

LEE COUNTY ORDINANCE NO 96-06

AN ORDINANCE AMENDING LEE COUNTY LAND DEVELOPMENT CODE (LDC) CHAPTERS 1, 2, 6, 10 AND 34 BY REFERENCE TO SPECIFIC SECTIONS; PROVIDING FOR EFFECT OF ORDINANCE REPEAL (LDC §1-4); PROVIDING FOR CONTINUING VIOLATIONS (LDC §1-5); AMENDING THE DEFINITION OF CAPITAL IMPROVEMENT (LDC §§2-304, 2-344) AND COMMUNITY PARK (LDC §2-344); PROVIDING FOR USE OF REGIONAL PARK IMPACT FEE FUNDS (LDC §2-310), PROVIDING FOR HEARING EXAMINER PENALTIES AND LIENS OF UP TO \$5,000 PER VIOLATION (LDC § 2-427), PROVIDING FOR SPECIAL MASTER PROCEEDINGS UNDER THE FLORIDA LAND USE AND ENVIRONMENTAL DISPUTE RESOLUTION ACT (LDC §2-440); PROVIDING FOR PROCEEDINGS UNDER THE BERT J. HARRIS, JR PRIVATE PROPERTY RIGHTS PROTECTION ACT (LDC §2-550),

PROVIDING FOR REPEAL OF LAND DEVELOPMENT CODE SECTIONS 6-111, 6-131, 6-151, 6-171, 6-191 AND REENACTMENT OF NEW LDC SECTIONS 6-111, 6-131, 6-151, 6-171 AND 6-191, PROVIDING FOR ADOPTION OF THE 1994 STANDARD BUILDING CODE WITH CERTAIN EXCEPTIONS (LDC §6-111), PROVIDING FOR ADOPTION OF THE 1994 STANDARD PLUMBING CODE WITH CERTAIN EXCEPTIONS (LDC §6-131), PROVIDING FOR THE ADOPTION OF THE 1994 STANDARD MECHANICAL CODE WITH CERTAIN EXCEPTIONS (LDC §6-151), PROVIDING FOR ADOPTION OF THE 1994 STANDARD GAS CODE WITH CERTAIN EXCEPTIONS (LDC §6-171), PROVIDING FOR ADOPTION OF THE 1993 NATIONAL ELECTRIC CODE (NFPA 70-1993) WITH CERTAIN EXCEPTIONS (LDC §6-191),

AMENDING THE DEFINITION OF THE TERMS "DECISION OF DEVELOPMENT REVIEW DIRECTOR" AND "SUBDIVISION" (LDC §10-1), AMENDING SECTIONS PERTAINING TO SUBDIVISION PLATS (LDC §§10-101, 10-211, 10-213 AND 10-215), DEVIATIONS AND VARIANCES (LDC §10-104); APPEALS (LDC §10-112); DEVELOPMENT REVIEW SUBMITTALS (LDC §10-151); WAIVER OF REQUIRED DEVELOPMENT REVIEW SUBMITTALS (LDC §10-152), SUBMITTAL FOR ASSURANCE OF COMPLETION OF IMPROVEMENTS (LDC §10-154), LIMITED DEVELOPMENT REVIEW PROCESS (LDC §§10-171 - 10-174), BIKEWAYS AND PEDESTRIAN WAYS (LDC §10-256), STREET DESIGN AND CONSTRUCTION STANDARDS (LDC §10-296); EXCAVATION FOR WATER RETENTION AND DETENTION (LDC §10-329); ADMINISTRATIVE EXCEPTIONS TO SANITARY SEWER SYSTEMS (LDC §10-353), REUSE WATER SYSTEMS (LDC §10-354); CREDIT FOR SIZE AND TYPE OF VEGETATION (LDC §10-416), DEVELOPMENT APPLICATION REQUIREMENTS FOR PROTECTION OF HABITAT (LDC §10-473); SIX MILE CYPRESS WATERSHED DESIGN STANDARDS (LDC §10-510); PROVIDING FOR ACCESS STREET CROSS SECTIONS (LDC §10-711),

AMENDING DEFINITIONS APPLICABLE TO ZONING REGULATIONS (LDC §34-2), AMENDING FUNCTIONS AND AUTHORITY OF BOARD OF COUNTY COMMISSIONERS (LDC §34-82 - 34-84), FUNCTIONS AND AUTHORITY OF HEARING EXAMINER (LDC §34-145), FINAL DECISIONS AND JUDICIAL REVIEW (LDC §34-146), PROCEDURES FOR APPLICATIONS REQUIRING PUBLIC HEARING (LDC §34-201), SUBMITTAL REQUIREMENTS FOR APPLICATIONS REQUIRING PUBLIC HEARING (LDC §34-202 AND 34-203), REPEAL OF LDC §34-204 REGARDING APPLICATIONS FOR DEVELOPMENT APPROVAL, REPEAL OF LDC §34-205 REGARDING APPLICATIONS FOR BUILDING PERMITS; REPEAL OF LDC §34-206 REGARDING GRADING PERMITS, AMENDING SECTIONS PERTAINING TO EXCAVATIONS (LDC §34-207), DENIALS AND RESUBMISSION OF APPLICATIONS (LDC §34-211), REQUIRED HEARINGS (LDC §34-232); PRELIMINARY REVIEW AND NOTICE CERTIFICATION (LDC §34-233); PUBLIC PARTICIPATION (LDC §34-234), DEFERRAL OR CONTINUANCE OF A PUBLIC HEARING (LDC §34-235); NOTICES (LDC §34-236), ADMINISTRATIVE SETBACK VARIANCES (LDC §34-268); PLANNED DEVELOPMENT DESIGNATION (LDC §34-341); MINIMUM INFORMATION REQUIRED FOR PLANNED DEVELOPMENT ZONING APPLICATIONS (LDC

§34-373), COVENANT OF UNIFIED CONTROL (LDC §34-374), PREHEARING CONFERENCES (LDC §34-375), PREHEARING STIPULATIONS (LDC §34-376); PROVIDING FOR PUBLIC HEARINGS (LDC §34-377), EFFECT OF PLANNED DEVELOPMENT ZONING (LDC §34-378); BINDING NATURE OF MASTER CONCEPT PLAN APPROVAL (LDC §34-379); AMENDMENTS TO APPROVED MASTER CONCEPT PLAN (LDC §34-380); DURATION OF RIGHTS CONFERRED BY AN ADOPTED MASTER CONCEPT PLAN (LDC §34-381); REPEAL OF LDC §34-382 REGARDING DEVELOPMENT PERMITS, AMENDING SECTIONS PERTAINING TO THE OFFICIAL ZONING MAPS (LDC §34-615); UNAUTHORIZED CHANGES TO ZONING MAPS (LDC §34-617); USES NOT SPECIFICALLY LISTED (LDC §34-620), USE AND DEVELOPMENT REGULATIONS FOR CONVENTIONAL DISTRICTS (LDC §34-621); USE ACTIVITY GROUPS COMMERCIAL SCHOOLS AND TRANSPORTATION SERVICES (LDC §34-622), PERFORMANCE STANDARDS (LDC §34-623); USE REGULATIONS TABLE FOR AGRICULTURAL DISTRICTS (LDC §34-653), PROPERTY DEVELOPMENT REGULATIONS TABLE FOR AGRICULTURAL DISTRICTS (LDC §34-654); USE REGULATIONS TABLE FOR ONE- AND TWO-FAMILY RESIDENTIAL DISTRICTS (LDC §34-694); PROPERTY DEVELOPMENT REGULATIONS TABLE FOR ONE- AND TWO-FAMILY RESIDENTIAL DISTRICTS (LDC §34-695); USE REGULATIONS TABLE FOR MULTIPLE-FAMILY RESIDENTIAL DISTRICTS (LDC §34-714); PROPERTY DEVELOPMENT REGULATIONS TABLE FOR MULTIPLE-FAMILY RESIDENTIAL DISTRICTS (LDC §34-715), USE REGULATIONS TABLE FOR MOBILE HOME RESIDENTIAL DISTRICTS (LDC §34-735); PROPERTY DEVELOPMENT REGULATIONS TABLE FOR MOBILE HOME RESIDENTIAL DISTRICTS (LDC §34-736), USE REGULATIONS TABLE FOR RECREATIONAL VEHICLE DISTRICTS (LDC §34-791), PROPERTY DEVELOPMENT REGULATIONS TABLE FOR RECREATIONAL VEHICLE DISTRICTS (LDC §34-792); USE REGULATIONS TABLE FOR COMMUNITY FACILITIES DISTRICTS (LDC §34-813); PROPERTY DEVELOPMENT REGULATIONS TABLE FOR COMMUNITY FACILITIES DISTRICTS (LDC §34-814), USE REGULATIONS TABLE FOR CONVENTIONAL COMMERCIAL DISTRICTS (LDC §34-843), PROPERTY DEVELOPMENT REGULATIONS TABLE FOR COMMERCIAL DISTRICTS (LDC §34-844); PURPOSE AND INTENT FOR MARINE-ORIENTED DISTRICTS (LDC §34-871), USE REGULATIONS TABLE FOR MARINE-ORIENTED DISTRICTS (LDC §34-873); PROPERTY DEVELOPMENT REGULATIONS TABLE FOR MARINE-ORIENTED DISTRICTS (LDC §34-874), USE REGULATIONS TABLE FOR INDUSTRIAL DISTRICTS (LDC §34-903); PROPERTY DEVELOPMENT REGULATIONS TABLE FOR INDUSTRIAL DISTRICTS (LDC §34-904), USE REGULATIONS TABLE FOR PLANNED DEVELOPMENT DISTRICTS (LDC §34-934), AMENDMENTS TO BUILT PLANNED UNIT DEVELOPMENTS (LDC §34-1039); GENERAL DEVELOPMENT STANDARDS AND REQUIRED IMPROVEMENTS FOR PLANNED UNIT DEVELOPMENTS (LDC §34-1041), PURPOSE OF SUPPLEMENTAL REGULATIONS (LDC §34-1142), SATELLITE DISHES (LDC §34-1175), ADDITIONAL DWELLING UNIT ON LOTS IN AGRICULTURAL DISTRICT (LDC §34-1180); PROVIDING FOR SEXUALLY ORIENTED BUSINESSES (LDC §§34-1201 - 34-1204), AMENDING SECTIONS PERTAINING TO PRIVATE AIRCRAFT LANDING FACILITIES (LDC §§34-1231 - 34-1237); SALE OR SERVICE FOR ON-PREMISES CONSUMPTION OF ALCOHOLIC BEVERAGES (LDC §34-1264), ANIMAL ACTIVITIES REQUIRING SPECIAL APPROVAL (LDC §34-1297), LOCATION OF ADULT CONGREGATE LIVING FACILITIES (ASSISTED LIVING FACILITIES) (LDC §34-1411), CONTINUING CARE FACILITIES (LDC §34-1414), COMMUNICATION TOWERS (LDC §§34-1441 - 34-1446), CALCULATION OF TOTAL PERMISSIBLE HOUSING UNITS (LDC §34-1493), REQUIRED APPROVAL FOR EXCAVATION ACTIVITY (LDC §34-1651), MINING OPERATIONS (LDC §§34-1673 - 34-1682); LOCATION AND HEIGHT OF FENCES AND WALLS (LDC §34-1744), ENTRANCE GATES AND GATEHOUSES (LDC §34-1749); PERMITTED USES AND OPERATION OF HOME OCCUPATIONS (LDC §34-1772); SPECIAL EXCEPTION REQUIRED FOR FARM LABOR HOUSING (LDC §34-1892), AMENDING DEFINITIONS OF "HIGH TURNOVER" AND "LOW TURNOVER" (LDC §34-2012); OFF-STREET PARKING ACCESS (LDC §34-2013); JOINT USE OF OFF-STREET PARKING LOTS (LDC §34-2018), REQUIRED PARKING SPACES (LDC §34-2020); EXCEPTION FROM HEIGHT LIMITATIONS FOR CERTAIN STRUCTURAL ELEMENTS (LDC §34-2173); STREET SETBACKS (LDC §34-2192); USES EMPLOYING SOLAR ENERGY OR WIND-DRIVEN ELECTRICAL GENERATORS (LDC §34-2196); SPECIAL SETBACK REGULATIONS FOR SPECIFIC USES (LDC §§34-2441 - 34-2443), SUBORDINATE COMMERCIAL USES (LDC

§34-3021), WATER-ORIENTED RENTAL ESTABLISHMENTS (LDC §34-3151), PROVIDING FOR "CLOTHING OPTIONAL" ESTABLISHMENTS FOR RESIDENTIAL DEVELOPMENTS (LDC §§34-3171 - 34-3173), GENERAL DEVELOPMENT STANDARDS FOR NONCONFORMING LOTS OF RECORD (LDC §34-3272); CONSTRUCTION OF SINGLE FAMILY RESIDENCE (LDC §34-3273),

PROVIDING FOR REPEAL OF THE FOLLOWING LEE COUNTY ORDINANCES: 71-2, 74-5, 85-26, 88-12, 89-29, 89-38, 90-27, 91-09, 93-36 RELATING TO SIGNS, 76-13 RELATING TO COASTAL CONSTRUCTION ON BONITA BEACH, 78-7 RELATING TO BUILDING HEIGHT LIMITATIONS; 78-25, 79-19, 87-31 RELATING TO MCGREGOR BOULEVARD, 82-41, 83-28, 84-2 RELATING TO BUILDING PERMIT FEES, 82-44 RELATING TO CAPTIVA ISLAND, 83-34 RELATING TO BOARD OF ADJUSTMENT AND APPEALS; 83-42, 92-44, 92-53, 93-17, 93-30, 93-38 RELATING TO DEVELOPMENT STANDARDS, 84-17, 87-20, 88-41, 90-23, 92-49 RELATING TO FLOOD PLAIN MANAGEMENT, 85-20 RELATING TO FIRE PROTECTION, 85-23, 89-17, 90-24, 90-47, 93-41 RELATING TO ROAD IMPACT FEES; 85-24, 89-16, 90-15, 90-49, RELATING TO REGIONAL PARK IMPACT FEES, 85-25, 88-56, 89-37, 93-32 RELATING TO DOCK AND SHORELINE STRUCTURES; 85-46 RELATING TO LAKES PARK WATERSHED, 85-49 RELATING TO STANDARD ALUMINUM CODE; 86-1 RELATING TO DANIELS ROAD SETBACK REQUIREMENTS, 86-9 RELATING TO COASTAL CONSTRUCTION ON ESTERO ISLAND, 86-15 RELATING TO BALD EAGLE PROTECTION; 86-17, 86-36, 86-37, 87-08, 87-14, 87-33, 88-21, 88-30, 88-31, 88-35, 88-44, 88-63, 88-64, 89-01, 89-03, 89-04, 89-06, 89-22, 89-31, 90-11, 90-12, 90-21, 90-28, 90-36, 90-59, 90-60, 91-22, 91-34, 91-36, 91-37, 92-20, 92-32, 92-33, 92-42, 92-43, 92-45, 92-52, 93-04, 93-14, 93-16, 93-20, 93-24, 93-29, 93-37 RELATING TO ZONING; 86-18, 88-34, 88-51, 89-27 RELATING TO TRANSFER OF DEVELOPMENT RIGHTS, 86-25 RELATING TO MINIMUM HOUSING STANDARDS, 86-31, 91-05, 93-03 RELATING TO WETLAND PROTECTION, 86-32, 93-31 RELATING TO MANGROVES, 86-34, 90-41, 91-04 RELATING TO TREE PROTECTION, 87-04 AND 87-05 RELATING TO THE ZONING BOARD, 87-25 RELATING TO UNSAFE STRUCTURES, 87-30 RELATING TO ACCESS SEPARATION STANDARDS FOR COUNTY ROADS; 88-33 RELATING TO MANGROVES, WETLANDS AND DOCK AND SHORELINE STRUCTURES, 88-52, 92-30 RELATING TO MARINE SANITATION; 88-57 RELATING TO LOW VOLTAGE ELECTRICAL CONTRACTOR LICENSE REQUIREMENTS, 88-62, 90-35, 90-54, 92-34 RELATING TO HISTORICAL PRESERVATION; 89-09 RELATING TO SEA TURTLE PROTECTION, 89-14, 90-16, 90-48 RELATING TO COMMUNITY PARK IMPACT FEES; 89-15, 90-14 RELATING TO FIRE AND EMS IMPACT FEES, 89-30, 90-40, 90-46, 93-19 RELATING TO WELLFIELD PROTECTION, 89-33, 90-37, 91-32 RELATING TO CONCURRENCY MANAGEMENT, 89-39, 93-35 RELATING TO MANATEES AND VESSEL OPERATION, 89-45, 92-50 RELATING TO HOUSING DENSITY BONUS PROGRAM, 90-10 RELATING TO STATE ROAD 80 WIDENING, 90-29 RELATING TO DEVELOPMENT AGREEMENTS; 91-15 RELATING TO PONDELLA ROAD OVERLAY DISTRICT, 91-21, 92-46 RELATING TO COASTAL CONSTRUCTION, 92-36 RELATING TO THE LEE COUNTY CONSTRUCTION CODE, PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS, SEVERABILITY AND AN EFFECTIVE DATE

WHEREAS, the County adopted Ordinance No. 95-12 to address the need for improved and expanded access to bikeways and pedestrian ways throughout the County, and

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

WHEREAS, in adopting Ordinance No. 95-12 the Board of County Commissioners expressed their desire to issue regional and community park impact fee credits for the construction of bikeway and pedestrian facilities which serve the active recreational needs of the citizens of Lee County, and

WHEREAS, the Board of County Commissioners desire to underscore this intent by acknowledging that bikeways and pedestrian facilities are capital improvements within the context of the impact fee regulations, and

WHEREAS, the Florida Land Use and Environmental Dispute Resolution Act adopted by the Florida Legislature

establishes an informal nonjudicial settlement and expedited hearing procedure to landowners who believe a development order or enforcement action is either unreasonable or unfairly burdens the use of his real property, and

WHEREAS, the Burt J. Harris, Jr., Private Property Rights Protection Act seeks to provide compensation to landowners when the actions of a governmental entity impose an inordinate burden on real property; and

WHEREAS, the Burt J. Harris, Jr., Private Property Rights Protection Act is intended to apply to governmental actions that do not rise to the level of a taking under the Florida or U.S. Constitutions; and

WHEREAS, under state law the County must accommodate requests for relief created by the Florida Land Use and Environmental Dispute Resolution Act as well as causes of action created by the Burt J. Harris, Jr., Private Property Rights Protection Act, and

WHEREAS, Florida Statutes Section 125.56 authorizes the Board of County Commissioners to adopt or amend a building code and imposes a criminal penalty for violation of a duly adopted building code, and

WHEREAS, Florida Statutes Section 553.73(1)(a) requires local governments with building construction regulation responsibilities to adopt a building code covering all types of construction; and

WHEREAS, the State of Florida through its Board of Codes and Building Standards has adopted, by rule, the Standard Building Codes, 1994 Edition, pertaining to building, plumbing, mechanical, gas and electrical requirements as one of the State Minimum Building Codes; and

WHEREAS, Florida Statutes Section 553.18 (2) authorizes counties to adopt and enforce more stringent standards than those adopted in Section 553.19 which adopts certain minimum electrical standards for the State of Florida including the 1990 edition of the National Electrical Code; and

WHEREAS, Florida Statutes Section 553.20 imposes responsibility for enforcement of the Florida Electrical Code upon the governing body of the County, and

WHEREAS, the Board of County Commissioners of Lee County previously adopted the Lee County Construction Code, codified in Lee County Land Development Code Chapter Six (6), Article II; and

WHEREAS, the Lee County Board of County Commissioners now desires to repeal the previously existing construction codes and reenact and adopt the above-referenced updated codes into the Lee County Construction Code, as codified, and

WHEREAS, Goal 25 of the Lee County Comprehensive Land Use Plan mandates that the County maintain clear, concise, and enforceable development regulations which fully address on-site and off-site development impacts, yet function in a streamlined manner, and

WHEREAS, Board of County Commissioners has created the Land Development Code Advisory Committee to explore the amendment to the Land Development Code, and

WHEREAS, the Land Development Code Advisory Committee for the Lee County Board of County Commissioners has endorsed amendments to Chapters 1, 2, 10 and 34 of the Land Development Code to implement Goal 25 of the Lee County Comprehensive Land Use Plan, and

WHEREAS, the Local Planning Agency has reviewed the amendments proposed herein and have found them consistent with the Lee Plan, and

WHEREAS, the Board of County Commissioners of Lee County desire to amend the Land Development Code as set forth herein below

WHEREAS, Lee County has over 500 active ordinances, and

WHEREAS, there are county ordinances presently on the books that have been preempted by state law, are obsolete, have served their purpose, have become impliedly repealed or have been codified in the Land Development Code; and

WHEREAS, the Board of County Commissioners directed the review of all county ordinances to identify those ordinance no longer needed or enforced that can be repealed to avoid confusion and to bring the county's active ordinance list up to current standards, and

WHEREAS, the repeal of existing county ordinances that are obsolete, impliedly repealed or superseded, or codified in the Land Development Code serves the public interest and welfare.

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

SECTION ONE: AMENDMENT OF THE LAND DEVELOPMENT CODE CHAPTER 1

Lee County Land Development Code Chapter 1 is hereby amended as follows with new language indicated by underlining and deleted language indicated by strike-through.

CHAPTER 1 GENERAL PROVISIONS

Sec. 1-4. Effect of repeal of ordinances

(a) The repeal or amendment of an ordinance will not revive any ordinance or part thereof that was not in force before or at the time the ordinance repealed or amended took effect

(b) The repeal or amendment of any ordinance ~~shall~~ will not affect any punishment or penalty incurred before the repeal took effect, or any suit, prosecution or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed or amended

(c) Notwithstanding a more recent ordinance's express repeal of a pre-existing ordinance, the reenactment of any previously existing provisions, including any amendments, through the use of similar or identical provisions in the repealing ordinance will continue the reenacted provisions in full force and effect from their original effective date. Only those provisions of the previously existing ordinance that are not reenacted will be considered void and without further effect. Any new provisions of the repealing ordinance will operate as amendments to the reenacted, previously existing text and become effective as part of the repealing ordinance.

Sec. 1-5. General penalty; continuing violations.

(a) In this section, the phrase "violation of this Land Development Code" means any of the following:

- (1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance
- (2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
- (3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance

(b) In this section, the phrase "violation of this Land Development Code" does not include the failure of a county officer or county employee to perform an official duty unless it is provided that failure to perform the duty is to be punished as provided in this section

(c) Except as otherwise provided, a person convicted of a violation of this Land Development Code ~~shall~~ will be punished by a fine not exceeding \$500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment. With respect to violations of this Land Development Code that are continuous with respect to time, each day the violation continues constitutes a separate offense in the absence of provisions to the contrary

(d) Any violation of this Land Development Code that arose from provisions that are subsequently repealed and reenacted will continue to be a violation of this Code and any penalties imposed for those violations will continue to exist unless the subsequent amendment or repeal of the violated provisions clearly intends to make previous violations legal and expressly voids any penalties imposed for those violations.

(e) The imposition of a penalty does not prevent revocation or suspension of a license, permit or franchise, the imposition of civil penalties or other administrative actions.

(f) Violations of this Land Development Code may be abated by injunctive or other equitable or civil relief, and no bond nor proof of intent or scienter shall be required. The imposition of a penalty does not prevent equitable relief.

SECTION TWO: AMENDMENT OF THE LAND DEVELOPMENT CODE CHAPTER 2

Lee County Land Development Code Chapter 2 is hereby amended as follows with new language indicated by underlining and deleted language indicated by strike-through.

CHAPTER 2 ADMINISTRATION

ARTICLE VI. IMPACT FEES

DIVISION 3. REGIONAL PARK IMPACT FEE

Sec. 2-304 Definitions

Capital Improvement means land acquisition, site improvement, including landscape plantings and the removal of exotic vegetation, off-site improvements associated with a new or expanded regional park, buildings and equipment. Off-site improvements may also include bikeways which connect to the park facility. Capital improvements do not include it does not mean maintenance and operations

Sec. 2-310 Use of funds

(a) Funds collected from regional parks impact fees ~~shall~~ will be used for the purpose of capital improvements for regional parks. Regional parks impact fee collections, including any interest earned thereon, less administrative costs retained pursuant to subsection (c) of this section, ~~shall~~ will be used exclusively for capital improvements or expansion within the county. These impact fee funds ~~shall~~ will be segregated from other funds and ~~shall~~ will be ~~expanded~~ expended in the order in which they are collected. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements for regional parks. If these funds or pledge of funds are combined with other revenue sources in a dual or multipurpose bond issue or other revenue-raising device, the proceeds raised thereby ~~shall~~ will be divided and segregated in such a fashion that the amount of such proceeds reserved for regional park purposes bears the same ratio to the total funds collected that the regional parks impact fee funds used or pledged bear to the total funds used or pledged.

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

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

DIVISION 4. COMMUNITY PARKS IMPACT FEE

Sec. 2 -344 Definitions

Capital Improvement means land acquisition, site improvements, including landscape plantings and the removal of exotic vegetation, off-site improvements associated with a new or expanded community park, buildings and equipment. Capital improvements include bikeways along the County road network that are designed and used primarily for active recreation. ~~Capital improvements do not include~~ ~~it does not mean~~ maintenance and operations.

Community park means a tract of land designated and used by the public primarily for active recreation but also used for educational and social purposes and passive recreation. Community parks also include bikeways along the County road network that are designed and used primarily for active recreation. A community park generally serves a specific community composed of at least several neighborhoods. The Lee Plan's community park standards are based upon several subclassifications of community parks: standard community parks, community recreation centers, community pools and school parks. The term "community park" specifically includes school sites and municipally owned parks where they are used as community parks.

ARTICLE VII. HEARING EXAMINER

Sec. 2-427. Penalties and liens.

(a) *Order imposing fine/lien* Upon sworn notification by the code inspector that the violator has failed to comply with the hearing examiner's order within the time specified ~~an order finding violation has not been complied with by the specified date~~ or, upon finding a repeat violation has occurred, the hearing examiner may order the violator to pay a fine. The fine may be imposed for each day the violation continues past the date specified for compliance. In the case of a repeat violation, a fine may be imposed for each day the repeat violation continues beginning with the date ~~the repeat violation is found to have occurred by the code inspector~~ first documents a violation exists. If the violation is of the type described in section 4-424(d) hereof, the hearing examiner must notify the division of codes and building services. The division of codes and building services may make all reasonable repairs required to bring the property into compliance and charge the violator with the reasonable cost of the repairs along with the fine imposed pursuant to under this section. A hearing will not be necessary for the issuance of an order imposing the fine if a finding of a violation or repeat violation has been made as provided herein.

(b) Penalties

- (1) A fine imposed pursuant to under this section cannot exceed \$250.00 per day for the first violation or \$500.00 per day for a repeat violation. However, if the hearing examiner finds a violation is irreparable or irreversible in nature, a fine of up to \$5,000 per violation can be imposed. Further, the fine may include the cost of all repairs incurred pursuant to in accordance with subsection (a) hereof as well as the cost of prosecution of prosecuting the case before the hearing examiner. For purposes of this article, the cost of prosecution costs ~~the case will include, but it is~~ are not limited to, recording costs, inspection costs, appearances by the code inspector at hearings, photography costs and similar items.
- (2) The following factors will be considered by the hearing examiner in determining the fine to be imposed:
 - a. The gravity of the violation,
 - b. Any actions taken by the violator to correct the violation; and
 - c. Any previous violations committed by the violator.
- (3) The hearing examiner may ~~reduce~~ mitigate the fine imposed pursuant to under this section.

(c) *Creation of a lien* A certified copy of an order imposing fine may be recorded in the public records and thereafter will constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including levy against the personal property, but such order will not be deemed to be a court judgment except for enforcement purposes. A fine imposed pursuant to under this article will continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on a the ~~lien~~ ~~filed pursuant to this section~~, whichever occurs first. A lien arising from a fine imposed pursuant to under this section

runs in favor of the Lee County Board of County Commissioners and the board may execute a satisfaction or release of lien entered pursuant to in accordance with this section. A release or satisfaction of lien may be executed by the chairman of the board on behalf of the entire board. The hearing examiner may authorize the county attorney to foreclose on a lien which remains unpaid for a period of three or more months after filing. No lien created pursuant to under this article may be foreclosed on real property which is a homestead under section 4, article X of the state constitution.

(d) Duration of lien A lien established pursuant to in accordance with the provisions of this article may not continue for a period longer than 20 years after the certified copy of an order imposing fine has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on the lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The county is entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien affected by the commencement of an action will not be enforceable against creditors or subsequent purchasers for valuable consideration without notice, unless a lis pendens is recorded.

ARTICLE VII. SPECIAL MASTER

Sec. 2-440. Special Master Proceedings Under the Florida Land Use and Environmental Dispute Resolution Act.

(a) Special Master Proceedings Special Master Proceedings may be requested and will be conducted in accordance with the Lee County Administrative Code designated for that purpose.

(b) Implementation of Special Master recommendation If the Board of County Commissioners elects to adopt the recommendation of the Special Master, the owner will not be required to duplicate processes in which the owner previously has participated in to effectuate the recommendation.

(c) Modification of Special Master recommendation The Board of County Commissioners may elect to modify the Special Masters recommendation and implement it by development agreement, where applicable, or by other method in the ordinary course and consistent with the County's rules and procedures, so long as it does not require the duplication of processes in which the owner has participated in to effectuate the Board's will.

(d) In order to implement the recommendation of the Special Master, or a modification of that recommendation, the Board has the authority to waive any or all procedural requirements contained in County ordinances or administrative codes and to directly exercise all authority otherwise delegated to the Hearing Examiner, the County Manager or his designees, or any other division or agency of Lee County government.

Secs. 2-441 -- 2-449. Reserved.

ARTICLE IX. PRIVATE PROPERTY RIGHTS PROTECTION ACT

Sec. 2-550. Proceedings under the Bert J. Harris, Jr. Private Property Rights Protection Act.

(a) Offers of settlement Within 180 days of the filing of a Notice of Intent to file a claim, the County may offer to resolve the claim by way of a settlement offer that includes an adjustment of the initial government action. Settlement offers may entail

- (1) an increase or modification to density, intensity or use of the owner's property, so long as the density, intensity and use remain consistent with the Lee Plan
 - (2) the transfer of development rights,
 - (3) land swaps or exchanges,
 - (4) compensation and purchase of the property or property interest or,
 - (5) issuance of a development permit or order.
- (b) The parties to a dispute arising under the Bert J. Harris, Jr. Private Property Rights Protection Act may craft

settlements that exceed the County's statutory or ordinance authority provided the parties jointly file a judicial action for court approval of the settlement.

(c) In order to implement a settlement offer, the Board has the authority to waive any or all procedural requirements contained in County ordinances or administrative codes and to directly exercise all authority otherwise delegated to the Hearing Examiner, the County Manager or his designees, or other division or agency of the Lee County government.

Secs. 2-551 -- 2-559. Reserved.

SECTION THREE: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 6

Lee County Land Development Code Section 6-111, 6-131, 6-151, 6-171 and 6-191 are hereby repealed and reenacted as follows.

CHAPTER 6 ARTICLE II. CODES AND STANDARDS

DIVISION 3 BUILDING CODE

Sec. 6-111. Adoption; amendments.

The following chapters and sections of the 1994 Standard Building Code as published by Southern Building Code Congress International, Inc , 900 Montclair Road, Birmingham, Alabama 35213-1206, are hereby adopted by reference and made a part of this article with the exceptions set forth in **bold** as follows

Chapter 1 - Administration

Exception: Section **104.1.1** relating to when permits are required is amended as follows

104.1.1 When Required Any owner, authorized agent, lessee, tenant or contractor or any other person using the land, building, or premises who desires to construct, enlarge, alter, repair, move, demolish, change or upgrade the occupancy of a building or structure as per Section 3401.2.1, or to erect, install, enlarge, alter, repair, remove, convert or replace any electrical, gas, mechanical or plumbing system, the installation of which is regulated by the technical codes, or to construct a sign of any description, or to install or alter fire extinguishing apparatus, elevators, engines, or to install a steam boiler, furnace, heater, incinerator, or other heat-producing apparatus, or other appurtenances, or to cause any such work to be done, must first make application to the Building Official and obtain the required permit for the proposed work

Additionally, pursuant to Section 553.73(7), F S , these regulations will not apply to non-residential farm buildings on farms, including pole barns, chicken coops, equipment sheds, and the like. These regulations do apply, however, to processing plants, offices, and the like, as may be determined by the Building Official

Permits also will not be required for the following mechanical work:

- i any portable heating appliances,
- ii any portable ventilation equipment,
- iii any portable cooling unit,
- iv. any steam, hot or chilled water piping within any heating or cooling equipment regulated by this Code,
- v. replacement of any part which does not alter its approval or make it unsafe,
- vi any portable evaporative cooler,
- vii. any self-contained refrigeration system containing 10 lbs. (4.54 kg) or less of refrigerant and actuated by motors of 1 horsepower (746 W) or less.

Exception Section **104.1.4** relating to minor repairs is amended to include the following:

For purposes of this section, "ordinary minor repairs" means those repairs as may be so defined, from time to

time hereafter, by the Building Official.

Exception: Section 104.1.6 relating to time limitations is amended to include the following.

The Building Official will take all actions necessary to process an application for a permit with plans as filed, or as amended, without unreasonable or unnecessary delay. All plans reviewed, which are approved by the Building Official, or his designee, are a best effort made in good faith by the Lee County Codes and Building Services staff to determine the compliance of submitted plans with all applicable Lee County codes, ordinances, rules and regulations. Any failure on the part of County staff to ascertain violations of any applicable County code, ordinance, rule or regulation on approved plans will not exonerate the contractor, builder and/or owner for their failure to comply with any and all County codes, ordinances, rules or regulations.

An issued permit will be construed as a license to proceed with the proposed work, but will not be construed as authority to violate, cancel, alter or set aside any of the provisions of this Code, nor will issuance of a permit prevent the Building Official from thereafter requiring the timely correction of errors in plans or in construction, or of violations of this Code. Although a permit issued to an owner is transferable to another owner, actual notice must be provided to the Building Official prior to transferring any permit. Building permits will be issued following the approval of site and construction plans. Building permits on multi-family projects will be issued on each individual building or structure. Multi-tenant occupancies including, but not limited to, shopping malls, may be permitted on an individual building or structure (shell), however, individual permits will be used separately for tenant spaces.

The first inspection required by the permit will be made within a six (6) month period of issuance or said permit will be deemed invalid. All subsequent inspections must be made within a six (6) month period of the most recent passed inspection until completion of work, or the permit will become invalid. For purposes of this section, the foundation inspection will be considered the first inspection.

The entire foundation must be completed within the first six (6) months from the date of issuance of the permit. Partial inspections due to complexity of foundation may be made with building inspector's plans and job site plans and will be initialed by said inspector only on that portion of said plans that is inspected and these inspections are for compliance to plans and specifications and are in no way to be construed as the first inspection. Subsequent inspections may be made until the entire foundation is completed. At that time, the foundation will be signed off as the first inspection. One or more extensions of the building permit for good cause may be granted by the Building Official on a project for a period not exceeding ninety (90) days each. Said request must be made by written notice to the Building Official at least thirty (30) days prior to expiration of said building permit. The Building Official may require compliance with any revised building code, mechanical code, plumbing code, electrical code, gas code, swimming pool code or fire code requirements in effect at the time of granting any extension to the building permit. Any extension request denied may be appealed to the Board of County Commissioners by the Applicant on a form provided by the Building Official. The Board will grant or deny the extension upon a finding of good cause or lack thereof. If granted, said extension or extensions may not exceed a period of ninety (90) days each.

Exception: Section 104.7.2 relating to work commencing before permit issuance is revised to read as follows:

104.7.2 Work Commencing Before Permit Issuance. If any person commences any work on a building or structure before obtaining the necessary permit, he may be subject to a penalty of double the permit fees, unless the work in question is emergency work, as defined herein.

Emergency work may be done without a permit and without penalty provided that the necessary permits are obtained after the fact (1) in a timely manner, (2) permit fees are paid, and (3) the work done meets all code requirements and passes inspection. For purposes of this section, Emergency Work is as defined, from time to time hereafter, by the Building Official who will also establish standards for determining the timeliness of after-the-fact permitting compliance. Emergency Work which fails to pass inspection will be corrected or removed immediately upon the direction of the Building Official.

Exception: Section 106.1.2 relating to issuing certificates of occupancy is amended as follows:

106.1.2 The Building Official will issue a Certificate of Occupancy stating the nature of the occupancy permitted, the number of persons for each floor when limited by law, the allowable load per square foot for each floor in

time hereafter, by the Building Official.

Exception: Section 104.1.6 relating to time limitations is amended to include the following.

The Building Official will take all actions necessary to process an application for a permit with plans as filed, or as amended, without unreasonable or unnecessary delay. All plans reviewed, which are approved by the Building Official, or his designee, are a best effort made in good faith by the Lee County Codes and Building Services staff to determine the compliance of submitted plans with all applicable Lee County codes, ordinances, rules and regulations. Any failure on the part of County staff to ascertain violations of any applicable County code, ordinance, rule or regulation on approved plans will not exonerate the contractor, builder and/or owner for their failure to comply with any and all County codes, ordinances, rules or regulations.

An issued permit will be construed as a license to proceed with the proposed work, but will not be construed as authority to violate, cancel, alter or set aside any of the provisions of this Code, nor will issuance of a permit prevent the Building Official from thereafter requiring the timely correction of errors in plans or in construction, or of violations of this Code. Although a permit issued to an owner is transferable to another owner, actual notice must be provided to the Building Official prior to transferring any permit. Building permits will be issued following the approval of site and construction plans. Building permits on multi-family projects will be issued on each individual building or structure. Multi-tenant occupancies including, but not limited to, shopping malls, may be permitted on an individual building or structure (shell), however, individual permits will be used separately for tenant spaces.

The first inspection required by the permit will be made within a six (6) month period of issuance or said permit will be deemed invalid. All subsequent inspections must be made within a six (6) month period of the most recent passed inspection until completion of work, or the permit will become invalid. For purposes of this section, the foundation inspection will be considered the first inspection.

