



**LAND DEVELOPMENT CODE ADVISORY COMMITTEE  
COMMUNITY DEVELOPMENT/PUBLIC WORKS BUILDING**

**COMMISSION CHAMBERS  
Old Lee County Courthouse  
2120 Main Street, Fort Myers, FL 33901**

**FRIDAY, MARCH 12, 2021  
8:30 A.M.**

**AGENDA**

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – October 9, 2020
3. LDC Amendments 2020-2021 Cycle – Clean-up Amendments
4. Adjournment  
Next Meeting date: April 9, 2021

To view a copy of the agenda, go to [www.leegov.com/dcd/calendar](http://www.leegov.com/dcd/calendar).

For more information, contact Debbie Carpenter, (239) 533-8345 or [DCarpenter@leegov.com](mailto:DCarpenter@leegov.com).

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**MINUTES REPORT  
LAND DEVELOPMENT CODE ADVISORY COMMITTEE  
(LDCAC)  
Friday, October 9, 2020  
8:30 a.m.**

**Committee Members Present:**

Paula McMichael, Chair  
Amy Thibaut  
Al Quattrone  
Linda Stewart  
Bill Prysi, Vice Chair  
Daryl (Max) Forgey

Richard Ibach  
Randy Krise  
Tom Lehnert  
Jay Johnson  
Jennifer Sapen  
Patrick Vanasse

**Excused / Absent:**

Veronica Martin

**Lee County Government Staff Present:**

Amanda Swindle, Assistant County Attorney  
Debbie Carpenter, DCD Admin., Recorder  
David Loveland, Director, DCD

Anthony Rodriguez, Principal Planner, Zoning  
Audra Ennis, Manager, Zoning

**Outside Consultants/Members of the Public Present:**

None

**CALL TO ORDER AND AFFIDAVIT:**

Ms. Paula McMichael called the meeting to order at 8:30 a.m. in the Commission Chambers, Old Lee County Courthouse, 2120 Main Street, Fort Myers, Florida.

Ms. Amanda Swindle, Assistant County Attorney, reviewed the Affidavit of Publication and found it legally sufficient as to form and content.

**APPROVAL OF MINUTES – January 10, 2020**

**Mr. Patrick Vanasse made a motion to approve the January 10, 2020 minutes. Mr. Tom Lehnert seconded. The motion was called and carried.**

**LDC AMENDMENTS – BACKYARD CHICKENS**

Mr. Anthony Rodriguez, Principal Planner, Zoning Section of Community Development stated that in June the Board directed staff to prepare amendments to the LDC to allow the keeping and raising of chickens in residential areas. Staff has done the research and analysis and is proposing amendments to LDC Sections 34-694 and 34-735, which are the residential land use regulations, and mobile home land use regulations tables, to allow for the keeping and raising of chickens as an accessory use by right within the RS-1 through RS-5 zoning districts. Currently the regulations allow for that by right in AG districts and by Special Exception within the RS-4 and RS-5 districts. The right to use an AG property for that use will remain unchanged. The proposed amendment to 34-735 would allow the keeping and raising of chickens as an accessory use by right in the MH-4 zoning district. The MH-4 zoning district has a larger lot size requirement than the MH-1 through MH-3 districts and also has a provision to establish a private stable by Special Exception. Staff is also proposing amendments to Sec 34-1294 to establish supplementary regulations related to the keeping and raising of chickens as an accessory use within those districts. The regulations permit the keeping of hens only, no roosters will be permitted, chickens may only be kept for personal use, they may not be slaughtered on the premises, and the limitation on the number of

chickens would be four (4) on lots of less than one (1) acre in size, and six (6) on lots of one (1) acre or greater in size. The lot must have an established residential use and must comply with minimum zoning requirements for width, depth and area. A coop would be required with a square footage requirement along with a requirement to provide continuous visual screening, a minimum of 6' feet in height around the sides and rear lot line.

Mr. Rodriguez referred to the next to last page of the meeting packet, identifying a change subsequent to the publication of the packet. In section 34-1294, sub(2)d. relating to the minimum standards for keeping and raising of chickens, items i and ii need to be amended to include mobile home, therefore item i should read: A single family home or a mobile home must be the principal use of the property (because this use would also be permitted within the MH-4 zoning district); and, item ii should read: The property must comply with the minimum dimensional requirements for the district as contained in section 34-695 or section 34-736 (which is relative to the mobile home property development regulations).

Ms. McMichael recognized Mr. Randy Krise. Mr. Krise had distributed copies of a letter of objection from Kevin Besserer of the Royal Palm Coast Realtor Association to the committee. The letter was passed through Commissioner's Pendergrass office and he asked that it be entered into the record.

Ms. McMichael asked staff if this would apply to gated communities with an HOA. Mr. Rodriguez said this would not preclude a gated community or HOA from establishing by-laws or covenants that restrict this use. He noted that this use is not permitted in planned developments (PD) which, more often than not, gated communities are within. Communities could vote to allow in accordance with regulations if they are conventionally zoned. Ms. Jennifer Sapien asked if a PD would have to be amended to allow the use and Mr. Rodriguez said "technically yes", but also said that regulations have not been changed to allow this use within the planned development use regulations table.

Ms. McMichael asked if building permits or inspections would be required and Mr. Rodriguez responded that accessory structures would have to go through the permitting process which includes inspections. There is also a requirement to complete a class through the University of Florida agricultural extension service and she asked if that was the only entity that offered that type of class. Mr. Rodriguez was not sure if it was the only one, but it was the most accessible and the Lee County extension service has agreed to offer it.

There was a brief discussion about the size of RS-1 and RS-2 lots, that they seemed too small to accommodate backyard chickens.

Ms. McMichael opened for discussion. Mr. Krise's opinion was that it was going to get out of control quickly, was going to cause the government headaches; that people were not going to want to follow the rules, and it will cause tension between neighbors. He referred to Mr. Besserer's letter, stating the Realtor Association was against it, and he had spoken with others that were against it as well.

Mr. Al Quattrone had personal experience raising just one chicken on his single family lot. He said it only lasted about 3 months before raccoons tried to kill it, it was messy and the smell was bad. It was re-homed to a farm.

Mr. Jay Johnson agreed with Mr. Krise that this would "open a can of worms" and that the rules and regulations would be hard for the owners to comply with and for the county to regulate.

Ms. Sapien thought the goal was to allow for more outdoor, backyard chickens, and she supported that. However she was worried about the rules being too burdensome and that chicken owners would not comply and then it would become a code enforcement issue. She had looked at the on-line chicken class and it was easy. She recognized that with setback requirements the use would not fit on some lots. She objected to the letters of no objection, stating that either the use is allowed or it is not. She supported the concept but again, felt that this much regulation was going to create a code enforcement issue.

Mr. Patrick Vanasse concurred with most of the comments. He said the idea of sustainability and urban agriculture were good things. His biggest concern was with the smell, that even with screening it traveled, and he agreed that it could become a code enforcement nightmare.

Ms. McMichael asked about the possibility of having a pilot program to test backyard chickens in residential areas. Mr. David Loveland, Community Development Director, responded that staff had reviewed other local ordinances, Bonita Springs and City of Fort Myers each have one, and he thought Bonita Springs might have done a test program. The Board direction to staff was to draft an ordinance, take it through committees and get input and then a decision could be made.

Mr. Krise made a motion to deny the change in this regulation of the land development code. Seconded by Mr. Johnson. The motion was called and approved unanimously.

There were no members of the public present and no public comment.

The next meeting was tentatively scheduled for November 13, 2020.

Mr. Loveland announced that it will soon be time to begin the regular 2 year land development code update cycle. There is a long list of potential amendments to discuss. The intent is to break them into manageable sections in order to have the time to vet them fully. He was not sure of the exact timetable, but he expected the committee would soon be having regular meetings. The location of the meetings will be contingent upon the topics of discussion.

There was no further discussion and the meeting was adjourned at 8:50 a.m.

**MEMORANDUM**  
**FROM**  
**THE DEPARTMENT OF**  
**COMMUNITY DEVELOPMENT**

**TO: Land Development Code  
Advisory Committee (LDCAC)**

**DATE: March 1, 2021**

**FROM: Anthony R. Rodriguez, AICP  
Zoning Manager**

**RE: Biennial Land Development Code (LDC) Amendment Cycle  
Clean-up Amendment Package**

The attached Land Development Code amendments, scheduled for consideration at the March 10, 2021 EROC meeting, have been prepared in response to direction from the Board of County Commissioners to initiate the biennial Land Development Code amendment cycle. Staff seeks a recommendation on whether the proposed amendments should be adopted by the Board of County Commissioners.

**BACKGROUND**

On February 2, 2021 the Board of County Commissioners directed staff to proceed with the regular two-year update cycle for the Land Development Code (LDC), starting with a package of “clean-up” changes to take through committee review and bring back for Board consideration. The amendments attached hereto consist of clarifying “clean-up” type changes consistent with this direction from the Board.

For this update cycle, staff is proposing to split the proposed amendments into more digestible packages to allow for more thorough consideration and vetting of proposed code changes. Staff will seek further direction from the Board for more substantive changes by topic area as this amendment cycle continues. Staff will develop proposed code changes for various topic areas, brief the Board and seek authorization to proceed with the proposed code changes, and complete the committee review process prior to final Board consideration if so authorized.

**SUMMARY**

The amendments attached hereto consist of clean-up type amendments to the LDC that are intended to reduce redundancies, clarify language for consistency in administration, correct cross-references to the Lee Plan and LDC, and ensure consistency with state statute. The proposed amendments can be generally summarized as follows:

- Revisions to impact fee regulations, Development of Regional Impact regulations, Care Facility/community residential home regulations, and Hurricane Impact Mitigation regulations to ensure consistency with state statute and the Florida Building Code;
- Clarifications and corrections to cross-references for certain landscape standards in LDC Chapter 10;

- The correction of scrivener's errors throughout the LDC;
- Relocation of procedural/administrative language from Chapter 22 (Historic Preservation) to the appropriate administrative code (AC-2-10);
- Updates to Lee Plan and LDC cross-references throughout the LDC;
- Clarification of regulations for essential service facilities, metal buildings in residential zoning districts, and permitting requirements for agricultural buildings; and
- The restoration of definitions and application exemption requirements that were inadvertently deleted through prior LDC amendment cycles;

cc: Roger Desjarlais, County Manager  
 Glen Salyer, Assistant County Manager  
 David Loveland, AICP, Director, Department of Community Development  
 Michael Jacob, Deputy County Attorney  
 Amanda L. Swindle, Assistant County Attorney  
 Mikki Rozdolski, Manager, Community Development Operations, Planning  
 Kevin Ruane, District One Commissioner  
 Cecil L. Pendergrass, District Two Commissioner  
 Ray Sandelli, District Three Commissioner  
 Brian Hamman, Chairman, District Four Commissioner  
 Frank Mann, District Five Commissioner

## CHAPTER 2 – ADMINISTRATION

### Sec. 2-46. - Concurrency certification.

Staff note: Revise Lee Plan cross-reference.

(a) through (i) remain unchanged.

- (j) *Determination of public school capacity.* The School Board of Lee County will compile a school concurrency inventory report annually. The School Board will inventory current school capacity and current occupancy by school type and by concurrency service area. Existing capacity will be adjusted by adding the expected capacity increase from new or expanded planned school facilities for the next three years in accordance with the adopted School Board Capital Improvements Program. Current occupancy will then be subtracted from existing and expected capacity to calculate the available capacity by school type by concurrency service area. The School Board will transmit the school concurrency inventory to the County. Upon its receipt, the County will incorporate the school concurrency inventory into the County's Concurrency Report for all public facilities.

The County will utilize the information in the report to determine whether there is available capacity for each level of school to accommodate the proposed development based on the level of service standards and the concurrency service area. In determining the capacity of public school facilities, the Director will include existing facilities and committed facilities, as provided in ~~Policy 71.2.2. of the Lee Plan.~~

If the County's Concurrency Report reflects that there is not adequate capacity available in the concurrency service area, mitigation options may be explored by proposed developments that cannot meet school concurrency. Mitigation options may include, but are not limited to:

- (1) The donation of land or funding of land acquisition or construction of a public school facility sufficient to offset the demand for public school facilities created by the proposed development; and,
- (2) Establishment of a charter school with facilities constructed in accordance with the State Requirements for Educational Facilities (SREF) on a site that meets the minimum acreage provided in SREF and subject to guarantees that the facility will be conveyed to the School Board at no cost to the Board if the charter school ceases to operate.

Proposed mitigation must be directed towards a permanent school capacity improvement identified in the School Board's financially feasible work program, which satisfies the demands created by the proposed development. If mitigation can be agreed upon, the County and the school district must enter into an enforceable binding developer agreement with the developer. If mitigation cannot be agreed upon, the County must deny application based upon an inadequate school capacity.

Relocatable classrooms will not be accepted as mitigation.

*Remainder of section unchanged.*

### Sec. 2-69. - General requirements.

Staff note: Clarify Lee Plan cross-reference.

- (a) A developer may choose to make a proportionate share contribution, pursuant to the following requirements:
  - (1) The proposed project is consistent with the Lee Plan and applicable land development regulations; and
  - (2) The schedule of capital improvements in the County CIE, Lee Plan Map 3A, or the Lee County MPO Long Range Transportation Plan (LRTP), includes, or may be amended to include, a transportation improvement(s) that, upon completion, will mitigate additional traffic generated by the proposed development.

## **ARTICLE VI. - IMPACT FEES**

### **DIVISION 1. - GENERALLY**

**Staff Note:** Adjust fee change applicability to align with recently adopted State Statutes.

#### **Sec. 2-232. - Impact fee schedule amendments.**

- (a) Unchanged
- (b) Impact fee schedule amendments will take effect as follows:
  - (1) If an impact fee schedule amendment causes a particular base fee to decrease, the reduction will take effect upon filing the amendment with the Secretary of State.
  - (2) If an impact fee schedule amendment causes a particular base fee to increase, the increase will take effect 90 days after the date the amendment is adopted, provided that:
    - a. An impact fee permit application submitted prior to the effective date of the amendment will be assessed based on the fee schedules in effect at the time the application is submitted ~~if the permit is issued within 90 days after the effective date of the amendment.~~
    - ~~b. An impact fee permit application submitted prior to the effective date of the amendment, but not issued within 90 days after the effective date of the amendment, will be assessed based on the amended impact fee schedules, subject to the following:~~
      - ~~1. The Director may accept payment based on the fee schedule in effect at the time of application in cases where the following conditions are satisfied:~~
        - ~~i. The impact fee permit application was properly submitted and sufficient for review prior to the effective date of the amendment;~~
        - ~~ii. A governmental action or failure to act in a timely manner caused the issuance of the permit to be delayed beyond 90 days after the effective date of the amendment; and~~
        - ~~iii. The applicant submits a written request to the Director specifying the basis for the request.~~
      - ~~2. The Director's decision to grant or deny such request must be in writing, is based solely on the discretion of the Director, and is not subject to appeal.~~



- ~~3. The ability of the Director to grant such a request terminates 120 days after the effective date of the amendment.~~
- ~~eb.~~ All impact fee permit applications submitted after the effective date of the amendment will be assessed based on the amended impact fee schedules.
- ~~ec.~~ For purposes of this section, an "impact fee permit application" is an application for a building permit, mobile home move-on permit, mine operation permit ~~development order~~, golf course development order, recreational vehicle development order, or any other permit or development order for which impact fees are applicable.

