

LEE COUNTY ORDINANCE NO. 00-07

AN ORDINANCE AMENDING LEE COUNTY LAND DEVELOPMENT CODE CHAPTER 2, ARTICLE VI, DIVISION 2 PERTAINING TO ROAD IMPACT FEES, AMENDING APPLICABILITY OF DIVISION (§2-262); INTENT AND PURPOSE OF DIVISION (§2-263); DEFINITIONS AND RULES OF CONSTRUCTION (§2-264); IMPOSITION OF IMPACT FEES (§2-265); COMPUTATION OF AMOUNT INCLUDING AMENDING THE IMPACT FEE SCHEDULE AND PROVIDING FOR PERIODIC REVIEW OF THE IMPACT FEE SCHEDULE (§2-266); AMENDING PAYMENT (§2-267); BENEFIT DISTRICTS ESTABLISHED (§2-268); TRUST FUNDS (§2-269); USE OF FUNDS (§2-270); REFUND OF FEES PAID (§2-271); PREPAYMENT OF FEES (§2-272); DEFERRAL OF FEES (§2-273); EXEMPTIONS (§2-274); CREDITS, INCLUDING PROVISION CREATING RECIPROCITY WITH INCORPORATED MUNICIPALITIES (§2-275); AND APPEALS (§2-276); ENFORCEMENT OF DIVISION, PENALTY; FURNISHING FALSE INFORMATION (§2-277); PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS AND AN EFFECTIVE DATE.

WHEREAS, the Board of County Commissioners of Lee County, Florida has adopted a comprehensive Land Development Code; and

WHEREAS, Goal 24 of the Lee County Comprehensive Land Use Plan mandates that the County maintain clear, concise and enforceable development regulations that fully address on-site and off-site development impacts, yet function in a streamlined manner; and

WHEREAS, the Board adopted the roads impact fee regulations and fee schedule in 1989 based upon the best information available at that time; and

WHEREAS, in 1999, the Board recognizing that the roads impact fee schedule has not been fully updated since originally adopted, approved a contract with Duncan Associates for the review and updating of the roads impact fee regulations; and

WHEREAS, the Road Impact Fee Update prepared for Lee County, Florida by Duncan Associates dated February 2000 forms the basis of the proposed amendments; and

WHEREAS, the Road Impact Fee Update generated better and more competent data allowing the use of a more sophisticated methodology to determine the impacts of development and to evaluate and establish appropriate impact fees; and

WHEREAS, the Land Development Code Advisory Committee has endorsed amendments to Land Development Code Chapter 2 regarding road impact fees; and

WHEREAS, the Executive Regulatory Oversight Committee has reviewed and endorsed the proposed amendments to the Land Development Code; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on April 11, 2000 and found them consistent with the Lee Plan.

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Lee County, Florida:

SECTION ONE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 2.

Lee County Land Development Code Chapter 2, Article VI, Division 2 is amended as follows with deleted language identified by strike-through and new language identified by underlining.

ARTICLE VI. IMPACT FEES

DIVISION 2. ROADS IMPACT FEE

Sec. 2-261. Statutory authority.

The Board of County Commissioners has the authority to adopt this division pursuant to article VIII of the constitution of the state, F.S. ch. 125 and F.S. §§ 163.3201, 163.3202 and 380.06(16).

Sec. 2-262. Applicability of division.

This division ~~shall apply~~ applies in ~~to both the unincorporated areas of the county_ and to the incorporated areas of the county.~~ It also applies in municipalities within the county that have entered into interlocal agreements with the county for the collection of roads impact fees.

Sec. 2-263. Intent and purpose of division.

(a) This division is intended to implement and be consistent with the Lee Plan.

(b) The purpose of this division is to regulate the use and development of land ~~so as~~ to ensure that new development bears a proportionate share of the cost of capital expenditures necessary to provide roads in the county as contemplated by the Lee Plan.

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

(a) For the purposes of administration and enforcement ~~of this division~~, unless otherwise stated in this division, the following rules of construction ~~shall~~ apply to the text of this division:

(1) Any road right-of-way used to define roads impact fee district boundaries may be considered to be within any district it bounds for purposes of using these funds.

(2) All transportation terms used in this division shall have the same meaning as in the Lee Plan, and in chapter 34 and chapter 10, unless otherwise indicated.

(b) The following words, terms and phrases, when used in this division, will have the meanings ascribed to them in this subsection and the latest edition of the Institute of Transportation Engineers (ITE) manual, except where the context clearly indicates a different meaning.

Access road means an access street, frontage ~~road~~ street or reverse frontage ~~road~~ street as defined in chapter 10.

Approved road means an arterial road, collector road, freeway or expressway, including sidewalks bordering such roads and access roads, that if constructed in whole or in part by a nongovernmental entity, or the right-of-way of which is dedicated to the county or some other government approved by the county, that may entitle the person constructing the road or dedicating the right-of-way to a roads impact fee credit equal to all or a portion of the value of the land dedicated or the cost of construction. Approved roads are divided into class 1 roads, class 2 roads and class 3 roads, which are defined in this section. Approved roads do not include site-related improvements.

Building official means that officer who is so defined in chapter 6, article II. Within any participating municipality, the term "building official" means that person whose duties and authority are similar to that of the county's building official, regardless of the title given such person.

Building permit means an official document or certification ~~which is~~ issued by the building official ~~and which authorizes~~ authorizing the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure. In the case of a change in use or occupancy of an existing building or structure, the term ~~shall~~ specifically includes certificates of occupancy and occupancy permits, as those permits are defined or required by county ordinance. The terms "building permit" and "certificate of occupancy permit" also mean those municipal permits ~~which~~ that are equivalent to these county permits, regardless of the names by which they are called within a municipality.

Building with mixed uses means a building ~~which~~ contains more than one principal use, as that term is defined in chapter 34.

Capital improvements means preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting and construction of all the necessary features for any non-site-related road construction project, including but not limited to:

- (1) ~~Construction of~~ Constructing new through lanes;
- (2) ~~Construction of~~ Constructing new turn lanes;
- (3) ~~Construction of~~ Constructing new frontage or access roads;
- (4) ~~Construction of~~ Constructing new bridges;
- (5) ~~Construction of~~ Constructing new drainage facilities in conjunction with roadway construction;
- (6) ~~Purchase~~ Purchasing and ~~installation of~~ installing traffic signalization (including both new installations and upgrading signalization);
- (7) ~~Construction of~~ Constructing curbs, medians, sidewalks, bicycle paths and shoulders in conjunction with roadway construction;

- (8) Relocating utilities to accommodate new roadway construction; and
- (9) Constructing on-street and off-street parking when such parking is intended for and designed to protect or enhance the vehicular capacity of the existing network of approved roads.

