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MEMORANDUM

TO: Fort Myers Beach Local Planning Agency
FROM: Bill Spikowski
DATE: March 12, 2002
SUBJECT: **NEW LAND DEVELOPMENT CODE, CHAPTER 34 (ARTICLES I AND II)**

Attached is the backup material for our March 19 workshop on the new land development code. This material contains the latest draft of Articles I and II of Chapter 34 (the zoning chapter of the code), as revised through March 12, 2002. Please insert these articles into your LDC binder and bring any questions or comments you may have on this material to the March 19 workshop. (Much earlier drafts of both Articles were reviewed by the LPA last year.)

- 1. ARTICLE I:** Article I contains the definitions of terms and phrases that are used throughout Chapter 34. There are major changes from the previous draft, including the following:
 - a. These definitions formerly contained many of the terms that are used to categorize the allowable land uses that are assigned to the various zoning districts; however, many other “use groups” were defined elsewhere in the code. These two methods of categorizing land uses are now being combined into a single greatly simplified system, which is described entirely within the definitions in § 34-2. (At the LDC workshop following this one, you will review the refined assignment of these land uses to the zoning districts; you will be better prepared at that time to critique the definitions of allowable land uses.)
 - b. At your February 19 LDC workshop, you reviewed Article V of Chapter 34, which contains supplemental regulations, and Article VI which regulates nonconformities. Article I has now been revised in accordance with those articles (which incidentally are being renumbered as Article IV and V).

- 2. ARTICLE II:** Article II contains all zoning procedures. This article is organized as follows:
 - a. Division 1, beginning on page 33, describes the restrictions on communications between the public and LPA (and Town Council) members concerning “quasi-judicial” hearings, such as rezonings, variances, and special exceptions.

- b. Division 2, beginning on page 34, describes each type of zoning action that can be taken by the Town Council and establishes criteria for approving or denying requests for these actions. Division 2 also describes the appeal processes for those aggrieved by decisions of the Town Council.
- c. Division 3, beginning on page 43, describes the Local Planning Agency. Much of this material has previously been adopted by Ordinances 96-02 and 96-25 but is now being relocated here. The only section that remains to be drafted is § 34-123, which will describe the LPA's potential additional role as a design review board that would hear appeals of administrative decisions on commercial building designs and also house-moving permits.
- d. Division 4, beginning on page 47, describes the application procedures for anyone seeking a zoning action on their property. The most important new material is in § 34-222 beginning on page 60, regarding buildings being moved to a new location at Fort Myers Beach. In addition to the current technical evaluations, new procedures are proposed here for determining the suitability of the building at its proposed new location. Please review this new material carefully.
- e. Division 5, beginning on page 63, describes the procedures for continuances and deferrals of public hearings.
- f. Division 6, beginning on page 66, contains miscellaneous provisions, including lenient provisions for "administrative setback variances" in certain specific situations.

The last portion of Chapter 34 will be Article III. This article combines the various allowable land uses into groups of compatible uses with similar impacts, then assigns these groups to the various zoning districts. Article III will also include a new official zoning map, and will provide specific regulations for each zoning district. A greatly expanded draft of Article III is now being prepared.

CHAPTER 34 ZONING

ARTICLE I. IN GENERAL

- Sec. 34-1. Purpose and intent of chapter.*
Sec. 34-2. Definitions.
Sec. 34-3. Rules of construction.
Sec. 34-4. Applicability of chapter; deed restrictions and vested rights.
Sec. 34-5. Interpretation of chapter.
Secs. 34-6--34-50. Reserved.

ARTICLE II. ZONING PROCEDURES ADMINISTRATION

Division 1. Generally

- Sec. 34-51. Notice of public hearings required.*
Sec. 34-52. ~~Unauthorized~~ Communications with public officials.
Sec. 34-53. Fees and charges.
Secs. 34-54--34-80. Reserved.

Division 2. Town Council Board of County Commissioners

- Sec. 34-81. Appointment of local planning agency.*
Sec. 34-82. Initiation of zoning actions.
Sec. 34-83. ~~Functions and authority: Land use ordinance amendments or adoption.~~
Sec. 34-84. General procedures for zoning actions on specific zoning applications.
Sec. 34-85. Rezoning.
Sec. 34-86. Appeals from administrative action.
Sec. 34-87. Variances.
Sec. 34-88. Special exceptions.
Sec. 34-89. Developments of regional impact.
Sec. 34-90. Land development code interpretations.
Sec. 34-91. Comprehensive plan interpretations.
Sec. 34-92 ~~84~~. Rehearing of decisions.
Sec. 34-93. Special master proceedings under the Florida land use and environmental dispute resolution act (F.S. § 70.51).
Sec. 34-94. Proceedings under the Bert J. Harris, Jr., private property rights protection act (F.S. § 70.001).
Sec. 34-95 ~~85~~. Final decision; judicial review.
Secs. 34-96 ~~86~~--34-110. Reserved.

Division 3. Local Planning Agency

- Sec. 34-111. Agency established.*
Sec. 34-112. Purpose and scope.

- Sec. 34-113. Composition, appointment, and compensation of members.*
Sec. 34-114. Members' terms and vacancies.
Sec. 34-115. Forfeiture of office.
Sec. 34-116. Election and duties of officers.
Sec. 34-117. Clerk.
Sec. 34-118. Rules and procedures.
Sec. 34-119. Employment of staff and experts.
Sec. 34-120. Specific functions, powers, and duties as to comprehensive planning and adoption of land development regulations.
Sec. 34-121. Functions, powers, and duties as to zoning matters.
Sec. 34-122. Functions, powers, and duties as to historic preservation matters.
Sec. 34-123. Functions, powers, and duties as to design review.
Sec. 34-124. Cooperation with the local planning agency.
Secs. 34-125 ~~116~~--34-200 ~~140~~. Reserved.

Division 4. Hearing Examiner [deleted in its entirety]

Division 5. Department of Community Development [deleted in its entirety]

Division 4 6. Applications and Procedures for Zoning Changes, Permits, Interpretations, and Other Approvals

- Subdivision I. General Procedures**
Sec. 34-201. General procedure for applications requiring public hearing.
Sec. 34-202. General submittal requirements for applications requiring public hearing.
Sec. 34-203. Additional requirements for certain owner-initiated applications requiring public hearing.
Sec. 34-204. Applications for development approval.
Sec. 34-205. Applications for building permits.
Sec. 34-206. Grading permits.
Secs. 34-204--34-210. Reserved.
Subdivision II. Additional Procedures for Planned Development Zoning Districts
Secs. 34-342--34-370. Reserved.
Sec. 34-211 ~~371~~. Generally.
Sec. 34-372. Preapplication conference.
Sec. 34-212 ~~373~~. Application for a planned development.
Sec. 34-213. Sufficiency and completeness.
Sec. 34-214. Application for an amendment.

~~Sec. 34-215 374. Covenant of unified control.~~
~~Sec. 34-375. Prehearing conference.~~
~~Sec. 34-376. Prehearing stipulation.~~
~~Sec. 34-216 377. Public hearings.~~
~~Sec. 34-217 378. Effect of planned development zoning.~~
~~Sec. 34-218 379. Binding nature of approval of master concept plan.~~
~~Sec. 34-219 380. Amendments to approved master concept plan.~~
~~Sec. 34-220 381. Duration of rights conferred by adopted master concept plan.~~
~~Sec. 34-382. Development permit.~~
~~Secs. 34-221 383--34-220 410. Reserved.~~
Subdivision III. Specialized Procedures
~~Sec. 34-221 207. Excavations permit for stormwater retention facilities.~~
~~Sec. 34-222 208. Requests for interpretation of this code zoning regulations.~~
~~Sec. 34-223 209. Building relocation permit.~~
~~Sec. 34-224 210. Temporary use permits.~~
~~Sec. 34-211. Denials and resubmission of applications.~~
~~Secs. 34-225 212--34-230. Reserved.~~

Division 5 7. Public Hearings and Review

~~Sec. 34-231. Definitions.~~
~~Sec. 34-232. Required hearings.~~
~~Sec. 34-233. Preliminary review and notice certification.~~
~~Sec. 34-234. Public participation.~~
~~Sec. 34-235. Deferral or continuance of public hearing.~~
~~Sec. 34-236. Notices.~~
~~Secs. 34-237--34-2650. Reserved.~~

Division 6 8. Enforcement and Special Administrative Actions

~~Sec. 34-261. Generally.~~
~~Sec. 34-262. Complaints.~~
~~Sec. 34-263. Penalties.~~
~~Sec. 34-264. Persons who may be charged with violations.~~
~~Sec. 34-265. Additional remedies.~~
~~Sec. 34-266. Enforcement. Cease and desist orders.~~
~~Sec. 34-267. Forced relocation of businesses. Authority to permit uses pending a zoning action.~~
~~Sec. 34-268. Administrative setback variances.~~
~~Sec. 34-269. Compliance agreements.~~
~~Secs. 34-26970--34-610300. Reserved.~~

ARTICLE III. RESERVED

ARTICLE IV. PLANNED DEVELOPMENTS

ARTICLE V. COMPREHENSIVE PLANNING; THE LEE PLAN

~~Sec. 34-491. The Lee Plan. [moved to § 34-619]~~
~~Secs. 34-492--34-610. Reserved.~~

ARTICLE III VI. ZONING DISTRICT REGULATIONS

Division 1. Mapping of Zoning Districts Generally

~~Sec. 34-611. Zoning districts established.~~
~~Sec. 34-612. Types and general purpose of districts.~~
~~Sec. 34-613. Designation of district boundaries.~~
~~Sec. 34-614. Existing Official zoning map.~~
~~Sec. 34-615. New official Current zoning maps.~~
~~Sec. 34-616. Records management for zoning maps.~~
~~Sec. 34-617. Unauthorized changes to zoning maps.~~
~~Sec. 34-6168. Rules for interpretation of district boundaries.~~
~~Sec. 34-619. District conversions.~~
~~Sec. 34-617-618. Reserved.~~

Division 2. Determining Allowable Uses of Land in Each Zoning District

~~Sec. 34-619. The Fort Myers Beach Comprehensive Plan.~~
~~Sec. 34-620. Allowable uses of land generally. Uses not specifically listed.~~
~~Sec. 34-621. Allowable uses of land described. Use and development regulations for conventional districts.~~
~~Sec. 34-622. Use activity groups. Use groups and sub-groups.~~
~~Sec. 34-623. Performance standards.~~
~~Secs. 34-6234--34-650. Reserved.~~

Division 3. Explanation of Certain Property Development Regulations That Apply To All Zoning Districts

~~Sec. 34-631. Building heights.~~
~~Sec. 34-632. Density.~~
~~Sec. 34-633. Intensity and floor area ratios.~~
~~Sec. 34-634. Minimum setbacks.~~
~~Sec. 34-635. Minimum lot sizes.~~
~~Sec. 34-636. Residential garages and driveways.~~
~~Sec. 34-637-34-640. Reserved.~~

Division 4. Conventional Zoning Districts

~~Sec. 34-641. Purpose.~~

- Sec. 34-642. RS (Residential Single-Family) zoning district.
- Sec. 34-643. RC (Residential Conservation) zoning district.
- Sec. 34-644. RM (Residential Multifamily) zoning district.
- Sec. 34-645. CR (Commercial Resort) zoning district.
- Sec. 34-646. CM (Commercial Marina) zoning district.
- Sec. 34-647. CO (Commercial Office) zoning district.
- Sec. 34-648. IN (Institutional) zoning district.
- Sec. 34-649. CF (Community Facilities) zoning district.
- Sec. 34-650. BB (Bay Beach) zoning district.
- Sec. 34-651. EC (Environmentally Critical) zoning district.
- Sec. 34-652–34-660. Reserved.

Division 5. Redevelopment Zoning Districts

Subdivision I. Generally

- Sec. 34-661. Purpose.
- Sec. 34-662. Build-to lines and setback lines.
- Sec. 34-663. Building frontages and lot frontages.
- Sec. 34-664. Commercial building design standards.
- Sec. 34-665. Property development regulations.
- Sec. 34-666–34-670. Reserved.

Subdivision II. DOWNTOWN Zoning District

- Sec. 34-671. Purpose.
- Sec. 34-672. District map and applicability.
- Sec. 34-673. Allowable uses.
- Sec. 34-674. Building placement.
- Sec. 34-675. Building size.
- Sec. 34-676. Circulation and parking.
- Sec. 34-677. Additional requirements.
- Sec. 34-678–34-680. Reserved.

Subdivision III. SANTINI Zoning District

- Sec. 34-681. Purpose.
- Sec. 34-682. District map and applicability.
- Sec. 34-683. Neighborhood center options.
- Sec. 34-684. Allowable uses.
- Sec. 34-685. Building placement.
- Sec. 34-686. Building size.
- Sec. 34-687. Parking.
- Sec. 34-688. Commercial design standards.
- Sec. 34-689–34-690. Reserved.

Subdivision III. VILLAGE Zoning District

- Sec. 34-691. Purpose.
- Sec. 34-692. District map and applicability.
- Sec. 34-693. Allowable uses.
- Sec. 34-694. Building placement.
- Sec. 34-695. Building size.

- Sec. 34-696. Circulation and parking.
- Sec. 34-697. Additional requirements.
- Sec. 34-698–34-700. Reserved.

Subdivision VI. CB Zoning District

- Sec. 34-701. Purpose.
- Sec. 34-702. Applicability.
- Sec. 34-703. Allowable uses.
- Sec. 34-704. Building placement.
- Sec. 34-705. Building size.
- Sec. 34-706. Circulation and parking.
- Sec. 34-707. Additional requirements.
- Secs. 34-708–34-710. Reserved.

Subdivision VI. SANTOS Zoning District

- Sec. 34-711. Purpose.
- Sec. 34-712. District map and applicability.
- Sec. 34-713. Allowable uses.
- Sec. 34-714. Building placement.
- Sec. 34-715. Building size.
- Sec. 34-716. Circulation and parking.
- Sec. 34-717. Additional requirements.
- Sec. 34-718–34-720. Reserved.
- Secs. 34-721–34-930. Reserved.

Division 2. Agricultural Districts

Division 3. Residential Districts

Division 4. Recreational Vehicle Park Districts

Division 5. Community Facilities Districts

Division 6. Commercial Districts

Division 7. Marine-Oriented Districts

Division 8. Industrial Districts

Division 9. Planned Development Zoning Districts

Subdivision I. Generally

- Sec. 34-931. Purpose and effect. intent.
- Sec. 34-932. Regulation of land use in planned developments.
- Sec. 34-933. Allowable permitted uses.
- Sec. 34-934. Building placement and size. Use regulations table.
- Sec. 34-935. Commercial building design standards. General conditions for all land uses.
- Sec. 34-937. Commercial uses in RPD and MHPD districts.
- Sec. 34-938. Industrial uses in CPD district.
- Sec. 34-939. Recreational vehicle planned developments.

~~Sec. 34-940. Mixed use planned developments.
Secs. 34-936+1--34-9460. Reserved.
**Subdivision II. RPD (Residential Planned Development)
Zoning District**
Sec. 34-941. RPD (Residential Planned
Development) zoning district.
Secs. 34-94 --34-950. Reserved.
**Subdivision III. CPD (Commercial Planned
Development) Zoning District**
Sec. 34-951. CPD (Commercial Planned
Development) zoning district.
Secs. 34-95 --34-960. Reserved.
**Subdivision IV. Former Planned Development Zoning
Districts**
Sec. 34-961. Former planned development zoning
districts.
**Subdivision V. PUD (Planned Unit Development)
Zoning District**~~

Division 10. Special Purpose Districts
~~**Subdivision I. In General**
Subdivision II. Environmentally Critical District
Subdivision III. Airport Hazard District
Subdivision IV. Planned Unit Development District
Sec. 34-1031. Applicability.
Secs. 34-962-34-1168. Reserved.
Sec. 34-1032. Purpose and intent.
Sec. 34-1033. Definitions.
Sec. 34-1034. Conflicting provisions.
Sec. 34-1035. Compliance with other regulations.
Sec. 34-1036. Procedure for approval; effect of
PUD zoning.
Sec. 34-1037. Contents of final development plan.
Sec. 34-1038. Changes to final development plan.
Sec. 34-1039. Amendments to built planned unit
developments.
Sec. 34-1040. Area, density and setback
requirements; permitted uses.
Sec. 34-1041. General development standards;
required improvements.
Secs. 34-1032--34-1070. Reserved.
Division 11. Overlay Districts [deleted in its
entirety]~~

**ARTICLE IV. VII. SUPPLEMENTARY
DISTRICT SUPPLEMENTAL REGULATIONS**

Division 1. Generally
Sec. 34-1169 +1+1. Purpose and applicability of
article.
Sec. 34-1170 +1+2. Purpose of supplemental
regulations.
Secs. 34-1143--34-1170. Reserved.

**Division 2. Accessory Uses, Buildings, and
Structures**

~~Sec. 34-1171. Applicability of division.
Sec. 34-1172. Definitions.
Sec. 34-1173. Development regulations.
Sec. 34-1174. Location and setbacks generally.
Sec. 34-1175. Satellite dishes and amateur radio
antenna/towers.
Sec. 34-1176. Swimming pools, tennis courts,
porches, decks, and similar
recreational facilities.
Sec. 34-1177. Accessory apartments not requiring
owner-occupancy.
Sec. 34-1178. Accessory apartments in owner-
occupied homes.
Sec. 34-1179. Trucks and commercial vehicles in
residentially zoned districts.
Commercial fishing equipment
storage as accessory use to residence
in Greater Pine Island area.
Sec. 34-1180. Additional dwelling unit on lot in
agricultural districts.
Secs. 34-1180+--34-1200. Reserved.~~

~~**Division 3. Adult Entertainment, Adult
Bookstores and Massage Parlors Sexually-
oriented Businesses**~~

~~Sec. 34-1201. Applicability of division.
Sec. 34-1202. Definitions.
Sec. 34-1203. Purpose of division.
Sec. 34-1204. Prohibited locations.
Secs. 34-1205--34-1230. Reserved.~~

~~**Division 4. Reserved Aircraft Landing
Facilities, Private**~~

~~Secs. 34-1231+8--34-1260. Reserved.~~

~~**Division 5. Alcoholic Beverages**~~

~~Sec. 34-1261. Definitions.
Sec. 34-1262. Compliance with applicable
regulations.
Sec. 34-1263. Sale for off-premises consumption.
Sec. 34-1264. Sale or service for on-premises
consumption.
Secs. 34-1265--34-1290. Reserved.~~

~~**Division 6. Animals**~~

~~Sec. 34-1291. Keeping of animals. Applicability of
division.
Sec. 34-1292. Horses and other equines.
Sec. 34-1293. Goats, sheep and swine.
Sec. 34-1294. Noncommercial poultry raising.
Sec. 34-1295. Dairy barns; commercial poultry
raising.~~

~~Sec. 34-1296. Other setbacks, exceptions to setback requirements.~~

~~Sec. 34-1297. Activities requiring special approval.~~
Secs. 34-1292~~8~~--34-1320. Reserved.

Division 7. Animal Clinics and Kennels Facilities

Sec. 34-1321. Permitted activities.
Sec. 34-1322. Enclosure of facilities.
Secs. 34-1323--34-1350. Reserved.

Division 8. Automotive Businesses, ~~Display, Rental, Repair, or Storage of Vehicles or Equipment~~

~~Sec. 34-1351. Automobile repair and service.~~
Sec. 34-1352. Display, sale, ~~rental, or storage~~ facilities for motor vehicles, boats, recreational vehicles, trailers, mobile homes, or equipment.

Sec. 34-1353. Automobile repair.
Secs. 34-1354~~3~~--34-1380. Reserved.

Division 9. Bus Depots, Stations and Transit Terminals

Sec. 34-1381. Purpose of division.
Sec. 34-1382. Site plan.
Sec. 34-1383. Access.
Sec. 34-1384. Parking generally.
~~Sec. 34-1385. Parking for bus terminals.~~
~~Sec. 34-1386. Modification of parking requirements.~~
~~Sec. 34-1387. Expansion of existing bus station/depot.~~
Secs. 34-1385~~8~~--34-1410. Reserved.

Division 10. Care and Assisted Living Facilities and Centers

Sec. 34-1411. Assisted Adult congregate living facilities.
Secs. 34-1412, 34-1413. Reserved.
Sec. 34-1414. Continuing care facilities.
Sec. 34-1415. Density equivalents.
Secs. 34-1416~~5~~--34-1440. Reserved.

Division 11. Commercial Antennas and Communication Towers

[existing text deleted in its entirety]

Sec. 34-1441. Purpose and intent.
Sec. 34-1442. Definitions.
Sec. 34-1443. Commercial antennas mounted on alternative support structures.
Sec. 34-1444. Commercial antennas mounted on communication towers.

Secs. 34-1445--34-1470. Reserved.

Division 12. Reserved Density

[deleted in its entirety]

Secs. 34-1491--34-1570. Reserved.

Division 13. Environmentally Sensitive Areas

Sec. 34-1571. Purpose of division; areas of concern.
Sec. 34-1572. Applicability of division.
Sec. 34-1573. Environmental assessment report.
Sec. 34-1574. Compliance with applicable regulations; new roads, development, or expansion of existing facilities.
Sec. 34-1575. Coastal zones.
Sec. 34-1576. ~~Islands.~~ Reserved.
Sec. 34-1577. Wetlands.
~~Sec. 34-1578. Floodplains.~~
Secs. 34-1578~~9~~--34-1610. Reserved.

Division 14. Essential Services and Essential Service Equipment and Buildings Facilities

Sec. 34-1611. Purpose of division.
Sec. 34-1612. Where permitted uses.
Sec. 34-1613. Setbacks.
Sec. 34-1614. Height of structures in visibility triangle.
Sec. 34-1615. Maximum number of structures per residential block.
Sec. 34-1616. Safety requirements: Screening and buffering.
Sec. 34-1617. Exemptions from property development regulations.
Secs. 34-1618--34-1650. Reserved.

Division 15. Excavation Activities

Subdivision I. Generally

Sec. 34-1651. Required approvals.
Secs. 34-1652--34-1710 ~~+670~~. Reserved.

Subdivision II. Mining [deleted in its entirety]

Division 16. ~~Farm Produce Stands, U-Pick Operations, Roadside Stands And Portable Kiosks, Farmers' Markets and Mobile Vendors~~

~~Sec. 34-1711. Applicability of division.~~
~~Sec. 34-1712. Definitions.~~
~~Sec. 34-1713. Produce stands.~~
~~Sec. 34-1714. Roadside stands.~~
~~Sec. 34-1715. U-pick operations.~~
Sec. 34-171~~1~~6 Portable kiosks.
Sec. 34-171~~2~~7. Mobile vendors and outdoor sales prohibited.
Secs. 34-1713~~7~~--34-1740. Reserved.

Division 17. Fences, Walls, and Entrance Gates and Gatehouses

- Sec. 34-1741. Applicability of division.
Sec. 34-1742. Design and construction of fences and walls. Building permit.
Sec. 34-1743. Reserved. Construction of fences.
Sec. 34-1744. Location and height of fences and walls.
Sec. 34-1745. Buffer for commercial and industrial uses.
Sec. 34-1746. Reserved. Visibility at entrances and exits.
Sec. 34-1747. Construction in easements.
Sec. 34-1748. Enclosure of high-voltage transformers and other utility equipment.
Sec. 34-1749. Entrance gates and gatehouses.
Sec. 34-1750. Walls and fences along limited access or controlled access streets.
Secs. 34-1750~~1~~--34-1770. Reserved.

Division 18. Home Occupations

- Sec. 34-1771. Intent of division.
Sec. 34-1772. Permitted uses; operation.
Secs. 34-1773--34-1800. Reserved.

Division 19. Hotels, and Motels, and Bed-and-Breakfast Inns

- Sec. 34-1801. Definitions.
Sec. 34-1802. Size of guest units.
Sec. 34-180~~3~~2. Allowable intensity. Property development regulations.
Sec. 34-1804. Parking.
Sec. 34-1805. Additional regulations for bed-and-breakfast inns.
Sec. 34-1806. Replacing a nonconforming hotel/motel.
Sec. 34-180~~7~~3. Conversions.
Sec. 34-1804. Subordinate uses.
Sec. 34-1805. Density limitation for Captiva Island.
Secs. 34-180~~8~~6--34-1830. Reserved.

Division 20. Reserved Junk, Scrap or Salvage Yards; Dumps and Sanitary Landfills [deleted in its entirety]

- Secs. 34-1831~~7~~--34-1860. Reserved.

Division 21. Marine Facilities, Structures and Equipment

- Sec. 34-1861. Boats, floating structures, floating equipment and live-aboards.

Sec. 34-1862. Reserved. Marinas, fish houses and docking facilities.

Sec. 34-1863. Construction and maintenance of docks, seawalls and other structures designed for use on or adjacent to waterways.

Secs. 34-1864--34-1890. Reserved.

Division 22. Reserved Farm Labor Housing [deleted in its entirety]

Secs. 34-1891~~5~~--34-1920. Reserved.

