

ORDINANCE NO. 15-15

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE CHAPTERS 10, 12, 26, AND 34 PERTAINING TO THE HEARING EXAMINER ZONING PROCESS; CONSOLIDATING NECESSARY FINDINGS ON ZONING APPLICATIONS; CLARIFYING THE FOLLOWING: LEGAL STANDARD FOR DENIAL, PREHEARING SUBMITTALS FOR PLANNED DEVELOPMENT ZONING REQUESTS, PROCEDURES FOR EXPERT TESTIMONY, FINDINGS/REVIEW CRITERIA, ADMINISTRATIVE APPEALS PROCESS; REMOVING REQUIREMENT FOR COURT REPORTER; PROVIDING FOR HEARING EXAMINER REVIEW OF AMENDMENTS TO DEVELOPMENTS OF REGIONAL IMPACT, ASSIGNING AUTHORITY FOR REVOCATION OF ALCOHOLIC BEVERAGE ZONING APPROVALS TO THE BOARD OF COUNTY COMMISSIONERS AND PROVIDING REVIEW CRITERIA FOR SUCH REVOCATION; RELOCATING CERTAIN PROCEDURES TO THE LEE COUNTY ADMINISTRATIVE CODE. PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER=S ERRORS, AND 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 of Lee County Florida (Board) adopted the Lee County Land Development Code which contains regulations applicable to the development of land in Lee County; and,

WHEREAS, the Board has adopted 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, the Board implemented a Hearing Examiner program to hear and consider zoning applications in unincorporated Lee County; and

WHEREAS, the procedures and criteria for review of zoning applications before the Hearing Examiner are set forth in the LDC and Lee County Administrative Code; and

WHEREAS, the subject ordinance clarifies findings, review criteria and certain processes before the Lee County Hearing Examiner; and

WHEREAS, the Land Development Code Advisory Committee reviewed the proposed amendments to the LDC on August 18, 2015 and recommended their approval; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments on September 9, 2015 and recommended approval; and,

WHEREAS, the Local Planning Agency reviewed the proposed ordinance on September 28, 2015 and found the ordinance to be consistent with the Lee Plan.

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

SECTION ONE: AMENDMENT TO LDC CHAPTERS 10, 12, 26 and 34.

Lee County Land Development Code Chapters 10, 12, 26, and 34 are amended as follows with strike through identifying deleted text and underline identifying new text.

Chapter 10

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ARTICLE II. – ADMINISTRATION

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Sec. 10-104. - Deviation and variances.

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

- ~~(1) The granting of the variance would not threaten the health, safety or welfare of abutting property owners or the general public;~~
- ~~(2) The requested variance is consistent with the Lee Plan;~~
- ~~(3) The requested variance will not create an undue burden on essential public facilities; and~~
- ~~(4) The standard from which the variance is being requested is unreasonably burdensome, as applied to the applicant's property and development plans.~~

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Chapter 12

ARTICLE II. MINING AND EXCAVATION

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Sec. 12-112. - Hearing Process.

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

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

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

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

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

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

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

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

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

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

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

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

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Chapter 26 - MARINE FACILITIES, STRUCTURES AND EQUIPMENT

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ARTICLE II – DOCKS AND SHORELINE STRUCTURES

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Sec. 26-46. - Variances.

- (a) Variances from the requirements of this article may be requested in accordance with section 34-145(b). ~~The hearing examiner may grant a variance from the provisions of this article only upon finding the following criteria have been met:~~
- ~~(1) The granting of a variance will not threaten or create an undue burden upon the health, safety and welfare of abutting property owners or the general public;~~
 - ~~(2) The requested variance is necessary to relieve an unreasonable burden placed upon the applicant by applying the regulations in question to his property;~~
 - ~~(3) The variance requested is consistent with the Lee Plan and the Manatee Protection Plan.~~
- (b) Requests for variances involving historic resources, as defined in Chapter 22, may be obtained in accordance with sections 22-173 and 22-174.

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Chapter 34 ZONING

ARTICLE I. IN GENERAL

Sec. 34-2. Definitions.

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

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

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

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

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

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

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

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

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

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

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Relevant evidence means information having the tendency to prove or disprove any fact of consequence to the decision to be made. The "decision to be made" in zoning matters is whether the application/appeal complies with applicable review criteria, including the project's consistency with the Lee Plan and this Code.

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Variance, use means ~~any departure from the provisions of this chapter and not specifically included in the definition set forth under Variance or Variance, procedural. The term "use variance" also means any attempt to allow a use in a district not allowed by this Code, except as provided in Sections 34-620 and 34-933. vary any one or more of the definitions set forth in this chapter, either directly or indirectly. Use variances are never permitted.~~

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ARTICLE II. ADMINISTRATION

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DIVISION 2. BOARD OF COUNTY COMMISSIONERS

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Sec. 34-83. Functions and authority.

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(b) Zoning actions.

(1) Function.

- a. ~~The Board of County Commissioners must hold public hearings (see sections 34-231 through 34-236) on the following applications:~~

~~1. Rezoning; 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;~~

~~3. Developments of Regional Impact;~~

~~4. Special exceptions or variances in connection with a rezoning~~

~~5. Zoning or Development of Regional Impact amendments that incorporate the terms of a settlement agreement designed to resolve pending administrative litigation or judicial proceedings; and any~~

~~6. Other actions in conjunction with such applications cases.~~

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- (2) Considerations. In rendering its decision, the Board of County Commissioners must consider the following:

a. ~~The considerations set forth in section 34-145(c)(2) which are applicable to the case.~~

b. ~~The substantive recommendations~~ of the Hearing Examiner, Staff, or the Applicant when applicable.

c. ~~Testimony received during public hearing before the Board.~~

d. ~~The evidence and testimony included with the Hearing Examiner's recommendation.~~

- (3) Findings/Review Criteria.

a. Before granting any rezoning, special exception, or variance in connection with a rezoning, or appeal of a Hearing Examiner decision, the Board of

County Commissioners must find that: the application satisfies the applicable review criteria in section 34-145.

- b. If a rezoning request complies with the review criteria, the Board may deny the request if it finds that maintaining the existing zoning designation accomplishes a legitimate public purpose and is not arbitrary, discriminatory, or unreasonable.
- ~~a. The applicant has proved entitlement to the rezoning, MEPD, or special exception by demonstrating compliance with the Lee Plan, this land development code, and any other applicable code or regulation; and~~
- ~~b. The request will meet or exceed all performance and locational standards set forth for the potential uses allowed by the request; and~~
- ~~c. The request is consistent with the densities, intensities and general uses set forth in the Lee Plan; and~~
- ~~d. The request is compatible with existing or planned uses in the surrounding area; and~~
- ~~e. Approval of the request will not place an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development; and~~
- ~~f. Where applicable, the request will not adversely affect environmentally critical areas and natural resources.~~
- ~~g. In the case of a planned development rezoning or mine excavation planned development, the decision of the Board of County Commissioners must also be supported by the formal findings required by sections 34-377(a)(2) and (4).~~
- ~~h. Where the change proposed is within a future urban area category, the Board of County Commissioners must also find that urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use.~~
- ~~i. In the case of an appeal of a Hearing Examiner decision pertaining to wireless communication facilities, the decision of the Board of County Commissioners must also be supported by the formal findings set forth in sections 34-1445(b) and 34-1453, as applicable.~~
- ~~j. If the rezoning is to Compact PD, the decision of the Board of County Commissioners must be supported by the formal finding regarding the provisions set forth in section 32-504(a).~~
- ~~k. Urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve a proposed land use change, when reviewing a proposed change to a future urban area category.~~
- ~~l. The level of access and traffic flow (i.e. median openings, turning movements etc.) is sufficient to support the proposed development intensity.~~

- ~~m. The request meets the criteria and standards set forth in chapter 12 for approval of a mine excavation planned development.~~

(4) Decisions and authority.

- a. In exercising its authority, the Board of County Commissioners:

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. ~~Unless otherwise provided by the Board, 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.

May not approve a rezoning other than the rezoning published in the newspaper, unless the change is more restrictive than the proposed rezoning published.

3. Has the authority to attach ~~such conditions and requirements deemed necessary for the protection of the public health, safety, comfort, convenience or welfare to any approval of a:~~

a) ~~a request for a special exception, d~~Development of ~~r~~Regional ~~i~~Impact;

b) ~~P~~lanned development, ~~mine excavation planned development,~~

c) ~~U~~se of TDR or affordable housing bonus density units in conjunction with a rezoning request; ~~or and~~

d) ~~Special exception or variance within their purview, deemed necessary for the protection of the health, safety, comfort, convenience or welfare of the general public.~~

~~These c~~Conditions and requirements must be reasonably related to the action requested.

