



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

**WEDNESDAY, SEPTEMBER 9, 2015
2:00 P.M.**

AGENDA

1. Call to Order/Review of Affidavit of Publication
2. Approval of Minutes – April 15, 2015
3. WELL ORDINANCE AMENDMENT –ROLAND OTTOLINI
4. AMENDMENTS TO HEARING EXAMINER ZONING PROCESS -
DONNA MARIE COLLINS AND LAURA BELFLOWER
5. Adjournment – Next Meeting Date: November 4, 2015

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MINUTES REPORT EXECUTIVE REGULATORY OVERSIGHT COMMITTEE WEDNESDAY, APRIL 15, 2015

Committee Members Present:

Tracy Hayden, Chairman	Bill Ennen	Darin Larson
Hal Arkin	Jim Ink	Matthew Petra
Bill DeDeugd	Stephanie Kolenut	Michael Reitmann

Committee Members Absent:

Carl Barraco, Jr.	Randy Mercer	Buck Ward
Bob Knight	Mike Roeder	

Lee County Government & Representatives Present:

Andrea Fraser Asst. County Attorney	Cathy Olson, Conservation Lands Mgr.
Pete Winton, Asst. County Manager	Marisa Carrozzo, Conservation of SW FL
Nettie Richardson, Zoning Senior Planner	Pam Hendry, DCD Admin., Recording

Public Participants:

Rae Ann Wessel, self
Brenda Thomas, Lee Bldg. Ind. Assoc.

Introduction

Ms. Tracy Hayden called the meeting to order at 2:08 p.m. in the first floor conference room of the Community Development/Public Works Center, 1500 Monroe Street, Ft. Myers, Florida.

Ms. Andrea Fraser, Assistant County Attorney, reviewed the Affidavit of Posting of Meeting and found it legally sufficient as to form and content.

Amending the Conservation 20/20 Ordinance

Mr. Pete Winton said Conservation 20/20 has been a long standing program since 1996 when there was a nonbinding referendum to charge a half million dollars to buy conservation 20/20 lands. A few years ago Lee County Commissioners (Board) received an interpretation that they couldn't charge a separate tax rate for the 20/20 program, and it should be considered a general fund rate because they didn't have the authority to charge a county wide tax rate without the cities opting in, and they never did. The millage had to go away so the Board decided we should update the ordinance to keep it current with today's conditions because they are committed to Conservation 20/20 and want to maintain it as a viable program. The amendments to the ordinance on how to fund it and the goals of the program came from many discussions with the Board and the Conservation Lands Acquisition Committee. The main change is language added about the funding of the program that says when the acquisition funds drop below a certain point, the Board commits to replenish the fund. Another part of the ordinance is the funding for maintaining all the 25,000 acres of property purchased over the last 20 years. There was

a separate fund from the dedicated millage, but this year it's folded into the general fund so from now on we're funding it in the general fund/continuation budget for all time. For the acquisition the Board said when it drops below point we'll replenish the fund in whatever way we choose to replenish that fund. With water quality at the top of everybody's legislative agenda, the Board also looked at ways that we could try and meet the conservation goals of the County's water quality mandates by using existing resources as effectively and efficiently as possible. So, there is some water quality language added to the ordinance where potentially we could purchase properties that met both the conservation and water quality goals, and use funds to do the restoration. He said there are no new regulations, some of it has been simplified, some is just making sure that this program continues without a dedicated millage.

Mr. Darin Larson asked how much was collected for the program on an annual basis. Mr. Winton said it generated between \$25 to \$50 million, depending on the tax base at the time. Mr. Larson asked how much was purchased through the program. Cathy Olson said the last couple of years they've only closed on a handful of parcels, fewer than 10 acres. Mr. Winton said over the last couple of years the highest year was about 3 million and the lowest was several hundred thousand. Mr. Larson said at one time there was a fairly significant backlog of eligible properties being considered, are there still a backlog of properties today? Ms. Olson said there are about a dozen or fifteen in various stages of authorization from the Board for negotiations. Mr. Winton said a lot of properties fall off the list for whatever reason, selling price to high, etc.

Mr. Hal Arkin asked if there is a reserve setup to maintain the 25,000 acres. Mr. Winton said yes, it's part of the general fund budget now and it runs about \$6 million a year. He said it is in the acquisition fund, as of today we have \$93 million.

Mr. Bill DeDeugd said on page 2, in the second paragraph it says, "...in order to reflect the Board's desire clarify expenditures..." it should say..."in order to reflect the Board's desire to clarify expenditures..." Mr. DeDeugd said in Section Three Objectives and Duties, C. has been crossed out complete, therefore D. should become C, and the rest fall in line accordingly.

Mr. Jim Ink said regarding Item E. of Section Three, can the County now solicit to buy property? Mr. Winton said we added language where the County can actually identify a property and see if it's for sale.

Mr. Ink said in Section Four G. it says "...New properties that meet both conservation *and* water quality goals can be purchased with improvements paid from the acquisition fund." He asked does all purchased property now have to meet both of those requirements, not just conservation, but water quality so there's now a water quality test? Mr. Winton said no, it can be strictly for conservation. Mr. Ink said it reads as if new properties must meet both to be purchased. Mr. Winton said we don't want 'or' because we want it to meet both tests. He said the County is faced with limited existing resources, we're not expanding our financial resources, and we have both conservation needs and we have water quality needs. We wanted to codify some flexibility giving the Board the option when looking at a

new property for conservation, that could meet a water quality goal also, we'd purchase it and we may or may not use some of the acquisition funds to do the water quality project. Mr. Ink said it goes on to state that the funds can be used for water quality improvement projects, so is that only on 20/20 land or could you use it somewhere else? Mr. Winton said it would have to be 20/20 land, so you can't use money just for property to do water quality projects, it has to meet the 20/20 Conservation goals as well as water quality goals. Ms. Hayden said she agrees with Mr. Ink that it reads as though new properties must meet both conservation *and* water quality goals for the County. Mr. Winton said it can be purely for conservation or it can meet both goals, it doesn't preclude just buying land for conservation. Mr. Ink said it does read as though both goals must be met for purchase. Mr. Petra said G. in Section Three lists options and uses the word 'or', so there's a discrepancy.

Mr. DeDeugd said on page 6 in Section Three J., in his opinion, the word 'may' should be removed as it has no place in there.

Mr. Larson asked for some background on rationale behind the two thresholds in Section Eight, 3. Fund Replenishment, \$100 million and \$40 million. Mr. Winton said we discussed it with the 20/20 committee and this is staff's recommendation that the Board will take up on Tuesday. He said we were looking at not greater than and what would be on the low end to give the Board fairly wide latitude. The recommendation from Conservation 20/20 is to have not less than \$60 million and the Board may not have a problem with that. The threshold will be almost purely at the discretion of the Board. He said we've never spent more than \$40 million in a year. The average over 20 years has been in the \$25, \$16, \$17 million dollar range. Mr. Larson said he's concerned that once the fund balance drops below this amount, the County will replenish the fund, what does that mean, \$1 dollar more? Mr. Winton said we gave the Board wide discretion, we didn't make a recommendation, we gave a range, so it could be \$1 dollar more. He said in certain times they could replenish the fund in one year, and other times they could have to do it over 2 or 3 years. Mr. Ink asked if that would come up in budgetary discussions. Mr. Winton said yes, when you read through the rest of the Section Eight, Annual Review and Appropriation, you're trying to do a projection on what properties you have in the hopper and where are they, what's the time frame, so it's more of a budgetary process to go through where you see what your immediate and midterm needs are and budget accordingly.

Ms. Hayden asked about the management fund and what the County is doing to manage the properties they have now. Mr. Winton said we've got a department with annual operating costs, equipment costs as well as the restoration projects. Ms. Olson said the management pot is the day to day fire lines, public access, treating exotics, etc., and the restoration which is the hardcore, big projects that repair hydrological impacts or address big invasive exotic projects, so it's about a million and a half dollars of staff and overhead and the rest is restoration, design work, permitting and on the ground heavy lifting. We have identified about \$30 million in hardcore restoration costs based on our current inventory. Ultimately that restoration need will go down and we'll be at maintenance level which over time will go up because we'll have to keep up on the restoration. Mr. Winton

said we'll need to fully fund the management account annually since the millage is going away. It will be in the general fund, treating it like a department now.

Mr. Bill Ennen asked if it was staff's recommendation to have a \$60 million fund balance. Mr. Winton said before you today is staff's recommendation to the Board, and actually, Conservation 20/20 had its own recommendations. He said we've had work sessions with the Board and won't change the recommendations at this point.

Mr. Larson asked about the differences in the different recommendations. Mr. Winton went over the different recommendations.

Mr. Michael Reitmann said the discussion at one time was that it would be placed on a ballot for the vote of the citizens to retain it or not, has that gone away because any specific millage reference has been removed and it's funded out of the general fund? Mr. Winton said that's not the case because a couple of years ago when there was a blue ribbon committee that was making changes to the program per the Board came up with 15 or 16 recommendations which the Board adopted and one of those was to go to referendum in 2016, so that's the Board's direction now.

Mr. Darin Larson made a motion to recommend the ordinance with the clarifications requested in the language that came up in discussion, with one exception, change it to \$60 million instead of not more than \$100 million and less than \$40 million. Mr. Bill DeDeugd seconded. Some discussion followed. The motion did not carry.

Mr. Jim Ink made a motion to accept the amendments as is with the scrivener errors corrected, and to clarify Section Four G. to say they could purchase strictly for conservation or they could purchase for conservation and water quality goals, and leave the minimum at \$40 million and not more than \$100 million, the way it is. Mr. Bill Ennen seconded. Some discussion followed. The motion carried unanimously.

ADJOURNMENT

Ms. Kolenut moved to adjourn. Mr. DeDeugd seconded. The meeting was adjourned at 2:56 p.m.

The next meeting was tentatively scheduled for May 13, 2015.

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Lee County
Well Ordinance
Amendment

Roland Ottolini

EROC ORDINANCE EVALUATION GUIDELINES

Proposed Ordinance:

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

Lee County groundwater resources.

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

Lee County is the local delegated authority for well construction per 40E-3 F.A.C. from the South Florida Water Management District. This ordinance is being updated to incorporate new State permitting requirements.

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

Well construction is regulated under 40E-3FAC with Lee County being the delegated authority by the SFWMD. Action through State delegation or local code as an option would require the same level of scrutiny and evaluation to protect the resource.

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

No. Lee County is the delegated authority on behalf of the SFWMD, a State agency.

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

Lee County has adopted e-permitting that allows a contractor to pull a permit without physically appearing at our facility.

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

The rules and regulations contained within the ordinance is the minimum standard necessary to protect the County's groundwater resources. Means and methods within are common practices of qualified contractors. Ordinance verifies certain stages of completion meet these standards.

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

This regulation is solely user based with support from the General Fund recognizing the regional nature and value of protecting our groundwater resources.

8. Does the regulation impact vested rights?

No impact to vested rights.

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

There are emergency permitting practices in place to meet the need of resource restrictions.

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

This is an update to an existing ordinance, not another regulation. Protection of potable water is a state requirement.

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

SFWMD has provided delegation to other jurisdictions within the State. Lee County is highly qualified to carry out these responsibilities. All inspectors are licensed well drillers with specific experience as contractors.

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

This is an existing Lee County program funded under General Fund which is partially fee supported. Currently, the budget for this program for FY 15/16 is \$822,432.00. This amendment proposes the new rates on Appendix "C" to help offset costs.

This is a proposed amendment only includes recent rulemaking that covers House Bill 999 and Well Contractor Licensing.

Private costs if not enacted are variable depending on the degree of violation. An improperly installed well can impose a health risk to those utilizing the supply, contaminate other important aquifers, therefore affecting neighboring potable wells. The cost to drill a replacement could cost double the initial amount plus recuperative fees to repair the resource damage or possible legal and court fees for action against contractor.

LEE COUNTY ORDINANCE NO. 06-09 15-

AN ORDINANCE REPEALING AND REPLACING LEE COUNTY ORDINANCE 06-0900-15 RELATING TO THE LEE COUNTY WELL CODE; PROVIDING FOR REPEALER, PURPOSE AND SHORT TITLE, AND ADOPTION BY REFERENCE: FLORIDA ADMINISTRATIVE CODE RELATING TO WELLS; PROVIDING FOR TERRITORIAL SCOPE; PROVIDING FOR DEFINITIONS; PROVIDING FOR WELL USE CLASSIFICATIONS; PROVIDING FOR ESTABLISHMENT OF THE WELL CONSTRUCTION ADVISORY BOARD; PROVIDING FOR COMPLAINTS, MEDIATIONS, FORMAL HEARING PROCESS, AND APPEALS; PROVIDING FOR PERMITTING PROCEDURES; PROVIDING TEST WELL REQUIREMENTS; PROVIDING FOR DRILLING INSPECTORS AND INSPECTIONS; PROVIDING FOR CONSTRUCTION OF WELLS, BORINGS, AND SHAFT HOLES; PROVIDING FOR ~~LICENSING; PROVIDING FOR~~ SUPPLEMENTAL REGULATIONS; PROVIDING FOR PENALTIES AND A FEE SCHEDULE; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY, INCLUSION IN THE CODE, SCRIVENER'S ERROR, AND AN EFFECTIVE DATE.

LEE COUNTY ORDINANCE No. 06-09

**-WELL-CODE
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WHEREAS, the Board of County Commissioners is the governing body in and for Lee County, a political subdivision of the State of Florida; and,

WHEREAS, the Lee County Board of County Commissioners recognizes the importance of safeguarding water resources; and,

WHEREAS, the Lee County Board of County Commissioners realizes the importance of safeguarding life, health, and public welfare; and,

WHEREAS, the Lee County Board of County Commissioners further appreciates the need for the development and maintenance of better well drilling and standardizing drilling and other practices; and,

WHEREAS, the Lee County Board of County Commissioners recognizes the Agreement between Lee County and South Florida Water Management District,” dated September 13, 2005, wherein Lee County received delegation of authority from the South Florida Water Management District; and,

WHEREAS, Lee County staff has the authority to interpret the content of this Ordinance; and,

WHEREAS, the Lee County Board of County Commissioners recognizes the delegation of authority for permitting well construction and abandonment and activities associated therewith; and,

WHEREAS, in accordance with the authority delegated to it by the South Florida Water Management District, the Board seeks to revise the Well Code to be consistent with the delegated authority and recent changes in State law.

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

SECTION ONE: REPEALER

~~1.1 — REPEAL OF EXISTING COUNTY ORDINANCE(S).~~

Lee County Ordinance ~~06-09, otherwise known as the Lee County Well Code, No. 00-15~~ is hereby repealed, ~~and~~ declared ~~null and void~~ and without further effect, ~~except as provided herein, as of the effective date of this Ordinance.~~

SECTION TWO: 1.2 PURPOSE AND SHORT TITLE.

This Ordinance is known and cited the Lee County Well Code (“Well Code”). This Ordinance provides the very minimum requirements for safeguarding life, health and public welfare by regulating ~~and controlling~~ design, construction, alteration, repair, equipment, location, maintenance,

and plugging of wells, borings, and elevator shafts in Lee County. The Well Code is dedicated to development and maintenance of better well drilling practices, to safeguarding water resources, and to standardizestandardizing drilling and related practices.

SECTION THREE:4-3 ADOPTION BY REFERENCE: FLORIDA ADMINISTRATIVE CODE RELATING TO WELLS.

The Board hereby adopts by reference and incorporates herein, as a part of this Ordinance, all applicable provisions of Chapters 40E-3, 62-532, 62-55564E-6, and 64E-8, Florida Administrative Code, as may be amended from time to time. In the event of a conflict between state regulations and this Ordinance, the more stringent requirement mustshould be applied.

SECTION FOUR: TWO: TERRITORIAL SCOPE.

This Ordinance shall be applicable in all areas of Lee County where no other such regulatory programs are administered by another delegated agency or municipality.

SECTION FIVE: THREE: DEFINITIONS.

The words, terms, and phrases defined below, when used in the Well Code, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Undefined words, terms, and phrases in the Lee Plan shall have their common meanings, except where the context clearly indicates a different meaning.

~~The following definitions are established for purposes of, and apply to, this Ordinance:~~

ABANDONED WELL – A well having any one of the following characteristics:

- without a valid South Florida Water Management District (SFWMD) Water Use Permit; or
- ~~• that is not capable of being operational throughout the year; or~~
- whose construction does not meet State or County standards; or
- which is not approved by Lee County Natural Resources Division (hereinafter referred to as NRD) within ninety (90) days of inspection completion; or
- whose purpose or use has been permanently discontinued; or
- which is in a such a state of disrepair that its purpose cannot be reasonably achieved; or
- acts as a source of ground water contamination; or
- that is detrimental to water resources of Lee County as determined by NRD or SFWMD.

AFTER-THE-FACT INSPECTION – An inspection conducted where one or more of the critical stages of well construction were not witnessed by a NRD well inspector.

ANNULUS OR ANNULAR SPACE - Any artificial void created during construction of a borehole, or existing between a well casing and a borehole wall, or between an inner and an outer casing.

APPROVED - Approved by the NRD or other authority having jurisdiction over the proposed activity.

APPROVED MATERIALS - Materials specified by Chapter 40E-3, Florida Administrative Code, as it may be amended from time to time, and as otherwise specified in this Ordinance.

AQUIFER – A geologic formation, group of formations, or part of a formation that contains sufficient saturated permeable material to yield useful quantities of groundwater to wells, springs, or surface water.

ARTESIAN WELL - Any artificial hole in the ground from which water supplies may be obtained and which penetrates any water-bearing rock, the water of which is raised to the surface by natural flow, or which rises to an elevation above the top of the uppermost confining unit.~~water-bearing bed.~~ Artesian wells are defined further to include all holes, drilled as a source of water, that penetrate any water-bearing beds that are a part of the artesian water system of Florida. through impermeable strata into strata receiving water from an area at a higher altitude than that of the well, so that there is sufficient pressure to force water to flow upwards.

ARTIFICIAL RECHARGE - is the practice~~The introduction~~ of increasing by artificial means the amount of water that enters a groundwater reservoir~~any fluid substance into any underground formation.~~

BENTONITE - A material used in the drilling industry and available in the following different grades:

- Non-drilling grade: Specially processed, coarse ground bentonite.
- Drilling grade: Specially processed, fine-ground bentonite used in make-up of Drilling mud and as an additive to cement grout.~~up of~~

~~drilling mud and as an additive to cement grout.~~

BOARD - The Board of County Commissioners of Lee County, Florida.

CASING DIAMETER – Also referred to as “diameter of casing” is the largest nominal permanent water-bearing casing. For the purpose of this Ordinance, the diameter of the casing at the upper terminus will be presumed to be the diameter for the entire length, unless the well owner or Contractor can demonstrate that the well has a smaller diameter permanent water bearing casing below the upper terminus.

Cathodic Protection Wells- Often known as deep groundbeds, are widely installed to protect metallic objects in contact with the ground from electrolytic corrosion, particularly structures within the oil, natural gas and water industries.

CONSOLIDATED – A geologic stratum, which is cemented with a binding substance commonly derived from within the deposit containing that stratum.

CONTRACTOR – See definition for **Water Well Contractor**.

CONSTRUCTION OF WATER WELLS - All parts and acts necessary to obtain or dispose of water by wells, including the location and excavation of the wells, but excluding the installation of pumps and pumping equipment.

CRITICAL STAGES – ~~Are the~~**The** stages of well construction considered by NRD to be critical for insuring and independently determining that a well is properly constructed. These critical stages of well construction are summarized as follows:

- Drilling the well borehole to the depth that the well casing(s) will be installed;
- Installation of the well casing(s) to the desired casing depth(s);
- Installation of the well casing(s) annular space grout seal; and
- Drilling the well borehole to the total depth that the well will be constructed (i.e. drilling open hole of the well or production interval).

DIRECTOR - The Director of the Lee County NRD or any other Division as designated by the Board; or his/her duly authorized representative, who the authority is charged with the administration and enforcement of the Ordinance.

DIRECT PUSH – rig that pushes tools into the ground for retrieving soil samples or for retrieving water samples by construction of a monitor well.

DISCIPLINARY GUIDELINES – Appendix B attached hereto and incorporated herein as “Well Contractor’s Disciplinary Guidelines” specifies procedures, fines and penalties for selected violations.

DOMESTIC WELL – A water supply well installed and utilized to provide water for ~~up to four (4) individual~~ residential unit~~s~~, where, if multiple units are supplied, not more than one unit is utilized as a rental unit. May also be utilized as an irrigation source.

DRILLER - Any person working under the direct supervision of a licensed water well contractor, who actually operates a drill rig to construct, repair, or abandon a well, boring, or an elevator shaft.

DRILLING EXPERIENCE - The physical operation of a drilling rig under the direct supervision of a licensed water well contractor for the purposes of construction, repair and

abandonment of wells, borings, or elevator shafts.

DRIVE SHOE - Any device specifically designed, fabricated, and installed to protect the bottom end of a water well casing from collapse or other damage while the casing is being driven into place ~~in a water well~~.

ELEVATOR SHAFT - A double-cased and grouted hole constructed into the earth's surface to provide for the movement of hydraulic rams used to lift and lower elevator cars.

ELEVATOR SHAFT SPECIALTY CONTRACTOR – A Lee County licensed drilling contractor with an elevator shaft specialty drilling license.

EMERGENCY NEED – The need to install a replacement water supply well, not including an irrigation well, in response to failure of an existing water supply well to yield water, where the existing well failure has resulted in a loss of water supply and no temporary water supply is readily available to the residential or commercial user.

EXISTING WELL INSPECTION– An inspection performed by NRD staff to confirm compliance of an existing well with the requirements of this Ordinance and Lee County Administrative Code AC 12-4.

FIRE WELL - A well installed and utilized solely for providing water supply sufficient for ~~fire fighting~~ fire fighting purposes.

GEOTECHNICAL BORING – Also referred to as a test boring, a test hole, or a standard penetration test is a boring performed with a boring or direct push drilling rig to obtain data for engineering studies, seismographic, geophysical, or geological exploration information and data on subsurface conditions for engineering design or prospecting for minerals.

GEOTECHNICAL BORING SPECIALTY CONTRACTOR - A Lee County licensed drilling contractor with a geotechnical boring specialty drilling license.

GEOTHERMAL CLOSED LOOP SYSTEMS- These systems use water and an antifreeze solution circulated through a closed-loop system of pipes buried in the earth commonly referred to as a loop field. The solution acts as a medium for heat transfer. These loops are heat fused at the joints and pressurized. The loop field is what sets these systems apart from conventional heating and cooling equipment.

GEOTHERMAL WELLS – A combination of a supply well and an injection well installed to utilize the natural thermal characteristics of groundwater for heating and cooling. Groundwater withdrawn by geothermal wells does not typically result in changes in water quality or consumptive use (i.e. the same quality and quantity of water withdrawn from the supply well are returned to the same aquifer through the injection well).

GROUNDING ROD BORING – A borehole constructed for installation of a metallic rod into the earth for the purpose of short circuiting electrical power or protection against accidental electrocution.

GROUND WATER - The water that occurs beneath the land surface in which the pore spaces in the subsurface formations are fully saturated and under atmospheric or greater pressure.

GROUTING MATERIAL – One of the following mixtures used for grouting or plugging annulus or annular space created during a permitted activity:

- Portland cement grout, with ~~or without~~ additives that must be pre-hydrated prior to mixing with cement.
- Neat Cement Grout – Portland cement without additives
- Any other grouting material approved in writing by the NRD.

GROUTING OF WELLS - The placement of ~~grout~~**grouting** material in the annulus or annular space of a well from the bottom of the casing to ground level so as to prohibit the movement of ground water from one aquifer to another. Grouting may be by tremie pipe or pressure method, whichever is appropriate.

HORIZONTAL WELL - An excavation, into which a fabric covered, perforated or slotted casing is laid horizontally for the purpose of withdrawing ground water. Withdrawals are made through vertical risers at either end of the horizontal section. Risers are constructed and grouted in accordance with this Code.

INJECTION WELL - A well designed and constructed for the purpose of pouring or pumping water, or some other liquid, into a ground water formation.

IRRIGATION WELL – A well installed and utilized solely for providing water to irrigate landscaping or agricultural crops.

LOWER TAMIAMI AQUIFER - The water-bearing formation typically occurring immediately below the first regional confining zone (“green clay layer”) in south Lee County as delineated on Plate 13 of the Lee County Water Management Project, October 5, 1988, completed by James M. Montgomery Consulting Engineers, Inc., or as depicted on a more recent study acceptable to NRD.

MONITORING WELL – Also referred to as observation well, used for monitoring the quality of water, fluctuation of water levels, or other purposes concerning hydrologic conditions.

~~**MONITORING WELL CONTRACTOR** – A Lee County licensed drilling contractor with a monitoring well specialty drilling license.~~

NEAT CEMENT GROUT - A mixture consisting of water and Portland cement (American Concrete Institute Types I, II, or III), without additives, or other types of cement as approved by the NRD having maximum allowable six (6) gallons of water per bag of Portland cement. (a mixture consisting of water and Portland cement (American Concrete Institute Type I or American Concrete Institute Type III), or other approved types of cement and acceptable amounts of those additives approved for use in cement grouts by the permitting authority.)-

NON-ARTESIAN WELL OR WATER-TABLE WELL - A well in which the water does not arise above the source bed; i.e., a drive point or dug well, or other well which does not penetrate a confining bed.

PERSON - Any and all persons, including, but not limited to, any individual, firm, association, organization, partnership, business, trust, corporation, company, or governmental agency.

PIEZOMETERS - a device used to measure static liquid pressure in a system by measuring the height to which a column of the liquid rises against gravity, or a device which measures the pressure (more precisely, the piezometric head) of groundwater at a specific point.

PRIVATE WATER SYSTEM WELLS – Wells that are being used to produce water for human consumption and other domestic purposes serving one or two single-family residences, one of which may be rental. A multi-family water system serves three or four residences, one of which may be rental.

PROCEDURES MANUAL – “Appendix A” attached hereto and incorporated herein as the “Procedures Manual for Issuance of Permits for Well Construction and Abandonment” periodically provides more details to selected methods, materials, procedures and policies that are described, in general terms, in the Lee County Well Code.

PUBLIC WATER SUPPLY WELL – A well serving a public water supply system.

PUBLIC WATER SUPPLY SYSTEM - Any system having at least fifteen (15) service connections or serving an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year or a Limited Use Commercial/Community Public Water Systems (LUCPWS).

RECOVERY WELL - A well constructed for the purpose of allowing free-product hydrocarbons or other contaminants to be withdrawn from the ground water.

REINSPECTION - Additional inspections due to untimely cancellations of proposed work, violations or non-compliance, which are required during or after the construction has been completed.

REPAIR - Any action which involves the physical alteration or replacement of any part of a well, ~~excluding~~ acidizing, but does not include the alteration or replacement of any part of a wellhead, which must be maintained at a minimum of twelve (12) inches above finished grade.

REPEAT VIOLATION – A violation of a provision of this Ordinance or of Chapter 40E-3, Florida Administrative Code (F.A.C.), by a person who has been previously found by NRD, Well Construction Advisory Board, or any other quasi judicial or judicial process, to have violated or who has admitted violating the same provision within five (5) years prior to the violation, notwithstanding the violation occur at different locations.

REPLACEMENT WELL – A well intended to replace an existing well, installed for the same purpose or use as the existing well.

SFWMD - South Florida Water Management District.

SAND-POINT WELL - Any device which is driven and/or washed into place in unconsolidated ~~Surficial~~ ~~surficial~~ earth materials, and which consists of a pipe with an attached perforated or screened end, designed to permit the passage of water.

SPECIAL CONDITIONS – Specific permit conditions included in the Well Construction Permit to insure compliance with intentions of this Ordinance or Chapter 40E-3, Florida Administrative Code.

SPECIALTY LICENSE – Lee County ~~drilling~~ contractor licenses issued specifically for the installation of ~~monitoring wells~~, geotechnical borings or elevator shafts.

TEST WELL, BORING, OR ELEVATOR SHAFT - Any well, boring, or shaft constructed for the purpose of obtaining data for engineering and/or seismography, geophysical or geological exploration; prospecting for minerals or products of mining or quarrying; or for placement of hydraulic rams, but not for the purposes of either producing or disposing of water.

TREMIE PIPE – A pipe or tubing of smaller diameter relative to the well casing pipe utilized for the emplacement of grout for sealing the annulus or annular space.

64E-8 (Chapter 64E-8 Florida Administrative Code) WELL - A well meeting the minimum requirements for a well system as set forth in Chapter 64E-8, Florida Administrative Code (F.A.C.), or any successor regulation to Chapter 64E-8 which regulations prescribe minimum water quality standards for uses similar to those covered by Chapter 64E-8.

UNDERGROUND FORMATION - Any subsurface stratum or strata, consolidated or unconsolidated, lying beneath the surface of the ground.

VIOLATION – Non-compliance with requirements of this Ordinance, ~~of~~ Chapter 40E-3, F.A.C., 62-532 F.S., 62-555 F.S., 373.323 F.S. or 64E-8 F.A.C.

WATER OR WATERS OF THE COUNTY - Any and all water on or beneath the surface of the ground, including natural or artificial watercourses, lakes, ponds, or diffused surface water and water percolating, standing, or flowing beneath the surface of the ground, as well as all coastal waters within the geographical boundaries of Lee County.

WATER/MONITORING WELL - Any excavation beneath the earth's surface that is drilled, cored, washed, driven, dug, jetted or otherwise constructed when the intended use of such excavation is for the location, monitoring, acquisition, development, or artificial recharge of ground water, but such term does not include wells for the purpose of obtaining or for prospecting for oils, natural gas or minerals.

WATER WELL CONTRACTOR (Also referred to hereinafter in this Ordinance as Contractor) - Any person actively engaged in the business of the construction, repair or abandonment of wells, ~~borings, or elevator shafts~~ with a valid State of Florida WaterLee County well contractor license.

WELL CONSTRUCTION ADVISORY BOARD - Also referred to as the Advisory Board appointed by the Lee County Board of County Commissioners of Lee County, Florida, to advise the Director concerning the administration of this Ordinance and the regulation of the drilling industry and other such duties as may be established in this Ordinance.

WELL DEVELOPMENT – The aggressive, forceful and vigorous withdrawal of residuals from a well, usually through pumping compressed air, following drilling a borehole, performed in a manner that ensures complete removal of drilling mud, drill cuttings and other debris present in the well.

SECTION SIXFOUR: WELL USE CLASSIFICATIONS.

4.4 6.1 GENERAL.

Every new and existing well shall, for the purpose of this Ordinance, be classified according to use, purpose, size and land use as described hereinafter.

6.4.2 WELL CLASSIFICATIONS.

- (1) Domestic Well
- (2) Irrigation Well
- (3) Test Well
- (4) Public Water Supply Well (includes LUCPWS wells)
- (5) Monitoring Well
- (6) Injection Well

- (7) Piezometer Well
- (8) Fire Well
- (9) Test Boring or Geotechnical Boring
- (10) Elevator Shaft (includes outer casing and grouting)
- (11) Geothermal Well (combination of supply and injection wells)
- (12) Replacement Well
- (13) Grounding Rod Boring
- (14) Recovery Well
- (15) Horizontal Well
- (16) Geothermal Holes
- (17) Cathodic protection wells

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4.3 LAND USE CLASSIFICATIONS.

- (1) Single Family
- (2) Duplex
- (3) Multi-Family
- (4) Commercial
- (5) Farm
- (6) Other

SECTION SEVENFIVE: COMPLAINTS, MEDIATIONS, FORMAL HEARING PROCESS, ANDand APPEALS.

75.1 WELL CONSTRUCTION ADVISORY BOARD.

By execution of this Ordinance by the Board of County Commissioners of Lee County, Florida, hereby creates the Well Construction Advisory Board (WCAB), also referred to as the Advisory Board.

—The Advisory Board shall be composed of five (5seven-7) members. The Advisory Board members with following qualifications appointed by resolution by the Lee County Board of County Commissioners shall be comprised as follows:

- (1) Three (3Four-4) licensed water well contractors actively engaged in well construction in Lee County and whose license is in good standing.
- (2) One (1) member who is not a Contractor but owns a well and is a resident of Lee County.

~~(3)~~(2) One (1) member from the Lee County Health Department, Environmental Engineering Division.

~~(4)~~(3) One (1) member from the South Florida Water Management District.

75.2 OFFICERS, QUORUM, AND RULES OF PROCEDURE.

—(1) Each January, the membership of the Advisory Board shall elect a Chairperson and, Vice Chairperson from among the Advisory Board members. Officers' terms shall be for one (1) year with eligibility for re-election.

—(2) The presence of four (34) or more members shall constitute a quorum of the Advisory Board necessary to take action and transact the business of the Advisory Board. In addition, an affirmative vote of four (34) or more members shall be necessary in order to take official action, regardless of whether four (34) or more members of the Advisory Board are present at the meeting.

—(3) Rules of Procedure for Meetings: The Advisory Board shall, by majority vote of the entire membership, establish rules and regulations for its own procedures consistent with Lee County codes and ordinances, and adopt rules of procedure for the transaction of business. This procedure will become part of the Lee County Administrative Code. The Advisory Board will meet at regular intervals as determined by the Chairman, but not less than once a month unless a good cause is shown. All meetings will be conducted in accordance with Robert's Rules of Order.

—The NRD or its designee will act as an *ex officio* secretary of the Advisory Board and will keep minutes of all meetings. An audio recording of the meeting will constitute the official record of the proceedings for any appeal purposes. Any person desiring to appeal a decision of the Advisory Board may request a transcript of the proceedings. The cost of transcription is the responsibility of the requesting party.

—Copies of all Advisory Board minutes, resolutions, reports and exhibits will be posted on the internet for review by the ~~submitted to the~~ Lee County Board of County Commissioners ~~for review~~ and the general public information.

