

ORDINANCE NO. 92-38

AN ORDINANCE AMENDING LEE COUNTY ORDINANCE NO. 86-28, AS AMENDED, AN ORDINANCE PROVIDING FOR EQUAL OPPORTUNITY IN HOUSING, PLACES OF PUBLIC ACCOMMODATION, AND EMPLOYMENT, IN LEE COUNTY, FLORIDA; AMENDING ARTICLE I, SECTION FOUR, INVESTIGATION PROCEDURES TO INCLUDE SUBSECTION 4.3(a)(6); AMENDING ARTICLE I, SECTION FIVE PROCEDURAL RULES, SUBSECTION 5.3(a), AND TO INCLUDE SUBSECTION (12); AMENDING ARTICLE II, SECTION NINE, DISCRIMINATORY HOUSING PRACTICE; AMENDING ARTICLE II, SECTION TEN, EXEMPTIONS; PROVIDING FOR DEFINITIONS, PROVIDING FOR EXEMPTIONS; PROVIDING FOR ADMINISTRATIVE PROCEDURES; PROVIDING FOR PROHIBITED DISCRIMINATION; PROVIDING FOR ADMINISTRATIVE ENFORCEMENT; PROVIDING FOR AN EFFECTIVE DATE.

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

WHEREAS, it is the policy of the United States of America to provide equal access for all citizens in housing and public accommodations, it is also the policy of Lee County, Florida; and,

WHEREAS, denial of equal opportunities in employment and housing deprives an individual of their basic right to associate, causes friction among groups in society, and adversely affects the public health, safety and welfare; and,

WHEREAS, equal enjoyment of constitutionally protected rights promotes individuals to reach their full productive capacities, and

WHEREAS, the Board of County Commissioners now wishes to amend Lee County Ordinance 86-28, as amended, pursuant to Chapter 125 Florida Statutes:

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

SECTION ONE:

The amendments and revisions set forth in the following sections are hereby adopted.

SECTION TWO:

Article I, Section Four, Investigation Procedures, subsection 4.3(a) is hereby amended to include subsection 4.3(a)(6) as follows:

- (6) to conduct public educational programs to inform the citizenry about equal opportunity in housing, places of public accommodation, and employment in Lee County, Florida.

SECTION THREE:

Article I, Section Five, Procedural Rules, subsections 5.3(a) is hereby amended as follows; Section Five is further amended to include subsection (12) as follows:

- (a) To aid the parties in obtaining evidence and testimony in advance of and at the hearing, the Human Relations Officer, the complainant, the respondent, the Hearing Examiner, and the Board shall be entitled to the issuance of a reasonable number of subpoenas to be

issued by and in the name of the Hearing Examiner, if the matter is pending before the Hearing Examiner or the Board, if the matter is pending before it. Subpoenas issued at the request of a party shall show on their face the name and address of that party and shall state that they were issued at the request of said party. The subpoena power herein granted shall be limited to a reasonable number of subpoenas specifically directed to obtain information or evidence relevant to and material to the charge and shall not be construed to provide for unlimited power to generally review a party's records.

(12) The County Administrator upon consultation with the Board and the Human Relations Officer may promulgate an Administrative Code to effectuate the purposes and policies of this section.

SECTION FOUR:

Article II, Section Nine, DISCRIMINATORY HOUSING PRACTICE, is hereby amended as follows; Article II, Section Ten, Exemptions, is hereby amended as follows:

ARTICLE II

SECTION I.

PURPOSE

It is the intent of this Ordinance to provide, within constitutional limitations, for fair housing throughout Lee County.

