

LEE COUNTY ORDINANCE 88-62

AN ORDINANCE RELATING TO THE CLASSIFICATION AND PRESERVATION OF HISTORIC AND ARCHAEOLOGICAL DISTRICTS, SITES AND STRUCTURES LOCATED WITHIN THE UNINCORPORATED AREAS OF LEE COUNTY, FLORIDA; PROVIDING A TABLE OF CONTENTS; PROVIDING A SHORT TITLE; PROVIDING LEGISLATIVE INTENT, PURPOSE AND SCOPE; PROVIDING DEFINITIONS; PROVIDING FOR THE ESTABLISHMENT OF A HISTORIC PRESERVATION BOARD AND ESTABLISHING THE POWERS AND DUTIES OF THE HISTORIC PRESERVATION BOARD; PROVIDING FOR THE ADOPTION OF RULES AND REGULATIONS; PROVIDING FOR THE DESIGNATION OF HISTORIC RESOURCES; PROVIDING PROCEDURES AND CRITERIA FOR DESIGNATION; PROVIDING FOR THE ISSUANCE OF CERTIFICATES OF APPROPRIATENESS AND CERTIFICATES TO DIG; PROVIDING EXEMPTIONS FOR MAINTENANCE AND MINOR REPAIRS; PROVIDING FOR DESIGNATION HEARINGS; PROVIDING FOR APPEALS; PROVIDING AN INCENTIVE PROGRAM FOR DESIGNATED HISTORIC RESOURCES; PROVIDING FOR ENFORCEMENT; PROVIDING FOR STOP WORK ORDERS; PROVIDING FOR PENALTIES, SEVERABILITY, CONFLICT OF LAWS AND INCLUSION IN CODE AND PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, there are located within Lee County certain historic and prehistoric archaeological sites and historic areas, structures, buildings, improvements and appurtenances, both public and private, both individual properties and districts, which are reminders of past eras, events and persons important in local, state and national history; or that provide significant examples of past architectural styles and are unique and irreplaceable assets to the county; and

WHEREAS, these sites, areas, structures, buildings, improvements and appurtenances provide concrete evidence for this and future generations of our physical surroundings in

past generations and of our cultural development and these historic resources are the tangible remains of the prehistoric and historic heritage of Lee County and the State of Florida; and

WHEREAS, the recognition, protection, enhancement, and sensitive use of such resources is in the public interest, and is essential to the health, safety, and welfare of the residents of Lee County; and

WHEREAS, Lee County has demonstrated its commitment to historic preservation by conducting historic and archaeological surveys, creating a Historic Preservation Commission to advise the County Commission on historic preservation policy issues, and by adopting a historic preservation element as part of its Comprehensive Plan; and

WHEREAS, Lee County intends to pursue Certified Local Government status in order to assume an active role in the process of nominating local properties to the National Register of Historic Places and thereby qualify for grant programs available to Certified Local Governments; and

WHEREAS, it is a matter of public policy that the identification, evaluation, preservation, protection, ~~enhancement and sensitive use of historic and archaeological~~ sites and districts are public necessities because of their value as visual reminders of the heritage of this community.

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 NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY

COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:

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This ordinance shall be known and may be cited as the "Lee County Historic Preservation Ordinance."

SECTION THREE: PURPOSE AND INTENT

The purpose of this ordinance is to identify, evaluate, preserve and protect historical and archaeological sites and districts, and to promote the cultural, health, moral, economic, educational, aesthetic and general welfare of the public by:

- A. Creating a Historic Preservation Board with the power and duty to review historic sites, areas, structures and buildings for possible designation as historic resources;
- B. Empowering the Historic Preservation Board to determine the historical significance of a designated historic resource;
- C. Protecting designated historic resources by requiring the issuance of Certificates of Appropriateness and Certificates to Dig before allowing alterations to those resources;
- D. Encouraging historic preservation by creating programs of technical assistance and financial incentives for preservation practices;
- E. Stabilizing and improving property values through the ~~revitalization of older residential and commercial~~ neighborhoods;

- F. Enhancing the county's attraction to visitors and the ensuing positive impact on the economy as a result of historic preservation activities;
- G. Creating and promoting cultural and educational programs aimed at fostering a better understanding of the community's heritage;
- I. Promoting the sensitive use of historic and archaeological sites, resources and districts for the education, pleasure and welfare of the people of Lee County.

The further purpose of this ordinance is to obtain Certified Local Government status pursuant to the "Procedures for Approved State and Local Government Historic Preservation Programs" 36 C.F.R. 67 (1987) and the National Historic Preservation Act of 1966, as amended, 16 U.S.C. §470.

SECTION FOUR: SCOPE OF REGULATIONS

- A. This ordinance shall govern and be applicable to all property located in unincorporated Lee County, Florida. The municipalities of Fort Myers, Sanibel and Cape Coral are excluded from the provision of this ordinance except where such municipalities may undertake activities outside of their corporate limits.

B. Nothing contained in this Ordinance shall be deemed to supersede or conflict with applicable building and zoning codes except as specifically provided herein.

SECTION FIVE: DEFINITIONS

For the purposes of this ordinance, the following terms are defined as follows:

Aggrieved Party: Anyone who has a legally recognizable interest which is or may be adversely affected by an action of the Historic Preservation Board.

Archaeologist: A person who is qualified under the professional standards of the Florida Archaeological Council or the Society of Professional Archaeologists to conduct archaeological surveys, assessments or excavations or is recognized as qualified to perform those tasks by Lee County.

Archaeological Site: An individual historic resource recognized for its prehistoric or historic artifacts and features.

Area of Archaeological Sensitivity: An area identified in "An Archaeological Site Inventory and Zone Management Plan For Lee County, Florida" (Piper Archaeological Research, Inc. 1987), as known or being likely to yield information on the history and prehistory of Lee County based on prehistoric settlement patterns and existing topographical features. Areas

of archaeological sensitivity are divided into the following categories:

A. Sensitivity Level 1: Those areas containing known archaeological sites that are considered to be significant or potentially significant historic resources. These areas include sites listed on the National Register of Historic Places and those considered eligible or potentially eligible for National Register listing or local historic resource designation.