## **DIVISION 2. - ROADS IMPACT FEE**

### **Sec. 2-264. - Definitions and rules of construction.**

**Staff Note:** Amend definitions to be consistent with language in the road impact fee schedule, omitting those that are no longer applicable and adding adjusting those not explicitly addressed.

- (a) For the purposes of administration and enforcement, unless otherwise stated in this division, the following rules of construction apply to the text of this division:
- (1) Any road right-of-way used to define roads impact fee district boundaries may be considered to be within any district it bounds for purposes of using these funds.
  - (2) All transportation terms used in this division have the same meaning as in the Lee Plan, and in chapter 34 and chapter 10, unless otherwise indicated.
- (b) The following words, terms and phrases, when used in this division, will have the meanings ascribed to them in this subsection and the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation, except where the context clearly indicates a different meaning.

~~Duplex~~ has the same meaning given it in chapter 34.

~~Elderly/disabled housing~~ means dwelling units qualified to receive Federal assistance through Section 202 (supportive housing for the elderly, authorized under the Housing Act of 1959, Section 210 of the Housing and Community Development Act of 1974, and the National Affordable Housing Act) or Section 811 (supportive housing for persons with disabilities, authorized under the National Affordable Housing Act of 1990, as amended by the Housing and Community Development Act of 1992, the Rescission Act and the American Homeownership and Opportunity Act of 2000) programs.

~~General office~~ means any type of office except a medical office. A general office building may contain accessory uses such as a beauty or barber shop, snack bar, cafeteria, day care or other use that primarily serves tenants of the office building and their employees, provided that such accessory uses do not account for more than ten percent of the gross floor area of the building.

~~Medical office~~ has the same meaning given it in chapter 34.

Mine operation permit has the same meaning given it in chapter 12.

~~Multiple-family building~~ has the same meaning given it in chapter 34. for the purpose of this Division only, means two or more dwelling units in a single building.

~~General Office~~ means any type of office ~~except a medical office~~. An ~~general~~ office building may contain accessory uses such as a beauty or barber shop, snack bar, cafeteria, day care or other use that primarily serves tenants of the office building and their employees, provided that such accessory uses do not account for more than ten percent of the gross floor area of the building.

~~Townhouse~~ has the same meaning given it in chapter 34.

~~Two-family attached~~ has the same meaning given it in chapter 34.

#### **Sec. 2-265. - Imposition.**

- (a) Except as provided in sections 2-272 through 2-275, any person who, after September 16, 1985, seeks to develop land by applying to the county or any participating municipality for the issuance of a building permit, mobile home move-on permit, mine operation permit or recreational vehicle development order for the purpose of making an improvement to land for one of the uses specified in section 2-266, which will generate or attract additional traffic, is required to pay a roads impact fee in the manner and amount set forth in this division.
- (b) No building permit, mobile home move-on permit, mine operation permit or recreational vehicle development order for any activity requiring payment of an impact fee pursuant to section 2-266 may be issued by the county or any participating municipality until the roads impact fee required by this division has been paid.
- (c) In the case of structures, mobile homes or park trailers that are moved from one location to another, a roads impact fee will be collected for the new location if the structure, mobile home or park trailer constitutes one of the land development uses listed in section 2-266, regardless of whether roads impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure, mobile home or park trailer so moved is replaced by an equivalent use, no roads impact fee is owed for the replacement use. In every case, the burden of proving past payment of roads impact fees or equivalency of use rests with the feepayer.

#### **Sec. 2-266. - Computation of amount.**

**Staff Note:** Adjust criteria to be met in order for a permit to be considered "issued", specifically to align with electronic means to doing business. Add references to "Mine operation permit" as needed to fully incorporate road impact fee applicability for mining operations.

- (a) At the option of the feepayer, the amount of the roads impact fee may be determined by the schedule set forth in this subsection. The reference in the schedule to square feet refers to the gross square footage of each floor of a building measured to the exterior walls, and not usable, interior, rentable, noncommon or other forms of net square footage. The reference in the schedule to mobile home/RV park site refers to the number of mobile home or recreational vehicle sites permitted by the applicable final development order. The reference in the schedule to mine refers to the number of cubic yards excavated.

#### **ROADS IMPACT FEE SCHEDULE**

Land Use Type	Unit	Roads Impact Fee Due at 100% of
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		<b>Actual Full Cost</b>
<b>Residential</b>		<b>Local Roads</b>
Single-family residence (detached)	Dwelling unit	\$9,996
Multi-family, low rise (1—2 stories)	Dwelling unit	\$7,750
Multi-family, mid-rise (3—10 stories)	Dwelling unit	\$5,760
Multi-family, high-rise (11+ stories)	Dwelling unit	\$4,700
Mobile home/RV park	Pad/park site	\$5,293
Senior adult housing, detached	Dwelling unit	\$4,511
Senior adult housing, attached	Dwelling unit	\$3,918
Adult congregate living facility (ACLF)	Dwelling unit	\$2,138
Continuing care retirement community	Dwelling unit	\$2,540
Hotel/motel or timeshare	Room/unit	\$4,947
<b>Retail Commercial</b>		
Shopping center	1,000 sq. ft.	\$11,476
Bank	1,000 sq. ft.	\$25,579
Car wash, self-service	Stall	\$6,112
Convenience store w/gas sales (<10 fuel positions)	Fuel positions	\$18,979
Convenience store w/gas sales (10+ fuel positions)	Fuel positions	\$13,565
Golf course (open to public)	Acre	\$2,277
Movie theater	1,000 sq. ft.	\$26,985
Restaurant, standard	1,000 sq. ft.	\$22,019

Restaurant, high-turnover (sit down)	1,000 sq. ft.	\$27,912
Restaurant, fast casual	1,000 sq. ft.	\$39,277
Restaurant, fast food	1,000 sq. ft.	\$48,912
<b>Office/Institutional</b>		
Office	1,000 sq. ft.	\$7,614
Hospital	1,000 sq. ft.	\$7,920
Nursing home	1,000 sq. ft.	\$4,907
Church	1,000 sq. ft.	\$4,712
Day care center	1,000 sq. ft.	\$10,345
Elementary/secondary school (private)	1,000 sq. ft.	\$3,893
<b>Industrial</b>		
Industrial park or general industrial	1,000 sq. ft.	\$3,380
Warehouse	1,000 sq. ft.	\$1,749
Warehouse, high-cube	1,000 sq. ft.	\$1,409
Mini-warehouse	1,000 sq. ft.	\$1,085
Mine	Cubic yard	\$.040

**Notes:**

- (1) Mobile homes not located within an established mobile home park will be treated as a single-family residence for impact fee calculation purposes.
- (2) Impact fees for a golf course (i.e., tees, fairways, greens, accessory structures such as golf cart houses, etc.) are due and payable prior to the issuance of the development order for the golf course. The golf course club house and related club house facilities will not be included in the impact fee calculation for the golf course. Impact fees for the

club house and related facilities will be calculated separately, at the time of building permit issuance for these facilities, based upon the uses encompassed by the club house facility.

- (3) Under this article, impact fees become due and payable at the time of building permit issuance. Mine impact fees become due and payable at the time the mine operation permit is issued. Mine impact fees will not be assessed upon the renewal of an existing mine operation permit, provided the mine footprint remains the same. If the mine footprint is increased beyond the previous mine operation permit approval, impact fees will be assessed upon the incremental increase in cubic yardage at the time the mine operation permit is issued. For purposes of this Code, a building permit or mine operation permit is considered "issued" when the permit has been approved by the County and all applicable fees have been paid. ~~meets all of the following criteria:~~

- ~~a. The permit is approved by the County; and all applicable fees have been paid.~~
- ~~b. Has been picked up by the owner or his agent; and~~
- ~~c. All applicable fees have been paid.~~

[Also, NOTE: The development order process is separate and distinct from the building permit process and not relevant with respect to establishing when impact fees become due and payable, except as to golf courses and RV parks.]

- (4) If a building permit is requested for a building with mixed uses, as defined in section 2-264, then the fee will determined according to the schedule set out in this subsection by apportioning the total space within the building according to the space devoted to each principal use. A shopping center will be considered a principal use; however, when located within a shopping center, a fast-food restaurant or convenience store with gasoline sales will be considered a principal use.
- (b) If the type of development activity for which a building permit is applied is not specified on the fee schedule set out in this subsection, the county manager will use the fee applicable to the most nearly comparable type of land use on the fee schedule set out in this subsection. The county manager will be guided in the selection of a comparable type by the Institute of Transportation Engineers' "Trip Generation" (latest edition), studies or reports done by the United States Department of Transportation, the state department of transportation and the county department of transportation, articles or reports appearing in the ITE Journal and other reliable sources. If the county manager determines that there is no comparable type of land use on the fee schedule set out in this subsection, then the county manager must determine the fee by: (1) using traffic generation statistics or other relevant data from the sources named in this subsection; and (2) applying the formula set forth in subsection (f) of this section.
- (c) When change of use, redevelopment or modification of an existing use requires the issuance of a building permit, mobile home move-on permit, mine operation permit, or recreational vehicle development order, the roads impact fee will be based upon the net increase in the impact fee for the new use as compared to the previous use. However, no impact fee refund or credit will be granted if a net decrease results.

## **Sec. 2-267. - Payment.**

Staff Note: Omit redundancy in subsection (a), add reference for mine operation permit.

- (a) ~~The feepayer must pay the roads impact fees required by this division to the building official prior to the issuance of any building permit, mobile home move-on permit, or recreational vehicle development order for which the fee is imposed, except as provided in sections 2-272 through 2-275. No building permit, mobile home move-on permit, mine operation permit, or recreational vehicle development order may be issued by the county or by any participating municipality in the county until the impact fee has been paid, except as provided in sections 2-272 through 2-275.~~

#### **Sec. 2-269. - Trust fund accounts.**

**Staff Note:** Adjust number of trust fund accounts to align with the number of road impact fee benefit districts.

- (a) There are hereby established ~~five~~ four roads impact fee trust fund accounts, one for each roads impact fee benefit district established in section 2-268. Subsidiary accounts may be established for subdistricts created by interlocal agreement.
- (b) Funds withdrawn from these accounts must be used in accordance with the provisions of section 2-270.

#### **Sec. 2-271. - Refund of fees paid.**

**Staff Note:** Add reference for mine operation permit.

- (a) If a building permit, mobile home move-on permit, mine operation permit, or recreational vehicle development order expires, is revoked or voluntarily surrendered and therefore voided, and no construction or improvement of land (including moving a mobile home onto land) has commenced, then the feepayer is entitled to a refund of the roads impact fee paid as a condition for its issuance, except that up to three percent of the impact fee paid will be retained as an administrative fee to offset the cost of processing the refund. This administrative fee is in addition to the charge collected at the time of fee payment. No interest will be paid to the feepayer on refunds due to noncommencement.
- (b) Funds not expended or encumbered by the end of the calendar quarter immediately following 20 years from the date the roads impact fee was paid will, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of three percent per annum.

#### **Sec. 2-275. - Credits.**

**Staff Note:** adjust mechanism of credit appreciation to provide for use of rate change prospectively, while maintaining CPI language for those created prior to recent statutory changes (HB 7103, effective date June 28, 2019). Adjust language to allow application of credits up until issuance, which is consistent with current practice.

- (a) Remainder unchanged
- (5) *Transferability.* Roads impact fee credits created on or after October 1, 1989 must be in transferable form and may be sold, assigned or conveyed as set forth in the County Administrative Code. Credits may be used to pay or offset roads impact fees in the same roads impact fee district in which they are earned, or in other districts directly benefitted by the capital improvements for which the credits were granted, and consistent with any interlocal agreements made with participating municipalities.

Credits may not be used outside the district earned unless the proposed use is found to be in compliance with this division by the County Attorney and the Director of the County Department of Transportation. Unless a longer period is specifically authorized by the Board of County Commissioners, transferable credits must be used within 20 years of the date created. The creation date is the date the instruments conveying legal title to the land or improvements given in exchange for credits were recorded in the County's official record book. The creation date for credits pursuant to prepayment of fees under section 2-272 will be the date the prepayment is received by the County.

a. Roads impact fees credits issued prior to June 28, 2019 will be increased at the time they are used, in the same percentage that the Consumer Price Index—All Urban Consumers (CPI-U), All Items, U.S. City Average maintained by the Bureau of Labor Statistics increased between the time the credits are used and the time the credits were created. ~~Credits not used within 20 years of issue will expire.~~

b. Roads impact fees credits issued on or after June 28, 2019 will be increased at the time they are used, in the amount that the applicable fee category has increased between the time the credits are used and the time the credits were created.

Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the provisions and restrictions of this division.

- (c) Credits must be claimed by the fee payer ~~at the~~ prior to the time of issuance of the ~~application for~~ a building permit, mobile home move-on permit, mine operation permit or recreational vehicle development order. Any credits not so claimed will be deemed waived by the fee payer.

### **DIVISION 3. - REGIONAL PARKS IMPACT FEE**

#### **Sec. 2-306. - Computation of amount.**

Staff Note: Adjust criteria to be met in order for a permit to be considered "issued", specifically to align with electronic means to doing business.

- (a) Unchanged
- (b) Under this article, impact fees become due and payable at the time of building permit issuance. For purposes of this Code, a building permit is considered "issued" when the permit has been approved by the County and all applicable fees have been paid. ~~meets all of the following criteria:~~
- ~~(1) The permit is approved by the county;~~
  - ~~(2) Has been picked up by the owner or his agent; and,~~
  - ~~(3) All applicable fees have been paid.~~

#### **Sec. 2-307. - Payment.**

Staff Note: Omit redundancy in subsection (a).

- (a) ~~The fee payer must pay the regional parks impact fee required by this division to the building official prior to the issuance of the building permit, mobile home move-on permit or recreational vehicle development order for which the fee is imposed, except as provided in section 2-312.~~ No building permit, mobile home move-on permit or recreational vehicle development order may be issued by the county or any participating municipality until the impact fee has been paid, except as provided in section 2-312.
- (b) In lieu of cash, up to 100 percent of the regional parks impact fee may be paid with credits created in accordance with the provisions of section 2-312(b).
- (c) Participating municipalities must remit regional parks impact fees to the county at least once each month, less any amounts retained pursuant to section 2-310(c), unless another method is specified in an appropriate interlocal agreement.
- (d) All funds collected pursuant to this division will be promptly transferred for deposit into the regional parks impact fee trust fund and used solely for the purposes specified in this division.

### **Sec. 2-312. - Exemptions and credits.**

**Staff Note:** adjust mechanism of credit appreciation to provide for use of rate change prospectively, while maintaining CPI language for those created prior to recent statutory changes.

