

ORDINANCE NO. 17-18

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE CHAPTERS 10 AND 33: CHAPTER 10 - SECTION 10-354 (REUSE WATER SYSTEMS); SECTION 10-417 (IRRIGATION DESIGN STANDARDS); AND CHAPTER 33 - SECTION 33-1612 (COMMUNITY REVIEW); SECTION 33-1615 (DEVIATIONS AND VARIANCES); ADD NEW SECTION 33-1622 (TREE REQUIREMENTS); SECTION 33-1627 (HEIGHT RESTRICTIONS ON CAPTIVA ISLAND); SECTION 33-1628 (REZONING AND DENSITY); PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND EFFECTIVE DATE.

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

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

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

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

WHEREAS, on May 17, 2016 the Board of County Commissioners directed staff to bring forward amendments to the LDC (Chapter 33) that encourage updating and implementing the Lee Plan's Captiva Goal and to maintain consistency and reduce redundancy between the Lee Plan and the LDC; and

WHEREAS, on February 7, 2017, the Board of County Commissioners directed staff to bring forward amendments to the LDC (Chapter 10) that encourage the efficient use of water by creating a hierarchy of water sources for irrigation needs and that promote the use of alternative design options to accommodate the most acceptable water source; 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 July 14, 2017, and recommended approval of the proposed amendments as modified; and

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Code on July 12, 2017, recommended their adoption; and

WHEREAS, the Local Planning Agency reviewed the proposed amendments on August 28, 2017, and October 23, 2017, 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 10

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

Chapter 10. Development Standards ARTICLE III. DESIGN STANDARDS AND REQUIREMENTS DIVISION 4. – UTILITIES.

Sec. 10-354. - Reuse water system.

- (a) ~~Wherever technically feasible, the irrigation of grassed or landscaped areas must be provided for through the use of a second water distribution system supplying treated wastewater effluent or reuse water. This reuse water system must be separate and distinct from the potable water distribution system and must be constructed and operated in accordance with the rules of the state department of environmental protection, specifically chapter 17-610, Florida Administrative Code.~~ Mandatory connection to central reuse water system required for certain developments. New developments meeting Lee Plan Standard 4.3 criteria must connect to a central reuse water system providing the quality and quantity of reuse water necessary for the reasonably anticipated irrigation needs of the proposed development or future phases of existing developments with a separate entrance.
- (b) ~~Any proposed development which is: (1) Located in the franchised or certificated service area of a sanitary sewer utility, or the County utilities' future sanitary service area, which is prepared to supply reuse water at a quality and quantity commensurate with the irrigation needs of the proposed development, when the nearest property line of the development is located within one quarter mile of the reuse distribution system; or (2) Planned to rely on an on-site wastewater treatment facility whose design average daily flow is 100,000 gallons per day or more; shall be designed to maximize the use of reuse water from the utility in the case of subsection (1) of this subsection, or on-site wastewater plant in the case of subsection (2) of this subsection.~~ For projects meeting the requirements of subsection (a) and delineated on Map 7 of the Lee Plan, the irrigation of grassed or landscaped areas must occur through the use of a second water distribution system supplying treated wastewater effluent or reuse water. This reuse water system must be constructed and operated in accordance with Florida Administrative Code 62-610 and the Lee County Reclaimed Water Ordinance.
- (c) Additional permissible uses of reuse water include exterior fountains and other landscape water features, ~~fire suppression and toilet flushing (only) in structures containing no dwelling units.~~

DIVISION 6. – OPEN SPACE, BUFFERING AND LANDSCAPING

Sec. 10-417. - Irrigation design standards.

To improve the survivability of required landscaping, cultivated landscape areas must be provided with an automatic irrigation system. All required irrigation systems must be designed to eliminate the application of water to impervious areas, including roads, drives and other vehicle areas. Required irrigation must also be designed to avoid impacts on existing native vegetation.

All new developments that have required landscaping must be irrigated by the use of an automatic irrigation system with controller set to conserve water. Moisture detection devices must be installed in all automatic sprinkler systems to override the sprinkler activation mechanism during periods of increased rainfall. Where existing irrigation systems are modified requiring the acquisition of a permit, automatic activation systems and overriding moisture detection devices must be installed. Irrigation water sources shall be evaluated in the following order:

1. When and where available, reuse water;

2. Surface water;

3. Groundwater;

4. Any other non-potable water;

5. Potable water.

SECTION TWO: AMENDMENT TO LDC CHAPTER 33

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

ARTICLE IX. CAPTIVA DIVISION 1. IN GENERAL

Sec. 33-1612. - Community review.