B. Sensitivity Level 2: Those areas containing known archaeological sites that have not been assessed for significance but are likely to conform to the criteria for local designation or areas where there is a high likelihood that unrecorded sites of potential significance are present.

Building: Any structure, either temporary or permanent, having a roof intended to be impervious to weather, and used or built for the shelter or enclosure of persons, animals, or property of any kind.

Building Official: The officer charged with the administration and enforcement of the Lee County Construction Code, Ordinance #87-9, as amended, or as may be further amended, renumbered or replaced.



Certificate of Appropriateness: A written authorization by the Historic Preservation Board or County staff to the owner(s) of a designated property, or a contributing property within a designated historic district (as that term is defined in this ordinance), allowing a proposed alteration, relocation, or the demolition of a building, structure or site. Certificates of Appropriateness are divided into the following two classes:

- A. Regular Certificate of Appropriateness: A Certificate of Appropriateness issued by the County staff allowing activities which require the issuance of a building permit but which are classified as "ordinary maintenance and repair", under the provisions of this Ordinance and based on the criteria listed in the Secretary of the Interior's Standards for Rehabilitation, 36 C.F.R. 67 (1983), or as amended, renumbered or replaced.
- B. Special Certificate of Appropriateness: A Certificate of Appropriateness issued directly by the Historic Preservation Board and required for any proposed work that will result in the alteration, demolition, relocation, reconstruction, new construction or excavation of a designated historic resource based on

the criteria listed in the Secretary of the Interior's Standards for Rehabilitation 36 C.F.R. 67 (1983), or as amended, renumbered or replaced.

Certificate to Dig: A certificate issued by the County staff or the Historic Preservation Board, authorizing certain clearing, digging, archaeological investigation or archaeological development projects that may involve the exploration of established or suspected archaeological sites in areas of Archaeological Sensitivity Levels 1 or 2.

Certified Local Government: A designated local government meeting the requirements of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470, which extends some aspects of the federal and state responsibilities for historic preservation to qualified local governments. Under the program, local governments are certified to review and make recommendations to the Florida National Register Review Board concerning nominations to the National Register of properties located within the confines of their local jurisdictions.

Contributing Property: Means and includes any building, structure or site which contributes to the overall historic significance of a designated historic district and was present during ~~the period of historic significance and possesses~~ historic integrity reflecting the character of that time or is

capable of yielding important information about the historically significant period or independently meets the criteria for designation as a historic resource.

Demolition: The complete removal of a building, structure, or portions thereof from a site.

Demolition by Neglect: The willful abandonment of a building or structure by the owner(s) resulting in such a state of deterioration that its self-destruction is inevitable or where demolition of the building or structure to remove a health and safety hazard is a likely result.

Designation Certificate: A certificate issued by the Historic Preservation Board declaring a building, structure, site or district to be a historic resource as defined in this Ordinance.

Designation Report: A written document indicating the basis for the findings of the Historic Preservation Board concerning the proposed designation of a historic resource pursuant to this ordinance.

Exterior: All outside surfaces of a building or structure visible from a public right-of-way or the street easement of the building or structure.

Historic District: A geographically definable area designated pursuant to this ordinance possessing a significant concentration, linkage, or continuity of sites, buildings,

structures, or objects united by past events or aesthetically by plan or physical development. A district may also be comprised of individual elements separated geographically but linked by association or history. To qualify as an historic district, an area may contain both contributing and noncontributing properties.

Historic Preservation Board: A Board of citizens appointed by the Lee County Board of County Commissioners to administer the provisions of this ordinance. For brevity, the Historic Preservation Board will be referred to hereafter as the "Board."

Historic Resource Data Base: The compilation of data gathered on historical and archaeological sites in Lee County, Florida, based on the findings of the "Historical and Architectural Survey, Lee County (1986)," "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida (1987)," and any subsequent historic or archaeological survey.

Historic Resource: Any prehistoric or historic district, site, building, structure, object, or other real or personal property of historical, architectural, or archaeological value. Historic resources may include, but are not limited to, monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the

history, government, or culture of Lee County, the State of Florida, or the United States.

National Register of Historic Places: A federal listing maintained by the U.S. Department of the Interior of buildings, sites, structures, and districts that have attained a quality of significance as determined by the Historic Preservation Act of 1966 as amended, 16 U.S.C. 470, or as may be amended, renumbered or replaced, and its implementing regulation, 36 CFR 60, "National Register of Historic Places", or as may be amended, renumbered or replaced.

Noncontributing Property: Means and includes any building, structure or site which does not contribute to the overall historic significance of a designated historic district due to alterations, disturbances or other changes and, therefore, no longer possesses historic integrity or was not present during the period of historic significance or is incapable of yielding important information about that period.

Ordinary Maintenance and Repairs: Work done to prevent deterioration, decay, or damage to a building or structure or any part thereof by restoring the building or structure as nearly as practicable to its condition prior to such deterioration, decay or damage.

Owner or Owners: Those individuals, partnerships, corporations or public agencies holding fee simple title to

real property. Owner or owners does not include individuals, partnerships, corporations, or public agencies holding easements or less than a fee simple interest (including leaseholds) in real property.

Staff: The County staff person or persons designated by the County Administrator serve as staff for the Historic Preservation Board and to administer the provisions of this Ordinance in cooperation with the Building Official and the Zoning Director.

Structure: That which is built or constructed. The term "structure" shall be construed as if followed by the words "or part thereof."

Undue Economic Hardship: An onerous and excessive financial burden that would be placed upon a property owner by the failure to issue a Special Certificate of Appropriateness for Demolition, thereby amounting to the taking of the owner's property without just compensation.

Zoning Director: The Director of the Zoning and Development Review Division or his or her successor or designee as the person responsible for administering the provisions of the Lee County Zoning Ordinance.

#### SECTION SIX: HISTORIC PRESERVATION BOARD

A. Establishment.

There is hereby created a Historic Preservation Board, referred to hereafter as the "Board," as an agency of

the county government in and for Lee County, Florida.

The Board is hereby vested with the power, authority and jurisdiction to designate, regulate and administer historical, cultural, archaeological and architectural resources in Lee County, Florida, as prescribed by this Ordinance, under the direct jurisdiction and control of the Board of County Commissioners.