—(4) All Advisory Board meetings shall be open to the public.

—(5) The Advisory Board shall comply with all Florida laws and rules relating to "Government in the Sunshine" (Chapter 286, F.S.), public records (Chapter 119, F.S.), and public officials (Chapter 112, F.S.).

—(6) Members of the Advisory Board shall serve without compensation.

75.3 FUNCTIONS, POWERS AND DUTIES OF THE ADVISORY BOARD.

The functions, powers and duties of the Advisory Board shall be as follows:

(1) The Advisory Board has the authority to conduct hearings and make final determinations related to all matters arising from violation of any part of this ordinance.

~~(2)~~—(4) The Advisory Board shall hear appeals of denial of permits, orders to plug or rehabilitate wells and other matters (what are these and where in the well code?) as set forth herein. The Advisory Board shall advise the NRD on licensed applicants, content of licensing examination, quality of workmanship when a complaint is placed on a licensee, or well construction problems.

~~(3)~~ ~~(2)~~ The Advisory Board shall recommend amendments to this Ordinance, and shall have all other duties as prescribed under this Ordinance or any amendments thereto.

~~(4)~~ ~~(3)~~ The Advisory Board members will have equal voting rights on all issues before the Board.

75.4 REMOVAL FROM MEMBERSHIP.

Any member of the Advisory Board may be removed from membership with or without cause, by a majority vote of the Lee County Board of County Commissioners.

— If any member of the Advisory Board fails to attend more than one-half of the Committee's meetings during any six-month period without a satisfactory excuse or if a member is absent from more than one-half of the Advisory Board's meetings, the Advisory Board may declare the member's seat to be vacant and the vacancy shall be filled by the Lee County Board of County Commissioners.

75.5 TERMS OF APPOINTMENT.

Each designated member shall serve for three (3) years. Thereafter, each appointment or reappointment shall be for a term of three (3) years. Appointments to fill any vacancies on the Advisory Board shall be for the remainder of the unexpired term.

75.6 ADVISORY BOARD DISCIPLINARY HEARING PROCEDURES (See Appendix B for Disciplinary Action Procedures Flow Chart).

75.6.1. Complaint

—(1) All complaints involving a violation of this ordinance are to be filed with the NRD. The NRD is responsible for the investigation of a complaint only if it is in writing and legally sufficient.

—(2) A complaint is legally sufficient if it contains the necessary facts to indicate a probable violation of this ordinance. During review for legal sufficiency, either the Advisory Board or the NRD may request additional documentation or information from the complainant. If there is a question as to whether the complaint is legally sufficient, the final determination will be made by the Lee County Attorney's Office.

—(3) The Advisory Board or NRD may investigate an anonymous complaint if:

- (a) the complaint is in writing;
- (b) legally sufficient;
- (c) the alleged violation is substantial, and

_____ (d) the NRD has reason to believe, after preliminary inquiry, that the violation alleged in the complaint is true.

_____ (4) Either the Advisory Board or the NRD may, on its own, initiate an investigation if there is reason to believe that a Contractor or a group of Contractors has committed a violation of this ordinance.

75.6.2 Investigation

_____ (1) The NRD must investigate all complaints that are in writing, signed by the complainant and found legally sufficient.

_____ (2) The NRD should furnish the subject Contractor or the subject Contractor's attorney with a copy of the complaint or document that results in the initiation of an investigation.

_____ (3) The NRD may conduct an investigation without notification to the subject Contractor if the NRD makes a finding that notification will be detrimental to the investigation or if the act under investigation is a criminal offense.

_____ (4) The subject Contractor may submit a written response to the NRD concerning _____ the information contained in the complaint or document within twenty (20) _____ calendar days after receipt of notice regarding the complaint. This response _____ will be included in any documentation sent to the Advisory Board for review.

75.6.3 Mediation

_____ (1) After the initial investigation, NRD staff may schedule a meeting with the complainant and/or Contractor. A representative from the Lee County Attorney's Office will act as mediator. This meeting will be considered an informal mediation session.

_____ (2) NRD's role at this meeting is to explain the nature of the violation, offer possible methods of achieving abatement.

_____ (3) The objective of this mediation session is to obtain a voluntary agreement identifying the action that will be taken to abate the violation. This "Assurance of Voluntary Compliance" agreement will be reduced to written form within five (5) working days after the meeting and become effective upon execution by all parties.

_____ (4) If the agreement is not executed within thirty (30) calendar days after

the mediation session, the County may present the complaint to the Advisory Board for a probable cause determination and proceed to a formal hearing on the violation and resultant disciplinary action against Contractor.

——(5) Once the agreement is executed, the parties are required to comply with its written terms. If the Contractor fails to comply with the terms of the agreement, the County may present the complaint or voluntary agreement to the Advisory Board for a probable cause determination and proceed to formal hearing.

——(6) The NRD will retain a copy of the mediation agreement in the Contractor's file.

——(7) A Contractor can avoid the formal hearing process by entering into a mediation agreement and complying with its terms. However, a Contractor can use this method of addressing violations only three (3) times in any five (5) year period. Once the threshold limit is met, the Contractor must obtain Advisory Board approval to enter into subsequent mediation agreements. The Advisory Board has the sole discretion to grant or deny approval.

——(8) Mediation is not mandatory. It is intended only as a means to obtain compliance on an expedited basis.

75.6.4 Probable Cause Determination

——(1) If, after the NRD conducts its investigation, the complaint is deemed legally sufficient, and the alleged violation would result in a practice restriction that either results in the suspension, revocation, or denial of a Contractor's license, the NRD will submit a request for Probable Cause Determination to the Advisory Board for formal process.

All other violations resulting in a fine or other penalty may be contested by a Contractor by requesting a formal hearing before the Advisory Board. The written request for such hearing before the Advisory Board must be submitted to the NRD and must comply with the formalities of subsection 7-Sub Section 5.6.8 entitled "Written Documents".

A formal hearing date will be set within thirty (30) calendar days of NRD's receipt of such request.

——(2) The determination as to whether probable cause exists will be made by a majority vote of the Advisory Board sitting as a Probable Cause Panel.

——(3) The Probable Cause Panel may request additional investigation if the Panel reasonably believes that additional information is necessary to make the

probable cause determination.

—(4) If the Panel finds probable cause does exist, the NRD will file a formal complaint against the subject Contractor and set the date for hearing.

—(5) In lieu of a finding of probable cause, the Panel may issue a letter of guidance to the subject Contractor.

75.6.5 Formal Hearing Process

—(1) A formal hearing date will be set within thirty (30) calendar days after the Panel finds probable cause.

—(2) The Chairman of the Advisory Board or the County Attorney's office has the discretion to delay or continue the hearing date for good cause. A request for continuance must be delivered to the NRD in writing at least fourteen (14) calendar days before the hearing date and it must state the specific reasons for the request.

—(3) All parties must be given ten (10) calendar days notice prior to formal hearing unless otherwise agreed by the parties.

—(4) The notice of hearing must include the following:

(a) a statement of the time, place and nature of the hearing;

—(b) a statement of the legal authority under which the hearing is to be held; and,

—(c) a copy of the complaint.

—(5) The suggested time period for presentations at the hearing is:

(a) Ten to Fifteen (10 - 15) minutes for the primary presentation; and

(b) Five to Ten (5 - 10) minutes for rebuttal and/or questions of staff.

—(6) The order of presentation should be:

—(a) Ground water unit supervisor from Lee County Division of Natural Resources;

—(b) Contractor, or designated representative.

—(7) During the hearing, all parties will have an opportunity to present

evidence and argument.

—(8) At the discretion of the Advisory Board, the general public will have an opportunity to present oral testimony or written communications. If this evidence is considered by the Advisory Board, the opposing party will be given the opportunity to cross-examine, challenge or rebut it.

—(9) All testimony must be under oath.

—(10) A Division of Natural Resources ground water unit supervisor will represent the County in the proceedings against the Contractor.

—(11) The standard of proof applicable to these hearings is “clear and convincing evidence.” [Florida case law indicates that “clear and convincing evidence” requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produced in the mind of the Trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.]

—(12) Irrelevant, immaterial or unduly repetitious evidence may be excluded, but all other evidence of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs will be admissible, whether or not the evidence would be admissible in civil court. Any part of the evidence may be received in written form.

—(13) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but will not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions.

—(14) Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available. Upon request, parties will be given an opportunity to compare the copy with the original.

—(15) All pleadings, motions or other papers filed in the proceedings must be signed by a party or the party’s qualified representative.

—(16) The Well Construction Advisory Board will then direct its decision to the Director of the Natural Resources Division.

—(17) Upon a party’s request, the Advisory Board Chairman can issue a subpoena for hearing. Any person subject to a subpoena may, before compliance, request the Board to invalidate the subpoena on the ground that it was not lawfully

issued, is unreasonable in scope, or requires the production of irrelevant material.

_____(18) At the conclusion of the hearing the Advisory Board will render an oral decision. The decision becomes final upon execution of the final order. However, if the Advisory Board decision includes suspension or revocation of license privileges, this portion of the decision will go into effect at the start of business on the day following the hearing.

75.6.6 FINAL ORDERS

_____(1) Within fourteen (14) calendar days after the conclusion of the formal hearing, the NRD or the County Attorney's Office will prepare a recommended final order that reflects the Advisory Board's determination. Any order imposing disciplinary action against a Contractor must contain, at a minimum, the following:

_____(a) A clear statement of the violation charged and the factual basis for the charge;

_____(b) Evidence that the Contractor was given notice of the charges and an opportunity to appear and present evidence and testimony regarding the charges;

_____(c) Findings of fact based exclusively on evidence of record and matters _____
_____officially recognized by the Advisory Board;

_____(d) Conclusions of law demonstrating that the facts alleged constitute a violation of local regulations;

_____(e) A statement of the penalty imposed against the Contractor;

_____(f) A clear statement concerning the right to appeal the Advisory Board's decision or challenge the recommendation to the Lee County Board of County Commissioners;

_____(2) The NRD will provide each Advisory Board member present at the hearing and the subject Contractor with a copy of the recommended order. The Board will consider the recommended order at its next regular meeting or any special meeting, held for such purpose.

_____(3) The Advisory Board may adopt the recommended order as the final order or make any amendments it deems necessary.

_____(4) All Final Orders must be in writing and signed by the chairman of the Advisory Board within thirty (30) calendar days after the formal hearing is

concluded.

____(5) A copy of any order rendered by the Advisory Board will be provided to the parties, including any complaint, by certified U. S. Mail.

____(6) The Advisory Board's order is final upon execution by the Chairman.

75.6.7 APPEALS

____(1) Contractor Appeals from any adverse decisions by the Advisory Board, pursuant to the provisions of this Ordinance, shall be made in writing to the Advisory Board and to the Lee County Board of County Commissioners, within ten (10) calendar days after receipt of the final order. In the event the decision of the Advisory Board is contrary to that of the NRD, the Director of the NRD may, within ten (10) days appeal the decision to the Lee County Board of County Commissioners. All appeals shall be filed with the Director of the NRD.

____(2) Each appeal must be made by filing a written Notice of Appeal within ten (10) calendar days from the date of final order of the Advisory Board and by paying a one hundredforty dollar (~~\$10040.00~~) non refundable filing fee (made payable to the Lee County Board of County Commissioners). The written Notice of Appeal shall be filed with the Director of the NRD and shall contain appropriate reference to the decision or order and shall state specifically the grounds of appeal.

____(3) The Lee County Board of County Commissioners shall hear all appeals from the decision of the Advisory Board. The Lee County Board of County Commissioners shall review the decision of the Advisory Board, de novo, based on the record, and to make its own decision at a regularly scheduled public meeting of the Lee County Board of County Commissioners as to all matters, including, but not limited to, the facts, law, decision and sanctions, and shall have no power to make special exceptions to the Advisory Board or to interpret disputed language in the Well Code Ordinance, so long as it is in harmony with the general purpose and intent of the code.

____(4) An appeal shall stay all proceedings in connection with the decision unless the Director of NRD certifies that a stay would cause immediate hazard to life, property or water resources.

____(5) The appeal shall be decided by the Lee County Board of County Commissioners within thirty (30) calendar days after filing of the Notice of Appeal.

____(6) Appeals from decisions of the Lee County Board of County Commissioners are by asking for a review in the County Court in and for the Twentieth Judicial Circuit located at the Lee County Justice Center, 1700 Monroe

Street, Fort Myers, Florida. All notices shall be filed in accordance with Florida Rules of Appellate Procedures 9.110. Appellant (Contractor) must file the notice for review with Clerk of Court within thirty (30) days after rendition of the Lee County Board of County Commissioners' order to be reviewed.

75.6.8 Written Documents: Petitions, Pleadings, Request for Hearing and Notice of Appeal

_____(1) The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition, pleading or request for hearing or appeal shall be legible and on 8 ½ x 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All written documents requesting any of the above such action shall contain:

_____(a) The name and address of each person affected, if known;

_____(b) The name, address, and telephone number of the Contractor or petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's or Contractor's substantial interests will be affected by the Advisory Board's determination;

_____(c) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

_____(d) A concise statement of the ultimate facts alleged, including the specific facts the petitioner or Contractor contends warrant reversal or modification of the NRD's or Advisory Board's proposed action;

_____(e) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the NRD, Advisory Board or Lee County Board of County Commissioners to take with respect to any proposed action;

_____(f) A petition shall not be heard or considered if it is not in substantial compliance with this section or it has been untimely filed;

_____(g) The NRD shall promptly give written notice to all parties of any action or the failure to take action on a petition.

SECTION EIGHT: LICENSING.

8.1 NEW CONTRACTOR OR RENEWAL LICENSURE REQUIREMENTS.

8.1.1 State Licensed Water Well Contractor

A completed "Lee County Contractor Information Sheet" showing:

- (1) Proof of a valid State Water Well Contractor License
- (2) Copy of valid driver's license (or State issued picture identification)

8.1.2 Lee County Specialty Contractor

(a) New Lee County Contractor Specialty License

- (1) Submit the "Lee County Specialty License Application" form
- (2) Submit a copy of valid driver's license (or State issued picture identification)
- (3) New License & exam fees totaling \$125.00
- (3) Pass a written specialty license exam
- (4) Pass a field practical test given on your first permitted job

(b) Renewal of your Lee County Contractor Specialty License

- (1) Submit the "Lee County Specialty Drilling Contractor Information Sheet Update" form
- (2) Copy of valid driver's license (or State issued picture identification)
- (3) License Renewal fee of \$100.00

8.2 LICENSE TYPES.

8.2.1 Water Well Contractor - A State of Florida Water well contractor license that entitles the holder to construct all classes of wells, as well as Test Borings and Elevator Shafts.

8.2.2 Geotechnical Boring Contractor - a Lee County specialty license to drill or direct push and properly abandon geotechnical borings.

8.2.3 Elevator Shaft Contractor - a Lee County specialty license to drill or repair elevator shafts.

8.3 LICENSE SUSPENSION OR REVOKATION.

Specialty contractors who repeatedly violate the provisions of this Ordinance may be denied the applications for permitting. In a three (3) year period, Specialty Contractors who accumulate fines totaling more than \$3,000 (three thousand dollars) for combined administrative and construction violations (except for violations for the failure to cancel or schedule an activity), or whose license(s) had been suspended or revoked for a period of 12 months or more, shall have their license(s) revoked, and not be eligible for future applications for a license or license renewal.

8.4 LICENSED CONTRACTOR RESPONSIBILITIES.

(1) The contractor shall bear full responsibility for compliance with the provisions of this Ordinance, Chapter 40E-3 F.A.C. 62-532 F.A.C., 373.323F.S. and other applicable state or federal requirements. The Contractor shall be capable of providing adequate supervision for work being performed on site. Prior to drilling, constructing, repairing, rehabilitating, plugging, enlarging or deepening any well, geotechnical boring, or elevator shaft, the Contractor shall ensure that he or she has a license appropriate for the work being conducted.

(2) The Contractor may not be eligible to apply for new permits until satisfactory completion of wells or other activities for which permits had been issued and construction has been commenced.

(3) The Contractor shall be responsible and liable for work being performed or taking actions deemed necessary by NRD to correct conditions that may harm environmental resources as a result of any drilling, constructing, repairing, rehabilitating, plugging, enlarging or deepening any well, geotechnical boring, or elevator shaft.

(4) The Contractor shall be responsible for providing adequately trained personnel and equipments in good working condition to carry out permitted work. Work being performed without on-site supervision by the Contractor may be halted and on-site supervision by the Contractor will be required prior to resuming work.

(5) The Contractor shall be responsible for providing safe work site conditions for his/her employees and NRD staff to perform their duties.

(6) The Contractor shall be responsible for performing work within a reasonable period of time for which a partial or full payment had been received from any person.

(7) The Contractor and his/her staff shall be responsible for cooperating with NRD staff during inspection of wells and other related activities. ~~SIX~~ It is unlawful for any person to knowingly interfere with, threaten with bodily harm, oppose, resist, obstruct, hinder or in any manner from preventing a NRD staff member performing his/her duty, or fail to obey the lawful order of NRD staff member.

(8) All contractors performing work within Lee County shall be responsible supplying up to date licensing information to Lee County Division of Natural Resources prior to obtaining any permits from the DNR.

SECTION NINE: PERMITS.

6.4 9.1 REQUIREMENTS FOR ~~ALL PERMITS~~PERMIT.

A valid permit issued by Lee County NRD is required to drill, construct, repair, rehabilitate, plug, enlarge or deepen any well, geotechnical boring, or elevator shaft. Prior to

issuance of a permit to drill, direct push, construct, repair, rehabilitate, plug, enlarge or deepen any well, geotechnical boring, or elevator shaft, an application must be completed, signed by the Contractor, and or the property owner, and submitted with the required supporting documentation to the NRD. This includes the State of Florida Department of Transportation borings that are not hand augured and exceed 10 feet in depth.- Applications for Fire Well permits shall be attached with an engineering analysis documenting water supply need for fire fighting for the structures or facilities on the property.- Dewatering wells not exceeding twenty (20) feet in depth are exempt from the provisions of this Ordinance. Cast-in-place foundation holes installed by Florida Department of Transportation, Florida Power and Light or other utility companies are also exempt from the provisions of this Ordinance.

The Contractor's Lee County drilling license shall be current and in good standing from the time of permit application, and through completion at the commencement of construction of permitted activity. A permit shall not be issued to a Contractor who is not capable of supervising the work being performed on site. The NRD will strive to review the application within twenty-four (24) hours of application receipt (except weekends and holidays) to determine completeness. When State, SFWMD, or other laws, rules or regulations require permits or variances, the applicant for a well construction permit shall attach copies of said permits or variances to the application. Upon determination of the completeness of the permit application, the NRD will strive to issue the permit to the applicant within twenty-four (24) hours (except weekends and holidays) from the time of receipt of a complete permit application. In the event a permit is denied, the reason(s) shall be supplied in writing ~~noted~~ on the application form and the applicant shall be notified according to SECTION EIGHTSIX.

All permits shall be located in the jobsite permit box or prominently and securely displayed on the premises and, when possible, visible from the street. It is the Contractor's responsibility to insure that the permit is securely fastened to the location where it is displayed. Permits that were posted, but are missing at the time when the inspection is performed shall be considered not posted. As a required permit condition; the Contractor must add the required subsurface and other final construction information to the permit at the time of completion.

9.2 CONDITIONS FOR ISSUANCE OF PERMITS.

(1) Unauthorized or Unpermitted wells: Wells drilled without all required permits shall be required to have the casing milled out and be plugged by a State licensed Contractor at the contractor's expense, or at the property owner's expense (if the responsible Contractor cannot be identified), within 7 days of notification by NRD. An after-the-fact permit may be issued if the well drilled without a permit appeared to meet the standards of this ordinance under existing well inspection procedures.

(2) Other Approvals: The Contractor shall be responsible for obtaining all other

applicable local, state, and federal permits or variances prior to commencement of construction of proposed work for which the Lee County well construction permit had been issued.

(3) Construction Scheduling: All drilling inspection scheduling, anticipated interruptions, or cancellations shall be in accordance with SECTION TWELVE, DRILLING INSPECTORS AND INSPECTIONS. Except in case of an emergency well construction, proposed work shall not commence on any site prior to scheduling an inspection in accordance with the inspection scheduling requirements.

(4) Aquifer Contamination: Construction of wells shall not result in uncontrolled movement of water from one aquifer or water bearing zone of differing water quality to another, contamination of groundwater or surface water resources, or other adverse impacts.

(5) Emergency Authorization: If an existing well has failed and the health, safety or general welfare of the community is involved, the Director or his/her designee or the Director of Lee County Public Health Department, Environmental Engineering Division may issue emergency authorization for the work to be started before permits are obtained. However, permit applications shall be submitted prior to completion of construction or by 7:30 a.m. of the following workday.

(6) Construction Completion: The Contractor shall not abandon the work site without notifying the inspector. The Contractor may not be eligible to apply for new permits until satisfactory completion of proposed work for which permits had been issued and construction had been commenced.

(7) Special Conditions: In order to protect groundwater resources, the NRD may include specific conditions in the well construction permit as required to address specific well construction or drilling performance requirements.

(8) Property Access: The property owner or the applicant, by obtaining of a well construction permit, specifically agrees to allow authorized NRD staff with proper identification to access the premises at reasonable times where the permitted activity is located or conducted for the purpose of ascertaining compliance with the permit issued or requirements of this Ordinance.

(9) Minimum Lot Size: A permit for installation of a domestic water supply well may be issued to lots that meet the minimum lot area, dimensions, and distances criteria stated in the Section 381.0065(4)(a), Florida Statute or as that statute may be amended, replaced or renumbered.

(10) Pollution Prevention: The Contractor is required to take all necessary measures as required by the NPDES program to prevent environmental pollution from well construction.

9.3 PERMIT FEE.

A fee shall be assessed for each permit as set forth in Lee County Administrative Code AC-3-10 External Fees and Charges Manual Appendix C (also Appendix C of this Code), or as that Administrative Code may be amended, replaced, or renumbered. Such fees are hereby declared to be necessary for the purpose of processing permits, making necessary inspections and for the administration and enforcement of this Ordinance.

9.4 REINSPECTION FEE.

There will be an assessed fee prior to each reinspection made by the NRD. The reinspection fees shall be those set forth in Lee County Administrative Code AC-3-10 External Fees and Charges Manual (Appendix C), or as that Administrative Code may be amended, replaced, or renumbered. These fees can be waived at the discretion of the NRD provided such waivers can be justified.

9.5 SUBMISSION OF SUBSURFACE DATA.

Upon completion of installation of a well, the Contractor must provide the following information on the permit posted at the site and on the water container bottle left at the site for NRD:

- (1) Well casing diameter and depth;
- (4)(2) Total well depth;
- (3) Quantity and type of annular space grout utilized; and
- (4) Well yield during well development;
- (5) Quantity of grout used for well abandonment if applicable;

State of Florida well completion reports shall be submitted within thirty (30) days to the NRD after completion of any type of well construction. Well construction information and sediment free clean water sample collected from the well water producing zone in an NRD supplied laboratory container shall be made available to the NRD staff pursuant to Appendix A, Procedures Manual. It will be stated on the permit whether relevant additional data, samples or tests are to be required for the specific area involved. Such information shall be submitted in accordance with the requirements of SECTION ELEVEN of this Ordinance, and shall be included with the completed log as required in SECTION ELEVEN of this Ordinance. The Contractor shall coordinate the submission of various samples and additional information with NRD staff as necessary. The above shall not preempt any testing and sampling as required by Lee County Health Department, Environmental Engineering Division or the SFWMD.

9.6 PERMIT TRANSFER OR EXCHANGE.

Permits issued are neither transferable nor exchangeable. Permitted projects that have not been scheduled for inspections may be eligible for refund of no more than 50% of the cost of the original permit application fee for the first 30 days of issuance, the fee shall be reduced by an additional 10% for each month after issuance.

9.7 AUTHORITY GRANTED BY THE PERMIT.

A permit shall authorize an owner, or a Contractor on behalf of an owner, to drill a well, geotechnical boring, or elevator shaft, providing the following conditions are satisfied:

- (1) A licensed water well contractor constructs the well, except for a homeowner constructing or plugging his/her own well using the standards specified in this Ordinance.
- (2) The well is constructed in accordance with the information furnished on the permit application, including exact location of well on property.
- (3) Proper notification is given to the NRD prior to construction.
- (4) All persons drilling a well shall comply with the applicable provisions of this Ordinance and Chapter 40E-3, F.A.C.

9.8 VALIDITY.

An NRD permit is valid for six (6) months from the date of issuance. Permits shall be void after six (6) months from the date of issuance, unless the time limit has been extended by the NRD after a written application by the Contractor. A fee shall be assessed for each permit time extension request as set forth in Lee County Administrative Code AC-3-10 External Fees and Charges Manual, Appendix C (also Appendix C of this Code), or as that Administrative Code may be amended, replaced, or renumbered. Supplemental information may be required by NRD prior to approval of a request for permit time extension. The NRD shall make a determination on applicant's written time extension request. No more than two (2) time extensions totaling 6 months shall be approved for a given permit. Permits that have been closed by NRD shall not be re-opened.

9.9 REPAIRED WELLS.

If an old well needs to be reconstructed to a greater depth within the same permitted aquifer or if its diameter is changed, within six months of being finalized no charge will be incurred, however if six months are exceeded a new permit must be obtained from the NRD specifying the work to be performed with a fee assessed. Prior to well construction commencing the assigned well inspector will take a water quality sample as a baseline sample. Once the well has been deepened the well must be properly developed and a second water sample taken by the well inspector. If the water quality degrades more than 500 parts per million total chlorides, the well contractor must either plug the well back to the previous depth well started or plug and abandon the whole well from bottom to top, as required by State code.

9.10 CAUSE FOR DENIAL, SUSPENSION OR REVOCATION.

An application for permit to drill may be denied or a permit that has been issued can be suspended or revoked if the well is subjected to or may cause any one or more of the following conditions:

- (1) Non-compliance with a provision of this Ordinance or any rule or regulation promulgated by the Board of County Commissioners pursuant thereto.

- (2) Intrusion of pollutants into the ground water supply of Lee County.
- (3) Uncontrolled intermixing of ground water between aquifers or intra-aquifers.
- (4) Endangering the public health, safety and welfare of the citizens within Lee County.
- (5) Material misstatement or misrepresentation in the application.

9.11 NOTICE OF DENIAL.

The NRD shall issue a written Notice of Denial of a permit application whenever it is found that an applicant fails to meet the requirements for issuance of a permit as herein provided. Such notice shall:

- (1) State the reasons for the denial, and may state any remedial action which, if taken, will affect compliance with this Ordinance and permit approval of the application.
- (2) Be served upon the applicant or his/her agency by Certified Mail, return receipt requested or Registered United States Mail.

Any person receiving a Notice of Denial may obtain a hearing before the Well Construction Advisory Board by filing a written petition with the Advisory Board, if filed within ten (10) working days of the receipt of said notice.

9.12 SUSPENSION AND REVOCATION OF PERMIT.

A permit may be suspended by the NRD by written notice thereof if well construction is in violation of the provisions of this Ordinance or other applicable local, State or Federal rules or regulations. Upon receipt of said written notice, the Contractor and/or landowner shall, at the discretion of the NRD, rectify the violation or cease construction. Any permittee receiving a notice of suspension may obtain a hearing before the Well Construction Advisory Board if the request to obtain such hearing is made in writing ten (10) calendar days of the receipt of said notice. Following such hearing, the Advisory Board may recommend extending such suspension or may recommend modifying or revoking the permit. In the absence of a request for hearing, the Lee County Board of County Commissioners may revoke the permit if notice was properly received, at the end of the ten (10) day period without such a hearing. All notices of suspensions or revocations or violations of permit conditions will be forwarded to the SFWMD.

9.13 IDENTIFICATION OF EQUIPMENT.

All drill rigs used by the Contractor shall prominently display the name of the Company or the name of his/her employer and his/her State license numbers in letters at least two (2) inches high on each side of the equipment.

SECTION TEN: GEOTECHNICAL BORINGS AND PERMITS.

10.1 REQUIREMENTS FOR PERMIT.

A valid permit issued by Lee County NRD is required to drill, direct push, auger, split spoon or construct any geotechnical boring deeper than 10 feet from land surface, other than by hand auger. Prior to issuance of a permit to drill, direct push, auger, split spoon or construct

any geotechnical boring deeper than 10 feet from Land Surface, an application must be completed, signed by the Contractor, and submitted with the required supporting documentation to the NRD.

The Contractor's license shall be current and in good standing at the time of permit application, and at the commencement of construction of permitted activity. A permit shall not be issued to a Contractor who is not capable of supervising the work being performed on site. The NRD will strive to review the application within twenty-four (24) hours of application receipt (except weekends and holidays) to determine completeness. Upon determination of the completeness of the permit application, the NRD will strive to issue the permit to the applicant within twenty-four (24) hours (except weekends and holidays) from the time of receipt of a complete permit application. In the event a permit is denied, the reason(s) shall be supplied in writing on the application form and the applicant shall be notified according to SECTION EIGHT. All permits shall be located in the jobsite permit box or prominently and securely displayed on the premises and, when possible, visible from the street. It is the Contractor's responsibility to insure that the permit is securely fastened to the location where it is displayed. Permits that were posted, but are missing at the time when the inspection is performed shall be considered not posted. The Contractor ~~must~~ shall add the required subsurface and other final construction information to the permit at the time of well completion.

106.2 CONDITIONS FOR ISSUANCE OF PERMITS.

(1) Unauthorized ~~Borings: Geotechnical Borings~~ ~~Wells: Wells~~ drilled without all required permits shall be plugged by the Contractor at the contractor's expense, or by a Licensed Contractor ~~the property owner~~ at the property owner's expense (if the responsible Contractor cannot be identified), within 7 days of notification by NRD. An after-the-fact permit may be issued if the boringwell drilled without a permit appeared to meet the standards of this ordinance under existing well inspection procedures.

~~(2) Other Approvals: The Contractor shall be responsible for obtaining all other applicable local, state, and federal permits or variances prior to commencement of construction of proposed work for which the Lee County well construction permit had been issued.~~

(2) Other Approvals: The Contractor shall be responsible for obtaining all other applicable local, state, and federal permits or variances prior to commencement of construction of proposed work for which the Lee County permit had been issued.

(3) Construction Scheduling: All drilling inspection scheduling, anticipated interruptions, or cancellations shall be in accordance with SECTION TWELVEEIGHT, DRILLING INSPECTORS AND INSPECTIONS. Except in case of an emergency well construction, proposed work shall not commence on any site prior to scheduling an inspection in accordance with the inspection scheduling requirements.

~~(4) Aquifer Contamination: Construction of wells shall not result in uncontrolled movement of water from one aquifer or water bearing zone of differing water quality to another, contamination of groundwater or surface water resources, or other adverse impacts.~~

~~(5) — Emergency Authorization: If an existing well has failed and the health, safety or general welfare of the community is involved, the Director or his/her designee or the Director of Lee County Public Health Department, Environmental Engineering Division may issue emergency authorization for the work to be started before permits are obtained. However, permit applications shall be submitted prior to completion of construction or by 7:30 a.m. of the following workday.~~

~~(4) Aquifer Contamination: Construction or abandonment of geotechnical borings shall not result in uncontrolled movement of water from one aquifer or water bearing zone of differing water quality to another, contamination of groundwater or surface water resources, or other adverse impacts.~~

~~(5) — (6) Construction Completion: The Contractor shall not abandon the work site without notifying the inspector. The Contractor may not be eligible to apply for new permits until satisfactory completion of proposed work for which permits had been issued and construction had been commenced.~~

~~(7) — Special Conditions: In order to protect groundwater resources, the NRD may include specific conditions in the well construction permit as required to address specific well construction or drilling performance requirements.~~

~~(8) — Property Access: The property owner or the applicant, by obtaining of a well construction permit, specifically agrees to allow authorized NRD staff with proper identification to access the premises at reasonable times where the permitted activity is located or conducted for the purpose of ascertaining compliance with the permit issued or requirements of this Ordinance.~~

~~(9) — Minimum Lot Size: A permit for installation of a domestic water supply well may be issued to lots that meet the minimum lot area, dimensions, and distances criteria stated in the Section 381.0065(4)(a), Florida Statute or as that statute may be amended, replaced or renumbered.~~
~~(6) Special Conditions: In order to protect groundwater resources, the NRD may include specific conditions in the permit as required to address specific construction or drilling performance requirements.~~

~~(7) Property Access: The property owner or the applicant, by obtaining of a geotechnical boring construction permit, specifically agrees to allow authorized NRD staff with proper identification to access the premises at reasonable times where the permitted activity is located or conducted for the purpose of ascertaining compliance with the permit issued or requirements of this Ordinance.~~

~~(8)~~

~~(40) Pollution Prevention: The Contractor shall utilizetake all current acceptable Best management practices (BMP's) necessary measures to prevent environmental pollution due to well construction.~~

106.3 PERMIT FEE.

—A fee shall be assessed for each permit as set forth in Lee County Administrative Code AC-3-10 External Fees and Charges Manual Appendix C (also Appendix C of this Code), or as that Administrative Code may be amended, replaced, or renumbered. Such fees are hereby declared to be necessary for the purpose of processing permits, making necessary inspections and for the administration and enforcement of this Ordinance.

106.4 REINSPECTION FEE.

—A fee ~~may~~shall be assessed prior to each reinspection made by the NRD. The reinspection fees shall be those set forth in Lee County Administrative Code AC-3-10 External Fees and Charges Manual (Appendix C), or as that Administrative Code may be amended, replaced, or renumbered. These fees can be waived at the discretion of the NRD provided such waivers can be justified.