Division 23. Mobile Homes

Sec. 34-1921. Mobile home subdivisions.

Sec. 34-1922. Mobile home parks.

Sec. 34-192~~3~~1. Move-on permit.

Sec. 34-1922. Tiedowns.

Sec. 34-1923. Skirting.

Secs. 34-1924--34-1950. Reserved.

Division 24. Reserved Model Homes, Units and Display Centers

Secs. 34-1951~~6~~--34-1980. Reserved.

Division 25. Off-Street Loading Areas

- Sec. 34-1981. Applicability of division.
Sec. 34-1982. Access.
Sec. 34-1983. Lighting, maintenance and drainage.
Sec. 34-1984. Other use of loading areas.
Sec. 34-1985. Screening.
Sec. 34-1986. Loading area required; loading plan; location of loading area.
Sec. 34-1987. Number of spaces.
Secs. 34-1988--34-2010. Reserved.

Division 26. Off-Street Parking

- Sec. 34-2011. Types of parking facilities. Applicability of division.
Sec. 34-2012. Definitions.
Sec. 34-2013. Access.
Sec. 34-2014. Parking plan.
Sec. 34-2015. Location and design generally.
Sec. 34-2016. Dimensional requirements; delineation of parking spaces.
Sec. 34-2017. Parking lot surface.
Sec. 34-2018. Joint use of off-street parking lots.
Sec. 34-2019. Other use of off-street parking lots.
Sec. 34-2020. Required parking spaces.
Sec. 34-2021. Reserved. Exception for fast order food establishments located in multiple use complex.
Sec. 34-2022. Temporary Seasonal parking lots.
Secs. 34-2023--34-2030 ~~2050~~. Reserved.

Division 26-A. Performance Standards

- Sec. 34-2031. Performance standards, environmental quality.
Sec. 34-2032. Performance standards, creation of nuisance.
Secs. 34-2033--34-2050. Reserved.

Division 27. Places of Worship and Religious Facilities

- Sec. 34-2051. Property development regulations.
Sec. 34-2052. Parking.
Sec. 34-2053. Expansion of existing place of worship.
Secs. 34-2054--34-2080. Reserved.

Division 28. Reserved Plant Nurseries

- Secs. 34-2081--34-2110. Reserved.

Division 29. Private Clubs, Fraternal Clubs and Membership Organizations Clubs

- Sec. 34-2111. Applicability of district use regulations.
Secs. 34-2112--34-2140. Reserved.

Division 30. Reserved Property Development Regulations [deleted in its entirety]

- Secs. 34-2141--34-2350. Reserved.

Division 31. Recreational Vehicles as Permanent Residences

- Sec. 34-2351. Use as permanent residence.
Sec. 34-2352. Recreational vehicle subdivisions.
Sec. 34-2352. Recreational vehicle parks.
Secs. 34-2354--34-2380. Reserved.

Division 32. Schools

- Sec. 34-2381. All schools.
Sec. 34-2382. Noncommercial schools.
Sec. 34-2383. Schools operated as businesses.
Secs. 34-2384--34-2410. Reserved.

Division 33. Signs

- Sec. 34-2411. Location and construction.
Secs. 34-2412--34-2440. Reserved.

Division 34. Reserved Special Setback Regulations for Specific Uses

- Secs. 34-2441--34-2470. Reserved.

Division 35. Sports/Amusement Parks and Recreational Facilities

- Sec. 34-2471. Applicability of division.
Sec. 34-2472. Required approvals.
Sec. 34-2473. Minimum lot area.
Sec. 34-2474. Setbacks.
Sec. 34-2475. Reserved. Access.
Sec. 34-2476. Accessory uses.
Sec. 34-2477. Lighting.
Sec. 34-2478. Parking.
Sec. 34-2479. Sound systems.
Secs. 34-2480--34-3000. Reserved.

Division 36. Storage Facilities and Outdoor Display of Merchandise

- Sec. 34-3001. Applicability of division.
Sec. 34-3002. Reserved. General setback requirements.
Sec. 34-3003. Lighting.
Sec. 34-3004. Outdoor display of merchandise for sale or rent.
Sec. 34-3005. Storage facilities.
Secs. 34-3006--34-3020. Reserved.

Division 37. Subordinate and Temporary Uses

Subdivision I. In General

- Sec. 34-3021. Subordinate uses.
Secs. 34-3022--34-3040. Reserved.

Subdivision II. Temporary Uses

- Sec. 34-3041. Generally.
Sec. 34-3042. Carnivals, fairs, circuses and amusement devices.
Sec. 34-3043. Christmas tree sales.
Sec. 34-3044. Temporary contractor's office and equipment storage shed.
Sec. 34-3045. Reserved. Horse shows and exhibitions.
Sec. 34-3046. Temporary use of mobile home.
Sec. 34-3047. Temporary telephone distribution equipment.
Sec. 34-3048. Ancillary temporary uses in parking lots.
Sec. 34-3049. Temporary Seasonal parking lots.
Secs. 34-3050--34-3060. Reserved.

Division 37-A. Tall Structures

- Sec. 34-3061 ~~1008~~. Permit for tall structures.
Secs. 34-3062--34-3065. Reserved.

Division 37-B. Tattoo Studios and Body-Piercing Salons

- Sec. 34-3066. Purpose of division.
Sec. 34-3067. Definitions.
Sec. 34-3068. Minimum spacing required for new, expanded, or relocated establishments..

~~Secs. 34-3069--34-3070. Reserved.~~

Division 38. Reserved. Units of High Impact

~~Sec. 34-3071. Applicability of division.~~

~~Sec. 34-3072. Purpose of division.~~

~~Sec. 34-3073. Conversions of dwelling or rooming units.~~

~~Sec. 34-3074. Sale of timeshare units.~~

~~Secs. 34-30715--34-3100. Reserved.~~

Division 39. Use, Occupancy, and Construction, and Moving Regulations

~~Sec. 34-3101. Compliance with applicable regulations.~~

~~Sec. 34-3102. Reserved. Number of principal buildings on lot.~~

~~Sec. 34-3103. Permit for moving building.~~

~~Sec. 34-3104. Clearing, grading or filling of land.~~

~~Sec. 34-3104. Use of vehicles, truck trailers, or shipping containers for storage.~~

~~Secs. 34-3105--34-3130. Reserved.~~

Division 40. Vehicle Visibility

~~Sec. 34-3131. Vehicle visibility at intersections.~~

~~Secs. 34-3132--34-3150. Reserved.~~

Division 41. Water-Oriented Activities

~~Sec. 34-3151. Water-oriented rental establishments; outdoors.~~

~~Secs. 34-3152--34-3200. Reserved.~~

ARTICLE V. VIII. NONCONFORMITIES

Division 1. Generally

~~Sec. 34-3201. Purpose of article.~~

~~Sec. 34-3202. Three types of nonconformities nonconforming use defined.~~

~~Sec. 34-3203. Illegal buildings, uses, and lots. Enlargement or expansion of nonconforming structure.~~

~~Sec. 34-3204. Amortization. Mobile home and recreational vehicle unit replacements and roof repairs.~~

~~Sec. 34-3205. Reserved. Uses approved by special exception or permit.~~

~~Sec. 34-3206. Nonconformities created by public acquisition. eminent domain proceedings.~~

~~Secs. 34-3207--34-32320. Reserved.~~

Division 2. Nonconforming Use of Land

~~Sec. 34-3221. Generally.~~

~~Sec. 34-3222. Enlargement or replacement.~~

~~Sec. 34-3223. Discontinuance.~~

~~Sec. 34-3224. Erection of additional structures.~~

~~Secs. 34-3225--34-3240. Reserved.~~

Division 2. 3. Nonconforming Buildings and Use of Buildings

~~Sec. 34-32341. Nonconforming buildings defined. and structures.~~

~~Sec. 34-3232. Continued use of a nonconforming building.~~

~~Sec. 34-3233. Repairing a nonconforming building.~~

~~Sec. 34-3234. Enlarging a nonconforming building.~~

~~Sec. 34-3235. Moving a nonconforming building.~~

~~Sec. 34-3236. Replacing a nonconforming building.~~

~~Sec. 34-3237. Pre-disaster buildback.~~

~~Sec. 34-3238. Post-disaster buildback.~~

~~Secs. 34-3239--34-3240. Reserved.~~

Division 3. Nonconforming Uses

~~Sec. 34-32412. Nonconforming uses generally. of buildings.~~

~~Sec. 34-3242. Enlarging a nonconforming use.~~

~~Sec. 34-3243. Replacing a nonconforming use.~~

~~Sec. 34-3244. Discontinuing a nonconforming use.~~

~~Sec. 34-3245. Repairing a building containing a nonconforming use.~~

~~Sec. 34-3246. Adding structures for a nonconforming use.~~

~~Sec. 34-324705. Nonconforming uses approved by special exception or permit.~~

~~Secs. 34-32483--34-3270. Reserved.~~

Division 4. Nonconforming Lots

~~Sec. 34-3271. Definitions. Nonconforming lot defined.~~

~~Sec. 34-3272. Determining when a lot was created. Lot of record defined; general development standards.~~

~~Sec. 34-3273. General requirements for residential uses on nonconforming lots.~~

~~Sec. 34-32743. Minimum use determinations. Construction of single-family residence.~~

~~Sec. 34-3275. Combining nonconforming lots.~~

~~Sec. 34-32764. Placement of Replacing a mobile home or recreational vehicle on a nonconforming lot.~~

~~Sec. 34-32775. Commercial or industrial use on a nonconforming lot.~~

ARTICLE I. IN GENERAL

Sec. 34-1. Purpose and intent of chapter.

(a) The purpose of this chapter is to encourage and promote, in accordance with present and future needs, the safety, health, order, convenience, prosperity, and general welfare of the citizens of the Town of Fort Myers Beach county, to recognize and promote real property rights, and to provide:

- (1) for efficiency and economy in the process of development,
- (2) for the appropriate and best use of land,
- (3) for preservation, protection, development, and conservation of the historical and natural resources of land, water, and air,
- (4) for convenience of traffic and circulation of people and goods,
- (5) for the use and occupancy of buildings,
- (6) for healthful and convenient distribution of population,
- (7) for adequate public utilities and facilities,
- (8) for promotion of the amenities of beauty and visual interest,
- (9) for protection of the character and maintenance of the stability of residential; ~~agricultural; and business and industrial~~ areas, and
- (10) for development in accordance with the Fort Myers Beach Comprehensive Plan. ~~Lee Plan adopted by the county~~;

(b) These purposes are furthered by establishing zoning districts and by regulating the location and use of buildings, signs, and other structures, water, and land ~~for agriculture, trade, industry and residence~~, by regulating and limiting or determining the height, bulk, and access to light and air of buildings and structures, the area of yards and other open spaces, and the density of use. To accomplish these objectives, the regulations and districts and accompanying maps have been designed with reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses.

(c) No building or structure, or part thereof, shall hereafter be erected, constructed, reconstructed, altered, or maintained, and no existing use, new use, or change of use of any building, structure, or land, or part thereof, shall be made or continued except in

conformity with the provisions of this code. Special regulations apply to certain nonconforming buildings and uses as provided in article IV of this chapter.

Sec. 34-2. Definitions.

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

Abutting property, unless specifically stated otherwise within this chapter, means properties having a boundary line, or point or portion thereof, in common, with no intervening street right-of-way or easement, or any other easement over 25 feet in width.

Access, vehicular means the principal means of vehicular ingress and egress to abutting property from a street right-of-way or easement.

Accessory apartment. See §§ 34-1177 and 1178.

Accessory building or structure. See *Building or structure, accessory*.

Accessory use. See *Use, accessory*.

Administrative office means an office which is customarily ancillary and subordinate to the permitted principal use of the property and which is used for clerical and administrative functions of the principal use. This term shall be interpreted to include managers or association offices for residential rental property, subdivisions, recreational vehicle parks and similar type activities.

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 town council Board of County Commissioners or any other person or board that has been delegated such authority by the town council Board of County Commissioners. ~~Property owners within 375 feet of the subject property are presumed to have a legally recognizable interest. A person or entity claiming to be aggrieved, and whose property lies outside of the 375-foot perimeter, will be required to offer proof that their interests are adversely affected. A person or entity~~

pursuing an appeal solely out of spite shall not be presumed to have a legally recognizable interest.

~~Agricultural uses [deleted]~~

~~Aircraft landing facilities, private [deleted]~~

~~Airport operations facilities [deleted]~~

Alter and *alteration* mean any change in size, shape, character, or use of a building or structure.

Amateur radio antenna/tower means a structure erected and designed to receive or transmit radio waves by licensed amateur radio operators.

Amusement device means any mechanical device or combination of devices which carries or conveys passengers on, along, around, over, or through a fixed or restricted course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement. This definition shall specifically include all amusement devices, amusement attractions, and temporary structures regulated by F.S. ch. 616 and the state department of agriculture and consumer services.

Amusement device, permanent means a device which is used, or intended to be used, as an amusement device or amusement attraction that is erected to remain a lasting part of the premises.

Amusement park means permanent establishments known as amusement parks, kiddie parks, theme parks, etc., which operate one or more amusement attractions such as mechanical rides, amusement devices, exhibits, and refreshment stands or picnic grounds, for a profit.

Animal clinic or kennel means an establishment providing for the diagnosis and treatment of ailments of animals other than humans, or for the temporary care of more than four dogs or cats for others, and which may include facilities for overnight care. See division 7 of article IV of this chapter. ~~*Animal kennel.*~~

~~*Animal kennel* means an establishment where more than four dogs or cats (except litters of animals of not more than six months of age) are kept, raised, bred, cared for, or boarded, for a fee.~~

~~*Animals, Class I [deleted]*~~

~~*Animals, Class H [deleted]*~~

~~*Apparel, manufacturing.* See § 34-622(c)(1).~~

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

Application, town- county initiated means any application in which the town council ~~Board of County Commissioners~~ is designated as the applicant, regardless of whether Lee County is the owner of the subject parcel.

Application, owner-initiated means any application that is not town- county initiated.

~~*Application or appeal* means any matter lying within the jurisdiction of the town council, hearing examiner and any application for rezoning which will be or is scheduled to be heard by the Board of County Commissioners.~~

~~*Approved discharge device [deleted]*~~

Architect means a professional architect duly registered and licensed by the state.

~~*Adult congregate living facilities (ACLF) or Assisted living facility* means a residential land use, licensed under ch. 58A-5 F.A.C. 40A-5, Florida Administrative Code, which may be a building, a section of a building, a section of a development, a private home, a special boarding home, a home for the aged, or similar place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a period exceeding 24 hours, housing and food service plus one or more personal services for four or more adults not related to the owner or administrator by blood or marriage. A facility offering ~~such~~ services for fewer than four adults shall be ~~constructed as being~~ within the context of this definition if it ~~formally or informally~~ advertises to or solicits the public for residents or referrals and holds itself out to the public ~~as to be~~ an establishment ~~which~~ providing such services. These facilities are not synonymous with the term “nursing home.” For purposes of this definition only, the term “personal services” means services in addition to housing and food service, which include but are not limited to~~

personal assistance with bathing, dressing, ambulation, housekeeping, supervision, emotional security, eating, supervision of self-administered medications, restoration therapy, and assistance with securing health care from appropriate sources.

ATM and automatic teller machine mean an unattended banking station located outside of or away from the principal bank building and in operation beyond normal lobby hours, operated by computerized equipment, and capable of carrying out specific banking transactions.

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

Auto parts store means establishments primarily engaged in the retail sale of new or used automobile, truck, trailer, or motorcycle parts and accessories. The term does not include auto wrecking yards.

Auto wrecking yard [deleted]

Automobile rental means the use of any building, land area, or other premises or portion thereof primarily for the rental (not leasing) of automobiles and light trucks. Incidental servicing and maintenance of the rental vehicles, excluding body/frame repair and painting, is a normal ancillary function.

Automobile repair means establishments that primarily offer parts installation and general vehicle servicing including diagnostic centers and the servicing of brakes, electrical systems, engines, glass, mufflers, oil, radiators, tires, transmissions, upholstery, etc. Automobile repair establishments may also provide body/frame repair, painting, and similar services when ancillary to general vehicle servicing.

Automobile service station means an establishment primarily engaged in the retail sale of motor fuel or lubricants, but which may also include facilities for washing, polishing, waxing, greasing, tire repair (with no recapping or vulcanizing) and other minor incidental repairs, and emergency road service, including towing and emergency repairs and services; provided, however, such establishment is not primarily engaged in work or services listed

as “automotive repair and service” (see § 34-622(c)(2)). See *Self-service fuel pump station*.

~~*Automotive repair and service*. See § 34-622(c)(2).~~

~~*Banks and financial establishments*. See § 34-622(c)(3).~~

~~*Bar or and cocktail lounge* mean any establishment devoted primarily to the retailing and on-premises drinking of beer, wine, malt, vinous, or other alcoholic beverages.~~

Beach or bay access means a right-of-way or easement that provides at least pedestrian access to beaches, bays, canals, or wetlands.

Bed and breakfast establishment. For purposes of this chapter, bed and breakfast establishments shall be treated the same as a boarding house.

Bed-and-breakfast inn means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings. See division 19 of this chapter.

Board means the Board of County Commissioners of Lee County, Florida.

Boarding house means an establishment with lodging facilities for more than four but less than ten persons, where meals are regularly prepared and served for compensation, and where food is placed upon the table family style, without service or ordering of individual portions from a menu. See *Rooming house*.

Boat means any vessel, watercraft, or other artificial contrivance used, or which is capable of being used, as a means of transportation, as a mode of habitation, or as a place of business, professional, or social association on waters of the town county, including:

- (1) Foreign and domestic watercraft engaged in commerce;
- (2) Passenger or other cargo-carrying watercraft;
- (3) Privately owned recreational watercraft;
- (4) Airboats and seaplanes; and
- (5) Houseboats or other floating homes.

Boat dealers are establishments primarily engaged in the display, sales, or leasing of new or used motorboats, yachts, and other watercraft, including boat trailers. Incidental servicing and repairs and the stocking of replacement parts is a normal ancillary function.

Boat parts store [deleted]

Boat repair and service means establishments primarily engaged in minor repair service to small watercraft, including the sale and installation of accessories.

Boatyard means a boating or harbor facility located on or having direct access to navigable water for building, maintaining, and performing extensive repair on boats and small ships, marine engines, and equipment. A boatyard shall be distinguished from a marina by the larger scale and greater extent of work done in a boatyard and by the use of dry dock, marine railway, or large capacity lifts used to haul out boats for maintenance or repair. See *Marina*.

Bonita Beach [deleted]

Building means any structure, either temporary or permanent, having a roof intended to be impervious to weather, and used or built for the shelter or enclosure of persons, animals, chattels, or property of any kind. This definition shall include tents, awnings, cabanas, or vehicles situated on private property and serving in any way the function of a building, but does not include screened enclosures not having a roof impervious to weather.

Building or structure, accessory means a building or structure which is customarily incidental and subordinate to a principal building or to the principal use of the premises, and located on the same premises. See *Building, principal*.

Building, conventional means:

- (1) A building, built upon the site and upon its own permanent foundation, constructed of basic materials such as wood, masonry, or metal or minimally prefabricated components such as roof trusses, wall panels, and bathroom/kitchen modules, and conformable to the locally adopted building, electrical, plumbing, and other related codes; or

- (2) A building manufactured off the site in conformance with F.S. ch. 553, pt. IV (or ch. 9B-1, F.A.C.), subsequently transported to its site complete or in modules and fixed to its own foundation with no intention to relocate.

Building; heights. See § 34-631. *of* means the vertical distance measured from grade to the highest point of the roof surface of a flat or Bermuda roof; to the deck line of a mansard roof; and to the mean height level between eaves and ridge of gable, hip, and gambrel roofs. Where minimum floor elevations in floodprone areas have been established by law, the building height shall be measured from such required minimum floor elevations (see article VII, division 30, subdivision H, of this chapter).

Building material sales. See § 34-622(c)(4). includes establishments selling new or used building materials such as lumber, roofing, siding, shingles, drywall, brick, tile, cement, sand, or gravel.

Building official means the director of the division of code enforcement or his designee.

Building, principal means a building in which is conducted the main or principal use of the premises on which the building is situated.

Bus station/depot [deleted]

Bus stop [deleted]

Bus terminal. See *Transit terminal.* ~~means any premises for the transient housing or parking of buses and where the loading and unloading of passengers, luggage or packages or the transfer of passengers, luggage or packages to other buses may occur.~~

Business office [deleted]

Business services. See § 34-622(c)(5).

Camera shop [deleted]

Car wash means establishments primarily engaged in washing cars or in furnishing facilities for the self-service washing of cars.

Carnival means an enterprise which travels from community to community, generally staying for ten

days or less in any one location, and which offers one or more amusement devices or attractions.

Carport means a freestanding or attached structure, consisting of a roof and supporting members such as columns or beams, unenclosed from the ground to the roof on at least two sides, and designed or used for the storage of motor-driven vehicles owned and used by the occupants of the building to which it is accessory.

~~*Cemetery* [deleted]~~

~~*Change of occupancy* [deleted]~~

~~*Chemicals and allied products.* [deleted]~~

~~*Cleaning and maintenance services.* See § 34-622(c)(7).~~

~~*Clothing stores, general.* See § 34-622(c)(8).~~

~~*Clubs.* See *Membership organization.*~~

~~(1) *Club, commercial* [deleted]~~

~~(2) *Club, country* [deleted]~~

~~(3) *Club, fraternal* [deleted]~~

~~(4) *Club, membership organization* [deleted]~~

~~(5) *Club, private* [deleted]~~

~~*Cluster development* [deleted]~~

Commercial means an activity involving the sale of goods or services carried out for profit.

Commercial accessory use means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a commercial structure or premises. See *Use, principal*. Typical commercial accessory uses are: *Parking lots, accessory; Storage, indoor; Telephone booth or pay telephone station; LIST OTHERS HERE*. Various divisions of article IV of this chapter describe permitted commercial accessory uses.

Commercial antenna (see definition in § 34-1442)

~~*Commercial fishery* [deleted]~~

Communication tower (see definition in § 34-1442)

Community residential home means a dwelling unit licensed to serve clients of the state department of ~~children and family services health and rehabilitative services~~ which provides a living environment for one to six unrelated residents who operate as the functional equivalent of a family, including such supervision and care by a supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. Residents include only aged persons as defined in F.S. § 400.618(3), as amended; physically disabled or handicapped persons as defined in F.S. § 760.22(7), as amended; developmentally disabled persons as defined in F.S. § 393.063(11), as amended; nondangerous mentally ill persons as defined in F.S. § 394.455(3), as amended; or children as defined in F.S. § 39.01(8) and F.S. § 39.01(10), as amended.

Compatible means, in describing the relation between two land uses, buildings or structures, or zoning districts, the state wherein those two things exhibit either a positive relationship based on fit, similarity or reciprocity of characteristics, or a neutral relationship based on a relative lack of conflict (actual or potential) or on a failure to communicate negative or harmful influences one to another.

Comprehensive plan means the document, and its amendments, adopted by the ~~town council Board of County Commissioners~~ pursuant to F.S. ch. 163, for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the ~~town county~~. The terms “comprehensive plan” and “the ~~Fort Myers Beach Comprehensive Use Plan~~” are synonymous.

~~*Condominium* means that form of ownership of property under which units or improvements are subject to ownership by one or more owners, and there is appurtenant to each unit or part thereof an undivided share in common elements.~~

~~*Consultant* [deleted]~~

~~*Contiguous lots* [deleted]~~

Continuance. See § 34-231.

Continuing care facility (CCF) means a facility, licensed under F.S. ch. 651, ~~which must be developed as a planned development (PD);~~ which

undertakes through its ownership or management to provide housing and food service to adult residents. The facility must meet the criteria for exemption from the Fair Housing Act Amendments of 1988, title VII USC.

~~Contractors and builders.~~ See § 34-622(c)(9).

Contractor's shop means a room or group of rooms used by a contractor for the custom fabrication of building-related products such as, but not limited to, air conditioning duct work, pool screen enclosures, door trim, etc., and for the interior storage of materials, but which does perform any exterior fabricating or use any exterior storage area. Specifically prohibited is the storage or parking of heavy construction equipment such as cement trucks, cranes, bulldozers, well-drilling trucks and other similar heavy equipment, or wrecking or demolition debris.

Contractor's storage yard means a lot or parcel upon which a contractor maintains an area to store and maintain construction equipment and other materials customarily used in the trade carried on by the contractor. Storage of wrecking debris is prohibited.

~~Convenience food and beverage store~~ means a store which specializes in convenience products and other commodities, which may have self-service fuel pumps and which normally is open to the public beyond the normal sales hours of other retail stores.

~~Conversion~~ [deleted]

~~Corner lot.~~ See *Lot, corner*.

~~Correctional facility, county~~ means a county-operated facility for incarceration of offenders, including detention centers and jails.

County Coastal construction control line or zones. See definition in § 6-333(a). The county coastal construction control line or zones landward of the mean high water along the Gulf of Mexico are identified on the county coastal construction setback map which is on file at the department of community development.