B. Qualifications of Board Members.

1. The Board shall consist of seven (7) members appointed by the Board of County Commissioners. Each member of the Board shall hold office only so long as he or she is a resident of Lee County, Florida. Appointments shall be made on the basis of a potential member's civic pride, involvement in community issues, integrity, experience, and interest in the field of historic preservation. One Board member shall be an architect registered to practice in Florida. The County Commission shall endeavor to appoint one Board member from each of the following categories:

- a. history or archaeology.
- b. ~~real estate, land development or finance.~~
- c. law or urban planning.

d. engineering, architecture, building construction, or landscape architecture.

The two remaining positions shall be filled by citizens at large. All members of the Board must comply with the financial disclosure laws of the State of Florida.

2. Members shall serve overlapping terms of three years. Initially, two members shall be appointed to one-year terms; two members shall be appointed to two year terms and three members shall be appointed to full three year terms. After their initial appointments, all appointments shall be made for three years. A Board member shall be eligible for reappointment. Members of the Board shall serve without compensation but shall be reimbursed for necessary expenses incurred in the performance of their official duties, as shall be determined and approved by the Board of County Commissioners. Prior to the expiration of his or her term, a member of the Board may be removed from office only by a three-fifths vote of the entire membership of the County Commission. If, however, a member of the Board fails to attend three (3) consecutive meetings, or four (4)



meetings in any one calendar year, the chairman shall certify the same to the County Commission. Upon such certification, that member shall be deemed to have been removed from the Board and the County Commission shall fill the vacancy by appointment.

C. Organization.

The members of the Board shall elect a chairman and a vice-chairman for a one-year term each. The chairman shall preside at all meetings and shall have the right to vote. The vice-chairman shall preside in the absence of the chairman. The chairman and vice-chairman may be re-elected for an additional one year term each, but may not serve for more than two consecutive years. Lee County shall provide adequate staff to allow the Board to perform its duties. Staff shall consist of at least one historic preservation planner, and one clerical person who shall be responsible for recording and transcribing the minutes of all meetings of the Board. A representative of the County Attorney's office shall be present at all Board meetings to represent the County. All meetings of the Board shall be open to the public. A public record of the Board's minutes and resolutions shall be

maintained and made available for inspection by the public. The Board shall meet at least once per month, at a date and time to be decided by the Board, unless there is no business pending before the Board. Regardless of the lack of pending business the Board shall meet at least four (4) times during any calendar year.

D. Powers and Duties.

The Board shall have the following powers and duties:

1. To propose rules and procedures to implement the provisions of this Ordinance to the Board of County Commissioners.
2. To maintain and update the findings of the historical and archaeological surveys and validate those findings.
3. To evaluate the significance and eligibility of historic resources for designation pursuant to this ordinance.
4. To designate eligible historic resources pursuant to this ordinance.
5. To nominate historic resources to the National Register of Historic Places.
6. To approve, deny, or approve with conditions applications for Special Certificates of

Appropriateness and Certificates to Dig applicable to historic resources designated pursuant to this ordinance.

7. To issue Designation Certificates, place historical markers and administer other programs aimed at the proper recognition of designated historic resources.
8. To advise the County Commission on all matters related to historic preservation policy, including use, administration and maintenance of county-owned designated sites and districts.
9. To recommend zoning and building code amendments to the County Commission to assist in the preservation of designated historic resources or districts.
10. To review and make recommendations to the County Commission on proposed amendments to the Comprehensive Plan or land development regulations that may affect designated historic resources and districts or buildings, structures, districts or sites eligible for designation.
11. To propose and recommend to the County Commission financial and technical incentive programs to further the objectives of historic preservation.

12. To increase the awareness of historic preservation and its community benefits by promoting public education programs.
13. To record and maintain records of the Board's actions and decisions.
14. To apply for, in the name of Lee County only, grant assistance from state, federal or private sources for the purpose of furthering the objectives of historic preservation.
15. Upon designation as a Certified Local Government, to review and make recommendations concerning National Register of Historic Places nomination proposals to the Florida Review Board.
16. To perform any other function or duty assigned to it by the County Commission.

E. Rules and Regulations.

The Board of County Commissioners shall develop and propose such rules and regulations as are reasonably necessary and appropriate for the proper administration and enforcement of the provisions of this ordinance. Such rules and regulations shall conform to the provisions of this ordinance and shall govern and control the procedures, hearings and actions of the Board. No such rules and regulations

shall become effective until the proposed rules and regulations, and any amendments or modifications thereto, have been approved by the County Commission as a Lee County Administrative Code Policy.

SECTION SEVEN:           DESIGNATION

A.   Initiation of the Designation Process.

The designation process may be initiated by a written petition from the property owner(s); by a majority vote of the Board; or at the request of the Board of County Commissioners. The Historic Resource Data Base, as defined herein, shall be used to identify buildings, structures and sites potentially eligible for historic designation.

1.   Designation Proposed by the Owner(s): When designation is requested by the owner(s), a written petition for designation shall be filed, accompanied by sufficient information to warrant further investigation of the property and to aid in the preparation of a designation report. The Board shall, based on the request and information presented, either direct staff to begin or assist in preparation of a designation report; accept and direct the filing of a designation report

prepared by the owner(s); reject a report submitted for filing or deny the designation petition. Upon the filing of a designation report, Board may direct staff commence the designation and notice process.

2. Designation Proposed by the Historic Preservation Board or the County Commission:

Upon the recommendation of staff, a request by a Board member, or request by the County Commission, the Board may direct staff to prepare or assist in preparation of a designation report. Upon completion of the designation report, the Board may, by majority vote, initiate the designation process by a motion directing staff to file the designation report and begin the notification process.

B. Designation Report.

Prior to the designation of any historic resource or historic district pursuant to this ordinance, a designation report shall be filed with the Board. The designation report shall contain the following information.