106.5 SUBMISSION OF SUBSURFACE DATA.

—Upon completion of installation of a geotechnical boring projectwell, the Contractor must supply~~shall ensure that the well~~ construction information summarized as follows:-

~~(2) Well casing diameter and depth;~~

~~(3)(6) Total well depth;~~

~~(4) Quantity and type of annular space grout utilized; and~~

~~(5) Well yield during well development;~~

~~is provided both~~ on the permit posted ~~at the site and~~ on ~~the water container bottle left at the site~~ for NRD as follows:

(1) Number of total borings;

(2) Total depth for each boring;

(3) Total quantity of grout used for all hole abandonments, well abandonment

~~State of.~~ ~~South Florida Water Management District~~ well completion reports shall be submitted within thirty (30) days to the NRD after completion of ~~well or geotechnical boring construction.~~ ~~Well construction information and sediment free clean water sample collected from the well water producing zone in an NRD supplied laboratory container shall be made available to the NRD staff pursuant to Appendix A, Procedures Manual. It will be stated on the permit whether relevant additional data, samples or tests are to be required for the specific area involved.~~ the well or geotechnical boring construction. It will be stated on the permit whether relevant additional data, samples or tests are to be required for the specific area involved. Such information shall be submitted ~~in accordance with the requirements of SECTION SEVEN of this Ordinance,~~ and shall be included with the completed log as required in SECTION SEVEN of this Ordinance. ~~The Contractor shall coordinate the submission of various samples and additional information with NRD staff as~~

~~necessary. The above shall not preempt any testing and sampling as required by Lee County Health Department, Environmental Engineering Division or the SFWMD. The Contractor shall coordinate the submission of various samples and additional information with NRD staff as necessary. The above shall not preempt any testing and sampling as required by Lee County Health Department, Environmental Engineering Division or the SFWMD.~~

106.6 PERMIT TRANSFER OR EXCHANGE.

—Permits issued are neither transferable nor exchangeable. Permitted projects that have not been scheduled for inspections may be eligible for refund of a partial permit application fee.

106.7 AUTHORITY GRANTED BY THE PERMIT.

—A permit shall authorize ~~an owner, or~~ a Contractor on behalf of an owner, to drill a ~~well, geotechnical boring, or elevator shaft,~~ providing the following conditions are satisfied:

~~(1) A licensed water well contractor constructs the well, except for a homeowner constructing or plugging his/her own well using the standards specified in this Ordinance.~~

~~(2) The well is constructed in accordance with the information furnished on the permit application, including exact location of well on property.~~

~~(3) Proper notification is given to the NRD prior to construction.~~

~~(4) All persons drilling a well shall comply with the applicable provisions of this Ordinance and Chapter 40E-3, F.A.C.~~(1) A licensed water well or specialty licensed contractor constructs the boring.

(2) The boring is constructed in accordance with the information furnished on the permit application, including exact location of well on property.

(3) Proper notification is given to the NRD prior to construction.

(4) All persons constructing a boring shall comply with the applicable provisions of this Ordinance.

10

6.8 VALIDITY.

—An NRD permit is valid for six (6) months from the date of issuance. Permits shall be void after six (6) months from the date of issuance, unless the time limit has been extended by the NRD after a written application by the Contractor. A fee shall be assessed for each permit time extension request as set forth in Lee County Administrative Code AC-3-10 External Fees and Charges Manual, Appendix C (also Appendix C of this Code), or as that Administrative Code may be amended, replaced, or renumbered. Supplemental

information may be required by NRD prior to approval of a request for permit time extension. The NRD shall make a determination on applicant's written time extension request. No more than two (2) time extensions totaling 6 months shall be approved for a given permit. Permits that have been closed by NRD shall not be re-opened.

~~106.9~~ ~~REWORKED WELLS.~~

~~If an old well needs to be reconstructed to a greater depth or if its diameter is changed, a new permit must be obtained from the NRD specifying the work to be performed.~~

~~6.10~~ CAUSE FOR DENIAL, SUSPENSION OR REVOCATION.

~~An application for permit for construction to drill may be denied or a permit that has been issued can be suspended or revoked if the boring well is subjected to or may cause any one or more of the following conditions:~~

- ~~(1) Non-compliance with a provision of this Ordinance or any rule or regulation promulgated by the Board of County Commissioners pursuant thereto.~~
- ~~(2) Intrusion of pollutants into the ground water supply of Lee County.~~
- ~~(3) Uncontrolled intermixing of ground water between aquifers or intra-aquifers.~~

(1) Non-compliance with a provision of this Ordinance or any rule or regulation promulgated by the Board of County Commissioners pursuant thereto.

(2) Intrusion of pollutants into the ground water supply of Lee County.

(3) Uncontrolled intermixing of ground water between aquifers or intra-aquifers.

(4) Extreme depletion of the ground water supply of Lee County so as to cause a threat to the availability of future water resources, or degradation of subsurface water strata.

(5) Endangering the public health, safety and welfare of the citizens within Lee County.

(6) Material misstatement or misrepresentation in the application.

~~6.11~~ 10.10 NOTICE OF DENIAL.

~~The NRD shall issue a written Notice of Denial of a permit application whenever it is found that an applicant fails to meet the requirements for issuance of a permit as herein provided. Such notice shall:~~

(1) State the reasons for the denial, and may state any remedial action which, if taken, will affect compliance with this Ordinance and permit approval of the application.

(2) Be served upon the applicant or his/her agency by Certified Mail, return receipt requested or Registered United States Mail.

~~(1) State the reasons for the denial, and may state any remedial action which, if taken, will affect compliance with this Ordinance and permit approval of the application.~~

~~(2) Be served upon the applicant or his/her agency by Certified Mail, return receipt requested~~

~~or Registered United States Mail.~~

(3)—Any person receiving a Notice of Denial may obtain a hearing before the Well Construction Advisory Board by filing a written petition with the Advisory Board, if filed within ten (10) working days of the receipt of said notice.

6.12 10.11 SUSPENSION AND REVOCATION OF PERMIT.

—A permit may be suspended by the NRD by written notice thereof if boringwell construction is in violation of the provisions of this Ordinance or other applicable local, State or Federal rules or regulations. Upon receipt of said written notice, the Contractor and/or landowner shall, at the discretion of the NRD, rectify the violation or cease construction. Any permittee receiving a notice of suspension may obtain a hearing before the Well Construction Advisory Board if the request to obtain such hearing is made in writing ten (10) calendar days of the receipt of said notice. Following such hearing, the Advisory Board may recommend extending such suspension or may recommend modifying or revoking the permit. In the absence of a request for hearing, the Lee County Board of County Commissioners may revoke the permit if notice was properly received, at the end of the ten (10) day period without such a hearing. All notices of suspensions or revocations or violations of permit conditions will be forwarded to the SFWMD.

6.13 10.12 IDENTIFICATION OF EQUIPMENTDRILLING RIGS.

—All drilling equipmentdrill rigs used by the Contractor shall prominently display the name of the licensee or the name of his/her employer -and his/her County and State license and or County (If applicable) numbers in letters at least two (2) inches high on each side of the equipment.

SECTION ELEVENSEVEN: TEST WELL REQUIREMENTS.

117.1 TEST WELLS.

—A well construction permit application together with a Test Well Form shall be submitted for each proposed test well to be constructed. Test wells are subject to the following conditions:

- (1) Exploratory drilling under one permit shall be conducted on a single parcel of property for a single owner.
- (2) Each and every test well shall be constructed, grouted, or plugged in accordance with this Ordinance and other State requirements.
- (3) In the exploration for water, a test well that is found to produce the desired amount of water shall be converted to a production or observation well. To convert a test well to a production well or an observation well, the Contractor shall submit a permit application to NRD and receive permit approval and submit a Water Use Permit application to SFWMD, as required, and receive permit approval.

117.2 TEST WELL APPLICATIONS.

- (1) Application must have a Test Well Form attached stating the purpose of test wells and that the construction of the test well complies with this Ordinance.
- (2) A test well that is not converted to a production well shall be plugged in compliance with this Ordinance.
- (3) A test well that is converted to a production well shall have the application amended by the Contractor. If a Water Use Permit (WUP) is required from SFWMD, an application for a WUP shall be submitted to SFWMD and the WUP application number shall be provided to NRD for the well construction permit application to be deemed sufficient. The WUP must be approved before the well can be used. The SFWMD may hold the Contractor, as well as the owner, liable if the well is used before amendment is approved.

117.3 TEST WELL REPORTS.

—Unless a time extension had been granted by NRD, reports of test well information, such as well logs, test pumpage, water quality, capacity, depths and sizes, shall be submitted, within 30-days of completion of well construction, to the NRD to be evaluated. Test well reports shall include all data obtained as described hereinafter.

117.4 TESTING PROCEDURE.

- (1) As noted above, complete logs shall be kept and filed with the NRD.
- (2) Descriptions of conditions shall be adequate to describe each separate layer of material encountered and shall include, but shall not limit to, size of particles, consolidation (blow count if applicable), type of material encountered (sand, limestone, shell, clay, etc.), color, relative hardness, relative permeability, where any and all water was encountered, and the depths below ground surface at which strata was encountered. Core samples or cuttings may be required for further examination.
- (3) Proposed well locations shall be indicated in permit applications. Final well locations shall be shown on a drawing or plot plan showing distances to property lines, corners or other surface features of a permanent nature; setbacks from septic systems, a north arrow; and this information will be maintained by the NRD.

SECTION TWELVEEIGHT: DRILLING INSPECTORS AND INSPECTIONS.

12—8.1 INSPECTORS.

Upon completion of passing their probationary period inspectors will maintain a valid State of Florida Water Well Contractors License and have attended and passed the Lee County Code Enforcement officers training course along with—~~Inspectors will have a valid Lee County Water Well Contractor license and~~ be fully knowledgeable in the provisions of this Ordinance and with construction practices relating to drilling, repairing, sealing and plugging of wells borings, and elevator shafts.

128.2 INSPECTIONS.

128.2.1 -Coordination:

(1) The NRD or appropriate state agency will conduct inspection of well construction, alterations, and plugging. The NRD representative or well inspector may assist and verify, but shall not be responsible for designating the location of a well to be constructed.

~~(2) It is the Contractor's responsibility to~~ ~~_____~~ ~~(2) The Contractors shall~~ advise the NRD of the date(s) and time(s) when construction will begin, when various portions of the work will be completed, when work is cancelled, and/or when work will be interrupted. (40E-3.461 Inspection.)

(3) The District or delegated agency is authorized to inspect any well or abandoned well within its jurisdiction, including those wells permitted under Rule 40E-3.041, F.A.C. Inspections shall be done as necessary to insure conformity with applicable standards. Duly authorized representatives of the District or delegated agency, upon presenting proper identification and at reasonable times, may enter upon any premises for the purpose of such inspection. Such inspection may include but need not be limited to geophysical logging, water level measurements, or other methods.

(4) If, based on such inspection, the District or delegated agency finds the standards of this chapter have not been met, the District or delegated agency shall proceed with enforcement actions as prescribed by Chapter 62-531, F.A.C.

(5) A site inspection may be conducted by an authorized representative of the District or delegated agency prior to issuing a permit for construction of a public water supply well.

(6) The District or delegated agency shall be notified at least 24 hours in advance of placement of grout in the annular space of any public water supply well. A District or delegated agency representative may be on site to observe the grouting. If the District or delegated agency is properly notified and a representative is not at the site at the appointed time, the grouting may begin in the absence of a representative.

(7) If, based on an inspection, the District or delegated agency finds any well is an abandoned or incomplete well, the well shall be plugged in accordance with Rule 40E-3.531, F.A.C. If deemed appropriate by the DNR, the county may require that the well casing be milled out and the hole be properly plugged and abandoned.

(8) If, based on an inspection, the District or delegated agency determines that applicable laws or rules have not been complied with, it shall disapprove the well. A disapproved well shall not be used until brought into compliance.

(9)(3) All private water system wells must be inspected and approved by the NRD prior to the issuance of a Certificate of Occupancy by the Lee County Building Department. Should

notification of specific stages of construction be necessary, it will be stipulated on the approved permit application.

(10(4) Existing Domestic wells: Once located by either the NRD or the Land owner, if not found in the Lee County records, shall be required at a minimum be inspected by ~~an~~ NRD Well Inspector for compliance with the requirements of this Ordinance. An existing well permit approval will not be issued for existing domestic wells that do not comply with the requirements of this Ordinance and the Lee County Health Department setback requirements for domestic supply wells. If conditions or requirements are not met for proper construction and setbacks, the existing well may be determined to need repaired or be properly abandoned by a Licensed State of Florida Water Well Contractor. Until such repairs or proper abandonment are performed by a Licensed State of Florida Water Well Contractor, Lee County NRD will place a permitting hold on that parcel.

(11(5) All drilling inspection scheduling, anticipated interruptions and cancellation shall be done in accordance with Appendix A, Procedures Manual. Drilling or well construction after regular work hours is addressed in APPENDIX A, Procedures Manual. After-hour inspection fee may be assessed for all inspections performed outside regular work hours (7:30 a.m. to 4:00 p.m.) of the county well inspectors. An Emergency well construction inspection is exempt from after-hour inspection fee. Mere carelessness or lack of planning on the part of the applicant, contractor or driller will not constitute sufficient cause for the issuance of an emergency permit. All scheduled inspections that are not cancelled according to Appendix A, Procedures Manual are subjected to a fine (Failure to schedule or cancel an activity). Excessive cancellations as described in APPENDIX B, Disciplinary Guidelines, shall result in fines. The Contractor shall also be responsible for not scheduling a drilling activity that has been already completed and inspected.

128.2.2 Public Water Supply and 64E-8 Wells - The NRD must be notified by the Contractor at least twenty-four (24) hours prior to construction so that an inspector can be present. If proper notification is not given, the well construction ~~could~~will be halted or postponed for at least a twenty-four (24) ~~hour period~~hours.

128.2.3 Unforeseen Conditions - Should, during construction, repair, replacement, abandonment, or plugging of a well, a condition be discovered which was unforeseen prior to the beginning of work, and said condition be unique and indicate that special construction techniques are desirable or required in order to maintain a safe working environment, the condition shall be reported to the NRD together with all related data, and if directed, all work applicable to subject well shall be discontinued until the above data have been reviewed and appropriate directions are given within 24 hours.

128.2.4 Non-Compliance - If during construction, repair, abandonment, or plugging of a well, the authorized representative or inspector finds the work is not being ~~performed~~done in accordance with rules, regulations, and standards of this Ordinance, or adopted by a regulatory agency pursuant to Chapter 373, F.S., the NRD shall give the owner and water well contractor

verbal or written notice stating which rules, regulations or standards indicate that the operation being performed is not in compliance and may order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Failure to comply with imposed penalties, or to correct a violation within seven (7) calendar days, or to pay a fine within thirty (30) calendar days, or to act in accordance with the order after receipt of a verbal followed by ~~a~~ written notice shall be grounds for revocations of the permit or suspension of well construction privileges or permitting privileges.

128.2.5 Inspections of Work on Barrier Islands – Due to limited and sensitive nature of ground water resources on barrier islands and the logistical complications for the NRD staff when accessing these islands by boat for inspection, NRD may attach special conditions to well construction permits on barrier islands.

128.2.6 ~~Re-inspections~~ Reinspections - A ~~re-inspection~~ reinspection fee shall be assessed to the Contractor for each re-inspection site visit required.

SECTION THIRTEEN~~NINE~~: CONSTRUCTION OF WELLS, BORINGS AND SHAFT HOLES.

9.4 13.1 SCOPE.

—The following minimum standards shall apply to construction, repair and abandonment of water wells in Lee County. Staff annotated opinions and policies may be prepared periodically by the NRD and included as part of this Ordinance in Appendix A, ~~Procedures Manual~~. The standards, opinions, and policies outlined herein shall not be construed to be any less restrictive than Chapter 40E-3, F.A.C., et seq., (Rules and Regulations Governing Water Wells in South Florida) of the Florida Administrative Code. Only ~~Lee County~~-licensed State of Florida Water Well drilling contractors ~~with a valid contractor license and documentation~~ are authorized to drill, construct, repair, rehabilitate, plug, enlarge, or deepen wells. Geotechnical Boring and Elevator Shaft. Any person without a State of Florida Water Well contractors must acquire a Lee County specialty contractor license. With a Specialty license a contractor can only drill or direct push for geotechnical boring, borings or elevator shafts in Lee County.

9.2 13.2 MATERIALS.

—Except as provided otherwise herein, all materials and standards used in construction, repair and abandonment of wells shall conform to the minimum requirements of Chapter 40E-3, F.A.C., or other applicable state standards adopted by reference and incorporated herein. In construction and/or repair of public potable water supply wells, valves shall conform to the applicable requirements of the AWWA Standards of the C-500 series and fittings downstream of the well casing shall conform to the applicable requirements of AWWA C-110, unless otherwise approved. All material, equipment or trained personnel required for construction of the well in accordance with the applicable requirements this Ordinance or Chapter 40E-3, F.A.C., shall be on site prior to commencement of well drilling activities. The inspector may order suspension of drilling activities if the required material, equipment or trained personnel are not on site to perform the proposed work.

~~13~~—9.3 CONSTRUCTION METHODS AND PROCEDURES.

139.3.1 General - No metal casing shall be driven below the first regional semi-confining bed (green clay layer) into an artesian aquifer in Lee County. Metal casing can be used to construct deep wells, but drilling methods and procedures shall be the same as those used for thermoplastic (PVC) casing wells.

139.3.2 Ground Water Wells

(1) All casing driven into place shall have an approved drive shoe on the bottom.

(2) All well casings shall meet or exceed State specifications.

(3) All wells which includes Cathodic protection wells, shall be constructed so that only one aquiferwater-producing-zone is utilized. If the NRD staff has determined that well construction has resulted in uncontrolled movement of groundwater causing aquifer contamination, the Contractor shall be required to remove both the casing and grout, and to reset a new casing followed by grouting.

(4) A minimum of 2-inch annular space shall be provided between the casing and the borehole, or between two casings, if a liner pipe is present.

(5) Wells completed in the Mid-Hawthorn aquifer or in shallower aquifers and constructed with a rubber formation packer, also known as rubber boot or shale packer at the base of the casing shall be seated into a smaller diameter hole drilled into the consolidated portion of the water-bearing formation and properly grouted above the casing seal (boot) from bottom to the land surface using approved materials and methods as defined in SECTION FIVE-THREE Grouting Material and Grouting of Wells.

(6) Wells completed in aquifers deeper than the Mid-Hawthorn aquifer shall be pressure grouted with tremie pipe inside the casing or through casing without a grout pipe in accordance with the current American Water Works Association, Inc., Standard for Deep Wells and using approved materials and methods as defined in SECTION FIVE-THREE Grouting Material and Grouting of Wells.

(7) All wells shall have an approved sanitary seal or other protective device installed to prevent contamination of the well after completion of the well or whenever there is a temporary interruption of work during construction.

(8) Wells shall be grouted from bottom of the annular space to the land surface by pumping grout through the casing with or without a tremie pipe, or through a tremie pipe outside the casing only after the annular space is flushed clean of debris. Wells grouted using a volume of grout less than eighty (80) percent of annular space volume, if approved by NRD staff, may be subjected to reinspections. The Contractor accepts responsibility for

repair or replacement of such a well, if NRD determines repair or replacement of the well is necessary. If a loss circulation zone prevents a proper grouting job, the annulus shall be bridged above the loss circulation zone with an approved material, using a tremie pipe, and grouted from the top of the bridge to the land surface. The bottom of tremie pipe shall be within one (1) foot of the casing seal with exit notches or slits strictly within three (3) feet from the seal allowing grouting to be discharged only within three (3) feet from the seal. The grout slurry shall be pumped with a rig mud pump, air diaphragm pump, or any other positive displacement pump. Drilling activities must halt for a minimum of 12 hours after casing grout is completed.

-Use of other types of pumps will be approved by NRD staff provided that the Contractor demonstrates that the pump can be used for the intended purpose.— Grouting under gravity pressure (pouring) shall not be allowed.

(9) If the annular space of a well under construction collapses or loses stability prior to successful installation of casing, the Contractor shall remove the well casing, redrill and stabilize the borehole, re-install the well casing and tremie pipe before grouting the annular space. Upon reviewing site specific conditions, the NRD inspection staff may authorize deviations from this requirement.

(10) If a borehole collapses prior to successful emplacement of grout, the Contractor shall redrill and stabilize the borehole, reinstall the tremie pipe then grout the borehole. Upon reviewing site specific conditions, only the NRD inspection staff may authorize deviations from this requirement.

(11) Unless otherwise permitted due to local topography, all wells shall be ~~left~~ a minimum of twelve (12) inches above finished grade and if practical, 12 inches above the 100-year flood elevation so as to prevent surface water from entering the well head. After the well is completed and construction has been approved, the minimum height of the well head above finished grade is to be maintained after the pump has been installed and connected to the water treatment system or the building.

(12) Wells, which flow at the ground surface, ~~must~~shall have a satisfactory valve so that the flow can be readily and completely stopped.

(13) All water wells constructed for the purpose of supplying public drinking water shall be subject to the requirements of the State of Florida Department of Environmental Protection and Lee County Health Department, Environmental Engineering Division, specifically with regard to site approval prior to construction and the flushing of disinfectant. The Contractor shall be responsible for the necessary coordination to ensure the above compliance.

(14) All private domestic water wells shall have at least thirty (30) feet of casing unless a special exemption or variance is granted by the NRD.

(15) All new wells within the boundaries of Lehigh Acres established in Policy 54.1.9 of the Lee Plan, or as that policy may be amended, renumbered, or replaced and as depicted in the map attached as Exhibit A and incorporated herein shall be constructed to accommodate submersible pumps unless the well is thirty (30) feet or less in depth.

~~(16) (16) New irrigation wells within the boundaries of the Bonita Springs area as established in Policy 1.7.10 of the Lee Plan, or as that policy may be amended, renumbered, or replaced and as depicted in the map attached as Exhibit A and incorporated herein may not utilize the Lower Tamiami aquifer below the first regional confining layer.~~

~~(17)~~ In the vicinity of San Carlos Park, an intra-aquifer confining unit exists in the Water Table aquifer, typically occurring at approximately thirty (30) to thirty five (35) below the land surface. This confining unit separates the shallow portion of the Water Table aquifer from the deeper portion of the Water Table aquifer. A distinct difference of water quality exists above and beneath the intra-aquifer confining unit. In order to prevent contamination of water quality in the deeper portion of the Water Table aquifer, all wells installed within the boundaries of the San Carlos Park area as depicted in the map attached as Exhibit A and incorporated herein, shall be constructed in a manner to prevent intermixing of waters of different quality.

~~(17)~~(18) In Lehigh Acres, an intra-aquifer confining unit exists in the Sandstone aquifer. This confining unit effectively separates the shallow portion of the Sandstone aquifer from the deeper portion of the Sandstone aquifer. In order to prevent contamination of water quality in the deeper portion of the Sandstone aquifer, all wells installed within the boundaries of Lehigh Acres area as depicted in the map attached as Exhibit A and incorporated herein, shall be constructed in a manner to prevent intermixing of waters of different quality.

~~(18) (19)~~ Following well construction, each well ~~must~~shall be thoroughly developed using the method of well development appropriate for the constructed well and the site conditions to ensure complete removal of all sand, drilling mud, drill cuttings and other debris from the well. On the day of construction, at the end of well development, sediment free clean water sample shall be collected from the well water producing zone in the container provided by NRD.

~~(19) (20)~~ Lee County recommends that all new domestic water supply wells be disinfected following their construction, and after pump installation by a State of Florida licensed water well contractor or plumber, prior to being utilized for domestic water supply

service.

~~(20—(21)~~ Wells installed by property owners who are not State of Florida Water Well Lee County licensed ~~drilling~~ contractors shall not exceed a depth of thirty (30) feet below the land surface or the top of the regional confining unit, whichever occurs first.

139.3.3 Test Wells, Geotechnical Borings, and Shaft Holes

(1) ~~Test Water test~~ wells whose purpose is obtaining exploratory or observational data shall conform to the specifications for regular wells within twelve (12) months of construction. Such wells may be converted to permanent production or observation wells if constructed by a State upon approval of Florida Water Well Contractor and the well construction was approved by the NRD and the SFWMD has approved the proposed aquifer for use, when applicable. Water test wells not converted to permanent wells shall be plugged as specified by this Ordinance and other State requirements.

(2) ~~Geotechnical Test holes or geotechnical~~ borings for the purpose of obtaining data for engineering studies, seismographic, geophysical or geological exploration or prospecting for minerals that exceed ten feet in depth, but not for the purpose of either producing or disposing of water shall be plugged from bottom of the borehole to the land surface with an approved grouting material immediately upon completion of tests or borings. Borings not exceeding ten feet in depth may utilize clean inert fill.- The Contractor shall be responsible for the proper ~~abandonment~~ plugging of such geotechnical boring test holes.

(3) Shaft holes for hydraulic lifts shall be double-cased with a minimum of two (2) inches of grouting material in annular spaces outside and between casing strings. The shaft hole shall be grouted a minimum of five (5) feet below the bottom of the inner casing.

(4) Boreholes that exceed ten feet in depth not completed as wells, test holes or elevator shafts shall be plugged from bottom of the borehole to the land surface in a manner specified in this Ordinance. The Contractor shall be responsible for the proper ~~abandonment~~ plugging of boreholes before leaving the site.

139.3.4 Abandoned Wells

When a well is determined to be abandoned, the Director or his/her designee may, by his/her authority for protection of water resources, require that the well be rehabilitated or plugged. The Director or his/her designee may use temporary measures, immediately, to control a flowing or a non-flowing well; otherwise, the following procedure shall take place before the well is rehabilitated or plugged:

(1) The Director or his/her designee shall notify the property owner that a well on his/her property has been identified as abandoned. If no property owner can be identified, the Director or his/her designee shall cause to be published in a paper of general circulation for Lee County, notice of the NRD's intent to plug the abandoned artesian or a non-flowing well. Notice shall be once each week for four (4) consecutive weeks.

- (2) Once so notified, the property owner shall submit to the NRD within ten (10) calendar days the geophysical logs or a well completion report showing depth of well and casing.
- (3) If the geophysical logs or a well completion report show the well is open to more than one aquifer or the casing is corroded, the well shall be ordered to be rehabilitated or plugged within ninety (90) days of notification by NRD.
- (4) If geophysical logs or a well completion report are not available or ~~cannot~~~~can not~~ be provided to NRD, the owner shall have ninety (90) days in which to have the depth of well and casing determined by the appropriate geophysical logs.
- (5) If the property owner has been ordered to plug or rehabilitate a well on his/her property but does not carry out the work as ordered within ninety (90) days, duly authorized representatives of the NRD may at reasonable times enter upon and shall be given access to the premises by the property owner for the purpose of carrying out the work so ordered. The property owner shall then become liable for the cost of the ordered work. If the owner fails to pay for the work performed by the County, a lien may be placed on the owner's property to satisfy such costs. If the abandoned well was for residential domestic or irrigation use and is being replaced, the homeowner may plug the abandoned well provided that the well does not exceed thirty (30) feet in depth and the homeowner shall obtain a well abandonment permit from NRD prior to plugging a the well. The homeowner must abandon the well in compliance with **SECTION 139.3.5**.

139.3.5 Plugging of Existing Wells

139.3.5.1 General - A well may be plugged provided:

- (1) It is filled from bottom to the land surface with an appropriate grouting material as defined in **SECTION FIVE** pumped into the well through appropriate sized tubing inserted in the well, and work done in accordance with the requirements of the NRD and the SFWMD.
- (2) An attempt is made to determine the depth of the well.
- (3) Other materials or methods for plugging wells may be utilized only if approved by the NRD and the SFWMD.

139.3.5.2 Permit

- (1) Prior to plugging any well, a permit must be obtained from the NRD.
- (2) The Contractor shall be familiar and shall comply with applicable provisions of Chapter 373, Florida Statutes, Regulation of Wells, Part III.
- (3) Unless the Contractor has obtained a permit for other work, as specified elsewhere herein, and said permit includes plugging of well(s) together with approved plugging specifications and procedures, he/she shall submit evidence of approval from the Florida Department of Environmental Protection or any other

required State agency approval, with the methods to be used in plugging together with the application to plug any well which extends beyond the water table aquifer.

(4) The Contractor shall notify the NRD at least twenty-four (24) hours prior to the start of the plugging operation so that a NRD inspector may be present during plugging operation.

(5) After completion of plugging a well, the required completion report shall be promptly filed with the NRD. This report shall include the depth of the well, chloride content (milligrams per liter or parts per million), static water level before plugging, temperature of the water, and the quantity of backfill material used if applicable.

139.3.6 Plugging of Replacement Wells

The Contractor shall ensure that the existing well is plugged from bottom to the land surface with approved grouting material and in accordance with the requirements of this Ordinance within two (2) weeks following completion of installation of the replacement well. The NRD must be notified by the Contractor at least twenty-four (24) hours prior to plugging the replacement well, so that an inspector can be present during plugging operation. Upon reviewing project specific circumstances, the NRD inspection staff may authorize deviations from this requirement.

139.3.7 ~~REPAIR OR REPLACEMENT OF WELLS~~ Repair or Replacement of

Wells - All work involving repair or replacement of wells shall be performed by a licensed State of Florida Water Well Contractor. Wells found to have defective casings shall be repaired or considered as an abandoned well. The defective casings shall not be pulled. Should special repair or replacement techniques seem desirable, special application by the Contractor, including all technical data regarding existing conditions and the Contractor's proposed methods of effecting repair, or replacement, shall be submitted to the NRD for review as necessary. The Contractor shall adhere precisely to the special application as approved, amended or disapproved.

~~SECTION TEN: LICENSING.~~

~~10.1 CONTRACTOR LICENSURE REQUIREMENTS.~~

~~Water well and specialty contractors as defined under this Ordinance shall obtain a County license from the NRD. All new or presently unlicensed water well contractors must show proof of a valid State of Florida water well contractor license, and provide the~~

following:

- ~~(1) a copy of a valid State of Florida driver license (or State issued picture identification),~~
- ~~(2) proof of a valid Lee County occupational license,~~
- ~~(3) evidence of workman's compensatory and liability insurance,~~
- ~~(4) references for at least two (2) years drilling experience, demonstrate competency during a field test, and~~
- ~~(5) written examination reviewed by NRD with a minimum of 70% correct answers.~~

~~10.2 LICENSE RENEWAL.~~

~~County licenses shall be renewed every two (2) years on the licensee's birthday. Application for license renewal shall be submitted to NRD within thirty (30) days prior to expiration of the license, to insure sufficient time for application review and processing. Failure to renew by the due date will result in an additional penalty or late fee. The grace period for license renewal is six (6) months following license expiration date. All applicants will be required to take the written licensure examination to re-instate any license that has not been renewed for a period greater than one (1) year following license expiration date. Water well contractor license in Lee County entitles the holder to construct all classes of wells addressed in this Ordinance. Among other documentation, application for license renewal shall include proof of continued education classroom hours accumulated during the license renewal period.~~

~~Contractors who repeatedly violate the provisions of this Ordinance may be denied the applications for license renewal. — In a three (3) year period, Contractors who accumulate fines totaling more than \$3,000 (three thousand dollars) for combined administrative and construction violations (except for violations for the failure to cancel or schedule an activity), or whose license(s) had been suspended or revoked for a~~

~~period of 12 months or more, shall have their license(s) revoked, and not be eligible for future applications for a license or license renewal.~~

~~10.3—SPECIALTY LICENSE.~~

~~In the absence of a State of Florida water well contractor license, Lee County specialty drilling licenses shall be required for construction, repair, or abandonment of geotechnical borings or elevator shafts. A monitoring well specialty drilling license authorizes the Contractor to construct, repair, or abandonment of monitoring wells and geotechnical borings. A geotechnical boring specialty drilling license authorizes the Contractor to construct, repair, or abandonment of geotechnical borings. An elevator shaft specialty drilling license authorizes the Contractor to construct, repair, or abandon elevator shafts. Requirements for renewal of these licenses are the same as for a water well contractor license.~~

~~10.3.1—Monitoring Wells—to obtain a specialty license to construct monitoring wells in Lee County, the applicant must provide the following:~~

- ~~(1) evidence of two (2) years monitoring well construction experience,~~
- ~~(2) proof of a valid State of Florida water well contractor license,~~
- ~~(3) proof of a valid Lee County occupational license,~~
- ~~(4) evidence of workman's compensatory and liability insurance, and~~
- ~~(5) pass a field and written examination with a minimum score of 70% and pay the appropriate licensing and testing fee.~~

~~10.3.2—Geotechnical Borings and Elevator Shafts—to obtain a specialty license to drill geotechnical borings and elevator shafts in Lee County, the applicant must provide the following:~~

- ~~(1) evidence of competency with a minimum of two (2) years of experience in the~~

trade,

~~(2) proof of a valid Lee County occupational license,~~

~~(3) evidence of workman's compensatory and liability insurance, and~~

~~(4) pass a field test and pay the appropriate licensing and testing fee.~~

~~10.4 LICENSED CONTRACTOR RESPONSIBILITIES.~~

~~(1) The Contractor shall bear full responsibility for compliance with the provisions of this Ordinance, Chapter 40E-3 F.A.C., and other applicable state or federal requirements. The Contractor shall be capable of providing adequate supervision for work being performed on site. Prior to drilling, constructing, repairing, rehabilitating, plugging, enlarging or deepening any well, geotechnical boring, or elevator shaft, the Contractor shall ensure that he or she has a Lee County license appropriate for the work being conducted.~~

~~(2) The Contractor may not be eligible to apply for new permits until satisfactory completion of wells or other activities for which permits had been issued and construction has been commenced.~~

~~(3) A valid State of Florida water well contractor license, a valid Lee County occupational license, and proof of workman's compensatory and liability insurances are prerequisites for obtaining and maintaining a Lee County water well contractor license or a specialty license.~~

~~(4) The Contractor shall be responsible and liable for work being performed or taking actions deemed necessary by NRD to correct conditions that may harm environmental resources as a result of any drilling, constructing, repairing, rehabilitating, plugging, enlarging or deepening any well, geotechnical boring, or elevator shaft.~~

~~(5) The Contractor shall be responsible for providing adequately trained personnel and~~

~~equipments in good working condition to carry out permitted work.—Work being performed without on-site supervision by the Contractor may be halted and on-site supervision by the Contractor will be required prior to resuming work.~~

~~(6) —The Contractor shall be responsible for providing safe work site conditions for his/her employees and NRD staff to perform their duties.~~

~~(7) —The Contractor shall be responsible for performing work within a reasonable period of time for which a partial or full payment had been received from any person.~~

~~(8) —The Contractor and his/her staff shall be responsible for cooperating with NRD staff during inspection of wells and other related activities.—It is unlawful for any person to knowingly interfere with, threaten with bodily harm, oppose, resist, obstruct, hinder or in any manner from preventing a NRD staff member performing his/her duty, or fail to obey the lawful order of NRD staff member.~~

13.3.8 GEOTHERMAL CLOSED LOOP HOLES- Multiple holes constructed for the purposes of heat exchange in the earth, Closed Looped piping is installed in the predrilled holes to exchange heat for cooling in the summer and heating in the winter. Holes may not exceed the Water-Table Aquifer, and must be filled with clean inert fill. The open hole or any installed pipe may not exceed the first confining unit below the Water Table aquifer.