Class 1 road means an approved road shown on Map 3A of the transportation element of the Lee Plan, ~~the construction of or improvement to which road also~~ that is included as a county-funded road construction or improvement project on the five-year schedule of improvements within the Lee Plan's capital improvements element adopted and amended from time to time in accordance with F.S. §§ 163.3177(3)(b) and 163.3187. Class I roads include access roads shown on the access road location map if the county requires ~~its~~ their construction as a condition of development order approval or a specific written condition of the zoning approval. Class 1 road also means any arterial or collector road included in the road network established in the transportation element of the comprehensive plan of any participating municipality, ~~which if the~~ road construction or improvement project is also included in the annual capital improvement program of the municipality to be funded through the use of roads impact fees. Notwithstanding their inclusion on the access road location map, Class I roads do not include site-related improvements such as access roads constructed to achieve site location standards for commercial development or to provide for internal circulation when such roads would not otherwise ~~have been~~ be required by the county pursuant to criteria in chapter 10 ~~of this code.~~

Class 2 road means an approved road shown on ~~the traffic circulation plan map and~~ Map 3A of the Lee Plan transportation element that is scheduled for construction as a county-funded project in any ten-year capital improvement, but which is not included on the five-year schedule of improvements within the capital improvements element of the Lee Plan.

Class 3 road means an approved road shown on ~~the traffic circulation plan map, but~~ construction of or improvement Map 3A of the Lee Plan transportation element that is not included for construction or improvement within the capital improvements element of the Lee Plan or any ten-year capital improvement plan of the county. Class 3 roads ~~also~~ include all arterial and collector roads on Gasparilla Island, Pine Island, and Captiva, Sanibel and Estero Island. Class 3 road also means an approved road not on the five-year schedule of improvements within the Lee Plan's capital improvement element, not in any ten-year capital improvement plan of the county, and not on ~~the traffic circulation plan map~~ Map 3A of the Lee Plan transportation element, but which provides a reasonable alternative route for traffic ~~which that~~ otherwise would travel a specific road shown on ~~the traffic circulation plan map~~ Map 3A of the Lee Plan transportation element.

~~*Convenience food and beverage store* has the same meaning given it in chapter 34.~~

County ~~administrator~~ manager means the county ~~administrator~~ manager , or the county or municipal officials that ~~he~~ the county manager may designate to administer the various provisions of this division.

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

Expansion of the capacity of a road means all road and intersection capacity enhancements, and includes but is not limited to extensions, widening, intersection improvements, upgrading signalization and improving pavement conditions.

Fast food restaurant has the same meaning given it in chapter 34.

Feepayer means a person commencing a land development activity ~~which~~ that will generates or attracts traffic, and who is applying to the county, ~~or to any a~~ participating municipality, for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order for a type of land development activity specified in section 2-266(a), regardless of whether the person owns the land ~~which is~~ to be developed.

~~*General industrial* means any type of industrial use except a public or private warehouse.~~

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

Hotel/motel has the same meaning given it in chapter 34. This category includes timeshare units.

Industrial means the use of a building or structure primarily for the storage, packaging or distribution of goods; the assembly, fabrication or manufacture of goods, either from raw materials or other goods; and the basic processing of foodstuffs.

Land development activity ~~generating traffic~~ means any change in land use, or any construction of buildings or structures, or any change in the use of any building or structure that attracts or produces vehicular trips.

Lee Plan means the county comprehensive plan adopted pursuant to F.S. ch. 163, as amended from time to time.

Level of service means a qualitative measure that represents the collective factors of speed, travel time, traffic interruption, freedom to maneuver, safety, driving comfort and convenience and operating costs provided by a highway facility under a particular volume condition. Levels of service vary from A to F. (Level of service D, for example, represents high-density, but stable, flow. Speed and freedom to maneuver are severely restricted, and the driver or pedestrian experiences a generally poor level of comfort and convenience. Small increases in traffic flow will generally cause operational problems at this level.)

Living unit has the same meaning given it in chapter 34.

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

Mobile home has the same meaning given it in chapter 34. Mobile homes not located within an established mobile home park will be treated as a single family residence for impact fee

calculation purposes.

Mobile home move-on permit means an official document or certification authorizing any purchaser, owner, mover, installer or dealer to move a mobile home onto a particular site. It also includes a permit authorizing the tiedown of a park trailer in a mobile home zoning district.

~~*Multiple-family building* has the same meaning given it means and includes those definitions set forth in chapter 34 for multiple-family building, duplex, townhouse and two-family attached.~~

~~*Office* means the use of a building or structure primarily for the sale of professional, medical, financial or other services, as opposed to the sale or manufacture and storage of goods.~~

~~*Interior completion Permit, interior completion* means any permit issued by the building official, that will permit completion of a shell building, or unit within a shell building, by authorizing work to finish interior units, so that the building may receive a certificate of occupancy.~~

~~*Other retail* means any kind of retail except a convenience food and beverage store or a fast food restaurant.~~

Park trailer has the same meaning given it in chapter 34.

Participating municipality means any municipality which enters into an interlocal agreement with the county to collect within the municipality the impact fees imposed by this division.

~~*Public or private warehouse* has the same meaning given it in chapter 34.~~

Recreational vehicle has the same meaning given it in chapter 34.

Recreational vehicle development order means a final development order, as that term is used in chapter 10, permitting the placement of recreational vehicles on any area of land. It also means those municipal permits or orders ~~which are~~ equivalent to a county recreational vehicle development order, regardless of the names by which those permits are called within a municipality.

Retail means the use of a building or structure primarily for the retail or wholesale sale of goods or foods ~~which that~~ have not been made, assembled or otherwise changed in ways generally associated with manufacturing or basic food processing in the same building or structure.

Road has the same meaning given it in F.S. § 334.03(17).

Shell building means any commercial or industrial building, or portion of a building, so constructed to consist exclusively of exterior walls and unfinished interior units with rough staged utilities so as to preclude occupancy. This definition does not include agricultural or residential buildings.

Shopping Center means an integrated group of commercial establishments planned, developed, owned or managed as a unit. A shopping center consists primarily of retail establishments, but may also contain some other uses, such as restaurants, medical or general offices. Shopping center outparcels will be treated as separate uses.

Single-family residence has the same meaning given it in chapter 34.

