The Planning and Zoning Commission will meet at 7:00 p.m. on THURSDAY, February 9, 2012, in the County Commission Chambers of the County Administration Building, 1801 27th Street, Vero Beach.

THE PLANNING AND ZONING COMMISSION SHALL ADJOURN NO LATER THAN 11:00 P.M. UNLESS THE MEETING IS EXTENDED OR CONTINUED TO A TIME CERTAIN BY A COMMISSION VOTE.

AGENDA

ITEM #1  CALL TO ORDER AND PLEDGE OF ALLEGIANCE

ITEM #2  ELECTION OF CHAIRMAN AND VICE CHAIRMAN

ITEM #3  APPROVAL OF MINUTES

A.  December 8, 2011

ITEM #4  ITEM NOT ON CONSENT

A.  The Lakes at Waterway Village: Request for preliminary planned development PD approval for phases IIA and IIIA of Waterway Village to be known as The Lakes at Waterway Village. DiVosta Homes L.P., Owner. Arcadis U.S., Agent. Zoning Classification: PD (Planned Development up to 2.29 units/acre). Land Use Designation: L-2, Low Density 2 (up to 6 units/acre). Density: Phase IIA 1.8 units/acre; Phase IIIA 1.9 units/acre. [2004010124-66944/PD-11-09-02] [Quasi-Judicial]
ITEM #5  PUBLIC HEARING

A. Dismissal of George Maib’s Appeal of the County Community Development Director’s Decision to Find No Vested Rights and Deny Ocean Concrete’s Site Plan Application for a Concrete Batch Plant [SP-MA-07-03-15 / 2004110124-57127]

ITEM #6  COMMISSIONERS MATTERS

ITEM #7  PLANNING MATTERS

A. Discussion of Draft Land Development Regulation Changes: Set 3
B. Planning Information Package

ITEM #8  ATTORNEY’S MATTERS

ITEM #9  ADJOURNMENT

ANYONE WHO MAY WISH TO APPEAL ANY DECISION, WHICH MAY BE MADE AT THIS MEETING, WILL NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH INCLUDES THE TESTIMONY AND EVIDENCE ON WHICH THE APPEAL IS BASED.

ANYONE WHO NEEDS A SPECIAL ACCOMMODATION FOR THIS MEETING MUST CONTACT THE COUNTY’S AMERICANS WITH DISABILITIES ACT (ADA) COORDINATOR AT 772-226-1223, (TDD #772-770-5215) AT LEAST 48 HOURS IN ADVANCE OF THE MEETING.

Meeting may be broadcast live on Comcast Cable Channel 27 – may be rebroadcast continuously Saturday 7:00 p.m., until Sunday morning 7:00 a.m. Meeting broadcast same as above on Comcast Broadband, Channel 27 in Sebastian.
PLANNING AND ZONING COMMISSION

There was a meeting of the Indian River County (IRC) Planning and Zoning Commission (PZC) on Thursday, December 8, 2011 at 7:00 p.m. in the Commission Chambers of the County Administration Building, 1801 27th Street, Vero Beach, Florida. You may hear an audio of the meeting; review the meeting agenda, backup material and the minutes on the Indian River County website www.ircgov.com/Boards/PZC/2011.

Present were members: Chairman Donna Keys, District 1 Appointee; Jens Tripson, District 3 Appointee; Dr. Jonathan Day, District 4 Appointee; Brad Emmons, District 5 Appointee; George Hamner and Todd Brognano, Members-at-Large.

Absent was Vice Chairman Sam Zimmerman, District 2 Appointee; and Carol Johnson, non-voting School Board Liaison (both excused).

Also present was IRC staff: Bill DeBraal, Deputy County Attorney; Stan Boling, Planning Director; Robert Keating, Community Development Director, and Darcy Vasilas, Recording Secretary.

Call to Order and Pledge of Allegiance

Chairman Keys called the meeting to order at 7:00 p.m. and led all in the Pledge of Allegiance.

Approval of Minutes

ON MOTION BY Dr. Day, SECONDED BY Mr. Tripson, the members voted unanimously (6-0) to approve the minutes of the meeting of November 10, 2011, as presented.

The secretary administered the testimonial oath to those present who wished to speak at tonight's meeting on any quasi-judicial items.

Public Hearing:

Chairman Keys read the following into the record:
A. Indian River County EMS Tower: Request for special exception use approval to construct a wireless communications tower at 7235 4th Street. Indian River County, Owner. Communications International, Inc., Agent. Zoning Classification: A-1, Agricultural 1 (1 unit per 5 acres). Land Use Designation: AG-1, Agricultural 1 (1 unit per 5 acres). (SP-SE-11-10-13/2006100156-67107) [Quasi-Judicial]

Chairman Keys asked the Commissioners to reveal any ex-parte communication with the applicant or any contact that would not allow them to make an unbiased decision. All Commissioners replied they had not had any ex-parte communication.

Mr. Stan Boling, IRC Planning Director, explained this was a request for special exception use and the process for reviewing and approving the application was as follows:

- The use was reviewed with specific land use criteria, in this case, for wireless communication facilities.
- Review of the appropriateness and compatibility of the requested use.
- Two public hearings will be held.
- The PZC makes a recommendation to the Board of County Commissioners (BCC).

The BCC will then either:

- Approve the request.
- Approve the request with conditions.
- Deny the request.

Mr. Boling continued this project consisted of a 180-foot monopole wireless communication facility which will be located on a portion of a county-owned large stormwater park site which is 35 acres overall and secured. The communication pole site will also be in a separate secured site within the overall secured site.

Mr. Boling reported the facility was designed to accommodate multiple public users and its primary users would be for public safety and emergency services. The applicant had demonstrated technical justification for the tower's need, location, height, and type and this had been reviewed and approved by the county's telecommunication manager.
Mr. Boling related the site itself, as well as surrounding properties, were zoned A-1, Agricultural. A PowerPoint presentation was given showing an aerial view of the site, access was from 4th Street going south to the Indian River Farms Drainage District maintenance facility, and the rest of the site was owned by the county.

Other related items to this site were:

- Landscaping will be provided on the perimeter of the stormwater park to screen the facility, as directed by stormwater park staff.
- Prior to building permit, applicant will demonstrate that the tower structure meets the building code criteria, including wind loading.
- Prior to site plan release, applicant will provide all necessary Federal Aviation Administration (FAA) and Federal Communications Commission (FCC) permits.
- Applicant will coordinate construction and operation with the stormwater park staff.

Staff recommended that the PZC recommend the BCC make findings and grant special exception use approval for the EMS tower with the conditions listed in the staff report dated November 22, 2011, which is included in the agenda and on file in the Commission Office.