(a) *No changes.*

(b) *Meeting requirements.* ~~The applicant submitting the application requiring review under this section must conduct at least one public informational meeting in conjunction with a publicly advertised meeting, including public notification in community-based media outlets. The applicant must provide a general overview of the project for interested citizens. The applicant is responsible for providing the meeting space and security measures as needed. Subsequent to this meeting, the applicant must provide county staff with a meeting summary document that contains the following information: the date, time and location of the meeting; a list of attendees; a summary of the concerns or issues that were raised at the meeting; and a proposal for how the applicant will respond to the issues raised. The meeting must be advertised no later than five days prior to the date of the meeting. The owner or agent applying for an application requiring review under this section must conduct one public informational meeting. The applicant is fully responsible for providing the meeting space, providing advance notice of the meeting, and providing security measures as needed. The meeting must be held within the community plan boundary. Advance notice of the meeting must be disseminated in a community-based media outlet, physically posted at the post office and provided in writing to citizen groups and civic associations within the community that are registered with Lee County for notification of pending zoning cases. The notice must be published and posted at least one week prior to the scheduled meeting date.~~

At the meeting, the agent will provide a general overview of the project for any interested citizens. Subsequent to this meeting, the applicant must provide county staff with a meeting summary document that contains the following information: the date, time, and location of the

meeting; a list of attendees; a summary of the concerns or issues that were raised at the meeting; and the applicant's response to any issues that were raised. This information must be submitted to the county before an application can be found sufficient.

Sec. 33-1615. – Deviations and variances.

- (a) *No changes.*
- (b) ~~Variances and deviations will be allowed only where unnecessary hardship would occur i.e. where the following findings, in addition to the findings required by section 34-145, are met:~~ Variances and deviations will only be permitted if all of the findings required by section 34-145 and all of the specific findings below are met:
 - (1) The hardship cannot be corrected by other means allowed in the code;
 - (2) Strict compliance of the regulations allows the property owner no reasonable use of the property, building or structure;
 - (3) The variance or deviation will not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties located on the same street and within the same Future Land Use category, unless denial of the variance or deviation would allow no reasonable use of the property, building or structure;
 - (4) The applicant did not cause the need for the variance or deviation;
 - (5) The variance or deviation to be granted is the minimum variance or deviation that will make possible the reasonable use of the property, building or structure; and
 - (6) The variance or deviation is not specifically prohibited in this article and not otherwise contrary to the spirit of the ordinance.
- (c) Variances and deviations are not permitted from the height requirements provided in section 33-1627.

DIVISION 2. ENVIRONMENTAL STANDARDS

Sec. 33-1622. Tree Requirements.

- (a) Trees Adjacent to Captiva Drive. For projects requiring a local development order with frontage on Captiva Drive, only trees that are indigenous to Captiva or native to South Florida, and that are not prohibited invasive exotics, may be planted within the minimum required right-of-way buffer.
- (b) Heritage Trees. For projects requiring a local development order, Heritage Trees, as defined in Chapter 10, will be preserved or when possible, may be relocated on-site. If a Heritage Tree must be removed from the site, then a replacement tree with a minimum 20-foot height must be planted within an appropriate open space.

Secs. 33-1623 - 33-1625. Reserved.

DIVISION 3. PROPERTY DEVELOPMENT REGULATIONS

Sec. 33-1627. Height restrictions on Captiva Island.

(a) ~~Consistent with Policy 13.1.2 of the Lee Plan, the~~ The height of buildings and structures may not exceed the least restrictive of the two following options:

(1)- (2) remain unchanged.

(b) remains unchanged.

Sec. 33-1628. - Rezoning and density.

(a) - (d) remain unchanged.

(e) Development orders or development permits, as they are defined in the Lee Plan, that would result in a reduction of the minimum lot size per unit permitted on a parcel under the parcel's current zoning category or under any other zoning category that would result in a reduction of the minimum lot size per unit on that parcel (as of November 22, 2017, are prohibited).

SECTION THREE: 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 FOUR: 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 FIVE: 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 SIX: 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 SEVEN: EFFECTIVE DATE

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

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

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

DULY PASSED AND ADOPTED this 21st day of November, 2017.

ATTEST:
LINDA DOGGETT, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Cecil Pendergrass, Chair

APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY

By: _____
Office of the County Attorney