



**SPECIAL MEETING  
LOCAL PLANNING AGENCY  
ADMINISTRATION EAST BUILDING  
2201 SECOND STREET, FORT MYERS, FL 33901  
ROOM 118 (FIRST FLOOR)  
MONDAY, NOVEMBER 7, 2022  
9:00 AM**

**AGENDA**

1. Call to Order/Review of Affidavit of Publication/Pledge of Allegiance
2. Public Forum
3. Land Development Code Amendments
  - A. Flood Ordinance Update
    - Revision to add FEMA FIRM Map adoption, mobile home regulations, and substantial damage calculation method.
4. Other Business
5. Adjournment

This meeting is open to the public. Interested parties may appear at the meeting and be heard. A verbatim record of the proceeding will be necessary to appeal a decision made at this hearing.

Lee County will not discriminate against individuals with disabilities. To request an accommodation, contact Joan LaGuardia, (239) 533-2314, Florida Relay Service 711, or [ADArequests@leegov.com](mailto:ADArequests@leegov.com) at least five business days in advance. To receive agendas by e-mail, contact [jmiller@leegov.com](mailto:jmiller@leegov.com).

**MEMORANDUM**  
**FROM**  
**THE DEPARTMENT OF**  
**COMMUNITY DEVELOPMENT**

**TO:** Local Planning Agency

**DATE:** November 4, 2022

**FROM:** David M. Loveland, AICP  
Director

**RE:** Land Development Code Amendments  
Update of Flood Regulations

---

The attached Land Development Code amendments, scheduled for consideration at the special November 7, 2022 LPA meeting, are intended to update the County's flood regulations to maintain consistency with FEMA requirements and to clarify application of FEMA's 50% rule. Staff seeks input and a recommendation as to whether the proposed amendments are consistent with the Lee County Comprehensive Plan and should be adopted by the Board of County Commissioners (BoCC).

Background

The BoCC in June had previously authorized staff to take two proposed amendments to the County's flood regulations forward through the normal committee review process, involving three committees. The two changes were necessary to ensure our flood regulations remain compliant with FEMA's National Flood Insurance Program Community Rating System requirements, to protect our current Class 5 rating and the resultant flood insurance discount. However, the impact of Hurricane Ian raised some questions about further amendments to our flood regulations (with suggestions from the Building Industry Association) and created a sense of urgency to get any changes in place as property owners contemplate repairs or replacements for damaged structures. On November 1, 2022, the BoCC authorized the amendments to the flood regulations proceed through an expedited review process, only requiring review by the Local Planning Agency before coming back for BoCC consideration at a public hearing. The BoCC also scheduled a special meeting on November 8, 2022 for that purpose.

The two amendments previously discussed with the Board are:

- Reference the newest version of FEMA's Flood Insurance Rate Maps for Lee County that take effect Nov. 17, 2022.
- Update the elevation requirements for manufactured homes in special flood hazard areas and coastal high hazard areas consistent with FEMA requirements.

The Lee Building Industry Association (BIA) suggested that the County consider three additional amendments to our flood regulations, namely:

- Reduce the cumulative assessment of improvement costs used in the 50% rule application from 5 years to either 1 year or eliminate the cumulative assessment altogether.
- Exclude hardening costs such as window and roof replacements from the cumulative assessment of costs used in the 50% rule application.
- Allow for an automatic increase of 30-40% to the structure's value derived from the Property Appraiser's website.

The impacts of any proposed amendments on the County's class rating score under the Community Rating System (CRS) need to be considered, as that can affect the cost of flood insurance for policy holders in unincorporated Lee County. Review by the Florida Division of Emergency Management (FDEM), Office of Floodplain Management for compliance with FEMA regulations is also required.

### Summary

Lee County currently participates in the National Flood Insurance Program's Community Rating System (CRS), a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum program requirements. Based on a recently-completed audit of the County's regulations and enforcement efforts to minimize risk in flood hazard areas, we received a CRS score of 2,797 points, well within the CRS Class Rating of 5 (the threshold is 2,500 points). This translates to a 25% discount on the cost of flood insurance for policyholders in unincorporated Lee County, which saves an estimated \$13.8 million annually.

