

**LEE COUNTY ORDINANCE NO. 10-08**  
**(PRE-DISASTER BUILDBACK)**  
**(CPA2008-15)**

**AN ORDINANCE AMENDING THE LEE COUNTY COMPREHENSIVE PLAN, COMMONLY KNOWN AS THE "LEE PLAN," ADOPTED BY ORDINANCE NO. 89-02, AS AMENDED, SO AS TO ADOPT AMENDMENT CPA2008-15 (PERTAINING TO PRE-DISASTER BUILDBACK) APPROVED DURING THE COUNTY'S 2009 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE; PROVIDING FOR PURPOSE, INTENT AND SHORT TITLE; AMENDMENTS TO ADOPTED TEXT; LEGAL EFFECT OF "THE LEE PLAN"; GEOGRAPHICAL APPLICABILITY; SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.**

WHEREAS, the Lee County Comprehensive Plan ("Lee Plan") Policy 2.4.1. and Chapter XIII, provides for adoption of amendments to the Plan in compliance with State statutes and in accordance with administrative procedures adopted by the Board of County Commissioners ("Board"); and,

WHEREAS, the Board, in accordance with Section 163.3181, Florida Statutes, and Lee County Administrative Code AC-13-6 provide an opportunity for the public to participate in the plan amendment public hearing process; and,

WHEREAS, the Lee County Local Planning Agency ("LPA") held a public hearing on the proposed amendment in accordance with Florida Statutes and the Lee County Administrative Code on March 23, 2009 and July 27, 2009; and

WHEREAS, the Board held a public hearing for the transmittal of the proposed amendment on September 23, 2009. At that hearing, the Board approved a motion to send, and did later send, proposed amendment CPA2008-15 pertaining to Pre-Disaster Buildback, to the Department of Community Affairs ("DCA") for review and comment; and,

WHEREAS, at the October 29, 2009 meeting, the Board announced its intention to hold a public hearing after the receipt of DCA's written comments commonly referred to as the "ORC Report." DCA issued their ORC report on January 15, 2010; and,

WHEREAS, on March 3, 2010, the Board held a public hearing and adopted the proposed amendment to the Lee Plan set forth herein.

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:**

## SECTION ONE: PURPOSE, INTENT AND SHORT TITLE

The Board of County Commissioners of Lee County, Florida, in compliance with Chapter 163, Part II, Florida Statutes, and with Lee County Administrative Code AC-13-6, conducted public hearings to review proposed text amendments to the Lee Plan. The purpose of this ordinance is to adopt text amendments to the Lee Plan discussed at those meetings and approved by a majority of the Board of County Commissioners. The short title and proper reference for the Lee County Comprehensive Land Use Plan, as hereby amended, will continue to be the "Lee Plan." **This amending ordinance may be referred to as the "2008/2009 Regular Comprehensive Plan Amendment Cycle CPA2008-15 Pre-Disaster Buildback Future Land Use Ordinance."**

## SECTION TWO: ADOPTION OF LEE COUNTY'S 2008/2009 REGULAR COMPREHENSIVE PLAN AMENDMENT CYCLE

The Lee County Board of County Commissioners amends the existing Lee Plan, adopted by Ordinance Number 89-02, as amended, by adopting an amendment, as revised by the Board on March 3, 2010, known as CPA2008-15, with strike through identifying deleted text and underlining identifying new text.

The corresponding Staff Reports and Analysis, along with all attachments for this amendment are adopted as "Support Documentation" for the Lee Plan.

**OBJECTIVE 5.2: Redevelopment of Existing Multi-Family Residential Development:**  
To incentivize and promote cost effective and timely redevelopment of multi-family developments that were approved and developed prior to the adoption of the 1984 Lee Plan, in excess of the standard density range for their current Future Land Use Category.

**POLICY 5.2.1:** Over-density multi-family residential developments that lawfully achieved their density prior to the effective date of the Lee Plan (December 21, 1984), may be permitted to redevelop at their existing density. Over-density multi-family redevelopments will be considered on a case by case basis to determine the approval process to be followed to achieve redevelopment.

**POLICY 5.2.2:** When rezoning is required, the Planned Development zoning process must be utilized to prevent and mitigate adverse impacts to the surrounding areas and to ensure that appropriate site development regulations are incorporated into the development plans.

**POLICY 5.2.3:** In order to establish the: exiting structures; number of dwelling units; floor area; existing water management systems and outfalls; and, impervious area on the subject property, all proposals for over-density multi-family redevelopment must provide the county with full documentation verifying this information and establishing development was lawful when initially constructed.

The documentation must include two site plans. One depicting existing development and another depicting the proposed plan of redevelopment. This information must be provided at a pre-application meeting with County staff.

**POLICY 5.2.4:** The site design of the proposed development must be compatible with surrounding land uses to the maximum extent possible.

**POLICY 5.2.5:** All wet retention and dry retention areas must be planted with appropriate native trees and herbaceous plant species.