Site-related improvements means capital improvements and right-of-way dedications for direct access improvements to the development in question. Direct access improvements include but are not limited to the following:

- (1) Site driveways and roads;
- (2) Median cuts made necessary by those driveways or roads;
- (3) Right turn, left turn, and deceleration or acceleration lanes leading to or from those driveways or roads;
- (4) Traffic control measures for those driveways or roads;
- (5) Access or frontage roads that are not shown as planned county-built or publicly owned roads on the county's access road location map, as amended;
- (6) Roads or intersection improvements whose primary purpose at the time of construction is to provide access to or within the development;
- (7) Unless required by the county pursuant to the criteria in section 10-283 of this code, access or frontage roads that enable a parcel to achieve site location standards for commercial development; and
- (8) Unless required by the county pursuant to the criteria in section 10-283 of this code, roads that provide frontage for newly created lots that would not normally have frontage.

Timeshare has the same meaning given it in chapter 34.

Townhouse has the same meaning given it in chapter 34.

~~*Traffic circulation plan map* means that document so identified in the current Lee Plan as may be amended from time to time.~~

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

Sec. 2-265. Imposition.

(a) Except as provided in sections 2-272 through 2-275, any person who, after September 16, 1985, seeks to develop land by applying to the county or any participating municipality for the issuance of a building permit, mobile home move-on permit or recreational vehicle development order ~~to make~~ for the purpose of making an improvement to land for one of the uses which is specified in section 2-266, and which will generate or attract additional traffic, ~~will be~~ is required to pay a roads impact fee in the manner and amount set forth in this division.

(b) No building permit, mobile home move-on permit or recreational vehicle development order for any activity requiring payment of an impact fee pursuant to section 2-266 ~~shall may~~ be issued by the county or any participating municipality ~~unless and~~ until the roads impact fee required by this division has been paid.

(c) In the case of structures, mobile homes or park trailers ~~which that~~ are moved from one location to another, a roads impact fee ~~shall will~~ be collected for the new location if the structure, mobile home or park trailer ~~is a type~~ constitutes one of the land development uses listed

in section 2-266, regardless of whether roads impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure, mobile home or park trailer so moved is replaced by an equivalent use, no roads impact fee ~~shall be~~ is owed for the replacement use. In every case, the burden of proving past payment of roads impact fees or equivalency of use rests with the feepayer.

Sec. 2-266. Computation of amount.

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

ROADS IMPACT FEE SCHEDULE

Land Use Type (unit)	Roads Impact Fee Due at 100% of Actual Full Cost (rounded to nearest dollar)
Residential:	
Single-family residence	\$ 1,712.00 per unit
Mobile home	775.00 per unit
Multiple-family building	1,075.00 per unit
Duplex, two-family attached or townhouse	1,251.00 per unit
Hotel/motel room	1,420.00 per unit
Timeshare	1,477.00 per unit
Recreational vehicle site	1,038.00 per unit
Office:	
General office:	
Under 100,000 sq. ft.	1,990.00 per 1,000 sq. ft.
100,000 sq. ft. and over	1,265.00 per 1,000 sq. ft.
Medical office	4,169.00 per 1,000 sq. ft.
Industrial:	
Public or private warehouse	722.00 per 1,000 sq. ft.
General industrial	1,079.00 per 1,000 sq. ft.
Retail:	
Convenience food and beverage store	11,177.00 per 1,000 sq. ft.
Fast food restaurant	7,947.00 per 1,000 sq. ft.
Other retail:	
Under 100,000 sq. ft.	3,297.00 per 1,000 sq. ft.
100,000 sq. ft. and over	4,041.00 per 1,000 sq. ft.

<u>Land Use Type</u> (Unit)	<u>Roads Impact Fee Due</u> <u>at 100% of Actual Full Cost</u>
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Residential

<u>Single-family</u>	<u>\$2,436 per unit</u>
<u>Multiple-family building, Duplex,</u> <u>Townhouse, Two-family attached</u>	<u>\$1,687 per unit</u>
<u>Mobile Home (1)/RV Park Site</u>	<u>\$1,221 per unit</u>
<u>Adult Congregate Living Facility (ACLF)</u>	<u>\$ 550 per unit</u>
<u>Hotel/Motel or Timeshare</u>	<u>\$1,834 per unit</u>

Retail Commercial

<u>Retail or Shopping Center (0-99,999 sf)</u>	<u>\$3,992 per 1,000 sf</u>
<u>Retail or Shopping Center (100,000-249,999 sf)</u>	<u>\$3,869 per 1,000 sf</u>
<u>Retail or Shopping Center (250,000-499,999 sf)</u>	<u>\$3,634 per 1,000 sf</u>
<u>Shopping Center (500,000+ sf)</u>	<u>\$3,354 per 1,000 sf</u>
<u>Bank</u>	<u>\$6,063 per 1,000 sf</u>
<u>Car Wash, Self-Service</u>	<u>\$7,749 per stall</u>
<u>Convenience Store w/Gas Sales</u>	<u>\$8,715 per 1,000 sf</u>
<u>Golf Course (2)</u>	<u>\$ 711 per acre</u>
<u>Movie Theater</u>	<u>\$5,600 per 1,000 sf</u>
<u>Restaurant, Fast Food</u>	<u>\$9,886 per 1,000 sf</u>
<u>Restaurant, Standard</u>	<u>\$4,905 per 1,000 sf</u>

Office/Institutional

<u>Office, General (0-99,999 sf)</u>	<u>\$2,254 per 1,000 sf</u>
<u>Office, General (100,000+ sf)</u>	<u>\$1,918 per 1,000 sf</u>
<u>Office, Medical</u>	<u>\$6,334 per 1,000 sf</u>
<u>Hospital</u>	<u>\$2,941 per 1,000 sf</u>
<u>Nursing Home</u>	<u>\$ 824 per 1,000 sf</u>
<u>Church</u>	<u>\$1,402 per 1,000 sf</u>
<u>Day Care Center</u>	<u>\$3,900 per 1,000 sf</u>
<u>Elementary/Secondary School (Private)</u>	<u>\$ 611 per 1,000 sf</u>

Industrial

<u>Industrial Park or General Industrial</u>	<u>\$1,681 per 1,000 sf</u>
<u>Warehouse</u>	<u>\$1,198 per 1,000 sf</u>
<u>Mini-Warehouse</u>	<u>\$ 419 per 1,000 sf</u>

Notes:

- (1) Mobile homes not located within an established mobile home park will be treated as a single family residence for impact fee calculation purposes.