The entire foundation must be completed within the first six (6) months from the date of issuance of the permit. Partial inspections due to complexity of foundation may be made with building inspector's plans and job site plans and will be initiated by said inspector only on that portion of said plans that is inspected and these inspections are for compliance to plans and specifications and are in no way to be construed as the first inspection. Subsequent inspections may be made until the entire foundation is completed. At that time, the foundation will be signed off as the first inspection. One or more extensions of the building permit for good cause may be granted by the Building Official on a project for a period not exceeding ninety (90) days each. Said request must be made by written notice to the Building Official at least thirty (30) days prior to expiration of said building permit. The Building Official may require compliance with any revised building code, mechanical code, plumbing code, electrical code, gas code, swimming pool code or fire code requirements in effect at the time of granting any extension to the building permit. Any extension request denied may be appealed to the Board of County Commissioners by the Applicant on a form provided by the Building Official. The Board will grant or deny the extension upon a finding of good cause or lack thereof. If granted, said extension or extensions may not exceed a period of ninety (90) days each.

Exception: Section 104.7.2 relating to work commencing before permit issuance is revised to read as follows:

104.7.2 Work Commencing Before Permit Issuance. If any person commences any work on a building or structure before obtaining the necessary permit, he may be subject to a penalty of double the permit fees, unless the work in question is emergency work, as defined herein.

Emergency work may be done without a permit and without penalty provided that the necessary permits are obtained after the fact (1) in a timely manner, (2) permit fees are paid, and (3) the work done meets all code requirements and passes inspection. For purposes of this section, Emergency Work is as defined, from time to time hereafter, by the Building Official who will also establish standards for determining the timeliness of after-the-fact permitting compliance. Emergency Work which fails to pass inspection will be corrected or removed immediately upon the direction of the Building Official.

Exception: Section 106.1.2 relating to issuing certificates of occupancy is amended as follows:

106.1.2 The Building Official will issue a Certificate of Occupancy stating the nature of the occupancy permitted, the number of persons for each floor when limited by law, the allowable load per square foot for each floor in

accordance with the provisions of this Code upon (1) satisfactory completion of construction of a building or structure and installation of electrical, gas, mechanical and plumbing systems in accordance with the technical codes, approved plans and specifications, (2) obtaining Certificate of Compliance as required by Section 106, as amended, if applicable; (3) paying garbage assessment, if required by Lee County Ordinance 95-08 as may be amended; and (4) after applying for and obtaining an approved final inspection.

Exception: Delete text of Section 108 relating to the Construction Board of Adjustments and Appeals and adopt the following

Section 108 Adopts by reference the procedures set forth in the current LDC provisions for the Board of Adjustment and Appeals found in Division 2 of this Chapter and Article

Chapter 2 - Definitions

Exception: The following definitions are hereby adopted and made part of this Ordinance:

Farm - For the purposes of this Chapter, farm means property 10 acres or larger in size on which crops are grown or livestock is raised for commercial purposes. A farm does not include the family garden or family pets, even though the underlying property may be classified as agricultural, for e g , AG-1, AG-2 or AG-3.

Valid inspection - For the purpose of this Code, valid inspection means an inspection of the structural, roofing, mechanical, electrical or plumbing components of a building by Building Department inspector and verification by said inspector that said component comply with the requirements of the applicable code.

Chapter 3 - Occupancy Classification

Chapter 4 - Special Occupancy.

Chapter 5 - General Building Limitations

Chapter 6 - Construction Types.

Chapter 7 - Fire Resistant Materials and Construction

Chapter 8 - Interior Finishes.

Chapter 9 - Fire Protection Systems

Chapter 10 - Means of Egress.

Exception: Section 1005.2 is amended to read as follows:

1005.2 Dead End Pockets or Hallways. Exits and exit access will be so arranged that dead end pockets or hallways in excess of 20 feet long, do not occur. An exception to this requirement may be administratively approved by the Building Official for Group A, B, F, M and S building classifications to allow dead end pockets or hallways of up to 50 feet, if the facility is sprinklered and egress lighting that is no more than one foot (1') above the floor, is provided. Such administrative approval will be granted when, in the opinion of the Building Official, deviation from the standard provides an equivalent degree of lifesafety and an equivalent method of construction.

For purposes of this section, "egress lighting" means and refers to lighting which will provide a visible delineation of the path of travel along the designated exit access in an essentially continuous manner, allowing for interruption by doorways, hallways, corridors and other similar architectural features. The lighting system must act continuously or at any time the building fire alarm system is activated. Egress lighting must provide illumination for a period of 1-1/2 hours after failure of normal lighting. Initial emergency illumination must average no less than one footcandle and decline to no less than an average of 0.6 footcandle at the end of the stated emergency period. See NFPA 101 Chapter 5 for additional guidance.

Chapter 11 - Accessibility for People with Physical Disabilities

Chapter 12 - Interior Environment

Exception: Amend Section 1203 - Light and Ventilation to include the following:

1203.1. Minimum Requirements.

1203.1.1 Every residential occupancy which is to be constructed, and which does not have a central air conditioning system, will have screens on all exterior openable windows and will have a screen door with a self-closing device on all exit doors except for the main entrance door

Exception Add new Section 1203.6

1203.6. Heating Facilities

- (1) Every residential occupancy which is to be constructed will have heating facilities which are installed as per the current Lee County Construction Code. Such heating facilities will be maintained in safe and good working condition and will be capable of safely and adequately heating all habitable rooms and bathrooms in every dwelling unit located therein to a temperature of at least 70 degrees at a distance of three (3) feet above floor level under ordinary minimum winter conditions, or
- (2) Where a central heating system is not provided, each dwelling unit must be provided with facilities whereby heating appliances may be connected.
- (3) Unvented fuel-burning heaters are prohibited except for gas heaters listed for unvented use and the total input rating of the unvented heater is less than 30 BTU's per hour per cubic foot of room volume. Unvented fuel-burning heaters are prohibited in bedrooms and sleeping areas.

Chapter 13 - Energy Conservation

Chapter 14 - Exterior Wall Coverings

Chapter 15 - Roofs and Roof Structures.

Exception New Section 1509.1.4.6 is hereby added as follows:

1509.1.4.6 - Use of square head caphead nails for underlayment is prohibited.

Exception: New Section 1509.1.4.7 is hereby added as follows:

1509.1.4.7 - Other sections of this construction code notwithstanding, use of staples for asphalt shingle attachment is hereby prohibited

Exception: New Section 1509.1.4.8 is hereby added as follows.

1509.1.4.8 - Felt All felt for underlayment must be ASTM rated and identified as such.

Exception: New Section 1509.13.1.2.1 is hereby added as follows

1509.13.1.2.1 - Any sheathing exposed or replaced during reroofing will be fastened in accordance with S.B.C. Table 2306.1, or verified by the owner or roofing contractor to be fastened in compliance already

Chapter 16 - Structural Loads

Chapter 17 - Structural Tests and Inspections.

Chapter 18 - Foundations and Retaining Walls

Chapter 19 - Concrete.

Chapter 20 - Light Metal Alloys

Chapter 21 - Masonry

Chapter 22 - Steel

Chapter 23 - Wood.

Chapter 24 - Glass and Glazing.

Chapter 25 - Gypsum Board and Plaster

Chapter 26 - Plastic

Chapter 27 - Electrical Systems

Chapter 28 - Mechanical Systems.

Chapter 29 - Plumbing Systems

Chapter 30 - Elevators and Conveying Systems.

Chapter 31 - Special Construction

Chapter 32 - Construction in the Public Right of Way

Chapter 33 - Site Work, Demolition and Construction

Exception Add New Section 3311.5 - Trash Containers

3311.5 It is unlawful to bury construction debris on the construction site or on any other public or private property not specifically approved for such use. A suitable trash container and adequate collection service must be provided for each construction site. For purposes of this requirement, a "suitable container" is any structure, device, receptacle, designated location or combination thereof, which holds construction debris on the construction site in a central location long enough for it to be removed from the site by means of whatever collection service the contractor chooses to use or may be required to use pursuant to other applicable laws, before such debris is (1) washed or blown off-site, (2) contaminates subsurface elements, (3) becomes volatile or malodorous, (4) makes an attractive nuisance, or (5) otherwise becomes a threat to the public health, safety and welfare.

Chapter 34 - Existing Buildings

Exception: Delete Section 3401.2.2.1 and replace with new Section 3401.2.2.1 as set forth below

Section 3401.2.2.1 Change of Occupancy, and/or Change of Occupant, and/or Upgrading a Certificate of Compliance to a Certificate of Occupancy.

(1) The regulations contained in subsections **3401.2.2.1(2)(a)**, **(2)(c)** and **(3)** below apply to all occupancy classifications. The regulations contained in subsection **3401.2.2.1(2)(b)** apply to all occupancy classifications except for the following types of Group R - Residential Occupancies, as defined in SBC §311; or as amended or replaced: single family residences, duplexes, mobile homes, condominiums and multi-family apartments

(2) IF:

(a) The occupancy classification of an existing building or a portion thereof is changed, or,

(b) The occupant of an existing building or portion thereof changes, or

- (c) The Certificate of Compliance for a building or portion thereof is upgraded to a Certificate of Occupancy,

(3) THEN:

The building or portion thereof will be made to conform to the intent of this code as required by the Building Official and a permit application will be made as per Section 104.1. In addition, no permit application will be processed nor a permit or certificate of occupancy issued if the proposed occupancy as described in Section 3401.2.2.1(1), (2) and (3), as amended, is located within areas zoned for industrial, manufacturing, or equivalent uses until use of the septic system by the new occupant or occupancy classification has been approved by and written approval obtained from the Lee County Public Health Unit of the Florida Department of Health and Rehabilitative Services.

Chapter 35 - Reference Standards

Appendix A - Weights of Building Materials

Appendix B - Recommended Schedule of Permit Fees

Exception- Delete schedule in its entirety and replace with

User fees and charges will be those referenced in Lee County Administrative Code 3-10- as set forth in Appendix C- External Fees and Charges Manual

Appendix C - One and Two Family Dwellings

Exception- Delete in its entirety.

Appendix D - Standards for Demolition

Appendix E -

Exception- Delete "Energy Conservation" appendix in its entirety and replace with

Florida Energy Efficiency Code for Building Construction referenced in Florida Statutes Chapter 553, Building Construction Standards, Part VIII, Thermal Efficiency Standards, § 553.901, F S

Appendix F - Fire District

Appendix G - Adobe Construction

Appendix H - Manufactured Homes Tie Down Standards

DIVISION 4 PLUMBING CODE

Sec. 6-131 Adoption; amendments

The following chapters and sections of the 1994 Standard Plumbing Code as published by Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, are hereby adopted by reference to them and made a part of the Lee County Construction Code with the exceptions set forth in **bold** as follows:

Chapter 1 -Administration

Exception Section 104.1.3 relating to Minor Repairs is revised to read as follows

104.1.3 Minor Repairs. Ordinary minor repairs may be made without a permit, provided that such repairs will not

violate any of the provisions of this Code. For purposes of this section, "ordinary minor repairs" means those repairs as may be so defined, from time to time hereafter, by the Building Official

Exception: Section 104.7.2 relating to Work Commencing Before Permit Issuance is revised to read as follows

104.7.2 Work Commencing Before Permit Issuance. If any person commences any work on plumbing before obtaining the necessary permit, he may be subject to a penalty of double the permit fees, unless the work in question is emergency work, as defined herein

Emergency work may be done without a permit and without penalty provided that the necessary permits are obtained after the fact: (1) in a timely manner, (2) permit fees are paid, and (3) the work done meets all code requirements and passes inspection. For purposes of this section, Emergency Work is as defined, from time to time hereafter, by the Building Official who will also establish standards for determining the timeliness of after-the-fact permitting compliance. Emergency Work which fails to pass inspection will be corrected or removed immediately upon the direction of the Building Official

Exception: Delete text of Section 108 relating to the Construction Board of Adjustments and Appeals and adopt the following.

Section 108 Adopts by reference the procedures set forth in the current LDC provisions for the Board of Adjustment and Appeals found in Division 2 of this Chapter and Article

Chapter 2 - Definitions

Chapter 3 - General Regulations

Chapter 4 - Plumbing Fixtures.

Chapter 5 - Water Heaters

Chapter 6 - Water Supply and Distribution.

Exception: Section 611.2 relating to materials above ground shall be revised to read as follows

611.2 Materials Above Ground Materials for water distribution pipes and tubing shall be brass, copper water tube minimum type L, stainless steel water tube minimum Grade H, cast iron pressure pipe, galvanized steel, chlorinated polyvinyl chloride (CPVC), polybutylene (PB) or cross-linked polyethylene (PEX) plastic pipe or tubing, all to be installed with approved fittings; except that changes in direction in copper tube (ASTM B 88) may be made with bends having a radius of not less than four diameters of the tube, providing that such bends are made by use of forming equipment which does not deform or create a loss in cross-sectional area of the tube.

Exception: Section 611.3 relating to materials below ground is amended as follows

611.3 Materials Below Ground. Inaccessible water distribution piping under slabs must be copper water tube minimum type L, brass, cast iron pressure pipe, galvanized steel pipe, chlorinated polyvinyl chloride (CPVC), polybutylene (PB) or cross-linked polyethylene (PEX) plastic pipe or tubing, all to be installed with approved fittings or bends. Any material subject to corrosion must be protected when used in corrosive soils.

Chapter 7 - Sanitary Drainage

Chapter 8 - Indirect and Special Wastes.

Chapter 9 - Vents

Chapter 10 - Traps

Chapter 11 - Storm Drainage.

Chapter 12 - Fuel Piping.

Chapter 13 - Special Piping and Storage Systems

Chapter 14 - Reference Standards.

Appendix A - Roof Drain Sizing Method

Appendix B - Travel Trailers and Travel Trailer Parks

Appendix C - Manufactured Homes and Manufactured Home Parks

Appendix D - Cross Connection, Backflow and Back-siphonage.

Appendix E - Private Sewage Disposal.

Appendix F - Sizing of Water Piping System

Appendix G - Hospital Plumbing Systems.

Appendix H - Recommended Schedule of Permit Fees

Exception- Delete schedule in its entirety and replace with

User fees and charges will be those referenced in Lee County Administrative Code 3-10- as set forth in Appendix C- External Fees and Charges Manual

Appendix I - Installation Building Sewers.

Appendix J - Illustrations

DIVISION 5. MECHANICAL CODE

Sec. 6-151. Adoption; amendments

The following chapters and sections of the 1994 Standard Mechanical Code as published by Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, are hereby adopted by reference to them and made a part of the Lee County Construction Code with the exceptions set forth in **bold** as follows:

Chapter 1 - Administration

Exception: Section 104.1.3 relating to Minor Repairs shall be revised to read as follows

104.1.3 Minor Repairs. Ordinary minor repairs may be made without a permit, provided that such repairs do not violate any of the provisions of this Code. For purposes of this section, "ordinary minor repairs" means those repairs as may be so defined, from time to time hereafter, by the Building Official

Exception: Section 104.7.2 relating to Work Commencing Before Permit Issuance is revised to read as follows.

104.7.2 Work Commencing Before Permit Issuance If any person commences any work on a mechanical system before obtaining the necessary permit, he may be subject to a penalty of double the permit fees, unless the work in question is emergency work, as defined herein

Emergency work may be done without a permit and without penalty provided that the necessary permits are obtained after the fact. (1) in a timely manner, (2) permit fees are paid, and (3) the work done meets all code requirements and passes inspection. For purposes of this section, Emergency Work is as defined, from time to time hereafter, by the Building Official who will also establish standards for determining the timeliness of after-the-fact permitting compliance. Emergency Work which fails to pass inspection will be corrected or removed immediately upon the direction of the Building Official

Exception: Delete text of Section 106 relating to the Construction Board of Adjustments and Appeals and adopt the the following

Section 108 Adopts by reference the procedures set forth in the current LDC provisions for the Board of Adjustment and Appeals found in Division 2 of this Chapter and Article

Chapter 2 - Definitions

Chapter 3 - General Requirements

Chapter 4 - Ventilation Air Supply.

Chapter 5 - Exhaust Systems.

Chapter 6 - Duct Systems

Chapter 7 - Combustion Air.

Chapter 8 - Chimney and Vents

Chapter 9 - Special Fuel - Burning Equipment

Chapter 10 - Boiler/Water Heaters

Chapter 11 - Refrigeration.

Chapter 12 - Hydronic Piping

Chapter 13 - Fuel Gas Piping.

Chapter 14 - Special Piping and Storage Systems.

Chapter 15 - Solar Systems

Chapter 16 - Referenced Standards.

Appendix A - Guidelines for Estimating Heat Loss and Gain.

Appendix B - Schedule of Permit Fees

Exception- Delete schedule in its entirety and replace with

User fees and charges will be those referenced in Lee County Administrative Code 3-10- as set forth in Appendix C- External Fees and Charges Manual

Appendix C - Procedures for Determining Thermal Resistance (R) Valves for Air Distribution Ducts and Plenums.

DIVISION 6 GAS CODE

Sec. 6-171. Adoption; amendments.

The following chapters and sections of the 1994 Standard Gas Code as published by Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, are hereby adopted by reference to them and made a part of the Lee County Construction Code with the exceptions set forth in **bold** as follows

Chapter 1 - Administration

Exception: Section 104.1.3 relating to Minor Repairs is revised to read as follows

104.1.3 Minor Repairs Ordinary minor repairs may be made without a permit, provided that such repairs do not violate any of the provisions of this Code. For purposes of this section, "ordinary minor repairs" means those repairs as may be so defined, from time to time hereafter, by the Building Official

Exception: Section 104.7.2 relating to Work Commencing Before Permit Issuance is revised to read as follows:

104.7.2 Work Commencing Before Permit Issuance If any person commences any work on a mechanical system before obtaining the necessary permit, he may be subject to a penalty of double the permit fees, unless the work in question is emergency work, as defined herein.

Emergency work may be done without a permit and without penalty provided that the necessary permits are obtained after the fact (1) in a timely manner, (2) permit fees are paid, and (3) the work done meets all code requirements and passes inspection. For purposes of this section, Emergency Work is as defined, from time to time hereafter, by the Building Official who will also establish standards for determining the timeliness of after-the-fact permitting compliance. Emergency Work which fails to pass inspection will be corrected or removed immediately upon the direction of the Building Official.

Exception: Delete text of Section 108 relating to the Construction Board of Adjustments and Appeals and adopt the the following:

Section 108 Adopts by reference the procedures set forth in the current LDC provisions for the Board of Adjustment and Appeals found in Division 2 of this Chapter and Article

Chapter 2 - Definitions

Chapter 3 - Gas Piping Installations

Chapter 4 - Appliance Installation

Chapter 5 - Installation Requirements for Specific Appliances

Chapter 6 - Venting of Appliances

Chapter 7 - Placing Appliance in Operation

Chapter 8 - Gas Equipment in Unlisted Boilers

Chapter 9 - Installation Requirements for Undiluted Liquefied petroleum Gases (Butane and Propane).

Chapter 10 - 2-PSI Gas Piping

Chapter 11 - Reference Standards

Appendix A - Flow of Gas Through Fixed Orifices.

Appendix B - Recommended Schedule of Permit Fees

Exception- Delete schedule in its entirety and replace with:

User fees and charges will be those referenced in Lee County Administrative Code 3-10- as set forth in Appendix C- External Fees and Charges Manual.

Appendix C - Delete in Entirety

Appendix D - Example Problems

Appendix E - 5-PSI Gas Sizing

DIVISION 7 ELECTRICAL CODE

Sec. 6-191. Adoption: amendments

(a) The following chapters and sections of the 1993 National Electrical Code, NFPA 70 as published by the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269, are hereby adopted by reference to them and made a part of the Lee County Construction Code with the exceptions set forth in bold as follows:

Chapter 1 - General.

Chapter 2 - Wiring and Protection

Chapter 3 - Wiring Methods and Materials

Chapter 4 - Equipment for General Use

Chapter 5 - Special Occupancies

Chapter 6 - Special Equipment

Chapter 7 - Special Conditions

Chapter 8 - Communications Systems

Chapter 9 - Tables and Examples

(b) The following standards as provided in Florida Statute 553 19 are hereby adopted and made part of the Lee County Construction Code as follows

- (1) Underwriters' Laboratories, Inc., "Standards for Safety, Electrical Lighting Fixtures, and Portable Lamps", UL 57-1982 and UL 153-1983
- (2) Underwriters' Laboratories, Inc., "Standard for Electric Signs", UL 48-1982.
- (3) The provisions of the following which prescribe minimum electrical standards
 - a. NFPA No 56A-1978, "Inhalation Anesthetics 1978."
 - b. NFPA No. 56B-1982, "Respiratory Therapy 1982 "
 - c. NFPA No 56C-1980, "Laboratories in Health-Related Institutions 1980 "
 - d. NFPA No. 56D-1982, "Hyperbaric Facilities."
 - e. NFPA No 56F-1983, "Nonflammable Medical Gas Systems for 1983."
 - f. NFPA No 76A-1984, "Essential Electrical Systems for Health Care Facilities 1984 "
- (4) Chapter 10D-29, Florida Administrative Code (FAC), setting forth rules and regulations of the Department of Health and Rehabilitative Services, entitled "Nursing Homes and Related Facilities Licenser "
- (5) The Minimum Standards for Grounding of Portable Electrical Equipment, Chapter 8C-27 FAC, as recommended by the Industrial Standards Section, Division of Workers' Compensation, Department of Labor and Employment Security

SECTION FOUR: AMENDMENT OF THE LAND DEVELOPMENT CODE CHAPTER 10

Lee County Land Development Code Chapter 10 is hereby amended as follows with new language indicated by underlining and deleted language indicated by strike through.

CHAPTER 10 DEVELOPMENT STANDARDS

ARTICLE I. IN GENERAL

Sec. 10-1. Definitions and rules of construction

(b) *Definitions.*

Decision of the development review director means any act of the director of zoning and development services ~~development review director~~ in interpreting or applying this chapter to a particular request for a an-exemption requirement waiver, limited review processing, or a development order, or any other request or matter relating thereto. In cases where making a decision involves the practice of engineering, as defined in F S § 471.005(6), where such decision ~~shall~~ must be made only by a professional engineer or someone supervised by a professional engineer pursuant to rule 21H-26.001, Florida Administrative Code, the director of zoning and development services review must be a professional engineer, registered in the state. If the director of zoning and development services review is not a registered professional engineer, the zoning and development services review director ~~shall~~ must adopt the decision of the county's professional engineer, or the person who is designated to act on behalf of the county's professional engineer and who is supervised by the professional engineer, as the basis for whatever final formal decision is made by the zoning and development services review director. In those cases, the phrase "decision of the development review director" means the decision made by the county's professional engineer, or a person supervised by the county's professional engineer, and adopted by the zoning and development services review director.

Subdivision.

(1) A subdivision is a type of development. The term "subdivision" means the following:

- a. ~~The division of a lot wherein the new lot, or any remaining portion of the original lot, is less than ten acres in size; or~~
- b. The division of a lot, the result of which is the extension of an existing street or the establishment of a new street.
- c. Creation of a condominium as defined in F S Chs. 718 and 721, except that condominium developments are exempt from the provisions of this code that require platting under F S Ch. 177.

(2) The following divisions are exempt:

- a. A division of land pursuant to a development platted or approved by the county prior to January 28, 1983, provided that all required improvements have been made or that a security for the performance of the improvements has been posted and is current,
- b. The division of land for the conveyance of land to a federal, state, county or municipal government entity, ~~or a public utility,~~
- c. The division of land by judicial ~~degree~~ decree, and
- d. ~~The division of land for the purpose of creating a single condominium as defined in F S chs. 718 and 721.~~

(3) The combination or recombination of up to three lots of record is not a subdivision provided that all resulting lots comply with chapter 34, the Lee Plan and all other applicable provisions of this ~~chapter~~ code. Specific provisions relating to the recombination of up to three lots are contained in section 10-217.

- (4) Subdivision includes resubdivision or redivision and, when appropriate to the context, ~~shall~~ also means the process of subdivision or the land subdivided.

ARTICLE II. ADMINISTRATION

DIVISION 2 DEVELOPMENT ORDERS

Subdivision II Procedures

Sec. 10-101. Applicability of requirements.

(b) *Subdivision plats.* All subdivisions requiring a development order must also have a subdivision plat meeting the standards of F.S. ch. 177, approved by the ~~Board of County Commissioners~~ and recorded in the public record, prior to the issuance of building permits, except for building permits for model buildings and sales centers. In addition, plats are not required for lot splits granted under the limited review process. Standards and procedures for the approval of plats are contained in division 5 of this article.

Sec. 10-104. Deviations and variances.

- (e) *Refusals.* Deviations may not be un reasonably refused.

Sec. 10-112. Appeals.

(a) *Right of appeal*

- (1) The applicant may file an appeal of any decision of the development review director. Except as may be required by F.S. § 163.3215, and then only pursuant to that statute, a third party shall does not have standing to appeal ~~any an~~ administrative decision granting or denying ~~any a~~ development order.
- (2) An appeal is not a legal substitute for a variance; ~~and a~~ Any appeal that requests a departure from or waiver of the terms and conditions of this chapter ~~is a variance which shall will~~ not be heard through the appeal process.

(b) *Procedure.* The appellant must file a written appeal of the director of development review's decision in accordance with those procedures set forth in chapter 34 for appeals of administrative decisions.

(c) *Decisions.*

- (1) If the decision of the development review director is upheld, then the applicant may redraft and resubmit all documents which are necessary for the appropriate approval in accordance with sections 10-109 and 10-110.
- (2) If the decision of the development review director is reversed without modifications, then the applicant may, ~~proceed to the preparation of~~ prepare the submittals required for final approval or be issued a development order by the development review director, as appropriate.
- (3) If the decision of the development review director is modified on appeal, then the applicant may take ~~such the~~ remedial steps ~~as are~~ necessary to correct the rejected submittals and resubmit them in accordance with sections 10-109 and 10-110.

(d) *Special Master*

- (1) The applicant may file a request for relief under Section 70.51, Florida Statutes, within 30 days from the conclusion of an Administrative Appeal or 4 months from the initiation of an Administrative Appeal, even if that appeal has not concluded.
- (2) The request for relief must allege that the decision of the Director of Zoning and Development Services is unreasonable or unfairly burdens the use of the subject property. The request for relief will be heard by an

impartial Special Master in accordance with the procedure set forth in the Administrative Code.

- (3) The request for relief under Section 70 51, Florida Statutes, will not adversely affect the applicant's right to judicial review. However, a request for judicial review will waive the right to a Special Master proceeding.

Subdivision III Submittals.

Sec. 10-151. Generally.

(a) Except as may be specifically ~~exempted~~ waived by the director of zoning and development services review in accordance with section 10-152, the documents and graphics required to apply for a development order ~~shall~~ will be as specified in this subdivision.

(b) All drawings shall must be drawn on 24-inch by 36-inch sheets at an appropriate scale. If more than one sheet is required, appropriate match lines shall must be indicated.

(c) All drawings shall must be oriented so that north ~~shall be~~ is towards the top or left of the drawing. A title block shall must appear in the lower right hand corner or along the right side of the sheet. Each sheet shall must be signed and, where appropriate, sealed by the consultant preparing the drawing.

(d) The following information shall must be provided on all submitted drawings other than plats.

- (1) The name of the proposed development and the date the drawing was completed. If a revision, the revision dates shall must be included.
- (2) The name, address and telephone number of the person preparing the drawings.
- (3) The name and address of the developer.
- (4) North arrow and scale.

Sec. 10-152. ~~Exemptions. Requirement waiver~~

The director of zoning and development services review may waive the requirement for any submittal item ~~which he deems deemed~~ unnecessary for an adequate review of the proposed development ~~under this division~~. Such a waiver of the required number or nature of submittals shall does not constitute a change in the substantive standards or requirements of this chapter. ~~Submittal exemptions shall be granted at the discretion of the director of development review.~~

Sec. 10-154. Additional required submittals.

- (27) *Assurance of completion of improvements* Assurance of completion of the development improvements as specified in subsections (27)a and b of this section will be required for all off-site improvements prior to commencing any off-site or on-site development. Assurance of completion of the development improvements for on-site subdivision improvements will be required prior to the acceptance of the subdivision plat. Those on-site subdivision improvements which have been constructed, inspected and approved by the director of development review may be excluded from the requirements of subsections (27)a and b. of this section. ~~In addition to the assurance of completion for off-site improvements, all subdivisions for single- and two-family residential structures shall provide the assurance of completion of on-site improvements, or the construction of on-site improvements, within one year of the date of issuance of the final development order for that subdivision.~~

DIVISION 3 LIMITED REVIEW PROCESS

Sec. 10-171. Generally.

Developments meeting the criteria in section 10-173 and 10-174 shall will be entitled to receive a development order in accordance with the procedures in this section. For developments meeting the criteria in this section, no site improvement, tree clearing or issuance of building permits shall may occur prior to approval of the development order by the division of zoning and development services review

Sec. 10-172. Legal effect of approval.

Approval of a development order for a development described in subsections 10-174(4) and (5) may require additional permits before development may commence. All applications shall must be reviewed by the division of zoning and development services review for compliance with the Comprehensive Plan the Zoning Ordinance (chapter 34) and other applicable regulations

Sec. 10-173. General requirements for limited review process.

Development orders being processed in accordance with the procedures in this division shall will be reviewed for compliance with the following general requirements

- (1) The development shall must comply with the general and specific requirements of sections 10-7 and 10-8,
- (2) The development shall must have no significant adverse effect upon surrounding land uses,
- (3) The development shall must have no significant adverse effect upon public facilities in the area,
- (4) The development shall must not adversely effect the environmental quality of the area, and
- (5) The development proposal shall must be consistent with the county comprehensive plan

The director of zoning and development services review is authorized to impose conditions consistent with the provisions of this chapter in order to mitigate adverse impacts generated by the proposed development

Sec. 10-174. Types of development entitled to limited review.

The following types of development may be ~~exempted~~ processed pursuant to in accordance with this section

- (1) A cumulative addition or enlargement of an existing impervious area, provided that the addition or enlargement does not increase the total impervious cover area by more than 2,500 square feet and there is no increase in the rate of runoff from the project site.
- (2) Any out-of-door type recreational facilities, such as swimming pools, tennis courts, tot lots and other similar facilities, provided the total cumulative additional impervious area does not exceed 8,000 square feet
- (3) Any development which received final site plan approval by the current planning department and the division of transportation and public works prior to November 10, 1982, where the development has been actively constructed continuously, or in phases, in accordance with such approval
- (4) Any one-time subdivision of land into four or less lots for single-family detached dwelling units or two-family detached dwelling units, where zoning district regulations permit such subdivision, provided, however, that
 - a Each lot must meet or exceed all width, depth and area requirements of the zoning district in which located,
 - b Each lot abuts and has access to a road which is maintained pursuant to Ordinance No 87-19, as amended or replaced, or to an existing improved road right-of-way or easement meeting at least the minimum construction standards required by this chapter ~~This provision requires that~~ Each lot abut and have access to a road complying with the requirements of section 10-296 The maximum allowable density for a proposed lot that will abut and have access to any unpaved rock/shell road (a category D road) is ~~one unit per 2.5 acres~~ 0.4 or less dwelling units per acre per in accordance with sections 10-296(d) and (e) Compliance with maximum density requirements of the Lee Plan is also required

~~Compliance with the roadway right-of-way width and wearing surface requirements of section 10-296 is required;~~

- c No alteration of existing utility installations is involved;
 - d No change in drainage will occur which adversely affects the surrounding properties, and
 - e No new road rights-of-way or road easements or upgrading of road rights-of-way or road easements to minimum standards contained in this chapter is required. This provision requires that a development order be obtained in order to establish or upgrade a road right-of-way or a road easement or to construct or upgrade a road
- (5) Any subdivision of land for a use other than single-family detached dwelling units, two-family detached dwelling units or agricultural; provided, however, that:
- a Each lot must meet or exceed all requirements of the zoning district in which it is located, or the subdivision is approved by the director of community zoning and development services under the provisions of section 34-2221(1), and the overall development complies with all other requirements of this chapter,
 - b No development may occur on any of the lots without first obtaining a development order,
 - c. If the parent parcel is ten acres or greater, a protected species survey may be required as specified in article III, division 8, of this chapter,
 - d. ~~Each lot shall~~ must abut and have access to a road which is maintained pursuant to Ordinance No. 87-19, as amended or replaced, or to an existing improved road right-of-way or easement meeting at least the minimum construction standards required by this chapter;
 - e No alteration of existing utility installations is involved;
 - f No change in drainage will occur which ~~negatively~~ adversely impacts the surrounding properties,
 - g. No new road rights-of-way or road easements or upgrading of road rights-of-way or road easements to minimum standards contained in this chapter are required. This provision requires that a development order be obtained in order to establish or upgrade a road right-of-way or a road easement or to construct or upgrade a road, and
 - h Reasonable conditions may be attached to the approval so that any development on all of the lots will comply with all county land development regulations
- (6) Any single building of two dwelling units or less and any accessory improvements thereto on a single lot which is not a lot of record or a platted lot, provided the applicant submits sufficient evidence that the lot was purchased, or contracted for purchase, prior to January 28, 1983.
- (7) Any development containing individual lots for single buildings of two dwelling units or less which, prior to January 28, 1983:
- a Has been approved by the county and registered with the state division of land sales and condominiums, provided that all improvements required or approved by the county have been completed or a surety has been posted and is current; or
 - b Has been approved for drainage, streets and utilities by the county and for which at least 51 percent of all lots along both sides of a street segment have been sold to individuals.
- (8) ~~An excavation or mining operation which is subject to chapter 34, article VII, division 15, subdivision II, sections 34-1651 to 1682 and which received a general excavation permit, or a renewal permit, from the Board of County Commissioners after August 1, 1984~~

- (9) Any county-initiated improvements for public water access purposes in county-owned or county-maintained rights-of-way
- (10) Any development for a fenced or screened enclosed storage yard as defined in chapter 34, provided that the yard consists solely of a stabilized grassed surface, a surface water management system, buffers and fencing; and provided further that site access complies with the provisions of this chapter and chapter 34.
- (11) The installation of new utility lines in existing right-of-ways or easements
- (12) Any other improvement to land determined by the director to have insignificant impacts on public facilities in accordance with applicable standards of measurement in this chapter (vehicular trips, amount of impervious surface, gallons per day, etc)

DIVISION 5 PLATS

Sec. 10-211. Required.

All subdivisions as defined in this chapter are required to have a plat of the parcel of land containing the subdivision, showing all of the information required by F.S. ch. 177, pt. I, by this chapter and by any adopted administrative code, approved by the Board of County Commissioners and recorded in the official records of the county, prior to the approval of any building permits. Building permits may be issued for model buildings and sales centers prior to recording of the plat, subject to evidence of a unified control agreement and provided that any certificate of occupancy issued is for model or sales use only, until the plat has been recorded. Plats are not required for lot splits granted under the limited review process.

Sec. 10-213. Technical requirements.

Technical requirements for plats are specified in the county administrative code entitled "Technical Requirements for Plat s Approval." ~~Submitted for Acceptance by the Board of County Commissioners."~~

~~Sec. 10-215. Exemptions. Waiver of Requirements~~

Subdivisions approved in accordance with sections 10-171 through 10-176 are not subject to the requirements of this division

ARTICLE III. DESIGN STANDARDS AND REQUIREMENTS

DIVISION 1 GENERALLY

Sec. 10-256. Bikeways and pedestrian ways

(c) *Provision of on-site bikeways and pedestrian ways*

(1) *General.*

- a Developments with private, noncounty maintained streets Interior bikeways and pedestrian ways are encouraged but are not required in any residential subdivision for lots abutting private, noncounty maintained roads
- b Residential subdivisions with county-maintained streets Residential subdivisions with county-maintained streets, must construct pedestrian ways as follows:
 - 1 Along one side of all county-maintained streets internal to a residential development where the proposed density exceeds one dwelling unit per acre. The pedestrian way must extend from intersection to intersection; and
 - 2 Along one side of all county-maintained cul-de-sac streets which serve ten dwelling units or more

The pedestrian way must extend from the intersection to the end of the cul-de-sac. Exceptions to these requirements are:

- I. Where such construction would encroach upon the required setback from a conservation or preservation area; and
 - II. Where the proposed street forms an exterior boundary to the subdivision
3. ~~Perimeter streets. Where streets are located at the perimeter of a development site, bikeways and pedestrian ways are required on the side of the street adjacent to the development. The facility may be constructed within the road right-of-way or within an easement permitted or dedicated for that purpose. The facility must be continuous from boundary to boundary of the development, except where:~~
- ~~i. The site configuration is such that county drainage ditches would have to be relocated or piped;~~
 - ~~ii. The location of such bikeway or pedestrian way would constitute a potential hazard to the user;~~
 - ~~iii. Construction of the bikeway or pedestrian way would be within wetland or other resource protection area; or~~
 - ~~iv. The director of zoning and development services concludes that a right-of-way is too small for construction of a safe bikeway or pedestrian way. However, the director may first require the developer to seek the necessary approvals to construct the facility within an adjacent easement, or alternatively, to dedicate an easement for that purpose.~~

~~Upon acceptance of the required facility by the county, the applicant may be entitled to road and park impact fee credits in accordance with chapter 2, article VI. Eligibility for impact fee credits will be evaluated on a case-by-case basis. THIS TEXT HAS BEEN RELOCATED TO SEC. 10-256(c)(2).~~

43. Waiver of requirement. The director of zoning and development services may exempt from this section developments that provide an alternate plan for an internal bikeway/pedestrian way circulation system if the alternate system is functionally equivalent to the standards set forth herein, connects with existing facilities and meets all off-site requirements. The alternate plan must be submitted simultaneously with the request for a development order for a subdivision plat. The master plan must be drawn to scale sufficient to indicate all lots and include the following.

- I. The location of all lots and the number and type of dwelling units on each lot
- ii. The location, width, and type of each bikeway and pedestrian way including those to be connected to the bikeways/pedestrian ways off-site

~~(2) Location. The bikeway or pedestrian way may be located within the road right-of-way or within any easement if approved by the affected utility companies and the director of zoning and development services.~~

~~(2) Perimeter streets - all residential developments. Where streets are located at the perimeter of a development site, bikeways and pedestrian ways are required on the side of the street adjacent to the development. The facility may be constructed within the road right-of-way or within an easement permitted or dedicated for that purpose. The facility must be continuous from boundary to boundary of the development, except where:~~

- a. The site configuration is such that county drainage ditches would have to be relocated or piped.
- b. The location of such bikeway or pedestrian way would constitute a potential hazard to the user.
- c. Construction of the bikeway or pedestrian way would be within wetland or other resource protection area, or
- d. The director of zoning and development services concludes that a right-of-way is too small for construction of a safe bikeway or pedestrian way. However, the director may first require the developer

to seek the necessary approvals to construct the facility within an adjacent easement, or alternatively, to dedicate an easement for that purpose.

Upon acceptance of the required facility by the county, the applicant may be entitled to road and park impact fee credits in accordance with chapter 2, article VI. Eligibility for impact fee credits will be evaluated on a case by case basis.

