



**EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
Community Development/Public Works Center
1500 Monroe Street, First Floor Conf. Rm. 1B**

**WEDNESDAY, JANUARY 9, 2013
2:00 P.M.**

AGENDA

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – November 14, 2012
3. LDC AMENDMENTS (2012/2013 REGULAR LDC AMENDMENTS) – STAFF
4. FLAMINGO BAY – PRIVATE CITIZEN AMENDMENT – CHARLES MESSINA/CHUCK NEWMAN
5. Adjournment – Next Meeting Date: March 13, 2013



Draft

**MINUTES REPORT
EXECUTIVE REGULATORY OVERSIGHT COMMITTEE
WEDNESDAY, JULY 11, 2012**

Committee Members Present:

Randy Mercer, Chairman	Jim Ink	Darin Larson
Bill deDeugd	Bob Knight	Terry Miller
Bill Ennen	Steve Kushner	Michael Reitmann
Tracy Hayden		

Committee Members Absent:

Hal Arkin	Stephanie Kolenut	Mike Roeder	Buck Ward
-----------	-------------------	-------------	-----------

Lee County Government & Representatives Present:

Donna Marie Collins, Assist. County Attorney	Mikki Rozdolski, Senior Planner, Zoning
Pam Houck, Zoning Director	Nettie Richardson, Princ. Planner, Zoning
Kathie Ebaugh, Princ. Planner, Planning	Tony Palermo, Princ. Planner, Zoning
Pam Hendry, DCD Admin., Recording	Andy Getch, Manager, LDOT

Consultant and Public Participants:

Jim LaRue, James Leese & Ben Smith of LaRue Planning & Management
Edd Weiner & Tonda Soisson-Lawson of Lehigh Acres Community Planning Panel
Brian Smith of Ensite
Joe Beck of N. Ft. Myers Community Planning Panel

Introduction

Mr. Randy Mercer called the meeting to order at 2:02 p.m. in the first floor conference room of the Community Development/Public Works Center, 1500 Monroe Street, First Floor, Fort Myers, Florida. Ms. Donna Marie Collins, Assistant County Attorney, reviewed the Affidavit of Posting of Meeting and found it legally sufficient as to form and content (later in the meeting).

Approve Meeting Minutes – July 11, 2012

Mr. Bill de Deugd made a motion to approve the July 11, 2012 minutes. Mr. Steve Kushner seconded. The motion carried unanimously.

Amendment to Compact Communities for Lehigh Acres and North Fort Myers Planning Communities

Ms. Kathie Ebaugh said the general idea when they started the project was to identify two communities that needed a sense of place, needed a downtown center, a place that will provide them additional options to help them integrate their community and provide additional connectivity that both communities are lacking. The compact community code is used to identify specific places within the town center areas. There is the core, the center, the general, the edge and the civic, and on both proposals you'll see these laid out, the core being the most intense, to the edge, which is the residential area. The civic areas are interconnected throughout. There are two types of civic areas, governmental and

park and public space areas. Ms. Ebaugh said street types are identified by the code and where they are appropriate. The code identifies the building types and which transect in which they're expected to be and she gave examples. She said the codes would be implemented through an optional zoning overlay, so this does not replace the underlying conventional zoning. There will be the ability to opt into this, with some incentives, one being a greater amount of use of the property: more building square footage, more rentable space or sellable space, and more lot coverage. Also an incentive is provided by an administrative review by the zoning division, meaning if you opt into this and adhere to the code with even some minor changes, you no longer have to go to the community for review. She gave some examples of the administrative flexibility of the code. She also gave an example of some changes that wouldn't be allowed administratively.

Ms. Ebaugh said they're now working to determine which of the two candidates will get the planning and design study for Lehigh Acres. That study will tell us the capacity for the utilities, the storm water issue, the transportation system and the economic question; is there more economic value in this type of development versus the conventional development? This will give us another incentive for helping us market these projects because we'll be able to definitively say this is what your property is worth today in terms of both your tax value as well as your income.

Regarding North Fort Myers, Ms. Ebaugh said they're working on grant procurement so we can do similar items that the County Commission has allocated the funds for the Lehigh Acres project. She said we're working with the Federal government to identify potential funding sources to do the same kind of work in North Fort Myers.

Mr. Tony Palermo said one main feature of goal #28 of the Lee Plan is the North Fort Myers town center, which is identified as just north of the river, between the two 41s and south of Pondella Rd. where there are offices, retail, some abandoned retail, and restaurants. He said this particular area was targeted because it has a lot of potential. The first step was working on a plan with the assistance of LaRue Planning & Management to put together a good plan using the compact communities codes. He said they've been meeting with the North Fort Myers community for the past two or three years and they've really been pushing us to put something together for the town center and make some improvements to their community. He said the North Fort Myers Planning Panel has been holding their meetings every month and we've been updating them, showing them plans, amending them and coming up with a really good product. Mr. LaRue and his team are to be commended for that. He said we've taken those plans and tried to incorporate them into code language and we've shared that code language and these plans with a variety of staff and a variety of stakeholders to get input from transportation, environmental, the water management district and even the fire and police districts.

Mr. Palermo said Goal #32 of the Lee Plan identifies a number of activity centers all over Lehigh Acres. He said they've met regularly with the Lehigh Acres Planning Panel and other community organizations of Lehigh Acres and have identified two of the activity centers on which to focus their efforts. Again, the plans have been shared with the water management district.

He said it has boiled down to 18 pages of codes in which the property owners can opt in if they want these mixed uses, and we've tried to make it easy to make their plans come to life.

Mr. Edd Weiner expressed the planning panel's concern about the optional administrative process in the ordinance saying without the mandatory process, developers are going to look for the easy way out and not look at something that's more productive to the community. He said we need to be smart enough to figure out how to make this process mandatory because the incentives offered like allowing less parking administratively, etc. aren't energetic enough to make a developer look at something that's more productive to the community.

Mr. Mercer asked where Lee County has used the compact communities concept, where it's worked and where it hasn't. Ms. Ebaugh said we haven't yet. The compact community code was adopted in 2010, so to learn about the code we used these model projects. She said there is a project that has been zoned and is moving forward by Ensite. Mr. Mercer asked if they've gone outside the market place to see if this has worked. Ms. Ebaugh said yes, in Naples, Baldwin Park and Celebration in Orlando. She said they're going to Naples to be walked through their code and shown how they've used it successfully over the last twenty years. Mr. Mercer said, from a market perspective, it might be a pretty long reach for any bedroom community in Lee County. Mr. Palermo said we know this is a very long term project, it could be 10 to 20 years down the line, when the market's a very different place. Ms. Ebaugh said Ensite has already received calls from property owners in the Admiral Lehigh center, so we do have property owners very interested and excited about getting this adopted. Mr. Mercer asked if it was mandatory and not optional, is it fair to assume that the assessed value of the property would go up. Ms. Ebaugh said no because that's still not what you have built on the ground.

Mr. Jim Ink said this is an area of blight and obviously you've got to try to come up with some plan. He asked if there was a discussion of the mandatory versus the optional, potentially a Bert Harris claim, if you start changing the underlying land use and zoning. Ms. Ebaugh said yes, that was a consideration, but working closely with the property owners, we determined that this was needed to provide an incentive. Mr. Ink asked why the town center plan was only on the east side of US 41 in the North Fort Myers plan. Ms. Ebaugh said our consultant, Frances Marino, helped identify specific locations, and recommended we not target too much property as it would disperse abilities to get anything accomplished. Mr. Ink said the acreage of Lehigh Acres would be equal to the acreage in North Fort Myers if you picked up some of the undeveloped areas of Palm Avenue and areas of the old Publix and those types. Ms. Ebaugh said we have goals to go to the other side of US 41 and will be working on that, but it's a longer term effort. Mr. Ink asked, as they get individual property owners wanting to redevelop sites in North Fort Myers, is there any thought of a community storm water management system or is everybody on their own. Ms. Ebaugh there is a significant area that could be used in a common way for storm water and for civic space. Mr. Ink asked how the plan would work to get the big picture they want. Ms. Ebaugh said we're doing a study in Lehigh to establish a marketing tool to

identify property owners and work with them. We hope to get a model project going, maybe the Admiral Lehigh, and the others will see this as viable options, there are property owners interested. She said our work is just beginning with this, and we're going to identify public projects that are going to need to be funded through public resources. Mr. Ink asked if the pictures they created are to help land owners and get the community see how this could potentially improve the neighborhood. Ms. Ebaugh said yes, it's also a tool as we go for federal funding. She said they didn't get funding the first time out but once the plan is adopted, we'll be in a better position to solicit grant funding.

Mr. Kushner asked if they'd give the funds even though it's optional. Ms. Ebaugh said the federal government understands that we're in a difficult situation and they're looking for us to step forward to continue the planning. Mr. Andy Getch said the \$3,000,000.00 would help with the planning, design, and development of the infrastructure plan and some of the construction of the major road within the center. And, there would've been a match eventually. Ms. Ebaugh said establishing the road network will help the property owners' concerns over the big cost of the infrastructure.

Ms. Tracy Hayden said this is a positive step.

Mr. Joe Beck said the North Fort Myers Planning Panel supports the consultant and staff.

Mr. Kushner asked what happens if some owners decide they don't want to participate? Do we end up with a plan that looks like a jigsaw puzzle with pieces missing? Ms. Ebaugh said worst case scenario would be existing properties can stay the way they are and redevelopment can happen around them, and she gave examples.

Mr. Bob Knight said it's a good concept, but options could cause problems that could take two or three decades. Ms. Ebaugh said planning for both of these has been a decade long effort. She said it has worked in other models, like Winter Park village.

Mr. Bill Ennen said as a land owner, if everyone around was doing it, he'd definitely do it, so the hurdle would be to get those first people.

Mr. James Leese said we tried very hard to get all of the roads on existing property lines and where there's a large piece of property we worked with the property owners on where those roads would go. In one case where the road went through an existing building, the owner was ok with it because they understood the value of what was being created. None of this is a taking, they're all sort of "givings" because you're giving them tremendous opportunities for tremendous increases of values of all of the properties.

Mr. Mercer asked for any suggested changes. Mr. deDeugd said on page 2 in Sec. 32-604(a)(2) he would like it to say "A pre-application meeting to review the project with County reviewers is required.", instead of encouraged.

Mr. Terry Miller made a motion to approve the Amendment with the suggested change on page 2. Mr. Bob Knight seconded. The motion carried unanimously.

Proposed Amendments to the North Fort Myers Neighborhood Centers Regulations

Mr. Palermo said this is an amendment proposed to the North Fort Myers code that was passed a couple of years ago. The point of that was if you were moving away from the town center, there're some neighborhood centers in North Fort Myers, about seven of them, identified at major intersections in which the code says that if you want to rezone these properties, you have to use the compact communities code. This amendment is to give options if they want to rezone the properties in the neighborhood centers of North Fort Myers, they can use the planned development process or they can use compact communities process. He said we're starting to see property owners who are serious about redeveloping their sites and we wanted to give them an incentive that if they want to use the planned development process, they can go right ahead and do that. He said this is just a clean up item.

Mr. Bill Ennen made a motion to approve the amendment. Mr. Steve Kushner seconded. The motion carried unanimously.

Reminder to Members to Turn in Conflict of Interest Packets

Mr. Mercer reminded members to turn in their packets.

ADJOURNMENT

There was no further discussion and no new business. The meeting was adjourned at 3:15 p.m.

The next meeting was tentatively scheduled for January 9, 2013.

s:\committees\eroc\2012\12-11-14 eroc meeting\minutes-draft 12-11-14 eroc.docx

EROC ORDINANCE EVALUATION GUIDELINES

Proposed Ordinance: 2012/2013 LDC Amendments

1. **What is the public interest that the Ordinance is designed to protect?**

The use and regulation of land.

2. **Can the identified public interest be protected by means other than legislation (e.g., better enforcement, education programs, administrative code in lieu of ordinance, etc.)? If so, would other means be more cost effective?**

No, this ordinance is the basis for the regulation.

3. **Is the regulation required by State or Federal law? If so, to what extent does the County have the authority to solve the problem in a different manner?**

N/A

4. **Does the regulation duplicate State or Federal programs? If so, why?**

No. This ordinance amends and supplements regulations at a different level.

5. **Does the regulation contain market-based incentives? If not, could that be used effectively?**

N/A

6. **Is the regulation narrowly drafted to avoid imposing a burden on persons or activities that are not affecting the public interest?**

Yes

7. **Does the regulation impose a burden on a few property owners for the benefit of the public as a whole? If so, does it provide any form of compensation?**

No

8. Does the regulation impact vested rights?

No

9. Does the regulation provide prompt and efficient relief mechanisms for exceptional cases?

Yes

10. Even though there is an interest to be protected, is it really worth another regulation?

Yes, this ordinance supplements and refines current regulations.

11. Has this approach been tried in other jurisdictions? If so, what was the result? If not, what are the reasons?

N/A

12. If this regulation is enacted, how much will it cost on an annual basis, both public and private? If this regulation is not enacted, what will be the public and private cost?

Any increased cost will be nominal.

2012/2013 LDC REGULAR AMENDMENTS

Staff

Overview

Chapter 2

2-264 Revise trafficways map reference; Revise NAVD reference

Chapter 6

6-333 Add NAVD 88 definition; Delete NGVD 29 definition

Chapter 10

10-8 Revise trafficways map reference
10-103 Housekeeping – remove irrelevant administrative code reference
10-104 Housekeeping – remove section reference; Add subsection for procedural variances and deviations
10-175 Housekeeping – revise aerial scale requirement
10-215 Housekeeping
10-281 Revise trafficways map reference
10-421 Housekeeping – remove section reference

Chapter 14

14-471 Add language to include other receiving waters
14-473 Add language to include other receiving waters
14-474 Clarification
14-475 Define receiving water
14-479 Housekeeping

Chapter 22

22-102 Housekeeping – remove certified mail, return receipt requested
22-203 Housekeeping – revise language to be consistent with procedure

Chapter 30

30-8 Revise notice procedure for disposal of signs removed from public property

Chapter 32

ARTICLE V Housekeeping – revise scrivener's error in Article title
32-803 Revise Section reference

Chapter 33

33-1231 Housekeeping - clarify applicability language
33-1250 Revise Section reference
33-1353 Revise Section reference

- 33-1481 Housekeeping – revise map reference consistent with the Lee Plan
- 33-1596 Revise Section reference

Chapter 34

- 34-2 Revise Florida Statute reference; Revise trafficways map reference; Revise NAVD reference; Revise procedural variance definition
- 34-145 Add subsection for procedural variances and deviations
- 34-201 Add subsection for procedural variances and deviations
- 34-411 Revise trafficways map reference
- 34-613 Clarify availability of and updates to official/current zoning maps
- 34-614 Describe official zoning map; remove timeframe
- 34-615 Describe current zoning map and procedure for updating
- 34-654 Housekeeping – revise language to correspond with Lee Plan
- 34-694 Housekeeping – Revise scrivener’s error in table; Remove American alligators or venomous reptiles use; Add poultry raising, noncommercial as SE to RS-4 and RS-5; Add Essential service facilities Group II as EO to RS-1 and TFC-2
- 34-714 Add Essential service facilities Group II as EO to RM-2
- 34-715 Housekeeping – revise Section number
- 34-791 Add Single-family residence as EO to RV-3
- 34-813 Add Golf Driving Range as P to CF-1; Add Essential service facilities Group II as EO to CF-2 and CF-3
- 34-842 New Section: Alternative Property Development Regulations for Duplex, Two-Family Attached, and Townhouse Units in C-1A, C-1, and C-2 Districts
- 34-843 Revise Section number; Add Wholesale establishments Group I as P to Use Table in C-1, C-2, CC, CG, CS-1, CS-2, CT, CR and CI zoning districts; Add Essential service facilities Group II as EO to C-1A and CC
- 34-844 Revise Section and Table number; Add Two-Family attached and Townhouse as P to C-1 and C-2 Use Table
- 34-845 Revise Section number
- 34-903 Add Wholesale Group I as P to IL and IG; Add Essential service facilities Group II as EO to IL
- 34-934 Add Single-family residence as EO to CPD Use Table; Add Golf Driving Range as P to CFPD and IPD; Housekeeping
- 34-935 Add reference to chapter 33
- 34-1297 Revise Florida Statute reference
- 34-1716 Housekeeping – revise references to zoning district use tables
- 34-2016 Add thermoplastic striping as permitted material to delineate parking spaces; revise delineation of parking space adjacent to sidewalks, landscaping and open space
- 34-2020 Housekeeping – revise Use Group reference; Revise Note (9); Delete Note (11) and Note (11) reference in table; Revise Theater parking requirements; Revise to specify landscaping requirements
- 34-2192 Revise trafficways map reference
- 34-3102 Revise Section reference

LDC Amendments (Packet #1)

Chapter 2. ADMINISTRATION

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

~~Class 3 road means an approved road shown on Lee Plan 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 five or ten-year capital improvement plan of the County. Class 3 roads include all arterial and collector roads on Gasparilla Island, Pine Island, and Captiva, Sanibel and Estero Island or any road that. Class 3 roads also include roadway expansions identified on the Official Trafficways Map. 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 Map 3A of the Lee Plan transportation element, but which provides a reasonable alternative route for traffic that otherwise would travel a specific road shown on Lee Plan Map 3A of the Lee Plan transportation element.~~

Water, body of.