SECTION II: DEFINITIONS

As used in Sections I. - XII., the term:

- A. "Board" means the Human Relations Review Board created by this Ordinance.
- B. "Complainant" means any person who files a complaint pursuant to this Ordinance.
- C. "Covered Multi-family Dwelling" means:
 - (a) A building which consists of four or more units and has an elevator; or
 - (b) The ground floor units of a building which consists of four or more units and does not have an elevator.
- D. "Discriminatory Housing Practice" means an act that is unlawful under the terms of Sections I. - XII.
- E. "Dwelling" means any building or structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location on the land of any such building or structure, or portion thereof.
- F. "Familial Status" is established when an individual who has not attained the age of 18 years is domiciled with:
 - (a) A parent or other person having legal custody of such individual; or
 - (b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

- G. "Family" includes a single individual.
- H. "Handicap" means:
 - (a) A person has a physical or mental impairment which substantially limits one or more major life activities, or he has a record of having, or is regarded as having, such physical or mental impairment; or
 - (b) A person has a developmental disability as defined in Section 393.063, Florida Statutes (1991).
- I. "Hearing Examiner" means that person selected to administer the conduct of the hearing on the complaint of discrimination. The Hearing Examiner shall not be an employee of Lee County or affiliated with the Human Relations Review Board. The Hearing Examiner shall be certified in accordance with the Florida Administrative Procedure Act, Florida Statute 120.
- J. "Human Relations Officer" means the designee of the Lee County Board of County Commissioners.
- K. "Investigation" means that period of time between the filing of the initial complaint and the time which it is actually formalized and presented before a Board or officer for presentation.
- L. "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

- M. "Recommended Corrective Order" means the Order rendered pursuant to this Chapter by the Hearing Examiner. Said Order shall contain an analysis, recommended findings of fact, conclusions of law and appropriate remedial actions.
- N. "Respondent" means the person against whom a complaint has been filed pursuant to this Ordinance.
- O. "To Rent" includes to lease, to sublease, to let, and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

SECTION III: DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING AND OTHER PROHIBITED PRACTICES

- A. It is unlawful to refuse to sell or rent after the making of a bona fide offer, to refuse to negotiate for the sale or rental of, or otherwise to make unavailable to deny a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.
- B. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, national origin, sex, handicap, familial status, or religion.

- C. It is unlawful to make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, national origin, sex, handicap, familial status, or religion or an intention to make any such preference, limitation, or discrimination.
- D. It is unlawful to represent to any person because of race, color, national origin, sex, handicap, familial status, or religion that any dwelling is not available for inspection, sale, or rental when such dwelling is in fact so available.
- E. It is unlawful, for profit, to induce or attempt to induce any person to sell or rent any dwelling by a representation regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, national origin, sex, handicap, familial status, or religion.
- F. The protections afforded under Sections I. - XII. against discrimination on the basis of familial status apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

G. It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of:

- (1) That buyer or renter;
- (2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- (3) Any person associated with the buyer or renter.

H. It is unlawful to discriminate against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a handicap of:

- (1) That buyer or renter;
- (2) A person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or
- (3) Any person associated with the buyer or renter.

I. For purposes of subsections (G) and (H), discrimination includes:

- (1) A refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises; or

(2) A refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

J. Covered multi-family dwellings as defined herein which are intended for first occupancy after March 13, 1991 shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site as determined by Board rule. Such buildings shall also be designed and constructed in such a manner that:

- (1) The public use and common use portions of such dwellings are readily accessible to and usable by handicapped persons.
- (2) All doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by a person in a wheelchair.
- (3) All premises within such dwellings contain the following features of adaptive design:
 - a. An accessible route into and through the dwelling.
 - b. Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations.

- c. Reinforcements in bathroom walls to allow later installation of grab bars.
- d. Usable kitchens and bathrooms such that a person in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the American National Standards Institute for buildings and facilities providing accessibility and usability for physically handicapped people, commonly cited as ANSI A117.1-1986, suffices to satisfy the requirements of subsection (J). State agencies with building construction regulation responsibility or County agencies, as appropriate, shall review the plans and specifications for the construction of covered multi-family dwellings to determine consistency with the requirements of this subsection.

SECTION IV: DISCRIMINATION IN THE PROVISION OF BROKERAGE SERVICES

It is unlawful to deny any person access to, or membership or participation in, any multiple-listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership, or participation, on

account of race, color, national origin, sex, handicap, familial status, or religion.