- (3) Location The bikeway or pedestrian way may be located within the road right-of-way or within any easement if approved by the affected utility companies and the director of zoning and development services.
- (34) Time of construction All on-site facilities must be coordinated with the bikeway/pedestrian way system of the surrounding area. Bikeways and pedestrian ways in a proposed development must connect to existing facilities on adjacent property where easements or stub-outs exist. Pedestrian ways along non-buildable lots, common areas, storm water ponds and other similar areas must be constructed by the developer prior to issuance of a certificate of compliance for the infrastructure unless the developer posts a bond or other surety acceptable to the county as assurance of completion of the improvements. Pedestrian ways along buildable lots will be the responsibility of the lot owner and must be constructed prior to issuance of a certificate of occupancy for any building on the lot. To ensure compliance, the covenants for the development must reflect that the lot owner must construct the required pedestrian way prior to requesting a certificate of occupancy.
- (f) Exemptions Waiver of Requirement Notwithstanding the provisions of paragraphs (1) -- (5) (a) - (e), bikeways and pedestrian ways will not be required where the director of zoning and development services determines that:
- (1) Their establishment would be contrary to public safety;
 - (2) The cost would be excessively disproportionate to the need or probable use,
 - (3) Other available means or factors suggest an absence of need.

DIVISION 2 TRANSPORTATION, ROADWAYS, STREETS AND BRIDGES

Sec. 10-296. Street design and construction standards.

(d) *Street and bridge development categories*

TABLE 4. MINIMUM SPECIFICATIONS FOR STREET IMPROVEMENTS

Category

- | | |
|---------|--|
| A B C D | (9) <u>Street name and regulatory signs.</u> Street name and regulatory signs will be installed by the developer at all intersections and on the streets in the development prior to the acceptance of the streets or the release of the security. |
|---------|--|

Regulatory signs will not be required at parking lot entrances for parking lots containing less than 25 parking spaces.

(k) *Culs-de-sac.*

- (1) Dead-end streets, designed to be so permanently, shall must be closed at one end by a circular turnaround for vehicles and shall be constructed according to the following minimum standards
 - a. Diameter of pavement to inside ~~face~~ edge of curb or edge of pavement must be a minimum of 90 feet outside diameter, and a maximum of 45 feet inside diameter.
 - b. Diameter of right-of-way for curb and gutter section: 110 feet.
 - c. The diameter of right-of-way for ditch and swale drainage shall must be a minimum of 130 feet.
- (2) The island in the center of the circular turnaround may be paved solid, kept unpaved to preserve existing vegetation, or enhanced with additional vegetation, provided that vegetation does not cause a visual obstruction between 2 ½ feet and seven feet in height above grade, and provided further that proper

maintenance agreements have been filed with the board

(3) The transition from the cul-de-sac pavement to the regular approaching pavement width shall must be as shown in section 10-714.

(4) On all roads to be maintained by and dedicated to the county, the length of a cul-de-sac shall must be 500 feet or less. This length may be extended to a maximum length of 1,000 feet for single-family residential development only. The length of the dead-end street with cul-de-sac shall will be measured along the centerline of the pavement from the centerline of the nearest lane of the intersecting street to the center point of the cul-de-sac. This subsection does not apply to privately maintained roads

(5) All streets ending in culs-de-sac that are over 250 feet long shall must have a standard "No Outlet" traffic sign installed at the street entrance and paid for by the developer

(l) *On-road and off-road bikeways* All county-maintained arterial, collector and local streets shall must be designed and constructed in accordance with the county administrative code policy relating to on-road and off-road bikeways and associated roadway width

(m) *Privately maintained accessways* The following privately maintained accessways shall are not be required to meet the minimum roadway right-of-way widths specified in subsection (b) of this section:

(1) Parking lot aisles (as defined in chapter 34);

(2) Parking lot accesses (as defined in chapter 34);

(3) Driveways (as defined in this chapter), and

(4) Accessways which meet the following three requirements

a Provide vehicle access to 50 or fewer multi-family residential units ~~and to 100 or fewer parking spaces (in determining the number of parking spaces served by an accessway any landscaped areas reserved for future parking spaces shall be included);~~

b Pavement width meets the dimensional requirements for parking lot accesses and aisles, and at areas of back-out parking; and

c. Provide for utility easements per in accordance with section 10-355(a)(1) if utilities are to be located in or adjacent to the accessway

DIVISION 3. SURFACE WATER MANAGEMENT

Sec. 10-329 Excavations for Water Retention and Detention.

(a) *Applicability* This section provides the permitting and development order requirements for the construction of previously unzoned and unpermitted excavations for water retention and detention. The specific requirements for excavations for commercial mining excavations are specified ~~in chapter 34, sections 34-1651 thru 34-1682 article VII, division 15, subdivision II;~~ and are not included in this section

~~(c) *Permit required, exceptions.* It is unlawful for any person, partnership or other legal entity to engage in excavation within the unincorporated area of the county, or for an owner to permit such excavation on his property, without first having obtained the approvals and permits specified in this section subsection (d) Table 2.~~

Excavations for bonafide agricultural uses that will not result in the use of the excavated materials off-site must comply with subsections (e)(1), (3) and (4) (bank slope ratio only) below, but are not subject to any county approval process. Other excavations for bona fide agricultural uses and excavations that are accessory to one single-family residence are permitted under the following conditions

(1) The property owner submits notice of intent to commence excavation to the director of zoning and development services review. The notice must contain the following information.

- a The location of the property,
- b The name of the owner,
- c A site plan showing the slopes of the proposed excavation, the maximum depth of the excavation and the location of the excavation relative to all property lines, easements, rights-of-way, section lines and quarter section lines;
- d The proposed date of commencement, which may not be less than ten days from the date of the submittal, and
- e The signature of the property owner.

(2) The excavation complies with subsections (e)(1), (3) and (4) (bank slope ratio only) of this section.

(d) *Excavation types and required approvals* Excavations are generally constructed either for mining operations, for stormwater retention or as a development site amenity. Table 2 summarizes the various types of excavations and the permits and approvals required for each excavation type.

(e) *Standards.* All new excavations for water retention and detention regulated by this section will be subject to the following standards

(1) *Setbacks for water retention or detention excavations*

a. No excavations will be allowed within:

- 1 Twenty-five feet of an existing or proposed street right-of-way line or easement for a local street,
- 2 Fifty feet of any existing or property-owner proposed right-of-way line or easement for a collector or arterial street. The 50-foot setback may be reduced if the developer provides elements for the protection of wayward vehicles. The elements for the protection of wayward vehicles may include guardrails, berms, swales, vegetation or others as determined by the director. In no event may the setback for an excavation from a collector or arterial street be less than 25 feet,
- 3 Fifty feet of any private property line under separate ownership. This setback does not apply to lots developed concurrently with the excavation for water retention when part of a development order; or

b In all cases, the most restrictive setback will apply

c All excavation setbacks must be measured from the mean high water (MHW) or the wet season water table (WSWT) line.

(2) *Setbacks for buildings, accessory buildings, equipment and other structures.* All setbacks for accessory buildings or structures must be shown on the site plan required as part of the application for a development order and must comply with the setback requirements of the zoning district in which the project is located. ~~No crusher, mixing plant, bin, tank or structure directly involved in the production process may be located less than 600 feet from any residentially-zoned area or district, or 250 feet from all other nonresidential areas or zoning districts. In order to allow flexibility, the general area of any accessory buildings, structures and processing facilities may be shown on the site plan. The final placement of these buildings, structures and facilities must comply with the setbacks noted above.~~

(3) *Maximum excavation depth.* Excavations for water retention or detention permitted under this section may not exceed 12 feet in depth and may not penetrate through any impervious soil or rock layer which presently prohibits intermingling of various watery strata. A greater depth may be permitted under this section provided that the proposed depth has been approved as a planned development rezoning deviation or as a condition of a zoning special exception approval.

(4) *Excavation bank slopes.* The design of shorelines of retention and detention areas ~~and other excavations~~ must

exemptions from species survey and management plan requirements. However, if the property is rezoned or if the master concept plan has been vacated, a species survey and management plan will be required. The director may waive survey and management plan requirements if the director deems that prior surveys and management plans are adequate.

DIVISION 9 SIX MILE CYPRESS WATERSHED

Sec. 10-510. Design standards.

(a) Drainage and surface water management.

- (1) The outfall discharge rate for the three-day 25-year storm event for all large projects within the Six Mile Cypress Watershed must be 37 csm or less as specified in the Six Mile Cypress Watershed plan.
- (2) All development in the Six Mile Cypress Watershed Basin must be consistent with the findings and conclusions in the Six Mile Cypress Watershed Plan. However, the county will consider alternate proposals which offer design standard flexibility in the conservation, restoration and enhancement of tributaries and flow-ways within the basin. In any event, the plan will not be interpreted to require a developer to mitigate impacts not created by the proposed development

ARTICLE IV. ILLUSTRATIONS, TABLES AND DIAGRAMS

Sec. 10-711. Access Streets Cross Sections

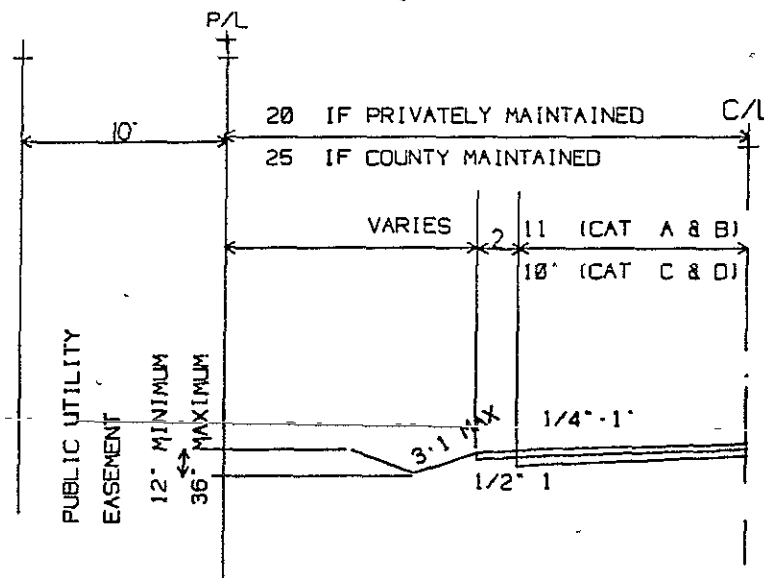
The following illustrations apply to access streets:

~~The following illustrations and footnotes are intended to replace the illustrations and footnotes currently set forth in 10-711.~~

ACCESS STREET WITH SWALE OR DITCH

'50-FOOT RIGHT-OF-WAY (COUNTY MAINTAINED)

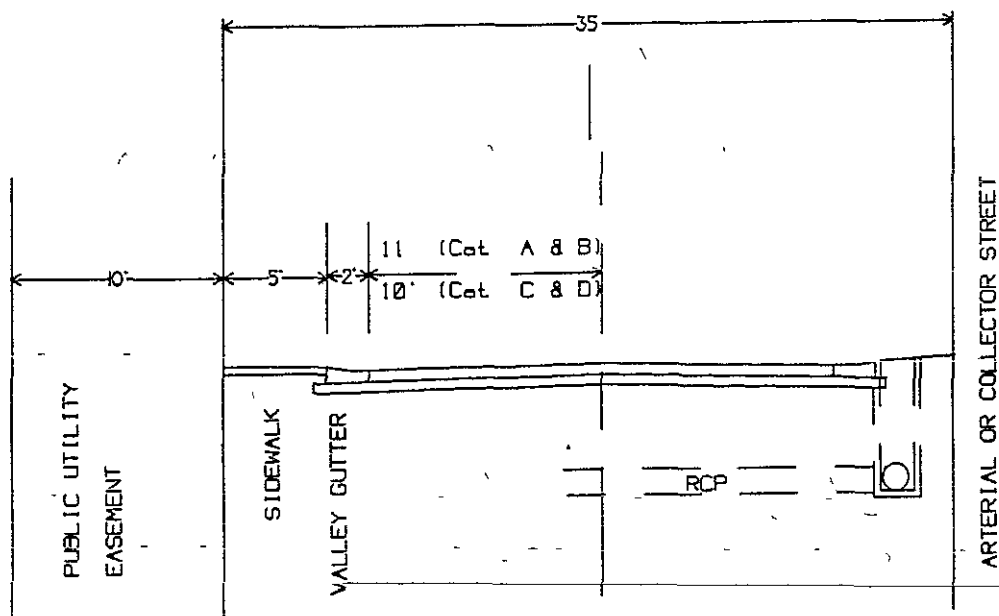
'40-FOOT RIGHT-OF-WAY (PRIVATELY MAINTAINED)



Note: This standard applies to frontage streets only. The local street standards shall apply to all other access streets including reverse frontage.

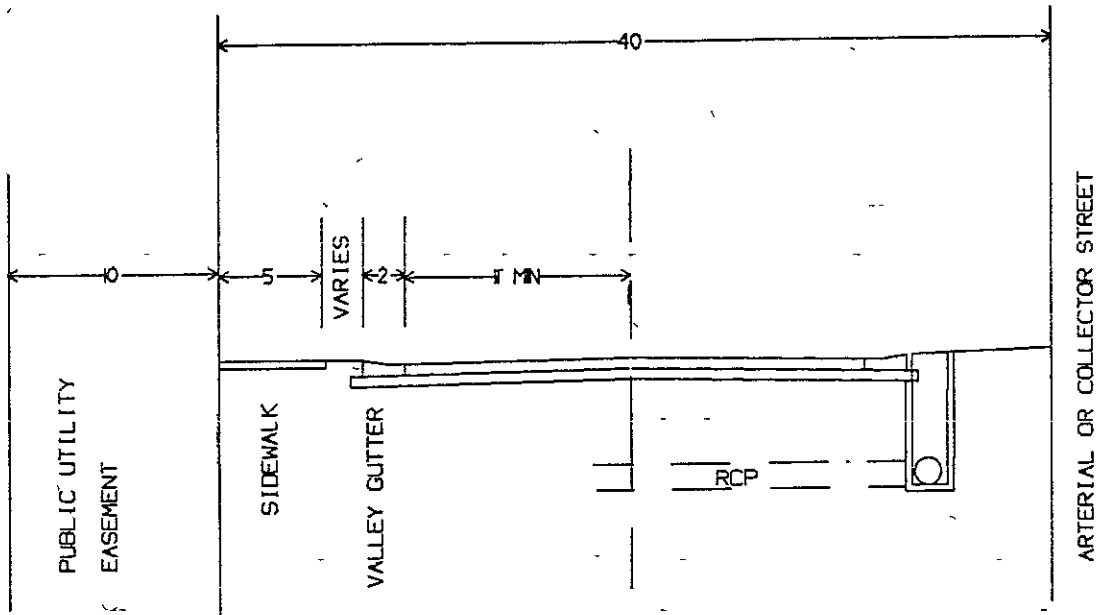
ACCESS STREET WITH UNDERGROUND DRAINAGE (35-FOOT ROW)

FOR PRIVATELY MAINTAINED STREETS



Development Category	Minimum Pavement Width	Asphaltic Conc. Surface Course	Base	Stabilized Subgrade LBR 40
A	22'	1 1/2" Type S-III	8"	12"
B	22'	1" Type S-III	6"	6"
C	20'	1" Type S-III	6"	6"
D	20'	NA	6"	6"

ACCESS STREET WITH UNDERGROUND DRAINAGE (40-FOOT ROW)
FOR COUNTY MAINTAINED STREETS



Development Category	Minimum Pavement Width	Surface Course	Base	Stabilized Subgrade LBR 40
A	22'	1 1/2" Type S-III	8"	12"
B	22'	1 1/2" Type S-III	6"	6"
C	20'	1 1/2" Type S-III	6"	6"
D	20'	N/A	6"	6"

SECTION FIVE: AMENDMENT OF THE LAND DEVELOPMENT CODE CHAPTER 34

Lee County Land Development Code Chapter 34 is hereby amended as follows with new language indicated by underlining and deleted language indicated by strikethru.

CHAPTER 34

ARTICLE 1. IN GENERAL

Sec. 34-2. Definitions.

Adult congregate living facilities (ACLF) or Assisted Living Facilities means a residential land use, licensed under chapter ~~10A-5~~ 58A-5, Florida Administrative Code, which may be a building, a section of a building, a section of a development, a private home, a special boarding home, a home for the aged or similar place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a period exceeding 24 hours, housing and food service plus one or more personal services for four or more adults not related to the owner or administrator by blood or marriage. A facility offering such services for fewer than four adults ~~shall~~ may be construed as being within the context of this definition if it formally or informally advertises to or solicits the public for residents or referrals and holds itself out to the public to be an establishment which provides such services. These facilities are not synonymous with the term "nursing home." For purposes of this definition only, the term "personal services" means assistance with bathing, dressing, ambulation, housekeeping, supervision, emotional security, eating, supervision of self-administered medications, restoration therapy and assistance with securing health care from appropriate sources.

Agricultural uses includes but is not limited to farming, horticulture, pasturage, forestry, citrus and other fruit groves, greenhouses and nurseries, truck farms and dairy farms, commercial fish, frog or poultry hatcheries, and raising of hogs and other farm animals. Lumbering or harvesting of cypress (*Taxodium* spp.) is not permitted except by special permit exception.

Authorized Representative means any person who appears with the permission of and on behalf of another person and who provides legal argument or relevant competent evidence through testimony, submission of documents or otherwise.

Contiguous lots means lots which are abutting or are separated only by a street right-of-way or easement which is 60 feet or less in width.

Party of record Participant means any person who appears at a hearing examiner proceeding, in person or enters an appearance through counsel or by authorized agent at a hearing examiner proceeding, representative and provides legal argument, testimony, or other evidence. A participant is thereby entitled to receive a written report notice of the hearing examiner's decision or recommendation. This term includes County staff and the applicant where appropriate.

Recreational vehicle park, developed means a parcel (or portion thereof) or contiguous abutting parcels of land designed, used or intended to be used to accommodate two or more occupied recreational vehicles, and in which necessary utilities and streets and the final site grading or paving of concrete pads or vehicle stands was completed prior to September 16, 1985.

Setback means the minimum horizontal distance required between a specified line and the nearest point of a building or structure.

- (1) *Street setback* means the setback extending across the front of a lot measured from the centerline of an existing or proposed street right-of-way or street easement. See section 34-2192 for requirements. Whenever this chapter refers to street setback it shall be interpreted to mean existing or proposed street right-of-way or street easement, whichever is greater.
- (2) *Side setback* means the setback, extending from the required street setback to the required rear lot line, or opposing street setback in the case of a double-frontage lot, measured from the side lot line.
- (3) *Rear setback* means the setback, extending across the rear of a lot, measured from the rear lot line.

(4) *Water body setback* means the setback measured from the mean high-tide line, or the control elevation line if applicable, of a water body See section 34-2194 for requirements

(5) ~~*Section line or quarter section line setback* means the setback measured from a section or quarter section line, as applicable~~

Transportation department means the county department of transportation ~~and engineering services~~

Use, special exception means a use or certain specified departures from the regulations of this chapter that may not be appropriate generally or without restriction throughout a zoning district, but which, when controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, order, comfort, convenience, appearance or prosperity, and may be permitted, in accordance with all applicable regulations.

Use, special permit ~~see Use, special exception~~ means a use or activity which is not permitted by right or by special exception and can only be permitted as provided in this chapter. The term "special permit" also applies to certain specified departures from the regulations of this chapter which are not considered variances in that the applicant is not required to prove hardship.

Variance means a departure from the provisions of this chapter or from any county ordinance (excluding building codes) relating to building and other structural setbacks, lot dimensions such as width, depth or area, structure or building height, open space, buffers, off-street parking or loading requirements, lot coverage, impervious areas, landscaping and similar type regulations, but not involving the actual use of the property, building or structures, procedural requirements, or definitions. This definition specifically excludes ~~section and quarter section line setbacks, street setbacks, modifications for solar or wind energy or other provisions specifically indicated as requiring a special permit exception, and variances from impact fees~~. However, in the case of planned development districts, the term "variance" means all of those requests to deviate from the provisions of this chapter, chapter 10 or other applicable regulations. A variance may be granted when the enforcement of the ordinance, as it applies to a specific lot, would work an undue hardship. ~~The applicant must demonstrate that the hardship is peculiar to his property and not to other properties in the zone. A finding must be made that the variance can be granted without any adverse impact on the public good. See Variance, use and Variance, procedural.~~

DIVISION 2. BOARD OF COUNTY COMMISSIONERS

Sec. 34-82. Initiation of zoning actions

The Board of County Commissioners or its designee may initiate rezonings, special exceptions, variances, ~~special permits~~, developments of regional impact and zoning ordinance amendments See section 34-201

Sec. 34-83. Functions and authority.

(a) *Land use ordinance amendments or adoption*

(1) *Function.* The Board of County Commissioners shall must hold public hearings on all proposed land use ordinance amendments or adoptions.

(2) *Considerations* When deciding whether to adopt a proposed land use ordinance or amendment, the Board of County Commissioners shall must consider the same criteria, recommendations and issues as set forth in section 34-115(b)(1), as well as the recommendation of the local planning agency, but are not required to accept these recommendations

(3) *Decisions and authority* The decision of the Board of County Commissioners on any proposed land use ordinance amendment or adoption is final

(4) Appeals of any decision concerning land use ordinance amendments or adoption shall may be taken in

(b) *Zoning actions*

(1) *Function*

- a The Board of County Commissioners ~~shall~~ must hold public hearings (see ~~division 7 of this article sections 34-231 - 34-236~~) on the following applications rezoning, the special exceptions that meet the criteria for developments of county impact, developments of regional impact, and any other action in conjunction with such applications
- b All requests for variances ; and special exceptions ~~and special permits~~ which are part of an application for a rezoning ~~shall~~ must be considered by the Board of County Commissioners with the application for rezoning and heard together with and at the same time as the rezoning

(2) *Considerations.* In rendering its decision, the Board of County Commissioners ~~shall~~ must consider the following

- a. ~~The entire~~ considerations set forth in section 34-145(c)(2) which are applicable to the case.
- b. The substantive recommendation of the hearing examiner when applicable

(3) *Findings.* Before granting any rezoning or special exception the Board of County Commissioners must find that

- a the applicant has proved entitlement to the rezoning or special exception by demonstrating compliance with the Lee Plan, this land development code, and any other applicable code or regulation and
- b the request will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request; and
- c the request is consistent with the densities, intensities and general uses set forth in the Lee Plan, and
- d the request is compatible with existing or planned uses in the surrounding area, and
- e approval of the request will not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development; and
- f where applicable, the request will not adversely affect environmentally critical areas and natural resources
- g In the case of a planned development rezoning, the decision of the Board of County Commissioners must also be supported by the formal findings required by Sections 34-377(a)(2) and (4).
- h Where the change proposed is within a future urban area category, the Board of County Commissioners must also find that urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.

(34) *Decisions and authority*

- a In exercising its authority, the Board of County Commissioners
 - 1 ~~shall~~ must consider the recommendation of the hearing examiner, but may, in conformity with the provisions of this chapter, reverse, affirm or modify the recommendation of the hearing examiner, or remand the recommendation to afford due process- ;
 - 2 ~~The Board of County Commissioners shall~~ may not approve any a rezoning other than the rezoning published in the newspaper unless such the change is more restrictive than the proposed rezoning published- ;

- e- 3. The Board of County Commissioners has the authority to attach such conditions and requirements to any approval of a request for a special permit, special exception, development of regional impact, planned development, or variance within their purview, deemed necessary for the protection of the health, safety, comfort, convenience or welfare of the general public. ~~Such These~~ conditions ~~or and~~ requirements must be reasonably related to the action requested.
- d b. The decision of the Board of County Commissioners on any matter listed in this subsection (b) is final. If there is a tie vote, the matter considered will be continued until the next regularly scheduled meeting for decisions on zoning matters by the Board of County Commissioners. If a decision of approval is not obtained, or if a tie vote results from a motion to grant a request or from a motion to deny a request, then the matter being considered shall be deemed to have been denied, unless a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action in lieu of denial. Such other action may be moved or seconded by any member, regardless of his vote on any earlier motion
- e-c. Any denial by the Board of County Commissioners is denial with prejudice unless otherwise specified by the Board of County Commissioners (see section 34-211)
- (45) Judicial review. Judicial review of final decisions under this section shall must be in accordance with section 34-85.
- (6) Special Master. Final decisions under this section may be the subject of a request for relief under Section 70 51, Florida Statutes, within 30 days after the decision has been rendered. For the purposes of computing the 30 day period, the date the decision has been rendered is the date of the public hearing at which the Board of County Commissioners made such decision by oral motion. The request for relief must allege that a decision of the Board of County Commissioners is unreasonable or unfairly burdens the use of the subject property. A request for relief will be heard by an impartial Special Master in accordance with the procedure set forth in the Administrative Code

Sec. 34-84. Rehearing of decisions.

- (a) Any person who may be aggrieved by any decision of the Board of County Commissioners made pursuant to an application for rezoning, development of regional impact, special exception that ~~meets the criteria of a development of county impact, or special exceptions, or variances or special permits~~ heard as part of a rezoning may, within 30 calendar days after such decision, but not thereafter, file with the county administrator or his designee a request in writing for a public rehearing by the Board of County Commissioners for a modification or rescission thereof. For purposes of computation of this 30-day period, the date of the decision ~~shall be~~ is the date of the public hearing at which the Board of County Commissioners made such decision by oral motion.
- (b) All requests for a public rehearing shall must state with particularity any new evidence or the points of law or fact which the aggrieved person argues the Board of County Commissioners has overlooked or misunderstood, and must include all documentation offered to support the request for a rehearing. The Board of County Commissioners shall will decide whether to grant or deny the request for a rehearing based exclusively upon the aggrieved person's written request and supporting documentation and the administrator's written analysis thereof. In addition, if the request is made by one other than the original applicant, the county shall must notify the applicant of the filing of the request for a rehearing and the applicant shall must be allowed to submit his independent written analysis. The deliberations of the Board of County Commissioners with respect to the question of whether to grant a rehearing do not constitute a public hearing, and no oral testimony shall will be allowed or considered by the Board of County Commissioners in the course of these deliberations. An aggrieved person need not request a rehearing in order to exhaust his administrative remedies as a condition precedent to filing an appeal to the circuit court.
- (c) Judicial review. The proper filing of a petition for rehearing will toll the 30-day time limit set forth for judicial review of final decisions in section 34-85. If a rehearing request is refused, or if the request is granted but modification or rescission of the original motion of the Board of County Commissioners is denied, any aggrieved person may, within 30 calendar days after such refusal or denial, apply for judicial review of the original motion in accordance with section 34-85. No judicial review is available to review the Board of County Commissioners' decision to refuse a rehearing request.
- (d) There ~~shall be~~ is no right to apply to court for relief on account of any determination or recommendation of the hearing examiner in those actions listed in section 34-83(b)(1) which require public hearing before the Board of County

DIVISION 4 HEARING EXAMINER

Sec. 34-145. Functions and authority.

(a) Appeals from administrative action.

- (1) *Function.* The hearing examiner will hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, determination or action of any administrative official charged with the administration and enforcement of the provisions of this chapter land development code or any other ordinance which provides for similar review; provided, however, that:
- a. No appeal to the hearing examiner shall may lie from any act by such an administrative official pursuant to.
 1. An order, resolution or directive of the Board of County Commissioners directing him to perform such act, or
 2. Any ordinance or other regulation or provision in this code which provides a different appellate procedure.
 - b. The appeal to the hearing examiner shall must be in writing on forms provided by the hearing examiner, and shall must be duly filed with the hearing examiner within 30 calendar days, but not thereafter, after such act or decision by the administrative official. The appeal shall must specify the grounds for the appeal.
 - c. No appeal shall may be considered by the hearing examiner where it appears to be a circumvention of an established or required procedure. Specifically, in no case may an appeal be heard when the hearing examiner determines that the case should more appropriately be heard on a request for a variance.
 - d. Notices of hearings on appeals shall will be provided in accordance with the provisions of an applicable administrative code which shall be adopted by the Board of County Commissioners
 - e. No appeal will be considered by the hearing examiner for any challenge to a development order which is controlled by F S Ch. 163.3215. ~~In cases of challenges to development orders controlled by F S. Ch 163 3215, no suit may be brought and no verified complaint, as explained in F.S. Ch 163 3215(4), may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the director, or by virtue of its having been ordered by the county hearing examiner on an appeal reversing the director's denial of the development permit, or by the Board of County Commissioners in cases where the Board of County Commissioners has granted planned development zoning or an extension of a development order. Once a development order has been granted, the provisions of F S. Ch. 163.3215 will be the sole means of challenging the approval or denial of a development order, as that term is defined in F S Ch 163 3164(6), when the approval of the development order is alleged to be inconsistent with the Lee Plan, in which case an action brought pursuant to F S. Ch. 163.3215 will be limited exclusively to the issue of comprehensive plan consistency~~
 - f. Except as may be required by F.S. 163 3215, and then only pursuant to that statute, a third party shall will not have standing to appeal an administrative decision ~~granting or denying any development permit~~. Only the applicant or his agent shall will be permitted to appeal such administrative action as set forth in this subsection (a)

(2) Considerations

- a. In reaching his decision, the hearing examiner shall must consider the following criteria, as well as any other issues which are pertinent and reasonable
 1. Whether ~~or not~~ the appeal is of a nature properly brought to him for decision, or whether ~~or not~~ there is an established procedure for handling the request other than through the appeal process (i.e , a variance or special exception, etc.)
 2. The intent of the ordinance ~~which is being~~ applied or interpreted.

3 The effect the ruling will have when applied generally to ~~the ordinance which will be affected by the hearing examiner's decision this code.~~

b Staff recommendations, the testimony of the appellant and testimony of the general public ~~shall~~ must also be considered

~~(3) Findings Before granting any appeal, the hearing examiner must find that an error was made in the order, requirement, decision, interpretation, determination or action of the administrative official charged with the administration and enforcement of the provisions of this code or other ordinance which provides for similar review~~

~~(34)~~ Authority

a. In exercising his authority, the hearing examiner may reverse, affirm or modify any decision or action of any administrative official charged with the administration or enforcement of this chapter

b. Subject to the limitations set forth in subsection (a)(~~3~~ 4)a of this section, the hearing examiner may make a decision to take the appropriate action which the hearing examiner finds the administrative official should have taken To that end, he ~~shall have~~ has the powers of the administrative official from whom the appeal is taken

~~(45)~~ Judicial review Judicial review of final decisions of the hearing examiner with respect to administrative actions are to the circuit court in accordance with section 34-146

(b) Variances.

(1) *Function* The hearing examiner ~~shall will~~ hear and decide all requests for variances from the terms of the regulations or restrictions of ~~this chapter~~ the land development code and such other ordinances as may be assigned to him by the Board of County Commissioners, except that no use variance ~~shall~~ may be heard or considered

(2) *Considerations* In reaching his decision, the hearing examiner ~~shall must~~ consider the following criteria, recommendations and testimony:

a ~~That Whether~~ exceptional or extraordinary conditions or circumstances exist which are inherent in the land, structure or building involved and ~~such whether those~~ exceptional or extraordinary conditions or circumstances create a hardship on the property owner, ~~and are not generally applicable to other lands, structures or buildings,~~

b ~~That Whether~~ the exceptional or extraordinary conditions or circumstances do not result from the actions of the applicant;

~~c That literal interpretation of the provisions of the section of this chapter would deprive the applicant of rights commonly enjoyed by properties in the same district under terms of this chapter,~~

~~d c~~ That ~~g~~Granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare;

~~e d~~ Staff recommendations;

~~f e~~ Testimony from the applicant, and

~~g f~~ Testimony from the public.

(3) *Findings* Before granting any variance, the hearing examiner ~~shall must~~ find that all of the following exist

a ~~That There~~ are exceptional or extraordinary conditions or circumstances that are inherent to the property in question ~~and that do not apply generally to the other nearby properties in the same zoning district;~~

b ~~That The~~ exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to the adoption of the ordinance (any action taken by an applicant pursuant to

lawfully adopted regulations preceding the adoption of the ordinance from which this chapter is derived will not be considered self-created),

- c. ~~That~~ The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property,
- d. ~~That~~ The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and
- e. ~~That~~ The condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of ~~so~~ a general or recurrent nature so as to make it more reasonable and practical to amend the ordinance

(4) Authority

- a. The hearing examiner ~~shall have~~ has the authority to grant, or deny, or modify, any request for a variance from the regulations or restrictions of this chapter code; provided, however, that no use variance as defined in this chapter, or any variance from definitions or procedures set forth in any ordinance, ~~shall~~ may be granted
- b. In reaching his decision, the hearing examiner ~~shall have~~ has the authority to attach ~~such~~ conditions and requirements ~~as are~~ necessary for the protection of the health, safety, comfort, convenience and welfare of the general public. ~~Such~~ The conditions or requirements ~~shall~~ must be reasonably related to the variance requested
- c. Variances may be reviewed by themselves or as part of a rezoning
- d. All decisions of the hearing examiner concerning variances filed as part of a rezoning ~~shall~~ must be in the form of a recommendation to the Board of County Commissioners. Only a ~~party of record~~ participant or his representative ~~shall~~ will be afforded the right to address the Board of County Commissioners

(5) *Judicial review* Judicial review of final decisions of the hearing examiner with respect to variances are to the circuit court in accordance with section 34-146

(c) *Special exceptions*

- (1) *Function* The hearing examiner ~~shall~~ will hear and decide all applications for special exceptions permitted by the district use regulations
- (2) *Considerations* In reaching his decision, the hearing examiner ~~shall~~ must consider the following, whenever applicable
 - ~~a. Whether there exists an error or ambiguity which must be corrected~~
 - ~~b. a. Whether there exist changed or changing conditions which that make approval of the request appropriate~~
 - ~~c. The impact of a proposed change on the intent of this chapter~~
 - ~~d. b. The testimony of any applicant~~
 - ~~e. c. The recommendation of staff~~
 - ~~f. d. The testimony of the public~~
 - ~~g. e. Whether the request is consistent with the goals, objectives, policies and intent of the Lee Plan.~~
 - ~~h. f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use~~
 - ~~i. Whether urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve a proposed land use change, when proposing a change to a future urban area category.~~

~~Whether the request is consistent with the densities, intensities and general uses set forth in the Lee Plan~~

k.g. Whether the request will protect, conserve or preserve environmentally critical areas and natural resources.

h. Whether the request will be compatible with existing or planned uses ~~and not~~

i. ~~Whether the request will~~ cause damage, hazard, nuisance or other detriment to persons or property

m. ~~Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development~~

n.j. Whether a requested use will be in compliance with all ~~applicable~~ general zoning provisions and supplemental regulations pertaining to the use, ~~as set forth in this chapter~~

o. ~~Whether a proposed change is to rectify errors on the official zoning map.~~

(3) *Findings.* Before granting any special exceptions, the hearing examiner shall must find that the applicant has proved entitlement to the special exception by demonstrating compliance with

- a The Lee Plan;
- b This chapter, and
- c Any other applicable county ordinances or codes

(4) *Authority*

- a The hearing examiner shall must grant the special exception unless he finds ~~that granting the special exception request~~ is contrary to the public interest and the public health, safety, comfort, convenience and welfare of the citizens of the county, or that the request is in conflict with subsection (c)(3) of this section.
- b In reaching his decision, the hearing examiner shall ~~have~~ has the authority to attach such conditions and requirements ~~as are necessary for the protection of the health, safety, comfort, convenience or welfare of the general public. Such The conditions or and requirements shall must~~ be reasonably related to the special exception requested
- c Special exceptions may be reviewed by themselves or as a part of a rezoning.
- d All decisions of the hearing examiner concerning special exceptions filed as part of a rezoning or that meet the criteria for a development of county impact shall must be in the form of a recommendation to the Board of County Commissioners. Only a party of record participant or his representative shall will be afforded the right to address the board of County Commissioners.

(5) *Judicial review* Judicial review of final decisions of the hearing examiner with respect to special exceptions are ~~to the will be in~~ circuit court in accordance with section 34-146

(d) *Zoning matters*

(1) *Functions* Regarding zoning matters, the hearing examiner ~~has the following prescribed duties and responsibilities~~

- a Prepare recommendations to the Board of County Commissioners for changes or amendments relating to the boundaries of the various zoning districts; or to the regulations applicable to those districts. ~~thereto, to the Board of County Commissioners~~
- b. Make recommendations ~~on the following~~ to the Board of County Commissioners on applications relating to the following

- 1 Applications for Rezoning, including developments of county impact, planned unit developments and planned developments.
 - 2 Applications for Developments of regional impact and Florida Quality Developments approval, which may or may not include a request for rezoning
 - 3 Special exceptions that meet the criteria for a development of county impact, as set forth in section 34-203(b)
 - 4 Other special exceptions and variances which are submitted simultaneously with and are heard in conjunction with a rezoning
 - 5 Variances from any county ordinance which specifies that variances from ~~such~~ the ordinance can may only be granted by the Board of County Commissioners.
- c. Certain amendments to development of regional impact development orders do not require a public hearing. After staff review and recommendation, proposed amendments of this type will proceed directly to the Board of County Commissioners and will be scheduled on the administrative agenda of a regular weekly meeting. The board will vote on the following types of amendments based upon the recommendation of staff without review by the hearing examiner
- 1 Amendments that incorporate the terms of a settlement agreement designed to resolve pending administrative litigation or judicial proceedings, or
 - 2 Any amendment contemplated under F.S. Ch. 380.06(19)(e)2
- (2) *Considerations* In preparing his recommendation on any matter, the hearing examiner shall must consider the criteria set forth in subsection (c)(2) of this section as well as the following, if applicable
- a. Whether there exists an error or ambiguity which must be corrected.
 - b. Whether urban services, as defined in the Lee Plan, are or will be available and adequate to serve a proposed land use change, when reviewing a proposed change to a future urban area category, and
 - c. Whether a proposed change is intended to rectify errors on the official zoning map.
- (3) *Findings* Before preparing his recommendation to the Board of County Commissioners on a rezoning, the Hearing Examiner must find that
- a. The applicant has proved entitlement to the rezoning or special exception by demonstrating compliance with the Lee Plan, this land development code, and any other applicable code or regulation and
 - b. The request will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request, and
 - c. The request is consistent with the densities, intensities and general uses set forth in the Lee Plan, and
 - d. The request is compatible with existing or planned uses in the surrounding area; and
 - e. Approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities and will be served by streets with the capacity to carry traffic generated by the development; and
 - f. Where applicable, the request will not adversely affect environmentally critical areas and natural resources
 - g. In the case of a planned development rezoning, the decision of the Hearing Examiner must also be supported by the formal findings required by Sections 34-377(a)(2) and (4)
 - h. Where the change proposed is within a future urban area category, the Hearing Examiner must also find that urban services, as defined in the Lee Plan, are or will be available and adequate to serve the proposed land use.