4. In the case of an appeal of a Hearing Examiner decision pertaining to wireless communication facilities, the Board of County Commissioners must consider the decision as a recommendation only and may, in conformity with the provisions of this chapter, reverse, affirm or modify the decision of the Hearing Examiner, or remand the case to the Hearing Examiner.

- b. ~~The decision of the Board of County Commissioners on any matter listed in this subsection (b) is final. If there is a tie vote, the matter considered will be continued until the next regularly scheduled Board meeting for decisions on zoning matters by the Board of County Commissioners, unless a majority of the members present and voting agree by motion, before the next agenda item is called, a majority of the members present and voting agree by motion to take some other action. Such other action may be moved or seconded by any member, regardless of his or her vote on any earlier motions.~~
 - c. ~~Any denial by the Board of County Commissioners is denial with prejudice unless otherwise specified by the Board of County Commissioners.~~
- (5) Judicial review. Judicial review of final decisions under this section must be in accordance with section 34-85
- (6) ~~Remand by Board of County Commissioners. An application remanded for further consideration must be brought to hearing before the Hearing Examiner within six months of the date the remand order is rendered. If the application is not brought forward as ordered. If a remand hearing does not occur within six months, it the application will be deemed withdrawn. Thereafter, the applicant will be required to file a new application for consideration by the Hearing Examiner and the Board.~~
- (7) ~~In matters that were first heard by the Hearing Examiner, only individuals who participated during the proceedings before the Hearing Examiner will be afforded the right to address the Board of County Commissioners. This prohibition does not apply to the Board's legal counsel, County staff whose sole purpose is to facilitate the zoning hearing, individuals who were represented by legal counsel during the hearing before the Hearing Examiner, or legal counsel representing an individual that testified during the hearing. Notwithstanding, the testimony presented to the Board will be limited to the testimony presented to the Hearing Examiner, testimony concerning the correctness of the findings of fact or conclusions of law contained in the record, or to allege the discovery of new, relevant information which was not available at the time of the hearing before the Hearing Examiner.~~
- (c) Revocation of Alcoholic Beverage Approvals under Section 34-1265.
- (1) Function. The Board must hold a hearing on petitions to revoke an alcoholic beverage approval. The hearings will be open to the public, but no public input will be taken.
- (2) Considerations. In rendering its decision, the Board must consider the following:
- a. The grounds set forth in section 34-1265 applicable to the case.
 - b. The recommendation of the Hearing Examiner.
 - c. Testimony received during the hearing before the Board.
 - d. The evidence and testimony included with the Hearing Examiner's recommendation.

(3) Findings. In order to revoke an alcoholic beverage approval, the Board must find the approval holder has materially breached the requirements and that revocation is appropriate to protect the public health, safety, and welfare.

(d) Appeals of Hearing Examiner decisions on appeals of administrative actions affecting fire impact fee regulation.

(1) Function. The Board of County Commissioners may hear appeals from Hearing Examiner decisions on appeals of an administrative action related to fire impact fee regulation as follows:

- a. Any Pparty may file a request to appeal ~~such a~~ decision of the Hearing Examiner within 15 calendar days after the decision is rendered.
- b. Requests for appeal must be in writing and state with particularity, the points of law or fact that the Hearing Examiner has overlooked or misunderstood.
- c. Requests for appeal must be filed with the Hearing Examiner's office. The ~~a~~Appellant must also concurrently provide copies to the County Attorney and all other Pparties in the case. Any Pparty may file a written response with the Hearing Examiner's office within 15 calendar days after the request for appeal is filed, but not thereafter. The Board of County Commissioners will decide whether to grant or deny the request based exclusively upon the ~~a~~Appellant's written request, ~~any responses~~ filed by another Pparty and the Hearing Examiner's written decision.
- d. The deliberations of the Board of County Commissioners ~~with respect to the question of~~ on whether to hear the appeal do not constitute a public hearing, and ~~no oral testimony will be~~ the Board will not allowed or considered by the Board of County Commissioners testimony in the course of these deliberations.
- e. The procedure for ~~handling of such~~ these appeals will be specified in the County's Administrative Codes.

(2) Considerations.

- a. Relevant matters. If the Board of County Commissioners ~~decides to accept~~s the appeal of a matter pertaining to fire impact fees, the review will be confined to: pursuant to section 34-145(a)(59), it will confine its review of the matter exclusively to (1) the written record prepared by the Hearing Examiner, and (2) oral argument/and discussion that will be limited to the identification of errors of fact or law or to allege the discovery of new evidence.

The Board will conduct its review as an appellate proceeding, and not as a de novo proceeding. The Board may ~~orally~~ question its staff, its attorneys, and any Pparty about matters ~~contained~~ in the written record and points of law or procedure.

- b. Irrelevant matters. ~~The Board of County Commissioners~~ will not take testimony from any person or accept into evidence any document that is not in the record provided by the Hearing Examiner.
- (3) Standard of review. ~~The Board of County Commissioners~~ will uphold the decision of the Hearing Examiner unless it the Board finds that it the decision is not supported by the record, or is incorrect as a matter of law ~~as to any conclusion of law made by the Hearing Examiner.~~
- (4) Decisions and authority. ~~In exercising its authority after~~ Once deciding to hear an appeal, the ~~Board of County Commissioners~~ will consider the decision of the ~~Hearing Examiner~~ but may reverse, or affirm in whole or in part, or modify, the Hearing Examiner's decision. The ~~Board of County Commissioners~~ may also remand the case to the Hearing Examiner for additional proceedings if deemed necessary to provide fundamental fairness or prevent injustice. Unless the case is remanded, the decision of the ~~Board of County Commissioners~~ is final. If there is a tie vote, the matter ~~considered~~ will be continued until the next regularly scheduled meeting for decisions on zoning matters by the ~~Board of County Commissioners~~, unless a majority of the members present and voting agree by motion, before the next agenda item is called, a majority of the members present and voting agree by motion to take some other action. Such other action may be moved or seconded by any member, regardless of his vote on ~~any earlier motions.~~
- (5) Judicial review. Judicial review of final decisions under this section will be in accordance with section 34-85

Sec. 34-84. Rehearing of decisions.

- (a) Any person ~~who may be aggrieved with~~ a legally recognizable interest that may be adversely affected by a the Board's decision of the Board of County Commissioners made pursuant to this division an application for rezoning, development of regional impact, special exception that meets the criteria of a Development of County Impact, special exceptions or variances heard as part of a rezoning, or an appeal pursuant to section 34-1445(b)(2)b, may file a written request with the Director and the County Attorney for a public rehearing ~~by the Board of County Commissioners~~ for a modification or rescission of the decision. The request must be filed ~~with the Director of Community Development and the County Attorney's Office~~ within 15 calendar days after the Board's decision. For purposes of computing the 15-day period, the date of the decision is the date of the public hearing at which the ~~Board of County Commissioners~~ made its decision by oral motion.

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DIVISION 4. HEARING EXAMINER

Sec. 34-141. Office established.

The Office of Hearing Examiner is hereby created and established, in accord with the provisions of this Code. The Hearing Examiner has the powers set forth in:

- The Land Development Code this division, as well as the powers and authority set forth in Chapter 2, Article VII;
- Code Enforcement Board/Special Masters Ordinance (Ordinance 90-01, Lee County Code 1, Article VI);
- Historic Preservation Ordinance (Ordinances 88-62 and 90-54, Lee County Code, Chapter 17½);
- The Nuisance Accumulation Ordinance (Ordinance 93-39, Lee County Code, Chapter 17, Article III);
- Post Disaster Recovery Ordinance (Ordinance 07-20, Lee County Code Chapter 13½, Article IV);
- Mandatory Recycling of Commercial and Multifamily Residential Solid Waste, Construction and Demolition Debris (Ordinance 07-25, Lee County Code Chapter 17, XIV);
- Mandatory Solid Waste Collection and Disposal Benefit Unit Ordinance (Ordinance 11-27, Lee County Code Chapter 17, Article VI);
- The Lot Mowing Ordinance (Ordinance 14-08, Lee County Code Chapter 17, Article IV);
- The Abandoned Property Registration Program (Ordinance 13-18, Lee County Code, Chapter 1, Article XIX); and
- The Noise Control Ordinance (Ordinance 14-18, Lee County Code, Chapter 24¼).