Mr. Rick Rewiski, representing Communications International, stated essentially the tower was for emergency services and the primary users would be the Sheriff's Office, Fire and EMS. This tower would provide additional coverage in that area of the county for emergency response agencies so they can provide quicker response to the people in that area.

Chairman Keys asked if other users would be able to use the tower. Mr. Rewiski responded if other people wanted to rent space on the tower they would be able to do so pending approval from the county. He estimated there were over 2,700 current users slated for the system that will be put into service by the tower.

Dr. Day inquired if additional towers would be needed in the future to continue to service that area as it grows.

Mr. Bob Stork, Communications International, replied this was just one step of the system which started in 1995 and they were trying to improve the coverage. As the population increases, there may need to be additional towers as this proposed tower would cover a 6-8 mile radius.
Chairman Keys asked if there had been any opposition to the tower. Mr. Boling responded notices went out over two weeks ago to adjoining property owners and staff had received no calls from the mailed notice, the posted sign notice or the newspaper advertisement.

Chairman Keys opened the public hearing at 7:13 p.m. and since no one cared to speak, the public hearing was closed.

ON MOTION BY Mr. Hamner, SECONDED BY Mr. Brognano, the members voted unanimously, (6-0) to approve the request for special exception use as presented by staff.

COMMISSIONERS MATTERS

Chairman Keys announced she was resigning from the PZC effective this meeting. She had served on the Commission for 12 years and felt it was time someone else take her place.

PLANNING MATTERS

A. Discussion of Draft Land Development Regulation Changes: Set 2

Mr. Boling recapped within the last few years the county went through the EAR (Evaluation Appraisal Report) which basically highlighted changes proposed for the Comprehensive Plan amendments which went into effect. Now we have EAR-based Land Development Regulations (LDR) amendments to make the LDR's consistent with the Comprehensive Plan and clean-up and update other aspects of the LDR's.

The timeline for LDR changes was as follows:

- **Set 1** – (August 2011) – Being revised per PZC input and recent issues
- **Set 2** – (December 8, 2011)
- **Set 3** – (January 2012)
- **Public Workshop**
- **Formal PZC & BCC hearings** – Spring 2012
Mr. Boling continued the Set 2 LDR changes involved the following:

- **Chapter 915 Planned Development (P.D.) process and standards.**
  - Update and clarify unified control, AG (Agricultural) lands in TND's (Traditional Neighborhood Developments), P.D. buffer standards.
  - Establish standards and process for anti-visual monotony design guidelines for residential P.D.'s per adopted FLUE (Future Land Use Elements) Policy 9.14 (workshop topic)
  - Establish regulations for mixed use developments on qualifying residentially designated sites per adopted FLUE Policy 5.6 (workshop topic)
  - Establish regulations implementing adopted FLUE 18.1 – 18.3 TND policies
  - Clarify expiration/extension provisions for P.D. conceptual plans and preliminary P.D. plans

- **Chapter 972**
  - Temporary Use Permits authorize temporary uses and structures; issued by staff
  - Changes:
    - Codify requirement for model home and temporary sales office applicants to verify no conflicts with private restrictions, provide Home Owner Association contact
    - Increase time (from 6 months to 1 year) for renewable TUP's (Temporary Use Permits) for fruit and vegetable stands
    - Simplify approval process for special event tents

- **Vertical Datum Update**
  - Nation-wide change from NGVD29 (National Geodetic Vertical Datum of 1929) to NAVD88 (North American Vertical Datum of 1988), all local governments making changes
    - Chapter 901: Update definitions
    - Chapters 913 & 914: Update survey submittal references
    - Chapter 930: Update references
      - Specify equipment pad minimum elevations are top of pad
Mr. Hamner questioned on the FLUE Policy 5.6 under Street Network, the reference to interconnectivity of streets. Mr. Boling clarified the interconnectivity referred to mixed use P.D.'s only.

Chairman Keys inquired under the section on transient merchant operations the Class C, Satellite Seafood Sales Operations should be allowed for 1 year; she felt 6 months would be a better time frame. Staff agreed to keep Class C permits at 6 months, as suggested.

Mr. Bob Keating, IRC Community Development Director, explained the reason for the change from NGVD29 to NAVD88 was to update datum to be consistent with current programs in use nation-wide.

ON MOTION BY Mr. Hamner, SECONDED BY Mr. Tripson, the members voted unanimously (6-0) to recommend to the Board of County Commissioners to keep the timeframe of 6 months for Class C transient merchant operations.

OTHER MATTERS

Mr. Hamner presented Chairman Keys with a plaque for her years of service to the PZC. A round of applause was given.

ATTORNEY'S MATTERS

There was none.

Adjournment

There being no further business, the meeting adjourned at 7:40 p.m.

Chairman Donna Keys

Darcy Vasilas, Recording Secretary
TO: The Honorable Members of the Planning and Zoning Commission

DEPARTMENT HEAD CONCURRENCE: Robert M. Keating, AICP; Community Development Director

THROUGH: Stan Boling, AICP; Planning Director

FROM: John W. McCoy, AICP; Senior Planner, Current Development

DATE: February 2, 2012

SUBJECT: DiVosta Homes LP's Request for Preliminary Planned Development (PD) Approval for Phases IIA and IIIA of Waterway Village, to be known as The Lakes at Waterway Village [PD-11-09-02/2004010124-66944]

It is requested that the data herein presented be given formal consideration by the Planning and Zoning Commission at its regular meeting of February 9, 2012.

DESCRIPTION & CONDITIONS

At its November 9, 2004 meeting, the Board of County Commissioners (BCC) approved the Waterway Village DRI (development of regional impact), the conceptual PD plan, and the PD zoning district. As approved, the conceptual PD plan allows up to 1,540 units and accessory facilities on the ± 696 acre overall site in six project phases. On April 14, 2005, the phase I preliminary PD plan (The Isles at Waterway Village), containing a school site and 462 units on 213.70 acres, was approved by the Planning and Zoning Commission (PZC). That phase covers the area between 49th Street and 53rd Street and between 58th Avenue and 51st Court.

At this time, Arcadis U.S., on behalf of DiVosta Homes L.P., is requesting preliminary planned development (PD) plan approval for phases IIA and IIIA of Waterway Village, to be known as The Lakes at Waterway Village. Located at the northwest corner of 43rd Avenue and 49th Street, phases IIA and IIIA lie east of 51st Court. Together, the two phases contain 129 single-family detached and single-family attached units, a new model center, perimeter buffers, and recreation tracts on 69.7 acres.