SECTION FOURTEEN

SECTION ELEVEN: SUPPLEMENTAL REGULATIONS.

~~11.4~~ 14.1 RULES AND REGULATIONS.

~~—~~All rules, regulations, administrative codes, statutes and laws set by higher authority in control of water resources remain in effect and are supplemented by rules and regulations in this Ordinance.

~~11.2~~ 14.2 LIMITS OF COUNTY LIABILITY.

~~—~~The issuance of a well construction approval number shall not be interpreted as an assurance by Lee County that any private water system well will continue to meet the minimum standards of this Ordinance or any other County, State or Federal standard. No person shall be entitled to rely upon the issuance of any permit or certificate as proof that Lee County or the State of Florida is assuming any legal responsibility for ensuring that private water wells, once tested, continue to meet any standards whatever for quality, quantity, and potability, including, but not limited to, bacteriological levels, salinity, turbidity, or mineral content.

SECTION FIFTEEN: ENFORCEMENT ACTIONS.

15.1 TWELVE: PENALTIES.

Any person, ~~including a property owner or a licensed contractor,~~ who ~~violates~~~~shall violate~~ any section of this Ordinance shall be punished in accordance with the Lee County Well Code Contractor's Disciplinary Guidelines (Appendix B). The Lee County Board of County Commissioners may institute in any Court or before any Administrative Board of competent jurisdiction an action to prevent, restrain, correct or abate any violation of this Ordinance or any order or ruling made in connection with its administration or enforcement by way of mandatory injunction or otherwise, as deemed proper by the Court.

15.2 CITATION PROCEDURE: ACTION STEPS FOR UNLICENSED CONTRACTORS:

(1) Applicability Lee County DNR Well inspectors are authorized to enforce the provisions of this ordinance against licensed and unlicensed Boring and Elevator Shaft contractors doing business in the Cities of Bonita Springs, Ft. Myers, Sanibel, Villages of Estero and the unincorporated areas of Lee County in accordance with the procedures set forth below.

(2) Citation Procedure

1. A code enforcement officer/ Well Inspector may issue a citation against a licensed or unlicensed Contractor for any violation of this ordinance, whenever, based upon personal investigation, the code enforcement officer has reasonable and probable grounds to believe that a violation has occurred.

2. The code enforcement officer does not have to provide the person with time to correct the violation prior to issuing a citation.

3. A citation must be in a form prescribed by the Division and contain:

a. The date and time of issuance.

b. The name and address of the person to whom the citation is issued.

c. The date and time the civil infraction was committed.

d. The facts constituting probable cause.

e. The number or section of the code or ordinance violated.

f. The name and authority of the code enforcement officer.

g. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.

h. The applicable civil penalty if the person elects to contest the citation.

i. The applicable civil penalty if the person elects not to contest the citation.

j. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he will be deemed to have waived his right to contest the citation and that, in

such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

4. The act for which the citation is issued must cease upon receipt of the citation.

5. Each day a willful, knowing violation continues constitutes a separate offense under this ordinance. Therefore, if appropriate, a code enforcement officer may issue successive Citations.

6. After issuing a citation to the alleged violator, the code enforcement officer must deposit the original citation and one copy of the citation with the county court.

7. A schedule of penalties to be assessed by the code enforcement officer is set out in the Lee County Administrative code. The maximum civil penalty that can be assessed is \$500.

8. Any person who willfully refuses to sign and accept a citation issued by a code Enforcement officer will be guilty of a misdemeanor of the second degree as provided in F.S. 775.082 or 775.083.C.

9. Any Lee County well inspector/ code enforcement officer has the ability to stop any and all unpermitted and unlicensed Well drilling, Test Boring and Elevator activities. If a stop work order has been issued and the work continues, the inspector may request the Lee County Sherriff's department be deployed for assistance to stop all unlicensed/unpermitted activities.

15.3 Funds Collected

Any funds collected in accordance with this section will be retained by the Division to support future code enforcement activities.

SECTION SIXTEEN: APPENDIX.

Appendix sections A, B, and C attached hereto are hereby incorporated into the Ordinance by reference as though fully set forth herein.

SECTION SEVENTEEN: ~~THIRTEEN~~—CONFLICTS.

In the event that any provision of this Ordinance is found to be contrary to any other existing Lee County Ordinance, code, rule or regulation covering the same subject matter, this Ordinance shall supersede all other such Ordinances, codes, rules or regulations to the extent that this Ordinance is in conflict therewith.

SECTION EIGHTEENFOURTEEN: SEVERABILITY.

The provisions of this Ordinance are severable and it is the intention to confer the whole or any part of the Powers herein provided for. If any of the provisions of this Ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of such Court shall not affect or impair any remaining provisions of this Ordinance. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional provision not been included therein.

SECTION NINETEENFIFTEEN: INCLUSION IN CODE.

——It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lee County Code and that sections of this Ordinance may be renumbered or relettered and the word “Ordinance” may be changed to “section”, “article”, or such other appropriate word or phrase in order to accomplish such intensions and regardless of whether such inclusion in the Code is accomplished. Sections of this Ordinance may be renumbered or relettered and the correction of typographical errors which do not affect the intent may be authorized by the

County Manager or his or her designee, without need of Public Hearing, by filing a corrected or recodified copy of same with the Clerk of the Circuit Court.

SECTION TWENTYSIXTEEN: SCRIVENER’S ERRORS.

The Board of County Commissioners intends that this Ordinance can be renumbered or relettered

By: _____
Deputy Clerk

By: _____
Brian Hamman, Chair — Chairwoman

Approved as to form by:

Michael D. Jacob

APPROVED AS TO FORM:

By: _____
~~Office of the~~ County Attorney's Office ~~Attorney~~

Attachments: Appendix A
Appendix B
Appendix C

APPENDIX A
LEE COUNTY WELL CODE
PROCEDURES MANUAL
For Issuance of
PERMITS
For
WELL CONSTRUCTION AND ABANDONMENT

INTRODUCTION

The purpose of this manual is to provide, periodically, more details to selected methods, materials, procedures, and policies that are described, in general terms, in the Lee County Well Code. The manual will also include updates of Federal, State, and other County regulations affecting the Well Code.

The manual is divided into three sections:

- I Permits (application requirements, supporting documentation)
- II Well Construction (methods, casing, grout, annulus)
- III Administration (code interpretations, license, penalties)

SECTION I PERMITS

A property owner, owner's agent, or a licensed water well, elevator shaft, monitor well or geotechnical boring contractor may make applications for permits, but all applications must include the signature of the appropriate Contractor. For convenience the Natural Resources Division (NRD) allows well permit applications to be mailed or faxed to our office location noted below.

**Lee County NRD
Well Permitting – 1st Floor
1500 Monroe Street
Ft. Myers, FL 33901**

FAX 239-479-8535

Permit and other fees are handled by the Cashier's Office located at the 1st floor of the Public Works and Community Service building. The Cashier's Office can be reached at the tel. (239) 479 8539 or by facsimile (239) 479 8186.

The County promotes electronic communication between staff and Contractors. In order to improve the efficiency of the work place, the staff may elect to electronically transmit permits and other correspondence to Contractors instead of facsimile or US mail.

Permit Processing Time: Permit applications are accepted at the permit counter from 7:30 a.m. to 4:030 p.m. All permit applications and supporting documents will be reviewed for completeness and a sufficiency determination will be made upon receipt of the application. A request for supplemental information will be transmitted to the applicant by NRD staff for applications determined insufficient. The NRD will strive to issue permits within 24-hours upon receipt of

a complete permit application. Any application received after 2:00 pm will not be processed until the following day. –Following permit approval drilling shall be scheduled prior to 6:30 a.m. on the drilling day. Upon issuance of a permit, the permit can be transmitted to the applicant via email, facsimile, mail or picked up and drilling can start at anytime of the scheduled day. The permit shall be placed in a ziplock plastic bag to protect it from inclement weather.

Permit Completion, Transfers, Exchanges, and Subcontracting: All entries on the Well Construction Permit Application must be *fully* completed. No permit shall be transferred or exchanged and any request for renewal must be made in writing to the NRD. Subcontracting may be authorized only due to extenuating circumstances.

Job Site Directions: The applicant for a well construction permit is responsible for providing clear, correct, and complete directions to the job site. The directions should be descriptive enough that a stranger to Lee County could find the location. These directions do not take the place of a site plan.

Permits are valid for 6 months: A well can be redrilled or relocated provided the permit has not been closed by NRD. The rehabilitation of an existing well because of extenuating circumstances will not require a new permit if rehab occurs within 6 months of the original drilling. Although a permit is not required, the NRD shall be notified of the proposed activity. Acceptable circumstances include drilling out a plug to set a pump, setting a screen, or redeveloping.

Casing Variances: In certain areas of Alva, the water in the Sandstone aquifer is too salty for potable use. A variance of the 30-foot casing requirement may be requested for domestic wells planned for construction in these areas (see Well Construction Permit for additional instructions).

Site Inspection Requirement: Permit applications for wells for new construction accompanied by Health Department/Environmental Engineering Division (HD/EE) approved site plans are exempt from site inspections by the Contractor. It is the Contractor's responsibility to make certain that a well construction permit application does not contain gross errors or materially misrepresents the facts. The revised well construction permit application includes a "Site Inspected: yes () no ()" item. If this item is checked "no" or not checked at all on an irrigation or replacement well application, the permit may be issued, but the well shall not be scheduled for construction until the site has been inspected by the Contractor or a well inspector. If the well inspector visits the site, an additional fee equivalent to reinspection fee will be added to the application fee.

Site Plans for Irrigation Wells: An irrigation well construction permit application shall have a detailed site plan showing distances from the proposed well location to septic systems both on the owner's property and adjoining properties. It is suggested that a copy of the approved septic system site plan be included with

the application. If the setback cannot be met, the applicant must apply to HD/EE for a variance.

Chapter 64E-6 F.A.C.: This Chapter authorizes the HD/EE to revoke a permit of an approved proposed or existing septic system if a new irrigation well is installed within the 50-foot setback. Chapter 64E-8 F.A.C. delegates variance authority to the HD/EE for replacement domestic wells that are less than 75 feet and irrigation wells that are less than 50 feet from a septic system.

Brokering Well Construction: The Contractor constructing the well must sign the well construction application. If another Contractor brokered the job, that should be shown on the application in the appropriate space. The Contractor brokering the job may sign the application also, but as an authorized agent of the owner.

Geotechnical Boring and Monitor Well Permits: A single permit shall be issued for all geotechnical borings located on an individual parcel. Likewise, a single permit shall be issued for all monitor wells located on an individual parcel. The Contractor shall be responsible for obtaining clearing permits, if necessary, in order to access the site.

Geotechnical borings constructed by hand **does** not require a permit, but must be filled with grout when completed. Geotechnical borings in bottoms of large surface-water bodies do not require well construction permits if the borings do not penetrate the first regional confining layer, which is usually 20 to 30 feet below land surface.

In cooperation with the Lee County Division of Environmental Sciences (ES), NRD will require that all geotechnical boring and monitor well construction permit applications indicate if the site has been checked with ES and a vegetation removal permit obtained, if needed.

For further information on the vegetation removal permits, call (239) 479-8323 or visit the Community Development/Public Works Service Center, 1500 Monroe Street, Fort Myers.

Sample Bottles: In order to help with the collection of water samples, the NRD staff will give a sample container bottle for each permit. All water samples shall be collected in the NRD provided laboratory containers.

Lee County Environmental Laboratory: This is a sterile environment. The outside of the sample bottles needs to be as clean as possible. If a well inspector is not present when the sample is collected, the Contractor shall ensure that the sample bottle is securely fastened to a fixed object located at the vicinity of the well. NRD suggests the use of duct tape or plastic cable ties (wire ties) be used to secure the sample bottles to the well casing. Lab procedures

require agitation of the water sample before analysis. Therefore, Contractors are required to collect a clear and clean sample as described in SECTION 6.5 of the Well Code.

STRAP Numbers: Effective July 1, 1998, STRAP numbers will be required on all well, geotechnical boring, and elevator shaft construction permit applications.

Construction Scheduling: All drilling inspection scheduling, anticipated interruptions and cancellation shall be logged on the inspection call-in scheduling recorder number provided on the well construction permit or application. The NRD must be notified of scheduled drilling prior to 6:30 a.m. of the day construction is to begin for any permit issued by the NRD.

Cancellation of Scheduled Construction: As soon as the need for cancellation/interruption arises, Contractors shall log the cancellation/interruption on the recorder. Failure to notify cancellations on the recorder prior to 11:59 p.m. of the day, for which work is scheduled, shall become a non-compliance with this Ordinance. All scheduled inspections that are not cancelled as stated above are subjected to a reinspection fee and a fine.

Excessive Cancellations: Failure to cancel a job prior to 6:30 a.m. of the day for which the work is scheduled shall be counted towards computing excessive cancellations. Excessive cancellations as described in Section II C of Appendix B, Disciplinary Guidelines, shall result in fines.

Specific Information Required on Permit Applications: In addition to the permit application and permit fee, the following information is required for processing permit applications depending on the type of project:

Domestic Supply Well (single family, duplex with multiple wells, multi-family, farm, replacement)

- A valid [Lee County State of Florida](#) water well contractor license;
- STRAP number;
- Site address;
- Correct proposed well casing and total well depth for aquifer production zone to be utilized;
- Lee County Health Department approved site plan;
- Lee County Health Department septic system permit;
- Letter of Intent to construct home within one year (as applicable);
and
- Replacement Well Form, if applicable.

Irrigation Well (single family, duplex, multi-family, replacement)

- A valid State of Florida Lee County-water well contractor license;
- STRAP number;
- Site address;
- Correct proposed well casing and total well depth for aquifer production zone to be utilized;
- Site plan sketch indicating proposed well and septic system locations; and
- Replacement Well Form, if applicable.

Commercial Irrigation Well

- A valid State of Florida Lee County-water well contractor license;
- STRAP number;
- Site address;
- Water Use Permit (WUP) number and copy of WUP;
- Correct proposed well casing and total well depth for aquifer production zone to be utilized;
- Site plan sketch indicating proposed well and septic system locations; and
- Replacement Well Form, if applicable.

Agricultural Irrigation Well (Farm, replacement)

- A valid State of Florida Lee County-water well contractor license;
- STRAP number;
- Site address;
- Water Use Permit (WUP) number and copy of WUP;
- Correct proposed well casing and total well depth for aquifer production zone to be utilized;
- Site plan sketch indicating proposed well and septic system locations; and
- Replacement Well Form, if applicable.

Fire Well (single family, duplex, multi-family)

- A valid State of Florida Lee County-water well contractor license;
- STRAP number;
- Site address;
- Correct proposed well casing and total well depth for aquifer production zone to be utilized;
- Site plan sketch indicating proposed well and septic system locations;
- Fire well engineering design calculations for fire suppression system water demand in accordance with National Fire Protection Association (NFPA); and
- Replacement Well Form, if applicable.

Fire Well (commercial, farm, replacement)

- A valid State of Florida Lee County water well contractor license;
- STRAP number;
- Site address;
- Correct proposed well casing and total well depth for aquifer production zone to be utilized;
- Water Use Permit (WUP) number and copy of WUP;
- Site plan sketch indicating proposed well and septic system locations;
- Fire well engineering design calculations for fire suppression system water demand in accordance with NFPA; and
- Replacement Well Form, if applicable.

Test Well (commercial, farm)

- A valid State of Florida Lee County water well contractor license;
- STRAP number;
- Site address;
- Correct proposed well casing and total well depth for aquifer production zone to be utilized;
- Water Use Permit (WUP) number and copy of WUP; and
- Site plan sketch indicating proposed well and septic system locations.

Piezometer Well (single family, duplex, multi-family, commercial, farm)

- A valid State of Florida Lee County water well contractor license;
- STRAP number;
- Site address;
- Site plan sketch indicating proposed piezometer location(s); and
- Correct proposed piezometer construction details.

Public Water Supply Well (commercial, replacement)

- A valid State of Florida Lee County water well contractor license;
- STRAP number;
- Site address;
- Correct proposed well casing and total well depth for aquifer production zone to be utilized;
- Lee County Health Department approved site plan;
- Lee County Health Department Form 4092;
- Water Use Permit (WUP) number and copy of WUP; and
- Replacement Well Form, if applicable.

Limited Use Community Public Water Supply Well (commercial, replacement)

- A valid [State of Florida Lee County](#) water well contractor license;
- STRAP number;
- Site address;
- Correct proposed well casing and total well depth for aquifer production zone to be utilized;
- Lee County Health Department approved site plan;
- Lee County Health Department Form 4092;
- Water Use Permit (WUP) number and copy of WUP; and
- Replacement Well Form, if applicable.

Geo-Thermal Supply and Injection Well (single family, replacement)

- A valid [State of Florida Lee County](#) water well contractor license;
- STRAP number;
- Site address;
- Correct proposed well casing and total well depth for aquifer production zone to be utilized;
- Site plan sketch indicating proposed well and septic system locations; and
- Replacement Well Form, if applicable.

Geo-Thermal Supply and Injection Well (commercial, farm, replacement)

- A valid [State of Florida Lee County](#) water well contractor license;
- STRAP number;
- Site address;
- Correct proposed well casing and total well depth for aquifer production zone to be utilized;
- Site plan sketch indicating proposed well and septic system locations;
- Florida Department of Environmental Protection injection well permit;
- Water Use Permit (WUP) number and copy of WUP; and
- Replacement Well Form, if applicable.

Geotechnical Boring

- A valid [State of Florida Lee County](#) water well or geotechnical boring contractor license;
- STRAP number;
- Site address; and
- Site plan sketch indicating proposed boring locations.

Monitoring Well

- A valid State of Florida Lee County-water well or monitoring well contractor license;
- STRAP number;
- Site address;
- Correct proposed well casing and total well depth for aquifer production zone to be utilized;
- Site plan sketch indicating proposed monitoring well locations; and
- Replacement Well Form, if applicable.

SECTION II WELL CONSTRUCTION

Drilling After Regular Work Hours: While not prohibited, NRD strongly recommends that weekend, holiday and evening drilling be restricted to emergencies only. By doing so, the County well inspectors will be available to assist in the administration and enforcement of the County Well Code. The NRD has the authority to require certain phases of well construction to be witnessed by a well inspector, the Director's authorized representative, or an approved third party. Well construction initiated during regular work hours may continue beyond normal working hours of County well inspectors as required and authorized by NRD on a case specific basis. An after-hour inspection fee may be assessed for inspections performed outside normal working hours (7:30 a.m. to 4:00 p.m.) of county well inspectors.

Drilling Water: The quality of water used for drilling and well construction shall comply with the requirements specified in Chapter 40E-3 F.A.C.

Proper Placement of Casing: Chapter 40E-3 F.A.C. and the Lee County Well Code states specifically that the casing of a well must be seated into the production aquifer. It has been difficult to determine the casing depth in Lower Hawthorn wells because of lithology within the Lower Hawthorn confining unit. Subsequent studies have named these limestone sections as Zone II and Zone III of the Mid-Hawthorn aquifer (see attached Exhibit B schematic Three Dimensional Representation of Lee County Aquifers). Where there is only one zone, it is referred to as the Lower Mid-Hawthorn aquifer and the section above the confining unit as the Upper Mid-Hawthorn aquifer. Many times, utilizing of Zone II or Zone III (or Lower Mid-Hawthorn), were interpreted as reaching the Lower Hawthorn and casing was set accordingly. However, in many instances the yield was very small and open hole was drilled until the yield increased - which was probably the true Lower Hawthorn. The SFWMD classifies the permeable units as part of the Lower Hawthorn aquifer.

The SFWMD differentiates between aquifers more on the differences in the quality of the waters than on the differences in lithologies. This means, technically, that a well can connect two aquifers if the aquifers have the same

quality of water. This rarely - if ever - happens except in the situation described immediately above and possibly between the Lower Hawthorn and Suwannee aquifers.

~~Lee County Utilities Cypress Lakes Wellfield: This wellfield has three 285-foot deep production wells in the Brantley Road—College Parkway area. Irrigation wells drilled in this area after July 1993 are required to use a minimum of 350 feet of casing. The SFWMD's Well Abandonment Program located and plugged a well in the area in 1983. The well was 482 feet deep, 126 feet of steel casing, and the water had a chloride content of 2,900 milligrams/liter.~~

Grout: "Grout" means a mixture of Portland cement and water, and may include additives such as bentonite (not to exceed 4.7 lbs. per 94 lb. sack of cement), High Yield Drilling Mud (not to exceed 0.9 lbs. per 94 lb. sack of cement), calcium chloride (not to exceed 3 lbs. per 94 lb. sack of cement) or retarder (not to exceed 1 lb. per 94 lb. sack of cement), or other admixtures approved by the NRD. When using bentonite as an additive, an additional 0.65 gallons of water per percent of bentonite may be used. When using High Yield Drilling Mud as an additive, an additional 0.80 gallons of water per percent of High Yield Drilling Mud may be used. The bentonite or High Yield Drilling Mud should always be pre-hydrated before introducing the cement into the mixture. Neat cement grout is a mixture of Portland cement and water without any additives. Neat cement grout composition shall not exceed six (6) gallons of water per 94-pound sack of Portland cement.

One sack of cement equals one cubic foot (cu ft); six gallons of water equal 0.8 cu ft, but a slurry of 6 gallons of water and 1 sack of cement occupies 1.28 cu ft. The annular space in an 8-inch borehole with 4-inch (4.5" O.D.) casing (4"x 8") is 0.2385 cu ft per linear foot. Therefore, assuming a consistent 8-inch borehole and no lost circulation zones, the 6:1 slurry will fill 5.4 feet of annulus (1.28/0.2385). If a 100-foot well casing is used, 18.6 sacks of cement will be needed for a proper grout job.

The *Halliburton Cementing Tables*, Section 230.15, states that if five (5) percent bentonite (about 4.7 lbs. of bentonite per 94-lb. sack of cement) is added to the cement grout, the maximum recommended amount of water is 8.5 gallons per sack of cement. This would yield a slurry volume of 1.71 cu ft per sack. This mixture would fill 6.6 feet of annulus in a 4"x8"x100' well and would require 15.2 sacks of cement and 71.44 lbs. of bentonite. These figures also assume a consistent 8-inch borehole and no lost circulation zones.

The typical 55-gallon barrel is 22 inches in diameter, 34 inches in height, and holds 7.47 cu ft. Each inch of depth in the barrel holds 1.64 gallons. To ensure adequate mixing of neat cement, no more than 24 gallons of water shall be used for mixing a 4-sack barrel and no more than 30 gallons used for a 5-sack barrel. The depth of 24 gallons is 14.59 inches and 30 gallons is 18.24 inches. After

mixing, a 4-sack slurry should have 10.65 inches of freeboard (distance between top of barrel and top of slurry) in the barrel and the 5-sack mix should have 4.82 inches. The numbers for these two mixtures in the plastic, curved-sided barrels have not been determined.

A 3-sack mix of 5 percent bentonite occupies 5.15 cu ft (3 sacks, 27.75 gallons, and 14.1 lbs. of bentonite). This is roughly the same volume as the 5.12 cu ft of the 6:1 neat cement. The 3-sack cement-bentonite slurry will require 16.87 inches of water in the barrel and the 4-sack, requires 22.5 inches.

If the well inspector witnesses grout return, the well will be approved. If the inspector does not witness the return and is not present when the well is completed, the well shall not be dry bagged. Whenever the well is inspected, if the grout is within five (5) feet of natural grade, the well will be approved. If deeper than five (5) feet, the Contractor will be notified to add grout. When the Division has been notified that the additional grouting is complete, the well will be re-inspected and approved.

Grout Shrinkage: There continues to be grout shrinkage even with the new mixing combinations. This was expected, but in some cases, the shrinkage has been excessive; i.e., more than five feet. Some grout should be saved and poured in the annulus around the well just as the site is about to be vacated. This should be sufficient to fill any shrinkage occurring during demobilization and will be much better than dry bagging.

Use of Surface Casing: If a loss circulation zone causes difficulty in setting casing, the Lee County Well Drilling Inspector can instruct the driller to set surface casing or some other method to control the bore hole until the production casing is set and properly grouted. If the driller refuses, the inspector can withhold approving the well and/or suspend well construction.

Approved Well Casing: SDR 26 PVC pipe shall not be used for well casing in Lee County. Lee County Well Code states that "All well casings shall meet or exceed State specifications." South Florida Water Management District's Chapter 40E-3, FAC states, in part, that "Any PVC pipe larger than 4.5 inches outside diameter used for well construction or repair shall have a working pressure rating of not less than 200 p.s.i. at 73 degrees F. or shall be ASA Schedule 40." Florida Department of Environmental Protection's Chapter 62-532.500 (1) (e) states, in part, that "Any PVC pipe used for well construction or repair shall at a minimum meet the specifications for Schedule 40 or Standard Dimension Ratio (SDR) 21."

PVC PIPE PRESSURE RATINGS
(In pounds per square inch)

Nominal Diameter (Inches)	Pipe Class					
	SDR 26	SDR 21	SDR 17	SDR 13.5	Schedule 40	Schedule 80
2	160	200	250	315	280	400
4	160	200	250	315	220	320
6	160	200	250	315	180	280
8	160	200	250	315	160	250
10	160	200	250	315	140	230
12	160	200	250	315	120	230

Chapter 40E-3s regulations are for 6-inch (some say 5-inch) diameter well casing and larger, except for public water supply wells, which are covered regardless of diameter. Therefore, NRD interprets SFWMD and FDEP regulations as covering all diameters. In that case, the above chart shows that Schedule 40 is rated at less than 200 p.s.i. in diameters larger than 4 inches. SFWMD states that although the regulations appear to be contradictory or confusing, larger than 4-inch diameter Schedule 40 well casing, although rated at less than 200 p.s.i., is permitted and the NRD would not be in violation by allowing its use. However, SDR 26 well casing is neither Schedule 40 nor rated at 200 p.s.i. and is not permitted by NRD.

GROUT MIXTURE CARDS: These cards are available upon request. Please call tel. 239 479 8114 to request a grout mixture card. It can also be picked up at the well permitting counter at first floor of the Community Service/Public Works Center building.

SECTION III ADMINISTRATION

~~**North Limit of Lower Tamiami Aquifer.** The Code states that in the Bonita Springs area, irrigation wells shall not be constructed in the Lower Tamiami aquifer. The boundaries of the Bonita Springs area are shown on a map attached to the Code. The north boundary follows the line between the first and second rows of sections in Township 47 South and Ranges 25 and 26 east. This imaginary line extends from the Lee Collier county line due west to Estero Bay. In the northwestern part of the Bonita Springs area, this line is about one-half mile north of, and parallel with, Coconut Road. This boundary is still in effect.~~

~~It is the position of NRD that the first water-producing zone below the regional confining unit is the principal aquifer for supplying potable water in the northwestern Bonita Springs area. Therefore, to protect it from exceeding its maximum safe yield by the addition of a potentially large number of irrigation wells, this zone is designated the Lower Tamiami aquifer and irrigation wells shall be prohibited.~~

Well Plugging Program: Chapter 40E-3 Florida Administrative Code and the Well Code require that abandoned wells be plugged. All wells discovered by NRD staff shall be plugged by the owner at his/her expense. A plugging permit is required, but no fee is charged. Well plugging shall be performed only by licensed water well contractors.

~~**Prohibition of Irrigation Wells in the Lower Tamiami Aquifer:** The Code states that new (after September 1, 1991) irrigation wells are prohibited from utilizing the Lower Tamiami aquifer. The reason for the prohibition is to reserve the aquifer for domestic supplies. Therefore, any proposed use of a well that does not include domestic consumption or an LUCPWS permit is prohibited. For example, wells to supply water to a car wash are prohibited from using the Lower Tamiami aquifer. However, a well furnishing the water for a stand-alone restroom (comfort station requiring a LUCPWS permit), can utilize the Lower Tamiami aquifer. If an irrigation well completed in the Lower Tamiami aquifer fails, the replacement well may be completed in the Lower Tamiami aquifer.~~

Correction of Violations: In all cases, corrections of violations must be scheduled, witnessed by a County well inspector, and completed during County normal work hours.

Well Completion Reports: All well completion reports must be received by the NRD within thirty (30) days of well completion. Well completion reports are also required for geotechnical borings.

Number of Wells per Lot: Chapter 40E-2, F.A.C. state that a single-family residence may have only one (1) domestic well, one (1) irrigation well, and one (1) fire well. Additional wells for any use will require WUPs and/or LUCPWS permits.

Sharing Wells: Chapter 40E-3 F.A.C. and the Code do not prohibit two single-family residences from sharing a domestic and/or irrigation well. The residences can be on conventional-sized lots, zero-lot-line lots, or common wall lots. However, two or more residences on one domestic well may fall under LUCPWS and should be approved by HD/EE prior to submitting permit application to NRD. Each zero-lot line lot and each common-wall lot may also have its own well. Sharing an irrigation well is quite common among winter residents in areas of North Fort Myers. However, if the well is drilled in a lot easement, there is the

possibility of it being destroyed if the easement is used later. Chapter 373.217 Florida Statutes, which prohibits transporting water, does not apply to single-family residences because a water use permit is not required.

Rental Duplexes: If the owner lives in one unit of a rental duplex or if the owner does not charge rent for the second unit, the duplex is considered a single-family residence by the Well Code. However, at the HD/EE's request, if a single well is to supply water to both units, the setback from the septic system shall be one hundred (100) feet. If a well is constructed for each unit, whether the duplex is single family or rental, setbacks may be seventy-five (75) feet for each well.

Abandonment of Wells: The definition of an abandoned artesian well in Florida Statute 373.203 (1) includes "(b) the use of which has been permanently discontinued". Section 3 of this Code (as amended) defines an abandoned well, in part, as "...not capable of being operational throughout the year". Therefore, if a well is unable to provide water throughout the entire year, especially in the dry season, it is considered inoperable and shall be abandoned. These definitions apply to the condition of the well only. If the well is inoperable because of a dysfunctional pump or the pumping water level in the well is below the lift capacity of the centrifugal pump, the well may become operational again by repairing the pump or replacing it with a submersible pump.

If a well is to be abandoned, Chapter 40E-3, Florida Administrative Code states that the well shall be filled from bottom to top with neat cement by a licensed water well contractor.

The NRD now has available a form letter to give to your well customers with the above statement. Wells that are non-working any part of the year or that are galvanized and have corrosion that may contaminate the aquifers must be plugged.

APPENDIX B
LEE COUNTY WELL CODE

WELL CONTRACTOR'S
DISCIPLINARY GUIDELINES

I INTRODUCTION

The purpose of this document is to establish disciplinary guidelines for the enforcement of the Lee County Well Code. The Guidelines specify fines and penalties for selected violations. Enforcement of these guidelines by the Lee County Natural Resources Division (NRD) will be in a consistent and impartial manner and adhere to the intent of protecting the public's health, safety, and welfare; and the groundwater resources.

II DISCIPLINARY GUIDELINES

Generally, administrative fines will be imposed for violations of the Code. Fines may range from \$ 50 to \$ ~~1000~~500 for each separate violation. Penalties may restrict the scope of a Contractor's practice or the status of his/her license. A violation may receive a penalty, a fine, or both. Repeat violations of this Ordinance may result in a more severe fine or penalty, or both. Reinspection fees and after-hour inspection fees are shown in the Lee County Administrative Code AC-3-10 Appendix C External Fee and Charges Manual.

A Definitions of Disciplinary Actions

1. **Fine:** Fines are generally imposed for any violation that does not pose a risk to the public welfare or to the groundwater resources. Fines are generally for violations in non-compliance of procedural or administrative sections of the Code. However, gross non-compliance violations such as drilling without a permit may be assessed penalties as well. In addition, repetition of a violation that has received an administrative fine may be changed to the penalty form of disciplinary action.
2. **Penalty:** Penalties are the more severe form of disciplinary action and are generally imposed for any violation that presents a risk or potential risk of harm to the ground-water resources or to the public health, safety, and welfare.

B Penalties

1. Denial of an application for licensure or for renewal of a license
2. Revocation of a specialty license for not less than one year during which time the licensee cannot construct, ~~repair, or abandon a well,~~ geotechnical boring, or elevator shaft.
3. Suspension of a licensee for a period of one to 6 months, during which time the licensee cannot construct, repair, or abandon a well, geotechnical boring, or elevator shaft.
4. Place the licensee on probation for up to 6 months, during which time the licensee would be required to give the NRD a minimum of 24 hours notice prior

to construction, repair, or abandonment of any well, geotechnical boring, or elevator shaft.

