

LEE COUNTY ORDINANCE NO.16-10

AN ORDINANCE AMENDING LEE COUNTY LAND DEVELOPMENT CODE, CHAPTERS 1, 32, AND 34; THE SPECIFIC PROVISIONS THAT ARE AMENDED ARE: SEC. 1-15 (EFFECT OF AMENDMENTS ON PREVIOUSLY APPROVED DEVIATIONS, VARIANCES, AND SPECIAL EXCEPTIONS); SEC. 1-16 (EFFECT OF EMINENT DOMAIN ON PROPERTY DEVELOPMENT REGULATIONS); SEC. 32-202 (TRANSECT ZONES DESCRIBED); SEC. 32-225 (DESIGN OF BLOCKS); SEC. 32-226. CROSS-SECTIONS OF STREETS, ALLEYS, AND LANES); SEC. 32-241 (LOT TYPES ALLOWABLE IN EACH TRANSECT ZONE); SEC. 32-243 (PROPERTY DEVELOPMENT REGULATIONS); TABLE 32-243 (PROPERTY DEVELOPMENT REGULATIONS FOR EACH LOT TYPE); SEC. 32-244 (PERMITTED USES); SEC. 32-274 (REQUIREMENTS FOR DETAILED REGULATING PLANS); SEC. 32-502 (APPLICATION REQUIREMENTS); SEC. 32-505 (MODIFICATIONS AFTER REZONING PROCESS); SEC. 34-2 (DEFINITIONS); SEC. 34-51 (NOTICE OF PUBLIC HEARINGS REQUIRED); SEC. 34-52 (UNAUTHORIZED COMMUNICATIONS); SEC. 34-53 (FEES AND CHARGES); SEC. 34-83 (FUNCTIONS AND AUTHORITY); SEC. 34-84 (REHEARING OF DECISIONS); SEC. 34-85 (FINAL DECISION; JUDICIAL REVIEW); SEC. 34-145 (FUNCTIONS AND AUTHORITY); SEC. 34-146 (FINAL DECISION; JUDICIAL REVIEW); SEC. 34-231 (DEFINITIONS); SEC. 34-232 (REQUIRED HEARINGS); SEC. 34-234 (PUBLIC PARTICIPATION); SEC. 34-235 (DEFERRAL OR CONTINUANCE OF PUBLIC HEARING); SEC. 34-935 (PROPERTY DEVELOPMENT REGULATIONS); AND PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

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

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

WHEREAS, the Board of County Commissioners of Lee County, Florida, has adopted a comprehensive Land Development Code (LDC); and,

WHEREAS, Goal 39 of the Lee County Comprehensive Land Use Plan (Lee Plan) mandates that the County maintain clear, concise, and enforceable development regulations that fully address on-site and off-site development impacts, yet function in a streamlined manner; and,

WHEREAS, Lee Plan Policy 158.6.2 requires county staff and private citizen committees to review existing development regulations to determine whether the regulations can be further

fine tuned and streamlined in order meet the Goals, Objectives, and Policies of the Lee Plan and County purpose; and

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

WHEREAS, the LDCAC has reviewed the proposed amendments to the LDC on January 8, 2016 and recommended approval of the proposed amendments as modified; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on January 13, 2016 recommended their adoption; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on January 25, 2016, and found them consistent with the Lee Plan, as indicated.

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

SECTION ONE: AMENDMENT TO LDC CHAPTER 1

Lee County Land Development Code Chapter 1 is amended as follows with strike through identifying deleted text and underline identifying new text.

Chapter 1 - GENERAL PROVISIONS

Sec. 1-15. Effect of Amendments on Previously Approved Deviations, Variances, and Special Exceptions.

(a) If the Code is amended in a manner that makes a previously approved variance or deviation no longer necessary, then the approval requirements for the deviation or variance, including any conditions of approval of the variance or deviation are no longer necessary and null and void.

(b) If the Code is amended in a manner to allow a particular use that previously required an approved Special Exception, then the approval requirements for a previously approved Special Exception, including any conditions of approval for the Special Exception are no longer necessary and null and void.

Sec. 1-16. Effect of Eminent Domain on Property Development Regulations.

(a) The Director of Community Development is authorized to grant administrative relief in the form of a variance or deviation from property development regulations for development of property that is subject to a Lee County initiated Eminent Domain proceeding or threat of eminent domain proceeding. With the exception of relief from the minimum right of way or easement widths, an administrative deviation or variance under this provision will be granted by right subject to the following conditions:

1. The eminent domain process or threat of condemnation was commenced by Lee County after April 8, 2016;
2. The deviation or variance is directly proportional to the amount of property or interest taken. For example, if a 15,000 square foot parcel is taken in fee, the administrative relief for the minimum lot size is limited to a 15,000 square feet reduction in the minimum lot size requirement, which may be divided up amongst multiple abutting parcels under common ownership or applied to one specific parcel.
3. The administrative relief under this provision is limited to the following types of development regulations:
 - a. minimum lot area and dimensions;
 - b. minimum street, side yard, rear yard, water body setbacks;
 - c. minimum open space and buffer widths, including type and number of buffer plantings;
 - d. maximum lot coverage;
 - e. minimum right of way or easement widths for privately maintained streets (no greater than 5 foot reduction) if Lee County DOT determines that the proposed right of way is designed in a manner that protects the public health, safety, and welfare of the traveling public;
 - f. minimum parking spaces;
 - g. sign setbacks, sizes, and type; and
 - f. platting requirements under Chapter 10 and AC13-19.
4. The maximum density on the remaining parcel will be determined based on the size of the property as though the eminent domain proceeding did not occur. Administrative deviations will be granted to avoid reduction in density as a result of an eminent domain taking. Administrative relief approved under this provision may not result in a density that exceeds the maximum density that was permitted prior to the eminent domain proceeding.