- (a) Unchanged
- (b) Credits are subject to the following:
  - (1)-(5) Unchanged
  - (6) Regional parks impact fee credits created on or after October 1, 1989, must be in transferable form and may be sold, assigned or otherwise conveyed as set forth in the county Administrative Code. They may be used to pay or otherwise offset regional parks impact fees required by this division, consistent with any interlocal agreements made with participating municipalities. Unless a longer period is specifically authorized by the Board of County Commissioners, such transferable credits must be used within 20 years of the date they are created, which date is the date the instruments conveying legal title to the land or improvements, which were given in exchange for credits, were recorded in the county's official record book.
    - a. Regional parks impact fee credits issued prior to June 28, 2019 will be increased at the time they are used in the same percentage that the Consumer Price Index—All Urban Consumers (CPI-U), All Items, U.S. City Average maintained by the Bureau of Labor Statistics increased between the time the credits are used and the time the credits were created. ~~Credits will expire after 20 years.~~
    - b. Regional parks impact fee credits issued on or after June 28, 2019 will be increased at the time they are used in the amount that the applicable fee category has increased between the time the credits are used and the time the credits were created.

Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the provisions and restrictions of this division.



## **DIVISION 4. - COMMUNITY PARKS IMPACT FEE**

### **Sec. 2-346. - Computation of amount.**

Staff Note: Adjust criteria to be met in order for a permit to be considered "issued", specifically to align with electronic means to doing business.

- (a) Unchanged
- (b) Under this article, impact fees become due and payable at the time of building permit issuance. For purposes of this code, a building permit is considered "issued" when the permit has been approved by the County and all applicable fees have been paid. meets all of the following criteria:
  - ~~(1) The permit is approved by the county;~~
  - ~~(2) Has been picked up by the owner or his agent; and~~
  - ~~(3) All applicable fees have been paid.~~
- (c) – (f) Unchanged

### **Sec. 2-347. - Payment.**

Staff Note: Omit redundancy in subsection (a).

- ~~(a) — The feepayer must pay the community parks impact fee required by this division to the building official prior to the issuance of the building permit, mobile home move-on permit or recreational vehicle development order for which the fee is imposed, except as provided in section 2-352. No building permit, mobile home move-on permit or recreational vehicle development order may be issued by the county or by any participating municipality until the impact fee has been paid, except as provided in section 2-352.~~
- (b) Remainder unchanged

### **Sec. 2-352. - Exemptions and credits.**

Staff Note: adjust mechanism of credit appreciation to provide for use of rate change prospectively, while maintaining CPI language for those created prior to recent statutory changes. Adjust language to allow application of credits up until issuance, which is consistent with current practice.

- (a) Unchanged
- (b) Credits are subject to the following:
  - (1)-(5) Unchanged
  - (6) Community parks impact fee credits created on or after October 1, 1989, must be in transferable form and may be sold, assigned or otherwise conveyed as set forth in the county Administrative Code. They may be used to pay or otherwise offset community parks impact fees required by this division, so long as the credits are used in the same community parks impact fee benefit district in which they are earned, consistent with any interlocal agreements made with participating municipalities. Unless a longer period is specifically authorized by the Board of County Commissioners, transferable credits must be used within 20 years of the date they are created, which date is the

date the instruments conveying legal title to the land or improvements that were given in exchange for credits were recorded in the county's official record book.

a. Community parks impact fee credits issued prior to June 28, 2019 will be increased at the time they are used in the same percentage that the Consumer Price Index—All Urban Consumers (CPI-U), All Items, U.S. City Average maintained by the Bureau of Labor Statistics increased between the time the credits are used and the time the credits were created. ~~Credits not used will expire within 20 years.~~ Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the provisions and restrictions of this division.

b. Community parks impact fee credits issued on or after June 28, 2019 will be increased at the time they are used in the amount that the applicable fee category has increased between the time the credits are used and the time the credits were created. Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the provisions and restrictions of this division.

## **DIVISION 5. - FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES IMPACT FEE**

### **Sec. 2-385. - Imposition.**

**Staff Note:** Adjust criteria to be met in order for a permit to be considered "issued", specifically to align with electronic means to doing business.

(a) – (c) Unchanged

(d) *When due and payable.* Under this article, impact fees become due and payable at the time of permit issuance. For purposes of this division, a building permit or mobile home move-on permit is considered "issued" when the permit has been approved by the County and all applicable fees have been paid. ~~meets all of the following criteria:~~

~~(1) The permit is approved by the County;~~

~~(2) Has been picked up by the owner or his agent; and~~

~~(3) All applicable fees have been paid.~~

~~(4) The development order process is separate and distinct from the building permit process and not relevant with respect to establishing when impact fees become due and payable, except as to RV parks.~~

### **Sec. 2-387. - Payment.**

**Staff Note:** Omit redundancy in subsection (a).

~~(a) The fee payer must pay the fire and EMS impact fees required by this division to the building official prior to the issuance of the building permit, mobile home move-on permit or recreational vehicle development order for which the fees are imposed, except as provided in sections 2-392 through 2-395. No building permit, mobile home move-on permit or recreational vehicle development order may be issued by the county or by any participating municipality until the fee has been paid, except as provided in sections 2-394 and 2-395.~~

*Remainder unchanged*

### **Sec. 2-395. - Credits.**

**Staff Note:** adjust mechanism of credit appreciation to provide for use of rate change prospectively, while maintaining CPI language for those created prior to recent statutory changes. Adjust language to allow application of credits up until issuance, which is consistent with current practice.

(a) Credits are subject to the following:

(1) – (3) *Unchanged*

(4) *Transferability.* Fire or EMS impact fees created on or after October 1, 1989 must be in transferable form and may be sold, assigned or conveyed as set forth in the county Administrative Code. Credits may be used to pay or offset the fire or EMS impact fees in the same fire or EMS impact fee district in which they are earned, consistent with the interlocal agreements made with participating fire districts and municipalities. Unless a longer period is specifically authorized by the Board of County Commissioners, transferable credits must be used within 20 years of the date created. The creation

date is the date the instrument conveying legal title to the land or improvements given in exchange for credits were recorded in the county's official record books.

a. Fire or EMS impact fee credits issued prior to June 28, 2019 will be increased at the time they are used, in the same percentage that the Consumer Price Index—All Urban Consumers (CPI-U), All Items, U.S. City Average maintained by the Bureau of Labor Statistics increased between the time the credits are used and the time the credits were created. Credits not used within 20 years of issue will expire.

b. Fire or EMS impact fee credits issued on or after June 28, 2019 will be increased at the time they are used, in the same amount that the applicable fee category has increased between the time the credits are used and the time the credits were created.

*Remainder unchanged*

- (c) Credits must be claimed by the fee payer prior to issuance of ~~at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order.~~ Credits not so claimed will be deemed waived by the fee payer.

## **DIVISION 6. - SCHOOL IMPACT FEES**

### **Sec. 2-407. - Payment.**

*Staff Note: Omit redundancy in subsection (a).*

- (a) ~~The Feepayer must pay the school impact fee required by this division to the building official prior to the issuance of the building permit, mobile home move-on permit, or mobile home park development order for which the fee is imposed, except as provided in section 2-412.~~ No building permit, mobile home move-on permit or mobile home park development order may be issued by the county or by any municipality until the impact fee has been paid, except as provided in section 2-412.
- (b) In compliance with F.S. § 163.31801, the fee schedule will take effect December 31, 2008.

### **Sec. 2-413. - Credits.**

*Staff Note: adjust mechanism of credit appreciation to provide for use of rate change prospectively, while maintaining CPI language for those created prior to recent statutory changes.*

Capital improvements for educational facilities may generate school impact fee credits in amounts to be established pursuant to subsection (a)(2) of this section. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the county.

- (a) - (b) Unchanged

(c) *Transferability.* School impact fee credits are transferable.

- (1) Credits may be used to pay or offset school impact fees anywhere in the county or any municipality. However, the county manager and the county attorney must first determine that the improvement for which the credits were issued is a direct benefit to the development where the credits are sought to be used.
- (2) Transferable credits must be used within 20 years of the date created.

- (3) School impact fees credits issued prior to June 28, 2019 will be increased at the time they are used in the same percentage that the Consumer Price Index—All Urban Consumers (CPI-U), All Items, U.S. City Average maintained by the Bureau of Labor Statistics increased between the time the credits are used and the time the credits were created. ~~Credits not used within 20 years will be canceled by the building official.~~ Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the provisions and restrictions of this division.
- (4) School impact fees credits issued on or after June 28, 2019 will be increased at the time they are used in the same amount that the applicable fee category has increased between the time the credits are used and the time the credits were created. Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the provisions and restrictions of this division.

(e) – (f) remain unchanged.

#### **Sec. 2-485. - Impact mitigation.**

Staff note: Revise section to incorporate reference to applicable requirements of Florida Building Code in lieu of specific wind speed standard. Correct scrivener's error related to formatting.

*Subsection (a) remains unchanged.*

- (b) *Shelter impacts.* One or a combination of the following options may be used to address the impacts on the hurricane shelter program precipitated by the proposed residential development except for those residential developments listed in section (5) below. The division will determine acceptability and appropriateness of the type of mitigation proposed.
- (1) *Land donation.* A donation of land must meet the following minimum criteria:
- The land must be located outside the coastal high hazard area.*
  - The land is capable of being used to reduce hurricane shelter impacts in Lee County.*
  - The County will receive marketable fee title to the property. (Property encumbered by a restriction that it be used solely for hurricane shelter purposes will be deemed unacceptable.)*
  - The value of the land donated will be determined as of the earliest date the requirement to provide hurricane preparedness mitigation becomes applicable based upon formal County action (i.e., rezoning, platting, etc.).*
- (2) *Donate use of private structure.* A donation of the use of a private structure must meet the following minimum criteria:
- The structure must be located outside the coastal high hazard area.
  - The structure must be constructed and capable of use as a primary public hurricane shelter. Specifically, the structure and all required equipment and supplies must be:
    1. Elevated to the anticipated land falling category 3 flood level; and

2. Constructed to withstand winds of at least 150 miles per hour according to in accordance with the requirements of the Florida Building Code; and
  3. Constructed with a minimum of exterior glass, with all glazed openings provided with impact protection in accordance with the Florida Building Code; and
  4. Equipped with emergency power and potable water supplies; and
  5. Have adequate ventilation, sanitary facilities and first aid equipment; and
  6. The structure, and all restrooms and support facilities, must comply with all regulations regarding accessibility for persons with disabilities.
- c. For purposes of compliance with this article, the cost of providing or donating a structure for use as a primary hurricane shelter will be determined as the incremental cost difference attributable to bringing the structure up to primary public shelter standards from the original primary proposed use.

*Remainder of section remains unchanged.*

## **CHAPTER 6 – BUILDINGS AND BUILDING REGULATIONS**

### **Sec. 6-490. - General.**

*Staff Note: Revise Lee Plan cross-reference.*

All manufactured homes installed in flood hazard areas must be installed by an installer that is licensed pursuant to F.S. § 320.8249 and must comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this article. If located seaward of the coastal construction control line, all manufactured homes must comply with the more restrictive of the applicable requirements.

The placement of manufactured homes or recreational vehicles is prohibited in coastal high hazard areas (Zone V), except in an existing manufactured home or recreational vehicle park or subdivision. A replacement manufactured home or recreational vehicle may be placed on a lot in an existing manufactured home or recreational vehicle park or subdivision, provided the anchoring standards of section 6-492 and the elevation standards of sections 6-494 and 6-495, as applicable, are met. New or expanded manufactured home or recreational vehicle parks or subdivisions are prohibited until such time, if ever, that the Lee Plan ~~Policy 80.1.2~~ is amended or ~~repealed~~ so as to allow such new or expanded manufactured home or recreational vehicle development.

## **CHAPTER 10 – DEVELOPMENT STANDARDS**

### **Sec. 10-1. - Definitions and rules of construction.**

*Staff Note: Correct Lee Plan cross-references for consistency.*

*Subsection (a) remains unchanged.*

- (b) *Definitions.* Except where specific definitions are used within a specific section of this chapter for the purpose of such sections, the following terms, phrases, words and their derivations will have the meaning given in this subsection when not inconsistent with the context:

*Absence of need* means where it can be reasonably determined that: (1) the facility is not likely to connect to an existing or planned facility, scheduled for construction in a five-year transportation work program, (2) is not identified on the Lee Plan ~~transportation m~~Map 3A (Financially Feasible Highway Plan), 3C (Financially Feasible Transit Network) or 3D (Unincorporated Bikeways/Walkways Facilities Plan), and (3) the roadway frontage is more than 60 percent developed, without facilities and the remainder of the undeveloped land will not provide a continuous facility at the time of build out.

*Abutting through Lot, L-shape remain unchanged.*

*Lot of record* means an undivided lot which is part of a plat which has been lawfully recorded in the plat books in the office of the clerk of the circuit court and is in compliance with F.S. ch. 177, or a parcel of land, the deed of which was lawfully recorded in the office of the clerk of the circuit court on or before January 28, 1983, or a lot resulting from an approved limited review development order lot split recorded in the public records of Lee County, Florida, or a single family lot approved pursuant to the single-family determination provisions of Lee Plan ~~article~~chapter XIII.

*Remainder of section remains unchanged.*

#### **Sec. 10-354. - Reuse water system.**

Staff note: correct Lee Plan cross-reference.

- (a) *Mandatory connection to central reuse water system required for certain developments.* New developments meeting Lee Plan Standard 4.1.3 criteria must connect to a central reuse water system providing the quality and quantity of reuse water necessary for the reasonably anticipated irrigation needs of the proposed development or future phases of existing developments with a separate entrance.

*Remainder of section remains unchanged.*

#### **Sec. 10-416. - Landscape standards.**

Staff note: clarify that roads, drives, and parking areas serving individual single- and two-family residential uses are exempt from this requirement.

*Subsections (a) through (c) remain unchanged.*

*Subsections (d)(1) through (d)(5) remain unchanged.*

- (6) If roads, drives, or parking areas associated with a multi-family or non-residential use are located less than 125 feet from an existing single-family residential subdivision or single-family residential lots, a solid wall or combination berm and solid wall not less than eight feet in height must be constructed not less than 25 feet from the abutting property and landscaped (between the wall and the abutting property) with a minimum of five trees and 18 shrubs per 100 lineal feet or a 30-foot wide Type F buffer with the

hedge planted a minimum of 20 feet from the abutting property. Where residences will be constructed between the road, drive or parking area and the existing residential subdivision or lots, the wall or wall and berm combination are not required.

*Remainder of section remains unchanged.*

#### **Sec. 10-424. - Landscape requirements for specific uses.**

Staff note: Revise section to enumerate items. Add convenience food and beverage stores, automotive service stations, fast food restaurants and car washes to list of uses requiring landscaping/screening beyond minimum standards as required by section 34-1353. Remove San Carlos Island Redevelopment Overlay Districts.