- (2) Impact fees for the golf course (ie, tees, fairways, greens, accessory structures such as golf cart houses etc) are due and payable prior to the issuance of the development order for the golf course. The golf course club house and related club house facilities will not be included in the impact fee calculation for the golf course. Impact fees for the club house and related facilities will be calculated separately, at the time of building permit issuance for these facilities, based upon the uses encompassed by the club house facility.

Note: The fee schedule in effect prior to July 2000 will be deleted from the LDC. As of July 1, 2000 this predecessor fee schedule will no longer be of any force or effect, except as to determining fees for building permits issued prior to July 1, 2000 or as otherwise indicated below.

Building permit (or golf course or RV Park development order) applications submitted on or before June 30, 2000 will be assessed road impact fees based upon the fee schedule applicable on June 30, 2000, if the building permit (or golf course or RV Park development order) is issued on or before August 31, 2000. Building permit (or golf course or RV Park development order) applications submitted on or after July 1, 2000 will be subject to the amended roads impact fee schedule. All permits, and golf course or RV park development orders, issued on or after September 1, 2000 will be assessed in accordance with the amended roads impact fee schedule, regardless of when the application was submitted to the County.

Under this Article, impact fees become due and payable at the time of building permit issuance. For purposes of this code, a building permit is considered "issued" when the permit meets all of the following criteria: (1) the permit is approved by the County; (2) has been picked up by the owner or his agent; and, (3) all applicable fees have been paid. [Also, NOTE: The development order process is separate and distinct from the building permit process and not relevant with respect to establishing when impact fees become due and payable, except as to golf courses and RV parks.]

If a building permit is requested for a building with mixed uses, as defined in section 2-264, then the fee ~~shall~~ will be determined according to the schedule set out in this subsection by apportioning the total space within the building according to the space devoted to each principal use. However, a shopping center will be considered a principal use. If the type of development activity for which a building permit is applied is not specified on the fee schedule set out in this subsection, the county ~~administrator~~ manager shall will use the fee applicable to the most nearly comparable type of land use on the fee schedule set out in this subsection. The county ~~administrator~~ manager shall will be guided in the selection of a comparable type by the ~~report titled "1984 Trip Generation Characteristics, Lee County, Florida" (David Plummer & Associates), the Institute of Transportation Engineers' "Trip Generation, An Informational Report" (latest edition), studies or reports done by the United States Department of Transportation, the state department of transportation and the county department of transportation, and articles or reports appearing in the ITE Journal.~~ If the county ~~administrator~~ manager determines that there is no comparable type

of land use on the fee schedule set out in this subsection, then the county ~~administrator~~ manager ~~shall~~ must determine the fee by:

- (1) Using traffic generation statistics from the sources named in this subsection; and
- (2) Applying the formula set forth in subsection (d) of this section.

(b) When change of use, redevelopment or modification of an existing use requires the issuance of a building permit, mobile home move-on permit or recreational vehicle development order, the roads impact fee ~~shall~~ will be based upon the net increase in the impact fee for the new use as compared to the previous use. However, ~~should the change of use, redevelopment or modification result in a net decrease, no impact fee refunds or credits for past impact fees paid shall be made or created. The county administrator manager shall be guided in this determination by the sources named in subsection (a) of this section.~~ will be granted if a net decrease results.

(c) If the roads impact fee has been calculated and paid based on error or misrepresentation, it ~~shall~~ will be recalculated and the difference refunded to the original feepayer or ~~paid collected by the County~~ , whichever is applicable. If roads impact fees are owed, no participating municipality or county permits of any type may be issued for the building or structure in question, or for any other ~~part~~ portion of a development of which the building or structure in question is a part, ~~while the~~ until impact fees remain unpaid, and are paid. †The building official may bring any action permitted by law or equity to collect unpaid fees.

(d) If a feepayer opts not to have the impact fee determined according to subsection (a) of this section, then the feepayer must prepare and submit to the county manager an independent fee calculation study for the land development activity for which a building permit, mobile home move-on permit or recreational vehicle development order is sought. The independent fee calculation study must measure the impact of the development in question on the road system illustrated on Map 3A of the transportation element of the Lee Plan by following the prescribed methodologies and formats for the study established by the county administrative code. The feepayer must attend a pre-application meeting with the county manager or his designee to discuss the traffic engineering and economic documentation required to substantiate the request. The traffic engineering and economic documentation submitted must address all aspects of the impact fee formula that the county manager determines to be relevant in defining the project's impacts at the preapplication meeting and must show the basis upon which the independent fee calculation was made, including but not limited to the following:

- (1) *Traffic engineering studies.*
 - a. Documentation of trip generation rates appropriate for the proposed land development activity;
 - b. Documentation of trip length appropriate for the proposed land development activity; and
 - c. Documentation of the percent of new trip data appropriate for the proposed land development activity.
- (2) *Cost documentation studies.* ~~Documentation of the cost per lane per mile for~~

roadway construction and right-of-way costs appropriate for the proposed land development activity, including but not limited to the cost of mitigating environmental impacts; the cost of constructing access roads shown on the access road location map if required by the county and built to the standards for county maintained streets, bridges, interchanges, intersections and drainage facilities; and the costs of design, engineering and planning. The feepayer may also provide documentation substantiating that the costs to accommodate the impacts of the proposed development, or the revenue credits due to the development, differ from the average figures used in developing the fee schedule. This documentation must be prepared and presented by qualified professionals in their respective fields and must follow best professional practices and methodologies. The following formula must be used by the county manager to determine the roads impact fee per unit of development:

- a. ~~New lane miles equals ((generation rate times average trip length times percent new trips) divided by lane service volume at level of service D) divided by 2.~~
- b. ~~Cost equals new lane miles times cost per lane mile.~~
- c. ~~Net cost equals total cost minus total credits.~~
- d. ~~Impact fee equals net cost.~~

$$\text{IMPACT FEE} = \text{VMT} \times \text{NET COST/VMT}$$

Where:

<u>VMT</u>	=	<u>ADT x % NEW x LENGTH ÷ 2</u>
<u>ADT</u>	=	<u>Trip ends during average weekday</u>
<u>%NEW</u>	=	<u>Percent of trips that are primary, as opposed to passby or diverted-link trips</u>
<u>LENGTH</u>	=	<u>Average length of a trip on the approved road system</u>
<u>÷ 2</u>	=	<u>Avoids double-counting trips for origin and destination</u>
<u>NET COST/VMT</u>	=	<u>COST/VMT - CREDIT/VMT</u>
<u>COST/VMT</u>	=	<u>COST/LANE-MILE ÷ AVG LANE CAPACITY</u>
<u>COST/LANE-MILE</u>	=	<u>Average cost to add a new lane to the approved roadway system</u>
<u>AVG LANE CAPACITY</u>	=	<u>Average daily capacity of a lane at level of service "D"</u>
<u>CREDIT/VMT</u>	=	<u>\$/GAL ÷ MPG x 365 x NPV</u>
<u>\$/GAL</u>	=	<u>Capacity-expanding funding for roads per gallon of gasoline consumed</u>
<u>MPG</u>	=	<u>Miles per gallon, average for U.S. motor vehicle fleet</u>
<u>365</u>	=	<u>Days per year (used to convert daily VMT to annual VMT)</u>
<u>NPV</u>	=	<u>Net present value factor (i.e., 12.46 for 20 years at 5% discount)</u>