Cross-access agreement means an agreement between adjacent property owners in which internal connections are provided between adjoining parking

areas in order to minimize the number of driveways from the parking areas to streets.

Cultural facility means facilities of historic, educational, or cultural interest, such as art galleries, aquariums, botanical gardens, concert halls, historical sites, and museums. ~~ies.~~ See § 34-622(c)(10).

~~Current assessed value~~ [deleted]

Day care center, adult means a facility or establishment which undertakes through its ownership or management to provide basic services such as but not limited to a protective setting, social or leisure time activities, self-care training, or nutritional services to three or more adults not related by blood or marriage to the owner or operator, who require such services. This definition shall not be interpreted to include overnight care.

Day care center, child means a facility or establishment which provides care, protection, and supervision for six or more children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. This definition shall not include public or nonpublic schools which are in compliance with the Compulsory School Attendance Law, F.S. ch. 232. The term "child day care center" is synonymous with the terms "preschool" and "nursery school."

~~Deferral.~~ See § 34-231.

~~Denial with prejudice~~ means an action taken by a hearing board indicating that the request being acted upon is formally denied and shall not be resubmitted, except as provided for in § 34-211(a).

~~Denial without prejudice~~ means an action taken by a hearing board indicating that the specific request being acted upon is formally denied but that the hearing board is willing to consider a modification of the request may be considered as set forth in § 34-211(b).

Density means an existing or projected relationship between numbers of dwelling units and land area. Refer to § 34-632 for methods of computing residential densities. ~~Refer to article VII, division 12, subdivision H, of this chapter, and article VII, division 19, of this chapter.~~

~~Department [deleted]~~

~~Department store [deleted]~~

~~Detrimental uses [deleted]~~

Developer means any individual, firm, association, syndicate, copartnership, corporation, trust, or other legal entity commencing development.

Development and to develop. A development includes the construction of any new buildings or other structures on a lot, the relocation of any existing buildings, or the use of a tract of land for any new uses. To develop is to create a development.

~~Development of county impact (DCI) [deleted]~~

Development of regional impact (DRI) means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

~~Development parcel [deleted]~~

~~Development perimeter [deleted]~~

Deviation means a departure from a specific regulation of this ~~code chapter~~, when requested and approved by the ~~town council Board of County Commissioners~~ as part of the application for a planned development or special permit. A deviation is not the same as a variance in that the criteria for granting a variance in § 34-87(3) need not be met.

Director means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee. ~~administrative director of the department of community development or his designee. As used in this chapter, the terms "division director," "department director" and "director" are synonymous.~~

~~District [deleted]~~

Dock means a structure built across wetlands or open water use for the mooring of watercraft or for fishing, observation, or similar recreational activities.

Domestic tropical birds means birds not indigenous to the state or the United States that are commonly kept as pets in a home, including but not limited to canaries, finches, lovebirds, parrots, parakeets, cockatiels, and mynah birds.

~~Dormitory [deleted]~~

Double-frontage lot means any lot, not a corner or through lot, having two or more property lines abutting to a street right-of-way or easement.

~~Drive-in theater [deleted]~~

Drive-through facility means an establishment or portion thereof where a patron is provided products or services without departing from his automotive vehicle or in which the patron may temporarily depart from his vehicle in a nonparking space while servicing it, such as a do-it-yourself car wash or fuel pump. The terms "drive-through," "drive-in," and "drive-up" are synonymous. Drive-throughs are classified as Type 1 when they serve land uses with lower volumes and limited hours such as banks and pharmacies, and Type 2 when they serve land uses that typically have higher volumes and extended hours such as convenience stores, fast-food restaurants.

~~Drugstore [deleted]~~

Duplex. See *Dwelling unit, types*.

Dwelling unit means a room or rooms connected together, which could constitute a separate, independent housekeeping establishment for a family, for owner occupancy, or for rental or lease on a weekly, monthly, or longer basis as specified in this code for various zoning districts, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing sleeping and sanitary facilities and ~~a one~~ kitchen. The term "dwelling unit" shall not include rooms in hotels, motels or institutional certain assisted living or continuing care facilities (see § 34-1415) or in accessory apartments in owner-occupied homes (see § 34-1178(d)). See also *Guest Housing unit* and *Living unit*.

Dwelling unit, types.

(1) ~~Duplex~~ means a single, freestanding, conventional building on a single lot, designed for two dwelling units under single

ownership, or wherein each dwelling unit is separately owned or leased but the lot is held under common ownership:

- (1) ~~(2)~~ *Single-family residence* means a single, freestanding, conventional building designed for one dwelling unit and which could be used for occupancy by one family.
- (2) ~~(3)~~ *Two-family attached* means a single, freestanding, conventional building designed as two dwelling units attached by a common wall or roof, but wherein each unit is located on a separate lot under separate ownership.
- ~~(4)~~ *Townhouse* means a group of three or more dwelling units attached to each other by a common wall or roof wherein each unit has direct exterior access and no unit is located above another, and each unit is completely separated from any others by a rated fire wall or a fire and sound resistant enclosed separation or space, and wherein each dwelling unit is on a separate lot under separate ownership.
- (3) ~~(5)~~ *Mobile home* means a building, manufactured off the site in conformance with the Federal Mobile Home Construction and Safety Standards (24 CFR 3280 et seq.), subsequently transported to a site complete or in sections where it is emplaced and tied down in accordance with ch. 15C-1, F.A.C., with the distinct possibility of being relocated at a later date. See §§ 34-1921-1950.
- (4) ~~(6)~~ *Multiple-family building* means a group of three or more dwelling units within a single conventional building, attached side by side, or one above another, or both, regardless of whether and wherein each dwelling unit may be individually owned or leased but the land on which the building is located is under common, or single, or individual ownership. Freestanding dwelling units with at least one wall on a side or rear property line are also considered to be part of multiple-family buildings. Dwelling units, other than caretaker's quarters, which are included in a building which also contains permitted commercial uses shall also be deemed to be multiple-family dwelling units.
- (5) *Caretaker* means a single dwelling unit, whether in a freestanding building or part of another structure, that is permitted in some zoning districts as an accessory use to house an on-site caretaker.

~~(7)~~ *Zero lot line* means a dwelling unit with at least one wall of a building on a side or rear line of the lot on which it stands:

Easement means a grant of a right to use land for specified purposes. It is a nonpossessory interest in land granted for limited use purposes.

~~*Electrical machinery and equipment, manufacturing.* [deleted]~~

Engineer means a professional engineer duly registered and licensed by the state.

Enlargement and *to enlarge*. An enlargement is an addition to the floor area or volume of an existing building, or an increase in that portion of a tract of land occupied by an existing use.

Entrance gate means a mechanized control device which is located near the point of access to a development which serves to regulate the ingress of vehicles to the interior of the development for the purpose of security and privacy.

~~*Environmental quality* [deleted]~~

Environmentally sensitive land means any lands or waters, the development or alteration of which creates or has the potential to create a harm to the public interest due to their value as sources of biological productivity, as indispensable components of various hydrologic regimes, as irreplaceable and critical habitat for native species of flora and fauna, or as objects of scenic splendor and natural beauty. Among these types of land are those designated wetlands resource protection areas and transition zones.

Equivalent means the state of correspondence or virtual identity of two land uses or zoning districts that exhibit similar levels of effects on each other and the community at large as defined by such factors as their intensities and schedules of use and activity, their demands for services and infrastructure such as roads and water and sewer systems, their impacts on natural resources and other similar parameters. The term "equivalent" is not synonymous with the term "compatible."

~~*Essential service facilities.* See § 34-622(c)(13).~~

Essential services means the erection, construction, alteration, or maintenance, by a public or private utility company for the purpose of furnishing adequate service by such company for the public health, safety, or general welfare, of electrical and communication cables, poles, and wires, and water and sewer collection, transmission or distribution mains, drains, and pipes, including fire hydrants. This definition includes necessary transformers, switching equipment, meters, pumps, and similar equipment which is less than 27 cubic feet in size, but does not include communication towers which are regulated by division 11 of article IV or telephone booths or pay telephone stations which are regulated by §§ 34-634(c) and 34-2019(b). This definition shall not be interpreted to include buildings, structures, or uses listed as “essential service equipment” or “essential service building” (defined below). See division 14 of article IV of this chapter. ~~facilities” (see § 34-622(c)(13)).~~

Essential service equipment means an above-ground structure that exceed 27 cubic feet, but less than 6 feet high and 100 square feet in area, and that except for its size would qualify as “essential services” See division 14 of article IV of this chapter.

Essential service building means a free-standing building or structure exceeding 6 feet in height or 100 square feet in area that, except for its size would qualify as an “essential services.” See division 14 of article IV of this chapter.

Existing only. ~~When used following a listed permitted use, the term “existing only” shall mean a building, structure or use which lawfully existed on the effective date of the ordinance from which this chapter is derived (August 1, 1986). Such lawfully existing use shall have the same rights as a permitted use and may be expanded or reconstructed in accordance with all applicable regulations on the parcel which existed on August 1, 1986. The use is permitted only if it lawfully existed on September 27, 1993, or was granted a special exception within the two years prior to that date and commenced the approved construction within two years after that date. Except for mobile home and recreational vehicle parks, a use that qualifies as “existing only” will not be classified as a nonconforming use; it will be afforded the same privileges as a permitted use and may be expanded or reconstructed, in accordance with all applicable current regulations,~~

but only on the specific parcel on which it is located, as that parcel was legally described on September 27, 1993.

Exotic animals [deleted]

~~*Fabricated metal products, manufacturing.*~~
[deleted]

Fair [deleted]

Family means one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family. The term “family” shall not be construed to mean a ~~fraternity, sorority,~~ club, monastery, convent, or institutional group.

Family day care home, as defined in § 403.302 *F.S.*, means an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. A family day care home shall be allowed to provide care for one of the following groups of children, which shall include those children under 13 years of age who are related to the caregiver:

(a) A maximum of four children from birth to 12 months of age.

(b) A maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children.

(c) A maximum of six preschool children if all are older than 12 months of age.

(d) A maximum of 10 children if no more than 5 are preschool age and, of those 5, no more than 2 are under 12 months of age.

~~*Farm labor housing*~~ [deleted]

~~*Flea market, indoor*~~ [deleted]

Floor area means the ~~usable~~ total area of every ~~each~~ story of a building, or portion thereof, within the surrounding exterior walls of the building or structure.

~~*Florist shop*~~ [deleted]

Food and beverage service, limited means the provision of food or beverages for members and guests of a membership organization private club or recreational center but not available to the general public. See the provisions of article IV VII, division 5, of this chapter relating to on-premises consumption of alcoholic beverages.

~~*Food and kindred products, manufacturing.*~~
~~[deleted]~~

~~*Food stores.*~~ See § ~~34-622(c)(16)~~.

~~*Foodcart*~~ [deleted]

~~*Fraternity house*~~ [deleted]

~~*Furniture and fixtures, manufacturing.*~~ See § ~~34-622(c)(18)~~.

~~*Garage, private*~~ [deleted]

~~*Garage, public*~~ [deleted]

Garage sale or ~~and~~ *yard sale* mean an informal sale of used household or personal articles, such as furniture, tools, or clothing, held on the seller's own premises, or conducted by several people on one of the sellers' own premises. Garage and yard sales are limited to not more than one week in duration, with sales limited to two garage or yard sales per year.

~~*Gasoline dispensing system, special*~~ means a gasoline dispensing system which is card-operated for governmental or commercial entities only in accordance with the provisions of ch. 4A-16, part VI, "Service Stations," of the Florida Administrative Code.

~~*Gasparilla Island conservation district*~~ [deleted]

~~*Gatehouse*~~ [deleted]

~~*Gift, novelty, and souvenir shops*~~ [deleted]

Glare means bright or brilliant light emitting from a point source of light, or reflected or refracted from a point source of light, with an intensity great enough to:

- (1) reduce an observer's ability to see;
- (2) cause an observer to experience momentary blindness or a temporary loss of visual performance or ability; or

- (3) cause an observer with normal sensory perception annoyance or discomfort to the degree which constitutes a nuisance.

~~*Government agency*~~ [deleted]

~~*Greater Pine Island*~~ [deleted]

~~*Grocery*~~ [deleted]

Gross floor area includes the total floor area of a building within the surrounding exterior walls.

Group quarters means a building in which a number of unrelated individuals that do not constitute a family live and share various spaces and facilities for, for example, cooking, eating, sanitation, relaxation, study, and recreation. Examples of group quarters include fraternity houses, boarding houses, adult congregate assisted living facilities, dormitories, sororities, rooming houses, and other similar uses.

~~*Guest house*~~ [deleted]

Guest unit means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms. See division 19 of this chapter.

Habitable means space in a structure available for living, sleeping, eating, cooking, or any commercial purposes. However, storage space is not considered to be habitable space.

Hardship means an unreasonable burden that is unique to a parcel of property, such as peculiar physical characteristics. Economic problems may be considered but may not be the sole basis for finding the existence of a hardship.

~~*Hardware store*~~ [deleted]

~~*Health care facility.*~~ See § ~~34-622(c)(20)~~. means an establishment such as a nursing home or hospice that is primarily engaged in furnishing medical, nursing, or other care to persons residing on the premises, but not including hospitals.

~~*Hearing board*~~ [deleted]

Hearing examiner [deleted]

Heliport [deleted]

Helistop means an area, either at ground level or elevated on a structure, licensed, or approved for the landing and takeoff of helicopters, heliport, but without auxiliary facilities such as parking, waiting room, fueling, and maintenance equipment.

Hidden path means an interconnected system of pedestrian and bicycle pathways throughout the town that improves mobility and promotes community interaction (see Objective 2-A of the Fort Myers Beach Comprehensive Plan).

Hobby, toy, and game shops. See § 34-622(c)(21).

Home care facility means a conventional residence in which up to three unrelated individuals are cared for, but without provision for routine nursing or medical care.

Home occupation means an occupation customarily carried on by an occupant of a dwelling unit as an accessory use which is clearly incidental to the use of the dwelling unit for residential purposes and operated in accordance with the application provisions of article IV ~~VH~~, division 18, of this chapter.

Hospice [deleted]

Hotel/motel means a building, or group of buildings on the same premises and under single control, consisting of ten or more guest units kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests or tenants. See division 19 of this chapter. [definition is required by § 2-304]

Hotel/motel, business. See article ~~VH~~, division 19, of this chapter.

Hotel/motel, efficiency. See article ~~VH~~, division 19, of this chapter.

Household/office furnishings. See § 34-622(c)(22).

Housing unit means ~~a house, apartment, mobile home or trailer, group of rooms or single room occupied or intended for occupancy as separate living quarters. Separate living quarters are those in which the occupants do not live and eat with any other person in the structure and which have direct access from the outside of the building or through a common hall. See *Dwelling unit* and *Living unit*.~~

Increase nonconformity [deleted]

Independent living unit means a unit which is authorized only as a part of a licensed continuing care facility (CCF), which may be equipped with a kitchen.

Insurance companies. See § 34-622(c)(23).

Intensity means a measurement of the degree of customarily nonresidential uses based on use, size, impact, bulk, shape, height, coverage, sewage generation, water demand, traffic generation, or floor area ratios.

Junkyard [deleted]

Kiosk, portable means a cart or stand not exceeding four by eight feet in width and length, capable of being easily moved, which is used or intended to be used for the display of retail goods for sale.

Land means earth, water, and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

Land use means the development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under the ~~Fort Myers Beach Comprehensive Use~~ Plan or an element or portion thereof, land development regulations, or a land development code, as the context may indicate.

Landscape architect means a professional landscape architect duly registered and licensed by the state.

Laundromat means a business that provides washing, drying, dry cleaning, or ironing machines for hire for customers to use on the premises.

~~Laundry or dry cleaning. See § 34-622(c)(24).~~

~~Lawful or lawfully means a building, or use, or lot which was permitted by right, special exception, variance, special permit, or other action approving the use or placement of a structure by the Board of County Commissioners or zoning board (such as by variance); at the time it was built, or occupied, or subdivided, and such building, or use, or lot was located in compliance with the comprehensive plan and zoning regulations for the district in which located, or in accordance with the terms of the variance.~~

~~Lawn and garden supply stores [deleted]~~

~~Leather products, manufacturing. [deleted]~~

~~Lee Plan [deleted]~~

Light trespass means light emitting from a point source of light that falls outside the boundaries of the property on which the point source of light is located and which constitutes a nuisance to a reasonable person of normal sensory perception.

Live-aboard means the use of a boat as a living unit.

Living unit means any temporary or permanent unit used for human habitation. See Dwelling unit and Guest Housing unit.

Loading space, off-street means a space logically and conveniently located for pickups or deliveries or for loading or unloading, scaled to delivery vehicles expected to be used and accessible to such vehicles when required off-street parking spaces are filled.

~~Local planning agency. See article II, division 3 of this chapter. means the county planning and zoning commission performing the functions set forth in F.S. § 163.3174, as well as the functions set forth in § 34-115.~~

Lock-off accommodations means a living unit which cannot be physically separated from another living unit but can be separated from it by locking a door, and which contains at least one bedroom and one bath and is accessible from a separate outside door.

Lock-off accommodations means a single guest unit or living unit designed in such a manner that at least one room and a bathroom can be physically locked off from the main unit and occupied as a separate unit. Each portion may have a separate outside entry, or share a common foyer with separate lockable interior doors, or share a lockable door or doors separating the two units. See § 34-632 and division 19 of this chapter.

Lot means a parcel of land considered as a unit. See also Lot, corner.

Lot area means the total horizontal area within the lot lines.

Lot, corner means:

- (1) A lot located at the intersection of two or more streets where the corner interior angle formed by the intersection of the two streets is 135 degrees or less; or
- (2) A lot abutting a curved street if straight lines drawn between the intersections of the side lot lines and the street right-of-way or easement to the foremost point of the lot form an interior angle of less than 135 degrees.

Lot coverage means that portion of the lot area, expressed as a percentage, occupied by all buildings or structures.

Lot line means a line which delineates the boundary of a lot.

Lot line, front means the lot line which separates the lot from a street right-of-way or easement.

Lot line, rear means that lot line which is parallel to or concentric with and most distant from the front lot line of the lot. In the case of an irregular or triangular lot, a line 20 feet in length, entirely within the lot, parallel to or concentric with and at the maximum possible distance from the front lot line, shall be considered to be the rear lot line. In the case of a through lot, there shall be no rear lot line. In the case of a double-frontage lot, the line directly opposite from the front line shall be designated as either a rear line or a side line depending upon the designation of the adjacent property. In the case of corner lots, the rear lot line shall be the line most nearly parallel to or concentric with and most distant from the front lot line most prevalent along the block.

Lot line, side means any lot line which is not a front or rear lot line.

Lot measurement, depth.

- (1) For lots lawfully created prior to January 28, 1983, depth of a lot shall be considered the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in the front and the rearmost points of the side lot lines in the rear.
- (2) For lots lawfully created after January 28, 1983, depth of a lot shall be considered to be the distance between the front lot line and the rear lot line as measured at the midpoint of the front lot line to the midpoint of the rear lot line. To determine the midpoint of a curved line, a straight line is drawn connecting the points of intersection of the curved line with the side lot lines. A line drawn perpendicular to the midpoint of the straight line to the point it intersects the curved line shall determine the midpoint of the curved line for purposes of this chapter.

Lot measurement, width.

- (1) For lots lawfully created prior to January 28, 1983, width of a lot shall be considered to be the average distance between straight lines connecting front and rear lot lines at each side of the lot, measured as straight lines between the foremost points of the side lot lines in front (where they intersect with the street line) and the rearmost points of the side lot lines in the rear.
- (2) For lots lawfully created after January 28, 1983, width of a lot shall be considered to be the distance between the side lot lines (or a front and side lot line for corner lots) as measured along the minimum required street setback line. See § 34-2221(4) for exceptions.

~~*Lot of record* means a lot which is part of a plat which has been lawfully recorded in the plat books in the office of the clerk of the circuit court of the county, and is in compliance with F.S. ch. 177, or a parcel of land, the deed of which was lawfully recorded in the office of the clerk of the circuit court of the county on or before January 28, 1983.~~

Lot, through means any lot having two opposite lot lines abutting a street right-of-way or easement.

~~*Machinery, manufacturing.* [deleted]~~

Manufactured housing. See *Building, conventional.*

Manufacturing means establishments which are primarily engaged in the mechanical or chemical transformation of materials or substances into new products, as well as establishments primarily engaged in assembling component parts of manufactured products if the new product is not a permanent structure or other fixed improvement.

~~*Marina* means a boating facility, chiefly for recreational boating, located on navigable water frontage, which provides a boat ramp with parking for vehicles and trailers, boat slips, dockage, or dry boat storage (with a service to place boats in the water upon request), and one or more marina accessory uses (df), to patrons other than residents of the premises. The word "marine" will also apply to navigable fresh waters. This term may not be construed to apply to docks, davits, boathouses, and similar facilities appurtenant to a residential land use providing only dockage or mooring to the residents, or to any county-owned boatramp or docking facility.~~

Marina means a commercial or industrial water-dependent use located on property adjacent to water with direct access to a navigable channel. The primary function must be to provide commercial dockage, mooring, storage, and service facilities for watercraft and land-based facilities and activities necessary to support the water-dependent use. The term "marina" does not apply to docks, davits, boathouses, and similar docking facilities that are accessory or ancillary and subordinate to:

- (1) residential buildings that are located on the same premises and under the same ownership or control as the docks, davits, boathouses, boat ramps, and similar docking facilities; and
- (2) commercial or industrial establishments that are not water-dependent uses.

Marina accessory uses means uses normally ancillary and subordinate to a marina, including but not limited to: sale of marine fuel and lubricants, marine supplies, boats, boat motors, and boat parts; restaurant or refreshment facility, boat rental, minor boat rigging, boat repair and service, and motor repair. However, no dredge, barge, or other work dockage or service is permitted and no boat

construction or reconstruction is permitted. See *Boatyard*.

Massage establishment [deleted]

~~*Measuring, analyzing, and controlling instruments, manufacturing.*~~ See § 34-622(c)(28).

Medical office [deleted]

Membership organization means an organization operating with formal membership requirements with the intent to pursue common goals or activities.

Mining [deleted]

Mini-warehouse means any building designed or used to provide separate individual storage units with separate exterior doors as the primary means of access rooms to individuals or businesses for a fee, or rental, with such rooms being intended The storage units must be used solely as dead storage depositories for personal property, inventory, and equipment and not for any other commercial or industrial use. See ~~*Warehousing, public and Storage, dead.*~~

Mobile home. See *Dwelling unit, types*.

Model [deleted]

~~*Modular home.*~~ See *Building, conventional*.

Moor means to secure a vessel with lines.

Multiple-family building. See *Dwelling unit, types*.

Multiple-occupancy complex means a parcel of property under one ownership or singular control, or developed as a unified or coordinated project, with a building or buildings housing more than five occupants conducting a business operation of any kind. See § 34-2020(c)(4).

~~*Multi-slip docking facility*~~ [deleted]

Music store [deleted]

Newsstand [deleted]

Nightclub [deleted]

~~*Nonconforming building, nonconforming or structure, lot, or nonconforming use*~~ – see definitions in § 34-3202 of means an existing building or structure, lot, or use, lawful when established, which fails to comply with any provisions of this chapter, or which fails to comply as the result of subsequent amendments. See article VHH of this chapter.

~~*Nonstore retailers.*~~ See § 34-622(c)(30).

~~*Nontransient park*~~ [deleted]

~~*Novelties, jewelry, toys, and signs, manufacturing.*~~ See § 34-622(c)(29).

~~*Nursery school.*~~ See *Day care center, child*.

Offices, general or medical mean a room or group of rooms where a business, government, profession, agency, or financial institution provides its services, but excluding uses listed as residential, lodging, retail, marine and civic in division 2 of article III of this chapter and otherwise classified by this code, and excluding uses that the director deems to have potential impacts that differ substantially from conventional office uses. Incidental retail sales and indoor storage may be provided in conjunction with these services. The following types of establishments are not considered to be offices for the purposes of this chapter: *Automobile rental Drive-throughs (Type 1 or Type 2); and Wholesale establishments.* See also *Administrative office.*

Opaque means the quality of blocking visibility through a material. For instance, concrete is 100% opaque; clear glass is 0% opaque; and a picket fence with 3-inch pickets separated by 3 inches of space is 50% opaque.

~~*Outparcel*~~ [deleted]

~~*Package store*~~ [deleted]

~~*Paint ball range, outdoor*~~ [deleted]

~~*Paint, glass, and wallpaper store*~~ [deleted]

~~*Paper and allied products, manufacturing.*~~ [deleted]

Parasailing operations office means a land-based site that can qualify for a parasailing activity license

in accordance with chapter 27 of this code. Parasailing operations offices are permitted as resort accessory uses and also by special exception in certain zoning districts.

Park, neighborhood means a recreational area open to the public and no larger than one acre that primarily serves the immediately surrounding neighborhood.

Park, community or regional means a recreational area open the public and larger than one acre that is designed to serve the entire community or larger areas.

