

ORDINANCE NO. 11-01

AN ORDINANCE AMENDING LEE COUNTY LAND DEVELOPMENT CODE, CHAPTERS 26, 30, 32, 33, AND 34. SPECIFICALLY AMENDING: CHAPTER 26 (MARINE FACILITIES, STRUCTURES AND EQUIPMENT) PROVISIONS FOR DOCKING FACILITIES AND BOAT RAMPS (§26-71) TO PERMIT A DOCK ON LOTS THAT DO NOT MEET MINIMUM LOT SIZE AND DIMENSIONS FOR A PRINCIPAL USE IF THE LOT WAS CREATED PRIOR TO SEPTEMBER 27, 1993, CONTAINS SUBMERGED LANDS, AND IS LOCATED ON ISLANDS WITHOUT VEHICULAR ACCESS TO THE MAINLAND; CHAPTER 30 (SIGNS) TO REMOVE REDUNDANT PROVISIONS THAT ARE ALSO CURRENTLY LOCATED IN CHAPTER 33-PURPOSE, (§30-400) AND PROHIBITED SIGNS (§30-404); CHAPTER 32 (COMPACT COMMUNITIES) PROVISION FOR REDEMPTION OF TDR CREDITS (§32-309); CHAPTER 33 (PLANNING COMMUNITY REGULATIONS) PROVISIONS FOR DEVIATIONS AND VARIANCES (§33-57) AND PROHIBITED SIGNS (§33-383) TO CLARIFY THAT PROHIBITED SIGNS MAY BE PERMITTED THROUGH THE VARIANCE PROCESS; AND CHAPTER 34 (ZONING) PROVISIONS FOR DEFINITIONS (§34-2); PRIVATE RECREATIONAL FACILITIES PLANNED DEVELOPMENTS (§34-941); DEVELOPMENT REGULATIONS (§34-1173); AND NON-CONFORMING PARKING LOTS ON GASPARILLA ISLAND (§34-3225); AND PROVIDING FOR AN EFFECTIVE DATE.

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 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 Land Development Code (LDC); and,

WHEREAS, Goal 24 of the Lee County Comprehensive Land Use Plan (Lee Plan) mandates that the County maintain clear, concise, and enforceable development regulations that fully address on-site and off-site development impacts, yet function in a streamlined manner; and,

WHEREAS, Lee Plan Policies 14.5.3, 24.1.9, 52.1.1 and 110.6.2 require county staff and private citizen committees to review existing development regulations to determine whether the regulations can be further fine tuned and streamlined in order meet the Goals, Objectives, and Policies of the Lee Plan; and,

WHEREAS, pursuant to the Board of County Commissioners' direction on multiple occasions, specific amendments were directed to be brought forward before the next round of LDC Amendments; and,

WHEREAS, the Land Development Code Advisory Committee (LDCAC) was created by the Board of County Commissioners to explore amendments to the LDC; and,

WHEREAS, the LDCAC has reviewed the proposed amendments to the LDC on January 14, 2011, and recommended modifications as indicated; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on January 12, 2011, and recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on January 31, 2011, 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 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.

(a) thru (f) remains unchanged.

(g) Interest in land to support residential dock/facility approval. In order to obtain a permit for a residential dock and related facilities, the property owner/applicant must have a recorded right to access the water meeting the following criteria:

(1) A deed describing the residential lot with at least one boundary being the waterway along which the dock facility is proposed. The lot described must be a buildable lot with sufficient square footage to meet county requirements except as provided in section 34-1173(a)(2)d; OR

The balance of this section remains unchanged.

SECTION TWO: AMENDMENT TO LDC CHAPTER 30

Lee County Land Development Code Chapter 30 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 30-SIGNS

ARTICLE VI. ESTERO SIGN OVERLAY DISTRICT

~~Sec. 30-400. Purpose of article.~~

~~The purpose and intent of this article is to modify and supplement this chapter to protect and preserve the character and appearance of the Estero Planning Community.~~

~~(Ord. No. 03-16, § 5, 6-24-03)~~

~~Sec. 30-404. Prohibited signs.~~

~~The following types of signs are prohibited within the Estero Planning Community:~~

~~(a) — Animated signs.~~

~~(b) — Emitting signs.~~

~~(c) — Balloons, including all inflatable air signs or other temporary signs that are inflated with air, helium or other gaseous elements.~~

~~(d) — Banners, pennants or other flying paraphernalia, except an official federal, state or county flag, and one symbolic flag not to exceed 15 square feet in area for each institution or business, or except where allowed by 30-405.~~