(e) ~~In the case of buildings or structures which are capable of being used by the public, but which are alleged to be restricted to private use which will be internal to a particular development (such as, for example, private clubhouse dining facilities which are sometimes built~~

~~as part of a planned development), and which therefore would have no off-site road impact, the full roads impact fee imposed by this division for like facilities which are open to the public shall be charged, unless the final development order which identifies the facility includes a condition limiting the facility exclusively to private on-site use and authorizes the building official to revoke the certificate of occupancy for the building or structure in question and to withhold all permits of all types on any and all phases of the development of which the building or structure is a part, until the correct impact fees are paid for public use of the facility, if public use occurs in violation of the condition. In the case of such facilities where a reduced impact fee is claimed because only part of the facility will be open to the public, the full impact fee nevertheless shall be charged unless the final development order contains a similar condition which identifies and restricts use of the part of the building or structure which will not be open to the public and grants similar authorization to the building official.~~

(e) All buildings, structures and facilities capable of being used by the public will be charged the full roads impact fee set forth for that use in the impact fee schedule. However, the county recognizes that there are instances where a building, structure or facility capable of public use is actually restricted to the private use of a specific development (i.e., private clubhouse dining facilities built as a planned development amenity). In these instances, a reduced impact fee may be claimed by the property owner in accordance with the following:

- (1) Filing of an independent fee calculation study ultimately approved by the County; or
- (2) Acceptance by the developers and property owner, as a condition of building permit or development order approval, that:
 - a. the developer or owner will submit documentation, acceptable to division of development service, that shows the proposed private use will have no off-site road impacts; and
 - b. the proposed use will be restricted to the sole use of the residents of the subdivision by covenants acceptable to the county attorney's office and enforced by a property owner's association or similar entity; and
 - c. the certificate of occupancy will be revoked if the Director of Development Services determines the proposed private use has changed in character to that of a public use and the certificate of occupancy may not be reinstated until the full impact fee is paid; and
 - d. the county will withhold all building permits and development approvals for all phases or parts of the development connected with, or entitled to use, the proposed private facility until the full impact fee is paid.

(f) The impact fee schedule set forth in section 2-266(a) will be administratively reviewed and reanalyzed every three years. As a result of this review, county staff is authorized and directed to pursue amendments to the impact fee schedule supported by the review and reanalysis. In accordance with this section, the first review of the roads impact fee schedule must be completed and any amendments to the schedule presented to the Board for adoption no later than May 1, 2003. Subsequent review dates will be calculated based upon the May 1, 2003 date.

Sec. 2-267. Payment.

(a) The feepayer must pay the roads impact fees required by this division to the building official prior to the issuance of any building permit, mobile home move-on permit or recreational vehicle development order for which the fee is imposed, except as provided in sections 2-272 through 2-275. No building permit, mobile home move-on permit or recreational vehicle development order may be issued ~~for any development listed in section 2-266(a)~~ by the county or by any participating municipality in the county until ~~such~~ the impact fee has been paid, except as provided in sections 2-272 through 2-275.

(b) In lieu of cash, up to 97 percent of the roads impact fee may be paid ~~by the use of~~ with credits which are created in accordance with the provisions of sections 2-272 through 2-275.

(c) Every participating municipality in the county ~~shall~~ must remit roads impact fee collections to the county at least once each month, less any amounts retained pursuant to section 2-270(d), unless another method is specified in an appropriate interlocal agreement.

(d) All funds collected pursuant to this division ~~shall~~ will be properly identified by roads impact fee benefit district and promptly transferred for deposit into the appropriate roads impact fee trust fund to be held in separate accounts as determined in section 2-269 and used solely for the purposes specified in this division.

Sec. 2-268. Benefit districts established.

(a) There are hereby established eight roads impact fee benefit districts as shown in Appendix K. Subdistricts may be created by interlocal agreement.

(b) District boundaries. Incorporated municipalities constitute sub districts for the purpose of this division. All or a portion of a municipality may be within the established districts set forth in Appendix K. Municipal district boundaries will expand and contract as the municipality boundaries are amended in accordance with Florida law.

Sec. 2-269. Trust funds accounts.

(a) There are hereby established eight roads impact fee trust funds ~~accounts~~, one for each roads impact fee benefit district established in section 2-268. Subsidiary accounts may be established for subdistricts created by interlocal agreement.

(b) Funds withdrawn from these accounts must be used in accordance with the provisions of section 2-270.

Sec. 2-270. Use of funds.

(a) Funds collected from roads impact fees ~~shall~~ must be used for the purpose of capital improvements to approved roads. Such improvements ~~shall~~ must be of the type ~~as are~~ made necessary by the new development. ~~No funds shall~~ may not be used for periodic or routine maintenance as defined in F.S. § 334.03(15) and (20). Except as provided in subsection (c) of this section, impact fee collections, including any interest earned thereon; less administrative costs retained pursuant to subsection (d) of this section, ~~shall~~ must be used exclusively for capital improvements within the roads impact fee district from which funds were collected, or for projects in other roads impact fee districts ~~which that~~ are of direct benefit to the roads impact fee district from which the funds were collected. These impact fee funds ~~shall~~ must be segregated from other funds and ~~shall be~~ expended as provided in the appropriate administrative code. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements to approved roads. If these funds or pledge of funds are combined with other revenue sources in a dual or multipurpose bond issue or other revenue-raising device, the proceeds raised thereby ~~shall~~ must be divided and segregated, ~~in such a fashion~~ that the amount of ~~such the~~ proceeds reserved for road purposes bears the same ratio to the total funds collected that the roads impact fee funds used or pledged bear to the total funds used or pledged.