SECTION V: DISCRIMINATION IN THE FINANCING OF HOUSING OR IN RESIDENTIAL REAL ESTATE TRANSACTIONS

It is unlawful for any bank, building and loan association, insurance company, or other corporation, association, firm, or enterprise the business of which consists in whole or in part of the making of commercial real estate loans to deny a loan or other financial assistance to a person applying for the loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling, or to discriminate against him in the fixing of the amount, interest rate, duration, or other term or condition of such loan or other financial assistance because of the race, color, national origin, sex, handicap, familial status, or religion of such person or of any person associated with him in connection with such loan or other financial assistance or the purpose of such loan or other financial assistance, or because of the race, color, national origin, sex, handicap, familial status, or religion of the present or prospective owners, lessees, tenants, or occupants of the dwelling or dwellings in relation to which such loan or other financial assistance is to be made or given.

It is unlawful for any person or entity whose business includes engaging in residential real estate transactions to

discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction, because of race, color, national origin, sex, handicap, familial status, or religion.

As used in this subsection, the term "residential real estate transaction" means any of the following:

- A. The making or purchasing of loans or providing other financial assistance:
 - 1. For purchasing, constructing, improving, repairing, or maintaining a dwelling; or
 - 2. Secured by residential real estate.
- B. The selling, brokering, or appraising of residential real property.

SECTION VI: EXEMPTIONS

Nothing in Sections III. and IV. applies to:

- A. Any single-family house sold or rented by its owner, provided such private individual owner does not own more than three single-family houses at any one time. In the case of the sale of a single-family house by a private individual owner who does not reside in such house at the time of the sale or who was not the most recent resident of the house prior to the sale, the exemption granted by this paragraph applies only with respect to one sale within any 24-month period. In addition, the bona fide private individual owner shall not own any

interest in, nor shall there be owned or reserved on his behalf, under any express or voluntary agreement, title to, or any right to all or a portion of the proceeds from the sale or rental of, more than three single-family houses at any one time. The sale or rental of any single-family house shall be excepted from the application of Sections I. - XII. only if the house is sold or rented:

1. Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent, or salesman or such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman, or person; and
2. Without the publication, posting, or mailing, after notice, of any advertisement or written notice in violation of Section III.C.

Nothing in this provision prohibits the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as is necessary to perfect or transfer the title.

B. Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the

owner actually maintains and occupies one of such living quarters as his residence.

For purposes of paragraph 1, a person is deemed to be in the business of selling or renting dwellings if:

1. He has, within the preceding 12 months, participated as principal in three or more transactions involving the sale or rental of any dwelling or interest therein;
2. He has, within the preceding 12 months, participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or interest therein; or
3. He is the owner of any dwelling designed or intended for occupancy by, or occupied by, five or more families.

Nothing in Sections I. - XII. prohibits a religious organization, association, or society, or any non-profit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, from limiting the sale, rental, or occupancy of any dwelling which it owns or operates for other than a commercial purpose to persons of the same religion or from giving preference to such persons, unless membership in such religion is restricted

on account of race, color, or national origin. Nothing in Sections I. - XII. prohibits a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or from giving preference to its members.

Nothing in Sections I. - XII. requires any person renting or selling a dwelling constructed for first occupancy before March 13, 1991, to modify, alter, or adjust the dwelling in order to provide physical accessibility except as otherwise required by law.

Any provision of Sections I. - XII. regarding familial status does not apply with respect to housing for older persons.

As used in this subsection, the term "housing for older persons" means housing:

1. Provided under any state or federal program that the Board determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;
2. Intended for, and solely occupied by, persons 62 years of age or older; or
3. Intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing

for older persons under this subparagraph, the Board shall consider at least the following factors:

- a. The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if providing such facilities and services is not practicable, such housing is necessary to provide important housing opportunities for older persons;
- b. At least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and
- c. The publication and adherence to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

Housing shall not fail to be considered housing for older persons if:

1. A person who resides in such housing on or after October 1, 1989, does not meet the age requirements of this subsection, provided that any new occupant meets such age requirements; or
2. One or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by

persons who meet the age requirements of this subsection.

