

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20061513

1. ACTION REQUESTED/PURPOSE: Conduct second public hearing on proposed amendments to Chapter Two of the Land Development Code (LDC) that provide an administrative variance procedure to address certain nonconformities resulting from the exercise of eminent domain by a governmental authority.

2. WHAT ACTION ACCOMPLISHES: a) Provides relief to owners of improved property whose remaining property has been rendered nonconforming as to signs, landscaping, buffers, and open space; and, b) may reduce money that governmental authorities must pay in damages to owners of property.

3. MANAGEMENT RECOMMENDATION: Adopt Ordinance.

4. Departmental Category: County Attorney **5:05 #2**

5. Meeting Date: 11-28-06

6. Agenda: **7. Requirement/Purpose:**
(specify)

<input type="checkbox"/> Consent	<input type="checkbox"/> Statute
<input type="checkbox"/> Administrative	<input checked="" type="checkbox"/> Ordinance <u>LDC</u>
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code
<input checked="" type="checkbox"/> Public	<input type="checkbox"/> Other
<input type="checkbox"/> Walk-On	

8. Request Initiated:
Commissioner
Department County Attorney
Division
By: *Donna Marie Collins*
Donna Marie Collins
Assistant County Attorney

9. Background:

The LDC currently provides relief to owners of improved property rendered nonconforming as to area, width, depth, setbacks, lot coverage, or parking because of a taking through eminent domain proceedings or by the voluntary sale of a parcel of land under the threat of eminent domain by a governmental authority. Lots affected in this way are deemed "conforming" under the terms of the zoning code.

The scope of relief currently provided does not address other nonconformities created by governmental action, specifically: signs, landscaping, buffers, and open space. The absence of an administrative means of relief has resulted in governmental entities paying more money in severance damages in the context of partial taking of improved property.

The proposed administrative variance process will provide a less costly and time consuming avenue of relief than the traditional variance procedures that require a public hearing before the Hearing Examiner. The administrative variance process would be limited to signs, landscaping, buffers, and open space. It will afford an opportunity for "betterment plans" developed in collaboration with DCD staff.

The request for greater relief from the LDC requirements for parcels affected by eminent domain was first initiated by FDOT, LDOT, and the litigation division of the County Attorney's Office. After meeting to discuss alternatives with DCD, the proposed amendment was agreed upon and drafted for Board consideration.

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>11/13/06</i>	N/A	N/A	N/A	<i>Joseph</i>	<i>11/15/06</i>	<i>11/15/06</i>	<i>11/15/06</i>	<i>11/15/06</i>	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
COUNTY ADMIN: *rk*
11-15-06
8:53 *mp*
COUNTY ADMIN
FORWARDED TO: *rl*
11-16-06
3PM

CO. ATTY.
FORWARDED TO:
ADHIA
11/15/06 8:30

214

LEE COUNTY ORDINANCE 06-____

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE (LDC) TO AMEND CHAPTER 10, ARTICLE III (DESIGN STANDARDS AND REQUIREMENTS), DIVISION SIX (OPEN SPACE, BUFFERING AND LANDSCAPING), SECTION 10-416 (LANDSCAPE STANDARDS); AND CHAPTER 34, ARTICLE II (ADMINISTRATION), DIVISION 8 (ENFORCEMENT), SECTION 34-268 (ADMINISTRATIVE SETBACK VARIANCES), ARTICLE VIII (NONCONFORMITIES), DIVISION ONE (GENERALLY), SECTION 34-3206 (NONCONFORMITIES CREATED BY EMINENT DOMAIN PROCEEDINGS); PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, Goal 39 of the Lee Plan mandates that the County maintain clear, concise, and enforceable development regulations that fully address on-site and off-site development impacts and protect and preserve public transportation facilities; and,

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

WHEREAS, the County has adopted the Lee County Land Development Code; and,

WHEREAS, the Board of County Commissioners has provided relief for nonconformities created by governmental action, either by negotiation or condemnation; and,