(1) *remains unchanged.*

(2) *Natural body of water* means a depression or concavity in the part of the surface of the earth lying landward of the line of mean sea level (NAVD-NGVD) which was created by natural geophysical forces and in which water stands or flows for more than three months of the year. Also included are the bays and estuaries lying between the county mainland and the barrier islands (Gasparilla Island, Cayo Costa, North Captiva Island, Captiva Island, Sanibel Island, Estero Island, Lovers Key, Big Hickory Island, Little Hickory Island and Bonita Beach) with the outermost boundary defined by the shortest straight line that can be drawn between these islands.

Chapter 6. BUILDING AND BUILDING REGULATIONS

ARTICLE III. COASTAL CONSTRUCTION CODE

DIVISION I. GENERALLY

Sec. 6-333. Definitions.

NAVD 88 means North American Vertical Datum of 1988, the vertical control datum of orthometric height based upon the General Adjustment of the North American Datum of 1988. NAVD 88 replaced the National Geodetic Vertical Datum of 1929 (NGVD 29).

~~NGVD means National Geodetic Vertical Datum, a geodetic datum established by the National Ocean Service and frequently referred to as the 1929 Mean Sea Level Datum.~~

Chapter 10. DEVELOPMENT STANDARDS

ARTICLE I. IN GENERAL

Sec. 10-8. Specific requirements.

Development will be approved and a development order will be issued when the development is designed so as to reasonably achieve the following:

(1) – (3) remain unchanged.

(4) ~~Official trafficways map.~~ Pursuant to the County Comprehensive Plan, there is hereby adopted as part of this chapter the official trafficways map for the County, which map is dated October 3, 1991, as it may be modified by the Board of County Commissioners. The map is a planning tool that identifies a network of trafficways and right-of-way widths necessary to meet present and anticipated roadway needs of the County. The official trafficways map will be signed by the chairman of the Board of County Commissioners and placed on file with the County Department of Transportation. Reproductions of the map will be made available to the public. The purpose of the official trafficways map is to: Lee Plan Map 3A. Lee Plan Map 3A is a planning tool that identifies the anticipated number of lanes and the approximate locations for existing and future arterial and collector streets in Lee County.

- a. ~~Identify the rights-of-way needed for the trafficways network necessary to ensure Countywide continuity of the transportation system;~~
- b. ~~Encourage municipalities within the County to adopt similar right-of-way maps that are basically in agreement with the County's official trafficways map;~~
- c. ~~Utilize as many existing rights-of-way as possible, and to anticipate future needs in areas where rights-of-way do not exist;~~
- d. ~~Establish right of way widths for future trafficways, including those for roads shown on the County traffic circulation plan map;~~
- e. ~~Constitute the official trafficways map described in the County Comprehensive Plan;~~
- f. ~~Establish harmonious, orderly and progressive development in the County that would ensure safer and more efficient traffic circulation; and~~
- g. ~~Adequately plan for the future transportation needs of the County and its citizens.~~

(5) – (15) remain unchanged.

ARTICLE II. ADMINISTRATION

DIVISION 2. DEVELOPMENT ORDERS

Subdivision II. Procedures.

Sec. 10-103. Prerequisite zoning approvals for development order submittals.

- (a) ~~In accordance with administrative code policy 13-4, as it may be amended, a~~ Any applicant who intends to submit an application for development order approval on a project that was zoned RPD, MHPD, RVPD, CPD, CFPD, IPD or AOPD prior to December 2, 1991, must submit four complete sets of plans and documents to the zoning review staff, who will review the submittals for full compliance with the adopted master concept plan and any conditions of approval. Plans may be reviewed concurrently for compliance with this chapter and with the terms of the zoning approval. No development orders may be issued for the project in question until the plans have been determined to be in compliance with the terms of the zoning approval. Specific reference to the districts listed in this section and the required review does not obviate the need to have plans reviewed for zoning compliance for conditions placed on other types of zonings, PUD's, special exceptions, variances and special permits.

(b) - (c) *remain unchanged.*

Sec. 10-104. Deviation and variances.

- (a) *Provisions where deviations are authorized.* The Development Services Director is hereby authorized to grant deviations from the technical standards in the following sections of this chapter.

(1) – (10) *remain unchanged.*

- (11) Section 10-329(d)(1)a. (Setbacks for water retention/detention excavations); ~~subject to section 10-329(e)(5);~~

(12) – (21) *remain unchanged.*

(b) – (i) *remain unchanged.*

- (j) Deviations or variances from procedures, definitions, or permitted or prohibited uses are prohibited.

DIVISION 3. LIMITED REVIEW PROCESS

Sec. 10-175. Required submittals.

The following submittals are required to apply for a development order in accordance with this division:

(1) - (3) *Remain unchanged.*

(4) An aerial photograph (most current available from the County), ~~at a scale of one inch equals 300 feet.~~

(5) - (7) *Remain unchanged.*

DIVISION 5. PLATS

Sec. 10-215. Waiver of requirements.

The following subdivisions of land are not subject to the requirements of this Chapter ~~division~~:

Remain unchanged.

ARTICLE III. DESIGN STANDARDS AND REQUIREMENTS

DIVISION 2. TRANSPORTATION, ROADWAYS, STREETS AND BRIDGES

Sec. 10-281. ~~Official trafficways map~~ Lee Plan Map 3A.

~~The official trafficways map~~ Lee Plan Map 3A is a planning tool that identifies ~~shows~~ the anticipated number of lanes and the approximate locations for existing and future arterial and collector streets in Lee County, ~~in addition to the roads identified on Lee Plan Map 3A.~~ ~~The official trafficways map is a supplement to Map 3A representing transportation needs beyond the planning horizon.~~ Development is encouraged to be set back from the rights-of-way shown on the ~~trafficways map~~ Lee Plan Map 3A to accommodate future road construction plans. Developers are encouraged to voluntarily dedicate these ~~rights-of-way~~, ~~shown on the trafficways map~~. Credits for such dedications may be authorized in accordance with chapter 2, article VI, division 2.

DIVISION 6. OPEN SPACE, BUFFERING AND LANDSCAPING

Sec. 10-421. Plant installation and maintenance standards.

(a) *Installation.* Plant materials must be installed in soil conditions that are conducive to the proper growth of the plant material. Limerock located within planting areas must be removed and replaced with native or growing quality soil before planting.

A plant's growth habit must be considered in advance of conflicts that might be created (e.g. views, signage, overhead power lines, lighting, buildings, and circulation). Trees may not be placed where they interfere with site drainage, subsurface utilities, or overhead utility lines, or where they will require frequent pruning in order to avoid interference with overhead power lines. Light poles must be located outside of all parking islands containing required trees. See Illustration 10-421(a).

All landscape materials must be installed in a recognized horticultural correct manner. At a minimum, the following installation requirements must be met:

(1) - (6) *Remains unchanged.*

(7) Signage located within or adjacent to landscape buffer area. All trees and shrubs located within landscape buffer must be located so as not to block the view of signage as shown in Illustration 10-421(a).

(8) *Remains unchanged.*

(b) - (c) *Remains unchanged.*

Chapter 14. ENVIRONMENT AND NATURAL RESOURCES

ARTICLE VII. CLEAN WATER PROVISIONS

Sec. 14-471. Purpose and intent.

The purpose of this article is to provide ~~clear guidance and regulation~~ with respect to discharges into the Lee County Municipal Separate Storm Sewer System (MS4) and other receiving waters. In order to comply with the requirements of the National Pollution Discharge Elimination System (NPDES) Permit, the county must establish regulations that will prohibit illicit discharges into the MS4 and other receiving waters and provide sufficient means to monitor and enforce local discharge regulations.

It is the intent of this article to prohibit any illicit, inappropriate or harmful discharges into the MS4 or waters of Lee County.

Sec. 14-473. Prohibition.

Illicit stormwater and non-stormwater discharges into the MS4 or other receiving waters are prohibited. Unless otherwise permitted, there are no discharges allowed to Lee County MS4 except uncontaminated stormwater runoff or one of the exemptions as listed in section 14-474.

Sec. 14-474. Exemptions.

The following discharges into the Lee County MS4 are specifically exempt from compliance with this article, unless identified as a source of pollutants:

(a) – (s) *remain unchanged.*

Sec. 14-475. Definitions.

Receiving Waters means stormwater conveyances (such as swales, ditches, canals or stormwater treatment devices/areas, designed, constructed and operated specifically for stormwater management or conveyance), sloughs, ponds, lakes, streams, creeks, rivers, estuaries, bays and gulf, these may be either natural or manmade.

Sec. 14-479. Enforcement.

(a) *Responsibility.* Lee County Natural Resources Division and Lee County Code Enforcement ~~are responsible to~~ may coordinate the enforcement of this article with the South Florida Water Management District (SFWMD), Environmental Protection Agency (EPA) and Florida Department of Environmental Protection (FDEP). In order to facilitate enforcement, Natural Resources' staff has full authority to act as a code enforcement officer or inspector, as those terms are defined in LDC sections 2-423 and 2-430.

(b) – (c) *remain unchanged.*

Chapter 22. HISTORIC PRESERVATION

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

DIVISION 3. CERTIFICATE OF APPROPRIATENESS

Sec. 22-102. Regular certificate of appropriateness.

Subsection (a) remains unchanged.

(b) The historic preservation board staff will ~~shall~~, within five 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 of a designated historic resource or a property within a designated historic district. The findings of the staff ~~shall~~ will be mailed ~~by certified mail, return receipt requested,~~ to the applicant within two working days of the staff decision, accompanied by a statement explaining the decision. The applicant ~~shall~~ will have an opportunity to appeal the staff decision by applying for a special certificate of appropriateness within 30 calendar days of the date the decision is issued.

ARTICLE III. DESIGNATION OF HISTORIC DISTRICTS AND RESOURCES

DIVISION 3. PROCEDURE

Sec. 22-203. Required notices; action by historic preservation board.

The historic preservation board will hold timely public hearings on every petition for designation made pursuant to this chapter. References in this chapter to calendar days will include Saturdays, Sundays and legal holidays. References in this chapter to working days exclude Saturdays, Sundays and legal holidays.

(1) *remains unchanged.*

(2) *Notification of public hearing.* For each proposed designation pursuant to this chapter, the historic preservation board ~~shall~~ will hold a public hearing no sooner than 20 calendar days and no later than 70 calendar days from the date a designation report has been filed with the historic preservation board and notice

of the intent to designate sent to the owners. Notice of the public hearing ~~shall~~ will be published in a newspaper of general circulation at least five calendar days but no ~~more sooner~~ more than 20 calendar days prior to the date of the public hearing.

(3) – (5) *remain unchanged.*

Chapter 30. SIGNS

ARTICLE I. IN GENERAL

Sec. 30-8. Removal of unlawful or dangerous signs.

All signs and sign structures which are or have been erected or maintained unlawfully ~~shall~~ will be considered illegal and subject to the following removal procedures:

(1) *Banners, promotional signs, sidewalk or sandwich signs, snipe signs and special event signs.*

a. *remains unchanged.*

b. After summary removal of a sign pursuant to this section, the building official ~~shall~~ will notify, either in person or by first class postage, prepaid, the occupant of the property from which the sign was removed, and, if the sign identified a party other than the occupant of the property, the party so identified. The notice ~~shall~~ will advise that the sign has been removed, and ~~shall~~ will state that the sign may be retrieved within 30 days of the date of the notice and that if the sign is not retrieved within 30 days it will be disposed of by the county. If the sign is removed from public property, ~~the party, if any, identified on the sign shall be notified; if no party is identified on the sign, then no notice prior to disposition is required.~~ The county ~~shall~~ will dispose of all unclaimed signs after the expiration of the 30-day period.

(2) – (4) *remain unchanged.*

Chapter 32. COMPACT COMMUNITIES

ARTICLE V. COMPACT COMMUNITIES THROUGH PLANNED DEVELOPMENT REZONINGREZOING

ARTICLE VIII. COMPACT COMMUNITY REGULATIONS FOR PLANNING COMMUNITIES

DIVISION 1. NORTH FORT MYERS

Sec. 32-803. Permitted uses.

TABLE 32-803B LIST OF ALLOWABLE RESIDENTIAL TYPE USES

Table remains unchanged.

Note: Uses allowed by special exception may also be requested through PD zoning.
All references to notes are to those notes found in section 34-844-3.

TABLE 32-803C
LIST OF ALLOWABLE COMMERCIAL TYPE USES

Table remains unchanged.

All references to notes are to those notes found in section 34-844-3.

Chapter 33 PLANNING COMMUNITY REGULATIONS

ARTICLE IV. PAGE PARK PLANNING COMMUNITY

DIVISION 2. DEVELOPMENT STANDARDS AND SPECIFICATIONS

Sec. 33-1231. Applicability.

The development standards and specifications herein do not apply to existing development as of September 14, 2010. ~~apply to all new developments, as specified in section 33-1202 constructed after the effective date of this article.~~ Additionally, a Any existing structure, building, or portion thereof, that is substantially improved (reconstructed, rehabilitated, altered or demolished), to the extent the cost of such improvement equals or exceeds a cumulative total of 50 percent of the current assessment of value of the structure or building before the start of construction of the improvement, must be reconstructed by utilizing the requirements of this article.

Additional requirements for mixed-use development are found in Division 3 of this article.

Subdivision I. Basic Elements

Sec. 33-1250. Property development regulations table.

Except as provided in the Table below, the property development regulations contained in sections 34-695 and 34-845-4 will apply.

Remainder of section remains unchanged.

DIVISION 3. SPECIFIC USE STANDARDS

Subdivision I. Mixed-Use Standards

Sec. 33-1353. Mixed-use property development regulations table.

Setbacks for mixed-use property development are shown in the table below. With the exception of the setbacks set forth in the below, the property development regulations in sections 34-695 and 34-845-4 will otherwise apply.

ARTICLE VII. CALOOSAHATCHEE SHORES PLANNING COMMUNITY

DIVISION 1. GENERALLY

Sec. 33-1481. Planning community boundaries.

- (a) Caloosahatchee Shores Planning Community. The boundaries of the Caloosahatchee Shores Planning Community are as depicted in the Lee County Comprehensive Plan on Lee Plan Map 1 Special Treatment Areas (Page 2 of 68) and in Appendix I on Map 14. The following overlays are located within the Caloosahatchee Shores Planning Community:
- (1) Olga Planning Community Overlay. The boundaries of the Olga Community overlay district are as depicted in the Lee County Comprehensive Plan on Lee Plan Map 1 Special Treatment Areas (Page 2 of 68) and in Appendix I on Map 14.
 - (2) *remains unchanged.*

ARTICLE VIII. NORTH FORT MYERS PLANNING COMMUNITY

DIVISION 3. COMMERCIAL CORRIDOR USE REGULATIONS

Subdivision VI. Commercial Corridor Use Regulations

Sec. 33-1596. Use regulations.

Table remains unchanged.

All references to notes are to those notes found in section 34-844-3.

Chapter 34. ZONING

ARTICLE I. IN GENERAL

Sec. 34-2. Definitions.

Animals, Class I means all animals described in F.S. § ~~379 372~~ and listed in Florida Administrative Rule 68A-6.002(1)(a).

Animals, Class II means all animals described in F.S. § ~~379 372~~ and listed in Florida Administrative Rule 68A-6.002(1)(b).

Street right-of-way, proposed is a general term denoting land or property, usually in a strip, indicated on the adopted County Official Trafficways Map identified on Lee Plan Map 3A, as land to be used in the future for transportation purposes.

Variance, procedural means any departure from the procedural requirements of this chapter, chapter 10 or any other Code or ordinance. ~~Procedural variances are never permitted.~~

Water, body of.

(1) *remains unchanged.*

(2) *Natural body of water* means a depression or concavity in the part of the surface of the earth lying landward of the line of mean sea level (NAVD-NGVD) which was created by natural geophysical forces and in which water stands or flows for more than three months of the year; also, the bays and estuaries lying between the County mainland and the barrier islands (Gasparilla Island, Cayo Costa, North Captiva Island, Captiva Island, Sanibel Island, Estero Island, Lovers Key, Big Hickory Island and Little Hickory Island and Bonita Beach) with the outermost boundary defined by a series of short straight lines that can be drawn connecting these islands.

ARTICLE II. ADMINISTRATION

DIVISION 4. HEARING EXAMINER

Sec. 34-145. Functions and authority.

(a) - (f) *remain unchanged.*

(g) Deviations or variances from procedures, definitions, or permitted or prohibited uses are prohibited.