In January 2006, the Planning & Zoning Commission approved a preliminary plat for phase II of The Lakes at Waterway Village. Now expired, that phase II approval was for a different location on the overall Waterway Village site from the current phase II preliminary plat application. Once approved, the proposed phase IIA preliminary plat will "supercede" all previous approvals associated with the old phase II.
PD PLAN AND DRI ANALYSIS:

1. **Size of Site:**
   - **Overall:** ± 696 acres (all 6 phases)
   - **Phase IIA:** 46.7 acres
   - **Phase IIIA:** 23.03 acres

2. **Zoning Classification:** PD, Planned Development up to 2.29 units/acre

3. **Land Use Designation:** L-2, Low Density 2 (up to 6 units/acre)

4. **Total Units:**
   - **Approved:** 1,540 units (all 6 phases)
   - **Phase I:** 462 units (approved)
   - **Phase IIA:** 84 units
   - **Phase IIIA:** 45 units

5. **Density:**
   - **Approved:** 2.29 units/acre (all 6 phases)
   - **Phase IIA:** 1.8 units/acre
   - **Phase IIIA:** 1.9 units/acre

6. **Surrounding Land Uses for Phases IIA and IIIA:**
   - **North:** Future phases of Waterway Village/PD
   - **South:** Future Phase of Waterway Village, 49th Street, Multi Family, County Park, Single Family, vacant/PD, RS-6 and RM-6
   - **West:** Waterway Village Phase I (approved) and Future Phase/PD
   - **East:** Vacant, future Waterway Village phases, future 43rd Avenue extension/PD

7. **Open Space and Recreation:**
   - **Phases IIA & IIIA Recreation Area:**
     - **Required:** 3.25 Acres
     - **Provided:** 5.21 Acres
   - The recreation area includes sidewalks, a clubhouse with a pool, tennis courts, and a fitness center.
   - **Phases IIA & IIIA Open Space:**
     - **Required:** 40%
     - **Provided:** 45%

8. **Landscaping & Buffering:**
   - **Perimeter Buffer:** As part of the DRI development order, the minimum project perimeter setback is 40' between the perimeter boundary and any hard surface improvement (e.g., roadway, structures). In most instances, the proposed plans provide a 60' setback from project roads and structures. Within that perimeter setback, there will be a Type "B" buffer with a 6' landscaped berm. Since the area along the proposed 51st Court (north/south public street) is considered internal to the project, it can have a reduced buffer. That buffer will be 25' wide and will not include a wall. As designed, the landscape buffers will not be visually obtrusive and not create a "walled-off" appearance from adjacent public roads (49th Street, 51st Court). Cross-
sections of the proposed buffers are depicted on the landscape plan. The proposed buffers and landscape improvements satisfy applicable D.R.I. development order and conceptual PD plan conditions.

- **Littoral Zones:** As a condition of PD approval, the applicant is required to provide 40 sq. ft. of littoral zone for every one linear foot of lake shoreline. Consistent with that requirement, littoral zones will be established concurrent with lake construction and will be distributed throughout the development in common areas and along roadways. Littoral zones will not be placed directly adjacent to homes. In Phase II, the required littoral zone area will be provided along proposed shoreline areas.

- **Street Trees:** A street tree planting plan is required, and a planting plan acceptable to staff has been provided with the landscape plan for phase IIA and phase IIIA. The street tree plan provides street trees with 100' to 40' spacing and laid out to avoid driveways and other obstructions.

- **Lake "Shore Line" Trees:** As a condition of PD approval, the applicant is required to provide one lake shoreline tree per 100' of lake shoreline. The landscape plan satisfies that requirement.

- **Development Order Condition:** Condition 79 in the approved D.R.I. development order requires the developer to provide landscape improvements along the 43rd Avenue and 49th Street frontages of Gifford Park, a county park located south of and adjacent to the phase IIA/IIIA portion of Waterway Village. The landscape improvements in the park are intended to blend-in the approach to Waterway Village from 43rd Avenue. Condition 79 also requires that, prior to issuance of the phase IIA permit for land development, the developer provide acceptable landscape plans depicting the proposed landscape improvements. To date, the developer has submitted preliminary plans and met at the park site with planning staff and the County Engineer. Based on the field meeting, the developer and staff have conceptually agreed on a landscape plan concept. Prior to the issuance of an LDP (land development permit) for phase IIA, final landscape plans for the 43rd Avenue and 49th Street frontages must be approved by staff.

9. **Parking:** The developer is providing the number of parking spaces required by county parking regulations for all proposed uses, including a minimum of 2 spaces per residence and spaces at recreation centers.

10. **Traffic Circulation:** Phases IIA and IIIA will connect to 51st Court, a roadway which connects to 49th Street and 53rd Street. In later phases, the internal roadway system will be extended to the east, providing access to the future 43rd Avenue extension. Until a secondary paved connection is provided for phase IIA, a portion of Waterway Village Blvd from Phase IIA west to 51st Court will be constructed as a stabilized rock road to serve as an emergency/construction access road. That emergency access road has been approved by Traffic Engineering and Emergency Services. Traffic Engineering has also approved the phase IIA and phase IIIA access points and the internal circulation plan.

In the dedication and improvements section of this report, the traffic improvements to be provided by the developer are listed. The timing of those improvements is based on vehicle trips generated/attracted at various stages of the development, and is set forth in the approved
DRI development order. Those improvements were required based upon a traffic analysis submitted by the applicant and reviewed and approved by FDOT, TCRPC, and the County Traffic Engineer and accepted by the PZC and BCC during the DRI and PD approval processes.

11. Dedications and Improvements:

- **Traffic Improvements:** A traffic impact analysis for the overall Waterway Village project was reviewed and approved by the Traffic Engineering Division at the time of initial project approval. Required improvements identified in the approved traffic analysis are covered and guaranteed by an approved developer’s agreement with the County. No additional traffic-related conditions are required or proposed with phases IIA and IIIA.

- **Transit Shelters/Bus Stops:** D.O. condition 84 requires that the developer provide bus/transit stops. The applicant has coordinated with MPO staff and is proposing two bus stops/transit stops along the north side of 49th Street near 51st Court and near 58th Avenue. The phase IIA land development permit will need to include a final location and design for the two transit stops, and both stops must be completed prior to issuance of a certificate of completion for phase IIA.