WHEREAS, that relief has not extended to nonconformities pertaining to signs, landscaping, buffers, and open space; and,

WHEREAS, the Board has concluded that additional relief must be afforded to improved properties that will be rendered nonconforming by governmental action; and,

WHEREAS, expanding the scope of relief is necessary and in the interest of the health, safety, and welfare of the County and its citizens; and,

WHEREAS, the Board of County Commissioners has concluded that it is permissible for landowners to install required buffers within slope easements adjacent to public right-of-way; and

WHEREAS, the Ordinance was considered by the LDCAC on October 13, 2006, Local Planning Agency on October 23, 2006, and EROC on November 8, 2006, and found to be consistent with the Lee Plan; and,

WHEREAS, the Ordinance was reviewed by the LPA and found to be consistent with the Lee Plan on October 23, 2006.

NOW, THEREFORE, be it ordained by the Board of County Commissioners of Lee County, Florida:

SECTION ONE: AMENDMENT TO LAND DEVELOPMENT CODE, CHAPTER 10, ARTICLE III, DIVISION SIX.

Lee County Land Development Code, Chapter 10, Article III, Division 6, is amended to read as follows, with "strikethrough" identifying deleted language and "underline" identifying new language:

Sec. 10-416. Landscape standards.

Subsections (a) - (c) are unchanged.

(d) *Buffering adjacent property.* Buffering and screening applies to all new development. Existing landscapes that do not comply with the provisions of this section must be brought into conformity to the maximum extent possible when: the vehicular use area is altered or expanded, except for restriping of lots/drives, the building square footage is increased, or there has been a discontinuance of use for a period of one year or more and a request for an occupational license to resume business is made.

(1) *General.* A buffering area is required along the entire perimeter of the proposed development whenever the proposed development abuts a different use. The existing use or, where vacant, the permitted use, of the abutting property will determine the type of buffering area required for the proposed development. Buffer areas may not be located on any portion of an existing or dedicated street right-of-way or roadway easement except that buffers may be located within slope easements as long as appropriate planting soil is provided in the slope. Variances or deviations from this requirement are prohibited.

Subsections (d)(2) - (d)(11) are unchanged.

SECTION TWO: AMENDMENT TO LAND DEVELOPMENT CODE, CHAPTER 34.

Lee County Land Development Code, Chapter 34, is amended to read as follows, with "strikethrough" identifying deleted language and "underline" identifying new language:

Sec. 34-268. Administrative setback variances.

- (a) Upon written request on a form prepared by the county, the director is authorized to modify the setbacks in sections 34-651 through 34-1041 and 34-1741 *et seq.* and 34-3206 of this chapter under the following circumstances.

Subsections (1) through (6) are unchanged.

- (7) Property affected by eminent domain proceedings, as well as property affected by voluntary sale under threat of condemnation by the sovereign. Administrative variance is limited to signs, landscaping, buffer widths, and open space.

Sec. 34-3206. Nonconformities created by Eminent Domain Proceedings.

(1) A structure, lot, tract, or parcel of land that has been or will be rendered non conforming as to area, width, depth, setbacks, lot coverage or parking because of a taking through eminent domain proceedings or by the voluntary sale of a parcel of land under the threat of eminent domain proceedings by a governmental authority after October 15, 1992, will be deemed conforming under the terms of this chapter.

(2) An administrative variance procedure is available to address improved parcels or parcels with approved development orders that have been rendered nonconforming as to signs, required landscape buffers, and open space because of a taking through eminent domain proceedings, or by the voluntary sale/donation of a parcel of land under the threat of eminent domain proceedings by a governmental authority. The procedures to address the nonconformities referenced in this subsection are set forth in Sec. 34-268.

Note: The LDC AC recommended that developed parcels rendered non-conforming as to open space should be added to the relief provided in subsection (1) above.

