

LEE COUNTY ORDINANCE NO. 22-11

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC), CHAPTERS 2, 10, 12, 14, 22, 26, 33, AND 34 RELATING TO FUNCTIONS OF THE HEARING EXAMINER (HEX); PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER=S ERRORS, AND AN EFFECTIVE DATE.

THE SPECIFIC LDC PROVISIONS THAT WILL BE AMENDED ARE: SEC. 2-1 (REQUESTS FOR AN INTERPRETATION OF A CODE PROVISION); SEC. 2-2 (COMPLIANCE AGREEMENTS); SEC. 2-52 (APPEALS); SEC. 2-147 (PROCEDURE TO APPROVE BONUS DENSITY); SEC. 2-191 (UNAUTHORIZED COMMUNICATIONS); SEC. 2-425 (CONDUCT OF HEARING); SEC. 2-427 (PENALTIES AND LIENS); SEC. 10-112 (APPEALS); SEC. 10-476 (VARIANCE PROCEDURES AND APPEALS); SEC. 12-124 (APPEALS); SEC. 14-255 (APPEALS); SEC. 22-174 (RELIEF FROM ZONING REGULATIONS); SEC. 26-71 (DOCKING FACILITIES AND BOAT RAMPS); SEC. 26-80 (TRANSFER OF (WATERCRAFT) SLIP CREDITS (TSC)); SEC. 33-6 (APPEAL); SEC. 34-83 (FUNCTIONS AND AUTHORITY); SEC. 34-145 (FUNCTIONS AND AUTHORITY); SEC. 34-146 (FINAL DECISION; JUDICIAL REVIEW); SEC. 34-231 (PUBLIC PARTICIPATION); SEC. 34-341 (EMPLOYMENT OF PLANNED DEVELOPMENT DESIGNATION); SEC. 34-1082 (OVERVIEW OF REDEVELOPMENT OVERLAY DISTRICT REGULATIONS); SEC. 34-1264 (SALE OR SERVICE FOR ON-PREMISES CONSUMPTION).

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

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

WHEREAS, the Board of County Commissioners of Lee County, Florida, has adopted a comprehensive LDC; and,

WHEREAS, Goal 4 of the Lee County Comprehensive Land Use Plan (Lee Plan) states: Pursue or maintain land development regulations which protect the public health, safety and welfare, encourage creative site designs and balance development with service availability and protection of natural resources; and,

WHEREAS, the Land Development Code Advisory Committee reviewed the proposed amendments to the LDC on March 11, 2022, and recommended approval of the proposed amendments as modified; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on April 13, 2022 and recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on March 28, 2022, and found them consistent with the Lee Plan, as indicated.

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

SECTION ONE: AMENDMENT TO LDC CHAPTER 2

Lee County Land Development Code Chapter 2 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 2 – ADMINISTRATION

ARTICLE I. – IN GENERAL

Sec. 2-1. - Requests for an interpretation of a code provision.

Where a question arises as to the meaning or intent of a section or subsection of this Code, a written request stating the area of concern and the explicit interpretation requested may be submitted to the director of the department of community development, on forms provided by the department. Requests for interpretation regarding a specific property may only be submitted by the owner or registered agent for the owner of the subject property.

Subsections (1)-(3) remain unchanged.

Sec. 2-2. – ~~Compliance agreements~~ Code Enforcement Agreements.

- (a) *Authority.* The County Manager or his designee has the authority to enter into ~~compliance~~ Code Enforcement agreements to facilitate compliance with the terms and conditions of the Land Development Code. ~~Compliance~~ Code Enforcement agreements may be executed at the discretion of the County Manager or his designee. However, the County Manager is under no obligation to enter in a ~~compliance~~ Code Enforcement agreement.
- (b) *Purpose.* The purpose of the ~~compliance~~ Code Enforcement agreement is to provide an alternative and efficient means to reach compliance with the terms of this Code in the event a violation is discovered.

- (c) ~~Procedure. Compliance Code Enforcement~~ agreements may only be entered into at any time prior to the violator's receipt of a notice of hearing for code enforcement action ~~before the Lee County Hearing Examiner entering an Order Finding Violation.~~ The agreement must be in writing and executed in recordable form, after review and approval by the County Attorney's office. At a minimum, the agreement must specifically set forth the terms and obligations necessary to abate the violation. The agreement must also provide a specific abatement time frame and the fine to be imposed if the violation has not been abated in accordance with the Agreement. The County may, at its option, record the ~~compliance Code Enforcement~~ agreement in the public records. If a copy of the agreement is recorded, the County, at the violator's expense, will record a satisfaction or release of the agreement once the violation is deemed abated.
- (d) The ~~parties~~ violator must comply with all terms of the agreement, in the stated time frame, before the violation will be deemed abated. In the event the ~~parties~~ violator fails to comply with the terms of the agreement, the County may pursue imposition of the agreed upon fine amount or other code enforcement action. ~~If the County pursues code enforcement action subsequent to the execution of the compliance agreement, the terms of the agreement will have no further effect on the parties and will not be binding on the Hearing Examiner.~~
- ~~(d)(e)~~ Enforcement. ~~The terms and conditions of a compliance agreement may be enforced in a court of competent jurisdiction by injunction or an action for specific performance. In the event the parties execute, but do not perform all obligations under an agreement, the County may pursue Code Enforcement Hearing Examiner action in accordance with Article VII. The Hearing Examiner is not responsible for the enforcement of compliance agreement obligations. If the violation has not been abated in accordance with the terms of the Agreement, the County may elect to enforce the terms and conditions of the agreement in a court of competent jurisdiction by injunction or an action for specific performance; or, the County may present the case to the Hearing Examiner for the sole purpose of determining that the agreed upon abatement has not occurred in accordance with the Agreement and entry of an Order Imposing a Fine at the agreed upon fine amount pursuant to the Agreement; or, any combination of the above methods. Unless otherwise agreed upon by the Director, the Hearing Examiner shall not impose a fine different than the one agreed upon within the Agreement, change the required date of abatement, or change the required method of abatement for the violation.~~

ARTICLE II. – CONCURRENCY MANAGEMENT SYSTEM

DIVISION 1. – CONCURRENCY MANAGEMENT PROVISIONS

Sec. 2-52. - ReservedAppeals.

~~Except for challenges to development orders controlled by the provisions of F.S. § 163.3215, decisions made by the Director in the course of administering this article may be appealed in accordance with those procedures set forth in chapter 34 for appeals of administrative decisions. In cases of challenges to development orders controlled by F.S. § 163.3215, no suit may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the Director or by virtue of its having been ordered by the County Hearing Examiner on an appeal reversing the Director's denial of the development permit, or by the Board of County Commissioners in cases where the Board has granted planned development zoning or an extension of a development order. Once a development order has been granted, the provisions of F.S. § 163.3215 will be the sole means of challenging the approval or denial of a development order, as that term is defined in F.S. § 163.3164(6), when the approval of the development order is alleged to be inconsistent with the Lee Plan. An action brought pursuant to F.S. § 163.3215 will be limited exclusively to the issue of comprehensive plan consistency.~~

ARTICLE IV. – BONUS DENSITY

DIVISION 2. – BONUS DENSITY PROGRAM

Sec. 2-147. – Procedure to approve bonus density.