(b) Requests for an administrative relief must be made by application by either Party from the eminent domain proceeding within five (5) years from conclusion of the eminent domain process. Requests for an administrative deviation for property within a Planned Development must include any necessary revisions to the Master Concept Plan.

(c) Property that is developed in accordance with administrative relief granted pursuant to this provision will be deemed legally conforming and will not be considered as legally nonconforming.

SECTION TWO: AMENDMENT TO LDC CHAPTER 32

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

Chapter 32 COMPACT COMMUNITIES ARTICLE III. FORM-BASED CODE COMPONENTS AND GENERAL REQUIREMENTS

DIVISION 2. STREET TYPES AND PARKING

Sec. 32-225 Design of blocks.

The street pattern breaks compact communities into blocks. Alleys and lanes are contained within most blocks to provide access to service areas and to route utilities lines. Except as otherwise provided, block perimeters may not exceed ~~1,600~~ 2,000 linear feet as measured along the inner edges of each surrounding street right-of-way. Blocks may be broken by a Civic Space Lot provided that lot is at least 50 feet wide and will provide perpetual pedestrian access between the blocks and to lots that front the Civic Space Lot. Smaller blocks are encouraged to promote walkability.

- (1) Block perimeters may exceed ~~1,600~~ 2,000 linear feet, up to a maximum of ~~2,000~~ 2,500 linear feet, if one or more of the following conditions apply:
 - a. The block is assigned to the Core transect zone;
 - b. The long side of a rectangular block faces an arterial street, or is located adjacent to the Caloosahatchee River or any other natural water body; or
 - c. The block contains valuable wetlands or other indigenous native vegetation that should not be crossed by a street.
- (2) Single block faces wider than 500 feet must include a publicly dedicated sidewalk, passage, or trail at least eight feet in width that connects to another street.

Sec. 32-226. Cross-Sections of streets, alleys, and lanes.

The specific design of each street, alley, and lane ~~must~~ may follow the cross-sections illustrated in figures 32-226(a)–(d) for each type, as adjusted for the transect zone it passes through in accordance with section 32-227. The lane widths shown include the width of horizontal extensions of curbs such as gutter pans. Details not specified in these cross-sections should be designed in accordance with the Traditional Neighborhood Development chapter of the Florida Greenbook (Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways, published by Florida DOT). Modifications to the cross-sections, that may include, but are not limited to, bicycle lanes, planting strips, medians, sidewalks, pedestrian ways, multi-modal paths, on-street parking areas, and green areas, will not require deviations from this Code, so long as it is demonstrated that such modifications will be generally consistent with the Traditional Neighborhood Development design as articulated by this chapter, consistent with the proposed project design, and serving the general health, safety and welfare of the public.

DIVISION 3. LOT TYPES

Sec. 32-241 Lot types allowable in each transect zone

Subsections (a) through (c) remain unchanged.

TABLE 32-241

Lot Type	Transect Zones				
	Core	Center	General	Edge	Civic
Pedestal Building Lot (PB)	X	X			
Lined Building Lot (LB)	X	X	<u>X</u>		
Mixed-Use Building Lot (MU)	X	X	X		
Apartment Building Lot (AB)	X	X	X		
Courtyard Building Lot (CO)	X	X	X		
Live-Work Building Lot (LW)		X	X		
Rowhouse Lot (RH)		X	X		
Apartment House Lot (AH)			X		
Duplex Lot (DU)			X	X	
Cottage House Lot (CH)			X	X	
Sideyard House Lot (SH)			X	X	
House Lot (H)			X	X	
Civic Building Lot (CB)	X	X	X	X	X
Civic Space Lot (CS)	X	X	X	X	X
Stormwater Lot (SL)	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	X

(d) Lot types described. The 15 lot types are described here. Except as noted, parking spaces are provided on-street, to the rear of the lot, or as otherwise provided in division 2.

(1) *Remains unchanged*

(2) LINED BUILDING LOT: A lot located and designed to accommodate a large-footprint building such as a parking garage, cinema, supermarket, etc., which is surrounded by a liner building that conceals large expanses of blank walls and faces the street with ample windows and doors opening onto the sidewalk. At least two (2) facades of the large-footprint building may be used as the liner building provided that screening and architectural features are employed to promote the architectural design of the Compact Community Planned Development, consistent with a Traditional Neighborhood Development design.