12. Drainage:

The overall Waterway Village approved drainage plan divides the site into 4 drainage basins: a western basin, a central basin, an eastern basin, and a basin area north of 53rd Street. Within the various basin, all of the lakes will be inter-connected and will ultimately outfall into an Indian River Farms Water Control District (IRFWCD) canal. As proposed, the lakes in phase IIA and phase IIIA will be part of the central stormwater basin. Prior to the issuance of an LDP for phase IIA and phase IIIA, the developer will need to obtain permits from the St. Johns River Water Management District, the IRFWCD, and the County for the proposed system.

13. Utilities:

County water and sewer will serve the entire development. Those utility provisions are consistent with the county’s land development regulations and have been approved by the Department of Utility Services and the Health Department. In accordance with an existing developer’s agreement with the County, the applicant has committed to accept effluent reuse water.

14. Environmental Issues:

The overall Waterway Village site has a number of environmental issues that were addressed through the DRI and PD review processes. Generally, those issues relate to listed species, upland preservation, and wetland impacts. Those issues are addressed through a preserve area management plan (PAMP) which has been approved by County environmental planning and all appropriate jurisdictional agencies. Most of the environmental conditions were addressed with phase I. There are no environmental issues or conditions tied specifically to phase IIA and phase IIIA.
15. **Emergency Services:**

The County Emergency Services Department reviews each preliminary PD plan for access, hydrant location, and other issues. In this case, Emergency Services has reviewed and approved the subject preliminary PD plan for phases IIA and phase IIIA.

16. **Concurrency:**

The applicant obtained concurrency approval through an agreement with County. Provided that the developer meets the conditions of the approved agreement, including traffic improvement conditions and timeframes specified in the agreement, Waterway Village is deemed to satisfy concurrency requirements. Therefore, concurrency requirements are satisfied for the requested phase IIA and phase IIIA preliminary PD plan approval.

**RECOMMENDATION:**

Based on the analysis performed, staff recommends that the Planning and Zoning Commission grant preliminary PD approval for Waterway Village phase IIA and IIIA (The Lakes at Waterway Village) with the following conditions:

1. Prior to the issuance of a Land Development Permit for phase IIA, the applicant shall obtain:
   
   a. County approval of the location and design of two transit stops; and
   
   b. County approval of the final plan for landscape improvements along the Gifford Park 43rd Avenue and 49th Street frontages.

2. Prior to the issuance of a certificate of completion for phase IIA, the applicant shall:
   
   a. Construct all perimeter buffers adjacent to the area of development,
   
   b. Construct two transit stops as depicted on the approved land development permit plan,
   
   c. Construct all required off-site sidewalks adjacent to Phases IIA and IIIA.
   
   d. Construct the Gifford Park landscape improvements.

**ATTACHMENTS:**

1. Application
2. Location Map
3. D. O. Condition 79 and 84
4. PD Plans including conceptual PD plan
5. Aerial
6. Landscape Plan

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APPROVED AS TO FORM AND LEGAL SUFFICIENCY
BY WILLIAM K. DEBRAAL
DEPUTY COUNTY ATTORNEY
Please indicate the type of application being submitted:

- Conceptual PD Special Exception:
- Concurrent Conceptual PD Special Exception & Preliminary PD:
- Preliminary Planned Development:
- Final Planned Development:

Note: For a PD rezoning please use the appropriate rezoning application.

**PROJECT NAME:** Lakes at Waterway Village Plat 2A

**Plan Number:** PD-11-09-02

**PROPERTY OWNER:** (PLEASE PRINT)

- Divosta Homes, LP
  - **NAME:**
  - **ADDRESS:** 1400 Indian Creek Parkway
  - **CITY, STATE, ZIP:** Jupiter, Florida 33458
  - **PHONE NUMBER:** 561-906-7967
  - **EMAIL ADDRESS:** mike.hueniken@pulte.com

**PROJECT ENGINEER:** (PLEASE PRINT)

- ARCADIS U.S., Inc.
  - **NAME:**
  - **ADDRESS:** 2081 Vista Parkway, 2nd Floor
  - **CITY, STATE, ZIP:** West Palm Beach, FL 33411
  - **PHONE NUMBER:** 561-697-7002
  - **EMAIL ADDRESS:** bob.lawson@arcadis-us.com

**APPLICANT:** (PLEASE PRINT)

**AGENT:** (PLEASE PRINT)

- **NAME:**
- **ADDRESS:**
- **CITY, STATE, ZIP:**
- **PHONE NUMBER:**
- **EMAIL ADDRESS:**

**CONTACT PERSON:**

- **NAME:**
- **ADDRESS:**
- **CITY, STATE, ZIP:**
- **PHONE NUMBER:**
- **EMAIL ADDRESS:**

**CONTACT PERSON:**

- **NAME:**
- **ADDRESS:**
- **CITY, STATE, ZIP:**
- **PHONE NUMBER:**
- **EMAIL ADDRESS:**

**SIGNATURE OF OWNER OR AGENT**

[Signature]
78. Streetlights must be provided along the site's 49th Street, 43rd Avenue, 58th Avenue, 53rd Street and 51st Court frontages. These streetlight improvements shall not be part of the Gifford Street lighting District.

79. In conjunction with the 43rd Avenue extension, the developer shall provide landscape plans that blend landscape improvements along the project's 43rd Avenue and 49th Street frontages with the area of 43rd Avenue located south of 49th Street and within the Gifford Park. Prior to issuance of a land development permit for 733 dwelling units, the developer shall submit and obtain planning staff approval of a landscape plan for these off-site landscape improvements. These off-site landscape improvements shall be completed prior to issuance of a certificate of occupancy for 828 dwelling units.

80. The following external pedestrian improvements are required:

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<th>Roadway</th>
<th>From</th>
<th>To</th>
<th>Selected Facility</th>
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<tbody>
<tr>
<td>49th Street</td>
<td>43rd Avenue</td>
<td>East Property Line</td>
<td>8' sidewalk, north side</td>
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<tr>
<td>49th Street</td>
<td>58th Avenue</td>
<td>43rd Avenue</td>
<td>8' sidewalk, north side</td>
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<td>53rd Street</td>
<td>43rd Avenue</td>
<td>East Property Line</td>
<td>5' sidewalk, both sides</td>
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<td>53rd Street</td>
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<td>49th Street</td>
<td>North Property Line</td>
<td>5' sidewalk, both sides</td>
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<td>43rd Avenue</td>
<td>49th Street</td>
<td>53rd Street</td>
<td>5' sidewalk, both sides</td>
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81. All internal streets shall have 5' wide sidewalks on both sides, with an 8' wide pedestrian path connection stub-out to the school site. Along 51st Court from 49th Street to 53rd Street, 8' wide sidewalks shall be provided on both sides. Recreation paths shall be provided within the preserve areas and limited public access allowed (e.g. scheduled tours) in coordination with the Waterway Village Management. All sidewalk and pedestrian path improvements shall be depicted on all land development permit plans.