SECTION THREE: CONFLICTS OF LAW

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

SECTION FOUR: SEVERABILITY

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

SECTION FIVE: CODIFICATION AND SCRIVENER'S ERRORS

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager, or his designee, without the need for a public hearing.

SECTION SIX: EFFECTIVE DATE

The ordinance will take effect on _____, 2006.

Commissioner _____ made a motion to adopt the foregoing resolution, seconded by Commissioner _____. The vote was as follows:

Robert P. Janes
Douglas St. Cerny
Ray Judah
Tammara Hall
John Albion

DONE AND ADOPTED this ____ of _____ 2006.

ATTEST:
CHARLIE GREEN, CLERK

LEE COUNTY
BOARD OF COUNTY COMMISSIONERS

BY: _____
Deputy Clerk

BY: _____
Robert P. Janes, Chairman

DATE: _____

Approved as to form by:

Donna Marie Collins
County Attorney's Office

**LEE COUNTY, FLORIDA
FINANCIAL & ADMINISTRATIVE IMPACT STATEMENT
PROPOSED COUNTY ORDINANCE**

**NAME OF ORDINANCE: Land Development Code Amendment -
Relief for Nonconformities created by the
Exercise of Eminent Domain**

I. DESCRIPTION OF ORDINANCE

A. Statement of Purpose

1. To provide relief to property owners adversely affected by the partial taking of improved property by the government.
2. To allow for buffer plantings to be located within slope easements adjacent to rights-of-way.

B. Narrative Summary of Ordinance (Several Sentence Summary)

Amendment to LDC Chapters 10 and 34 to expand the scope of relief available to owners of improved property that has been rendered nonconforming by virtue of eminent domain actions or sales in lieu of condemnation, and to allow buffer plantings to be located with slope easements.

C. Principal Division(s) or Department(s) Affected (List)

Department of Community Development
Department of Transportation

**LEE COUNTY, FLORIDA
FINANCIAL & ADMINISTRATIVE IMPACT STATEMENT
PROPOSED COUNTY ORDINANCE:
Relief for Nonconformities Created by Exercise of Eminent Domain**

I. FISCAL IMPACT ON COUNTY AGENCIES/COUNTY FUNDS.

- A. What is estimated Demand? (Develop Indicators) N/A
- B. What is estimated Workload? (Develop Indicators) N/A
- C. What are estimated costs?

	<u>1st Year \$'s</u>		<u>2nd Year \$'s</u>	
	<u>Existing</u>	<u>New</u>	<u>Existing</u>	<u>New</u>
Personnel				
	N/A		N/A	
Fringe				
Operating				
Capital Outlay				
Total				

- D. List the anticipated revenues to cover costs identified in II., C., above. If a fee is to be charged, answer the following:
 - 1. What is the basis (rationale) for the fee? N/A
 - 2. Do the anticipated fees cover the full cost of operation? If not, what percentage of the costs are covered?
N/A
- E. Give a brief narrative analysis of the information contained in II., A. through D., above.

The purpose of this ordinance is to provide relief to a landowner in the case of a partial taking through eminent domain proceedings or a voluntary sale. Currently, if a parcel's remainder does not conform as it relates to sign placement, open space, buffering, or landscaping, there was no automatic relief. The landowner would be required to seek a variance from the Hearing Examiner without any guarantee a variance would be granted.

The intent of this ordinance is to provide for an administrative process that would not require a hearing with the Hearing Examiner; thus, serve as a negotiation tool that would save time and money and provide an avenue of relief for the landowner.

COMMITTEE REVIEW CHART FOR PROPOSED ORDINANCE
Eminent Domain

Land Development Code Advisory Committee 10-13-06	Recommended for adoption with one change noted on draft ordinance.
Local Planning Agency 10-23-06	Found consistent with the Lee Plan (5-0).
Executive Regulatory Oversight Committee 11-8-06	Recommended for adoption.