DIVISION 6. APPLICATIONS AND PROCEDURES FOR CHANGES, PERMITS, INTERPRETATIONS AND APPROVALS

Sec. 34-201. General procedure for applications requiring public hearing.

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

(c) Requests for deviations or variances from procedures, definitions, or permitted or prohibited uses will not be processed.

ARTICLE IV. PLANNED DEVELOPMENTS

DIVISION 3. DESIGN STANDARDS

Sec. 34-411. General Standards.

(a) - (c) *remain unchanged.*

(d) The tract or parcel shall have access to existing or proposed roads:

- (1) In accordance with chapter 10 and as specified in the Lee Plan transportation element traffic-circulation element or the official trafficways map of the County;

Remainder of Section remains unchanged.

ARTICLE VI. DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Sec. 34-613. Zoning maps; ~~designation of district boundaries; vested rights.~~

- (1) Public availability. The official and current zoning maps are part of the public records. The Department of Community Development will retain a copy of the these zoning maps consistent with statutory record-keeping requirements.
- (2) Unauthorized changes to zoning maps. No one may acquire any interest or right in property or personalty from an unauthorized change in the official zoning map.
- (3) Vested rights. There is no right to rely on either the official or current zoning maps to vest development or private rights. Staff members and members of the public must consult the pertinent zoning resolutions, Hearing Examiner decisions for special exceptions or variances, and administrative approvals or deviations to determine the parameters and conditions affecting the subject property.
- (4) Both the official zoning map and the current zoning map are a part of this chapter as if fully described in this chapter.

~~The boundaries of each zoning district as they were officially adopted from 1991 thru 1994 are designated and established as shown on the "official zoning map" of the County. Amendments officially approved by the Board of County Commissioners since the adoption of the most recent official zoning maps are shown on the "current zoning map" described below. Both the official zoning map and the current zoning map are a part of this chapter as if fully described in this chapter.~~

~~There is no right to rely on either the official or current zoning maps to vest development or private rights. Staff members and members of the public must consult the pertinent zoning resolutions, Hearing Examiner decisions for special exceptions or variances, and administrative approvals or deviations to determine the parameters and conditions affecting the subject property.~~

Sec. 34-614. Official zoning map.

- (a) Generally. Description. The boundaries of each zoning district as they were officially adopted from 1991 thru 1994 by Resolutions 91-09-42, 92-03-11, 93-01-17 and 94-03-27 are designated and established on the "official zoning map" of the County. Amendments approved by the Board of County Commissioners since the adoption of the official zoning maps are shown on the "current zoning map" described below.

~~(1) Description. The official zoning map of the County consists of a series of computer-generated and printed section maps depicting zoning information adopted by the Board of County Commissioners between 1991 and 1994 as follows:~~

~~Resolution 91-09-42 (adopted September 18, 1991) All areas of the County lying within Range 27E.~~

~~Resolution 92-03-11 (adopted March 18, 1992) All areas of the County lying within Range 26E.~~

~~Resolution 93-01-17 (adopted January 20, 1993) All areas of the County lying within Range 25E.~~

~~Resolution 94-03-27 (adopted March 16, 1994) All unincorporated areas of the County lying within Ranges 20E, 21E, 22E, 23E, and 24E.~~

~~(2) Public availability. The official zoning map is part of the public records.~~

~~(b) Replacement pages and new official zoning maps. If a page of the official zoning map becomes damaged, destroyed, lost, or it is determined an error exists in the official zoning map the current zoning map will control. If a page of the official zoning map becomes damaged, destroyed, lost, or it is determined an error exists in the official zoning map, the Board of County Commissioners may adopt by resolution at an advertised public hearing a replacement page printed from the corrected current zoning map which will supersede the prior official zoning map page.~~

~~(c) New official zoning maps. The Board of County Commissioners may, periodically, but not less than once every ten years, adopt new official zoning maps in accordance with this chapter.~~

~~(d) Records management for official zoning maps. The Department of Community Development must retain a copy of the official zoning maps adopted under section 34-614 consistent with statutory record-keeping requirements.~~

~~(e) Unauthorized changes to the official zoning maps. Changes to the official zoning map may only be made as provided for in section 34-614(b). No one may acquire any interest or right in property or personalty from an unauthorized change in the official zoning map.~~

Sec. 34-615. Current zoning maps.

~~(a) Generally.~~

~~(1) Description. The current zoning maps of the County consist of computer-generated section maps depicting the same information on the official zoning map as it may be subsequently modified by zoning amendments, special exceptions, variance or administrative deviations, etc. and mapping corrections that have been entered into the computer data base since the most recent adoption of the official zoning maps. For purposes of this section the term~~

"mapping corrections" means corrections applied to the current zoning map to provide an accurate reflection of the legal description attached to a duly adopted zoning resolution.

~~(2) — Public availability. The current zoning maps are part of the public records.~~

~~(b) Preparation. The Board of County Commissioners hereby authorizes the preparation of current zoning maps in conformance with the procedures set forth in this section.~~

~~(1) – (6) remains unchanged.~~

DIVISION 2. AGRICULTURAL DISTRICTS

Sec. 34-654. Property development regulations table.*

Property development regulations for agricultural districts are as follows:

TABLE 34-654. PROPERTY DEVELOPMENT REGULATIONS FOR AGRICULTURAL DISTRICTS

Table remains unchanged.

Notes:

- (1) *Remains unchanged.*
- (2) Any lot created in the rural community preserve land use category (as delineated by policy 17.1.3 of the Lee Plan) after July 9, 1991, must have a minimum area of 43,560 square feet excluding all street rights-of-way or easement areas, water management areas, and natural water bodies. Public utility easement areas may be included in the lot size calculation.
- (3) – (6) *Remains unchanged.*

DIVISION 3. RESIDENTIAL DISTRICTS

Subdivision II. One- and Two-Family Residential Districts

Sec. 34-694. Use regulations table.

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

TABLE 34-694. USE REGULATIONS FOR ONE- AND TWO-FAMILY RESIDENTIAL DISTRICTS

	Special Notes or Regulations	RSC-1	RSC-2	RSA	RS-1	RS-2	RS-3	RS-4	RS-5	TFC-1	TFC-2	TF-1
Accessory uses, buildings and structures:	34-1171 et seq., 34-2441 et seq., 34-3106	P	P	P	P	P	P	P	P	P	P	P
Amateur radio antennas and satellite	34-1175	Refer to 34-1175 for regulations.										

earth-stations													
	<u>Amateur radio antennas and satellite earth stations</u>	<u>34-1175</u>	Refer to 34-1175 for regulations.										
	Animals (equines)	<u>34-1291 et seq.</u>	-	-	-	-	-	-	SE	SE	-	-	-
	Docks, seawalls	34-1863	P	P	P	P	P	P	P	P	P	P	P
	Fences, walls	34-1741 et seq.	P	P	P	P	P	P	P	P	P	P	P
	Entrance gate, gatehouses	34-1741 et seq.	P	P	P	P	P	P	P	P	P	P	P
	Nonroofed structures	34-2194(c)	P	P	P	P	P	P	P	P	P	P	P
	Signs in compliance with chapter 30		P	P	P	P	P	P	P	P	P	P	P
Animals and reptiles													
	<u>Keeping, raising or breeding of American alligators or venomous reptiles</u>	<u>34-1291 et seq.</u>	-	-	-	SE	SE	SE	SE	SE	-	-	-
	<u>Poultry raising, noncommercial</u>	<u>34-1291 et seq.</u>	=	=	=	=	=	=	SE	SE	=	=	=
Essential service facilities (34-622(c)(13)):													
	Group I	34-1611 et seq., 34-1741 et seq., 34-2142	P	P	P	P	P	P	P	P	P	P	P
	Group II	34-1611 et seq., 34-1741 et seq., 34-2141 et seq.	=	=	=	EO	=	=	=	=	=	EO	=

Subdivision III. Multiple-Family Districts

Sec. 34-714. Use regulations table.

Use regulations for multiple-family districts are as follows:

TABLE 34-714. USE REGULATIONS FOR MULTIPLE-FAMILY RESIDENTIAL DISTRICTS

		Special Notes or Regulations	RM-2 (Note 5)	RM-3, RM-6, RM-8, RM-10 (Note 5)
Essential service facilities (34-622(c)(13)):				
	Group I	34-1611 et seq., 34-1741 et seq., 34-2142	P	P
	<u>Group II</u>	<u>34-1611 et seq.,</u> <u>34-1741 et seq.,</u> <u>34-2141 et seq.</u>	<u>EO</u>	<u>=</u>

Sec. 34-715. Property development regulations table.

Property development regulations for multiple-family districts are as follows:

TABLE 34-715. PROPERTY DEVELOPMENT REGULATIONS FOR MULTIPLE-FAMILY RESIDENTIAL DISTRICTS

	Special Notes or Regulations	RM-2	RM-3	RM-6	RM-8	RM-10
Special regulations:						
Essential service facilities (34-622(c)(13))	34-1611 et seq., 34-2142	Refer to the sections specified for exceptions or additions to the minimum setback requirements listed in this table.				

DIVISION 4. RECREATIONAL VEHICLE PARK DISTRICTS

Subdivision II. Conventional Recreational Vehicle Districts

Sec. 34-791. Use regulations table.

Use regulations for recreational vehicle districts are as follows:

TABLE 34-791. USE REGULATIONS FOR RECREATIONAL VEHICLE DISTRICTS

	Special Notes or Regulations	RV-1	RV-2	RV-3	RV-4
Dwelling Unit:					
<u>Single-family residence, conventional</u>		<u>=</u>	<u>=</u>	<u>EO</u>	<u>=</u>

DIVISION 5. COMMUNITY FACILITIES DISTRICTS

Sec. 34-813. Use regulations table.

Use regulations for the community facilities districts are as follows:

TABLE 34-813. USE REGULATIONS FOR COMMUNITY FACILITIES DISTRICTS

		Special Notes or Regulations	CF-1	CF-2	CF-3	CF-4
Essential service facilities (34-622(c)(13)):						
	Group I	34-1611 et seq., 34-1741 et seq., 34-2142	P	P	P	P
	Group II	34-1611 et seq., 34-1741 et seq., 34-2141 et seq.	=	EO	EO	=
Golf Driving Range			P	=	=	=

DIVISION 6. COMMERCIAL DISTRICTS

Sec. 34-842. Alternative Property Development Regulations for Duplex, Two-Family Attached, and Townhouse Units in C-1A, C-1, and C-2 Districts.

As an alternative to developing in accordance with section 34-845, property zoned C-1A, C-1, and C-2, may be developed with duplexes, two-family attached units (where permitted by section 34-844), and townhouses on lots with a minimum lot area of 2,400 square feet per lot without compliance with minimum lot width, lot depth, side setback requirements or the requirement that lots must abut streets in section 10-291(2); provided the following conditions are met:

- (1) The overall parcel on which the lots are developed must comply with all lot coverage, area, width, and depth requirements for the district in which located;
- (2) The overall parcel on which the lots are developed complies with section 10-291;
- (3) All structures must comply with setbacks for the district in which located, as measured from the boundary of the overall parcel;
- (4) All structures must comply with street, rear, and water body setbacks for the district in which located, with the rear setback measured from individual lot lines;
- (5) All structures which exceed the maximum height requirements of the district in which located must comply with the additional setbacks specified in article VII, division 30, subdivision II, of this chapter as measured from the overall parcel boundary;
- (6) The applicant must provide adequate assurance that all areas of the overall parcel which are not developed as individual lots will remain and be maintained as common areas by an appropriate property owners' association. Such assurance may be provided in the form of maintenance and access easements or other documents or combination of documents satisfactory to the county attorney to ensure the common areas are perpetually maintained and the common infrastructure is available for the property owners within the development; and

- (7) This section may not be utilized to authorize the subdivision of a parent parcel. Subdivision of a parent parcel must meet the requirements of Chapter 10 (either through an approved lot split, plat, or replat).

Sec. ~~34-843~~ 34-842. Applicability of use and property development regulations.

No land, body of water or structure may be used or permitted to be used and no structure may hereafter be erected, constructed, moved, altered or maintained in any conventional commercial district for any purpose other than as provided in section 34-844-3, pertaining to use regulations for conventional commercial districts, and section 34-845-4, pertaining to property development regulations for conventional commercial districts, except as may be specifically provided for in article VIII (nonconformities) of this chapter, or in section 34-620.

Sec. ~~34-844~~ 34-843. Use regulations table.

Use regulations for conventional commercial districts are as follows:

TABLE ~~34-844~~ 34-843. USE REGULATIONS FOR CONVENTIONAL COMMERCIAL DISTRICTS

	Special Notes or Regulations	C-1A	C-1	C-2	C-2A	CN-1	CN-2	CN-3 (21, 23)	CC	CG	CS-1	CS-2	CH	CT	CR	CI	CP
Dwelling unit:																	
Two-family attached	Note (25) & (35)	P	P	P	P	--	--	--	--	--	--	--	--	--	--	--	--
Townhouse	Note (25)	EO	P	P	EO	--	--	--	--	--	--	--	--	--	--	--	--
Essential service facilities (34-622(c)(13)):																	
Group I	34-1611 et seq., 34-1741 et seq., 34-2142	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Group II	34-1611 et seq., 34-1741 et seq., 34-2141 et seq.	EO	=	=	=	=	=	=	EO	=	=	=	=	=	=	=	=
Wholesale																	

establishment (34-622(c)(56)):																		
Group I		--	P(15)	P	P	--	--	--	P(15)	P(15)	P(15)	P(15)	--	P(15)	P(15)	P	--	

Sec. 34-845-34-844. Property development regulations table.

Property development regulations for conventional commercial districts are as follows:

TABLE ~~34-845-34-844~~. PROPERTY DEVELOPMENT REGULATIONS FOR COMMERCIAL DISTRICTS

Table remains unchanged.

DIVISION 8. INDUSTRIAL DISTRICTS

Sec. 34-903. Use regulations table.

Use regulations for industrial districts are as follows:

TABLE 34-903. USE REGULATIONS FOR INDUSTRIAL DISTRICTS

		Special Notes or Regulations	IL Note (14)	IG Note (14)	IR Note (14)
Essential service facilities (34-622(c)(13)):					
	Group I	34-1611 et seq., 34-1741 et seq., 34-2142	P	P	P
	Group II	34-1611 et seq., 34-1741 et seq., 34-2141 et seq.	EO	=	=
	Group III	34-1611 et seq., CFPD, IPD or MPD only	EO	--	--
Wholesale establishment (34-622(c)(56)):					
	Group I	34-3001 et seq., Note (9)	P	P	P

DIVISION 9. PLANNED DEVELOPMENT DISTRICTS

Sec. 34-934. Use regulations table.

Use regulations for planned development districts are as follows:

TABLE 34-934. USE REGULATIONS FOR PLANNED DEVELOPMENT DISTRICTS

	Special Notes or Regulations	RPD	MHPD	RVPD	Compact PD	CFPD	CPD	IPD Note (37)	AOPD	MPD	MEPD

Amateur radio antennas and satellite earth stations	34-1175	Refer to 34-4 <u>34-1175</u> for regulations.										
Dwelling unit:											P	
Single-family	Note (29)	P	P	—	—	—	EO	—	—	P	—	
Golf driving range		P	P	--	--	P--	P	P--	--	P	--	

Sec. 34-935. Property development regulations.

Subsection (a) remains unchanged.

- (b) Minimum setbacks of structures and buildings from development perimeter boundaries.
- (1) All buildings and structures must be set back from the development perimeter a distance equal to the greater of:
 - a. The width of any buffer area or landscape strip, required by chapter 10 or chapter 33; or
 - b. – h. *Remain unchanged.*
- (2) Parking or internal roads or drives may not be closer to the development perimeter than the width of any buffer area or landscape strip, required by chapter 10, chapter 33, or five feet, whichever is greater.
- (3) – (5) *Remain unchanged.*

ARTICLE VII. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 6. ANIMALS

Sec. 34-1297. Activities requiring special approval.

Subsections (a) – (b) remain unchanged.

- (c) Class I animals maintained on a lot in accordance with state permits issued pursuant to F.S. ch. 379 ~~372~~ prior to September 9, 1994, but which were not permitted by right or by special exception in the zoning district in which the lot is located, are considered nonconforming uses.

No new, additional, or replacement Class I animals will be permitted on such lots so long as the possession of these animals is not otherwise permitted by the operation of these zoning regulations.

- (d) *Remains unchanged.*

DIVISION 16. FARM PRODUCE STANDS, U-PICK OPERATIONS, AND COMMUNITY GARDENS

Sec. 34-1716. Standards for community gardens.

