

**AGENDA
LOCAL PLANNING AGENCY
JUNE 6, 1995
9:30 A.M.
COUNTY COMMISSION CHAMBERS**

1. Call to Order; Certification of Affidavit of Publication
2. Public Forum
3. Approval of Minutes from May 2, 1995 meeting
4. ORDINANCE REVIEW
 - a. AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE SO AS TO AMEND CHAPTER 10 DEVELOPMENT STANDARDS AND CHAPTER 34 ZONING TO PROVIDE FOR BIKEWAYS AND PEDESTRIAN WAYS AS A CONDITION OF DEVELOPMENT APPROVAL; AMENDING CHAPTER 10 ARTICLE I, IN GENERAL, SECTION 10-1 DEFINITIONS AND RULES OF CONSTRUCTION; SECTION 10-8 SPECIFIC REQUIREMENTS; AMENDING ARTICLE II, ADMINISTRATION, DIVISION 2, DEVELOPMENT ORDERS, SECTION 10-154 ADDITIONAL REQUIRED SUBMITTALS; AMENDING ARTICLE III, DESIGN STANDARDS AND REQUIREMENTS BY ADDING A NEW SECTION 10-256 TO DIVISION I, GENERALLY, ENTITLED BIKEWAYS AND PEDESTRIAN WAYS, ALSO AMENDING DIVISION 6, OPEN SPACE, BUFFERING AND LANDSCAPING, SECTION 10-413 OPEN SPACE; SECTION 10-414 BUFFERS; SECTION 10-415 LANDSCAPING; DIVISION 7, PUBLIC TRANSIT, SECTION 10-443 EXCEPTIONS; AMENDING ARTICLE IV, ILLUSTRATIONS, TABLES AND DIAGRAMS, SECTION 10-709 PUBLIC LOCAL STREETS; SECTION 10-710 PRIVATE LOCAL STREETS; SECTION 10-711 ACCESS STREETS; AMENDING CHAPTER 34, ZONING, ARTICLE IV, PLANNED DEVELOPMENTS, DIVISION 3, DESIGN STANDARDS, SECTION 34-411 GENERAL STANDARDS; DIVISION 4, RESIDENTIAL PLANNED DEVELOPMENTS IN RURAL AND OUTER ISLANDS, SECTION 34-442 IMPACT ANALYSIS; ARTICLE VI, DISTRICT REGULATIONS, DIVISION 9, PLANNED DEVELOPMENT DISTRICTS, SECTION 34-936 GENERAL CONDITIONS FOR ALL LAND USES; DIVISION 10, SPECIAL PURPOSE DISTRICTS, SECTION 34-983 USE REGULATIONS; DIVISION 11, OVERLAY DISTRICTS, SUBDIVISION IV, REDEVELOPMENT OVERLAY DISTRICT; SECTION 34-1128, MASTER PLAN INITIATION AND ADOPTION; DIVISION 26, OFF-STREET PARKING, SECTION 34-2020 REQUIRED SPACES; DIVISION 27, PLACES OF WORSHIP AND RELIGIOUS FACILITIES, SECTION 34-2052 PARKING; PROVIDING FOR SEVERABILITY, CONFLICTS, SCRIVENER'S ERRORS, INCLUSION IN CODE, CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

- b. AN ORDINANCE REPEALING AND REPLACING LEE COUNTY ORDINANCE NO. 90-61 TO BETTER MANAGE RECOVERY, RECONSTRUCTION AND MITIGATION ACTIVITIES FOLLOWING A MAJOR OR CATASTROPHIC DISASTER WITHIN THE UNINCORPORATED AREAS OF LEE COUNTY, FLORIDA; PROVIDING FOR THE PURPOSE AND INTENT OF THE ORDINANCE; PROVIDING FOR JURISDICTION; PROVIDING DEFINITIONS; PROVIDING FOR THE CREATION, COMPOSITION, DUTIES AND RESPONSIBILITIES, DURATION AND CHAIR OF A DISASTER ADVISORY COUNCIL; PROVIDING FOR THE CREATION, DURATION, DUTIES AND RESPONSIBILITIES OF A POST-DISASTER RECOVERY TASK FORCE AND CERTAIN MEMBERS THEREOF; PROVIDING FOR THE COMPOSITION AND DUTIES OF AN EMERGENCY REVIEW BOARD; PROVIDING PRIORITIES FOR POST-DISASTER REDEVELOPMENT; PROVIDING PRIORITIES FOR ESSENTIAL SERVICES AND FACILITIES RESTORATION; PROVIDING DEBRIS CLEARANCE, REMOVAL AND DISPOSAL STRATEGIES; PROVIDING FOR DETERMINATION OF DAMAGE; PROVIDING FOR IMPLEMENTATION OF A BUILDBACK POLICY; PROVIDING FOR A DECLARATION OF AN INITIAL BUILDING MORATORIUM AND ESTABLISHING RELATED MORATORIA PERTAINING TO BUILDING PERMIT INSPECTIONS, DEVELOPMENT ORDERS AND SITE PLANS PROVIDING PROVISIONS FOR A MORATORIA; PROVIDING FOR EMERGENCY REPAIRS; PROVIDING FOR AN EMERGENCY PERMITTING SYSTEM; PROVIDING POLICIES FOR ECONOMIC REDEVELOPMENT; PROVIDING GUIDELINES FOR ACQUIRING DAMAGED PROPERTY; PROVIDING FOR AUTHORITY; PROVIDING PENALTIES; PROVIDING CONFLICT AND SEVERABILITY PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.
 - c. AN ORDINANCE CREATING A PERSONAL WATERCRAFT VENDOR AND PARASAILING ORDINANCE; PROVIDING FOR TITLE, DEFINITIONS; CREATING PROHIBITIONS; PROVIDING FOR APPLICATION AND FRANCHISE FEE; PROVIDING FOR RANDOM DISTRIBUTION OF LICENSES, PROVIDING FOR RENEWAL AND DISPLAY OF LICENSE; PROVIDING FOR CONDITIONS OF LICENSING USE; PROVIDING FOR INSURANCE REGULATORY PENALTIES AND EXEMPTIONS; PROVIDING FOR SEVERABILITY, CONFLICTS OF LAW, INCLUSION IN CODE, CODIFICATION AND SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.
- 5. Proposed Capital Improvement Budget - Review for Consistency and Recommendations to Board of County Commissioners
 - 6. Other Business
 - a. Discussion of Next LPA Meeting Date
 - 7. Adjournment

LEE COUNTY ORDINANCE NO. _____

**AN ORDINANCE CREATING A PERSONAL WATERCRAFT
VENDOR AND PARASAILING ORDINANCE; PROVIDING FOR
TITLE, DEFINITIONS; CREATING PROHIBITIONS;
PROVIDING FOR APPLICATION AND FRANCHISE FEE;
PROVIDING FOR RENEWAL AND DISPLAY OF LICENSE;
PROVIDING FOR CONDITIONS OF LICENSING USE;
PROVIDING FOR INSURANCE, REGULATORY PENALTIES
AND EXEMPTIONS; PROVIDING FOR SEVERABILITY,
CONFLICTS OF LAW, INCLUSION IN CODE, CODIFICATION
AND SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.**

WHEREAS, the Board of County Commissioners of Lee County, Florida is the governing body
in and for Lee County, Florida; and

WHEREAS, the Lee County Board of County Commissioners has the authority under Florida
Statutes §125.01 to create fees and to regulate businesses within its jurisdiction; and

WHEREAS, it is in the interest of safety and welfare of the public to establish certain regulations
for the rental of personal watercraft and to limit the areas of personal watercraft rental and parasailing
activity in order to reduce potential injury and inconvenience to the public; and

WHEREAS, the manner, mode, type and degree to which the adjoining waters are used affects
the health, safety and welfare of the public; and

WHEREAS, the operation of personal watercraft and parasailing in areas used for other water-
oriented recreational activities poses a threat to the safety of swimmers and to the control of other water
vessels; and

WHEREAS, the proliferation of personal watercraft rental businesses along the beaches has
increased the potential risk of injury to swimmers and other persons using the water for recreational
purposes; and

WHEREAS, the Board of County Commissioners has determined that the rental of personal

DRAFT FOR DISCUSSION PURPOSES ONLY

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watercraft should be controlled in order to protect the public from vendors who rent to operators without providing adequate training; and

WHEREAS, the Board of County Commissioners has determined that in the interest of safety and welfare of other persons using the waters it is necessary to regulate the number and location of personal watercraft vendors and parasailing operations so as to minimize overcrowding of the waters used by swimmers.

WHEREAS, it is within sound planning principles to establish setback and distance separation requirements for certain types of businesses as deemed necessary so as to minimize their impacts on other uses and the safety and welfare of the general public,

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

SECTION ONE: TITLE

This Ordinance shall be known and may be cited as the Lee County Personal Watercraft Rental Vendor License and Parasailing License Ordinance.

SECTION TWO: PURPOSE AND AUTHORITY

- A. The purpose of this Ordinance shall be to regulate personal watercraft rental vendors and parasailing operators in order to promote safety in the waters of Lee County and to preserve and protect our natural resources.
- B. The County does hereby declare that the public health, safety and welfare of the citizens of the County and others requires regulation of personal watercraft rentals and parasailing

activities.

- C. The County is hereby authorized to regulate personal watercraft rentals and parasailing, in the interest of safety, thus requiring certain conditions of those renting personal watercraft and Parasailing.

SECTION THREE: DEFINITIONS

For the purposes of this ordinance, the following terms, phrases, words and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- A) "Beach" shall mean the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.
- B) "Business" shall mean any personal watercraft rental or parasailing activity business, including any commercial activity engaged in the rental, leasing, or bailment for consideration of personal watercraft or Parasailing.
- C) "County Manager" shall include the designee(s) of the Lee County Manager.
- D) "Idle speed" shall mean the lowest speed at which a personal watercraft can operate and maintain steering control. The actual speed will depend upon the design of the personal watercraft, the personal watercraft's load, wind direction and speed, and the sea conditions. Generally, it shall mean the minimum speed required for personal watercraft to effectively traverse breaking water.
- E) "Operate" shall mean to navigate or otherwise use any personal watercraft in, on or under the water.

- F) "Parasailing" or "Parasailing Activity" shall mean the act of towing a person or object over the water, suspended beneath a parachute, kite, or other similar contrivance.
- G) "PWVL" shall mean Personal Watercraft Vendor's License, and shall also include parasailing activity.
- H) "Person" shall mean any individual(s), partnership, association, corporation, or any legal entity whatsoever.
- I) "Personal watercraft" shall mean a small Class A-1 or A-2 vessel as defined by State law, which uses an outboard motor, or an inboard motor powering a water jet pump, as its primary source of power and which is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing personal watercraft inside the vessel.

**SECTION FOUR: UNLICENSED RENTAL OF PERSONAL WATERCRAFT
OR PARASAILING PROHIBITED**

- A. No person shall offer for rent, lease, or bailment for consideration, a personal watercraft or a ride on a parasail within the unincorporated areas of Lee County except from a boat rental business which fully complies with the regulations set forth in the Land Development Code and this ordinance.
- B. No Person shall conduct any personal watercraft rental business or have a parasailing operation within the unincorporated areas of Lee County, except from a business holding a valid PWVL and which fully conforms to the terms of this Ordinance.

- C. No person shall offer for rent, lease, or bailment for consideration a personal watercraft or use a vessel for Parasailing activity which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

SECTION FIVE: PWVL APPLICATION; REGULATORY FEE

- A. Application for a PWVL shall be made to the County Manager on a form provided by the County.
- B. Information to be provided by the applicant shall include, at a minimum:
 - 1. BUSINESS LOCATION
 - a. The STRAP number and address from which the personal watercraft or parasailing business will operated;
 - b. If the applicant is not the owner of the property from which the personal watercraft or parasailing business will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.
 - 2. OWNERSHIP INFORMATION
 - a. Business Owner's name, home address, local address, telephone number;
 - b. Manager's name, home address, local address, telephone number;
 - c. Mailing address at which notice of any County information pertinent to any PWVL or parasailing business shall be considered received and binding upon the applicant or PWVL holder, on the fifth day after First Class Mail is posted

to said address;

d. State sales tax number.

3. **BUSINESS EQUIPMENT INFORMATION**

a. The number of, and a description of, the vessels to be used by the business, including model, year, manufacturer, color and Florida Vessel registration number(s).

b. A description of the chase vessel(s) to be kept at the place of business as well as the Florida Vessel registration number.

4. **PROOF OF INSURANCE**

Proof of insurance required by Section Eleven.

5. Pays a fee of: a) _____ for county administrative processing costs; and b) _____ for the right to offer for business, as herein provided, a rental of the personal watercraft or for the right to operate a parasailing activity; and c) _____ for county enforcement costs.

Applicants who misrepresent information provided under this Section shall not be issued a PWVL, or if issued, may suffer suspension or revocation of the PWVL.

SECTION SIX: ANNUAL PWVL

PWVL's shall be issued on an annual basis coinciding with the County's fiscal year, October 1 through September 30.

SECTION SEVEN: PWVL RENEWAL

- A. Except as provided in Subsection C, upon application, the County Manager may renew the PWVL of any applicant who:
1. Held a valid PWVL which expired not more than 10 calendar days previous to filing of a complete application for renewal; and
 2. Held a valid PWVL and operated the personal watercraft rental or Parasailing activity business for at least nine months out of the previous year, and
 3. Has provided the County with new or updated information, documents, and fees listed in Section Five and continues to meet the regulations set forth in the Land Development Code, unless otherwise provided for in Section Ten B and C, and this Ordinance ; and
 4. Pays a late processing fee of \$25.00 for any renewal application filed after October 1.
- B. Upon application, the County Manager may renew any PWVL suspended under Section Twelve, hereof, but any remaining term of suspension shall be applied to the renewed license, and during said term the PWVL confers no rights to offer the rental of any personal watercraft or permit any parasailing operation.
- C. Any PWVL not renewed by October 15th shall be void and of no further use or effect whatsoever. No business deemed to be a nonconforming use in accordance with Section Ten C of this Ordinance, which fails to renew it's license in a timely manner, shall again be issued a license except in conformity with the regulations then in effect.

SECTION EIGHT: DISPLAY OF PWVL

Any business offering the rental of personal watercraft or having parasailing activities shall display the PWVL in plain sight at the location from which the rental of personal watercraft or parasail rides are offered.

SECTION NINE: CONDITIONS OF PWVL USE OR PARASAILING ACTIVITY

- A. Except as provided in Section Ten B and C of this Ordinance, businesses holding a valid PWVL or conducting parasailing activity shall be situated together with their vessels upon a site authorized by the Land Development Code and this Ordinance to have such business and shall not:
1. be located within 500 feet of any other business offering personal watercraft for rent or lease or parasailing activities;
 2. allow their watercraft to be used above idle speed within 500 feet of swimmers, waders, or people floating in/on the water.
 3. allow their watercraft to be used in any littoral waters east of a line formed by Gasparilla Road, Park Avenue and Gulf Boulevard on Boca Grande; any waters east of Cayo Costa and Upper (North) Captiva Island; any waters located east of Southeast Plantation Road on Captiva Island; north of an imaginary line extending from the Sanibel Lighthouse and Bodwich Point on Estero Island; or east of a line formed by Estero Boulevard, Bonita Beach Causeway, and Hickory Boulevard.
 4. Lease, hire or rent a personal watercraft to any person who is under 16 years of age;

- B. Except as provided in Section Ten B and C of this Ordinance, all personal watercraft rental businesses are required to comply with Section Seven A of the Lee County Vessel Control Ordinance No. 90-51, as amended.
- C. A business shall have and maintain a telephone and an operable marine radio at its land-based operations office.
- D. A business shall have a motorized chase vessel with operational marine radio in good running condition that meets all United States Coast Guard safety requirements kept at the personal watercraft launching site during all hours of the business operation.
- E. A business must have and maintain comprehensive general liability insurance in accordance with Section Eleven.
- F. Each personal watercraft must be registered in the name of the business and have a Florida vessel registration number affixed thereon.
- G. Identification markings shall be placed on each personal floatation device worn by operators of the personal watercraft which distinguishes the business from other businesses engaged in the rental of personal watercraft. Said marking shall also be located where the personal watercraft are launched. The identification marking, which will be assigned to the business by the county upon issuance of the PWVL, shall be not less than ____ x ____ inches in size and of a contrasting color to the personal floatation device.
- H. Personal watercraft may be moored in the water during the operating hours of the business, but under no circumstances may a person place or arrange any personal watercraft vessel or associated equipment in any manner which blocks pedestrian traffic on the beach.