Sec. 34-142. Appointment; qualifications.

~~The Board of County Commissioners shall will appoint the Chief Hearing Examiner, and may, as necessary, appoint authorize the Chief Hearing Examiner to hire any deputy Hearing Examiners or Hearing Examiners pro tempore, as necessary. Such Chief Hearing Examiners shall will hold their positions at the pleasure of the Board of County Commissioners. Appointment to, removal from, and qualifications for such offices shall of the Hearing Examiner will be according to in accordance with the aAdministrative eCodes specifically covering this subject matter.~~

Sec. 34-143. Funding.

~~The Board of County Commissioners shall will establish the office of the Hearing Examiner and appropriately budget such the office annually.~~

Sec. 34-144. Conduct of meetings hearings; reports and records.

- (a) Rules of procedure. ~~The Board of County Commissioners shall will adopt rules for transaction of Hearing Examiner business and the Hearing Examiner shall will conduct meetings in accordance with pursuant to the provisions of applicable regulations and aAdministrative eCodes of the Board of County Commissioners.~~

- (b) ~~MeetingsHearings. Meetings for the purpose of holding p~~Public hearings shall will
be scheduled, noticed and conducted pursuant to applicable ~~a~~Administrative
~~e~~Codes and the provisions contained in this chapter Code.
- (c) Reports of decisions and recommendations. After a public hearing is held, the
Hearing Examiner will ~~make~~prepare a written report of his ~~the~~decision or
recommendation in accordance with the rules and procedures set forth in the
applicable ~~a~~Administrative eCode, and provide a copy of the report of decision (by
~~either electronic means or hard copy~~) to all parties of record, appropriate County
staff and the Board of County Commissioners.
- (d) Recordings.
 - (1) ~~The Hearing Examiner will provide for a court reporter at all proceedings under~~
section 34-145 record hearings and provide a copy of the recording to the
Department. The Department will be the official custodian of the recordings. At
a minimum, a summary of testimonies will be provided in the report of decision
itself or as a separate document in addition thereto. Transcripts will be provided
only upon request. Individuals making the request must bear the costs of
transcription.
 - (2) ~~The Hearing Examiner shall keep indexed records of all meetings, agendas,~~
~~findings, determinations and reports of decision. Such records shall be public~~
~~records.~~
- (e) Attendance at hearings. The Hearing Examiner may request ~~s~~Staff members with
personal knowledge of relevant facts to attend hearings and produce relevant
documents, ~~and~~ The Hearing Examiner may advise notify the County Administrator
Manager of failure to if Staff fails to comply with the ~~Hearing Examiner's such~~
requests.
- (f) ~~In addition to the provisions found within this Code, all hearings before the Hearing~~
~~Examiner must comply with the procedures established in Administrative Code 2-6.~~

Sec. 34-145. Functions and authority.

- (a) Appeals from administrative action.

- (1) ~~Function:~~ Authority.

- a. ~~The Hearing Examiner is authorized~~ has authority to hear and decide
appeals where it is alleged ~~that a~~ County administrative official charged with
the administration and enforcement of the provisions of this Code (or other
ordinance that provides for similar review) erred in issuing or denying any
order, requirement, decision, interpretation, determination or action,
~~implementing the provisions of this Code; provided, however, that:~~

- ab. The Hearing Examiner is not authorized to hear appeals based on:

- 1. Acts of administrative officials pursuant to the orders, resolutions, or
directives of the Board, ~~of County Commissioners; or~~

- Ordinances, ~~or other~~ regulations, or provisions in this Code that
provides a different appellate procedure.

3. Zoning verification letters.
 4. ~~Challenges to a development order controlled by F.S. § 163.3215. An administrative official's determinations or interpretations of the Lee County Comprehensive Plan, State or Federal Statutes, State or Federal Codes, Rules, or Regulations. If the Hearing Examiner must interpret or apply the Lee County Comprehensive Plan, State or Federal Statutes, State or Federal Codes, Rules or Regulations in reaching a decision on an appeal, the Hearing Examiner is not authorized to hear the appeal and the case must be dismissed.~~
- b. ~~An appeal to the Hearing Examiner must be in compliance with the provisions of Administrative Code section 2-6.~~
 - c. ~~No appeal may be considered by t~~The Hearing Examiner may not consider appeals that circumvent where it appears to be a circumvention of an established or required procedures. Specifically, ~~in no case may the Hearing Examiner may not consider an appeal be heard if the case would be more appropriately addressed as a request in an application for a variance, special exception, or rezoning.~~
 - 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.
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.
- d. ~~Notices of hearings on appeals will be provided in accordance with the provisions of an applicable administrative code adopted by the Board of County Commissioners.~~
 - e. ~~The Hearing Examiner will not consider appeals for challenges to a development order controlled by F.S. § 163.3215.~~
- (3) Standing to Appeal
- fa. ~~Except as provided in subsection g. below, a third party will not have standing to appeal an administrative action to the Hearing Examiner. Only~~

~~the applicant or his agent will be permitted to~~ The Applicant may appeal such an administrative action as set forth in this section. 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.

~~g~~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 ~~any the~~ the appeal of such actions.

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

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

~~(2) Considerations.~~

~~a. In reaching a decision, the Hearing Examiner must consider the following criteria, as well as any other issues that are pertinent and reasonable:~~

- ~~1. Whether appeal is of a nature properly brought before the Hearing Examiner for a decision.~~

~~— The plain and ordinary meaning of all applicable ordinance or code provisions, unless the language is unclear or ambiguous then the intent of the ordinance or code provision applied or interpreted may be considered.~~

~~b. Staff recommendations, the testimony of the parties and witnesses and testimony of the general public must also be considered.~~

~~(4) De Novo or Appellate Proceedings~~

~~e~~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, are not de novo proceedings and will be limited to a determination of whether:

1. T~~t~~he board afforded procedural due process,

T~~t~~he b~~B~~oard applied the correct law, and ~~whether~~

3. The record contains competent and substantial evidence to support the Board's actions.
- eb. All other appeals from administrative actions, with the exception of section 34-145(a)(2)d, are de novo proceedings. All 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.
- ~~(3) Findings. Before granting an appeal, the Hearing Examiner must determine if an error was made by the administrative official.~~
- ~~(4) Authority.~~
- ~~a. The Hearing Examiner has the authority to reverse, affirm or modify the decisions or actions of the administrative official. In appeals pursuant to section 22-42, or other appeals of decisions or actions of any commission or board, the Hearing Examiner may only remand the matter to the Board or Commissioner for further proceedings consistent with the Hearing Examiner's findings and conclusions of law.~~
 - ~~b. Subject to the limitations set forth in subsection section 34-145(a)(4)a of this section, the Hearing Examiner may make a decision to take the action that the Hearing Examiner finds the administrative official should have taken. To that end, the Hearing Examiner has the power of the administrative official from whom the appeal is taken. The Hearing Examiner may only take an action that the administrative official is authorized to take under this Code. The Hearing Examiner is not authorized~~

~~to take an action that requires the approval or authorization of the Board of County Commissioners.~~

(58) Review of decisions. ~~Any party~~ 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 of County Commissioners within 15 calendar days after ~~such the~~ decision is rendered. ~~(See section 34-83(c).)~~ Judicial reviews of final decisions of the Hearing Examiner with respect to on appeals of other administrative actions are to the circuit court in accordance with section 34-146.

(b) Variances.

(1) ~~Function.~~ Authority.

- a. The Hearing Examiner will hear and decide all requests for variances from the terms of the regulations or restrictions of the Land Development this Code and such from other ordinances as may be assigned to him by the Board of County Commissioners, except that no use variance may be heard or considered.
- b. The Hearing Examiner has the authority to grant, deny, or modify any request for a variance.
- 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 recommendations, including the sStaff rReport and attachments;
- ~~b. Testimony from the applicant;~~
- c. Testimony and evidence from the public participants;
- d. The Lee Plan;
- e. ~~This chapter~~ Code; and
- f. ~~Any other applicable County ordinances or County codes~~ regulations.