~~*Park-trailer. See Recreational vehicle.*~~

Parking garage means a building or structure that allows the parking of motor vehicles on two or more levels, whether the garage is provided only for vehicles of occupants of the principal use or the garage is available for the use of the general public. However, for the purposes of this chapter, a building containing two or more levels of parking only for the vehicles of occupants of the principal use shall not be considered a parking garage if is built below and fully within the perimeter of the remainder of the principal building.

Parking lot, accessory means an area of land set aside for the temporary parking of vehicles owned or leased by the owner of the premises, guests, employees, or customers of the principal use.

Parking lot, shared permanent commercial means a parking lot which constitutes the principal use of the property and which is available to the public for a fee, or which may be leased to individual persons.

Parking lot, seasonal temporary means an area of land set aside temporarily to provide overflow parking to meet (seasonal) demands, as set forth in § 34-2022.

~~*Parks. See § 34-622(c)(32).*~~

~~*Party of record* [deleted]~~

~~*Permanent resident* [deleted]~~

~~*Permanent unit* [deleted]~~

~~*Personal services. See § 34-622(c)(33). means establishments primarily engaged in providing frequent or recurrent services involving the care of a person or his or her personal goods or apparel, such as beauty and barber shops, clothing alterations and repair, health clubs, and laundry drop-off points.*~~

~~*The following types of establishments are not considered to be personal services for the purposes of this chapter: laundry facilities, whether self-service or _____; car washes, LIST OTHERS HERE*~~

~~. This chapter contains specific regulations for certain personal services (for example, see § 34-3066–3070 on tattoo studios and body piercing).~~

~~*Personal watercraft operations office* means a land-based site that can qualify for a personal watercraft vendor's license in accordance with chapter 27 of this code. Personal watercraft operations offices are permitted as resort accessory uses and also by special exception in certain zoning districts.~~

~~*Pet services* [deleted]~~

~~*Pet shop* [deleted]~~

~~*Petroleum, manufacturing.* [deleted]~~

~~*Pharmacy* [deleted]~~

~~*Photofinishing laboratories* [deleted]~~

Place of worship means a structure or structures designed primarily for accommodating an assembly of people for the purpose of religious worship, including related religious instruction, church, or synagogue ministries involving classes for 100 or less children during the week, and other church or synagogue sponsored functions which do not exceed the occupancy limits of the building.

~~*Planned development. See article III, division 6 of this chapter. means a development that is designed and developed as a cohesive, integrated unit under single ownership or unified control which permits flexibility in building siting, mixture of housing types or land uses, clustering, common functional open space, the sharing of services, facilities, and utilities, and protection of environmental and natural resources.*~~

~~Planned unit development (PUD). See article VI, division 10, subdivision IV, of this chapter.~~

~~Plant nursery [deleted]~~

Plat means a plat as defined by F.S. ch. 177.

Plaza means an unroofed public open space designed for pedestrians that is open to the sidewalk on at least one side.

Point source of light means a manmade source emanating light, including but not limited to: incandescent, tungsten-iodine (quartz), mercury vapor, fluorescent, metal halide, neon, halogen, high-pressure sodium, and low-pressure sodium light sources, as well as torches, campfires, and bonfires.

Portable kiosk. See § 34-17112.

Premises means any lot, area, or tract of land.

Premises, on the same means being on the same lot or building parcel or on an abutting lot or adjacent building in the same ownership.

~~Primary metal industries, manufacturing.~~ See § 34-622(c)(35).

Principal building. See *Building, principal*.

Principal use. See Use, principal.

~~Printing and publishing.~~ See § 34-622(c)(36).

~~Prison [deleted]~~

~~Private park [deleted]~~

Processing and warehousing means the storage of materials in a warehouse or terminal and where such materials may be combined, broken down or aggregated for transshipment or storage purposes where the original material is not chemically or physically changed. The term “processing and warehousing” shall mean an establishment essentially for storage and shipment as opposed to a manufacturing establishment.

~~Produce stand.~~ See article VII, division 16, of this chapter.

Property line. See *Lot line*.

~~Public park [deleted]~~

~~Quarter section line [deleted]~~

~~Racetracks.~~ See § 34-622(c)(37).

Recreation hall means a building owned or operated by a condominium or homeowners’ association for a social or recreational purpose, but not for profit or to render a service which is customarily carried on as a business. This definition does not include fraternities or sororities.

Recreational facilities.

- (1) ~~Commercial Recreation facilities.~~ commercial means a recreation equipment or facilities not classified as a park (34-622(c)(32)), or as personal, private-on-site, or private-off-site facility, but instead operated as a business and open to the public for a fee. See § 34-622(c)(38).
- (2) ~~Personal Recreation facilities.~~ personal means a recreation equipment or facilities such as swimming pools, tennis, shuffleboard, handball or racquetball courts, swings, slides, and other playground equipment provided as an accessory use on the same premises and in the same zoning district as the principal permitted use and designed to be used primarily by the owners, tenants, or employees occupants of the principal use and their guests.
- (3) ~~Private Recreation facilities.~~ private ON-SITE means a recreation hall, equipment, or facilities such as swimming pools, tennis, shuffleboard, handball or racquetball courts, swings, slides, and other playground equipment which are located on the same premises and in the same zoning district as the development or neighborhood it serves, owned, leased or operated by a nonprofit organization, such as a homeowners’, co-op, or condominium association and located in the development or neighborhood controlled by the association, and open only to bona fide members and guests of such nonprofit organization. This term shall not be interpreted to include fraternal or membership organization clubs.
- (4) ~~Recreation facilities.~~ private OFF-SITE means recreation equipment or facilities such

as, but not limited to, swimming pools, tennis, shuffleboard, handball or racquetball courts, swings, slides, and other playground equipment owned, leased or operated by a homeowners', co-op, or condominium association for use by the association's members and guest, but which are not located in the development or neighborhood controlled by the association.

- (5) ~~(4)~~ Public Recreation facility, public means a recreation facility operated by a governmental agency and open to the general public.

Recreational vehicle means a recreational vehicle type unit which is so defined in F.S. § 320.01(b). It is primarily designed as temporary living quarters for recreational, camping or travel use, and has its own motive power or is mounted on or drawn by another vehicle. Because the statutory definition set forth in F.S. § 320.01(b) changes, the definition of the term "recreational vehicle," as used in this chapter, is intended to change with such statutory changes so as to be consistent with them.

[deleted remainder of this definition, which described six types of recreational vehicles]

Recreational vehicle park, ~~developed~~ means a parcel (or portion thereof) or abutting contiguous parcels of land designed, used or intended to be used to accommodate two or more occupied recreational vehicles, and in which necessary utilities and streets and the final site grading or paving of concrete pads or vehicle stands was completed prior to September 16, 1985.

Recreational vehicle park, expanded expansion to an existing means the preparation of additional sites, by the construction of facilities for servicing the sites on which the recreational vehicles are to be located (including the installation of utilities, final site grading, pouring of concrete pads or the construction of streets); ~~for which a preliminary development order was not issued by the county prior to September 16, 1985.~~ This shall not be interpreted to include pads for utility rooms, enclosures or storage sheds where permitted.

Recreational vehicle park, new ~~[deleted]~~

Recreational vehicle park, phased ~~[deleted]~~

Recreational vehicle park resident, permanent ~~[deleted]~~

Recycling facility ~~[deleted]~~

Religious facilities means religious-related facilities and activities, which may include but are not limited to places of worship, bus storage facilities or areas, convents, monasteries, retreats, church or synagogue ministries involving classes for more than 100 children during the week, and homes for the aged.

Rental establishments. See § 34-622(c)(39).

Rental of beach furniture means a business that provides beach chairs, umbrellas, and similar equipment for a fee. Rental of beach furniture is permitted as a resort accessory use and also by right in certain zoning districts. See divisions 1 and 2 of ch. 14 and § 34-3151.

Repair shops. See § 34-622(c)(40).

Research and development laboratories. See § 34-622(c)(41).

Residence. See *Dwelling unit; and Living unit and Housing unit.*

Residential accessory uses. See § 34-622(c)(42). means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a residential structure. See Use, principal. Typical residential accessory uses are: carports and garages (§ 34-636); decks, gazebos, patios, and screen enclosures; dock, personal (§ 34-1863); fences and walls (division 17 in article IV); garage sales or yard sales; recreational facilities, personal; seawalls (ch. 26); and sheds. Division 2 and other portions of article IV provide regulations for many residential accessory uses.

Resort means a mixed-use facility that accommodates transient guests or vacationers. Resorts contain at least 50 units, which may include a combination of dwelling units, guest units and timeshare units, and provide food service, outdoor recreational activities, and/or conference facilities for their guests, facility principally for the accommodation or short-term residence of transient guests or vacationers, but where the primary

attraction is generally recreational features or activities:

Resort accessory use means the use of a structure or premises that is customarily incidental and subordinate to a resort. Typical resort accessory uses are: Amusement devices (§ 34-_____); Golf courses; Parasailing operations office (ch. 27); Personal watercraft operations office (ch. 27); Rental of beach furniture (ch. 14); LIST OTHERS HERE.

~~Resource protection area [deleted]~~

~~Resource recovery [deleted]~~

Restaurant, fast food means an establishment whose principal business is the sale of food or beverages in a ready-to-consume state primarily for off-site consumption, and which may not contain drive-through facilities. [as amended by Fort Myers Beach Ordinance 00-13]

Restaurant, standard means an establishment whose principal business is the sale of food or beverages to customers in a ready-to-consume state. Restaurants desiring to provide drive-through service must obtain separate approval for a Type 2 drive-through, and whose principal method of operation includes one or both of the following characteristics:

- (1) Customers, normally provided with an individual menu, are served their foods and beverages by a restaurant employee at the same table or counter at which food and beverages are consumed.
- (2) A cafeteria-type operation is conducted where food and beverages generally are consumed within the restaurant building.

See § 34-622(c)(43).

Retail store means an establishment operating within a fully enclosed building that provides goods and incidental services directly to consumers where such goods are available for immediate purchase or rental. Retail stores are classified as small (less than 10,000 square feet) or large (more than 10,000 square feet), based on gross floor area per establishment. The following types of establishments are not considered to be retail stores for the purposes of this chapter: Automobile rentals, LIST OTHERS HERE.

~~Retaining wall [deleted]~~

~~Right-of-way line. See Street right-of-way line.~~

~~Roadside stand. See article VII, division 16, of this chapter.~~

Rooming house means a residential building used, or intended to be used, as a place where sleeping or housekeeping accommodations are furnished or provided for pay to transient or permanent guests or tenants on a weekly or longer basis in which less than ten and more than three rooms are used for the accommodation of such guests or tenants, but which does not maintain a public dining room in the same building or in any accessory building.

~~Rooming unit~~ means a room or group of rooms used, or designed and intended to be used, as a living facility for a single family, and which contains provisions for living, sleeping and sanitation but does not provide cooking or eating facilities:

~~Rubber and plastics products, manufacturing [deleted]~~

School, commercial. See § 34-622(c)(45). means an educational institution run by a public agency, a church or synagogue, or a not-for-profit organization. See division 32 of article IV of this chapter.

Vertical Seawall has the meaning provided in § 26-41. means a vertical bulkhead located at or below mean high water, built to withstand wave force and erosion. See Retaining wall.

~~Self-service fuel pump station [deleted]~~

Self-service fuel pumps means vehicle fuel dispensing devices pumps providing an accessory use to a permitted retail trade establishment, but in which only self-service is permitted pumps are provided and no other vehicle service is provided. For purposes of determining the number of “pumps,” a “pump” may serve only one vehicle at a time. If a pump island contains a pump which can be used simultaneously by two vehicles, then it is counted as two pumps.

~~Servants' quarters [deleted]~~

Setback means the minimum horizontal distance required between a specified line and the nearest

point of a building or structure. See also “build-to” lines in § 34-662.

- (1) *Street setback* means the setback extending across the front of a lot measured from the edge centerline of an existing or proposed street right-of-way or street easement. See § 34-634, 2192 for requirements. Whenever this chapter refers to street setback it shall be interpreted to mean existing or proposed street right-of-way or street easement, whichever is greater.
- (2) *Side setback* means the setback, extending from the required street setback to the required rear lot line, or opposing street setback in the case of a double-frontage lot, measured from the side lot line. See § 34-634.
- (3) *Rear setback* means the setback, extending across the rear of a lot, measured from the rear lot line. See § 34-634.
- (4) *Water body setback* means the setback measured from the mean high water tide line (MHWL), or the control elevation line if applicable, of a water body. See § 34-634, 2194 for requirements.
- (5) ~~*Section line or quarter section line setback* means the setback measured from a section or quarter section line, as applicable.~~

Shield means to establish a visual and sound barrier by the use of a berm, wall, screening, or other methods that will not permit the sound or sight of the facility in question to be apparent from adjoining property.

~~*Shopping center* [deleted]~~

Shoreline means a straight or smoothly curved line which, on tidal waters, follows the general configuration of the mean high-water line, and which on nontidal waters is determined by the annual average waterline. Boat slips and other manmade or minor indentations shall be construed as lying landward of the shoreline and are considered upland when computing the lot area of waterfront property.

~~*SIC code* [deleted]~~

Single-family residence. See *Dwelling unit, types.*

~~*Social services.* See § 34-622(c)(46).~~

~~*Special exception.* See *Use, special exception.*~~

~~*Specialty retail shop.* See § 34-622(c)(47).~~

~~*Stable, boarding* [deleted]~~

~~*Stable, commercial* [deleted]~~

~~*Stable, private* [deleted]~~

~~*Stone, clay, glass and concrete products, manufacturing* [deleted]~~

Storage means the safekeeping of any goods, wares, products, or other commodities in any area for more than 48 hours for later use or disposal. The term “storage” includes the keeping of boats, cars, recreational vehicles, etc., for others, whether or not compensation is made to the property owner. The term shall not include animals, nor shall it apply to normally anticipated outdoor display of products for sale such as by boat, mobile home, construction equipment or vehicle dealers, or landscaping materials, or customary and usual activities accessory to agricultural or residential dwellings.

Storage, dead means the storage of goods, wares, products, or other commodities, with no sales, conferences, or other human activity other than the placement, removal, or sorting of stored items.

Storage, indoor means storage accessory to a permitted use and which is contained wholly within a building. When listed as a permitted or permissible use in the zoning district regulations, it shall not be construed to mean a warehouse or a mini-warehouse.

Storage, open means any storage not defined as indoor storage.

Story (floor) means that portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above, including space at ground level as the first story provided it is six feet or more in height. Space within a roofline that is entirely non-habitable shall not be considered to be a story.

STRAP number is a means of property identification which consists of seventeen digits including the section, township, range, area, and parcel numbers.

Street means a public or private thoroughfare which affords vehicle access to the principal means of ingress or egress to a lot. The term “street” is synonymous with the terms “avenue,” “boulevard,” “drive,” “lane,” “place,” “road,” and “way,” or similar terms.

Street right-of-way, existing is a general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes, which has been dedicated to the public and accepted by the town council or board of county commissioners.

~~*Street right-of-way or street easement line*~~
[deleted]

~~*Street right-of-way, proposed*~~ [deleted]

Structure means that which is built or constructed. The term “structure” shall be construed as if followed by the words “or part thereof.”

~~*Studios.*~~ See § 34-622(c)(49).

~~*Supermarket*~~ [deleted]

Surveyor or professional surveyor means a Professional Land Surveyor and Mapper (PSM) duly registered and licensed by the state.

Telephone booth or pay telephone station means a telephone installation made available for use by the general public for a fee, whether installed in an enclosed booth, attached to a pole, post, or pedestal, or attached to a building. A telephone booth or pay telephone station is not an “essential service” nor “essential service equipment,” nor is it considered to be a “Residential Accessory Use.”

~~*Temporary use.*~~ See *Use, temporary.*

~~*Textile mill products.*~~ [deleted]

Theater means a building or part thereof that seats more than 200 people and is devoted to showing motion pictures, or for dramatic, musical, or live entertainment.

Through lot. See *Lot, through.*

Timeshare unit means any dwelling unit, guest unit, or living unit ~~rooming unit~~ for which a

timesharing plan, as defined in F.S. ch. 721, has been established and documented. See § 34-632 for determining density of timeshare units that include “lock-off accommodations.”

~~*Tobacco manufacturing.*~~ [deleted]

~~*Tower*~~ [deleted]

~~*Townhouse.*~~ See *Dwelling unit, types.*

~~*Transient guest*~~ [deleted]

~~*Transient park*~~ [deleted]

~~*Transient unit*~~ [deleted]

Transit terminal means a location where airport shuttles may stop to load or unload passengers and luggage and which allows convenient transfers to local trolleys and taxis.

~~*Transition zone*~~ [deleted]

~~*Transportation department*~~ [deleted]

~~*Transportation equipment, manufacturing.*~~
[deleted]

~~*Transportation services.*~~ See § 34-622(c)(53).

~~*Travel trailer.*~~ See *Recreational vehicle.*

~~*Truck stop*~~ [deleted]

~~*Trucking terminal*~~ [deleted]

Two-family. See *Dwelling unit, types.*

~~*Unauthorized communication*~~ [deleted]

Unified control means the unrestricted right of any owner or agent to enforce whatever conditions are set on the use and development of a parcel of land through the provisions of this chapter, by binding his heirs, assigns, or other successors in title with covenants or restrictions on the development and subsequent use of the property.

Unified control, covenant of means the demonstration and documentation that an owner or agent has unified control over a piece of property and is competent and willing to bind his heirs,

assigns or other successors in title in the public interest to whatever conditions are placed on the development and subsequent use of the property through the provisions of this chapter.

[the following two definitions were added to chapter 10 by Lee Ordinance 99-05; second one is now referenced in 34-202(a), and has been modified slightly from 99-05 for potential use there]

Unified control means that a single property owner or entity has been authorized by all owners of the property to represent them and to encumber the parcel with covenants and restrictions applicable to development of the property as approved by the town, a notarized agreement or covenant running with a parcel of land stipulating that the subject parcel shall be held under single ownership or control and shall not be transferred, conveyed, sold or divided in any unit other than in its entirety; provided, however, that:

- ~~(1) Individual condominium units or residential subdivision lots, if any, may be conveyed.~~
- ~~(2) A subunit of the project may be transferred, conveyed or sold if the purchaser agrees to abide by all applicable stipulations and conditions specified in the approved development order.~~

Unified control document. A notarized statement evidencing a property owner's or entity's right and authority to impose covenants and restrictions on the parcel or otherwise bind the property with respect to conditions necessary to secure the approval requested. A notarized statement submitted to the town establishing a property owner or entity's right and authority to impose covenants and restrictions on a parcel as a result of development approval in accordance with this code. The unified control document also constitutes an agreement that the property owner will not transfer, convey, sell, or subdivide the subject parcel unencumbered by any covenants and restrictions imposed as part of the zoning process.

Unit of high impact ~~means any dwelling unit or rooming unit:~~

- ~~(1) Located in a hotel or motel and rented or leased to guests for terms of less than 30 consecutive days.~~

- ~~(2) That is being developed or converted to a timeshare unit as defined by the Florida Real Estate Time-Share Act, F.S. ch. 721, and being created and divided into ten or more periods.~~

Use means any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied; or any activity, occupation, business, or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

Use, accessory means a use of a structure or premises which is customarily incidental and subordinate to the principal use of the structure or premises. See *Use, principal*; *Commercial accessory use*; *Residential accessory use*; and *Resort accessory use*.

Use, mixed means the development of land or building or structure with two or more different but compatible uses, such as but not limited to residential, office, ~~industrial and technological~~, retail, commercial, public, entertainment or recreation uses, in a compact urban form.

Use permitted by right means a use or uses which, by their very nature, are allowed within the specified zoning district provided all applicable regulations of the town county are met. Permitted use includes the principal use of the land or structure as well as accessory uses, unless specifically stated to the contrary.

Use, principal means the primary purpose for which land or a structure or building is used.

Use, public means the use of any land, water, or building by a public agency for a public service or purpose.

Use, special exception means a use or certain specified departures from the regulations of this chapter that may not be appropriate generally or without restriction throughout a zoning district, but which, when controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity, and may be permitted, in accordance with all applicable regulations.

~~Use, special permit [deleted]~~

Use, temporary means a use or activity which is permitted only for a limited time, and subject to specific regulations and permitting procedures. See article IV, division 37 of this chapter.

Use variance. See Variance, use.

~~*Used merchandise stores. See § 34-622(c)(54).*~~

Variance means a departure from the provisions of this chapter or from any town county ordinance (excluding building codes) relating to building and other structural setbacks, lot dimensions such as width, depth, or area, structure or building height, open space, buffers, ~~off-street~~ parking or loading requirements, lot coverage, impervious areas, landscaping, and similar ~~type~~ regulations, ~~but not involving~~ A variance may not involve the actual use of the property, building, or structures, procedural requirements, or definitions. This definition specifically excludes section and quarter section line setbacks, street setbacks, modifications for solar or wind energy or other provisions specifically indicated as requiring a special exception permit, and variances from impact fees. However, in the case of planned development districts, the term “variance” means all of those requests to deviate from the provisions of this chapter, chapter 10 or other applicable regulations. A variance may be granted in accordance with the procedures set forth in § 34-87. when the enforcement of the ordinance, as it applies to a specific lot, would work an undue hardship. The applicant must demonstrate that the hardship is peculiar to his property and not to other properties in the zone. A finding must be made that the variance can be granted without any adverse impact on the public good. See *Variance, use* and *Variance, procedural*.

Variance, procedural means any departure from the procedural requirements of this chapter, chapter 10 or any other ordinance. Procedural variances are never permitted.

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 vary any one or more of the definitions set forth in this chapter, either

directly or indirectly. Use variances are never permitted.

~~*Variety store [deleted]*~~

~~*Vehicle and equipment dealers. See section 34-622(c)(55): means the use of any building or land area for the display, sales, leasing, or storage of automobiles, trucks, trailers, recreational vehicles, construction equipment, and similar vehicles and equipment. See also *Automobile rental and Boat dealers.**~~

~~*Warehouse, private [deleted]*~~

~~*Warehouse, public [deleted]*~~

Water-dependent uses means land uses for which water access is essential and which could not exist without water access.

Water-related uses means land uses that might be enhanced by proximity to the water but for which water access is not essential.

Water, body of: means any artificial or natural depression in the surface of the earth that is inundated with daily tidal flows, and all adjacent wetlands as defined in § 14-293.

- (1) *Artificial bodies of water* means man-made canals and similar water bodies that extend a natural water body into uplands, a depression or concavity in the surface of the earth, other than a swimming pool, created by human artifice, or that portion of a natural body of water extended or expanded by human artifice, and in which water stands or flows for more than three months of the year.
- (2) *Natural bodies of water* include the Gulf of Mexico, Matanzas Pass, Estero Bay, Ostego Bay, Buccaneer Lagoon, and similar water bodies that were created by natural geophysical forces. means a depression or concavity in the part of the surface of the earth lying landward of the line of mean sea level (NGVD) which was created by natural geophysical forces and in which water stands or flows for more than three months of the year; also, the bays and estuaries lying between the county mainland and the barrier islands (Gasparilla Island, Cayo Costa, North Captiva Island, Captiva Island, Sanibel Island, Estero Island, Lovers Key, Big

Hickory Island and Little Hickory Island and Bonita Beach) with the outermost boundary defined by a series of short straight lines that can be drawn connecting these islands.

Waterway [deleted]

Wetlands are defined in § 14-293. Wetlands in the Town of Fort Myers Beach are generally indicated on the future land use map of the Fort Myers Beach Comprehensive Plan, but the precise boundaries of wetlands shall be determined by this definition. means an area that is subject to permanent or prolonged periods of inundation or saturation (i.e., water is at the soil surface for at least two to seven months, seven out of ten years) and does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps and marshes and may include similar areas such as sloughs, wet meadows and natural ponds.

Wholesale establishments. See § 34-622(c)(56). means a place of business primarily engaged in preparing and selling merchandise to retailers, other businesses, or other wholesale establishments, and operating completely within an enclosed building.

Zero-lot-line development [deleted]

Cross reference(s)--Definitions and rules of construction generally, § 1-2.

Sec. 34-3. Rules of construction.

The following rules of construction apply to the text of this chapter:

- (1) Where the term “ordinance,” “law,” “statute,” or “map” is referred to in the text, it is meant to include the phrase “as adopted and as amended from time to time” unless specifically stated to the contrary in the text.
- (2) In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table, or illustrative table, the text will control.
- (3) Where this chapter refers to a specific federal, state, or county, or town agency, department or division, it will be interpreted to mean “or any succeeding agency authorized to perform similar functions or duties.”

Sec. 34-4. Applicability of chapter; deed restrictions and vested rights.

(a) *Scope of chapter.* The provisions of this chapter shall apply uniformly to all land, water, buildings, and structures now or hereafter located in the Town of Fort Myers Beach unincorporated areas of the county.