In 2020, the CRS established certain minimum actions as prerequisites for communities to qualify for or maintain class ratings of 8 or better. The two initial amendments discussed with the Board in June and noted above were essentially necessary to meet the prerequisites for a Class 5 rating.

The National Flood Insurance Program requires buildings located in Special Flood Hazard Zones (zones beginning with A or V) to be brought into full compliance with current flood damage prevention regulations (including elevations) when the cost of proposed improvements or repairs equals or exceeds 50% of the value of the building. On the cost side of the equation, the County's current regulations require the cumulative costs of any improvements to the building for the prior five years to be included with the costs of needed repairs (found in the definition of Substantial Improvement). On the value side of the equation, the County's current definition of "market value" defers to the Property Appraiser's tax assessment value with an adjustment deemed appropriate by the Property Appraiser. Alternatively, the property owner can have an appraisal done by a qualified independent appraiser.

Staff is recommending that the definition of "Substantial Improvement" in the County's flood regulations be revised to eliminate references to a cumulative assessment of costs, essentially going to a permit-by-permit approach for cost determination, at least

for properties that are not designated as “repetitive loss” properties by FEMA. A repetitive loss property is one for which two or more National Flood Insurance Program losses of at least \$1000.00 each have been paid out within any 10-year period. The amendment says the repetitive loss properties will still be subject to a cumulative assessment of costs over the prior year in order to comply with Lee Plan Policy 59.1.11. This amendment addresses the first two suggestions from the BIA. The County currently receives 29 points in the CRS scoring process for having higher regulatory ordinance language by relying on the 5-year cumulative costs, so we would likely lose some or all of those points with the proposed change, but the loss of 29 points from our 2,797 total would not affect the County’s Class 5 rating. From the standpoint of consistency with surrounding jurisdictions, Fort Myers Beach and Collier County currently use a permit-by-permit approach and Charlotte County is considering it.

Regarding the valuation issue, staff is recommending that the definition of “Market Value” in the County’s flood regulations be revised consistent with recent state guidance, which is intended to bring more clarity. On November 1, the BOCC directed staff to consider adding a multiplier to the value provided by the Property Appraiser, in the 5-15% range (not as much as suggested by the BIA). Staff is recommending the BOCC consider adopting a separate resolution establishing a 15% multiplier to be applied to the tax assessment value for a structure as reported on the Property Appraiser’s web site for any substantial improvements necessary as a result of Hurricane Ian. This is the top end of the range specified by the BoCC and is the maximum adjustment factor that FDEM seems comfortable with; a larger adjustment may have a CRS score impact, although that is not clear at this time. Some other surrounding jurisdictions currently use a larger multiplier, but it is not clear what those factors are based on. Property owners would continue to have the option of having an appraisal done by a qualified independent appraiser.

Attachments:

Draft LDC Amendments  
Resolution

## PROPOSED LEE COUNTY FLOOD REGULATION AMENDMENTS

NOVEMBER, 2022

### Sec. 6-119. – Reserved. ~~Substantial improvement.~~

Staff Summary: This repeals local technical amendments, thus restores the basic definitions in the FBC-B and FBC-EB. Proposing to amend the definition of “Substantial improvement” in Sec. 6-749 to remove references to a cumulative determination of improvement costs over the prior 5-year period for purposes of the 50% rule calculation.

~~Amend FBC, Building Section 1612.2 and Existing Building Section 202, pertaining to the definition of substantial improvement, as follows:~~

~~*Substantial improvement.* Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, taking place during a five year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. For each building or structure, the five year period begins on the date of the first improvement or repair of the building or structure subsequent to the date specified in the Local Floodplain Management Ordinance. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:~~

- ~~(1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.~~
- ~~(2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.~~

~~*Substantial damage.* Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes buildings and structures that have experienced repetitive loss.~~

### Sec. 6-411. - General.

Staff Summary: Reference the newest version of FEMA’s Flood Insurance Rate Maps for Lee County that take effect Nov. 17, 2022. FEMA has been working for the last few years on a revised Flood Insurance Study and the accompanying Flood Insurance Rate Maps (FIRM).