82. The neighborhood commercial area shall be subject to architectural standards that are consistent with the residential development and generally consistent with the SR60 corridor criteria, including the monument sign criteria. The developer shall obtain planning staff approval of architectural plans for all buildings and signs within the neighborhood commercial area.

83. A street tree planting plan shall be provided with each preliminary PD plan, and the developer shall obtain staff approval of the street tree planting plan.

84. The developer shall explore locations for transit/bus stops with each preliminary design phase of the PD. Transit/bus stop improvements may be required.

85. An annual report shall be filed November 1st of every year after adoption of the DO and shall contain the following:

a. A description of changes in the plan of development, or in the phasing for the reporting year and for the next year.
THE LAKES AT WATERWAY VILLAGE
(WATERWAY VILLAGE PHASE 2A & 3A)
INDIAN RIVER COUNTY, FL.

ATTACHMENT 6
TO: The Honorable Members of the Planning and Zoning Commission

FROM: Stan Boling, AICP, Planning Director

DATE: February 1, 2012

SUBJECT: Dismissal of George Maib's Appeal of the County Community Development Director's Decision to Find No Vested Rights and Deny Ocean Concrete's Site Plan Application for a Concrete Batch Plant [SP-MA-07-03-15 / 2004110124-57127]

It is requested that the data herein presented be given formal consideration by the Planning and Zoning Commission at its regular meeting of February 9, 2012.

BACKGROUND

On November 15, 2005, George Maib submitted a major site plan application to construct a concrete batch plant (the Ocean Concrete project) on a site located along Old Dixie Highway about 1 mile south of CR512 (see attachment #1). The site is zoned IL (Light Industrial). Although staff reviewed the application and issued a discrepancy letter on December 5, 2005, the applicant never responded to the letter. Consequently, the application expired on November 15, 2006, one year after the original filing.

On December 6, 2006, Mr. Maib filed a second major site plan application for the same project on the same site. That second application was reviewed by staff, and a discrepancy letter was issued on January 2, 2007. Although the discrepancy letter was issued on January 2, 2007, the applicant did not respond to the letter until November 21, 2007. Meanwhile, a local resident requested that the Board of County Commissioners (BCC) initiate the process of changing the County’s land development regulations to prohibit heavy industrial uses, such as concrete plants, paper mills, and brick plants, in the IL district. In response to the request and following a staff analysis, the BCC directed staff to initiate the proposed zoning district use changes. Those changes were reviewed by the Professional Services Advisory Committee (PSAC), the PZC, and the BCC. On July 24, 2007, the BCC adopted IL district changes which prohibit concrete batch plants and numerous other heavy industrial uses in the IL district.

Although the IL district changes were adopted prior to the applicant's November 21, 2007 response to staff's January 2nd site plan discrepancy letter, staff reviewed the response, including a revised site plan, under the pre-July 24th regulations, with the caveat that the old regulations would apply only if the applicant could show that he had vested rights. Staff then found that the revised plans did not meet the old regulations.
When that site plan application expired on December 6, 2007, staff declined to extend the application since the site’s zoning no longer allowed the proposed use. Subsequently, the applicant appealed the site plan application extension denial to circuit court. Based on the court’s order on the appeal issue, the BCC, on April 20, 2010, granted a one year extension of the application. That extension allowed the applicant to pursue site plan approval until April 20, 2011, but did not prejudice or address the vested rights issue.

On March 1, 2011, the applicant submitted a response to staff’s December 17, 2007 discrepancy letter. After reviewing that response, staff issued a letter on April 15, 2011 stating that the revised site plan was approved, subject to many stated conditions, and subject to a yet-to-be-made determination of whether or not Mr. Maib had vested rights.

While staff was reviewing the revised site plan, Mr. Maib’s attorney (Geoff Smith) submitted an argument and materials supporting a finding of vested rights for Mr. Maib. In response, the County Attorney drafted an eight page legal opinion on the vested rights issue. That legal opinion held that Mr. Maib had no vested rights to the pre-July 24, 2007 regulations.

Based on the County Attorney’s opinion, the Community Development Director, on May 9, 2011, issued a letter to the applicant denying the site plan application because concrete batch plants are no longer permitted under the IL zoning district. In response, Mr. Maib submitted an appeal of the Community Development Director’s decision. Since LDR (land development regulations) Section 902.07 provides for site plan appeals to be heard by the PZC, staff coordinated with the appellant’s attorney from June to October 2011 in an attempt to schedule an acceptable PZC hearing date.

Meanwhile, a foreclosure judgment was obtained by LNV Corporation (LNV), the holder of a note and mortgage on the subject property, against Mr. Maib. That judgment resulted in a foreclosure sale eventually being held on July 7, 2011, at which LNV was the successful bidder. After a challenge by Mr. Maib, the sale was confirmed by order of the foreclosure court on October 11, 2011 (see attachment #2). After the foreclosure court confirmed the sale, the County Attorney advised staff that issuance of the deed was imminent and that issuance of the deed to LNV would moot the site plan/vested rights appeal, because once the deed was issued to LNV, Mr. Maib would not be the owner of the property. On October 27, 2011, staff updated the PZC on the status of the ownership change and the appeal. Subsequently, title was issued to LNV by U.S. Marshal’s deed on November 10, 2011 (see attachment #3).

On November 28, 2011, the Community Development Director sent a letter to Mr. Maib providing him 30 days to obtain authorization from the new owner (LNV) to proceed with the appeal (see attachment #4). Mr. Maib did not respond. Forty-five days after the November 28th letter, the Community Development Director sent a second letter to Mr. Maib. That letter, dated January 12, 2012, stated that, since no authorization from LNV had been provided, staff would schedule a February 9, 2012 hearing before the PZC at which the PZC would consider dismissing the appeal (see attachment #5).

The PZC is now to consider dismissal of the subject appeal.

**ANALYSIS**

According to County site plan ordinance sections 914.06(4)(a)(3) and (4) (see attachment #7), a site plan application filing must include a deed of the project property and authorization from the property owner if the applicant is different from the owner. In the Ocean Concrete case, the site plan applicant
(Mr. George Maib) is different from the owner of the subject property (LNV) and has not produced authorization from the owner. Therefore, Mr. Maib may not proceed with the project site plan application and associated appeal.

Under land development regulations 902.05 and 902.07 (see attachment #8), the PZC is authorized to hear appeals of Community Development Director decisions, including the subject appeal. In addition, the PZC is authorized to dismiss an appeal. In the opinion of the County Attorney, the subject appeal needs to be dismissed due to lack of authorization (see attachment #6). Therefore, the PZC should dismiss the appeal.