**POLICY 5.2.6:** For sites located within the Coastal High Hazard Area, proposed redevelopment must:

1. Have sufficient elevation to address a storm surge from a land falling category 5 hurricane;
2. Be constructed to withstand winds of 200 mph in accordance with the Florida Building Code;
3. Utilize impact protection for all exterior openings in accordance with the Florida Building Code;
4. Be equipped with emergency power and potable water supplies to last up to five days;
5. Be protected with adequate ventilation, sanitary facilities, and first aid medical equipment; and,
6. Be designed to minimize light pollution, sky glow and light trespass beyond the property lines by using appropriate light fixtures and other light management techniques to reduce the impact on wildlife such as sea turtles and migrating birds. Techniques may include:
  - a. Utilizing fully shielded, full cut off luminaries; down style canisters with interior baffles on the balconies; pole lights less than 15 feet in height; bollard type fixtures with louvers; and other techniques acceptable to the Division of Environmental Sciences.
  - b. Up-lighting is prohibited. Mercury vapor and metal halide lamps are also prohibited.
  - c. Glass windows and doors must be treated to achieve an industry-approved, inside-to-outside light transmittance value of 45 percent or less.

The following definition of "Build-back" is to be added to the Lee Plan Glossary.

## **GLOSSARY**

**Build-back** - replacing an existing structure or developed site with structures and/or development of substantially similar use, density and/or intensity.

## **SECTION THREE: LEGAL EFFECT OF THE "LEE PLAN"**

No public or private development will be permitted except in conformity with the Lee Plan. All land development regulations and land development orders must be consistent with the Lee Plan as amended.

## **SECTION FOUR: GEOGRAPHIC APPLICABILITY**

The Lee Plan is applicable throughout the unincorporated area of Lee County, Florida, except in those unincorporated areas included in joint or interlocal agreements with other local governments that specifically provide otherwise.

## **SECTION FIVE: SEVERABILITY**

The provisions of this ordinance are severable and it is the intention of the Board of County Commissioners of Lee County, Florida, to confer the whole or any part of the powers herein provided. If any of the provisions of this ordinance are held unconstitutional by a court of competent jurisdiction, the decision of that court will not affect or impair the remaining provisions of this ordinance. It is hereby declared to be the legislative intent of the Board that this ordinance would have been adopted had the unconstitutional provisions not been included therein.

## **SECTION SIX: INCLUSION IN CODE, CODIFICATION, SCRIVENERS' ERROR**

It is the intention of the Board of County Commissioners that the provisions of this ordinance will become and be made a part of the Lee County Comprehensive Plan. Sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," or other appropriate word or phrase in order to accomplish this intention; and regardless of whether inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered. The correction of typographical errors that do not affect the intent, may be authorized by the County Manager, or his or her designee, without need of public hearing, by filing a corrected or recodified copy with the Clerk of the Circuit Court.

SECTION SEVEN: EFFECTIVE DATE

The plan amendments adopted herein are not effective until a final order is issued by the DCA or Administrative Commission finding the amendment in compliance with Section 163.3184(9), Florida Statutes, or until the Administrative Commission issues a final order determining the adopted amendment to be in compliance in accordance with 163.3184(10), Florida Statutes, whichever occurs earlier. No development orders, development permits, or land uses dependent on this amendment may be issued or commence before the amendment has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a resolution affirming its effective status. A copy of such resolution will be sent to the DCA, Bureau of Local Planning, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100.

Commissioner Mann made a motion to adopt the foregoing ordinance, seconded by Commissioners Judah. The vote was as follows:

Robert P. Janes*	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Aye
Frank Mann	Aye

\*By telephone.

DONE AND ADOPTED this 3<sup>rd</sup> day of March 2010.

ATTEST:  
CHARLIE GREEN, CLERK

LEE COUNTY  
BOARD OF COUNTY COMMISSIONERS

BY: Marcia Wilson  
Deputy Clerk

BY: Ray Judah for  
Ray Judah, Chairman

DATE: 3/3/10



Approved as to form by:  
Donna Marie Collins  
Donna Marie Collins  
County Attorney's Office

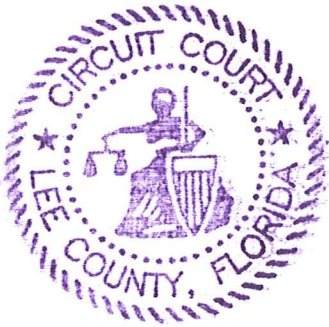
STATE OF FLORIDA

COUNTY OF LEE

I Charlie Green, Clerk of Circuit Court, Lee County, Florida, and ex-Officio Clerk of the Board of County Commissioners, Lee County, Florida, do hereby certify that the above and foregoing is a true and correct copy of Ordinance 10-08, as approved by the Board of Lee County Commissioners in the Regular Meeting of March 03, 2010, and same filed in the Clerk of the Court's Office.

Given under my hand and seal, at Fort Myers, Florida, this 12<sup>th</sup> day of March, 2010.

CHARLIE GREEN,  
Clerk of Circuit Court  
Lee County, Florida



By: *Shirley L. Perce*  
Deputy Clerk