(3) MIXED-USE BUILDING LOT: A lot located and designed to accommodate a multi-story building with multiple dwellings in upper stories and various commercial uses in any stories.

Subsections (4) through (14) remain unchanged

(15) STORMWATER LOT: A lot whose primary purpose is to accommodate stormwater detention areas. Stormwater lots may be permitted in any transect zone.

(e) *Remains unchanged*

(f) Additional lot types, unique to a particular Compact Community Planned Development may be requested and assigned to any transect under the following circumstances:

(1) The lots described in §32-241(d), above, do not adequately allow for the types of development proposed to be contained within the proposed Compact Community Planned Development.

(2) The lots proposed provide for multi-modal accessibility, and design parameters that reflect the design, location, and development regulations of the other lots proposed within the Compact Community Planned Development, consistent with a Traditional Neighborhood Development design.

(3) Infrastructure provision for the proposed lot types are consistent with the service design for the other lots proposed within the Compact Community Planned Development, consistent with a Traditional Neighborhood Development design.

(4) Open space, integration of the separate portions of the development, and architectural features are consistent in the proposed lot types with the other lot types throughout the proposed Compact Community Planned Development, consistent with a Traditional Neighborhood Development design if development is to be located within the proposed lot types.

(5) A schedule of uses specific to the proposed lot type will be established from either §32-244 and/or §34-934.

Sec. 32-243 Property development regulations

Subsections (a) through (o) remain unchanged

(p) Property Development Regulations unique to a particular Compact Community Planned Development may be requested and approved as part of the Compact Community Planned Development Application without the need for deviations.

TABLE 32-243 — PROPERTY DEVELOPMENT REGULATIONS FOR EACH LOT TYPE

Lot Type	Lot Area (min/ max in sf)	Lot Width (min/ max)	Frontage Percentage (min/max)		Lot Coverage by all bldgs (max)	Setbacks							Height ^{4, 10} (min/max in stories ; max in feet)					Accessory Apartments ⁵ (max bldg footprint in sf)
						Street (min/max)				Side Yard (min)	Rear Yard ^{1, 2} (min)	Water Body ³ (min)						
						Core	Center	General	Edge				Core	Center ⁹	General	Civic	Edge	
Pedestal Building Lot	no min/ no max	no min/ 500	90%/ 100%	100%		0/ 10	0/ 10	NP*	NP	0	0	25	2/8 ⁶ 85' 6	2/56 85' 6	NP	NP	NP	NP
Lined Building Lot	no min/ no max	no min/ 500	90%/ 100%	100%		0/ 10	0/ 10	NP	NP	0	0	25	2/6 65'	2/4 65'	NP	NP	NP	NP
Mixed-Use Building Lot	no min/ no max	no min/ 300	90%/ 100%	100%		0/ 10	0/ 10	0/ 10	NP	0	3	25	2/5 65'	2/4 65'	2/3 45'	NP	NP	NP
Apartment Building Lot	10,000 / no max	100/ 200	80%/ 100%	100%		0/ 10	0/ 10	5/ 10	NP	0	10	25	2/4 55'	2/4 55'	2/3 45' 2/4 55'	NP	NP	NP
Courtyard Building Lot ⁷	20,000 / no max	150/ 300	50%/ 90%	70%		0/ 10	0/ 10	5/ 10	NP	5	10	25	2/3 1/2 55'	2/3 1/2 55'	2/2 1/2 45'	NP	NP	NP
Live-Work Building Lot	1,800/ 7,200	16/ 60	60%/ 100%	80%		NP	0/ 12	5/ 12	NP	0	20	25	NP	2/3 45'	2/2 1/2 45'	NP	NP	625
Rowhouse Lot	1,800/ 3,840	16/ 32	90%/ 100%	80%		NP	0/ 12	5/ 12	NP	0	20	25	NP	2/3 45'	2/2 1/2 45'	NP	NP	625
Apartment House Lot	4,800/ 18,000	48/ 120	70%/ 90%	80%		NP	NP	10/ 25	NP	5	15	25	NP	NP	1/3 45'	NP	NP	NP
Duplex Lot	5,000 10,800	35/ 90	60%/ 90%	80%		NP	NP	10/ 20	15/ no max	5	15	25	NP	NP	1/3 45'	NP	1/2 1/2 45'	NP

Cottage House Lot	2,400/4,800	24/40	70%/90%	60%	NP	NP	5/20	10/no max	3	15	25	NP	NP	1/2; 35'	NP	1/2; 35'	NP
Sidyard House Lot	3,000/7,200	30/60	60%/90%	50%	NP	NP	5/10	10/15	0/10 ⁸	15	25	NP	NP	1/3; 45'	NP	1/2 1/2; 45'	800
House Lot	4,000/8,400	40/70	60%/80%	50%	NP	NP	10/20	15/no max	5	15	25	NP	NP	1/3; 45'	NP	1/2 1/2; 45'	800
Civic Building Lot	no min/ no max	no min/ no max	no min/ no max	no min/ no max	no min/ no max	no min/ no max	no min/ no max	no min/ no max	0	0	15	1/4; 65'	1/4; 65'	1/4; 55'	1/4; 65'	1/4; 55'	1250
Civic Space Lot	no min/ no max	no min/ no max	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	NP
Stormwater Lot	no min/ no max	no min/ no max	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	NP