- I. In order to adequately monitor the operation of the personal watercraft, one employee per five personal watercraft actually rented must be located so as to observe the operation of the vessel by the party renting the personal watercraft.
- J. Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state and local fire, safety, and environmental regulations are met.
- K. Fueling of personal watercraft on the beach or in the water is limited to the use of one - five gallon container.
- L. No billboards or free standing signs advertising the rental of personal watercraft are permitted on the beach.
- M. Except in locations which have permanent 500 foot markers, the personal watercraft vendor shall place temporary markers in the water not less than 500 feet seaward from the beach to which the personal watercraft are to be launched during each day of personal watercraft operations. All such markers shall be removed each day by the personal watercraft vendor no later than a half ($\frac{1}{2}$) hour after sunset. The personal watercraft vendor must instruct each personal watercraft operator:
 - 1. To travel at idle speed until past said markers;
 - 2. To maintain a distance of not less than 500 feet from the shoreline while operating the personal watercraft; and
 - 3. To travel at idle speed when returning to the shore.
 - 4. To not travel within environmentally sensitive areas, e.g., Estero Bay, Pine Island Sound, Matlacha Pass.

SECTION TEN: TRANSFERABILITY OF PWVL: GRANDEFATHER CLAUSE

- A. The PWVL is transferable provided that:
 - 1. The location of the business complies with the minimum separation requirement of Section Nine A.2. and
 - 2. The new business owner files an amended application with the county providing the information required in Section Five.
- B. Personal watercraft vendors or parasail operators that have established or commenced business at their existing locations on or before the effective date of this Ordinance, and which are not in conformity with the location requirements of Section Seven A of the Lee County Vessel Control and Water Safety Ordinance No. 90-51, as amended, may continue to operate for 6 months after the effective date of this Ordinance, unless terminated earlier for failure to obtain the PWVL as required by this Ordinance, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PWVL permit.
- C. Personal watercraft vendors or parasail operators that have established or commenced business at their existing locations on or before the effective date of this Ordinance, and which are in conformity with the location requirements of Section Seven A of the Lee County Vessel Control and Water Safety Ordinance No. 90-51, as amended, but may or may not comply with the locational requirements set forth in Section Nine A.1 and A.2 of this ordinance, may continue to operate as a nonconforming use after the effective date of this Ordinance, unless terminated for failure to obtain the PWVL as required by this

Ordinance, voluntary discontinuation of business for a period of 30 days or more, or revocation of the PWVL permit.

SECTION ELEVEN: INSURANCE

- A. No person shall operate a personal watercraft or Parasailing activity business unless covered by a comprehensive general liability insurance policy insuring the public against injury or damage occasioned by negligence arising from or incidental to the business activity. At a minimum, the policy shall provide coverage of not less than \$500,000 per person and \$500,000 per incident. The policy shall list Lee County as a co-insured and shall provide that coverage shall not be canceled or materially altered except after 30 days written notice has been received by the County.
- B. Proof of the continued coverage under the insurance policy shall be provided upon the County Manager's request given on reasonable notice at any time that the PWVL is valid and outstanding. Any failure to provide such proof shall render the PWVL null and void and of no further use and effect. The holder's subsequent application for a new PWVL shall be subject to the regulations for a new business and shall lose the nonconforming status afforded under Section Ten C of this Ordinance.

SECTION TWELVE: REGULATORY PENALTIES

- A. Violation of the provisions of this ordinance, or failure to comply with any of the requirements, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any provisions shall upon conviction thereof be fined or imprisoned,

or both, as provided by law, and in addition shall pay all costs and expenses involved in the case. In the alternative, a citation may be issued pursuant to the procedures set forth in Sections 327.73 and 327.72, Florida Statutes, or Part II of Chapter 162, Florida Statutes, should they be applicable.

- B. The County Manager shall have the authority to exempt persons from the terms of this ordinance, for a period of up to 48 consecutive hours during special programs. No person shall receive more than one such exemption for any 48 hour period. By resolution, the County Commission may exempt the terms of these provisions from persons offering rental from public property by permission of persons having a leasehold interest in the property.

SECTION THIRTEEN: AREA OF ENFORCEMENT

The area of enforcement of this provision shall include all of the area located within the unincorporated area of Lee County, including all public waters within the jurisdiction of the County in which the tide ebbs and flows. This ordinance does not apply to the Florida Intracoastal Waterway and West Coast Inland Navigation District Waterway.

SECTION FOURTEEN: MEANS OF ENFORCEMENT

The provisions of this ordinance shall be enforced by members of all duly authorized law enforcement agencies within Lee County and by Lee County Division of Codes and Building Services.

In addition to the regulations of this ordinance, any operator of a personal watercraft is subject to Florida Statutes Chapter 327 and the Lee County Vessel Control Ordinance, Lee County Ordinance No. 90-51, as amended.

SECTION FIFTEEN: SEVERABILITY

The provisions of this Ordinance are severable and it is the legislative intention to confer upon the whole or any part of the Ordinance the powers herein provided for. If any of the provisions of this Ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any remaining provisions of the Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional provision not been included herein.

SECTION SIXTEEN: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements shall apply.

SECTION SEVENTEEN: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

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

SECTION EIGHTEEN: EFFECTIVE DATE

This Ordinance shall take effect immediately upon receipt of official acknowledgment from the Secretary of State of Florida that it has been filed with that office.

The foregoing Ordinance was offered by Commissioner _____, who moved its adoption.

The motion was seconded by Commissioner _____ and, being put to a vote, the vote was as follows:

JOHN E. MANNING
DOUGLAS ST. CERNY
RAY JUDAH
ANDREW W. COY
JOHN E. ALBION

DULY PASSED AND ADOPTED this ____ day of _____, 1995. ✓

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

LEE COUNTY ATTORNEY'S OFFICE
APPROVED AS TO FORM:

By: _____
Assistant County Attorney

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

DATE: May 16, 1995

To: Liz Valver
Secretary II, Division of Planning

FROM:



Patrick G. White
Assistant County Attorney

**RE: ORDINANCE SCHEDULING FOR LPA
POST DISASTER ORDINANCE**

Attached please find a copy of the above-referenced draft ordinance. Please schedule this ordinance to be heard before the Local Planning Agency at their June 6, 1995 meeting and advertise accordingly.

If you should have any questions, please do not hesitate to contact me.

PGW/bas
Attachment

cc: James G. Yaeger, County Attorney
Timothy Jones, Assistant County Attorney
Donna Marie Collins, Assistant County Attorney
Susan M. Rainey, Legal Secretary II for Ordinance Report
Mary Gibbs, Director, DCD
John Wilson, Director, Public Works
Bobby Stewart, Director, Codes & Building Services
Gloria Sajgo, Planning
all above w/attachment

RECEIVED

MAY 17 1995

PLANNING
DIVISION

NOTES ON THE MAY16, 1995 DRAFT REVISIONS

1. Due to the extensive changes made to the text of Ordinance No.90-61, the proposed text could not readily be presented in the underline/strike-through format. To simplify the amendment process the pre-existing ordinance will be repealed and replaced with the text shown.
2. No provisions have been added concerning historic preservation as all such proposed changes were offered only for the Post-Disaster Strategic Plan. Specific amendments in this regard may be incorporated in subsequent drafts.
3. All comments regarding further amendments, etc. should be forwarded to Patrick White, Office of the County Attorney with copies to John Wilson, Public Safety Director and any other affected department or entity.
4. Thanks to all who contributed their efforts!

LEE COUNTY, FLORIDA
ORDINANCE NUMBER 95-??

AN ORDINANCE REPEALING AND REPLACING LEE COUNTY ORDINANCE NO. 90-61 TO BETTER MANAGE RECOVERY, RECONSTRUCTION AND MITIGATION ACTIVITIES FOLLOWING A MAJOR OR CATASTROPHIC DISASTER WITHIN THE UNINCORPORATED AREAS OF LEE COUNTY, FLORIDA; PROVIDING FOR THE PURPOSE AND INTENT OF THE ORDINANCE; PROVIDING FOR JURISDICTION; PROVIDING DEFINITIONS; PROVIDING FOR THE CREATION, COMPOSITION, DUTIES AND RESPONSIBILITIES, DURATION, AND CHAIR OF A DISASTER ADVISORY COUNCIL; PROVIDING FOR THE CREATION, DURATION, DUTIES AND RESPONSIBILITIES OF A POST-DISASTER RECOVERY TASK FORCE AND CERTAIN MEMBERS THEREOF; PROVIDING FOR THE COMPOSITION AND DUTIES OF AN EMERGENCY REVIEW BOARD; PROVIDING PRIORITIES FOR POST-DISASTER REDEVELOPMENT; PROVIDING PRIORITIES FOR ESSENTIAL SERVICES AND FACILITIES RESTORATION; PROVIDING DEBRIS CLEARANCE, REMOVAL AND DISPOSAL STRATEGIES; PROVIDING FOR DETERMINATION OF DAMAGE; PROVIDING FOR IMPLEMENTATION OF A BUILDBACK POLICY; PROVIDING FOR A DECLARATION OF AN INITIAL BUILDING MORATORIUM AND ESTABLISHING RELATED MORATORIA PERTAINING TO BUILDING PERMIT INSPECTIONS, DEVELOPMENT ORDERS AND SITE PLANS PROVIDING PROVISIONS FOR MORATORIA; PROVIDING FOR EMERGENCY REPAIRS; PROVIDING FOR AN EMERGENCY PERMITTING SYSTEM; PROVIDING POLICIES FOR ECONOMIC REDEVELOPMENT; PROVIDING GUIDELINES FOR ACQUIRING DAMAGED PROPERTY; PROVIDING FOR AUTHORITY; PROVIDING PENALTIES; PROVIDING CONFLICT AND SEVERABILITY PROVISIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Southwest Florida and the Lee County area are vulnerable to a variety of hazards which may result in major or catastrophic disasters causing substantial injury or harm to the population and substantial damage to or loss of property; and

WHEREAS, safeguarding the life and property of its citizens is an innate responsibility of the Lee County Board of County Commissioners; and

WHEREAS, Chapter 252, Florida Statutes, confers upon the Board of County Commissioners of Lee County the authority to declare a state of local emergency and take all actions necessary to ensure the safety and well being of its residents, visitors and their property during disasters caused by these hazards; and

WHEREAS, Section 163.3177(6)(g), Florida Statutes, requires a comprehensive planning element for coastal management; and

WHEREAS, Section 163.3178(2)(h), Florida Statutes, affords discretion to the Board of County Commissioners to apply mitigation and redevelopment policies to designated high-hazard coastal areas; and

WHEREAS, Section 163.3178(8), Florida Statutes, requires that Lee County identify and prioritize coastal properties for acquisition according to criteria which include, amongst others, recognition of hazard mitigation; and

WHEREAS, the 1995 Florida Land Plan: the State Land Development Plan- proposes goals, objectives and policies in Priority Issue VI - Emergency Management - to reduce vulnerability and exposure of the public and public facilities to natural and technological disasters; and

WHEREAS, the Strategic Regional Policy Plan of the Southwest Florida Regional Planning Council proposes goals and policies, which would require local governments to have effective risk reduction and recovery components in their emergency management program; and

WHEREAS, the Board of County Commissioners of Lee County, Florida adopted the Lee Plan promulgated by Lee County Ordinance Number 89-02 on January 31, 1989, which became effective March 1, 1989; and

WHEREAS, the Lee Plan Goal 81: Post-Disaster Redevelopment, requires Lee County to provide for planning and decision-making to guide redevelopment during the response and recovery period following major emergencies, such as tropical storms and hurricanes; and

WHEREAS, the Lee Plan Objective 81.1: Post-Disaster Strategic Plan requires that the County establish and maintain post-disaster institutions and procedures to guide county actions following a natural or technological disaster; and

WHEREAS, the Lee Plan Policy 81.1.1, as amended, requires that the Post--Disaster Strategic Plan establish and maintain a Recovery Task Force to work with state and federal emergency officials, assess damage, review emergency actions, prepare a redevelopment plan, and recommend needed changes to the Strategic Plan and to the Lee County Comprehensive Plan; and

WHEREAS, the Lee Plan Objective 81.2: Post-Disaster Ordinance, requires that the County adopt an ordinance to implement (where necessary) regulations that may be needed following a natural or technological disaster; and

WHEREAS, the Lee Plan Policy 81.2.1 requires that the Post-Disaster Ordinance will provide for enactment of a temporary moratorium on rebuilding not immediately needed for the public health, safety, and welfare (e.g., to allow repairs to water, power, fire, police, and medical facilities; debris removal; stabilization or removal of structures in danger of collapsing; and minimal repairs to make dwellings habitable); and

WHEREAS, the Lee Plan Policy 81.2.3 requires that the Post-Disaster Ordinance implement the county buildback policy; and

WHEREAS, the Post-Disaster Redevelopment Plan-Chapter 3 of the Lee County Post-Disaster Strategic Plan-is intended to guide redevelopment activities within unincorporated Lee County in the event of a major or catastrophic disaster; and

WHEREAS, Section 125.01(t), Florida Statutes, provides the authority for the Board of County Commissioners of Lee County, Florida to adopt ordinances necessary for the exercise of its powers and prescribe fines and penalties; and

WHEREAS, it is the intent of Lee County to take reasonable action to guide redevelopment during the response and recovery period following a major or catastrophic disaster, such as tropical storms and hurricanes.

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

SECTION ONE. PURPOSE AND INTENT OF ORDINANCE.

Lee County Ordinance No. 90-61 is hereby repealed and replaced with the text that follows.

The provisions of this Ordinance may be cited as the "Post-Disaster Ordinance."

It is the intent of the County to establish, prior to a storm event or emergency constituting a major or catastrophic disaster, organizations that will oversee the recovery and reconstruction process and also serve to advise the Board of County Commissioners on recovery and reconstruction issues. These organizations will also identify opportunities to mitigate future damages through the management of recovery and reconstruction. It is further the intent of the County to allow rebuilding and reconstruction in an orderly manner by controlling the issuance of building permits, development orders

and site plans in order to manage the location, timing, and sequence of reconstruction and repair. To further this intent, the County will make every effort to develop its capacity to identify and coordinate various post-disaster recovery and reconstruction resources while at the same time ensuring maximum local control over the recovery and reconstruction process.

Following a major or catastrophic disaster, sufficient time must be provided to conduct damage assessment, classify and categorize individual structure damage, evaluate the effectiveness and enforcement of the existing building code.

SECTION TWO. JURISDICTION.

This Ordinance applies to all areas within Lee County, Florida under the jurisdiction of the Lee County Board of County Commissioners. Every incorporated city within Lee County is encouraged to adopt provisions of this Ordinance, either through ordinance revisions or interlocal agreements.

SECTION THREE. DEFINITIONS.

The following terms and definitions apply for the purposes of this Ordinance.

- A. "Building Value" means the latest total assessment of all improvements on a parcel of land recorded on the Lee County Property Appraiser's file before the structure was damaged.
- B. "Catastrophic Disaster" means a disaster that will require massive state and federal assistance including immediate military involvement.
- C. "Chief Building Official" means the Director of the Division of Codes and Building Services or his/her designee, who is hereby designated by the Board of County Commissioners of Lee County, Florida to implement, administer and enforce the building permit moratoria provisions of this Ordinance.
- D. "Current regulatory standards for new construction" means the following:
 - 1. federal requirements for elevation above the 100-year flood level;
 - 2. building code requirements for floodproofing;
 - 3. repair work meets current building and life safety codes;

- E. "Damage Assessment" means a systematic procedure for evaluating damage to public and private property, based on current replacement cost. The assessment may be used to determine if the damaged area can qualify for federal or state disaster assistance.
- F. "Destroyed Structure" means a structure that is a total loss or damaged to such an extent that repairs are not technically or economically feasible. The indicator for this category is if the cost to repair exceeds fifty percent (50%) of the replacement cost at the time of damage or destruction.
- G. "Disaster Advisory Council" means a group of officials designated by this Ordinance for the effectuation of its purposes.
- H. "Emergency Review Board" means a committee of three members from the Post-Disaster Recovery Task Force established for the purposes of this Ordinance.
- I. "Local Damage Assessment Team" means a group of individuals designated by the local jurisdiction to perform damage assessment according to State and Federal requirements.
- J. "Major Damage Structure" means a structure that can be made habitable with extensive repairs. Damage may include foundation, roof structure, and major structural components. The indicator for this category is if the cost to repair is greater than twenty percent (20%) and up to and including fifty percent (50%) of the replacement cost at the time of damage.
- K. "Major Disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance.
- L. "Minor Disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance.
- M. "Minor Damage Structure" means a structure that can be made habitable in a short period of time with minimal repairs. Damages may include doors, windows, floors, roofs, central air conditioners, and other minor structural damage. The indicator for this category is if the cost to repair is twenty percent (20%) or less than the replacement cost at the time of damage.
- N. "Post-Disaster Recovery Task Force" means a group of officials designated by and for the purposes of this Ordinance.
- O. "Replacement Cost" means the actual cost to repair, reconstruct, rebuild or replace a damaged structure. It will not include the following parts of a structure or items

not considered a permanent part of the structure: building plans, surveys, permits, sidewalks, pools, screens, sheds, gazebos, fences, furniture and carpeting. For purposes of this Ordinance, the replacement cost will be compared to the structure's replacement value to determine the percent of the structure damaged.

P. "Replacement Value" of a structure means the market building value contained in the Lee County Property Appraiser's File multiplied by one of the following factors:

1. 120% in a major disaster, or
2. 150% in a catastrophic disaster.