(3) Findings/Review Criteria. Before granting any variance, the Hearing Examiner must find ~~that all of the~~ following review criteria are satisfied:

- a. ~~There are property has inherent exceptional or extraordinary conditions or circumstances that are inherent to the property in question and whether those exceptional or extraordinary conditions or circumstances that cause the application of the regulation to create a hardship (as defined in section 34-2) on the property owner.~~

- b. ~~The exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant property owner taken subsequent to the adoption of the ordinance. (any action taken by an applicant pursuant to lawfully adopted regulations preceding the adoption of the ordinance from which this chapter is derived will not be considered self created).~~
- c. The variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his the property.
- d. The granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- e. ~~The condition or situation of the specific piece of property, or the intended use of the property, for which the variance is sought is not of a general or recurrent nature so as to make it more reasonable and practical to amend the ordinance. The variance is consistent with the Lee Plan.~~

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

- ~~fa. In the case of w~~Wireless communication facilities; the Hearing Examiner must also make the findings required by section 34-1453
 - 1. Denial would have the effect of prohibiting the provision of personal wireless services;
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.
- ~~gb. For variances from the Airport Compatibility District regulations;~~ the Hearing Examiner must also find that ~~t~~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.

~~(45)~~ Authority Decisions.

- a. ~~The Hearing Examiner has the authority to grant, deny, or modify any request for a variance from the regulations or restrictions of this Code; provided, however, that no use variance as defined in this chapter, or any variance from definitions or procedures set forth in any ordinance, may be granted. If~~ When ~~the Hearing Examiner determines denial is appropriate, then the decision must include a citation to the specific legal authority for the denial, in accord with section 2-4~~
- b. In reaching a decision, the Hearing Examiner may attach conditions necessary for the protection of the health, safety, comfort, convenience and welfare of the general public. ~~The c~~ Conditions must be rationally related to the variance requested and the potential impacts of the request on surrounding uses.
- c. ~~Variances may be reviewed by themselves or as part of a rezoning. d. All d~~ Decisions of the Hearing Examiner concerning on variances filed as part of a rezoning with an application to rezone property, or from the Airport Compatibility District regulations, must be in the form of a recommendation to the Board of County Commissioners. Only a participant or his representative will be afforded the right to address the Board of County Commissioners.

- ~~(56)~~ Judicial review. Except as provided in section 34-1453(b) for wireless communication facilities, j Judicial review of Hearing Examiner's final variance decisions of the Hearing Examiner with respect to variances are to the circuit court in accordance with section 34-146. Exception: review of the Hearing Examiner's wireless communication facilities decisions must follow the procedures outlined in sections 34-1453(b) and 34-1445(b)(2)b.

- ~~(6)~~ Variances from Airport Compatibility District Regulations. The Hearing Examiner will issue a recommendation to the Board of County Commissioners for a final decision in all cases seeking a variance from the Airport Compatibility District regulations.

- ~~(7)~~ Effective Date. Final decisions in a variance case, including attached conditions, become effective and enforceable on the date Hearing Examiner issues the final decision is issued by the Hearing Examiner.

(c) Special exceptions.

- (1) Function Authority. The Hearing Examiner will hear and decide all applications for special exceptions permitted by the district use regulations. Special exceptions may be reviewed 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 recommendations, including the sStaff rReport and attachments;
- ~~b. Testimony from the applicant;~~
- c. Testimony and evidence from the public participants;
- d. The Lee Plan;
- e. ~~This chapter Code;~~ and
- f. ~~Any other applicable County ordinances or County codes~~ regulations.

(3) Findings/Review Criteria.

- a. ~~Before~~ Prior to granting any special exceptions, the Hearing Examiner must find that the aApplicant has provedn entitlement to the special exception by demonstrating the request:
 - a1. ~~That the request iIs~~ consistent with the goals, objectives, policies and intent of the Lee Plan;
 - b2. ~~That, when applicable, the request wWill~~ protect, conserve or preserve environmentally critical and sensitive areas and natural resources, where applicable;
 - c3. ~~That the request wWill~~ be compatible with existing ~~or~~ and planned uses;
 - d4. ~~That the request wWill~~ not be injurious to the neighborhood or otherwise detrimental to the public welfare; and,
 - e5. ~~That the requested use wWill~~ be in compliance with ~~all~~ zoning provisions regulations pertaining to the use ~~set forth in this chapter and any other applicable County ordinances or codes~~ regulations.
- fb. In the case of new antenna supporting structure wireless communication facilities, the Hearing Examiner must also ~~make the findings required by section 34-1445(b).~~ find, or conclude a finding is not applicable, that:
 - 1. The Applicant is not able to use existing wireless communications facility sites in the geographic search area;
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.

(4) Authority Decision.

- a. The Hearing Examiner must grant the special exception unless he or she finds the request conflicts with subsection (c)(3) of this section or the request is contrary to the public interest and the health, safety, comfort, convenience and welfare of the citizens of the County, or that the request is in conflict with subsection (c)(3) of this section. If the Hearing Examiner determines denial is appropriate, ~~then the decision must include a citation to the specific legal authority for the denial in accord with section 2-4.~~
- b. ~~In reaching a decision, t~~The Hearing Examiner may attach conditions necessary for the protection of the health, safety, comfort, convenience or welfare of the general public. The conditions must ~~be rationally related to the special exception requested and the potential impacts of the request on surrounding uses.~~
- c. ~~Special exceptions may be reviewed by themselves or as a part of a rezoning.~~
- d. ~~All d~~Decisions of the Hearing Examiner concerning on special exceptions filed ~~as part of a rezoning with an application to rezone property or from the Airport Compatibility District regulations~~ must be in the form of a recommendation to the Board of County Commissioners. Only a participant ~~or his representative will be afforded the right to address the Board of County Commissioners.~~

(5) ~~Judicial review. Except as provided in section 34-1445(b) for wireless communication facilities, j~~Judicial review of Hearing Examiner's final decisions of the Hearing Examiner with respect to on special exceptions will be in are to circuit court in accordance with section 34-146. Exception: review of Hearing Examiner's wireless communication facilities decision must follow the procedure outlined in section 34-1445(b)(2)b.

(6) ~~Final decisions in a special exception case, including attached conditions, become effective and enforceable on the date the~~ Hearing Examiner issues the final decision is issued by the Hearing Examiner.

(d) Zoning matters.

(1) Authority.

- a. The Hearing Examiner serves in an advisory capacity to the Board on zoning matters and does not make the final determination.
- b. The Hearing Examiner may not recommend approval of a rezoning that is more expansive than the request published in the newspaper. The Hearing Examiner may recommend approval of a zoning district that is more restrictive than the published request.
- c. The Hearing Examiner may recommend conditions of approval on requests for planned developments and requests for special exceptions or variances heard with a rezoning application.

(12) Functions. ~~Regarding zoning matters, t~~The Hearing Examiner has the following ~~prescribed duties~~ and responsibilities: to

- ~~a. Prepare recommendations to the Board of County Commissioners for changes or amendments relating to the boundaries of the various zoning districts or to the regulations applicable to those districts.~~
- ~~b. M~~make recommendations to the Board of County Commissioners on applications ~~relating to~~ for the following requests:
 - ~~4a. Rezoning, including Developments of County Impact, planned unit developments and planned developments, and conventional zoning districts, and any accompanying request to use TDR or affordable housing bonus density.~~
 - ~~2b. Developments of r~~Regional Impact and Florida Quality Developments approval, which ~~may or may not include~~ with or without a companion request for rezoning.
 - ~~3. Special exceptions that meet the criteria for a Development of County Impact, as set forth in section 34-203(b).~~
 - ~~4c. Other s~~Special exceptions and variances which ~~are submitted simultaneously with and are heard in conjunction with a rezoning.~~
 - ~~5d. Variances from any County ordinances which specifies that specify variances from the ordinance may only be granted by the Board of County Commissioners.~~
 - ~~6e. Applications to increase density above the Lee Plan standard density range through the use of affordable housing bonus density units~~ or Transfer Development Rights.
 - ~~7. Applications for mine excavation development planned approval under chapter 12~~
 - ~~c. Certain amendments to development of regional impact development orders do not require a public hearing. After staff review and recommendation, proposed amendments of this type will proceed directly to the Board of County Commissioners and will be scheduled on the administrative agenda of a regular weekly meeting. The Board will vote on the following types of amendments based upon the recommendation of staff without review by the Hearing Examiner:~~
 - ~~1. Amendments that incorporate the terms of a settlement agreement designed to resolve pending administrative litigation or judicial proceedings; or~~
~~— Any amendment contemplated under F.S. § 380.06(19)(e)2.~~
 - f. Amendments to Development of Regional Impact Development Orders under F.S. §380.06(19)(e)2.