(4) Authority

- a The hearing examiner ~~shall~~ serves in an advisory capacity to the Board of County Commissioners with respect to zoning matters as set forth in subsection (d)(1) of this section, and in such capacity, may not make final determinations.
- ~~b. The hearing examiner shall~~ may not recommend the approval of a rezoning, and the Board of County Commissioners shall may not approve a rezoning, other than the change request published in the newspaper pursuant to section 34-236(b), unless such ~~change~~ the zoning district proposed by the Hearing Examiner is more restrictive and permitted within the land use classification ~~as set forth in the Lee Plan.~~
- c In reaching his recommendations, the hearing examiner ~~shall have~~ has the authority to recommend conditions and requirements to be attached to any request for a special exception or variance included under subsection (d)(1)b 3, 4 or 5 of this section

- (5) 4 Decisions All decisions of the hearing examiner concerning zoning matters under this subsection (d) will be in the form of a recommendation to the Board of County Commissioners. Only a participant party of record or his representative will be afforded the right to address the Board of County Commissioners

~~(e) Special permits~~

- ~~(1) Function The hearing examiner shall hear and decide all applications for special permits permitted by the district use regulations~~
- ~~(2) Considerations. In reaching his decision, the hearing examiner shall consider the criteria set forth in subsection (c)(2) of this section.~~
- ~~(3) Findings. Before granting any special permit, the hearing examiner shall find that the applicant has proved entitlement to the special permit by demonstrating compliance with~~
 - ~~a. The Lee Plan;~~
 - ~~b. This chapter, and~~
 - ~~c. Any other applicable county ordinances or codes.~~

~~(4) Authority.~~

- ~~a The hearing examiner shall grant the special permit unless he finds that granting the special permit is contrary to the public interest and the public health, safety, comfort, convenience and welfare of the citizens of the county, or that the request is in conflict with subsection (e)(3) of this section~~
 - ~~b The hearing examiner shall have the authority to attach such conditions and requirements to any approval of a request for a special permit as deemed necessary for the protection of the health, safety, comfort, convenience or welfare of the general public. Such conditions or requirements shall be reasonably related to the action requested.~~
 - ~~c Special permits may be reviewed by themselves or as a part of a rezoning~~
 - ~~d All decisions of the hearing examiner concerning special permits filed as part of a rezoning shall be in the form of a recommendation to the Board of County Commissioners. Only a party of record or his representative shall will be afforded the right to address the Board of County Commissioners.~~
- ~~(5) Judicial review Judicial review of final decisions of the hearing examiner with respect to special permits will be in circuit court, in accordance with section 34-146~~

~~(ef) Notice of intent to deny based on insufficient information~~

- ~~(1) If the hearing examiner intends to deny or recommend denial of an application described in subsections (a) through (d) of this section based on the applicant's failure to provide information adequate in scope and detail~~

to address particular issues, he may, in his discretion, send a notice of intent to deny based on insufficient information to all participants parties-of-record in lieu of a denial or a recommendation to deny the application. The notice shall must state the issues on which additional information is necessary and shall must direct the applicant to indicate within ten working days whether he intends to provide the information and the date upon which the information will be provided (not to exceed 30 working days).

- (2) If the applicant does not respond affirmatively within ten working days of the date of the notice, the hearing examiner shall must prepare and submit a recommendation or decision, whichever is applicable, denying the application to the Board of County Commissioners and all participants parties-of-record. If the applicant does respond affirmatively, the hearing examiner shall must send a copy of the response to all parties of record along with a notice of a new hearing date, at which time the new evidence shall will be considered.
- (3) The applicant shall must submit all of the new evidence provided in accordance with this section to the zoning staff, which shall who will review it and prepare a supplementary staff report addressing only those issues to which the new evidence is relevant.
- (4) The hearing following the receipt of the new evidence shall will be limited to those issues to which the new evidence is relevant.
- (5) No applicant shall will be entitled to more than one notice of intent to deny based on insufficient information.

Sec. 34-146. Final decision; judicial review.

(a) The decision of the hearing examiner will be final on applications for administrative appeals and variances, and special exceptions and special permits, when such variances; or special exceptions or special permits are not part of a rezoning or development of county impact request which requires final decision by the Board of County Commissioners. Judicial review of a final decision of the hearing examiner concerning such an administrative appeal, variance; or special exception or special permit will be in circuit court. Except for review of verified complaints filed pursuant to F.S. 163.3215 and proceedings pursuant to Ch. 70, F.S., jurisdiction for review of any final decision of the hearing examiner lies exclusively in circuit court. This review may only be obtained through filing a petition for writ of certiorari pursuant to the Florida Rules of Appellate Procedure. Any such petition must be filed within 30 calendar days after the decision has been rendered.

(b) For the purposes of this subsection, a decision is "rendered" as of the date when it is reduced to writing, signed and dated by the hearing examiner. Decisions will be delivered or mailed by the hearing examiner to parties of record and each individual County Commissioner on the date it is rendered or on the next regular working day thereafter. In some cases, notice of the decision may be provided pursuant to applicable administrative codes.

(c) The person making application to the hearing examiner for any final decision that is entitled to judicial review, is a necessary and indispensable party to any action seeking judicial review.

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

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

(a) *Initiation of application* An application for a rezoning, special exception, ~~special permit~~ or variance may be initiated by:

- (1) A landowner, or his authorized agent, for his own property, provided, however, that
 - a. Except as provided in subsections (a)(1)b and c of this section, where there is more than one owner, either legal or equitable, then all such owners must jointly initiate the application or petition.
 1. This ~~shall not be construed to require~~ does not mean that both a husband and wife must initiate the application on private real property which is owned by them.
 2. Where the property is subject to a land trust agreement, the trustee may initiate the application.
 3. Where the fee owner is a corporation, any duly authorized corporate official may initiate the application.

- 4 Where the fee owner is a partnership, the a general partner may initiate the application.
 - 5 Where the fee owner is an association, the association or its governing body may appoint an agent to initiate the application on behalf of the association
 - b. Where the property is a condominium or a timeshare condominium, as defined and regulated in F.S. chs 718 and 721, respectively, an application or petition may be initiated by both the condominium association and no less than 75 percent of the total number of condominium unit owners, or by both the owners' association and no less than 75 percent of timeshare condominium unit owners.
 - 1 For purposes of this subsection, each individually owned condominium unit within the condominium complex and each individually owned timeshare unit as defined by F S ch 721 counts as one unit, regardless of the number of individuals who jointly own the unit
 2. In order to verify ownership, the applicants shall must furnish the county, as part of their application, a complete list of all unit owners, identified by unit number and timeshare period, as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants, who shall must verify the list and fact of notice by sworn affidavit
 - 3 So as to protect the legal rights of nonparticipating unit owners, the application shall must be accompanied by a letter of opinion from a licensed Florida attorney, who shall must attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents or timeshare documents, as applicable, and concluded that the act of applying or petitioning to the county violates none of the provisions therein, or any federal or state law regulating condominiums or timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the county would violate no such rights
 - c. Where the property is a subdivision, an application or petition may be initiated by no less than 75 percent of the total number of lot or parcel owners and the homeowners' association, if applicable
 - 1 For purposes of this subsection, a subdivision is an area of property defined by a specific boundary in which lot divisions have been established on a plat that has been recorded in either a plat book or official records book whereby legal descriptions are referred to by lot or parcel number. This term may include any unit or phase of the subdivision and not the entire subdivision.
 2. In order to verify ownership, the applicants shall must furnish the county, as part of their application, a complete list of all lot owners, identified by lot number, along with proof that all lot owners who did not join in the application were given actual written notice thereof by the applicants, who shall must verify the list and fact of notice by sworn affidavit
- (2) The county, which for purposes of this section shall means the Board of County Commissioners
- a ~~The Board of County Commissioners.~~
 - b ~~The hearing examiner, subject to approval by the Board of County Commissioners.~~
- (b) Application submittal and official receipt procedure. The application procedure and requirements in this section shall apply to all applications for rezoning, special exceptions, ~~special permits~~ and variances.
- (1) ~~All properties within a single application shall must be contiguous, abutting. The director may, at his discretion, allow a single application to cover noncontiguous non-abutting properties where it is in the public interest due to the size or scope and nature of the request, and there is a rational continuity to the properties in question.~~
 - (2) No application shall may be accepted unless it is presented on the official forms provided by the department, or on county approved computer-generated forms containing the same information ~~accompanied by a hold harmless agreement for the utilization of computer-generated forms~~
 - a Forms shall must include but not be limited to disclosure forms for corporations, trusts and partnerships, and disclosure of information regarding contract purchases and their percentages of interest

- b Disclosure ~~shall will~~ not be required of any entity whose interests are solely equity interests which are regularly traded on an established securities market in the United States or another country.
 - c. ~~Disclosure forms, shall be established by an administrative code, to be approved by the Board of County Commissioners. Such completed disclosure forms shall must be included in the materials distributed to the zoning hearing examiner and the Board of County Commissioners for all zoning cases in which the Board of County Commissioners has the final decision or for which jurisdiction has been taken.~~
 - d Subsections (b)(2)a through c of this section ~~shall do~~ not apply to county-initiated rezonings
- (3) Before an application may be accepted, it must fully comply with all information requirements enumerated in sections 34-202 and 34-203, as applicable, unless specifically stated otherwise in this chapter.
 - (4) The applicant ~~shall must~~ ensure that an application is accurate and complete. Any additional expenses necessitated because of any inaccurate or incomplete information ~~submitted shall will~~ be borne by the applicant
 - (5) ~~The department shall review all applications for completeness. All applications shall be deemed complete unless a letter advising the applicant of any deficiencies has been mailed within ten working days of the date of the original filing. All amended applications shall must similarly be deemed complete unless a subsequent letter advising the applicant of any deficiencies has been mailed within ten working days of the date of the resubmittal.~~
 - (56) Upon receipt of the completed application form, all required documents and the filing fee, the department will place the request on the appropriate agenda and inform the applicant of the hearing dates, or, in the case of planned development applications, begin reviewing the application for sufficiency pursuant to section 34-373(a)(3).

Sec. 34-202. General submittal requirements for applications requiring public hearing.

(a) ~~County-initiated All applications~~ Every county-initiated request for actions requiring a public hearing under this chapter ~~shall must~~ include the following However, upon written request the director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request and the director's written response must accompany the application submitted and will become a part of the permanent file

- (1) Legal description The request ~~shall include~~ A legal description of the property ~~upon which the action is to be initiated, sufficiently detailed so as to locate the property on county maps or aerial photographs.~~ The legal description ~~shall must~~ include a copy of the plat, if any, and the county STRAP number (s). The director has the right to reject any legal description which is not sufficiently detailed so as to locate the property on county maps or section aerial maps.

- (2) Boundary sketch A boundary sketch unless the subject property consists of one or more undivided platted lots. If the application includes multiple abutting parcels, the legal description must describe the perimeter boundary of the total area, but need not describe each individual parcel. However, the STRAP number for each parcel must be included. The director may require that a certified survey boundary sketch be submitted where there is a question regarding the accuracy of the legal description of the property.

If the request is owner-initiated, the boundary sketch must include the location of existing structures on the property.

- (3) Confirmation of Ownership If at any time during the review process the director concludes there is a question regarding ownership of the property, the director may require a title insurance policy, attorney's opinion of title, or owner's and encumbrance report.
- (42) Area location map. ~~The request shall include~~ A map, at suitable scale, indicating the property described in the legal description. The map ~~shall must~~ be sufficiently referenced to known major streets or other physical boundaries so as to be clearly identifiable to the general public
- (53) Property owners list ~~The request shall include~~ A complete list of all property owners, and their mailing

addresses, for all property within the area described. For the purpose of this subsection, names and addresses of property owners shall be deemed to be those appearing on the latest tax rolls of the county. The applicant shall be responsible for the accuracy of such list.

(6) *Surrounding property owners list.* A complete list of all property owners, and their mailing addresses, for all property within 375 feet of the perimeter of the subject parcel or the portion thereof that is the subject of the request. For the purpose of this subsection, names and addresses of property owners will be deemed to be those appearing on the latest tax rolls of the county at the time of sufficiency. The applicant is responsible for the accuracy of such list.

This list is for the purpose of mailing notice to property owners within 375 feet of the property described. The notice is a courtesy only and is not jurisdictional. Accordingly, the county's failure to mail or to timely mail such notice or failure of any affected property owner to receive mailed notice will not constitute a defect in notice or bar the public hearing as scheduled.

(7) *Property owners map.* A map displaying all parcels of property within 375 feet of the perimeter of the subject parcel or the portion thereof that is the subject of the request. This map must reference by number or other symbol the names on the property owners list. The applicant is responsible for the accuracy of the map.

(4) *Land use classification.* The request shall include the Lee Plan land use classification for the property in question.

(8) *Additional material.* Additional material, depending on the specific type of action requested, may be required as set forth in section 34-202(b) and 34-203.

(5)(9) *Filing fee.* All fees, in accordance with the duly adopted fee schedule (see section 34-53), for county-initiated applications shall be paid at the time the application is submitted to the department in accordance with the duly adopted fee schedule (see section 34-53).

(b) *Additional submittal requirements for Owner-initiated applications.* In addition to the submittal requirements set forth in (a), every application involving changes in zoning district boundaries, or a request for special exception, variance or special permit, initiated by a landowner, or his authorized agent, for his own property, shall must include the following

(1) *Authority.*

a. *The application shall include* The names of all parties having interest in the subject property, to include including the names of all stockholders and the names of beneficiaries of trusts

b. If the owner(s) has authorized an agent to prepare and sign the application and to represent him in all matters pertaining to the application, applicant has an agent, the agent shall provide a notarized document establishing his authority which has been signed by the owner and notarized by a notary public. To represent the applicant as part of the application

c. If the property is subject to a contract for purchase and the vendee is the applicant, the applicant must submit a notarized authorization form from the landowner to the applicant shall also be required as part of the application

(2) *Legal description.* A legal description of the subject property sufficiently detailed so as to locate the property on county maps or aerial photographs shall be submitted. The legal description shall include a copy of the plat, if any, and the county CTRAP number. A boundary sketch shall also be required unless the subject property is vacant and consists of one or more undivided platted lots. The boundary sketch shall include the location of any existing structures on the property. If the application includes multiple contiguous parcels, the legal description shall must describe the perimeter boundary of the total area, but need not describe each individual parcel. However, the CTRAP number for each parcel must be included. The director shall have the right to reject any legal description which is not sufficiently detailed so as to locate the property on section aerial maps, and the director may require that a certified survey boundary sketch be submitted.

(3) *Property owners list.* The application shall include a complete list of all property owners, and their mailing addresses, for all property within 375 feet of the perimeter of the subject parcel or the portion thereof that is the subject of the request. For the purpose of this subsection, names and addresses of property owners shall must

be deemed to be those appearing on the latest tax rolls of the county. The applicant shall must be responsible for the accuracy of such list.

(4) ~~Property owners map~~ The application shall must include a county zoning map or other similar map displaying all of the parcels of property within 375 feet of the perimeter of the subject parcel or the portion thereof that is subject of the request, referenced by number or other symbol to the names on the property owners list. The applicant shall must be responsible for the accuracy of the map.

(25) Property Deed restrictions The application shall must include a copy of the deed restrictions or other types of covenants and restrictions on the subject parcel, if any, along with a statement as to how the deed restrictions may affect the requested action. If there are no restrictions on the property, the applicant must indicate so on the application form

(6) ~~Land use classification~~ The application shall include the Lee Plan land use classification for the subject property

(37) Affidavit regarding proposed use If buildings or structures exist on the property, the applicant shall must submit an affidavit stating that the buildings and structures will be removed or that the proposed use of the buildings, structures and land is, or will be, in compliance with all applicable requirements of chapter 10 and this chapter code.

(8) (4) Hazardous materials emergency plan for port facilities Any applicant seeking a rezoning for a private port facility shall be required to must submit a hazardous materials emergency plan, which shall will be subject to the approval of the county divisions of emergency management, water resources and planning, and of the appropriate fire district. The plan shall must also provide for annual monitoring for capacity and effectiveness of implementation. At the minimum, the plan shall must comply with the spill prevention control and countermeasure plan (SPCC) as called for in the federal oil pollution prevention regulations, 40 CFR 112, as amended

(9) ~~Additional material~~ Additional material, depending on the specific type of action requested, shall must be required as set forth in section 34-203(a) through (g).

~~(c) Modifications to submittal requirements~~ Upon written request, the director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request and the director's written response must accompany the application submitted and will become a part of the permanent file.

Sec. 34-203 Additional requirements for owner-initiated applications requiring public hearing

(a) Developments of regional impact All developments of regional impact shall must comply with the information submittal and procedural requirements of F.S. ch. 380, as administered through the Southwest Florida Regional Planning Council. If the development of regional impact requires specific zoning actions (i.e., rezoning), the intent of the procedures and requirements of section 34-202; this section and article IV of this chapter shall must be met. Additionally, even if the development of regional impact does not require any specific zoning action, the applicant must submit a traffic impact statement, as described in section 34-373(a)(2)c and detailed in section 10-286, ~~shall be submitted~~. Thresholds for developments of regional impact can be found in Florida Administrative Code chapter 27F2.

(b) Planned Developments All Planned Developments must comply with the additional information submittal and procedural requirements set forth in section 34-373.

~~(b) Determination of development of county impact status~~ ENTIRE SUBSECTION (b) MODIFIED AND MOVED TO SECTION 342.

(1) ~~Any owner or agent wishing a determination of the development of county impact status of his property shall apply to the director and pay a fee to cover administrative costs.~~

(2) ~~Any development which is less than 80 percent of the thresholds listed in section 34-341(b) is conclusively presumed not to be a development of county impact. Any development which is more than 80 percent but less than 100 percent of the appropriate threshold is rebuttably presumed not to be a development of county impact. Any development which is more than 100 percent but less than 120 percent of any threshold is rebuttably presumed to be a development of county impact. Any development which exceeds 120 percent of any threshold is conclusively presumed to be a development of county impact.~~

~~(3) The director shall consider the following items in determining the development of county impact status of a proposed rezoning or special exception:~~

- ~~a. The compatibility of the proposed zoning district with neighboring zoning districts and uses;~~
- ~~b. The impact of the proposed zoning change on existing and proposed transportation facilities;~~
- ~~c. The impact of the proposed zoning change on other urban services, as defined in the Lee Plan, and~~
- ~~d. The impact of the proposed zoning change on environmentally critical areas.~~

~~(4) For the purpose of determining whether a parcel is a development of county impact, all contiguous parcels which are in common ownership or control may be identified and taken into account in both determining development of county impact status and estimating the impacts of any proposed development.~~

~~(5) The director's decision is an administrative decision which may be appealed in accordance with the procedure in this article.~~

~~(c) Rezoning other than developments of regional impact or developments of county impact~~

~~(1) All requests for rezonings, other than those determined to be a development of regional impact or a development of county impact, shall must include a statement of the basis or reason for the rezoning. Such statement is to be directed, at a minimum, to the guidelines for decision - making embodied in section 34-145(d)(2). This statement may be utilized by the Board of County Commissioners, hearing examiner and staff in establishing a factual basis for the granting or denial of the rezoning.~~

~~(2) Applications for rezonings are required to comply with section 34-202(b).~~

~~(d) Special exceptions Except for special exceptions which are developments of county impact (see sections 341 and 342), as preempted under subsection (b)(3) of this section, every owner initiated all applications for a special exception shall must, in addition to the requirements of section 34-202(a) & (b), include the following:~~

~~(1) A statement as to how the property qualifies for the special exception requested, and what impact granting the request would have on surrounding properties. Such statement shall must be directed, at a minimum, to the guidelines for decision-making embodied in section 34-145(d)(2). This statement may be utilized by the hearing examiner and staff in establishing a factual basis for granting or denial of the special exception.~~

~~(2) A site development plan detailing the proposed use, including, where applicable, the following~~

- ~~a. The location and current use of all existing structures on the site, as well as those on adjacent properties within 100 feet of the perimeter boundaries of the site.~~
- ~~b. All proposed structures and uses to be developed on the site~~
- ~~c. Any existing public streets, easements or land reservations within the site, and the proposed means of vehicular access to and from the site.~~
- ~~d. A traffic impact analysis of projected trip generation for the development.~~
- ~~e. Proposed fencing and screening, if any~~
- ~~f. Any other reasonable information which may be required by the director which is commensurate with the intent and purpose of this chapter~~

~~(3) Solar or wind energy modifications If the request is to modify property development regulations for the purposes of using solar or wind energy, evidence shall be submitted that the proposed modifications are the minimum necessary to provide for the solar or wind energy proposal and that the proposed modifications will not adversely affect adjacent properties. (See section 34-2196)~~

~~(4) Temporary Parking Lot If the request is for a temporary parking lot~~

- a. The site plan must show all existing and proposed parking spaces and drives, both paved and unpaved, vehicle access points, and lighting, if any.
 - b. An analysis indicating the need for the temporary parking lot, as well as the anticipated frequency of use must be submitted.
 - c. If the temporary parking lot is off the premises of the principal use, plans for providing for traffic control and pedestrian safety must be submitted.
- (5) On-premises consumption of alcoholic beverages If the request is for a consumption on premises permit:
- a. The property owners list and map [see section 34-202 (a)(4) & (5)] must be modified to include all property within 500 feet of the perimeter of the subject property.
 - b. The site plan must include a detailed parking plan.
 - c. A written statement describing the type of state liquor license to be acquired, e.g., 2 COP, SRX 11C etc., and the anticipated hours of operation for the business, must be submitted.
- (6) Harvesting of cypress (*Taxodium spp*) An application for a Special Exception to harvest cypress must include:
- a. An aerial photograph with vegetation associations mapped as listed in the Florida Land Use, Cover, and Forms Classification System (FLUCCS).
 - b. A forest management plan for the proposed harvesting site.
 - c. Steps which will be taken to ensure that the proposed activity will not have an adverse affect on the environmental sensitivity of the area.
- (7) Joint parking Applications for joint parking lots must include:
- a. A notarized statement from all property owners involved indicating the use of each property and that the activities of each separate building or use which create a demand for parking will occur at different times.
 - b. Written agreements, covenants, contracts and the like, acceptable to the county which ensure that the parking area is to be used jointly and establish the responsibility for maintenance.
 - c. A backup plan to provide sufficient parking if the joint agreement is violated by either party.
- Violation of the agreement for joint use of off-street parking is sufficient grounds for revocation of the special exception.
- (8) Private aircraft landing facilities Applications for private aircraft landing facilities must:
- a. Indicate the type of facility, as set forth in Florida Administrative Code chapter 14-60.
 - b. Indicate on the site plan the proposed location and length of the effective landing length, as well as the area included in the approach zone.
 - c. Submit a certified list of all airports and municipalities within 15 miles of the proposed site and all property owners within 1,000 feet of the property or within the minimum required approach zone, whichever is greater.

The department of community development will forward a copy of the application to the department of airports for comment prior to any public hearings. No proposed airport will be granted a special exception if the department of airports finds that the proposed site would interfere with any other lawfully existing aircraft landing facility, airport or heliport.

All property owners listed in subsection (d)(7)c of this section will be sent written notice by certified mail, return receipt requested, of the date, time and place of any public hearing. The applicant will bear the cost of the notification.

(e) *Variances* Every owner-initiated application for a variance from the terms of this chapter shall must, in addition to the requirements of section 34-202 (a) & (b), include the following.

(1) A document describing

- a The section number and the particular regulation of ~~this chapter~~ the Land Development Code from which relief (variance) is requested,
- b The reason why the variance is needed,
- c What effect, if any, granting of the variance would have on adjacent properties; and
- d The nature of the hardship which is used to justify the request for relief

(2) A site plan describing

- a Existing public streets, easements or other reservations of land within the site;
- b All existing and proposed structures on the site,
- c All existing structures within 100 feet of the perimeter boundary of the site, and
- d The proposed ~~deviation~~ variance from the adopted standards.

(3) ~~All other information required by the official forms provided by the department, and~~ Any other reasonable information which may be required by the department which is commensurate with the intent and purpose of this chapter code.

(4) Variance from required street setbacks on collector and arterial roads For a variance from a collector or arterial street setback, the applicant

- a May modify the property owners list and property owners map [see section 34-202 (a) (4) & (5)] to show only the names and locations of property owners which abut the perimeter of the subject property
- b Must submit a site plan, drawn to scale, showing
 - 1 All structures, easements, and rights-of-way, etc., within 100 feet of the peripheral boundary of the subject property.
 - 2 The location of all proposed structures, easements, rights-of-way and vehicular access onto the property, including entrance gates or gatehouses, and
 - 3 The extent of modification from street setbacks requested

(f) Use variance ~~It is hereby noted that~~ Use variances are not legally permissible, and no application for a use variance will be processed. Department staff will notify the applicant when a more appropriate procedure, e.g., rezoning or special exception or special permit, is required

(g) ~~Special permits~~ Except as specifically stated otherwise in this chapter, all owner-initiated applications for special permits must contain the information required by section 34-202(b), as well as the following information:

(1) ~~Modification of street setbacks.~~

- a ~~Property owners list~~ The property owners list and property owners map (see section 34-202 (b)(3) and (4)) may be modified to show only the names and locations of property owners which abut the perimeter of the subject property.
- b. ~~Site development plan~~
 - 1. ~~The site plan must include~~ All structures, easements, rights-of-way, etc., within 100 feet of the peripheral boundary of the subject property.

~~2. A site plan showing The location of all proposed structures, easements, rights-of-way and vehicular access onto the property, including entrance gates or gatehouses, must be included;~~

~~3. The extent of modification from street setbacks being requested must be shown~~

~~(2) Temporary parking lots:~~

- ~~a. In addition to the requirements of section 34-202 (a) & (b), the applicant shall submit A site plan showing all existing and proposed parking spaces and drives, both paved and unpaved, vehicle access points, and lighting, if any.~~
- ~~b. An analysis indicating the need for the temporary parking lot, as well as the anticipated frequency of use shall be included~~
- ~~c. If the temporary parking lot is off the premises of the principal use, provisions for traffic control and pedestrian safety shall be provided~~

~~(3) On-premises consumption of alcoholic beverages~~

- ~~a. The property owners list and map [see section 34-202(b)(3) and (4)] shall be modified to include all property within 500 feet of the perimeter of the subject property.~~
- ~~b. A site plan of the property, including a detailed parking plan, shall be submitted~~
- ~~c. A written statement shall be submitted which describes the type of state liquor license to be acquired, e.g., 2-COP, SRX, 11C, etc., and the anticipated hours of operation for the business~~

~~(4) Harvesting of cypress (Taxodium spp.).~~

- ~~a. In addition to the requirements of section 34-202 (b)(3) and (4), the applicant shall submit An aerial photograph with vegetation associations mapped as listed in the Florida Land Use, Cover, and Forms Classification System (FLUGCS)~~
- ~~b. A forest management plan shall be submitted for the proposed harvesting site~~
- ~~c. Steps which will be taken to ensure that the proposed activity will not have an adverse affect on the environmental sensitivity of the area shall be included~~

~~(5) Joint parking~~

~~a. The following shall be submitted with the application:~~

- ~~1. A notarized statement from all property owners involved indicating the use of each property and that the activities of each separate building or use which create a demand for parking shall occur at different times~~
- ~~2. Written agreements, covenants, contracts and the like, acceptable to the county, which ensure that the parking area is to be used jointly and establish the responsibility for maintenance.~~
- ~~3. A backup plan to provide sufficient parking if the joint agreement is violated by either party.~~

~~b. Violation of the agreement for joint use of off-street parking shall be sufficient grounds for revocation by the county of the special permit~~

~~(6) Solar or wind energy modifications. Evidence shall be submitted that the proposed modifications are the minimum necessary to provide for the solar or wind energy proposal and that the proposed modifications will not adversely affect adjacent properties~~

~~(7) Private aircraft landing facilities~~

~~a. The applicant shall indicate in the application the type of facility, as set forth in Florida Administrative Code~~

~~chapter 14-60, being proposed~~

- ~~b A site plan, drawn to scale, shall be submitted, showing the proposed location and length of the effective landing length, as well as the area included in the approach zone~~
- ~~c The application shall include A certified list of all airports and municipalities within 15 miles of the proposed site and all property owners within 1,000 feet of the property or within the minimum required approach zone, whichever is greater.~~
- ~~d The department of community development will forward a copy of the application to the department of airports for comment prior to any public hearings. No proposed airport shall be granted a special permit if the department of airports finds that the proposed site would interfere with any other lawfully existing aircraft landing facility, airport or heliport~~
- ~~e All property owners listed in subsection (g)(7)c of this section shall be sent written notice by certified mail, return receipt requested, of the date, time and place of any public hearing. The applicant shall bear the cost of the notification.~~

(g) Modifications to submittal requirements. Upon written request, the director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request and the director's written response must accompany the application submitted and will become a part of the permanent file

Sec. 34-204 Applications for development approval. Reserved

~~All applications for development shall be in accordance with the procedures and regulations set forth in chapter 10~~

Sec. 34-205. Applications for building permits. Reserved

~~(a) All applications for building permits shall be in compliance with this chapter as well as~~

~~(1) Chapter 10;~~

~~(2) The county building code, and~~

~~(3) All other applicable county or state regulations~~

~~(b) An application for a building permit for property subject to a deed of restrictions recorded in the office of the clerk of the county court shall contain a statement signed by the applicant that such application complies with the applicable deed of restrictions~~

Sec. 34-206. Grading permits. Reserved

~~All grading and contouring of property, including alteration of drainage, shall be done in compliance with the procedures and regulations set forth in chapter 10 or other county development regulations.~~

Sec. 34-207 Excavations permit for stormwater retention facilities:

~~(a) Applicability~~

~~(a1) This section shall apply to any Grading or excavation activities which are intended primarily to provide for the retention or detention of stormwater runoff in which the excavated material is retained and used for grading of the premises. must obtain a development order in compliance with procedures set forth in Chapter 10~~

~~(2) If any of the natural materials or deposits are removed or are to be removed from the subject property, the excavation permit shall be issued only in conformance with article VII, division 15, of this chapter.~~

~~(b) Issuance An excavation permit for water retention or detention shall be issued in accordance with the procedures set forth in chapter 10 or other county development regulations. Commercial mining excavations must comply~~

with the requirements and procedures set forth in sections 34-1651 thru 34-1682 of this chapter

Sec. 34-211. Denials and resubmission of applications

(a) Denial with prejudice.

- (1) Except when specifically stated otherwise, a denial by the hearing examiner or Board of County Commissioners is a denial with prejudice
- (2) If an application is denied, no similar application for rezoning, special exception, ~~or variance or special permit~~ covering the same property, or portion of the property, shall be resubmitted or initiated for a period of 12 months from the date of denial. However, this shall not preclude the application for a different rezoning, special exception; ~~or variance or special permit~~ which in the opinion of the administrative official is substantially different from the request originally denied

(b) Denial without prejudice

- (1) When the hearing examiner or Board of County Commissioners denies without prejudice any application, it is an indication that, although the specifically requested action is denied, the hearing examiner or board is willing to consider the same request after modifications have been made, or an application for other action, without the applicant having to wait 12 months before applying for consideration of the modified request or other action.
- (2) Any resubmitted application shall clearly state the modifications which have been made to the original request or other changes made in the application

DIVISION 7. PUBLIC HEARINGS AND REVIEW

Sec. 34-232. Required hearings.

(a) Amendment or adoption of land use ordinances

- (1) Any proposed amendment to this chapter or to any land use ordinance, or adoption of any new land use ordinance, ~~shall~~ must be enacted pursuant to the requirements set forth in F.S. 125.66 (5)
- (2) Prior to a final required hearing by the Board of County Commissioners, the local planning agency ~~shall~~ must review the amendment at a public hearing

(b) Board of County Commissioner initiated rezoning of private property including ancillary variances, special exceptions

- (1) Applications for less than 10 contiguous acres of land will require one public hearing before the Hearing Examiner and one public hearing before the Board of County Commissioners.
- (2) Applications for 10 or more contiguous acres of privately owned property will require one public hearing before the Hearing Examiner and two public hearings before the Board of County Commissioners. The public hearings before the Board of County Commissioners must be in accordance with F.S. Section 125.66(4)(b).

(c) Privately initiated requests for Developments of Regional Impact, rezonings, and ancillary variances and special exceptions, require one public hearing before the Hearing Examiner and one public hearing before the Board of County Commissioners

(d) Variances and special exceptions that are not ancillary to an application for rezoning or a Development of Regional Impact and all Administrative Appeals of decisions of the director pertaining to the interpretation of the Land Development Code require one public hearing before the Hearing Examiner.

~~(b) Rezoning, developments of regional impact, and special exceptions, special permits and variances submitted for simultaneous review.~~

- (1) ~~Any application requesting a rezoning, a development of regional impact or a special exception that meets the criteria for a development of county impact, and any special exception, variance or special permit submitted for~~

simultaneous review with a development of regional impact or rezoning on less than five percent (26,726 acres) of the total land area of the county, shall require a minimum of one public hearing before the hearing examiner and one public hearing before the Board of County Commissioners.

- (2) ~~Any application listed in subsection (b)(1) of this section which affects five percent (26,726 acres) or more of the total land area of the county shall require a minimum of one public hearing before the hearing examiner and two public hearings before the Board of County Commissioners. Both hearings by the Board of County Commissioners shall be held after 5:00 p.m. on a weekday.~~

~~(c) Other special exceptions, special permits and variances, administrative appeals. Except for those special exceptions, special permits and variances included in subsection (b) of this section, any application for a special exception, variance, administrative appeal or special permit shall require a minimum of one public hearing before the hearing examiner.~~

Sec. 34-233. Preliminary review and notice certification

(a) Staff review

- (1) No application for a ~~land use ordinance amendment, rezoning, special exception, development of regional impact, special permit or variance, appeal or any other action required by this chapter to proceed through the public hearing process shall~~ may be heard by the hearing examiner or Board of County Commissioners, ~~as applicable~~, until after the department staff has reviewed and prepared written comments on the requested action.
- (2) All staff comments ~~shall~~ will be forwarded to the hearing examiner or Board of County Commissioners, ~~as applicable~~, prior to the scheduled public hearing.

~~(b) Other reviews. No application or proposed land use ordinance amendment required under the provisions of this chapter to be reviewed by the local planning agency prior to review by the Board of County Commissioners shall be heard for final consideration by the Board of County Commissioners prior to receiving a substantive recommendation of the local planning agency. As used in this subsection, a motion to continue a matter by the local planning agency shall not be considered a substantive recommendation.~~

~~(c) Notice certification and affidavits. No public hearing shall~~ may be commenced by the hearing examiner, local planning agency or Board of County Commissioners unless affidavit proof of required notice publication, posting and mailing, if applicable, is presented to the hearing examiner, local planning agency or Board of County Commissioners for review and submitted to the records keeper for filing with the minutes of the meeting.

Sec. 34-234. Public participation.

(a) *Participation before hearing examiner or local planning agency.* At a public hearing before the hearing examiner or local planning ~~commission~~ agency, all persons shall will be heard. However, the hearing examiner or local planning agency ~~shall have~~ has the right to refuse to hear testimony which is irrelevant, repetitive, defamatory or spurious, and to establish reasonable time limits on testimony.

(b) Participation before Board of County Commissioners

- (1) ~~Land use ordinance amendments or adoption hearings. At a public hearing before the Board of County Commissioners, all persons shall be heard. However, the Board of County Commissioners shall have the right to refuse to hear testimony which is irrelevant, repetitive, defamatory or spurious.~~

- (2) *Zoning matters.* At public hearings of zoning matters, only a participant party of record, or his representative, ~~to at the proceeding before the hearing examiner shall~~ will be afforded the right to address the Board of County Commissioners, but only as to the correctness of findings of fact or conclusions of law contained in the record, or to allege the discovery of relevant new evidence which was not known by the speaker at the time of the hearing ~~before the hearing examiner and not otherwise disclosed in the record. Additionally,~~

~~†~~The Board of County Commissioners may orally question its staff, its attorneys and any ~~party of record~~ participant who is present about matters contained in the written record and points of law or procedure.

Sec. 34-235. ~~Deferral, postponement,~~ or continuance of public hearing.

The following procedures and regulations for deferring or continuing a public hearing shall apply for the hearing examiner, local planning agency and Board of County Commissioners

- (1) *Deferral* A scheduled but not yet advertised public hearing may be deferred by the ~~department~~ division staff or by the applicant as follows.

- a *County-initiated deferral* ~~Department staff~~ The division of zoning and development services or the hearing examiner may initiate a deferral of ~~defer~~ a scheduled public hearing prior to advertising, if additional or corrected information is required to permit staff to properly or adequately review a requested application; provided that notice is mailed to the applicant, or his authorized agent, stating the reason for the deferral and what additional information is required to complete staff review
- b *Applicant-initiated deferral.* An applicant, or his duly authorized agent, may request a deferral of the public hearing provided that ~~4~~ If the request is in writing and received by the division of zoning and development services appropriate department prior to the division that department's submitting notice of the hearing to the newspaper for publication, and
 2. ~~The applicant agrees to have his application rescheduled in accordance with the scheduling procedures in effect at that time.~~
- c *Fee.* There shall will be no additional fee for either a staff-initiated or applicant-initiated deferral. However, the applicant must obtain corrected zoning notice posters from the division and post the signs on-site
- d. *Staff authority.* Applicant-initiated deferral requests which meet meeting the requirements of subsection (1)b of this section may be deferred by the director without any further action by the hearing examiner, local planning agency, or Board of County Commissioners (as applicable)

If the hearing has already been advertised, the applicant, or his authorized agent, may appear at the hearing and orally request a continuance to a date certain [see subsection (2)b]

- (2) *Continuance* A scheduled, advertised public hearing may be continued by the county or by the applicant as follows.

a *County-initiated continuance*

1. The hearing examiner, local planning agency or Board of County Commissioners, upon staff request, or upon its own initiative, may continue a public hearing when it is deemed necessary to require additional information, public testimony or time ~~in order to render an appropriate recommendation.~~ Any Board initiated request to continue a public hearing must be in accordance with the rules set forth in AC 1-3
2. The ~~county-initiated~~ hearing shall must be continued to a date certain, and the hearing examiner, local planning agency or Board of County Commissioners shall must continue its consideration on the hearing matter on that date certain.
3. There shall are be no limitations on the number of county-initiated continuances
4. The county shall must bear all renofication costs of any county-initiated continuance

b. *Applicant-initiated continuance.*

1. The applicant, or his duly authorized agent, may shall submit the request in writing to, and the request shall be received by, the appropriate department prior to the advertised or hearing date, or the applicant or his duly authorized agent shall appear before the hearing examiner, local planning agency or Board of County Commissioners at the beginning of its scheduled agenda and orally request the continuance
2. The hearing examiner, local planning agency or Board of County Commissioners may either deny or grant the request for continuance
 1. If the request for continuance is denied, the hearing shall will proceed in accordance with the published

agenda

- ii. If the request for continuance is approved, the hearing examiner, local planning agency or Board of County Commissioners may set a date certain for hearing the application
- 3 The applicant shall will be entitled to one continuance before each decision-making body as a matter of right. Each decision-making body shall have has the authority to grant additional continuances upon a showing of good cause
- 4 A fee, in accordance with a duly adopted fee schedule, shall will be charged for any applicant-initiated continuance to cover the costs of renotification.