(b) *Deed restrictions.* The provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, safety, and welfare. It is not intended by this chapter to interfere with, abrogate, or annul any easements, covenants, or other agreement between the parties; provided, however, that, where this chapter imposes a greater restriction upon the uses of structures, land, and water, or requires more open space, than is required by other rules or regulations, or by easements, covenants, or agreements, by recorded deed, plat, or otherwise, the provisions of this chapter shall govern. The town county shall not be responsible for the enforcement of private deed restrictions.

(c) *Vested rights.* Nothing in this chapter is to be interpreted or construed to give rise to any vested right in the continuation of any particular use, district or zoning classification or any permissible activities therein; and such use, district, zoning classification, and permissible activities are hereby declared to be subject to subsequent amendment, change, or modification as may be necessary to the protection of public health, safety, and welfare.

(d) Special regulations for Gasparilla Island conservation district. [deleted in its entirety]

Sec. 34-5. Interpretation of chapter.

(a) The interpretation and application of the provisions of this chapter shall be reasonably and uniformly applied to all property within the Town of Fort Myers Beach unincorporated areas of the county. The provisions of this chapter are regulatory.

(b) The provisions of this chapter shall be held to be the minimum requirements adopted for the protection and promotion of the public health, safety, comfort, convenience, order, appearance, prosperity, or general welfare, and for securing safety from fire and other dangers, providing

adequate light and air, and preventing excessive concentration of population.

(c) Whenever the regulations and requirements of this chapter are at variance with the requirements of any other lawfully enacted and adopted rules, regulations, ordinances, or laws, the most restrictive shall apply.

Secs. 34-6--34-50. Reserved.

ARTICLE II. ZONING PROCEDURES ADMINISTRATION¹

DIVISION 1. GENERALLY

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 town council 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. Communications with public officials. ~~Unauthorized communications.~~ [existing § 34-52 deleted in its entirety]

(a) *Definitions.* The following terms and phrases, when used in this section, shall have these meanings:

Ex parte communication means any direct or indirect communication in any form, whether written, verbal or graphic, with the town council or local planning agency, by any person outside of a public hearing and not on the record, concerning substantive issues in any proposed or pending quasi-judicial action relating to appeals, variances, rezonings, special exceptions or any other quasi-judicial action assigned by statute, ordinance or administrative code.

Legislative action means the formulation of a general rule or policy, such as enacting a comprehensive plan or a comprehensive rezoning of multiple properties.

Public official means an elected or appointed member of a town board or commission that recommends or takes quasi-judicial actions, specifically including all members of the town council and the local planning agency. Members of the town staff are not public officials under this definition unless they also serve on a board or commission that recommends or takes quasi-judicial actions.

Quasi-judicial action means the application by the local planning agency or town council of a

previously adopted general rule or policy that will have an impact on a limited number of persons or property owners, such as individual appeals, variances, rezonings, and special exceptions.

Unrestricted communication means any communication by the public with public officials which are specifically allowed and encouraged, for instance, communications regarding the town budget or the general welfare of the community; or legislative actions such as proposed ordinances or general changes to the Fort Myers Beach Comprehensive Plan.

(b) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the public official is a member.

(1) Except for quasi-judicial actions (such as appeals, variances, rezoning, and special exceptions), the town encourages unrestricted communications between all public officials and town residents, visitors, businesspeople, and property owners.

(2) When discussions on pending quasi-judicial actions (such as administrative appeals, variances, rezonings, and special exceptions) take place *prior to* an advertised public hearing, the following procedures, which mirror those in F.S. § 286.0115(1), shall remove any presumption of prejudice arising from such ex parte communications with public officials:

- a. The substance of any ex parte communication with a public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identify of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.
- b. A public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a public official shall not be presumed prejudicial to the action, and such written communication shall be

¹Cross reference(s)--Administration generally, ch. 2.

made a part of the record before final action on the matter.

- c. Public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.
- d. Disclosure made pursuant to subsections a., b. and c. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject public officials to the Code of Ethics for Public Officers and Employees (part III of F.S. ch. 112) for not complying with this paragraph.

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 where permits applications are filed of the department of community development. The charges listed may be changed by resolution of the town council, Board of County Commissioners. In the absence of a resolution by the town council, the director shall charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.

(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. TOWN COUNCIL BOARD OF COUNTY COMMISSIONERS

Sec. 34-81. Appointment of local planning agency.

The town council Board of County Commissioners shall appoint the members of the local planning agency.

Sec. 34-82. Initiation of zoning actions.

The town council Board of County Commissioners or the town manager its designee may initiate rezonings, special exceptions, variances, ~~special permits~~, developments of regional impact, ~~and zoning ordinance~~ land development code amendments, formal interpretations of this code and the Fort Myers Beach Comprehensive Plan, and other actions as may be specified in this code. See division 4 of this article for specific application requirements. See § 34-201.

Sec. 34-83. ~~Functions and authority.~~ (a) Land use ordinance amendments or adoption.

- (1) **Function.** The town council Board of County Commissioners shall 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 town council Board of County Commissioners shall consider the Fort Myers Beach Comprehensive Plan and same criteria, recommendations and issues as set forth in § 34-115(b)(1), as well as the recommendation of the local planning agency.
- (3) **Decisions and authority.** The decision of the town council Board of County Commissioners on any proposed land use ordinance amendment or adoption is final.
- (4) **Appeals.** Appeals of any decision concerning land use ordinance amendments or adoption shall be taken in accordance with applicable state law.

Sec. 34-84. General procedures for (b) zoning actions on specific zoning applications.

- (1) ***Function.*** ~~a.~~ The town council Board of County Commissioners shall hold public hearings (see §§ 34-231 through 34-265 ~~division 7 of this article~~) on the following applications: rezonings, appeals from administrative actions, variances, the special exceptions that meet the criteria for developments of county impact, and developments of regional impact, and any other action in conjunction with such applications.
- ~~b.~~ All requests for variances, special exceptions and special permits which are part of an application for a rezoning shall be considered by the Board of County Commissioners with the application for rezoning and heard together with and at the same time as the rezoning.
- (2) ***Prior hearings.*** Public hearings before the town council shall be held after the local planning agency has held its hearing on these applications and rendered its formal recommendation to the town council, except for applications for interpretations of this code and certain interpretations of the comprehensive plan which shall require only a single public hearing before the town council.
- (2) ~~*Considerations.*~~ In rendering its decision, the Board of County Commissioners shall consider the following:
- ~~a.~~ The criteria set forth in § 34-145(c)(2):
- ~~b.~~ The substantive recommendation of the hearing examiner when applicable.
- (3) ***Decisions and authority.***
- a. In exercising its authority, the town council Board of County Commissioners shall consider the recommendation of the local planning agency hearing examiner, but may, in conformity with the provisions of this chapter, reverse, affirm, or modify the recommendation ~~of the hearing examiner~~, or remand the recommendation to afford due process.
- b. The town council Board of County Commissioners shall not approve any rezoning action other than that the rezoning published in the newspaper unless such change is more restrictive than the proposed rezoning published.

- c. The town council Board of County Commissioners has the authority to attach conditions and requirements to any approval of a request for a special permit, special exception, development of regional impact, planned development rezoning, or variance within their purview, deemed necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such conditions or requirements must be reasonably related to the action requested.
- d. The decision of the town council Board of County Commissioners on any matter listed in this subsection (b) is final. If a decision of approval is not obtained, or if a tie vote results from a motion to grant a request or from a motion to deny a request, then the matter being considered shall be deemed to have been denied, unless a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action in lieu of denial. Such other action may be moved or seconded by any member, regardless of his vote on any earlier motion.
- (4) ~~*e.*~~ ***Denials.*** *[relocated from § 34-211]* Any denial by the Board of County Commissioners is denial with prejudice unless otherwise specified by the Board of County Commissioners (see § 34-211):
- a. *Denial with prejudice.*
1. Except when specifically stated otherwise, a denial by the town council hearing examiner or Board of County Commissioners is a denial with prejudice.
 2. If an application is denied with prejudice, no similar application for rezoning, special exception, or variance or special permit covering the same property, or portion of the property, shall be resubmitted or initiated for a period of 12 months from the date of denial. However, this shall not preclude the application for a different rezoning, special exception, or variance or special permit which in the opinion of the director administrative official is

- substantially different from the request originally denied.
- b. *Denial without prejudice.*
1. When the town council hearing examiner or Board of County Commissioners denies without prejudice any application, it is an indication that, although the specifically requested action is denied, the town council hearing examiner or board is willing to consider the same request after modifications have been made, or an application for other action, without the applicant having to wait 12 months before applying for consideration of the modified request or other action.
 2. Any resubmitted application shall clearly state the modifications which have been made to the original request or other changes made in the application.

(5) ***Rehearings.*** Any rehearings of decisions under this section shall be in accordance with § 34-92.

(6) ***Special master.*** Final decisions under this section may be the subject of a request for relief under F.S. § 70.51 or 70.001 (see §§ 34-93 and 34-94).

(7) ***Judicial review.*** Judicial review of final decisions under this section shall be in accordance with section 34-895.

Sec. 34-85. Rezoning.

(1) ***Function.*** The town council shall hear and decide all applications for changes in zoning district boundaries.

(2) ***Considerations.*** In reaching its decision, the town council shall consider the following, whenever applicable:

- a. Whether there exists an error or ambiguity which must be corrected.
- b. Whether there exist changed or changing conditions which make approval of the request appropriate.
- c. The impact of a proposed change on the intent of this chapter.
- d. The testimony of any applicant.
- e. The recommendation of staff and of the local planning agency.
- f. The testimony of the public.

g. Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.

h. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

i. Whether urban services are, or will be, available and adequate to serve a proposed land use change.

j. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.

k. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.

l. Whether the location of the request places 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.

(3) ***Findings.*** Before granting any rezoning, the town council shall find that the requested zoning district complies with:

a. The Fort Myers Beach Comprehensive Plan;

b. This chapter; and

c. Any other applicable town ordinances or codes.

(4) ***Authority.***

a. When rezoning land to conventional zoning districts or redevelopment districts (see §§ 34-612(1) and (2)), the town council shall not impose any special conditions or requirements beyond those contained in this code, except as authorized by subsections 34-87(4) b. related to variances and 34-88(4)b. related to special exceptions.

b. In reaching decisions on planned development rezonings (see § 34-612(3)):

1. The town council shall follow the additional procedures set forth in § 34-214); and

2. The town council shall have the authority to attach such conditions and requirements as are necessary for the protection of the health, safety, comfort, convenience, or welfare of

the general public, provided such conditions or requirements shall be reasonably related to the zoning requested.

Sec. 34-86. (a) Appeals from administrative action. *[moved from § 34-145]*

(1) **Function.** The town council hearing examiner will hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, determination, or action of any administrative official charged with the administration and enforcement of the provisions of this code, chapter or any other ordinance or portion of this code which provides for similar review; provided, however, that:

- a. No appeal to the town council hearing examiner shall lie from any act by such administrative official pursuant to:
 1. An order, resolution, or directive of the town council Board of County Commissioners directing him to perform such act; or
 2. Any ordinance or other regulation or provision in this code which provides a different appellate procedure.
- b. The appeal to the town council hearing examiner shall be in writing on forms provided by the director hearing examiner, and shall be duly filed ~~with the hearing examiner~~ within 30 calendar days, but not thereafter, after such act or decision by the administrative official. The appeal shall specify the grounds for the appeal.
- c. No appeal shall be considered by the town council hearing examiner where it appears to be a circumvention of an established or required procedure. Specifically, in no case may an appeal be heard when the town council hearing examiner determines that the case should more appropriately be heard on a request for a variance.
- ~~d. Notices of hearings on appeals shall be provided in accordance with the provisions of an applicable administrative code which shall be adopted by the Board of County Commissioners.~~

- ~~d.~~ ~~e.~~ ~~The town council~~ ~~No appeal will not be considered by the hearing examiner~~ for any challenge to a development order which is controlled by F.S. § 163.3215. In cases of challenges to development orders controlled by F.S. § 163.3215, no suit may be brought and no verified complaint, as explained in F.S. § 163.3215(4), may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the director, or by virtue of its having been ordered by the town council county hearing examiner on an appeal reversing the director's denial of the development permit or denial of a development order extension, or by the town council Board of County Commissioners in cases where the town council Board of County Commissioners has granted planned development zoning or an extension of a development order. Once a development order has been granted, the provisions of F.S. § 163.3215 will be the sole means of challenging the approval or denial of a development order, as that term is defined in F.S. § 163.3164(6), when the approval of the development order is alleged to be inconsistent with the Fort Myers Beach Comprehensive ~~Lee~~ Plan, in which case an action brought pursuant to F.S. § 163.3215 will be limited exclusively to the issue of comprehensive plan consistency.
- ~~f.~~ ~~Except as may be required by F.S. § 163.3215, and then only pursuant to that statute, a third party shall not have standing to appeal an administrative decision granting or denying any development permit. Only the applicant or his agent shall be permitted to appeal such administrative action as set forth in this subsection (a).~~

(2) **Considerations.**

- a. In reaching ~~its~~ his decision, the town council hearing examiner shall consider the following criteria, as well as any other issues which are pertinent and reasonable:
 1. Whether ~~or not~~ the appeal is of a nature properly brought ~~to him~~ for decision, or whether ~~or not~~ there is an

- established procedure for handling the request other than through the appeal process (i.e., a variance or special exception, etc.).
 - 2. The intent of the ordinance which is being applied or interpreted.
 - 3. The effect the ruling will have when applied generally to this code the ordinance which will be affected by the hearing examiner's decision.
 - b. Staff recommendations, local planning agency recommendations, the testimony of the appellant, and testimony of the general public shall also be considered.
- (3) **Authority.**
- a. In exercising its his authority, the town council hearing examiner may reverse, affirm, or modify any decision or action of any administrative official charged with the administration or enforcement of this chapter.
 - ~~b. Subject to the limitations set forth in subsection (a)(3)a of this section, the hearing examiner may make a decision to take the appropriate action which the hearing examiner finds the administrative official should have taken. To that end, he shall have the powers of the administrative official from whom the appeal is taken.~~
- (4) ~~Judicial review. Judicial review of final decisions of the hearing examiner with respect to administrative actions are to the circuit court in accordance with § 34-146.~~

Sec. 34-87. (b) Variances. *[moved from § 34-145]*

- (1) **Function.** The town council hearing examiner shall hear and decide all requests for variances from the terms of the regulations or restrictions of this code (except for administrative setback variances as provided in § 34-268) chapter and such other ordinances which assign this responsibility to the town council as may be assigned to him by the Board of County Commissioners, except that no use variance as defined in this chapter shall be heard or considered.
- (2) **Considerations.** In reaching its his decision, the town council hearing examiner shall consider the following criteria, recommendations and testimony:

- a. ~~That Whether~~ exceptional or extraordinary conditions or circumstances exist which are inherent in the land, structure, or building involved and whether those such exceptional or extraordinary conditions or circumstances create a hardship on the property owner ~~and are not generally applicable to other lands, structures or buildings;~~
 - b. ~~That Whether~~ the exceptional or extraordinary conditions or circumstances do not result from the actions of the applicant;
 - c. ~~That literal interpretation of the provisions of the section of this chapter would deprive the applicant of rights commonly enjoyed by properties in the same district under terms of this chapter;~~
 - ~~d. That granting the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare;~~
 - ~~d. e. Staff recommendations and local planning agency recommendations;~~
 - ~~e. f. Testimony from the applicant; and~~
 - ~~f. g. Testimony from the public.~~
- (3) **Findings.** Before granting any variance, the town council must hearing examiner shall find that all of the following exist:
- a. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question ~~and that do not apply generally to the other nearby properties in the same zoning district;~~
 - b. That the exceptional or extraordinary conditions or circumstances are not the result of actions of the applicant taken subsequent to after 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. That 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 property;
 - d. That the granting of the variance will not be injurious to the neighborhood or

- otherwise detrimental to the public welfare; and
- e. That 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 so general or recurrent a nature as to make it more reasonable and practical to amend the ordinance.

(4) **Authority.**

- a. The town council ~~has hearing examiner shall have~~ the authority to grant or deny, or modify, any request for a variance from the regulations or restrictions of this code chapter; provided, however, that no use variance as defined in this chapter, or any variance from definitions or procedures set forth in any ordinance, shall be granted.
- b. In reaching its ~~his~~ decision, the town council ~~has hearing examiner shall have~~ the authority to attach ~~such~~ conditions and requirements ~~as are~~ necessary for the protection of the health, safety, comfort, convenience and welfare of the general public. Such conditions or requirements shall be reasonably related to the variance requested.
- ~~c. Variances may be reviewed by themselves or as part of a rezoning.~~
- ~~d. All decisions of the hearing examiner concerning variances filed as part of a rezoning shall be in the form of a recommendation to the Board of County Commissioners. Only a party of record or his representative shall be afforded the right to address the Board of County Commissioners.~~

- ~~(5) **Judicial review.** Judicial review of final decisions of the hearing examiner with respect to variances are to the circuit court in accordance with § 34-146.~~

Sec. 34-88. (c) Special exceptions. *[moved from § 34-145]*

- (1) **Function.** The town council ~~hearing examiner~~ shall hear and decide all applications for special exceptions permitted by the district use regulations.
- (2) **Considerations.** In reaching its ~~his~~ decision, the town council ~~hearing examiner~~ shall consider the following, whenever applicable:

- ~~a. Whether there exists an error or ambiguity which must be corrected.~~
- ~~a.~~ ~~b.~~ Whether there exist changed or changing conditions which make approval of the request appropriate.
- ~~c. The impact of a proposed change on the intent of this chapter.~~
- ~~b.~~ ~~d.~~ The testimony of any applicant.
- ~~c.~~ ~~e.~~ The recommendation of staff and of the local planning agency.
- ~~d.~~ ~~f.~~ The testimony of the public.
- ~~e.~~ ~~g.~~ Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Lee Plan.
- ~~f.~~ ~~h.~~ Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
- ~~i. Whether urban services, as defined in the Lee Plan, are, or will be, available and adequate to serve a proposed land use change, when proposing a change to a future urban area category.~~
- ~~g.~~ ~~j.~~ Whether the request is consistent with the densities, intensities and general uses set forth in the Fort Myers Beach Comprehensive Lee Plan.
- ~~h.~~ ~~k.~~ Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
- ~~i.~~ ~~l.~~ Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
- ~~m.~~ Whether the location of the request places 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.
- ~~j.~~ ~~n.~~ Whether a requested use will be in compliance with all applicable general zoning provisions and supplemental regulations pertaining to the use, as set forth in this chapter.
- ~~o.~~ Whether a proposed change is to rectify errors on the official zoning map.
- (3) **Findings.** Before granting any special exceptions, the town council ~~hearing examiner~~ shall find that the applicant has proved entitlement to the special exception by demonstrating compliance with:

- a. The Fort Myers Beach Comprehensive ~~Lee~~ Plan;
 - b. This chapter; and
 - c. Any other applicable town county ordinances or codes.
- (4) **Authority.**
- a. The town council hearing examiner shall grant the special exception unless it he finds that granting the special exception is contrary to the public interest and the public health, safety, comfort, convenience and welfare of the citizens of the town county, or that the request is in conflict with subsection (~~fe~~)(3) of this section.
 - b. In reaching its his decision, the town council has hearing examiner shall have the authority to attach such conditions and requirements as are necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such conditions or requirements shall be reasonably related to the special exception requested.
 - ~~c. Special exceptions may be reviewed by themselves or as a part of a rezoning.~~
 - ~~d. All decisions of the hearing examiner concerning special exceptions filed as part of a rezoning or that meet the criteria for a development of county impact shall be in the form of a recommendation to the Board of County Commissioners. Only a party of record or his representative shall be afforded the right to address the Board of County Commissioners.~~
- (5) **Judicial review.** ~~Judicial review of final decisions of the hearing examiner with respect to special exceptions are to the circuit court in accordance with § 34-146.~~

Sec. 34-89. Developments of regional impact.

The town council shall hold public hearings on all applications for developments of regional impact, in accordance with the requirements of ch. 380, Florida Statutes. If a proposed development of regional impact also requires a rezoning and/or a comprehensive plan amendment, the public hearings shall be held simultaneously provided that all advertising requirements for the individual applications can be met.

Sec. 34-90. Land development code interpretations.

The town council may hear and decide applications for interpretations of this code as provided in § 34-208. Such applications shall not require a public hearing or recommendation from the local planning agency.

Sec. 34-91. Comprehensive plan interpretations.

The town council will hear and decide applications for interpretations of the Fort Myers Beach Comprehensive Plan as permitted by the “procedures and monitoring” section of that plan. The following types of applications will be accepted:

- (1) ***Equitable estoppel.*** In circumstances where development expectations conflict with the comprehensive plan but judicially defined principles of equitable estoppel may override the otherwise valid limitations imposed by the plan, such expectations may be recognized by the town through a resolution of the town council. Such applications shall not require a public hearing or recommendation from the local planning agency.
- (2) ***Appeals of administrative interpretations.*** Persons or entities whose interests are directly affected by the comprehensive plan have the right to certain administrative interpretations of the plan as described in its “procedures and monitoring” section. That section specifies the following procedures for appealing an administrative interpretation:
 - a. An administrative interpretation may be appealed to the town council by filing a written request within fifteen days after the administrative interpretation has issued in writing. In reviewing such an appeal, the town council shall consider only information submitted in the administrative interpretation process and shall review only whether the proper standards set forth in the comprehensive plan have been applied to the facts presented. No additional evidence shall be considered by the town council.
 - b. The town council shall conduct such appellate review at a public meeting to be held within thirty days after the date of the written request for appeal. The town

council may adopt the administrative interpretation being appealed, or may overrule it, with a written decisions to be rendered by the town clerk in writing within thirty days after the date of the hearing.

(3) ***Legislative interpretations.*** In order to apply the plan consistently and fairly, it will be necessary from time to time to interpret provisions in the plan in a manner which insures that the legislative intent of the town council which adopted the plan be understood and applied by subsequent councils, town employees, private property owners, and all other persons whose rights or work are affected by the plan. When the plan is interpreted, it should be done in accordance with generally accepted rules of statutory construction, based upon sound legal advice, and compiled in writing in a document which can be a companion to the plan itself.

a. ***Requests.*** Requests for legislative interpretations may be made by any town council member, the town manager, the local planning agency, or any applicant for a type of development regulated by the plan.

b. ***Local planning agency.*** Upon receiving a request and written recommendations from the town manager, the local planning agency shall review the same and forward them to the town council with its comments and recommendations.

c. ***Town council.*** Upon receiving the recommendations of the local planning agency, the town council shall render a final decision as to the correct interpretation to be applied. This interpretation shall be that which is adopted by absolute majority of the town council, and, upon being reduced to a resolution drafted in response to the council majority, it shall be signed by the mayor and recorded in the town's official records. The town clerk shall be responsible for maintaining copies of all such resolutions in a single document which shall be appropriately indexed and provided to all persons upon request. The document shall be updated regularly and the latest version thereof furnished to all persons requesting copies of the plan itself.

d. ***Legal effect of legislative interpretations.*** Any provision of the plan specifically construed in accordance with the foregoing procedures may not be re-interpreted or modified except by a formal amendment of the plan itself. Once formally adopted in accordance with these procedures, the interpretation shall have the force of local law and all persons shall be placed on constructive notice of it. Any development orders issued in reliance on legislative interpretations of this plan are subject to challenge under the provisions of F.S. § 163.3215.

Sec. 34-92 84. Rehearing of decisions.

(a) ***Timely filing.*** Any person who may be aggrieved by any decision of the town council Board of County Commissioners made pursuant to an application for rezoning, development of regional impact, administrative appeal, special exception that meets the criteria of a development of county impact, or special exceptions, or variances or special permits heard as part of a rezoning may, within 30 calendar days after such decision, but not thereafter, file a written request with the county administrator or his designee a request in writing for a public rehearing before by the town council to modify or rescind its decision. Board of County Commissioners for a modification or rescission thereof. The request must be filed with the director within 15 calendar days after the decision. For purposes of computing the 15- computation of this 30-day period, the date of the decision is shall be the date of the public hearing at which the town council Board of County Commissioners made such decision by oral motion.

(b) ***Written request and response.*** All requests for a public rehearing shall state with particularity the any new evidence or the points of law or fact which the aggrieved person argues the town council Board of County Commissioners has overlooked or misunderstood, and must include all documentation offered to support the request for a rehearing. In addition, if the request is filed made by one other than the original applicant, the director county shall notify the applicant of the filing of the request for a rehearing and the applicant shall be allowed 15 days to submit an his independent written analysis.

(c) *No oral testimony.* The town council Board of County Commissioners shall decide whether to grant or deny the request for a rehearing based exclusively upon the aggrieved person's written request, and supporting documentation, any response, and the director's and/or town manager's administrator's written analysis thereof. The deliberations of the town council 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 shall be allowed or considered by the town council Board of County Commissioners in the course of these deliberations.