5. Place the licensee on probation for up to 6 months, during which time the licensee cannot perform a specified stage of construction unless said construction is scheduled during County work hours and witnessed by a County well inspector.
6. Restriction of the licensee's authorized scope of practice for a selected period of time. Such restrictions may apply to a specific activity (construction, repair, or abandonment), a specific type of well, a specific drilling method, a specific geographic area, or a specific period during the week.
 7. Denial of permits for new construction until violation is corrected.
8. Impositions of an administrative fine of up to \$ 500 for each count or separate violation.
9. Plug the well, pay fine of \$ 500, and obtain permit for each well. Upon inspection of the well, the NRD staff may waive the requirement for plugging the well and authorize an after-the-fact permit.
10. Well construction halted for 24 hours or until correction of non-compliant activity.
11. Prohibit scheduling of construction until violation is corrected.

C VIOLATIONS

Violations of the provisions of this Ordinance include the following:

(1) No Permit: The construction of any type of well, geotechnical boring, or elevator shaft in Lee County, without a valid **well** construction permit issued by NRD, SFWMD or other delegated authority. (SECTION 6.1) 40E-3.041 (1)

64E-8.002(2)

(2) Permit not Posted: The construction of any type of well, geotechnical boring or elevator shaft in Lee County, without conspicuously posting a well construction permit, issued by NRD, SFWMD or other delegated authority, at the job site. Permits that were posted, but are missing at the time of inspection shall be considered not posted. (SECTION 6.1)(62-532.400(4)))

(3) No Water Sample or failure to collect required well cuttings: Failure to collect a sediment free clean water sample in the NRD supplied container following well development or to deliver the water sample to NRD staff according to Appendix A, Procedures Manual. It is the Contractor's responsibility to ensure the water sample is properly labeled. (SECTIONS 6.5 and 9.3.2(19)) Failure to provide drilling samples when required(40E-3.411 (4))

(4) No Well Specifications On Site - The construction of any type of well, geotechnical boring or elevator shaft, without providing the actual construction specifications at the job site. It is the Contractor's responsibility to provide as-built construction information on the permit posted and water sample bottle. (SECTION 6.5) (40E-3.341 (1)(b))

(5) No License - The construction of any type of well, geotechnical boring or elevator shaft without obtaining the appropriate ~~Lee County~~ contractor license. (SECTION 10.1) 40E-3.038(1)(2) 62-531.450(2)(a).(4)(f)

(6) Invalid License - The construction of any type of well, geotechnical boring or elevator shaft with an invalid ~~Lee County~~ contractor license. (SECTIONS 6.1 and 9.1) 40E-3.038(1)(2) 62-531.450(2)(a).(4)(f)

(7) Un-numbered Equipment named Drilling Rigs - The construction of any type of well, geotechnical boring or elevator shaft using a drilling rig that does not display the State and or Lee County contractor license number ~~and drilling company name~~ in permanent lettering with a minimum of 2 inches in height. (SECTION 6.13) 40E-3.037, 62-531.380(2)

(8) Failure to Schedule or Cancel Activity – The initiation of construction of any type of well, geotechnical boring or elevator shaft without scheduling an inspection. The cancellation or cessation of construction of any type of well, geotechnical boring or elevator shaft without notifying NRD of the cancellation. (SECTIONS 6.2(3) and 8.2.1(5)) (40E-3.341 (1)(b))

(9) Scheduling a Job that was Previously Completed and Inspected – The scheduling of a drilling job for inspection that was previously completed and inspected. (SECTION 8.2.1(5))

(10) Cancellation Frequency Exceeds 30 Percent in any given month– The Contractor has scheduled more than 50 inspections in any given month, and subsequently has cancelled over 30 percent of scheduled inspections after 6:30 a.m. of the day construction is to be commenced. (SECTION 8.2.1(5) and Appendix B, Disciplinary Guidelines)

(11) Fraudulent Misrepresentation on a Permit Application – Attempting to obtain or obtaining a permit by bribery or fraudulent misrepresentation of information. (SECTION 6.1) 40E-3.341 (1)(a)

(12) Well Completion Report Late or Missing – The failure to provide NRD with a completion report for any type of well or geotechnical boring constructed in Lee County, within thirty (30) days following completion of the well or geotechnical boring(s). (SECTION 6.5) 40E-3.411 (1),(3) 62-532.410

(13) Failure to Correct a Violation – The failure to take the action required to correct a violation of this Ordinance, following notification by NRD of the violation, within seven (7) calendar days. (SECTION 8.2.4)

(14) Failure to Pay a Fine within 30 days – The failure to remit payment within thirty (30) calendar days of a fine issued by NRD for violation of this Ordinance. (SECTION 8.2.4)

(15) Failure to Comply with Imposed Penalty(s) or voluntary compliance – The failure to comply with any penalty(s) imposed by NRD due to violation of this Ordinance or breach of voluntary compliance following mediation. (SECTIONS 8.2.4 and 5.6.3)

(16) Failure to Comply with Conditions for Issuance of Permits– Failure to comply with any of the conditions for issuance of permits listed in this Ordinance. (SECTION 6.2) (40E-3.341 (1)(b))

(17) Failure to meet septic system setback – Construction of a well that does not meet setback requirements of the Lee County Health Department. (SECTIONS 6.1 and 6.2) 62-532.400(7)

(18) Use of Unapproved Casing – The construction of any type of well or elevator shaft using a well casing material that is not approved by this Ordinance. (SECTION 9.2, 9.3 and Appendix A, Procedures Manual) 40E-3.507(1) 62-532.500(1)

(19) Use of Unapproved Materials – The construction of any type of well, geotechnical boring or elevator shaft using any materials that are not approved by this Ordinance. (SECTION 9.2) 40E-3.507(1) 62-532.500(1)

(20) Insufficient Annular Space – The construction of any type of well or elevator shaft without achieving the required minimum annular space (two inches) over the entire cased interval of the borehole. (SECTION 9.3.2(4)) ~~40E-3.517(2) 62-532.500(2)(f)4~~

(21) Insufficient Wellhead Height – The construction, completion or alteration of a well casing that results in the top of the well casing being less than twelve (12) inches above the finished grade elevation. (SECTION 9.3.2(11)) ~~(62-532.S00(3)(b)2,3,4))~~

(22) No Temporary Well Seal or Sanitary Seal – The failure to utilize a sanitary well seal during the temporary cessation of drilling activities or the failure to install a sanitary seal on a well following construction completion. (SECTION 9.3.2.(7))

(23) Incomplete Grout Stage – The failure to install the required volume or type of grout into any portion of the annulus or annular space of any type of well or elevator shaft. (SECTION 9.3.2)

(24) Tremie Pipe Improperly Installed or modified– The use of a tremie pipe which is not properly installed in accordance with this Ordinance, or a tremie pipe with exit notches or slits not located within 3 feet from the seal. (SECTION 9.3.2(8))

(25) Borehole left Open without Grout – The failure to grout any borehole in accordance with the grouting requirements of this Ordinance. (SECTION 9.3.3(4))

(26) Casing Improperly Installed and Seated – The failure to install the casing at the proper depth where the bottom of the casing does not extend beyond the top of water bearing aquifer to be used. Seating of the well casing must ensure proper placement of the casing seal (rubber boot). (SECTION 9.3.2)

(27) Improper Grout Mixture – The use of any grouting mixture that does not meet the grout mixture specifications of this Ordinance. (Appendix A, Procedures Manual & Ch 40E-3)

(28) Drilling Water fails to Meet Chapter 40E-3, F.A.C. – The use of water for drilling that does not comply with the water quality requirements of Chapter 40E-3 Florida Administrative Code. [40E-3.512\(1\)](#)

(29) Incomplete Well Development – The failure to thoroughly develop a well using the method of well development appropriate for the well construction and the site conditions to ensure complete removal of all sand, drilling mud, drill cuttings and other debris from the well before collecting a clear and clean water sample in a NRD provided container. (SECTIONS 9.3.2 (3) and (19))

(30) Failure to Plug a Replaced Well – The failure to properly plug an existing well that has been replaced within two (2) weeks of the completion of the replacement well. (SECTION 9.3.6) [40E-3.531 \(3\)](#)

(31) Failure to Plug an Abandoned Well – The failure to plug any abandoned well in accordance with the requirements of this Ordinance. (SECTION 9.3.4) [40E-3.531 \(3\)](#)

(32) Leaking Wellhead Seal – The failure of a wellhead seal to prevent discharge from a flowing artesian well or to prevent the introduction of surface water into the wellhead. (SECTION 9.3.2(12)) [40E-3.517\(9\)](#) [62-532.500\(3\)\(b\) 5.](#)

(33) Collapse/Open Annulus or Aquifer Contamination – Collapse or open annulus space that allows surface water to enter the subsurface, or aquifer contamination. (SECTIONS 9.3.2(3), (9) and (10))

(34) Failure to Comply with Contractor Responsibilities – The failure to comply with each of the Contractor responsibilities listed in this Ordinance. (SECTION 10.4)

III REPETITION OF VIOLATIONS

Repeat violations of the same rule indicate either a Contractor's refusal to follow the Code or an unacceptable knowledge of the Code. Because the Code was promulgated to protect the groundwater resources and the public health, safety and welfare, it is imperative that the rules and requirements are followed and repetition is minimized. Therefore, even if corrective action was taken on previous violations, repetition of the same violation can increase both the fine and the penalty of a violation.

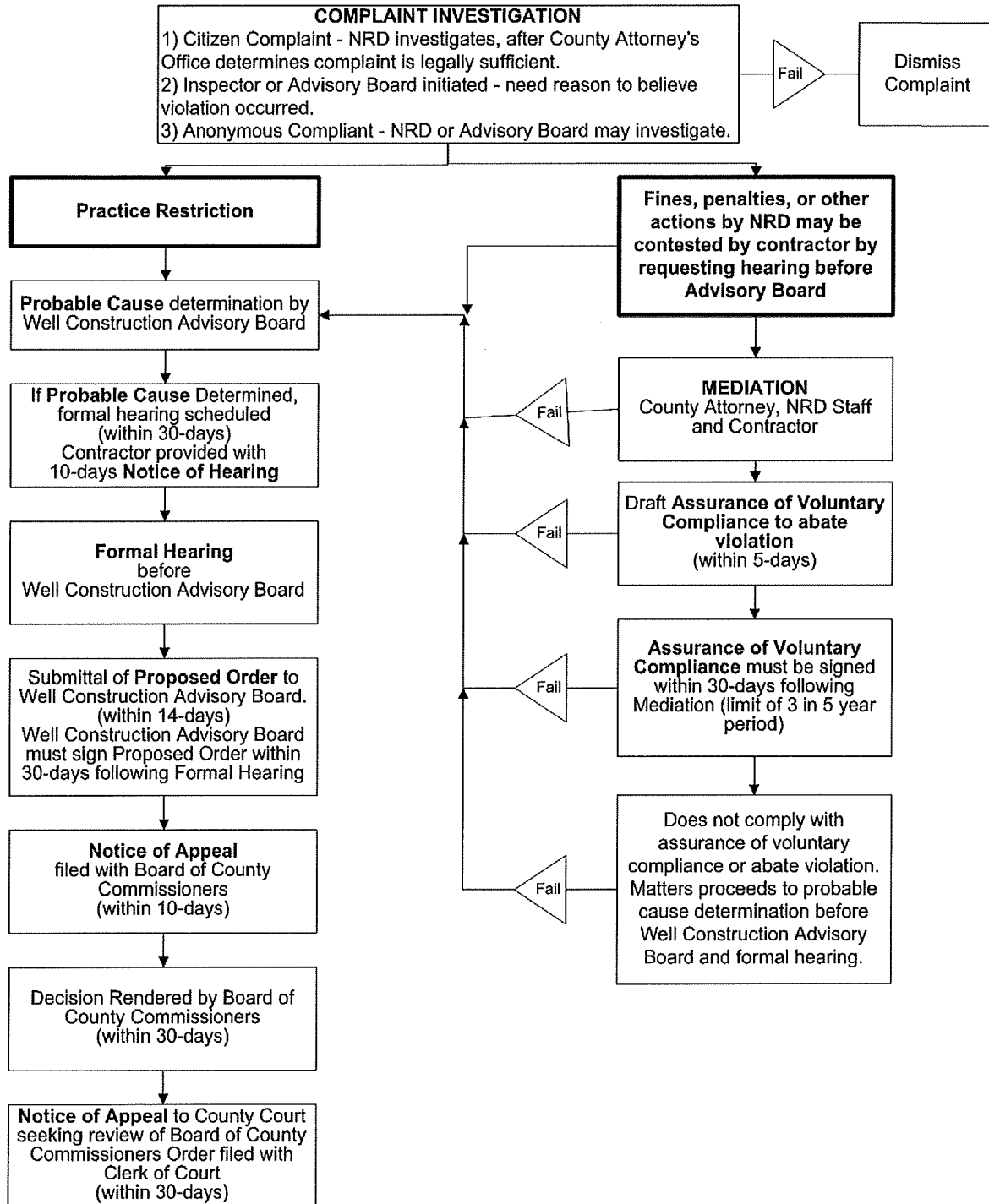
Frequent or repeat violations, disregard or ignorance of well code has potential for endangering public health, safety, and welfare, or contaminating groundwater resources.

Contractors who repeatedly violate the provisions of this Ordinance may be denied the applications for license renewal. In a three (3) year period, Speciality Contractors who accumulate fines totaling more than \$3,000 (three thousand dollars) for combined administrative and construction violations (except for violations for the failure to cancel or schedule an activity), or whose license(s) had been suspended or revoked for a period of 12 months or more, shall have their license(s) revoked, and not be eligible for future applications for a license or license renewal.

Violation Matrix

State of Florida Water Well Contractors follow the water well contractor's matrix which will assess both a fine as well as points to the state register. Points are only assessed on those violations for which a Permitting Authority has taken final action. Each point is equivalent to .01 of the administrative penalty assessed by the Permitting Authority.

DISCIPLINARY ACTION PROCEDURES



Elevator Shaft and Test Boring Matrix

TABLE 1. ADMINISTRATIVE VIOLATIONS

Violation	Fine				Penalty ¹			
	First	Repetitions			First	Repetitions		
		1	2	3 ²		1	2	3 ²
No permit	\$500 ²				(#7, #9) ²	#3	#2	#1
Permit not posted	\$50	\$100 ²						
No water sample <u>or required cuttings</u>	\$50	\$100 ²						
No well specifications on site	\$50	\$100 ²						
No license					#7, #9	#1		
Invalid license					#11, (#7, #9) ²	#3 ²	#2	#1
Unnamed drilling rigs	\$50	\$100	\$200	\$400	#7			
Failure to schedule or cancel an activity	\$50	\$100 ²			(#7, #10) ²			
Scheduling a job previously completed and inspected	\$50 ²							
Cancellation frequency exceeds 30 % in any given month	\$200 ²							
Fraudulent misrepresentation on permit application	\$50	\$100	\$200	\$400	(#7, #6) ²	#3 ²		
Well completion report late or missing	\$50	\$100 ²			#7 ²			
Failure to correct a violation	\$50	\$100	\$200	\$400	(#7, #11) ²			
Failure to pay a fine within 30 days					(#7, #11) ²			
Failure to comply with imposed penalty(s) or voluntary compliance	\$50	\$100	\$200	\$400	(#7) ² , #3	#8, #2	#1	
Failure to comply with conditions for issuance of permits	\$50	\$100	\$200 ²		(#7, #10) ²	#6 ²	#5 ²	#3

¹ Numbers in the penalty columns refer to the disciplinary actions shown in Section II B

² Superscript 2 indicates that the fine or the penalty shall apply to repetitions thereafter

Elevator Shaft and Test Boring Matrix

TABLE 2. CONSTRUCTION VIOLATIONS

Violation	Fine				Penalty ¹			
	First	Repetitions			First	Repetitions		
		1	2	3 ²		1	2	3 ²
Failure to meet septic system setbacks					#7 ²			
Use of unapproved casing	\$50 ²				#7 ²			
Use of unapproved materials	\$50 ²				#7 ²	#5 ²		
Insufficient annular space	\$50 ²				#7 ²	#5 ²		
Insufficient wellhead height	\$50	\$100	\$200 ²		#7 ²	#5 ²		
No temporary well seal or sanitary seal	\$50	\$100 ²						
Incomplete grout stage	\$50	\$100	\$200	\$400	#7 ²	#5 ²	#4, #8 ²	#3
Tremie pipe improperly installed or modified	\$50	\$100	\$200	\$400	#7 ²	#5 ²	#4, #8 ²	#3
Borehole left open without grout	\$500 ²				(#7, #5) ²	#8 ²	#3 ²	#2
Casing improperly installed and seated	\$50	\$100	\$200 ²		#7 ²	#5 ²	#4, #8 ²	#3
Improper grout mixture	\$50	\$100	\$200	\$200	#5	#8	#3 ²	
Drilling water fails to meet Ch. 40E-3, F.A.C.	\$50	\$100	\$200	\$400				
Incomplete well development	\$50	\$100 ²			#7 ²			
Failure to plug a replaced well	\$50	\$100	\$200	\$400	#7 ²			
Failure to plug an abandoned well	\$500 ²				#7 ²	#3 ²	#2	#1
Leaking wellhead seal	\$50	\$100 ²			#5 ²			
Collapse/open annulus or aquifer contamination					#7 ²			
Incomplete well development	\$50	\$100 ²			#7 ²			
Failure to comply with contractor responsibilities	\$50	\$100	\$200	\$400	(#7, #8) ²	#6 ²	#5 ²	#3

¹ Numbers in the penalty columns refer to the disciplinary actions shown in Section II B

² Superscript 2 indicates that the fine or the penalty shall apply to repetitions thereafter

Well Construction Matrix

TABLE 1. ADMINISTRATIVE VIOLATIONS

<u>Violation</u>	<u>Fine</u>	<u>State Violation Number</u>
<u>No water sample or required cuttings</u>	<u>500</u>	<u>40E-3.341 (1)(b)</u>
<u>No well specifications on site</u>	<u>500</u>	<u>40E-3.341 (1)(b)</u>
<u>Failure to schedule or cancel an activity</u>	<u>500</u>	<u>40E-3.341 (1)(b)</u>
<u>Failure to comply with permit conditions.</u>	<u>500</u>	<u>40E-3.341 (1)(b)</u>
<u>Failure to provide accurate information when applying for a permit.</u>	<u>250</u>	<u>40E-3.341 (1)(b)</u>
<u>Failure to notify the District or permitting Agency of any change.</u>	<u>100</u>	<u>40E-3.037</u>
<u>Failure to maintain a field log on-site for any well during construction, repair or abandonment activities.</u>	<u>100</u>	<u>40E-3.411 (2)</u>
<u>Failure to allow 12 hours set time for grout before proceeding with drilling</u>	<u>500</u>	<u>40E-3.517(1)</u>
<u>Construction of a well for which a water or consumptive use permit is required prior to issuance of the water use permit.</u>	<u>500</u>	<u>40E-3.301 (3)(b)</u>
<u>Failure to submit a completion report within 30 days after well completion.</u>	<u>100</u>	<u>40E-3.411 (1),(3)</u> <u>62-532.410</u>
<u>Failure of the licensed contractor to file a fully completed well completion report.</u>	<u>100</u>	<u>40E-3.411 (1)</u>
<u>Failure to provide a 6' x 6' concrete pad around the wellhead on Public Water Supply Wells.</u>	<u>150</u>	<u>62-532.500(3)(c)</u>
<u>Practice water well contracting without an active license or with a revoked, suspended, or inactive license</u>	<u>1000</u>	<u>40E-3.038(1)(2)</u> <u>62-531.450(2)(a),(4)(f)</u>
<u>Allowing any other person to use the licensee's license.</u>	<u>1000</u>	<u>40E-3.038(1)(2)</u> <u>62-531.450(4)(c)</u>
<u>Failure to submit the permit application and fee within twenty-four hours after an emergency permit has been issued verbally.</u>	<u>100</u>	<u>40E-3.451 (3)</u>
<u>Failure to supply additional information as requested.</u>	<u>100</u>	<u>62-532.400(2)(b)</u>
<u>Failure to apply for an amended permit prior to changing well location.</u>	<u>100</u>	<u>62-532.400(5)</u>
<u>Failure to make the permit application available for inspection at the site during construction, repair, or abandonment of a well.</u>	<u>100</u>	<u>62-532.400(4)</u>
<u>Failure to comply with special conditions issued with a construction variance.</u>	<u>500</u>	<u>40E-3.0511 (6)</u>
<u>Failure to request an extension prior to expiration of a permit, in the event construction, repair, or abandonment is not complete.</u>	<u>250</u>	<u>40E-3.321</u> <u>62-532.400(6)</u>
<u>Failure to provide drilling samples when required.</u>	<u>250</u>	<u>40E-3.411 (4)</u>
<u>Failure to allow access to inspect any well to insure conformity with applicable standards.</u>	<u>350</u>	<u>40E-3.461 (1)</u> <u>62-532.510(1)</u>
<u>Failure to plug an abandoned well in accordance with the rules of the applicable Permitting Authority.</u>	<u>1000</u>	<u>40E-3.461 (5)</u> <u>40E-3.531 (1.2.3)</u> <u>64E-8.002(2)(c)</u>

Well Construction Matrix

TABLE 2. CONSTRUCTION VIOLATIONS

Violation	Fine	State Violation Number
<u>Failure to obtain a permit prior to the construction, repair or abandonment of a water well within the District, not exempted by the rule.</u>	<u>500</u>	<u>40E-3.041 (1)</u> <u>64E-8.002(2)</u>
<u>Failure to obtain a water well construction permit for any gang well regardless of size other than for dewatering.</u>	<u>500</u>	<u>40E-3.041 (2)</u>
<u>Failure to obtain a water well construction permit prior to the construction, repair or abandonment of any public water supply well.</u>	<u>1000</u>	<u>40E-3.041 (1)</u> <u>64E-8.002(2)</u> <u>62-555.510(1,2)</u>
<u>Failure to obtain a water well construction permit to convert to a test hole to a water well, not exempted by rule.</u>	<u>500</u>	<u>40E-3.041 (3)</u>
<u>Failure to obtain or modify a water well construction permit to convert a monitor or observation well to a production well.</u>	<u>500</u>	<u>40E-3.041 (4)</u>
<u>Failure to meet casing or liner pipe standards</u>	<u>1000</u>	<u>40E-3.507(1),(2),(3),(5),(6)</u> <u>62-532.500(1)(b,c,d,e,g)</u>
<u>Failure to install non-metallic and stainless well casing or liner in an approved manner.</u>	<u>1000</u>	<u>40E-3.507(8)</u> <u>62-532.500(1)(i)</u>
<u>Failure to maintain a reasonably sanitary work site to prevent contamination of the resource.</u>	<u>350</u>	<u>40E-3.512(1)</u>
<u>Failure to maintain contaminant free make-up water.</u>	<u>1000</u>	<u>40E-3.512(1)</u>
<u>Failure to use a screen in an unconsolidated stratum</u>	<u>500</u>	<u>40E-3.512(3)</u> <u>62-532.500(2)(a)</u>
<u>Failure to extend casing from above top of grade to the well screen in unconsolidated aquifers.</u>	<u>500</u>	<u>40E-3.S12(3)</u>
<u>Failure to extend well casing at least 12 inches above grade, unless an exemption has been granted.</u>	<u>500</u>	<u>62-532.S00(3)(b)2,3,4</u>
<u>Failure to follow criteria for below grade casing installation.</u>	<u>500</u>	<u>62-532.500(3)(b)2</u>
<u>Failure to attach the well screen with a watertight seal.</u>	<u>500</u>	<u>40E-3.S12(3)(a)</u> <u>62-S32.S00(2)(a)</u>
<u>Failure to comply with any provision of Chapter 373, Part III, F.S. any rule adopted by the District or any order of the District</u>	<u>500</u>	<u>40E-3.038(1)(2)</u>
<u>Failure to display contractor license number on both sides of each piece of drilling equipment owned, leased, or operated by the contractor.</u>	<u>100</u>	<u>40E-3.037</u> <u>62-531.380(2)</u>
<u>Failure to install casing to or below the static water level of the producing aquifer.</u>	<u>500</u>	<u>40E-3.517(4)</u> <u>62-532.500(2)(b)</u>
<u>Failure to extend a continuous casing in a consolidated stratum from above land surface to the producing aquifer.</u>	<u>500</u>	<u>40E-3.512(4)</u> <u>62-532.500(2)(b)</u>
<u>Failure to case, line or screen all caving zones within the well.</u>	<u>500</u>	<u>40E-3.512(3)</u> <u>62-532.500(2)(b)</u>

TABLE 2. CONSTRUCTION VIOLATIONS

Violation	Fine	State Violation Number
<u>two (2) inch thickness of grout in a consolidated formation.</u>	<u>500</u>	<u>40E-3.517(2)</u> <u>62-532.500(2)(f)4</u>
<u>Failure to seal all non-caving annular space in an unconsolidated stratum with neat cement grout</u>	<u>500</u>	<u>40E-3.517(3)</u>
<u>Failure to grout the annular space of wells constructed in unconsolidated formations not more than ten feet above the top of the screen, to land surface</u>	<u>500</u>	<u>40E-3.517(3)</u>
<u>Failure to grout from bottom of casing to land surface any driven casing which is placed in a bore hole of larger diameter.</u>	<u>500</u>	<u>40E-3.517(7)(c)</u> <u>62-532.500(2)(f)4.</u>
<u>Failure to use a tremie pipe or other approved methods when grouting or sealing the annular space.</u>	<u>500</u>	<u>40C-3.517(8)(e)</u>
<u>Failure to introduce grout from bottom to top in the annular space.</u>	<u>500</u>	<u>40E-3.517(1)</u> <u>62-532.500(2)(f)4.</u>
<u>Failure to seal the annular space of any Public Supply well casing when the bore hole exceeds the outside diameter of the casing with neat cement from bottom to top.</u>	<u>1000</u>	<u>62-532.500(f)4.</u>
<u>Failure to use the designated mixture of grout</u>	<u>500</u>	<u>40E-3.517(6)</u> <u>62-532.500(2)(f)6.</u>
<u>Failure to center the casing in the bore hole prior to grouting and sealing the annular space.</u>	<u>500</u>	<u>40E-3.517(1)</u> <u>62-532.500(2)(f)4.</u>
<u>Failure to restore or improve the hydrologic conditions after the well is</u>	<u>1000</u>	<u>40E-3.531 (3)</u>
<u>Failure to seal the annular space between telescoping casing with grout, packers or both.</u>	<u>500</u>	<u>40E-3.517(1)</u> <u>62-532.500(2)(b)</u>
<u>Failure to use approved methods and materials to bridge a lost circulation zone during grouting operations</u>	<u>500</u>	<u>40E-3.S17(1)</u> <u>40E-3.S31 (3)(a)</u>
<u>Failure to seal the well opening of a well penetrating the aquifer with a tamper resistant cover when there is a temporary interruption in work or use</u>	<u>350</u>	<u>40E-3.517(8)</u> <u>62-532.500(3)(a)1.</u>
<u>Failure to seal the upper terminus of well casing with a water tight seal.</u>	<u>500</u>	<u>40E-3.517(9)</u> <u>62-532.500(3)(b)5.</u>
<u>Failure to vent above the 100-year flood level or two (2) feet above land surface</u>	<u>150</u>	<u>40E-3.517(9)</u>
<u>Failure to install a required inspection port.</u>	<u>250</u>	<u>40E-3.517(9)</u> <u>62-532.500(3)(b)6.</u>
<u>Failure to install pumping equipment, piping or electrical equipment through a well seal.</u>	<u>250</u>	<u>40E-3.517(9)</u> <u>40E-3.521 (2)(c)</u> <u>62-532.500(3)(a)3.</u>
<u>Failure to receive FDEP and District approval prior to the use of explosives in well construction or development</u>	<u>1000</u>	<u>40E-3.525</u>

TABLE 2. CONSTRUCTION VIOLATIONS

Violation	Fine	State Violation Number
<u>Failure to plug an abandoned artesian well bottom to top with grout using a Licensed Water Well Contractor.</u>	<u>1000</u>	<u>40E-3.531 (2)</u>
<u>Failure to plug any well not constructed in accordance with this rule.</u>	<u>1000</u>	<u>40E-3.531 (1)</u>
<u>Failure to plug an abandoned well within the time specified by the District in writing.</u>	<u>250</u>	<u>40E-3.531 (3)</u>
<u>Failure to grout or seal a well to prevent movement of water from surface to aquifer or between aquifers</u>	<u>1000</u>	<u>40E-3.517</u>
<u>Failure to seat casing into consolidated formation or seal with neat cement grout</u>	<u>1000</u>	<u>40E-3.512(4)</u> <u>62-532.500(2)(f)1</u>
<u>Failure to meet requirements of Rule 62-532.500(2)(f)3. when grouting public water supply or limited use systems wells.</u>	<u>1000</u>	<u>40E-3.502(b)</u> <u>62-532.500(2)(f)3</u> <u>62-555.315(2)(b)4</u>
<u>Failure to seal the annular space surrounding the entire length of a casing less than 4 inches in outside diameter with a nominal one inch thickness of grout in a consolidated formation.</u>	<u>500</u>	<u>40E-3.517(2)</u> <u>62-532.500(2)(f)4</u>
<u>Failure to valve an artesian well discharging at land surface.</u>	<u>1000</u>	<u>40E-3.529</u> <u>62-532.500(3)(d)</u>
<u>Failure to notify the District 24 hours prior to commencing drilling operations or placement of grout for a Public Supply Well.</u>	<u>500</u>	<u>40E-3.461 (4)</u>
<u>Failure to receive a variance from the FDEP prior to the use of explosives in well construction or development</u>	<u>1000</u>	<u>62-532.500(2)(e)</u>

APPENDIX C
LEE COUNTY WELL CODE

EXTERNAL FEES AND CHARGES MANUAL

DEPARTMENT: Public Works
 DIVISION: Natural Resources
 PURPOSE: Well Permit Fees, Inspection Fees, and License Fees
 BASIS FOR FEE:
 DATE APPROVED:

WELL PERMIT FEES

PERMITS:	FEES
Water Wells:	
<u>Commercial Public Supply</u>	
<u>Drinking Water Supply Wells Serving Public Water Systems</u>	<u>\$500.00 per well</u>
Commercial	\$275.00 per well
Recovery/Injection	\$200.00 per well
Residential	\$200.00 per well
Fire Protection	\$200.00 per well
Multi-Residence Rental (Duplex, Triplex, etc.)	\$275.00 per well
Permit Time Extension	\$ 100.00
Permit Application Late Fee	\$50.00
Repair permit Residential Well	\$200.00
Repair permit Commercial Well	\$275.00
Elevator Shaft:	
Drilling	\$150.00 per shaft
Grouting	\$150.00 per shaft
Monitor Well	
Water-Table Aquifer	\$50.00per well
Deeper than the first confining unit	
Lower Tamiami Aquifer and deeper	\$200.00 per well

~~Direct Push Temporary Piezometer Well where well is not to be abandoned
\$100.00 per well within one week of construction~~

Geotechnical Borings or Direct Push Temporary Piezometer well(s) where well is to be abandoned within one week of construction	\$180.00 for up to first 6 and \$30.00 for each additional
Well Plugging <u>(Wells deeper than 20 feet Below Natural grade)</u>	\$100.00
Existing Well Inspection Permit	\$100.00

INSPECTION FEES

First Reinspection	\$100.00
Second Reinspection	\$150.00
Third and Subsequent Reinspection	\$200.00
After Hour Inspection	\$ 65.00 per hour

LICENSE FEES

Geotechnical Boring or Elevator Shaft Contractor License or License Renewal	\$100.00 every 2 years
Late Fee for License Renewal	\$100.00

Amendments
to the
Hearing Examiner
Zoning Process

Donna Marie Collins
Laura Belflower

**M E M O R A N D U M
FROM
THE OFFICE OF THE
LEE COUNTY HEARING EXAMINER**

DATE: August 24, 2015

TO: Executive Regulatory
Oversight Committee

FROM: Donna Marie Collins
Chief Hearing Examiner



RE: Response to EROC Ordinance Evaluation Guidelines for Land Development Code Amendments to Hearing Examiner's Process

The proposed ordinance addresses the existing Land Development Code regulations governing the Hearing Examiner's zoning process. The process remains substantively unchanged; the proposed amendments streamline the existing process and clarify existing policies. The public interests protected, and the methods to implement those protections, remain the same as the existing regulations.

Cc: Tony Palermo
Pamela Hendry
Michael Jacob

Summary of Major Proposed Changes to the Hearing Examiner Zoning Process

Land Development Code

- Consolidates the required findings for zoning applications in one location of the Code.
- Clarifies the legal standard for denials of rezoning cases.
- Simplifies the planned development prehearing materials:
 - Clarifies option for the Applicant Summary Report.
 - Clarifies procedures pertaining to Expert Testimony.
- Clarifies the Hearing Examiner findings/review criteria.
- Clarifies the administrative appeals process.
- Removes requirement for County provided court reporter.
- Relocates text for ease of use.
- Relocates procedures to the Administrative Code.
- Includes Hearing Examiner review of amendments to DRI Development Orders.
- Reassigns the authority for revocation of alcoholic beverage approvals from the Hearing Examiner to the Board, and provides review criteria.

Administrative Code 2-6

- Clarifies the roles of Parties and participants (Parties may file motions, make objections, and cross-examine witnesses).
- Makes 48-hour letter optional.
- Establishes process for Hearing Examiner's 48-hour notice.
- Clarifies motion process.
- Clarifies legal standard for recommendations of denial by Staff.
- Formalizes process for objections by Parties.
- Clarifies the participants' opportunity to ask questions.
- Clarifies the role of expert witnesses.
- Clarifies the purpose of cross-examination.
- Formalizes procedures for written submissions.
- Establishes process for Hearing Examiner to reopen hearings for additional evidence.
- Formalizes process for Notices of Intent to Deny.
- Formalizes order for preparing Hearing Examiners recommendations and decisions.
- Clarifies remand procedure.
- Relocates text for ease of use.