The structure's owner can opt to establish replacement value by hiring a state licensed contractor rather than use the formula stated in this definition.

Q. "Structure" means that which is built or constructed.

SECTION FOUR. DISASTER ADVISORY COUNCIL, RECOVERY TASK FORCE AND EMERGENCY REVIEW BOARD.

A. A Disaster Advisory Council is hereby established to replace the existing Recovery Task Force. The Council's functions would primarily be pre-disaster planning and post-disaster recommendations. It would essentially consist of the same members currently serving on the "Recovery Task Force" with some additions at the Disaster Advisory Council's discretion, and as set forth below.

B. The Disaster Advisory Council will meet on a continuing and regularly scheduled basis to discuss its specific roles and responsibilities in accordance with this Ordinance, and relative issues associated with recovery from a major or catastrophic disaster. The Council's duties and responsibilities include, but are not limited to:

1. overseeing the recovery and reconstruction process,
2. advising the Board of County Commissioners on relevant recovery and reconstruction issues,
3. identifying opportunities to mitigate future loss of life and property damage through the management of recovery and reconstruction,
4. maintaining a post-disaster redevelopment plan for the County, including recommending changes regarding the Lee County Post-Disaster Strategic Plan, the Lee County Comprehensive Plan and the Post-Disaster Ordinance to the Board of County Commissioners,

5. developing procedures to carry out the County's buildback policy, as defined by the Lee Plan and the Post-Disaster Redevelopment Plan,
6. maintaining established policies for redeveloping high hazard land areas that have sustained repeated damage from flooding or hurricanes,
7. defining principles and establishing criteria for prioritizing acquisition of property damaged as the result of a major or catastrophic disaster,
8. establishing special committees and subcommittees within the Disaster Advisory Council to deal with specific issues arising during the disaster recovery process,
9. implementing a management system that allows for rebuilding and reconstruction to be conducted in an orderly and timely manner through control of the issuance of building permits, development orders and site plans considering the location, timing, and sequence of reconstruction and repair,
10. developing procedures that promote the mitigation of future disaster damage through activities carried out during recovery and reconstruction,
11. setting priorities to guide community redevelopment following a major or catastrophic disaster, including, but not limited to:
 - a. priorities in restoring essential community services (electrical power, communications, water, and waste water service),
 - b. predetermined strategies for clearing, removing and disposing of disaster-caused debris, and
12. establishing an education program to advise the public of the County's Post-Disaster Redevelopment Plan.
13. developing and recommending procedures to document actual uses, densities and intensities, and compliance with regulations in effect at the time of construction, through such means as photographs, diagrams, plans, affidavits, permits, appraisals, tax records, etc.
14. if considered necessary, recommending changes in approved land uses in land areas with sustained, repeated damage from flooding or hurricanes in accordance with the criteria set forth in Section Ten of this Ordinance.
15. making recommendations for participation in federal and state post-disaster

hazard mitigation planning.

16. evaluating damaged public facilities and formulating alternative mitigation options (i.e., repair, replace, modify or relocate).
17. making recommendations for revision of the County's redevelopment plan in conjunction with federal, state, and local emergency officials.
18. recommending any changes in the Comprehensive Plan, development standards, zoning regulations, setback, density, open space, buffering and elevation requirements, building codes, or any other ordinances necessary or advisable to prevent a recurrence of damage.

C. Composition of Disaster Advisory Council. The Disaster Advisory Council will consist of the following officials and such other officials as may be approved annually by the Board of County Commissioners:

1. County Manager
2. County Public Information Officer
3. County Attorney
4. County Administrative Services Director
5. County Public Safety Director
6. County Parks and Recreation Director
7. County Community Development Director
8. County Transportation Director
9. County Transit Director
10. County Human Services Director
11. County Public Works Director
12. County Budget Services Director
13. County Finance Director
14. County Visitor & Convention Bureau Director

15. County Port Authority Director
16. County Equal Opportunity Director
17. County Health Department
18. County Medical Examiner
19. County Economic Development Director
20. County Utilities Director
21. County Solid Waste Director
22. Local Planning Agency Member
23. Representatives of the Community such as representatives from Chamber of Commerce, hospital, religious community, private water or wastewater utilities and power companies, and any Lee County contract operations and maintenance providers
24. Representative from the Lee County Fire Chief's Association
25. City of Cape Coral Liaison
26. City of Fort Myers Liaison
27. City of Sanibel Liaison
28. County Sheriff Liaison
29. County School District Liaison
30. SW Florida Regional Planning Council Liaison
31. Other representatives as appointed by the Board of County Commissioners

The officials set forth above may be represented by a designee chosen to serve in their place providing the appointment is made in writing to the Disaster Advisory Council chair.

- D. Chair of the Disaster Advisory Council. The County Manager (or designee) will serve as the Chair of the Disaster Advisory Committee. County Public Safety and Emergency Management personnel will serve as staff for the Disaster Advisory

Council.

- E. Post-Disaster Recovery Task Force. A Post-Disaster Recovery Task Force is established that will be comprised of the following nine officials:
1. County Manager,
 2. Public Safety Director,
 3. Community Development Official,
 4. Chief Building Official,
 5. Public Works Director,
 6. Disaster Recovery Coordinator (County Budget Services Director or designee),
 7. Economic Recovery Coordinator, (County Economic Development Director or designee),
 8. Hazard Mitigation Coordinator (County Planning Director or designee), and
 9. Tourism Recovery Coordinator (County Visitor and Convention Bureau Director or designee),

Additionally, all Disaster Advisory Council members will be ex-officio members of the Post-Disaster Recovery Task Force.

- F. Activation of Post-Disaster Recovery Task Force. For post-disaster responsibilities, the post-disaster recovery task force will be activated and mobilized by a disaster declaration made either by the Board of County Commissioners under the procedures set forth in Lee County Ordinance 87-1 or the Office of the Governor of the State of Florida.
- G. Duration of Post-Disaster Recovery Task Force. In the event of a disaster declaration, the Post-Disaster Recovery Task Force will activate and mobilize for a minimum period of sixty (60) days. Unless the Board of County Commissioners extend its tenure, the Post-Disaster Recovery Task Force's post-disaster function will de-activate after 60 days.
- H. Repealing or Extending of Post-Disaster Recovery Task Force. The Board of County Commissioners may, by resolution, extend or repeal the activation of the Post-Disaster Recovery Task Force.

- I. Responsibilities of the Post-Disaster Recovery Task Force. The Post-Disaster Recovery Task Force will be responsible for advising the Disaster Advisory Council or the Board of County Commissioners on a wide range of post-disaster recovery, reconstruction, and mitigation issues. The Post-Disaster Recovery Task Force will have the following responsibilities:
1. To receive and review damage reports and other analyses of post-disaster circumstances and to compare these circumstances with mitigation opportunities identified prior to the disaster in order to discern appropriate areas for post-disaster change and innovation. Where needed, the Post Disaster Recovery Task Force can review alternative mechanisms for achieving these changes and recommend the coordination of internal and external resources for achieving these ends.
 2. In addition to the responsibilities above, the Post-Disaster Recovery Task Force may:
 - a. Initiate recommendations for the enactment, repeal or extension of emergency ordinances and resolutions.
 - b. Review the nature of damages, identify and evaluate alternate program objectives for repairs and reconstruction, and formulate recommendations to guide community recovery, and assist local municipalities with their programs.
 - c. Formulate special committees and sub-committees as conditions may warrant.
 - d. Recommend and implement an economic recovery program focusing on rapid recovery of the tourism industry, utilizing funds set aside for recession periods as per Lee County Resolution 90-07-27.
 - e. Recommend rezoning changes in areas of damage, when deemed appropriate.
 - f. Set a calendar of milestones for recovery tasks.
 - g. Recommend repealing or extending any moratorium.
 - h. Recommend land areas and land use types that will receive priority in recovery operations.
 - i. Recommend blanket reductions in non-vital zoning regulations and development standards (e.g., buffering, open space, side setbacks,

etc.; see Section Eight, A., below) to minimize the need for individual variances or compliance determinations prior to reconstruction.

- j. Recommend changes to procedures to document actual uses, densities and intensities, and compliance with regulations in effect at the time of construction, through such means as photographs, diagrams, plans, affidavits, permits, appraisals, tax records, etc.
 - k. Evaluate hazards and the effectiveness of mitigation policies and recommend appropriate amendments, if considered advisable.
 - l. If considered necessary, recommend changes in approved land uses in land areas which sustained repeated damage from flooding or hurricanes in accordance with the criteria set forth in Section Ten of this Ordinance.
 - m. Initiate recommendations for acquisition of damaged property.
 - n. Make recommendations for participation in federal and state post-disaster hazard mitigation planning.
 - o. Recommend hazard mitigation projects or programs for consideration of post-disaster state or federal funding.
 - p. Evaluate damaged public facilities and formulate alternative mitigation options (i.e., repair, replace, modify or relocate).
 - q. Make recommendations for revision of the County's redevelopment plan in conjunction with federal, state, and local emergency officials.
 - r. Review emergency actions and recommend amendments to Lee County's: 1) Post-Disaster Ordinance; 2) Post-Disaster Strategic Plan; 3) Comprehensive Emergency Management Plan; 4) Emergency Operations Center's Standard Operating Procedures; and 5) relevant Administrative Codes.
3. The Post-Disaster Recovery Task Force may recommend any changes in the Comprehensive Plan, development standards, zoning regulations, setback, density, open space, buffering and elevation requirements, building codes, or any other ordinances which it deems necessary or advisable to prevent a recurrence of damage.
4. The Post-Disaster Recovery Task Force may also recommend that the Disaster Advisory Council or the Board of County Commissioners consider

such objectives as the following:

- a. enhancing local recreational and open space opportunity.
- b. enhancing public access to estuarine, riverine and gulf beaches.
- c. enhancing and restoring local natural ecosystems.
- d. reducing traffic congestion, noise, and other transportation-related problems.
- e. enhancing long-term economic vitality of the local commercial and industrial base.

J. Function and Duties of Certain Post-Disaster Recovery Task Force Members.

1. Disaster Recovery Coordinator.

- a. Purpose. To coordinate disaster assistance available from the federal government and state agencies to Lee County following a major or catastrophic disaster.
- b. Duties. Will consist of, but not be limited to, the following:
 - (1) Determine the types of assistance available to the County and the types of assistance most needed.
 - (2) Assist in the local coordination of federal and state disaster recovery efforts.
 - (3) Provide local assistance to facilitate federal and state disaster assistance programs.
 - (4) Act as facilitator in securing federal or state disaster assistance.
 - (5) Inform the community of types of disaster assistance available.
 - (6) Fulfill other duties as directed by the Disaster Advisory Council or the Board of County Commissioners.

2. Economic Recovery Coordinator.

a. Purpose. To coordinate economic recovery with the business community following a major or catastrophic disaster.

b. Duties. Will consist of, but not be limited to, the following:

- (1) Determine the potential or actual impacts to the local economy and determine short and long term strategies to be considered by the Post-Disaster Recovery Task Force.
- (2) Assist in the local coordination of federal and state economic recovery efforts.
- (3) Disseminate accurate information to and from the business community.
- (4) Inform the business community of types of disaster assistance available.
- (5) Fulfill other duties as directed by the Disaster Advisory Council or the Board of County Commissioners.

3. Hazard Mitigation Coordinator.

a. Purpose. To coordinate hazard mitigation assistance available from the federal government and state agencies to Lee County following a major or catastrophic disaster.

b. Duties. Will consist of, but not be limited to, the following:

- (1) Determine the types of hazard mitigation assistance or funding available to the County and the types of assistance most needed.
- (2) Assist in the local coordination of federal and state hazard mitigation efforts.
- (3) Provide local assistance to facilitate federal and state hazard mitigation assistance programs.
- (4) Act as facilitator in securing federal or state hazard mitigation funding for hazard mitigation projects to local entities.
- (5) Fulfill other duties as directed by the Disaster Advisory Council

or the Board of County Commissioners.

4. Tourism Recovery Coordinator.

- a. Purpose To coordinate tourism recovery with the visitor and convention community following a major or catastrophic disaster.
- b. Duties. Will consist of, but not be limited to, the following:
 - (1) Determine the potential and actual impacts to the local tourism industry and its economy and determine short and long term strategies for expedient recovery.
 - (2) Acquire and disseminate accurate information from and to the tourism industry and to and from the local, state, national and international media.
 - (3) Inform the tourism industry of types of disaster assistance available.
 - (4) Fulfill all other duties as directed by the Disaster Advisory Council or the Board of County Commissioners.

K. Quorum. For all meetings of the Post-Disaster Recovery Task Force or Disaster Advisory Council those members present will constitute a quorum.

L. Emergency Review Board.

- 1. An Emergency Review Board is established in major or catastrophic disasters to review disputes arising from the implementation of the county's buildback policy. The Emergency Review Board will consist of three representatives from the Post-Disaster Recovery Task Force appointed by the Chief Building Official and serving on a rotating basis. Decisions rendered by the Emergency Review Board may be appealed to the Lee County Hearing Examiner through the normal administrative appeals process.
- 2. The Emergency Review Board may refer and make recommendations to the appropriate County department for any requests for modifications that are beyond those authorized in this Ordinance.

SECTION FIVE. POST-DISASTER REDEVELOPMENT PRIORITIES.

The following priority sequence will govern community rebuilding and redevelopment efforts:

- A. Reestablishing services that meet the physical and safety needs of the community: to include water, food, ice; medical care; emergency access; continuity of governmental operations; emergency communications; security of residents and possessions from harm; health, and temporary housing.
- B. Reestablishing infrastructure necessary for community reconstruction (i.e., electrical distribution systems; potable water and sanitary sewer service; restoring medical and health care; rebuilding damaged transportation facilities; and housing facilities).
- C. Restoring the community's economic base, as defined by the Lee Plan or accepted econometric principles and practices.
- D. Improving the community's ability to withstand the effects of future major or catastrophic disasters.

SECTION SIX. ESSENTIAL SERVICE AND FACILITY RESTORATION PRIORITIES.

- A. The following priorities will govern power and communication service restoration once damaged electrical transmission systems, substations and distribution systems are restored:
 - 1. Priority # 1 - Emergency response and recovery facilities having no emergency power or telephone service (community emergency operations or command centers, response/ recovery centers); medical facilities having no emergency power; repairing emergency communication centers and facilities; and designated facilities providing emergency food, water and ice.
 - 2. Priority # 2 - Water treatment and pumping facilities, special care centers, nursing home facilities having no emergency power, law enforcement and fire stations having no emergency power, the Southwest Florida International Airport, Page Field, staging areas and distribution centers requiring emergency power, and county/state detention centers (the jail, stockade).
 - 3. Priority # 3 - Wastewater treatment plants and lift stations, general telephone service, solid waste facilities, medical facilities having emergency power, nursing homes having emergency power, law enforcement and fire stations having emergency power, public shelters still housing evacuees and the homeless, adult congregate living facilities, facilities serving as disaster application centers for federal disaster relief, and public and private facilities necessary for resource management and distribution activities (government facilities handling emergency purchasing, designated grocery

store/restaurant outlets).

4. Priority # 4 - Community areas receiving minor damage, and other government facilities.
5. Priority # 5 - Community areas receiving major damage.
6. Priority # 6 - Community areas receiving catastrophic damage.

B. The following procedures will govern restoration of water service:

1. Valve off major leak areas.
2. Work with private franchises providing service to determine extent of damaged facilities and reestablish service.
3. Identify highly damaged areas.
4. Assess and provide service to meet critical customer needs (i.e., emergency response and recovery facilities, Southwest Florida International Airport, hospitals, nursing homes, emergency public shelters, kidney dialysis patient facilities, and other identified emergency response facilities).
5. Establish emergency water sites as necessary.
6. Establish priorities and repair damaged facilities in the following order: treatment plants, trunk mains, distribution mains, service connections.
7. Repressurize area water systems as necessary.
8. Establish area water potability.

C. The following procedures will govern wastewater service restoration:

1. Assess damages to system (wastewater treatment plants, lift stations, electrical support systems, to include evaluating the need to take lift stations off line in flooded evacuated areas to avoid damage to property when power is restored).
2. Work with private franchises providing service to determine extent of damaged facilities and reestablish service.
3. Coordinate recovery operations in determining and repairing any damages

to wastewater treatment plants within Lee County.

4. Determine need and provide emergency service to emergency response and recovery facilities, Southwest Florida International Airport and Page Field, and hospitals.
5. Repair damaged facilities in the following sequence: treatment plants first, then lift stations starting with those closest to the treatment plants.
6. Reestablish wastewater service to franchise areas as power and water service are restored.

SECTION SEVEN. POST-DISASTER DEBRIS CLEARANCE AND DISPOSAL STRATEGIES.