1. Individual Historic or Archaeological Buildings,  
Structures or Sites.

- a. A physical description of the building, structure or site and its character-defining features, accompanied by photographs;
- b. A statement of the historical, cultural, architectural, archaeological or other significance of the building, structure or site as defined by the criteria for designation established by this ordinance;
- c. A description of the existing condition of the building, structure or site including any potential threats, or other circumstances that may affect the integrity of the building, structure or site;
- d. A statement of rehabilitative or adaptive use proposals;
- e. A location map, showing relevant zoning and land use information;
- f. Staff recommendations concerning the eligibility of the building, structure or ~~site for designation pursuant to this~~ ordinance and a listing of those features of the building, structure or site which

require specific historic preservation treatments.

2. Historic or Archaeological Districts.

- a. A physical description of the district, accompanied by photographs of buildings, structures or sites within the district indicating examples of contributing and noncontributing properties within the district. Also, a list of all contributing properties outside the proposed boundaries of the district.
- b. A description of typical architectural styles, character-defining features, and types of buildings, structures or sites within the district.
- c. An identification of all buildings, structures and sites within the district and the proposed classification of each as contributing, contributing with modifications, or noncontributing, with an explanation of the criteria utilized for the proposed classification.
- d. A statement of the historical, cultural, architectural, archaeological, or other



significance of the district as defined by the criteria for designation established by this ordinance.

- e. A statement of recommended boundaries for the district and a justification for those boundaries, along with a map showing the recommended boundaries.
- f. A statement of incentives requested, if any, and the specific guidelines which should be used in authorizing any alteration, demolition, relocation, excavation or new construction within the boundaries of the district.

C. Designation Process.

The Board shall hold timely public hearings upon every petition for designation made pursuant to this ordinance. Any reference hereafter to "calendar days" shall include Saturdays, Sundays and legal holidays. Any reference hereafter to "working days" excludes Saturdays, Sundays and legal holidays.

1. Notice to Owner(s).

~~The Board shall notify the property owner(s) of its intent to consider a proposed designation at least thirty (30) calendar days prior to the date~~

of the public hearing. Notice shall be sent by registered mail, return receipt requested, to the record owner(s) of the property as reflected by the current ad valorem tax roll. Prior to the hearing, the County Staff shall furnish the owner(s) with copies of the designation report, this ordinance and any related administrative codes, and any other literature which may help the owner(s) understand the proposed action. County staff shall make every reasonable effort to contact the owner(s) after mailing the Notice of Intent to Designate, to answer the owner's questions and address areas of concern prior to the public hearing.

2. Notification of Public Hearing.

For each proposed designation pursuant to this ordinance, the Board shall hold a public hearing no sooner than thirty (30) calendar days and within sixty (60) calendar days from the date a designation report has been filed with the Board and Notice of the Intent to Designate sent to the owner(s). ~~Notice of the public hearing shall be published in a newspaper of general circulation at least ten (10) calendar days but not more than~~

twenty (20) calendar days prior to the date of the public hearing.

3. Decision Deadlines.

Within fourteen (14) calendar days after the date of the public hearing, the Board shall render, by written resolution, its decision approving, denying, or approving with conditions a proposed designation pursuant to this ordinance. The rendering of a decision by the Board shall constitute final administrative action. The Board shall notify the following parties of its actions and shall attach a copy of the resolution:

- a. Owner(s) of the affected property.
- b. The Building Official.
- c. The Zoning Director.
- d. The County Clerk.
- e. The Planning Division.
- f. The Department of Transportation & Engineering.
- g. The County Property Appraiser.
- h. Any other County, Municipal, State or Federal agency, including agencies with demolition powers, that may be affected by the Board's decision.

4. Recording of Designation: All resolutions designating historic resources shall be recorded in the public records of Lee County, Florida, within twenty-five (25) calendar days of the date the Board renders its decision unless an appeal of that decision has been filed within the time limits established by this ordinance.
5. Suspension of Activities: Upon the filing of a designation report, no permits may be issued authorizing building, demolition, relocation or excavation on the subject property until such time as final administrative action occurs or the expiration of seventy-five (75) calendar days from the date the designation report is filed with the Board, whichever occurs first, unless an appeal of the Board's decision is filed. If an appeal to the Board of County Commissioners is filed, as provided herein, the suspension of activities shall continue in effect for an additional thirty-five (35) calendar days from the date the Board renders its decision or until the rendering of a decision on the appeal, whichever occurs first. The property owner(s) may waive the suspension of activities deadlines

set out above. Waivers shall be in the form of a notarized statement to the Board for inclusion in the Board's files. The Board shall notify all affected government agencies of the suspension of activities upon the filing of a designation report. The suspension of activities shall also expire after sixty (60) days if no public hearing is held.

D. Criteria for Designation.

1. The Board shall have the authority to designate historic resources based upon their significance in Lee County's history, architecture, archaeology or culture and/or for their integrity of location, design, setting, materials, workmanship or association, and because they:
  - a. Are associated with distinctive elements of the cultural, social, political, economic, scientific, religious, prehistoric or architectural history that have contributed to the pattern of history in the community, Lee County, Southwestern Florida, the state or the nation; or
  - b. Are associated with the lives of persons significant in our past; or

- c. Embody the distinctive characteristics of a type, period, style or method of construction or are the work of a master; or that possess high artistic value; or that represent a distinguishable entity whose components may lack individual distinction; or
  - d. Have yielded, or are likely to yield information on history or prehistory; or
  - e. Are listed or have been determined eligible for listing in the National Register of Historic Places.
2. A historic resource shall be deemed to have historical or cultural significance if it is:
- a. Associated with the life or activities of a person of importance in local, state, or national history; or
  - b. The site of a historic event with a significant effect upon the county, state or nation; or
  - c. Associated in a significant way with a major ~~historic event; or~~
  - d. Exemplary of the historical, political, cultural, economic, or social trends of the community in history; or

- e. Associated in a significant way with a past or continuing institution which has contributed substantially to the life of the community.
3. A historic resource shall be deemed to have architectural or aesthetic significance if it fulfills one or more of the following criteria:
- a. Portrays the environment in an era of history characterized by one or more distinctive architectural styles; or
  - b. Embodies the characteristics of an architectural style, period or method of construction; or
  - c. Is a historic or outstanding work of a prominent architect, designer, or landscape architect; or
  - d. Contains elements of design, detail, material, or craftsmanship which are of outstanding quality or which represented, in its time, a significant innovation, adaptation or response to the South Florida environment.
4. A historic resource shall be deemed to have archaeological significance if it meets one or more of the following criteria:

- a. There is an important historical event or person associated with the site; or
- b. The quality of the site or the data recoverable from the site is significant enough that it would provide unique or representative information on prehistoric or historical events; or
- c. The site was the locus of discrete types of activities such as habitation, religious, burial, fortification, etc; or
- d. The site was the location of historic or prehistoric activities during a particular period of time; or
- e. The site maintains a sufficient degree of environmental integrity to provide useful archaeological data. Said integrity shall be defined as:
  - 1. The site is intact and has had little or no subsurface disturbance, or
  - 2. The site is slightly to moderately disturbed, but the remains have considerable potential for providing useful information.