***NP= Not Permitted.**

Core	Center	General	Edge	Civic	<p>¹ Minimum rear yards apply to lots with alleys or lanes and to lots with neither alleys nor lanes; rear yards do not apply to through lots or to double-frontage lots.</p> <p>² Minimum rear yards in this column apply to principal buildings and structures. When alleys or lanes are provided, garages and accessory dwelling units must be built with one wall placed 3' from the property line which is adjacent to the alley or lane.</p> <p>³ Gulf of Mexico — 50'; all other water bodies — as shown.</p> <p>⁴ Buildings must comply with both maximum heights, as measured in stories and feet. For heights measured in feet, see section 34-2171 et seq. for details and exceptions. Mezzanines that exceed the percentage of floor area for a mezzanine defined in the Florida Building Code are counted as a story for the purpose of measuring height. Space within a roofline that is entirely non-habitable is not counted as a story.</p> <p>⁵ See requirements for accessory apartments in sections 4-243 and 34-1777.</p> <p>⁶ On pedestal buildings, one or more step-backs of at least 14 feet must occur above the second floor level. Said step-backs shall consist of at least 70% of a pedestal building's primary facade being built at least 14 feet further from all streets than the story below. In addition to these heights, buildings on Pedestal Building Lots and Liner Building Lots are allowed up to four (4) additional stories provided the square footage of each additional story is less than 70% of the largest lower story..</p> <p>⁷ On Courtyard Building Lots, the longer dimension of the central garden or courtyard must be at least 30 feet long if oriented east-west or 40 feet if oriented north-south. If the longer dimension is less than 35 feet; architectural projections such as porches and balconies may only extend into the courtyard from one side. Maximum lot coverage is measured</p>
------	--------	---------	------	-------	--

					<p>immediately above the courtyard level.</p> <p>⁸ One sideyard must be 10' min; the opposite side yard may be 0' if the adjacent lot is a Sideyard House Lot or if the adjacent lot provides a maintenance easement, otherwise the side yard must be 3' min.</p> <p>⁹ Maximum height exception: For properties located in the Center Transect and having direct frontage on the Caloosahatchee River, the maximum height on any allowable building lot is 12 stories and 120 feet.</p> <p>¹⁰ <u>For all building types on all lots, up to 30% of the total number of buildings may be constructed as single-story structures.</u></p>
--	--	--	--	--	---

DIVISION 5. REGULATING PLANS

Sec. 32-274 Requirements for detailed regulating plans

Submittals to obtain approval of a detailed regulating plan must meet the following criteria:

Subsections (1) through (3) remain unchanged.

- (4) The plan must show proposed lot lines and lot types for all land to be subdivided into lots. Lot types must be allowed within the transect zones where the lots are located and must be able to meet the development standards for each lot type and other requirements in division 3, ~~in addition to the following standards:~~
 - a. ~~Minimum diversity of lot types within transect zones:~~
 1. ~~Edge: At least two different lot types are required within the Edge transect zone, with no one type representing more than 75 percent of the lots.~~
 - ~~General and Center: At least four different lot types are required within each of these transect zones, with no one type representing more than 60 percent of the lots.~~
 3. ~~The minimum diversity requirements of section 32-274(4)a. are not applicable to regulating plans for the North Fort Myers Town Center.~~
 - b. ~~Minimum residential density within transect zones:~~
 1. ~~General: At least four dwelling units per acre within all General transect zones.~~
 - ~~Center: At least eight dwelling units per acre within all Center transect zones.~~
 3. ~~Core: At least ten dwelling units per acre within all Core transect zones.~~
 4. ~~For these density calculations, the aggregate area of each type of transect zone includes the internal street network and also includes all lots even if planned for commercial uses.~~

Subsection (5) remains unchanged.

Sec. 32-502. - Application requirements.

Subsections (a) and (c) remain unchanged.

- (d) ~~Deviations From Chapter 32.~~ Deviations may be requested from the Land Development Code. An applicant must clearly identify deviations requested from the specific standards of ~~chapter 32~~the Land Development Code. The Board of County Commissioners will decide whether to accept, modify, or reject each proposed deviation during the planned development rezoning process based on a determination as to the consistency of each deviation with this chapter, good planning practice for compact communities, and the deviation criteria in chapters 10 and 34. Potential deviations specific to compact communities include the following:
 - (1) Modified block standards (section 32-225).
 - (2) For street types shown in article II, modified cross-sections (section 32-226) and/or modified streetscape standards (section 32-227).
 - (3) Additional street types, accompanied by proposed cross-sections (section 32-226) and streetscape standards (section 32-227).