~~(e) — (Changing sign (automatic), including electronic changing message centers, except as approved within a development of regional impact by planned development zoning resolution adopted prior to June 24, 2003.~~

~~(f) — Figure-structured signs.~~

~~(g) — Pole signs.~~

~~(h) — Pylon signs, except as approved within a development of regional impact by planned development zoning resolution prior to June 24, 2003.~~

~~(i) — Off site directional signs, except as approved within a development of regional impact by planned development zoning resolution prior to June 24, 2003.~~

~~(Ord. No. 03-16, § 5, 6-24-03)~~

Sec.30-403-30-404 Reserved.

SECTION THREE: AMENDMENT TO LDC CHAPTER 32

Lee County Land Development Code Chapter 32 is amended as follows with strike through identifying deleted text and underline identifying new text.

CHAPTER 32-COMPACT COMMUNITIES

ARTICLE III. TRANSFER OF DEVELOPMENT RIGHTS

Sec. 32-309. Redemption of TDR credits.

(a) Unchanged.

(1) *Southeast Lee County*. TDR credits are eligible for use in Southeast Lee County only in those areas designated on Map 17 as "Mixed-Use Communities" and "Rural Golf Course Communities."

The balance of this section remains unchanged.

SECTION FOUR: 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 II. ESTERO PLANNING COMMUNITY DIVISION 1. IN GENERAL

Section 33-57. Deviations and Variances.

If an applicant desires to deviate from any architectural, site design, landscaping or signage guidelines in Article II, including all sections from 33-111 thru 33-385, an applicant may do so at the time of zoning or development order if permitted under ~~in accordance with~~ section 10-104. A rendered drawing to scale, showing the design, and clearly demonstrating the nature of the requested deviation must be submitted as part of the development order application. Administrative deviations to a planned development may be allowed subject to a meeting within the Estero Planning Community in accord with section 33-54(b).

DIVISION 2. DESIGN STANDARDS SUBDIVISION V. SIGNS

Section 33-383. Prohibited signs.

Unless a deviation or variance is granted, the following types of signs are prohibited within the Estero Planning Community:

- (1) Animated signs.
- (2) Emitting signs.
- (3) Balloons, including all inflatable air signs or other temporary signs that are inflated with air, helium or other gaseous elements.
- (4) Banners, pennants or other flying paraphernalia, except an official

federal, state or county flag, and one symbolic flag not to exceed 15 square feet in area for each institution or business.

- (5) Changing sign (automatic), including electronic changing message centers, except as approved within a development of regional impact by planned development zoning resolution adopted prior to June 24, 2003 (the adoption date of Ordinance 03-16).
- (6) Figure-structured signs.
- (7) Pole signs/freestanding.
- (8) Pylon signs, except as approved within a development of regional impact by planned development zoning resolution adopted prior to June 24, 2003 (the adoption date of Ordinance 03-16).
- (9) Off-site directional signs, except as approved within a development of regional impact by planned development zoning resolution adopted prior to June 24, 2003 (the adoption date of Ordinance 03-16).

SECTION FIVE: 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 I. IN GENERAL

Sec. 34-2. Definitions.

Bed and breakfast establishment means an owner-occupied conventional single-family residence that accommodates lodgers. Bed and breakfast establishments are permitted in any district permitting boardinghouses. See section 34-1494(b)(d) for calculating density equivalents. Bed and Breakfast Establishments approved as part of a Private Recreational Facilities Planned Development (PRFPD) are not required to be owner occupied.

Fractional Ownership dwelling unit means any unit for which the ownership interest in the property or dwelling unit is divided among multiple entities and/or individuals for the primary purpose of creating short-term residential use or rental units, rather than full time residential units.

ARTICLE VI. DISTRICT REGULATIONS **DIVISION 9. PLANNED DEVELOPMENT DISTRICTS**

Sec. 34-941. Private recreational facilities planned developments.

- (a) Applicability: The private recreational facilities planned development (PRFPD) district option may only be requested and

approved in those areas depicted on the Lee Plan Private Recreation Facilities Overlay Map (Map 4).

(b) General limitations:

- (1) Except for a caretaker's residence, development rights to residential density (i.e. dwelling units) associated with land zoned to the PRFPD district are extinguished, and therefore, cannot be transferred, clustered or otherwise assigned to any property as long as the private recreational facilities continue to exist. Development rights to residential density can be re-established only by removing the private recreational facilities in their entirety and eliminating all private recreational facility uses from the zoning district in effect.
- (2) Approval of a PRFPD district may not be used as justification for requesting or approving an amendment to the future land use map series which will increase residential density in DR/GR areas.