(b) Each fiscal period the county ~~administrator~~ manager ~~shall~~ will, after consultation with participating municipalities and consistent with the provisions of any interlocal agreements made with them, present to the Board of County Commissioners a proposed capital improvement program for roads, assigning funds, including any accrued interest, from the several roads impact fee trust funds to specific road improvement projects. Monies, including any accrued interest, not assigned in any fiscal period ~~shall~~ must be retained in the same roads impact fee trust funds until the next fiscal period, except as provided by the refund provisions of this division.

(c) Unless prohibited by an appropriate interlocal agreement, monies placed in one roads impact fee trust fund may be borrowed and placed in another roads impact fee trust fund so long as the Board of County Commissioners first determines in a public meeting that ~~such the~~ loans will not disrupt or otherwise alter the timing of provision of capital facilities to the lending district and will be repaid from specifically identified revenue sources within two years, either from the borrowing district or from some other source, with interest at a rate established by the board at the time it authorizes the loan; provided, however, that, if the interest is to be paid from roads impact fees collected in the borrowing district, the board first finds that the amount of ~~such the~~ interest ~~so to be~~ paid will be equal to or less than the benefit given to feepayers in the borrowing district by virtue of the earlier provision of capital facilities in the borrowing district made possible by virtue of the loan. ~~So as to~~ To secure repayment of the loan on the terms established for it by the board, the motion authorizing the loan implicitly ~~shall~~ must include direction and authorization to the county's fiscal officers to perform all acts necessary to comply with the loan terms. Loans ~~shall~~ may not be renewed.

(d) The county or the participating municipality collecting roads impact fees ~~shall be~~ is entitled to retain up to three percent of roads impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee to offset the costs of administering this division.

Sec. 2-271. Refund of fees paid.

(a) If a building permit, mobile home move-on permit or recreational vehicle development order expires, is revoked or is voluntarily surrendered; and is therefore voided, and no construction or improvement of land (including moving a mobile home onto land) has been commenced, then the feepayer ~~shall be~~ is entitled to a refund of the roads impact fee paid as a condition for its issuance, except that three percent of the fee paid ~~shall~~ will be retained as an administrative fee to offset the cost of processing the refund. Subject to the limitations set forth in subsection (b) of this section, the feepayer ~~shall be~~ is entitled to a refund equal to 97 percent of the roads impact fee paid. No interest ~~shall~~ will be paid to the feepayer on refunds due to noncommencement.

(b) ~~No refund shall be allowed for any expired permit or development order which was obtained by the use of credits, except for that portion of the roads impact fee which was not paid by credit, in which case the three percent administrative fee described in subsection (a) of this section shall be deducted from the portion of the fee which was not paid by credit. If a permit or development order expires, then a refund of the roads impact fee is allowed, if no construction has commenced, to the extent the fee was paid in cash (i.e., noncredit payment). However, the 3% administrative fee described in subsection (a), will be deducted from the amount eligible for refund prior to the issuance of the roads impact fee refund.~~

(c) Any funds not expended or encumbered by the end of the calendar quarter immediately following ten years from the date the roads impact fee was paid ~~shall~~ will, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of six percent per annum.

Sec. 2-272. Prepayment of fees.

~~If required or specifically permitted by the terms of a development order adopted pursuant to F.S. ch. 380, or by an agreement made by the county pursuant to its home rule powers granted by article VIII of the constitution of the state and F.S. § 125.01, or by a development agreement made pursuant to F.S. §§ 163.3220--163.3243, the Florida Local Government Development Agreement Act, and any ordinance adopted under the enabling authority thereof, any person who desires to prepay roads impact fees may do so by delivering a certified check or cashier's check to the building official with a letter identifying the roads impact fee benefit district(s) in question and the amount of roads impact fees prepaid. The county will issue credit equal to the prepayment subject to the express terms of the development order, agreement or development agreement.~~

Prepayment of roads impact fees will be accepted by the County in accordance with the following:

- (a) Prepayment is specifically required or permitted by
 - (1) A DRI development order adopted in accordance with F.S. Chapter 380;
 - (2) An agreement between the developer and county made in accordance with Florida State Constitution Article VIII and F.S. §125.01; or

(3) A development agreement in compliance with F.S. §§163.3220-163.3243 (The Florida Local Government Development Agreement Act).

(b) Prepayment is made by certified check or cashier's check accompanied by a letter identifying the applicable roads impact fee benefit district, the amount to be prepaid and the document allowing prepayment delivered to the building official.

(c) The county will issue credit equal to the prepayment, subject to the express terms of the development order, agreement or development agreement.

Sec. 2-273. Deferral of fees.

(a) Deferrals will be limited to the following:

(1) Persons seeking building permits for a shell building as defined herein may, at their option, defer payment of roads impact fees until issuance of any interior completion permits.

(2) No interior completion permit will be issued until the applicant pays the corresponding road impact fee that is due, or demonstrates to the building official that the road impact fee due has already been paid for the unit(s) to be completed.

(b) Deferrals must be claimed by the feepayer at the time of the application for a commercial or residential building permit, mobile home move-on permit or recreational vehicle development order. Any deferrals not so claimed ~~will be~~ are deemed waived by the feepayer.

Sec. 2-274. Exemptions.

(a) The following are exempt from payment of the roads impact fee:

(1) Alterations or expansion of an existing building or use of land where no additional living units will be produced, where the use is not changed, and where the alteration or expansion will not produce more vehicular trips than the existing use.

(2) The construction of accessory buildings or structures that will not produce more vehicular trips than those produced by the principal building or use of the land.

(3) The replacement of a(n) existing lawfully permitted building, mobile home, park trailer or structure, where the original permit was issued on or before September 16, 1985.

(4) The replacement of a building, mobile home, park trailer or structure, ~~which that~~ was constructed or placed after September 16, 1985, where the correct roads impact fee was paid or otherwise provided for; with a new building, mobile home, park trailer or structure of the same use and at the same location, provided that no additional vehicular trips will be produced than those produced by the original use of the land.

(5) An amendment to a recreational vehicle development order, provided that the

amendment does not increase the number of recreational vehicle units permitted.

- (6) A building permit obtained by or for the United States of America, the State of Florida or the Lee County School Board.
- (7) A building permit, mobile home move-on permit or recreational vehicle development order for which the roads impact thereof has been or will be paid or provided for pursuant to a written agreement, zoning approval or development order which, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact.
- (8) A building permit, mobile home move-on permit or recreational vehicle development order that does not generate or attract additional traffic.
- (9) A building permit for residential construction in Harlem Heights, Charleston Park and the Dunbar Enterprise Zone, as those areas are described in Appendix J.
- (10) A building permit for construction included in the City of Sanibel's below market rate housing (BMRH) program established under the Sanibel land development code.
- (11) Building permits issued in a redevelopment area or enterprise zone, or for low- or moderate-income housing, in the City of Fort Myers, but only when the permit is identified by the type of land use and by the land area or housing or redevelopment program in question by explicit language included in an appropriate inter-local agreement.