(a) The following uses require landscaping or screening beyond the minimum standard requirements:

- (1) Recreational vehicle planned developments, section 34-939(a)(3).
- (2) Private recreational facilities planned developments, section 34-941.
- (3) Display, sale, rental or storage facilities for motor vehicles, boats, recreational vehicles, trailers, mobile homes or equipment, section 34-1352.
- (4) Convenience food and beverage stores, automobile service stations, fast food restaurants, and car washes, section 34-1353.
- (5) Wireless communications facilities, section 34-1447(c)(4)(c).
- (6) Essential services and facilities, section 34-1616(b).
- (7) Mining, chapter 12.
- (8) Residential project walls, section 34-1743(b)(3).
- (9) Open storage, section 34-3005(b)(1).
- ~~(10) San Carlos Island Redevelopment Overlay Districts, Chapter 33.~~

## **CHAPTER 12 – RESOURCE EXTRACTION**

#### **Sec. 12-110. - Application submittals.**

Staff note: revise to correct cross-reference.

- (a) *Mine excavation planned development approval.* Application for a MEPD approval must be made on a form prepared by Lee County and be submitted with the appropriate fee. Application sufficiency and resubmittal timing will be in accord with section 34-373(d). The application must address the following:

*Subsections (1) through (9) remain unchanged.*



- (10) *Existing agricultural use affidavit.* This affidavit must meet the requirements set forth in section 34-202(a)(12)(b)(7).

*Remainder of section remains unchanged.*

## CHAPTER 14 – ENVIRONMENTAL AND NATURAL RESOURCES

### Sec. 14-374. - Definitions.

Staff Note: Correct Lee Plan reference.

- (a) The following words, terms and phrases, and their derivations, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

*Administrator through Dripline remain unchanged*

*Greater Pine Island* means the area that is affected by Lee Plan Goal 2414 as depicted on the Future Land Use Map and as described in section 33-1002.

*Remainder of section remains unchanged.*

## CHAPTER 22 – HISTORIC PRESERVATION

### Sec. 22-2. - Applicability of chapter.

Staff Note: Revise to update local governments no longer under County jurisdiction.

- (a) This chapter shall govern and be applicable to all property located in the unincorporated area of the county. The municipalities of Fort Myers, Fort Myers Beach, Bonita Springs, Estero, Sanibel and Cape Coral are excluded from the provisions of this chapter except where such municipalities may undertake activities outside of their corporate limits.
- (b) Nothing contained in this chapter shall be deemed to supersede or conflict with applicable building and zoning codes except as specifically provided in this chapter.

### Sec. 22-72. - Membership; compensation of members; removal of members; composition; meetings; powers and duties.

Staff Note: Relocate administrative language from Secs. 22-72 through 22-74 to Administrative Code 2-10.

The appointment, compensation, and removal of historic preservation board members, the composition of the board, the conduct of board meetings, and the powers and duties of the board will be in accordance with Administrative Code 2-10.

- ~~(a) The historic preservation board shall consist of seven members appointed by the Board of County Commissioners. Each member of the historic preservation board shall hold office only so long as he is a resident of the county. Appointments shall be made on the basis of a potential member's civic pride, involvement in community issues, integrity, experience and interest in the field of historic preservation. One member of the historic preservation board~~

~~shall be an architect registered to practice in the state. The Board of County Commissioners shall endeavor to appoint one member of the historic preservation board from each of the following categories:~~

- ~~(1) History or archaeology.~~
- ~~(2) Real estate land development or finance.~~
- ~~(3) Law or urban planning.~~
- ~~(4) Engineering, architecture, building construction or landscape architecture.~~

~~The two remaining positions shall be filled by citizens at large. All members of the historic preservation board must comply with the financial disclosure laws of the state.~~

- ~~(b) Members shall serve overlapping terms of three years. Initially, two members shall be appointed to one-year terms, two members shall be appointed to two-year terms, and three members shall be appointed to full three-year terms. After the initial appointments, all appointments shall be made for three years. A member of the historic preservation board shall be eligible for reappointment. Members of the historic preservation board shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their official duties, as shall be determined and approved by the Board of County Commissioners. Prior to the expiration of his term, a member of the historic preservation board may be removed from office only by a three-fifths vote of the entire membership of the Board of County Commissioners. If, however, a member of the historic preservation board fails to attend three consecutive meetings, or four meetings in any one calendar year, the chairman shall certify such fact to the Board of County Commissioners. Upon such certification, that member shall be deemed to have been removed from the historic preservation board and the Board of County Commissioners shall fill the vacancy by appointment.~~

#### ~~Sec. 22-73. Organization; meetings.~~

~~The members of the historic preservation board will elect a chairman and a vice chairman for a one-year term each. The chairman will preside at all meetings and have the right to vote. The vice chairman will preside in the absence of the chairman. The chairman and vice chairman may be reelected for an additional one-year term each, but may not serve for more than two consecutive years. The county will provide adequate staff to allow the historic preservation board to perform its duties. Staff will consist of at least one historic preservation planner, and one clerical person responsible for recording and transcribing the minutes of all meetings of the historic preservation board.~~

~~All meetings of the historic preservation board must be open to the public. A record of the minutes and resolutions of the historic preservation board will be maintained and made available for inspection by the public. The historic preservation board will meet at least once per month, at a date and time to be decided by the historic preservation board, unless there is no business pending before the historic preservation board. Regardless of the lack of pending business, the historic preservation board must meet at least four times during any calendar year.~~

#### ~~Sec. 22-74. Powers and duties.~~

~~The historic preservation board shall have the following powers and duties:~~

- ~~(1) To propose rules and procedures to implement the provisions of this chapter to the Board of County Commissioners.~~

- ~~(2) To maintain and update the findings of the historical and archaeological surveys and validate those findings.~~
- ~~(3) To evaluate the significance and eligibility of historic resources for designation pursuant to this chapter.~~
- ~~(4) To designate eligible historic resources pursuant to this chapter.~~
- ~~(5) To nominate historic resources to the National Register of Historic Places.~~
- ~~(6) To approve, deny or approve with conditions applications for special certificates of appropriateness and certificates to dig applicable to historic resources designated pursuant to this chapter.~~
- ~~(7) To issue designation certificates, place historical markers and administer other programs aimed at the proper recognition of designated historic resources.~~
- ~~(8) To advise the Board of County Commissioners on all matters related to historic preservation policy, including use, administration and maintenance of county owned designated sites and districts.~~
- ~~(9) To recommend zoning and building code amendments to the Board of County Commissioners to assist in the preservation of designated historic resources or districts.~~
- ~~(10) To review and make recommendations to the Board of County Commissioners on proposed amendments to the comprehensive plan or land development regulations that may affect designated historic resources and districts or buildings, structures, districts or sites eligible for designation.~~
- ~~(11) To propose and recommend to the Board of County Commissioners financial and technical incentive programs to further the objectives of historic preservation.~~
- ~~(12) To increase the awareness of historic preservation and its community benefits by promoting public education programs.~~
- ~~(13) To record and maintain records of the actions and decisions of the historic preservation board.~~
- ~~(14) To apply for, in the name of the county only, grant assistance from state, federal or private sources for the purpose of furthering the objectives of historic preservation.~~
- ~~(15) Upon designation as a certified local government, to review and make recommendations concerning National Register of Historic Places nomination proposals to the Florida Review Board.~~
- ~~(16) To perform any other function or duty assigned to it by the Board of County Commissioners.~~

Sec. 22-~~7375~~. - Rules and regulations.

The Board of County Commissioners shall develop and propose such rules and regulations as are reasonably necessary and appropriate for the proper administration and enforcement of the provisions of this chapter. Such rules and regulations shall conform to the provisions of this chapter and shall govern and control the procedures, hearings and actions of the historic preservation board. No such rules and regulations shall become effective until the proposed rules and regulations, and any amendments or modifications thereto, have been approved by the Board of County Commissioners as a county administrative code policy.

Secs. 22-~~7476~~—22-100. - Reserved.

## CHAPTER 30 – SIGNS

### Sec. 30-2. - Definitions and rules of construction.

Staff Note: Update Lee Plan cross-reference to Greater Pine Island community plan.

- (a) In case of any difference of meaning or implication between the text of this chapter and any other law or regulation, this chapter controls.
- (b) The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Greater Pine Island* means the area that is affected by Lee Plan Goal 2444 as depicted on the Future Land Use Map and described in section 33-1002.

*Remainder of section unchanged.*

### Sec. 30-4. - Applicability of chapter.

Staff Note: Provide recognition of F.S. § 604.50 and its effect on of LDC regulations for certain nonresidential farm buildings and farm signs, within applicability sections as necessary.

- (a) *Generally.* Except as otherwise provided in this chapter, it shall be unlawful for any person to erect, construct, enlarge, move or convert any sign in the county, or cause such work to be done, without first obtaining a sign permit for each such sign from the building official as required by this chapter. In the event of conflict between the provisions of this chapter and the requirements of F.S. § 553.79, the requirements of F.S. § 553.79 shall prevail.
- (b) *Exceptions.*
  - (1) *and (2) remain unchanged.*
  - (3) This chapter does not apply to
    - a. Holiday and community banners located on light poles;
    - b. Community identifications signs located within the right-of-way when approved by the Lee County Department of Transportation;
    - c. Tourist Oriented Directional Signs (TODS) as regulated by AC 11-18; or
    - d. Specific Services Sign Programs regulated by AC 11-16.
    - e. Farm signs located on lands used for bona fide agricultural purposes pursuant to F.S. § 604.50.

## CHAPTER 33 – PLANNING COMMUNITY REGULATIONS

### Sec. 33-1001. - Applicability and community boundary.

**Staff Note: Correct Lee Plan cross-reference.**

The provisions of article III apply to all new development or redevelopment requiring zoning, local development order approval, or an agricultural notice of clearing permit, located within the Greater Pine Island Planning Community as defined in Goal ~~24.14~~ of the Lee County Comprehensive Plan. The boundaries of the Greater Pine Island Planning Community are depicted in the Lee County Comprehensive Plan on Future Land Use Map 1, Page 2 of 8. A copy of the Greater Pine Island portion of the planning communities map is reproduced in Appendix I as Map 5. A legal description of the Greater Pine Island Planning Community is set forth in Appendix I, and includes Matlacha (the Chamber of Commerce building and all lands to the west), as well as Little Pine Island, Pine Island, and small adjacent islands.

#### **Sec. 33-1011. - Greater Pine Island road level of service.**

**Staff Note: Correct Lee Plan cross-references.**

The roadway level of service standards set forth in Lee Plan Policy ~~24.2.144.2.1~~ and a maximum hurricane evacuation clearance time of 18 hours for Pine Island residents as set forth in Lee Plan Policy ~~24.2.2 44.8.3~~ must be maintained for Pine Island Road.

- (a) The minimum acceptable peak hour, peak season, peak direction roadway level of service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is level of service "E" calculated in accordance with Policy 37.1.1 of the Lee County Comprehensive Plan. This standard will be measured at the County's permanent count station #3 on Little Pine Island at the western edge of Matlacha and will apply to all of Greater Pine Island.
- (b) If the level of service standards and/or maximum hurricane evacuation clearance time is exceeded, new development approvals will be subject to the mitigation requirements set forth in chapter 2.

#### **Sec. 33-1031. - Agricultural notice of clearing on Greater Pine Island.**

**Staff Note: Correct Lee Plan cross-reference.**

Notices of clearing for agricultural purposes in Greater Pine Island must comply with the following additional requirements in accordance with Policy ~~24.1.514.1.5~~ of the Lee Plan:

*Subsections (a) through (h) remain unchanged.*

#### **Sec. 33-1051. - Applicability.**

**Staff Note: Correct Lee Plan cross-reference.**

The following provisions and development standards apply to new development and redevelopment within the Coastal Rural future land use category, as ~~designated~~ depicted on the Lee County Future Land Use Map, Lee Plan Map 1, ~~Page 1 of 8.~~

#### **Sec. 33-1082. - Development abutting an aquatic preserve.**

**Staff Note: Correct Lee Plan cross-reference.**

*Subsections (a) and (b) remain unchanged.*

- (c) *Exemptions.* This section does not apply to:

*Subsections (1) and (2) remain unchanged.*

- (3) Developments eligible for modified vegetated buffer requirements in accordance with Lee Plan Policy 24.1.544.1.5.

*Subsections (d) and (e) remain unchanged.*

**Sec. 33-1083. - Commercial building design standards.**

*Staff Note: Correct Lee Plan cross-reference.*

*Subsection (a) remains unchanged.*

- (b) *Purpose and intent.* The standards in this section implement Lee Plan Policy 24.4.314.4.3 by expanding the commercial design standards in chapter 10, article IV.

*Remainder of section remains unchanged.*

**Sec. 33-1202. - Applicability.**

*Staff Note: Correct Lee Plan cross-reference.*

- (a) *Scope.* The provisions of this article apply to all development located within the Page Park Community, as defined in Goal 3127 of the Lee Plan (see Map 6 in Appendix I). The standards in this article apply to non-residential, religious, institutional, multi-family and mixed-use developments, (which must contain a residential component) including live-work units, except where the authority of a separate political jurisdiction supersedes county authority.

*Remainder of section remains unchanged.*

**Sec. 33-1400. - Applicability.**

*Staff note: Remove reference to specific page of Lee Plan Map 1. Revise language for internal consistency.*

- (a) *Scope.* The provisions of this article will apply to all development located in the Lehigh Acres Planning Community as depicted on ~~{Lee Plan Map 1}, and~~ as defined in Goal 2532 of the Lee County Comprehensive Plan.

*Remainder of section remains unchanged.*

**Sec. 33-1411. - Applicability.**

*Staff Note: Correct Lee Plan cross-reference.*

All commercial development, except areas located within the Downtown Lehigh Acres, Community Mixed Use Activity Centers, Neighborhood Mixed-Use Activity Centers, or the Local Mixed-Use Activity Centers as depicted on ~~{Lee Plan Map 1, Page 8 of 8}~~.

**Sec. 33-1417. - Maximum height.**

*Staff note: Remove reference to specific page of Lee Plan Map 1. Revise language for internal consistency.*

- (a) Maximum building heights are determined based on location in the Specialized Mixed Use Nodes of the Community Plan Overlay as depicted on (Lee Plan Map 1, ~~Page 8 of 8~~). Buildings outside of the Specialized Mixed Use Nodes are limited to a maximum of three stories or 45 feet, whichever is less, unless approved by variance or deviation in accordance with chapter 34.

The maximum building heights, based on location in the Specialized Mixed Use Nodes are as follows:

*Subsections (1) through (4) remain unchanged.*

*Subsection (b) remains unchanged.*

#### **Sec. 33-1480. - Applicability.**

**Staff Note:** Remove reference to specific page of Lee Plan Map 1. Revise language for internal consistency.

This division is applicable to Caloosahatchee Shores Planning Community (see Map 14 in Appendix I), described in Goal 21 of the Lee County Comprehensive Plan (Lee Plan).

- (a) *Scope.* The provisions of this article apply to all development located in the Caloosahatchee Shores Planning Community, as defined in section 33-1481(a) and depicted in the Lee County Comprehensive Plan on Lee Plan Map 1 ~~Special Treatment Areas (Page 2 of 8)~~ and apply to all commercial, religious, institutional, multiple-family, and mixed use developments, including live-work units, except where the authority of a separate political jurisdiction supersedes County authority.