- A. The following policies will govern emergency debris clearance, removal and disposal strategies:
 1. Emergency access to aid search and rescue operations,
 2. Major arterial roadways linking Lee County to intercounty traffic,
 3. Major arterial roadways providing access to designated response/recovery centers,(Lee Civic Center, Lee County Sports Complex), the Southwest Florida International Airport, public/private utility companies providing water service, and entry roads to the County's designated solid waste disposal facilities.
 4. Major arterial roadways providing access to roadways carrying intercounty traffic.
 5. Roadways providing access to designated staging areas and distribution centers supporting disaster relief efforts,
 6. Roadways providing access to major commercial activity centers,
 7. Minor arterial roadways coming under county maintenance responsibility,
 8. Collector roadways under county maintenance responsibility, and
 9. Other roadways under county maintenance responsibility.
- B. Once road clearing operations supporting search and rescue operations, clearing intercounty roadways, and providing access to designated response/recovery

centers are completed, debris clearance will be guided by the following priority sequence:

1. Area medical facilities with emergency rooms, areas designated for field medical sites, areas designated for staging and distributing disaster relief aid,
 2. Facilities designated as centers for emergency response operations, fire district and law enforcement stations,
 3. Areas with minor damage,
 4. Areas with major damage, and
 5. Areas with catastrophic damage.
- C. Debris will be separated to avoid mixing hazardous materials and hazardous waste with other types of debris.
- D. Agencies or organizations contracted to clear, remove and dispose of debris will follow the following principles:
1. Debris collection and removal procedures from residential and commercial properties will adhere to the following collection sequence: priority 1 - raw garbage; priority 2 - rubbish; priority 3 - yard waste; and priority 4 - construction/demolition debris. Debris will be separated into these four general priority classes. Instructions will be provided by contract providers to separate debris in this fashion and also provide notification of the established schedule for picking up these four general debris classes.
 2. Storage areas will be operational within seven to ten days after the disaster to separate debris that does not fall under the residential and commercial property programs.
 3. Open pit burning, burning by incineration, mulching or chipping horticultural debris, hauling mulched or chipped debris out of the county, disposal at approved solid waste sites and debris reuse and recycling will be acceptable methods of debris disposal, provided that these methods meet all applicable rules and regulations established for such operations.

SECTION EIGHT. DETERMINATION OF DAMAGE, BUILDBACK POLICY, MORATORIA, EMERGENCY REPAIRS AND EMERGENCY PERMITTING SYSTEM.

- A. Determination of Damage. The primary task of the local damage assessment team is to identify structures which have been damaged as a result of the disaster. The County damage assessment team will catalogue and report to the Chief Building Official those structures which have: (1) been destroyed; (2) received major damage; and (3) received minor damage. The Chief Building Official will then, as may be necessary, inspect the damaged structures and place each structure in one of the damaged categories. The assessment will also serve as a basis for determining if a disaster declaration is warranted.
- B. County Buildback Policy. Structures which have been damaged by fire or other natural forces to the extent that the cost of their reconstruction or repair exceeds fifty percent (50%) 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, which do not preclude reconstruction otherwise intended by this policy.

In accordance with this policy, this Ordinance provides that:

1. Structures damaged up to and including fifty percent (50%) of their replacement cost at the time of disaster can be rebuilt to their original conditions, with repair work subject to current building and life safety codes.
2. Structures damaged by flood waters in a disaster by more than twenty percent (20%) of their replacement cost, which have recorded one or more national flood insurance losses of one thousand (\$1,000.00) or more since 1978, must be brought into compliance with current regulatory standards for new construction.
3. Structures damaged more than fifty percent (50%) of their replacement cost at the time of disaster can be rebuilt to their original square footage and density, provided that they comply with:
 - a. federal requirements for elevation above the 100-year flood level;
 - b. building code requirements for floodproofing;
 - c. repair work meets current building and life safety codes;
 - d. Coastal Construction Control Lines regulations (if applicable);

- e. disability access regulations; and
 - f. any required zoning or other development regulations (other than density or intensity), unless compliance with such regulations would preclude reconstruction otherwise intended by the buildback policy as may be determined by the Emergency Review Board as set forth below.
4. To minimize the need for individual variances or compliance determinations before reconstruction, the development regulations affecting setbacks, parking, buffering and open space may be modified as follows:
- a. The Emergency Review Board is authorized to modify setback requirements under the following circumstances:
 - (1) Street, rear, side, or waterbody setbacks may be modified to permit the reconstruction of or additions to existing structures that are nonconforming with regard to a specific setback so long as:
 - (a) The reconstruction will not result in an increase in the height of the structure as specified in Chapter 34 of the Land Development Code; and
 - (b) The reconstruction will not result in a further diminution of the setback. The Emergency Review Board may approve bay windows, chimneys and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.
 - (2) Street, rear, side, or waterbody setbacks may be modified to permit the construction of a handicapped access appurtenant to any reconstruction.
 - (3) Street, rear, side, or waterbody setbacks may be modified to allow the replacement of stairs or decking that provides access into a reconstructed dwelling unit.
 - (4) Street, rear, side, or waterbody setbacks may be modified to legitimize minor errors in setbacks at the time of reconstruction.
 - (5) Rear or side setbacks for lots that qualify for a single family

determination, pursuant to the Lee Plan, may be modified to permit the construction of a single-family dwelling unit so long as the proposed lot coverage does not exceed 45 percent.

- (6) Prior to approving a diminution of the street or street easement setbacks a determination will be made regarding future road widening requirements.
- b. The Emergency Review Board is authorized to modify the parking requirements under the following circumstances:
 - (1) To improve ingress and egress to the site.
 - (2) To eliminate or reduce the instances where parked vehicles back out onto thoroughfares.
 - (3) To allow for the provision of handicapped parking spaces.
 - (4) To accommodate changes as a result of the reconstruction.

In no instance may parking requirements be modified where the reconstruction involves an increase in density or intensity of use.

- c. The Emergency Review Board is authorized to modify buffering requirements under the following circumstances:
 - (1) To accommodate modifications to existing parking or additional parking.
 - (2) To accommodate changes as a result of reconstruction.

Buffering may not be completely eliminated.

- d. The Emergency Review Board is authorized to modify open space requirements under the following circumstances:
 - (1) To accommodate modifications to existing parking.
 - (2) To accommodate additional parking.
 - (3) To accommodate changes as a result of the reconstruction.

In no instance may open space be completely eliminated.

- e. The Emergency Review Board may also consider other modifications, conditions or variances necessary to reconstruct an existing structure in a timely and expeditious manner, including requests for reconstruction not specifically set forth in this sub-sub-section.
 - f. The Emergency Review Board may require documentation as to the actual uses, densities, and intensities in existence at the time of earlier construction through such means as photographs, diagrams, plans, affidavits, permits, etc. before authorizing modifications to the requirements referenced above.
5. No provision is made to redevelop property containing damaged structures for a more intense use or at a density higher than the original lawful density. No redevelopment at a higher density or more intense use will be permitted unless appropriate Zoning, Development Review, Building Permit and other applicable land development approvals are granted.
- C. Moratoria. The following moratoria will apply for the purpose of prioritizing repair and reconstruction immediately needed for public health, safety and welfare purposes.
- 1. Initial building moratorium.
 - a. Effective date of an Initial Building Moratorium. An initial building moratorium will become effective when one or more of the following actions or findings occur:
 - (1) The Governor of the State of Florida or the President of the United States declares the County a disaster area.
 - (2) The Chief Building Official determines that one hundred (100) or more structures have received major damage or have been destroyed.
 - (3) Upon a finding by the Board of County Commissioners of the existence of a state of local emergency in accordance with Chapter 252 of the Florida Statutes.
 - (4) The County is unable to maintain acceptable levels of public service expected during non-emergency situations.
 - b. Duration. The initial building moratorium will remain in effect for

up to seventy-two (72) hours. No building permits may be issued during this time period. After expiration of this initial building moratorium, the following moratoria will then become immediately effective.

2. Destroyed structure moratorium. No building permit may be issued within thirty (30) days following the expiration of the initial building moratorium for the replacement of any structure which has been destroyed. When a building permit may subsequently be issued, structures damaged more than fifty percent (50%) of their replacement value at the time of disaster can be rebuilt to their original intensity and density, so long as they comply with:
 - a. federal requirements for elevation above the 100-year flood level;
 - b. building code requirements for floodproofing;
 - c. current building and life safety codes for all repair work;
 - d. Coastal Construction Control Lines regulations (if applicable);
 - e. disability access regulations; and
 - f. any required zoning or other land development regulations (other than density or intensity), unless compliance with such regulations would preclude reconstruction otherwise intended by this Ordinance's buildback policy.
3. Major damaged structure moratorium. No building permit for repairs of a major damaged structure may be issued for at least ten (10) days following the expiration of the initial building moratorium. Except as provided in Section Eight, B.2. of this Ordinance, when a building permit may subsequently be issued, structures damaged greater than twenty percent (20%) and up to and including fifty percent (50%) of the replacement cost at the time of damage can be rebuilt to their original condition, subject to the current building and life safety codes.
4. Minor damaged structure moratorium. No building permits for the repair of minor damaged structures may be issued for at least four (4) days following the expiration of the initial building moratorium. When a building permit may subsequently be issued, structures damaged twenty percent (20%) or less than the replacement cost at the time of damage can be repaired to their original condition, subject to the current building and life safety codes.
5. New development moratorium. No building permit for new construction or

reconstruction unrelated to rebuilding or repairing disaster damaged structures may be issued for at least thirty (30) days following the expiration of the initial building moratorium in order to allow an examination of existing building and life safety codes. The Disaster Advisory Committee or Post-Disaster Recovery Task Force will determine and advise the Board of County Commissioners whether a new development moratorium is necessary based upon the results of damage assessment and recommendations from the Chief Building Official and the Recovery Task Force.

6. Outstanding building permit inspection moratorium.

- a. Inspections for all building permits that were issued prior to the disaster will be suspended for a minimum period of thirty (30) days following the expiration of the initial building moratorium, unless the Chief Building Official determines on an area wide or case-by-case basis that sufficient inspection staff will be available to adequately inspect the structures. Suspension of inspections of building permits process means that no building permit inspections by the Lee County Division of Codes and Building Services will be performed during the moratorium period, except as allowed by the Chief Building Official, and that no further building permit work is authorized beyond the point at which any inspection is otherwise required.
- b. The County may reinspect all building permit work in place prior to the disaster to verify that the work was not damaged during the disaster. If the County determines the building permit work was damaged during the disaster or suspects damage occurred, the developer will be responsible for rework, removal, retesting, and uncovering work to facilitate inspection, to ensure compliance with the building permit documents and the building code.
- c. Scheduled inspections and requests for building permit inspections suspended under this section will be adjusted to reflect the thirty (30) day moratorium.

7. Outstanding development order moratorium.

- a. All applications for development orders, inspections of development order work and all development orders issued prior to a major or catastrophic disaster will be suspended for a minimum period of thirty (30) days following the expiration of the initial building moratorium. Suspension of outstanding development order process means that no development order work is authorized beyond the point at which a

development order inspection is required and that no development order inspections will be performed by the Lee County Division of Zoning and Development Services during this moratorium except as may be authorized by the Department of Community Development Director on an area wide or case-by-case basis.

- b. The County may reinspect all development order work in place prior to the disaster to verify that the work was not damaged during the disaster. If the County determines that the development order work was damaged during the disaster or suspects that damage occurred, the developer will be responsible for rework, removal, retesting, and uncovering work to facilitate inspection to ensure compliance with the development order documents and Section 10 of the Land Development Code.
- c. Applications for, and inspections and expiration of, development orders suspended under this section will be adjusted to reflect the thirty (30) day moratorium.

8. Moratorium on review of site plans, zoning requests and subdivision plats.

- a. Site plans, zoning requests and subdivision plats submitted to the County prior to the disaster will not be reviewed by the County staff or considered by the Board of County Commissioners for a period of thirty (30) days following the expiration of the initial building moratorium.
- b. No new site plans, zoning requests or subdivision plats will be accepted by the County for a period of thirty (30) days following the expiration of the initial building moratorium.
- c. All submittal dates and review periods will be adjusted to reflect the thirty (30) day moratorium.

9. Duration of moratoria. All moratoria other than the initial building moratorium as enacted will be in effect for the duration described above and may be repealed or extended upon resolution by the Board of County Commissioners.

E. Emergency Repairs.

- 1. No construction or reconstruction activity may be undertaken without a building permit, while a building moratorium is in effect. Emergency repairs necessary to prevent injury, loss of life, imminent collapse or additional

damage to the structure or its contents will not be subject to the temporary moratoria. Examples of activities considered acceptable emergency repairs include:

- a. Temporary roof repairs with plywood or plastic sheeting to make structures habitable or to prevent continuing damage due to rain and wind to building interiors and exteriors,
 - b. Covering exterior wall openings with plywood or plastic sheeting,
 - c. Repairs to interior ceilings to make buildings habitable or to drain accumulated water,
 - d. Repairs to steps, and
 - e. Temporary shoring measures to avoid imminent building or structure collapse.
2. Emergency repairs to buildings or infrastructure that house the following organizations or activities will not be subject to the temporary moratorium provisions of this ordinance because of their necessity to protect the public health and safety: electrical power, potable water, wastewater, power and communications facilities; emergency stabilization of roadways; police, fire and medical facilities; essential governmental facilities; response/recovery centers and distribution centers; debris removal; and stabilization or removal of structures about to collapse.
 3. Nothing in this Ordinance will be construed to exempt any development from compliance with State and Federal permit regulations.

F. Emergency Permitting System.

An Emergency Permitting System will be established by administrative code to assure the quality of rebuilt or reconstructed buildings or structures, and to implement the provisions of the county's buildback policy. The provisions contained in the administrative code will take effect when a disaster designated as major or catastrophic has affected Lee County, or when the Board of County Commissioners requests the Governor to declare Lee County a Disaster Area.

SECTION NINE. ECONOMIC REDEVELOPMENT POLICIES.

- A. The following general policies will guide the use of resources employed toward rebuilding of the community's economic base:

1. Reestablish the tourist industry,
 2. Reestablish banking and financial institutions,
 3. Reopen the business community,
 4. Restore agriculture and industry.
- B. Damaged businesses and other economic enterprises necessary for the public health and safety and for restoring the community's economic base may use temporary structures (such as modular buildings, mobile homes or similar type structures) to carry out their activities, until their damaged structure is rebuilt or replaced according to applicable development and redevelopment regulations.

SECTION TEN. GUIDELINES FOR ACQUIRING DAMAGED PROPERTY.

- A. When determined to be in the public interest, the Board of County Commissioners may enter into negotiations with a property owner or owners whose improved real property has been damaged by the disaster for the purpose of acquiring such buildings and associated land or lot for transfer by sale, lease or donation to Lee County when the following acquisition conditions are met:
1. the property is located in an area damaged by the disaster, and
 2. the property is free of encumbrances (i.e., taxes, liens and judgments) unless the extent of the encumbrances is determined to be acceptable given the property's location and value, and
 3. the property meets at least one of the following conditions:
 - a. there are buildings or structures damaged substantially beyond repair or damaged to the extent that the cost of reconstruction or repair exceeds fifty percent (50%) of the replacement value of the building or structure at the time of the disaster.
 - b. there are buildings or structures defined as repetitive loss properties according to the definition contained in Lee Plan Policy 80.1.7.
 - c. there are buildings or structures damaged by a single event that are not repairable because of buildback policy provisions or significantly increased building costs.

- d. the property is abandoned by the owner and may create a blighted area as defined by Section 163.340 (8), Florida Statutes.

B. Property acquired under these criteria must be dedicated for such purposes as the Board of County Commissioners may agree are consistent with:

- 1. open space uses, or
- 2. managing the land for its dedicated purposes.

Future uses which would likely result in a threat to human life or property damage of the same type that occurred during previous disasters is prohibited.

C. Allowable open space uses will include parks for outdoor recreational activities, nature preserves or trails, beach access, unimproved parking lots, and structures functionally related to these uses such as open-sided picnic facilities, refreshment stands, or other non-habitable structures primarily supporting the recreational activities.

SECTION ELEVEN. AUTHORITY.

Nothing in this Ordinance limits the authority of the Board of County Commissioners to declare, repeal or extend a state of local emergency or to take any action prescribed herein.

SECTION TWELVE. PENALTIES.

- A. Any person, firm, company or corporation who fails to comply with any section of this Ordinance, or the emergency measures which may be made effective pursuant to this Ordinance, is guilty of a misdemeanor of the second degree, and upon conviction for such offense, may be punished by a fine not to exceed five-hundred dollars (\$500.00) or by imprisonment not to exceed sixty (60) days in the Lee County Jail, or both, in the discretion of the Court hearing the case. Each day of continued non-compliance or violation will constitute a separate offense.
- B. In addition, any construction licensee of Lee County or the State of Florida who violates any provision of this Ordinance or the emergency measures which are effective as a result of this Ordinance may be charged with a violation and the matter will be heard before the appropriate Lee County Board, in a state administrative proceeding or a court of law.
- C. Nothing contained in this Section prevents the County from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any failure to comply with, or violation of, this Ordinance or the emergency

measures which may be made effective according to this Ordinance. Other lawful action will include, but is not limited to, an equitable action for injunctive relief or an action at law for damages.