Subsection (b)(2)b is amended as follows:

- b. The Director's written findings conclude that, in addition to the minimum requirements provided in section 2-146, the proposed development is:
 1. Designed so that 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; and
 2. Will not decrease required open space, buffering, landscaping and preservation areas or cause adverse impacts on surrounding land uses.

The Director's written approval may contain reasonable conditions to mitigate adverse impacts that could otherwise be created by the density increase. ~~The Director's decision may be appealed according to the provisions of chapter 34 for appeals of administrative decisions.~~

Remainder of section unchanged.

ARTICLE V. – UNAUTHORIZED COMMUNICATIONS

Sec. 2-191. - Unauthorized communications.

Subsection (a) remains unchanged.

(b) *Unauthorized communications with a County Commissioner prohibited.*

- (1) ~~*Unauthorized communication with a County Commissioner.*~~ No person may communicate with an individual Commissioner or a Commissioner's assistant regarding the substance (non-procedural aspects) of a pending rezoning action or appeal that will be considered by the Board under sections 34-83(b)(1) and (6), to include:
 - a. Rezoning actions (conventional rezoning and planned developments);
 - b. Development of regional impact applications;
 - c. Special exceptions meeting the development of County impact thresholds;
 - d. Special exceptions and variances to be decided in conjunction with a zoning request;
 - e. Code enforcement proceedings requiring a rezoning to achieve compliance; and
 - f. Reinstatement or extension of a master concept plan.
- (2) This section does not prohibit the informational discussion of pending or proposed cases or appeals by and between a County Commissioner and any employee of the Board of County Commissioners.

(c) Unauthorized communication with a County Hearing Examiner prohibited.

- (1) No person may communicate with a Hearing Examiner or the Hearing Examiner's staff regarding the substance (non-procedural aspects) of a pending rezoning action or appeal to be considered by the Hearing Examiner under sections 2-420 through 2-429, or 34-145. This prohibition includes communications on the substance of:

- a. Code enforcement proceedings;
- b. Rezoning actions (conventional rezoning and planned developments);
- c. Rehearings on remand from the Board;
- d. Developments of regional impact;
- e. Special exceptions;
- f. Variances; and
- g. Appeals brought from administrative decisions.

~~(3)~~(2) *Limited communications to and from a Hearing Examiner.* Under certain limited circumstances communication with a Hearing Examiner during the pendency of a zoning action, or other proceeding defined in section 2-191(2), is permitted as follows:

- a. Written communications specifically requested by the Hearing Examiner pursuant to an order or in compliance with section 34-378 (24 hour rule).
- b. *Advice from a disinterested expert.* A Hearing Examiner may obtain the advice of a disinterested expert other than another County Hearing Examiner or employee of the County (except a member of the Hearing Examiner's staff) concerning a matter of law, planning or zoning applicable to a proceeding before the Hearing Examiner. A Hearing Examiner must give notice of the intention to solicit such an opinion to all interested parties who appeared at the public hearing personally, by agent or through counsel, or have filed documents or statements in the public record under consideration in the pending matter; forward copies of the written opinion received as a result of the request to each party; and afford all interested parties reasonable opportunity to respond to and rebut the opinion on the record prior to rendering a decision.

~~(4)~~(3) This section does not prohibit the discussion of pending or proposed cases or appeals by and between the Hearing Examiners or between a Hearing Examiner and any employee of the office of the Hearing Examiner.

~~(c)~~(d) *Penalties.* Any person who intentionally makes or attempts to initiate an unauthorized communication to or with a Hearing Examiner, a member of the Hearing Examiner's staff, a County Commissioner or an assistant to a County Commissioner, or any Hearing Examiner or County Commissioner who fails to publicly disclose and report an unauthorized communication or an attempt to initiate an unauthorized communication, may be subject to the following penalties:

- (1) *Criminal penalties.* Such person may be subject to punishment as provided for in section 1-5.
- (2) *Civil penalties.* Such person may be subject to:
 - a. Revocation, suspension or amendment of any permit, variance, special exception or rezoning granted as a result of the Hearing Examiner action that is the subject of the unauthorized communication, and,
 - b. Any other relief available at law or in equity.

Each unauthorized communication or attempt to initiate an unauthorized communication constitutes a separate offense under the provisions of this section.

ARTICLE VII. – HEARING EXAMINER

Sec. 2-425. - Conduct of hearing.

- (a) Code Enforcement Hearings will be conducted in accordance with Administrative Code 2-14.
- ~~(b)~~ *Scheduling of hearings.* A regular time and place will be designated by the Hearing Examiner for code enforcement proceedings. The frequency of hearings will be based upon the number of cases to be heard. If necessary, the Hearing Examiner may also set special hearings that may occur on any day. The code enforcement section will schedule cases to be heard by the Hearing Examiner. All code enforcement proceedings and hearings will be open to the public, but no public input will be taken.
- ~~(b)~~ ~~Before the hearing, the Director will give the alleged violator the opportunity to enter into an Agreed Order Finding Violation with Lee County.~~
- ~~(c)~~ ~~*Hearing agenda.* Each item on the day's agenda will be addressed in one of the following manners:~~

- ~~(1) — Removed as corrected;~~
- ~~(2) — Withdrawn from prosecution;~~
- ~~(3) — Withdrawn for re-noticing or other change;~~
- ~~(4) — Continued to a date certain;~~
- ~~(5) — Through an Agreed Order; or~~
- ~~(6) — Heard and decided.~~

~~(d)~~(c) *Prosecution of the case.* Each case on the code enforcement docket will be presented to the Hearing Examiner by the County's Code Enforcement department or County Attorney's Office on the date of the hearing unless the case has been abated, resolved through a Code Enforcement Agreement, or a request for continuance has been granted. The County will be entitled to recover prosecution costs if the County prevails. The issuance of an Order Finding Violation will serve as evidence the County prevailed in prosecuting the case.

~~(e)~~(d) *Hearing testimony.* All testimony will be under oath and recorded. Testimony will be taken from a code inspector and, if present, the alleged violator. Formal rules of evidence will not apply, but fundamental due process will be observed and will govern the proceedings.

~~(f)~~(e) *Decisions.* At the conclusion of each case heard that was not continued for additional review, the Hearing Examiner will make findings of fact, conclusions of law, and a decision, based on the evidence of record.

~~(g)~~(f) *Hearing Examiner orders.*

- (1) After the close of the day's hearings, the Hearing Examiner will issue a written non-final Order of Continuance, an Order Finding Violation, or an Order Finding No Violation. The Orders Finding Violation or Finding No Violation are final orders.
- (2) Orders Finding Violation.
 - a. The Order Finding Violation must include the actions necessary to correct the violation, the fine to be imposed if the violation is not corrected, and an award of the prosecution costs due and owing to the County.
 - b. The Hearing Examiner has the discretion to grant additional time to correct the violation. The written Order will state the date of correction.