5. Properties not generally considered eligible for designation include cemeteries, birthplaces or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, buildings or sites primarily commemorative in nature, reconstructed historic buildings, and properties that have achieved significance less than fifty (50) years prior to the date the property is proposed for designation. However, such properties will qualify if they are integral parts of districts that do meet the previously described criteria or if they fall within one or more of the following categories:

- a. A religious property deriving primary significance from architectural or artistic distinction of historical importance.
- b. A building or structure removed from its location but which is primarily significant for architectural value, or is the surviving ~~structure most importantly associated with~~ an historic event or person.

- c. A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his or her productive life.
- d. A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, distinctive design features, or from association with historic events.
- e. A property primarily commemorative in nature if design, age, tradition or symbolic value have invested it with its own historical significance.
- f. A building, structure, site or district achieving significance less than fifty (50) years from the date it is proposed for designation if it is of exceptional historical importance.

SECTION EIGHT: CERTIFICATES OF APPROPRIATENESS

No building, moving or demolition permit shall be issued for a designated historic resource or a building, structure or site which is a part of a designated historic or archaeological district, until a Certificate of Appropriateness has been

issued. The criteria for issuance of a Certificate of Appropriateness shall be the U.S. Secretary of the Interior's "Standards for Rehabilitation", 36 C.F.R. 67 (1983), or as may be amended, renumbered or replaced, which are hereby adopted by reference as though set forth fully herein. Copies of the Secretary of the Interior's Standards, and the implementing "Guidelines for Rehabilitating Historic Buildings," shall be kept on file by the Building Official and the Zoning Director.

A. Regular Certificate of Appropriateness.

A Regular Certificate of Appropriateness shall be required for work requiring a building permit and classified as "ordinary maintenance and repair" by this ordinance, or for any work that will result, to the satisfaction of the County staff, in the close resemblance in appearance of the building, architectural feature or landscape feature to its appearance when it was built or was likely to have been built, or to its appearance as it presently exists so long as the present appearance is appropriate to the style and materials.

The Board staff shall, within five (5) working days from the date a complete application has been filed, approve, deny, or approve with conditions an application for a Regular Certificate of

Appropriateness presented by the owner(s) of a designated historic resource or a property within a designated historic district. The findings of the staff shall be mailed to the applicant within two (2) working days of the staff decision, accompanied by a statement explaining the decision. The applicant shall have an opportunity to appeal the staff decision by applying for a Special Certificate of Appropriateness within thirty (30) calendar days of the date the decision is issued.

B. Special Certificate of Appropriateness.

A Special Certificate of Appropriateness shall be issued by the Board prior to initiation of any work involving the alteration, demolition, relocation, reconstruction, excavation or new construction which will result in a change to the original appearance of a designated historic resource. A Special Certificate of Appropriateness may also be issued to reverse or modify a staff decision regarding an application for a Regular Certificate of Appropriateness or a Conditional Certificate to Dig. An applicant for a ~~Special Certificate of Appropriateness shall submit an~~ application to the Board accompanied by full plans and specifications, a site plan, and, in the case of sites

involving buildings or structures, samples of materials as deemed appropriate by the Board to fully describe the proposed appearance, color, texture, materials, or design of the building(s) or structure(s) and any outbuilding, wall, courtyard, fence, landscape feature, paving, signage or exterior lighting. The applicant shall provide adequate information to enable the Board to visualize the affect of the proposed action on the historic resource and on adjacent buildings and streetscapes within a historic district. The Board shall hold a public hearing upon an application for a Special Certificate of Appropriateness affecting designated historic resources or districts. Notice of the public hearing and a copy of the Board's Rules shall be given to the property owner(s) by certified mail, return receipt requested, and to other interested parties by an advertisement in a newspaper of general circulation at least ten (10) calendar days, but not more than twenty (20) calendar days, prior to the date of hearing. The Board shall meet and act upon an application for a ~~Special Certificate of Appropriateness within sixty~~ (60) calendar days of receipt of the application and materials adequately describing the proposed action.

The Board shall approve, deny or approve the Special Certificate of Appropriateness with conditions (subject to the acceptance of the conditions by the applicant), or suspend action on the application for a period not to exceed thirty (30) calendar days in order to seek technical advice from outside sources or to meet further with the applicant to revise or modify the application. Failure of the Board to act upon an application within sixty (60) calendar days (if no additional information is required) or ninety (90) calendar days (if additional information is required by Board) shall result in the immediate issuance of the Special Certificate of Appropriateness applied for, without further action by the Board. All decisions of the Board shall be in writing and shall include findings of fact. Evidence of approval of the application shall be by the Special Certificate of Appropriateness issued by the Board (or the Board's designated staff representative). Notice of a decision shall be given to the applicant and to the Building Official, the Zoning Director and any other ~~appropriate public agency, as determined by the~~ Board. When an application is denied, the Board's notice shall provide an adequate written explanation

of its decision to deny the application. The Board shall keep a record of its actions under this ordinance.

C. Demolition

1. Demolition of a designated historic resource or a contributing property within a designated historic district may only occur pursuant to an order of a governmental body or Board or an order of a court of competent jurisdiction and pursuant to approval of an application by the owner for a Special Certificate of Appropriateness for Demolition.

2. Governmental agencies having the authority to demolish unsafe structures shall receive notice of the designation of historic resources and districts pursuant to Section Six. The Board shall be deemed an interested party and shall be entitled to receive notice of any public hearings conducted by said agencies regarding demolition of any designated historic resource or contributing property to a designated historic district. ~~The Board may make recommendations and~~ suggestions to the governmental agency and the owner(s) relative to the feasibility of and the

public interest in preserving the designated resource.