~~(23) Considerations. In preparing a recommendation on a zoning matter, t~~The
Hearing Examiner must consider the considerations set forth in section 34-
145(c)(2) following:

- a. Testimony and evidence from the Applicant;
- b. Testimony and evidence from the Staff, including the Staff Report and attachments;
- c. Testimony and evidence from participants;
- d. The Lee Plan;
- e. This Code; and
- f. Applicable regulations.

~~(4) Authority.~~

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

~~(34) Findings/Review Criteria.~~

- a. Before preparing a recommendation to the Board of County Commissioners on a zoning matter, recommending approval for:
 1. Rezoning – T~~he~~ Hearing Examiner must find that the request:
 - ~~a.) The applicant has proved entitlement to the rezoning by demonstrating compliance~~Complies ~~with the Lee Plan,;~~
 - b) Meets this land development c~~ode~~, and any other applicable code orCounty regulations or qualifies for deviations; and
 - ~~b. The request, including the use of TDR or affordable housing bonus density units, is consistent with the densities, intensities and general uses set forth in the Lee Plan; and~~
 - ~~c.) The request is compatible with existing or~~and ~~planned uses in the surrounding area; and~~
 - ~~d.) Approval of the request will not place an undue burden upon existing transportation or planned infrastructure facilities and will be~~

~~served by streets with the capacity to carry traffic generated by the development; and Will provide access sufficient to support the proposed development intensity and the expected impacts on existing or planned transportation facilities will be mitigated through existing County regulations or conditions of approval;~~

~~e.) Where applicable, the request wWill not adversely affect environmentally critical or sensitive areas and natural resources; and~~

~~g.f.) Where the change proposed is within a future urban area category, the Hearing Examiner must also find that Will be served by urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve the proposed land use if located in a Future Urban area category.~~

~~f2. Planned Development Rezonings – In the case of a planned development rezoning or mine excavation planned development, the decision of tThe Hearing Examiner must also be supported by the formal findings required by sections 34-377(a)(2) and (4). find:~~

~~a) The proposed use or mix of uses is appropriate at the proposed location;~~

~~b) The recommended conditions provide sufficient safeguards to the public interest and are reasonably related to the impacts on the public's interest expected from the proposed development.~~

~~c) If the application includes deviations pursuant to section 34-373(a)(9), that each requested deviation:~~

~~1) Enhances the achievement of the objectives of the planned development; and~~

~~2) Preserves and promotes the general intent of this Code to protect the public health, safety and welfare.~~

~~h.d) If the rezoning is to Compact PD in Southeast Lee County, – the recommendation of the Hearing Examiner must also include findings regarding the provisions set forth in section 32-504(a). The regulating plan will be similar in performance to the conceptual regulating plan, under section 32-405; and~~

~~i. That the level of access and traffic flow (i.e. median openings, turning movements etc.) is sufficient to support the proposed development intensity.~~

~~j.e) If the hearing concerns a mMine excavation planned development, – that tThe request meets the criteria and standards set forth in chapter 12 following;~~

- 1) The mining activity will not create or cause adverse effects from dust, noise, lighting and odor on existing agricultural, residential, conservation activities, or other nearby land uses.
- 2) The Applicant has given special consideration to the protection of surrounding private and publicly owned conservation and preservation lands.
- 3) Approval of the request:
 - i. will maintain the identified wet and dry season water level elevations and hydro periods necessary to restore and sustain water resources and adjacent wetland hydrology on and off-site during and upon completion of the mining operations;
 - ii. will serve to preserve, restore and enhance natural flowways deemed important for local or regional water resource management.
 - iii. preserves indigenous areas that are occupied wildlife habitat to the maximum extent possible.
 - iv. provides interconnection to off-site preserve areas and conservation lands via indigenous preservation areas, flowway preservation or restoration, and planted buffer areas.
- 4) The site is designed to:
 - i. avoid adverse effects to existing agricultural, residential or conservation activities in the surrounding area.
 - ii. avoid adverse effects from dust, noise, lighting, or odor on surrounding land uses and natural resources.
 - iii. mimic or restore the natural system pre-disturbed water budget to the maximum extent practicable.
- 5) Traffic mitigation standards in section 12-116.
- 6) Reclamation standards in section 12-119.
3. Rezoning to the Environmentally Critical (EC) district – The Hearing Examiner must make the additional finding that rezoning to the EC district is necessary to prevent public harm or meet a public need.
4. Bonus Density Program – The Hearing Examiner must find the request meets the provisions of the draft contract agreement and the following minimum requirements:
 - a) The request for participation in the program:
 - 1) Complies with and is consistent with the Lee Plan and other applicable federal, state and regional laws and regulations;

- 2) Only includes property zoned for the type of dwelling units to be constructed; and
 - 3) Limits the proposed density to the total density allowed by the Lee Plan category.
- b) The proposed development is designed so that:
- 1) The resulting development does not have substantially increased intensities of land uses along its perimeter, unless adjacent to existing or approved development of a similar intensity;
 - 2) The additional traffic will not be required to travel through areas with significantly lower densities before reaching the nearest collector or arterial road;
 - 3) Existing and committed public facilities are not so overwhelmed that a density increase would be contrary to the overall public interest;
 - 4) There will be no decrease in required open space, buffering, landscaping and preservation areas or adverse impacts on surrounding land uses;
 - 5) Storm shelters or other appropriate mitigation is provided, if the development is located within the Category 1 Storm Surge Zone for a land-falling storm as defined by the October 1991 Hurricane Storm Tide Atlas for Lee County prepared by the Southwest Florida Regional Planning Council; and
 - 6) The resulting development will be compatible with existing and planned surrounding land uses.
- b. Denials. Before recommending denial of a rezoning request that complies with the applicable review criteria, the Hearing Examiner must find maintaining the existing zoning designation is not arbitrary, discriminatory, or unreasonable and accomplishes a legitimate public purpose.
- (5) ~~Decisions—Recommendations.~~ All decisions of the Hearing Examiner's recommendation on concerning zoning matters under this subsection (d) will be in the form of a recommendation provided in a written report to the Board of County Commissioners.
- (e6) Recommendations on Planned Developments.
- a. If the Hearing Examiner determines that a recommended condition is insufficient, 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.
- (e) Notice of intent to deny based on insufficient information. (1)—If the Hearing Examiner intends to deny or recommend denial of an application/appeal described in subsections (a) through (d) of this section based on the aApplicant's/Appellant's failure to provide information evidence adequate in scope and detail to address particular issues, he the Hearing Examiners may, in his discretion, send a notice of intent to deny based on insufficient information evidence to all Parties and participants in lieu of a denial or a recommendation to deny the application or reopen the hearing. The procedure for issuing the notice and the responses to the notice are set forth in the Administrative Codes. The notice must state the issues on which additional information is necessary and must direct the applicant to indicate within ten working days whether he intends to provide the information and the date upon which the information will be provided (not to exceed 30 working days).
 - (2) ~~If the applicant does not respond affirmatively within ten working days of the date of the notice, the Hearing Examiner must prepare and submit a recommendation or decision, whichever is applicable, denying the application to the Board of County Commissioners and all participants. If the applicant does respond affirmatively, the Hearing Examiner must send a copy of the response to all participants of record along with a notice of a new hearing date, at which time the new evidence will be considered.~~
 - (3) ~~The applicant must submit all of the new evidence provided in accordance with this section to the zoning staff, who will review it and prepare a supplementary staff report addressing only those issues to which the new evidence is relevant.~~
 - (4) ~~The hearing following the receipt of the new evidence will be limited to those issues to which the new evidence is relevant.~~
 - (5) ~~No applicant will be entitled to more than one notice of intent to deny based on insufficient information.~~
- (f) Equitable jurisdiction. Unless specifically provided, tThe Hearing Examiner does not have the authority to render decisions based on equitable the law of equity in any proceedings under this section 34-145(a) through (d).
- (g) In reaching a decision or preparing a recommendation, tThe Hearing Examiner is limited to the authority granted within County regulations. The Hearing Examiner is not authorized to render legal declarations regarding state or federal statutes, this includes, but is not limited to, the ability for the Hearing Examiner to render decisions regarding the effect of state or federal law on County regulations. The Hearing Examiner may consider state, federal, or common law in the application of the County regulations.