Sec. 34-236 Notices.

(a) *Minimum required information* A notice of public hearing under this chapter shall must contain the following minimum required information:

(1) *Action proposed*

- a *Land use ordinance amendments or adoption* The notice shall must describe the chapter or section of the land use ordinance to be amended, or the subject of a new ordinance, with sufficient clarity so as to advise the public of the subject to be amended or adopted, but need not describe the exact wording or change
 - b *Rezoning and developments of regional impact.* All required notices shall must indicate the existing zoning of the property, the proposed zoning and the general location of the property, by reference to common street names and addresses, ~~covered by the application~~, with sufficient certainty so as to advise the public, but need not describe the proposed plans or details thereof, or the specific legal description of the property
 - c. ~~*Special exceptions, special permits and variances*~~ All required notices shall must indicate the existing zoning of the property, the proposed use by special exception ~~or special permit~~, or the requirement from which the variance is ~~being requested~~ and the actual degree of variance ~~being requested~~; and the location of the property, by reference to common street names and addresses, with sufficient certainty so as to advise the public, but need not describe the proposed plans or details thereof or the specific legal description of the property.
 - d *Appeals* The notice shall summarize the decision or action upon which the appeal is based with sufficient clarity so as to advise the public of the subject matter.
- (2) *Time and place of hearing* The notice shall must specify the date, time and place that the public hearing will be held by the hearing examiner, the local planning agency or the Board of County Commissioners, as applicable
- (3) *Public availability of information.* The notice shall must indicate where copies of the proposed amendment may be obtained or reviewed, or where the application for public hearing may be reviewed
- (4) *Location of record of notice* ~~A copy of such notice shall be kept available for public inspection during the regular business hours at the office of the department of community development or hearing examiner, as appropriate, and indicated in the notice-~~
- a The copy of notices for the adoption or amendment of land use ordinances will be kept available for public inspection during regular business hours at the Office of the Clerk of the Board of County Commissioners.
 - b. Copies of all other notices will be kept available for public inspection during regular business hours at the Office of the Department of Community Development or Hearing Examiner, as appropriate.

(b) *Method of providing notice.* Notices of hearings before the Board of County Commissioners, the Hearing Examiner and the Local Planning Agency shall will be provided in accordance with applicable statutes and ~~as may be set forth in the County Administrative Code subject to the requirements of sub-section (a) of this Section~~

The "Surrounding property owners list and map" required by Section 34-202(a) is for the purpose of mailing notice to property owners within 375 feet of the property described. The notice is a courtesy only and is not jurisdictional

Accordingly, the county's failure to mail or to timely mail such notice or failure of any affected property owner to receive mailed notice will not constitute a defect in notice or bar the public hearing as scheduled

Sec. 34-268. Administrative setback variances

(a) The director is authorized to modify the setbacks in sections 34-651 through 34-1041 and 34-1744 (residential fences only) of this chapter under the following circumstances.

- (1) Street, rear, side, or waterbody setbacks may be modified to permit the remodeling of or additions to existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition will not result in
 - a ~~The remodeling or addition will not result in~~ An increase in the height of the structure, and
 - b ~~The remodeling or addition will not result in~~ A further diminution of the setback. The director may approve bay windows, chimneys and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.
- (2) Street, rear, side, or waterbody setbacks may be modified to permit the construction of a handicapped access appurtenant to any existing structure
- (3) Street, rear, side, or waterbody setbacks may be modified to allow the replacement of stairs or decking that provides access into an existing dwelling unit
- (4) Street, rear, side, or waterbody setbacks may be modified to legitimize minor errors in setbacks at the time of construction
- (5) Street (local streets only), rear or side setbacks for lots that qualify for a single family determination, pursuant to the Lee Plan, may be modified to permit the construction of a single-family dwelling unit so long as the proposed lot coverage does not exceed 45 percent
- (6) Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted may also be reviewed by the director for consideration under this section.

ARTICLE IV. PLANNED DEVELOPMENTS

DIVISION 1. GENERALLY

Sec. 34-341. Employment of planned development designation.

(a) The Lee Plan requires that developments of county impact ~~must to~~ be developed as planned developments. These developments of county impact, defined in subsection (b) of this section, if not already zoned for the use desired, must be rezoned only to the most applicable planned development category. Other proposed developments, regardless of size, may seek a planned development designation where the developer desires and the ~~department~~ division director determines that it is in the public interest to do so. Any request for an RPD in areas designated as rural or outer islands in the Lee Plan, which is for the purpose of increasing density over the standard density permitted, will be required to comply with special regulations ~~as set forth in division 4 of this article~~ sections 34-441 & 442 as well as the other ~~requirements set forth in this article~~

(b) The Lee Plan provides that certain owner-initiated rezonings and special exceptions meeting specified thresholds will be reviewed as developments of county impact. The development of county impact thresholds are further categorized as major or minor planned developments as follows

(1) Major Planned Developments

- a (1) A residential development of 300 or more dwelling units;
- b (2) Any residential development proposing a density above the standard density range when located in areas designated as rural or outer islands by the Lee Plan,

- ~~c.(3)~~ A commercial development or activity which is located on a parcel of ten or more acres or which may that includes 100,000 square feet or more of floor area;
- ~~d.(4)~~ An industrial development or activity which is located on a parcel of ten or more acres or which may that includes 100,000 square feet or more of floor area,
- ~~e.(5)~~ Mining/excavation activities on a parcel of 320 or more acres;
- ~~f.(6)~~ Non-commercial schools (except lee county school district) proposed to have over 100 students
- ~~g.(6)~~ Cultural facilities, parks - Group III, race tracks , and correctional facilities and prisons. -An institutional, public or quasi public development or activity, not including health care facilities or a place of worship, on ten or more acres of land;
- ~~h.(7)~~ A, health care facility - group IV (hospital) or group home of 50 or more beds, that is not a part of a residential or commercial or community facility planned development;
- ~~i.(8)~~ Any other development required to apply for planned development zoning as set forth in pursuant to section 34-901 thru 34-904 article VI, division 9, of this chapter for the RVPD, CFPD, IPD and AOPD districts, or as set forth in article VI, division 10, subdivision IV, of this chapter for PUD districts, and as set forth in sections 34-2471 thru 2479, article VII, division 35, of this chapter, pertaining to sports/amusement parks and recreational facilities;
- ~~j.(9)~~ Any development on land falling located within a the general, general commercial, industrial or industrial commercial interchange area as specified by the Lee Plan and its attendant land use plan map;
- ~~k.(10)~~ Any combination of residential, commercial, institutional or industrial the above-listed land uses where the sum of the percentages of each applicable individual threshold is equal to or greater than 100 percent,
- ~~l.(11)~~ Any development of regional impact not included in subsections (b)(1)(a) through (7 (h) of this section;
- ~~m.(12)~~ Any development which includes the above ground storage of more than 40,000 gallons of petroleum,
- ~~n.(13)~~ Any development proposed under the New Community section of the land use element of the Lee Plan.
- ~~o.(14)~~ Any proposed hotel/motel which will contain more than 200 rental units or which will exceed the equivalency factors set forth in section 34-1802(4) when divided by the Lee Plan maximum standard density for the property in question.

(2) Minor Planned Developments

- ~~a.(6)~~ Any cultural facility not identified as a major planned development (excluding historical sites and art galleries), library, park - group II, public recreational facility (df), or religious facility (excluding place of worship), a institutional, public or quasi public development or activity, not including health care facilities or a place of worship, on ten or more acres of land;
- ~~b.(7)~~ A health care facility - group I. or II, social service - group III or IV -or group home community residential home, continuing care facility (CCF), or hospice, of 50 or more beds, which is not a part of a residential, commercial, or community facility planned development;
- ~~c.(8)~~ Any other development required to apply for planned development zoning as set forth in sections 34-651 thru 34-873 article VI, division 9, of this chapter for the RVPD, CFPD, IPD and AOPD districts, or as set forth in article VI, division 10, subdivision IV, of this chapter for PUD districts, and as set forth in, article VII, division 35, of this chapter, pertaining to sports/amusement facilities;
- ~~d.(e)~~ All Except as listed below, any other applications for planned developments rezoning that does not meet or exceed the thresholds in section 34-341(b)(1)(a) thru (l) will be reviewed as minor planned developments The submittal requirements for a minor planned development are listed in section 34-373(b)(2)-

- 1 (d) Existing Development An application for an existing development, such as a mobile home development, which has already been developed but does not conform to the regulations for a conventional district, that requests a rezoning to a planned development classification will be reviewed as set forth in section 34-373(b)(3) in the same manner as a minor planned development except that a traffic impact statement will not be required.

~~THE FOLLOWING IS FROM 34-373(a)(1) WITH SOME MODIFICATIONS~~

- 2 Amendments to application Applications for amendments to an approved major or minor master concept plan or its attendant documentation, or for the extension of a previously vacated master concept plan (for plans approved prior to December 2, 1991) will be treated procedurally as minor planned developments. These applications will require only as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in development, environment and background (surrounding land use, traffic volumes, water, wastewater and other service availability, etc.), that have occurred since the original application

- (e) ~~Two or more planned development categories may be combined in one application under the following circumstances:~~

- (1) ~~The subject property is divided into development areas, each of which corresponds to a different planned development category, and~~
- (2) ~~Each development area is identified by a legal description~~

- (c) Determination of development of county impact status ~~MODIFIED AND MOVED FROM SUBSECTION 34-203(b)~~

- (1) Any owner wishing a determination of the development of county impact status of his property may apply to the director and pay a fee to cover administrative costs
- (2) Any development which is less than 80 percent of the thresholds listed in section 34-341(b)(1) is conclusively presumed not to be a development of county impact. Any development which is more than 80 percent but less than 100 percent of the appropriate threshold is rebuttably presumed not to be a development of county impact. Any development which is more than 100 percent but less than 120 percent of any threshold is rebuttably presumed to be a development of county impact. Any development which exceeds 120 percent of any threshold is conclusively presumed to be a development of county impact
- (3) The director will consider the following items in determining the development of county impact status of a proposed rezoning or special exception:
- a. The compatibility of the proposed zoning district with neighboring zoning districts and uses.
 - b. The impact of the proposed zoning change on existing and proposed transportation facilities.
 - c. The impact of the proposed zoning change on other urban services, as defined in the Lee Plan, and
 - d. The impact of the proposed zoning change on environmentally critical areas
- (4) For the purpose of determining whether a parcel is a development of county impact, all abutting parcels which are in common ownership or control may be identified and taken into account in both determining development of county impact status and estimating the impacts of any proposed development
- (5) The director's decision is an administrative decision which may be appealed in accordance with the procedure in this article.

Secs. 34-342-34-370. Reserved

DIVISION 2 APPLICATION AND PROCEDURE FOR APPROVAL

Sec. 34-373. Application

(a) Minimum Required Information for All Planned Development Zoning Applications. ~~Except as specifically provided in subsection (b) of this section, an~~ All applications for rezoning for a planned development ~~proposal shall provide~~ must include the following information, supplemented, where necessary, with written material, maps, plans, or diagrams conforming to the best engineering graphic and cartographic standards, in addition to the information regularly required in an application for a rezoning, etc. (see sections 34-201, 34-202 and 34-203, and section 34-53). Wherever this section calls for the exact or specific location of anything on a map or plan, the location ~~of that thing shall~~ must be indicated by dimensions from an acceptable reference point, survey marker or monument

(1) General Application A general application for public hearing in accordance with the requirements set forth in sections 34-201, 34-202 and 34-203

Two or more planned development categories may be combined in one application under the following circumstances:

a The subject property is divided into development areas, each of which corresponds to a different planned development category, and

b Each development area is identified by a separate legal description and boundary sketch

(2) Filing Fee The filing fee in accordance with the duly adopted fee schedule. (See section 34-53)

(3) Covenants A covenant and documentation of unified control (See section 34-374)

(4) Description of existing conditions ~~In addition to the legal requirements of sections 34-201, 34-202 and 34-203,~~ The application for a planned development ~~shall~~ must be accompanied by.

~~a A covenant and documentation of unified control~~

ba. A map or other depiction of the existing zoning and current land uses surrounding the tract or parcel to a distance of 375 feet

eb. Maps or aerial photographs marked or overprinted to show soils, vegetation and ground cover, and a county topographic map (required if available) or a USGS quadrangle map showing the subject property. Soils and vegetation, etc., should be classified in accordance with the USDA/SCS system and the Florida Land Use and Cover Classification System, respectively

c The location of any environmentally sensitive land and water, based upon standard environmental data and verified by a field inspection by the county staff, unless waived by the director A survey is not required until the plan has been incorporated into an application for a development order;

d A map or other depiction of the property in relation to existing and proposed public transit routes, as well as to bus stops ~~The map shall also indicate what facilities (shelter, passenger parking or bicycle racks, benches, etc.) exist at the bus stop~~

e. A survey as required by chapter 10, article III, division 8, pertaining to protected species requirements. Upon written request, the director may waive this requirement for minor planned developments

f A map showing the exact location of existing easements and rights-of-way

(5) A narrative explanation as to how the proposed development complies with the Lee Plan

(6) Description of proposed development The application ~~shall~~ must be accompanied by a description of the proposed development, consisting of, as a minimum, the following ~~The applicant has the option of using one of two options as follows~~ The option chosen must be clearly indicated on the application form. All applications,

regardless of the option chosen, must also comply with subsection 6:

- a — ~~A clearly legible master concept plan, to be no less than 24 inches by 36 inches in size and at an appropriate scale to adequately show development detail, meeting the standards set forth in either subsection (a)(2)a-1 or 2) subsection (a)(2)a-2 of this section, and including the information required in subsections (a)(2)a-3, 4 and 5 of this section—~~

(4) Option 1 The subject parcel may be divided into development areas. For each development area, the following shall must be shown, either within the areas or on schedules keyed to the areas:

- 1+ The general size, configuration and location of each sub area of development area,
- 2+ The maximum height, in feet and number of stories, of any proposed buildings or structures,
- 3+ The kinds of uses and the number of units proposed for each use, in terms of dwelling units by type, hotel or motel units, number of beds for health care facilities, gross square feet of commercial or industrial use, or other appropriate measures of intensity;
- 4+ The minimum width and composition of all proposed buffers along the perimeter of the subject property, as well as between the individual sub areas of development areas, if the types of proposed uses requires buffer separations. References to types of buffers as described in chapter 10 are acceptable,
- v- ~~The location of any environmentally sensitive land and water, based upon standard environmental data and verified by a field inspection by county staff. A survey is not required until the plan has been incorporated into an application for a development order;~~
- 5+ ~~The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development, the general location of all proposed internal street rights-of-way or easements, and the general location of all points of vehicular ingress and egress from the proposed internal rights-of-way or easements into each development area~~
- 6+ Proposed access and facilities for public transit, where applicable,
- 7+ ~~viii—The percentage of open space, unless the proposed development is in a development area consisting solely of conventional single-family dwelling units on lots of no less than 6,500 square feet. For commercial and industrial developments, the percentage of open space within each lot or outparcel shall must be as set forth in section 34-414(c);~~
- 8+ ~~The general location of excavations for on-site fill and wet retention; and~~
- 9+ ~~The location of any requested deviations, keyed to the schedule of deviations, including sample detail drawings of the effect on the site plan of the requested deviation,~~
- 10+ ~~Where the subdivision or resubdivision of land is a feature of the proposed development, indicate on the plan of the proposed development regulations for each sub area, ie, minimum size and dimensions of all of the lots, lot coverage, as well as all of the minimum proposed setbacks for principal structures. If conventional zoning district the property development regulations for a specific zoning district such as lot coverage regulations, will be used, reference to the specific district shall be sufficient; and~~
- 11 A traffic impact statement in a format and to the degree of detail required by a form furnished by the county and in conformance with the adopted county administrative code. Upon written request, the director may waive this requirement for minor planned developments.

- b2- Option 2 If the plan does not divide the subject parcel into development areas, it shall must indicate the general location of all proposed land uses, the general location and configuration and approximate dimensions of all proposed lots, parcels or outparcels, and the general location and pattern of vehicular and pedestrian circulation and movement within the site, in addition to the following items, ~~listed in subsections (a)(2)a-1 through x of this section,~~ for the entire site.

This option requires the submittal of a clearly legible master concept plan, 24 inches by 36 inches in size, and at an appropriate scale to adequately show the following information for each lot or on a schedule keyed

to the lots

1. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development. If a subdivision, the plan must also show the general location of all proposed internal street rights-of-way or easements and the general location of all points of vehicular ingress and egress from the proposed internal rights-of-way or easements into multiple-family, commercial, or industrial use lots.
 2. The minimum width and composition of all proposed buffers along the perimeter of the subject property, as well as between the individual lots, if the types of proposed uses requires buffer separations. References to types of buffers as described in chapter 10 are acceptable;
 3. The kinds of uses and the number of units proposed for each use, in terms of dwelling units by type, hotel or motel units, number of beds for health care facilities, gross square feet of commercial or industrial use, or other appropriate measures of intensity, for the parcel or for each lot if subdivided.
 4. Where the subject property is divided into lots, indicate on the plan the general location, configuration, approximate dimensions and use of all proposed lots, parcels or outparcels as well as lot coverage, and the minimum proposed setbacks for principal structures. If the property development regulations for a specific zoning district, will be used, reference to the specific district will be sufficient
 5. The maximum height in feet and number of stories, of any proposed buildings or structures.
 6. Proposed access and facilities for public transit, where applicable.
 7. The percentage of open space, unless the proposed development is a development consisting solely of conventional single-family dwelling units on lots of no less than 6,500 square feet. For commercial and industrial developments, the percentage of open space within each lot or outparcel must be as set forth in section 34-414(c).
 8. The general location of excavations for on-site fill and wet retention, and
 9. The location of any requested deviations, keyed to the schedule of deviations including sample detail drawings of the effect on the site plan of the requested deviation
 10. A traffic impact statement in a format and to the degree of detail required by a form furnished by the county and in conformance with the adopted county administrative code. Upon written request, the director may waive this requirement for minor planned developments.
- (73) Additional Submittal Requirements for all applications. The master concept plan shall must also include a summary schedule of uses for the entire property with containing the following information
- a.i. A summary of The kinds types of uses proposed for the entire site. For projects containing with residential uses, the master concept plan must this shall include the types of proposed dwelling units,
 - b. ii. The units (gross square feet for commercial/industrial uses, number of units for residential or motel/hotel uses, beds for institutional types of uses, etc) of each kind of use ,for the entire site;
 - iii. For developments containing uses for which the parking requirements are to be determined by the director, the number of parking spaces proposed for those uses;
 - c. iv. The proposed percentage of open space for the entire site
 4. The master concept plan shall also include the exact location of existing easements and rights-of-way.
 - d-5. The master concept plan shall also include a schedule of deviations, including sample detail drawings, unless such drawings would merely duplicate the information shown pursuant to subsection (a) 3- (2) a- 4) x of this section. Section 34-373 (a)(5)a 10 and b 9 , and a written justification for each requested deviation

(b) Additional Required Information for All Major Planned Development Zoning

- (1) ~~b~~ A completed questionnaire, on a form furnished by the department, written description of the surface water management plan that includes: detailing the conceptual surface water management program and the public infrastructure and service and facility demands anticipated from the proposed development, including impacts expected to fall on private for-profit utilities and special-use districts.

- a the runoff characteristics of the property in its existing state.
- b in general terms, the drainage concept proposed, including the outfall to canals or natural water bodies including how drainage flow from adjacent properties will be maintained,
- c the retention features (including existing natural features) that will be incorporated into the drainage system and the legal mechanism which will guarantee their maintenance;
- d how existing natural features will be preserved. Include an estimate of the ranges of existing and post development water table elevations, where appropriate.
- e the requirements for fill materials posed by this development for other than building pads (use, volume, etc.), and
- f If the property is subject to seasonal inundation or subject to inundation by a stream swollen by the rains of a 100-year storm event, indicate the measures that will be taken to mitigate the effects of expectable flooding

~~(c) All applications for planned developments that do not meet or exceed the thresholds in sections 34-341(b) will be reviewed as minor planned developments. The submittal requirements for a minor planned development are listed in section 34-373(b)(2):~~

- ~~(2) d A protected species management plan as required by chapter 10, article III, division 8 sections 10-471 to 10-476 pertaining to protected species requirements~~

- ~~e The text of the private covenants or restrictions, if any, proposed to ensure the enforcement of the limitations on permitted uses the enforcement of the limitations on building the integrity of open space and common facilities and the perpetual maintenance of the open space and common facilities, keeping always aware that the county shall not be party to those covenants except as they are incorporated into the planned development documents as special conditions~~

- ~~(4) f. A description of all proposed dedications, if any, including public beach access, boat ramps, park and recreation areas, open space or other types of easements.~~

- ~~(3) g A description of the program of phased construction, If the development is to be so constructed in phases or if the Traffic Impact Statement utilized phasing, then a description of the phasing program must be submitted~~

- ~~(4) h For Developments of regional impact, the following. If a proposed planned development is also a development of regional impact per F S ch 380, To the extent that a complete and sufficient application for development approval (ADA) per F S ch 380 and supplementary regulations of both the state department of community affairs and the Southwest Florida Regional Planning Council duplicate or exceeds any submittal requirement required in this chapter, it may substitute for the required submittal detail of existing soils, vegetation and ground cover and topography as required in subsection (a)(1)c of this section, schedule of proposed uses as required in subsection (a)(2)a.3 of this section, projection of anticipated infrastructure and service demand as required in subsection (a)(2)b of this section, and traffic impact statement as required in subsection (a)(2)c of this section. If the master development plan accompanying the ADA meets or exceeds the criteria for a master concept plan in subsection (a)(2)a of this section, it shall be deemed to be the proposed master concept plan. Further, the text of the proposed covenants and restrictions as required in subsection (a)(2)e of this section may be submitted no later than ten working days prior to the hearing examiner hearing (see section 34-377(a)).~~

~~34-373(a)(3) SUFFICIENCY AND COMPLETENESS - MOVED TO 34-373(d)~~

~~(3) Sufficiency and completeness~~

~~a. No hearing will be scheduled for an application has been found sufficient. All applications for planned developments will be deemed sufficient unless a letter advising the applicant of insufficiencies has been mailed within 15 working days of the application. All amended applications will be deemed sufficient unless a subsequent letter advising the applicant of any insufficiencies has been mailed within 15 working days of the resubmittal. The contents of insufficiency letters will be limited to brief explanations of the manner in which insufficient applications do not comply with the formal requirements in this section.~~

~~Subsequent to notification that the application has been found to be insufficient, the applicant has 60 days to submit supplemental or corrected documents, unless a longer time is agreed to in writing by the director and the applicant prior to the expiration of the 60 days. If the supplement or corrections are not submitted within the 60 days (or other time period agreed to) the application will be deemed withdrawn.~~

~~b. In those instances where a proposed planned development is identified by local staff as a possible development of regional impact, the applicant shall be notified that the application will be deemed sufficient only when accompanied by either a binding letter of interpretation from the state department of community affairs or a complete and sufficient ADA. Failure by the county to notify the applicant in a timely manner (within 30 days of the application) shall nullify any finding of insufficiency based on this requirement.~~

~~(b) Exceptions.~~

~~(1) Amendments to application. Applications for amendments to an approved master concept plan or its attendant documentation, or for the reaffirmation of a previously vacated master concept plan (for plans approved prior to December 2, 1994) shall be treated procedurally as minor planned developments, but will require only as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in development, environment and background (surrounding land use, traffic volumes, water, wastewater and other service availability, etc.), if any, that have occurred since the original application was made.~~

~~(2) Minor planned developments. The following submittals shall be required for a minor planned development:~~

~~a. A completed application for public hearing as required by section 34-201(b);~~

~~b. The items required in section 34-202(b);~~

~~c. A master concept plan as required in subsection (a)(2)a thru d of this section;~~

~~d. A schedule of uses as required in subsection (a)(2)a.3 of this section;~~

~~e. A schedule of deviations, if applicable, as required in subsection (a)(2)a.5 of this section;~~

~~f. A covenant of unified control as required in section 34-374; and~~

~~g. A traffic impact statement as required in subsection (a)(2)c of this section, unless waived by the director in conjunction with the department of transportation and engineering.~~

~~(3) Existing developments seeking planned development classification. An existing development, such as a mobile home development, which has already been developed but does not conform to the regulations for a conventional zoning district, may request rezoning to a planned development classification. The required submittals for existing developments seeking planned development classification are set out in section 34-373(b)(2)a through 34-373(b)(2)f.~~

~~(c4) Amendments to built planned developments (PD). Any part or all of a planned development which is built, as defined in this subsection, may be the subject of an application for a variance or other approval covered by this chapter wherein the subject property shall be is the only the part of the original planned development for which the approval is sought. If the subject property meets the threshold for a development of county impact, it shall will be reviewed in accordance with the provisions in this chapter which apply to developments of county impact. If the subject property is not a development of county impact, it shall will be reviewed in accordance with the provisions in this chapter which apply to conventional zoning districts. In either case, the applicant shall will be the owner of the subject property and the consent of the owners of the remainder of the original planned development shall will be unnecessary. although they shall However, these owners must be given notice of the application and other proceedings as if they were owners of property contiguous to abutting the subject property regardless of their actual proximity to the subject property.~~

For purposes of this subsection, the term "built" means that all of the roads, utilities buffering, open space, surface water management features and structures, common space, common amenities, common landscaping, gatehouses, entrance signs, entrance ways and other similar items identified as part of the final approved master concept plan have been constructed and acknowledged by the county as being completed. In the case of residential planned developments or mixed developments which include residential structures, the term "built" does not mean that all residential structures must have been constructed on individual platted lots.

(d) Sufficiency

- (1) No hearing will be scheduled for an application for a planned development until the application has been found sufficient. All applications for planned developments will be deemed sufficient unless a letter advising the applicant of insufficiencies has been provided within 15 working days of submittal of the application. All amended applications will be deemed sufficient unless a subsequent letter advising the applicant of any insufficiencies has been mailed within 15 working days of the resubmittal. The contents of insufficiency letters will be limited to brief explanations of the manner in which insufficient applications do not comply with the formal requirements in this section.

After notice of insufficiency, the applicant has 60 days to submit supplemental or corrected documents, unless a longer time is agreed to in writing by the director and the applicant prior to the expiration of the 60 days. If the supplement or corrections are not submitted within the 60 days (or other time period agreed to) the application will be deemed withdrawn.

- (2) Where a proposed planned development is identified by staff as a possible development of regional impact, the applicant will be notified that the application will be deemed sufficient only when accompanied by either a binding letter of interpretation from DCA or a complete and sufficient ADA. Failure by the county to notify the applicant in a timely manner (within 30 days of the application) will nullify any finding of insufficiency based on this requirement. Assuming the application is sufficient in all other respects, staff will commence its review of the planned development. However, there will be no hearing held before the hearing examiner until the applicant submits a binding letter of interpretation from DCA or a complete and sufficient ADA.

Sec. 34-374. Covenant of unified control

(a) Any applicant for a rezoning or master concept plan confirmation under the planned development regulations as provided in this article shall must submit documentation corroborating unified control over the subject property. In addition, the applicant shall submit, on a standard form, a covenant with the county setting forth and agreeing to the obligation to control the development and subsequent use of the property in accordance with this article and any special condition attached to the master concept plan in accordance with this article. This shall include the obligation to impose these restrictions and limitations on any subsequent owner of all or any part of the subject property, including lots, development parcels and outparcels.

~~(b) The obligation to enforce the conditions attached to the master concept plan shall remain with the original applicant until such time as all of the subject property is developed and certificated for use and occupancy or until a subsequent owner takes up that obligation for all or part of the subject property. Completion or vacation of a phase of the development, or conveyance of a development parcel or outparcel, shall relieve the original applicant only insofar as that phase, development parcel or outparcel is concerned, and then only when notice per subsection (c) of this section is properly filed and recorded.~~

The obligation to enforce the conditions attached to a reaffirmed master concept plan shall will lie with whomever files the covenant of unified control for that reaffirmation. ~~MOVED TO 34-378(e)~~

~~(be) In such instance as if the initial applicant conveys all or part of the subject property to a subsequent purchaser, the conveyance shall be subject to the original covenant of unified control and the subsequent owner shall file a document unless an amended covenant is filed with the department director accepting the obligation to enforce all conditions and restrictions attached to the master concept plan as if the original applicant. This document shall must be filed within 60 days of closing, and shall must be recorded with other notices related to the subject planned development. This requirement shall does not apply to individual homesteads or units (apartments) of a residential development or to any development wherein the obligation to enforce the regulations and conditions or covenants and restrictions is delegated to property owners or a condominium association or cooperative.~~

~~—(d) In such instance as the county discovers any noncompliance with the regulations or the master concept plan and its attachments, during the period of time in which the county seeks such equitable relief as necessary to compel the enforcement of the covenant of unified control, the county may withhold any and all permits, certificates or licenses to construct, occupy or use any part of the planned development. This shall not be construed to injure the rights of tenants of previously completed and properly occupied phases.~~ MOVED TO 34-378(f)

Sec. 34-375. Prehearing conference.

Prior to the public hearing by the hearing examiner on an application under this division, the department shall may schedule and conduct a conference to facilitate a meeting of the applicant and staff persons from all relevant county, state, sub-state regional and federal agencies and special use districts. The purpose of this meeting is to identify, discuss and resolve various issues and to advise the applicant of staff concerns and potential recommendations. The product of this conference shall will include the staff's recommendations based upon the original or an amended application, and the applicant's written objections, if any.

Sec. 34-376. Prehearing stipulation.

(a) ~~If the applicant wishes to enter a stipulation under this division, or his representative, shall he must prepare and file with the hearing examiner a stipulation setting out the issues upon on which he and the staff do not agree, with the Hearing Examiner no less than one working day prior to the date of the hearing. The stipulation shall must be signed by the applicant or his representative and, if there are any disputed issues, by the county planner responsible for the preparation of the staff report. Neither the staff nor the applicant may alter their positions on issues that were not listed as disputed on the stipulation at the hearing without the consent of the other party or the hearing examiner.~~

(b) The prehearing stipulation shall will not be construed to limit the issues that may be raised by the hearing examiner or members of the general public. Neither the applicant nor the staff shall will be bound by the terms of the stipulation to the extent that new issues may be raised by the general public or the hearing examiner.

(c) ~~If the stipulation is not filed by the date required in subsection (a) of this section, the hearing shall must be continued unless the hearing examiner determines that the absence of the stipulation will not materially impair his abilities to understand the case.~~

Sec. 34-377. Public hearing.

(a) Hearing before hearing examiner. After the staff prehearing conference required by this division, the application will be scheduled for a public hearing before the hearing examiner.

- (1) At the public hearing the hearing examiner will consider the application in accordance with article II of this chapter.
- (2) The recommendation made to the Board of County Commissioners must be supported by formal findings that address the guidelines set forth in section 34-145(d)(2) of this chapter. In addition, the findings must address whether the following criteria can be satisfied:
 - a. The proposed use or mix of uses is appropriate at the subject location,
 - b. ~~Sufficient safeguards to the public interest are provided by~~ The recommended conditions to the concept plan or by and other applicable regulations, and provide sufficient safeguards to the public interest
 - c. ~~All~~ The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development
- (3) If the hearing examiner determines that a recommended condition is insufficient, he may recommend an alternate condition for consideration by the Board of County Commissioners.
- (4) If the application includes a schedule of deviations pursuant to section 34-412, the hearing examiner's recommendation must approve, approve with modification or reject each requested deviation based upon a finding that each item
 - a. ~~Each item~~ Enhances the achievement of the objectives of the planned development, and
 - b. Preserves and promotes the general intent of this chapter to protect the public health, safety and welfare.

~~will be preserved and promoted~~

If the hearing examiner concludes that the application omits necessary deviations, he may include the necessary those omitted deviations in his recommendation without an additional hearing

- (5) As a condition of approval of a deviation, the hearing examiner may recommend that the applicant receive administrative approval of a more detailed development plan for each affected development area. Applications for administrative approval will be processed as administrative amendments in accordance with section 34-380 of this chapter and may be granted by the director upon a finding that public health, safety, and welfare will not be adversely affected thereby by the request

(b) *Hearing before Board of County Commissioners*

- (1) ~~Subsequent to~~ After the hearing examiner's hearing, an application for a planned development, together with all attendant information, staff reports and the hearing examiner minutes and resolution of recommendation, ~~shall~~ will be forwarded to the Board of County Commissioners. ~~The board will which shall~~ consider the application in public hearing per in accordance with article II of this chapter. After reviewing all the identified information, including staff review and hearing examiner recommendations, the Board of County Commissioners may either:

- a. Continue further consideration until additional information is provided by applicant or staff or until the applicant makes changes in the application, subject to re-review by staff and the hearing examiner as required, or
- b. Formally approve, approve with modification, or deny the application

~~Should~~ If the Board of County Commissioners ~~deny~~ denies the application without prejudice, it may remand the proposal to staff with directions to bring the application back to the hearing examiner once the application is amended. If new or additional information, not previously provided to either staff or the hearing examiner ~~is supplied by the applicant subsequent to the hearing examiner hearing~~, the Board of County Commissioners may remand the application to the hearing examiner for rehearing.

- (2) ~~Any decision made by~~ The decision of the Board of County Commissioners ~~shall~~ must be supported by a formal finding, that, in addition to the appropriate guidelines set forth in article II of this chapter, the criteria set forth in subsection (a)(2) of this section ~~are or are not met~~ have or have not been satisfied.

- (3) In addition to adopting a master concept plan for the planned development, the Board of County Commissioners may adopt such any special conditions ~~as are~~ necessary to address unique aspects of the subject property in the interest of protecting the public health, safety and welfare. ~~Should~~ If any recommended special condition ~~be~~ is found to be insufficient, the Board of County Commissioners may substitute its own language for such special condition in the final resolution.

- (4) ~~Should~~ If a schedule of deviations from other provisions of this chapter (see section 34-412) be a part of the planned development application, the Board of County Commissioners may approve, approve with modification, or reject the entire schedule or specific items based upon their finding that for each item:

- a. ~~Each item~~ Enhances the achievement of the objectives of the planned development, and
- b. Preserves and promotes the general intent of this chapter to protect the public health, safety and welfare. ~~will be preserved and promoted~~

- (5) The Board of County Commissioners may require, as a condition of approval of the deviation, that the applicant receive administrative approval of a more specific development plan for each affected development area or parcel. Applications for administrative approval will be processed as administrative amendments in accordance with section 34-380 of this chapter and may be granted by the director only upon a finding that public health, safety, and welfare will not be adversely affected thereby by the request.

Sec. 34-378. Effect of planned development zoning.

- (a) Compliance with applicable regulations. ~~Subsequent to~~ After the adoption of the master concept plan and the conditions and auxiliary documentation that govern it, any and all development and subsequent use of land, water and structures within ~~any~~ the planned development ~~shall~~ must be in compliance with the following, in order of precedence:

(1) The Lee Plan

(2) Divisions 1, 2 and 3 of this article

(3) The master concept plan and attendant conditions and auxiliary documentation

(4) ~~Any Applicable~~ county development regulations in force at the time of final plan submission.

(5) The general provisions of this chapter, unless otherwise excepted by an approved schedule of deviations

(b) *Applicability of development regulations* All approvals of general aspects of the master concept plan (see section 34-373(a)(2) ~~(5)~~) are conceptual only and are subject to all development regulations established to protect health, safety and welfare that are in force at the time of final plan review. Any Reliance in detail on the approval of a general aspect of the master concept plan is not justified and is not in good faith.

(c) *Recording of notice* ~~Upon approval of a master concept plan and the conditions and auxiliary documentation that govern it, a notice of such approval and its encumbrance of the real estate involved, all in proper form, be recorded by The department must record a notice of master concept plan approval on in the official records of the county. The notice should include a statement which explains that the master concept plan approval is an encumbrance on the real estate described in the plan.~~

(d) *Prohibitions*

(1) The introduction of a use of land or water not provided for on the master concept plan or attendant documentation thereto ~~is prohibited~~.

(2) Creation of a development parcel or outparcel not specified on the master concept plan ~~is prohibited~~

(3) No development parcel or outparcel ~~shall~~ may be created that is not of sufficient size and configuration to support the principal use proposed together with all accessory land and water uses, such as open space, parking, surface water management and the like, or that does not have permanent and irrevocable rights to such space or use on adjacent and contiguous ~~abutting~~ property

~~(e) The obligation to enforce the conditions attached to the master concept plan remains with the original applicant until all of the subject property is developed and certificated for use and occupancy or until a subsequent owner assumes that obligation for all or part of the subject property. Completion or vacation of a phase of the development, or conveyance of a development parcel or outparcel, will relieve the original applicant only as to that phase, development parcel or outparcel, and then only when notice is filed and recorded in accordance with section 34-374.~~

The obligation to enforce the conditions attached to a reaffirmed master concept plan will lie with whomever files the covenant of unified control for that reaffirmation

(f) If the county discovers noncompliance with the regulations or the master concept plan and its attachments, the county may withhold any permit, certificate or license to construct, occupy or use any part of the planned development. This will not be construed to injure the rights of tenants of previously completed and properly occupied phases

Section 34-379. Binding nature of approval of master concept plan.

All terms, conditions, safeguards and stipulations made at the time of the approval of a master concept plan shall be are binding upon the applicant or any successor in title or interest to all or part of the planned development. Departure from the approved plans or failure to comply with any requirement, condition or safeguard shall constitutes a violation of this chapter

Sec. 34-380. Amendments to approved master concept plan

(a) Amendments to an approved master concept plan or its attendant documentation may be requested at any time during the development of or useful life of a planned development

(b) Amendments that may be approved by the ~~department~~ division director include, in general, any change to the interior of the development which does not increase density or intensity (i.e., number of dwelling units or quantity of

commercial or industrial floor area), or a decrease in buffers or open space. The director ~~shall~~ may not approve any ~~a~~ change which results in ~~a~~ the substantial underutilization of public resources and public infrastructure committed to the support of the development, ~~nor shall~~ in addition the director ~~may not~~ approve any changes which results in a reduction of total open space, buffering, landscaping and preservation areas or which adversely impacts on surrounding land uses.