- (c) The Flood Insurance Study for Lee County, Florida and Incorporated Areas, effective November 17, 2022 ~~August 28, 2008~~ and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this article and will serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Lee County Department of Community Development

**Sec. 6-424. - Substantial improvement and substantial damage determinations.**

Staff Summary: Since the 5 year cumulative assessment is being removed from the Substantial Improvement definition in Sec. 6-479, the reference to “evaluation of previous permits” should be removed in this section.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator will:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure will be the market value before the damage occurred and before any repairs are made;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; ~~the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement" and previous permits issued for repair of flood related damage;~~ and
- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the Florida Building Code and this article is required.

**Sec. 6-479. – Definitions**

Staff Summary This definition is used only in Sec. 6-494 which is being deleted. The definition of “existing manufactured home park or subdivision” will be retained because it is used in Sec. 6-490, which will remain.

~~*Expansion to an existing manufactured home park or subdivision.* The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).~~

**Sec. 6-479. – Definitions**

Staff Summary: Amend the definition of “Market value” for clarification, consistent with model ordinance language provided by the State of Florida. There was some consideration of adding

language to this definition to specify a 15% adjustment factor is to be applied to the tax assessment value provided by the Property Appraiser's Office, since some other local jurisdictions specify an adjustment factor in their ordinances, and on Nov. 1, 2022 the BOCC indicated it was interested in applying an additional adjustment factor to the Property Appraiser's Just Value figure in the range of 5-15%. However, putting the adjustment factor in the code means that same figure applies all the time, when any adjustment to bring the Property Appraiser's assessed value closer to market value should be something that varies from year to year. It was determined that the BoCC should adopt a separate resolution specifying the 15% adjustment factor to be applied only for repairs related to the impact of Hurricane Ian, so it would have limited application and can be easily changed in the future as conditions warrant. This approach also allows time to ensure the County's flood regulations and its' Post-Disaster Recovery Ordinance are consistent.

The 15% figure represents the maximum of the range specified by the BoCC, and is the maximum adjustment factor that the FDEM Office of Floodplain Management would support at this time. It is also somewhat related to how assessed value is to be determined in the State of Florida, although the reality is there is great variability from county to county. Using a larger figure not supported by FDEM could have a negative impact on Lee County's CRS rating score, which could in turn affect the cost of flood insurance. How much of an effect is not known at this time. The language below is recommended by the state.

~~Market value. The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this article, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, is the Actual Cash Value (like-kind replacement cost depreciated for age, wear and tear, neglect, and quality of construction) determined by a qualified independent appraiser, or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser, whichever is higher.~~

#### **Sec. 6-479. – Definitions.**

Staff Summary: Amends the definition of repetitive loss to match FEMA's definition and the language in Lee Plan Policy 59.1.11.

~~Repetitive loss property. Flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. A property for which two or more National Flood Insurance Program losses of at least \$1000.00 each have been paid out within any 10-year period.~~

#### **Sec. 6-479. – Definitions.**

Staff Summary: Eliminate the 5 year cumulative assessment of costs and simply go to a permit-by-permit approach for all but repetitive loss properties. The carve-out for repetitive loss properties is necessary to maintain consistency with Lee Plan Policy 59.1.11. Regarding surrounding jurisdictions, Charlotte County currently uses 1 year but is pursuing a change to permit-by-permit; they are also considering only allowing one active building permit at a time on

a property, to discourage the piecemealing. Collier County uses a permit-by-permit approach. Removing the 5 year cumulative will result in a minor loss of points but will ultimately have no impact on the county's current standing as a CRS Class 5.

*Substantial improvement.* Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure for all but repetitive loss properties as defined by FEMA, taking place during a five-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If a building or structure is identified as part of a repetitive loss property by FEMA, the costs of any repair, reconstruction, rehabilitation, addition or other improvement of a building or structure will be considered cumulatively over the prior twelve-month period. For each building or structure, the five-year period begins on the date of the first improvement or repair of the building or structure subsequent to November 18, 1992. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.