- ~~(h) Deviations or variances from procedural requirements of this chapter, chapter 10 or any other ordinance, definitions, or the actual use of land or structures are prohibited. This does not prohibit the granting of special exceptions as provided for in this Code.~~

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

- (a) The decision of the Hearing Examiner ~~will be final on~~ is final for:
- ~~(1) applications for a~~Administrative appeals that are not appealed to, and decided by, the Board of County Commissioners; and
 - ~~(2) Variances, and special exceptions, when such variances or special exceptions are not except when those requests are:~~
 - a. part of a rezoning or Development of County Impact other request that requires final decision by the Board of County Commissioners; or
 - b. a wireless communication facility appealed to the Board pursuant to sections 34-1445(b) or 34-1453.
- ~~(b) Judicial review of a final decisions of the Hearing Examiner concerning an administrative appeal, variance or special exception will be in circuit court. This review may only be obtained through by filing a petition for writ of certiorari pursuant to in accordance with the Florida Rules of Appellate Procedure. The petition must be filed within 30 calendar days after the final decision has been rendered.~~
- ~~Appeals from Hearing Examiner decisions concerning wireless communication facilities must be to the Board of County Commissioners pursuant to sections 34-1445(b) and 34-1453, as applicable.~~
- ~~(bc) For the purposes of this subsection, a A decision is "rendered" as of on the date when it is reduced to writing, signed and dated by the Hearing Examiner. Decisions will be delivered or mailed by the Hearing Examiner to parties of record and each individual County Commissioner on the date it is rendered or on the next regular working day thereafter. In some cases, notice of the decision may be provided pursuant to applicable administrative codes.~~
- ~~(ed) The person making application to the Hearing Examiner for a final decision that is entitled to judicial review, is a necessary and indispensable party to an actions seeking judicial review.~~
- ~~(de) This section is does not intended to preclude actions pursuant to F.S. § 70.51 or § 163.3215.~~

Secs. 34-147—34-170. Reserved.

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

...

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

- (c) *Rezoning other than planned developments and developments of regional impact.* A statement explaining the nature of the request, how the property qualifies for the rezoning, and how the request meets the applicable required findings/review criteria set forth in section 34-145(d)(34). This statement may be utilized by the Board of County Commissioners, Hearing Examiner and staff in establishing a factual basis for the granting or denial of the rezoning.

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DIVISION 7. PUBLIC HEARINGS AND REVIEW

Sec. 34-231. Definitions. Reserved.

~~For purposes of this division only, certain terms are defined as follows:~~

~~Continuance means an action initiated by the applicant, staff or a Hearing Examiner or the Board of County Commissioners to postpone, to a later time or date, a public hearing after the notice of the public hearing has been submitted to the newspaper for publication as required in section 34-236.~~

~~Deferral means an action initiated by the applicant or staff to postpone, to a later time or date, a public hearing prior to the notice of the public hearing being submitted to the newspaper for publication.~~

...

Sec. 34-233. Preliminary review and notice certification.

- (a) Staff Review

...

- (3) ~~All The Staff comments Report will be forwarded to the Hearing Examiner or Board of County Commissioners prior to the scheduled public hearing.~~

Sec. 34-234. Public participation.

- (a) Participation before ~~Hearing Examiner or~~ Local Planning Agency. At a public hearing before the ~~Hearing Examiner or~~ Local Planning Agency, all persons will be heard. However, the ~~Hearing Examiner or~~ Local Planning Agency has the right to refuse to hear testimony ~~which that~~ is irrelevant, repetitive, defamatory or spurious, and to establish reasonable time limits on testimony.
- (b) Participation before ~~Board of County Commissioners~~; zoning matters. At public hearings of ~~n~~ zoning matters, only the Parties and participants or his representative at the proceeding before the Hearing Examiner ~~will be afforded the right to may~~ address the ~~Board of County Commissioners~~. This prohibition does not apply to the Board's legal counsel, County staff whose sole purpose is to facilitate the zoning hearing, or legal counsel representing a Party or hearing participant. The testimony presented to the Board will be limited to:

- (1) Testimony presented to the Hearing Examiner.

- (2) Testimony concerning but only as to the correctness of the findings of fact or conclusions of law contained in the record, or
- (3) to allege the discovery of Allegations that relevant new evidence has been discovered that which was not known or could not have been reasonably discovered by the speaker at the time of the hearing before the Hearing Examiner, and not otherwise disclosed in the record.

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

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

Sec. 34-235. - Deferral or continuance of public hearings before the Local Planning Agency and zoning hearings before the Board.

The following procedures and regulations for deferring or continuing a public hearing apply for the ~~Hearing Examiner~~, Local Planning Agency (LPA) and zoning hearings before the Board of County Commissioners:

- (1) ~~Deferral. A scheduled but not yet advertised public hearing may be deferred by the Division staff or by the applicant as follows:~~
- a. County Staff or an Applicant may request to defer a scheduled public hearing to a later time or date if requested before delivery of the public hearing notice to the newspaper.
 - b. County Staff-initiated deferral. The Division of Zoning and Development Services may defer a scheduled public hearing prior to advertising, if additional or corrected information is required to permit staff to properly or adequately review a requested application provided notice is mailed to the applicant stating the reason for the deferral and what additional information is required to complete staff review. If County Staff defers a scheduled public hearing, they must notify the Applicant in writing of the reason for deferral and specify the information necessary to complete Staff review.
 - bc. Applicant-initiated deferral. Requests for a deferral by an Applicant may request a deferral of the public hearing if the request is must be in writing and received by the Division of Zoning and Development Services Department prior to the Division Department submitting notice of the hearing to the newspaper for publication.
 - ed. Fee. There will be no additional fee for either a staff-initiated or applicant-initiated deferrals. However, the aApplicant must obtain corrected zoning notice posters from the Division Department and post the signs on-site, if required by the LDC or Administrative Codes.

~~de. Applicant-initiated deferral requests meeting the requirements of this section may be deferred by the Director. The Director may defer a case without any further action by the Hearing Examiner, Local Planning Agency, LPA or Board of County Commissioners (as applicable).~~

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

(2) Continuance. A scheduled, advertised public hearing may be continued by the County or by the aApplicant as follows:

a. A continued hearing must be set to a specific date and time. Any hearing not continued to a date and time certain must be re-advertised.

~~ab. County-initiated continuance. 1. The Hearing Examiner, Local Planning Agency LPA or Board of County Commissioners, upon staff request, or upon its own initiative, may continue a public hearing, upon Staff request, or on its own initiative, when it is necessary to require request additional information, public testimony, or time to render an appropriate their decision/recommendation, or to accommodate their schedules. Any County initiated request to continue a public hearing must be in accordance with the rules set forth in AC 1-3.~~

c. The Applicant may request a continuance at the beginning of the agenda.

~~3d. County sStaff and an Applicant are each is entitled to one the first continuance as a matter of right without showing cause. Each decision-making body has the authority to grant additional further continuances upon a showing of good cause. There are no limitations to the number of County-initiated continuances. If the subsequent request for continuance is denied, the hearing will proceed in accordance with the published agenda.~~

~~4e. The County requesting party must bear all re-notification costs of a County-initiated continuance.~~

f. The County Staff's and the Applicant's first continuance requests for a zoning case scheduled before the Board will be automatically granted if submitted in writing to the other Party no later than seven calendar days before the scheduled hearing. Otherwise, the Board will consider the continuance request on the date of hearing.

1. The Department will set the date and time of the continued hearing and notify the Board, Office of the County Attorney, and participants of record.

At the originally noticed hearing, the Board will announce the date and time of the continued hearing. No public comment or testimony will be taken on the case until the date of the continued hearing.

~~b. Applicant-initiated continuance.~~

- ~~1. The applicant may appear before the Hearing Examiner, Local Planning Agency or Board of County Commissioners at the beginning of its scheduled agenda and request the continuance.~~
- ~~The applicant is entitled to one continuance before each decision-making body as a matter of right. A request for continuance by the applicant for a case scheduled before the Board of County Commissioners must be submitted to the Department of Community Development no later than five calendar days before the scheduled hearing. Each decision-making body has the authority to grant additional continuances upon a showing of good cause.~~
 - ~~i. If the additional request for continuance is denied, the hearing will proceed in accordance with the published agenda.~~
 - ~~ii. If the request for continuance is approved, the Hearing Examiner, Local Planning Agency or Board of County Commissioners may set a date certain for hearing the application. Any hearing not continued to a date certain is deemed to be withdrawn.~~
- ~~3. A fee, in accordance with a duly adopted fee schedule, will be charged for any applicant-initiated continuance to cover the costs of renotification. The applicant must bear all renotification costs of an applicant-initiated continuance.~~

Sec. 34-236. Notices.