Community gardens may be permitted by right in certain zoning districts as specified in the district use regulations, ~~subject to the following regulations~~. Community gardens are not subject to review under Chapter 10-, but are subject to the following regulations:

- (1) *Size limitation.* A community garden may not be greater than two acres in size.
- (2) *Noise.* The use or operation of power tools or portable mechanical equipment ~~used outdoors in zoning districts that allow residential uses areas zoned RS, TFC, RM, MHC, MH, RV, CFPD, CPD, RPD, MHPD, RVPD, and MPD~~ is prohibited before 8:00 a.m. and after 7:00 p.m. so as to avoid noise disturbance in the community. ~~The use of hand tools and domestic gardening tools is encouraged.~~
- (3) *Chemical application.* ~~Organic gardening is strongly encouraged.~~ The use of fertilizer, pesticide, insecticide, herbicide or agricultural use chemicals must be consistent with label instructions and must be in compliance with Lee County Fertilizer Ordinance 08-08.
- (4) *Sale of produce and plants in residential zoning districts.* The sale of flowers, vegetables or other crops grown on the property may be sold only as approved by a temporary use permit issued prior to the sale ~~within residential zoning districts RS, TFC, RM, MHC, MH, RV, CFPD, CPD, RPD, MHPD, RVPD, and MPD.~~
- (5) – (9) remain unchanged.

DIVISION 26. PARKING

Sec. 34-2016. Parking space dimension, delineation, angle and aisle width.

In addition to satisfying the provisions of this division, off-street parking lots must conform to the following requirements:

- (1) *remains unchanged.*
- (2) *Delineation of spaces.*
 - a. *Paved parking lots.*
 1. Parking spaces must be delineated by all-weather painted lines, or thermoplastic striping, not less than four inches in width, centered on the dividing line between spaces.

Parking spaces for persons with disabilities must be prominently outlined with blue paint, and must be repainted when necessary to be clearly distinguishable as a parking space designated for

persons who have disabilities. Signs erected after October 1, 1996 must indicate the penalty for illegal use of the space.

2. Parking spaces ~~without a curb~~ that abut a pedestrian walkway, required landscaping, or required open space must be provided with a parking block set two feet from the end of the parking space.

Sec. 34-2020. Required parking spaces.

- (a) *remains unchanged.*
- (b) *Non-residential uses.* Non-residential uses permitted under this chapter are subject to the following minimum requirements:

TABLE 34-2020(b). REQUIRED PARKING SPACES FOR NON-RESIDENTIAL USES

Use	Special Notes or Regulations	Minimum Required Spaces for Single-Use Development	Minimum Required Spaces for Multiple-Use Development
Retail or business establishments.			
c. <i>Very large products or commodities:</i> Household/office furnishings groups II I & III; mobile home dealers; specialty retail stores group IV; used merchandise stores group IV; vehicle and equipment dealers groups I, III, IV and V; and other similar type establishments.		1 space per 700 square feet, with a minimum of 5 spaces; dead storage is calculated at 1 space per 1,500 square feet	1 space per 700 square feet of total floor area; no parking is required for areas of the building used only as dead storage and not available to the public
Theaters, auditoriums, stadiums, arenas and other similar places of public assembly.	Notes (1)&(14)	1 space per 3 4 seats plus one space per employee	1 space per 3 4 seats
Warehouse, high-cube.	Note (1)		
a. Passenger car parking	Note (14)	1 space per 1,000 square feet of total floor area for the first 20,000 square feet, plus 1 space per 2,000 square feet for the second 20,000 square feet to 99,999 square feet, plus 1 space per 5,000 square feet for that portion over 100,000 square feet.	--

Notes:

- (1) – (8) *remain unchanged.*
- (9) The minimum required parking requirement for Groups I, II and fast food restaurants with no drive-up facilities located in a multiple-use development is 1 space per 350 square feet of total floor area.
- (10) *remains unchanged.*

(11) ~~Passenger car parking for office area comprising less than ten percent of the total sq. ft. of the building will be included in this calculation. Office area over ten percent will be calculated at the office (excluding medical) rate. Reserved.~~

(12) – (15) remain unchanged.

(c) – (d) remain unchanged.

(f) *Parking in excess of 120 percent of minimum requirements.*

(1) In commercial, industrial and mixed-use developments that require 80 parking spaces or more, each additional parking space provided at time of local development order approval in excess of 120 percent of the minimum requirements of this section, must provide:

a. *remains unchanged.*

b. All internal parking island landscape areas must be planted with trees, shrubs, and ground covers. The landscape areas must include shrubs and ground cover plants with a minimum of 50 percent coverage of the landscape area at the time of planting. Trees and shrubs must meet the size requirements of Section 10-420(d). Groundcover plants must be a minimum one-gallon container size.

(2) *remains unchanged.*

DIVISION 30. PROPERTY DEVELOPMENT REGULATIONS

Subdivision III. Setbacks

Sec. 34-2192. Street setbacks.

(a) *Required setback.* Except as provided for in subsection (b) of this section, or unless a modification is granted as a variance or deviation, all buildings and structures must be set back from the adjacent street easement or right-of-way according to the functional classification of the adjoining street as set forth ~~on the official trafficways map in the Functional Classification of Roadways Administrative Code, AC-11-1.~~ Any street not shown on the trafficways map in AC-11-1 as a collector or arterial street will be presumed to be a local street or a private street for the purposes of this section.

DIVISION 39. USE, OCCUPANCY AND CONSTRUCTION REGULATIONS

Sec. 34-3102. Number of principal buildings on lot.

(a) – (c) *remains unchanged.*

(d) In the CS-2 district, two principal structures may be permitted in accordance with note (5) in section 34-844-3.

Suggested Language &
Background Information
to Amend the LDC to Allow
a Dock at the end of an
Easement

From Charles Messina &
Chuck Newman

MEMORANDUM

FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT

DATE: December 20, 2012

TO: EROC Committee Members

Pam Houck

Zoning Director

RE: **Land Development Code (LDC) Amendment
Charles Messina – dock amendment**

Attached are documents provided by Mr. Messina, a property owner who wants the LDC amended to allow a dock to be located at the end of an easement near his property in Flamingo Bay, a mobile home subdivision on Pine Island.

The LDC requires an accessory use (dock) to be located on the same premises as the principal use.

Please review these documents for discussion at the January 9, 2013 meeting.

Flamingo Bay

This is an amendment, proposed by a private citizen, to allow a dock in a 10 foot wide easement when the accessory use (dock) is not located on the same premises as the principal use.

Attached is background information submitted by the private citizen, Mr. Charles Messina, see attached.

Staff drafted alternative language although we do not recommend any change to the Land Development Code, see attached.

Memo

To: Mary Gibbs

From: Chuck Newman

CC: Charles Messina, George Alleman, Attorney Josh Dorcey, Councilmen John Manning, Brian Bigelow, Ray Judah, Frank Mann, Councilwoman Tammy Hall, & file

Date: 12/20/2012

Re: Flamingo Bay

Hi Mary, I am Chuck Newman and look forward to speaking with you in person. I have volunteered to try to help the people in Flamingo Bay resolve their problem with their docks. I look forward to working with you and other County staff to resolve the Flamingo Bay situation to a satisfactory conclusion for all parties.

I am old enough to remember when Zoning Regulations became a dominant figure in planning new economic developments. My first job after graduating college was working for an architectural firm that occupied half of a building while the other half by a firm that did city planning. There was a lot of inter action between the two firms as we shared a duplication department. Many times we created the sketches to go with the regulations they were writing. On occasion, they would ask us to read what they had written to get our opinion. I learned a lot from both firms while working there. But I digress on the issue at hand.

I wrote what I believe would make a good exception to the basic rule defining accessory structures. I thought it really made good sense. However, that's where I ran into trouble. An accessory structure is,

" buildings and structures that are customarily recognized as clearly incidental and subordinate to the principal use of the property, are permitted by right when located on the same lot or parcel and in the same zoning category as the principal use"

per the Lee County development Code. I do not think a dock is clearly incidental to the principal use of the property.

Additionally, the regulation states,

"no accessory use, building or structure may be commenced, erected, placed or moved onto a lot or parcel prior to the principal use, building or structure."

that the accessory structure cannot be ON the subject property before the primary structure is built. That's contrary to what the Zoning Department has recently allowed in the Flamingo Bay Housing development and also contrary to what the Zoning Department has allowed in my own canal system. Also, why would I build a dock ONTO the property instead of in the actual canal. Makes ya wanna say "hmmm".

The Zoning Code required setback requirements for accessory buildings reads as follows,

"all accessory uses, buildings and structures must be located on the same premises and must have the same zoning classification as the principal use"

Again if a dock is an accessory structure it is required to be on the same premises as the principal structure.

"Setback from bodies of water. No building or structure (except docks and seawalls, which are subject to the setback requirements as set forth in chapter 26, article II) may be located closer to a bay, canal or other body of water than the minimum setback required in section 34-2194"

But the next section states

Residential accessory buildings and structures: Except as provided in sections 34-1175 and 34-1176, all accessory residential buildings and structures must be set back a minimum of five feet from any rear property line and may not be closer to a side property line than the minimum required side setback for the district in which the property is located, or ten feet, whichever is less.

Contrary to what some people may believe the current Zoning Regulations state, Docks do not appear to be accessory structures but are governed by their own section of the Zoning Code. I propose the following section of the Lee County Development Code be modified as shown in red to be amended to read as follows:

Sec. 34-1863. - Construction and maintenance of docks, seawalls and other structures designed for use on or adjacent to waterways.

Construction, placement, erection and maintenance of docks, mooring piles, seawalls, watercraft landing facilities and other structures designed for use on, or adjacent to waterways, must be in compliance with the Manatee Protection Plan established building permit procedures and with chapter 26, article II. See section 34-1171, et seq.

- a. *Flamingo Bay on Pine Island: Land locked residents also known as dry lot owners may, if granted a 10 foot wide right of way to the water by deed, construct a boat dock in the canal provided that boat dock does not project into the canal more than 25% of the useable width of the canal, is between the granted right of way lines if extended into the canal, and in no case is more than 10 feet wide.*

However in reading the Lee County Land Development Code it seems that the situation in Flamingo Bay may have already been taken into consideration by the code. Specifically the following section of the current Lee County Development Code.

DIVISION 2. LOCATION AND DESIGN

Sec. 26-71. - Docking facilities and boat ramps.

- (g) *Interest in land to support residential dock/facility approval. In order to obtain a permit for a residential dock and related facilities, the property owner/applicant must have a recorded right to access the water meeting the following criteria:*
- (1) *A deed describing the residential lot with at least one boundary being the waterway along which the dock facility is proposed. The lot described must be a buildable lot with sufficient square footage to meet county requirements except as provided in section 34-1173(a)(2)d; OR*
- (2) *A recorded easement granting access to the waterbody for purposes of constructing and using a dock/facility meeting the following criteria.*
- a. *The easement must be over land contiguous to the residential lot such that an extension of the side lot lines will allow access to the water beyond the rear lot line;*
- b. *The easement must be for the benefit of a residential lot that is a buildable lot under county regulations; and*
- c. *The easement must be necessary to gain access to the waterbody over and through waterway buffer and maintenance areas required for development approval under chapter 10*

Perhaps some portion of the code section above should be modified to cover the conditions of the Flamingo Bay properties.

After you and your staff have had the opportunity to review what I have presented, I would appreciate the opportunity to meet directly with you, at your convenience, to discuss the matter at hand in greater detail.

I also have another item I would like to discuss directly with you. I would like to discuss with you that section of the code which deals with Historic Preservation. The code outlines the specifics for an Historical Board consisting of different types of people on a review board. My Interest is who is on that Historical Board, when do they normally meet, and is it possibly to meet with the Board on an informal basis to discuss upcoming projects.

Sincerely

Chuck Newman Architect

Lee County
Property
Appraiser's
Aerial
Photography Web
Site



Select a plug-in

- Native plug-in
- Java plug-in
- HTML only

[Which plug-in?](#)

Select an application

- [Simple Viewer](#)
- [Linked Viewer](#)
- [Overlay Viewer](#)
- [Coordinate Viewer](#)
- [Scale Viewer](#)
- [Measurement Viewer](#)

Help

[Usage Instructions](#)

Overlay Viewer Application

This application allows you to view differences between two sets of aeriels by making the top layer transparent. To change the Top layer's transparency value, drag the slider to alter the top layer transparency.



Toolbar:



Progress:



Choose which Aerial

Top Image (moving right)
2010 Hi-Res (1/2 foot)

Bottom Image (moving left)
2005 Hi-Res (1/2 foot)

Transparency:

Drag the slider to alter the top layer transparency.



Clip regions:

Use clip region on the top image

Lee County
Property
Appraiser's
Aerial
Photography Web
Site



Select a plug-in

- Native plug-in
- Java plug-in
- HTML only

[Which plug-in?](#)

Select an application

- [Simple Viewer](#)
- [Linked Viewer](#)
- [Overlay Viewer](#)
- [Coordinate Viewer](#)
- [Scale Viewer](#)
- [Measurement Viewer](#)

Help

[Usage Instructions](#)

Overlay Viewer Application

This application allows you to view differences between two sets of aerials by making the top layer transparent. To change the Top layer's transparency value, drag the slider to alter the top layer transparency.



Toolbar:



Progress:



Choose which Aerial

Top Image (moving right)
2010 Hi-Res (1/2 foot)

Bottom Image (moving left)
2005 Hi-Res (1/2 foot)

Transparency:

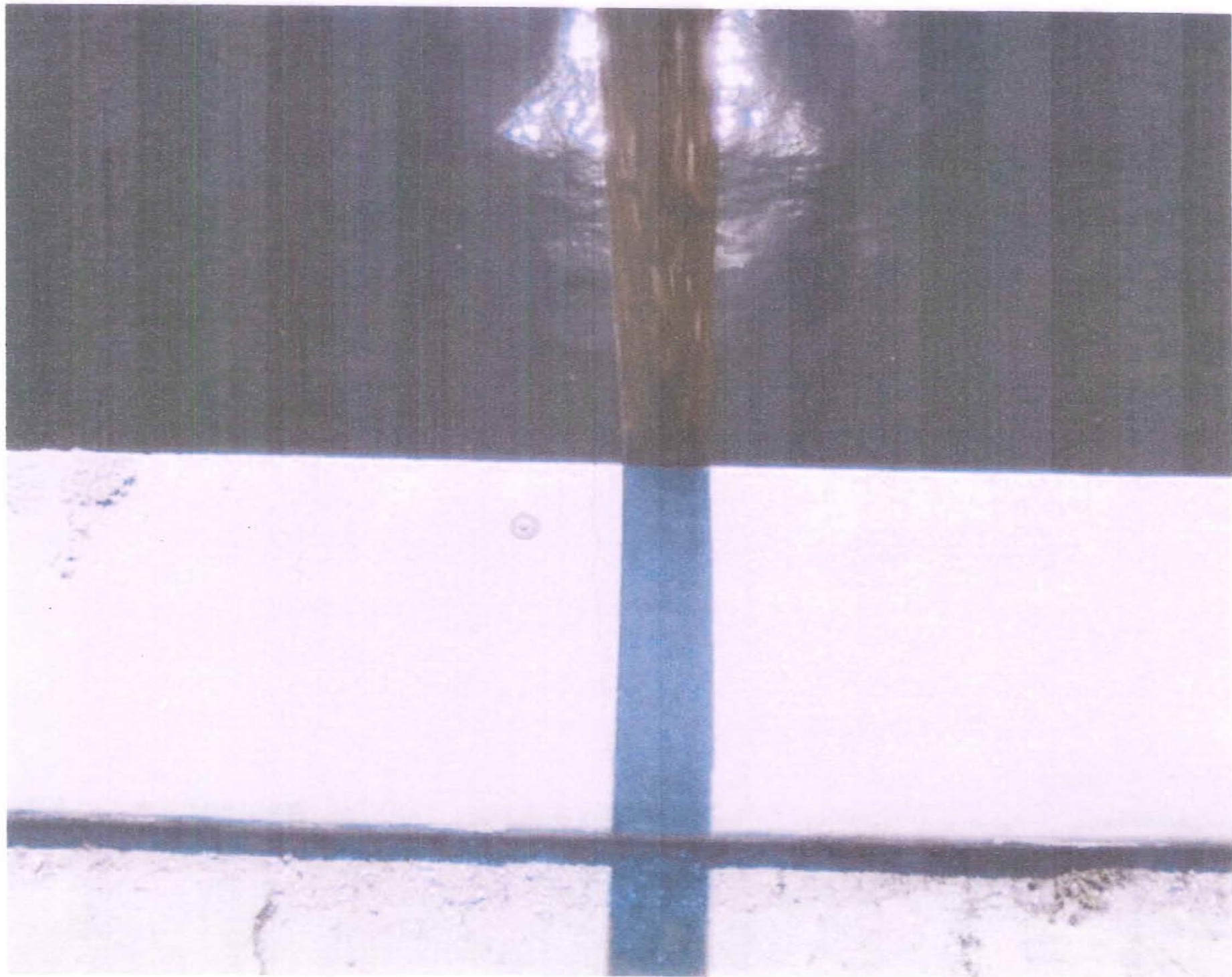
Drag the slider to alter the top layer transparency.