- c. Upon finding a repeat violation, the Hearing Examiner ~~may~~ must order the fine imposed pursuant to sec 2-427 to begin on the date the code inspector discovered the repeat violation.
- d. Upon finding a violation warrants an immediate hearing, as contemplated by section 2-424(e), the Hearing Examiner may order the violator to pay a fine and will notify the Division of Codes and Building Services of the finding. The division may make the repairs to bring the property into compliance and charge the violator the reasonable costs for the repairs, along with the fine imposed by the Hearing Examiner.

(3) Orders Imposing Fines.

- a. Upon receipt of a sworn statement by the Director that a code enforcement violation has not been corrected by the time set in the Order Finding Violation, the Hearing Examiner ~~may~~ shall order the violator to pay the fine specified in the ~~Order~~ sec 2-427 or grant a continuance if a request has been made and good cause shown to grant the continuance. The imposition of the fine will be reflected in a written Order Imposing Fine, which will be sent to the violator. No hearing is required for the imposition of the fine noted in the Order Finding Violation.
- b. If a dispute arises as to whether correction occurred within the set timeframe, the Hearing Examiner may grant a request for a hearing to review the evidence as to correction. Requests for a review hearing must be in writing and set forth the reasons for dispute on the matter of correction. The request must be made either on the date set for correction or within 20 days thereafter.
- c. If review of the Order Imposing Fine is not requested as indicated above or the Order is reviewed and upheld, the Order Imposing Fine is a final order.

Remainder of section unchanged.

Sec. 2-427. - Penalties and liens.

(a) *Penalties.*

- (1) ~~Fines imposed under this section may not exceed \$250.00 per day for the first violation or \$500.00 per day for a repeat violation. Fines~~

imposed under this section for the first violation will be no less than \$25 per day and no greater than \$250 per day. Fines imposed under this section for a repeat violation will be no less than \$50 per day and no greater than \$500 per day. Unless agreed upon by the County Manager or designee, fines imposed pursuant to a Code Enforcement Agreement must be imposed in accordance with the provisions of the Code Enforcement Agreement. However, if the Hearing Examiner finds a violation is irreparable or irreversible in nature, a fine of up to \$5,000.00 per violation may be imposed. Further, the fine may include the cost of all repairs incurred by the county as well as the costs of prosecuting the case before the Hearing Examiner.

- (2) For purposes of this article, prosecution costs include, but are not limited to, recording costs, inspection costs, appearances by the code inspector at hearings, photography costs, and similar items.
- (3) The following factors will be considered by the Hearing Examiner in determining the fine to be imposed above the minimum fine specified above:
 - a. The gravity of the violation;
 - b. Actions taken by the violator to correct the violation; and
 - c. Previous violations committed by the violator.
- (4) The Hearing Examiner may mitigate fines imposed under this section, as provided in section 2-427(g).

Subsections (b) through (g) remain unchanged.

- (h) Mitigation of ~~lien~~ Code Enforcement Fines and Costs. Once the violation has been abated, ~~t~~The Hearing Examiner has the authority to mitigate code enforcement fines and costs by reducing or eliminating fines and costs imposed by Hearing Examiner's Orders up to the point of the county filing for foreclosure of the lien.
- (1) Prior to mitigating an Order imposing a fine entered pursuant to a Code Enforcement Agreement, the Hearing Examiner must find that the request meets the requirements of 2-427(a)(3), and, the failure to abate the violation was the result of excusable neglect or the ability to abate the violation was outside the control of person requesting the Mitigation during the time given for abatement and the individual diligently pursued abatement once able to do so.

- (2) The person requesting the mitigation has the burden to demonstrate that the requirements for mitigation have been met.

SECTION TWO: AMENDMENT TO LDC CHAPTER 10

Lee County Land Development Code Chapter 10 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 10 – DEVELOPMENT STANDARDS

ARTICLE II. – ADMINISTRATION

DIVISION 2. – DEVELOPMENT ORDERS

Subdivision II. – Procedures

Sec. 10-112. – Reserved. Appeals.

~~(a) *Right of appeal.*~~

- (1) ~~The applicant may file an appeal of any decision of the Development Review Director. Except as may be required by F.S. § 163.3215, and then only pursuant to that statute, a third party does not have standing to appeal an administrative decision granting or denying a development order.~~

- (2) ~~An appeal is not a legal substitute for a variance. Any appeal that requests a departure from or waiver of the terms and conditions of this chapter will not be heard through the appeal process.~~

- (b) ~~*Procedure.* The appellant must file a written appeal of the Director of Development Review's decision in accordance with those procedures set forth in chapter 34 for appeals of administrative decisions.~~

~~(c) *Decisions.*~~

- (1) ~~If the decision of the Development Review Director is upheld, then the applicant may redraft and resubmit all documents which are necessary for the appropriate approval in accordance with sections 10-109 and 10-110.~~

- (2) ~~If the decision of the Development Review Director is reversed without modifications, then the applicant may prepare the submittals required for final approval or be issued a development order by the Development Review Director, as appropriate.~~

- (3) ~~If the decision of the Development Review Director is modified on appeal, then the applicant may take the remedial steps necessary to correct the rejected submittals and resubmit them in accordance with sections 10-109 and 10-110.~~

~~(d) — *Special Magistrate.*~~

- (1) ~~The applicant may file a request for relief under F.S. § 70.51, within 30 days from the conclusion of an administrative appeal or four months from the initiation of an administrative appeal, even if that appeal has not concluded.~~
- (2) ~~The request for relief must allege that the decision of the Director is unreasonable or unfairly burdens the use of the subject property. The request for relief will be heard by an impartial special magistrate in accordance with the procedure set forth in the Administrative Code.~~
- (3) ~~The request for relief under F.S. § 70.51, will not adversely affect the applicant's right to judicial review. However, a request for judicial review will waive the right to a special magistrate proceeding.~~

ARTICLE III. – DESIGN STANDARDS AND REQUIREMENTS

DIVISION 8. – PROTECTION OF HABITAT

Sec. 10-476. - Variance procedures and appeals.

- (a) ~~Requests for variances from the terms of this division will be administered and decided in accordance with the requirements for variances set forth in chapter 34.~~
- (b) ~~Any decision made by the Director or his designee may be appealed under the procedures set forth in chapter 34 for appeals of administrative decisions.~~

SECTION THREE: AMENDMENT TO LDC CHAPTER 12

Lee County Land Development Code Chapter 12 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 12 – RESOURCE EXTRACTION

ARTICLE II. – MINING AND EXCAVATION

Sec. 12-124. - Appeals.

A final decision of the Board of County Commissioners rendered with respect to a MEPD may be appealed in accordance with section 34-85.

Final ~~Decisions~~ rendered by a Director under this article may be appealed in accordance with, and subject to the limitations under, ~~the provisions of~~ section 34-145(a), ~~unless otherwise specifically provided.~~

~~A decision of the Code Enforcement Hearing Examiner may be appealed in accordance with the provisions set forth in section 2-420.~~

SECTION FOUR: AMENDMENT TO LDC CHAPTER 14

Lee County Land Development Code Chapter 14 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 14 – ENVIRONMENT AND NATURAL RESOURCES

ARTICLE III. – WELLFIELD PROTECTION

DIVISION 2. – ADMINISTRATION AND ENFORCEMENT

Sec. 14-255. - Appeals.