SECTION THIRTEEN. CONFLICT AND SEVERABILITY.

- A. In the event of conflict between provisions of this Ordinance, the more restrictive provisions will control. In the event of conflict with other regulations, the provisions of this Ordinance will supersede any other land development regulations, regardless of when they were adopted, to the extent of such conflict.
- B. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion will be deemed a separate, distinct and independent provision and such holding will not affect the validity of the remaining portion.

SECTION FOURTEEN. EFFECTIVE DATE.

This Ordinance will take effect immediately upon receipt of official acknowledgment from the Office of Secretary of the State of Florida that this Ordinance has been duly filed with said office.

DULY PASSED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF
LEE COUNTY, FLORIDA, this ___ day of _____, 19__.

THE FOREGOING ORDINANCE was offered by Commissioner who moved its
adoption. The motion was seconded by Commissioner and, upon being put to a vote, the
vote was as follows:

JOHN MANNING
ANDREW COY
RAY JUDAH
DOUGLAS ST. CERNY
JOHN ALBION

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

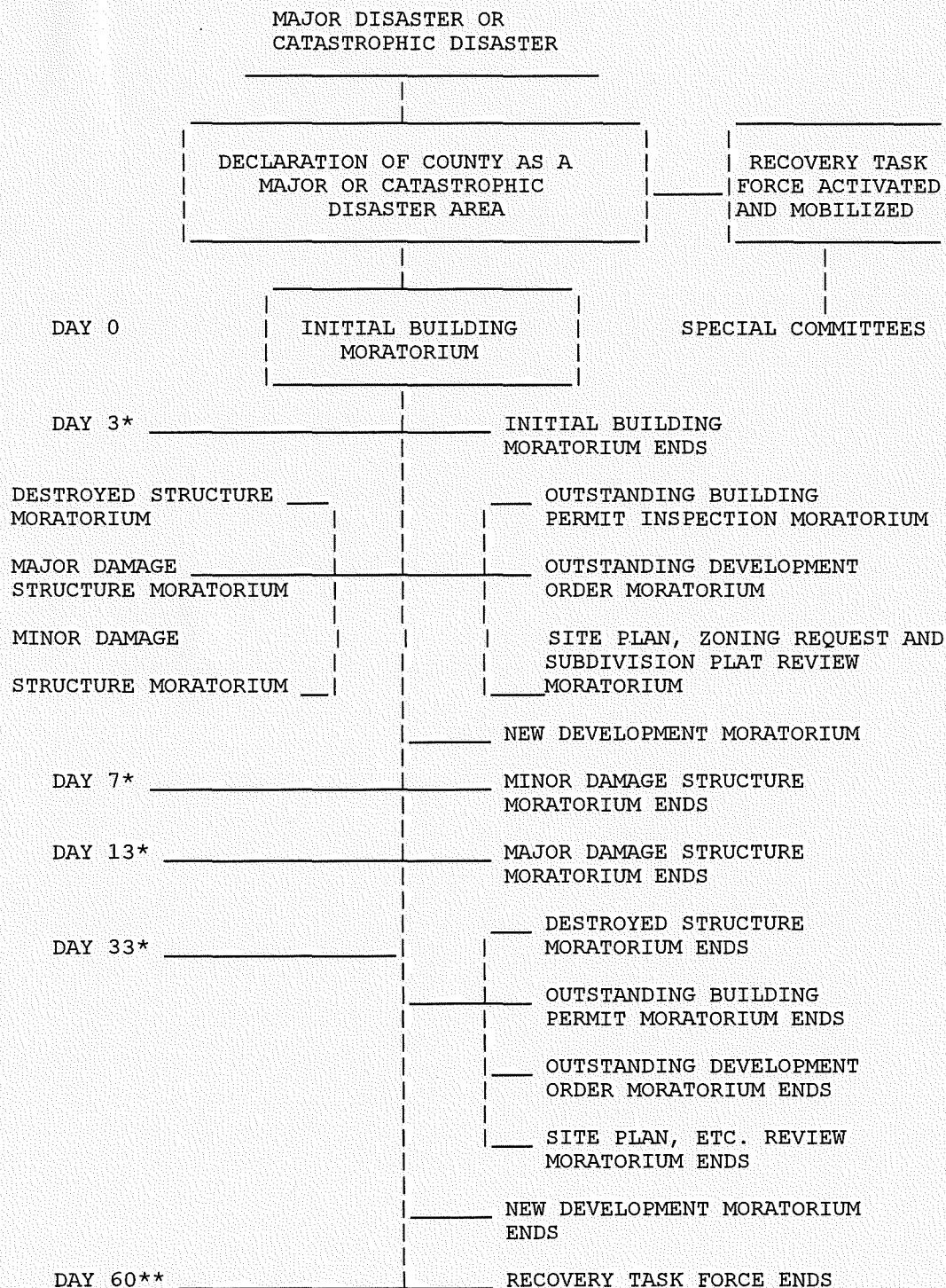
By: _____
Chairman

ATTEST:
CHARLIE GREEN, CLERK

APPROVED AS TO FORM:

By: _____
Deputy Clerk

By: _____
Office of the County Attorney



*DURATION OF MORATORIA. MAY BE REPEALED OR EXTENDED UPON RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS.

**DURATION OF RECOVERY TASK FORCE. MAY BE REPEALED OR EXTENDED UPON RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS.

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

DATE: May 26, 1995

TO: LPA Members
& Distribution

FROM: Liz Valver, Secretary II

RE: June 6, 1995 LPA Meeting
Ordinance Review - Item 4a - Bikeways and Pedestrian Ways

Attached please find the latest draft of the above referenced ordinance received today. Please replace item 4a of your packet with the attached.

If you have any questions, please do not hesitate to call.

Distribution

Paul O'Connor, Planning
Mary Gibbs, DCD-Admin.
Scott Gilbertson, DOT
Lee Cares
Gene & Ellie Boyd
Mike Roeder, Humphrey & Knott
emv/
attachment

LEE COUNTY ORDINANCE NO. 95-__

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE SO AS TO AMEND CHAPTER 10 DEVELOPMENT STANDARDS AND CHAPTER 34 ZONING TO PROVIDE FOR BIKEWAYS AND PEDESTRIAN WAYS AS A CONDITION OF DEVELOPMENT APPROVAL; AMENDING CHAPTER 10 ARTICLE I, IN GENERAL, SECTION 10-1 DEFINITIONS AND RULES OF CONSTRUCTION; SECTION 10-8 SPECIFIC REQUIREMENTS; AMENDING ARTICLE II, ADMINISTRATION, DIVISION 2, DEVELOPMENT ORDERS, SECTION 10-154 ADDITIONAL REQUIRED SUBMITTALS; AMENDING ARTICLE III, DESIGN STANDARDS AND REQUIREMENTS BY ADDING A NEW SECTION, 10-256 TO DIVISION I, GENERALLY, ENTITLED BIKEWAYS AND PEDESTRIAN WAYS, ALSO AMENDING DIVISION 6, OPEN SPACE, BUFFERING AND LANDSCAPING, SECTION 10-413 OPEN SPACE; SECTION 10-414 BUFFERS; SECTION 10-415 LANDSCAPING; DIVISION 7, PUBLIC TRANSIT, SECTION 10-443 EXCEPTIONS; AMENDING ARTICLE IV, ILLUSTRATIONS, TABLES AND DIAGRAMS, SECTION 10-709 PUBLIC LOCAL STREETS; SECTION 10-710 PRIVATE LOCAL STREETS; SECTION 10-711 ACCESS STREETS; AMENDING CHAPTER 34, ZONING, ARTICLE IV, PLANNED DEVELOPMENTS, DIVISION 3, DESIGN STANDARDS, SECTION 34-411 GENERAL STANDARDS; DIVISION 4, RESIDENTIAL PANNED DEVELOPMENTS IN RURAL AND OUTER ISLANDS, SECTION 34-442 IMPACT ANALYSIS; ARTICLE VI, DISTRICT REGULATIONS, DIVISION 9, PLANNED DEVELOPMENT DISTRICTS, SECTION 34-936 GENERAL CONDITIONS FOR ALL LAND USES; DIVISION 10, SPECIAL PURPOSE DISTRICTS, SECTION 34-983 USE REGULATIONS; DIVISION 11, OVERLAY DISTRICTS, SECTION 34-1122 REDEVELOPMENT OVERLAY DISTRICT; DIVISION 26, OFF-STREET PARKING, SECTION 34-2020 REQUIRED SPACES; DIVISION 27, PLACES OF WORSHIP AND RELIGIOUS FACILITIES, SECTION 34-2052 PARKING; PROVIDING FOR SEVERABILITY, CONFLICTS, SCRIVENER'S ERRORS; INCLUSION IN CODE, CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County finds that the rapid growth in the population and the development and occupation of vacant lands in the county requires the Board to consider the anticipated needs and welfare of the individuals living on that land; and

WHEREAS, the influx of new residents has increased the need for improved and expanded access to bikeways and pedestrian ways throughout the County; and

WHEREAS, bikeways and pedestrian ways provide for the transportation and active recreational needs of the residents of Lee County; and

WHEREAS, the Board desires to offset the anticipated needs of the community by providing bikeways and pedestrian ways for the substantial benefit of its residents; and

WHEREAS, Policy 5.1.6 of the Lee Plan requires the County to establish development regulations which require community facilities such as park, recreational, and open space areas in residential developments to be functionally related to all dwelling units and easily accessible via pedestrian and bicycle pathways; and

WHEREAS, Policy 5.1.6 also requires that these pathways be interconnected with adjoining developments and public pathways whenever possible; and

WHEREAS, Policy 44.3.7 of the Lee Plan requires that new residential developments provide for adequate pedestrian and bicycle access for school children; and

WHEREAS, Policy 6.1.1 provides that commercial developments requiring rezoning and meeting the development of community impact thresholds must be developed as commercial planned developments designed to arrange uses in an integrated and cohesive unit in order to, amongst other things, promote pedestrian movement within the developments and reduce dependence on the automobile; and

WHEREAS, Policy 7.1.1 provides that industrial developments requiring rezoning and meeting development of community impact thresholds must be developed as planned industrial developments designed to arrange uses as an integrated and cohesive unit in order to, amongst other things, reduce dependence on the automobile and promote pedestrian movement within the development; and

WHEREAS, Policy 4.1.2 states that development designs must be evaluated to insure that the internal street system is designed for the efficient and safe flow of vehicles and pedestrians without having a disruptive affect on the activities and functions contained within or adjacent to the development; and

WHEREAS, Policy 18.5.14 provides that sidewalks, bikepaths and mass transit routes shall be designed to provide convenient and safe access to all recreational facilities in the Fort Myers Beach area;

WHEREAS, Policy 20.1.5 provides that in order to create a cohesive community, site design within the University Community shall utilize alternate modes of transportation such as pedestrian networks, mass transit opportunities, sidewalks, bikepaths and similar facilities; and

WHEREAS, Policy 20.1.5 provides that site design must link related land uses through the use of alternate modes of transportation thus reducing automobile traffic within the University Community; and

WHEREAS, Policy 26.4.3 provides that safety considerations for pedestrians and cyclists must be incorporated into the design of segments and intersections of arterials and collectors; and

WHEREAS, Objective 26.4 of the Lee Plan requires the County to consider the needs and opportunities for allowing and encouraging the use of other modes of transportation when conducting all transportation planning and engineering studies; and

WHEREAS, bikeways and pedestrian ways promote the public health, safety and general welfare of the citizens of Lee County by lessening traffic congestion on roads and minimizing conflicts between vehicular and pedestrian/cyclist movement; and

WHEREAS, the Board of County Commissioners desires to exercise its police power by amending the land development regulations to further the County goal of an integrated bikeway and pedestrian way network designed to protect the health, safety and welfare of its citizens; and

WHEREAS, the Board of County Commissioners desires to amend the Land Development Code to require as a condition of development approval, the construction of bikeways and pedestrian ways to accommodate the needs of and benefit the residents of Lee County.

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

SECTION ONE:

The Lee County Land Development Code is hereby amended by designating additions to previously adopted text with underlined language and deleted text with strike-through. The Chapters of the Land Development Code amended in this ordinance include Chapter 10, Development Standards and Chapter 34, Zoning.

SECTION TWO:

Chapter 10 Article I, Section 10-1 Definitions and Rules of Construction and Section 10-8 are amended as set forth below:

SECTION 10-1 DEFINITIONS AND RULES OF CONSTRUCTION

Bicycle path and *bike path* mean a bikeway physically separated from motorized vehicular traffic

by an open ~~space~~ recovery area or barrier and either lying within the highway right-of-way or within an independent right-of-way.

On-road bikeway or bike lane means a portion of a roadway which has been specifically designated for the use of bicyclists.

Pedestrian way means a paved, surfaced path or way which is specifically designated or intended to be open to pedestrian travel, whether such facilities are intended for the exclusive use of pedestrians or not.

Sidewalk means a pedestrian way ~~paved, surfaced area~~, paralleling and usually separated from the street, ~~used as a pedestrian walkway~~.

Sidewalk, off-site means a pedestrian way ~~sidewalk~~ which is exterior to a parcel being improved and located in the right-of-way of the arterial or collector road adjacent to that parcel or within an easement dedicated to the public.

Sidewalk, on-site means a pedestrian way ~~sidewalk~~ which is located within the boundaries of the parcel being improved.

SEC. 10-8. SPECIFIC REQUIREMENTS.

(5) Bicycle Path and Pedestrian ways Plan

There is hereby adopted as part of this chapter the official Bikeways/Walkways Facilities Plan map for the county dated _____ . The map identifies a network of arterial and collector roads which, if improved with bikeways and pedestrian ways, will meet present and anticipated bikeway and pedestrian way needs of the county. The official Bikeways/Walkways Facilities Plan map will be signed by the chairman of the Board of County Commissioners and placed on file with the county departments of transportation and community development. Reproductions of the map will be available to the public. The purpose of the official Bikeways/Walkways Facilities Plan map is to target certain arterial and collector roadways for the improvements necessary to ensure county-wide continuity of the bicycle and pedestrian transportation system. Bikeways and pedestrian ways are necessary along the roadways depicted on the map for the benefit and protection of the health, safety, and welfare of the residents of Lee County because those facilities serve to : a) lessen traffic congestion, b) reduce conflicts between vehicular and pedestrian/cyclist movement, c) provide safe pedestrian/cyclist circulation to community facilities, and d) provide safe access to active and passive recreational activity .

- (5) (6) Required access streets. Pursuant to the county comprehensive plan, there is hereby adopted as part of this chapter the required access road map for the county, which map is dated February 1, 1991, as it may be amended, which identifies the arterials and collectors where access streets are needed to protect the health, safety and welfare of county residents. The required access road map ~~shall~~ will be signed by the chairman of the Board of County Commissioners and placed on file with the county department of transportation ~~and engineering~~. Reproductions of the map ~~shall~~

will be made available to the public. Access streets are necessary along major urban streets for the protection of the health, safety and welfare of county residents because:

- a. Access streets reduce the need for individual driveways and thereby decrease conflicting traffic movements, which in turn reduces the potential for accidents; and
- b. The use of access streets decreases traffic on the county's arterial and collector streets, thereby improving their levels of service.

(6) (7) *Water and sewage systems.* The development ~~shall~~ must be proposed in such a way as to prevent any potential hazards to the health, safety and welfare of the public, especially with regard to the provision of potable water or sanitary sewage services. Unless otherwise excepted in this chapter, all new residential, commercial or industrial development proposed within the certificated or franchised service areas of regulated private (investor- or subscriber-owned) water or sewer utilities, or within the designated future water or sanitary sewer service areas of county utilities, as shown and specified in the Lee Plan, must connect to that water or sewer system. Where a development is permitted to stand free of established potable water or sanitary sewage systems, the water and sewage systems proposed to serve that development ~~shall~~ must be of sufficient capacity for the intended initial uses, and provisions ~~shall~~ must be made for expansion, increased capacity and extensions for any future uses through appropriate and binding legal commitments, including the commitment to connect to a central system at such time as it is created or extended to the development.

(7) (8) *Drainage and stormwater management.* The development ~~shall~~ must be designed in accordance with applicable county and water management districts' runoff, retention and attenuation requirements and any other state and local drainage laws. The development ~~shall~~ must also be designed to avoid flooding or erosion damage to adjacent property and the county drainage system and to avoid the creation of stagnant pools that would encourage mosquito breeding. The development ~~shall~~ must provide a method of continual maintenance and operation through legal documentation and ~~shall~~ must ensure proper stormwater management so as to reduce the potential impacts of flooding.

(8) (9) *Open space, parks and recreation.* Sufficient open space ~~shall~~ must be provided for the use of the occupants of the development. Recreation facilities and parks ~~shall~~ must be located so as to avoid nuisance conditions affecting adjacent and nearby properties, and ~~shall~~ must be of a sufficient size and variety for all occupants of the development. Every effort ~~shall~~ must be made to locate required open space so as to protect archaeological sites.