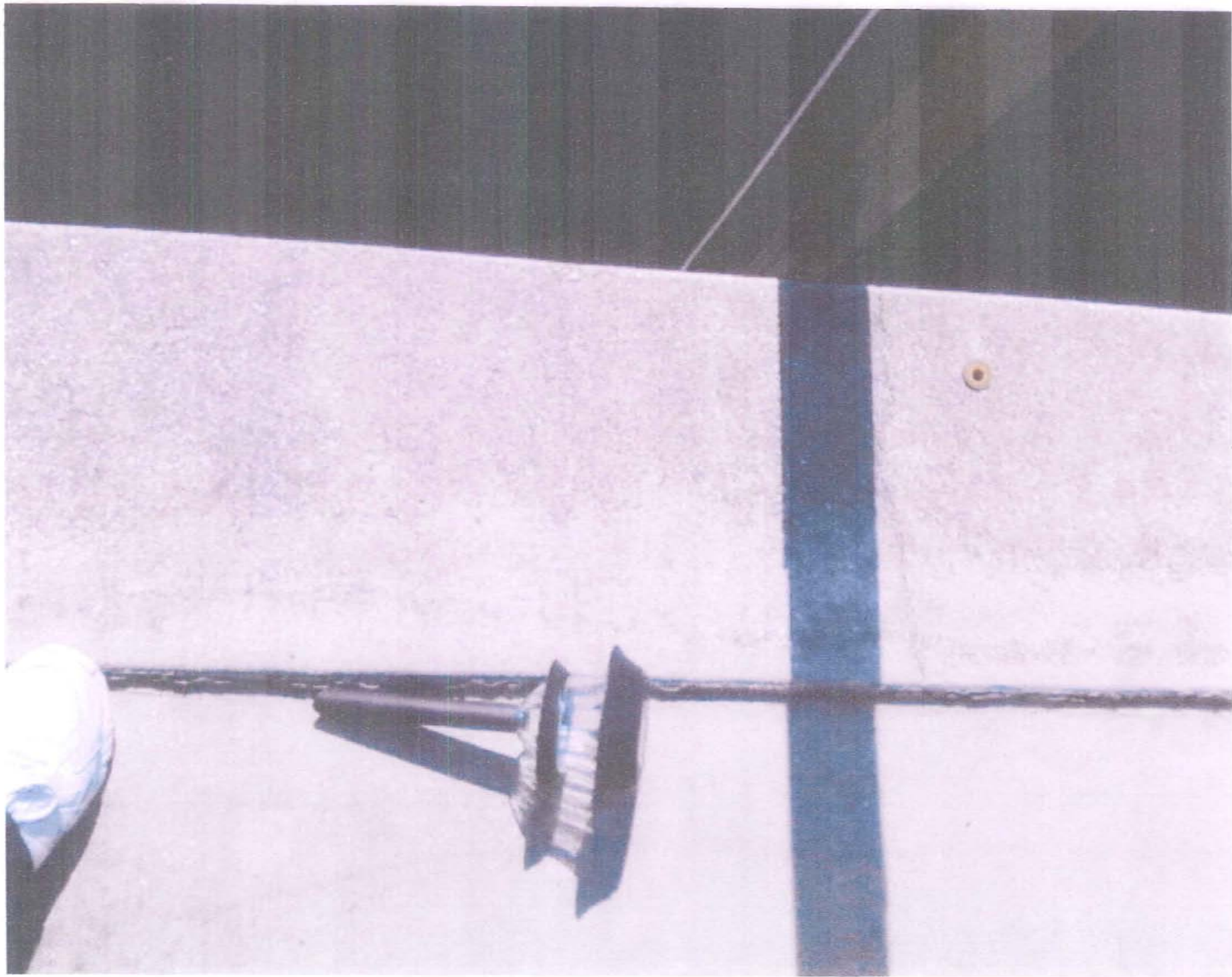


Clip regions:

Use clip region on the top image

Photos













SHT. 2 of 2 SHTS.

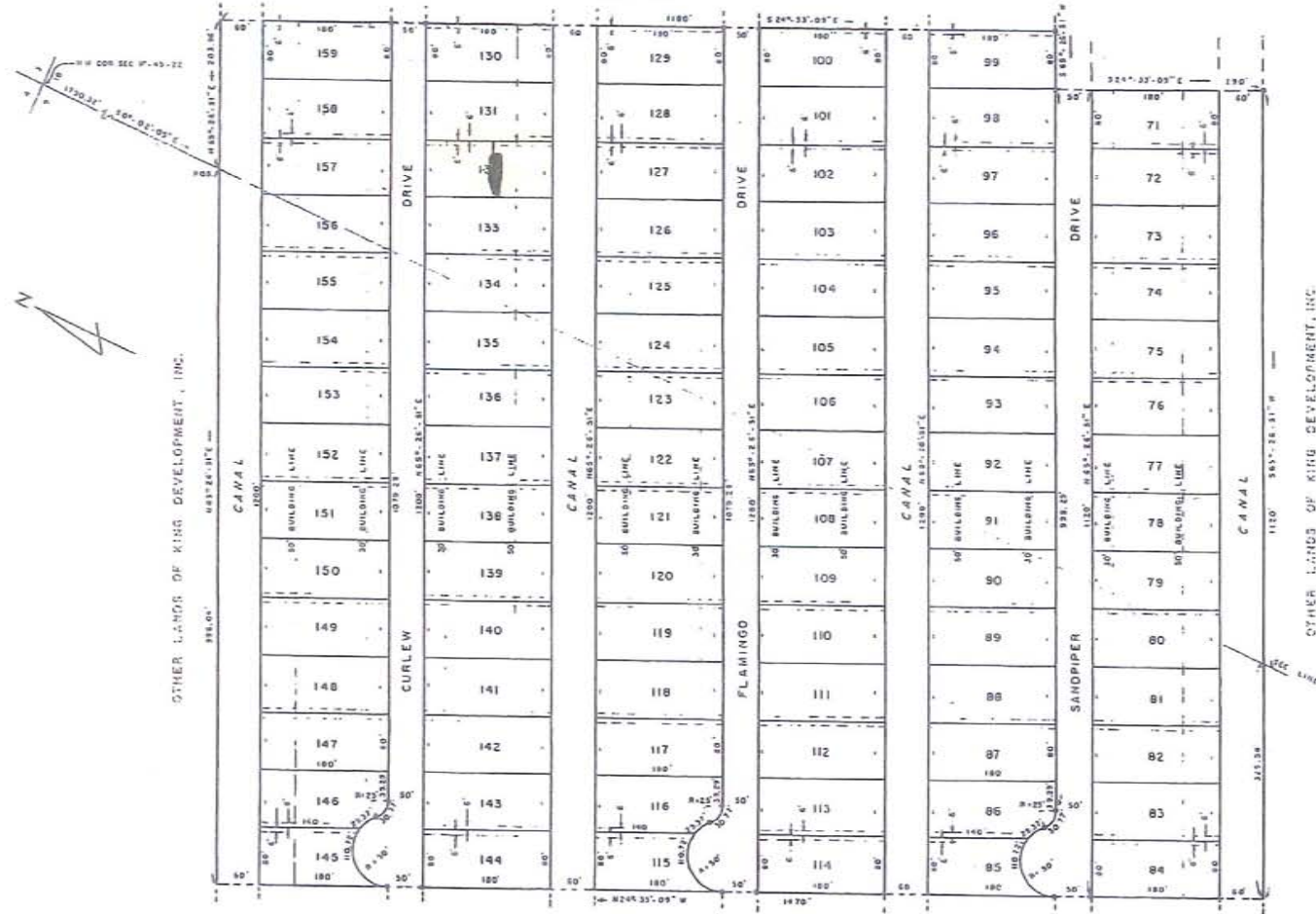
P/B 10, PGE. 103
for vacation of canal
B R/W easement
SEE C.C.M.B 42
Pg 50-512 To SII Inc

FLAMINGO BAY

SUBDIVISION

UNIT NO. 2
LEE COUNTY, FLORIDA
SCALE: 1" = 100'

UNIT NO. 1



OTHER LANDS OF KING DEVELOPMENT, INC.

LEGEND

- PERM. REF. MON.
- 5' DRAINAGE EASEMENT ON EACH SIDE OF LOT LINES.

DRAWN AND PLAT BY:
MOSEBY ENGINEERING ASSOCIATES, INC.
2255 BEE RIDGE RD., SARASOTA, FLORIDA

G.M. [Signature]

Memos & Letters

Case Law



**DIVISION OF ENVIRONMENTAL SCIENCES
DOCK & SHORELINE PLAN REVIEW
NOTICE OF REJECTION**

CHARLES C MESSINA
4975 CURLEW DR
ST JAMES CITY FL 33956

Owner: MESSINA CHARLES C

Case Number: DSH2006-00392 **Project:**

Please be advised that your application for a Dock & Shoreline permit has been rejected for the reason(s) outlined below. No further review will take place until you have provided corrected plans as required and noted hereon. Your immediate attention is appreciated.

The request for a permit to repair an existing dock cannot be approved because no dock exists.

A new dock permit request cannot be approved because a dock must be on the same lot or building parcel or on an abutting lot or adjacent building in the same ownership.

Alan Mead	(239) 479-8191	06/26/2006
Plan Reviewer	Phone	Date

If further information is required contact the
LEE COUNTY DIVISION OF ENVIRONMENTAL SCIENCES
1500 MONROE STREET, FORT MYERS, FL 33901
Phone: (239) 479-8389
Fax: (239) 479-8144

**MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY**

DATE: August 3, 2001

To: Rick Joyce
Planning Division

FROM: 
Joan C. Henry
Assistant County Attorney

RE: Dock Application for Joseph Williamson
STRAP #10-45-22-01-00000.043A
4933 Curlew Drive
St. James City, FL 33956
LU-01-07-2132

sent #3
Pursuant to your request, I have reviewed the deed restrictions for Flamingo Bay Subdivision where the above-referenced property is located. Mr. Williamson owns the North 90 feet of Lot 43, together with a 10-foot easement across the South 90 feet of Lot 43. [The deed restrictions recorded in OR Book 18, Page 471, and OR Book 466, Page 792, provide for ingress and egress and for any purpose relating to access to the ramp, canal or for the use, ownership, enjoyment, or maintenance of a dock.] The deed restrictions restrict construction of docks or projections into canals as follows: No dock or projections into canals and waterways shall exceed 12 feet diagonally at 60 degrees from the shoreline. The restrictions in OR Book 466, Page 792, require all docks be approved by Flamingo Bay. I believe the dock permit forms signed by the applicants state that they will comply with any applicable deed restrictions.

g
Based on my review of the documents regarding the use of the easement and Mr. Williamson's deed, a dock permit may be issued.

If you should have any questions or wish to discuss this matter further, please do not hesitate to contact me.

JCH/amp

MEMORANDUM
FROM THE
OFFICE OF COUNTY ATTORNEY

*35-111-1
dpl Williamson*

DATE: August 14, 2001

To: Rick Joyce
Planning Division

FROM: *[Signature]*
Joan C. Henry
Assistant County Attorney

RE: Dock Application for Joseph Williamson
STRAP #10-45-22-01-00000.043A
4933 Curlew Drive
St. James City, Florida 33956
File No. LU-01-07-2132

Upon further review of the Lee County Land Development Code (LDC) and the above-referenced application, I must retract my August 3, 2001 memo to you and instead recommend that you do not issue a dock permit. Although deed restrictions exist permitting docks on easements such as the one Mr. Williamson has, use of this easement must comply with the LDC regulations. An accessory use must be subordinate to the principal use of premises. Chapter 34 of the LDC defines premises, on the same as, "being on the same lot or building parcel or on an abutting lot or adjacent building in the same ownership." Pursuant to LDC Section 34-1171, accessory uses are subordinate to the principle use. Further, as stated in LDC Section 34-1173, accessory uses, buildings and structures are permitted in conjunction with the permitted principle use.

The situation here involves a parcel between Mr. Williamson's lot and easement. The parcel in between is owned by someone other than Mr. Williamson. If a dock were permitted and constructed on the easement by Mr. Williamson, it would have an accessory use not on the same premises as his principle use. Therefore, based on our regulations I recommend that you do not issue a permit.

I have also reviewed the Final Judgment in the case *Johnson v. O'Neill* rendered by Lee County Circuit Judge William C. McIver on June 21, 2000, which found in favor of the defendant's right to use a 10' easement similar to the easement Mr. Williamson holds. The Judgment is as to the rights of the easement holder and does not pertain to government regulations and restrictions.

If you should have any questions or wish to discuss this further, please do not hesitate to contact me.

JCH/bas

Post-It™ brand fax transmittal memo 7671		# of pages	1
To	Mr. Messina	From	Tanya
Co.		Co.	
Dept.		Phone #	
Fax #	282-8886	Fax #	

*Joe Bought in 2000
from Percy
2007 sold to Jean C. Miller
Faststart 4877721
Deed.*

(941) 335-2236

Facsimile (941) 335-2606

September 4, 2001

Jimmy Williamson
Williamson Brothers Marine Construction, Inc.
3915 SE 2nd Avenue
Cape Coral, FL 33904

*— Name Belongs
to Miller*

Re: Dock Permit Application for Joseph Williamson
4933 Curlew Drive, St. James City, FL 33956
File LU-01-07-2132

Dear Mr. Williamson:

I am in receipt of your letter regarding the rejection of the permit application filed by Joseph Williamson to place a dock in a 10-foot easement. I refer to Assistant County Attorney Joan Henry's memo to Rick Joyce dated August 14, 2001 for the basis of the permit denial, i.e., that a dock is an accessory use and must be located on the same lot or building parcel or on an abutting lot as a permitted principle use. These provisions of the Lee County Land Development Code (LDC) have been in effect since 1993.

Your letter states that your brother has a photograph from 1977 showing a dock on the aforesaid easement. An existing dock may fall under the category of a nonconforming structure pursuant to the LDC, however, since the nonconformity has discontinued for a continuous period of at least six calendar months, it loses its nonconforming status and must conform with all regulations. This is pursuant to LDC Section 34-3223. Therefore, although there may have been a dock on this easement in 1977, since there has not been a dock on the property for a period of more than six months, any new structures must conform to the LDC, which again means that it must be located on the same parcel as the principle use.

You may appeal the denial of the permit to the Lee County Hearing Examiner following the procedures set forth in LDC Section 34-145(a)(1) within thirty (30) days of the denial of the permit. Although you may have an easement right by virtue of the Warranty Deed conveying this easement and the deed restrictions for Flamingo Bay,

Jimmy Williamson
September 4, 2001
Page 2

Re: Dock Permit Application for Joseph Williamson
4933 Curlew Drive, St. James City, FL 33956
File LU-01-07-2132

such use must be in compliance with Lee County regulations. Please contact this office should you wish to discuss this matter further.

Sincerely,

James G. Yaeger
County Attorney

JGY/mme
Enclosures

cc: Timothy Jones, Assistant County Attorney
Joan C. Henry, Assistant County Attorney
Rick Joyce, Deputy Director, Planning Department



BOARD OF COUNTY COMMISSIONERS

Writer's Direct Dial Number: (941) 335-2236

Facsimile (941) 335-2606

Bob Janes
District One

Douglas R. St. Cerny
District Two

Ray Judah
District Three

Andrew W. Coy
District Four

John E. Albion
District Five

Donald D. Stilwell
County Manager

James G. Yaeger
County Attorney

Diana M. Parker
County Hearing
Examiner

September 5, 2001

Jimmy Williamson
Williamson Brothers Marine Construction, Inc.
3915 SE 2nd Avenue
Cape Coral, FL 33904

Re: Dock Permit Application for Joseph Williamson
4933 Curlew Drive, St. James City, FL 33956
File LU-01-07-2132

Dear Mr. Williamson:

James Yaeger, County Attorney, forwarded your letter to me for a response regarding the rejection of the permit application filed by Joseph Williamson to place a dock in a 10-foot easement. I refer to my memo to Rick Joyce dated August 14, 2001 for the basis of the permit denial, i.e., that a dock is an accessory use and must be located on the same lot or building parcel or on an abutting lot as a permitted principal use. These provisions of the Lee County Land Development Code (LDC) have been in effect since 1993.

Your letter states that your brother has a photograph from 1977 showing a dock on the aforesaid easement. An existing dock may fall under the category of a nonconforming structure pursuant to the LDC, however, since the nonconformity has discontinued for a continuous period of at least six calendar months, it loses its nonconforming status and must conform with all regulations. This is pursuant to LDC Section 34-3223. Therefore, although there may have been a dock on this easement in 1977, since there has not been a dock on the property for a period of more than six months, any new structures must conform to the LDC, which again means that it must be located on the same parcel as the principal use.