(d) *Judicial review.* An aggrieved person need not request a The pursuit of a request for rehearing is not required in order to exhaust his administrative remedies as a condition precedent to seeking judicial review in filing an appeal to the circuit court. The proper filing of a request petition for rehearing will not toll the 30-day time limit set forth for to file an action seeking judicial review of final decisions, in § 34-85. If a rehearing request is refused, or if the request is granted but modification or rescission of the original motion of the Board of County Commissioners is denied, any aggrieved person may, within 30 calendar days after such refusal or denial, apply for judicial review of the original motion in accordance with § 34-85. No judicial review is available to review the town council's Board of County Commissioners' decision to deny refuse a rehearing request.

(e) A request for rehearing is not an administrative appeal as that term is used in F.S. § 70.51. Filing 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.

(d) There shall be no right to apply to court for relief on account of any determination or recommendation of the hearing examiner in those actions listed in § 34-83(b)(1) which require public hearing before the Board of County Commissioners.

Sec. 34-93. Special master proceedings under the Florida land use and environmental dispute resolution act (F.S. § 70.51)

(a) *Special master proceedings.* Special master proceedings may be requested by landowners who believe that action on a development order or enforcement of this code is unreasonable or unfairly burdens the use of their property. Special master proceedings are a non-judicial approach to resolving land-use disputes and will be conducted in accordance with state law and any administrative codes designated for that purpose.

(b) *Implementation of special master recommendation.* If the town council elects to adopt the recommendation of any duly-appointed special master, the landowner will not be required to duplicate processes in which the owner previously has participated in to effectuate the recommendation.

(c) *Modification of special master recommendation.* The town council may elect to modify a special master's recommendation and implement it by development agreement, where applicable, or by other method in the ordinary course and consistent with the town's rules and procedures, so long as it does not require the duplication of processes in which the owner has participated in to effectuate the council's will.

(d) In order to implement the recommendation of a special master, or a modification of that recommendation, the town council has the authority to waive any or all procedural requirements contained in town ordinances or administrative codes and to directly exercise all authority otherwise delegated to the local planning agency, the town manager or designees, or any other part of town government.

Sec. 34-94. Proceedings under the Bert J. Harris, Jr., private property rights protection act (F.S. § 70.001).

(a) *Offers of Settlement.* Within 180 days of the filing of a notice of intent to file a claim under this act, the town may offer to resolve the claim by way of a settlement offer that includes an adjustment of the initial government action. Settlement offers may entail:

- (1) an increase or modification to density, intensity, or use of the owner's property, so long as the density, intensity, and use remain consistent with Fort Myers Beach Comprehensive Plan.
- (2) the transfer of development rights;
- (3) land swaps or exchanges;
- (4) compensation and purchase of the property or property interest, or
- (5) issuance of a development permit or order.

(b) The parties to a dispute arising under the Bert J. Harris, Jr., private property rights protection act may craft settlements that exceed the town's statutory or ordinance authority provided the parties jointly file a judicial action for court approval of the settlement.

(c) In order to implement a settlement offer, the town council has the authority to waive any or all procedural requirements contained in town ordinances or administrative codes and to directly exercise all authority otherwise delegated to the local planning agency, the town manager or designees, or any other part of town government.

Sec. 34-95 85. Final decision; judicial review.

(a) Any final zoning decision of the town council on a specific application Board of County Commissioners may be reviewed by the circuit court unless otherwise provided in this article. Except for review of verified complaints filed pursuant to F.S. § 163.3215, jurisdiction for review of any final decision of the Board of County Commissioners lies exclusively in circuit court. This review may only be obtained through filing a petition for writ of certiorari pursuant to the Florida Rules of Appellate Procedure. Any such 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 of the public hearing at which the town council Board of County Commissioners made such decision by oral motion.

(b) The person making application to the town council Board of County Commissioners for any final decision that is entitled to judicial review is a necessary and indispensable party to any action seeking judicial review of that final decision.

(c) This section is not intended to preclude actions pursuant to F.S. § 70.51 or § 163.3215.

Secs. 34-96 86--34-110. Reserved.

DIVISION 3. LOCAL PLANNING AGENCY

NOTES:

— *Previous §§ 34-111–34-115 regarding Lee County's local planning agency are repealed in their entirety.*

— *New §§ 34-111–34-120 and 34-122 below incorporate and will replace Fort Myers Beach Ordinances No. 96-02 and 96-25, which established the town's local planning agency.*

Sec. 34-111. Agency established.

The Town of Fort Myers Beach local planning agency (LPA) is hereby established.

Sec. 34-112. Purpose and scope.

The broad objectives of town planning and the creation of the local planning agency are to further the welfare of the citizens of the town by helping to promote a better, more helpful, convenient, efficient, healthful, safe, and attractive community environment and to insure that the unique and natural characteristics of the island are preserved.

Sec. 34-113. Composition, appointment, and compensation of members.

(a) The local planning agency shall consist of not less than seven nor more than nine members appointed by the town council. No members of the local planning agency shall be salaried officials of the town.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

Sec. 34-114. Members' terms and vacancies.

(a) The term of office of a member of the local planning agency shall be staggered three years or until a successor has been appointed and has qualified, except that the respective terms of the

members first appointed shall be two for one year, three for two years, and two for three years.

(b) Appointments shall be made annually at the first meeting of the council in January. Vacancies in the local planning agency shall, within thirty days, be filled by the council for the remainder of the term created by such vacancy.

Sec. 34-115. Forfeiture of office.

A local planning agency member shall forfeit office if the member:

- (1) Lacks at any time during the term of office any qualification for the office prescribed by town ordinance or state law; or
- (2) Violates any standard of conduct or code of ethics established by law for public officials; or
- (3) Is absent from three consecutive regular local planning agency meetings without being excused by the local planning agency.

Sec. 34-116. Election and duties of officers.

(a) The local planning agency shall elect a chairperson and a vice-chairperson each year at the first meeting of the newly appointed members.

(b) It shall be the duty of the chairperson to preside over all meetings of the local planning agency. In the absence of the chairperson, the vice-chairperson may preside.

Sec. 34-117. Clerk.

The town manager or designee shall be the clerk of the local planning agency. It shall be the duty of the clerk to keep a record of all proceedings of the local planning agency, transmit its recommendations when directed by the chairperson, maintain an updated complete file of all its proceedings at town hall, and perform such other duties as are usually performed by the clerk of a deliberative body.

Sec. 34-118. Rules and procedures.

The local planning agency shall meet at least eight times per year and shall meet no less often than bimonthly or more frequently at regular intervals to be determined by it, and at such other times as the chairperson or as it may determine. It may adopt rules for the transaction of its business.

The rules may be amended from time to time, but only upon notice to all members that said proposed amendments shall be acted upon at a specified meeting. A majority vote of the local planning agency shall be required for the approval of the proposed amendment. It shall keep a properly indexed record of its resolutions, transactions, findings, and determinations, which record shall be a public record. All meetings of the local planning agency shall be public meetings.

Sec. 34-119. Employment of staff and experts.

The local planning agency may, subject to the approval of the town council and within the financial limitations set by appropriations made or other funds available, recommend the town manager employ such experts, consultants, technicians and staff as may be deemed necessary to carry out the functions of the local planning agency. Such technical assistance to the local planning agency shall be under the day-to-day supervision of the town manager.

Sec. 34-120. Specific functions, powers, and duties as to comprehensive planning and land development regulations.

The functions, powers, and duties of the local planning agency as to comprehensive planning and adoption of land development regulations shall be to:

- (1) Acquire and maintain such information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions, and provide data for estimates of future conditions. Such information and material may include maps and photographs of man-made and natural physical features, statistics on trends and present and future estimated conditions with respect to population, property values, economic base, land uses, municipal services, various parameters of environmental quality, and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the town and its various parts and the necessary regulation thereof to insure that the unique and natural characteristics of the island be preserved.

- (2) Prepare principles and policies for guiding land uses and development in the town in order to preserve the unique and natural characteristics of the island, to overcome the island's present handicaps, and to prevent or minimize future problems.
- (3) Make or cause to be made any necessary special studies on the location, condition, and adequacy of specific facilities in the town or portion thereof. These may include, but are not limited to, studies on housing, commercial facilities, utilities, traffic, transportation, parking, and emergency evacuation.
- (4) Review proposed land development codes and amendments thereto, and make recommendations to the town council as to their consistency with the comprehensive plan.
- (5) Recommend to the town council annually whether the proposed capital improvements program is consistent with the comprehensive plan.
- (6) Make administrative interpretations of the comprehensive plan when such interpretation are referred to the local planning agency by its attorney, in accordance with the plan's "procedures and monitoring" section.
- (7) Request legislative interpretations of the comprehensive plan in accordance with the plan's "procedures and monitoring" section, when deemed appropriate by the local planning agency.
- (8) Make recommendations to the town council on legislative interpretations that have been requested, in accordance with the plan's "procedures and monitoring" section.
- (9) Recommend action to the town council on any amendments that are proposed to the comprehensive plan.
- (10) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the town council such changes in the comprehensive plan as may from time to time be required, including preparation of the periodic evaluation and appraisal reports required by F.S. § 163.3191.
- (11) Conduct such public hearings as may be needed for updating the comprehensive plan and such additional public hearings as are specified by law.

- (12) Aid town officials charged with the direction of projects or improvements embraced within the comprehensive plan and generally promote the realization of the comprehensive plan.
- (13) Cooperate with municipal, county and regional planning commissions and other agencies or groups to further the local planning program and to assure harmonious and integrated planning for the area.
- (14) Perform any other duties which lawfully may be assigned to it by the town council.

Sec. 34-121. Functions, powers, and duties as to zoning matters.

The functions, powers, and duties of the local planning agency as to zoning matters shall be to:
[following material moved from 34-145(d)]

(d) Zoning matters.

- (1) ~~Functions.~~ Regarding zoning matters, the hearing examiner has the following prescribed duties and responsibilities:
 - (1) a. ~~Prepare recommendations for changes or amendments relating to the boundaries of the various zoning districts, or to the regulations applicable thereto, to the town council Board of County Commissioners.~~
 - (2) b. ~~Make recommendations on the following to the town council Board of County Commissioners:~~
 - a. ~~1. Applications for rezonings, including developments of county impact, planned unit developments and planned developments.~~
 - b. ~~2. Applications for developments of regional impact and Florida Quality Developments approval, which may or may not include a request for rezoning.~~
 - c. ~~3. Special exceptions that meet the criteria for a development of county impact, as set forth in § 34-203(b).~~
 - d. ~~4. Other special exceptions and variances which are submitted simultaneously with and are heard in conjunction with a rezoning.~~
 - e. ~~5. Variances from this code and any town county ordinance which specifies that variances from such ordinance can only be granted by the~~

- town council Board of County Commissioners.
- f. Appeals from administrative action.
- g. Any other applications that require action by the local planning agency pursuant to this code.
- 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~~
 2. ~~Any amendment contemplated under F.S. § 380.06(19)(c)2.~~
- (2) *Considerations.* ~~In preparing his recommendation on any matter, the hearing examiner shall consider the criteria set forth in subsection (c)(2) of this section.~~
- (3) *Authority.*
- a. ~~The local planning agency hearing examiner shall serve in an advisory capacity to the town council Board of County Commissioners with respect to zoning matters as set forth in subsections (1) and (2) (d)(1) of this section, and in such capacity may not make final determinations.~~
 - b. ~~The local planning agency hearing examiner shall not recommend the approval of a rezoning, and the town council Board of County Commissioners shall not approve a rezoning, other than the change published in the newspaper pursuant to § 34-236(b), unless such change is more restrictive and permitted within the land use classification as set forth in the Fort Myers Beach Comprehensive Lee Plan.~~
 - c. ~~In reaching its his recommendations, the local planning agency hearing examiner shall have the authority to recommend conditions and requirements to be~~

attached to any request for a planned development, special exception, or variance included under subsection (d)(1)b.3, 4 or 5 of this section.

- (4) ~~Decisions.~~ ~~All decisions of the hearing examiner concerning zoning matters under this subsection (d) will be in the form of a recommendation to the Board of County Commissioners. Only a party of record or his representative will be afforded the right to address the Board of County Commissioners.~~

Sec. 34-122. Functions, powers, and duties as to historic preservation matters.

The functions, powers, and duties of the local planning agency as to historic preservation matters shall be to perform all functions assigned to the historic preservation board as set forth in ch. 22, article II, division 2.

Sec. 34-123. Functions, powers, and duties as to design review.

TO BE WRITTEN [SEE §§ 10-602(2) & 34-223(c)]

Sec. 34-124. Cooperation with the local planning agency.

Each officer and employee of the town is hereby directed to give all reasonable aid, cooperation, and information to the local planning agency or to the authorized assistants of such agency when so requested.

Secs. 34-12516--34-200140. Reserved.

DIVISION 4. HEARING EXAMINER

~~**Sec. 34-141. Office established:** [deleted in its entirety]~~

~~**Sec. 34-142. Appointment, qualifications:** [deleted in its entirety]~~

~~**Sec. 34-143. Funding:** [deleted in its entirety]~~

~~**Sec. 34-144. Conduct of meetings, reports and records:** [deleted in its entirety]~~

~~**Sec. 34-145. Functions and authority:**~~

~~(a) Appeals from administrative action: [moved to § 34-86]~~

~~(b) Variances: [moved to § 34-87]~~

~~(c) Special exceptions: [moved to § 34-88]~~

~~(d) Zoning matters: [moved to §§ 34-85 and 34-121]~~

~~(e) Special permits. [deleted in its entirety]~~
~~(f) Notice of intent to deny based on insufficient information. [deleted in its entirety]~~

~~Sec. 34-146. Final decision; judicial review. [deleted in its entirety]~~

~~Secs. 34-1417--34-170. Reserved.~~

**DIVISION 5:
DEPARTMENT OF COMMUNITY
DEVELOPMENT**

~~Sec. 34-171. Appointment of director. [deleted in its entirety]~~

~~Sec. 34-172. Powers and duties. [deleted in its entirety; relevant portions have been moved to §§ 1-6 and 34-6]~~

~~Secs. 34-173--34-200. Reserved.~~

**DIVISION 4 6. APPLICATIONS AND
PROCEDURES FOR ZONING CHANGES,
PERMITS, INTERPRETATIONS, AND
OTHER APPROVALS**

Subdivision I. General Procedures

Sec. 34-201. General procedure for applications requiring public hearing.

(a) **Initiation of application.** An application for a rezoning, development of regional impact, special exception, appeal from administrative action, special permit or variance may be initiated by:

- (1) A landowner, or his authorized representative agent, for his own property; provided, however, that:
 - a. Except as provided in subsections (a)(1)b. and c. of this section, where there is more than one owner, either legal or equitable, then all such owners must jointly initiate the application or petition.
 1. This ~~does not mean shall not be construed to require~~ that both a husband and wife must initiate the application on private real property which is owned by them.
 2. Where the property is subject to a land trust agreement, the trustee may initiate the application.

3. Where the fee owner is a corporation, any duly authorized corporate official may initiate the application.
 4. Where the fee owner is a partnership, the general partner may initiate the application.
 5. Where the fee owner is an association, the association or its governing body may appoint an agent to initiate the application on behalf of the association.
- b. Where the property is a condominium or a timeshare condominium, as defined and regulated in F.S. chs. 718 and 721, respectively, an application or petition may be initiated by both the condominium association and no less than 75 percent of the total number of condominium unit owners, or by both the owners' association and no less than 75 percent of timeshare condominium unit owners.
1. For purposes of this subsection, each individually owned condominium unit within the condominium complex and each individually owned timeshare unit as defined by F.S. ch. 721 counts as one unit, regardless of the number of individuals who jointly own the unit.
 2. In order to verify ownership, the applicants shall furnish the town county, as part of their application, a complete list of all unit owners, identified by unit number and timeshare period, as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants, who shall verify the list and fact of notice by sworn affidavit.
 3. So as to protect the legal rights of nonparticipating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents or timeshare documents, as applicable, and concluded that the act of

applying or petitioning to the town county violates none of the provisions therein, or any federal or state law regulating condominiums or timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town county would violate no such rights.

- c. Where the property is a subdivision, an application or petition may be initiated by no less than 75 percent of the total number of lot or parcel owners and the homeowners' association, if applicable.
 1. For purposes of this subsection, a subdivision is an area of property defined by a specific boundary in which lot divisions have been established on a plat that has been recorded in either a plat book or official records book whereby legal descriptions are referred to by lot or parcel number. This term may include any unit or phase of the subdivision and not the entire subdivision.
 2. In order to verify ownership, the applicants shall furnish the town county, as part of their application, a complete list of all lot owners, identified by lot number, along with proof that all lot owners who did not join in the application were given actual written notice thereof by the applicants, who shall verify the list and fact of notice by sworn affidavit.
- (2) The town county, which for purposes of this section shall mean: the town council or town manager.
 - a. ~~The Board of County Commissioners.~~
 - b. ~~The hearing examiner, subject to approval by the Board of County Commissioners.~~

(b) ***Application submittal and official receipt procedure.*** The application procedure and requirements in this section shall apply to all applications for rezoning, special exceptions, appeals from administrative action, special permits and variances.

- (1) All properties within a single application must be abutting contiguous. The director

may, at his discretion, allow a single application to cover non-abutting noncontiguous properties where it is in the public interest due to the size or scope and nature of the request, and there is a rational continuity to the properties in question.

- (2) No application shall be accepted unless it is presented on the official forms provided by the director department, or on computer-generated forms containing the same information, ~~accompanied by a hold harmless agreement for the utilization of computer-generated forms.~~
 - a. Forms shall include but not be limited to disclosure forms for corporations, trusts, and partnerships, and disclosure of information regarding contract purchases and their percentages of interest.
 - b. Disclosure shall not be required of any entity whose interests are solely equity interests which are regularly traded on an established securities market in the United States or another country.
 - c. Disclosure forms shall be provided by the director, ~~established by an administrative code to be approved by the Board of County Commissioners.~~ Such completed disclosure forms shall be included in the materials distributed to the local planning agency zoning hearing examiner and the town council Board of County Commissioners for all zoning cases in which the Board of County Commissioners has the final decision or for which jurisdiction has been taken.
 - d. Subsections (b)(2)a. through c. of this section shall not apply to town- county-initiated rezonings.
- (3) Before an application may be accepted, it must fully comply with all information requirements enumerated in § 34-202 and 34-203, as applicable, unless specifically stated otherwise in this chapter.
- (4) The applicant shall ensure that an application is accurate and complete. Any additional expenses necessitated because of any inaccurate or incomplete information submitted shall be borne by the applicant.
- (5) ~~The department shall review all applications for completeness. All applications shall be deemed complete unless a letter advising the applicant of any deficiencies has been mailed within ten working days of the date of the~~

original filing. All amended applications shall similarly be deemed complete unless a subsequent letter advising the applicant of any deficiencies has been mailed within ten working days of the date of the resubmittal.

- (5) ~~(6)~~ Upon receipt of the completed application form, all required documents, and the filing fee, the director will begin reviewing the application for completeness, department will place the request on the appropriate agenda and inform the applicant of the hearing dates, or, in the case of planned development applications, begin reviewing the application for sufficiency pursuant to § 34-212(b) 373(a)(3).

Sec. 34-202. General submittal requirements for applications requiring public hearing.

(a) *County-initiated All applications.* Every county-initiated request for actions requiring a public hearing under this chapter shall include the following. However, upon written request using a form prepared by the director, the director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request for a waiver or modification must be submitted to the director prior to submitting the application. A copy of the request and the and the director's written response must accompany the application submitted and will become a part of the permanent file. [second and third sentences relocated from § 34-202(c)]

- (1) **Legal description.** The request shall include A legal description of the property upon which the action is to be initiated, sufficiently detailed so as to locate the property on county maps or aerial photographs. The legal description application shall include a copy of the plat or plats, if any, and the county correct STRAP number(s). If the application includes multiple abutting parcels or consists of other than one or more undivided platted lots, the legal description must specifically describe the perimeter boundary of the total property, by metes and bounds with accurate bearings and distances for every line, but need not describe each individual parcel. However, the application must provide the STRAP number for every parcel. The director has the right to reject any legal description

which is not sufficiently detailed to locate the property on official maps.

- (2) **Boundary survey or certified sketch of description.** A certified sketch of description, unless the subject property consists of one or more undivided platted lots in a subdivision recorded in the official Lee County Plat Books. The director may require a boundary survey where there is a question regarding the accuracy of the legal description of the property or a question regarding the location of structure(s) or easement(s) that may be relevant to the review of the application. All certified sketches and boundary surveys must meet the minimum technical standards for land surveying in the state, as set out in ch. 61G 17-6, F.A.C. The perimeter boundary must be clearly marked with a heavy line and must include the entire area that is the subject of the application.
- (3) **Confirmation of ownership.** If at any time during the review process the director concludes there is a question regarding ownership of the property, the director may require submittal of a title insurance policy, attorney's opinion of title, or ownership and encumbrance report.
- (4) ~~(2)~~ **Area location map.** The request shall include A map, at a suitable scale, drawn on an 8½-inch by 11-inch sheet of paper, that depicts indicating the property described in the legal description in relation to the surrounding neighborhood. The map shall be sufficiently referenced to known major streets, waterways, and or other physical boundaries so as to be clearly identifiable to the general public.
- (5) ~~(3)~~ **Property owners list.** The request shall include A complete list of all property owners; of the property subject to this request and their mailing addresses; for all property within the area described. If multiple parcels are involved, a map showing the owners' interest must be provided. The applicant is responsible for the accuracy of the list and map. For town-initiated actions only, For the purpose of this subsection, names and addresses shall be deemed to be those appearing on the latest tax rolls of the county.
- (6) **Surrounding property owners list.** The application shall include A complete list, and two sets of mailing labels, of all property owners, and their mailing addresses, for all

property within ~~500~~ 375 feet of the perimeter of the subject parcel or the portion thereof that is the subject of the request. This list shall also include the owners of all individual condominium units within the ~~500-foot~~ 375-foot perimeter, plus the managing entity of any timeshare properties. For the purpose of this subsection, names and addresses of property owners, condominium owners, and timeshare managers will be deemed to be those appearing on the latest tax rolls of the county at the time of application. The applicant shall be responsible for the accuracy of such list. In the event that more than six months lapses between the time of application and the date of mailing courtesy notices for the scheduled public hearing, the director may require the applicant to submit a new list and mailing labels. This list is for the purpose of mailing notice to property owners within 500-375 feet of the property described. The notice is a courtesy only and is not jurisdictional. Accordingly, failure to mail or to timely mail such notice or failure of any affected property owner to receive mailed notice will not constitute a defect in notice or bar the public hearing as scheduled.

[relocated from § 34-202(b)(3)]

- (7) **Surrounding property owners map.** The application shall include a county zoning map or other similar map displaying all of the parcels of property within 500 375 feet of the perimeter of the subject parcel or the portion thereof that is subject of the request, referenced by number or other symbol to the names on the surrounding property owners list. The applicant shall be responsible for the accuracy of the map. *[relocated from § 34-202(b)(4)]*
- ~~(4)~~ **Land use classification.** The request shall include the Lee Plan land use classification for the property in question.
- (8) **Additional material.** Additional material, depending on the specific type of action requested, may be required as set forth in §§ 34-202(b) and 34-203.
- ~~(9)~~ **Filing fee.** All fees, in accordance with the fee schedule (see § 34-53), ~~for county-initiated applications shall be paid at the time the application is submitted to the department in accordance with the duly adopted fee schedule (see section 34-53).~~

(b) **Additional submittal requirements for owner-initiated applications.** In addition to the submittal requirements set forth in (a), every application initiated by a property owner involving a changes in the zoning district boundaries, or a request for special exception, appeal from administrative action, or variance or special permit, initiated by a landowner, or his authorized agent, for his own property, shall include the following:

(1) **Evidence of authority.**

- a. **Ownership interests.** ~~The application shall include~~ The names of all persons or entities parties having an ownership interest in the subject property, to including the names of all stockholders and trust the names of beneficiaries of trusts (see § 34-201(b)(2)a. through c.).
- b. **Unified control document.** A unified control document, as defined in this chapter.
- c. **Agent authorization.** If the owner authorizes an agent to represent the owner in all matters pertaining to the application applicant has an agent, the owner must provide the agent with agent shall provide a notarized statement evidencing the agent's authority to act on the owner's behalf and encumber the property with conditions applicable to the approval requested in the application. An agent may authorize additional agents to assist in the preparation and presentation of the application. However, an agent cannot transfer authority to bind the property with respect to conditions. This later authority will on be recognized by the town when it is provided directly to the agent by the owner. document establishing his authority to represent the applicant as part of the application.
- d. **Contract purchaser/vendee authorization.** If a the property is subject to a contract for purchaser or and the vendee is the applicant, a notarized statement from the property owner must be submitted authorizing the contract purchaser/vendee to act as an agent of the property owner for purposes of application submittal and agreement to conditions applicable to approval of the request. authorization form from the landowner to the applicant shall also be required as part of the application.