(9) (10) *Landscaping and buffering.* Adequate landscaping, including screens and buffers, to preserve compatibility with uses outside the proposed development ~~shall~~ must be provided, and, as a furtherance of the ecological preservation goal, vegetation, trees and signs ~~shall~~ must be in accordance with this chapter and ~~shall~~ must be aesthetically pleasing.

(10) (11) *Fire protection.* The development ~~shall~~ must include an adequate fire protection system.

- (11) ~~(12)~~ *Density*. The development ~~shall~~ must have a density no higher than that which can be adequately supported by the facilities existing or agreed upon by the developer at the time the development order is issued, and in no case may the density exceed the allowable density as set forth in the comprehensive plan or chapter 34.
- (12) ~~(13)~~ *Intensity of use*. Nonresidential development ~~shall~~ must have an intensity of use no higher than that which can be adequately supported by the facilities existing, or agreed upon by the developer, at the time the development order is issued.
- (13) ~~(14)~~ *Historic resources*. The development ~~shall~~ must provide for the identification, recognition, protection or mitigation of the historical and archaeological resources of the county, as provided by the historic preservation element of the Lee Plan.

SECTION THREE:

Article II, Administration, Division 2 Development Orders, Section 10-154 Additional Submittal Requirements is amended by amending subsections (8), (9), (24), (25), (26) and (27) as set forth below:

SECTION 10-154 ADDITIONAL REQUIRED SUBMITTALS

- (8) *Existing conditions and improvements drawing*. An existing conditions and improvements drawing ~~shall be submitted~~, showing at a minimum the following:
- h. The location and size of all public water and sewage systems, private wells, irrigation and flowing wells, sidewalks, bicycle paths, curbs, gutters, storm drains and manholes on or abutting the property.
 - i. The location of existing and proposed public transit service areas, and bus routes and stops, including passenger amenities, e.g., shelters, lighting, benches, sidewalks, bicycle paths, walkways, passenger parking, bicycle racks, etc.
- (9) *Proposed development plan drawings*. Proposed development plan drawings ~~shall be submitted~~ showing ~~as~~ at a minimum the following:
- b. Phasing plan. Where a large development is ~~being~~ proposed, the applicant ~~shall~~ must submit a master phasing plan with the stages numbered in sequence. It is understood that, for long-term projects, the details of a given phase may change as the economic, environmental, social and legal elements of the proposed development change. For such phased developments, each phase ~~shall~~ will be issued a separate development order, but each phase ~~shall~~ will be considered in relation to the rest of the overall project. The phasing plan ~~shall must~~ show how each phase fits into the master plan for the continuance of streets, bicycle paths, sidewalks, drainage, storm water management, potable water, fire protection, sewage collection, landscaping and buffers. Specific requirements for phased projects are specified in section 10-117.

- g. Proposed location of on-site and off-site bikeways and pedestrian ways, sidewalks and bicycle paths with ingress to and egress from the development, as well as to or from common open space areas.
- (24) *Operation and maintenance covenants.* Where applicable, a copy of the covenants used for the maintenance and operation of the improvements ~~as~~ required by this chapter ~~shall be provided and shall include~~ including but not be limited to private streets and adjacent drainage, drainage and storm water management systems, utilities, public water and sewage systems, on-site bicycle paths, on-site sidewalks, open space, parks, recreation areas and buffers.
- (25) *Articles of incorporation or other legal documents for assignment of maintenance.* The developer ~~shall~~ must submit a copy of the legal documents creating the legal mechanism to ensure that the drainage system, on-site bicycle paths, on-site sidewalks, roadways and rights-of-way are continuously maintained.
- (26) *Opinion of probable construction costs.* The developer's consultant must prepare and submit the estimated cost of installing all streets, drainage systems, water management systems, potable water treatment and distribution systems, sewage collection and treatment systems, bicycle paths, sidewalks, park and recreation improvements, landscaping and buffers ~~shall be prepared by the developer's consultant~~, as follows:
- ~~For s~~ Subdivisions, ~~both~~ on-site and off-site systems: improvements.
 - ~~For a~~ All other developments; off-site improvements.

The opinion of probable cost ~~shall~~ must include an estimated date of completion for the work.

- (27) *Assurance of completion of improvements.* Assurance of completion of the development improvements as specified in subsections (27)a. and b. ~~of this section will be~~ is required for all off-site improvements prior to commencing any off-site or on-site development. Assurance of completion of the development improvements for on-site subdivision improvements will be required prior to the acceptance of the subdivision plat. Those on-site subdivision improvements which have been constructed, inspected and approved by the director of zoning and development review services may be excluded from the requirements of subsections (27)a. and b. ~~of this section~~. In addition to the assurance of completion for off-site improvements, and with the exception of sidewalks on individual buildable lots, all subdivisions for single- and two-family residential structures ~~shall~~ must provide the assurance of completion of on-site improvements, or the construction of on-site improvements, within one year of the date of issuance of the final development order for that subdivision.
- Surety or cash performance bond.* Security in the form of a surety or cash performance bond ~~shall~~ must be posted with the board and made payable to the county in an amount equal to 110 percent of the full cost of installing the required improvements ~~as~~ approved by the county. If the proposed improvement will not be constructed within one year of issuance of the final development order, the amount of the surety or cash performance bond ~~shall~~ must be increased by ten percent compounded for each year of the life of the surety or bond. Alternatively, the surety or cash performance bond may be renewed

annually at 110 percent of the cost of completing the remaining required improvements ~~as if~~ approved by the director of zoning and development review services. Prior to acceptance, B bonds shall must be reviewed and approved ~~as to form~~ by the county attorney's office ~~prior to acceptance~~.

- b. *Other types of security.* The board may accept letters of credit or escrow account agreements or other forms of security provided that the reasons for not obtaining the bond are stated and the county attorney approves the document.

SECTION FOUR:

Article III Design Standards and Requirements is amended by adding a new Section 10-256 entitled Bikeways and Pedestrian Ways set forth below:

SECTION 10-256 ~~RESERVED~~: BIKEWAYS & PEDESTRIAN WAYS

(1) Official Bikeways/Walkways Facilities Plan.

The official Bikeways/Walkways Facilities Plan (hereinafter "the plan") shows locations of existing and proposed bikeways and pedestrian ways in the unincorporated areas of Lee County. All development proposed along the arterial and collector roadways depicted on the plan must provide for bikeways and pedestrian ways in accordance with this section.

(2) Provision of Bikeways and Pedestrian Ways.

(a) General

Bicycle paths and pedestrian ways are required for all new developments and for expansion of any existing development that results in a 25 percent or greater increase in either:

- 1) Building size or floor area; or
- 2) Residential density.

(b) Types

1) Off-site Facilities shown on the Bikeways/Walkways Facilities Plan

The developer must construct a bikeway or pedestrian way in the public road right-of-way if the subject property abuts a street shown on the plan. Upon county acceptance of the required facility, the applicant may be entitled to road and park impact fee credits in accordance with chapter 2, art. VI. Eligibility for impact fee credits will be evaluated on a case by case basis.

The developer may choose to construct the facility outside the public road right-of-way

on his own property. If the developer opts to construct the facility across the property in this manner, the easement must be at least 10 feet in width and perpetually open to the public.

2) Off-site Facilities - Other

- a) When any portion of the property to be developed is located within one-quarter mile of a collector or arterial road shown on the plan as requiring either a bikeway or pedestrian way, or within a quarter mile of an existing facility, the developer must construct a similar facility within the existing road right-of-way from the subject property to the existing or proposed facility. This section will not require the purchase of right-of-way or easements where none exist. Upon County acceptance of the facility, the developer may be entitled to road and park impact fee credits in accordance with chapter 2, art. VI. Eligibility for impact fee credits will be evaluated on a case by case basis.
- b) When any portion of a proposed residential subdivision is located within one-quarter mile of an existing or proposed pedestrian generator such as schools, parks, playgrounds, shopping centers or employment centers, or transit facilities, the developer must construct a bicycle path or sidewalk not less than 8 feet in width within the existing road right-of-way connecting the subdivision to the pedestrian generator. This section will not require the purchase of right-of-way or easements where none exist. Upon acceptance of the required facility by the county, the applicant may be entitled to road and park impact fee credits in accordance with chapter 2, art. VI. Eligibility for impact fee credits will be evaluated on a case by case basis.

3) On-site Facilities

- a) Pedestrian ways must be constructed along both sides of all streets internal to the development extending from intersection to intersection and on all dead-end streets.
- b) Waiver of Requirement

Developments that provide an alternate plan for an internal bicycle path/pedestrian circulation system may be exempted from this section by the director of zoning and development services if the alternate system is functionally equivalent to the standards set forth herein, which connects with existing facilities and meets all off-site requirements.

The alternate plan must be submitted simultaneously with the request for a development order for a subdivision plat. The master plan must be drawn to scale sufficient to indicate all lots and include the following:

- 1) the location of all lots and the number and type of dwelling units on each lot.

- 2) the location, width, and type of each bikeway and pedestrian way including those to be connected to the bikeways/pedestrian ways off-site.

(3) Location

a) General

The bikeway or pedestrian way may be located within the road right-of-way or within an easement for that purpose. Bikeways and pedestrian ways may not be located in water or sewer utility easements. However, they may be located in power easements or drainage easements if approved by the utility company and the Director of Zoning and Development Services.

b) Subdivisions

1) On-site Streets

Pedestrian ways must be constructed on both sides of all streets within the development from intersection to intersection and along all dead-end streets except as follows:

- a) Where such construction would encroach upon the required setback from a conservation or preservation area;
- b) Where the proposed street forms an exterior boundary to the subdivision; or
- c) In affordable housing developments where pedestrian ways are required on only one side of internal subdivision streets.

2) Off-site Streets

Where streets are located at the perimeter of the development site, bikeways and pedestrian ways are required on the side of the street adjacent to the development. The facility may be constructed within the road right-of-way or within an easement dedicated for that purpose. The facility must be continuous from boundary to boundary of the development, except where:

- a) The site configuration is such that County drainage ditches would have to be relocated or piped;
- b) The location of such bikeway or pedestrian way would constitute a potential hazard to the user;
- c) Construction of the bikeway or pedestrian way would be within wetland or other resource protection area; or

- d) The Director of Zoning and Development Services concludes that a right-of-way is too small for construction of a safe bikeway or pedestrian way. However, the director may first require the developer to seek the necessary approvals to construct the facility within an adjacent power or drainage easement, or alternatively, to dedicate an easement for that purpose.

(4) Time of Construction

a) Off-site Facilities

All bikeways and pedestrian ways must be constructed prior to issuance of a Certificate of Compliance for the infrastructure unless the developer posts a bond or other surety acceptable to the county as assurance of completion of the improvements.

The County will not require construction of the bikeways or pedestrian way where the right-of-way is scheduled for improvement within 2 years pursuant to the current CIP and the right-of-way improvement would result in the destruction of the facility. However, the developer will be required to provide a bond or other surety acceptable to the county assuring construction of the facility when the right-of-way improvements are completed.

b) On-site Facilities

The proposed facility layout must be coordinated with the bikeway/pedestrian way system of the surrounding area. Bikeways and pedestrian ways in a proposed development must connect to existing facilities on adjacent property where easements or stub-outs exist.

Pedestrian ways along non-buildable lots, common areas, storm water ponds and other similar areas must be constructed by the developer prior to issuance of a Certificate of Compliance for the infrastructure unless the developer posts a bond or other surety acceptable to the county as assurance of completion of the improvements.

Pedestrian ways along buildable lots will be the responsibility of the lot owner and must be constructed prior to issuance of a Certificate of Occupancy for any building on the lot. To ensure compliance, the covenants for the development must reflect that the lot owner must construct the required pedestrian way prior to requesting a Certificate of Occupancy.

(5) Construction Standards

a) General

- 1) Curb cut ramps(wheelchair ramps) are required at all intersections where pedestrian ways intersect roadway curb and gutter. Curb ramps may not exceed 12 foot horizontal to 1 foot vertical (12:1) and must have a slip-resistant surface texture.
- 2) Permanent obstacles such as utility pole signs, mailboxes, drainage structures, etc. may

not be located within a bikeway or pedestrian way unless a minimum of 3 feet clearance can be obtained within the bikeway or pedestrian way.

- 3) Bikeways and pedestrian ways must be located in the right-of-way or within adjacent easements of interior or perimeter streets. However, the facility may not be closer than one foot to an abutting property line. Sufficient distance from obstacles such as fire hydrants, drainage inlets, manholes, utility structures and streets must be maintained for the safety of the bikeway or pedestrian way user. No pedestrian way may be located within the recovery area of the traveled way of the street.
- 4) There must be no unsafe curves or sudden elevation changes in the bikeway or pedestrian way that would present a hazard to the user.
- 5) The Director of Zoning and Development Services may require fences, hedges, berms, landscaping, or other barriers to discourage pedestrians and bicycle riders from crossing hazardous streets at unsafe or at numerous locations. When possible, developments must be designed to promote bicycle and pedestrian street crossings at traffic-control signals, crosswalks or intersections.

b) Off-site Facilities

1) On-road

Where the Bikeways/Walkways Facilities Plan shows the use of bike lanes adjacent to the roadway, those lanes must be constructed to county specifications as set forth in Administrative Code AC-11-9.

2) Off-road

All bikeways and pedestrian ways constructed off-site of the development or along a street perimeter to the development must be 8 feet in width and constructed of 4 inch thick concrete on a compacted stabilized subgrade (LBR 40 min.). Where the bikeway or pedestrian way will be traversed by a driveway or parking lot entrance, the concrete thickness must be increased to a minimum of 6 inches.

c) On-site Facilities

All sidewalks constructed within the development must be a minimum of 4 feet in width and constructed of 4 inch thick concrete on a compacted stabilized subgrade (LBR 40 min.). Where the sidewalks will be traversed by a driveway or parking lot entrance, the concrete thickness must be a minimum of 6 inches.

(6) Maintenance

On-site bikeways and pedestrian ways must be maintained by the property owner's association

through the operation and maintenance covenants. The county department of transportation will maintain off-site facilities located within county right-of-way.

(7) Exemptions

Notwithstanding the provisions of paragraphs (1)-(5), bikeways and pedestrian ways will not be required where the director of zoning and development services determines that:

- a) Their establishment would be contrary to public safety;
- b) The cost would be excessively disproportionate to the need or probable use;
- c) Other available means or factors suggest an absence of need.

SECTION FIVE:

Article III Design Standards and Requirements, Division 6 Open Space, Buffering and Landscaping, is amended as follows:

Sec. 10-413. Open Space.

(e) Use of open space.

- (2) The following uses may contribute to the open space requirements provided the minimum dimensions are met:
 - e. Active and passive recreation areas such as playgrounds, golf courses, beach frontage, native trails, bikeways, pedestrian ways, and other similar open spaces, as long as not more than 25 percent of the area consists of impervious surface.

Sec. 10-414 Buffers.

(f) Development abutting natural waterway. Except where a stricter standard applies for the Greater Pine Island Area (defined in chapter 34 of the land development code), there must be a 25-foot wide buffer landward from the mean high water line of all nonseawalled natural waterways. Where a proposed planned development or subdivision is located in the Greater Pine Island Area adjoining state-designated aquatic preserves and associated natural tributaries, the width of the required buffer will be 50 foot. No deviation or variance from these requirements will be permitted except under circumstances in which the requirement would have the effect of prohibiting all reasonable use of the property.

Existing vegetation within the buffer area ~~may~~ must be retained except for the removal or control of exotic plants. Removal of such plants may not involve the use of heavy mechanical equipment such as bulldozers, draglines, front end loaders, and tractors. Where the use of heavy equipment may disturb native vegetation, the approval of the director must be obtained.

Sec. 10-415. Landscaping.

(b) *Landscaping adjoining street.*

- (1) All industrial and commercial developments and developments described in section 10-414(c) above must include landscaped strips that are no less than ten feet in width adjacent to all street rights-of-way. Where bikeways or pedestrian ways are located in a dedicated easement adjacent to the right-of-way, the planting strip may be reduced by the width of the facility provided there remains a minimum of four feet for the planting strip. No less than 12 shrubs per 100 linear feet must may be planted in each landscape strip. The clustering of shrubs is encouraged to improve survivability, ease of maintenance, and the aesthetic effect of the landscaped areas.
- (2) All multiple-family residential developments must include landscaped strips that are no less than 15 feet in width adjacent to all street rights-of-way. Where bikeways or pedestrian ways are located in a dedicated easement adjacent to the right-of-way, the planting strip may be reduced by the width of the facility provided there remains a minimum of seven feet for the planting strip. No less than five trees and 18 shrubs per 100 linear feet must may be planted in each landscaped strip. If the planting of trees, in the opinion of the director, could create a potential conflict with existing overhead power lines, the plantings required by this subsection may be replaced by a vegetative hedge that is no less than three feet in height at the time of planting.
- (3) Landscaped strips adjoining street rights-of-way are not required for single-family development.

SECTION SIX:

Article III Design Standards and Requirements, Division 7 Public Transit is amended by amending Section 10-443 as follows:

DIVISION 7 PUBLIC TRANSIT

Sec. 10-443. Exceptions.