If the department ~~division~~ denies an exemption ~~or the applicant disputes any final administrative determination made by the division pursuant to this article,~~ the applicant may file an appeal of the department's ~~division's~~ written decision in accordance with the procedures set forth ~~for appeals of administrative decisions in section 34-145(a), and in accordance with any county administrative codes adopted to implement the provisions of chapter 34~~ Administrative Code 2-6.

SECTION FIVE: AMENDMENT TO LDC CHAPTER 22

Lee County Land Development Code Chapter 22 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 22 – HISTORIC PRESERVATION

ARTICLE III. – DESIGNATION OF HISTORIC DISTRICTS AND RESOURCES

DIVISION 2. - INCENTIVES

Sec. 22-174. - Relief from zoning regulations.

The department of community development director may, by written administrative decision, approve any relief request for designated historic resources or contributing properties to a designated historic district, for matters involving setbacks, lot width, depth, area requirements, land development regulations, height limitations, open space requirements, parking requirements, signs, docks, and other similar relief not related to a change in use of the property in question.

- (1) Before granting relief, the director must find that:
 - a. The relief will be in harmony with the general appearance and character of the community.
 - b. The relief will not be injurious to the area involved or otherwise detrimental to the public health, safety or welfare.
 - c. The proposed work is designed and arranged on the site in a manner that minimizes aural and visual impact on the adjacent properties while affording the owner a reasonable use of his land.
- (2) In granting any relief, the director may prescribe appropriate conditions necessary to protect and further the interest of the area and abutting properties, including but not limited to:
 - a. Landscape materials, walls and fences as required buffering.
 - b. Modifications of the orientation of any openings.
 - c. Modifications of site arrangements.

~~The owner of a building, structure or site affected by the operation of this chapter and the decision of the director may appeal that decision in accord with section 34-145.~~

SECTION SIX: AMENDMENT TO LDC CHAPTER 26

Lee County Land Development Code Chapter 26 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 26 – MARINE FACILITIES, STRUCTURES, AND EQUIPMENT

ARTICLE II. – DOCK AND SHORELINE STRUCTURES

DIVISION 2. – LOCATION AND DESIGN

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

Subsection (d)(4) is amended as follows:

- (4) The ~~D~~director, in ~~his~~ the Director's discretion, may permit administrative deviations from the setbacks required by this subsection if the facility is located as close to the required setback as possible and:
- a. The width of the subject parcel is not wide enough to permit construction of a single-family docking facility, perpendicular to the shoreline at the midpoint of the shoreline property line, without a deviation; or
 - b. Construction of the structure outside the setback area will not cause or will minimize damage to wetland vegetation or other environmental resources or will not cause greater damage than will occur if the deviation is not granted.

~~The director's decision under this subsection can be appealed through the procedure set forth in section 34-145(a) or the applicant may seek a variance in accordance with section 26-46.~~

Remainder of section unchanged.

Sec. 26-80. - Transfer of (watercraft) slip credits (TSC).

Subsections (a) and (b) remain unchanged.

- ~~(c)~~ ~~*Appeal of director's decision.*~~ Appeals from the decision of the director may be appealed to the Lee County Hearing Examiner in accord with the procedures set forth in chapter 34 for appeals of administrative decisions. The hearing examiner may grant the appeal only upon a finding that the applicable criteria in the Manatee Protection Plan have been met.
- ~~(d)(c)~~ *Credits from shorelines with legally existing docks.* The Manatee Protection Plan contains provisions that may give credit for the removal of legally existing docks.
- ~~(e)(d)~~ *Procedural rules for creating transfer (watercraft) slip credit under the Lee County Manatee Protection Plan.* Lee County Administrative Code Section 13-21 has been adopted to supplement and implement the transfer of (watercraft) slips pursuant to the provisions of the Manatee Protection Plan.

SECTION SEVEN: AMENDMENT TO LDC CHAPTER 33

Lee County Land Development Code Chapter 33 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 33 – PLANNING COMMUNITY REGULATIONS

ARTICLE I. – IN GENERAL

Sec. 33-6. – ~~Reserved.~~Appeal.

~~Appeal of the application or interpretation of this chapter must be filed and processed in accord with section 34-145(a).~~

SECTION EIGHT: AMENDMENT TO LDC CHAPTER 34

Lee County Land Development Code Chapter 34 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 34 – ZONING

ARTICLE II. – ADMINISTRATION

DIVISION 2. – BOARD OF COUNTY COMMISSIONERS

Sec. 34-83. – Functions and Authority.

(a) *Zoning actions.*

- (1) *Function.* Unless another approval process is authorized by County ordinance, the Board of County Commissioners must hold public hearings to consider the following applications: planned development rezoning, except as excluded by section 34-145(d)(1)e, ~~requests for variances, and special exceptions, which are part of an application for a rezoning, MEPD, extension and reinstatement of master concept plans, the special exceptions that meet the criteria for Developments of County Impact,~~ appeals from decisions of the Hearing Examiner concerning wireless communications facilities, developments of regional impact, and any other action in conjunction with such applications.
- (2) *Considerations.* In rendering its decision, the Board must consider the following:
 - a. The recommendations of the Hearing Examiner, Staff, or the Applicant when applicable.

- b. Testimony received during public hearing before the Board.
- c. The evidence included with the Hearing Examiner's recommendation.

(3) *Findings/review criteria.*

- a. Before granting a planned development rezoning or an amendment to a planned development, ~~special exception or variance in connection with a rezoning~~, or appeal of a Hearing Examiner decision, the Board must find that the application satisfies the applicable review criteria in section 34-145.
- b. If a planned development rezoning or a planned development amendment 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.

(4) *Decisions and authority.*

- a. In exercising its authority, the Board:
 - 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 record. 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 conditions deemed necessary for the protection of the public health, safety, comfort, convenience, or welfare to an approval of a:
 - a) Development of Regional Impact;
 - b) Planned ~~d~~Development; and
 - c) Use of TDR or affordable housing bonus density units in conjunction with a ~~rezoning~~ planned development zoning request; ~~and~~
 - d) ~~Special exception or variance with their purview.~~

Conditions must reasonably relate to the action requested.
4. In the case of an appeal of a Hearing Examiner decision pertaining to wireless communication facilities, the Board must consider the decision as recommendation.
 - b. The decision of the Board is final. If there is a tie vote, the matter will be continued until the next regularly scheduled Board meeting for decisions on zoning matters~~7~~.
 - c. Denial by the Board is denial with prejudice unless otherwise specified.

Remainder of section unchanged.

DIVISION 4. – HEARING EXAMINER

Sec. 34-145. – Functions and authority.