#### **Sec. 6-493. - Elevation.**

*Staff Summary: In 2020 the Community Rating System (CRS) established certain minimum prerequisites for communities to qualify for or maintain class ratings of 8 or better. To meet the prerequisites for its Class 5 rating, Lee County must modify our regulations related to manufactured homes. Our current regulations require manufactured homes to be elevated such that the top of the lowest floor is at or above the required elevation for the flood zone in which they are located. In mobile home parks that haven't experienced substantial damage as a result of flooding, the bottom of the frame can be supported by reinforced piers or the equivalent not less than 36 inches above grade. In many cases, this allows mobile homes in mobile home parks to have a finished floor elevation below the elevation for the flood zone in which they are located. Per the 2020 CRS requirements, all manufactured homes installed or replaced in special flood hazard areas now must be elevated such that the lowest floors are at or above the base flood elevation plus one foot. For those manufactured homes in coastal high hazard areas, the bottom of the frame of the unit must be elevated to the base flood elevation plus one foot. The practical effect of this change is that newly placed and replacement units could be substantially higher than surrounding units within mobile home parks.*

Manufactured homes that are placed, replaced, or substantially improved must comply with section 6-494 or 6-495, as applicable. All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that:

- (1) The lowest floor is at or above the base flood elevation plus one foot in flood hazard areas other than coastal high hazard areas.
- (2) The bottom of frame is at or above the base flood elevation plus one foot in coastal high hazard areas.



**Sec. 6-494. – General elevation requirement.**

Staff Summary: Delete sections that are superfluous or contradictory given the new language in Sec. 6-493.

~~Unless subject to the requirements of section 6-495, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, must be elevated such that the top or the lowest floor is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V).~~

**Sec. 6-495. – Elevation requirement for certain existing manufactured home parks and subdivisions.**

Staff Summary: Delete sections that are superfluous or contradictory given the new language in Sec. 6-493.

~~Manufactured homes that are not subject to section 6-494, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, must be elevated such that either the:~~

- ~~(1) Top or the lowest floor of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V); or~~
- ~~(2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.~~

**Sec. 6-479. – Definitions**

Staff Summary: Removes the repetitive loss term, restoring the definitions to the basic terms defined by the FBC and NFIP.

~~*Substantial damage.* Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes buildings and structures that have experienced repetitive loss.~~

LEE COUNTY RESOLUTION NO. \_\_\_\_\_

A RESOLUTION \_\_\_\_\_

**WHEREAS**, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; and,

**WHEREAS**, the Board of County Commissioners (“Board”) adopted the Lee County Land Development Code which contains regulations applicable to the development of land in Lee County; and

**WHEREAS**, the Board has adopted provisions under Chapter 6 of the Land Development Code related to Flood Hazard Reduction, including a definition of “market value” to be used in determining whether the cost of a substantial improvement exceeds 50% of the value of a structure; and

**WHEREAS**, Hurricane Ian made landfall on September 28th, 2022, causing extensive damage to many communities within Lee County, necessitating the need for immediate reconstruction activity; and

**WHEREAS**, Florida Statutes Section 252.38, as well as Lee County Ordinance No. 87-1, authorize the Board to exercise certain emergency powers in order to respond to a declared state or local emergency.

**WHEREAS**, the Board has heard testimony from local building industry representatives that factors such as the inflated price of building materials and the limited availability of licensed contractors and appraisers are constraining the ability of residents to repair and rebuild their homes and businesses in a timely manner; and

**WHEREAS**, the Board has determined that it is in the public interest for recovery from Hurricane Ian to establish an efficient method of calculating “market value” that does not require

the use of an independent appraiser; and

**WHEREAS**, the Board desires to establish an adjustment factor to be applied to a property's assessed value as an alternative method of calculating a property's market value for purposes of determining the relative cost of substantial improvements needed as a result of Hurricane Ian.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA**, that

Notwithstanding any local ordinance, rule, or other law to the contrary, for any substantial improvements required as a result of Hurricane Ian, the definition of market value under Section 6-479 of the Land Development Code may, at the option of the property owner, be calculated by applying an adjustment factor of 15% to the assessed value of the structure, as determined by the Property Appraiser, in lieu of obtaining an independent appraisal.

Commissioner \_\_\_\_\_ made a motion to adopt the foregoing resolution, seconded by Commissioner \_\_\_\_\_. The vote was as follows:

Kevin Ruane	___
Cecil L Pendergrass	___
Raymond Sandelli	___
Brian Hamman	___
Mike Greenwell	___

DULY PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

ATTEST:  
KEVIN KARNES, CLERK

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
\_\_\_\_\_, Chair

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

\_\_\_\_\_  
County Attorney's Office