(c) All other requests for amendments to a master concept plan or its auxiliary documentation ~~shall~~ will be treated procedurally as minor planned developments, but with application information and materials specified by section 34-373(b)(2) f 2.

(d) Any application for an amendment that proposes a development which, taken by itself, would constitute a major planned development [development of county impact - see sections 34-203(b) and 34-341(b) 1] ~~shall~~ may not be treated as a minor planned development unless it clearly meets the criteria set forth in section 34-341(e) (b)(2). Otherwise, it ~~shall~~ must proceed as a new and separate major planned development.

(e) Notice of any a plan amendment ~~shall~~ must be recorded in the same manner as the approved master concept plan itself.

Sec. 34-381. Duration of rights conferred by adopted master concept plan.

(b) Master concept plans approved after December 2, 1991, are subject to the following

- (1) An approved master concept plan and its attendant documentation ~~shall~~ will be deemed ~~to be~~ vacated unless the property owner applies for a development order for a substantial portion of the project within five years of the date of the original approval ~~by the Board of County Commissioners~~. A substantial portion of the project ~~shall~~ consists of no less than 20 percent of the lots, dwelling units, square footage or other applicable measurements of intensity for the development in question unless a lesser percentage is approved by the Board of County Commissioners.
- (2) Time frames for approval of subsequent portions of the development ~~shall~~ will be governed by a phasing plan, which ~~shall~~ must be included in the resolution rezoning the subject parcel. Phases may be defined by geographical areas, units of intensity, traffic impacts or any other units of measurement deemed appropriate by the Board of County Commissioners.
- (3) Any phase for which a development order has not been requested by the time specified in the resolution and all subsequent phases ~~shall~~ will be deemed vacated.
- (4) Any failure to complete development within a phase or the entire project, whichever is applicable, prior to the expiration of rights established by the development order for the phase or project ~~shall~~ will result in the vacation of the applicable phase (and all subsequent phases) of the project.
- (5) If all or part of a master concept plan is vacated, a notice of vacation ~~shall~~ will be sent to the owner of record of the affected property via certified mail, and ~~The~~ notice, accompanied by all necessary maps and documents, ~~shall~~ will be recorded by the ~~department~~ division on the official records of the county in order to provide notice to subsequent purchasers ~~and others having or seeking an interest in the property~~. Failure to provide direct notice of a vacation or to record the notice ~~shall~~ will not vest or extend the validity of the vacated concept plan.
- (6) Extensions of master concept plans may be granted by the Board of County Commissioners in accordance with subsection (a)(4)a of this section.
- (7) Master concept plans for planned developments which do not require development orders are not subject to the time frames for vacation in this section.
- (8) Phasing plans may be amended in accordance with section 34-373(b)(1).

Sec. 34-382. Development permit Reserved.

~~At such time as a developer of a planned development is prepared to begin initial land preparation or construction, he shall submit an application for a development permit in accordance with chapter 10 and Board of County Commissioners administrative code AC-13-4.~~

ARTICLE VI. DISTRICT RESTRICTIONS

DIVISION 1. GENERALLY

Sec. 34-615. New official zoning maps.

(b) *Amendments.*

- (1) If a rezoning occurs on a parcel of property after public notice and hearings in accordance with the current county zoning ordinance and the enabling legislation, the changes shall be noted on copies of the official zoning map in the following manner
 - a. The district boundary change shall be drawn on the map indicating the new district designation or symbol, as well as a notation which will reference the reader to a margin notation
 - b. The margin notation shall indicate, at a minimum, the resolution number, the hearing number, what the change was and whether or not there were any special conditions imposed
- (2) ~~All special permits, special exceptions or variances approved by the Board of County Commissioners or hearing examiner board of zoning adjustments, as applicable,~~ after public hearings and notice in accordance with article II of this chapter, shall be noted in the margin as follows
 - a. The property in question shall be marked with a reference number directing the reader to the margin notes; and
 - b. The margin note shall indicate, at a minimum, the resolution number, hearing number, type of action taken (i.e., special exception, ~~permit or variance~~) and whether or not there were conditions
- (3) If a page becomes difficult to interpret due to numerous revisions or for any other reason, the Board of County Commissioners may adopt a new page reflecting all changes approved in accordance with this chapter, which will supersede the original page

Sec. 34-617. Unauthorized changes to zoning maps

No changes to zoning district boundaries, special exceptions, ~~special permits~~ or variances shall be made on any official zoning maps, except as provided for in this chapter. Copies of the official maps may be requested and paid for by members of the public and purchased for private use. Any unauthorized change, or a change by unauthorized personnel or persons of whatever kind, shall be considered a violation of this chapter, and such person shall be subject to any and all criminal and civil sanctions provided by this chapter or as otherwise provided by law. No one shall acquire any interest or right in property or personalty by the unauthorized change in the official zoning map.

Sec. 34-620. Uses not specifically listed.

The director is authorized to determine that uses that are not specifically listed in the use activity groups or in any of the use regulation tables are permitted by right ~~or~~ by special exception ~~or by special permit~~ in a particular zoning district based upon the placement of similar listed uses in the various districts.

Sec. 34-621. Use and development regulations for conventional districts

(a) *Applicability* No land, body of water or structure shall be used or permitted to be used and no structure shall hereafter be erected, constructed, moved, altered or maintained in any conventional zoning district for any purpose other than as provided in the use regulation tables and in accordance with the property development regulations tables set forth in this article for the zoning district in which the property is located, except as may be specifically provided for in article VIII of this chapter, pertaining to nonconforming uses, or in section 34-620.

- (1) All uses of land, water and structures in the conventional zoning districts are subject to the county comprehensive plan (the Lee Plan) and the county future land use plan map, and therefore may not be permitted in all land use categories.

(2) All uses of land, water and structures in the conventional zoning districts are subject to the specific use and property development regulations set forth for the district in which located, as well as all general provisions and all applicable supplemental regulations set forth in this chapter. Except as may be specifically provided for elsewhere in this chapter, deviations from the property development regulations may only be granted in accordance with the procedures established in sections 34-203(e) and (f) and 34-145(b) for variances.

(b) Use regulations tables. Divisions 2 through 9 of this article contain use regulations tables which list specific uses or use activity groups followed by a symbol indicating whether the use is permitted by right (P), special exception (SE) or special permit (SP), or by administrative approval (AA), or not permitted at all. In all instances, unless specifically noted to the contrary, the symbols used in the use regulations tables shall have the following meaning:

AA Administrative approval required. The director has the authority to approve the use when in compliance with the referenced sections of this chapter.

EO Existing only. The use is permitted only if it lawfully existed on September 27, 1993, or was granted a special exception within the two years prior to such date, and commenced the approved construction within two years after such date. A use which qualifies as existing only shall not be classified as a nonconforming use and shall be afforded the same privileges as a permitted use.

P Permitted. The use is permitted when in compliance with all applicable regulations.

SE Special exception required. The hearing examiner may approve the use after public hearing upon a finding that the use is consistent with the standards set forth in section 34-145(c), as well as all other applicable regulations. The hearing examiner may place restrictions on the use as a condition of approval.

~~SP Special permit required. The hearing examiner may approve the use after public hearing upon a finding that the use is consistent with the standards set forth in sections 34-203(g) and 34-145(e), as well as all other applicable regulations. The hearing examiner may place restrictions on the use as a condition of approval.~~

TP Temporary permit. The use may be granted a temporary permit in accordance with section 34-3041.

~~— Not permitted. The use is not permitted or permissible in the zoning district.~~

~~AA/SP~~ AA/SE The use is permissible either through administrative approval or special permit exception, subject to the regulations set forth in the specified section.

EO/SE Lawfully existing uses are permitted, but new uses are permissible only by special exception.

(1) Parenthesized number. The use is limited as set forth in the referenced footnote.

Note (1) The use is limited as set forth in the referenced footnote.

(c) Property development regulations. Divisions 2 through 9 of this article contain property development regulations tables which set forth the minimum lot size and dimensions, setbacks, lot coverage, maximum building height and similar regulations for development of land within the specified districts.

Sec. 34-622. Use activity groups

(45) *Schools, commercial.*

Art schools and academies
Aviation, ground school only
Bartending
Business, general
Clerical, including court reporting, secretarial and similar areas
Computer and data processing
Crafts
Dance instruction, including folk, tap, ballet, modern and ballroom

Driving school (automobile and motorcycle only)
 Gymnastics
 Law, including paralegal
 Oriental martial arts
 Real estate, including appraisal
 Sailing and marine-oriented outdoor lifestyle

- (53) **Transportation services** This group includes establishments which provide land or water transportation services to individuals and in which the driver or instructor is provided by the leasing agency

GROUP IV Trucking.

Interstate trucking, without storage facilities
 Local trucking, without storage facilities
Truck driving school

Sec. 34-623. Performance standards.

All uses and activities permitted by right, ~~special permit~~, special exception or temporary permit in any zoning district shall be constructed, maintained and operated so as to comply with all local, state and federal air, water and noise pollution standards, and as to not be injurious or offensive to the occupants of adjacent premises by reason of the emission or creation of noise, vibration, smoke, dust or other particulate matter, toxic or noxious waste materials, odors, fire or explosive hazard, or glare, nor shall anything be placed, constructed or maintained that would in any way constitute a nuisance to owners or residents or to the community, or adversely impact water quality and water needs

DIVISION 2 AGRICULTURAL DISTRICTS

Sec. 34-653. Use regulation tables.

Amend selected portions of table as indicated

TABLE 34-653. USE REGULATIONS FOR AGRICULTURAL DISTRICTS

	Special Notes or Regulations	AG-1	AG-2	AG-3
Aircraft landing facilities, private				
Lawfully existing				
Expansion of aircraft landing strip or helistop or heliport landing pad	34-1231 et seq	SP <u>SE</u>	SP <u>SE</u>	SP <u>SE</u>
New accessory buildings	34-1231 et seq	P	P	P
New				
Aircraft landing strip and ancillary hangers, sheds and equipment	34-1231 et seq	SP <u>SE</u>	SP <u>SE</u>	SP <u>SE</u>
Animals, reptiles, marine life				
Animals (excluding exotic species)	34-1291 et seq	P	P	P
Animal clinic (df) or animal kennel (df)	34-1321 et seq	EO/SE	EO/SE	EO/SE
Keeping, raising or breeding of domestic tropical birds (df) for commercial purposes	<u>Note (12)</u> , 34-1291 et seq	SP <u>SE</u>	SP <u>SE</u>	SP <u>SE</u>
Keeping, raising or breeding of American alligators, venomous reptiles or Class I or Class II animals (df)	34-1291 et seq	SP <u>SE</u>	SP <u>SE</u>	SP <u>SE</u>
Keeping, raising or breeding of marine life which requires the storage of brackish or saline water in man-made ponds	34-1291 et seq	SP <u>SE</u>	SP <u>SE</u>	SP <u>SE</u>

TABLE 34-653. USE REGULATIONS FOR AGRICULTURAL DISTRICTS (Continued)

0152

Consumption on premises	34-1261 et seq	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE
Excavation				
Oil or gas	34-1651	SP SE	SP SE	SP SE
Water retention	34-1651	P	P	P
Excavation/mining	Note (11), 34-1651, 34-1671 et seq	EO/SE	EO/SE	EO/SE
Forestry, cypress (Taxodium spp.), for sawtimber use only	34-651 et seq	SP SE	SP SE	SP SE
Farm labor housing	34-1891 et seq	EO/SP EO/SE	EO/SP EO/SE	EO/SP EO/SE

Notes

- (1) Any expansion which will bring the number of beds to 50 or more requires CFPD PD zoning - see section 34-341 and Table 34-934
- (2) includes but is not limited to farming, horticulture, pasturage, forestry, citrus and other fruit groves, greenhouses and nurseries, truck farms and dairy farms, commercial fish, frog or poultry hatcheries, and raising of hogs and other farm animals. Lumbering or harvesting of cypress (Taxodium spp) is not permitted except by special permit exception
- (6) Expansion of facility to ~~over five~~ ten or more acres requires CFPD PD zoning - see section 34-341 and Table 34-934.
- (7) New facilities exceeding ~~five ten~~ acres or expansion of an existing facility to ~~over five~~ ten or more acres requires CFPD PD zoning - see section 34-341 and Table 34-934
- (8) Any new facility of 50 or more beds, or any expansion of an existing facility which will bring the number of beds to 50 or more beds or which changes the use, requires CFPD PD zoning - see section 34-341 and Table 34-934
- (11) Any excavation/mining in excess of 320 acres requires IPD zoning unless approved as part of an RPD, MHPD, RVPD, CFPD, CPD, OR MPD development
- (12) The keeping of ostrich, cassowary, rhea, or emu for the production of meat, skins or hides, feathers, or the progeny thereof, as part of a bonafide agricultural operation does not require a special exception

Sec. 34-654. Property development regulations table.

Notes.

- (3) Modifications to required setbacks for collector or arterial streets, or for solar or wind energy purposes, are permitted only by special permit variance. See section ~~34-2144~~ 34-2191 et seq.

DIVISION 3 RESIDENTIAL DISTRICTS

Subdivision II. One- and Two-family Residential Districts

Sec. 34-694. Use regulations table.

Amend selected portions of table 34-694 as indicated:

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
Aircraft landing facilities, private												
Lawfully existing												
Expansion of aircraft landing strip, or heliport or heliport landing pad	34-1231 et seq	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>
New accessory buildings	34-1231 et seq	P	P	P	P	P	P	P	P	P	P	P
New												
Aircraft landing strip and ancillary hangars, sheds and equipment	34-1231 et seq	--	--	--	--	--	--	--	--	--	--	--
Heliport	34-1231 et seq	--	--	--	--	--	--	--	--	--	--	--
Heliport	34-1231 et seq	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>
Animals and reptiles												
Keeping, raising or breeding of Class I animals (df)	34-1291	--	--	--	--	--	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	--	--	--
Keeping, raising or breeding of american alligators, venomous reptiles or Class II animals (df)	34-1291	--	--	--	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	--	--	--
Consumption on premises	34-1261 et seq	<u>AA/SP</u> <u>AA/SE</u>	<u>AA/SP</u> <u>AA/SE</u>	<u>AA/SP</u> <u>AA/SE</u>	<u>AA/SP</u> <u>AA/SE</u>	<u>AA/SP</u> <u>AA/SE</u>	<u>AA/SP</u> <u>AA/SE</u>	<u>AA/SP</u> <u>AA/SE</u>	<u>AA/SP</u> <u>AA/SE</u>	<u>AA/SP</u> <u>AA/SE</u>	<u>AA/SP</u> <u>AA/SE</u>	<u>AA/SP</u> <u>AA/SE</u>
Excavation												
Oil or gas	34-1651(c)	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>
Water retention	34-1651(b)	P	P	P	P	P	P	P	P	P	P	P
Library		--	--	--	--	EO	--	--	--	--	--	--
Real estate sales office	34-3924 34-1954(c)	SE	SE	SE	SE	SE	SE	SE	SE	--	--	--

Notes

- (2) Any New facilities of 50 or more beds, or any the expansion of an existing facility ~~which that~~ will bring the number of beds to 50 or more , requires GFPD PD zoning - see section 34-341 and Table 34-934
- (3) Any new facility ~~exceeding five~~ of ten or more acres or any expansion of an existing facility to ~~over five~~ ten or more acres requires GFPD PD zoning - see section 34-341 and Table 34-934

Sec. 34-695. Property development regulations table.

TABLE 34-695 PROPERTY DEVELOPMENT REGULATIONS FOR ONE- AND TWO FAMILY RESIDENTIAL DISTRICTS

TABLE 34-695. PROPERTY DEVELOPMENT 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
Maximum height (feet)	34-2171 et seq.	35	35	35	35	35	35	35	35	35	35	35
	Note: Bonda Beach, Captiva, Estero and San Carlos Islands, Gasparilla Island conservation district, Greater Pine Island and areas within the airport hazard zone have special limitations (see section 34-2144 34-2171 et seq.)											
Maximum lot coverage (percent of total lot area)		45%	25%	45%	40%	40%	40%	40%	40%	45%	40%	45%

Notes:

- (1) Modifications to required setbacks for collector or arterial streets, or for solar or wind energy purposes, are permitted by special permit variance only. See section ~~34-2144~~ 34-2191 et seq.

Sec. 34-714. Use regulations table.**TABLE 34-714 USE REGULATIONS FOR MULTIPLE-FAMILY
RESIDENTIAL DISTRICTS**

	Special Notes or Regulations	RM-2	RM-3, RM-6, RM-8, RM-10
Aircraft landing facilities, private:			
Lawfully existing			
Expansion of aircraft landing strip or heli-stop landing pad	34-1231 et seq	SP SE	SP SE
New accessory buildings	34-1231 et seq	P	P
New			
Aircraft landing strip and ancillary hangars, sheds and equipment	34-1231 et seq	—	—
Heliport	34-1231 et seq.	—	—
Heli-stop	34-1231 et seq	SP SE	SP SE
<u>Bed and Breakfast</u>		P	P
<u>Consumption on premises</u>	34-1261 et seq	AA/SP AA/SE	AA/SP AA/SE
Excavation			
Oil or gas	34-1651(c)	SP SE	SP SE
Water retention	34-1651(b)	P	P
Golf course	<u>Note (5), 34-2471 et seq.</u>	EO	EO
Real estate sales office	<u>Note (4), 34-1951 et seq., 34-3021</u>	P	P

Notes

- (3) Expansion of a facility to over five ten or more acres requires CFPD PD zoning - see section 34-341 and Table 34-934.
- (5) Redevelopment of an "existing only" golf course with residential buildings or structures requires PD zoning.

Sec. 34-715. Property development regulations table.**TABLE 34-715 PROPERTY DEVELOPMENT REGULATIONS FOR
MULTIPLE-FAMILY RESIDENTIAL DISTRICTS**

- (4) Modifications to required setbacks for arterial or collector streets, or for solar or wind energy purposes, are permitted only by special permit variance. See section ~~34-2141~~ 34-2191 et seq

Subdivision IV. Mobile Home Residential Districts

Sec. 34-735. Use regulations table.

TABLE 34-735. USE REGULATIONS FOR MOBILE HOME DISTRICTS

	Special Notes or Regulations	MHC-1, MHC-2	MH-1	MH-2	MH-3	MH-4
Aircraft landing facilities, private						
Lawfully existing						
Expansion of aircraft landing strip or heliport landing pad	34-1231 et seq.	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>
New accessory buildings	34-1231 et seq.	P	P	P	P	P
New						
Aircraft landing strip and ancillary hangars, sheds and equipment	34-1231 et seq	—	—	—	—	—
Heliport	34-1231 et seq	—	—	—	—	—
Helistop	34-1231 et seq	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>
Animals and reptiles						
Keeping, raising or breeding of Class I animals (df)	34-1291	—	—	—	<u>SP SE</u>	<u>SP SE</u>
Keeping, raising or breeding of American alligators, venomous reptiles or Class II animals (df)	34-1291	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>
Consumption on premises	34-1261 et seq	AA/SP <u>AA/SE</u>	AA/SP <u>AA/SE</u>	AA/SP <u>AA/SE</u>	AA/SP <u>AA/SE</u>	AA/SP <u>AA/SE</u>
Excavation						
Oil or gas	34-1651(c)	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>	<u>SP SE</u>
Water retention	34-1651(b)	P	P	P	P	P

Notes:

- (1) Expansion of facility to ~~over five~~ ten or more acres requires ~~CFPD PD~~ PD zoning - see section 34-341 and Table 34-934

Sec. 34-736. Property development regulations table.TABLE 34-736 PROPERTY DEVELOPMENT REGULATIONS FOR
MOBILE HOME RESIDENTIAL DISTRICTS**Notes**

- (1) Developments built between January 5, 1978, and July 31, 1986, see ~~additional regulations~~ Section 34-733 minimum and maximum area requirements
- (2) For developments built after August 1, 1986, see ~~additional regulations~~ Section 34-734 for emergency shelter requirements
- (3) Modifications to required setbacks for collector or arterial streets, or for solar or wind energy purposes, are permitted only by special permit variance See section ~~34-2144~~ 34-2191 et seq.

DIVISION 4 RECREATIONAL VEHICLE DISTRICTS

*Subdivision II. Conventional Recreational Vehicle Districts***Sec. 34-791. Use regulations table.**

TABLE 34-791. USE REGULATIONS FOR RECREATIONAL VEHICLE DISTRICTS

	Special Notes or Regulations	RV-1	RV-2	RV-3	RV-4
Consumption on premises	34-1261 et seq	AA/SP <u>AA/SE</u>	AA/SP <u>AA/SE</u>	AA/SP <u>AA/SE</u>	AA/SP <u>AA/SE</u>
Excavation					
Oil or gas	34-1651(c)	SP <u>SE</u>	SP <u>SE</u>	SP <u>SE</u>	SP <u>SE</u>
Water retention	34-1651(b)	P	P	P	P

Sec. 34-792. Property development regulations table.TABLE 34-792 PROPERTY DEVELOPMENT REGULATIONS FOR
RECREATIONAL VEHICLE DISTRICTS**Notes**

- (2) Modifications to required setbacks for collector or arterial streets are permitted only by special permit variance See section 34-2191 et seq
- (3) Modifications to setbacks for solar or wind energy purposes are permitted only by special permit exception See section ~~34-2191~~ et seq

DIVISION 5. COMMUNITY FACILITIES DISTRICTS

Sec. 34-813. Use regulations table

TABLE 34-813 USE REGULATIONS FOR COMMUNITY FACILITIES DISTRICTS

	Special Notes or Regulations	CF-1	CF-2	CF-3	CF-4
Consumption on premises	34-1261 et seq.	—	AA/SP AA/SE	AA/SP AA/SE	—
Excavation:					
Oil or gas		SP SE	SP SE	SP SE	SP SE
Water retention	34-1651 et seq.	P	P	P	P
Helistop	34-1231 et seq.	SP SE	SP SE	SP SE	—

Notes.

- (1) ~~Any facility~~ New facilities proposed for of 50 or more beds, or any the expansion to of an existing facility which that will bring the number of beds to 50 or more beds, or which changes the use, must request and be approved as a GFPD PD - see section 34-341 and Table 34-934
- (2) ~~Any facility~~ Facilities proposed for ten or more than five acres or any the expansion to of an existing facility which that will bring the number of acres to over five ten or more acres or which that changes the use, must request and be approved as a GFPD PD - see section 34-341 and Table 34-934

Sec. 34-814. Property development regulations table.

TABLE 34-814 PROPERTY DEVELOPMENT REGULATIONS FOR
COMMUNITY FACILITIES DISTRICTS

Notes

- (1) Modifications to required setbacks for collector or arterial streets is permitted only by variance; Modifications ; or for solar or wind energy purposes, are permitted only by special permit exception See section 34-2191 et seq.

DIVISION 6 COMMERCIAL DISTRICTS

Sec. 34-843. Use regulations table.

TABLE 34-843 USE REGULATIONS FOR CONVENTIONAL COMMERCIAL DISTRICTS

	Special Notes or Regulations	C-1A	C-1	C-2	C-2A	CN-1	CN-2	CC	CG	CS-1	CS-2	CH	CT	CR	CI	CA	CP
Aircraft landing facilities, private																	
Lawfully existing																	
Expansion of aircraft landing strip, heliport or heliport landing padding pad	34 1231 et seq	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	-
New accessory buildings	34 1231 et seq	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	-
New																	
Aircraft landing strip and ancillary hangars, sheds and equipment	34 1231 et seq	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Heliport	34 1231 et seq	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Heliport	34 1231 et seq	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	-
Bar or cocktail lounge	34-1261 et seq	-	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	-	-	AA/SP AA/SE	AA/SP AA/SE	-	-	AA/SP(6) AA/SE (6)	AA/SP AA/SE	AA/SP AA/SE	-	AA/SP(2) AA/SE (2)	-
Bed and Breakfast		-	P	P	P	-	-	-	-	-	SE	-	P	-	-	-	-
Commercial use of beachfront seaward of the water body setback line	34 3151	GP (7) SE (7)	GP (7) SE (7)	GP (7) SE (7)	GP (7) SE (7)	-	-	GP (7) SE (7)	GP (7) SE (7)	-	-	-	GP (7) SE (7)	-	-	GP (7) SE (7)	-
Consumption on premises	34-1261 et seq	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE	-	AA/SP (5) AA/SE (5)
Excavation																	
Mining		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Water retention	34 1651 et seq	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Oil or gas		GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	GP SE	-	GP SE	GP SE	GP SE	GP SE	GP SE	-

Notes.

- (7) The following uses may be permissible seaward of the water body setback line only by special permit exception boat rentals (inflatables, sailboats, jet skis, windsurfers and the like), foodstands, rental of cabanas and beach furniture, outdoor amusements including boat balloonist, and seaplane rides, water ski tows, parasail tows and similar activities, fishing and sightseeing piers and towers
- (13) Any New facility facilities of 50 or more beds, or any the expansion of an existing facility which that will bring the number of beds to 50 or more , requires CFPD PD zoning - see section 34-341 and Table 34-934

Sec. 34-844. Property development regulations table.

TABLE 34-844 PROPERTY DEVELOPMENT REGULATIONS FOR COMMERCIAL DISTRICTS

Notes

- (3) Modifications to required setbacks for arterial or collector streets are permitted only by variance; Modifications or for solar or wind energy purposes, are permitted only by special permit exception. See section 34-2191 et seq

DIVISION 7 MARINE-ORIENTED DISTRICTS

Sec. 34-871. Purpose and Intent.

(b) *IM marine industrial district* The purpose and intent of the IM district is to permit the designation of suitable locations for and to ensure the proper development and use of land and adjacent waters for commercial and industrial waterfront-dependent land uses. Such uses are more intense than those normally encountered in a recreational marina, yet fall short of the intensity of use represented by the storage and commodity handling facilities and equipment attendant to the waterborne commerce movement facilities which are the principal focus of the PORT district. The marine industrial district is intended to accommodate such uses as boatbuilding, major hull and engine maintenance and repair, landing, icing and shipping of fish and seafood (fish and seafood processing requires a special permit exception), and other uses of similar scope and scale. The marina siting and design criteria to be used are those set forth under objectives 98.5 and 98.6 of the Lee Plan

Sec. 34-873. Use regulations table.

TABLE 34-873 USE REGULATIONS FOR MARINE ORIENTED DISTRICTS

	Special Notes or Regulations	CM	IM	PORT
Bar or cocktail lounge	34-1261 et seq.	AA/SP AA/SE	--	--
Consumption on premises	34-1261 et seq.	AA/SP AA/SE	AA/SP AA/SE	AA/SP AA/SE
Excavation				
Water retention	34-1651	P	P	--
Oil or gas		SP SE	SP SE	--

Sec. 34-874 Marine-oriented - Property Development Regulations

TABLE 34-874 PROPERTY DEVELOPMENT REGULATIONS FOR MARINE-ORIENTED DISTRICTS

Notes:

- (2) Modifications to required setbacks for collector or arterial streets is permitted only by variance. Modifications ; or for solar or wind energy purposes, are permitted only by special-permit exception. See section 34-2191 et seq.

DIVISION 8. INDUSTRIAL DISTRICTS

Sec. 34-903. Use regulations table.

TABLE 34-903 USE REGULATIONS FOR INDUSTRIAL DISTRICTS

	Special Notes or Regulations	IL	IG	IR
Aircraft landing facility, private				
Lawfully existing				
Expansion of aircraft landing strip or helistop or heliport landing pad	34-1231 et seq.	SP <u>SE</u>	SP <u>SE</u>	SP <u>SE</u>
New accessory buildings	34-1231 et seq.	P	P	P
New				
Aircraft landing strip or heliport, ancillary hangers, sheds and equipment	34-1231 et seq	SP <u>SE</u>	SP <u>SE</u>	SP <u>SE</u>
Helistop	34-1231 et seq	SP <u>SE</u>	SP <u>SE</u>	SP <u>SE</u>
Consumption on premises	34-1261 et seq	AA/SP AA/SE	AA/SP AA/SE	—
Excavation*				
Mining	34-1671 et seq	—	—	—
Water retention	34-1651	P	P	P
Oil or gas		SP <u>SE</u>	SP <u>SE</u>	SP <u>SE</u>

Notes

- (2) New facilities ~~exceeding five acres~~ of ten or more acres or expansion of an existing facility to ~~over five~~ ten or more acres requires ~~GFPD PD~~ zoning - see section 34-341 and Table 34-934
- (4) Expansion of ~~an~~ existing facility to over 50 beds requires ~~GFPD PD~~ zoning unless otherwise approved as part of another planned development - see section 34-341 and Table 34-934

Sec. 34-904. Property development regulations table.

TABLE 34-904 PROPERTY DEVELOPMENT REGULATIONS FOR INDUSTRIAL DISTRICTS

Notes.

- (1) Modifications to required setbacks for collector or arterial streets is permitted only by variance. Modifications ; or for solar or wind energy purposes, are permitted only by special-permit exception. See section 34-2191 et seq.

DIVISION 9 PLANNED DEVELOPMENT DISTRICTS

Sec. 34-934. Use regulations table.

TABLE 34-934 USE REGULATIONS FOR PLANNED DEVELOPMENT DISTRICTS

	Special Notes or Regulations	RPD	MHPD	RVPD	CFPD	CPD	IPD	AOPD	MPD
<u>Bed and Breakfast</u>		<u>P</u>	-	-	-	<u>P</u>	-	-	<u>P</u>
<u>Motion Picture Production Studio</u>			-	-	-	<u>P</u>	P	-	P

DIVISION 10. SPECIAL PURPOSE DISTRICTS

Subdivision IV Planned Unit Development District

Sec. 34-1039. Amendments to built planned unit developments.

Any part or all of a planned unit development (PUD) which is built, ~~as defined in this section~~, may be the subject of an application for a variance, special exception ~~permit or other approval covered by this chapter wherein the subject property shall be only is the only part of the original planned unit development (PUD) for which the approval is sought.~~ If the subject property meets the threshold for a development of county impact, it ~~shall~~ must be reviewed in accordance with the provisions in this chapter which apply to developments of county impact. If the subject property is not a development of county impact, it ~~shall~~ will be reviewed in accordance with the provisions in this chapter which apply to conventional zoning districts. In either case, the applicant ~~shall~~ must be the owner of the ~~subject~~ property and the consent of the owners of the remainder of the original planned unit development (PUD) ~~shall be is unnecessary.~~ However, these owners, although they shall must be given notice of the application and other proceedings as if they were owners of property contiguous to abutting the subject property regardless of their actual proximity to the subject property

For purposes of this section, the term "built" means that all of the roads, utilities, buffering, open space, surface water management features and structures, common space, common amenities, common landscaping, gatehouses, entrance signs, entrance ways and other similar items identified as part of the final approved master concept plan have been constructed and acknowledged by the county as ~~being completed complete~~. In the case of planned unit developments (PUDs) which include residential structures, the term "built" does not mean that all residential structures ~~must~~ have been constructed on individual platted lots

Sec. 34-1041. General development standards; required improvements

All PUD applications ~~shall~~ must conform to the purpose and intent of this subdivision and be in compliance with the following development standards:

(1) *General standards.*

- a. A PUD ~~shall~~ must conform to the appropriate provisions of the Lee Plan adopted by the county
- b. Every effort ~~shall~~ must be made in the planning and development of a PUD to protect desirable natural, historic or archaeological features of the PUD site, including trees and other vegetation of consequence. The disturbance of terrain or vegetation in a manner likely to significantly increase either wind or water erosion or possible flooding within or adjacent to the PUD is prohibited
- c. Structures and open space should be arranged in such a way as to serve the needs of the PUD residents and minimize any adverse effects on neighboring properties.

- d Integrated architectural design for buildings, structures, landscaping and common open space ~~will be~~ is encouraged
- e If a PUD contains a mixture of land uses, such as residential and commercial, the schedule of development ~~shall~~ must provide for coordination of these mixed uses
- f Underground utilities will be encouraged wherever possible.

(2) *Public facilities.*

- a A PUD ~~shall~~ must be so located in relation to sanitary sewers, water lines, drainage systems and other utility systems and ~~installments~~ installations so that ~~neither extensions nor or enlargements of such those systems will not be required in manner, form, character, location, degree, scale or timing resulting result~~ in higher net public cost or earlier expenditure of public funds than would development in a form generally permitted in the county
- b However, if a PUD is not located as required in subsection (2)a of this section, the developer ~~shall~~ must
 - 1 Provide public utilities, facilities or services approved by the appropriate county departments to ensure ~~their satisfactory continuing operation and maintenance permanently or until equivalent public utilities or services are available, or~~
 - 2 Make ~~acceptable provisions for offsetting to off-set~~ any added net public cost or premature commitment of public funds necessitated by the PUD

(3) *Public safety standards*

- a ~~Within a PUD~~ There must be adequate space to permit accessibility to all structures by firefighting and similar emergency equipment within the PUD
- b The applicant ~~shall~~ must install fire hydrants in accordance with the provisions of the board of fire underwriters.

(4) *Fill and excavation*

- a The developer's plans should minimize the hauling of fill along county rights-of-way.
- b The developer is encouraged to utilize existing high and dry land for higher-density residential use

- (5) *Vehicular and pedestrian traffic* Principal vehicular access points ~~shall~~ must be designed to encourage smooth traffic flow and minimum hazard to vehicular or pedestrian traffic Merging and turnout lanes and traffic dividers ~~shall will~~ be required where existing or anticipated heavy traffic flows indicate need ~~Where streets within the PUD intersect adjoining streets, A safe sight zone (see section 34-3131) shall must be maintained where streets within the PUD intersect adjoining streets.~~

(6) *Screening.*

- a Fences, walls or vegetative screening ~~shall~~ must be provided at the perimeter of the PUD site where necessary to reduce noise, glare or other influences having that have an adverse impact either on the PUD or on adjacent property
- b ~~Such Similar~~ screening requirements may also be necessary to separate different land uses within the PUD, such as residential uses from commercial uses, developed recreational facilities, utility facilities, or outdoor loading or storage

(7) *Open space*

- a There should be reasonably convenient access from all occupied structures to open space
- b ~~Contiguous Abutting~~ and interrelated open space is desired

- c Open space plans should attempt to maintain and enhance valuable site amenities such as vegetation, natural land forms and the like.
 - d If a proposed PUD is to be constructed in a series of development phases, the total area of open space provided at the end of any phase of development shall must bear substantially the same or greater relationship ~~or greater to the totals~~ total open space to be provided ~~in on~~ the entire PUD site as the structures of units completed or under development bear to the entire PUD site
- (8) **Fees.** Each applicant for rezoning to a PUD district shall must pay a fee to the county for the examination of development plans or an amendment thereto and the inspection of all required improvements shown on such plans.

ARTICLE VII. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 1. GENERALLY

Sec. 34-1142. Purpose of supplemental regulations.

(a) Regulations over and above those imposed by other sections of this chapter are necessary for certain uses which, because of their uniqueness or potential for substantial impact on surrounding land uses, warrant minimum standards which cannot properly be addressed in general provisions or property development regulations set forth in specific districts. The purpose of the supplemental regulations set forth in this article is to set forth the detailed regulations, including but not limited to the bulk, layout, yard size and lot area, that apply to these uses

(b) Some of the uses provided for in this article will exceed the minimum thresholds for developments of county impact (see section 34-203) and will be required to apply for approval through the planned development procedure. The Board of County Commissioners may modify any of the requirements of this article in accordance with the procedures for a planned development application approval.

(c) The supplemental regulations set out in this article shall apply to the specified use regardless of whether it is a use permitted by right, ~~special permit or~~ special exception, development of county impact or temporary use permit, as specified in the district use regulations

DIVISION 2. ACCESSORY USES, BUILDINGS AND STRUCTURES

Sec. 34-1175. Satellite dishes.

(a) Satellite dishes ~~shall be~~ are permitted as a residential accessory use subject to the following:

- (1) Dishes shall must maintain a ten-foot setback from all side and rear property lines, and
- (2) Satellite dishes shall may not be placed closer to the street right-of-way than the principal building.
- (3) ~~The height of the dish shall not extend beyond the height of the principal structure on the same lot~~

(b) All commercial storage and display of satellite dishes shall must meet the requirements of division 36 of this article

Sec. 34-1180. Additional dwelling unit on lot in agricultural district.

(a) *Applicability* This section provides the minimum regulations to permit development of an additional conventional single-family residence on the same parcel if the parcel has been zoned in an AG district and the parcel is developed in accordance with the density requirements of the applicable land use classification

(b) *Standards*

- (1) Minimum lot area must be ~~two times~~ twice the required lot area ~~based on that~~ for the zoning district, but in no event less than two acres including easements

- (2) Minimum lot width must be ~~two times~~ twice the required lot width ~~based on that for the zoning district.~~
- (3) The units must be separated by a minimum of ~~two times~~ twice the required side yard setback ~~based on that for the zoning district~~
- (4) No more than two living units constructed as two freestanding conventional single-family residences ~~shall be~~ are permitted.
- (5) Property owners who have already established or plan to establish a caretaker's residence ~~cannot~~ may not avail themselves of this provision
- (6) Each unit must be located on the parcel in such a manner that the units could be separated into individual lots and still meet the property development regulations for ~~that the zoning district and as well as the density requirements for the applicable land use category~~ without first creating a new street easement or right-of-way

DIVISION 3 ADULT ENTERTAINMENT, ADULT BOOKSTORES AND MESSAGE PARLORS SEXUALLY ORIENTED BUSINESSES

Sec. 34-1201. Applicability of division

This division ~~shall apply~~ applies to all zoning districts wherein bookstores, entertainment or message parlors would ~~be permitted by right or by special exception.~~ sexually oriented businesses (as defined in the Lee County Sexually Oriented Business Ordinance, Ord 95-18)

Sec. 34-1202. Definitions

~~The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning-~~ Sexually Oriented Business means a sexually oriented business as defined in the Lee County Sexually Oriented Business ordinance, Ord 95-18

~~Adult bookstore means an establishment maintained for the sale or distribution to adults of materials, the sale of which to juveniles would be prohibited by F.S. § 847.012.~~

~~Adult exhibition means an establishment maintained for the exhibition for monetary consideration of motion pictures, exhibitions, shows, presentations or representations, the exhibition of which to a minor would be prohibited by F.S. § 847.013.~~

~~Massage parlor means a shop, establishment or place of business wherein treatments with mechanical or electrical apparatus for the purpose of body slenderizing, body reducing or body contouring or all or any one or more of the following subjects and methods of treatment are administered—oil rubs, salt glows, hot or cold packs, all kinds of baths including steam rooms, cabinet baths, sitz baths, irrigations, body massage either by hand or by any mechanical or electrical apparatus or device excluding fever therapy, or the application of such movements as stroking, friction, rolling, vibration, kneading, cupping, petrissage, rubbing, effleurage or tapotement, provided, however, this definition shall not apply to massage establishments as defined in section 34-2.~~

Sec. 34-1203. Purpose of division.