RECOMMENDATION

Staff recommends that the PZC dismiss the appeal filed by George Maib due to lack of owner authorization.

ATTACHMENTS

1. Location Map
2. Court Order to Issue Deed to LNV Corporation
3. Marshal's Deed to LNV Corporation
5. January 12, 2012 Letter to Maib
6. County Attorney’s Opinion
7. Site Plan Ordinance Sections 914.06(4)(a)(3) & (4)
8. Section 902.05 and 902.07

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

BY

WILLIAM K. DEBRAAL
DEPUTY COUNTY ATTORNEY
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. PIERCE DIVISION

Case No. 09-14239-CIV-GRAHAM/LYNCH

LNV CORPORATION,
       Plaintiff,
vs.
GEORGE A. MAIB, and
ROBYNE E. MAIB, et al.,
       Defendants.

ORDER

THIS CAUSE came before the Court upon Plaintiff’s Motion for
order overruling Defendants’ objections, confirming foreclosure
sale and directing U.S. Marshal to issue U.S. Marshal’s Deed [D.E.
84].

THE COURT has considered the Motion, the pertinent portions of
the record, and is otherwise fully advised in the premises.

I. BACKGROUND

On October 4, 2010, the Court entered its Summary Judgment of
Foreclosure Including Award of Attorney’s Fees and Costs (“Final
Judgment”), directing, inter alia, the U.S. Marshall to sell the
70]. The U.S. Marshal originally scheduled the public sale on the
Property for December 2, 2010, however the sale was stayed upon the
filing of George Maib’s Suggestion of Chapter 7 Bankruptcy. [D.E.
76]. On July 7, 2011, after the U.S. Bankruptcy Court granted
Plaintiff’s Amended Stay Relief Motion, the U.S. Marshal conducted the public sale of the Property in accordance with 28 U.S.C. §2001 and the Final Judgment. Among others, a representative of LNV and George Miab, the record owner of the property, were present at the sale. LNV was the winning bidder at the sale, purchasing the Property for $100.00.

Defendants filed objections to the sale. Specifically, the Trust asserts that it did not receive notice of the sale. [D.E. 82]. Additionally, George Maib objects contending that the judgment itself is in error because Plaintiff has admitted that Robyn Maib had neither a legal or recognizable equitable interest in the real property. [D.E. 83]. The Court finds Defendants’ objections without merit. It is clear to this Court that all parties in this action, including counsel of record for the Trust, received actual notice of both the sale and the publication of the same, as required by 28 U.S.C. §2002, through LNV’s filing of the Notice of Filing the Original Affidavit of Proof of Publication of Notice of Sale. [D.E. 78-79]. Moreover, Ms. Robyn Maib is not a party to the foreclosure action and thus has nothing to do with the foreclosure sale.

On July 8, 2011, the U.S. Marshal made a report of the sale to the Court. [D.E. 81]. Accordingly, it is hereby

ORDERED AND ADJUDGED that Defendants’ Objections [D.E. 82 and 83] are OVERRULED. It is further

ORDERED AND ADJUDGED that Plaintiff’s Motion Confirming
Foreclosure Sale [D.E. 84] is GRANTED. The result of the Foreclosure Sale held on July 7, 2011 at 11:00am on the steps of the Indian River County Courthouse is hereby CONFIRMED. Plaintiff LNV Corporation was the successful bidder at the Foreclosure Sale. It is further ORDERED AND ADJUDGED that the U.S. Marshal's Office is hereby directed to issue a U.S. Marshal's Deed in favor of LNV Corporation with respect to the following property:

That part of Government Lot 3, lying West of the Florida East Coast Railroad, in Section 8, Township 31 South, Range 39 East, Indian River County, Florida.

DONE AND ORDERED in Chambers at Miami, Florida, this 11th day of October, 2011.

DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record
This INDENTURE, is made and entered into this 8th day of November, 2011, between
the United States Marshal for the Southern District of Florida (hereinafter referred to as
"United States Marshal"), in his official capacity, and LNV Corporation, a Nevada corporation,
7195 Dallas Parkway, Plano, Texas, 75024, grantee (hereinafter referred to as "LNV
Corporation").

Witnesseth, that on the 04th day of October, 2010, in the United States Court for the
Southern District of Florida, in Case No. 09-14239-CIV-GRAHAM/LYNCH, the Plaintiff, LNV
Corporation, entered a Final Judgment against George A. Maib and Robyn E. Maib, et al.,
Defendants, in the amount of $3,363,412.35 with interest thereafter at the rate provided by 28
U.S.C. § 1961 per day (hereinafter referred to as "the judgment").

That on the 7th day of July, 2011, the United States Marshal did hold a foreclosure sale
as directed by the Court in the Judgment in connection with the following described real
property:

Legal Description; That part of Government Lot 3,
Lying West of the Florida East Coast Railroad,
In Section 8, Township 31 South, Range 39 East,
Indian River County, Florida

[Hereinafter referred to as "the property"]
That the property was first advertised for sale by the United States Marshal according to law, then sold at a public sale at the Indian River County Courthouse, 2000 16th Avenue, Vero Beach, Florida, 32960, to the Plaintiff, LNV Corporation, who bid the highest and best bid in the amount of $100.00.

Now therefore, I, Nell DeSousa, Acting United States Marshal, by virtue of my office and according to law, in consideration of $100.00 in hand paid to me by the Plaintiff, LNV Corporation, grant, bargain and sell all right, title, interest and claim which George A. Malb and Robyn E. Malb, et al., Defendants had in the property.

To have and hold, together, with appurtenances thereto, to LNV Corporation, 7195 Dallas Parkway, Plano, Texas, 75024, his/her successors and assigns.

IN WITNESS WHEREOF, I have hereby set my hand and seal, the 10 day of

November, 2011.

NEIL DESOUSA
Acting United States Marshal for The Southern District of Florida
400 North Miami Avenue, 6th Floor
Miami, Florida 33128

Elizabeth Valdes
Print Name
STATE OF FLORIDA

COUNTY OF MIAMI-DADE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State of aforesaid and in the County aforesaid, to take acknowledgments, personally appeared, Neil DeSousa, Acting United States Marshal for the Southern District of Florida, and he acknowledged to me that he executed the foregoing instrument for the purpose and considerations therein expressed. He is personally known to me and did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 10th Day of November, 2011.