Nothing in Sections I. - XII.:

1. Prohibits a person engaged in the business of furnishing appraisals of real property from taking into consideration factors other than race, color, national origin, sex, handicap, familial status, or religion.
2. Limits the applicability of any reasonable local restriction regarding the maximum number of occupants permitted to occupy a dwelling.
3. Requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others.
4. Prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined under Chapter 893, Florida Statutes (1991).

SECTION VII: ADMINISTRATION OF SECTIONS I. - XII.

A. The authority and responsibility for administering Sections I. - XII. is in the Board.

B. The Board may delegate any of its functions, duties, and powers to its staff, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under Sections I. - XII.

SECTION VIII: POWERS AND DUTIES OF BOARD

The Board shall:

- A. Make studies with respect to the nature and extent of discriminatory housing practices in representative urban, suburban, and rural communities throughout the County.
- B. Publish and disseminate reports, recommendations, and information derived from such studies.
- C. Cooperate with and render technical assistance to public or private agencies, organizations, and institutions within the County which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices.
- D. Administer the programs and activities relating to housing in a manner affirmatively to further the policies of Sections I. - XII.
- E. Adopt the rules necessary to implement Sections I. - XII. and govern the proceedings of the Board

in accordance with Chapter 120.. Board rules shall clarify terms used with regard to handicapped accessibility, exceptions from accessibility requirements based on terrain or site characteristics, and requirements related to housing for older persons.

SECTION IX: ENFORCEMENT

A. Any person who claims to have been injured by a discriminatory housing practice or who believes that he will be injured by a discriminatory housing practice that is about to occur may file a complaint with the Board. Complaints shall be in writing and shall contain such information and be in such form as the Board requires. Upon receipt of such a complaint, the Board shall furnish a copy to the person or persons who allegedly committed the discriminatory housing practice or are about to commit the alleged discriminatory housing practice. Within 100 days after receiving a complaint, or within 100 days after the expiration of any period of reference under this Ordinance, the Board shall investigate the complaint and give notice in writing to the person aggrieved whether it intends to resolve it. If the Board decides to resolve the complaint, it shall proceed to try to

eliminate or correct the alleged discriminatory housing practice by informal methods of conference, conciliation, and persuasion. Insofar as possible, conciliation meetings shall be held in Lee County.

Nothing said or done in the course of such informal endeavors may be made public or used as evidence in a subsequent proceeding under Sections I. - XII. without the written consent of the persons concerned. Any employee of the Board who makes public any information in violation of this provision is guilty of a misdemeanor of the first degree, punishable as provided in Section 775.082 or Section 775.083, Florida Statutes (1991).

B. A complaint under subsection A. must be filed within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him and, with the leave of the Board, which shall be granted whenever it would be reasonable and fair to do so, may amend his answer at any time. Both complaint and answer shall be verified.

- C. If, within 180 days after a complaint is filed with the Board, and the Board has been unable to obtain voluntary compliance with Sections I. - XII., the person aggrieved may commence a civil action in any appropriate court against the respondent named in the complaint or petition for an administrative determination pursuant to Section XI. to enforce the rights granted or protected by Sections I. - XII. If, as a result of its investigation under subsection A., the Board finds there is reasonable cause to believe that a discriminatory housing practice has occurred, at the request of the person aggrieved, the Attorney General shall bring an action in the name of the state on behalf of the aggrieved person to enforce the provisions of Sections I. - XII.
- D. In any proceeding brought pursuant to this section or Section XI., the burden of proof is on the complainant.
- E. Whenever an action filed in court pursuant to this section or Section XI comes to trial, the Board shall immediately terminate all efforts to obtain voluntary compliance.
- F. The Board may institute a civil action in any appropriate court if it is unable to obtain voluntary compliance with Sections I. - XII. The Board need not

have petitioned for an administrative hearing or exhausted its administrative remedies prior to bringing a civil action.

The court may impose the following fines for each violation of Sections I. - XII:

1. Up to \$10,000, if the respondent has not previously been found guilty of a violation of Sections I. - XII.
2. Up to \$25,000, if the respondent has been found guilty of one prior violation of Sections I. - XII. within the preceding 5 years.
3. Up to \$50,000, if the respondent has been found guilty of two or more violations of Sections I. - XII. within the preceding 7 years.