~~The purpose of this division is to provide reasonable regulations to alleviate the adverse affect of~~ sexually oriented businesses adult bookstores, adult exhibitions and message parlors on adjacent and nearby uses of land.

Sec. 34-1204. Prohibited locations

~~(a) No use of land for purposes governed by this division shall~~ may be located closer than 1,000 feet, measured on a straight line, from

(a) The closest wall of any building containing a similar use, or

(b) No use of land for purposes governed by this division shall may be located closer than 1,000 feet, measured on a straight line, from any district which allows residential uses, or

- (c) ~~No use of land for purposes governed by this division shall be located closer than 1,000 feet, measured on a straight line, from any hotel, motel, restaurant, school (noncommercial), day care center (child), park, playground, place of worship, religious facility, public recreation facility, cultural center, rooming house, boarding house or hospital.~~

DIVISION 4 AIRCRAFT LANDING FACILITIES PRIVATE

Sec. 34-1231. ~~Permit required. Intent of division~~

(a) *Existing landing strips, heliports or helistops*

- (1) In a residential subdivision planned in conjunction with an aircraft landing strip or heliport, no hangars may be constructed on the individual residential lots prior to construction of the principal residence on the lot.

Sec. 34-1232. State permit

If a proposed aircraft landing facility fails to obtain or is denied a permit from the state within one year from the approval of the special exception permit, the permit shall will automatically expire and become null and void

Sec. 34-1233. Land area and site.

The area proposed for an aircraft landing facility use shall must be sufficient and the site otherwise adequate to meet the standards of the Federal Aviation Administration and the state division of aeronautics, department of transportation, for the class of airport proposed, in accordance with the published rules and regulations of each agency

Sec. 34-1234. Building setbacks

Any building, hangar or other structure within a planned development subject to this division shall must be set back a minimum of 100 feet from any public street right-of-way or other property line. Privately owned hangars on individual lots adjacent to existing aircraft landing strips shall must comply with the setback regulations for accessory structures set forth in division 2 of this article, unless safety requirements require a larger setback

Sec. 34-1235. ~~Setbacks for approach zones.~~

(a) Every new or expanded aircraft landing strip shall must be set back from the property line a sufficient distance to ensure that the approach zone requirements and minimum effective landing strip length, as defined in Florida Administrative Code rule 14-60.007 and this division, do not interfere with the maximum permissible building heights on adjacent property. Maximum permissible building height is defined as the maximum building height allowable for the zoning district applicable to the adjacent property on the date the request for planned development zoning or a special exception permit is made

(b) Every new or expanded heliport or helistop shall must be set back from the property line a sufficient distance to ensure that the two approach/departure corridors required by Florida Administrative Code rule 14-60.007(6)(a)3 do not interfere with the maximum permissible building heights on adjacent property as defined in this section

Sec. 34-1236. Compliance with height restrictions

Any proposed runway or landing strip shall must be situated so that any structures, power lines, towers, chimneys and natural obstructions within the approach zones shall will comply with regulations for height restrictions in airport and heliport or helistop approach zones of the Federal Aviation Administration and the state department of transportation, division of aeronautics, or other airport authority qualified by law to establish airport hazard zoning regulations.

Sec. 34-1237. Repair of aircraft and machinery.

All major repair of aircraft and machinery shall must be conducted within a completely enclosed structure

DIVISION 5 ALCOHOLIC BEVERAGES

Sec. 34-1264. Sale or service for on-premises consumption

(a) Approval required The sale or service of alcoholic beverages for consumption on the premises ~~shall~~ is not be permitted until such location has been approved by the county as follows

(1) *Administrative approval* The director of the department of community development ~~shall~~ may administratively approve the sale or service of alcoholic beverages for consumption on the premises when in conjunction with the following uses if the proposed use satisfies the requirements otherwise set forth in this division. When ~~circumstances so warrant the director shall~~ may determine that administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception permit. Such circumstances may include the previous denial by the director or by a hearing board of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the director ~~shall~~ may not, within one year's time, approve another request for consumption on the premises which could potentially violate the distance requirements. If the first building is completed within less than the one-year time frame, and it is physically demonstrable that the second use would not violate the prescribed distance requirements, then the director may approve the second location subject to all other requirements contained in this division

- a County-owned airports, including liquor, beer, malt liquor and wine in restaurants, bars, lounges, concessions, concession stands and package stores at county-owned airports,
- b Bars or cocktail lounges located in commercial and industrial zoning districts which permit bars or cocktail lounges, provided the standards set forth in subsections (b)(1) and (3) of this section are met;
- c Bottle clubs in commercial and industrial zoning districts which permit bars or cocktail lounges, provided the standards set forth in subsections (b)(1) and (3) of this section are met;
- d Bowling alleys, provided the standards set forth in subsections (b)(2)a and (b)(3) of this section are met,
- e Clubs and fraternal or membership organizations located in commercial and industrial zoning districts, where permitted, provided the standards set forth in subsections (b)(2)f and (b)(3) of this section are met;
- f Cocktail lounges in golf course, tennis clubs or indoor racquetball clubs, provided the standards set forth in subsections (b)(2)d and e and (b)(3) of this section are met,
- g Hotels/motels, provided the standards set forth in subsections (b)(2)c and (b)(3) of this section are met, and
- h Restaurants groups II, III and IV, and restaurants with brew pub license requirements, provided the standards set forth in subsections (b)(2)b and (b)(3) of this section are met

(2) *Special exception permit*

- a A special exception permit for consumption on the premises ~~shall be~~ is required for
 - 1 Any establishment not covered by subsection (a)(1) of this section; or
 - 2 Any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages; except that a group II, III or IV restaurant may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a religious facility, school (noncommercial), day care center (child), park or dwelling unit under separate ownership
- b ~~The burden of proof that the granting of the special exception permit will not have any adverse affect on surrounding properties shall lie with the applicant~~
- c A single special exception permit for consumption on the premises for a shopping center in a conventional zoning district ~~is shall be~~ sufficient to permit consumption on the premises in every restaurant which exists or may be established within the shopping center

(3) *Planned developments and planned unit developments*

- a No administrative approval is necessary where an individual establishment or other facility proposing consumption on the premises is explicitly designated on the master concept plan and is included on the

- b If consumption on the premises is shown as a permitted use on the approved schedule of uses for a shopping center, ~~no administrative approval for consumption on the premises is shall be required for restaurants within the shopping center~~
- - - - - c Consumption on the premises ~~is shall~~ not be permitted for other uses within planned developments and planned unit developments without an administrative approval or a special exception permit

(b) *Location; parking.*

(1) *Prohibited locations.*

- a Except as may be exempted in subsection (a)(1) of this section or as exempted in subsection (b)(2) of this section, no establishment for the sale or service of alcoholic beverages for consumption on the premises shall may be located within
 - 1 Five hundred feet of a any religious facility, school (noncommercial), day care center (child) or park;
 - 2 Five hundred feet of a dwelling unit under separate ownership, except when approved as part of a planned development; or
 - 3. Five hundred feet of any other establishment primarily engaged in the sale of alcoholic beverages for consumption on the premises, excluding those uses listed under subsection (b)(2) of this section

~~Distance shall must~~ be measured from any public entrance or exit of the establishment in a straight line to the nearest property line of the religious facility, school (noncommercial), day care center (child), dwelling unit or park, or to the closest public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages

- b. Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a religious facility, school (noncommercial), day care center(child), park or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall will not apply.

(2) *Exceptions to location standards. Exceptions to location standards are as follows*

- a Bowling alleys (4-COP-SBX license only), provided that
 - 1 ~~There are no signs of any type exhibited or displayed, or other indications that can be seen from the outside of the structure concerned, that beer or wine or other malt and vinous beverages are being served;~~
 - 2 ~~Such~~ The bowling alleys are in a fully air conditioned building having at least 10,000 square feet of floorspace under one roof and where both uses are owned by the same entity,
 - 3 The building contains at least 12 alleys usable for bowling. The facilities for the service of food and beverages shall must be in an area separate from the alleys ~~themselves~~. The facility for the service of food and beverages shall must contain at least 2,000 square feet of usable floorspace and ~~shall have accommodations for~~ must accommodate at least 60 patrons at tables; and
 - 4. ~~The~~ Such building is not less than 500 feet, measured as provided in this subsection, from the uses in described in subsections (b)(1)a 1 and 2 of this section
- b Restaurants groups II, III and IV, provided that
 - 1 The restaurant is in full compliance with state requirements,
 - 2 The restaurant serves cooked, full-course meals, prepared daily on the premises, and
 - 3 Only a service bar is used and the sale or service of alcoholic beverages is only to patrons ~~being served~~

ordering meals, or, if the restaurant contains a cocktail lounge for patrons waiting to be seated at dining tables, the lounge shall must be so located so that there is no indication from the outside of the structure that the cocktail lounge is within the building

- c. Hotels/motels (4-COP-S license only), provided that ~~nightclubs, cabarets, cocktail lounges or bars shall be located within the hotel or motel and under the same roof, which contains at least 100 guestrooms under the same roof, and provided further that the exterior of any such building shall not have storefronts or give the appearance of commercial or mercantile activity as viewed from the highways~~

1. The hotel/motel contains at least 100 guest rooms under the same roof and that nightclubs, cabarets, cocktail lounges or bars are located within the hotel or motel and under the same roof and
2. The exterior of the building must not have storefronts or give the appearance of commercial or mercantile activity as viewed from the highways

If the use contains windows which may be seen visible from the highway, the windows shall must be of fixed, obscure glass. ~~Such~~ The nightclub or cabaret shall may be entered only through the lobby. ~~and No additional entrance shall will be permitted except if the~~ An additional entrance or door shall be permitted when the entrance or door opens into a an enclosed courtyard or patio (away from the street side) which is enclosed and which is not visible from the street. A fire door or exit shall be is permitted so long as, provided that the door or exit is equipped with panic type hardware and locks and is maintained in a locked position except in an emergency

- d. Golf course clubhouses (11-C (golf club) license only), provided that

1. The golf course consists of at least nine holes, with a clubhouse, locker rooms and attendant golf facilities, and comprises in all at least 35 acres of land
2. Failure of such club to maintain the golf course, clubhouse and golf facilities shall will automatically terminate the privilege of the cocktail lounge and sale of beer from the refreshment stands

- e. Tennis clubs and indoor racquetball clubs (11-C (tennis and racquetball clubs) license only), provided that the club is chartered or incorporated and owns or leases and maintains a bona fide tennis club or four-wall indoor racquetball club consisting of not less than:

1. ten regulation-size tennis courts, or
2. ten regulation-size four-wall indoor racquetball courts, or
3. a combination of tennis courts and four-wall indoor racquetball courts numbering ten, and
4. with clubhouse facilities, pro shop, locker rooms and attendant tennis or racquetball facilities, all located on a contiguous an abutting tract of land owned or leased by such club and providing that

~~There are may be~~ no signs of any type ~~exhibited or displayed~~ or other indications ~~that can be seen visible~~ from the exterior of the clubhouse, building or structure that alcoholic beverages are served.

- f. Clubs and fraternal or membership organizations (11-C license only), ~~provided that so long as~~

1. ~~such the~~ club conforms to all the requirements of a private club as stated in F.S. ch 561 and other applicable state laws; and
2. ~~providing that there are no signs of any type exhibited or displayed or other indications that can be seen visible~~ from the exterior of the clubhouse, building or structure that alcoholic beverages are served.

Before a certificate of use and occupancy to serve alcoholic beverages will be issued, the applicant must submit necessary data to prove that ~~if the club~~ is eligible for the use and complies with F.S. ch 561 or other applicable state laws. ~~provided, anything to the contrary notwithstanding,~~

These requirements must be complied with, apply even though if the club intends to serve only beer or wine

(c) *Procedure for approval*(1) *Administrative approval*

- a. Application. An applicant for a consumption on the premises permit ~~shall~~ must submit, on a form provided by the county, the following information
 1. The name, address and telephone number of the applicant.
 2. The name, address and telephone number of the owner of the premises, if not the applicant
 3. A notarized authorization from the property owner to apply for the permit
 4. Location by STRAP and street address
 5. Type of state liquor license being requested
 6. A site plan, drawn to scale, showing
 - i. The property in question, including all buildings on the property and adjacent property;
 - iii. Entrances to and exits from the building to be used by the public,
 - iii. A parking plan, including entrances and exits,
 - iv. The floor area of the building and proposed seating capacity. If a restaurant is proposing a bar or lounge for patrons waiting to be seated in the restaurant, the floor area and seating area of the lounge ~~shall~~ must be shown in addition to the restaurant seating area
 7. A county map marked to indicate all of the property within 500 feet of the building to be used for consumption on the premises
 8. An affidavit executed by the applicant indicating that no religious facilities, day care centers (child), noncommercial schools, dwelling units or parks are located within 500 feet of the building to be used
- b. Additional requirements for bottle clubs. Any owner, lessee or tenant seeking approval for consumption on the premises for a bottle club must include the information listed in this subsection in addition to the information listed in subsection (c)(1)a of this section. If the applicant is a corporation, partnership or association, all officers, partners or principals shall supply such information
 1. Characterization of the type of ownership of the business, i.e., whether individual, partnership, corporation or otherwise, and the names and addresses of any and all co-owners
 2. An affidavit stating the full history of any criminal convictions of the applicant.
- c. Findings by director. Prior to approving a permit, the director ~~shall~~ must ascertain that all applicable standards have been met. In addition, the director ~~shall~~ must make the following findings of fact
 1. There will be no apparent deleterious effect of such use upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises
 2. The premises are suitable in regard to their location, site characteristics and intended purpose. Lighting on the permitted premises ~~shall~~ must be shuttered and shielded from surrounding properties

(2) *Special exception permit*

- a. Applications for special exception permit ~~shall~~ must be submitted on forms supplied by the county and ~~shall~~ must contain the same information as required for administrative approval.
- b. Advertisements and public hearings ~~shall~~ must be conducted in accordance with the requirements set forth in article II of this chapter

(d) *Temporary one-day permit*

- (1) *Intent, applicability.* It is the intent of this subsection to require that nonprofit and for-profit organizations and establishments in the unincorporated area of the county obtain a one-day temporary alcoholic beverage permit for the sale of alcoholic beverages at the specific location where an event is held. This subsection will pertain to but not necessarily be limited to the following uses:

- a. Grand openings or open houses at residential, commercial or industrial developments,
- b. Special outdoor holiday or celebration events at bars and restaurants which are or are not already special permitted,
- c. Weddings and other special occasions at clubhouses;
- d. Political rallies or events,
- e. Block parties, and
- f. Carnivals

Only twelve temporary alcoholic beverage permits may be issued per year to a specific location. If more than twelve permits are sought per year for a specific location, then the location must obtain a permanent alcoholic beverage special permit. If the event for which the temporary alcoholic beverage permit is sought continues for longer than one day, the applicant may petition the director for an extended permit. A temporary alcoholic beverage permit may not be issued for more than three days.

(2) *Procedure for approval*

- a. Any owner, lessee or tenant seeking approval for consumption on the premises for a temporary alcoholic beverage permit, must submit a written request to the department of community development. The written request must include:
 - 1. The name and address of the applicant;
 - 2. A general description of the exact site where alcoholic beverages are to be sold and consumed,
 - 3. The type of alcoholic beverages to be sold and consumed, and
 - 4. The payment of a fee in accordance with the adopted fee schedule.
- b. The director will make a final decision within ten working days. The decision will be in the form of approval, approval with conditions or denial. The director may forward the request to other appropriate agencies for comment.
- c. The Board of County Commissioners will review all requests for temporary alcoholic beverage permits where an event will run longer than three days. Under no circumstances will a temporary alcoholic beverage permit be issued for more than ten days.

(e) *Expiration of approval.* The administrative or special exception permit approval of a location for the sale of alcoholic beverages for consumption on the premises granted pursuant to this section shall will expire after the following periods of time, and shall will thereafter become null and void:

- (1) In the case of an existing structure, the approval shall will expire six months from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. For purposes of this subsection, the term "operation" shall be is defined as the sale of alcoholic beverages in the normal course of business.
- (2) In the case of a new structure, the approval shall will expire one year from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. However, if substantial construction is completed, the director may grant one extension of up to six months.

(f) *Transfer of permit.* Alcoholic beverage permits, excluding permits for bottle clubs, issued by virtue of this section shall will be deemed to be a privilege running with the land. The sale of the real property which has been granted an alcoholic beverage permit shall will automatically vest the purchaser thereof with all rights and obligations originally granted to or imposed on the applicant. Such privilege may not be separated from the fee simple interest in the realty

(g) *Expansion of area designated for permit* The area designated for an alcoholic beverage permit cannot be expanded without filing a new application for an alcoholic beverage permit in accordance with the requirements contained in this chapter

(h) *Nonconforming establishments.*

(1) *Expansion.* A legally existing establishment engaged in the sale or service of alcoholic beverages which is made nonconforming by reason of the regulations contained in this section shall may not be expanded without a special exception permit. The term "expansion," as used in this subsection, shall include the enlargement of space for such use and uses incidental thereto, the expansion of a beer and wine bar to include intoxicating liquor, as that term is defined by the Florida Statutes, and the expansion of a bar use to a nightclub use. Nothing in this subsection, however, shall will be deemed an attempt to modify any prohibition or make less restrictive any requirement of the laws of the state

(2) *Abandonment* Any uses, created and established in a legal manner, which may thereafter become nonconforming, may continue until there is an abandonment of the permitted location for a continuous six-month period. For purposes of this subsection, the term "abandonment" shall mean failure to use the location for consumption on the premises purposes as authorized by the special exception permit or administrative approval. Once a nonconforming use is abandoned, it cannot be reestablished unless it can conform to the requirements of this chapter, and such use may be reestablished only after issuance of new permits.

(i) *Revocation of permit or approval.*

(1) ~~The Board of County Commissioners~~ hearing examiner has the authority to revoke an alcoholic beverage special exception permit or administrative approval upon any of the following grounds

- a A determination that an application for special exception permit or administrative approval contains knowingly false or misleading information
- b Violation by the permit holder of any provision of this chapter, or violation of any state statute which results in the revocation of the permit holder's state alcoholic beverage license by the state alcoholic beverage license board or any successor regulatory authority
- c Repeated violation of any county ordinance at the location within the 12-month period preceding the revocation hearing.
- d Failure to renew a state liquor license, or written declaration of abandonment by the tenant and owner of the premises if under lease, or by the owner himself if not under lease
- e Abandonment of the premises. An establishment which continually maintains (renews) its state liquor license, even though it has suspended active business with the public, shall will not be deemed to have been abandoned for purposes of this subsection.
- f Violation by the permit holder of any condition imposed upon the issuance of the special exception permit
- g Violation of any of the minimum standards of the special exception permit.

(2) Prior to revoking an administrative approval or special exception permit for alcoholic beverages, ~~the Board of County Commissioners shall~~ hearing examiner must conduct a public hearing at which the permit holder may appear and present evidence and testimony concerning the proposed revocation. At the hearing, the ~~board~~ hearing examiner may revoke the permit if a violation described in this subsection is established by a preponderance of the evidence. The permit holder shall must be notified of the grounds upon which revocation is sought prior to any hearing, and shall must be given notice of the time and place of the hearing in the same manner as set forth in article II of this chapter

- (3) When an alcoholic beverage permit is revoked pursuant to the terms of this subsection, no petition requesting an alcoholic beverage permit ~~shall~~ may be considered by the county for the property for a period of 12 months from the date of final action on the revocation
- (4) Any owner or operator of an establishment with a COP license shall must, upon written demand of the hearing examiner ~~Board of County Commissioners~~, make under oath a statement itemizing what percentage of his gross receipts are from the sale of alcoholic beverages. Failure to comply with such demand within 60 days of the date of demand shall will be grounds for revocation of the special exception permit
- (j) *Appeals* All appeals of decisions by the director shall ~~be pursuant to~~ must be in accordance with the procedures set forth in article II or article IV of this chapter for appeals of administrative decisions

DIVISION 6 ANIMALS

Sec. 34-1297. Activities requiring special approval.

(a) Due to possible adverse effects on the natural environment, or the potential hazard to surrounding property or the general public, the following activities are authorized only by special ~~permit~~ exception in certain zoning districts

(1) The keeping, raising or breeding of

- a. American alligators or venomous reptiles,
- b. Marine life which requires the storage of brackish or saline water in man-made ponds,
- c. Domestic tropical birds for commercial purposes; and
- d. Class I and II animals (df)

(b) All special ~~permits~~ exceptions authorizing the keeping, raising or breeding of American alligators, venomous reptiles, Class I animals or Class II animals must specify the number and type of animals permitted thereby

(c) Class I animals maintained on a lot in accordance with state permits issued pursuant to F.S. ch. 372 prior to (effective date of this section), but which were not permitted by right or by special ~~permit~~ 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) The provisions of this section do not apply to the possession of ostrich, cassowary, rhea or emu for the production of meat, skins or hides, feathers, or progeny thereof as part of a bonafide agricultural operation in an agricultural district,

DIVISION 10 CARE FACILITIES AND CENTERS

Sec. 34-1411. Adult congregate living facilities (Assisted Living Facilities).

~~(a) Location: Adult congregate living facilities (ACLF's) having 49 beds or less may be located in zoning districts by right or by special exception, as specified in the district use regulations, provided that but they are shall be subject to the density ranges for the land use category applicable to the subject property. Density shall must be calculated in accordance with sections 34-1491 thru 34-1495, with division 12, subdivision II of this article. Facilities with 50 or more beds are permissible in RPD, CFPD, CPD, and MPD districts when approved as part of the master concept plan.~~

Sec. 34-1414. Continuing care facilities

(a) *Generally.* Continuing care facilities (CCF's) may only be located in a CFPD, RPD, or MPD district, as if enumerated on the master concept plan, provided that:

(1) Continuing care facilities ~~shall be~~ are subject to the density ranges for the land use category applicable to the subject property. Density ~~shall~~ must be calculated in accordance with subsection (c) of this section

(2) A continuing care facility must contain one or more health care facilities group I or II; for on-site patient care.

(b) *Design, required facilities*

(1) A continuing care facility ~~shall~~ must provide housing for older persons pursuant to Title VII USC

(2) A continuing care facility must provide full common dining facilities on the site. Individual units may be equipped with kitchens, but an average of at least one meal a day must be provided by the continuing care facility for all residents.

(3) A continuing care facility must incorporate one or more resident services on the site, such as banking facilities, barbershops or beauty shops, pharmacies, and laundry or dry cleaning

(4) A continuing care facility must provide a shuttle bus service or similar transportation service for residents

(c) *Density.* Density equivalents for a continuing care facility ~~shall~~ must be calculated for any adult congregate living facility units and nursing beds pursuant to division 12, subdivision II, of this article, and for independent living units on the basis of two independent living units equal to one residential dwelling unit

(d) *Lot dimensions and setbacks* Continuing care facilities ~~shall be~~ are subject to the property development regulations applicable in the CFPD district.

(e) *Parking.* For parking requirements, see division 26 of this article

DIVISION 11 COMMUNICATION TOWERS

Sec. 34-1441. Required approvals.

(a) Communication towers may be permitted by right or by special exception, as designated in the zoning district use regulations, subject to the requirements of this division

(b) No tower, including towers existing on August 1, 1986, ~~shall~~ may be increased in height above 100 feet unless the increase is approved as a special exception

(c) No new tower erected after August 1, 1986, ~~shall~~ may exceed 100 feet unless first approved as a special exception

Sec. 34-1442. Location generally; compliance with airport hazard regulations.

(a) All communication tower supports and peripheral anchors ~~shall~~ must be located entirely within the boundaries of the property and in no case may they be located less than five feet from the property line

(b) All towers ~~shall~~ must comply with regulations for height restrictions in airport approach zones of the Federal Aviation Administration and the state department of transportation, division of aeronautics, or a municipal or other airport authority qualified by law to establish airport hazard zoning regulations

Sec. 34-1443. Protection of adjacent property.

Except for monopoles less than 100 feet tall, engineered to withstand category 5 hurricane force winds, All new communication towers shall must be engineered so that, in the event of collapse, all parts of the structure will fall within the property lines

Sec. 34-1444. Setbacks for accessory buildings.

All accessory buildings and structures for a communication tower ~~shall~~ must conform to the setback requirements for the district in which ~~the use~~ it is located

Sec. 34-1445 Fencing

A fence or wall not less than eight feet in height from finished grade shall must be provided around each communication tower. Access to the tower shall must be through a locked gate.

Sec. 34-1446. Warning signs for high-voltage facilities.

If high voltage is necessary for the operation of a communication tower facility and is present in a ground grid or in the tower, signs located every 20 feet and attached to the required fence or wall ~~required by this division~~ shall must display in large bold letters the following: "HIGH VOLTAGE--DANGER" in large bold letters

DIVISION 12 DENSITY

*Subdivision II Residential Development***Sec. 34-1493. Calculation of total permissible housing units.**

The Lee Plan establishes a standard and maximum residential density range permissible for each residential land use category. The procedure set forth in this section shall must be used to determine the standard residential density as well as the total number of housing units which may be permitted within a development.

(1) Proposed developments

- a. Determination of land area. The applicant shall must provide the calculations used in determining the following.

1. Total land area of the proposed development
2. Total gross residential acres.
3. Gross residential acres, less any area classified as a resource protection area or transition zone area by the Lee Plan.

- b. Estimation of total permissible housing units. The number of permissible housing units is calculated as follows:

1. Intensive development, central urban and urban community land use districts.
 - i. Multiply the total gross residential acres less resource protection areas and transition zone areas (see subsection (1)a 3 of this section) by the standard density range permitted for the land use category in which the property is located.
 - ii. Additional units may be transferred from contiguous abutting resource protection areas and transition zones at the same underlying density as is permitted for the uplands, up to one-half of the additional bonus density available on the upland property unless further restricted by the Lee Plan.
2. Suburban, outlying suburban, rural, outer islands and rural community preserve land use districts.
 - i. Multiply the total gross residential acres less resource protection areas and transitional zone areas (see subsection (1) a 3 of this section) by the standard density range permitted for the land use category in which the property is located.
 - ii. Add one dwelling unit for every 40 acres of resource protection area.
 - iii. Add one dwelling unit for every 20 acres of transition zone area.
3. The figure derived by adding the numbers derived in accordance with subsections (1)b 1 and 2 of this section represents the number of housing units which may be permitted within the development, unless a higher density is permitted under subdivision III of this division or any ordinance adopted which allows transfer of development rights.

- (2) *Existing developments and lots.* Due to the obvious problems of computing gross density in the same manner as set forth for new developments, the following procedures shall must be followed:
- a. *Single-family structures* Any lawfully existing lot of record zoned for residential use shall will be permitted one single-family residence ~~provided so long as~~ the lot complies with either the property development regulations for the zoning district in which located, ~~in accordance with article VI of this chapter,~~ or the lot qualifies under the single-family residence provision of the Lee Plan. A lot or parcel that qualifies under the single-family residence provision of the Lee Plan shall will be exempt from the minimum lot area and minimum lot dimension requirements of this chapter, and it shall will not be necessary to obtain a variance from ~~such those~~ requirements. Other property development regulations, such as setbacks, height, lot coverage, etc., applicable to a lot or parcel that qualifies under the single-family residence provisions shall ~~be are~~ those specified in this chapter for the RS or AG category whose minimum lot size is the closest to the size of the subject parcel. A lot or parcel which conforms to the density provisions of the Lee Plan shall will not be eligible for this exemption.
 - b. *Two-family or duplex structures.* If two or more ~~contiguous~~ abutting properties have each qualified for the right to construct a single-family residence, and if the lots or parcels are located in a zoning district which permits duplex or two-family dwellings, the property owner may combine the lots to build a single duplex or two-family building in lieu of constructing two single-family residences.
 - c. *Townhouse or multiple-family structures* Except as limited by section 34-1495, any legally existing lot of record which is zoned for townhouse or multiple-family development shall will be permitted dwelling units as follows:
 1. Developments which are not planned developments or PUD's. When reviewing a request for a building permit for a townhouse or multiple-family building which is not part of a PUD or planned development, the maximum permitted dwelling units shall will be determined by the property development regulations set forth for the zoning district in which located for the particular type of building proposed, provided that:
 - I. The maximum number of dwelling units permitted shall will not exceed the standard density range for the land use category in which located, and
 - II. The parcel area shall ~~must~~ be calculated as the area of the lot in question plus one-half of any abutting right-of-way or easement.
 2. Planned developments and PUD's. Maximum density shall will be as set forth in the approving resolution.

DIVISION 15 EXCAVATION ACTIVITIES

Subdivision I Generally

Sec. 34-1651. Required approvals.

- (a) *Excavation for mining purposes*
- (1) No stripping, grading, excavating or removal by any process of natural deposits of solid minerals from their natural location or state for use off of the premises shall may be commenced prior to applying for and receiving approval ~~as a special exception in the AG districts or as a permissible use in a an industrial planned development district as set forth in Tables 34-653 and 34-34-934~~ or otherwise in accordance with ~~article II and article IV of this chapter and subdivision II of this division~~. A certificate to dig shall must be obtained prior to the granting of approval to excavate for all properties located within Level 1 or Level 2 zones of archaeological sensitivity pursuant to chapter 22.
 - (2) ~~Excluded from the requirements of this subsection are~~ Excavations for construction of roads, drainage ways, buildings or similar activities ~~which that~~ have received an approved a development order or building permit and where no material is removed from the premises except surplus not required for backfill or grading are excluded from the requirements of this subsection.

(b) *Excavations for purpose of water retention*

(1) No manmade water detention or retention bodies ~~shall~~ body may be commenced prior to receiving approval in accordance with the provisions of chapter 10. A certificate to dig shall must be obtained prior to ~~the granting of~~ approval to excavate for all properties located within Level 1 or Level 2 zones of archaeological sensitivity pursuant to chapter 22.

~~(2) This subsection shall not apply to water retention excavations one acre or less in area for bona fide agricultural purposes, or for maintenance and cleaning of existing manmade water bodies.~~

(c) *Excavations for purpose of oil or gas exploration*

(1) No oil or gas exploration wells or test wells shall may be commenced prior to application for and approval of a special exception permit in accordance with the procedures set forth in article II of this chapter. A certificate to dig shall must be obtained prior to the granting of approval to excavate for all properties located within Level 1 or Level 2 zones of archaeological sensitivity pursuant to chapter 22.

(2) No oil or gas exploration wells shall may be used for or converted to production wells prior to application for and approval of another special exception permit in accordance with the procedures set forth in article II of this chapter.

*Subdivision II. Mining***Sec. 34-1673 Applicability of subdivision**

(a) The requirements of this subdivision ~~shall~~ apply to the excavation, stripping, grading or removal by any process of natural materials or deposits from their natural state and location, for use off of the premises from which extracted. These natural materials and deposits include, including but are not limited to peat, sand, rock, shell, soil, fill dirt or other extractive materials ~~, from their natural state and location, for use off of the premises from which extracted.~~

(b) The provisions of this subdivision shall are not be applicable to any of the following activities.

(1) ~~Excavation, removal or storage of rock, sand, dirt, gravel, clay or other material for the purpose of constructing the foundation of a structure~~

(2) The removal or moving of materials for construction of roads, sewer lines, storm sewers, water mains or other utilities

(3) The removal or moving of materials for purposes of surface water drainage or conservation purposes (see chapter 10)

(4) The temporary removal of topsoil from a lot for landscaping purposes

Sec. 34-1674. Permit required

~~It shall be is~~ unlawful for any person to engage in excavation for mining, quarries or borrow pits within the unincorporated area of the county, or for an owner to permit such excavation on his property, without first ~~having obtained~~ obtaining a general excavation permit and an excavation/mining operation permit. All permits required by this section shall must be posted by the applicant at the excavation site.

Sec. 34-1675. Existing operations: Reserved

~~(a) Except as provided in subsection (b) of this section, any person now conducting operations governed by this subdivision and for which this subdivision requires a permit shall, within 60 days of August 1, 1986, make application for approval. Failure to do so shall be a violation of this chapter, however, on request and for cause, the director may extend the time for the initial application to 90 days. If application is not made within the required time, all excavation operations shall be terminated.~~

~~(b) Persons having received a general excavation permit, or a renewal permit, from the Board of County Commissioners within two years prior to August 1, 1986, in conjunction with a county development order, when applicable, shall not be required to comply with subsection (a) of this section. Such holders of excavation permits shall be required to obtain a renewal of their excavation/mining operation permit in accordance with sections 34-1678 and 34-1679 within two years from August 1, 1986.~~

Sec. 34-1676. General policies for approval and operation

The following policies, set forth in the Lee Plan, shall must be adhered to in applying for and conducting excavation/mining activities

- (1) Applications for general excavation permits for new or expanding areas shall must include an environmental assessment. The assessment shall must include but not be limited to consideration of air emissions, impact on environmental, historical and natural resources, a protected species survey as required by chapter 10, article III, division 8, effect on nearby land uses, degradation of water quality, depletion of water quantity, drainage, fire and safety, noise, odor, visual impacts, transportation, including access roads, sewage disposal and solid waste disposal
- (2) Applications for general excavation permits for new or expanding sites shall must include a reclamation plan which provides assurance of implementation (see section 34-1677(c)(2)b). Reclamation plans in or near important groundwater resource areas shall must be designed to minimize the possibility of contamination of the groundwater during mining and after completion of the reclamation
- (3) Mineral extraction operations intending to withdraw groundwater for any purpose must provide a monitoring system to measure groundwater impacts.
- (4) Excavation/mining operations shall must meet or exceed local, state and federal standards for noise, air and water quality, and vibration.
- (5) Excavation/mining shall must be located and designed ~~in such a way so~~ as to minimize adverse environmental impacts
- (6) ~~Excavation/mining activities, and industrial uses which are ancillary to mineral extraction, may be permitted in areas indicated on the future land use map as rural and density reduction/groundwater resource, provided they have adequate fire protection, transportation facilities, wastewater treatment and water supply, and provided further that they have no significant adverse effects such as dust and noise on surrounding land uses and natural resources. In order to reduce transport costs and minimize wear on the county's roadways, the extraction and transport of fill material may also be permitted as an interim use in the future urban areas, provided that the requirements of this subsection are met. However, special restrictions, to be determined during the rezoning process, may also be applied to protect other land uses~~

Sec. 34-1677. Application for permit; issuance of permit.

(a) General procedure.

- (1) A general excavation permit shall may be issued as part of a planned development or special exception zoning resolution following
 - a. Submission of the required information, and
 - b. Approval, after public hearings before the hearing examiner or Board of County Commissioners in accordance with article II of this chapter, as a planned development or special exception
- (2) General excavation permits may be issued with or without conditions if necessary to protect the public health, safety and welfare or to ensure compliance with the plan or other applicable regulations. An excavation/mining operations permit is also required prior to any activity on the site (see subsection (c) of this section).

(b) *Application for public hearing.* All applications for a planned development or special exception and general excavation permits shall must follow the procedures set forth in articles II and IV of this chapter. In addition to the information required in articles II and IV of this chapter, the following additional information shall must be submitted.

(1) *Applicant information.* The application shall must include:

- a. The names, addresses and telephone numbers of the owner of the property and its agents located in the county upon which service of any papers under this chapter may be made
- b. The names, addresses and telephone numbers of the applicant or operator, if other than the owner, and its agent residing in the county upon which service of any papers under this chapter may be made. The application shall must state the applicant's legal interest in the lands comprising the project tract
- c. The name, address and telephone number of the Florida registered professional engineer of record for the project, who has prepared and signed all engineering documents submitted to the county.

(2) *Historical and archaeological data* The applicant shall must indicate whether or not the property is located within a Level 1 or Level 2 zone of archaeological sensitivity pursuant to the survey titled "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida," or contains an archaeological site that is listed on the Florida Master Site File. If either is the case, a certificate to dig, pursuant to chapter 22, will be required prior to approval.

(3) *Environmental assessment report* An environmental assessment report shall must be submitted including consideration of air emissions, impact on environmental, historical and natural resources, a protected species survey as required by chapter 10, article III, division 8, effect on nearby land uses, degradation or depletion of water quality and quantity, drainage, fire and safety, noise, odor, visual impacts, sewage disposal and solid waste disposal. In lieu of the traffic impact statement required by section 34-373(a)(2)c, the following information shall must be submitted.

- a. Projected yearly volume of excavated material to be removed from the site
- b. Projected number of peak hour and annual average daily truck trips.
- c. Ownership, condition and maintenance plans for access routes from the actual excavation to the nearest county-maintained road.
- d. Projected distribution of truck trips on the county and state road network

(4) *Test boring data* Test borings shall must be conducted on each proposed excavation site at intervals determined by the division of environmental services natural resources. The description shall must specify the locations of the test borings, the nature and depth of overburden, the likely yield of extractive material, and the complete chemical characteristics of water in each water-bearing strata that will to be penetrated. After evaluation by the division of environmental services natural resources, the test borings shall must be plugged from bottom to top with cement under the supervision of the that division of environmental services.

(5) *Site map.* A site map shall be prepared and certified by a registered engineer or surveyor must prepare and certify a site map showing the date on which maps were prepared, a north directional arrow and the names and locations of all streams, water bodies, percolation ponds and drainfields, roads, railroads, utility lines, buildings, cemeteries and easements within 375 feet of the property line. The certification of the maps shall read: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all information required by the requirements of this Land Development Code."

(6) *Proposed mining plan.* The applicant shall must submit a plan, drawn to scale, showing

- a. The proposed area to be excavated, as follows
 - 1. Projects anticipated to be completed within ten years shall must show areas to be excavated in two-year increments, and
 - 2. Long duration projects (ten or more years) with projected annual production in excess of 500,000 cubic yards shall must show areas to be excavated in ten-year increments
- b. A proposed profile plan showing depth of excavation and slope of banks during excavation operations and after reclamation.