3. No permit for voluntary demolition of a designated historic resource or contributing site within a historic district shall be issued to the owner(s) thereof until an application for a Special Certificate of Appropriateness has been submitted to the Board and approved pursuant to the procedures in this section. The Board shall approve, deny, or approve with conditions the application for a Special Certificate of Appropriateness for Demolition. Refusal by the Board to grant a Special Certificate of Appropriateness shall be evidenced by a written order detailing the public interest which is sought to be preserved. The Board may grant a Special Certificate of Appropriateness for Demolition which may provide for a delayed effective date of six (6) months to allow the Board to seek possible alternatives to demolition. During the demolition delay period, ~~the Board may take such steps as it deems~~ necessary to preserve the structure concerned, in accordance with the purpose of this ordinance.



Such steps may include, but shall not be limited to, consultation with civic groups, public agencies and interested citizens, recommendations for acquisition of property by public or private bodies or agencies, and exploration of the possibility of moving the building or other feature.

4. The Board shall consider the following criteria in evaluating applications for Certificates of Appropriateness for Demolition of designated historic resources or contributing properties within a designated historic district:

a. Is the building or structure of such interest or quality that it would reasonably meet national, state or local criteria for additional designation as an historic or architectural landmark?

b. Is the building or structure of such design, craftsmanship, or material that it could be reproduced only with great difficulty and/or expense?

c. Is the building or structure one of the last remaining examples of its kind in the neighborhood, the county or the region?

- d. Does the building or structure contribute significantly to the historic character of a designated historic district?
- e. Would retention of the building or structure promote the general welfare of the county by providing an opportunity for the study of local history or prehistory, architecture and design or by developing an understanding of the importance and value of a particular culture and heritage?
- f. Are there definite plans for reuse of the property if the proposed demolition is carried out, and what will be the effect of those plans on the character of the surrounding area?
- g. Has demolition of the designated building or structure been ordered by the appropriate public agency due to unsafe conditions?
5. Unless demolition has been ordered by a court of competent jurisdiction or another governmental body, a Special Certificate of Appropriateness ~~for Demolition of a designated building or~~ structure shall not be issued until there are definite plans for reuse of the property and a

building permit or development order for the new construction has been applied for.

6. In the event that an "undue economic hardship", as defined herein, is claimed by the property owner(s) as a result of the denial of a Special Certificate of Appropriateness for Demolition, the Board shall have the power to vary or modify adherence to its original decision within thirty (30) calendar days of the date the original decision is issued. Any variance or modification of a prior order shall be based upon sufficient evidence submitted by the owner(s) and a subsequent finding by the Board that retention of the building or structure would deny the owner(s) of all economically viable use of the property, thus creating an undue economic hardship. The owner(s) may present the following evidence as grounds for such a finding:

a. For all property:

1. The amount paid for the property, the date of purchase and the party from whom purchased;
2. The assessed value of the land and improvements thereon according to the

two (2) most recent property tax assessments;

3. The amount of real estate taxes for the previous two (2) years;

4. The annual debt service, if any, for the previous two (2) years;

5. All appraisals obtained within the previous two (2) years by the owner or applicant in connection with the purchase, financing or ownership of the property;

6. Any listings of the property for sale or lease, the price asked and offers received, if any; and

7. Any profitable adaptive uses for the property which have been considered by the owner(s).

b. In addition to the items set forth above, the owner(s) may present for income-producing property:

1. The annual gross income from the property for the previous two (2) years;

2. Itemized operating and maintenance expenses for the previous two (2) years; and
3. The annual cash flow, if any, for the previous two (2) years.

D. Moving Permits.

The Board shall consider the following criteria for applications for Special Certificates of Appropriateness for the moving of all historic resources and contributing properties located within a designated historic district:

1. The historic character and aesthetic interest the building or structure contributes to its present setting.
2. The reasons for the proposed move.
3. The proposed new setting and the general environment of the proposed new setting.
4. Whether the building or structures can be moved without significant damage to its physical integrity.
5. Whether the proposed relocation site is ~~compatible with the historical~~ and architectural character of the building or structure.

6. When applicable, the effect of the move on the distinctive historical and visual character of a designated historic district.

E. Archaeological Sites and Districts.

1. The survey known as "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida" (Piper Archaeological Research, Inc., 1987) shall be used as the initial data base when considering the designation of areas of Archaeological Sensitivity Level 1, as defined in this ordinance.

2. A Certificate of Appropriateness shall be required prior to the issuance of a building permit for activity within an archaeological site or district designated pursuant to this ordinance. An application for a Certificate of Appropriateness shall be accompanied by full plans and specifications indicating areas of work that might affect the surface and subsurface of the archaeological site or sites.

a. The requirements outlined in Section Seven ~~of this ordinance shall apply to all~~ applications and the issuance of all

Certificates of Appropriateness for archaeological sites and districts designated pursuant to this ordinance.

b. In reviewing the application for a Special Certificate of Appropriateness for a designated Archaeological Site, the Board may also require any or all of the following:

1.) Scientific excavation and evaluation of the site by an archaeologist at the owner(s) expense.

2.) An archaeological survey, conducted by an archaeologist as defined herein, containing an analysis of the impact of the proposed activity on the archaeological site.

3.) Proposal for mitigation measures.

4.) Protection or preservation of all or part of the designated archaeological site for green space, in exchange for incentives as provided in Section Ten of this ordinance.

c. ~~Human Burials:~~ To knowingly disturb human burial remains is a third degree felony in the State of Florida, pursuant to Chapter

.872, F.S. (1987) (Offenses Concerning Dead Bodies and Graves). The law includes prehistoric as well as historic period interments, aboriginal burial mounds or cemeteries as well as historic period cemeteries. Procedures for dealing with the accidental discovery of unmarked human burials are outlined in the above cited state statute. If unmarked human burials are suspected or known in an area under consideration for any Certificate of Appropriateness, the area shall be surveyed by a professional archaeologist to locate such remains. Procedures for dealing with human remains shall be carried out according to the above referenced statute. Any located human interments should be preserved in place if at all possible. If it is necessary to excavate or otherwise move the remains, every effort shall be made to identify and contact persons who may have a direct kinship, tribal, community or ethnic relationship with the deceased in order to



arrange for their appropriate reinternment or disposition.