S:\LUJch\Jch letters\Dock Permit Application - Jimmy Williamson.wpd

P.O. Box 398, Fort Myers, Florida 33902-0398 (941) 335-2111
Internet address <http://www.lee-county.com>
AN EQUAL OPPORTUNITY AFFIRMATIVE ACTION EMPLOYER

Jimmy Williamson
September 5, 2001
Page 2

Re: Dock Permit Application for Joseph Williamson
4933 Curlew Drive, St. James City, FL 33956
File LU-01-07-2132

You may appeal the denial of the permit to the Lee County Hearing Examiner following the procedures set forth in LDC Section 34-145(a)(1) within thirty (30) days of the denial of the permit. Although you may have an easement right by virtue of the Warranty Deed conveying this easement and the deed restrictions for Flamingo Bay, such use must be in compliance with Lee County regulations. Please contact this office should you wish to discuss this matter further.

Sincerely,



Joan C. Henry
Assistant County Attorney

JCH/bas
Enclosure

cc: James G. Yaeger, County Attorney
Timothy Jones, Assistant County Attorney
Rick Joyce, Deputy Director, Planning Division

April 8, 2006

To: Charles Messina

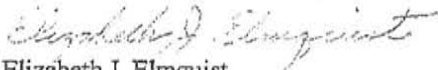
From: Elizabeth J. Elmquist

Regarding: Property on Curlew Dr., Flamingo Bay, St. James City, FL 33956

Dear Mr. Messina:

I was pleased to hear you are planning to put in a dock. I own the property adjoining yours. I thought it might be helpful if Lee County Commissioners, and the other powers to be, might appreciate the fact that your neighbor is in harmony with your plans. I also own the same water access next to yours. All four houses split the cost of cementing from the road to the water. This gave the houses by the water access to the road and those on the road access to the water.

Respectfully,


Elizabeth J. Elmquist



BOARD OF COUNTY COMMISSIONERS

(239) 479-8345

Bob Janes
District One

April 18, 2007

A. Brian Bigelow
District Two

Mr. Charles Messina
4975 Curlew Drive
St. James City, FL 33956

Ray Judah
District Three

Tammy Hall
District Four

Re: Boat Dock Permit Issues

Frank Mann
District Five

Dear Mr. Messina:

Donald D. Stillwell
County Manager

This is a follow up to a meeting held with you on January 24, 2007 at my office. Attending this meeting were Rob Spickerman, Assistant County Attorney, me, Alan Mead and Craig Brown of my staff. You also had in attendance Betty Elmquist, Vladimir Gera, Gary Walker and Mike Feranachi.

David M. Owen
County Attorney

Diana M. Parker
County Hearing Examiner

We set up this meeting to discuss boat dock permit issues, particularly in regard to the Flamingo Bay area of Pine Island. We discussed a myriad of issues, including the history of Flamingo Bay, easements, deed restrictions, land development regulations and more site specific information pertaining to your lot where we had denied a boat dock repair permit on June 26, 2006. You asked us to look at this issue again.

I received a phone message from you on April 3rd, when you called to request your survey back. Your message indicated that you received a verbal statement from Alan Mead that the County was not going to reconsider their position.

This is not quite correct. After Alan Mead informed me that you had called him, I asked Alan to call you back to let you know that after reviewing the information you presented to us in the meeting and discussing this information again with our attorneys, that we were not going to reverse our position. You applied for a permit which was denied. You filed an appeal of the denial and then withdrew it.

I am returning your survey and aerial photograph from our meeting.

Sincerely,

DEPARTMENT OF COMMUNITY DEVELOPMENT

Mary Gibbs, AICP
Director

MG/dxc

cc: Rob Spickerman
Alan Mead

Attachments: 2006 Survey
Aerial Photograph

Deeds & Survey



INSTR # 6610651
 OR BK 04562 Pgs 2136 - 2137; (2pgs)
 RECORDED 01/21/2005 08:07:09 AM
 CHARLIE GREEN, CLERK OF COURT
 LEE COUNTY, FLORIDA
 RECORDING FEE 10.50
 DEED DOC 535.50
 DEPUTY CLERK P Johnston

Prepared by and return to:
 Timothy J. Bruehl

Waggoner & Bruehl, P.A.
 5400 Pine Island Road, Suite D
 Bokeelia, FL 33922

Will Call No.: 105

Parcel Identification No. 10-45-22-02-00000.132A

[Space Above This Line For Recording Data]

Warranty Deed
 (STATUTORY FORM - SECTION 689.02, F.S.)

This Indenture made this 10th day of January, 2005 between Betty Lo Menfefe Koplaski, an unmarried widow whose post office address is 4975 Curlew Drive, Saint James City, FL 33956 of the County of Lee, State of Florida, grantor*, and Charles C. Messina, a single man whose post office address is 24000 Rampart Blvd., Unit 144, Port Charlotte, FL 33980 of the County of Charlotte, State of Florida, grantee*,

Witnesseth that said grantor, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained, and sold to the said grantee, and grantee's heirs and assigns forever, the following described land, situate, lying and being in Lee County, Florida, to-wit:

The Northerly One-Half of Lot 132, FLAMINGO BAY, UNIT 2, being the Northwesterly 90 feet of said Lot, according to the Plat thereof as recorded in Plat Book 10, pages 102 and 103, inclusive, in the Public Records of Lee County, Florida. LESS AND EXCEPT right of way for ingress and egress over and across the Easterly 10 feet of subject land.

and said grantor does hereby fully warrant the title to said land, and will defend the same against lawful claims of all persons whomsoever.

* "Grantor" and "Grantee" are used for singular or plural, as context requires.

In Witness Whereof, grantor has hereunto set grantor's hand and seal the day and year first above written.

Signed, sealed and delivered in our presence:

Michael A. Blanke
Witness Name: Michael A. Blanke

Anthony Berry
Witness Name: Anthony Berry

Betty Lo Menefee Koplaski
Betty Lo Menefee Koplaski

State of Virginia

County of SPANGHER

The foregoing instrument was acknowledged before me this ___ day of January, 2005 by Betty Lo Menefee Koplaski, who is personally known or has produced a driver's license as identification.

[Notary Seal]

James Wm. Leake
Notary Public

Printed Name: JAMES Wm. LEAKE

My Commission Expires: MARCH 31, 2005



2100

0R2066

PG4497

Prepared by:

2642738

CORPORATE
WARRANTY DEED
Denise P. Wilson
Executive Title Insurance Service
304 Del Prado Blvd., Suite C
Cape Coral, Florida 33990

THIS INDENTURE, Made this 27th day of April, A.D. 89 **BETWEEN**
DSN EXCHANGE CORPORATION

a corporation organized and existing under the laws of the State of CALIFORNIA
Grantor, and BARWIN E. VanGILDER and DONNA M. VanGILDER, Husband and Wife and
TERRY L. VanGILDER and MARY F. VanGILDER, Husband and Wife

Whose Mailing Address is : 1407 OAKWOOD DRIVE
JENISON, MICHIGAN 49428, Grantee,

WITNESSETH: that the said Grantor, for and in consideration of the sum of ten and 00/100 Dollars and other
valuable consideration, in hand paid by the said Grantee, the receipt whereof is hereby acknowledged, has
granted, bargained and sold to the said Grantee, their heirs and assigns forever, the following described land,
situate, lying and being in the County of LEE, State of Florida, to wit:

South 90 feet of Lot 132, Unit 2, FLAMINGO BAY SUBDIVISION,
according to the map or plat filed in Plat Book 10. Pages 102 &
103. Public Records of Lee County, Florida.

RECORDED
INDEXED
FILED
MAR 1 1989
CLERK OF SUPERIOR COURT
LEE COUNTY, FLORIDA

CHARLIE GREEN LEE CITY FL
89 MAY -2 PM 4: 56

Documentary Tax Pd. \$ 121.00
Int. P.D. 1.00 Pd.
CHARLIE GREEN, CLERK, LEE COUNTY
Deputy Clerk

Subject to covenants, restrictions and easements of record. Subject also to taxes for 89 and subsequent years.

And the said Grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, the said Grantor has caused this instrument to be executed in its name by its duly authorized officer and caused its corporate seal to be hereto affixed the day and year first above written.

Signed and Sealed in Our Presence:
by: Priscilla A. Brown
PRISCILLA A. BROWN
Its SECRETARY
(Corporate Seal)

State of Florida CALIFORNIA
County of

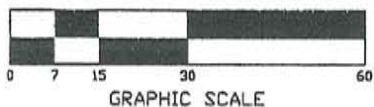
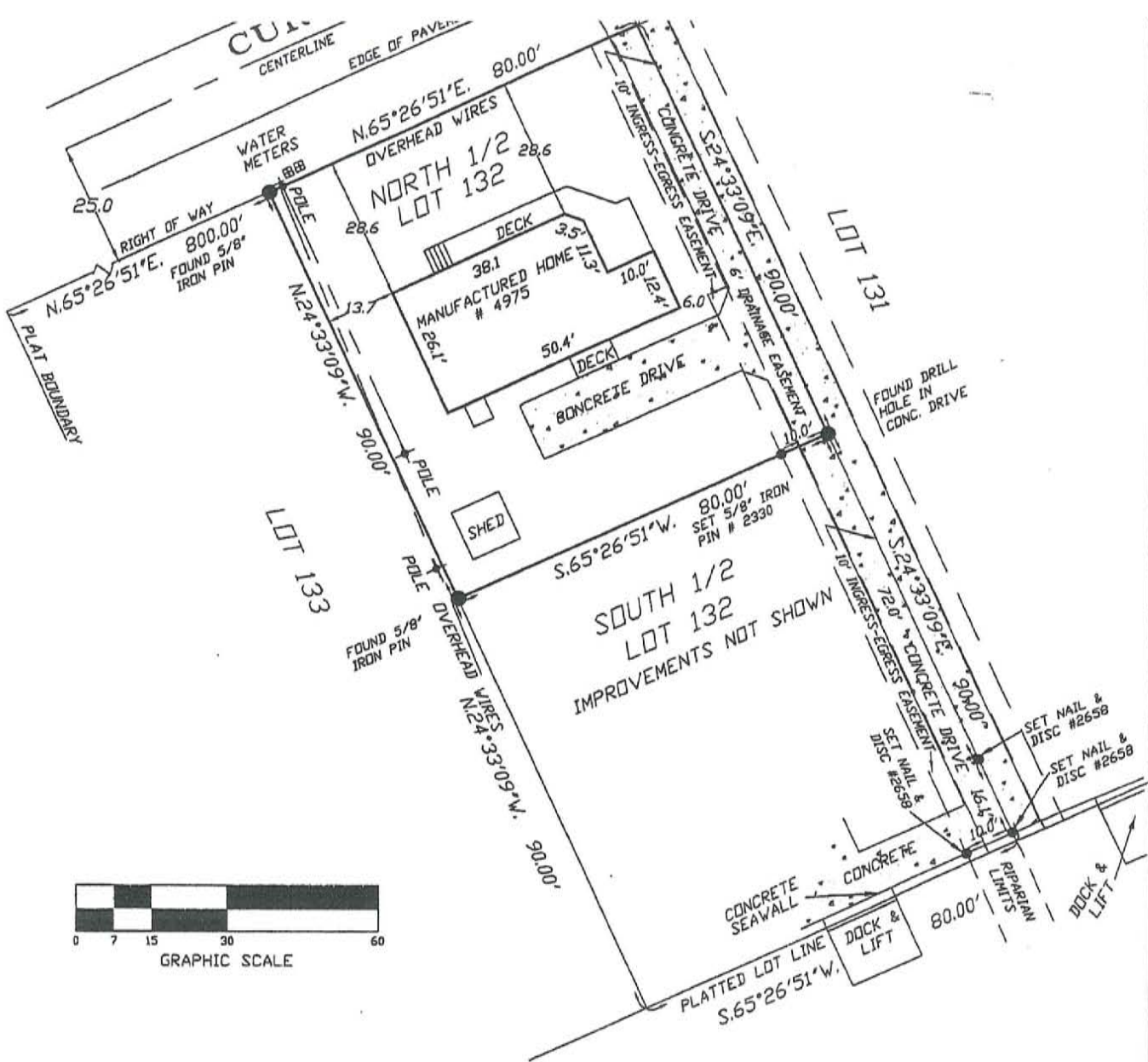
The foregoing instrument was acknowledged before me this 27th day of April
189, by PRISCILLA A. BROWN, SECRETARY

of DSN EXCHANGE CORPORATION
a CALIFORNIA corporation, on behalf of the corporation.



Paula L. Knight
Notary Public
My commission expires: October 10, 1992

NC-3854



NOTE:
 Bearings and Distances shown hereon are according to the referenced DEED (D) or PLAT (P) unless otherwise noted as measured (M).

NATIONAL FLOOD INSURANCE DATA, COMMUNITY PANEL NUMBER 125124 0280 B, FEDERAL FLOOD ZONE A9, ELEVATION 9'
 ELEVATIONS BASED ON N.G.V.D.-29, BENCH MARK
 BOUNDARY SURVEY SHOWING RIPARIAN LIMITS OF THE NORTH HALF LOT 132, FLAMINGO BAY SUBDIVISION UNIT NO. 2 AS RECORDED IN PLAT BOOK 10, PAGES 102-103 AMONG THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.

This survey is in compliance with the minimum technical standards as set forth in Chapter 61G17-6, Florida Administrative Code. This Survey Map is not valid without the signature and raised seal of a Florida Licensed Surveyor and Mapper.

Alfred J. Watson
 ALFRED J. WATSON
 PROFESSIONAL SURVEYOR AND MAPPER
 #2330, STATE OF FLORIDA

FOR: CHARLES MESSINA
 JOB # 05-0387 F. B. L 130
 STRAP # 10-45-22-02-00000.132A

SKETCH OF SURVEY
 SCALE 1" = 30'

DATE: SEPTEMBER 19, 2006
 DATE: _____
 DATE: _____

Case Law

DEED RESTRICTIONS FOR FLAMINGO BAY
 UNITS 1 & 2 SUBDIVISION, RECORDED
 IN PLAT BOOK 10, PAGES 100 & 102,
 IN THE PUBLIC RECORDS OF LEE,
 COUNTY, FLORIDA, AND UNRECORDED
 UNIT 3, FLAMINGO BAY SUBDIVISION.

DEED OF RESTRICTIONS

Dated March 30th, 1962
 Filed April 5th, 1962

O. R. Book 119, page 31

KLINE ENTERPRISES, INC., a Florida corporation, organized and existing under the laws of the State of Florida, having title to a tract of ground designated as FLAMINGO BAY UNITS 1, 2 & 3 Subdivision, and

WHEREAS, KLINE ENTERPRISES, INC., intends to develop and improve said tract of land and open up and lay out streets shown on said plat and offer for sale the lots and other parcels of land included in said tract, and is desirous of subjecting all of said tracts of land, and the lots and parcels on said plat to certain covenants, agreements, easements, restrictions, conditions and charges as hereinafter set out;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that KLINE ENTERPRISES, INC., does hereby impose and charge lots, blocks and parcels of FLAMINGO BAY UNITS 1, 2 & 3 Subdivision with certain exceptions and covenants; agreements, easements, restrictions, and charges hereinafter set out, said Subdivision lying, being and situate in Lee County, Florida:

1. All lots designated by number on the recorded plat shall be used for residential purposes only. No residence shall be placed or permitted upon any lot or parcel in Flamingo Bay Units 1, 2 & 3 other than one mobile home with complete sanitary facilities, including a lavatory, toilet, tub or shower, and kitchen sink, said sanitary facilities to be connected to septic tanks in conformance with requirements of the Florida State Board of Health. EXCEPTION: Lots 29, 32 and 34 shall be reserved for houses of CBS construction, with not less than 1,000 square feet of living space.

2. No mobile home, building or accessory, fence, wall or other structure, shall be erected, placed or maintained, nor shall any addition to, or change or alteration therein, be made until the plans and specifications showing the nature, kind, shape, height, material, floor plans and location of same shall have been submitted to and approved in writing by KLINE ENTERPRISES, INC. or its duly authorized agent. KLINE ENTERPRISES, INC. has the right to approve or disapprove, upon such basis as it may deem proper for the development and good of the Subdivision, provided that approval shall not be arbitrarily withheld. In the event same has not been approved or disapproved within 30 days after same has been submitted, or in the event that no suit to enjoin the erection or construction of same has been commenced prior to completion thereof, no such approval shall be required and this covenant shall be deemed to have been fully complied with.

3. No structure of any nature other than a fence, wall or hedge, shall be placed or permitted within five feet of any side line of a lot, nor within ten feet of the back lot line. No structure, including fences, walls and hedges, shall be placed or permitted within ten feet of a front lot line. No fence, wall or hedge, exceeding thirty inches in height shall be placed or

(O. R. Book 119, page 31, cont'd) #2

permitted within five feet of any side line of lot. No fence, wall or hedge, exceeding sixty inches in height shall be placed or permitted within ten feet of any rear lot line. This shall not prevent the grouping of two or more parcels or lots for the installation of a mobile home with customary accessory structures, in which event the outside lines shall be considered for the minimum set-back.

4. There shall be no water wells of any nature, drilled or permitted to be drilled on any property in FLAMINGO BAY UNITS 1, 2 & 3, other than for the community central water system.