(b) Exemptions must be claimed by the feepayer at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Any exemptions not so claimed ~~will be~~ is deemed waived by the feepayer.

Sec. 2-275. Credits.

- (a) Credits are subject to the following:
 - (1) *Prohibition.* No credit will be given for:
 - a. Site-related improvements,
 - b. Local roads,
 - c. Access streets needed to achieve site location standards for commercial development or for internal circulation unless required by the county pursuant to criteria in chapter 10 ~~of this code.~~
 - (2) *Capital improvement to approved roads.* All ~~other~~ capital improvements for approved roads, except for those improvements deemed site-related pursuant to a participating municipality, state or county development or zoning approval, may generate roads impact fee credits in amounts to be established pursuant to

subsection (a)(3) or by an appropriate interlocal agreement. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the county, unless otherwise provided for in an appropriate interlocal agreement.

If the improvement is not site-related and is required under a participating municipality, state or county development or zoning approval, credits will be given to the extent required by law.

(3) *Conditions of credit approval.* Credit for road construction or land dedication is subject to the following:

a. *Road construction.* ~~When a person requests credits for construction of an approved road, he~~ A request submitted for road impact fee construction credits must include a detailed project description in sufficient detail and with complete cost estimates, prepared by a qualified professional, so as sufficient to enable the county manager to verify the cost estimates and thereby determine the appropriate amount of the credit amount. The county manager retains the right to ~~independently determine the amount of credit to be approved or recommended by securing secure~~ other engineering and construction cost estimates using meeting the fee methodology described set forth in section 2-266(d) in order to independently determine the credit amount to recommend or approve.

1. *Class 1 roads.* The county manager may approve roads impact fee credits ~~administratively in the case of for construction costs applicable to class 1 roads, and This includes roads that are required to be constructed or the right-of-way therefor dedicated pursuant to a condition of zoning condition or development order approval.~~ Construction credits for class 1 roads will be given for the full actual cost of construction, as determined and verified by the county manager.

2. *Class 2 or 3 roads.* In the case of class 2 and 3 roads ~~or roads that are not required to be dedicated as a condition of zoning or development order approval,~~ the county manager will make a recommendation to the board of county commissioners on the appropriate amount of credits.

Construction credits for class 2 and class 3 roads may be given at the discretion of the board of county commissioners on a case-by-case basis if the board finds that: (1) the construction will not increase public infrastructure costs to serve the new development, and (2) the grant of credits will not significantly affect future roads impact fee collections within the roads impact fee benefit district in which the credit is created.

The amount of credit approved by the board is limited to the actual verified costs of construction and may be reduced by the percentage

that the new road's total capacity is expected to be utilized by local traffic from future development on adjacent lands owned or controlled by the grantor. This amount may be further reduced, at the board's discretion, to reflect the county DOT's Department of Transportation's estimate of the value of the accelerated construction of the road in relation to the county's schedule of planned road construction.

b. *Land dedication.* ~~When a person requests credit for~~ The following documents must be submitted to support an application for road impact fee credits applicable to land dedication for approved roads; he must present the following:

1. A signed and sealed ALTA survey prepared by a licensed Professional Surveyor and Mapper and certified to the county, encompassing of the land to be dedicated to the county and covered by the title insurance policy, ~~certified by a professional land surveyor or a registered land surveyor, each of whom are licensed in the state;~~
2. A specimen of the deed ~~which he proposes to use~~ that will be used to convey title to the appropriate governmental body;
3. An ALTA Form B title insurance policy in an amount equal to the approved value of the credits, to be issued by a company satisfactory to the county attorney and verifying that the proffered deed will convey unencumbered fee simple title to the appropriate governmental body;
4. Property appraisals prepared by qualified professionals that appraise the road as part of the whole development of regional impact, planned development or parent parcel; and
5. ~~A certified copy of the most recent assessment of the property for tax purposes.~~ document from the tax collector stating the current status of the property taxes

These submittals will be reviewed by the county manager in making the decision to approve credits or to make a recommendation to the Board of County Commissioners.

Except where a dedication is made pursuant to a condition of zoning approval or development of regional impact development order, the appraiser must value the land at its current zoning without any enhanced value that could be attributed to improvements on the parent parcel. If the land in question is subject to a valid agreement, zoning approval or development order ~~that prescribes~~ insing a different valuation, that document will control the date of valuation. If the dedication is made pursuant to a condition of zoning or other development approval and is not a site-related

improvement and the condition does not specifically prescribe otherwise, then the land value will be valued based upon the value of the land as it existed prior to the approval ~~that contains~~ ing the condition of dedication. The county manager retains the right to independently determine the amount of credit to be approved or recommended by securing other property appraisals for right-of-way dedications using the methodology described in section 2-266(d).

Credit for dedication of right-of-way will be limited to the minimum amount of right-of-way needed by Lee County DOT. Credit for class 1 and class 2 roads will be given for the full value of the land in question, as determined by the methodology and procedures set out in this subsection. Credit for dedication of right-of-way for class 3 roads may be given by the Board of County Commissioners on a case-by-case basis if the board finds that: (1) the dedication will not increase public infrastructure costs to serve the new development, and (2) the granting of credits will not significantly affect future roads impact fee collections within the roads impact fee benefit district in which the credit is created.

The amount of credit approved by the board is limited to the value of the land in question, as determined by the methodology and procedures set out in this subsection, and may be reduced by the percentage the capacity of the road in question is reasonably expected to be utilized by local traffic from future development on adjacent lands owned or controlled by the grantor. This amount may be further reduced, at the board's discretion, to reflect the board's estimate of the value of the accelerated acquisition of the road in relation to the county's schedule of planned road construction. In every case, roads impact fee credits must be calculated consistent with F.S. § 380.06(16).

c. *Impact fee credit application requirement waiver.* The County Attorney's office, with the prior approval of DOT, may waive one or more of the impact fee credit application requirement if the requirement is clearly not necessary to protect a county interest. A waiver granted by the County Attorney's office must be in writing, addressed to the applicant, with a copy to DOT.