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AC 2-6 Amendments - redlined

ADMINISTRATIVE CODE BOARD OF COUNTY COMMISSIONERS	
CATEGORY: Committees/Boards/Commissions/Examiners	CODE NUMBER: AC-2-6
TITLE: Administrative Procedure for Scheduling and Conducting Matters Coming Before the Lee County Hearing Examiner	ADOPTED: 12/14/88
	AMENDED: 8/5/92, 6/8/94, 8/31/94, 3/20/96, 6/3/97, 3/20/01, 6/21/11, 6/12/2012,
	ORIGINATING DEPARTMENT: Hearing Examiner

PURPOSE/SCOPE:

The purpose of This administrative code 2-6 is to establish procedures for the conduct of public hearings conducted before the Hearing Examiner. ~~This administrative code~~ It supplements Lee County's Land Development Code (LDC). If there is a conflict between ~~the administrative~~ this code and the Land Development Code, ~~the provisions of the LDC will prevail.~~

Terms used in this code have the meanings specified in the LDC. References to the Hearing Examiner, County Manager, County Attorney, and department directors include their designees. References to County Staff may include the County Attorney, as a representative of the Board, unless the context indicates otherwise.

POLICY/PROCEDURE:

SECTION 1. FILING AND SCHEDULING OF CASES

1.1 Filing Appeals and Documentary Evidence Relating to Appeals from Administrative Actions¹

A. Parties appealing administrative actions must file a Notice of Appeal no later than the 30 calendar days after the administrative official renders the action being appealed. Administrative appeals will be heard in accordance with the provisions of LDC section 34-145.

(1) The Notice of Appeals from administrative actions must be filed with the Department on a Notice of Appeal form, and the filing fees paid to the Department of Community Development (DCD) ^

(2) A Notice of Appeal is not deemed filed until payment of the filing all fees have been paid.

~~CB.~~ The Notice of Appeal must state with particularity the error made by the administrative official, the relief sought, and the legal basis for the requested relief same. An appeal may be dismissed for The failure to specifically state the errors made by the

¹ Under LDC 34-145(a).

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~~administrative official may result in dismissal of the appeal. Objections regarding the Appellant's failure to satisfy these requirements must be made no later than 15 days before the hearing or the objection is deemed waived.~~

C. The Department will submit the Notice of Appeal to the Hearing Examiner's office within 15 working days after filing. The Department may include a position statement on whether the Appeal is within the Hearing Examiner's authority and sufficiently states the claimed error.

~~BD.~~ Within ~~five~~10 working days after the ~~Hearing Examiner's office receives~~ing the Notice of Appeal, the Hearing Examiner will either:

(1) Issue an Order of Dismissal, dismissing the Appeal as outside the Hearing Examiner's authority or for failure to state the error made by the administrative official; or

(2) Issue an Order Accepting the Appeal and authorizing the Department to provide the County Manager and the County Attorney, or their designees, with copies of the appeal and schedule the matter for a public hearing as set forth in accordance with Subsection 1.3. below.

~~DE.~~ All subsequent appellate filings must be made to the Hearing Examiner's office.

~~EF.~~ The Appellant will have ~~ten~~10 days from issuance of the Order of Dismissal to amend the Notice of Appeal. ~~If the Hearing Examiner does not receive an amended Notice of Appeal is not received within ten~~10 days, or the amended Notice of Appeal fails to specifically state the error ~~or basis~~ of the ~~a~~Appeal, the Hearing Examiner may ~~enter an order dismissing the a~~Appeal with prejudice.

~~FG.~~ Appeals ~~must be~~are limited to the issues raised by the ~~Appellant~~ in the Notice of Appeal.

(1) The Appellant may amend the Notice of Appeal to raise aAdditional issues, if filed may not be raised outside of the initial 30 days unless the Appellant files a formal request with the Hearing Examiner to amend the Notice of Appeal. A request to amend the Notice of Appeal must be filed no later than at least 15 days before the hearing, but the amendment may result in the continuance of the hearing.

(2) The Hearing Examiner does not have jurisdiction to determine matters consider issues not raised in the initial or amended Notice of Appeal ~~or amended Notice of Appeal.~~

1.2 ~~Filing~~ Applications for Rezoning, Variances, and Special Exceptions

~~A.~~ All applications must be submitted to DCD on forms provided by that Department. Applications for rezoning, variances and special exceptions must be filed in accordance with the LDC or applicable Administrative Codes.

~~B.~~ Fees must be paid at the time of application submittal in accordance with the external fees and charges manual.

~~C.~~ The Department will produce a written Staff Report summarizing the County Staff's position regarding the application, providing a substantive analysis of the request, and, when applicable, complying with requirements of Section 2.2(B)(5)(f), below. The Staff Report for zoning cases must be delivered to the Applicant, the Hearing Examiner, and

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~~made available to the public at least 14 days prior to the public hearing. The Staff Report for variance and special exception cases must be delivered to the Applicant, the Hearing Examiner and made available to the public at least 7 days prior to the public hearing. A hearing may not take place until the Staff Report has been provided in accordance with these guidelines. Upon receipt of the Staff Report, the Hearing Examiner's office will notify each party the name of the Hearing Examiner that will preside over the case.~~

- ~~D. After an application is deemed sufficient and before transmittal of the Staff Report to the Hearing Examiner, the Applicant may provide a report summarizing the Applicant's position regarding the application, providing a substantive analysis of the request, and attaching copies of documents, studies, plans, or other materials (hereinafter "materials") for the Hearing Examiner to consider. The report and materials will be included with the transmittal of the Staff Report to the Hearing Examiner. The Applicant will submit three (3) complete copies of any such materials to the Staff at least twenty (20) days prior to the scheduled hearing date. Staff will include one copy of materials submitted by the Applicant to the Hearing Examiner simultaneously with transmittal of the Staff Report and will transmit one copy of such materials to the County Attorney's office. The third copy will be retained in Staff's official zoning file. Only materials submitted with the original Application or in response to sufficiency questions asked by Staff may be submitted; no new materials that were not previously reviewed by Staff may be submitted. If such materials are not submitted a minimum of 20 days prior to the scheduled hearing date, the Applicant waives its right to have any such materials transmitted to the Hearing Examiner prior to the hearing.~~

1.3 Scheduling Cases

- ~~A. The Hearing Examiner will schedule hearings for appeals of administrative actions. The date may be no sooner than 15 or more than 30 business days after copies of the appeal have been distributed in accordance with Section 1 .I.B. above, unless a later date is agreed upon by the Parties. Cases will be scheduled in accordance with the LDC. Cases may be deferred or continued in accordance with paragraph 2.2.F.~~
- ~~B. Upon receipt of the Staff Report, the Hearing Examiner's office will advise the Parties of the Hearing Examiner assigned to the case.~~

1.4 Notice

~~The Department will provide n~~Notice of hearings will be provided in the manner specified in the LDC and the Administrative Codes accordance with AC 2-8, except notice to adjacent property owners is not required for Appeals from Administrative Actions.

SECTION 2. CONDUCT OF HEARINGS

2.1 Recording

- ~~A. The Hearing Examiner will provide for stenographic recording of all hearings, by a court reporter. The recording will be preserved as a public record but will not be routinely transcribed.~~
- ~~B. The Hearing Examiner may arrange for a court reporter to attend a hearing and, if transcribed, the transcript is public record.~~

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C. Any person may arrange for a court reporter to attend the hearing request and obtain a transcript of the record from the court reporter at their own expense.

2.2 Order of Proceedings Pre-Hearing/Hearing Materials and Actions

A. The Department will provide the Hearing Examiner with a written Staff Report in accordance with the LDC.

~~DB. Forty Eight Hour~~ Issues and Information Notices

(1) Staff ~~The Applicants, or the Applicant's representative, must~~ may provide the Hearing Examiner, County Staff, and County Attorney with a written notice of outstanding issues in zoning and land use cases at least 48 hours before the start of the scheduled hearing. Simple statements that one party disagrees with the other party is insufficient. The 48-hour notice must provide sufficient detail regarding the outstanding issues to enable the parties to prepare with appropriate witnesses and evidence. A copy of the notice must be sent to all parties, including the Assistant County Attorney, assigned to the case, and the Hearing Examiner. The opposing party may, but is not required to, file a response. Evidence or testimony regarding outstanding issues that were not properly identified in the 48-hour notice may be excluded at the public hearing or may result in a continuance of the hearing charged to the party that failed to provide the required notice. The documentation required above may not be submitted to the Hearing Examiner before the hearing unless submitted as part of the Applicant's report permitted in accordance 1.2(D) above.

(2) The Hearing Examiner may issue notice to the Parties requesting information to be presented at the hearing.

(a) The Hearing Examiner will provide the notice by electronic mail.

(b) The notice is a courtesy, intended to aid the Parties in preparation for the hearing.

(c) The notice, or lack thereof, does not limit the Hearing Examiner's right to request additional testimony or evidence on any issue relevant to the case.

~~EC. Requests for an order or relief~~ Motions.

(1) A Party may request for an eOrder or other relief from the Hearing Examiner may be made by Motion, unless another form is required. Motions will be permitted in accordance with the following:

(a) Motions made prior to a hearing.

1. Motions made prior to a hearing, must be made in writing.

2. The Party making the motion must provide Copies of the original Motion, and companion supporting documents, to the Hearing Examiner, and copies to the other Party (cases, etc.) must provided to all participating parties, including County Staff and Assistant County Attorney assigned to the case.

(b) 3. The Hearing Examiner may give the opposing Party up to 10 working days to respond, unless that Party requests additional time, is requested. The Hearing Examiner may be continued the hearing to permit opposing party sufficient time to respond to the Motion.

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~~(c) If a Motion is made at the hearing, the Hearing Examiner may continue the hearing and afford the opposing party sufficient time to respond to the Motion.~~

~~(d) 4. Parties may submit a memorandum of law in support of, or in response to, a their Motion or response to a Motion. If necessary, The Hearing Examiner may also request that one or both parties provide a memorandum of law on the subject matter of a Motion.~~

~~(e) If requested, the Hearing Examiner will provide an opposing party additional time to provide a response to a Motion or memorandum of law presented in support of a Motion.~~

~~(f) Memoranda must include a complete copy of all cited cases cited within the memorandum must be provided to the Hearing Examiner at the time the memorandum is submitted to the Hearing Examiner.~~

5. The Hearing Examiner will generally rule on written motions within three working days after the end of the response time.

(b) At the discretion of the Hearing Examiner, the Hearing Examiner will rule on motions made during a hearing:

1. Immediately;
2. After a pause in the hearing;
3. On a continued hearing date; or
4. After a separate hearing on the motion.

(2c) Motions may be set for hearing at the discretion of If the Hearing Examiner sets a separate hearing on a motion:

1. The Hearing Examiner must continue the current hearing to a date certain; and
2. , and Only legal argument pertaining to the motion will be heard at these hearings.

(d) The Hearing Examiner will not consider motions to strike testimony from the record.

2.4D. Disqualification or Recusal of a Hearing Examiner.

~~A-(1) Motion by the Hearing Examiner. At any time during the pendency of a zoning case or action before a Hearing Examiner, the Hearing Examiner may, of his or her own Motion, disqualify himself or herself themselves where there exists, to the Hearing Examiner's own knowledge, any of the grounds for a suggestion of disqualification, as provided under Chapter 38, Florida Statutes exist. The failure of a the Hearing Examiner to so disqualify himself or herself themselves under subsection 2.4A1 is not assignable as error or subject to review.~~

B-(2) Motion by Party.

(a) Any party to an action before the Hearing Examiner The County or the Applicant may move to disqualify the Hearing Examiner assigned to the case. Only Parties may file motions for disqualification.

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(b) A ~~M~~otion for disqualification must satisfy the requirements under Rule 2.330 of the Florida Rules of Judicial Administration.

~~C.~~(c) Basis of Motion.

1. A ~~M~~otion for disqualification must be based on a well-grounded fear on the part of the movant that ~~he or she~~ they will not receive a fair hearing. The well-grounded fear must be born out of actual facts that would create an objectively reasonable basis to fear prejudice or bias in the current case (as opposed to hypothetical facts). A well grounded fear cannot be based solely upon the fact a Hearing Examiner has heard a similar request and issued a recommendation/decision that would be deemed unfavourable to the movant.

2. It is the burden of the Party seeking disqualification to show that Party has a well-grounded fear of not receiving a fair hearing.

(d) Legal Sufficiency of Motion

1. In determining the legal sufficiency of a Motion, the Hearing Examiner must determine if the facts alleged, which must be taken as true, would prompt a reasonably prudent person to fear that he or she could not receive a fair and impartial hearing. It is the burden of the party seeking disqualification to show that party has a well-grounded fear of not receiving a fair hearing.

~~(3) A Motion made during a hearing must be ruled on immediately or set for hearing at a future date. If the hearing on the Motion is set for a future date, the current hearing must be continued to a date certain, no sooner than 30 days from the date of the hearing on the Motion to provide an opportunity for the hearing on the Motion to occur and the time for filing an appeal to run.~~

~~D2.~~ A Motion for disqualification of a Hearing Examiner is also subject to the following legally insufficient and must be denied if the motion is:

~~(1)a. A Motion ~~f~~iled before the movant becomes aware of the Hearing Examiner formally assigned to the case ~~is legally insufficient and must be denied.~~~~

~~(2)b. A Motion ~~f~~iled after the period required under Rule 2.330 ~~is legally insufficient and must be denied.~~~~

~~(4)c. A Motion ~~b~~ased solely on hypothetical or contingent facts ~~is legally insufficient and must be denied.~~~~

~~(5)d. A Motion ~~b~~ased solely on a movant's subjective fear of bias ~~is legally insufficient and must be denied.~~~~

~~(6)e. A Motion ~~b~~ased solely on very general and speculative assertions about a Hearing Examiner's attitudes ~~is legally insufficient and must be denied.~~~~

~~(7)f. A Motion ~~b~~ased solely on prior adverse rulings or findings of a Hearing Examiner ~~is legally insufficient and must be denied.~~ or~~

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~~(8)g. A Motion based solely on prior decisions of a the Hearing Examiner's to recuse himself or herself prior disqualification decision in another case, is legally insufficient and must be denied.~~

~~(9)5 The filing of a Motion with an allegation of bias does not create a per se rule requiring recusal.~~

~~(10)(e) A hearing on the Motion is not required.~~

E. Objections.

- (1) During a hearing, the County or the Applicant may raise objections to testimony or evidence the Party contends:
 - (a) Violates a procedural provision of the LDC or Administrative Code;
 - (b) Is irrelevant to the decision to be made; or
 - (c) Is an opinion beyond the speaker's qualifications.
- (2) The objecting Party must state there is an objection and provide a short (one or two sentence) summation of the objection. The Hearing Examiner may ask for additional information on the objection prior to ruling.
- (3) Once the Hearing Examiner has ruled on the objection, it is not necessary to renew the objection. Ongoing objections will be noted for the record.

2.3F. Deferrals and Continuances and Deferrals

(1) Deferrals.

- (a) A Party may request to defer a scheduled public hearing to a later time or date if requested before delivery of the public hearing notice to the newspaper.
- (b) Department-initiated deferral. If the Department defers a scheduled public hearing, the Department must notify the Applicant in writing of the reason for deferral and specify the information necessary to complete County Staff review.
- (c) Fee. There will be no fee for deferrals. However, the Applicant must obtain corrected notice posters from the Department and post the signs on-site, if required by the LDC or Administrative Codes.
- (d) The Director may defer a case without action by the Hearing Examiner.

(2) Continuances.

- (a) If the notice of the public hearing was delivered to the newspaper for publication, the scheduled public hearing may be postponed only through a continuance.
- (b) Hearing Examiner-initiated continuance. A. If, in the opinion of the Hearing Examiner, the testimony, documentary evidence, or information presented at a hearing justifies allowing additional research or review in order to properly decide the case, then the Hearing Examiner, in the Hearing Examiner's sole discretion, may continue the a case to a specific time and date to allow for such research or review. The Hearing Examiner may

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~~request Staff or the Applicant to the~~ submittal of additional written testimony; or documentary evidence necessary to decide the case, to consider a motion, or for other good cause, or information by the time and date specified in the continuance order. The Hearing Examiner's decision to ~~grant or deny such a continuance~~ the case is not subject to review.

(c) Party-initiated continuance.

1. The Parties are entitled to one continuance each as a matter of right. The Hearing Examiner may grant additional continuances upon a showing of good cause.

~~B. Other deferrals or continuances may be granted in accordance with the provisions of the Lee County Land Development Code.~~

~~C.2. If notices have been mailed or published, a request for~~ The Party must request the continuance must be made on the Record before the Hearing Examiner on at the originally scheduled or previously continued hearing date.

3. If the Hearing Examiner approves the continuance, the hearing will be continued to a date certain.

4. The Party requesting the continuance must bear the cost of notification of the new hearing date if the LDC or Administrative Codes require notification.

5. If the Hearing Examiner denies the request for continuance, the hearing will proceed.

6. The Hearing Examiner's decision to grant or deny the continuance is not subject to review.

~~D.(d) Once the hearing has begun, The Hearing Examiner will send notices of continuances will be mailed only to the Parties and public participants of record. There will be nNo further additional notices will be mailed or published for to the general public or adjacent property owners.~~

~~E. Appeal. An appeal of the order on the Motion for disqualification must be made to the circuit court within 30 days of the date the order was issued. An order denying a Motion to disqualify a Hearing Examiner is reviewed by a petition for writ of prohibition.~~

G. If a Party intends to submit new/modified application materials or Staff Report in the hearing, the documents must be provided to the other Party a minimum of 48 hours before the hearing. Unless waived by the other Party, failure to meet this deadline may result in a continuance of the hearing.

2.3 Hearing Proceedings

A. The Hearing Examiner will conduct hHearings will be conducted in an informal but courteous and professional manner. ~~2. Application of Rules. The Hearing Examiner is responsible for ensuring equal and consistent application of these rules these rules are applied equally and consistently to all evidence and testimony presented by the parties and public participants.~~

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B. Presentation Order. To the extent reasonably possible and at the Hearing Examiner's discretion, the order of proceedings will be as follows:

- (1) Hearing Examiner's announcement of the case matter to be heard, explanation of the procedure, and rights and responsibilities of all interested persons as well as an explanation of future proceedings that may occur in relation to the matter to be heard.
- (2) Presentation of Request or Appeal by Applicant, Appellant, or representative Applicant/Appellant arguments, testimony, and evidence.
- (3) Cross-examination of Applicant/~~or~~ Appellant's witnesses by County Staff, the County Attorney, or and the Hearing Examiner, with redirect examination by Applicant/~~or~~ Appellant. The Hearing Examiner may limit or disallow Re-Cross examination or re-re-direct examination may be limited or disallowed by the Hearing Examiner.
- (4) Presentation of the County Staff's position on the Request by County Staff. Or, presentation of the County's position regarding an appeal by County Attorney arguments, testimony, and evidence.
- (5) Cross-examination of County Staff's witnesses by Applicant/~~(Appellant)~~ or the Hearing Examiner, with redirect examination by County Staff ~~or County Attorney.~~ Re-Cross examination The Hearing Examiner may limit or disallow re-cross or re-re-direct examination may be limited or disallowed by the Hearing Examiner.
- [^] (76) Presentation by public participants or their representatives of participant argument, testimony, and evidence. Participants may direct questions relevant to the application/appeal to the Hearing Examiner. Participants may not engage in direct or cross examination of witnesses.
- (7) Cross examination of public participants by Applicant/~~(Appellant)~~, County Staff, County Attorney, or and the Hearing Examiner.
- (8) Responses to questions posed by participants during public comment. In the alternative, these responses may be addressed as part of rebuttal.
If a question can be answered quickly and it is not disruptive to do so, the Hearing Examiner may invite the Parties to answer a question posed by a participant when asked.
- (89) Presentation of Rebuttal Testimony. (a) Presentation of Rebuttal testimony will be in accordance with the following: 1. Rebuttal testimony by the Applicant/Appellant.
- (10) Rebuttal testimony by County Staff.
- (11) Final surrebuttal by Applicant/Appellant.
- (912) Closing statements by County Staff or County Attorney.
- (10) Closing statements by the Applicant or Appellant the Parties.

BC. Taking Testimony. Testimony will be taken in accordance with the following:

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- (31) All witnesses and public participants will be sworn placed under oath and submit to reasonable cross-examination by the Parties. ^
- (2) The Hearing Examiner will give all persons desiring to participate in the hearing an opportunity to speak. However, The Hearing Examiner has the authority to refuse to hear testimony that is irrelevant, or repetitive, defamatory, or spurious.
- (43) Statements of Counsel or authorized representatives will be considered statements are argument and not testimony unless identified to the Hearing Examiner as based upon actual knowledge of the matters that, which are the subject of the statements and are testified to under oath.

~~(5)~~ D. Rules of Procedure.

- (a1) Due Process. The proceedings conducted under § 34-145 (a) through (d) are quasi-judicial proceedings and must will provide basic due process. For purposes of these proceedings, "basic due process" requires that the Parties have notice of the hearing and an opportunity to be heard. Furthermore, Parties must be able to present evidence, cross-examine witnesses, and be informed of all the facts upon which the County acts. The term "parties" to any proceeding are the Applicant and the County (or their representatives). The term "parties" does not include public participants or their representatives.

(e2) Burden of Proof.

(a) In appeal proceedings under § 34-145(a), the Appellant has the burden of proof to show that the County administrative official charged with the administration and enforcement of the provisions of the code erred in issuing or denying an order, requirement, decision, interpretation, determination, or action.

(b) In other proceedings under § 34-145(b) through (d), the Applicant has the burden of proving, through the submission of to show by competent and substantial evidence, the proposed request conforms to the LDC and the Lee Plan applicable review criteria.

(c) If County Staff recommends denial of an application, Staff must provide competent substantial evidence to show:

1. The application does not conform to the review criteria; or
2. For zoning cases, that maintaining the existing zoning designation is not arbitrary, discriminatory, or unreasonable and accomplishes a legitimate public purpose.

~~2.~~(3) Standard of Proof. The applicable standard of proof that the Applicant or Appellant must meet in the proceedings under § 34-145(a) through (d) is the greater weight by a (preponderance) of the competent and substantial evidence.

(b4) Evidence. The Florida and Federal Rules of Evidence do not apply to the proceedings under § 34-145(a) through (d). The following rules do apply:

~~4.~~(a) Admissibility. The admissibility of evidence is as follows:

- a1. All relevant evidence is admissible and is not limited to only competent and substantial evidence. Relevant evidence is defined as evidence having the tendency to make the existence of any fact

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~~that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. The "determination of the action" in zoning matters includes, but is not limited to, the project's consistency with the Lee Plan and Land Development Code, the compatibility of the project and proposed uses on surrounding uses, the Hearing Examiner's required findings and considerations, deviations and variances requested by the Applicant, and the imposition of conditions.~~

~~b. In proceedings under § 34-145(b) through (d), testimony and evidence regarding the proposed uses and potential impact of those uses are admissible.~~

~~e2. Lay opinion is admissible if the opinions and inferences do not require a special knowledge, skill, experience, or training. Lay opinion testimony can establish substantial competent evidence, so long as it is fact based. Lay persons' opinions unsubstantiated by competent facts are not competent and substantial evidence.~~

~~d. Objection to testimony based upon inadequacy of facts goes to the weight of the evidence and not to its admissibility.~~

~~e3. Relevant, fact-based testimony by expert or lay witnesses in a zoning matter is admissible and may constitute substantial competent evidence. ^ f. ^~~

~~i4. While hearsay evidence is generally admissible in proceedings under § 34-145(a) through (d), hearsay alone does not constitute substantial competent evidence.~~

~~(4)5. Letters or and other written statements from members of the public may be made a part of the record of the case, but they will not constitute competent substantial evidence on which a decision can be based documents not prepared by a witness are admissible, but are hearsay and cannot be the sole basis for a decision or recommendation. The presence and ability to cross-examine the author of the document is not required for admissibility.~~

~~^-(b) Taking Judicial Notice. The Hearing Examiner may take judicial notice of previous Board decisions, previous Hearing Examiner decisions or recommendations, and matters that are generally recognized by Florida courts. ^ 4. Competent and substantial evidence is evidence a reasonable mind would accept as adequate to support a conclusion. ^ (e) Final decisions and recommendations.~~

(f5) Expert Witness.

~~4-(a) The purpose of expert testimony is to aid the Hearing Examiner and the Board in understanding issues and evidence in areas that are not common knowledge.~~

~~(b) Acceptance as an Expert~~

~~1. A witness may be qualified recognized by the Hearing Examiner may recognize a witness as an expert if the witness has through~~

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specialized knowledge, training, experience, or education, ~~which is not limited to academic, scientific, or technical knowledge on the subject matter of their testimony.~~

2. ~~Objections to the level of an expert's expertise goes to credibility and weight; it does not affect admissibility of an expert's testimony. The acceptance of a witness as an expert goes to the witness' competence to testify on the subject and does not equate to greater credibility or weight.~~

(c) Basis of Expert Opinions

1. Expert opinions must have a basis in facts identified in the record.
2. ~~An expert witness may give an opinion based on the expert's own knowledge of the facts, after stating those facts and then the expert's opinion, or an expert may give an opinion based upon a hypothetical question as to facts already in evidence or evidence to be subsequently admitted. Where personal observation is lacking, however, an expert witness cannot be permitted to give an expert opinion until facts upon which the expert's opinion is to be based have been properly hypothesized before the expert.~~
 - g. ~~The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before the hearing.~~
 - h. ~~If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence in order to establish the basis of the opinion.~~
3. ~~A party intending to present expert testimony during a zoning hearing (not including variances, special exceptions and conventional rezoning cases) must provide the other party, not less than 48 hours before the date of the hearing during which the expert is expected to provide direct testimony, with the following: a. Expert's name, business address and current resume; b. A detailed description of the expert's qualifications (or copy of current resume) and the area of expertise that the witness will be qualified to testify as an expert; c. A copy of the report that serves as the basis of the expert's opinion, if not already submitted as part of the application or Staff Report. The report must include: i. A brief description of research conducted by the expert to reach his/her opinion; ii. The nature of the opinion sought and the issues to which the opinion relates; iii. A description of the factual assumptions and data on which the opinion is based; and iv. The opinion and the basis for the opinion. d. A complete copy of documents, studies, reports, charts or tables (along with the data used to create the charts or tables) relied upon by the expert in formulating the expert's opinion and which the party intends to use as evidence during the hearing. Charts, tables, graphs, maps, power point presentations, or other demonstrative aids that are intended to be used during the hearing to reproduce,~~

~~summarize, or demonstrate the data or facts relied upon by the expert, do not need to be provided in advance, so long as the underlying data or information that is being reproduced, summarized, or demonstrated was provided. Citations to relevant provisions of the LDC, Lee County Administrative Code, Florida Statutes, U.S. Code, Florida Administrative Code, or Lee Plan are sufficient to meet this requirement. 4. ^ 5. All documentation may be exchanged between the parties electronically.~~

~~6. Unless agreed upon by the parties, the Hearing Examiner may not admit or consider reports, studies, charts, tables, documents, or datum derived therefrom, if it was not provided in accordance with this provision. Notwithstanding, the Hearing Examiner may consider such information if offered as rebuttal to direct testimony.~~

(d) If the Applicant does not provide experts' opinion or materials required by the Director in accordance with LDC Section 34-376(b), the Department may object and request a break in the hearing or continuance to a later date to review the opinion materials or provide additional expert testimony. The Department's failure to object constitutes waiver.

~~7. At any time, the requirements in (f)(3) above may be waived by either party at the request of the other party.~~

(6) Cross-Examination

(a) The purpose of cross-examination is to test the accuracy, completeness, and truthfulness of the evidence provided. It may not be used to badger or intimidate a witness or as an opportunity to debate, disagree, or argue with the witness.

(b) Cross-examination of witnesses by non-parties is not permitted by right, but may be allowed at the Hearing Examiner's discretion. Participants may not cross-examine witnesses. Questions from participants will be addressed in accordance with subparagraph 2.3.B.(6).

(7) Rebuttal

(ba) Rebuttal evidence and or rebuttal-witnesses must be confined solely to the subject matter of the evidence being rebutted. New evidence on other subjects may not be brought presented as rebuttal.(c) Rebuttal testimony may not be used by an Applicant to provide new information or make changes to the information reviewed by County Staff in preparing its recommendation.

~~2. Rebuttal testimony by Staff or County Attorney, which is limited to responding to the testimony raised during the rebuttal testimony presented by the Applicant,~~

~~3.(b) fFinal surrebuttal, which is must directly related to the testimony raised during the rebuttal testimony presented by County Staff or County Attorney.~~

E. Accepting Additional Evidence

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(1) Written Submissions. The Hearing Examiner may leave the record open until a specified date to receive amended documents specifically requested at the hearing.

(2) Additional evidence beyond that allowed by paragraph (1) may only be accepted in a public hearing, in accordance with the following:

(a) Additional Hearing Date.

If the Hearing Examiner or a Party determines a relevant issue is unresolved or additional evidence is necessary to fully review the case, the evidence may be provided at an additional hearing as follows:

1. The Hearing Examiners may schedule an additional hearing date by providing a Notice of Intent to Schedule an Additional Hearing Date. The Notice must include the issues to be discussed or evidence to be provided at the additional hearing and propose potential hearing dates.

2. A Party may request an additional hearing date by filing a Motion for an Additional Hearing Date, describing the issue or evidence that justifies the additional hearing and proposes potential hearing dates.

a. A Motion for an Additional Hearing Date must be filed with the Hearing Examiner by the later of the established Written Submission date addressed in paragraph (1), if any, or 15 working days after the close of the regularly scheduled hearing.

b. The other Party has 5 working days to respond to the Motion for an Additional Hearing Date.

c. The Hearing Examiner will rule on the Motion within 7 working days after the other Party's response.

3. If the Motion is granted or if the additional hearing date is initiated by the Hearing Examiner, the Hearing Examiner will provide notice of the scheduled additional hearing date, at least ten days before the hearing.

a. The notice will be provided to the Parties and record participants.

b. If there were no participants, the Parties may waive the ten day notice requirement.

(b) Notice of Intent to Deny. The Hearing Examiner may issue a Notice of Intent to Deny for failure to provide adequate evidence, as contemplated in LDC Section 34-145(e), in accordance with the following:

1. The Notice must:

a. State the issues that require additional evidence; and

b. Request the Applicant to respond within 10 working days whether they will provide the requested evidence.

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2. If the Applicant does not agree to provide the evidence, the Hearing Examiner will issue a recommendation/decision denying the application.
3. If the Applicant agrees to provide the requested evidence:
 - a. The Applicant must submit the evidence to the Department within 30 working days of the Notice.
 - b. The Department will send a copy of the requested evidence to the Hearing Examiner and record participants with the new hearing date.
 - c. The Department will review the additional evidence and prepare a supplementary Staff Report addressing only the issues pertaining to the new evidence. The Department will send the supplementary Staff Report to the Hearing Examiner, Parties, and record participants a minimum of five working days before the hearing.
4. The hearing will be limited to the new evidence issues.

2.4 Hearing Record

- A. Official Records Custodian. The Department is custodian of the hearing recordings and exhibits.
- B. Record on Remand. If an application or appeal is remanded to the Hearing Examiner, the record of the previous hearing is a part of the remand hearing record.

^ SECTION 3. DECISIONS & RECOMMENDATIONS

- 3.1. Site Visits ~~Prior to rendering a decision or recommendation,~~ The Hearing Examiner will make a site visit prior to rendering a decision or recommendation unless the site is not accessible.
- 3.2. Recommendations and decisions will generally be prepared by the Hearing Examiner in the order the case was heard, unless:
 - A. The record was held open for written submissions;
 - B. The testimony summary/transcript is not available to the Hearing Examiner;
 - C. It is more efficient to take the case out of order, at the Hearing Examiner's discretion;
or
 - D. At the direction of the Board of County Commissioners.

3.3 Final Decisions and Zoning Recommendations

- A. ~~(e)~~ Weight of Evidence.
 - (1) The Hearing Examiner must review the testimony record and determine the appropriate weight to give the evidence presented in the case. In accordance with subsection 2.2B(5)(b) above, the use of Rules of Evidence are not applicable to determine the probative value of evidence is not appropriate. See 2.3.D.(4).

(2) The Hearing Examiner's final decisions and recommendations must be based on competent and substantial evidence. ~~Mere generalized statements of opposition must be disregarded. Relevant fact based testimony may not be disregarded.~~

(3) Uncontroverted competent substantial evidence should not be arbitrarily rejected, but the Board or the Hearing Examiner, as the final decision-makers, will determine the credibility of a witness and the weight to give evidence.

B. The Hearing Examiner's decision/recommendation must ~~contain~~ include the following:

- (1) Identification of the subject matter or property involved and the action requested by the Applicant or Appellant.
- (2) A brief sSummary of the relevant evidence and testimony in the matter, including the recommendations of the County Staff.
- (3) Findings of fact and conclusions of law based on the evidence and testimony ~~in the matter~~, including citations to relevant Code LDC and Lee Plan provisions to support the basis for the recommendation.
- (4) In cases involving an appeal of administrative action, whether to grant or deny the appeal and, specify any if the appeal is granted, the administrative action to be taken by virtue of a decision granting an appeal.
- (5) The decision or recommendation whether to grant, grant with conditions (specifying any such the conditions), or deny the application.