~~(a) Appeals from administrative action.~~

~~(1) Authority.~~

- a. ~~The Hearing Examiner has authority to hear and decide appeals where it is alleged 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 an order, requirement, decision, interpretation, determination or action.~~
- b. ~~The Hearing Examiner is not authorized to hear appeals based on:~~
 - 1. ~~Acts of administrative officials pursuant to the orders, resolutions, or directives of the Board.~~
 - 2. ~~Ordinances, regulations, or provisions in this Code that provide a different appellate procedure.~~
 - 3. ~~Zoning verification letters.~~
 - 4. ~~Challenges to a development order controlled by F.S. § 163.3215.~~
- c. ~~The Hearing Examiner may not consider appeals that circumvent required procedures. Specifically, the Hearing Examiner may not consider an appeal more appropriately addressed in an application for a variance, special exception, or rezoning.~~
- d. ~~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 may reverse, affirm or modify the decisions or actions of the administrative official.~~
 - 2. ~~The Hearing Examiner may take the action the Hearing Examiner finds the administrative official should have taken. The Hearing Examiner has the power of the administrative official from whom the appeal is taken. The Hearing Examiner may only take an action the administrative official is authorized to take.~~

3. ~~The Hearing Examiner may not take an action that requires Board approval or authorization.~~

~~(2) *Procedure.* Appeals to the Hearing Examiner must be in compliance with the Administrative Codes.~~

~~(3) *Standing to appeal.*~~

~~a. The Applicant may appeal an administrative action. Non-applicants do not have standing to appeal administrative actions to the Hearing Examiner, except in the context of actions arising out of the fire impact fee regulations.~~

~~b. 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 the appeal.~~

~~2. A Fire District may appeal an administrative action under this section, but only if the action in conjunction with future actions that will necessarily flow from the decision appealed, will result in a cumulative reduction of impact fee revenues to the district exceeding \$25,000.00. The District's appeal must clearly explain how the action will produce the cumulative reduction in revenues. Any Disputes over whether the action falls within this subsection will be resolved by the Hearing Examiner before the appeal hearing.~~

~~3. This subsection does not authorize a Fire District to appeal permits or other administrative actions that fall within the scope of the existing exemption for Timberland and Tiburon DRI. Such appeals are prohibited.~~

~~(4) *De novo or appellate proceedings.*~~

~~a. 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, will be limited to a determination of whether:~~

1. ~~The board afforded procedural due process,~~
 2. ~~The board applied the correct law, and~~
 3. ~~The record contains competent and substantial evidence to support the board's actions.~~
- b. ~~All other appeals from administrative actions are de novo proceedings. The Parties may present evidence and testimony as to laws or facts supporting their position in the case.~~
- (5) ~~*Jurisdiction.* In determining whether to accept jurisdiction of the Appeal, the Hearing Examiner must conclude:~~
- a. ~~The appeal has been properly brought before the Hearing Examiner for a decision; and~~
 - b. ~~The Notice of Appeal sufficiently states the alleged error made by the administrative official.~~
- (6) ~~*Considerations.* The Hearing Examiner must consider the competent substantial evidence from the:~~
- a. ~~Notice of Appeal,~~
 - b. ~~Staff position statement, if provided, and~~
 - c. ~~Testimony and materials from the Parties and other hearing participants.~~
- (7) ~~*Decision making.* Before making a decision that the administrative official erred in the appealed action, the Hearing Examiner must find the administrative action was:~~
- a. ~~Inconsistent with the applicable review criteria;~~
 - b. ~~Inconsistent with the plain and ordinary meaning of the regulation; or~~
 - c. ~~If the regulation is unclear or ambiguous, inconsistent with the intent of the regulation.~~
- (8) ~~*Review of decisions.* Parties 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 within 15 calendar days~~

~~after the decision is rendered. Judicial reviews of final decisions of the Hearing Examiner on appeals of other administrative actions are to the circuit court.~~

The Hearing Examiner is limited to the authority that is conferred by the following:

(a) Appeals of Administrative Decisions.

(1) Authority. The Hearing Examiner's authority to hear and decide appeals is limited to the following final, written decisions issued by the appropriate administrative official with the final decision-making authority:

- a. rejection of an application for a building or sign permit;
- b. denial of an application for a local development order or Mine Operations Permit under Chapters 10 or 12 of this Code;
- c. denial of an application for a use permit for a use specifically identified within the Use Activity Groups or the Zoning District Use Regulation Tables under Chapter 34 of this Code;
- d. decision made in the course of administering Chapter 2, Article VI of this Code;
- e. decision of the historic preservation board in accordance with section 22-42 of this Code;
- f. denial of an exemption or final administrative action under Chapter 14, Article III of this Code;
- g. decision pursuant to section 26-80 of this Code;
- h. unlawful sign determination provided under section 30-8(2) of this Code; and,
- i. requirement for submittal of additional information or documentation within the Request for Additional Information as part of a local development order or zoning application (including variances and special exceptions), limited to a determination as to whether the requested additional information is beyond the application submittal requirements under the Code or outside the authority of the County to require such additional information under the Code.

- (2) Final Decisions. The decisions within subsection (a)(1) upon which the Hearing Examiner has authority to hear administrative appeals must be a final decision that was issued in writing by the appropriate administrative official with final decision-making authority to implement or enforce the applicable provision of this Code, including the County Manager, Lee County Director of Community Development, Zoning Manager, Development Services Manager, Building Official, or Director of Natural Resources. For purposes of this provision, the use of the individual titles does not include their designees.
- (3) Limitations on Authority. If the requirements of subsection (a)(1) and (a)(2) are met, the authority to hear an appeal is further limited and the Hearing Examiner is not authorized to hear appeals based on:
- a. Challenges to the validity of County ordinances, regulations or actions of administrative officials under State or Federal Laws;
 - b. Acts of administrative officials pursuant to the orders, resolutions, or directives of the Board;
 - c. Ordinances, regulations, or provisions in this Code that provide a different appellate procedure;
 - d. Challenges to a development order controlled by F.S. § 163.3215;
 - e. Appeals requiring the interpretation of the Lee Plan, including but not limited to, the issuance of a denial due to inconsistency with the Lee Plan or the requirement for submittal of additional information or documentation based on requirements of the Lee Plan;
 - f. Appeals that circumvent required procedures;
 - g. Appeals that seek relief more appropriately addressed in an application for a variance, special exception, or rezoning; and,
 - h. Appeals of a decision of the Historic Preservation Board will be limited to a determination of whether:
 - 1. The board afforded procedural due process.

2. The board applied the correct law, and

3. The record contains competent and substantial evidence to support the board's actions.

(4) *Time for filing Notice of Appeal.* Unless otherwise provided in the Code, ordinance, or resolution or other provision which creates the right of appeal, no person shall be entitled to appellate review of an appealable decision who fails to file a proper notice of appeal within 30 calendar days of the date the decision is issued. For appeals seeking review of requirements for submittal of additional information or documentation, the notice of appeal must be filed within 14 calendar days from the date the written Request for Additional Information was issued.