...

(b) Method of providing notice.

- (1) Notices of hearings before the Board of County Commissioners, the Hearing Examiner and the Local Planning Agency will be provided in accordance with applicable Florida Statutes and the County Administrative Codes.
- (2) Mailed notice may be provided via electronic means unless prohibited by statute.
- (3) The "surrounding property owners list and map" required by section 34-202(a) is for the purpose of mailing notice to property owners within 500* feet of the property described. The notice is a courtesy only and is not jurisdictional. Accordingly, the County's failure to mail or to timely mail the notice or failure of an affected property owner to receive mailed notice will not constitute a defect in notice or bar the public hearing as scheduled.

*NOTE: in those instances where fewer than ten owners of property would be notified, the distance must be expanded to include all owners of property within 750 feet, ~~and or~~ 1,250 feet for wireless communication facilities.

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ARTICLE IV. PLANNED DEVELOPMENTS

DIVISION 1. GENERALLY

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Sec. 34-376. Prehearing stipulation Prehearing Materials.

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

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

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

(a) Summary Report.

- (1) After an application is found sufficient and before transmittal of the Staff Report to the Hearing Examiner, the Applicant may provide a report that includes a substantive analysis of the request with copies of documents, studies, plans, or other materials (hereinafter "materials") for the Hearing Examiner to consider.
- (2) The Applicant's report will be transmitted to the Hearing Examiner with the Staff Report.
- (3) The Applicant must submit three complete copies of the report to the Staff at least 25 calendar days prior to the scheduled hearing. Staff will include one copy of the report to the Hearing Examiner and one copy to the County Attorney's office with the Staff Report. The third copy will be retained in the official zoning file. If the materials are not submitted a minimum of 25 calendar days prior to the scheduled hearing, the Applicant waives the right to have the materials transmitted to the Hearing Examiner prior to the hearing.
- (4) If the materials include substantive changes to the information submitted with the original Application or in response to sufficiency questions asked by Staff, Staff may withdraw the sufficiency determination and seek a continuance to review the materials.

(b) Expert Testimony Information.

- (1) The Director may require an Applicant to provide the following information at least 48 hours before the date an expert is expected to testify:
 - a. Expert's name, business address and current resume;
 - b. A detailed description of the expert's qualifications (or copy of current resume) and the area of expertise;
 - c. A copy of the report that serves as the basis of the expert's opinion (if not already submitted with the application or included in the Staff Report). The report must include:
 1. A brief description of research conducted by the expert to reach the opinion;
A description of the facts, assumptions, and data forming the basis of the opinion; and
 3. The opinion;
 - d. Copies of materials relied on in formulating the expert's opinion;
 1. Summary or demonstrative materials do not need to be provided in advance, provided the underlying data or facts are provided.
Citations to the Land Development Code, Lee County Administrative Codes, Florida Statutes, U.S. Code, Florida Administrative Code, or Lee Plan are sufficient to meet this requirement.
- (2) The Director's written request for information must be issued a minimum of 30 days prior to the hearing.
- (3) The expert testimony information may not be submitted to the Hearing Examiner prior to the hearing unless included in the Applicant's summary report referenced in subsection (a).

Sec. 34-377. Public hearing.

- ~~(a) Hearing before Hearing Examiner. After the staff prehearing conference required by this division, the application will be scheduled for a public hearing before the Hearing Examiner.~~
- ~~(1) At the public hearing the Hearing Examiner will consider the application in accordance with article II of this chapter.~~
 - ~~(2) The recommendation made to the Board of County Commissioners must be supported by formal findings that address the guidelines set forth in section 34-145(d)(3) of this chapter. In addition, the findings must address whether the following criteria can be satisfied:~~
 - ~~a. The proposed use or mix of uses is appropriate at the subject location;~~
 - ~~b. The recommended conditions to the concept plan and other applicable regulations provide sufficient safeguards to the public interest.~~

- c. ~~The recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.~~
- (3) ~~If the Hearing Examiner determines that a recommended condition is insufficient, he may recommend an alternate condition for consideration by the Board of County Commissioners.~~
- (4) ~~If the application includes a schedule of deviations pursuant to section 34-373(a)(9), the Hearing Examiner's recommendation must approve, approve with modification or reject each requested deviation based upon a finding that each item:~~
 - a. ~~Enhances the achievement of the objectives of the planned development; and~~
 - b. ~~Preserves and promotes the general intent of this chapter to protect the public health, safety and welfare.~~

~~If the Hearing Examiner concludes that the application omits necessary deviations, those omitted deviations may be included in the recommendation without an additional hearing.~~
- (5) ~~As a condition of approval of a deviation, the Hearing Examiner may recommend that the applicant receive administrative approval of a more detailed development plan for each affected development area. Applications for administrative approval will be processed as administrative amendments in accordance with section 34-380 of this chapter and may be granted by the Director upon a finding that public health, safety, and welfare will not be adversely affected by the request.~~
- (6) ~~The Hearing Examiner recommendation must consider whether the proposed development intensity is supported by sufficient vehicular access and traffic flow from the County street system. However, the Hearing Examiner may not recommend a condition that appears to guarantee or approve a temporary or permanent median opening, turning movement or traffic control device in order to address any deficiency.~~

(b~~a~~) Hearing before Board of County Commissioners.

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ARTICLE VI. - DISTRICT REGULATIONS

DIVISION 9. PLANNED DEVELOPMENT DISTRICTS

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

...

- (g) *Submittal requirements.* In addition to the submittal requirements for planned developments set forth elsewhere in this Code, PRFPD applications must include:

- ...
- (3) A narrative explanation as to how the proposed development complies with the Lee Plan, as well as the guidelines for decision-making embodied in sections 34-145(c)(3)a. and b. and 34-145(d)(34).
- ...

DIVISION 10. - SPECIAL PURPOSE DISTRICTS

Subdivision II. - Environmentally Critical District

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Sec. 34-981. - Purpose and intent.

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- (b) The application of the EC district is intended to prevent a public harm by: (1) precluding the use of land for purposes for which it is unsuited in its natural state and which injures the rights of others; or otherwise (2) adversely affects a defined public interest. The EC district shall will be applied to an area of land or water only upon a recommendation by the Hearing Examiner and a finding by the Board of County Commissioners in their respective public hearings that the use or conversion of the property may create a public harm or a public need, as described in section 34-145(d)(4)a.3.
- ...

ARTICLE VII. - SUPPLEMENTARY DISTRICT REGULATIONS

DIVISION 5. ALCOHOLIC BEVERAGES

Sec. 34-1262. Compliance with applicable regulations.

- (a) No structure, building, establishment or premises shall may be occupied, used or maintained for the purpose of the retail sale, service or consumption of alcoholic beverages except in conformity with all applicable State and County regulations, including this chapter, and with the applicable state regulations.
- (b) Failure to abide by County and State regulations may result in the revocation of alcoholic beverage approval, as addressed by Section 34-1265.
- ...

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

...

(i) ~~Revocation of permit or approval.~~

- (1) ~~The Hearing Examiner has the authority to revoke an alcoholic beverage special exception, administrative approval, or other approval upon any of the following grounds:~~

- a. ~~A determination that an application for special exception or administrative approval contains knowingly false or misleading information.~~

- b. ~~Violation by the permit holder of any provision of this chapter, or violation of any state statute which results in the revocation of the permit holder's state alcoholic beverage license by the State Alcoholic Beverage License Board or any successor regulatory authority.~~
- c. ~~Repeated violation of any County ordinance at the location within the 12-month period preceding the revocation hearing.~~
- d. ~~Failure to renew a state liquor license, or written declaration of abandonment by the tenant and owner of the premises if under lease, or by the owner himself if not under lease.~~
- e. ~~Abandonment of the premises. An establishment which continually maintains (renews) its state liquor license, even though it has suspended active business with the public, will not be deemed to have been abandoned for purposes of this subsection.~~
- f. ~~Violation by the permit holder of any condition imposed upon the issuance of the special exception or administrative approval.~~
- g. ~~Violation of any of the minimum standards of the special exception.~~
- (2) ~~Prior to revoking an administrative approval, special exception, or other approval for alcoholic beverages, the Hearing Examiner must conduct a public hearing at which the permit holder may appear and present evidence and testimony concerning the proposed revocation. At the hearing, the Hearing Examiner may revoke the permit if a violation described in this subsection is established by a preponderance of the evidence. The permit holder must be notified of the grounds upon which revocation is sought prior to any hearing, and must be given notice of the time and place of the hearing in the same manner as set forth in article II of this chapter.~~
- 3) ~~When an alcoholic beverage permit is revoked in accordance with the terms of this subsection, the County may not consider a petition requesting an alcoholic beverage permit on the property for a period of 12 months from the date of final action on the revocation.~~
- (4) ~~Upon written demand of the Hearing Examiner, any owner or operator of an establishment with a COP license must make, under oath, a statement itemizing the percentage of his gross receipts from the sale of alcoholic beverages. Failure to comply with the demand within 60 days of the demand date is grounds for revocation of the special exception, administrative approval, or other approval.~~
- (ji) Appeals. All appeals of the Director's decisions by the Director must be filed in accordance with the procedures set forth in article II or article IV of this chapter for appeals of administrative decisions.
- (kj) Bottle clubs.