- (4) *Timing of credit issuance.* Credits for construction will be created when the construction is complete and accepted by the county for maintenance in accordance with AC 11-7 or when the feepayer posts security for the costs of such construction. Credits for land dedication will be created when the title to the land has been accepted by the county and recorded in the official records of the clerk of circuit court. No credits for construction or dedication will be approved or created until the county has established the location of the road in question using the procedures provided therefor by law. Security in the form of cash, a performance bond, irrevocable letter of credit or escrow agreement must be posted with the Board of County Commissioners, made payable to the county in an amount approved by the county manager equal to 110 percent of the full cost of construction. If the road construction project will not be constructed within one year of the acceptance of the offer by the county, the amount of the security will be increased by ten percent,

compounded for each year of the life of the security. The security must be reviewed and approved by the county attorney's office prior to acceptance by the county. If the road is to be owned by a participating municipality, the county may assign its rights in such security to the municipality if permitted by law.

- (5) *Transferability.* Roads impact fee credits created on or after October 1, 1989 are transferable. ~~Road impact fee credits generated within the boundaries of the Town of Fort Myers Beach may not be transferred for use in unincorporated Lee County.~~ Transferable credits may be sold, assigned or conveyed as set forth in the county administrative code. Credits may be used to pay or offset roads impact fees in the same roads impact fee district in which they are earned, or in other districts directly benefitted by the capital improvements for which the credits were granted, and consistent with any interlocal agreements made with participating municipalities. Credits may not be used outside the district earned unless the proposed use is found to be in compliance with this division by the county attorney and the director of the county ~~division~~ department of transportation. Unless a longer period is specifically authorized by the Board of County Commissioners, transferable credits must be used within ten years of the date created. The creation date is the date the instruments conveying legal title to the land or improvements given in exchange for credits were recorded in the county's official record book. The creation date for credits pursuant to prepayment of fees under section 2-272 will be the date the prepayment is received by the county. If roads impact fees are increased before credits are used, the unused transferable credits will be increased at the time they are used in the same percentage that the fee prescribed in section 2-266 is increased for the particular listed use, rounded to the nearest dollar. For example, see Exhibit A of Ordinance No. 90-24, on file in the county clerk's office. If roads impact fees are decreased, unused transferable credits will not decrease in value. Credits not used within ten years of issue will be canceled by the building official.

Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, non-refund provisions and other restrictions prescribed in this division.

- (6) *Use of credits.* Unless converted to transferable form pursuant to subsection (a)(7), roads impact fee credits created prior to October 1, 1989, must be used, on a first applied for, full credit basis. This rule applies to permits requested on any part of the original tract. For purposes of subsections (a)(6) and (a)(7), "original tract" means the area developed or approved for development, as part of a dedication of land or improvements for which the credits were created, to the extent that credits are available. This will be done regardless of whether the feepayer owned the land at the time the credit was created, and regardless of whether the ratio of the credit requested to the original full credit created is disproportionate to the ratio of the land covered by the requested permit to the original tract. In addition, this rule will apply regardless of whether the owner of the original tract has assigned or failed to assign the credits to the current owner of the land covered by the requested permit. In determining ownership or agency for purposes of administering pre-October 1, 1989 credits, the building official may rely upon apparent authority; but he may, in his sole discretion, require proof of ownership or agency. The burden of proving ownership or agency lies exclusively on the person claiming it.

- (7) *Conversion of credits.* Credits created prior to October 1, 1989, may be converted to transferable form unless conversion is prohibited by the conditions of a development order issued pursuant to F.S. ch. 380, or some other participating municipality, state or county development approval. The conversion must be accomplished by an agreement between the county and all owners of the undeveloped land remaining from the original tract of land that was developed or permitted for development as part of the dedication of land or improvements for which the credits were created. The agreements must state that the person who acquires transferable credits will defend and indemnify the county from claims made by other persons asserting an interest in the pre-October 1, 1989, credits.
- (8) Any person who offers land or improvements in exchange for credits may withdraw the offer prior to the transfer of legal title to the land or improvements and pay the impact fees required by this division.
- (b) Feepayers claiming credits must submit documentation sufficient to permit the building official to determine whether the credits claimed are due and, if so, the amount of the credits.
- (c) Credits must be claimed by the feepayer at the time of the application for a building permit, mobile home move-on permit or recreational vehicle development order. Any credits not so claimed will be deemed waived by the feepayer.
- (d) Once used, credits must be canceled and may not be reestablished even if the permit for which they were used expires without construction.
- (e) Any person seeking credits for dedication of land must meet with the county attorney, ~~division~~ department of transportation, and county lands staff to seek agreement on appraisal methodology and assumptions before preparing any appraisals for valuation of land to be dedicated.
- (f) *Reciprocity with municipalities.* Credits issued by municipalities will be recognized by Lee County if:
- (1) The credits are issued for improvements that would qualify under section 2-270.

- (2) The issuing municipality has adopted a reciprocal regulation providing for similar recognition of Lee County road impact fee credits or has entered into an agreement with the county allowing reciprocal transfer of impact fee credits.

Sec. 2-276. Appeals.

Decisions made by the county manager or his designee, or by the building official, in the course of administering this division may be appealed in accordance with the procedures set forth in Chapter 34 for appeals of administrative decisions. Every interlocal agreement made pursuant to this division must specifically incorporate this appeal procedure. Each participating municipality must agree to be bound by the results of the administrative appeal. Interlocal agreements must provide further that, if the administrative appeal decision is further appealed to the circuit court by another person, the appeal will be defended by the county, at its expense, unless the municipality elects to provide the defense of the case.

Sec. 2-277. Enforcement of division; penalty; furnishing false information.

A violation of this division ~~shall be~~ is punishable according to section 1-5; however, in addition to or in lieu of any criminal prosecution, the county, or any ~~roads-impact~~ feepayer, ~~shall have~~ has the power to sue for relief in civil court to enforce the provisions of this division. Knowingly furnishing false information to the county ~~administrator~~ manager or his designee, the building official or any municipal official who is charged with the administration of this division on any matter relating to the administration of this division ~~shall constitute~~ s a violation thereof.

Secs. 2-278--2-300. Reserved.

SECTION TWO: 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 THREE: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION FOUR: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be

corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION FIVE: EFFECTIVE DATE

The ordinance will take effect on July 1, 2000

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

JOHN E. MANNING	<u>Aye</u>
DOUGLAS ST. CERNY	<u>Aye</u>
RAY JUDAH	<u>Aye</u>
ANDREW W. COY	<u>Aye</u>
JOHN E. ALBION	<u>Aye</u>

DULY PASSED AND ADOPTED THIS 25th day of April, 2000.

ATTEST:
CHARLIE GREEN, CLERK

By: *Charlie Green*
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: *John E. Albion*
Chairman

APPROVED AS TO FORM:

By: *David C. [Signature]*
Office of County Attorney