(5) *Standing to appeal.*

a. The Applicant may appeal an administrative action. Non-applicants do not have standing to appeal administrative actions to the Hearing Examiner, except in the context of actions arising out of the fire impact fee regulations.

b. Administrative appeals 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 the appeal.

2. A Fire District may appeal an administrative action under this section, but only if the action in conjunction with future actions that will necessarily flow from the decision appealed, will result in a cumulative reduction of impact fee revenues to the district exceeding \$25,000.00. The District's appeal must clearly explain how the action will produce the cumulative reduction in revenues. Any Disputes over whether the action falls within this subsection will be resolved by the Hearing Examiner before the appeal hearing.

3. This subsection does not authorize a Fire District to appeal permits or other administrative actions that fall within the scope of the existing exemption for Timberland and Tiburon DRI. Such appeals are prohibited.

(6) Acceptance of the Appeal. In determining whether to accept the Appeal and issue an Order to Show Cause, the Hearing Examiner must conclude all of the following:

- a. The appeal was timely filed;
- b. The Hearing Examiner has authority to hear the appeal under (a)(1) and that the appeal is not further limited under (a)(2);
- c. The Hearing Examiner has authority to grant the relief sought;
- d. The Appellant has standing to file the appeal;
- e. The Notice of Appeal sufficiently states the alleged error and basis of the appeal, including the sections of this Code in which the decision does not comply;
- f. The Appeal is not moot; and,
- g. The Notice of Appeal meets the requirements of the Administrative Code.

(7) Considerations. The Hearing Examiner shall only consider evidence which was presented to the County Administrative Official at the time the decision was made, or legislative intent, in the event the provision is unclear or ambiguous. No issue, testimony, physical or documentary evidence may be raised or introduced at the hearing or within the Notice of Appeal which was not previously submitted to the County Staff, Administrative Official, or Board whose decision is being appealed.

(8) Relief Granted. The Relief that may be granted in an Administrative Appeal is limited as follows:

- a. The Hearing Examiner may:
 - 1. Reverse or affirm the decision;
 - 2. Remand the case back to County staff with instructions to consider additional competent substantial evidence or relevant Code provisions or requirements; or

3. 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.

b. The Hearing Examiner may not grant relief that:

1. Requires Board approval or authorization; or

2. Requires approval through a public hearing under this Code or an Administrative Code.

c. Before making a decision that the Administrative Official erred in the appealed action, the Hearing Examiner must find the administrative action was:

1. Inconsistent with the applicable Code provision and review criteria;

2. Inconsistent with the plain and ordinary meaning of the regulation; or

3. If the regulation is unclear or ambiguous, inconsistent with the intent of the regulation.

(9) Judicial Review. Judicial review by the Circuit Court of a final decision of a Hearing Examiner may be had by filing a notice of appeal in accordance with applicable Appellate Rules. Parties 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 within 15 calendar days after the decision is rendered.

(10) Procedure. Appeals to the Hearing Examiner must be submitted in compliance with the Administrative Codes. Formal Rules of Evidence, Civil Procedure and Appellate Procedure do not apply.

(b) *Variances.*

(1) *Authority.*

a. The Hearing Examiner will hear and decide requests for variances from this Code and from other ordinances as assigned by the Board.

- b. The Hearing Examiner has the authority to grant, deny, or modify any request for a variance.
 - c. The Hearing Examiner does not have the authority to grant a use variance or variances from the definitions or procedures in ordinances.
 - d. Variance requests may be reviewed alone or as part of a rezoning or special exception.
- (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, including the Staff Report and attachments;
 - c. Testimony and evidence from participants;
 - d. The Lee Plan;
 - e. This Code; and
 - f. Applicable regulations.
- (3) *Findings/review criteria.* Before granting a variance, the Hearing Examiner must find the following review criteria are satisfied:
- a. The property has inherent exceptional conditions that cause the application of the regulation to create a hardship (as defined in section 34-2) on the property owner.
 - b. The exceptional conditions are not the result of actions of the property owner taken subsequent to the adoption of the ordinance.
 - c. The variance granted is the minimum variance that will relieve the unreasonable burden caused by the application of the regulation to the property.
 - d. The granting of the variance will not be injurious to the neighborhood or detrimental to the public welfare.
 - e. The variance is consistent with the Lee Plan.

(4) *Special findings.* The Hearing Examiner must also make special findings in variances for the following:

a. Wireless communication facilities:

1. Denial would have the effect of prohibiting the provision of personal wireless services;
2. Denial would unreasonably discriminate among providers of functionally equivalent personal wireless services;
3. The variance is necessary to ensure adequate public safety and emergency management communications;
4. The variance 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 antenna at a given height will constitute a presumption that this requirement has been met);
5. Denial would 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.

b. Airport Compatibility District regulations: The 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: The variance will not create an undue burden on essential public facilities.

d. Chapter 26, article II, Dock and Shoreline Structures: The variance is consistent with the Manatee Protection Plan.

(5) *Decisions.*

a. When the Hearing Examiner determines denial is appropriate, the decision must cite to the specific legal authority for the denial.

- 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. Conditions must rationally relate to the variance.
 - c. Decisions of the Hearing Examiner on variances ~~filed with an application to rezone property, or from the Airport Compatibility District regulations,~~ must be in the form of a recommendation to the Board.
- (6) *Judicial review.* Judicial review of Hearing Examiner's final variance decisions are to the circuit court. 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.
- (7) *Effective date.* Final decisions in a variance case become effective and enforceable on the date Hearing Examiner issues the final decision.
- (c) *Special exceptions.*
 - (1) *Authority.* The Hearing Examiner will hear and decide applications for special exceptions permitted by the district use regulations. Special exceptions may be reviewed alone or with an application for a variance or 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, including the Staff Report and attachments;
 - c. Testimony and evidence from participants;
 - d. The Lee Plan;
 - e. This Code; and
 - f. Applicable regulations.
 - (3) *Findings/review criteria.*

- a. Prior to granting a special exception, the Hearing Examiner must find the Applicant has proven entitlement to the special exception by demonstrating the request:
 - 1. Is consistent with the goals, objectives, policies and intent of the Lee Plan;
 - 2. Will protect, conserve or preserve environmentally critical and sensitive areas and natural resources, where applicable;
 - 3. Will be compatible with existing and planned uses;
 - 4. Will not be injurious to the neighborhood or detrimental to the public welfare; and,
 - 5. Will be in compliance with zoning regulations pertaining to the use and other applicable regulations.
- b. In the case of new antenna supporting structure wireless communication facilities, the Hearing Examiner must also 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;
 - 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;
 - 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.
- c. In the case of private aircraft landing facilities, the Hearing Examiner must make a finding that the location of the proposed facility will not interfere with the operation of any existing aircraft landing facilities, airports or heliports.

- d. In the case of any use proposing to use solar or wind energy for water heating, climate control or electricity, the Hearing Examiner must find:
 1. Modifications to the property development regulations, if requested:
 - i. Are necessary so as to maximize use of solar or wind energy; and
 - iii. Do not decrease total lot area on which the use is located;
 2. The principal use, absent its solar or wind aspects, is a permitted use in the zoning district for which it is proposed; and
 3. The location of the proposed solar or wind energy equipment and access, do not, or will not, require the restriction of development on adjoining properties with respect to their existing zoning classification.