In imposing a fine under this paragraph, the court shall consider the nature and circumstances of the violation, the degree of culpability, the history of prior violations of Sections I. - XII, the financial circumstances of the respondent, and the goal of deterring future violations of Sections I. - XII.

The court shall award reasonable attorney's fees and costs to the Board in any action in which the Board prevails.

SECTION X: CIVIL ACTIONS AND RELIEF; ADMINISTRATIVE PROCEDURES

A. A civil action shall be commenced no later than 2 years after an alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought pursuant to this section or Section X. from time to time before bringing it to trial if the court believes that the conciliation efforts of the Board are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the Board and which practice forms the basis for the action in court. Any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of Sections I. - XII. and involving a bona fide purchaser, encumbrancer, or tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of Sections I. - XIII. shall not be affected.

B. If the court finds that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including injunctive and other equitable relief, actual and punitive damages, and reasonable attorney's fees and costs.

C. If the Board is unable to obtain voluntary compliance with Sections I. - XIII. or has reasonable cause to believe that a discriminatory practice has occurred:

1. The Board may institute an administrative proceeding under Chapter 120; or
2. The person aggrieved may request administrative relief under Chapter 120 within 30 days after receiving notice that the Board has concluded its investigation under Section X.

Administrative hearings shall be conducted pursuant to Section 120.57(1), Florida Statutes, (1992). The respondent must be served written notice by certified mail. If the hearing officer finds that a discriminatory housing practice has occurred or is about to occur, he shall issue a recommended order to the Board prohibiting the practice and recommending affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney's fees and costs. The Board may adopt, reject, or modify a recommended order only as provided under Section 120.57(1), Florida Statutes, (1992). Judgment for the amount of damages and costs assessed pursuant to a final order by the Board may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

The district courts of appeal may, upon the filing of appropriate notices of appeal, review final orders of the Board pursuant to Section 120.68, Florida Statutes, (1992). Costs or fees may not be assessed against the Board in any appeal from a final order issued by the Board under this subsection. Unless specifically ordered by the Court, the commencement of an appeal does not suspend or stay an order of the Board.

This subsection does not prevent any other legal or administrative action provided by law.

SECTION XI: CONCILIATION AGREEMENTS

Any conciliation agreement arising out of conciliation efforts by the Lee County Human Relations Review Board must be agreed to by the respondent and the complainant and is subject to the approval of the Board. Notwithstanding the provisions of Section X(A), each conciliation agreement shall be made public unless the complainant and the respondent otherwise agree and the Board determines that disclosure is not required to further the purposes of this Ordinance.

SECTION XII: INTERFERENCE, COERCION, OR INTIMIDATION; ENFORCEMENT BY ADMINISTRATIVE OR CIVIL ACTION

It is unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of, or on account of his having exercised, or on account of his having aided or encouraged any

other person in the exercise of any right granted under Sections I. - XII. This section may be enforced by appropriate administrative or civil action.

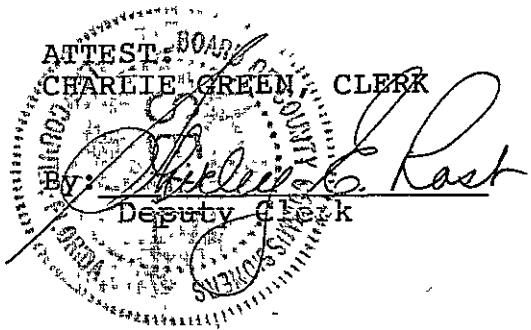
SECTION FIVE:

This Ordinance shall become effective upon notice from the Secretary of State that the Ordinance has been duly filed.

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

DOUGLAS ST. CERNY	<u>AYE</u>
JOHN E. MANNING	<u>AYE</u>
RAY JUDAH	<u>AYE</u>
VICKI LOPEZ-WOLFE	<u>AYE</u>
DONALD SLISHER	<u>AYE</u>

DULY PASSED AND ADOPTED this 2nd day of September, 1992.



BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: John E. Rast

Chairman

APPROVED AS TO FORM:

By: Paul N. Peterson
Office of County Attorney