.BC. The Hearing Examiner will ~~deliver~~ distribute all decisions and recommendations, including copies of the summaries of evidence and testimony (or transcript if available), by electronic mail or regular mail to the Board, the Parties, and the County Commissioners' offices. The Hearing Examiner will deliver a notice of all decisions and recommendations to public participants, and members of the public that requested copies by electronic mail, or by regular mail, in the event if an email address is not available. The notice to public participants must provide case identification, the Hearing Examiner's recommendation or decision, and provide the location that the recipient may find the complete recommendation and summary of evidence and testimony. For the purpose of this administrative code, public participants include any person who attends a hearing examiner proceeding or the authorized representative of a public participant.

C. The Hearing Examiner's Office will prepare a summary of the evidence and testimony or provide a transcript of the proceedings.

D. Once the recommendation in a zoning case has been delivered Upon distribution of the zoning recommendation, the Department DCD Staff will schedule the matter for hearing by the Board of County Commissioners hearing in accordance with the LDC Chapter 34.

SECTION 4. Remands

4.1 Applications or Appeals Remanded by the Board to the Hearing Examiner.

The following procedures apply to applications or appeals remanded to the Hearing Examiner by the Board:

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A. Remand Information

(1) Applicant/Appellant Requested Remands.

- a. The Applicant/Appellant must provide to the Department the information/changes to the application/appeal responsive to the issue(s) prompting the remand within 131 calendar days following the remand vote.
- b. Within 10 working days of receipt of the information/changes, the Department will schedule the public hearing before the Hearing Examiner and provide electronic or mailed notice to the Parties and the record participants.

(2) Department Requested Remands.

- a. The Department must provide to the Applicant the information or recommended changes to the application/appeal responsive to the issue(s) on remand within 60 calendar days following the remand vote.
- b. The Applicant/Appellant may provide a response to the Department's information/recommended changes. The response must be filed with the Department within 131 calendar days following the remand vote.
- c. No later than 142 calendar days following the remand vote, the Department will schedule a public hearing before the Hearing Examiner. The Department will provide notice of the hearing to all Parties and participants.

(3) Board directed remands will be handled as if requested by the Department.

B. Remanded hearings must occur within six months of the date the remand order was rendered.

- (1) If the six month deadline is not met because of action or inaction of the Applicant/Appellant, the application/appeal will be considered withdrawn.
- (2) The timeframe will be met if the hearing is opened and testimony is received within the six months, even if the record is left open.

C. The Department will review the new information and prepare a revised Staff Report addressing the remanded issue(s). The Department will provide the new information and revised Staff Report to the Hearing Examiner a minimum of two weeks before the scheduled public hearing.

D. Remanded hearings will be conducted in the same manner as the original hearing, but the scope of the hearing will be limited to the issue(s) that prompted the remand.

E. The Hearing Examiner will prepare a recommendation/decision consistent with Section 3.

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LDC Amendments - redlined

Chapter 10

...

ARTICLE II. – ADMINISTRATION

...

Sec. 10-104. - Deviation and variances.

...

(g) Variances. Requests to ~~deviate for~~ variances from the terms of those sections of this chapter not listed in subsection (a) above must be filed in accordance with the procedures set out for variances in chapter 34. Applicants for administrative deviations that have been denied by the Director or the Hearing Examiner may also apply for variances in accordance with this section. ^

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Chapter 12

ARTICLE II. MINING AND EXCAVATION

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Sec. 12-112. - Hearing Process.

The hearing process for approval of MEPD applications is ~~as set forth~~ in sections 34-83 and 34-145. This includes the notice requirements ~~applicable to notice for hearings and criteria for review~~. In addition to the required findings required to support a for rezonings and planned developments, the Hearing Examiner and Board must also make the findings required by section 34-145(d)(4)a.2.e. consider and find that the applicant has proven entitlement to MEPD rezoning by demonstrating:

(1) ~~The mining activity will not create or cause adverse effects with respect to dust, noise, lighting and odor on existing agricultural, residential, conservation activities, or other nearby land uses.~~

(2) ~~The applicant has given special consideration to protection of surrounding private and publicly owned conservation and preservation lands.~~

(3) ~~Approval of the request will maintain the identified wet and dry season water level elevations and hydro periods necessary to restore and sustain water resources and adjacent wetland hydrology on and off-site during and upon completion of the mining operations.~~

(4) ~~The site is designed to avoid adverse effects to existing agricultural, residential or conservation activities in the surrounding area.~~

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~~(5) The site is designed to avoid adverse effects from dust, noise, lighting, or odor on surrounding land uses and natural resources.~~

~~(6) The site is designed to mimic or restore the natural system-predisturbed water budget to the maximum extent practicable.~~

~~(7) Approval of the request will serve to preserve, restore and enhance natural flowways deemed important for local or regional water resource management.~~

~~(8) Approval of the request preserves indigenous areas that are occupied wildlife habitat to the maximum extent possible.~~

~~(9) Approval provides interconnection to off-site preserve areas and conservation lands via indigenous preservation areas, flowway preservation or restoration, and planted buffer areas.~~

~~(10) — Compliance with the traffic mitigation standards set forth in section 12-116.~~

~~(11) — Compliance with the reclamation standards set forth in section 12-119.~~

...

Chapter 26 - MARINE FACILITIES, STRUCTURES AND EQUIPMENT

...

ARTICLE II – DOCKS AND SHORELINE STRUCTURES

...

Sec. 26-46. - Variances.

(a) Variances from the requirements of this article may be requested in accordance with section 34-145(b). ^

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(b) Requests for variances involving historic resources, as defined in Chapter 22, may be obtained in accordance with sections 22-173 and 22-174.

...

Chapter 34 ZONING

ARTICLE I. IN GENERAL

Sec. 34-2. Definitions.

The following words, terms and phrases, when used in this chapter, have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

...

~~*Aggrieved person or party* means anyone who has a legally recognizable interest which is or which may be adversely affected by an action of or an action requested of the Board of County Commissioners or any other person or Board that has been delegated such authority by the Board of County Commissioners.~~

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Applicant means any individual, firm, association, syndicate, co-partnership, corporation, trust or other legal entity, or their duly authorized representative, commencing non-appeal proceedings under this chapter.

...

~~*Application or appeal* means any matter lying within the jurisdiction of the Hearing Examiner and any application for rezoning which will be or is scheduled to be heard by the Board of County Commissioners.~~

...

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

...

Competent substantial evidence is non-speculative, fact based, relevant evidence, provided by a person with personal knowledge of the facts or the expertise to provide an opinion on the facts, that establishes a reasonable foundation for the points argued or tends to prove the points that must be proven, and a reasonable mind would accept as adequate to support those points.

...

Hearing Examiner means the officer ~~appointed~~ authorized by the Board of County Commissioners, including Hearing Examiners *pro tempore*, to hear matters and exercise duties set out in article II of this chapter. For purposes of prohibiting unauthorized communication, the term "Hearing Examiner" includes members of the Hearing Examiner's staff.

...

Participant means any non-party ~~person who appears~~ at a Hearing Examiner proceeding, in person or through ~~counsel or authorized representative,~~ and providing legal argument, ~~or testimony, or other evidence.~~ A participant is entitled to receive a written notice of the Hearing Examiner's decision or recommendation. This term includes County staff and the applicant where appropriate.

Party or Parties to proceedings before the Hearing Examiner or Board means the Applicant/Appellant and the County (and their representatives). The term "Parties" does not include participants or their representatives.

...

Record means the information presented to the Hearing Examiner and made a part of the hearing record, as evidenced by the recording of the hearing and the documents and materials accepted as exhibits.

...

Relevant evidence means information having the tendency to prove or disprove any fact of consequence to the decision to be made. The "decision to be made" in zoning matters is whether the application/appeal complies with applicable review criteria, including the project's consistency with the Lee Plan and this Code.

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~~Variance, use means any departure from the provisions of this chapter and not specifically included in the definition set forth under Variance or Variance, procedural. The term "use variance" also means any attempt to allow a use in a district not allowed by this Code, except as provided in Sections 34-620 and 34-933, vary any one or more of the definitions set forth in this chapter, either directly or indirectly. Use variances are never permitted.~~

...

ARTICLE II. ADMINISTRATION

...

DIVISION 2. BOARD OF COUNTY COMMISSIONERS

...

Sec. 34-83. Functions and authority.

...

(b) Zoning actions.

(1) Function.

a. ~~The Board of County Commissioners must hold public hearings (see sections 34-231 through 34-236) on the following applications:~~

- ~~1. Rezoning^s; MEPD, extension and reinstatement of master concept plans, the special exceptions that meet the criteria for Developments of County Impact,~~
- ~~2. Appeals from decisions of the Hearing Examiner concerning wireless communications facilities^s;~~
- ~~3. Ddevelopments of rRegional iImpact^s;~~
- ~~4. Special exceptions or variances in connection with a rezoning~~
- ~~5. Zoning or Development of Regional Impact amendments that incorporate the terms of a settlement agreement designed to resolve pending administrative litigation or judicial proceedings; and any~~
- ~~6. Oother actions in conjunction with such-applications cases.~~

...

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

- ~~a. The considerations set forth in section 34-145(c)(2) which are applicable to the case.~~
- ~~b. The substantive recommendations of the Hearing Examiner, Staff, or the Applicant when applicable.~~
- ~~eb. Testimony received during public hearing before the Board.~~
- ~~ec. The evidence and testimony included with the Hearing Examiner's recommendation.~~

(3) Findings/Review Criteria.

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- a. Before granting any rezoning, special exception, or variance in connection with a rezoning, or appeal of a Hearing Examiner decision, the Board of County Commissioners must find that: the application satisfies the applicable review criteria in section 34-145.
- b. If a rezoning request complies with the review criteria, the Board may deny the request if it finds that maintaining the existing zoning designation accomplishes a legitimate public purpose and is not arbitrary, discriminatory, or unreasonable.
- a. ~~The applicant has proved entitlement to the rezoning, MEPD, 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 or mine excavation planned development, 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). *m. The request meets the criteria and standards set forth in chapter 12 for approval of a mine excavation planned development.*~~
- 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.~~
- i. ~~In the case of an appeal of a Hearing Examiner decision pertaining to wireless communication facilities, the decision of the Board of County Commissioners must also be supported by the formal findings set forth in sections 34-1445(b) and 34-1453, as applicable.~~ ~~j. If the rezoning is to Compact PD, the decision of the Board of County Commissioners must be supported by the formal finding regarding the provisions set forth in section 32-504(a).~~
- k. ~~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.~~
- l. ~~The level of access and traffic flow (i.e. median openings, turning movements etc.) is sufficient to support the proposed development intensity. ^~~

(4) *Decisions and authority.*

- a. In exercising its authority, the Board of County Commissioners:

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1. May approve the request, deny the request, or remand the case for further proceedings before the Hearing Examiner.
 - a) In reaching its decision, the Board may, but is not required to, adopt the Hearing Examiner's recommendation, Staff's recommendation, or the Applicant's recommendation. The Board may render its own decision based on competent substantial evidence presented in the R~~ecord~~. Unless otherwise provided by the Board, a^A decision to adopt the recommendation by the Hearing Examiner, Applicant, or Staff will include the written findings, conclusions, and conditions provided in the applicable recommendation.
 - b) The Board may remand a case back to the Hearing Examiner for further review of specific issue(s). The scope of the remanded hearing will be limited to the specific issue(s) identified by the Board.
2. May not approve a rezoning other than the rezoning published in the newspaper, unless the change is more restrictive than the proposed rezoning published.
3. Has the authority to attach ~~such conditions and requirements deemed necessary for the protection of the public health, safety, comfort, convenience or welfare~~ to any approval of a:
 - a) a request for a s^Special exception;
 - b) d^Development of r^Regional i^Impact;
 - c) P^Planned development, mine excavation planned development; and
 - d) U^Use of TDR or affordable housing bonus density units in conjunction with a rezoning request, or variance within their purview, deemed necessary for the protection of the health, safety, comfort, convenience or welfare of the general public.

~~These c^Conditions and requirements must be reasonably related to the action requested.~~
4. In the case of an appeal of a Hearing Examiner decision pertaining to wireless communication facilities, the Board of County Commissioners ~~must consider the decision as a recommendation only and may, in conformity with the provisions of this chapter, reverse, affirm or modify the decision of the Hearing Examiner, or remand the case to the Hearing Examiner.~~
 - 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 Board meeting for decisions on zoning matters by the Board of County Commissioners, unless a majority of the members present and voting agree by motion, before the next agenda item is called, a majority of the members present and voting agree by motion to take some other action. Such other action may be moved or seconded by any member, regardless of his or her vote on any earlier motions.
 - c. Any d^Denial by the Board of County Commissioners is denial with prejudice unless otherwise specified by the Board of County Commissioners.

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- (5) *Judicial review.* Judicial review of final decisions under this section must be in accordance with section 34-85
- (6) ~~*Remand by Board of County Commissioners.* An application remanded for further consideration must be brought to hearing before the Hearing Examiner within six months of the date the remand order is rendered. If the application is not brought forward as ordered if a remand hearing does not occur within six months, it the application will be deemed withdrawn. Thereafter, the applicant will be required to file a new application for consideration by the Hearing Examiner and the Board.~~
- (7) ~~In matters that were first heard by the Hearing Examiner, only individuals who participated during the proceedings before the Hearing Examiner will be afforded the right to address the Board of County Commissioners. This prohibition does not apply to the Board's legal counsel, County staff whose sole purpose is to facilitate the zoning hearing, individuals who were represented by legal counsel during the hearing before the Hearing Examiner, or legal counsel representing an individual that testified during the hearing. Notwithstanding, the testimony presented to the Board will be limited to the testimony presented to the Hearing Examiner, testimony concerning the correctness of the findings of fact or conclusions of law contained in the record, or to allege the discovery of new, relevant information which was not available at the time of the hearing before the Hearing Examiner.~~
- (c) *Revocation of Alcoholic Beverage Approvals under Section 34-1265.*
- (1) *Function.* The Board must hold a hearing on petitions to revoke an alcoholic beverage approval. The hearings will be open to the public, but no public input will be taken.
- (2) *Considerations.* In rendering its decision, the Board must consider the following:
- The grounds set forth in section 34-1265 applicable to the case.
 - The recommendation of the Hearing Examiner.
 - Testimony received during the hearing before the Board.
 - The evidence and testimony included with the Hearing Examiner's recommendation.
- (3) *Findings.* In order to revoke an alcoholic beverage approval, the Board must find the approval holder has materially breached the requirements and that revocation is appropriate to protect the public health, safety, and welfare.
- (d) *Appeals of Hearing Examiner decisions on appeals of administrative actions affecting fire impact fee regulation.*
- (1) ~~*Function.* The Board of County Commissioners may hear appeals from Hearing Examiner decisions on appeals of an administrative action related to fire impact fee regulation as follows:~~
- ~~Any Pparty may file a request to appeal such a decision of the Hearing Examiner within 15 calendar days after the decision is rendered.~~
 - ~~Requests for appeal must be in writing and state with particularity, the points of law or fact that the Hearing Examiner has overlooked or misunderstood.~~
 - ~~Requests for appeal must be filed with the Hearing Examiner's office. The aAppellant must also concurrently provide copies to the County Attorney and all~~

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other Pparties in the case. Any Pparty may file a written response with the Hearing Examiner's office within 15 calendar days after the request for appeal is filed, but not thereafter. The Board of County Commissioners will decide whether to grant or deny the request based exclusively upon the appellant's written request, any responses filed by another Pparty and the Hearing Examiner's written decision.

- d. The deliberations of the Board of County Commissioners with respect to the question of on whether to hear the appeal do not constitute a public hearing, and ~~no oral testimony will be the Board will not~~ allowed or considered by the Board of County Commissioners testimony in the course of these deliberations.
- e. The procedure for handling of such these appeals will be specified in the County's Administrative Codes.

(2) *Considerations.*

- a. *Relevant matters.* If the Board of County Commissioners decides to accept the appeal of a matter pertaining to fire impact fees, the review will be confined to: pursuant to section 34-145(a)(59), it will confine its review of the matter exclusively to (1) the written record prepared by the Hearing Examiner, and (2) oral argument/and discussion that will be limited to the identification of errors of fact or law or to allege the discovery of new evidence.

The Board will conduct its review as an appellate proceeding, and not as a *de novo* proceeding. The Board may orally question its staff, its attorneys, and any Pparty about matters contained in the written record and points of law or procedure.

- b. *Irrelevant matters.* The Board of County Commissioners will not take testimony from any person or accept into evidence any document that is not in the record provided by the Hearing Examiner.

- (3) *Standard of review.* The Board of County Commissioners will uphold the decision of the Hearing Examiner unless it the Board finds that it the decision is not supported by the record, or is incorrect as a matter of law ~~as to any conclusion of law made by the Hearing Examiner.~~

- (4) *Decisions and authority.* ~~In exercising its authority after~~ Once deciding to hear an appeal, the Board of County Commissioners will consider the decision of the Hearing Examiner but may reverse, or affirm in whole or in part, or modify, the Hearing Examiner's decision. The Board of County Commissioners may also remand the case to the Hearing Examiner for additional proceedings if deemed necessary to provide fundamental fairness or prevent injustice. Unless the case is remanded, the decision of the Board of County Commissioners 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, unless a majority of the members present and voting agree by motion, before the next agenda item is called, a majority of the members present and voting agree by motion to take some other action. Such other action may be moved or seconded by any member, regardless of his vote on any earlier motions.

- (5) *Judicial review.* Judicial review of final decisions under this section will be in accordance with section 34-85

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Sec. 34-84. Rehearing of decisions.

- (a) Any person who ~~may be aggrieved with a legally recognizable interest that may be adversely affected by a~~ the Board's decision of the Board of County Commissioners made pursuant to this division ~~an application for rezoning, development of regional impact, special exception that meets the criteria of a Development of County Impact, special exceptions or variances heard as part of a rezoning, or an appeal pursuant to section 34-1445(b)(2)b,~~ may file a written request with the Director and the County Attorney ~~for a public rehearing by the Board of County Commissioners~~ for a modification or rescission of the decision. The request must be filed ~~with the Director of Community Development and the County Attorney's Office~~ within 15 calendar days after the Board's decision. For purposes of computing the 15-day period, the date of the decision is the date of the public hearing at which the Board of County Commissioners made its decision by oral motion.

...

DIVISION 4. HEARING EXAMINER

Sec. 34-141. Office established.

The Office of Hearing Examiner is hereby created and established, in accord with the provisions of this Code. The Hearing Examiner has the powers set forth in:

- The Land Development Code this division, as well as the powers and authority set forth in Chapter 2, Article VII;
- Code Enforcement Board/Special Masters Ordinance (Ordinance 90-01, Lee County Code 1, Article VI);
- Historic Preservation Ordinance (Ordinances 88-62 and 90-54, Lee County Code, Chapter 17½.
- The Nuisance Accumulation Ordinance (Ordinance 93-39, Lee County Code, Chapter 17, Article III);
- Post Disaster Recovery Ordinance (Ordinance 07-20, Lee County Code Chapter 13½, Article IV);
- Mandatory Recycling of Commercial and Multifamily Residential Solid Waste, Construction and Demolition Debris (Ordinance 07-25, Lee County Code Chapter 17, XIV);
- Mandatory Solid Waste Collection and Disposal Benefit Unit Ordinance (Ordinance 11-27, Lee County Code Chapter 17, Article VI);
- The Lot Mowing Ordinance (Ordinance 14-08, Lee County Code Chapter 17, Article IV);
- The Abandoned Property Registration Program (Ordinance 13-18, Lee County Code, Chapter 1, Article XIX); and
- The Noise Control Ordinance (Ordinance 14-18, Lee County Code, Chapter 24¼).

Sec. 34-142. Appointment; qualifications.

The Board of County Commissioners shall ~~will~~ appoint the Chief Hearing Examiner, and may, ~~as necessary, appoint~~ authorize the Chief Hearing Examiner to hire any deputy Hearing Examiners or Hearing Examiners *pro tempore*, ~~as necessary~~. Such ~~Chief Hearing Examiners~~ shall ~~will~~ hold their positions at the pleasure of the Board of County Commissioners. Appointment to, removal from, and qualifications for such offices ~~shall~~ of the Hearing Examiner will be according to in accordance with the ~~a~~ Administrative eCodes, ~~specifically covering this subject matter.~~

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Sec. 34-143. Funding.

The Board of County Commissioners shall will establish the office of the Hearing Examiner and appropriately budget such the office annually.

Sec. 34-144. Conduct of meetings hearings; reports and records.

- (a) *Rules of procedure.* The Board of County Commissioners shall will adopt rules for transaction of Hearing Examiner business and the Hearing Examiner shall will conduct meetings in accordance with pursuant to the provisions of applicable regulations and aAdministrative eCodes of the Board of County Commissioners.
- (b) *Meetings Hearings.* Meetings ~~for the purpose of holding p~~Public hearings shall will be scheduled, noticed and conducted pursuant to applicable aAdministrative eCodes and the provisions contained in this chapter.
- (c) *Reports of decisions and recommendations.* After a public hearing is held, the Hearing Examiner will ~~make~~ prepare a written report of his ~~the~~ decision or recommendation in accordance with the rules and procedures set forth in the applicable aAdministrative eCode, and provide a copy of the report of decision (by either electronic means or hard copy) to all parties of record, appropriate County staff and the Board of County Commissioners.
- (d) *Recordings.* (1) ~~The~~ Hearing Examiner will ~~provide for a court reporter at all proceedings under section 34-145~~ record hearings and provide a copy of the recording to the Department. The Department will be the official custodian of the recordings. At a minimum, a summary of testimonies will be provided in the report of decision itself or as a separate document in addition thereto. Transcripts will be provided only upon request. Individuals making the request must bear the costs of transcription.
- (2) ~~The~~ Hearing Examiner shall keep indexed records of all meetings, agendas, findings, determinations and reports of decision. Such records shall be public records.
- (e) *Attendance at hearings.* The Hearing Examiner may request sStaff members with personal knowledge of relevant facts to attend hearings and produce relevant documents, and The Hearing Examiner may ~~advise~~ notify the County Administrator Manager of failure to if Staff fails to comply with the Hearing Examiner's such requests.
- (f) ~~In addition to the provisions found within this Code, all hearings before the Hearing Examiner must comply with the procedures established in Administrative Code 2-6.~~

Sec. 34-145. Functions and authority.

(a) *Appeals from administrative action.*

(1) *~~Function.~~ Authority.*

a. The Hearing Examiner is ~~authorized~~ has authority to hear and decide appeals where it is alleged that ~~a~~ County administrative official charged with the administration and enforcement of the provisions of this Code (or other ordinance that provides for similar review) erred in issuing or denying any order, requirement, decision, interpretation, determination or action, ~~implementing the provisions of this Code;~~ provided, however, that:

ab. The Hearing Examiner is not authorized to hear appeals based on:

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1. Acts of administrative officials pursuant to the orders, resolutions, or directives of the Board of County Commissioners~~;~~ or
 2. Ordinances~~,~~ or other regulations~~,~~ or provisions~~,~~ in this Code that provides a different appellate procedure.
 3. Zoning verification letters.
 4. ~~An administrative official's determinations or interpretations of the Lee County Comprehensive Plan, State or Federal Statutes, State or Federal Codes, Rules, or Regulations. If the Hearing Examiner must interpret or apply the Lee County Comprehensive Plan, State or Federal Statutes, State or Federal Codes, Rules or Regulations in reaching a decision on an appeal, the Hearing Examiner is not authorized to hear the appeal and the case must be dismissed. e. The Hearing Examiner will not consider appeals for~~
eChallenges to a development order controlled by F.S. § 163.3215.
- [^] c. ~~No appeal may be considered by t~~The Hearing Examiner where it appears to be a circumvention of an established or may not consider appeals that circumvent required procedures. Specifically, in ~~no case may the Hearing Examiner may not consider~~ an appeal be heard if the case would be more appropriately addressed as a request in an application for a variance, special exception, or rezoning.
- ad. Where the Hearing Examiner has the authority to review decisions of a commission or board, the Hearing Examiner may only remand the matter to the applicable board or commission for further proceedings consistent with the Hearing Examiner's findings and conclusions of law.
- e. In other appeals:
1. ~~The Hearing Examiner has the authority to may reverse, affirm or modify the decisions or actions of the administrative official. In appeals pursuant to section 22-42, or other appeals of decisions or actions of any commission or board, the Hearing Examiner may only remand the matter to the Board or Commissioner for further proceedings consistent with the Hearing Examiner's findings and conclusions of law.~~
 2. b. Subject to the limitations set forth in subsection section 34-145(a)(4)a of this section, tThe Hearing Examiner may ~~make a decision to take the action that the Hearing Examiner finds the administrative official should have taken. To that end, the Hearing Examiner has the power of the administrative official from whom the appeal is taken. The Hearing Examiner may only take an action that the administrative official is authorized to take under this Code.~~
 3. The Hearing Examiner is may not authorized to take an action that requires Board the approval or authorization of the Board of County Commissioners.

(2) Procedure

- ba. ~~An appeals~~ to the Hearing Examiner must be in compliance with the provisions of Administrative Codes section 2-6.
- db. Notices of hearings on appeals ~~will must comply be provided in accordance with the applicable Administrative Codes 2-8 the provisions of an applicable administrative code adopted by the Board of County Commissioners.~~

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^ (3) Standing to Appeal.

~~fa. ^ Only ~~the~~ Applicant or his agent will be permitted to may appeal such an administrative action as set forth in this section. *Except as provided in subsection g. below, a third party will* Non-applicants do not have standing to appeal an administrative actions to the Hearing Examiner, except in the context of actions arising out of the fire impact fee regulations.~~

~~gb.~~ With regard to administrative actions arising out of fire impact fee regulations:

1. The Fire District with jurisdiction over the property affected by the action appealed is a necessary party in any the appeal of such actions.
2. A Fire District may appeal ~~such an~~ administrative actions under this section, but only if the action ~~by itself, or in conjunction with future actions that will necessarily flow from the decision being appealed,~~ will result in a cumulative reduction of impact fee revenues to the district that exceeding \$25,000.00. ~~The District's appeal filed by the district must contain a clearly explain explanation of how the action appealed will produce the cumulative reduction in revenues. Any ~~disputes~~ over whether the action appealed falls within this subsection will be resolved by the Hearing Examiner before the appeal hearing on the appeal.~~
3. This subsection does not authorize a Fire District to appeal any permits or other administrative actions that falls within the scope of the existing ~~determination of exemption for Timberland and Tiburon DRI;~~ any sSuch appeals are is prohibited.

(4) De Novo or Appellate Proceedings

~~da. Appeals pursuant to section 22-42 (Historic Preservation Board decisions), or other provisions authorizing the Hearing Examiner to review decisions of a commission or board, are *not de novo proceedings* and will be limited to a determination of whether:~~

1. ~~*The board afforded procedural due process,*~~
2. ~~*The Bboard applied the correct law, and whether*~~
3. ~~*The record contains competent and substantial evidence to support the Bboard's actions.*~~

~~eb. All other aAppeals from administrative actions, with the exception of section 34-145(a)(2)d, are *de novo* proceedings. All pThe Parties may present evidence and testimony as to laws or facts supporting their position in the case.~~

^ (25) Jurisdiction. In determining whether to accept jurisdiction of the Appeal, the Hearing Examiner must conclude:

1a. Whether ~~The~~ appeal is of a nature has been properly brought before the Hearing Examiner for a decision; and

2b. The Notice of Appeal sufficiently states the alleged error made by the administrative official.

(6) Considerations. The Hearing Examiner must consider ~~b the~~ competent substantial evidence from the:

- a. Notice of Appeal.
 - b. Staff recommendations, position statement, if provided, and
 - c. the testimony and materials of from the Pparties and witnesses and testimony other hearing participants of the general public must also be considered.
- (7) Decision making. ~~In reaching a decision, Before making a decision that the administrative official erred in the appealed action, the Hearing Examiner must consider find the administrative action was the following criteria, as well as any other issues that are pertinent and reasonable:~~
- a. Inconsistent with the applicable review criteria;
 - b. Inconsistent with the plain and ordinary meaning of all applicable the regulation; or ordinance or code provisions, unless
 - c. If the regulation language is unclear or ambiguous, then inconsistent with the intent of the regulation, ordinance or code provision applied or interpreted may be considered.
- (3) ~~Findings.~~ Before granting an appeal, the Hearing Examiner must determine if an error was made by the administrative official.
- (4) ~~Authority.~~[^]
- (58) Review of decisions. Any Ppartyies to a fire impact fee regulation case may file a request to appeal a decision made by the Hearing Examiner under this section to the Board of County Commissioners within 15 calendar days after such the decision is rendered. (See section 34-83(e).) Judicial reviews of final decisions of the Hearing Examiner with respect to on appeals of other administrative actions are to the circuit court in accordance with section 34-146.

(b) *Variances.*

- (1) Function Authority.
- a. The Hearing Examiner will hear and decide all requests for variances from the terms of the regulations or restrictions of the Land Development this Code and such from other ordinances as may be assigned to him by the Board of County Commissioners, except that no use variance may be heard or considered.
 - b. The Hearing Examiner has the authority to grant, deny, or modify any request for a variance, from the regulations or restrictions of this Code; provided, however, that no
 - c. The Hearing Examiner does not have the authority to grant a use variance as defined in this chapter, or any variances from the definitions or procedures set forth in any ordinances, may be granted.
 - d. Variance requests may be reviewed by themselves alone or as part of a rezoning.
- (2) Considerations. In reaching a decision, the Hearing Examiner must consider the following:
- a. Testimony and evidence from the Applicant;
 - b. Testimony and evidence from Staff recommendations, including the staff reportStaff Report and attachments;

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- b. ~~Testimony from the applicant;~~
 - c. Testimony and evidence from the public participants;
 - d. The Lee Plan;
 - e. ~~This chapter Code;~~ and
 - f. Any other applicable County ordinances or County codes regulations.
- (3) Findings/Review Criteria. Before granting any variance, the Hearing Examiner must find that all of the following review criteria are satisfied:
- a. ~~There are~~ property has inherent exceptional or extraordinary conditions or circumstances that are inherent to the property in question and whether those exceptional or extraordinary conditions or circumstances that cause the application of the regulation to create a hardship (as defined in section 34-2) on the property owner.
 - b. ~~The exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant property owner 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. ~~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~~ the property.
 - d. ~~The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.~~
 - e. ~~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 a general or recurrent nature so as to make it more reasonable and practical to amend the ordinance. The variance is consistent with the Lee Plan.~~
- (4) Special Findings. The Hearing Examiner must also make special findings in variances for the following:
- fa. ~~In the case of wireless communication facilities, the Hearing Examiner must also make the findings required by section 34-1453. In addition to the considerations and findings required under section 34-145, the Hearing Examiner must also make at least one of the following findings of fact:~~
 - (1). ~~Failure to grant the variance or deviation~~ Denial would prohibit or have the effect of prohibiting the provision of personal wireless services;
 - (2). ~~Failure to grant the variance or deviation~~ Denial would unreasonably discriminate among providers of functionally equivalent personal wireless services;
 - (3). ~~The variance or deviation is necessary to ensure adequate public safety and emergency management communications;~~
 - (4). ~~The variance or deviation is the minimum necessary in order for the applicant to provide broadcast services pursuant to an FCC-issued license or construction permit (existence of an FCC license requiring a broadcast~~

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antenna at a given height will constitute a presumption that this requirement has been met);

~~(5) Failure to grant the variance or deviation Denial would prohibit or have the effect of prohibiting the provision of amateur radio services; or~~

~~(6) The variance will obviate the need for additional antenna-supporting structures in the geographic search area.~~

~~gb. For variances from the Airport Compatibility District regulations, the Hearing Examiner must also find that Tthe variance can be accommodated in the navigable airspace without an adverse impact to the aviation operation of SWFIA or Page Field.~~

~~c. Variances to the sections of Chapter 10 not listed in Section 10-104(a): The Hearing Examiner may grant variances from this chapter only upon a finding that the following criteria have been satisfied:~~

~~(1) The granting of the variance would not threaten the health, safety or welfare of abutting property owners or the general public;~~

~~(2) The requested variance is consistent with the Lee Plan;~~

~~(3) The requested variance will not create an undue burden on essential public facilities; and~~

~~(4) The standard from which the variance is being requested is unreasonably burdensome, as applied to the applicant's property and development plans.~~

~~d. Chapter 26, Article II, Dock and Shoreline Structures: The hearing examiner may grant a variance from the provisions of this article only upon finding the following criteria have been met:~~

~~(1) The granting of a variance will not threaten or create an undue burden upon the health, safety and welfare of abutting property owners or the general public;~~

~~(2) The requested variance is necessary to relieve an unreasonable burden placed upon the applicant by applying the regulations in question to his property;~~

~~(3) The variance requested is consistent with the Lee Plan and the Manatee Protection Plan.~~

~~(45) Authority Decisions.~~

~~a. ^ If When the Hearing Examiner determines denial is appropriate, then the decision must include a citation to the specific legal authority for the denial, in accord with section 2-4~~

~~b. In reaching a decision, the Hearing Examiner may attach conditions necessary for the protection of the health, safety, comfort, convenience and welfare of the general public. The eConditions must be rationally related to the variance requested and the potential impacts of the request on surrounding uses.~~

~~c. ^ d. All dDecisions of the Hearing Examiner concerning on variances filed as part of a rezoning with an application to rezone property, or from the Airport Compatibility District regulations, must be in the form of a recommendation to the Board of County Commissioners. Only a participant or his representative will be afforded the right to address the Board of County Commissioners.~~

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~~(56)~~ *Judicial review.* ~~Except as provided in section 34-1453(b) for wireless communication facilities, judicial review of Hearing Examiner's final variance decisions of the Hearing Examiner with respect to variances are to the circuit court in accordance with section 34-146. Exception: review of the Hearing Examiner's wireless communication facilities decisions must follow the procedures outlined in sections 34-1453(b) and 34-1445(b)(2)b.~~

~~(6) Variances from Airport Compatibility District Regulations. The Hearing Examiner will issue a recommendation to the Board of County Commissioners for a final decision in all cases seeking a variance from the Airport Compatibility District regulations.~~

~~(7) Effective Date. Final decisions in a variance case, including attached conditions of approval, become effective and enforceable on the date Hearing Examiner issues the final decision is issued by the Hearing Examiner.~~

(c) *Special exceptions.*

(1) ~~Function~~Authority. The Hearing Examiner will hear and decide all applications for special exceptions permitted by the district use regulations. *Special exceptions may be reviewed by themselves alone or with an application for a variance or to rezone property as a part of a rezoning.*

(2) *Considerations.* In reaching a decision, the Hearing Examiner must consider the following:

a. Testimony and evidence from the Applicant;

b. Testimony and evidence from Staff recommendations, including the staff report~~Staff Report~~ and attachments;

b. ~~Testimony from the applicant;~~

c. Testimony and evidence from the public participants;

d. The Lee Plan;

e. This chapter Code; and

f. Any other applicable County ordinances or County codes regulations.