*Subsections (b) through (d) remain unchanged.*

#### **Sec. 33-1481. - Planning community boundaries.**

**Staff note:** Remove reference to specific page of Lee Plan Map 1. Revise language for internal consistency.

- (a) *Caloosahatchee Shores Planning Community.* The boundaries of the Caloosahatchee Shores Planning Community are as depicted in the Lee County Comprehensive Plan on Lee Plan Map 1 ~~Special Treatment Areas (Page 2 of 8)~~ and in Appendix I on Map 14. The following overlays are located within the Caloosahatchee Shores Planning Community:

- (1) *Olga Planning Community Overlay.* The boundaries of the Olga Community overlay district are as depicted in the Lee County Comprehensive Plan on Lee Plan Map 1 ~~Special Treatment Areas (Page 2 of 8)~~ and in Appendix I on Map 14.

*Subsection (2) remains unchanged.*

#### **Sec. 33-1531. - Applicability.**

**Staff note:** Update Lee Plan cross-reference.

*Scope.* The provisions of this article will apply to all development located in the North Fort Myers Community, as defined in Goal ~~3028~~ of the Lee County Comprehensive Plan.

#### **Sec. 33-1534. - Existing planned development.**

Staff Note: Update Lee Plan cross-reference.

Existing approved master concept plans may be voluntarily brought into compliance with the North Fort Myers Plan (Lee Plan Goal 3028) or any regulation contained in this article through the administrative amendment process. No public hearing will be required if the sole intention is for existing planned developments to comply with these regulations. Notwithstanding, any request to change the zoning designation of a parcel must comply with the notice and hearing requirements under F.S. § 125.66.

#### **Sec. 33-1611. - Applicability.**

Staff Note: Update Lee Plan cross-reference.

- (a) *Scope.* The provisions of article IX apply to development located on Captiva Island not specifically exempted under section 33-1613, "Existing development" below, as defined in Goal 2313 of the Lee County Comprehensive Plan, but excluding Upper Captiva, Cayo Costa, Useppa, Buck Key, and Cabbage Key. This Article applies to development and redevelopment located on Captiva Island unless specifically stated otherwise.

*Remainder of section remains unchanged.*

#### **Sec. 33-1661. - Applicability.**

Staff Note: Update Lee Plan cross-reference.

The provisions of Article XI apply to all new development requiring zoning or local development order approval, excluding limited development orders entitled to limited review per section 10-174, located in the North Olga Community Planning Area, as defined in Goal 2935 of the Lee County Comprehensive Plan.

### **CHAPTER 34- ZONING**

#### **Sec. 34-2. - Definitions.**

Staff note: Correct Lee Plan cross-references. Replace definition of lot depth for lots after 1983 with original definition (inadvertently replaced with duplication of "lot measurement, width" in past LDC supplement). Correct scrivener's error in tactical training center definition. Update care facilities definitions to better align with State Statute.

The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Abutting property through Artificial light or artificial lighting remain unchanged.*

*Assisted living facilities (ALF)* means ~~a residential land use, licensed under chapter 58A-5, Florida Administrative Code, that may be any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, that undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator. For purposes of this definition only, the term "personal services" means direct physical assistance with or supervision of the activities of daily living and the self-administration of medication and other similar services that~~



~~the department may define by rule. "Personal services" will not be construed to mean the provision of medical, nursing, dental, or mental health services.~~ means any building or buildings, section or distinct part of a building, private home, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.

*ATM through Consultant remain unchanged.*

*Continuing care facility (CCF)* means a facility, licensed under F.S. ch. 651, ~~which must be developed as a planned development (PD),~~ which undertakes through its ownership or management to provide housing and food service to adult residents. The facility must meet the criteria for exemption from the Fair Housing Act Amendments of 1988, title VII USC.

*Controlled water depth through Exotic Animals remain unchanged.*

*Exterior cladding, residential* means customary residential siding which extends from the base of a building to the roof eave, such as wood, metal, and vinyl lap siding, brick and composite materials. This definition excludes corrugated and ribbed galvanized steel or similar finishes, generally applied in nonresidential or agricultural applications.

*Exterior lighting through Government agency remain unchanged.*

*Greater Pine Island* means the area that is affected by Lee Plan Goal 2414 as depicted on the Future Land Use Map and as described in section 33-1002.

*Greenhouse through Increase nonconformity remain unchanged.*

*Independent living unit* means a unit which is authorized only as a part of a licensed continuing care facility (CCF) or assisted living facility (ALF), which may be equipped with a kitchen.

*Indirect light through Lot line, side remain unchanged.*

*Lot measurement, depth.* See section 10-703.

- (1) Lots lawfully created prior to January 28, 1983: Depth of a lot is the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in the front and the rearmost points of the side lot lines in the rear.
- (2) Lots lawfully created after January 28, 1983: Depth of a lot is the distance between the front lot line and the rear lot line as measured at the midpoint of the front lot line to the midpoint of the rear lot line. To determine the midpoint of a curved line, a straight line is drawn connecting the points of intersection of the curved line with the side lot lines. A line drawn perpendicular to the midpoint of the straight line to the point it intersects the curved line will determine the midpoint of the curved line for the purposes of this chapter. For lots lawfully created after January 28, 1983, width of a lot is considered to be the distance between the side lot lines (or a front and side lot line for corner lots) as measured along the minimum required street setback line. See section 34-2221 for exceptions.

*Lot measurement, width through Lot, through remain unchanged.*

*Low pressure sodium* or *LPS* means a bulb that is filled with low pressure sodium vapor, ~~that~~ which has a nearly monochromatic spectrum. LPS emits light that is deep orange in color.

*Luminaire through Surveyor or professional surveyor remain unchanged.*

*Tactical training facility* means a venue that provides facilities for the practical training of government funded law enforcement, fire, emergency medical and emergency management personnel. Such venues may include indoor and outdoor facilities, and may incorporate the use of vehicles and equipment relating to the performance of these jobs. ~~P~~Tactical Training Facilities may include: shooting ranges, Military Operations on Urban Terrain (MOUT) sites, explosives handling, chemical munitions handling, hazardous materials handling, riot control training, K-9 training, mounted patrol training, obstacle courses, physical conditioning courses, rappelling towers, driving courses, emergency response training, fire training, confined space training, police and fire academy training, storage, classroom and other ancillary facilities necessary and related to these activities.

*Remainder of section remains unchanged.*

#### **Sec. 34-202. - Submittal requirements for applications requiring public hearing.**

**Staff Note:** Correct reference to application type within title certificate subsection. Re-establish inadvertently deleted exception to the traffic impact analysis requirement for COP-related special exception requests, and update cross reference for DRI related application materials.

(a) *Submittal requirements for all public hearing applications.* All applications for public hearing requests must include the following. Any additional expenses due to inaccurate or incomplete information will be borne by the applicant.

*(1) through (6) remain unchanged.*

(7) *Certification of title and encumbrances.* Certification of title and encumbrances submitted for property subject to zoning approval must meet the following criteria:

a. *Form.* The certification of title must be in one of the following forms:

- i. Title certificate or title opinion, no greater than 90 days old at the time of the initial ~~development order~~ application submittal. The title certification submittal must be either an opinion of title meeting the Florida Bar Standards prepared by a licensed Florida attorney or a certification of title/title certification prepared by a title abstractor or company.
- ii. Title insurance policy with appropriate schedules, no greater than five years old at the time of the initial zoning case submittal and an affidavit of no change covering the period of time between issuance of the policy and the application date. If submission of a complete affidavit of no change is not possible, a title certificate, or title opinion must be submitted in the alternative.

b. *Content.* The certification of title must include, at a minimum, the following:

- i. The name of the owner or owners of the fee title;
- ii. All mortgages secured by the property;
- iii. All easements encumbering the property;
- iv. The legal description of the property; and
- v. The certification of title documentation must be unequivocal.

*(8) through (13) remain unchanged.*

(b) *Additional submittal material.* Additional information, specific to the type of action(s) requested, is required as follows:

(1) *Developments of regional impact.* Developments of regional impact must ~~comply with F.S. ch. 380~~ provide the additional information required by section 34-204.

(2) *through (4) remain unchanged*

(5) *Special exceptions.* Applications for special exceptions must include the following:

- a. A statement explaining the request, how the property qualifies for the special exception, and how the request meets the applicable required findings set forth in section 34-145(c)(3). This statement may be utilized by the Hearing Examiner and staff in establishing a factual basis for approval or denial of the special exception.
- b. A traffic impact analysis of projected trip generation.
- c. A site plan, drawn to scale, depicting:
  1. Location and current use of existing structures.
  2. Location of proposed structures and/or uses.
  3. Location of existing and proposed road rights-of-way, streets, easements or land reservations.
  4. Location of vehicular access to and from the site.
  5. Other information required for analysis of the request as determined by the Director.
- d. Additional information is required for the following special exception requests:
  1. *Solar or wind energy modifications.* Evidence that the proposed modifications are the minimum necessary to provide for the solar or wind energy proposal and that the proposed modifications will not adversely affect adjacent properties.
  2. *On-premises consumption of alcoholic beverages.* The type of license requested, a floor plan showing the proposed indoor and outdoor service areas, and if in conjunction with a restaurant, a copy of the menu must be provided. A traffic impact analysis of projected trip generation for the development is not required for special exceptions solely for consumption on premises.
  3. *Private aircraft landing facilities.*
    - i. Type of facility as set forth in Florida Administrative Code.
    - ii. Site plan depicting the proposed location and dimensions of the effective landing length, including the approach zone.
    - iii. An affidavit that written notice of the public hearing will be sent by certified mail, return receipt requested, to all airports and municipalities within 15 miles of the proposed facility and to all property owners within 1,000 feet of the property or within the minimum required approach zone, whichever is greater. The applicant will be responsible for sending the written notice and will bear the cost of the notification.

*Remainder of section remains unchanged*

**Sec. 34-204. – Submittal requirements for Ddevelopments of regional impact essentially built-out determination.**

Staff Note: The DRI 'Essentially Built Out' process is no longer an option within F.S. § 380.06. This language has been removed and replaced with submittal requirements for all DRI actions (Changes, Rescissions, and Abandonments). Proposed language should remain consistent with the Statute if/when the statutory language and processes change.

- (a) Developments of regional impact (DRI) are subject to the requirements and procedures established in F.S. § 380.06 and Chapter 9J-2, F.A.C. as they may be amended. In the event of conflict between the provisions of this chapter and the requirements of F.S. § 380.06 the requirements and processes of F.S. § 380.06 will prevail.
- (b) Submittal requirements for all development of regional impact applications. Every request for action to a Development of Regional Impact must include the following:
  - (1) General application. A general application for public hearing in accordance with the requirements set forth in sections 34-201, 34-202 and 34-203.
  - (2) A single narrative explaining the nature of the request and how the property qualifies for the proposed action to the DRI. This narrative should include how the proposed action complies with the statutory requirements found in F.S. § 380.06 and Chapter 9J-2, F.A.C. This narrative may be utilized by the Board of County Commissioners and staff in establishing a factual basis for granting or denial of the rezoning.
  - (3) A list of each condition and developer commitment contained in the DRI Development Order (DO) and a statement demonstrating how and when each condition/commitment was fulfilled.
  - (4) A summary of the total development built and total development remaining for each land use category. Identify the geographic location of parcels with remaining unbuilt development entitlements and the nature of those entitlements.
  - (5) Demonstration of notification to all property owners within the DRI.
  - (6) The most recent Master Plan (Map H).
  - (7) A draft resolution to be executed by the Board which sets forth the following information:
    - a. The history of development within the DRI, including amendments to the DRI DO, and the current status of development within the DRI;
    - b. A statement confirming the public notice that was provided for consideration of the DRI Development Order action;
    - c. A statement regarding compliance with F.S. ch. 380 and other applicable Florida Statutes, local development regulations, and Lee Plan provisions, including

findings that the requirements of subsections (a) and (b) above have been met; and

d. A provision incorporating and adopting the proposed amendments to the DRI DO consistent with the state statute, including all DRI DO conditions to remain in effect (if any) after adoption DRI DO action.

(d) Applications requesting rescission or abandonment of a DRI will not be considered found sufficient if any of the parcels located within the DRI DO contains unabated code enforcement violations.

(e) Review of all Development of Regional Impact applications is subject to the policies and procedures set forth in F.S. §166.033.

~~(a) A development of regional impact may be determined to be "essentially built-out" if the applicant shows that the development of regional impact meets the criteria under subsections (a)(1) (Option I) or (a)(2) (Option II).~~

~~(1) *Essentially built out determination Option I.* To be qualified as essentially built out under Option I, the project must meet the following~~

~~a. The project has been determined to be an essentially built-out DRI through an agreement executed by the developer, the state land planning agency, and the County, in accordance with F.S. § 380.032, establishing the terms and conditions under which the development may be continued; and~~

~~1. The developers are in compliance with the terms and conditions of the development order except the buildout date; and~~

~~2. The amount of development that remains to be built is less than the substantial deviation threshold specified in paragraph F.S. § 380.06(19)(b) for each individual land use category, or, for a multiuse development, the sum total of all unbuilt land uses as a percentage of the applicable substantial deviation threshold is equal to or less than 100 percent; or~~

~~3. The state land planning agency and the County have agreed in writing that the amount of development to be built does not create the likelihood of additional regional impacts not previously reviewed.~~

~~b. If the project is determined to be essentially built out under Option I, development may proceed pursuant to the agreement after the termination or expiration date in the development order without further DRI review subject to any modified DRI analysis created under the agreement, the Lee Plan, and LDC.~~

~~c. The single family residential portions of a development may be considered "essentially built-out" under Option I if:~~

~~i. All of the workforce housing obligations and all of the infrastructure and horizontal development is complete;~~

~~ii. At least 50 percent of the dwelling units have been completed; and~~

~~iii. More than 80 percent of the lots have been conveyed to third-party individual lot owners or to individual builders who own no more than 40 lots at the time of the determination.~~