- ~~(2) *Legal description.* [subject matter relocated to § 34-202(a)(1) and (2) and (b)(4)]~~
- ~~(3) *Property owners list.* [relocated to § 34-202(a)(5)]~~
- ~~(4) *Property owners map.* [relocated to § 34-202(a)(6)]~~
- (2) ~~(5) ***Property Deed restrictions.*** The application shall include a copy of the deed restrictions or other types of covenants and restrictions on the subject parcel, if any, along with a statement as to how the deed restrictions may affect the requested action. If there are no restrictions on the property, the applicant must indicate so on the application form.~~
- ~~(6) *Land use classification.* The application shall include the Lee Plan land use classification for the subject property.~~
- ~~(7) *Affidavit regarding proposed use.* [deleted]~~
- (3) ***Boundary sketch.*** The boundary sketch shall include the location of existing structures on the property.
- (4) ***Confirmation of ownership.*** If at any time during the review process the director concludes there is a question regarding ownership of the property, the director may require submittal of a title insurance policy, attorney's opinion of title, or ownership and encumbrance report.
- (5) ~~(8) ***Sketch of proposed building.*** *Additional material.* Additional material, depending on the specific type of action requested, shall be required as set forth in § 34-203(a) through (g). In addition, All applications for PD planned development zoning, variances, appeals from administrative action, and special exceptions, and special permits must be accompanied by a sketch or sketches that indicate the physical character of the proposed building(s), and in the case of variances, the difference between the proposal and the configuration that would be allowed without the variance.~~

~~(e) *Modifications to submittal requirements.* [moved to § 34-202(a)]~~

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

(a) ***Developments of regional impact.*** All Developments of regional impact shall comply with

the information submittal and procedural requirements of F.S. ch. 380, as administered through the Southwest Florida Regional Planning Council. If the development of regional impact requires specific zoning actions (i.e., rezoning), ~~the intent of the procedures and requirements of § 34-202; and this section and article IV of this chapter shall be met.~~ Additionally, even if the development of regional impact does not require any specific zoning action, the applicant must submit a traffic impact statement, as described in § 34-212(4) §§ 34-373(a)(2)c and detailed in § 10-286, shall be submitted. Thresholds for developments of regional impact can be found in F.A.C. ch. ~~28-24 27F-2.~~

~~(b) ***Planned developments.*** Planned development rezonings must comply with the additional submittal requirements in § 34-212. Additional procedural requirements are set forth in §§ 34-211-220.~~

~~(b) *Determination of development of county impact status.* [deleted in its entirety]~~

~~(c) ***Rezonings other than developments of regional impact or developments of county impact.***~~

~~(1) All Requests for rezonings, other than those determined to be a development of regional impact or a development of county impact, shall, in addition to the requirements of § 34-202, include a statement of the basis or reason for the rezoning. Such statement is to be directed, at a minimum, to the guidelines for decision-making embodied in § 34-85(2) 34-145(d)(2). This statement may be utilized by the town council Board of County Commissioners, hearing examiner and staff in establishing a factual basis for the granting or denial of the rezoning.~~

~~(2) Applications for rezonings are required to comply with § 34-202(b).~~

~~(d) ***Special exceptions.*** Except as preempted under subsection (b)(3) of this section, every owner-initiated Applications for a special exception shall, in addition to the requirements of § 34-202(b), include the following:~~

~~(1) A statement as to how the property qualifies for the special exception requested, and what impact granting the request would have on surrounding properties. Such statement shall be directed, at a minimum, to the guidelines for decision-making embodied in § 34-88 34-~~

- ~~145(d)(2)~~ This statement may be utilized by the town council hearing examiner and staff in establishing a factual basis for granting or denial of the special exception.
- (2) A site development plan detailing the proposed use, including, where applicable, the following:
- The location and current use of all existing structures on the site, as well as those on adjacent properties within 100 feet of the perimeter boundaries of the site.
 - All proposed structures and uses to be developed on the site.
 - Any existing public streets, easements, or land reservations within the site, and the proposed means of vehicular access to and from the site.
 - A traffic impact analysis of projected trip generation for the development.
 - Proposed fencing and screening, if any.
 - Any other reasonable information which may be required by the director which is commensurate with the intent and purpose of this chapter.

- (4) On-premises consumption of alcoholic beverages. If the request is for a consumption-on-premises permit:
- The site plan must include a detailed parking plan.
 - A written statement describing the type of state liquor license to be acquired, e.g., 2 COP, SRX, 11C, etc., and the anticipated hours of operation for the business, must be submitted.
[relocated from § 34-203(g)(3)]
- (e) Variances. Every owner-initiated Applications for a variance from the terms of this chapter shall, in addition to the requirements of § 34-202(b), include the following:

- A document describing:
 - The section number and the particular regulation of this code chapter from which relief (variance) is requested;
 - The reason why the variance is needed;
 - What effect, if any, granting of the variance would have on adjacent properties; and
 - The nature of the hardship which is used to justify the request for relief; and
 - A statement as to how the property qualifies for the variance, directed, at a

minimum, to the guidelines for decision-making embodied in § 34-87.

- A site plan describing:
 - Existing public streets, easements, or other reservations of land within the site;
 - All existing and proposed structures on the site;
 - All existing structures within 100 feet of the perimeter boundary of the site; and
 - The proposed variance deviation from the adopted standards.
- ~~All other information required by the official forms provided by the department, and Any other reasonable information which may be required by the director department which is commensurate with the intent and purpose of this code chapter.~~

[NEW SECTION REQUIRING SITE PLANS?]

(f) Use variance. It is hereby noted that Use variances are not legally permissible, and no application for a use variance will be processed. The director Department staff will notify the applicant when a more appropriate procedure, e.g., rezoning; or special exception or special permit, is required.

~~(g) Special permits: [deleted in its entirety; certain portions have been relocated to 34-203(d)(4)]~~

~~**Sec. 34-204. Applications for development approval.** [deleted in its entirety]~~

~~**Sec. 34-205. Applications for building permits:** [deleted in its entirety]~~

~~**Sec. 34-206. Grading permits:** [deleted in its entirety]~~

~~**Secs. 34-204–34-210. Reserved.**~~

Subdivision II. Additional Procedures for Planned Development Zoning Districts

**ARTICLE IV.
PLANNED DEVELOPMENTS**

[moved from §§ 34-341–34-410]

DIVISION 1. GENERALLY
[deleted in its entirety]

**DIVISION 2. APPLICATION AND
PROCEDURE FOR APPROVAL**

Sec. 34-371. Generally. *[deleted in its entirety]*

Sec. 34-211. Generally.

(a) Planned development zoning districts are described generally in §§ 34-612(3) and 34-931-940.

(b) The application and procedure requirements described in this division are a supplement to the general requirements for rezoning applications found in article II of this chapter.

Sec. 34-372. Preapplication conference.

(c) The applicant may initiate the planned development process by requesting an optional preapplication conference with the department staff. In this request, the applicant shall provide a description of the property in question, the location of the property, the existing use, special features, and the use proposed. Through this meeting, the applicant may avail himself of staff in order to be oriented to the planned development process, to determine what application materials are required (if a minor planned development), and to be advised of the impacts of the Fort Myers Beach Comprehensive Use Plan, surrounding development and zoning, and other public policy on the development proposal.

Sec. 34-212 373. Application for a planned development.

(a) Required information. Except as specifically provided in subsection (b) of this section, An applicant for a planned development proposal shall provide the following information, supplemented, where necessary, with written material and conforming to the best engineering graphic and cartographic standards, in addition to the information regularly required in an application for a rezoning, etc. (see §§ 34-201, 34-202, 34-203, and 34-53). Wherever this section calls for the exact or specific location of anything on a map or plan, the location of that thing shall be indicated by dimensions from an acceptable reference point, survey marker or monument. ~~(1) Description of existing conditions. [deleted in its entirety]~~ ~~(2) Description of proposed development.~~ The

application shall be accompanied by a description of the proposed development, consisting of, as a minimum, the following:

(1) **Master concept plan.** ~~a.~~ A clearly legible master concept plan, to be no less than 24 inches by 36 inches in size and at an appropriate scale to adequately show development detail, ~~meeting the standards set forth in either subsection (a)(2)a.1 or subsection (a)(2)a.2 of this section, and including the following information: required in subsections (a)(2)a.3, 4 and 5 of this section.~~

- ~~f.~~ The subject parcel may be divided into development areas. For each development area, the following shall be shown, either within the areas or on schedules keyed to the areas:
 - a. i: The general size, configuration, and location of each development area; phase, and a description of the phasing of construction, unless the development is to be so constructed in a single phase;
 - b. ii: The maximum height of any proposed buildings or structures, using this code's means of measuring height (see § 34-631);
 - c. iii: The kinds of uses and the number of units proposed for each use, in terms of dwelling units by type, hotel or motel units, gross square feet of types of commercial or industrial uses, floor area ratios (see § 34-634), or other appropriate measures of intensity;
 - d. iv: The minimum width and composition of all proposed buffers along the perimeter of the subject property, as well as between the individual development areas. References to types of buffers as described in ch. 10 are acceptable;
 - e. v: The location of any environmentally sensitive land and water, based upon standard environmental data and verified by a field inspection by town the county staff. An engineering survey is not required until the plan has been incorporated into an application for a development order;
 - f. vi: The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development, and the general location of all points of vehicular ingress and

- egress from proposed internal rights-of-way or easements into each development area;
- g. ~~vii. Access and facilities for public transit, where applicable;~~
 - ~~viii. The percentage of open space, unless the proposed development is in a development area consisting solely of conventional single-family dwelling units on lots of no less than 6,500 square feet. For commercial and industrial developments, the percentage of open space within each lot or outparcel shall be as set forth in § 34-414(c);~~
 - h. ~~ix. The general location of stormwater management areas; excavations for on-site fill and wet retention;~~
 - i. ~~x. The specific location of any requested deviations, keyed to the schedule of deviations; and~~
 - j. ~~The exact location of existing rights-of-way and easements, whether or not those easements are recorded; and~~
 - k. ~~Proposed dedications, if any, including public beach access, boat ramps, park or recreation areas, open space, or other easements.~~
 - ~~xi. Where the subdivision or resubdivision of land is a feature of the proposed development, indication on the plan of the minimum size and dimensions of all of the lots, as well as all of the minimum proposed setbacks for principal structures. If conventional zoning district property development regulations, such as lot coverage regulations, will be used, reference to the specific district shall be sufficient.~~
2. If the plan does not divide the subject parcel into development areas, it shall indicate the general location of all proposed land uses, the general location and configuration and approximate dimensions of all proposed lots, parcels or outparcels, and the general location and pattern of vehicular and pedestrian circulation and movement within the site, in addition to the items listed in subsections (a)(2)a.1.ii through x of this section, for the entire site.
- (2) 3. **Schedule of uses.** The master concept plan shall also include a schedule of uses, containing the following information:
- a. ~~i. A summary of the kinds of uses proposed for the entire site. For projects containing residential uses, this shall include the types of proposed dwelling units; and~~
 - b. ~~ii. The units (gross square feet for commercial/industrial uses, number of dwelling units for residential, guest units for or motel/hotel uses, beds for institutional types of uses, etc.) of each kind of use, for the entire site;~~
 - ~~iii. For developments containing uses for which the parking requirements are to be determined by the director, the number of parking spaces proposed for those uses;~~
 - ~~iv. The proposed percentage of open space for the entire site.~~
4. ~~The master concept plan shall also include the exact location of existing easements and rights-of-way.~~
- (3) **Schedule of deviations.** 5. The master concept plan shall also include a schedule of deviations, including sample detail drawings, unless such drawings would merely duplicate the information shown pursuant to subsection (a)(1)(i) (a)(2)a.1.x of this section.
- b. ~~A completed questionnaire, on a form furnished by the department, detailing the conceptual surface water management program and the public infrastructure and service and facility demands anticipated from the proposed development, including impacts expected to fall on private for-profit utilities and special use districts.~~
- (4) **Traffic impact statement.** c. A traffic impact statement in a format and to the degree of detail required by a form furnished by the town, unless waived by the director, county and in conformance with the adopted county administrative code.
- IMPLEMENT POLICY 7-J-2 HERE**
- (5) **Protected species management plan.** d. A management plan as required by ch. 10, article III, division 8, pertaining to protected species requirements.
- e. ~~The text of the private covenants or restrictions, if any, proposed to ensure the enforcement of the limitations on permitted uses, the enforcement of the limitations on building, the integrity of open space and common facilities and the perpetual maintenance of the open space and common facilities, keeping always aware that the~~

county shall not be party to those covenants except as they are incorporated into the planned development documents as special conditions:

- ~~f. A description of all proposed dedications, if any, including public beach access, boat ramps, park and recreation areas, open space or other types of easements:~~
- ~~g. A description of the program of phased construction, if the development is to be so constructed:~~
- ~~h. For developments of regional impact, the following: [deleted in its entirety]~~

Sec. 34-213. (3) Sufficiency and completeness.

- ~~a. No hearing will be scheduled for any application for a planned development until the application has been found sufficient.~~
- (1) All applications for planned developments will be deemed sufficient unless a letter advising the applicant of insufficiencies has been mailed within 15 working days of the payment of the application fee. All amended applications will be deemed sufficient unless a subsequent letter advising the applicant of any insufficiencies has been mailed within 15 working days of the resubmittal. The contents of insufficiency letters will be limited to brief explanations of the manner in which insufficient applications do not comply with the formal requirements in this section.
- (2) Subsequent to notification that the application has been found to be insufficient, the applicant has 60 days to submit supplemental or corrected documents, unless a longer time is agreed to in writing by the director and the applicant prior to the expiration of the 60 days. If the supplement or corrections are not submitted within the 60 days (or other time period agreed to) the application will be deemed withdrawn.
- (3) Once an application has been found sufficient, any new information submitted by the applicant, or any changes made to information submitted by the applicant, may, at the discretion of the director, be grounds for a deferral or continuance of the public hearing, depending on the advertised status of the hearing.
- ~~(4) b. In those instances where a proposed planned development is identified by the director local staff as a possible development~~

of regional impact, the applicant shall be notified that the application will be deemed sufficient only when accompanied by either a binding letter of interpretation from the state department of community affairs or a complete and sufficient ADA. Failure by the county to notify the applicant in a timely manner (within 30 days of the application) shall nullify any finding of insufficiency based on this requirement.

Sec. 34-214. Application for an amendment.

- ~~(b) Exceptions. (1) Amendments to application: Applications for amendments to an approved master concept plan or its attendant documentation, or for the reaffirmation of a previously vacated master concept plan (for plans approved prior to December 2, 1991), shall be treated procedurally as minor planned developments, but will require only as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in development, environment, and background (surrounding land use, traffic volumes, water, wastewater, and other service availability, etc.), if any, that have occurred since the original application was made.~~
- ~~(2) Minor planned developments: [deleted in its entirety]~~
- ~~(3) Existing developments seeking planned development classification: [deleted in its entirety]~~
- ~~(4) Amendments to built planned developments (PD): [deleted in its entirety]~~

Sec. 34-215 374. Covenant of Unified control document.

(a) Any applicant for a rezoning or master concept plan confirmation under the planned development regulations as provided in this article shall submit documentation corroborating unified control over the subject property. In addition, the applicant shall submit, on a standard form, a covenant with the town county setting forth and agreeing to the obligation to control the development and subsequent use of the property in accordance with this article and any special condition attached to the master concept plan in accordance with this article. This shall include the obligation to impose these restrictions and limitations on any subsequent owner of all or any

part of the subject property, including lots; ~~development parcels~~ and outparcels.

(b) The obligation to enforce the conditions attached to the master concept plan shall remain with the original applicant until such time as all of the subject property is developed and certificated for use and occupancy or until a subsequent owner takes up that obligation for all or part of the subject property. Completion or vacation of a phase of the development, or conveyance of a ~~development parcel~~ lot or outparcel, shall relieve the original applicant only insofar as that phase, ~~lot,~~ ~~development parcel~~ or outparcel is concerned, and then only when notice per subsection (c) of this section is properly filed and recorded. The obligation to enforce the conditions attached to a reaffirmed master concept plan shall lie with whomever files the covenant of unified control for that reaffirmation.

(c) In such instance as the initial applicant conveys all or part of the subject property to a subsequent purchaser, the conveyance shall be subject to the original covenant of unified control and the subsequent owner shall file a document with the ~~department~~ director accepting the obligation to enforce all conditions and restrictions attached to the master concept plan as if the original applicant. This document shall be filed within 60 days of closing, and shall be recorded with other notices related to the subject planned development. This requirement shall not apply to individual homesites or units (apartments) of a residential development or to any development wherein the obligation to enforce the regulations and conditions or covenants and restrictions is delegated to property owners or a condominium association or cooperative.

(d) In such instance as the ~~town~~ county discovers any noncompliance with the regulations or the master concept plan and its attachments, during the period of time in which the ~~town~~ county seeks such equitable relief as necessary to compel the enforcement of the covenant of unified control, the ~~town~~ county may withhold any and all permits, certificates or licenses to construct, occupy, or use any part of the planned development. This shall not be construed to injure the rights of tenants of previously completed and properly occupied phases.

~~Sec. 34-375. Prehearing conference.~~ *[deleted in its entirety]*

~~Sec. 34-376. Prehearing stipulation.~~ *[deleted in its entirety]*

Sec. 34-216 377. Public hearings.

(a) ~~Hearing before the local planning agency hearing examiner.~~ After an application is complete, ~~the staff prehearing conference required by this division,~~ the application will be scheduled for a public hearing before the local planning agency hearing examiner.

- (1) At the public hearing the local planning agency hearing examiner will consider the application in accordance with article II of this chapter.
- (2) The recommendation made to the town council Board of County Commissioners must be supported by formal findings that address the guidelines set forth in § 34-85 145(c)(2) 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. Sufficient safeguards to the public interest are provided by the recommended conditions to the concept plan or by other applicable regulations; and
 - c. All recommended conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
- (3) If the local planning agency hearing examiner determines that a proposed recommended condition is insufficient, ~~he~~ it may recommend an alternate condition for consideration by the town council Board of County Commissioners.
- (4) If the application includes a schedule of deviations pursuant to §§ 34-212(3) and 34-932(c) § ~~34-412~~, the local planning agency's hearing examiner's recommendation must approve, approve with modification, or reject each requested deviation based upon a finding that:
 - a. Each item enhances the achievement of the objectives of the planned development; and
 - b. The general intent of this chapter to protect the public health, safety, and welfare will be preserved and promoted; and

- c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
- d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

If the local planning agency hearing examiner concludes that the application omits necessary deviations, ~~he~~ it may include the necessary deviations in his its 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 § 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 thereby.~~

(b) Hearing before the town council. Board of County Commissioners:

- (1) ~~Subsequent to~~ After the local planning agency's hearing examiner's hearing, an application for a planned development, together with all attendant information, staff reports, and the local planning agency's hearing examiner minutes and resolution of recommendation, shall be forwarded to the town council Board of County Commissioners, which shall consider the application in public hearing per article II of this chapter. After reviewing all information, including staff reports review and local planning agency hearing examiner recommendations, the town council Board of County Commissioners may either:
 - a. Continue further consideration until additional information is provided by applicant or the director staff or until the applicant makes changes in the application, subject to re-review by the director staff and the local planning agency hearing examiner as required; or
 - b. Formally approve, approve with modification, or deny the application.

Should the town council Board of County Commissioners deny without prejudice, it may remand the proposal to the director staff with directions to bring the application back

to the local planning agency hearing examiner once the application is amended. If new or additional information, not previously provided to either the director staff or the local planning agency hearing examiner, is supplied by the applicant subsequent to after the local planning agency hearing examiner hearing, the town council Board of County Commissioners may remand the application to the local planning agency hearing examiner for rehearing.

- (2) Any decision made by the town council Board of County Commissioners shall be supported by a formal finding, that, in addition to the appropriate guidelines set forth in article II of this chapter, the criteria set forth in subsection (a)(2) of this section are or are not met.
- (3) In addition to adopting a master concept plan for the planned development, the town council Board of County Commissioners may adopt such special conditions as are necessary to address unique aspects of the subject property in the interest of protecting the public health, safety, and welfare. Should any recommended special condition be found to be insufficient, the town council Board of County Commissioners may substitute its own language for such special condition in the final resolution.
- (4) Should a schedule of deviations from other provisions of this chapter (see §§ 34-212(3) and 34-932(c) ~~§ 34-412~~) be a part of the planned development application, the town council Board of County Commissioners may approve, approve with modification, or reject the entire schedule or specific items based upon their finding that for each item:
 - a. Each item enhances the achievement of the objectives of the planned development; and
 - b. The general intent of this chapter to protect the public health, safety, and welfare will be preserved and promoted;
 - c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
 - d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.
- (5) ~~The Board of County Commissioners may require, as a condition of approval of the deviation, that the applicant receive administrative approval of a more specific~~

development plan for each affected development area or parcel. Applications for administrative approval will be processed as administrative amendments in accordance with § 34-380 of this chapter and may be granted by the director only upon a finding that public health, safety, and welfare will not be adversely affected thereby.

- (5) If the town council denies or modifies any requested use(s), deviations(s), or other information shown on the master concept plan, a revised master concept plan must be submitted to the director reflecting the substance of the approved resolution prior to execution of the resolution. Legible copies of the revised master concept plan must be provided in two sizes, 24 inches by 36 inches and 11 inches by 17 inches in size.
- (6) No development orders may be issued until the approved resolution has been signed by proper town officials.

Sec. 34-217 378. Effect of planned development zoning.

(a) ***Compliance with applicable regulations.*** ~~After~~ Subsequent to the adoption of the master concept plan and the conditions and auxiliary documentation that govern it, any and all development and subsequent use of land, water, and structures within any planned development shall be in compliance with the following, in order of precedence:

- (1) The Fort Myers Beach Comprehensive Fee Plan.
- (2) This subdivision of the land development code. Divisions 1, 2, and 3 of this article.
- (3) The master concept plan and attendant conditions and auxiliary documentation.
- (4) Any applicable town county development regulations in force at the time of final plan submission of the application for a development order.
- (5) The general provisions of this chapter, unless otherwise excepted by an approved schedule of deviations.

(b) ***Applicability of development regulations.*** ~~All~~ approvals of general aspects of The master concept plan (see § 34-212(1) 373(a)(2)) ~~is~~ are conceptual only, and ~~are~~ development pursuant to the master concept plan is subject to all development regulations established to protect health, safety, and

welfare in force at the time of ~~final plan review~~ submission of the application for a development order, except where deviations have been formally granted in accordance with § 34-216(b). ~~Any reliance in detail on the approval of a general aspect of the master concept plan is not justified and is not in good faith.~~

(c) ***Recording of notice.*** Upon approval of a master concept plan and the conditions and auxiliary documentation that govern it, a notice of such approval and its encumbrance of the real estate involved, all in proper form, shall be recorded by the director department on the official records of the county.

(d) ***Prohibitions.*** ~~[deleted in its entirety]~~

Sec. 34-218 379. Binding nature of approval of master concept plan.

All terms, conditions, safeguards, and stipulations made at the time of the approval of a master concept plan shall be binding upon the applicant or any successor in title or interest to all or part of the planned development. Departure from the approved plans or failure to comply with any requirement, condition, or safeguard shall constitute a violation of this chapter.

Sec. 34-219 380. Amendments to approved master concept plan.

(a) Amendments to an approved master concept plan or its attendant documentation may be requested at any time during the development or useful life of a planned development.

(b) Amendments that may be approved by the ~~department~~ director include, in general, any change ~~to the interior of the development~~ which does not increase height, density, or intensity (i.e., number of dwelling units, hotel units, or quantity of commercial floor area), or a decrease in buffers or open space. The director shall not approve any change which results in a substantial underutilization of public resources and public infrastructure committed to the support of the development, nor shall the director approve any change which results in a reduction of total open space, buffering, landscaping, and preservation areas or which adversely impacts on surrounding land uses.

(c) All other requests for amendments to a master concept plan or its auxiliary documentation shall be treated procedurally as an amendment to the minor planned developments, but with application information and materials specified by § 34-373(b)(2). See § 34-214.

~~(d) Any application for amendment that proposes a development which, taken by itself, would constitute a development of county impact (see §§ 34-203(b) and 34-341(b)) shall not be treated as a minor planned development unless it clearly meets the criteria set forth in § 34-341(c). Otherwise, it shall proceed as a new and separate planned development.~~

~~(d) (e) Notice of any plan amendment to a planned development shall be recorded in the same manner as the original planned development approved master concept plan itself.~~

Sec. 34-220 381. Duration of rights conferred by adopted master concept plan.