(3) Findings/Review Criteria.

a. ~~Before~~Prior to granting any special exceptions, the Hearing Examiner must find that the ~~a~~Applicant has proved^u entitlement to the special exception by demonstrating the request:

a¹. ~~That the request i~~s consistent with the goals, objectives, policies and intent of the Lee Plan;

b². ~~That, when applicable, the request w~~ill protect, conserve or preserve environmentally critical and sensitive areas and natural resources, where applicable;

e³. ~~That the request w~~ill be compatible with existing ~~or~~ and planned uses;

d⁴. ~~That the request w~~ill not be injurious to the neighborhood or otherwise detrimental to the public welfare; and,

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~~e5. That the requested use w~~ill be in compliance with all zoning provisions regulations pertaining to the use set forth in this chapter and any other applicable County ordinances or codes regulations.

~~fb.~~ In the case of new antenna supporting structure wireless communication facilities, the Hearing Examiner must also ~~make the findings required by section 34-1445(b)-~~ find, or conclude a finding is not applicable, that:

1. The Applicant is not able to use existing wireless communications facility sites in the geographic search area; and

2. The Applicant has agreed to rent or lease available space on the antenna-supporting structure, under the terms of a fair-market lease, without discrimination to other wireless communications service providers; and

3. The proposed antenna-supporting structure will not be injurious to historical resources, obstruct scenic views, diminish residential property values, or reduce the quality and function of natural or man-made resources; and

4. The Applicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the structures and facilities.

(4) *Authority*Decision.

a. The Hearing Examiner must grant the special exception unless he or she finds the request conflicts with subsection (c)(3) of this section or the request is contrary to the public interest and the 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. If the Hearing Examiner determines denial is appropriate, then the decision must include a citation to the specific legal authority for the denial in accord with section 2-4.~~

b. ~~In reaching a decision, t~~The Hearing Examiner may attach conditions necessary for the protection of the health, safety, comfort, convenience or welfare of the general public. The conditions must ~~be~~ rationally related to the special exception requested ~~and the potential impacts of the request on surrounding uses.~~

c. ^ d. ~~All d~~Decisions of the Hearing Examiner ~~concerning on~~ special exceptions filed as part of a rezoning ~~with an application to rezone property or from the Airport Compatibility District regulations~~ must be in the form of a recommendation to the Board of County Commissioners. Only a participant or his representative will be afforded the right to address the Board of County Commissioners.

(5) *Judicial review*. ~~Except as provided in section 34-1445(b) for wireless communication facilities, j~~Judicial review of Hearing Examiner's final decisions of the Hearing Examiner with respect to on special exceptions will be in are to circuit court in accordance with section 34-146. Exception: review of Hearing Examiner's wireless communication facilities decision must follow the procedure outlined in section 34-1445(b)(2)b.

(6) Final decisions in a special exception case, ~~including attached conditions,~~ become effective and enforceable on the date the Hearing Examiner issues the final decision ~~is issued by the Hearing Examiner.~~

(d) *Zoning matters*.

(4~~1~~) *Authority*.

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- a. The Hearing Examiner serves in an advisory capacity to the Board of County Commissioners with respect to on zoning matters as set forth in subsection (d)(1) of this section, and in such capacity, may does not make the final determinations.
 - b. The Hearing Examiner may not recommend the approval of a rezoning, and the Board of County Commissioners may not approve a rezoning, other that is more expansive than the request published in the newspaper, pursuant to section 34-236(b), unless the The Hearing Examiner may recommend approval of a zoning district proposed by the Hearing Examiner that is more restrictive than the published request and permitted within the land use classification set forth in the Lee Plan.
 - c. The Hearing Examiner ~~has the authority to~~ may recommend conditions of approval on and requirements to be attached to any requests for planned developments and requests for a special exceptions or variances included under subsection (d)(1)b.3., 4. or 5. of this section heard with a rezoning application.
- (12) *Functions.* Regarding zoning matters, ~~the~~ The Hearing Examiner has the following prescribed duties and responsibilities: to
- 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 these districts.~~
 - b. ~~Make recommendations to the Board of County Commissioners on applications relating to~~ for the following requests:
- 1a. ~~Rezoning, including Developments of County Impact, planned unit developments and planned developments, and conventional zoning districts, and any accompanying request to use TDR or affordable housing bonus density.~~
 - 2b. ~~Developments of Regional Impact and Florida Quality Developments approval, which may or may not include~~ with or without a companion request for rezoning.
 3. ~~Special exceptions that meet the criteria for a Development of County Impact, as set forth in section 34-203(b).~~
 - 4c. ~~Other Special exceptions and variances which are submitted simultaneously with and are heard in conjunction with a rezoning.~~
 - 5d. ~~Variances from any County ordinances which specifies that~~ specify variances from the ordinance may only be granted by the Board of County Commissioners.
 - 6e. ~~Applications to increase density above the Lee Plan standard density range through the use of affordable housing bonus density units~~ or Transfer Development Rights.
 7. ~~Applications for mine excavation development planned approval under chapter 12~~
 - 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:~~

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~~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. § 380.06(19)(e)2.~~

f. Amendments to Development of Regional Impact Development Orders under F.S. §380.06(19)(e)2.

~~(23) Considerations. In preparing a recommendation on a zoning matter, tThe Hearing Examiner must consider the considerations set forth in section 34-145(c)(2) following.:~~

a. Testimony and evidence from the Applicant;

b. Testimony and evidence from the Staff, including the Staff Report and attachments;

c. Testimony and evidence from participants;

d. The Lee Plan;

e. This Code; and

f. Applicable regulations.

~~(34) Findings/Review Criteria.~~

a. Before preparing a recommendation to the Board of County Commissioners on a zoning matter, recommending approval for:

1. Rezoning – Tthe Hearing Examiner must find that the request:

a.) The applicant has proved entitlement to the rezoning by demonstrating compliance ~~Complies~~ with the Lee Plan;

b.) Meets this land development eCode, and any other applicable code or County regulations or qualifies for deviations; and

b. The request, including the use of TDR or affordable housing bonus density units, is consistent with the densities, intensities and general uses set forth in the Lee Plan; and

c.) The request ~~is~~ compatible with existing or and planned uses in the surrounding area; and

d.) Approval of the request ~~w~~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

e.) Where applicable, the request ~~w~~Will not adversely affect environmentally critical or sensitive areas and natural resources; and

gf.) Where the change proposed is within a future urban area category, the Hearing Examiner must also find that Will be served by urban services, as defined in the Lee Plan, ~~are, or will be, available~~ and adequate to serve the proposed land use if located in a Future Urban area category.

f2. Planned Development Rezoning – In the case of a planned development rezoning or mine excavation planned development, the decision of tThe

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Hearing Examiner must also be supported by the formal findings required by sections 34-377(a)(2) and (4). find:

- a) The proposed use or mix of uses is appropriate at the proposed location;
- b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development.
- c) If the application includes deviations pursuant to section 34-373(a)(9), that each requested deviation:
 - 1) Enhances the achievement of the objectives of the planned development; and
 - 2) Preserves and promotes the general intent of this Code to protect the public health, safety and welfare;
- ~~h.d)~~ If the rezoning is to Compact PD in Southeast Lee County, the recommendation of the Hearing Examiner must also include findings regarding the provisions set forth in section 32-504(a). The regulating plan will be similar in performance to the conceptual regulating plan, under section 32-405; and
- ~~i.~~ That the level of access and traffic flow (i.e. median openings, turning movements etc.) is sufficient to support the proposed development intensity.
- ~~j.e)~~ If the hearing concerns a mine excavation planned development, that the request meets the criteria and standards set forth in chapter 12 following:
 - 1) The mining activity will not create or cause adverse effects from dust, noise, lighting and odor on existing agricultural, residential, conservation activities, or other nearby land uses.
 - 2) The Applicant has given special consideration to the protection of surrounding private and publicly owned conservation and preservation lands.
 - 3) Approval of the request:
 - i. will maintain the identified wet and dry season water level elevations and hydro periods necessary to restore and sustain water resources and adjacent wetland hydrology on and off-site during and upon completion of the mining operations;
 - ii. will serve to preserve, restore and enhance natural flowways deemed important for local or regional water resource management.
 - iii. preserves indigenous areas that are occupied wildlife habitat to the maximum extent possible.
 - iv. provides interconnection to off-site preserve areas and conservation lands via indigenous preservation areas, flowway preservation or restoration, and planted buffer areas.

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- 4) The site is designed to:
 - i. avoid adverse effects to existing agricultural, residential or conservation activities in the surrounding area.
 - ii. avoid adverse effects from dust, noise, lighting, or odor on surrounding land uses and natural resources.
 - iii. mimic or restore the natural system pre-disturbed water budget to the maximum extent practicable.
- 5) Traffic mitigation standards in section 12-116.
- 6) Reclamation standards in section 12-119.
3. Rezoning to the Environmentally Critical (EC) district – The Hearing Examiner must make the additional finding that rezoning to the EC district is necessary to prevent public harm or meet a public need.
4. Bonus Density Program – The Hearing Examiner must find the request meets the provisions of the draft contract agreement and the following minimum requirements:
 - a) The request for participation in the program:
 - 1) Complies with and is consistent with the Lee Plan and other applicable federal, state and regional laws and regulations;
 - 2) Only includes property zoned for the type of dwelling units to be constructed; and
 - 3) Limits the proposed density to the total density allowed by the Lee Plan category.
 - b) The proposed development is designed so that:
 - 1) The resulting development does not have substantially increased intensities of land uses along its perimeter, unless adjacent to existing or approved development of a similar intensity;
 - 2) The additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road;
 - 3) Existing and committed public facilities are not so overwhelmed that a density increase would be contrary to the overall public interest;
 - 4) There will be no decrease in required open space, buffering, landscaping and preservation areas or adverse impacts on surrounding land uses;
 - 5) Storm shelters or other appropriate mitigation is provided, if the development is located within the Category 1 Storm Surge Zone for a land-falling storm as defined by the October 1991 Hurricane Storm Tide Atlas for Lee County prepared by the Southwest Florida Regional Planning Council; and
 - 6) The resulting development will be compatible with existing and planned surrounding land uses.

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- b. Denials. Before recommending denial of a rezoning request that complies with the applicable review criteria, the Hearing Examiner must find maintaining the existing zoning designation is not arbitrary, discriminatory, or unreasonable and accomplishes a legitimate public purpose.
- (5) ~~Decisions~~Recommendations. All ~~decisions of~~ The Hearing Examiner's recommendation on concerning zoning matters under this subsection (d) will be in the form of a recommendation provided in a written report to the Board of County Commissioners.
- (e6) Recommendations on Planned Developments.
- a. If the Hearing Examiner determines that a recommended condition is insufficient, he the Hearing Examiner may propose an alternate condition for consideration by the Board of County Commissioners.
- b. If the Hearing Examiner concludes that the application omits necessary deviation(s), those deviation(s) may be included in the recommendation without an additional hearing, provided evidence exists on the record to support the omitted deviation(s).
- c. The Hearing Examiner may not recommend conditions or deviations allowing use variances or deviations from definitions or procedural requirements of this Code or other Ordinances.
- d. As a condition of approval of a deviation, tThe Hearing Examiner may recommend that the applicant receive obtain administrative approval of a more detailed development plan for each affected development area as a condition of approval of a deviation.
- (e) Notice of intent to deny based on insufficient information. (4) ~~If the Hearing Examiner intends to deny or recommend denial of an application/appeal described in subsections (a) through (d) of this section based on the aApplicant's/Appellant's failure to provide information evidence adequate in scope and detail to address particular issues, he the Hearing Examiners may, in his discretion, send a notice of intent to deny based on insufficient information evidence to all Parties and participants in lieu of a denial or a recommendation to deny the application, or reopen the hearing. The procedure for issuing the notice and the responses to the notice are set forth in the Administrative Codes. The notice must state the issues on which additional information is necessary and 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 must prepare and submit a recommendation or decision, whichever is applicable, denying the application to the Board of County Commissioners and all participants. If the applicant does respond affirmatively, the Hearing Examiner must send a copy of the response to all participants of record along with a notice of a new hearing date, at which time the new evidence will be considered.~~
- (3) ~~The applicant must submit all of the new evidence provided in accordance with this section to the zoning staff, who will review it and prepare a supplementary staff report addressing only those issues to which the new evidence is relevant.~~

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- ~~(4) The hearing following the receipt of the new evidence will be limited to those issues to which the new evidence is relevant.~~
- ~~(5) No applicant will be entitled to more than one notice of intent to deny based on insufficient information.~~
- (f) *Equitable jurisdiction.* ~~Unless specifically provided, t~~The Hearing Examiner does not have the authority to render decisions based on equitable the law of equity in any proceedings under this section 34-145(a) through (d).
- (g) ~~In reaching a decision or preparing a recommendation, t~~The Hearing Examiner is limited to the authority granted within County regulations. ~~The Hearing Examiner is not authorized to render legal declarations regarding state or federal statutes, this includes, but is not limited to, the ability for the Hearing Examiner to render decisions regarding the effect of state or federal law on County regulations. The Hearing Examiner may consider state, federal, or common law in the application of the County regulations.~~
- ~~(h) Deviations or variances from procedural requirements of this chapter, chapter 10 or any other ordinance, definitions, or the actual use of land or structures are prohibited. This does not prohibit the granting of special exceptions as provided for in this Code.~~

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

- (a) The decision of the Hearing Examiner ~~will be final on~~ is final for:
 - (1) applications for aAdministrative appeals that are not appealed to, and decided by, the Board of County Commissioners; and
 - (2) Vvariances, and special exceptions, ~~when such variances or special exceptions are not except when those requests are:~~
 - a. part of a rezoning or ~~Development of County Impact~~ other request that requires final decision by the Board of County Commissioners; or
 - b. a wireless communication facility appealed to the Board pursuant to sections 34-1445(b) or 34-1453.
- (b) Judicial review of a final decisions of the Hearing Examiner ~~concerning an administrative appeal, variance or special exception will be in circuit court. This review may only be obtained through by filing a petition for writ of certiorari pursuant to in accordance with the Florida Rules of Appellate Procedure. The petition must be filed within 30 calendar days after the final decision has been rendered.~~

Appeals from Hearing Examiner decisions concerning wireless communication facilities must be to the Board of County Commissioners pursuant to sections 34-1445(b) and 34-1453, as applicable.
- ~~(bc) For the purposes of this subsection, a~~ A decision is "rendered" ~~as of on~~ 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.~~
- ~~(ed) The person making application to the Hearing Examiner for a final decision that is entitled to judicial review, is a necessary and indispensable party to an actions seeking judicial review.~~

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(de) This section is does not intended to preclude actions pursuant to F.S. § 70.51 or § 163.3215.

Secs. 34-147—34-170. Reserved.

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DIVISION 7. PUBLIC HEARINGS AND REVIEW

Sec. 34-231. Definitions. Reserved.

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Sec. 34-233. Preliminary review and notice certification.

(a) Staff Review

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(3) All The sStaff comments Report will be forwarded to the Hearing Examiner or Board of County Commissioners prior to the scheduled public hearing.

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 Agency~~, all persons will be heard. However, the ~~Hearing Examiner or Local Planning Agency~~ has the right to refuse to hear testimony which that is irrelevant, repetitive, defamatory or spurious, and to establish reasonable time limits on testimony.

(b) *Participation before ~~Board of County Commissioners; zoning matters~~.* At public hearings of zoning matters, only the Parties and participants or his representative at the proceeding before the Hearing Examiner will be afforded the right to may address the Board of County Commissioners. This prohibition does not apply to the Board's legal counsel, County staff whose sole purpose is to facilitate the zoning hearing, or legal counsel representing a Party or hearing participant. The testimony presented to the Board will be limited to:

(1) Testimony presented to the Hearing Examiner.

(2) Testimony concerning but only as to the correctness of the findings of fact or conclusions of law contained in the record, or

(3) to allege the discovery of Allegations that relevant new evidence has been discovered that which was not known or could not have been reasonably discovered by the speaker at the time of the hearing before the Hearing Examiner, and not otherwise disclosed in the record.

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

(c) Participation before the Hearing Examiner will be in accordance with the Administrative Codes.

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Sec. 34-235. Deferral or continuance of public hearings before the Local Planning Agency and Board.

For purposes of this division only, certain terms are defined as follows:

~~Continuance means an action initiated by the applicant, staff or a Hearing Examiner or the Board of County Commissioners to postpone, to a later time or date, a public hearing after the notice of the public hearing has been submitted to the newspaper for publication as required in section 34-236.~~

Deferral means an action initiated by the applicant or staff to postpone, to a later time or date, a public hearing prior to the notice of the public hearing being submitted to the newspaper for publication.

The following procedures and regulations for deferring or continuing a public hearing apply for the ~~Hearing Examiner, Local Planning Agency (LPA) and Board of County Commissioners:~~

(1) Deferrals.

- a. ~~A scheduled but not yet advertised public hearing may be deferred by the Division staff or by the applicant as follows: A Party may request to defer a scheduled public hearing to a later time or date if requested before delivery of the public hearing notice to the newspaper.~~
- ab. ~~County Department-initiated deferral.~~ The Division of Zoning and Development Services may ~~If the Department defers~~ a scheduled public hearing, prior to advertising, if additional or corrected information is required to permit ~~s~~Staff to properly or adequately review ~~an~~ requested application, provided notice is mailed to the applicant stating the reason for the deferral and what additional information is required to complete staff review. ~~the Department must notify the Applicant in writing of the reason for deferral and specify the information necessary to complete Staff review.~~
- bc. ~~Applicant-initiated deferral.~~ An applicant may request a deferral of the public hearing if the request is in writing and received by the Division of Zoning and Development Services prior to the Division submitting notice of the hearing to the newspaper for publication.
- c. ~~Fee.~~ There will be no additional fee for either a staff-initiated or applicant-initiated deferral. However, the ~~a~~Applicant must obtain corrected zoning notice posters from the ~~Division Department~~ and post the signs on-site, if required by the LDC or Administrative Codes.
- de. Applicant-initiated deferral requests meeting the requirements of this section may be deferred by ~~t~~The Director may defer a case without any further action by the ~~Hearing Examiner, Local Planning Agency (LPA), 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) Continuances.

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- a. A scheduled, advertised public hearing may be continued by the County or by the applicant as follows: Public hearings before the Board may be continued in compliance with the Administrative Codes.
- b. Continuances before the LPA.
 1. If the notice of the public hearing was delivered to the newspaper for publication, the scheduled public hearing may be postponed only through a continuance.
 - 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 necessary to require additional information, public testimony or time to render an appropriate recommendation. Any County initiated request to continue a public hearing must be in accordance with the rules set forth in AC 1-3~~
 2. ~~The hearing must be continued to a date certain, and the Hearing Examiner, Local Planning Agency or Board of County Commissioners must continue its consideration on the hearing matter on that date certain.~~
 2. The LPA may continue a public hearing to a specific time and date. Any hearing not continued to a date certain is deemed to be withdrawn closed.
 3. ~~County staff is~~ The Parties are each entitled to one continuance as a matter of right. ~~Each decision-making body~~ The LPA may has the authority to grant additional continuances upon a showing of good cause. ~~There are no limitations to the number of County-initiated continuances.~~
 4. The County Party requesting the continuance must bear the all renotification costs of notification of the new hearing date, if any a County initiated continuance.
 5. If the continuance request is denied, the hearing will proceed.
 - b. ~~Applicant initiated continuance.~~
 1. ~~The applicant may appear before the Hearing Examiner, Local Planning Agency or Board of County Commissioners at the beginning of its scheduled agenda and request the continuance.~~
 2. ~~The applicant is entitled to one continuance before each decision-making body as a matter of right. A request for continuance by the applicant for a case scheduled before the Board of County Commissioners must be submitted to the Department of Community Development no later than five calendar days before the scheduled hearing. Each decision-making body has the authority to grant additional continuances upon a showing of good cause.~~
 - i. ~~If the additional request for continuance is denied, the hearing 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. Any hearing not continued to a date certain is deemed to be withdrawn.~~

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- ~~3. A fee, in accordance with a duly adopted fee schedule, will be charged for any applicant initiated continuance to cover the costs of renotification. The applicant must bear all renotification costs of an applicant-initiated continuance.~~

Sec. 34-236. Notices.

...

(b) Method of providing notice.

~~(1) Notices of hearings before the Board of County Commissioners, the Hearing Examiner and the Local Planning Agency will be provided in accordance with applicable Florida Statutes and the County Administrative Codes.~~

~~(2) Mailed notice may be provided via electronic means unless prohibited by statute.~~

~~(3) The "surrounding property owners list and map" required by section 34-202(a) is for the purpose of mailing notice to property owners within 500* 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 the notice or failure of an affected property owner to receive mailed notice will not constitute a defect in notice or bar the public hearing as scheduled.~~

~~*NOTE: in those instances where fewer than ten owners of property would be notified, the distance must be expanded to include all owners of property within 750 feet, and or 1,250 feet for wireless communication facilities.~~

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ARTICLE IV. PLANNED DEVELOPMENTS

DIVISION 1. GENERALLY

...

Sec. 34-376. Prehearing stipulation Prehearing Materials.

~~(a) If the applicant wishes to enter a stipulation under this division he must file a stipulation setting out the issues on which he and the staff do not agree, with the Hearing Examiner no less than two working days prior to the date of the hearing. The stipulation 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 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 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 must be continued unless the Hearing Examiner determines that the absence of the stipulation will not materially impair his abilities to understand the case.~~

~~(a) Summary Report.~~

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- (1) After an application is found sufficient and before transmittal of the Staff Report to the Hearing Examiner, the Applicant may provide a report that includes a substantive analysis of the request with copies of documents, studies, plans, or other materials (hereinafter "materials") for the Hearing Examiner to consider.
- (2) The Applicant's report will be transmitted to the Hearing Examiner with the Staff Report.
- (3) The Applicant must submit three complete copies of the report to the Staff at least 25 calendar days prior to the scheduled hearing. Staff will include one copy of the report to the Hearing Examiner and one copy to the County Attorney's office with the Staff Report. The third copy will be retained in the official zoning file. If the materials are not submitted a minimum of 25 calendar days prior to the scheduled hearing, the Applicant waives the right to have the materials transmitted to the Hearing Examiner prior to the hearing.
- (4) If the materials include substantive changes to the information submitted with the original Application or in response to sufficiency questions asked by Staff, Staff may withdraw the sufficiency determination and seek a continuance to review the materials.

(b) Expert Testimony Information.

- (1) The Director may require an Applicant to provide the following information at least 48 hours before the date an expert is expected to testify:
 - a. Expert's name, business address and current resume;
 - b. A detailed description of the expert's qualifications (or copy of current resume) and the area of expertise;
 - c. A copy of the report that serves as the basis of the expert's opinion (if not already submitted with the application or included in the Staff Report). The report must include:
 1. A brief description of research conducted by the expert to reach the opinion;
 2. A description of the facts, assumptions, and data forming the basis of the opinion; and
 3. The opinion;
 - d. Copies of materials relied on in formulating the expert's opinion:
 1. Summary or demonstrative materials do not need to be provided in advance, provided the underlying data or facts are provided.
 2. Citations to the Land Development Code, Lee County Administrative Codes, Florida Statutes, U.S. Code, Florida Administrative Code, or Lee Plan are sufficient to meet this requirement.
- (2) If requested, the Director's written request for information must be issued prior to finding the application sufficient.
- (3) The expert testimony information may not be submitted to the Hearing Examiner prior to the hearing unless included in the Applicant's summary report referenced in subsection (a).

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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)(3) 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. ~~The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.~~
 - c. ~~The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.~~
 - ^
 - (4) ~~If the application includes a schedule of deviations pursuant to section 34-373(a)(9), the Hearing Examiner's recommendation must approve, approve with modification or reject each requested deviation based upon a finding that each item:~~
 - a. ~~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.~~
 - ^
 - (5) ~~^ 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 by the request.~~
 - (6) ~~The Hearing Examiner recommendation must consider whether the proposed development intensity is supported by sufficient vehicular access and traffic flow from the County street system. However, the Hearing Examiner may not recommend a condition that appears to guarantee or approve a temporary or permanent median opening, turning movement or traffic control device in order to address any deficiency.~~
- (ba) *Hearing before Board of County Commissioners.*

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ARTICLE VI. - DISTRICT REGULATIONS

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DIVISION 10. - SPECIAL PURPOSE DISTRICTS

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Subdivision II. - Environmentally Critical District

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Sec. 34-981. - Purpose and intent.

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(b) The application of the EC district is intended to prevent a public harm by: (1) precluding the use of land for purposes for which it is unsuited in its natural state and which injures the rights of others; or ~~otherwise~~ (2) adversely affects a defined public interest. The EC district shall will be applied to an area of land or water only upon a recommendation by the Hearing Examiner and a finding by the Board of County Commissioners in their respective public hearings that the use or conversion of the property may create a public harm or a public need, as described in section 34-145(d)(4)a.3.

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ARTICLE VII. - SUPPLEMENTARY DISTRICT REGULATIONS
DIVISION 5. ALCOHOLIC BEVERAGES

Sec. 34-1262. Compliance with applicable regulations.

- (a) No structure, building, establishment or premises shall may be occupied, used or maintained for the purpose of the retail sale, service or consumption of alcoholic beverages except in conformity with all applicable State and County regulations, including this chapter, and with the applicable state regulations.
- (b) Failure to abide by County and State regulations may result in the revocation of alcoholic beverage approval, as addressed by Section 34-1265.

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

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- (i) ~~Revocation of permit or approval.~~
 - (1) The Hearing Examiner has the authority to revoke an alcoholic beverage special exception, administrative approval, or other approval upon any of the following grounds:
 - a. A determination that an application for special exception 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.

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- 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, 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 or administrative approval.~~
- g. ~~Violation of any of the minimum standards of the special exception.~~
- (2) ~~Prior to revoking an administrative approval, special exception, or other approval for alcoholic beverages, the 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 Hearing Examiner may revoke the permit if a violation described in this subsection is established by a preponderance of the evidence. The permit holder must be notified of the grounds upon which revocation is sought prior to any hearing, and 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 in accordance with the terms of this subsection, the County may not consider a petition requesting an alcoholic beverage permit on the property for a period of 12 months from the date of final action on the revocation.~~
- (4) ~~Upon written demand of the Hearing Examiner, any owner or operator of an establishment with a COP license must make, under oath, a statement itemizing the percentage of his gross receipts from the sale of alcoholic beverages. Failure to comply with the demand within 60 days of the demand date is grounds for revocation of the special exception, administrative approval, or other approval.~~
- (j) *Appeals.* ~~All appeals of the Director's decisions by the Director must be filed in accordance with the procedures set forth in article II or article IV of this chapter for appeals of administrative decisions.~~
- (k) *Bottle clubs.*
 - (1) ~~All bottle clubs operating under a valid special permit as of September 18, 1996 are deemed nonconforming on the effective date of this ordinance uses.~~
 - (2) ~~All non-conforming bottle clubs must discontinue their use no later than 12 months from the effective date of this ordinance.~~
 - (3) ~~No new bottle clubs will be allowed in any zoning district. This subsection supersedes and repeals any existing County regulations in conflict herewith.~~

Sec. 34-1265. Revocation of alcoholic beverage permit or approval

- (a) The Board has the authority to revoke an alcoholic beverage special exception, administrative approval, or other alcohol related approval on the following grounds:
 - (1) Evidence shows the Applicant knowingly submitted false or misleading information in the request;
 - (2) The approval was granted based on a mutual mistake of fact;
 - (3) Violation of a condition of the approval;

- (4) Violation of the Land Development Code provisions related to the alcoholic beverage use;
 - (5) The operation of or change to the alcoholic beverage use is materially inconsistent with the minimum standards of the special exception or the review criteria for the use;
 - (6) The operation of or change to the alcoholic beverage use materially alters the information, configuration, basis, or circumstances presented by the Applicant and on which the approval was granted;
 - (7) The alcoholic beverage permit property had more than two findings of violation of a County ordinance within the 12-month period preceding the revocation hearing;
 - (8) Revocation of the permit holder's state alcoholic beverage license;
 - (9) Failure to maintain a state liquor license on the premises; or
 - (10) Abandonment of the premises. If an establishment maintains a state liquor license, the premises will not be deemed abandoned for purposes of this subsection, even though active business with the public may have been temporarily suspended.
- (b) The Board or Director may initiate the revocation of the alcoholic beverage approval.
- (c) The notice to the permit holder, scheduling of the hearing, and conduct of the revocation hearing will be in accordance with Section 2-420 et seq. process. At the conclusion of the hearing, the Hearing Examiner will prepare a recommendation to the Board, who will make the final decision on the revocation.
- (d) If the Board revokes an alcoholic beverage permit, the County may not consider a request for an alcoholic beverage permit on the same property for 12 months from the date of final action on the revocation.

Secs. 34-12656—34-1290. Reserved.

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DIVISION 11. - WIRELESS COMMUNICATION FACILITIES

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Sec. 34-1445. - Development review process.

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(b) *Zoning.*

...

(3) *Final decision.*

a. *Approval.*

1. For administrative approvals and in addition to the findings required by section 34-145 for special exceptions and variances, for new antenna supporting structures the County must make all of the following findings (or conclude that a finding is not applicable) before granting approval of an application:

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4-a) The aApplicant is not able to use existing wireless communications facility sites, ~~either with or without repeaters,~~ in the geographic search area; and

2-b) The aApplicant has agreed to rent or lease available space on the antenna-supporting structure, under the terms of a fair-market lease, without discrimination to other wireless communications service providers; and

3-c) The proposed antenna-supporting structure will not be injurious to historical resources, obstruct scenic views, diminish residential property values, or reduce the quality and function of natural or man-made resources; and

4-d) The aApplicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the structures and facilities.

2. For new antenna supporting structure special exceptions, the Hearing Examiner must make additional findings, as indicated in section 34-145(c)(3)b.

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Sec. 34-1453. - Variance criteria.

(a) Variances ~~or deviations~~ to this division must be in accordance with the procedures and requirements set forth in section 34-145. ^

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(b) Appeal of decisions of the Hearing Examiner pursuant to this section will be to the Board of County Commissioners in accordance with the provisions of section 34-1445(b)(2).

DIVISION 12. – DENSITY

Subdivision III. – Housing Density for Provision of Very Low, Low, Moderate and Work Force Income Housing

Sec. 34-1517. - Procedure to approve density increases.

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(d) Processing the application.

(1) Hearing eExaminer. The bonus density application and staff recommendation will be presented to the Hearing Examiner in accordance with the procedure set forth in section 34-145(d).

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The Hearing Examiner's recommendation to the Board must also consider the review criteria contained in section ~~34-1516(c)~~ as well as the provisions in the draft contract agreement 34-145(d)(4)a.4. A copy of the draft contract must be attached to the Hearing Examiner recommendation for consideration by the Board.

- (2) Board action. The Board will consider the Hearing Examiner's recommendation ~~will be considered by the Board~~ in accordance with the procedure set forth in section 34-83(b). During the hearing, the Board will consider the evidence and testimony submitted with respect to the bonus density application along with the proposed bonus density contract. The Board and may approve or deny the application and contract based upon the criteria set forth in section ~~34-1517(e)~~ 34-145(d)(4)a.4.

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DIVISION 37. - SUBORDINATE AND TEMPORARY USES

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Sec. 34-3046. - Temporary use of mobile home.

- (a) *Rehabilitation or construction of residence following disaster.*
- (1) If fire or disaster renders a single-family residence unfit for human habitation, the temporary use of a mobile home, travel trailer or park-trailer located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.
 - (2) The maximum duration of the use is 18 months or 540 days after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, then the maximum duration of the use is six months. The Director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the owner's control. Application for an extension must be made prior to expiration of the original permit. ~~Additional extensions may be granted only by the Hearing Examiner approval.~~
- (b) *Rehabilitation or construction of a damaged business, commercial or industrial uses following disaster.*
- (1) Business, commercial or industrial uses, damaged by a major or catastrophic disaster necessary for the public health and safety or that will aid in restoring the community's economic base, may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.
 - (2) The maximum duration of the temporary use is nine months or 270 days after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, then the maximum duration of the use is six months. The Director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the owner's control. Application for an extension must be made prior to expiration of the original permit. ~~Additional extensions may be granted only by Hearing Examiner approval~~

...

Underlining indicates new language

~~Strike-through~~ indicates deleted existing language

Italicize language indicates existing language moved from its existing location

^ symbol indicates a location from which existing language was moved

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Sec. 34-3047. - Temporary telephone distribution equipment.

Telephone distribution equipment may be granted a temporary permit during planning and construction of permanent facilities, provided that:

- (1) The equipment is less than six feet in height and 300 cubic feet in volume; and
- (2) The maximum length of the use shall be six months, but the Director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company. Application for an extension shall be made at least 15 days prior to expiration of the original permit. ~~Additional extensions may only be allowed by the Hearing Examiner.~~