(4) *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. If the Hearing Examiner determines denial is appropriate, the decision must cite to the specific legal authority for the denial.
- b. 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 rationally relate to the special exception.
- c. ~~Decisions of the Hearing Examiner on special exceptions filed with an application to rezone property must be in the form of a recommendation to the Board.~~

(5) *Judicial review.* Judicial review of Hearing Examiner's final decisions on special exceptions are to circuit court. 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 become effective on the date the Hearing Examiner issues the final decision.
- (d) *Zoning matters.*
 - (1) *Authority.*
 - a. The Hearing Examiner will hear and decide applications for conventional rezoning, amendments to approved planned developments pursuant to section 34-145(d)(1)e, and, notwithstanding section 34-1038(b), amendments to planned unit developments that are not subject to separate ordinance.
 - b. Unless otherwise specified below, tThe Hearing Examiner serves in an advisory capacity to the Board on new planned development zoning matters requests, amendments to planned developments exceeding the scope of amendments permitted by section 34-145(d)(1)e.3, amendments to approved MEPDs, and amendments to planned unit developments approved by separate ordinance and does not make the final determination.
 - ~~b.c.~~ The Hearing Examiner may not approve or recommend approval of a rezoning that is more expansive than the request published in the newspaper. The Hearing Examiner may approve or recommend approval of a zoning district that is more restrictive than the published request.
 - ~~c.d.~~ The Hearing Examiner may recommend-impose conditions of approval on requests for to amend planned developments and requests for special exceptions or variances heard with a rezoning application where the Hearing Examiner retains final decision-making authority. The Hearing Examiner may recommend conditions of approval on requests for new planned developments or amendments to existing planned developments subject to Board approval.
 - ~~d.e.~~ The Hearing Examiner has the final decision making authority on the following matters:
 - 1. Board--initiated applications to rezone County--owned property to the Environmentally Critical (EC) district;
 - 2. Applications for conventional rezoning;

3. Applications for amendments to planned developments when the request is limited to:

i. Amendments to the master concept plan, schedule of uses, or property development regulations that do not affect the maximum density or intensity permitted in the planned development;

ii. Requests for consumption on premises;

iii. Requests for wireless telecommunication facilities;

iv. Requests for an increase in the maximum number of fuel pumps in conjunction with a convenience food and beverage store provided that the use is already approved in the planned development;

v. Changes to conditions and deviations; or

vi. Requests to establish or increase density within the Mixed Use Overlay; and

4. Notwithstanding section 34-1038(b), amendments to planned unit developments that are not subject to separate ordinance.

5. An applicant or agent applying for a conventional rezoning or an amendment to a planned development in which the Hearing Examiner has the final decision-making authority may request a public hearing before the Board of County Commissioners in accordance with section 34-83(a)(1). Such a request must be made prior to the conclusion of the public hearing before the Hearing Examiner.

(2) *Functions.* The Hearing Examiner has the duty and responsibility to make recommendations to the Board on applications for the following requests:

a. Rezoning, including Developments of County Impact, New planned developments rezoning requests, and conventional zoning districts. or amendments to planned developments

exceeding the scope of amendments permitted by section 34-145(d)(1)e.3.

- b. Developments of Regional Impact and Florida Quality Developments, with or without a companion request for rezoning.
- ~~c. Special exceptions and variances heard in conjunction with a rezoning.~~
- ~~d.c.~~ Variances from County ordinances that specify variances may only be granted by the Board.
- ~~e.d.~~ Use of bonus density in conjunction with a rezoning to a planned development district except as permitted by section 34-145(d)(1)e.3.
- ~~f.e.~~ Amendments to Development of Regional Impact Development Orders under F.S. Chapter 380.—§ 380.06(19)(e)2.

(3) *Considerations.* The Hearing Examiner must consider the 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.

(4) *Findings/review criteria.*

- a. Before approval or recommending approval for:
 - 1. Rezonings. The Hearing Examiner must find the request:
 - a) Complies with the Lee Plan;

- b) Meets this Code and other applicable County regulations or qualifies for deviations;
- c) Is compatible with existing and planned uses in the surrounding area;
- d) Will provide access sufficient to support the proposed development intensity;
- e) The expected impacts on transportation facilities will be addressed by existing County regulations and conditions of approval;
- f) Will not adversely affect environmentally critical or sensitive areas and natural resources; and
- g) Will be served by urban services, defined in the Lee Plan, if located in a Future Urban area category.

2. *Planned Development Rezoning*s. The Hearing Examiner must also 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 p~~Protects the public health, safety and welfare.
- d) Mine excavation planned development. The request meets the 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.
- 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.
 - b. *Denials.* Before denying or 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) *Recommendations.* The Hearing Examiner's recommendation on planned development and DRI zoning matters will be provided in a written report to the Board.
- (6) *Recommendations on Planned Developments.*
 - a. If the Hearing Examiner determines that a recommended condition is insufficient, the Hearing Examiner may propose an alternate condition for consideration by the Board.
 - 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 in 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. The Hearing Examiner may recommend that the applicant obtain administrative approval of a more detailed development plan for each development area as a condition of approval of a deviation.

(7) *Recommendations on applications for amendments to development of regional impact development orders pursuant to F.S. ~~380.06(19)(e)(2)~~, (as amended).* ~~Requests for amendments to development of regional impact development orders pursuant to F.S. § 380.06(19)(e)(2) do not require a public hearing before the Hearing Examiner. After staff review, Staff will prepare a Staff report with a recommendation, including a determination regarding the consistency of the request with F.S. § 380.06(19)(e)(2), (as amended). The Staff report, application materials, and additional documentation requested by the Hearing Examiner, will be sent to the Hearing Examiner for review and preparation of a written recommendation to the Board, including a determination regarding the consistency of the request with F.S. § 380.06(19)(e)(2), (as amended). Unless unavoidable delay occurs, the Hearing Examiner will issue a written recommendation to the Board within 14 days from receipt of the Staff report and required documents. The Hearing Examiner and Staff recommendations will be presented to the Board at a public hearing. If the Board determines that the request does not meet the requirements of F.S. § 380.06(19)(e)(2), the Board must deny the request and remand the application to Staff for processing as an application of Notice of Proposed Change or other request under F.S. ch. 380.~~

Requests for amendments to development of regional impact development orders pursuant to F.S. sec. 380.06(7) do not require a public hearing before the Hearing Examiner. After review of the application, Staff will prepare a report and recommendation including an analysis of consistency with the Lee Plan and this Code. New conditions proposed by staff must be consistent with F.S. 380.06(7)(b). The Staff report and application material will be sent to the Hearing Examiner for preparation of a written recommendation to the Board. The Hearing Examiner may request additional documentation from Staff and Applicant.

The Hearing Examiner will issue a written recommendation to the Board within 14 days from receipt of the Staff report or requested

documents. The Hearing Examiner's recommendation must include a finding on whether the proposed amendment is consistent with the Lee Plan and this Code. New conditions recommended by the Hearing Examiner must be consistent with F.S. sec. 380.06(7)(b).