- c A description of the excavation operation, including a description of methods to be employed in removing extractive materials from the ground and from the premises
 - d General location and description of all physical plant facilities or other facilities for the operation.
 - e Location and description of all existing and proposed monitoring wells.
 - f Location and description of all vehicle access routes, to the nearest county-maintained road.
- (7) *Rehabilitation and reclamation plan* Plans and other appropriate documents ~~shall~~ must be submitted that accurately depict the plan of reclamation to take place upon completion of for each increment of the mining plan as outlined in the proposed mining plan submitted pursuant to subsection (b)(6)a of this section
- a The plans ~~shall~~ must include a typical section indicating the steepness of side slopes and depth of excavation
 - b The plans ~~shall~~ must indicate the type of reclamation to take place along the perimeter of the excavation.
 - c A statement ~~shall~~ must be submitted that reclamation ~~shall~~ will begin within six months after completion in any area that will not be disturbed by future operations, and ~~shall~~ will be completed within 12 months or whenever the operations have been abandoned or the general excavation permit expires, whichever comes first.
 - d The applicant ~~shall~~ must submit an estimated cost for the reclamation program for each increment of the mining plan, including breakdowns for the cost of revegetation, resloping of lake banks and any other required site work
- (8) *Other permits* The applicant ~~shall~~ must provide copies of all local, state and federal permits issued for the project, or any applications for any such pending permits pending but not issued. The applicant ~~shall~~ must also file a summary listing of all required project permits by agency, identification number, date of issuance and date of expiration.
- (c) Application for excavation/mining operation permit.
- (1) Upon approval of the general excavation permit the applicant ~~shall~~ must proceed to file for an excavation/mining operation permit. The zoning and development review services staff ~~shall~~ will issue the excavation/mining operation permit after reviewing the application for compliance with any the conditions placed on the general excavation permit
- (2) In addition to the submittal requirements of chapter 10, the applicant ~~shall~~ must submit the following information
- a. A list of any the conditions placed ~~upon on~~ the operation by the Board of County Commissioners or hearing examiner for the approved phase, as well as specific proposals to comply with the conditions
 - b. A performance bond, cash in escrow or letter of credit in an amount to be determined by the director but not less than 110 percent of the amount calculated pursuant to subsection (b)(7)d of this section, or other agreement acceptable to the county attorney to ensure the applicant's compliance in all respects with the conditions of the general excavation permit for the phase or portion thereof covered by the excavation/mining operation permit.
 - c. An engineer ~~shall~~ must submit a certified survey of the area and depth of the excavation site to the division of zoning and development review services as part of each renewal application for an excavation/mining operation permit.

Sec. 34-1678. Duration of permit

- (a) Excavation/mining operation permits for the area or phase approved in the general excavation permit ~~shall~~ will be valid for two years from the date of issuance unless a lesser period of time has been stipulated by the Board of County Commissioners or the hearing examiner. Applications for renewal ~~shall~~ must be made at least 90 days prior to expiration.

(b) Long duration projects, which qualify under section 34-1677(b)(6) a 2, ~~shall will~~ be valid for five years from the date of issuance unless a lesser time has been stipulated by the Board of County Commissioners or the hearing examiner

(c) The Board of County Commissioners and the hearing examiner have the authority to issue a general excavation permit for all increments of large projects as defined in section 34-1677(b)(6)a.2 after the public hearings required by article II of this chapter.

Sec. 34-1679. Renewal of permit

(a) Application for an excavation/mining operation permit renewal ~~shall must~~ contain the same information required in section 34-1677(c), updated to reflect actual current conditions. Other information, sufficient to demonstrate compliance with all conditions of the original approval, ~~shall must~~ be submitted upon request by the department.

(b) Renewal of excavation/mining operation permits ~~shall may~~ be issued by the director after a determination of compliance with the provisions of the original permit approval, including any conditions placed on the operation by the Board of County Commissioners or the hearing examiner, compliance with the provisions of the reclamation plan, and analysis of any supplemental relevant information. Renewal permits ~~shall will~~ be valid for two years or until the expiration date of the general excavation permit, whichever occurs first. Renewal permits for long duration projects, which qualify under section 34-1677(b)(6)a 2, ~~shall will~~ be valid for five years or until the expiration date of the general excavation permit, whichever occurs first.

(c) Permits may be modified by making application to the director stating the reason for the modification and by providing a necessary documentation for the change

Sec. 34-1680. Additional phase approvals.

If a project subject to this subdivision has not received a general excavation permit for each increment shown in accordance with section 34-1677(b)(6)a 2, the developer ~~shall must~~ submit a detailed mining plan and reclamation plan in accordance with the procedures for a minor planned development (if the project was approved as a planned development) or for a special exception (if the project was approved as a special excavation) prior to obtaining the general excavation permit for the next increment.

Sec. 34-1681. Inspections

The county's designated representatives ~~shall~~ have the right of entry into to enter excavation sites; at all reasonable hours, whenever ~~such~~ entry is necessary for the proper discharge of their duties under this subdivision

Sec. 34-1682. Site requirements.

All excavation/mining activities will be subject to the following standards. The Board of County Commissioners or hearing examiner, as may be provided for in this subdivision, may modify these standards as a condition of approval when they deem it necessary and in the public interest, or where they deem a particular requirement unnecessary due to some unusual circumstance

(1) *Minimum land area* All uses permitted under this subdivision ~~shall must~~ have a minimum lot size of ~~not less than~~ five acres

(2) *Setbacks for excavation site.*

a. No excavation may be allowed within:

1. One hundred fifty feet of an existing street right-of-way line or easement;
2. One hundred feet of any private property line under separate ownership;
3. One hundred fifty feet of any corridor shown on the county trafficways map.

In all cases, the most restrictive setback will apply

- b The Board of County Commissioners may allow lesser setbacks in ~~issuing~~ a planned development approval provided:

1. The reclamation plan indicates how access, if needed, will be made to future development,
2. The reclamation plan indicates that, ~~after restoration~~, the setback area will not be developed after restoration, or
3. A closer setback will not be injurious to other property owners ~~;~~ and the applicant agrees to fence the excavation site nearest private property under separate ownership if deemed necessary by the Board of County Commissioners

- (3) *Setbacks for accessory buildings or structures.* All setbacks for accessory buildings or structures shall must be shown on the site plan required as part of the application for a general excavation permit and an excavation/mining operation permit. No crusher, mixing plant, bin, tank or structure directly involved in the production process shall may be located less than 600 feet from any residentially zoned area or district, or 250 feet from all other nonresidential areas or zoning districts. ~~In order To~~ allow flexibility, the general area of any accessory buildings, structures and processing facilities shall must be shown on the site plan with the appropriate setbacks as noted in this subsection listed as criteria for the final placement of these buildings, structures or facilities

- (4) *Security* All entrances to excavation and removal areas shall must be restricted from public access during working hours ~~;~~ and locked at all other times

~~a If the excavation site is adjacent to a residentially zoned area, all operation, excavation and removal areas shall be restricted from access by the general public. This may include a fence of sufficient height, if determined necessary by the Board of County Commissioners or hearing examiner.~~

~~b For excavation sites adjacent to areas zoned other than residential, all operation, excavation and removal areas shall be restricted from public access~~

- (5) *Observation wells.*

a Where dewatering is proposed and permitted by the Board of County Commissioners or the hearing examiner, shallow observation wells shall must be installed at regular intervals along the periphery of the proposed site, as prescribed by the division of ~~environmental services~~ natural resources

b. ~~Observation wells are to be monitored, at least monthly, by The division of environmental services~~ natural resources will monitor observation wells monthly to determine the effect on the water table in adjacent areas. ~~A fee, to be~~ The applicant must pay a fee established by the county ~~;~~ to cover costs of the monitoring shall be paid by the applicant. In lieu of monitoring by the division of ~~environmental services~~ natural resources, monitoring may be performed by private consultants ~~engaged~~ retained by the operator, provided the results are forwarded to the division. The division may also perform its own monitoring at random ~~in addition~~

- (6) *Maximum depth* ~~Maximum excavation depths may be established by The Board of County Commissioners or the hearing examiner will establish maximum excavation depths~~ after reviewing any findings and recommendations of the South Florida Water Management District and the division of ~~environmental services~~ natural resources. The permitted depth shall may not exceed the depth permitted by the South Florida Water Management District and shall may not penetrate through any impervious soil or other confining layer which presently prohibits intermingling of two or more aquifers.

- (7) *Bank slope*

a. After excavation is complete ~~;~~ and upon reclamation of the site, the banks of the excavations shall must be sloped at a ratio not greater than 6 horizontal to 1 vertical to a water depth of four feet below the dry season depth. ~~;~~ and The excavation banks must also have a revegetated linear edge of at least 150 feet along the perimeter ~~;~~ when abutting a residentially zoned area or district, or

b. The bank may be sloped a minimum of 4 horizontal to 1 vertical to four feet below the dry season water table if planted with suitable native wetland vegetation according to a plan approved by the Board of County

Commissioners or the hearing examiner Requests for 4 to 1 slopes ~~shall~~ must be included in the schedule of deviations (see section 34-412)

DIVISION 17. FENCES, WALLS, GATES AND GATEHOUSES

Sec. 34-1744. Location and height of fences and walls

- (a) *Setbacks* Except as may be specifically permitted or required by other sections of this chapter or chapter 10, no fence or wall, excluding seawalls, ~~shall~~ may be erected, placed or maintained
- (1) ~~Closer than five feet to~~ Within any street right-of-way or street easement
- (2) Closer to the Gulf of Mexico than permitted by chapter 6, article III
- (3) Closer than five feet to the mean high-water line along natural water bodies, including canals created from sovereign lands, except that, where the canal is seawalled, the fence may be built landward of the seawall.
- (b) *Height* Except as may be specifically provided for elsewhere in this chapter, fences and walls may be erected, placed and maintained along any property line or on any residentially zoned property provided
- (1) In residential areas, any fence or wall located between a street right-of-way or easement and the minimum required street setback line ~~shall~~ may not exceed three feet in height, except that fences may be ~~increased to~~ a maximum height of four feet ~~provided that such so long as the fence~~ is of open mesh screening and does not interfere with vehicle visibility requirements (see section 34-3131) at traffic access points.
- (2) A residential project fence* or wall may be ~~increased to~~ a maximum height of eight feet around the perimeter of the project upon a finding by the ~~county engineer~~ zoning and development services director that ~~there is no~~ the fence does not interference with vehicle visibility requirements (see section 34-3131) at traffic access points
- (3) Except for a residential project fence*, a fence or wall ~~shall be~~ is limited to a maximum height of six feet in the rear and side yards of residential areas. A fence within 25 feet of a body of water ~~shall~~ must be of open mesh screening above a height of 3 1/2 feet. For purposes of this requirement, the side yard ~~shall~~ will be considered as that portion of the lot extending from the minimum required street setback line to the rear lot line
- (4) Fences and walls for residential project fences* may include architectural features such as columns, cupolas, fountains, parapets, etc., at a height not to exceeding twice the fence or wall height. All such features must be compatible with the project and abutting properties

* For purposes of this section, a residential project fence means a wall or fence erected around a residential subdivision (but not individual lots) or development of ten or more dwelling units

(c) *Determination of grade.* For residential fences, other than residential project fences, grade ~~shall~~ will be determined as the existing elevation of the lot. However, any fill placed on the lot which exceeds the average grade of the street shall be included in determining the maximum fence height.

Sec. 34-1749. Entrance gates and gatehouses.

The following regulations apply to any entrance gate or gatehouse which controls access to three or more dwelling units or recreational vehicles, or any commercial, industrial or recreational facility:

- (1) An entrance gate or gatehouse not approved as part of a planned development is permitted by right provided it is not located on a publicly dedicated street or right-of-way, and
- a. Appropriate evidence of consent from all property owners who have the right to use the subject road is submitted; or
- a.b. The gate or gatehouse is located a minimum of 100 feet back from any public street right-of-way or easement, or

- b-c The gate or gatehouse is designed in such a manner that a minimum of five vehicles or one vehicle per dwelling unit, whichever is less, can pull safely off the public street while waiting to enter; or
- e-d The development provides a deceleration turning lane adjacent to the existing pavement for a distance of 300 feet leading into the access drive or road unless otherwise required by the department of transportation and engineering services. right turn and left turn auxiliary lanes at the project entrance. The design of the auxiliary lanes must be approved by the zoning and development services director

(2) Access for emergency vehicles must be provided

- a. Any security gate or similar device that is not manned 24 hours per day must be equipped with an override mechanism acceptable to the local emergency services agencies or an override switch installed in a glass-covered box for the use of emergency vehicles
- b. If an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle if applicable, will be the responsibility of the owner or operator of the gate

(3) Extension of fences or walls to an entrance gate or gatehouse

- a. A fence or wall may be extended into the required setback where it abuts an entrance gate or gatehouse, provided vehicle visibility requirements (see section 34-3131) are met

DIVISION 18 HOME OCCUPATIONS

Sec. 34-1772. Permitted uses; operation

(a) Any use of a residence for a home occupation shall must be clearly incidental and subordinate to its use for residential purposes by ~~its~~ the occupants

(b) ~~Such~~ The use shall must be conducted entirely within the dwelling unit or customary accessory building

(c) No employees other than members of the immediate family residing in the dwelling shall may be permitted to work at the residence, but may be employed to work elsewhere ~~employed in the home occupation~~. Under special conditions, such as a handicapped person or retiree needing clerical assistance, the director may allow one employee who is not a resident of the home to work at the residence.

(d) There shall may be no exterior indication that the dwelling is being used for any purpose other than a residence, except that one non-illuminated nameplate, not exceeding one square foot (144 square inches) in area, may be attached to the building on or next to the entrance.

(e) No commodities, stores or display of products on the premises shall may be visible from the street or surrounding residential area. and No outdoor display or storage of materials, goods, supplies or equipment used in the home occupation shall may be permitted on the premises. Vehicles and trailers for use by the employees may not be parked or stored on the premises unless completely enclosed within a building

(f) No equipment shall may be used which creates noise, vibration, glare, fumes, odors or electrical interference objectionable to the normal senses. No equipment or process shall may be used which creates visual or audible interference in any radio or television receiver off the premises or causes fluctuations in line voltage off the premises

(g) No use permitted by this division shall may generate greater volumes of traffic than would otherwise be expected by normal residential uses

(h) No use that attracts customers to the dwelling unit may be permitted under this section.

DIVISION 22. FARM LABOR HOUSING

Sec. 34-1892. Special exception permit required

Farm labor housing developed under the regulations set forth in this division must obtain a special exception permit if located in agricultural zoning districts (see Table 34-653). Densities in the rural, open lands, and groundwater resource/density reduction land use categories are limited as provided in Lee Plan Policy 100 2 3. Densities in other land use categories are limited to the regular residential densities in the Lee Plan and to all other requirements of the site's zoning district.

DIVISION 26 OFF-STREET PARKING

Sec. 34-2012. Definitions

For purpose of this division only, certain words or phrases are defined as follows:

High turnover applies to parking lots wherein numerous vehicles are parked for relatively short periods of time ranging from a few minutes to several hours. Customer parking for retail establishments, offices, commercial or similar establishments is considered to be high turnover.

Low turnover applies to parking wherein vehicles are parked for relatively long periods of time, such as employee parking during the day, or uses such as marina parking, cruise ship parking, sports arena parking, etc. wherein customers leave their cars for periods of four or more hours while attending special events, or overnight parking in residential developments.

Sec. 34-2013 Access.

(a) All parking lots ~~shall~~ must be designed so as to permit vehicles exiting the parking lot to enter the street right-of-way or easement in a forward motion.

(b) Each parking lot ~~shall~~ must have a distinct parking lot entrance. ~~Such~~ The entrance ~~shall~~ must meet the requirements of chapter 10, as well as the following:

- (1) Minimum width at street for one-way entrances is 15 feet
- (2) Minimum width at street for two-way entrances is 25 feet
- (3) Maximum width at street is 35 feet

The director of zoning and development services or the department of transportation ~~and engineering~~ may determine that high traffic volumes or other special circumstances warrant other requirements.

(c) Parking lot entrances ~~shall~~ may not exceed a six percent grade for 20 feet into any lot or parcel, nor ~~shall~~ may a parking lot entrance enter a street right-of-way or easement at an angle of less than 90 degrees unless a lesser angle is approved by the director of zoning and development services or the director of transportation ~~and engineering services~~.

Sec. 34-2018. Joint use of off-street parking lots.

(a) Except where specifically approved as part of a planned development district, joint use of off-street parking lots ~~shall~~ will be permitted only after application for and approval of a special exception permit for that purpose (see section 34-203(g)(5)).

(b) Such Shared parking lots ~~shall~~ must be within 300 feet of, and ~~contiguous to each use and shall~~ Shared parking lots may not be separated from the use by a street right-of-way or easement which exceeds 25 feet in width.

(c) No part of a parking lot used, designed or intended to satisfy required off-street parking for any use ~~shall~~ may be used to offset the parking requirements for another use unless the peak parking demands of the different uses clearly occur at different times.

Sec. 34-2020. Required parking spaces(2) *Commercial uses.*

- g *Car washes.* The minimum requirement is two spaces per car wash stall or space, plus drive-up facilities (see subsection (2)h of this section) Each individual car wash stall or space may count as one of the required two parking spaces per stall.
- h. *Drive-up facilities* Any commercial establishment providing drive-up service windows or stalls ~~shall~~ must provide separate vehicle stacking for those uses. For the purpose of this section, a stacking unit is defined as 18 feet in length and nine feet in width. The total number of stacking units required ~~is to~~ will be based on the type of business as follows:
 - 1. Banks and financial establishments Stacking lanes to accommodate five cars per window.
 - 2. Car wash: Stacking to accommodate one car per service stall or five cars, whichever is greater.
 - 32. Restaurants Stacking lanes to accommodate ten cars per service lane, with a minimum of five spaces preceding the menu board
 - ~~43.~~ Other:
 - I Photo dropoff, laundry dropoff or other similar type dropoff facilities. Stacking for three cars
 - II All other Stacking to accommodate five cars per service lane.

I Restaurants/bakeries

- 1 When a store such as a bakery provides seating for customers to eat the bakery products made on the premises, the store must provide a minimum of one parking space per table or one space per four seats, whichever is greater, in addition to the parking required for the bakery
- ~~2 Restaurants group II~~ When a restaurant is located within the same building as the principal use, and is clearly provided primarily for the employees and customers of the subordinate and incidental to the a permitted principal use, and located on the same premises as the principal use, no additional parking spaces shall be required. In all other cases, parking shall will be as follows as set forth for restaurants groups I, III and IV.
- ~~2 Restaurants groups I, III and IV:~~
 - I The minimum requirement is 14 spaces per 1,000 square feet of total floor area
 - II If the restaurant contains a cocktail lounge or bar, the minimum requirement is 24 14 spaces per 1,000 square feet of total floor area plus 7 additional spaces per 1,000 square feet of floor area used for the bar or cocktail lounge shall be provided for the area attributable to the lounge
 - 3 *Restaurants, fast food* The minimum requirement is 16 spaces per 1,000 square feet of total floor area and any other area used for seating, including outdoor seating plus one space per four outdoor seats, except as provided for in section 34-2021. See also subsection (2)h of this section pertaining to drive-up facilities

(4) *Miscellaneous uses.*

- a *Airports, landing strips and heliports.* The required minimum number of parking spaces for these facilities shall will be determined by the director
- b *Boat ramps* For each boat ramp facility, there shall must be a minimum of ten parking spaces with dimensions of ten feet wide by 40 feet long to accommodate a vehicle and boat trailer.

- c. *Bowling alleys* The minimum requirement is six spaces for each lane, plus additional spaces for ancillary uses (see subsection (5) of this section)
- d. *Clubs, fraternal or membership organizations.* The minimum requirement is one space per 300 square feet of total floor area, or one space for each four seats, whichever is greater. (See subsection (7) of this section)
- e. *Day care centers.* ~~There shall be provided at least~~ The minimum requirement is two spaces per employee ~~plus in addition to~~ adequate and safe provisions for loading and unloading of clients
- f. *Educational institutions, including public, private and parochial*
 - 1. *Public schools* Parking shall must be provided in compliance with state law
 - 2. *Private or parochial schools*
 - i. *Elementary and middle schools* The minimum requirement is one space per employee plus one space for each every 40 students
 - ii. *High schools.* The minimum requirement is one space per employee plus one space for each every ten students
 - iii. *Colleges, universities and trade and vocational institutions.* The minimum requirement is one space per employee plus sufficient space for student parking as the director ~~shall~~ deems necessary

Where public use of an auditorium or other place of assembly within a school is likely, an additional one space for each every six seats ~~shall~~ must be provided
- g. *Essential service facilities* The minimum requirement is one space per employee on the largest shift.
- h. *Golf courses* The minimum requirement is six spaces per hole (see subsection (5) of this section). However, where restaurants are made an integral part of the golf course facility, additional parking for the restaurant, ~~per in accordance with~~ subsection (2).2 of this section, ~~shall will~~ be required only to the extent that the parking requirement for the restaurant exceeds the parking requirement for the golf course.
- i. *Hospitals (health care facilities group IV).* The minimum requirement is one space per bed, excluding bassinets and gurneys, plus one space per employee on the largest shift.
- j. *Marnas and other water-oriented uses* Minimum requirements are as follows.
 - 1. *Boat slips* Two spaces per three slips
 - 2. *Boat ramps* See subsection (4)b of this section
 - 3. *Dry storage:* One space per four unit stalls.
 - 4. *Charter or party fishing boat services* One space per three people based on maximum passenger capacity of the boats using the dock or loading facility
 - 5. Local Cruise ships One space per ~~two three~~ people based on the maximum passenger and crew capacity of the ship Local cruise ships are ships which usually leave port and return in less than 24 hours and which usually provide at least one meal, gambling or other entertainment for customers
 - 6. International Cruise ships One space per three people based on the maximum passenger and crew capacity of the ship International cruise ships are ships which usually leave port for 24 hours or more and which provide meals, sleeping accommodations, gambling or other entertainment for customers
- 7 6 *Other uses* Refer to subsection (5) of this section

DIVISION 30 PROPERTY DEVELOPMENT REGULATIONS

*Subdivision II Height***Sec. 34-2173. Exception to height limitations for certain structural elements.**

(a) The following kinds of structural appurtenances may exceed the height limitations stipulated in the applicable districts for authorized uses.

- (1) ~~These purely~~ Purely ornamental structural appurtenances such as church spires, belfries, cupolas, domes, ornamental towers, flagpoles or monuments
- (2) ~~These necessary~~ Appurtenances necessary to mechanical or structural functions such as chimneys and smokestacks, water tanks, elevator and stairwell enclosures, ventilators, bulkheads, radio towers, masts and aenals, television antennas, satellite dishes, fire and hose towers, utility transmission and distribution structures, cooling towers, aircraft control towers or navigation aids, forest fire observation towers, and barns, silos, windmills or other farm structures when located on farms
- (3) ~~These s~~Structural extensions deemed necessary to appropriate building design such as corners or parapet walls, which may extend to a maximum of four feet above the height limitations, provided there are no window openings

(b) The permitted exceptions to the height limitations may be authorized only when the following conditions can be satisfied:

- (1) ~~No The~~ portion of any the building or structure permitted as an exception to a height limitation ~~shall~~ may ~~not~~ be used for human occupancy or for commercial purposes.
- (2) ~~Any~~ Structural exceptions to height limitations ~~shall~~ may only be erected ~~only~~ to the minimum height ~~as may~~ be necessary to accomplish the purpose it is intended to serve, and no higher.
- (3) If the roof area of such the structural elements permitted to exceed the height limitations equals 20 percent or more of the total roof area, ~~they shall~~ will be considered as integral parts of the whole structure, and ~~therefore shall not be~~ not eligible to exceed the height limitations

*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 special permit, 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. Any street not shown on the trafficways map as a collector or arterial street will be presumed to be a local street or a private street for the purposes of this section

SETBACKS FROM STREETS

<i>Street Classification</i>	<i>Setback from Edge of Right-of-Way or Street Easement Line(feet)</i>
Arterial or collector street:	
With frontage street*	65
Without frontage street	25
Local	25
Private	20

* Applies only where the frontage street is located within 40 feet of the right-of-way, does not apply where the frontage street is or will be located within the right-of-way

(c) *Modifications.*

- (1) ~~Upon determination that the street setbacks set forth in subsection (a) of this section for arterial or collector streets are not needed, the street setbacks may be modified by a variance special permit approved pursuant to section 34-203(e) 34-203(g) or by a deviation as part of a planned development. Right-of-way modifications shall may not be granted through this provision.~~
- (2) ~~Requests for variances from the street setbacks for local or private streets shall be heard by the hearing examiner pursuant to section 34-203(e).~~

Sec. 34-2196. Uses employing solar energy or wind-driven electrical generators.

Any use proposing to use solar or wind energy for water heating, climate control or electricity may request a special exception permit to modify the property development regulations so as to maximize use of solar or wind energy, provided that

- (1) The modifications from this chapter are the minimum required to provide such access,
- (2) The modifications do not decrease either total lot area or total usable yard area,
- (3) The principal use, absent its solar or wind aspects, is a permitted use in the zone for which it is proposed, and
- (4) The proposed plans for solar or wind access best serve to protect the degree and location of that access and do not, or will not, require the restriction of development on adjoining properties with respect to their existing zoning classification

DIVISION 34 SPECIAL SETBACK REGULATIONS FOR SPECIFIC USES**Sec. 34-2441. Intent of division**

It is the intent of this division to set forth minimum setback requirements for certain types of uses not specifically regulated elsewhere in this chapter. Where a use is not specifically regulated, the setback requirements of the zoning district in which the use is located ~~shall rule will govern~~. Where this division specifies a different setback, the most restrictive shall will prevail.

Sec. 34-2442. Definitions.

For purposes of this division only, ~~certain terms or phrases are defined as follows~~ "residentially zoned property" means any property zoned RSC, RS, TFC, TF, RM, RV, RVPD, MH, RPD or MHPD, and those portions of property zoned CPD indicating residential use.

Sec. 34-2443 Minimum required setbacks

(a) ~~The following uses must be set back a minimum of 100 feet from any residentially zoned property under separate ownership. The setback applies to all buildings and structures, and all areas used for parking of trucks or equipment, shipping, receiving, or storage.~~

(3) *Manufacturing of.*

J Stone, clay, glass and concrete products, groups I and II III (section 34-622(c)(48))

DIVISION 37 SUBORDINATE AND TEMPORARY USES**Sec. 34-3021. Subordinate uses.**(c) *Other subordinate commercial uses.*

- (1) The subsection applies to subordinate commercial uses for hotels/motels, multiple-family buildings, social services groups III and IV (section 34-622(c)(46)), health care facilities groups I, II and IV (section 34-622(c)(20)),

cultural facilities groups I and II (section 34-622(c)(10)), and office complexes containing 50,000 square feet or more of floor area on the same premises. The uses listed in subsection (c)(2) of this section shall will be permitted when clearly subordinate to the principal use, subject to the following requirements:

- a The retail use shall must be totally within the building housing the principal use,
- b The retail use shall may not occupy more than ten percent of the total floor area of the principal use, and
- c Public access to the commercial uses shall must not be evident from any abutting street

DIVISION 41 WATER-ORIENTED ACTIVITIES

Sec. 34-3151. Water-oriented rental establishments; outdoors

(a) **Applicability** This section is to provide specific standards for those outdoor rental activities that occur on commercially zoned property adjacent to the Gulf of Mexico and are not located in a building.

(b) **Permitted districts** These activities are permitted only in commercial zoning districts that permit boat rentals and leasing or rental establishments, group I.

(c) **Location** The activity or activities must be located on development properties, landward of the water body setback line for the Gulf of Mexico, unless approved by special exception permit; and must be situated so that they are not readily visible from any public street right-of-way or easement. There may not be any indication from any street that this activity is occurring

(d) **Setbacks** The activity may be located no closer than ten feet to the side property lines and may not be permitted seaward of the minimum waterbody setback for the Gulf of Mexico as set forth in section 34-2194 without a special exception permit

(e) **Time limitations.** The rental activity may not occur after sunset or before sunrise. Artificial lighting is prohibited

(f) **Storage** The equipment not being displayed for rent must be stored in an enclosed structure or removed from the property when not in use

(g) **Signage** Signage visible from any street right-of-way or street easement is prohibited. Only one on-site identification sign will be permitted. The sign must be located on the beach side of the building, facing the beach and may not exceed 25 square feet

(h) **Parking** A minimum of five parking spaces will be provided for the outdoor water-oriented rental establishments. Any other use of the property must comply with the off-street parking requirements set forth in article VII, division 26 of this chapter

DIVISION 42 "CLOTHING OPTIONAL" ESTABLISHMENTS FOR RESIDENTIAL DEVELOPMENTS

Sec. 34-3171. Applicability of division

This division will apply to all businesses, clubs, recreational facilities, and residential developments wherein the wearing of clothes by members, visitors, residents, or guests is optional.

Sec. 34-3172. Definitions.

The following words, terms and phrases will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Clothing Optional development any business, club, residential development, or recreational facility, not otherwise defined as a sexually oriented business in accordance with Ordinance 95-18 wherein the wearing of clothes by members, visitors, residents, tenants, or guests is optional or prohibited as well as any residential development which permits members, visitors, tenants, guests, or residents to appear in a state of nudity in any common area

Nudity. The showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state.

Sec. 34-3173. Special Exception Required

Any clothing optional development must obtain a Special Exception and is subject to the following minimum regulations

- (a) Clothing optional developments which are not contained totally within an enclosed building, must be completely enclosed by a fence or wall not less than eight feet in height, which provides 100 percent opacity
- (b) Clothing optional developments may not be located closer than 1,000 feet, measured on a straight line from property line to property line, from any school (noncommercial), day care center (child), park, playground, place of worship, religious facility, or public recreation facility
- (c) Clothing optional developments may not be located closer than 500 feet, measured on a straight line from property line to property line, from any existing residence under separate ownership

ARTICLE VIII. NONCONFORMITIES

DIVISION 4. NONCONFORMING LOTS

Sec. 34-3272. Lot of record defined; general development standards.

- (3) Lots of record may be developed subject to the following provisions
 - a All other regulations of this chapter shall must be met
 - b No division of any parcel may be permitted which creates a lot with width, depth or area below the minimum requirements stated in this chapter, provided that ~~contiguous~~ abutting lots of record may be combined and redivided to create larger dimension lots as long as such recombination includes all parts of all lots, and existing allowable density is not increased, and all setback requirements are met.
 - c. For mobile home or recreational vehicle lots of record, the following shall will also apply
 - 1. All mobile homes or recreational vehicles, including any attachments, shall must be placed at least five feet from any body of water or waterway
 - 2. All mobile homes or recreational vehicles shall must have a minimum separation of ten feet between units (body to body) and appurtenances thereto. Each unit shall will be permitted to have eaves which encroach not more than one foot into the ten-foot separation.
 - 3. Sites or lots located within a park shall may not be reconfigured or reduced in dimension so as to increase the density for which the park was originally created

Sec. 34-3273. Construction of single-family residence.

(a) A single-family residence may be constructed on a lot of record which does not comply with the density requirements of the Lee Plan, provided the owner receives a favorable single-family residence determination in accordance with the Lee Plan

(b) A single-family residence may ~~also~~ be constructed on a lot of record which does comply with the density requirements of the Lee Plan, as long as the lot was lawfully created prior to June 1962 and the following conditions are met

- (1) Lots existing in the AG-2 or AG-3 zoning district require a minimum width of 75 feet, a minimum depth of 100 feet and a lot area not less than 7,500 square feet

- (2) Lots existing in any other zoning district which permits the construction of a single-family residence require a minimum of 40 feet in width and 75 feet in depth, and a lot area not less than 4,000 square feet
- (3) The use of any single lot of record for any residential use other than a single-family dwelling unit residential use is prohibited where the area of the lot is less than 6,000 square feet except in compliance with the lot width, lot depth, lot area, and density requirements for the zoning district
- (4) Neither a guest house nor servants' quarters shall be ~~is~~ permitted on a single lot of record having less than 7,500 square feet in area, or which is occupied by any dwelling unit or units other than one single-family residence.

(c) A single-family residence may also be constructed on a lot which complies with the density requirements of the Lee Plan, as long as the lot is part of a plat approved by the Board of County Commissioners and lawfully recorded in the public records of the county after June 1962.

(d) Minimum setbacks for structures are as follows:

- 1. Street setbacks must be in accordance with the regulations for the applicable zoning district
- 2. Side setbacks must be 10 percent of lot width, or 5 feet, whichever is greater
- 3. Rear setbacks must be one-fourth of the lot depth but do not need to be greater than 20 feet

SECTION SIX: GENERAL REPEALER

A FINDINGS

Lee County has over 500 active ordinances. Some of these ordinances have been preempted by state law, are obsolete, have served their purpose, have become impliedly repealed or have been codified in the Land Development Code. The Board of Lee County Commissioners directed the review of all county ordinances to identify those ordinances no longer needed or enforced that can be repealed to avoid confusion. Repeal of county ordinances that are codified in the Land Development Code, or that have become impliedly repealed, superseded or obsolete serves the public interest and welfare.

B INTENT

It is the intent of the Board of County Commissioners to repeal each and every ordinance set out below as though each ordinance was considered for repeal by separate ordinance and vote. The controlling provisions with respect to land use are those regulations contained in the Lee County Land Development Code, as currently existing or amended from time to time. A favorable vote to adopt this ordinance will be deemed a favorable vote to repeal each ordinance set out below and render it of no further force and effect.

The following ordinances are repealed and of no further force and effect

Lee County Ordinance Numbers 71-2, 74-5, 85-26, 88-12 89-29, 89-38, 90-27, 91-09, 93-36 relating to signs,

Lee County Ordinance Number 76-13 relating to coastal construction on Bonita Beach;

Lee County Ordinance Number 78-7 relating to building height limitations,

Lee County Ordinance Numbers 78-25, 79-19, 87-31 relating to McGregor Boulevard,

Lee County Ordinance Numbers 82-41, 83-28, 84-2 relating to building permit fees;

Lee County Ordinance Number 82-44 relating to Captiva Island;

Lee County Ordinance Number 83-34 relating to the Board of Adjustments and Appeals;

Lee County Ordinance Numbers 83-42, 92-44, 92-53, 93-17, 93-30, 93-38 relating to development standards;

Lee County Ordinance Numbers 84-17, 87-20, 88-41, 90-23, 92-49 relating to flood plain management;

Lee County Ordinance Number 85-20 relating to fire protection,

Lee County Ordinance Numbers 85-23, 89-17, 90-24, 93-41 relating to road impact fees;

Lee County Ordinance Numbers 85-24, 89-16, 90-15, 90-49 relating to regional park impact fees;

Lee County Ordinance Numbers 85-25, 88-56, 89-37, 93-32 relating to dock and shoreline structures;

Lee County Ordinance Number 85-46 relating to Lakes Park Watershed,

Lee County Ordinance Number 85-49 relating to the standard aluminum code;

Lee County Ordinance Number 86-1 relating to Daniels Road setback requirements,

Lee County Ordinance Number 86-9 relating to coastal construction on Estero Island,

Lee County Ordinance Number 86-15 relating to bald eagle protection;

Lee County Ordinance Numbers 86-17, 86-36, 86-37, 87-08, 87-14, 87-33, 88-21, 88-30, 88-31, 88-35, 88-44, 88-63, 88-64, 89-01, 89-03, 89-04, 89-06, 89-22, 89-31, 90-11, 90-12, 90-21, 90-28, 90-36, 90-59, 90-60, 91-22, 91-34, 91-36, 91-37, 92-20, 92-32, 92-33, 92-42, 92-43, 92-45, 92-52, 93-04, 93-14, 93-16, 93-20, 93-24, 93-29, 93-37 relating to zoning;

Lee County Ordinance Numbers 86-18, 88-34, 88-51, 89-27 relating to transfer of development rights,

Lee County Ordinance Number 86-25 relating to minimum housing standards,

Lee County Ordinance Numbers 86-31, 91-05, 93-03 relating to wetlands protection,

Lee County Ordinance Numbers 86-32, 93-31 relating to mangroves,

Lee County Ordinance Numbers 86-34, 90-41, 91-04 relating to tree protection,

Lee County Ordinance Numbers 87-04, 87-05 relating to the Zoning Board,

Lee County Ordinance Number 87-25 relating to unsafe structures;

Lee County Ordinance Number 87-30 relating to access separation standards for county roads;

Lee County Ordinance Number 88-33 relating to mangroves, wetlands and dock and shoreline structures ;

Lee County Ordinance Numbers 88-52, 92-30 relating to marine sanitation;

Lee County Ordinance Number 88-57 relating to low voltage electrical contractor license requirements;

Lee County Ordinance Numbers 88-62, 90-35, 92-34, 90-54 relating to historical preservation;

Lee County Ordinance Number 89-09 relating to sea turtle protection;

Lee County Ordinance Numbers 89-14, 90-16, 90-48 relating to community park impact fees,

Lee County Ordinance Numbers 89-15, 90-14 relating to fire and EMS impact fees;

Lee County Ordinance Numbers 89-30, 90-40, 90-46, 93-19 relating to wildlife protection;

Lee County Ordinance Numbers 89-33, 90-37, 91-32 relating to concurrency management,

Lee County Ordinance Numbers 89-39, 93-35 relating to manatees and vessel operation,

Lee County Ordinance Numbers 89-45, 92-50 relating to the Housing Density Bonus program;

Lee County Ordinance Number 90-10 relating to state road 80 widening,

Lee County Ordinance Number 90-29 relating to development agreements;

Lee County Ordinance Numbers 91-15 relating to Pondella Road Overlay District,

Lee County Ordinance Numbers 91-21, 92-46 relating to coastal construction code,

Lee County Ordinance Number 92-36 relating to the Lee County Construction Code

SECTION SEVEN: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Land Development Code, and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to section, "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not effect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing, by filing a corrected or recodified copy of same with the Clerk of Circuit Court

SECTION EIGHT: SEVERABILITY

The Board of County Commissioners intend that if any section, subsection, sentence, clause or provision of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion will be deemed a separate provision and will not effect the remaining portions of this Ordinance. The Board of County Commissioners further declare that this Ordinance would have been adopted had the unconstitutional provision not been included.

SECTION NINE: EFFECTIVE DATE

This ordinance will take effect upon filing of a copy with the Department of State

THE FOREGOING ORDINANCE was offered by Commissioner Ray Judah, who moved its adoption. The motion was seconded by Commissioner John E. Manning and, being put to a vote, the vote was as follows

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

DULY PASSED AND ADOPTED THIS 20TH DAY OF MARCH, 1996.

ATTEST.
CHARLIE GREEN, CLERK

By *[Signature]*
Deputy Clerk

ldcar@pe.dmc

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By *[Signature]*
Chairman

APPROVED AS TO FORM

By *[Signature]*
Office of County Attorney