- (1) ~~All ^bBottle clubs operating under a valid special permit as of September 18, 1996 are deemed nonconforming on the effective date of this ordinance uses.~~
- (2) ~~All non-conforming bottle clubs must discontinue their use no later than 12 months from the effective date of this ordinance.~~
- (3) No new bottle clubs will be allowed in any zoning district. This subsection supersedes and repeals any existing County regulations in conflict herewith.

Sec. 34-1265. Revocation of alcoholic beverage permit or approval

- (a) The Board has the authority to revoke an alcoholic beverage special exception, administrative approval, or other alcohol related approval on the following grounds:
 - (1) Evidence shows the Applicant knowingly submitted false or misleading information in the request;
 - (2) The approval was granted based on a mutual mistake of fact;
 - (3) Violation of a condition of the approval;
 - (4) Violation of the Land Development Code provisions related to the alcoholic beverage use;
 - (5) The operation of or change to the alcoholic beverage use is materially inconsistent with the minimum standards of the special exception or the review criteria for the use;
 - (6) The operation of or change to the alcoholic beverage use materially alters the information, configuration, basis, or circumstances presented by the Applicant and on which the approval was granted;
 - (7) The alcoholic beverage permit property had more than two findings of violation of a County ordinance within the 12-month period preceding the revocation hearing;
 - (8) Revocation of the permit holder's state alcoholic beverage license;
 - (9) Failure to maintain a state liquor license on the premises; or
 - (10) Abandonment of the premises. If an establishment maintains a state liquor license, the premises will not be deemed abandoned for purposes of this subsection, even though active business with the public may have been temporarily suspended.
- (b) The Board or Director may initiate the revocation of the alcoholic beverage approval.
- (c) The notice to the permit holder, scheduling of the hearing, and conduct of the revocation hearing will be in accordance with the Section 2-420 et seq. process. At the conclusion of the hearing, the Hearing Examiner will prepare a recommendation to the Board, who will make the final decision on the revocation.

- (d) If the Board revokes an alcoholic beverage permit, the County may not consider a request for an alcoholic beverage permit on the same property for 12 months from the date of final action on the revocation.

Secs. 34-1265~~6~~—34-1290. Reserved.

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DIVISION 11. - WIRELESS COMMUNICATION FACILITIES

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Sec. 34-1445. - Development review process.

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- (b) Zoning.

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- (3) Final decision.

- a. Approval.

1. ~~For administrative approvals and in addition to the findings required by section 34-145 for special exceptions and variances,~~ for new antenna supporting structures the County must make all of the following findings (or conclude that a finding is not applicable) before granting approval of an application:

~~1-a)~~ aApplicant is not able to use existing wireless communications facility sites, ~~either with or without repeaters,~~ in the geographic search area; and

~~2-b)~~ aApplicant has agreed to rent or lease available space on the antenna-supporting structure, under the terms of a fair-market lease, without discrimination to other wireless communications service providers; and

~~3-c)~~ The proposed antenna-supporting structure will not be injurious to historical resources, obstruct scenic views, diminish residential property values, or reduce the quality and function of natural or man-made resources; and

~~4-d)~~ aApplicant has agreed to implement all reasonable measures to mitigate the potential adverse impacts of the structures and facilities.

2. For new antenna supporting structure special exceptions, the Hearing Examiner must make additional findings, as indicated in section 34-145(c)(3)b.

...

Sec. 34-1453. - Variance criteria.

- (a) Variances ~~or deviations~~ to this division must be in accordance with the procedures and requirements set forth in section 34-145.
- (b) Appeal of decisions of the Hearing Examiner pursuant to this section will be to the Board of County Commissioners in accordance with the provisions of section 34-1445(b)(2).

DIVISION 12. – DENSITY

Subdivision III. – Housing Density for Provision of Very Low, Low, Moderate and Work Force Income Housing

Sec. 34-1517. - Procedure to approve density increases.

...

- (d) Processing the application.

- (1) Hearing ~~e~~Examiner. The bonus density application and staff recommendation will be presented to the Hearing Examiner in accordance with the procedure set forth in section 34-145(d).

The Hearing Examiner's recommendation to the Board must also consider the review criteria contained in section ~~34-1516(c) as well as the provisions in the draft contract agreement~~ 34-145(d)(4)a.4. A copy of the draft contract must be attached to the Hearing Examiner recommendation for consideration by the Board.

- (2) Board action. The Board will consider the Hearing Examiner's recommendation ~~will be considered by the Board in accordance with the procedure set forth in section 34-83(b). During the hearing, the Board will consider the evidence and testimony submitted with respect to the bonus density application along with the proposed bonus density contract. The Board and may approve or deny the application and contract based upon the criteria set forth in section 34-1517(c)~~ 34-145(d)(4)a.4.

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DIVISION 37. - SUBORDINATE AND TEMPORARY USES

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Sec. 34-3046. - Temporary use of mobile home.

- (a) Rehabilitation or construction of residence following disaster.
 - (1) If fire or disaster renders a single-family residence unfit for human habitation, the temporary use of a mobile home, travel trailer or park-trailer located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.

- (2) The maximum duration of the use is 18 months or 540 days after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, then the maximum duration of the use is six months. The Director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the owner's control. Application for an extension must be made prior to expiration of the original permit. ~~Additional extensions may be granted only by the Hearing Examiner approval.~~
- (b) Rehabilitation or construction of a damaged business, commercial or industrial uses following disaster.
- (1) Business, commercial or industrial uses, damaged by a major or catastrophic disaster necessary for the public health and safety or that will aid in restoring the community's economic base, may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.
 - (2) The maximum duration of the temporary use is nine months or 270 days after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, then the maximum duration of the use is six months. The Director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the owner's control. Application for an extension must be made prior to expiration of the original permit. ~~Additional extensions may be granted only by Hearing Examiner approval~~

...

Sec. 34-3047. - Temporary telephone distribution equipment.

Telephone distribution equipment may be granted a temporary permit during planning and construction of permanent facilities, provided that:

- (1) The equipment is less than six feet in height and 300 cubic feet in volume; and
- (2) The maximum length of the use shall be six months, but the Director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company. Application for an extension shall be made at least 15 days prior to expiration of the original permit. ~~Additional extensions may only be allowed by the Hearing Examiner.~~

SECTION TWO: CONFLICTS OF LAW

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

SECTION THREE: 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

remainder of the ordinance. The Board further declares its intent that this ordinance would have been adopted if the unconstitutional provision was not included.

SECTION FOUR: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intends this ordinance to be made part of the Lee County Code. Sections of this ordinance may be renumbered or relettered and the word "ordinance" may 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 may be renumbered or relettered and typographical errors that do not affect the intent may be corrected with the authorization of the County Administrator, County Manager or his designee, without need for a public hearing.

SECTION FIVE: MODIFICATION

It is the Board of County Commissioners' intent that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Any such modification will be incorporated into the final version.

SECTION SIX: 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 is for an Amendment to Development of Regional Impact Development Order pursuant to F.S. §380.06(19)(e)2 and such application is complete and found sufficient before the effective date hereof.

Commissioner John Manning made a motion to adopt the foregoing ordinance. The Motion was seconded by Commissioner Cecil L Pendergrass. The vote was as follows:

John Manning	Aye
Cecil L Pendergrass	Aye
Larry Kiker	Aye
Brian Hamman	Aye
Franklin B. Mann	Aye

DULY PASSED AND ADOPTED this 17th day of November, 2015.

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Franklin B. Mann, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of the County Attorney