3. Certificates to Dig. The survey known as "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida" shall be used to identify areas of Archaeological Sensitivity Level 1 and 2.

a. A Certificate to Dig shall be required prior to or in conjunction with the issuance of a final development order for activity within any area of Archaeological Sensitivity Levels 1 and 2 that may involve new construction, filling, digging, removal of trees, or any other activity that may alter or reveal an interred archaeological site. If submerged or wetland areas, such as ponds, sloughs, or swamps, are also to be damaged by development or by dredge and fill activities, these shall also be assessed for their potential to contain significant archaeological sites.

~~b. The purpose of a Certificate to Dig shall be to allow sufficient time to conduct any necessary investigations, including the~~

location, evaluation and protection of significant archaeological sites in areas suspected of having such archaeological sites.

- c. The staff of the Board shall, within fifteen (15) calendar days of receipt of a complete application for a Certificate to Dig, approve the application for a Certificate to Dig, or approve the Certificate to Dig subject to specified conditions, including but not limited to a delay not to exceed sixty (60) days to allow any necessary site excavation or additional archaeological assessment prior to commencement of the proposed construction activity. Staff's decision shall be based on the application and any other guidelines which the Board may establish. If the approved Certificate to Dig requires archaeological excavation, the Certificate shall specify a period of time during which excavation shall occur, not to exceed sixty (60) days unless the owner(s) agree to an extension. The owner(s) shall have an archaeologist conduct excavations as

necessary during this period. The Certificate to Dig and any staff findings shall be mailed to the applicant by registered mail within seven (7) calendar days of its review and approval.

The applicant shall have the opportunity to appeal any conditions attached to a Certificate To Dig by applying for a Special Certificate of Appropriateness within thirty (30) calendar days of the date the Conditional Certificate to Dig is issued. The Board shall convene within thirty (30) calendar days after the date a completed application for a Special Certificate of Appropriateness is filed with the staff. Approved Certificates to Dig shall contain an effective date not to exceed sixty (60) calendar days at which time the proposed activity may begin, unless the archaeological excavation should uncover evidence of such significance that it warrants designation of the archaeological site as a historic resource pursuant to Section Six of this ordinance.

All work performed pursuant to the issuance of a Certificate to Dig shall conform to the requirements of such certificate. It shall be the duty of the appropriate county agencies and the staff of the Board to inspect work for compliance with such certificate. In the event of noncompliance the appropriate county staff shall have the power to issue a stop work order and all work shall cease.

SECTION NINE: MAINTENANCE AND MINOR REPAIR PROVISIONS

A. Exemption for Work not Requiring a Building Permit.

Nothing in this ordinance shall be construed to prevent or discourage the ordinary maintenance and repair of the exterior elements of any historic resource or any property within a designated historic district when such maintenance and repair does not involve a change of design, appearance (other than color), or material, and which does not require a building permit.

B. Enforcement of Maintenance and Repair Provisions.

When the Board determines that the exterior of a designated historic resource, or a contributing property within a designated historic district, is

endangered by lack of ordinary maintenance and repair, or that other improvements in visual proximity of a designated historic resource or historic district are endangered by lack of ordinary maintenance, or are in danger of deterioration to such an extent that it detracts from the desirable character of the designated historic resource or historic district, the Board may request appropriate officials or agencies of the county government to require correction of such deficiencies under the authority and procedures of applicable ordinances, laws, and regulations.

C. Unsafe Structures.

In the event the Building Official determines that any designated historic resource or contributing property is unsafe pursuant to the provisions of the applicable County ordinances, the Building Official will immediately notify the Board by submitting copies of such findings. Where appropriate and in accordance with applicable ordinances, the Board shall encourage repair of the building or structure rather than demolition. The Building Official will, in these instances, take into consideration any comments and recommendations made by the Board. The Board may also endeavor to negotiate with the owner(s) and interested

parties, provided such actions do not interfere with procedures established in the applicable ordinances.

D. Emergency Conditions.

For the purpose of remedying an emergency condition determined to be imminently dangerous to life, health, or property, nothing contained herein will prevent the temporary construction, reconstruction, demolition, or other repairs to a historic structure, building, or site or a contributing or noncontributing property, structural improvement, landscape feature, or archaeological site within a designated historic district. Such temporary construction, reconstruction or demolition must take place pursuant to permission granted by the Building Official, and only such work as is reasonably necessary to correct the emergency conditions may be carried out. The owner(s) of a building or structure damaged by fire or natural calamity will be permitted to immediately stabilize the building or structure and to later rehabilitate it under the procedures required by this ordinance. The owner(s) may request a special meeting of the Board to consider an application for a Certificate of Appropriateness to provide for permanent repairs.

F. Demolition by Neglect.

In the event that the Board's staff or the Building Official inform the Board that a designated historic resource or contributing property within a historic district is being demolished by neglect, as defined pursuant to this ordinance, the Board shall notify the owner(s) of record by certified mail of its preliminary findings and intent to hold a public hearing within thirty (30) calendar days to determine evidence of neglect. The owner shall have until the time of the public hearing to make necessary repairs to rectify the evidence of neglect as identified in the certified notice. Upon failure by the owner(s) to abate the structural, health or safety hazards identified in the initial notice within thirty (30) calendar days, the Board shall hold a public hearing to consider recommending to the Building Official that the owner(s) be issued a citation for code violation. The owner(s) shall have the right to rebut the Board's preliminary findings at the public hearing. If the Board finds that the building or structure is being demolished by neglect pursuant to this ordinance, the Board may recommend to the Building Official that the

owner(s) be issued a citation for code violations and that penalties be instituted pursuant to this ordinance.

SECTION TEN: APPEALS

Any aggrieved party may appeal a decision of the Board by filing a written notice of appeal within fifteen (15) days of the date the Board's written decision is rendered. The notice of appeal shall be filed with the Hearing Examiner and a copy provided to the Historic Preservation Board staff which shall state the decision being appealed, the grounds for the appeal, and a summary of the relief sought by the aggrieved party.