5. There shall be no oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind upon or in any lot or parcel, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any lot or parcel. No derrick or other construction designed for use in boring for oil or natural gas shall be erected or maintained, or permitted upon any lot or parcel.

6. All mobile homes shall be placed on lots at a uniform angle as established by KLINE ENTERPRISES, INC.

7. Mobile homes shall be placed in position, levelled and hooked up to utilities on the owner's lot only through KLINE ENTERPRISES, INC. A flat charge of \$10.00, plus all supplies, will be made.

8. FLAMINGO BAY UNITS 1, 2 & 3 are restricted to modern mobile homes constructed within five years of the time of the purchase of the lot by a recognized mobile home manufacturer, and not less than 28 feet in length. Cabanas, utility rooms and carports shall be constructed of material approved by KLINE ENTERPRISES, INC.

9. KLINE ENTERPRISES, INC. specifically reserves the right to control all peddling, soliciting or selling in FLAMINGO BAY UNITS 1, 2 & 3.

10. No electrical or plumbing repair work or installation may be done in FLAMINGO BAY UNITS 1, 2 & 3 without first obtaining written approval of KLINE ENTERPRISES, INC., and such repairs or installations shall be only by a qualified contractor. KLINE ENTERPRISES, INC. has the right to make such regulations respecting type, design and construction of all electrical and plumbing construction and apparatus as shall be necessary for the safety of the residents and the appearance of the Subdivision.

11. KLINE ENTERPRISES, INC., in the handling of properties, whether real or personal, shall not be responsible for loss by fire, theft, accident, windstorm, or other cause whatsoever.

12. No outdoor drying lines or apparatus for the drying of laundry shall be permitted on any lot, except one folding drying pole not exceeding six feet in height. No outdoor laundering will be permitted on any lot.

13. No outdoor storage of any kind will be permitted on any lot. No storage of any kind shall be permitted under a mobile home unless neatly and properly screened from view and such screening is approved by KLINE ENTERPRISES, INC.

14. It shall be the responsibility of each lot owner to keep his lot clean, mowed, and free of unsightly structures. In case of failure to do so,

(O. R. Book 119, page 31, cont'd) #3

KLINE ENTERPRISES, INC. reserves the right to enter upon all lots, mow the grass, clean up the lot and remove unsightly structures, and charge the owner the actual cost of services performed, and if he does not pay, to file a lien thereon.

15. KLINE ENTERPRISES, INC. reserves the right of access on to all lots at all times for purposes of inspection and maintenance of all service utilities.

16. Permission must be obtained in writing from KLINE ENTERPRISES, INC. to plant any trees or shrubbery, due to the underground location of utilities, and in order to protect the rights of your neighbors.

17. The throwing or placing of garbage, refuse, trash or any other matter into the canals or waterways within or abutting FLAMINGO BAY UNITS 1, 2 & 3 is strictly prohibited.

18. All garbage and trash shall be sacked or securely wrapped and placed in an approved container which must be kept tightly closed and in good condition, and shall be kept behind the mobile home. All trimmings of shrubbery and trees and other debris shall be placed up the street side of each lot for collection or may be disposed of according to the rules and regulations established by KLINE ENTERPRISES, INC. No trash or garbage may be burned upon any lot in FLAMINGO BAY UNITS 1, 2 & 3.

19. No animals, fowl or reptiles shall be kept on the premises except household pets owned by the owner or occupant of the lot on which they are kept, and no dog shall be allowed off the lot of the owner except on leash.

20. No property in FLAMINGO BAY UNITS 1, 2 & 3 shall at any time be owned or occupied by any person other than Caucasian.

21. Speed limits in the canals and waterways wherever navigable and within the limits of FLAMINGO BAY UNITS 1, 2 & 3 shall not exceed three miles per hour, and discretion and courtesy shall be used for the benefit of people with anchored boats along such canals and waterways.

22. KLINE ENTERPRISES, INC. shall have the right to file a lien for all unpaid balances or delinquent assessments or payments for utility services rendered as provided herein, or for unpaid balances on lot payments. Such liens may be enforced in the same manner as Mechanics Liens under Chapter 84 of Florida Statutes.

23. Children under twelve years of age may reside permanently only in lots on either side of Sandpiper Drive.

24. All land now platted as FLAMINGO BAY UNITS 1, 2 & 3 shall be subject to a monthly water charge which shall not be less than \$2.00 for an occupied lot, and \$1.00 for an unoccupied lot.

25. When the population of FLAMINGO BAY UNITS 1, 2 & 3 becomes sufficient in the opinion of KLINE ENTERPRISES, INC. to warrant a central sewage disposal plant, the Corporation shall install such a plant. A charge for installation of the pipe from the streets to the point of service shall be borne by the lot owner, and a monthly charge shall be made to maintain and operate the plant and system.

(O. R. Book 119, page 31, cont'd) #4

26. No sign of any kind shall be displayed to public view except a residence name sign of not more than one square foot in area, or a sign of not more than five square feet advertising the property for sale.

27. There shall be no dock or projections into canals and waterways which shall exceed twelve feet diagonally at 60 degrees from shore line. Canal and waterway front lot owners desiring boat slip or dock facilities must have plans for same approved by KLINE ENTERPRISES, INC. before being constructed. Lots abutting on waterfront lots, with canal privileges, shall conform to KLINE ENTERPRISES, INC. control of dock construction. Other lots shall have water privileges in Forty Acre Bay or other bays when facilities are available.

28. KLINE ENTERPRISES, INC., or its assignees specifically reserves a ten foot easement at top of banks of canal lots; a ten foot easement on one side of each lot for access way; and a five foot easement, for public or private utilities, on all lot lines or, if lot sizes and lines are irregular, wherever necessary.

29. Nothing shall be placed on any parts of a lot reserved for easements of public or private utilities which shall in any way interfere with the construction, use or maintenance of said utilities. No structure other than driveway or fence shall be placed on any lot except as herein provided with a minimum of five feet from each property line, and a minimum of ten feet from the rear of canal lots, and six feet from the rear of main road lots, and shall conform to a setback of twenty feet minimum from the main road.

30. Each and every heir, successor, legal representative or assign taking any lot or lots, blocks or parcels shall take them subject to these covenants and shall expressly vest in KLINE ENTERPRISES, INC. the right and power to bring all actions against an owner of the land conveyed or any part thereof, for the collection of such charge and to enforce the aforesaid lien thereafter.

31. A free membership in FLAMINGO BAY CLUB & RECREATION facilities shall be given each resident of the subdivision. There will be a small monthly charge, which shall not be effective until a clubhouse is completed, to defray operational and equipment costs.

32. KLINE ENTERPRISES, INC. shall at no time have the right to waive any express provisions of these restrictions, but reserves the right to make reasonable modifications, clarifications and interpretations of these restrictions. This shall include changes in all charges for necessary performance and operations of utilities and recreation facilities.

33. All sea walls shall conform in pattern, style, material and size to the specifications set up by KLINE ENTERPRISES, INC., in order that a harmonious appearance may be attained.

The provisions contained herein shall run with and bind the land and shall inure to the benefit of and be enforceable by any owner of land included and shown in FLAMINGO BAY UNITS 1, 2 & 3 Subdivision, their respective legal representatives, heirs, successors and assigns, and also by KLINE ENTERPRISES, INC.

(O. R. Book 119, page 31, cont'd) #5

If any lot owner or persons in possession or any of said lots of FLAMINGO BAY UNITS 1, 2 & 3 Subdivision shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person, or persons, owning any real property situated in said development of FLAMINGO BAY UNITS 1, 2 & 3 Subdivision and/or KLINE ENTERPRISES, INC. to prosecute any proceedings at law or in equity against the person or persons violating or attempting to violate any such covenant, either to prevent him from so doing or to recover damages or other dues for such violation.

The failure of any landowner or KLINE ENTERPRISES, INC. to enforce any restrictions, conditions, covenant or agreement herein contained shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or as to one occurring prior or subsequent thereto.

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them to January 1, 1985, at which time said covenants shall be automatically extended for successive periods of ten years unless by vote of the majority of the then owners of the lots it is agreed that it is to the best interest of FLAMINGO BAY UNITS 1, 2 & 3 Subdivision that said changes should be made and such changes shall then be in evidence.

If any provisions of this Indenture or the application of such provisions to any persons or circumstances shall be held invalid, the remainder of the Indenture or application of such provisions to persons, or circumstances other than those which were held invalid, shall not be affected thereby.

Two witnesses.

Harry Byrd Kline

Harry Byrd Kline - President
KLINE ENTERPRISES, INC.

Acknowledged by Harry Byrd Kline in the form of an Affidavit, before a Notary Public in the County of Lee, Florida, on April 3rd, 1962. N. P. SEAL. Commission expires Feb. 24, 1963.

Deck

Shed

4/17/80

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA CIVIL ACTION

JAMES W. JOHNSON et al.,

Plaintiffs,

vs.

CASE NO. 99-4480 CA-WCM

DONALD B. O'NEILL et al.,

Defendants.

EXCERPT OF PROCEEDINGS
(Judge's Ruling)

Before the Honorable WILLIAM C. McIVER,
Circuit Judge, at a hearing in the
above-styled action at the Lee County
Justice Center, Fort Myers, Florida,
on the 1st day of March, 2000.

CERTIFIED
COPY

FORT MYERS COURT REPORTING, INC.
2231 First Street
Fort Myers, Florida, 33901
(941) 334-1411
FAX (941) 334-1476

1 THE COURT: Mr. O'Neill, I'm assuming that your
2 position is the same now as it was at the beginning,
3 that your parents should be permitted to keep the dock
4 and what not. You know, initially, I'm going to
5 decline to consider your final argument because I
6 already know what it is.

7 Mr. Ebelini and Mr. and Mrs. Johnson and Mr.
8 Johnson, I understand why you resisted this, and at
9 first blush, when I looked at this, I see that boat
10 ramp there and I'm thinking, hey, that boat ramp has
11 to be for the use and benefit of all four property
12 owners, but the easement of way across your property
13 is not to benefit you.

14 You don't need the boat ramp. You can say that
15 you do, because it's nice for it to be there, but the
16 easement is for the use and benefit of the front lot
17 owner, and notwithstanding the fact that the record --
18 Marketable Record Title Act may have extinguished the
19 precise language of its contents, you know, with
20 regard to this, I find that it's useful to go back and
21 find out what the easement of way means, and I have to
22 look at it and see what it says.

23 Also the other extrinsic evidence, which has been
24 presented from the contractor, from the lawyer that
25 they called, who ended up being not an expert witness,

1 because his knowledge about the law wasn't that
2 beneficial, but his knowledge of the problems that
3 have happened in this subdivision.

4 The fact that this isn't defined and that none of
5 the attorneys have found a case precisely like this --
6 there's the Maryland case, that the proposition that
7 just because there is an easement to the water,
8 doesn't mean you have the right to build a dock.

9 That's true, but here historically and, in fact,
10 in writing at one time, owners of the street lots have
11 had docks at the end of the easement, and at the end
12 of the easement the restriction even talks in terms
13 about their docks have to conform with the developer's
14 standards, and the fact that that exists and the fact
15 that there are other docks in precisely the same
16 location, suggests to me that the primary concern of
17 the Court with regard to the easement is whether the
18 owner of the easement is able to accomplish the
19 purposes of the easement, and that is to get to the
20 water and to be able to enjoy a boat access there, and
21 as long as they stay within their 10 feet going to and
22 from it -- now, an interesting problem here, I note
23 that the dock begins on your property.

24 It's in the easement on your property, but then
25 it extends out into the water, which is not your

1 property, so you see what I'm saying? In other words,
2 right in front of you, the canal, I guess, belongs to
3 everybody because the lot -- the way this shows that
4 the lot is defined is that the concrete sea wall
5 defines the perimeter of your property. It goes right
6 up to the water.

7 The water, I guess, is a certain depth right at
8 the sea wall. I don't know, but -- so my ruling will
9 be in this case that the dock stays. That they have
10 the right to use the dock because their right to be
11 able to go to the water and have a boat there is
12 exactly within what was contemplated by the easement,
13 and so you all have to tolerate it, and that's not to
14 say -- I mean, I just hope that the neighbors can get
15 along. The ramp itself, the fact that it was a ramp
16 confused me at first because I thought oh, my God,
17 that ramp is for both.

18 The easement of way is not necessary for you.
19 You can build a ramp on some other part of your
20 property. The easement of way for them to get to the
21 water means it's their right to use that to get to the
22 water as opposed to yours. In fact, you have a wooden
23 dock and you can still get in and out of there when
24 their boat is not there, you know, arguably, but your
25 right to be able to take a boat and put it down the

1 ramp is secondary to their right to be able to go down
2 there and have that, to use that property with a boat
3 dock, and the boat dock is consistent with the other
4 uses.

5 I mean, it's not specifically stated. I do not
6 take any great joy in this decision, because I think,
7 you know, I would have handled things differently, Mr.
8 and Mrs. O'Neill. I would have gotten this decided
9 before I built it. I mean, you know, come to the
10 Court, get an advisory opinion, a declaration of
11 rights, you know, but at the same time, that
12 notwithstanding, I don't know how to repair injured
13 feelings. I guess we end up just doing the best we
14 can with that.

15 The legal system has to do with legal results,
16 not with our spiritual and emotional needs. Like I
17 say, I prefer everybody to leave my courtroom and be
18 happy, but I know that's not possible.

19 I thought about this, thought about it long and
20 hard all day, considered it, and then I realized
21 something. Like I said, the easement on your property
22 is for them, the easement on their property is for
23 you. It's an easement of way for a purpose.

24 If they can't dock a boat down there, then are
25 they going to sit and fish? I guess, you know -- so I

1 think the only reasonable thing in light of the other
2 uses that are being made of that type of area and that
3 it is legitimate to how it's being done other places
4 in the subdivision, and the language of the ancient
5 deed of restrictions leads me to the inescapable
6 conclusion that it's appropriate for them to be able
7 to have a dock.

8 MR. EBELINI: So, your Honor, you're relying on
9 the easement -- I mean the restrictions as the basis
10 for your ruling or --

11 THE COURT: As a way of explaining what the
12 easement of way means, okay? It's not even clear.
13 It's ambiguous, but that coupled with the use to
14 which -- and Judge Shafer's decision.

15 Judge Shafer's decision did not involve a similar
16 situation because of the difference between the ramp
17 and the sea wall, but there was a dock on that
18 property that had been removed when the sea wall was
19 installed, and then the owner of the water front lot
20 did not want to put the dock back up, and Judge Shafer
21 said, I'm sorry, but you got to let them have the
22 dock.

23 That's partially what I'm relying on, Mr.
24 Ebelini, is that precedent. It caused me to stop and
25 think, hey, what is this? Because the use as a ramp,

1 it would even suggest that they would have the right,
2 if they wanted to, to fill level with the land and
3 then put a dock out there up to 12 feet into the
4 water. You see? And as long as they stay on the
5 easement to get to and from their dock, the dock would
6 not be on the Johnson's property, but now I'm going to
7 make a specific finding here.

8 This dock is lower than the sea wall; is it not?
9 It does not seem to me to be obtrusive or pose some
10 additional burden other than obstructing, as it does,
11 the ramp and the ability of the Johnsons to use that
12 10 feet as a ramp, so it's okay for the dock to begin
13 where it is. It's not impeding some use of the
14 property that the Johnsons may make of it because the
15 Johnsons may not impair the O'Neill's ability to get
16 to and from the water, but they may only use it for
17 that purpose.

18 I think it's reasonable, a reasonable extension
19 that persons who are their guests may accompany them
20 to use it. You see what I'm saying? I think it gets
21 problematical when you tell someone, well, you can put
22 your boat there. No. It's personal to the rights of
23 the people who own the lot, the owners, themselves. I
24 don't think they can expand it and have all the world
25 use the dock, so you have to be there with your guests

1 and supervise them to make sure they're behaving
2 consistently with what's neighborly and reasonable, so
3 strangers other than yourselves and your immediate
4 family may not just use the dock and you say, well, we
5 gave them permission, because you can see the problem
6 that would be. It would be similar to -- well, I
7 can't imagine that -- these lots don't lend themselves
8 to parties, but, of course, when you all have guests,
9 your guests should be reasonable in number so as not
10 to overburden their use of their property, so if you
11 have a lot of people backing up parking on that -- you
12 know, I'm not here to solve problems that aren't
13 presented to me, so I guess I will quit speculating
14 about how it might work.

15 The point is, I will decline to grant the
16 petition to order the removal of the dock. I will
17 grant a -- my declaration is they have the right to
18 use it. I don't know -- I don't want to enter an
19 injunction against the Johnsons because they did not
20 have a Court ruling at the time, you know, and so they
21 believed that they were doing what they had a right to
22 do.

23 I have explained it to them now, so I will
24 wait -- I'm not going to anticipate that they are
25 going to violate your parents' rights to use the dock.