- (c) The Director of Zoning and Development Services may waive the requirements of Section 10-442 where a developer has provided bikeways or pedestrian ways and those facilities provide equivalent access to the nearest bus stop.

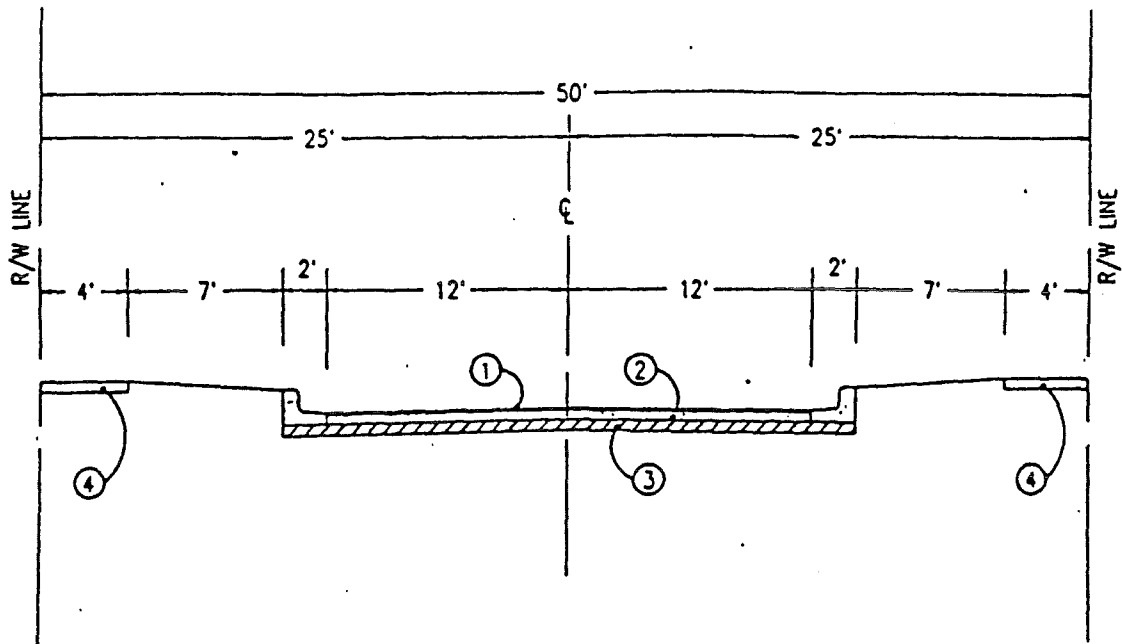
SECTION SEVEN:

Article IV Illustrations, Tables and Diagrams is hereby amended by amending Sections 10-709, 10-710 and 10-711 as follows:

Sec. 10-709. Public local streets.

(a) The following illustration applies to publicly maintained local streets with closed drainage and on-road bikeways, with a volume of less than 800 vehicles per day:

PUBLICLY MAINTAINED LOCAL STREET WITH CLOSED DRAINAGE AND ON-ROAD BIKEWAYS - VOLUME LESS THAN 800 VEHICLES PER DAY



CATEGORY B & C

1. 1" Type III asphalt concrete
2. 6" Base
3. 6" Stabilized subgrade
4. Optional sidewalk

CATEGORY A

- 1-1/2" Type S-1 asphalt concrete
- 8" Base
- 12" Stabilized subgrade
- Optional sidewalk

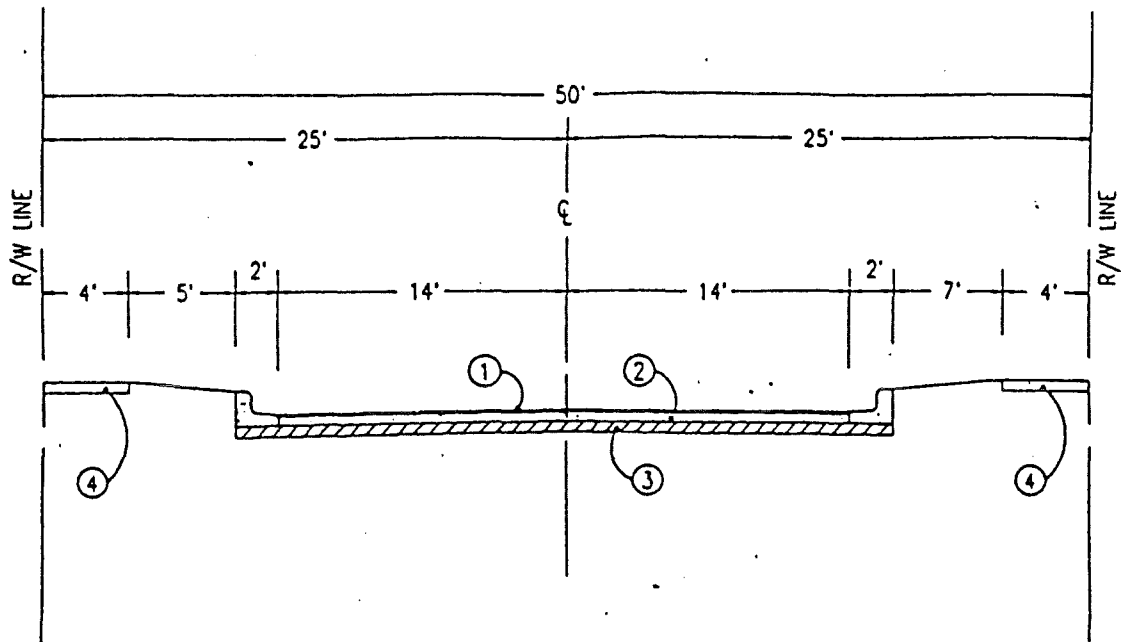
Notes:

- (1) A ten-foot-wide public utility easement shall be provided on each side of the right-of-way.

Sec. 10-709. Public local streets.

(b) The following illustration applies to publicly maintained local streets with closed drainage and on-road bikeways, with a volume of more than 800 vehicles per day:

PUBLICLY MAINTAINED LOCAL STREET WITH CLOSED DRAINAGE AND
ON-ROAD BIKEWAYS - VOLUME MORE THAN 800 VEHICLES PER DAY



CATEGORY B & C

1. 1" Type III asphalt concrete
2. 6" Base
3. 6" Stabilized subgrade
4. Optional sidewalk

CATEGORY A

- 1-1/2" Type S-1 asphalt concrete
- 8" Base
- 12" Stabilized subgrade
- Optional sidewalk

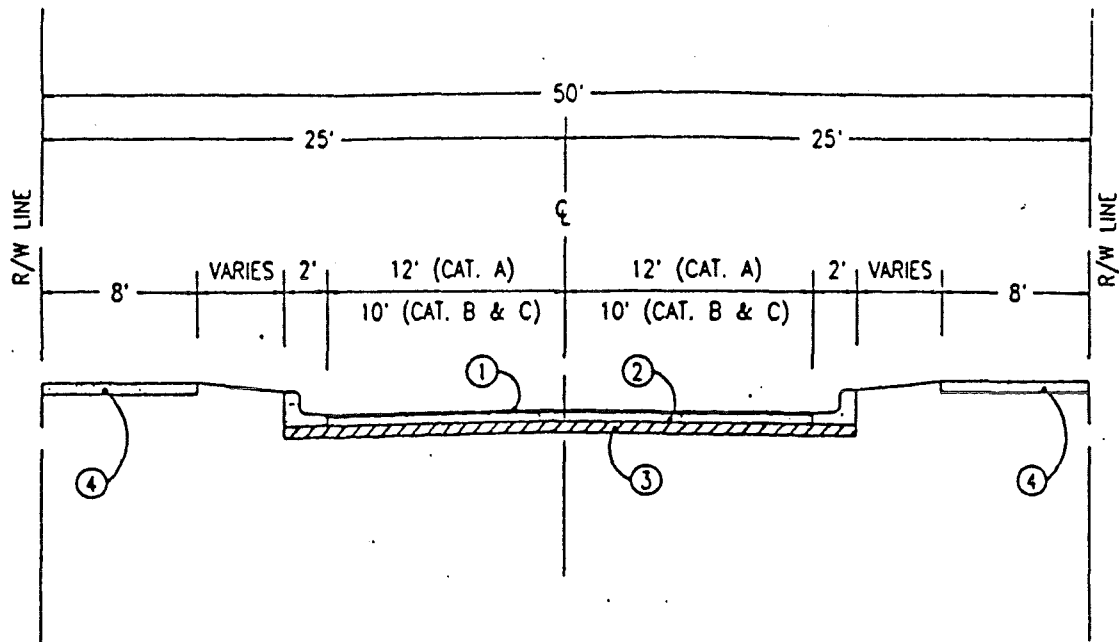
Notes:

- (1) A ten-foot-wide public utility easement shall be provided on each side of the right-of-way.

Sec. 10-709. Public local streets.

(c) The following illustration applies to local public streets with closed drainage and off-road bikeways:

LOCAL PUBLIC STREET WITH CLOSED DRAINAGE AND OFF-ROAD BIKEWAYS



CATEGORY B & C

1. 1" Type III asphalt concrete
2. 6" Base
3. 6" Stabilized subgrade
4. Bikeway

CATEGORY A

- 1-1/2" Type S-1 asphalt concrete
- 8" Base
- 12" Stabilized subgrade
- Bikeway

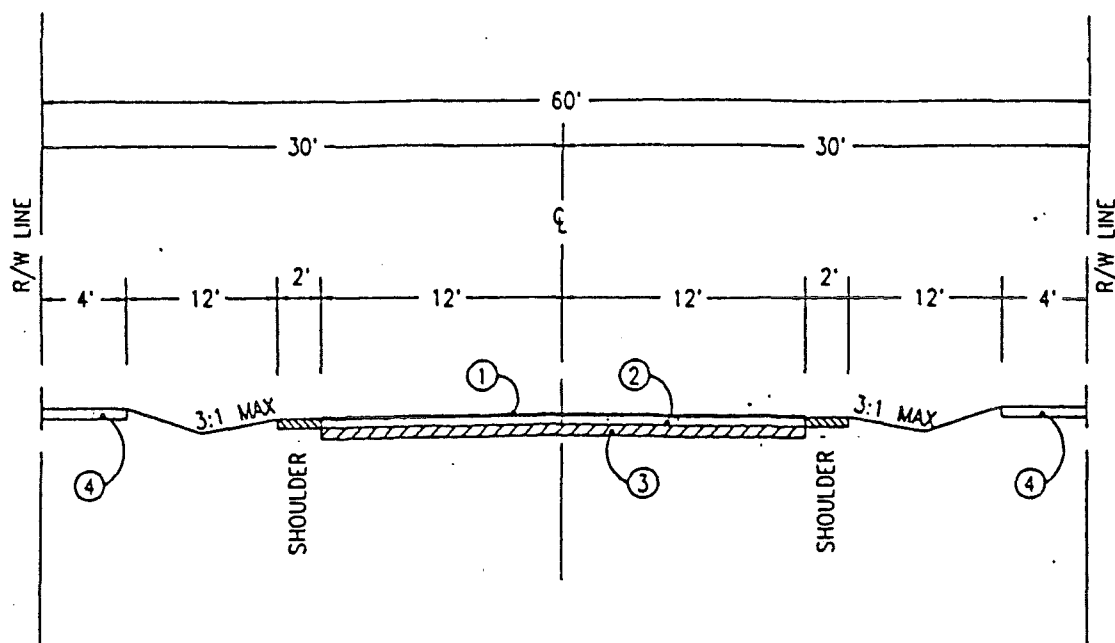
Notes:

- (1) A ten-foot-wide public utility easement shall be provided on each side of the right-of-way.

Sec. 10-709. Public local streets.

(d) The following illustration applies to publicly maintained local streets with open drainage and on-road bikeways, with a volume of less than 800 vehicles per day:

PUBLICLY MAINTAINED LOCAL STREET WITH OPEN DRAINAGE AND
ON-ROAD BIKEWAYS - VOLUME LESS THAN 800 VEHICLES PER DAY



CATEGORY B & C

1. 1" Type III asphalt concrete
2. 6" Base
3. 6" Stabilized subgrade
4. Optional sidewalk

CATEGORY A

- 1-1/2" Type S-1 asphalt concrete
- 8" Base
- 12" Stabilized subgrade
- Optional sidewalk

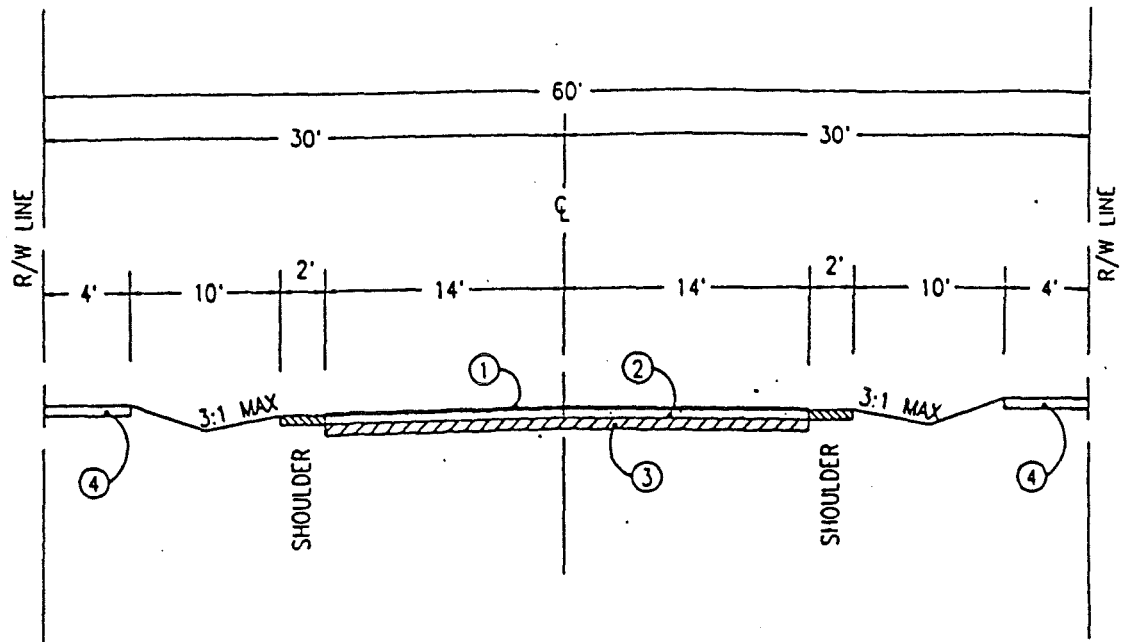
Notes:

- (1) A ten-foot-wide public utility easement shall be provided on each side of the right-of-way.

Sec. 10-709. Public local streets.

(e) The following illustration applies to publicly maintained local streets with open drainage and on-road bikeways, with a volume of more than 800 vehicles per day:

**PUBLICLY MAINTAINED LOCAL STREET WITH OPEN DRAINAGE AND
ON-ROAD BIKEWAYS - VOLUME MORE THAN 800 VEHICLES PER DAY**



CATEGORY B & C

1. 1" Type III asphalt concrete
2. 6" Base
3. 6" Stabilized subgrade
4. Optional sidewalk

CATEGORY A

- 1-1/2" Type S-1 asphalt concrete
- 8" Base
- 12" Stabilized subgrade
- Optional sidewalk

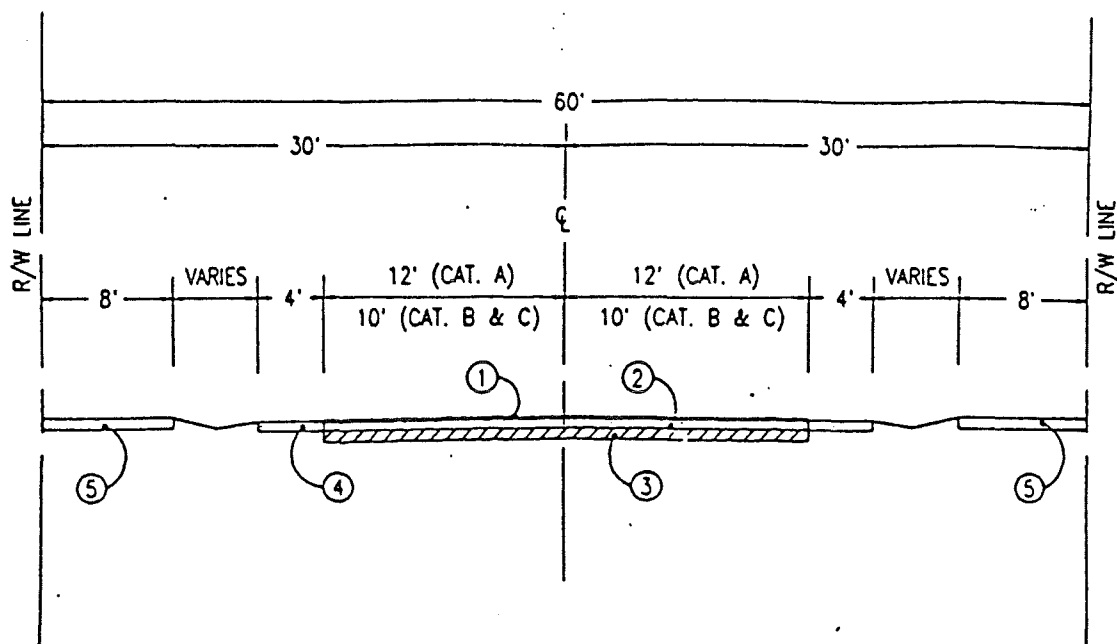
Notes:

- (1) A ten-foot-wide public utility easement shall be provided on each side of the right-of-way.