Appeals shall otherwise be pursued using the procedures set forth in §900.02.A., "Appeals from Administrative Matters", of the Lee County Zoning Ordinance Number 86-17, as amended, or as may be further amended or replaced from time to time, and in accordance with Lee County Administrative Codes adopted to implement the provisions of the Zoning Ordinance.

SECTION ELEVEN: INCENTIVES

A. Financial Assistance.

All properties designated as historic resources or as a contributing property to a designated historic district shall be eligible for any financial assistance set aside for historic preservation



projects by Lee County, the State of Florida or the federal government, provided they meet any additional requirements of those financial assistance programs. The Board and its staff shall investigate funding sources and make recommendations to the Board of County Commissioners to establish a program providing for transfer of development rights, easements and other local financial assistance programs whenever possible.

B. National Register of Historic Places.

The Board shall encourage and assist in the nomination of eligible income-producing properties to the National Register of Historic Places in order to make available to those property owners the investment tax credits for certified rehabilitations pursuant to the Tax Reform Act of 1986 and any other programs offered through the National Register.

C. Building Code.

Designated historic resources and contributing properties to a designated historic district may be eligible for administrative variances or other forms of relief from applicable building and zoning codes as follows:

1. Repairs, alterations and additions necessary for the preservation, restoration, rehabilitation or continued use of a building or structure may be made without conformance to the technical requirements of the Standard Building Code when the proposed work has been approved by a Regular or Special Certificate of Appropriateness and also by the Building Official, pursuant to the authority granted to the Building Official by other ordinances or statutes and further provided that:

- a. The restored building will be no more hazardous based on considerations of life, fire and sanitation safety than it was in its original condition.
- b. Plans and specifications are sealed by a Florida registered architect or engineer, if required by the Building Official.
- c. The Building Official has required the minimum necessary corrections to be made before use and occupancy which will be in the public interest of health, safety and welfare.

D. Zoning Ordinance.

The Zoning Director may, by written administrative decision, approve any variance request for designated historic resources or contributing properties to a designated historic district, for matters involving setbacks, lot width, depth, area requirements, land development regulations, height limitations, open space requirements, parking requirements, and other similar zoning variances not related to a change in use of the property in question.

Before granting a variance the Zoning Director must find:

- a. That the variance will be in harmony with the general appearance and character of the community.
- b. That the variance will not be injurious to the area involved or otherwise detrimental to the public health, safety or welfare.
- c. That the proposed work is designed and arranged on the site in a manner that minimizes aural and visual impact on the adjacent properties while affording the owner(s) a reasonable use of their land.

In granting any variances the Zoning Director may prescribe any appropriate conditions necessary to protect and further the interest of the area and abutting properties, including but not limited to:

- a. Landscape materials, walls and fences as required buffering.
- b. Modifications of the orientation of any openings.
- c. Modifications of site arrangements.

The applicant or any aggrieved property owner in the area may appeal the decision of the Zoning Director according to the provisions of the Lee County Zoning Ordinance.

E. Flood Plain Management Regulations.

Variances from the Flood Plain Management Regulations may be requested pursuant to the terms of that ordinance.

SECTION TWELVE: STOP WORK ORDERS

Any work conducted contrary to the provisions of this ordinance shall be immediately stopped upon notice from the Building Official or his designee that the work does not conform to the terms of this ordinance. Notice shall be in writing and shall be given to the property owner, his agent, or

to the person doing the work. If none of these persons are immediately available on the construction site to receive the required notice, it shall be posted on the property. The notice shall state all conditions under which work may be resumed. In emergencies the Building Official shall not be required to furnish written notice of the stop work order.

SECTION THIRTEEN: PENALTIES

Any person, organization, society, association or corporation, or any agent or representative thereof, who violates any provision of this ordinance shall, upon conviction, be subject to the following penalties:

A. Criminal Penalties

1. A fine not to exceed Five Hundred Dollars (\$500.00); or

B. Civil Penalties

1. Injunctive relief to enjoin and restrain any person from violating the provisions of the ordinance; and
2. Revocation, suspension or amendment of any permit granted pursuant to this ordinance; and
3. In addition to all other criminal and civil ~~penalties contained herein, any person applying~~ for a permit after commencing or completing

construction of a structure in violation of this ordinance shall pay twice the amount of the building permit fee as established by the Lee County Administrative Codes.

For purposes of this ordinance, each day that a violation continues to exist will be considered a separate violation of the ordinance, to which both civil and criminal penalties may apply.

SECTION FOURTEEN: SEVERABILITY

The provisions of this ordinance are severable and it is the intention to confer the whole or any part of the powers herein provided for and 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 of the remaining provisions of this ordinance. It is hereby declared to be the legislative intent that this ordinance would have been adopted had such unconstitutional provision not been included therein.

SECTION FIFTEEN: CONFLICT

In the event that any provision in this ordinance is found to be contrary to any other existing Lee County ordinance, code, rule or regulation covering the same subject matter, this ordinance shall supersede all other such ordinances, codes,

rules or regulations to the extent that this ordinance is in conflict therewith.

SECTION SIXTEEN: INCLUSION IN CODE

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 the Sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intentions.

SECTION SEVENTEEN: EFFECTIVE DATE

This ordinance shall take effect immediately upon receipt of official acknowledgement of the Office of the Secretary of State of Florida that this ordinance has been filed with said office.

This Ordinance is adopted by the Lee County Board of County Commissioners upon a motion by Commissioner Manning and seconded by Commissioner Fussell and, upon a poll of the members present, the vote was as follows:

JOHN MANNING	<u>AYE</u>
WILLIAM FUSSELL	<u>AYE</u>
CHARLES BIGELOW	<u>AYE</u>
RAY JUDAH	<u>ABSENT</u>
DONALD SLISHER	<u>AYE</u>

DONE AND ADOPTED this 21st day of December, 1988.

ATTEST:  
CHARLIE GREEN, CLERK

By: *Janet S. Foster*  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: *David D. King*  
Chairman

Approved As To Form

By: *Gregory S. Hager*  
Office Of The  
County Attorney

(05341)