1 MR. EBELINI: Your Honor, I don't think there was
2 any testimony --

3 THE COURT: No. Count 2 in the counter claim was
4 to enjoin something.

5 MR. EBELINI: But they haven't refused -- you
6 know.

7 THE COURT: Right. So I'm not going to enjoin
8 them from doing something which -- it was urged upon
9 the Court that there was evidence suggesting some
10 impairment of the -- you see, your clients disagreed
11 with their ability to make an improvement on the
12 easement. Okay?

13 The improvement that they made was consistent
14 with the purposes of the easement, and that's another
15 finding.

16 I hope you're taking some notes. You might want
17 to order the transcript of what I have said so that
18 you can prepare an order that incorporates all the
19 findings I have made. I will leave it up to you, Mr.
20 O'Neill.

21 MR. O'NEIL: I would be happy to, and I will
22 order that.

23 THE COURT: And I think that everybody here --
24 these are good people on both sides of this equation.
25 For God's sake, try to find a way to get along and put

1 this behind you, and if you appeal my decision, I
2 don't blame you, because I won't pretend that I'm
3 right and on the money all the time. I call it as
4 best I can.

5 MR. EBELINI: Your Honor, do we have the right,
6 if we have such a party that you described, to park on
7 the easement, on the north 90 feet of lot 136.

8 THE COURT: I'm sorry.

9 MR. EBELINI: The right to occasionally park on
10 the 10 feet easement on the north 90 feet of lot 136
11 if you have the right of access.

12 THE COURT: Am I addressing that in this case?

13 MR. EBELINI: Well, I don't know. Maybe you
14 would decline to do that, but --

15 THE COURT: No.

16 MR. EBELINI: We've talked about --

17 THE COURT: If I've made any pronouncements about
18 that -- that's why I receded from that, Mr. Ebelini.
19 I don't want to throw in a lot of dicta that can
20 confuse these folks.

21 I am going to leave it up to them to decide what
22 steps they take next. I hope it's neighborly. I hope
23 it comports with reason and common sense and good
24 judgment. Your clients have the right to appeal my
25 order. If they elect to do that, my feelings aren't

1 going to be hurt by that at all, because this is only
2 one step in the way.

3 I have to say to the people, if I wrote a book
4 about the civil justice system, the title might well
5 be, "You Can't Afford to be Right in Many, Many
6 Instances", in parentheses, because there is -- the
7 system is too slow, too expensive and too complex to
8 be used by the average person.

9 These folks paid considerable money for these
10 lots, and they had to come to Court and hire lawyers,
11 able lawyers. Mr. Ebelini is a good lawyer. Mr.
12 O'Neill seems to handle himself very well and verses
13 himself thoroughly and Mr. Bone before him.

14 This is one of those classic cases where there is
15 something that's not clear, and then you can get
16 lawyers to argue on both sides of the issue. The
17 Court ends up having to make a decision, and I did.

18 Now, that's not the end of it; is it? Not until
19 it's tested perhaps if someone elects to appeal it,
20 and the District Court of Appeal could look at it and
21 say, well, gee, we disagree with Judge McIver. He was
22 in error, and that's another possibility. I'm not
23 encouraging it. I'm just saying that I'm recognizing
24 that that's a possibility, and that you folks have
25 spent a lot of money on this problem.

1 For all I know, you know, it might have been that
2 you could have worked something else out and the dock
3 wouldn't have been necessary, but you weren't able to
4 do that. The neighbors have done something along
5 those lines.

6 I think this is less obtrusive for you than
7 having them share the sea wall in front of your
8 property with a dock because they're kind of stuck
9 over to the side of the property where the boat is.
10 It may mean ultimately if the other side closes their
11 side of it or does the same thing, that no one is
12 going to be able to use that to get in and out when
13 their boat is there, because the same arrangement, as
14 far as I can tell, could happen on the other side of
15 the lot line.

16 MR. O'NEIL: Your Honor, just one last thing, I
17 perceived Mr. Ebelini's statement a minute ago about
18 parking on the easement --

19 THE COURT: No. Let's not get into that.

20 MR. O'NEIL: -- as some sort of threat.

21 THE COURT: Mr. O'Neill, listen. Please, just
22 filter that and leave it alone --

23 MR. O'NEIL: Be happy to, Your Honor.

24 THE COURT: -- because no one is going to do
25 something silly just to spite somebody, I hope, on

1 either side of this.

2 MR. O'NEIL: Thank you, Your Honor.

3 THE COURT: The Court will reserve jurisdiction
4 on the judgment to assess costs, reasonable costs,
5 whatever those are. I don't believe there is any
6 provision for attorney's fees, so neither side would
7 be entitled to that anyway.

8 (Excerpt concluded.)
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1 STATE OF FLORIDA)

2 COUNTY OF LEE)

3 I, Tammy L. Betz, Registered Professional
4 Reporter and Notary Public do in and for the State of
5 Florida at Large, do hereby certify that the proceedings
6 were had in the cause styled in the caption hereto, on
7 Page 1 hereof; that I was authorized to and did attend
8 said proceedings and report the proceedings had therein
9 fully and accurately in shorthand, and that the foregoing
10 typewritten pages numbered 1 through 14, inclusive,
11 constitute a transcript of my shorthand report of the
12 proceedings taken at said time.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 7th day of March, 2000.

15

16

17

18

19

20

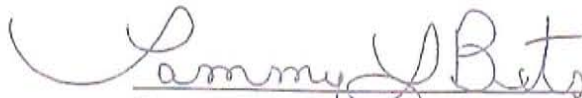
21

22

23

24

25



Tammy L. Betz, RPR, and Notary
Public in and for the State of
Florida at Large.
My commission expires: 3-18-2000

vs.

E. KEITH DAVIS and MARGARET J. DAVIS, Husband and Wife,

Defendants.

)
)
)
)
)
)
)

AMENDED FINAL JUDGMENT

THIS CAUSE coming before this Court for final hearing and the Court hearing testimony of the parties and witnesses thereto, argument of counsel, and being advised in the premises, it is:

ORDERED AND ADJUDGED that the Court makes the following finding:

1. The Plaintiffs are the owners and residents of the North one-half (N 1/2) of Lot 134, FLAMINGO BAY SUBDIVISION, Unit 2, Lee County, Florida, as recorded in Plat Book 10, Page 102-103 of the Public Records of Lee County, Florida.

2. The Defendants are the owners and reside upon the South one-half (S 1/2) of Lot 134, FLAMINGO BAY SUBDIVISION, Unit 2, Lee County, Florida, as recorded in Plat Book 10, Page 102-103 of the Public Records of Lee County, Florida.

3. That the developers of the Subdivision did reserve a grant to the parties by virtue of those certain Deeds of Restrictions recorded on July 12, 1960, in Official Record Book 18, Page 471, of the Public Records of Lee County, Florida, and March 30, 1962 recorded in Official Record Book 119, Page 31, Public Records of Lee County, Florida.

THEREFORE, based upon the findings of this Court of the above, this Court finds in favor of the Defendants, E. KEITH DAVIS and MARGARET J. DAVIS, Husband and Wife, as to Count I of the Complaint filed herein, and

IT IS FURTHER ORDERED AND ADJUDGEDZ that this Court finds in favor of the Plaintiffs, DALE E. CARSON and HELENA R. CARSON, Husband and Wife, as to Count II in the sum of \$25.00 representing the repair costs of the dock destroyed by the Defendants, E. KEITH DAVIS and MARGARET J. DAVIS, Husband and Wife, plus Court costs of \$68.00, for which let execution issue, and

SHIELDS,
IAVERFIELD
LUTTZ
ATTORNEYS AT LAW
BOX 88
BANK BUILDING
FLORIDA 33904
47-3143

Husband and Wife. Attorney fees requested in Count II are hereby denied, and

IT IS FURTHER ORDERED AND ADJUDGED that the premises of the Defendants, E. KEITH DAVIS and MARGARET J. DAVIS, Husband and Wife, is subject to a six-foot easement on the West boundary line of said Lot 134 and further that the Plaintiffs, DALE E. CARSON and HELENA R. CARSON, Husband and Wife, rights are hereby confirmed in that certain ten-foot easement for ingress and egress to and from the canal situated on the Southeast property line of the South one-half (S 1/2) of Lot 134, owned by the Defendants, E. KEITH DAVIS and MARGARET J. DAVIS, Husband and Wife. The use of said ten-foot easement by the Plaintiffs, DALE E. CARSON and HELENA R. CARSON, Husband and Wife, may be for any purpose instant to their right and ownership of that pier located in the canal within the extension of the easement, for the purpose of launching or hauling their boat or boats from said canal; for the purpose of repairing, maintaining, or otherwise utilizing said pier or dock; and for any other purpose consistent with the full use and enjoyment by the Plaintiffs, including ingress and egress to the canal, not inconsistent with the rights of the Defendants, but Plaintiffs may not delegate this right to anyone, any other corporation, or any other entity, with the exception that said ten-foot easement may be used temporarily by visitors and guests to and of the Plaintiffs, but said usage shall not be on a regular or permanent basis, and

IT IS FURTHER ORDERED AND ADJUDGED that the rights of the Defendants in ingress and egress in that ten-foot easement along the Northeast side of Lot 134, as a joint driveway between the property of the Plaintiffs and Defendants is hereby confirmed as a means of ingress and egress to and from the Defendants' lot for themselves, their temporary visitors, and temporary guests, with the exception that same is not to be delegated by Defendants on a regular or permanent basis.

HIELDS,
VERFIELD
TTZ
AT LAW
X 88
4K BUILDING
ORIDA 32804
3148

to Seven P.M., so as not to cause interference or inconvenience to the Plaintiffs, their temporary visitors or guests.

IT IS FURTHER ORDERED AND ADJUDGED that the rights of the Plaintiffs and the Defendants are hereby confirmed and governed by those Deeds of REstrictions recorded in Official Record Book 18, Page 471, and Official Record Book 119, Page 31, of the Public Records of Lee County, Florida.

DONE AND ORDERED on this _____ day of _____, 1979.

ROBERT T. SHAFER, Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Proposed Amended Final Judgment has been furnished by U. S. Mail this _____ day of October, to JAMES R. CLOUSE, JR., ESQUIRE, Attorney for Plaintiffs, at Suite 306, Courtney Building, Fort Myers, Florida 33901.

Harvey Rollings

SHIELDS,
WATERFIELD
ATTORNEYS
AT LAW
SUITE 306
COURTNEY BUILDING
FORT MYERS, FLORIDA 33901
2-3148

Staff's Draft language

**Note: Staff does not recommend any change to
the Land Development Code**

Flamingo Bay Ordinance:

DIVISION 2. LOCATION AND DESIGN

Sec. 26-71. Docking facilities and boat ramps.

Docking facilities will be permitted in accordance with the following regulations:

- (a) Number of slips.
 - (1) No more than one private single-family watercraft mooring dock with two slips is permitted in natural waterbodies.
 - (2) A shared property line dock can be permitted for up to four slips with a joint use agreement in compliance with section 26-71(g).
 - (3) Handrails may be required to prohibit the mooring of watercraft in any area not designated as a watercraft slip. Handrails must be permanently maintained.

- (b) Length of docks. No private single-family dock, including mooring area, may be permitted or constructed in a natural or artificial waterbody to exceed any of the following lengths as measured from the mean high water line seaward:
 - (1) 200 feet;
 - (2) 25 percent of the navigable channel width. In artificial waterbodies, the navigable channel is measured from mean high waterline to mean high waterline. Watercraft mooring areas that are waterward of the dock will be deemed 10 feet in width; or
 - (3) Up to 300 feet, if the director, in his sole discretion, finds that:
 - a. The proposed dock has been approved by all applicable state and federal agencies;
 - b. The increased length will not result in a hazard to navigation;
 - c. The proposed dock is compatible with docks or other structures and uses on adjoining lots; and
 - d. The increase in length will lessen the dock's impacts on seagrass beds or other marine resources.

- (c) Maximum dimensions.
 - (1) Docking facilities in natural waterbodies must comply with the following maximum dimensional requirements:

TABLE INSET:

Private Single-Family Structure

Access walkway	4 feet wide
Terminal platform	160 square feet
Finger piers	3 feet wide

The application of these regulations is illustrated in Figure 26-1, Private Single-Family Structure Plan View.

- (2) The director has the discretion to permit a dock of greater dimensions than allowed by this subsection if:
 - a. The primary access to the property is by watercraft;
 - b. No reasonable alternative access exists; and
 - c. The increase in the dock dimensions is the minimum necessary to meet the needs of the property owner.
 - (3) Single-family residential boat ramps cannot exceed 15 feet in width.
- (d) Setbacks.
- (1) All multi-slip and marina docking facilities, except boat davits, in or adjacent to natural waterbodies must be set back a minimum of 25 feet from all adjoining side lot lines.
 - (2) All private single-family docking facilities in natural waterbodies must be set back from all adjoining side lot and side riparian lines as follows:
 - a. Marginal docks--No less than 10 feet.
 - b. All other docks--No less than 25 feet.
 - c. Boat lifts and mooring pilings--No less than 10 feet.
 - (3) Side setback requirements can be reduced if:
 - a. Adjoining property owners execute a written agreement in recordable form, agreeing to a setback less than that required or to a zero setback; and
 - b. Placement of the dock in accordance with the setback agreement will not result in greater environmental impacts than compliance with the regulations set forth in this subsection.
 - (4) The director, in his discretion, may permit administrative deviations from the setbacks required by this subsection if the facility is located as close to the required setback as possible and:
 - a. The width of the subject parcel is not wide enough to permit construction of a single-family docking facility, perpendicular to the shoreline at the midpoint of the shoreline property line, without a deviation; or
 - b. Construction of the structure outside the setback area will not cause or will minimize damage to wetland vegetation or other environmental resources or will not cause greater damage than will occur if the deviation is not granted.The director's decision under this subsection can be appealed through the procedure set forth in section 34-145(a) or the applicant may seek a variance in accordance with section 26-46.
 - (5) All boat ramps must setback ten feet from all adjoining side lot and side riparian lines.
- (e) Location.
- (1) Docking structures in natural or artificial waterbodies that create a hazard to navigation are prohibited.
 - (2) Boat ramp located in a manner that will result in a change in the mean high water line are prohibited.

- (3) Docks located at the end of a canal may require a survey sealed by a PSM depicting the riparian area. The dock must be designed to allow for adequate ingress/egress and mooring within the subject property's riparian area.
- (f) Minimum water depths.
- (1) Single-family docking facilities. There must be a minimum depth of three feet mean low water for all watercraft slips on private single-family docking facilities in natural waterbodies.
- (2) Water depths adjacent to and within a multi-slip docking facility or a marina. Except when a reduced water depth for a public service marina has been approved by variance, there must be a minimum depth of one foot clearance between the deepest draft of a vessel (with the engine in the down position) and an unvegetated bottom or the top of submerged aquatic vegetation (e.g. seagrasses) at mean low water, with a minimum water depth of at least four feet within mooring areas, turning basins, and ingress and egress pathways. The hearing examiner may grant a variance to the minimum water depth for a public service marina in accordance with section 34-145(b), only upon finding the request is consistent with the provisions of Manatee Protection Plan.
- (g) *Interest in land to support residential dock/facility approval.* In order to obtain a permit for a residential dock and related facilities, the property owner/applicant must have a recorded right to access the water meeting the following criteria:
- (1) A deed describing the residential lot with at least one boundary being the waterway along which the dock facility is proposed. The lot described must be a buildable lot with sufficient square footage to meet county requirements except as provided in section 34-1173(a)(2)d; OR
- (2) A recorded easement granting access to the waterbody for purposes of constructing and using a dock/facility meeting the following criteria.
- a. The easement must be over land contiguous to the residential lot such that an extension of the side lot lines will allow access to the water beyond the rear lot line;
- b. The easement must be for the benefit of a residential lot that is a buildable lot under county regulations; and
- c. The easement must be necessary to gain access to the waterbody over and through waterway buffer and maintenance areas required for development approval under chapter 10; OR,
- (3) Owners of a lawfully created lot in existence before June 27, 1962 and that lot is contiguous to a lot that abuts a man made waterbody may acquire a permit to construct one boat dock on the adjacent lot, under separate ownership, subject to the following:
- a. The owner of the lot that is not abutting the waterbody has a valid easement for access and construction of a boat dock on the parcel abutting the waterbody and the easement was recorded before

November 12, 1973 (Adoption of the Lee County Subdivision Regulations); and,

- b. The easement must be for the benefit of the residential lot not abutting the waterbody and cannot be severed from the residential lot; and,
- c. The lot that is not abutting the waterbody must be a buildable lot under county regulations; and,
- d. The Applicant owns fee simple interest in the residential lot not abutting the waterbody; and,
- e. The Applicant acquires the necessary dock permit in accordance with Chapter 26; and,
- f. The Applicant provides a notarized letter of no objection from the owner of the lot abutting the waterbody; and,
- g. The dock may not be placed within a drainage easement or canal controlled or owned by the County, a Municipality, Water Control District, or other governmental entity.