- (4) For lots types shown in article II, modified transect zone assignments (table 32-241), modified property development regulations (table 32-243), and/or modified use regulations (table 32-244). Additional uses within a Lot Type may be proposed for a Compact Community Planned Development under the following circumstances:

(a) The uses included in §32-244 do not adequately allow for the types of development proposed to be contained within the proposed Compact Community Planned Development;

(b) A schedule of uses specific to each lot type is proposed with uses being from §34-934; and,

(c) A justification of how the additional uses promote a mix of uses, enhance the planned development and are consistent with a Traditional Neighborhood Design.

- (5) Additional lot types, accompanied by allowable transect zone assignments (table 32-241), proposed property development regulations (table 32-243), and proposed use regulations (table 32-244).

~~(e) Deviations From Other Chapters. Deviations from other chapters of this Code may be requested as provided in chapters 10 and 34.~~

Sec. 32-505. - Modifications after rezoning process.

- (a) Modifications to an approved Compact PD regulating or illustrative plan and its attendant documentation may be requested at any time during the development of the Project. ~~accepted by~~ The Director of Community Development or designee may approve the request at the development order stage provided the proposed modifications conform with all of the following requirements:

(1) The requested modification must be located within the interior of the development and may not decrease total open space, buffer plantings and preservation areas by more than 20%. In no event may the overall density or intensity of the development be increased via an administrative amendment.

(2) The request may not adversely impact surrounding land uses and be no less consistent with the health, safety, and welfare of abutting landowners and the general public than the original standard.

~~(1) Modifications must comply with all special conditions of the planned development approval, including any conditions that may limit the Director's authority to modify specific portions of an approved regulating plan.~~

~~(23) Modifications must be consistent with the Lee Plan and with the intent and the specific regulations of this chapter.~~

~~(34) Modifications to the regulating or illustrative plans must be consistent with this provision; however, may not change transect zones, increase allowable building heights, increase overall density, exceed allowable block sizes, add an access point through the~~

~~Edge transect zone, or reduce the diversity of lot types or street types that had been shown on the approved regulating plan. However, modifications may substitute similar lot types or street types that are allowed in the designated transect zone and may make adjustments to comply with regulatory actions of the Florida Department of Transportation or the South Florida Water Management District. Modifications may not increase overall density.~~

- ~~(4) Modifications may not increase the intensity of any block in the Edge transect zone.~~
- (5) The cumulative effect of multiple modifications to an approved regulating plan will be evaluated using the same standards in section 32-~~3505~~(1)-(4) that apply to individual modifications.
- (b) If proposed modifications ~~exceed these thresholds or~~ are deemed by the Director to be material changes that may affect the original planned development approval, the Director may determine that the proposed modifications can only be approved by the Board of County Commissioners through the rezoning through the public hearing process.
- (c) Approved modifications must be reflected on a new record copy of the regulating plan or illustrative plan (see section 32-404).
- (d) If the County determines that an approved administrative amendment was based on inaccurate or misleading information or if the approval did not comply with this Code when the decision was rendered, then, at any time, the Director may issue a modified approval that complies with the Code or revoke the approved administrative amendment. If the approval is revoked, the applicant must acquire the necessary approvals by filing an application for public hearing in accordance with section 32-502 of this chapter.
- (e) Decisions by the Director pursuant to this section are discretionary and may not be administratively appealed.

SECTION THREE: AMENDMENT TO LDC CHAPTER 34

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

Chapter 34. ZONING **ARTICLE I- IN GENERAL** **DIVISION 1. - ~~GENERALLY~~ Reserved.**

~~Sec. 34-51. Notice of public hearings required.~~

~~No public hearing required by this chapter shall be held by the Hearing Examiner, Local Planning Agency or Board of County Commissioners until notice of the public hearing has been provided in accordance with the requirements set forth in this article.~~

~~Sec. 34-52. Unauthorized communications.~~

~~Communication with individual County Commissioners, commissioner's assistants, a Hearing Examiner, or the Hearing Examiner's staff regarding the substance (non-procedural~~

aspects) of pending zoning applications or pending zoning related appeals are subject to section 2-191.

~~Sec. 34-53. Fees and charges.~~

~~(a) The schedule of fees and charges for matters pertaining to this chapter shall be posted in the office of the Department of Community Development. The charges listed may be changed by resolution of the Board of County Commissioners.~~

~~(b) No permit shall be issued and no inspection, public notice or other action relative to a zoning matter shall be instituted until after such fees and charges have been paid.~~

~~Secs. 34-54—34-80. Reserved.~~

DIVISION 2. - BOARD OF COUNTY COMMISSIONERS

Sec. 34-83. - Functions and authority

~~(a) Land use ordinance amendments or adoption.~~

~~(1) Function. The Board of County Commissioners must hold public hearings on all proposed land use ordinance amendments or adoptions.~~

~~(2) Considerations. When deciding whether to adopt a proposed land use ordinance or amendment, the Board of County Commissioners must consider the same criteria, recommendations and issues as set forth in section 34-115(b)(1), as well as the recommendation of the Local Planning Agency, but are not required to accept these recommendations.~~

~~(3) Decisions and authority. The decision of the Board of County Commissioners on any proposed land use ordinance amendment or adoption is final.~~

~~(4) Appeals of any decision concerning land use ordinance amendments or adoption may be taken in accordance with applicable state law.~~

~~(a)(b)~~ Zoning actions.