- d. ~~The mobile home park portions of a development may be considered "essentially built-out" under Option I if:~~
  - i. ~~All the infrastructure and horizontal development is complete; and~~
  - ii. ~~At least 50 percent of the lots are leased to individual mobile home owners.~~
- (2) ~~*Essentially built-out determination Option II.*~~ To qualify as "essentially built-out" under Option II, the project must meet the following
  - a. ~~The developers are in compliance with the terms and conditions of the development order except the build out date;~~
  - b. ~~All the mitigation requirements in the development order have been satisfied; and~~
  - c. ~~The amount of proposed development that remains to be built is less than 40 percent of the applicable DRI threshold for the remaining portions to be built.~~
- (b) ~~An applicant seeking an essentially built-out determination must submit three hard copies and one electronic copy of the following:~~
  - (1) ~~A list of each development order condition and each developer commitment contained in the DO and a statement demonstrating how and when each condition/commitment was fulfilled.~~
  - (2) ~~A summary of the total development built and total development remaining for each land use category. Identify the geographic location of parcels with remaining unbuilt development entitlements and the nature of those entitlements.~~
  - (3) ~~Variance report and mailing labels for all property owners within the DRI.~~
  - (4) ~~The most recent Master Plan (Map H).~~
  - (5) ~~Legal description and sketch of the entire DRI.~~
  - (6) ~~A draft resolution to be executed by the Board which sets forth the following information:~~
    - a. ~~The history of development within the DRI, including amendments to the DRI DO, and the current status of development within the DRI;~~
    - b. ~~A statement confirming the public notice that was provided for consideration of the EBO determination;~~
    - c. ~~A statement regarding compliance with F.S. ch. 380 and other applicable Florida Statutes, local development regulations, and Lee Plan provisions, including findings that the requirements of subsections (a) and (b) above have been met; and~~
    - d. ~~A provision incorporating and adopting the proposed amendments to the DRI DO consistent with the EBO determination, including all DRI DO conditions to remain in effect (if any) after adoption of the EBO determination and agreement.~~
  - (7) ~~Draft amendment to the DRI DO in strike-through and underline format incorporating the EBO determination and findings of compliance with applicable Florida Statutes, including F.S. § 380.06(15)(g), local development regulations, and Lee Plan provisions, as well as the conditions that remain applicable to future development within the DRI.~~
  - (8) ~~In addition, for Option I Determinations, a draft agreement to be executed by the developer, the state land planning agency, and the County, in accordance with F.S. § 380.032, establishing the terms and conditions under which the development may be~~

~~continued pursuant to the agreement after the termination or expiration date contained in the development order.~~

- ~~(c) Once the request is found sufficient, County staff will prepare a report evaluating the application. The report will be available to the public within 14 days before the scheduled hearing.~~
- ~~(d) Applications for determinations of essentially built out will not be considered by the Board of County Commissioners until the application is found sufficient by DCD Staff. Applications for determinations of essentially built out will not be considered by the Board of County Commissioners if any of the parcels located within the DRI DO contains unabated code enforcement violations. The application will be placed on hold until such time as the violation has been abated.~~
- ~~(e) Applications for determinations of essentially built out will proceed directly to the Board of County Commissioners and will be heard at a publicly advertised Board zoning hearing.~~

#### **Sec. 34-341. - Employment of planned development designation.**

**Staff note: Clarify language and delete duplicate language regarding appeals.**

*Subsections (a) and (b) remain unchanged.*

*(c) Determination of Development of County Impact status.*

- ~~(1) Any owner~~ An applicant may apply for wishing a determination of the Development of County Impact status of his the applicant's property ~~may apply~~ to the Director and pay a fee to cover administrative costs.
- (2) Any development which is less than 80 percent of the thresholds listed in section 34-341(b)(1) is conclusively presumed not to be a Development of County Impact. Any development which is more than 80 percent but less than 100 percent of the appropriate threshold is rebuttably presumed not to be a Development of County Impact. Any development which is more than 100 percent but less than 120 percent of any threshold is rebuttably presumed to be a Development of County Impact. Any development which exceeds 120 percent of any threshold is conclusively presumed to be a Development of County Impact.
- (3) The Director will consider the following items in determining the Development of County Impact status of a proposed rezoning or special exception:
  - a. The compatibility of the proposed zoning district with neighboring zoning districts and uses;
  - b. The impact of the proposed zoning change on existing and proposed transportation facilities;
  - c. The impact of the proposed zoning change on other urban services, as defined in the Lee Plan; and
  - d. The impact of the proposed zoning change on environmentally critical areas.
- (4) For the purpose of determining whether a parcel is a Development of County Impact, all abutting parcels which are in common ownership or control may be identified and taken into account in both determining Development of County Impact status and estimating the impacts of any proposed development.

~~(5) The Director's decision is an administrative decision which may be appealed in accordance with the procedure in this article.~~

**Sec. 34-622. - Use activity groups.**

Staff Note: Address scrivener's error "Class and glazing" to "Glass and glazing."

*(a) and (b) remain unchanged.*

(c) Use activity groups are as follows:

*(1) through (8) remain unchanged.*

(9) *Contractors and builders.* This group includes all general, operative and special trade contractors and builders, including:

Carpentering and flooring
Concrete work
Electrical contractors
General contractors
Heavy construction:
Bridge, tunnel and elevated highway
Water, sewer, pipelines, communication and power lines
Other
Highway and street construction
Masonry, stone setting and other stonework
Operative builders
Painting, paperhanging and decorating
Plumbing, heating and air conditioning
Roofing and sheetmetal



Special trades:
Structural steel erection
<del>Glass</del> <u>Glass</u> and glazing
Excavation and foundation
Wrecking and demolition
Installation or erection of building equipment
Other
Water well drilling

GROUP I. Permits offices and indoor storage facilities but specifically excludes any fabrication work or outdoor storage, other than parking of cars.

GROUP II. Permits offices, indoor storage and light fabrication work. Outdoor storage of materials and equipment is permitted if enclosed. Specifically prohibited is any heavy construction equipment such as cement trucks, cranes, bulldozers, well-drilling trucks and other similar heavy equipment, or wrecking or demolition debris.

GROUP III. Permits offices, storage (indoor or outdoor), fabrication work and outdoor storage of heavy construction equipment. Storage of wrecking debris is prohibited.

*Remainder of section remains unchanged.*

**Sec. 34-652. - Applicability of use and property development regulations.**

**Staff Note:** Provide recognition of F.S. § 604.50 and its effect on of LDC regulations for certain nonresidential farm buildings and farm signs, within applicability sections as necessary.

No land, body of water or structure may be used or permitted to be used and no structure may hereafter be erected, constructed, moved, altered or maintained in the AG districts for any purpose other than as provided in section 34-653, pertaining to use regulations for agricultural districts, and section 34-654, pertaining to property development regulations for agricultural districts, except as may be specifically provided for in article VIII (nonconformities) of this chapter, or in section 34-620. In the event of conflict between the provisions of this division and the requirements of F.S. § 604.50, the requirements of F.S. § 604.50 shall prevail.

**Sec. 34-695. - Property development regulations table.**

**Staff Note: Correct Lee Plan cross-reference.**

Property development regulations for one- and two-family residential districts are as follows:

**TABLE 34-695. PROPERTY DEVELOPMENT REGULATIONS FOR ONE- AND TWO-FAMILY RESIDENTIAL DISTRICTS**

		Special Notes or Regulations	RS C-1	RSC- 2	RSA	RS- 1	RS-2	RS-3	RS-4	RS- 5	TFC- 1	TFC- 2	TF-1
	Minimum lot area and dimensions:	34-2221, 34-2222											
	Single- family detached:	Note (5)											
	Lot area (square feet)		4,000	43,560	6,500	7,500	12,500	20,000	40,000	2 acres	6,000	7,500	7,500
	Lot width (feet)		40	100	65	75	100	100	100	130	50	75	75
	Lot depth (feet)		75	200	75	100	100	100	100	130	100	100	100
	Duplex:												
	Lot area (square feet)		—	—	—	—	—	—	—	—	6,000	7,500	10,000
	Lot width (feet)		—	—	—	—	—	—	—	—	50	75	75
	Lot depth (feet)		—	—	—	—	—	—	—	—	100	100	100

[illegible]



height (feet)	et seq.											
		Note: Bonita Beach, Captiva, San Carlos Island, Gasparilla Island conservation district, Greater Pine Island and areas within the airport hazard zone have special limitations (see section 34-2171 et seq.) .										
Maximum lot coverage (percent of total lot area)		45%	25%	45%	40%	40%	40%	40%	40%	45%	40%	45%

Notes:

(1) through (4) remain unchanged.

(5) All lots in the "Coastal Rural" land use category in Greater Pine Island (as delineated by policies 1.4.7 and ~~24.3.314.1.8~~ of the Lee Plan) that are created after May 29, 2007 must comply with the additional regulations in section 33-1052. Lots created before that date are not required to comply with the additional regulations in section 33-1052.

**Sec. 34-841. - Purpose and intent.**

Staff note: Correct Lee Plan cross-reference.

*Subsections (a) through (n) remain unchanged*

(o) *CR rural commercial district.* The purpose and intent of the CR district is to designate and to facilitate the proper development and use of land for limited commercial purposes in the nonurban areas of the County. In addition to the neighborhood scale provision of basic goods and services, it is the intent that the rural commercial district be used to provide other goods and services, specific to rural productive activities, such as farming or ranching, and for the rural lifestyle in general. The standard of physical development must be or closely approximate that of a minor commercial development as set forth in standard 6.1.2.4 of the Lee Plan.

**Sec. 34-844. - Use regulations table.**

Staff note: Delete incorrect cross reference related to consumption on premises.

Use regulations for conventional commercial districts are as follows:

**TABLE 34-844. USE REGULATIONS FOR CONVENTIONAL COMMERCIAL DISTRICTS**

[illegible]

mption on premise s	- 12 61 et se q., <del>Ne</del> te (3 3)	SE	SE	SE	SE	SE	SE	(22)	SE	SE	SE	SE	SE	SE	SE		
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*Remainder of table unchanged.*

**Sec. 34-934. - Use regulations table.**

**Staff Note:** Update table to include Consumption on Premises as a permitted use in CFPD zoning district.

Use regulations for planned development districts are as follows:

**TABLE 34-934. USE REGULATIONS FOR PLANNED DEVELOPMENT DISTRICTS**

Consumption on premises	34-1261 et seq.	P(4)	P(4)	P(8)	<u>P</u>	P	P(9)	P	—
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*Reminder of table unchanged.*

**Sec. 34-941. - Private recreational facilities planned developments.**

**Staff Note:** Correct Lee Plan cross-reference and scrivener's errors.

*Subsections (a) through (c) remain unchanged*

(d) *Design standards.*

*Subsections (1) and (2) remain unchanged*

(3) *Water quality, quantity and surface water resources.*

- a. Prior to development order approval, all private recreational facility developments must design and obtain County approval of an overall surface water management plan as outlined in Lee Plan Objectives 60.2, 61.3 and 125.1445.4, in cooperation with Lee County and the SFWMD.

*Subsections 34-941(d)(3)b. through (3)d. remain unchanged.*

*Subsection 34-941(d)(4) remains unchanged.*

*Subsection 34-941(e) remains unchanged.*

- (f) *Environmental monitoring.* In order to ensure that the development will not degrade the ambient condition of surface and groundwater quality and quantity, vegetation and wildlife,

the developer must establish and maintain an ongoing monitoring program evaluated and approved by Lee County Division of Natural Resources and the Lee County Regional Water Supply Authority, consistent with the following:

- (1) *Pre-development groundwater and surface water analysis.* A study to establish baseline data for groundwater and surface water monitoring for the project area must be designed to identify those nutrients and chemicals that are anticipated to be associated with the project. The applicant/developer is responsible for conducting the study and monitoring.
  - a. Prior to commencing this baseline study, the study methodology and modeling components must be approved by the Lee County Division of Natural Resources and the Lee County Regional Water Supply Authority.
  - b. Issues of well locations, easements and wastewater re-use must be evaluated and approved by the Lee County Division of Natural Resources and the Lee County Regional Water Supply Authority during the planned development review process. Formal agreements, acceptable to the County Attorney's Office, addressing these issues must be executed prior to development order issuance.

The Division of Natural Resources Director must make a formal finding that the proposed uses will not have negative impacts on present and future water quality and quantity.

*Remainder of section remains unchanged.*

#### **Sec. 34-1232. - State permit.**

Staff Comment: During testimony of SEZ2020-00002 (Helistop) it was Staff and the Hearing Examiner's finding that the word "permit" (struck-through below) was implied to mean special exception. The revision provides for clarity of the expiration.

If a proposed aircraft landing facility fails to obtain or is denied a permit from the state within one year from the approval of the special exception, the ~~permit~~ special exception will automatically expire and become null and void.

#### **Sec. 34-1291. - Applicability of division.**

Staff Note: Provide recognition of F.S. § 604.50 and its effect on of LDC regulations for certain nonresidential farm buildings and farm signs, within applicability sections as necessary.

The keeping, raising or breeding of horses and other livestock, including poultry of all kinds usually and customarily considered as farm animals, and the keeping, raising or breeding of reptiles, marine life or animals not indigenous to the state, may be permitted only as set forth in this division. This will not be interpreted as applying to pet stores or hobbyists keeping aquariums or domestic tropical birds in their own homes. In the event of conflict between the provisions of this division and the requirements of F.S. § 604.50, the requirements of F.S. § 604.50 shall prevail.

#### **Sec. 34-1411. - Assisted living facilities.**

Staff Note: Added a cross reference for density equivalents for Assisted Living Facilities.

- (a) *Generally*. Assisted living facilities (ALFs) are permitted by right or special exception as specified in the district use regulations or as approved as part of a master concept plan in the RPD, CFPD, CPD or MPD districts. Density must be calculated in accordance with sections 34-1491 through 34-1495 based on the density ranges for the land use category in which the subject property is located.
- (b) *Design*. An assisted living facility must be designed so as to appear as, and be compatible with, adjacent residential buildings.
- (c) *Lot dimensions and setbacks*. Assisted living facilities are subject to the property development regulations applicable to the zoning district within which they are located.
- (d) *Parking*. Refer to section 34-2011 et seq.
- (e) *Location*. No ALF may be established within the Coastal High Hazard Area of the County unless the ALF facilities demonstrate compliance with the hurricane preparedness impact mitigation provisions set forth in Chapter 2.
- (f) *Density*. Density equivalents for Assisted Living Facilities (ALFs) will be calculated based on the ratios set forth in section 34-1494.

#### **Sec. 34-1414. - Continuing care facilities.**

**Staff Note:** Subsection (c) is applicable to more than just Continuing Care Facilities (CCFs). Moved density equivalents from this section to LDC Sec 34-1494 – Density equivalents.

- (a) *Generally*. Continuing care facilities (CCFs) may only be located in a RPD, CFPD, and MPD districts, as enumerated on the master concept plan, provided that:
  - (1) Continuing care facilities are subject to the density ranges for the land use category applicable to the subject property. ~~Density will be calculated in accordance with subsection (c) of this section.~~
  - (2) A continuing care facility must contain one or more health care facilities group I or II, for on-site patient care.