(c) Uses.

- (1) Prohibited uses: No residential uses, ~~other than a single bonafide caretaker's residence or a resident manager's unit,~~ are permitted within the PRFPD district, except as delineated in section 34-941(c)(3).

(2) Permissible uses:

a. The following uses are permitted and may be approved administratively within a PRFPD district without their location being designated on the approved master concept plan, provided the use is approved as part of the adopted zoning resolution:

b. The following uses are permitted only if approved in the adopted zoning resolutions and their general location is shown on an adopted master concept plan.

Aquifer storage and recovery facilities.

Boarding horse stables and riding areas (see note 1).

Camp grounds - tent camping only, including:

Camping area office (see note 1).

Camping restrooms (see note 1).

Excavations for water retention (section 34-1651).

Forestry tower.

Golf Course, including:

Country club (see note 1).

Golf course restrooms (see note 1).

Golf course maintenance areas (see note 1).

Helistop - if required by emergency services.

Recreational and educational facilities (see note 4).

Wireless communication facility (see note 1).

- (3) Accessory uses and structures. The following uses and structures may be permitted as accessory uses and structures when specifically included in the adopted zoning resolution.

Administrative offices (see note 1).

Bait and tackle shops.

Bed and Breakfast Establishment

Boat ramps and docks.

Boat rental - motorized boats limited to a trolling motors.

Consumption on premises - (see note 2).

Dwelling unit: One caretakers residence OR resident manager's unit

Entrance gates and gatehouse.

Fishing piers.

Fences, walls (see note 5).

Food and beverage service, limited - (see Note 2).

Fractional ownership, dwelling unit

Golf course driving range and practice area.

Parking lots - accessory to a permitted use.

Personal services - Group II (see note 2).

Play areas - "Elementary school age" and "teenage and young adults" as discussed in "Park Planning Guidelines, 3rd Ed."

Service/maintenance areas ancillary to approved permissible uses (see note 1).

Restaurants - only if located within the clubhouse.

Sewage package plant.

Signs in accordance with Chapter 30.

Specialty retail - Groups I, II and III (see note 3).

Timeshare, dwelling unit

ARTICLE VII. SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 2. ACCESSORY USES, BUILDINGS AND STRUCTURES

Sec. 34-1173. Development regulations.

- (a) Permitted structures and uses. Unless specifically indicated to the contrary, accessory uses, buildings and structures that are customarily recognized as clearly incidental and subordinate to the principal use of the property, are permitted by right when located on the same lot or parcel and in the same zoning category as the principal use, provided that:

- (1) All uses, buildings and structures must comply with all applicable development regulations and building codes.

- (2) Accessory buildings or structures may be built concurrently with a principal building or structure but, except as provided herein, no accessory use, building or structure may be commenced, erected, placed or moved onto a lot or parcel prior to the principal use, building or structure.

Exceptions are as follows:

- a. Agricultural accessory structures in the AG district.
- b. Fences or walls when in compliance with section 34-1741 et seq.
- c. Seawalls or retaining walls (see section 34-1863).
- d. Docks, personal (see section 34-1863). Only permitted if the lot meets the minimum lot size and dimensions required for a principal use, except that lots created prior to September 27, 1993 which contain submerged lands and which are located on islands without vehicular access to the mainland are exempt from this requirement.

ARTICLE VIII. NONCONFORMITIES

DIVISION 2. NONCONFORMING USE OF LAND

Sec. 34-3225. Non-conforming parking lots on Gasparilla Island

Any RS-1 (residential single-family) zoned property on Gasparilla Island that has been used as an accessory parking lot since on or before January 1, 1980, to support water dependent uses on the same premises, with no intervening street right-of-way, is deemed to be a non-conforming use as defined in this chapter.

SECTION SIX: 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 SEVEN: 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 EIGHT: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered

and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not 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 FIFTEEN: 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 application for such project is complete and found sufficient before the effective date hereof.

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

John E. Manning	Aye
Brian Bigelow	Aye
Ray Judah	Aye
Tammara Hall	Absent
Frank Mann	Absent

DONE AND ADOPTED this 8th day of March 2011.

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
Frank Mann, Chair

Approved as to form by:

County Attorney's Office