The Hearing Examiner and Staff recommendations will be presented to the Board at a public hearing.

(8) Conditions of Approval.

a. Except as provided in paragraph d. below, any Applicant or County Staff request for the Board to consider changes to Conditions of Approval recommended by the Hearing Examiner must be submitted in writing to the Hearing Examiner no later than 21 working days prior to the scheduled public hearing before the Board.

b. The Hearing Examiner will consider the basis for the requested change and may issue a memorandum in response, without further hearing, either approving or denying the requested changes. If the Hearing Examiner determines that additional competent substantial evidence is needed to support the proposed changes, the proposed changes are outside the scope of the testimony in the record, or that modifications of the proposed conditions materially alter the Hearing Examiner's Recommendation, the Hearing Examiner may recommend that the Board deny the requested changes or remand the case back to the Hearing Examiner to reopen the testimony portion of the Hearing and schedule the matter for further public hearings as needed. Notice of the new Hearing date will be provided to the Participants of Record and Parties. Testimony by the Parties and Public Participants will be limited to the requested changes to the Conditions of Approval.

c. If an Applicant or County Staff fails to submit the request for changes as required in paragraph a. above, the Board may continue the case to a date certain to allow the Hearing Examiner to review the request, remand the case to the Hearing Examiner for further consideration of the requested changes, or deny the requested changes.

d. This subsection (8) does not apply to requests for scrivener's errors, changes resulting from the Board's decision not to adopt the Hearing Examiner's recommendation or portions thereof, changes requested by the Board or Public

Participants at the public hearing before the Board, or changes requested by the County Attorney's office to remove unenforceable conditions or to ensure the proposed conditions comply with State or Federal Law.

- (e) *Notice of intent to deny based on insufficient information.* If the Hearing Examiner intends to deny or recommend denial of an application/appeal described in subsections (a) through (d) based on the Applicant's/Appellant's failure to provide evidence adequate to address particular issues, the Hearing Examiners may send a notice of intent to deny based on insufficient evidence to all Parties and participants or reopen the hearing. The procedure for issuing the notice and the responses to the notice are set forth in the Administrative Codes.
- (f) The Hearing Examiner is limited to the express authority granted within County regulations. ~~The Hearing Examiner may consider state, federal, or common law in the application of the County regulations. The authority granted to the Hearing Examiner under this section is limited to the actions identified above. Under no circumstances shall the provisions of this section be construed to grant additional authority or expand upon authority granted to the Hearing Examiner. The powers and authority granted to the Hearing Examiner in Code Enforcement matters are separate and distinct from those granted herein.~~

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

- ~~(a) The decision of the Hearing Examiner is final for the following:~~
 - ~~(1) Administrative appeals that are not appealed to, and decided by, the Board;~~
 - ~~(2) Variances, and special exceptions, except when those requests are:~~
 - ~~a. Part of a rezoning or other request that requires final decision by the Board; or~~
 - ~~b. A wireless communication facility appealed to the Board pursuant to sections 34-1445(b) or 34-1453.~~
 - ~~(3) Board initiated applications to rezone County owned property to the Environmentally Critical (EC) zoning district.~~
- ~~(b)~~(a) Judicial review of final decisions of the Hearing Examiner will be in circuit court. This review may only be obtained by filing a petition for writ of certiorari 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.

- ~~(c)~~(b) A decision is “rendered” on the date it is reduced to writing, signed and dated by the Hearing Examiner.
- ~~(d)~~(c) The person making application to the Hearing Examiner is a necessary and indispensable party to actions seeking judicial review.
- ~~(e)~~(d) This section does not preclude action pursuant to F.S. § 70.51 or § 163.3215.

DIVISION 7. – PUBLIC HEARINGS

Sec. 34-231. - Public participation.

Subsection (a) remains unchanged.

- (b) *Participation before Board; zoning matters.* At public hearings on zoning matters, only the Parties, the Hearing Examiners, and participants at the proceeding before the Hearing Examiner may address the Board. 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) Presentation of the Hearing Examiner’s recommendation.
 - (3) Testimony concerning the correctness of the findings of fact or conclusions of law contained in the record, or
 - ~~(3)~~(4) Allegations that relevant new evidence has been discovered that was not known or could not have been reasonably discovered by the speaker at the time of the hearing before the Hearing Examiner.

During the public hearing, The Board may question its staff, its attorneys, the Applicant/Appellant, the Hearing Examiner authoring the report, and the participants present about matters in the written report and record and points of law or procedure.

- (c) Participation before the Hearing Examiner will be in accordance with the Administrative Codes.

ARTICLE IV. – PLANNED DEVELOPMENTS

DIVISION 1. – GENERALLY

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

Subsections (a) and (b) remain unchanged.

~~(c) — Determination of Development of County Impact status.~~

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

ARTICLE VI. – DISTRICT REGULATIONS

DIVISION 11. – REDEVELOPMENT OVERLAY DISTRICTS

Subdivision I. – General Requirements

Sec. 34-1082. - Overview of redevelopment overlay district regulations.

Subsections (a) through (c) remain unchanged.

- (d) *Development approvals.* Once a landowner has elected to develop under a redevelopment overlay district's regulations, the Community Development Director, or designee, is authorized and required to determine whether each development request complies with the redevelopment overlay district's land development regulations. When a property owner submits a development request relying on the redevelopment overlay district regulations, a copy of the recorded document reflecting the property owner's election to participate in the redevelopment overlay district must be provided.

Subsections (1) through (5) remain unchanged.

- ~~(6) Administrative decisions of the Director may be appealed in accordance with existing procedures for such appeals in this chapter.~~

Subsection (e) remains unchanged.

ARTICLE VII. – SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 5. – ALCOHOLIC BEVERAGES

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

Subsections (a) through (g) remain unchanged.

- ~~(h) *Appeals.* Appeals of the Director's decisions must be filed in accordance with the procedures set forth in this chapter.~~

- ~~(i) *Bottle clubs.*~~

- (1) Bottle clubs operating under a valid special permit as of September 18, 1996, are nonconforming uses.
- (2) No new bottle clubs will be allowed in any zoning district. This subsection supersedes and repeals any existing County regulations in conflict herewith.

SECTION NINE: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION TEN: SEVERABILITY

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

SECTION ELEVEN: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code. Sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section," "article," or other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION TWELVE: MODIFICATION

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

SECTION THIRTEEN: EFFECTIVE DATE

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the development order application for such project is complete or the zoning request is found sufficient before the effective date.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Commissioner Ruane made a motion to adopt the foregoing ordinance, seconded by Commissioner Sandelli. The vote was as follows:

Kevin Ruane	Aye
Cecil L Pendergrass	Aye
Raymond Sandelli	Aye
Brian Hamman	Aye
Frank Mann	Nay

DULY PASSED AND ADOPTED this 17th day of May 2022.

ATTEST:
KEVIN KARNES, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Cecil L Pendergrass, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of the County Attorney