*Subsection (b) remains unchanged.*

- (c) ~~*Density*. Density equivalents for a continuing care facility will be calculated for any assisted living facility units and nursing beds pursuant to division 12, subdivision II, of this article, and for independent living units on the basis of two independent living units equal to one residential dwelling unit. Density equivalents for continuing care facilities (CCF) will be calculated based on the ratios set forth in section 34-1494.~~
  - ~~(1) Where health care, social service, adult living facilities (ALF), continuing care facilities, or other "group quarters" (df) are provided in dwelling units, wherein each unit has its own cooking facilities, density equivalents will be calculated on a 1:1 ratio.~~
  - ~~(2) Except as may be specifically set forth elsewhere in this chapter, where health care, social service, adult living facilities (ALF), continuing care facilities (CCF), or other "group quarters" (df) are provided in dwelling units or other facilities wherein each unit does not have individual cooking facilities and where meals are served at a central dining facility or are brought to the occupants from a central kitchen, density equivalents will be calculated at the ratio of four people equals one dwelling unit.~~



~~A planned development, for which the master concept plan states the number of persons that may occupy an approved adult living facility (ALF) or continuing care facility (CCF), may request an amendment to the approved master concept plan to reflect the increased number of occupants based upon the equivalency factor set forth in this section (if applicable). Such amendment will be considered an administrative amendment that will be deemed to not increase density and may be approved pursuant to section 34-380(b) as long as existing floor space is not increased to accommodate the increased number of occupants. If increased floor space is required, then a public hearing will be required.~~

~~Also see section 34-1494, density equivalents.~~

*Remainder of section remains unchanged.*

#### **Sec. 34-1446. - Application submittal requirements.**

*Staff Note: correct LDC cross-reference on airspace notification, updated via Ord. 19-03.*

- (a) *Minimum required information for all wireless communication facilities applications.* Every application for wireless communication facilities must include the following information. However, upon written request, on a form prepared by the County, the Director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request for a waiver or modification must be submitted to the Director prior to submitting the application. A copy of the request and the Director's written response must accompany the application and will become a part of the permanent file. The Director's decision is discretionary and may not be appealed.

*Subsections (1) through (5) remain unchanged.*

- (6) A letter or letters:

- a. Demonstrating consent from the Executive Director of the Lee County Port Authority if the wireless communications facilities is to be located within the County airspace notification limits of section 34-100834-1107;

*Subsections b. and c. remain unchanged.*

*Remainder of section remains unchanged.*

#### **Sec. 34-1493. - Calculation of total permissible housing units.**

*Staff note: correct Lee Plan cross-reference. Establish appropriate Lee Plan cross-reference regarding density limitations.*

The Lee Plan establishes a standard and maximum residential density range permissible for each residential land use category. The procedure set forth in this section must be used to determine the standard residential density as well as the total number of housing units which may be permitted within a development.

- (1) *Proposed developments.*

*Subsection a. remains unchanged.*

- b. Estimation of total permissible housing units. The number of permissible housing units is calculated as follows:

*Subsections 1. and 2. remain unchanged.*

3. Outlying suburban land use district.
  - i. Multiply the total gross residential acres less wetland area by the standard density range permitted for the land use category in which the property is located.
  - ii. Additional units may be transferred from abutting fresh water wetland areas at the same underlying density as is permitted for the uplands, so long as the maximum uplands density does not exceed the maximum standard density of three units per acre plus one for a total of four units per acre. Outlying suburban land located north of the Caloosahatchee River and east of Interstate-75, north of Pondella Road and south of Pine Island Road (SR 78), and in the Buckingham area (see Goal 4920 of the Lee Plan), the maximum upland density shall be two units per acre plus one for a total of three (3) units per acre.

*Subsection c. remains unchanged.*

- (2) *Existing developments and lots.* Due to the problems of computing gross density in the same manner as set forth for new developments, the following procedures must be followed:

*Subsections a. and b. remain unchanged.*

- c. *Townhouse or multiple-family structures.* Except as limited by the Lee Plan-section 34-1495, any legally existing lot of record which is zoned for townhouse or multiple-family development will be permitted dwelling units as follows:

*Subsections 1. and 2. remain unchanged.*

## **Sec. 34-1494. - Density equivalents.**

Staff Note – Add density equivalent language from LDC Sec 34-1414 to clarify applicability to include all care facilities. Clarify independent living units are permitted within CCFs and ALFs consistent with current practice.

*Subsection (a) remains unchanged.*

- (b) *Equivalency factors:*

~~(See section 34-1414(c) for assisted living facility units and nursing beds, independent living units, health care, social service, adult living facilities (ALF), continuing care facilities (CCF), or other "group quarters".)~~

*Subsections (1) through (3) remain unchanged.*

- (4) Density. Density equivalents for health care, social service, adult living facilities (ALF), continuing care facilities, or other "group quarters" (df) are provided in dwelling unit equivalents:

- (a) Where each unit has its own cooking facilities, density equivalents will be calculated on a 1:1 ratio.
- (b) Where a continuing care facility (CCF) or assisted living facility (ALF) contains independent living units two independent living units equal to one residential dwelling unit.

(c) Except as may be specifically set forth elsewhere in this chapter, where health care, social service, adult living facilities (ALF), continuing care facilities (CCF), or other "group quarters" (df) are provided in dwelling units or other facilities wherein each unit does not have individual cooking facilities and where meals are served at a central dining facility or are brought to the occupants from a central kitchen, density equivalents will be calculated at the ratio of four people equals one dwelling unit.

A planned development, for which the master concept plan states the number of persons that may occupy an approved adult living facility (ALF) or continuing care facility (CCF), may request an amendment to the approved master concept plan to reflect the increased number of occupants based upon the equivalency factor set forth in this section (if applicable). Such amendment will be considered an administrative amendment that will be deemed to not increase density and may be approved pursuant to section 34-380(b) as long as existing floor space is not increased to accommodate the increased number of occupants. If increased floor space is required, then a public hearing will be required.

- (c) *Determination of permitted density.* The maximum permitted density shall be determined by multiplying the number of dwelling units permitted (see subsection (a) of this section) by the appropriate equivalency factor.

#### **Sec. 34-1613. - Setbacks.**

Staff Note: Provides clear regulations for essential facilities which are greater than six feet in height but less than 300 cubic feet in volume. Current regulations leave a gap for structures greater than six feet in height but less than 300 cubic feet in volume.

Current regulations impose a 30-foot street setback for structures less than 600 cubic feet, however, assess larger structures in the final tier subsection to meet the minimum required setbacks for the district in which located. The vast majority of street setbacks are assessed as 25 feet or less by the LDC. To impose a more stringent street setback for smaller facilities categorized specifically in a smaller tier is unreasonable.

- (a) Structures regulated by this division that are three feet or less in height and which individually or collectively on the same parcel are 80 cubic feet or less in volume are exempt from all setback requirements.
- (b) Buildings or structures that are over three feet but less than six feet in height, and which individually or collectively on the same parcel are 300 cubic feet or less in volume, must be set back a minimum of five feet from any street right-of-way or street easement and must comply with the visibility requirements set forth in section 34-1614.
- (c) Buildings or structures that exceed six feet in height ~~and~~ or which individually or collectively on the same parcel exceed 300 cubic feet in volume but are less than 600 cubic feet in volume ~~may not be located closer than 30 feet to any street~~ must comply with the minimum right-of-way or street easement setback for the district in which located, or and may not be located closer than 25 feet to any body of water.
- (d) Buildings or structures that individually or collectively on the same parcel exceed 600 cubic feet in volume must comply with all setback requirements for the district in which located.

## **Sec. 34-1862. - Marinas, fish houses and docking facilities.**

**Staff Note: Update Lee Plan cross-references.**

- (a) *Water-dependent overlay zones.* Water-dependent overlay zones have been designated for shoreline areas where priority will be granted to water-dependent land uses (Goal 8). Goal 12 and ~~Objective 124.6~~ of the Lee Plan details specific requirements for the water-dependent overlay zones on San Carlos Island (see map 2 of the Lee Plan). Policies regulating water-dependent uses in other areas of the County are found ~~in under objectives 128.1 and 128.2~~ in under objectives 128.1.1 and 128.2.1, and are mapped in the appendix of the Lee Plan, as map 12.

*Subsections (b) and (c) remain unchanged.*

## **Sec. 34-2175. - Height limitations for special areas and Lee Plan land use categories.**

**Staff Note: Update Lee Plan cross-reference.**

The following areas have special maximum height limitations applicable to all conventional and planned development districts:

- (a) *Special areas.*

*Subsection (1) remains unchanged.*

- (2) *Captiva Island.* No building or structure may be erected or altered so that the peak of the roof exceeds 35 feet above the average grade of the lot in question or 42 feet above mean sea level, whichever is lower. The provisions of section 34-2174(a) do not apply to Captiva Island. No variance or deviation from this height restriction may be granted; provided however, one communication tower, not to exceed 170 feet in height, may be constructed in accord with Lee Plan Policy 23.2.313-1.14.

*Subsections (3) through (7) remain unchanged.*

*Subsection (b) remains unchanged.*

## **Sec. 34-2381. - Noncommercial schools.**

**Staff Note: Update Lee Plan cross-reference for clarity.**

- (a) *Permitted districts.* All noncommercial schools constructed by the district school board on land owned by the district school board are permitted by right in any zoning district. Also permitted by right in any zoning district is Florida Gulf Coast University, located in the Lee Plan University Campus sub-category of the University Community future land use category, including all facilities normally associated with a public university. Development of Florida Gulf Coast University will be in accord with a campus master plan adopted pursuant to F.S. § 240.155. All other noncommercial schools are permitted in accordance with the applicable zoning district use regulations for the property.
- (b) *Access.* Access requirements for new schools are as follows:
- (1) Whenever possible, elementary schools will have access to local or collector streets; and
  - (2) Secondary schools must have access to a collector or arterial street.

- (c) *Location.* No school site will be approved which, in the opinion of the Hearing Examiner, is exposed to physical constraints, hazards or nuisances which are detrimental to the health and safety of students and to the general operation of the school.

**Sec. 34-3106. - Use of metal buildings in residential districts.**

Staff Note: Clarify and remove use correlations to apply regulation to all buildings at a certain scale in specified residential areas.

~~Effective December 12, 2000, the~~ The construction or use of enclosed or partially enclosed metal buildings with an exterior surface of corrugated or galvanized steel or similar materials (excluding aluminum lap or clapboard style siding), exceeding 240 square feet in total floor area or 12 feet in height above finished floor, for storage of merchandise, produce, or commodities, or for the parking of vehicles (garages) is prohibited must provide residential exterior cladding (df), unless approved as a special exception, in the following residential districts: RS, RSA, RSC, TFC, TF, RM, RPD and the residential portions of an MPD.

**Sec. 34-3241. - Nonconforming buildings and structures.**

Staff Note: Update cross-reference. Ord. 95-14 was repealed and replaced by Ord. 07-20, which became effective on June 18, 2007.

*Subsection (a) remains unchanged.*

- (b) A nonconforming building or structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

*Subsection (1) remains unchanged.*

- (2) Except as provided in this section:

*Subsection a. remains unchanged.*

- b. Structures damaged by fire or other natural forces to the extent that the cost of their reconstruction or repair exceeds 50 percent of the replacement cost of the structure may be reconstructed at, but not to exceed, the legally documented actual use, density and intensity existing at the time of destruction, thereby allowing such structures to be rebuilt or replaced to the size, style and type of their original construction, including their original square footage; provided, however, that the affected structure, as rebuilt or replaced, complies with all applicable federal and state regulations, local building and life safety regulations, and other local regulations that do not preclude reconstruction otherwise intended by the Lee Plan and Lee County Ordinance No. 95-1407-20, as amended from time to time.

*Remainder of section remains unchanged.*

**ADMINISTRATIVE CODE  
BOARD OF COUNTY COMMISSIONERS**

**CATEGORY:**  
**Committees/Boards/Commissions/Examiners**

**CODE NUMBER:**  
**AC-2-10**

**TITLE:**  
**Establishment of the Boca Grande Historic Preservation Board and the Lee County Historic Preservation Board with Corresponding Rules of Procedure.**

**ADOPTED:**  
**AC-2-10: 2/8/89**  
**AC-2-13: 11/15/89**

**AMENDED: Merged AC2-10 & AC-2-13: 8/31/94;  
4/4/06, 2/26/2013**

**ORIGINATING DEPARTMENT:**  
**Community Development**

**PURPOSE/SCOPE:**

The purpose and Intent of this Administrative Code is to establish two Historic Preservation Boards: (1) the Boca Grande Historic Preservation Board; and (2) the Lee County Historic Preservation Board. The Boca Grande Historic Preservation Board is responsible for the aesthetic, archeological, cultural, historical, and architectural heritage of the Boca Grande Community as defined in the Lee Plan. The Lee County Historic Preservation Board is responsible for the aesthetic, archeological, cultural, historical, and architectural heritage of the unincorporated areas of Lee County, excluding the Boca Grande Community. The Boca Grande Historic Preservation Board and the Lee County Historic Preservation Board may hereinafter be referred collectively as the "Board".

The primary purposes of the Board are:

1. Providing a mechanism to identify, protect, enhance and preserve the distinctive historic, archaeological, scenic and architectural features of Lee County which represent elements of the County's cultural, social, economic, political and architectural history;
2. Fostering civic pride in the accomplishments of Lee County's past;
3. Conserving and improving the value of property designated historically or architecturally significant;
4. Supporting and promoting the economy by protecting and enhancing the attractiveness of Lee County to residents, tourists, and visitors;
5. Preventing future urban blight by encouraging preservation, restoration, and rehabilitation of structures, areas and neighborhoods; and
6. Promoting the use of historic sites, historic districts, archaeological, and scenic sites for education, pleasure and welfare of the citizens of Lee County.

**POLICY/PROCEDURE:**

**A. Composition of Historic Preservation Boards**

1. The historic preservation board shall consist of seven members appointed by the Board of County Commissioners. Each member of the historic preservation board shall hold office only so long as he/she is a resident of the county. Appointments shall be made on the basis of a potential member's civic pride, involvement in community issues, integrity, experience and interest in the field of historic preservation. One member of the historic preservation board shall be an architect registered to practice in the state. The Board of County Commissioners shall endeavor to appoint one members of the historic preservation board from such that each of the following categories are represented: The composition of the Historic Preservation Boards is set forth in Chapter 22 of the Land Development Code.

- a. History or archaeology.
- b. Real estate land development or finance.
- c. Law or urban planning.
- d. Engineering, architecture, building construction or landscape architecture.

The two remaining positions shall be filled by citizens at large. All members of the historic preservation board must comply with the financial disclosure laws of the state.

2. Members shall serve overlapping terms of three years. A member of the historic preservation board shall be eligible for reappointment. Members of the historic preservation board shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their official duties, as shall be determined and approved by the Board of County Commissioners. Prior to the expiration of his term, a member of the historic preservation board may be removed from office only by a three-fifths vote of the entire membership of the Board of County Commissioners. If, however, a member of the historic preservation board fails to attend three consecutive meetings, or four meetings in any one calendar year, the chairman shall certify such fact to the Board of County Commissioners. Upon such certification, that member shall be deemed to have been removed from the historic preservation board and the Board of County Commissioners shall fill the vacancy by appointment.

#### B. Jurisdiction

~~Upon appointment and the calling of its first meeting, the~~ The Boca Grande Historic Preservation Board has legal jurisdiction over the Boca Grande Planning Community as defined in the Lee Plan. The Lee County Historic Preservation Board has legal jurisdiction over the unincorporated areas of Lee County, Florida, ~~including the Boca Grande Community until the Boca Grande Historic Preservation Board is appointed and calls its first meeting; thereafter,~~ The Lee County Historic Preservation Board will ~~only have~~ retain jurisdictional authority within the Boca Grande Community for the limited purposes of funding special projects and reviewing and funding properties located within the Boca Grande Community that are the subject of applications requesting Historic Preservation grant money.