(1) Function. Unless another approval process is authorized by County Ordinance, the Board of County Commissioners must hold public hearings to consider the following applications: rezoning, requests for variances, and special exceptions, which are part of an application for a rezoning, MEPD, extension and reinstatement of master concept plans, the special exceptions that meet the criteria for Developments of County Impact, appeals from decisions of the Hearing Examiner concerning wireless communications facilities, developments of regional impact, and any other action in conjunction with such applications.

a. The Board must hold public hearings on the following applications:

1. ~~Rezoning;~~

~~— 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~~
- ~~6. Other actions in conjunction with such cases.~~

Subsections (2) and (3) remain unchanged.

(4) Decisions and authority.

Subsection a. remains unchanged.

- b. The decision of the Board is final. If there is a tie vote, the matter will be continued until the next regularly scheduled Board meeting for decisions on zoning matters, ~~unless, 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 earlier motions.~~
- c. Denial by the Board is denial with prejudice unless otherwise specified.

Remaining provisions are unchanged.

~~Sec. 34-84. Rehearing of decisions.~~

- ~~(a) Any person who may be aggrieved by a decision of the Board of County Commissioners made pursuant to 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 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 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.~~
- ~~(b) All requests for a public rehearing must state with particularity the new evidence or the points of law or fact that the aggrieved person argues the Board of County Commissioners has overlooked or misunderstood. The report must include all documentation offered to support the request for rehearing. The Board of County Commissioners will decide whether to grant or deny the request based exclusively upon the aggrieved person's written request and supporting documentation and the administrator's written analysis thereof. In addition, if the request is filed by one other than the original applicant, the County must notify the applicant of the filing of the request for rehearing and the applicant must be allowed 15 days to submit an independent written analysis.~~
- ~~(c) The deliberations of the Board of County Commissioners with respect to the question of whether to grant a rehearing do not constitute a public hearing, and no oral testimony will be allowed or considered by the Board of County Commissioners in the course of these deliberations.~~

- ~~(d) The pursuit of a request for rehearing is not required in order to exhaust administrative remedies as a condition precedent to seeking judicial review in the circuit court. The proper filing of a request for rehearing will not toll the 30 day time limit to file an action seeking judicial review of final decisions. No judicial review is available to review the Board of County Commissioners' decision to deny a rehearing request.~~
- ~~(e) A request for rehearing is not an administrative appeal as that term is used in F.S. § 70.51. Filing of a request for rehearing will not toll the time for filing a request for relief under F.S. § 70.51.~~
- ~~(f) Filing of a request for rehearing will not toll the time for seeking relief under F.S. § 163.3215.~~
- ~~(g) There is no right to apply to court for relief on account of a determination or recommendation of the Hearing Examiner in those actions listed in section 34-83(b)(1) which require public hearing before the Board of County Commissioners.~~

Sec. 34-84 Reserved.

Sec. 34-85. - Final decision; judicial review.

- (a) Any final decision of the Board of County Commissioners may be reviewed by the circuit court unless otherwise provided in this article. This review may only be obtained through filing a petition for writ of certiorari pursuant to the Florida Rules of Appellate Procedure. The petition must be filed within 30 calendar days after the decision has been rendered. For the purposes of computing the 30-day period, the date that the decision has been rendered is the date the signed resolution is date stamped received by the Minutes Department of the Clerk of Courts or where a written Resolution is not adopted, 30 days from date the Board's decision.

Subsections (b) and (c) remain unchanged.

Sec. 34-145. - Functions and authority

Subsections (a) through (c) remain unchanged.

- (d) Zoning matters.

- (1) Authority.

- a. Unless otherwise specified below, 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.

- d. The Hearing Examiner has the final decision making authority on Board initiated applications to rezone County owned property to the Environmentally Critical district.

Subsections (2) and (3) remain unchanged.

(4) Findings/review criteria.

a. Before recommending approval for:

1. Rezoning. The Hearing Examiner must find the request:

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

Subsections 2 through 4 remain unchanged.

Subsections (5) and (6) remain unchanged.

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

Remaining provisions are unchanged.

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

- (a) The decision of the Hearing Examiner is final for:
 - (1) Administrative appeals that are not appealed to, and decided by, the Board; and
 - (2) Variances, and special exceptions, except when those requests are:
 - a. Part of a rezoning or other request that requires final decision by the Board; or
 - b. A wireless communication facility appealed to the Board pursuant to sections 34-1445(b) or 34-1453.
 - c. Board initiated application to rezone County owned property to the Environmentally Critical district

Subsections (b) through (d) remain unchanged.