~~(a) Master concept plans approved prior to December 2, 1991, are subject to the following: (1) through (4) [deleted in their entirety]~~

~~(b) Master concept plans approved after December 2, 1991, are subject to the following:~~

- ~~(1) An approved master concept plan and its attendant documentation shall be deemed to be vacated unless the property owner applies for a development order for a substantial portion of the project within five years of the date of the original approval by the town council Board of County Commissioners. A substantial portion of the project shall consist of no less than 20 percent of the lots, dwelling units, square footage, or other applicable measurements of intensity for the development in question unless a lesser percentage is approved by the town council Board of County Commissioners.~~
- ~~(2) Timeframes for approval of subsequent portions of the development shall be governed by a phasing plan, which shall be included in the resolution rezoning the subject parcel. Phases may be defined by geographical areas, units of intensity, traffic impacts, or any other units of measurement deemed appropriate by the town council Board of County Commissioners.~~

- (3) Any phase for which a development order has not been requested by the time specified in the resolution and all subsequent phases shall be deemed vacated.
- (4) Any failure to complete development within a phase or the entire project, whichever is applicable, prior to the expiration of rights established by the development order for the phase or project shall result in the vacation of the applicable phase (and all subsequent phases) of the project.
- ~~(5) If all or part of a master concept plan is vacated, a notice of vacation shall be sent to the owner of record of the affected property via certified mail, and the notice, accompanied by all necessary maps and documents, shall be recorded by the department on the official records of the county in order to provide notice to subsequent purchasers and others having or seeking an interest in the property. Failure to provide direct notice of a vacation or to record the notice shall not vest or extend the validity of the vacated concept plan.~~
- ~~(5) Extensions of master concept plans may be granted as follows: by the Board of County Commissioners in accordance with subsection (a)(4)a. of this section. [relocated from § 34-381(a)(4)]~~
- ~~(4) An approved master concept plan may be extended as follows:~~
 - a. An approved master concept plan for a phase of or an entire planned development which has been vacated due to a failure to proceed on the applicant's part may be extended by the town council Board of County Commissioners for a period of no more than two years from the date of the extension based on the following findings of fact:
 1. The master concept plan is consistent with the current Fort Myers Beach Comprehensive Use Plan, including, but not limited to, density, intensity, and concurrency requirements;
 2. The development shown by the master concept plan has not become incompatible with existing and proposed uses in the surrounding area as the result of development approvals issued subsequent to after the original approval of the master concept plan; and

3. The development shown by the master concept plan will not, by itself or in conjunction with other development, place an unreasonable burden on essential public facilities.
 - b. An application for an extension may be filed at any time after the vacation of the master concept plan and must consist of the following:
 1. A completed application form provided by the director department of community development;
 2. The approved master concept plan;
 3. The applicable zoning resolution;
 4. A written statement describing how the criteria listed in subsection (5)a. ~~(a)(4)a.~~ above have been met; and
 5. A fee, in accordance with an adopted administrative code.
 - c. No more than two extensions may be granted for any development or phase thereof.
- ~~(6) Master concept plans for planned developments which do not require development orders are not subject to the timeframes for vacation in this section.~~
- (7) Phasing plans may be amended in accordance with § 34-214. 373(b)(1):

Sec. 34-382. Development permit. *[deleted in its entirety]*

Secs. 34-383–34-410. Reserved.

Subdivision III. Specialized Procedures

Sec. 34-221 207. Excavations permit for stormwater retention facilities.

~~(a) Applicability: (1) This section shall apply to any Grading or excavation activities which are intended primarily to provide for the retention or detention of stormwater runoff must obtain a development order in compliance with procedures set forth in ch. 10, in which the excavated material is retained and used for grading of the premises. (2) If any of the natural materials or deposits are removed or are to be removed from the subject property, the excavation permit shall be issued only in conformance with article VII, division 15, of this chapter.~~

~~(b) Issuance. An excavation permit for water retention or detention shall be issued in accordance with the procedures set forth in chapter 10 or other county development regulations.~~

Sec. 34-222 208. Requests for interpretation of this code zoning regulations.

Where a question arises as to the meaning or intent of a section or subsection of this code chapter, a written request stating the area of concern and the explicit interpretation requested shall be submitted ~~to the director~~, on forms provided by the director department.

- (1) The director may render decisions of an administrative nature, such as but not limited to:
 - a. Proper zoning classification for a use not specifically addressed; and
 - b. Procedures to follow in unusual circumstances.
- (2) Interpretations which, in the opinion of the director, involve policy or legislative intent issues shall be placed on the agenda of the town council a regularly scheduled meeting of the Board of County Commissioners for its consideration.
 - a. ~~If the question involves clarification of the legislative intent of this chapter, the Board of County Commissioners may render a decision as an administrative action item.~~
 - b. ~~Decisions involving policy issues or potential conflicts with the Lee Plan shall be scheduled for a public hearing in accordance with division 7 of this article.~~
- (3) ~~Annotations of all decisions of the director or Board of County Commissioners which may have an impact on future decisions shall be periodically printed and made available to the general public.~~

Sec. 34-223 209. Building relocation permit.

(a) Compliance with applicable regulations; time limit for leaving buildings on street.

- (1) When a building is moved to any location within the town unincorporated area of the county, the building or part thereof shall immediately be made to conform to all the provisions of this chapter, the latest adopted zoning ordinance and other applicable county regulations.

- (2) Any building being moved for which a permit was granted may not remain in or on the streets for more than 48 hours.

(b) **Contents of application.** Any person desiring to relocate or move a building must first file with the director ~~of the division of codes and building services~~ a written application on an official form ~~provided by the division~~. The application must include the following information furnished by the applicant and must be accompanied by the required application fee:

- (1) The present use of the building.
- (2) The proposed use of the building.
- (3) The building's present location and proposed new location by STRAP number, as well as by street numbers.
- (4) Certified survey of the proposed site with ground elevations, flood zone, and required elevation, ~~if in a V or A flood zone area.~~
- (5) Plot plan showing lot dimensions, setbacks, location of existing structures, and location of building drawn to scale no more than ½-inch equals one inch and no less than one inch equals 50 feet. The plot plan should depict the roof overhang as well as the foundation.
- (6) Construction details, drawn to a scale of no larger than one-half inch equals one foot and no smaller than one-eighth inch equals one foot, including the following:
 - a. Foundation layout with connection details.
 - b. Floor plan, existing and proposed.
 - c. Mechanical plans, including air conditioning, electric system, and plumbing plans.
 - d. Elevations, front, side, and rear.
 - e. Flood elevation, if applicable.
- (7) Current termite inspection by licensed pest controller.
- (8) Water and sewer approvals from appropriate agencies.
- (9) Photographs showing all sides of the building and the site where the building is proposed to be located.
- (10) Proof of notice to all owners of property abutting or across the street from located adjacent to the site where the building is proposed to be located.
- (11) A detailed written statement describing all proposed exterior alterations to the building after it is relocated. At a minimum, these details shall include methods and materials,

and construction details as appropriate, regarding:

- a. The height and method of elevating the building above grade;
- b. Any proposed enclosure of space below the first floor;
- c. Any changes to exterior doors, windows, siding, awnings, and shutters;
- d. Any porches or decks to be built, modified, or eliminated; and
- e. Any changes to the roof other than routine maintenance or replacement with similar materials.

(c) **Criteria for suitability of proposed site.** The town manager shall determine whether the building to be relocated is suitable for its proposed site under one of the following categories:

- (1) **Historic buildings.** For buildings that, after relocation, would be eligible for historic designation pursuant to § 22-204(a)-(d):
 - a. Is the proposed use of the building permitted by the zoning district?
 - b. Has the property owner consented to historic designation of the site after the building is relocated?
 - c. Has the property owner proposed improvements that restore the building while retaining its essential historic characteristics, consistent with the criteria in § 22-101-103?
- (2) **Other buildings.** For all other buildings:
 - a. Is the proposed use of the building permitted by the zoning district and similar to existing uses in the neighborhood?
 - b. Is the building reasonably compatible with the neighborhood when considering factors such as its size, age, and condition? If not, has the property owner proposed sufficient renovations or improvements to the building to achieve compatibility?

The town manager may place reasonable conditions on suitability decisions to bring applications up to these criteria or to ensure the performance of proposed improvements or renovations. Suitability decisions pursuant to this subsection may be appealed to the local planning agency in accordance with § 34-123. The decision of the local planning agency shall be final.

~~(d)~~ ~~(e)~~ **Inspection of building.** The director of the division of codes and building services will have the building inspected to determine:

- (1) If the building can be brought into compliance in all respects with this chapter and other town county regulations pertaining to the area to which the building is to be moved.
- (2) If the building is structurally sound and either complies with applicable portions of chapter 6 of this code ~~the Standard Building Code~~ and other codes adopted by the town county or can be brought into compliance with such codes.

~~(e)~~ ~~(d)~~ **Rejection of application.** The director of the division of codes and building services must reject any application if:

- (1) The building fails to meet the suitability criteria in subsection (c), as determined by the town manager, or the inspection criteria detailed in subsection (e) (d) of this section;
- (2) In the opinion of the director, the moving of any building will cause serious injury to persons or property;
- (3) The building to be moved has deteriorated due to fire or other element to more than 50 percent of its assessed market value, as that term is defined in § 6-405; or
- (4) The moving of the building will violate any of the requirements of ~~the Standard Building Code;~~ this code chapter or other applicable town county regulations.

Except for decisions as to the suitability in subsection (c), such decisions are administrative decisions which may be appealed in accordance with § 34-86 34-145(a).

~~(f)~~ ~~(e)~~ **Approval of building relocation permit application.** ~~(f)~~ Upon approval of the application for building relocation, a licensed building relocation contractor representing the applicant must:

- ~~(1)~~ ~~a.~~ Apply for and receive all required permits from the departments of transportation; of the county or state, if county or state roads will be used during the relocation;
- ~~(2)~~ ~~b.~~ Pay the required fees and obtain the building relocation permit and appropriate sub-permits.

Sec. 34-224 210. Temporary use permits.

(a) **Applicability.** The town county, or any person desiring to conduct any of the uses described in article ~~IV~~ ~~VII~~, division 37, subdivision II, of this chapter shall be required to submit an application for a temporary use permit.

(b) **Initiation of application.** An application for a temporary use permit may be initiated by the town county or any individual authorized in accordance with § 34-201(a).

(c) **Submission of application.**

- (1) No application shall be accepted unless it is presented on the official forms provided by the director department.
- (2) Before an application may be accepted, it must fully comply with all information requirements enumerated in the application form as well as the requirements set forth in subsection (d) of this section.
- (3) The applicant shall ensure that an application is accurate and complete. Any additional expenses necessitated because of any inaccurate or incomplete information submitted shall be borne by the applicant.

(d) **Additional required information.** In addition to the application information, the applicant shall submit satisfactory evidence of the following:

- (1) Evidence shall be submitted that adequate sanitary facilities meeting the approval of the county health department are provided.
- (2) Evidence shall be submitted that sounds emanating from the temporary use shall not adversely affect any surrounding property.
- (3) Evidence shall be submitted that all requirements as to providing sufficient parking and loading space are assured.
- (4) When deemed necessary, a bond shall be posted, in addition to an agreement with a responsible person sufficient to guarantee that the ground area used during the conduct of the activity is restored to a condition acceptable to the director department.
- (5) All applications for temporary permits, excluding those for mobile homes during construction of a residence, shall provide public liability and property damage insurance. This requirement may be waived by the town council Board of County

~~Commissioners~~ at a regular meeting, ~~after advertisement on the agenda.~~

- (6) Evidence shall be submitted that, where applicable, the applicant for a proposed use has complied with town ordinances No. 91-26 of the county, pertaining to special events, including Ordinances No. 98-1, 00-16, and any later amendments.
- (7) Evidence shall be submitted that the law enforcement and fire agencies who will be coordinating traffic control or emergency services have been advised of the plans for a temporary use and that they are satisfied with all aspects under their jurisdiction.

(e) ***Inspection following expiration of permit; refund of bonds.*** Upon expiration of the temporary permit, the director department shall inspect the premises to ensure that the grounds have been cleared of all signs and debris resulting from the temporary use and shall inspect the public right-of-way for damages caused by the temporary use. Within 45 days after a satisfactory inspection report is filed, the director department shall process a refund of the bonds. An unsatisfactory inspection report shall be sufficient grounds for the town county to retain all or part of the bonds posted to cover the costs which the town county would incur for cleanup or repairs.

Sec. 34-211. Denials and resubmission of applications. *[modified and relocated to § 34-84(4)]*

Secs. 34-225 ~~212~~--34-230. Reserved.

DIVISION 5 7. PUBLIC HEARINGS AND REVIEW

Sec. 34-231. Definitions.

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

Continuance means an action initiated by the applicant, staff, local planning agency, or the town council ~~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 § 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. 34-232. 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, shall be enacted pursuant to the requirements set forth in F.S. § ~~166.041~~ ~~125-66(5)~~.
- (2) Prior to a final required hearing by the town council Board of County Commissioners, the local planning agency shall review the amendment at a public hearing.

(b) ***Owner-initiated requests.*** Owner-initiated requests for rezonings, variances, special exceptions, appeals from administrative action, and developments of regional impact require one public hearing before the local planning agency and one public hearing before the town council.

(c) ***Town-initiated requests.*** Town-initiated requests for rezonings, variances, special exceptions, and developments of regional impact require one public hearing before the local planning agency and:

- (1) Applications covering less than 10 abutting acres of land will require a single public hearing before the town council.
- (2) Applications covering more than 10 abutting acres of land will require two public hearings before the town council in accordance with F.S. § 166.041.

~~(b) Rezoning, developments of regional impact, and special exceptions, special permits and variances submitted for simultaneous review. [deleted in its entirety]~~

~~(c) Other special exceptions, special permits and variances, administrative appeals. [deleted in its entirety]~~

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

(a) *Staff review.* The director will produce a written (staff) report summarizing each application and making a formal recommendation to the local planning agency and town council to be available about 7 days before the public hearing.

- (1) ~~No application for a land use ordinance amendment, rezoning, special exception, development of regional impact, special permit or variance, appeal or any other action required by this chapter to proceed through the public hearing process shall be heard by the hearing examiner or Board of County Commissioners, as applicable, until after the department staff has reviewed and prepared written comments on the requested action.~~
- (2) ~~All staff comments shall be forwarded to the hearing examiner or Board of County Commissioners, as applicable, prior to the scheduled public hearing.~~

(b) *Other LPA reviews.* ~~No application or proposed land use ordinance amendment required under the provisions of this chapter to be reviewed by the local planning agency prior to review by the town council Board of County Commissioners shall be heard for final consideration by the town council Board of County Commissioners prior to receiving a substantive recommendation of the local planning agency. As used in this subsection, a motion to continue a matter by the local planning agency shall not be considered a substantive recommendation.~~

(c) *Notice certification and affidavits.* ~~No public hearing shall be commenced by the hearing examiner, local planning agency or Board of County Commissioners unless affidavit proof of required notice publication, posting and mailing, if applicable, is presented to the hearing examiner, local planning agency or Board of County Commissioners for review and submitted to the records keeper for filing with the minutes of the meeting.~~

Sec. 34-234. Public participation.

(a) *Participation at public hearings, before hearing examiner or local planning agency.* ~~At a public hearing before the hearing examiner or local planning commission or town council, all persons shall be heard. However, the hearing examiner or~~

~~local planning agency and town council shall have the right to refuse to hear testimony which is irrelevant, repetitive, defamatory, or spurious, and may establish reasonable time limits on testimony.~~

~~(b) *Participation before Board of County Commissioners.* [deleted in its entirety]~~

(b) *Participation prior to public hearings.* When any person discusses a matter that is the subject of a pending quasi-judicial hearing with a member of the local planning agency or the town council, such member shall disclose the discussion at the public hearing in accordance with § 34-52(b)(2).

Sec. 34-235. Deferral or continuance of public hearing.

The following procedures and regulations for deferring or continuing a public hearing shall apply for the ~~hearing examiner, local planning agency and town council~~ Board of County Commissioners:

- (1) *Deferral.* A scheduled but not yet advertised public hearing may be deferred by the ~~director department staff~~ or by the applicant as follows:
 - a. ~~Town-County-initiated deferral.~~ The director may defer Department staff or the hearing examiner may initiate a deferral of 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 that notice is mailed to the applicant, or his authorized representative agent, stating the reason for the deferral and what additional information is required to complete staff review.
 - b. *Applicant-initiated deferral.* An applicant, ~~or his duly authorized agent,~~ may request a deferral of the public hearing if provided that:
 1. ~~the request is in writing and received by the director appropriate department prior to that department's submitting notice of the hearing to the newspaper for publication, and~~
 2. ~~The applicant agrees to have his application rescheduled in accordance with the scheduling procedures in effect at that time.~~

- c. *Fee.* There shall be no additional fee for either a ~~town- staff-~~initiated or applicant-initiated deferral. However, the applicant must obtain corrected zoning notice posters and post the signs on-site.
 - d. ~~Staff authority.~~ Applicant-initiated deferral requests which meet the requirements of subsection (1)b of this section may be deferred by the director without any further action by the Board of County Commissioners.
- (2) **Continuance.** A scheduled, advertised public hearing may be continued by the town county or by the applicant as follows:
- a. Town- County-initiated continuance.
 - 1. The ~~hearing examiner,~~ local planning agency or town council Board of County Commissioners, upon staff request or upon its own initiative, may continue a public hearing when it is ~~deemed~~ necessary to require additional information, public testimony, or time ~~in order~~ to render an appropriate recommendation.
 - 2. The ~~county-initiated~~ hearing shall be continued to a date certain, and the ~~hearing examiner,~~ local planning agency or town council Board of County Commissioners shall continue its consideration on the hearing matter on that date certain. Any hearing not continued to a date certain is deemed to be denied without prejudice.
 - 3. There shall be no limitations on the number of ~~town- county-~~initiated continuances.
 - 4. The town county shall bear all renotification costs of any ~~town- county-~~initiated continuance.
 - b. Applicant-initiated continuance.
 - 1. The applicant, or his duly authorized agent, shall submit the request in writing to, and the request shall be received by, the ~~appropriate department~~ town manager at least one day prior to the advertised hearing date, or the applicant or his duly authorized agent shall appear before the ~~hearing examiner,~~ local planning agency or town council Board of County Commissioners at the beginning of its scheduled agenda and orally request the continuance.
 - 2. The ~~hearing examiner,~~ local planning agency or town council Board of County Commissioners may either deny or grant the request for continuance.
 - i. If the request for continuance is denied, the hearing shall proceed in accordance with the published agenda.
 - ii. If the request for continuance is approved, the ~~hearing examiner,~~ local planning agency or town council 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 denied without prejudice.
 - 3. The applicant shall be entitled to one continuance before the local planning agency and one continuance before the town council ~~each decision-making body~~ as a matter of right. Each ~~decision-making~~ body shall have the authority to grant additional continuances upon a showing of good cause.
 - 4. A fee, in accordance with a ~~duly adopted~~ fee schedule, shall 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.
- c. Unknown hearing dates. Continuances may also be granted to unknown dates at the discretion of the local planning agency or town council. Such continuances shall be rescheduled by the director and shall be readvertised in the same manner as the originally scheduled hearing. If such a continuance was requested by an applicant, the director may charge the applicant for additional costs of renotification.

Sec. 34-236. Notices.

(a) **Minimum required information.** A notice of public hearing under this chapter shall contain the following minimum required information:

- (1) **Action proposed.**
 - a. **Land use ordinance amendments or adoption.** The notice shall 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 shall indicate the existing zoning of the property, the proposed zoning, and the general location of the property; by reference to common street names and addresses, ~~covered by the application,~~ with sufficient clarity certainty 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, special permits and variances.** All required notices shall indicate the existing zoning of the property; the proposed use by special exception ~~or special permit,~~ or the requirement from which the variance is being requested and the actual degree of variance being requested; and the location of the property; by reference to common street names and addresses, with sufficient clarity certainty 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 shall 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 shall specify the date, time and place that the public hearing will be held by ~~the hearing examiner,~~ the local planning agency or the town council ~~Board of County Commissioners,~~ as applicable.
- (3) **Public availability of information.** The notice shall 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 copy of such notice shall be kept available for public inspection during the regular business hours at town hall and at the director's office. ~~the office of the department of community development or hearing examiner, as appropriate, and indicated in the notice.~~

(b) **Method of providing notice.** Notices of hearings before the ~~Board of County Commissioners, the hearing examiner and the local planning agency and the town council~~ shall be provided in accordance with applicable statutes and ~~as may be set forth in the county's administrative code,~~ subject to the requirements of subsection (a) of this section.

(c) **Mailed notices.** The list and map of surrounding property owners required by § 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 failure to mail or to timely mail such notice, or failure of any affected property owners to receive mailed notice, will not constitute a defect in notice or bar the public hearing as scheduled.

Secs. 34-237--34-2650: Reserved.

DIVISION 6 8. ENFORCEMENT AND SPECIAL ADMINISTRATIVE ACTIONS

Sec. 34-261. Generally. *[deleted in its entirety]*

Sec. 34-262. Complaints. *[deleted in its entirety]*

Sec. 34-263. Penalties. *[subject moved to § 1-5]*

Sec. 34-264. Persons who may be charged with violations. *[moved to § 1-5(f)]*

Sec. 34-265. Additional remedies. *[moved to § 1-5(d)]*

Sec. 34-266. Cease and desist orders. *[subject moved to § 1-5]*

Sec. 34-266. Enforcement.

The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

Sec. 34-267. Forced relocation of businesses. Authority to permit uses pending a zoning action:

(a) The director is authorized to permit proposed uses that are not permitted on a subject parcel for a period of not more than 180 days under the following circumstances:

- (1) The property owner, contract purchaser, or other authorized person has filed an application for a rezoning or a special exception for the subject parcel that would, if approved, make the requested use a permitted use;
- (2) The requested rezoning or special exception, in the opinion of the director, is clearly compatible with the neighboring uses and zoning and is consistent with the Fort Myers Beach Comprehensive Lee Plan;
- (3) The proposed use of the property is a business that is being relocated due to the town's county's economic development or redevelopment efforts or as the result of threatened or ongoing condemnation proceedings;
- (4) No new principal structures are to be constructed on the subject property; and
- (5) The applicant agrees in writing that the proposed use will cease within 180 days of the date of the administrative approval unless the town council Board of County Commissioners or hearing examiner, whichever is applicable, has rendered a final decision approving the requested rezoning or special exception. Upon execution, the agreement shall be recorded in the public records of the county.

(b) Decisions by the director pursuant to this section are discretionary and may not be appealed pursuant to subsection 34-~~86~~. ~~145(a)~~.

(c) The director may extend the effective date of the approval up to an additional 90 days upon good cause shown.

(d) No approval issued pursuant to this section shall excuse any property owner from compliance

with any town county regulation except the list of permitted uses in the zoning district in question.

Sec. 34-268. Administrative setback variances.

(a) Upon written request using a form prepared by the director, the director is authorized to modify the setbacks in §§ 34-634, 34-1174–34-1176, and 34-1744 34-651 through 34-1041 and 34-1744 (residential fences only) of this chapter under the following circumstances:

- (1) Street, rear, side, or waterbody setbacks may be modified to permit the remodeling of or additions to existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition will not result in:
 - a. ~~The remodeling or addition will not result in~~ An increase in the height of the structure; ~~and or~~
 - b. ~~The remodeling or addition will not result in~~ A further diminution of the setback. The director may approve bay windows, chimneys, and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.
- (2) Street, rear, side, or waterbody setbacks may be modified to permit the construction of a handicapped access appurtenant to any existing structure.
- (3) Street, rear, side, or waterbody setbacks may be modified to allow the replacement of stairs or decking that provides access into an existing dwelling unit.
- (4) Street, rear, side, or waterbody setbacks may be modified to legitimize minor errors in setbacks at the time of construction.
- (5) ~~Rear or side setbacks for lots that qualify for a single-family determination, pursuant to the Lee Plan, may be modified to permit the construction of a single-family dwelling unit so long as the proposed lot coverage does not exceed 45 percent.~~
- (5) (6) Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted may also be reviewed by the director for consideration under this section.

(b) The director, prior to approving the modifications, must make the following findings of fact:

- (1) There are no apparent deleterious effects upon the adjoining property owners;
- (2) The modifications will not have an adverse impact on the public health, safety, and welfare; and
- (3) The modifications will be the minimum required.

(c) Decisions by the director pursuant to this section are discretionary and may not be appealed in accordance with § 34-86. 145(a) of this chapter.

~~Sec. 34-269. Compliance agreements. [deleted in its entirety]~~

~~Secs. 34-269-34-610 300. Reserved.~~

~~ARTICLE III. RESERVED~~

~~Secs. 34-301-34-340. Reserved.~~

~~ARTICLE IV. PLANNED DEVELOPMENTS~~

~~[divisions 1 & 2 moved to §§ 34-211-34-220]~~

~~DIVISION 3. DESIGN STANDARDS~~

~~Sec. 34-411. General standards. [deleted in its entirety]~~

~~Sec. 34-412. Deviations from general zoning regulations. [moved to § 34-932(c)]~~

~~Sec. 34-413. Density or intensity of use. [moved to § 34-932(d)]~~

~~Sec. 34-414. Open space. [deleted in its entirety]~~

~~Sec. 34-415. Provision of public facilities and services. [deleted in its entirety]~~

~~Secs. 34-416-34-440. Reserved.~~

~~DIVISION 4. RESIDENTIAL PLANNED DEVELOPMENTS IN RURAL OR OUTER ISLANDS~~

~~[deleted in its entirety]~~

~~ARTICLE V. COMPREHENSIVE PLANNING; THE LEE PLAN*~~

~~Sec. 34-491. The Lee Plan. [moved to § 34-619]~~

~~Secs. 34-492-34-610. Reserved.~~