Sec. 10-709. Public local streets.

(f) The following illustration applies to publicly maintained local streets with open drainage and off-road bikeways:

**PUBLICLY MAINTAINED LOCAL STREET WITH OPEN DRAINAGE AND
OFF-ROAD BIKEWAYS**



CATEGORY B & C

1. 1" Type III asphalt concrete
2. 6" Base
3. 6" Stabilized subgrade
4. Stabilized shoulder
5. Bikeway

CATEGORY A

- 1-1/2" Type S-1 asphalt concrete
- 8" Base
- 12" Stabilized subgrade
- Stabilized shoulder
- Bikeway

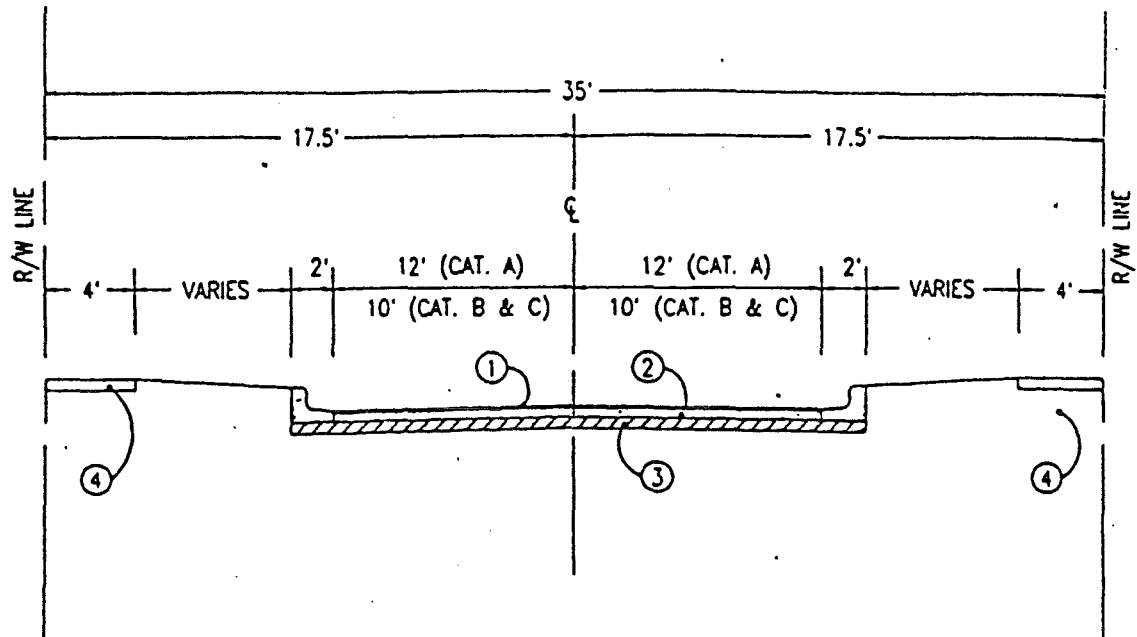
Notes:

- (1) A ten-foot-wide public utility easement shall be provided on each side of the right-of-way.

Sec. 10-710. Private local streets.

(a) The following illustration applies to private local streets with closed drainage:

PRIVATE LOCAL STREET WITH CLOSED DRAINAGE



CATEGORY B & C

1. 1" Type III asphalt concrete
2. 6" Base
3. 6" Stabilized subgrade
4. Optional sidewalk

CATEGORY A

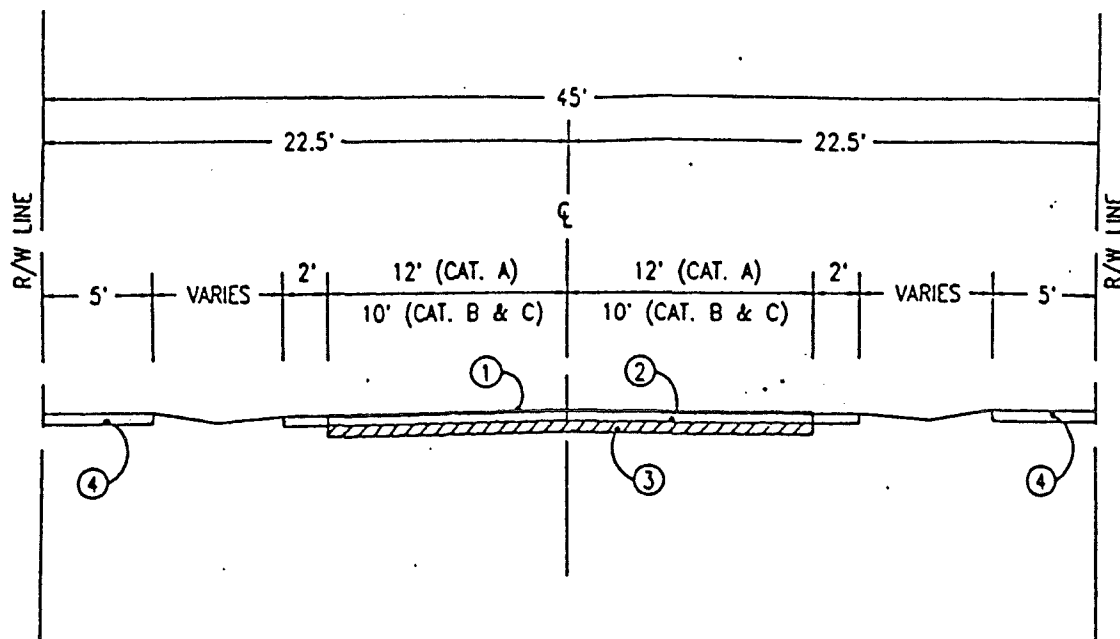
- 1-1/2" Type S-1 asphalt concrete
- 8" Base
- 12" Stabilized subgrade
- Optional sidewalk

Notes:

- (1) A ten-foot-wide public utility easement shall be provided on each side of the right-of-way.

(b) The following illustration applies to private local streets with open drainage:

PRIVATE LOCAL STREET WITH OPEN DRAINAGE



CATEGORY B & C

1. 1" Type III asphalt concrete
2. 6" Base
3. 6" Stabilized subgrade
4. Optional sidewalk

CATEGORY A

- 1-1/2" Type S-1 asphalt concrete
- 8" Base
- 12" Stabilized subgrade
- Optional sidewalk

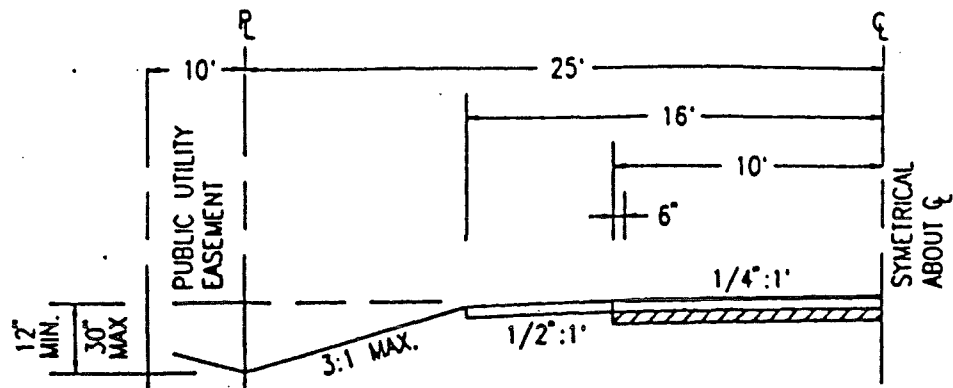
Notes:

- (1) A ten-foot-wide public utility easement shall be provided on each side of the right-of-way.

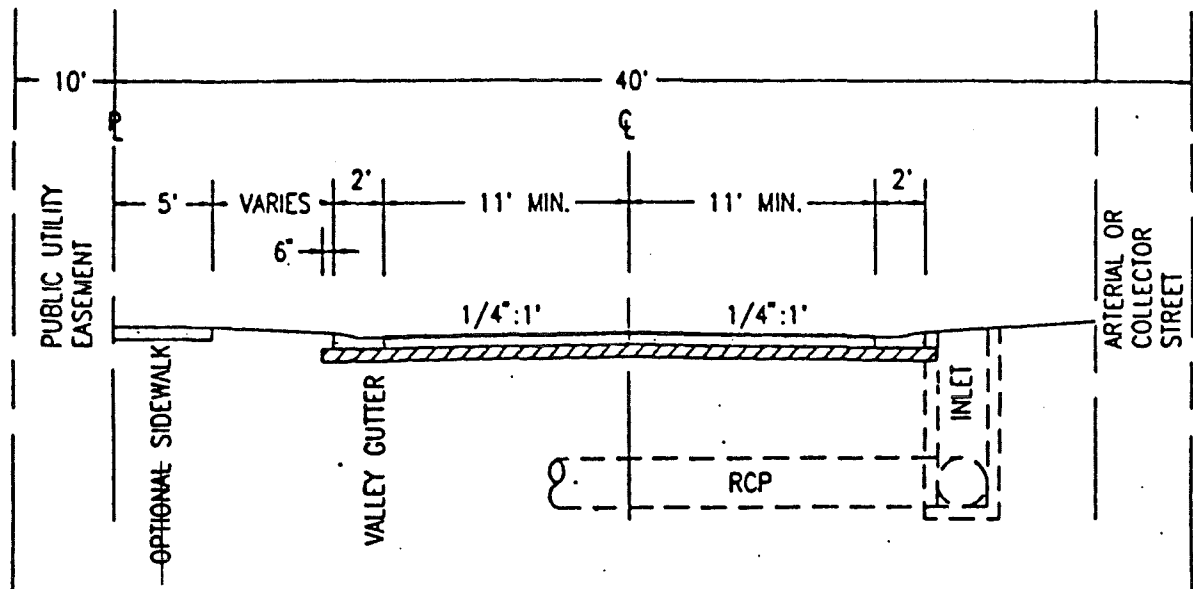
Sec. 10-711. Access streets.

The following illustrations apply to access streets:

ACCESS STREET WITH SWALE OR DITCH
(50-FOOT RIGHT-OF-WAY)



ACCESS STREET WITH UNDERGROUND DRAINAGE (40-FOOT RIGHT-OF-WAY)



**Pedamnd Revised 5/16/95 Supersedes 5/09/95
Draft For Discussion Purposes Only
Lee County Attorney's Office**

ACCESS STREETS

| Development Category | Minimum Pavement Width | Surface Course | Base | Stabilized Subgrade LBR 40 |
|----------------------|------------------------|----------------|------|----------------------------|
| A | 22' | 1 ½" Type S-1 | 8" | 12" |
| B | 22' | 1" Type S-1 | 6" | 6" |
| C and D | 20' | 1" Type S-1 | 6" | 6" |
| D* | 20' | 1" Type S-1 | 6" | N/A |

Note:

*The county shall not accept maintenance of these streets in this type development.

SECTION EIGHT:

Chapter 34 Zoning, Article IV Planned Developments, Division 3 Design Standards, Section 34-411 is amended by amending subsections (c) and (1) as follows:

Section 34-411 General Standards

- (c) The tract or parcel proposed for development under this article ~~shall~~ must be located so as to minimize the negative effects of the resulting land uses on surrounding properties and the public interest generally, and ~~shall~~ must be of such size, configuration and dimension as to adequately accommodate the proposed structures, all required open space, including private recreational facilities and parkland, bikeways, pedestrian ways, buffers, parking, access, on-site utilities, including wet or dry runoff retention, and reservations of environmentally sensitive land or water.
- (1) In large residential or commercial planned developments, the site planner is encouraged to create subunits, neighborhoods or internal communities which promote pedestrian and cyclist activity and community interaction.

SECTION NINE:

Chapter 34 Zoning, Article IV Planned Developments, Division 4 Residential Planned Developments in Rural or Outer Islands, Section 34-442(1) Environmental Impact Analysis is amended as follows:

Pedamnd Revised 5/16/95 Supersedes 5/09/95

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Lee County Attorney's Office

Section 34-442 Impact Analysis

(1) Environmental Impact Analysis. ...

- r. A site plan showing the general location of buildings and infrastructure including bikeways, at the same scale as the aerial photograph depicting vegetation associations on the site as listed in the Florida Land Use and Cover Classification System.

SECTION TEN:

Chapter 34 Zoning, Article VI District Regulations, Division 9 Planned Development Districts is amended by amending Section 34-936 as set forth below:

Section 34-936. General Conditions for all land uses.

- (h) Bicycle Paths and Pedestrian Ways. Unless governed by alternative standards established by special conditions, bicycle paths and pedestrian ways must be located and constructed in accordance with the requirements set forth in Chapter 10.

SECTION ELEVEN:

Chapter 34 Zoning, Article VI District Regulations, Division 10 Special Purpose Districts, Section 34-983 is amended as follows:

Section 34-983 Use regulations

- (2) Special exceptions. Upon a finding that the proposed use is consistent with the standards set forth in section 34-145(c)(2), as well as all other applicable county regulations, the hearing examiner may permit any specific use from the following list as a special exception, subject to conditions set forth in this chapter and in the resolution of approval:
 - a. Accessory structures, to include any building, structure (including seawalls) or impervious surface area including bikeways which is accessory to a use permitted by right or by special exception in the EC district.
 - b. Boating, without restriction, except that it shall be limited to natural or existing manmade channels.
 - c. Nature study center, noncommercial, and its customary accessory uses.

SECTION TWELVE:

Chapter 34 Zoning, Article VI District Regulations, Division II Overlay Districts, Subdivision IV Redevelopment Overlay District is amended as follows:

128 Master Plan initiation and adoption.

plans which modify existing use regulations. If the master plan proposes to modify the use of chapter 34, then the master plan ~~shall~~ must include the following, unless specifically agreed by agreement with the director of community development or a decision of the county attorney:

ing property lines, current zoning and land uses.
General location of all principal buildings and their current use.
Proposed uses of land.
Requirement as to the kind and number of additional public facilities or utilities which will be required area, if applicable.
ing and/or proposed density or intensity of land such as lot sizes, setbacks, building heights, number of dwelling units per acre, etc.
General location and pattern of vehicular and pedestrian circulation.
Open space and recreation;
General information such as:

Access control.
Architecture and sign guidelines.
Parking.
Pedestrian ways and bikeways.
Open space design.
Other similar attributes.

THIRTEEN:

34 Zoning, Article IV District Regulations, Division 26 Off-street Parking is amended by subsection to Section 34-2020 as follows:

. Required spaces.

the number of required spaces for uses identified in Section 34-2020(2)-(5) may be reduced by 10% if the development provides bikeways or pedestrian ways in accordance with Section 10-256.

FOURTEEN:

34 Zoning, Article IV District Regulations, Division 27 Places of Worship and Religious is amended by adding a new subsection to Section 34-2052 as follows:

Sec. 34-2052. Parking.

- (d) The total number of parking spaces for Places of Worship and Religious Facilities may be reduced by 5 percent if the development provides bikeways or pedestrian ways in accordance with Section 10-256.

SECTION FIFTEEN: SEVERABILITY

It is the legislative intent that if any section , subsection, sentence, clause or provision of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, such portion will be deemed a separate provision and the remaining provisions of this ordinance will not be affected. It is the legislative intent of the Board of County Commissioners that this ordinance would have been adopted had such unconstitutional provision not be included therein.

SECTION SIXTEEN: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION SEVENTEEN: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS

The Board of County Commissioners intend for the provisions of this ordinance will become and be made a part of the Lee County Code; and that sections of this ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section," "article," or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this ordinance may be renumbered or relettered and typographical errors which do not affect the intent may be authorized by the County Administrator, or his designee, without need of public hearing.

SECTION EIGHTEEN: EFFECTIVE DATE

This ordinance will take effect immediately upon receipt by the Board of County Commissioners of Lee County, Florida, of the official acknowledgment from the Secretary of State of Florida that it has been filed with that office.

THE FOREGOING ORDINANCE was offered by Commissioner _____ who moved its adoption. The motion was seconded by Commissioner _____ and, being put to a vote, the vote was as follows:

| | |
|----------------------|-------|
| JOHN E. ALBION | _____ |
| RAY JUDAH | _____ |
| DOUGLAS R. ST. CERNY | _____ |
| JOHN E. MANNING | _____ |
| ANDREW W. COY | _____ |

DULY PASSED AND DATED THIS ____ TH DAY OF JUNE, 1995.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM BY:

Office of the County Attorney