DIVISION 7. - PUBLIC HEARINGS AND REVIEW

~~Sec. 34-232. - Required hearings.~~

- ~~(a) Amendment or adoption of land use ordinances:
 - (1) Any proposed amendment to this chapter or to any land use ordinance, or adoption of any new land use ordinance, must be enacted pursuant to the requirements set forth in F.S. § 125.66.
 - (2) Prior to a final required hearing by the Board of County Commissioners, the Local Planning Agency must review the amendment at a public hearing.~~
- ~~(b) Board of County Commissioner initiated rezoning of private property including ancillary variances, special exceptions:
 - (1) Applications for less than ten contiguous acres of land will require one public hearing before the Hearing Examiner and one public hearing before the Board of County Commissioners.
 - (2) Applications for ten or more contiguous acres of privately owned property will require one public hearing before the Hearing Examiner and two public hearings before the Board of County Commissioners. The public hearings before the Board of County Commissioners must be in accordance with F.S. § 125.66(4)(b).~~
- ~~(c) Privately initiated requests for developments of regional impact, rezonings, and ancillary variances and special exceptions, require one public hearing before the Hearing Examiner and one public hearing before the Board of County Commissioners.~~
- ~~(d) Variances and special exceptions that are not ancillary to an application for rezoning or a development of regional impact and all administrative appeals of decisions of the Director pertaining to the interpretation of the Land Development Code require one public hearing before the Hearing Examiner.~~
- ~~(e) Applications for mining excavation planned development (MEPD) require one public hearing before the Hearing Examiner and one public hearing before the Board of County Commissioners.~~

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

- ~~(a) Staff review.~~

- ~~(1) No application for an action required by this chapter or chapter 12 to proceed through the public hearing process may be placed on a schedule to be heard by the Hearing Examiner until:~~
- ~~a. If a planned development, after the Department has finalized a written staff report on the requested action OR 60 days after the Department finds the application sufficient, whichever comes first.~~
 - ~~b. For other than a planned development, after the Department has finalized a written staff report OR 60 days after submittal of the complete application, whichever comes first.~~
- ~~The Department will produce a written (staff) report summarizing the County staff's position regarding the subject application. In the case of a conventional or planned development zoning, the staff report must be available at least 14 days prior to the public hearing. In the case of a special exception or a variance the staff report must be available at least seven days prior to the public hearing. Once submitted, the staff report may not be modified or amended except by the Department staff.~~
- ~~(2) No application for an action required by this chapter or chapter 12 may be scheduled for a public hearing before the Board of County Commissioners until after the Hearing Examiner has rendered a recommendation.~~
- ~~(3) All staff comments will be forwarded to the Hearing Examiner or Board of County Commissioners prior to the scheduled public hearing.~~

Sec. 34-~~234~~231. - Public participation.

- (a) Participation before Local Planning Agency. At a public hearing before the Local Planning Agency, all persons will be heard. However, the Local Planning Agency has the right to refuse to hear testimony that is irrelevant, repetitive, defamatory or spurious, and to establish reasonable time limits on testimony.
- (b) Participation before Board; zoning matters. At public hearings on zoning matters, only the Parties and participants at the proceeding before the Hearing Examiner may address the Board. This prohibition does not apply to the Board's legal counsel, County staff whose sole purpose is to facilitate the zoning hearing, or legal counsel representing a Party or hearing participant. The testimony presented to the Board will be limited to:
 - (1) Testimony presented to the Hearing Examiner.
 - (2) Testimony concerning the correctness of the findings of fact or conclusions of law contained in the record, or
 - (3) Allegations that relevant new evidence has been discovered that was not known or could not have been reasonably discovered by the speaker at the time of the hearing before the Hearing Examiner.

The Board may question its staff, its attorneys, the Applicant/Appellant, and the participants present about matters 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. 34-235232. - 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 Local Planning Agency (LPA) and zoning hearings before the Board:

- (1) Deferral.
 - 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. 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.
 - c. Applicant-initiated deferral. Requests for a deferral by an Applicant must be in writing and received by the Department prior to the Department submitting notice of the hearing to the newspaper for publication.
 - d. Fee. There will be no additional fee for deferrals. However, the Applicant must obtain corrected zoning notice posters from the Department and post the signs on-site, if required by the LDC or Administrative Codes.
 - e. The Director may defer a case without action by the LPA or Board.
- (2) Continuance. A scheduled, advertised public hearing may be continued by the County or by the Applicant 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.
 - b. The LPA or Board may continue a public hearing, upon Staff request, or on its own initiative, when necessary to request additional information, public testimony, time to render their decision/recommendation, or to accommodate their schedules.
 - c. The Applicant may request a continuance at the beginning of the agenda.
 - d. County Staff and an Applicant are each entitled to the first continuance without showing cause. Each decision-making body has the authority to grant further continuances upon a showing of good cause. If the subsequent request for continuance is denied, the hearing will proceed in accordance with the published agenda.
 - e. The requesting party must bear re-notification costs.
 - 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.