#### C. Officers

1. Each Board will elect a Chair and Vice Chair from among each Board's members by a majority vote and may create such other officers as each Board may determine.
2. Officers will be elected at the first regular meeting of each Board and will hold office for one year but may not serve for more than two consecutive years.
3. A vacancy occurring in any office will be filled by a majority vote of the remaining members of the subject Board.
4. Lee County will provide adequate staff to allow each Board to perform its duties. Staff will consist of at least one historic preservation planner and one clerical person who will be responsible for recording and transcribing the minutes of all meetings of each Board.
5. The Chair, or in his or her absence, the Vice Chair, will preside at all meetings and hearings of each respective Board and decide all points of order and procedure. The Chair or Vice Chair, as presiding officer of the meeting, will have the right to vote.
6. No Board members may take part in any hearing, consideration or determination of any case in which he or she is personally or financially interested.

#### D. Powers and Duties

Each Board will have the following powers and duties:

1. To adopt its own procedural regulations subject to the approval of the Board of County Commissioners;
  - a. Historic Preservation Funding Program: Lee County Historic Preservation Board

On or before 90 days from date of BOCC approval, the Historic Preservation Planner will

recommend to the Lee County Historic Preservation Board procedures and criteria for evaluating special projects and properties that are the subject of an application requesting Historic Preservation grant money. These procedures and criteria will include the requirement that the Historic Preservation Planner provide a written report containing a review and recommendation to the Board that addresses the adopted criteria. At the next regularly scheduled meeting after the submission of the Historic Preservation Planner's recommendation, the Board will review the recommendations and either adopt the recommendations or adopt alternative procedures and criteria. A public record of the procedures and criteria will be maintained and made available for inspection by the public. Thereafter, the Board will use its adopted procedures and criteria to evaluate special projects and properties that are the subject of an application requesting Historic Preservation grant money.

b. Historic Preservation Funding: Boca Grande Historic Preservation Board

If the Board of County Commissioners approves Historic Preservation funding for the Boca Grande Community to be administered by the Boca Grande Historic Preservation Board, then on or before 90 days from date of BOCC approval, the Historic Preservation Planner will recommend to the Boca Grande Historic Preservation Board procedures and criteria for evaluating special projects and properties that are the subject of an application requesting Historic Preservation grant money. These procedures and criteria will include the requirement that the Historic Preservation Planner provide a written report containing a review and recommendation to the Board that addresses the adopted criteria. At the next regularly scheduled meeting after the submission of the Historic Preservation Planner's recommendation, the Board will review the recommendations and either adopt the recommendations or adopt alternative procedures and criteria. A public record of the procedures and criteria will be maintained and made available for inspection by the public. Thereafter, the Board will use its adopted procedures and criteria to evaluate special projects and properties that are the subject of an application requesting Historic Preservation grant money.

2. To administer Chapter 22 of the Land Development Code within each Board's respective jurisdiction;
3. To maintain and update the findings of the historical and archaeological surveys and validate those findings;
- 3-4. To evaluate the significance and eligibility of historic resources for designation and to designate eligible historic resources pursuant to the provisions of Chapter 22 of the Land Development Code;
- 4-5. To develop and maintain a register of all properties and structures that have been designated as historic architecturally or archaeologically significant, including all information required for each designation. The register will be compatible with the Florida Master Site File;
- 5-6. To advise and assist owners of historic properties or structures on physical and financial aspects of preservation, renovation, relocation, rehabilitation and reuse, and procedures for inclusion on the National Register of Historic Places;
- 6-7. To nominate historic, architecturally, or archaeologically significant structures and sites to the National Register of Historic Places and to review and comment on any National Register nominations submitted by other persons or organizations;
- 7-8. To develop and administer an appropriate system of historic and scenic markers or other programs aimed at the property recognition of designated historic resources and to make recommendations to the Board of County Commissioners for the design and implementation of specific markings of the streets, and routes leading from one historic site or district to another;
- 8-9. To hold public hearings ~~and to review applications for construction, renovation or refurbishment, alteration, removal, relocation or demolition affecting proposed or designated historic sites or structures~~ resources and, to render decisions make recommendations to the Board of County Commissioners as to the propriety and effect of the construction, renovation, refurbishment, alteration, removal, relocation or demolition, and to record and maintain



~~records of the actions and decision of the historic preservation board; Applicants may be required to submit plans, drawings, elevations, specifications, and other information as may be necessary to make decisions;~~

~~9-10.~~ To develop specific design guidelines for the alteration, construction, renovation or refurbishment, relocation or removal of historic sites and structures within historic districts.

~~10-11.~~ To evaluate, and comment upon decisions of other public agencies affecting the physical development and appearance of scenic and historically significant sites and structures;

~~11-12.~~ To inform and educate the citizens of Lee County concerning the historic, architectural and archaeological heritage of Lee County by holding educational programs, seminars, and other similar presentations;

~~12-13.~~ To periodically review the Historic Preservation element of the Lee Plan and to recommend to the Local Planning Agency any appropriate amendments that are for the protection and continued use of historic sites and structures;

~~13-14.~~ To periodically review the Land Development Code, and to recommend to the Board of County Commissioners any appropriate amendments ~~designed intended~~ for the protection and continued use of ~~historic sites and structures within historic districts or~~ historic resources as defined in Chapter 22 of the Land Development Code;

~~14-15.~~ ~~In the name of Lee County and with the consent of the Board of County Commissioners,~~ To apply for, solicit, receive, or expend any federal, state or private grant, gift, or bequest of any funding, property, or interest in property in furtherance of the purpose of historic preservation, with the consent of the Board of County Commissioners, on behalf of Lee County;

~~16.~~ To Advise the Board of County Commissioners on all matters related to historic preservation policy including the use, administration, and maintenance of County owned historic and scenic properties;

~~15-17.~~ To proposed and recommend to the Board of County Commissioners financial and technical incentive programs to further the objectives of historic preservation; and

~~16-18.~~ To undertake any other action or activity requested by the Board of County Commissioners necessary or appropriate to the implementation of its powers and duties or its implementation of the purpose of this administrative code.

#### E. Meetings

1. Each Board will meet at least once per month, at a date and time to be decided by each Board, unless there is no business pending before that Board. Regardless of the lack of pending business, each Board will meet at least four times during any calendar year.
2. Each Board's Chair, or in his or her absence, the Vice Chair, may call a special meeting of the Board ~~upon with~~ at least ~~five-fifteen (15)~~ calendar days notice to each member of the subject Board. Adequate notice must be provided to all interested and affected parties. Special meetings may be called in the case of a continuation of previously advertised matters or as Historic Preservation Board workshop meetings. Special meetings must not be held in violation of the procedural requirements of Chapter 22 of the Land Development Code.
3. All meetings of each Board must be open to the public. A public record of each Board's minutes and resolutions must be maintained and made available for inspection by the public.

#### F. Attendance

1. Board members are expected to attend the following meetings:
  - A. Regular Historic Preservation Board meetings which are defined as those meetings

regularly scheduled to carry out the duties of each Historic Preservation Board

B. Special Historic Preservation Board meetings, which are defined as those meetings called by the Chair of the respective Board upon at least five calendar days notice to each subject member; or scheduled by a majority vote of the subject Board at a regularly advertised meeting.

2. Attendance will be taken by each Board's staff at all regular or special meetings of each Board.
3. If a member of either Board fails to attend three consecutive regular meetings, or four regular meetings of their respective Board in any one calendar year, ~~that Board's chair will certify the same to the Board of County Commissioners. Upon such certification, that member will be deemed to have been removed from the Board and the Board of County Commissioners will fill the vacancy by appointment.~~

#### G. Legislative Procedure

1. A majority of all members of each Board constitutes a quorum. No action may be taken by a Board unless a quorum is present.
2. A motion to recommend approval or a motion for denial of a petition for designation of a historic resource under Chapter 22 of the Land Development Code requires a simple majority vote of the members of the subject Board present and voting.
3. A motion to recommend the suspension of activities, ~~issuance approval,~~ or denial of a Special Certificate of Appropriateness requires a simple majority vote of the members of the subject Board present and voting in order to be carried.
4. Recommendations to the Board of County Commissioners or to government officials for special study items or enforcement measures also requires a simple majority vote of the subject Board Members who are present and voting.

#### H. Historic Preservation Board Report and Agenda

1. No new items may be placed on the Agenda of either Board after the date the agenda has been advertised unless approved by the Chair of the subject Board.
2. Copies of the Agenda and backup documents of each Board must be made available to the public at the Planning Division five days prior to scheduled meeting day.
3. Each Board's Agenda will be advertised in a newspaper of general circulation at least five days prior to any Board meeting. All advertisements must adhere to Chapter 22 of the Land Development Code.
4. For proposed designation or proposed Special Certificate of Appropriateness reviews pursuant to Chapter 22 of the Land Development Code, the notice of the public hearing must be published in a newspaper of general circulation at least ten calendar days but not more than 20 calendar days prior to the date of the public hearing.
5. National Register nominations will be considered at public meetings conducted by the appropriate Board. Notices of these meetings must be advertised in a newspaper of general circulation at least five days prior to the Board meeting at which the nomination will be reviewed. Any additional notices must be made as required by the U.S. Department of Interior rules. Where appropriate, meetings will be held at the neighborhood level.
6. The Historic Preservation Planner will provide a copy of the County recommendation to an applicant or applicant's agent at least five days prior to the scheduled meeting of the subject Board.

#### I. Order of Business at each Board's Meetings

- I. Call to Order;

- II. Approval of Minutes;
- III. Designation of Historic Structures or Districts;
- IV. Designation of Archaeological Sites or Districts;
- V. Special Certificates of Appropriateness;
- VI. Maintenance and Repair;
- VII. National Register Nominations;
- VIII. Special Study Items;
- IX. Receive and Schedule New Items for Review;
- X. Presentation of Items by the Public;
- XI. Presentation of Topics by Board Members;
- XII. Presentation of Topics by Staff;
- XIII. Future Meetings;
- XIV. Adjournment.

J. Procedural Rules

- 1. Hearings will be conducted in the following sequence:
  - A. Statement of the petition by the Historic Preservation Planner.
  - B. Presentation of information, documentation, correspondence and report or recommendation by the Historic Preservation Planner.
  - C. Statements by the petitioner(s) with supporting argument.
  - D. Statements by others at hearing in support of the petitioner.
  - E. Opposing statements by persons attending the hearing.
  - F. Rebuttal by petitioner.
  - G. Discussion by Board Members.
  - H. Motion and role call vote.
- 2. Each Chair may establish appropriate time limits for arguments and may request that representatives of each position speak for an entire group. If the Chair imposes time limitations those limitations will apply equally to both sides of the matter being discussed.
- 3. Appropriate language for Board motions:
  - A. Petitions for Designation as a Historic Resource:  
Move for approval (or denial or continuance) of Petition (No.).
  - B. Special Certificates of Appropriateness - Move to approve (or approve with conditions, suspend action, deny, or continue) the Special Certificate of Appropriateness (No.).
- 4. The rules contained in the current edition of Robert's Rules of Order will be observed during the Board meetings where they are applicable unless those rules conflict with Chapter 22 of the Land Development Code or the procedures established herein. In that case, the provisions of the Land Development Code or this code will prevail as appropriate.

K. Certified Local Government Requirements

In order to become a Certified Local Government, a local government must meet the requirements contained in 36 C.F.R. Part 61, which establishes regulations pursuant to the National Historic Preservation Act Amendments of 1980, Public Law 96-515 enacted on December 12, 1980. These requirements are met by Chapter 22 of the Lee County Land Development Code and by the following requirements as set forth below:

- 1. The Historic Preservation Planner must notify the Board of County Commissioners that any vacancies on either of the Historic Preservation Boards, including expired terms, must be filled by the Board of County Commissioners within 60 days and that extensions up to an additional 60 days may be granted by the State Historic Preservation Officer on a case-by-case basis.
- 2. Each Historic Preservation Board member should make a reasonable effort to attend the State Historic Preservation Office orientation program and subsequent training programs for Certified Local Governments. Board members should make every effort to be represented at

any informational or educational meetings, conferences, or workshops pertaining to work and functions of the Historic Preservation Board scheduled by the State Historic Preservation Officer or the Florida Conference of Preservation Boards or Commissions.

3. When either Historic Preservation Board considers a National Register nomination proposal and other actions that will impact properties normally evaluated by a professional in a specific discipline, and that discipline is not represented on the Board, the respective Board must seek professional expertise in this area before rendering a decision. This can be accomplished through consulting (e.g., universities, private preservation organizations or regional planning commissions) or by other means that the State Historic Preservation Officer determines appropriate.
4. All the Historic Preservation Board responsibilities will be complimentary to and carried out in accordance with the responsibilities of the State Historic Preservation Officer as described in 36 C.F.R. 61.4(b).
5. All inventories must be compatible with the Florida Master Site File, which exemplifies the format used for statewide comprehensive historic preservation planning, and kept current and regularly provided to the State Historic Preservation Officer for incorporation in the Florida Master Site File.
6. Historic Preservation Board members are encouraged to participate in the process of surveying historic and/or archaeologically significant properties and in preservation planning carried out by the Certified Local Government (i.e. Lee County).
7. Rules of procedure adopted by the Lee County Board of County Commissioners for the Historic Preservation Board must be available for public inspection, per Sections 286.011, 119.011, and 267.021, Florida Statutes.
8. Appropriate local officials, owners of record and applicants must be notified of proposed Historic Preservation Board actions concerning a proposed nomination to the National Register according to requirements found in 36 CFR Part 60. Objections by owners of properties proposed for nomination must be notarized.
9. Each Historic Preservation Board will give at least 30 days' advance notice of its meetings to the State Historic Preservation Officer.
10. Each Historic Preservation Board must submit the minutes of each Board's respective meeting and attendance figures for Historic Preservation Board members and the public to the State Historic Preservation Officer within 30 days of each meeting.
11. Each Historic Preservation Board must notify the State Historic Preservation officer of any change in that Board's membership within 30 days of any appointment.
12. Each Historic Preservation Board must immediately notify the State Historic Preservation Officer of all of their respective new historic designations or alterations of existing designations.
13. Each Historic Preservation Board must submit to the Historic Preservation Officer an annual report by November 1 of each year covering the previous October 1 through September 30. This report must address the following:
  - a. All changes to the Rules of Procedure;
  - b. The number of proposals reviewed;
  - c. All new designations;
  - d. Any changes in the membership of the Historic Preservation Board;
  - e. Revised resumes of the Historic Preservation Board members as appropriate;
  - f. A review of Survey and Inventory activity with a description of the system used; and
  - g. A program report on each grant-assisted activity.

L. Amendments

At any regular meeting of each Board, members may recommend to the Board of County Commissioners

amendments to these Rules of Procedure by the affirmative vote of a majority of Board members. Upon approval of amendments by the Board of County Commissioners, the amendments will be incorporated into the Lee County Administrative Code.