~~Sec. 34-236. Notices.~~

- ~~(a) Minimum required information. A notice of public hearing under this chapter must contain the following minimum required information:~~
- ~~(1) Action proposed.~~
 - ~~a. Land use ordinance amendments or adoption. The notice must describe the chapter or section of the land use ordinance to be amended, or the subject of a new ordinance, with sufficient clarity so as to advise the public of the subject to be amended or adopted, but need not describe the exact wording or change.~~
 - ~~b. Rezoning and developments of regional impact. All required notices must indicate the existing zoning of the property, the proposed zoning and where applicable, the number of TDR and affordable housing bonus density units requested, and the general location of the property by reference to common street names and addresses, with sufficient clarity so as to advise the public, but need not describe the proposed plans or details thereof, or the specific legal description of the property.~~
 - ~~c. Special exceptions and variances. All required notices must indicate the existing zoning of the property; the proposed use by special exception, or the requirement from which the variance is requested and the actual degree of variance requested; and the location of the property, by reference to common street names and addresses, with sufficient clarity so as to advise the public, but need not describe the proposed plans or details thereof or the specific legal description of the property.~~
 - ~~d. Appeals. The notice must summarize the decision or action upon which the appeal is based with sufficient clarity so as to advise the public of the subject matter.~~
 - ~~(2) Time and place of hearing. The notice must specify the date, time and place that the public hearing will be held by the Hearing Examiner, the Local Planning Agency or the Board of County Commissioners, as applicable.~~
 - ~~(3) Public availability of information. The notice must indicate where copies of the proposed amendment may be obtained or reviewed, or where the application for public hearing may be reviewed.~~
 - ~~(4) Location of record of notice.~~
 - ~~a. The copy of notices for the adoption or amendment of land use ordinances will be kept available for public inspection during regular business hours at the Minutes Department in the Office of the Clerk of the Board of County Commissioners.~~
 - ~~b. Copies of all other notices will be kept available for public inspection during regular business hours at the office of the Department of Community Development or Hearing Examiner, as appropriate.~~
- ~~(b) Method of providing notice.~~
- ~~(1) Notices of hearings will be provided in accordance with applicable Florida Statutes and the 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. The~~

~~notice is a courtesy 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, or 1,250 feet for wireless communication facilities.~~

Secs. 34-~~233~~—34-260. - Reserved.

DIVISION 8. – ENFORCEMENT

Sec. 34-268. - Administrative variances.

(a) The Director is authorized to administratively approve variances of the following:

Subsection (1) remains unchanged.

~~(2) Sign, landscaping, buffer widths, and open space requirements on property affected by eminent domain proceedings, as well as property affected by voluntary sale under threat of condemnation by the sovereign~~ Relief authorized for development of property that is subject to a Lee County initiated Eminent Domain proceeding pursuant to Section 1-16.

All other provisions remain unchanged.

DIVISION 9. - PLANNED DEVELOPMENT DISTRICTS

Sec. 34-935. - Property development regulations.

Subsections (a) through (e) remain unchanged.

(f) Height of Buildings

- ~~(1) Mobile home planned developments. In the MHPD district, no building or structure shall exceed 35 feet in height, and no mobile home shall exceed one story in height.~~
- ~~(2) Community facility planned developments. The maximum permitted height of any building shall be 35 feet. Buildings above 35 feet may be approved by the Board of County Commissioners at the time of master concept plan approval, provided that setbacks from adjacent property not under the same ownership shall be equal to or greater than the height of the building.~~
- ~~(3) Other planned developments. Except as restricted by section 34-2175, height of buildings in all other planned developments will vary in accordance with the land use classification of the subject property according to the Lee Plan land use plan map as follows:~~

Subsections a. through e. remain unchanged.

Subsection (g) remains unchanged.

~~Sec. 34-3152. Non Water Dependent Uses.~~

- ~~(a) Applicability. This section is to provide standards for properties depicted on the Water Dependent Overlay Zones, Maps 12 in the Lee County Comprehensive Plan.~~
- ~~(b) Permitted districts. Non-water dependent uses may be permitted at existing commercial fishing, ports and docking sites and commercial marinas by special exception or through the planned development process.~~
- ~~(c) Permitted uses. A non-water dependent use is a use that can exist without water access. The following uses may be permitted by special exception or through the planned development process:
Bait and tackle shops.
Consumption on Premises in conjunction with a Restaurant—Group I, II or III.
EMS, fire or sheriff's station.
Fish Market, enclosed.
Food store—Group I limited to 500 square feet.
Gift and souvenir shop in conjunction with the existing commercial marina.
Offices, marine oriented government.
Processing or packaging of agricultural or fish products.
Rental establishment—Group I in conjunction with the existing commercial marina.
Restaurants—Groups I, II and III that are ancillary and subordinate to the primary water dependent use.~~
- ~~(d) Procedures for approval. Applications for special exceptions or planned developments must be submitted on forms supplied by the County and must contain the required information outlined in section 34-201.~~

Secs. 34-3152—34-3170. - Reserved

SECTION FOUR: CONFLICTS OF LAW

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

SECTION FIVE: SEVERABILITY

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

SECTION SIX: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code. Sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article," or other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be

corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

SECTION SEVEN: MODIFICATION

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

SECTION EIGHT: EFFECTIVE DATE

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

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

John Manning	Aye
Cecil L Pendergrass	Aye
Larry Kiker	Aye
Brian Hamman	Aye
Frank Mann	Aye

DULY PASSED AND ADOPTED this 5th day of April, 2016.

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