Sandra M. Viteri
Printed Name
NOTARY PUBLIC,
STATE OF FLORIDA
November 28, 2011

George Maib
5074 Quail Hollow St
Palm City FL 34990

RE: Authorization for Ocean Concrete Site Plan Application
[SP-MA-07-03-15 / 2004110124-57127]

Dear Mr. Maib

On May 31, 2011, you filed an appeal of my decision, as Community Development Director, to deny the Ocean Concrete site plan application. Based upon agreement of the parties, the appeal hearing was scheduled for Fall, 2011.

At the time that the appeal was filed, the property that was the subject of the Ocean Concrete site plan application was in foreclosure. In fact, a summary judgment of foreclosure was issued in October, 2010. Because the court's order of sale was initially stayed due to your bankruptcy filing, the County determined that the site plan appeal process could proceed.

In July, 2011, however, circumstances changed. At that time, the U.S. Marshal held a foreclosure sale of the subject property, at which LNV Corporation was the successful bidder. Subsequently, the U.S. District Court confirmed the foreclosure sale and directed the U.S. Marshal to issue a deed for the subject property to LNV Corporation (see attachment #1). The deed was executed by the U.S. Marshal on November 10, 2011, thereby transferring the subject property to LNV Corporation (see attachment #2).

According to site plan ordinance sections 914.06(4)(a)3 & 4, an applicant for site plan approval must own the property which is the subject of the application or submit written authorization from the owner. Since a U.S. Marshal’s deed for the subject property has been issued to LNV Corporation, you are no longer the owner of the property and therefore have no standing to continue to pursue your appeal.

I am hereby providing you with the opportunity to obtain and produce written authorization from the owner (LNV Corporation) of the subject property for you to proceed with the site plan appeal. If you are able to produce the authorization, staff will schedule an appeal hearing before the Planning
If you are not able to produce the authorization, staff will schedule an appeal dismissal hearing before the Planning & Zoning Commission based on the fact that you are no longer the owner of the subject property and do not have written authorization from the owner (LNV Corporation) to proceed.

If, within 30 days, staff has not received the written authorization from LNV for you to proceed with the site plan appeal, staff will schedule the dismissal hearing. If you need more than 30 days, please let me know in writing.

If you require any additional information, please contact this office at 226-1254.

Sincerely,

Robert M. Keating, AICP
Community Development Director

Attachments: 1. Court Order
               2. U.S. Marshals Deed

cc: Board of County Commissioners
    Joseph A. Baird (via e-mail)
    Stan Boling, AICP
    John W. McCoy, AICP (via e-mail)
    David Hays, P.E. (via e-mail)
    Jeanne Bresett (via e-mail)
    Alan S. Polackwich, Sr., County Attorney (via e-mail)
    Geoffrey Smith, Smith & Associates (via e-mail)
    Todd Smith (via e-mail)
    Al Minner, City of Sebastian (via e-mail)
    Ralph Brown (via e-mail)
    Sam Block, Esq. (via e-mail)
    Richard Brown (via e-mail)
    Deb Robinson (via e-mail)
    Helene Caseltine (via e-mail)
    Ruth Stanbridge (via e-mail)
    George Simons (via e-mail)
    Kelly Mather (via e-mail)
    Robert A. Ginsburg (via e-mail)
    Deborah C. Menotte, Bankruptcy Trustee (via e-mail)
    LNV Corporation (US Mail)
    Kelly Mather (via e-mail)
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FT. PIERCE DIVISION

Case No. 09-14239-CIV-GRAHAM/LYNCH

LNV CORPORATION,

Plaintiff,

vs.

GEORGE A. MAIB, and
ROBYNE E. MAIB, et al.,

Defendants.

ORDER

THIS CAUSE came before the Court upon Plaintiff's Motion for order overruling Defendants' objections, confirming foreclosure sale and directing U.S. Marshal to issue U.S. Marshal's Deed [D.E. 84].

THE COURT has considered the Motion, the pertinent portions of the record, and is otherwise fully advised in the premises.

I. BACKGROUND

On October 4, 2010, the Court entered its Summary Judgment of Foreclosure Including Award of Attorney's Fees and Costs ("Final Judgment"), directing, inter alia, the U.S. Marshall to sell the property at public sale in accordance with 28 U.S.C. §2001. [D.E. 70]. The U.S. Marshal originally scheduled the public sale on the Property for December 2, 2010; however the sale was stayed upon the filing of George Maib's Suggestion of Chapter 7 Bankruptcy. [D.E. 76]. On July 7, 2011, after the U.S. Bankruptcy Court granted
Plaintiff's Amended Stay Relief Motion, the U.S. Marshal conducted the public sale of the property in accordance with 28 U.S.C. §2001 and the Final Judgment. Among others, a representative of LNV and George Maib, the record owner of the property, were present at the sale. LNV was the winning bidder at the sale, purchasing the Property for $100.00.

Defendants filed objections to the sale. Specifically, the Trust asserts that it did not receive notice of the sale. [D.E. 82]. Additionally, George Maib objects contending that the judgment itself is in error because Plaintiff has admitted that Robyn Maib had neither a legal or recognizable equitable interest in the real property. [D.E. 83]. The Court finds Defendants' objections without merit. It is clear to this Court that all parties in this action, including counsel of record for the Trust, received actual notice of both the sale and the publication of the same, as required by 28 U.S.C. §2002, through LNV's filing of the Notice of Filing the Original Affidavit of Proof of Publication of Notice of Sale. [D.E. 78-79]. Moreover, Ms. Robyn Maib is not a party to the foreclosure action and thus has nothing to do with the foreclosure sale.

On July 8, 2011, the U.S. Marshal made a report of the sale to the Court. [D.E. 81]. Accordingly, it is hereby

ORDERED AND ADJUDGED that Defendants' Objections [D.E. 82 and 83] are OVERRULED. It is further

ORDERED AND ADJUDGED that Plaintiff's Motion Confirming
Foreclosure Sale [D.E. 84] is GRANTED. The result of the Foreclosure Sale held on July 7, 2011 at 11:00am on the steps of the Indian River County Courthouse is hereby CONFIRMED. Plaintiff LNV Corporation was the successful bidder at the Foreclosure Sale.

It is further ORDERED AND ADJUDGED that the U.S. Marshal’s Office is hereby directed to issue a U.S. Marshal’s Deed in favor of LNV Corporation with respect to the following property:

That part of Government Lot 3, lying West of the Florida East Coast Railroad, in Section 8, Township 31 South, Range 39 East, Indian River County, Florida.

DONE AND ORDERED in Chambers at Miami, Florida, this 11th day of October, 2011.

DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record
THIS INDENTURE, is made and entered into this 8th day of November, 2011, between the United States Marshal for the Southern District of Florida [hereinafter referred to as "United States Marshal"], in his official capacity, and LNV Corporation, a Nevada corporation, 7195 Dallas Parkway, Plano, Texas, 75024, grantee [hereinafter referred to as "LNV Corporation"].

Witnesseth, that on the 04th day of October, 2010, in the United States Court for the Southern District of Florida, in Case No. 09-14239-CIV-GRAHAM/LYNCH, the Plaintiff, LNV Corporation, entered a Final Judgment against George A. Maib and Robyn E. Maib, et al., Defendants, in the amount of $3,383,412.35 with interest thereafter at the rate provided by 28 U.S.C. § 1961 per day [hereinafter referred to as "the judgment"].

That on the 7th day of July, 2011, the United States Marshal did hold a foreclosure sale as directed by the Court in the Judgment in connection with the following described real property:

Legal Description; That part of Government Lot 3,

Lying West of the Florida East Coast Railroad,

In Section 8, Township 31 South, Range 39 East,

Indian River County, Florida

[Hereinafter referred to as "the property"]
That the property was first advertised for sale by the United States Marshal according to law, then sold at a public sale at the Indian River County Courthouse, 2000 16th Avenue, Vero Beach, Florida, 32960, to the Plaintiff, LNV Corporation, who bid the highest and best bid in the amount of $100.00.

Now therefore, I, Nell Desousa, Acting United States Marshal, by virtue of my office and according to law, in consideration of $100.00 in hand paid to me by the Plaintiff, LNV Corporation, grant, bargain and sell all right, title, interest and claim which George A. Malb and Robyn E. Maib, et al., Defendants had in the Property.

To have and hold, together, with appurtenances thereto, to LNV Corporation, 7195 Dallas Parkway, Plano, Texas, 75024, his/her successors and assigns.

IN WITNESS WHEREOF, I have hereby set my hand and seal, the 10 day of

November 2011.

NEIL DESOUSA
Acting United States Marshal for The Southern District of Florida
400 North Miami Avenue, 6th Floor
Miami, Florida 33128

Elizabeth Valdes
Print Name
STATE OF FLORIDA

COUNTY OF MIAMI-DADE

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State of aforesaid and in the County aforesaid, to take acknowledgments, personally appeared, Neil DeSousa, Acting United States Marshal for the Southern District of Florida, and he acknowledged to me that he executed the foregoing Instrument for the purpose and considerations therein expressed. He is personally known to me and did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 10th Day of November 2011.

Sandra M. Viteri
Printed Name

NOTARY PUBLIC,
STATE OF FLORIDA
January 12, 2012

George Maib  
5074 Quail Hollow St  
Palm City FL 34990  

RE: Follow-up on Authorization for Ocean Concrete Site Plan Application  
[SP-MA-07-03-15 / 2004110124-57127]  

Dear Mr. Maib  

On November 28, 2011, I sent you a letter regarding owner authorization for the Ocean Concrete Site Plan Application referenced above. In that letter, I stated that, because the Ocean Concrete property had been acquired by LNV Corporation at a foreclosure sale, you were no longer the owner of the property and had no standing to proceed with your site plan appeal. At that time, I gave you 30 days to obtain authorization from the current owner (LNV Corporation) for you to continue with your site plan appeal. In addition, I offered to extend the 30 day period if you requested more time in writing.  

On December 28, 2011, the 30 day period ended without a response from you, and it appears that you have not been able to obtain authorization from the current property owner. Therefore, staff is scheduling a hearing before the Planning & Zoning Commission on February 9, 2012 to dismiss the appeal based on the fact that you are no longer the owner of the subject property and do not have written authorization from the owner of the property to proceed with your site plan appeal. Please be advised that the dismissal hearing will focus solely on the ownership and authorization issue.  

If you require any additional information, please contact this office at 226-1254.  

Sincerely,  

[Signature]  
Robert M. Keating, AICP  
Community Development Director
Attachment: November 28, 2011 Letter

cc: Board of County Commissioners
    Joseph A. Baird (via e-mail)
    Stan Boling, AICP
    John W. McCoy, AICP (via e-mail)
    David Hays, P.E. (via e-mail)
    Jeanne Bresett (via e-mail)
    Alan S. Polackwich, Sr., County Attorney (via e-mail)
    Geoffrey Smith, Smith & Associates (via e-mail)
    Todd Smith (via e-mail)
    Al Minner, City of Sebastian (via e-mail)
    Ralph Brown (via e-mail)
    Sam Block, Esq. (via e-mail)
    Richard Brown (via e-mail)
    Deb Robinson (via e-mail)
    Helene Caseltine (via e-mail)
    Ruth Stanbridge (via e-mail)
    George Simons (via e-mail)
    Kelly Mather (via e-mail)
    Robert A. Ginsburg (via e-mail)
    Deborah C. Menotte, Bankruptcy Trustee (via e-mail)
    LNV Corporation (US Mail)
    Kelly Mather (via e-mail)
November 28, 2011

George Maib
5074 Quail Hollow St
Palm City FL 34990

RE: Authorization for Ocean Concrete Site Plan Application
[SP-MA-07-03-15 / 2004110124-57127]

Dear Mr. Maib

On May 31, 2011, you filed an appeal of my decision, as Community Development Director, to deny the Ocean Concrete site plan application. Based upon agreement of the parties, the appeal hearing was scheduled for Fall, 2011.

At the time that the appeal was filed, the property that was the subject of the Ocean Concrete site plan application was in foreclosure. In fact, a summary judgment of foreclosure was issued in October, 2010. Because the court's order of sale was initially stayed due to your bankruptcy filing, the County determined that the site plan appeal process could proceed.

In July, 2011, however, circumstances changed. At that time, the U.S. Marshal held a foreclosure sale of the subject property, at which LNV Corporation was the successful bidder. Subsequently, the U.S. District Court confirmed the foreclosure sale and directed the U.S. Marshal to issue a deed for the subject property to LNV Corporation (see attachment #1). The deed was executed by the U.S. Marshal on November 10, 2011, thereby transferring the subject property to LNV Corporation (see attachment #2).

According to site plan ordinance sections 914.06(4)(a)3 & 4, an applicant for site plan approval must own the property which is the subject of the application or submit written authorization from the owner. Since a U.S. Marshal's deed for the subject property has been issued to LNV Corporation, you are no longer the owner of the property and therefore have no standing to continue to pursue your appeal.

I am hereby providing you with the opportunity to obtain and produce written authorization from the owner (LNV Corporation) of the subject property for you to proceed with the site plan appeal. If you are able to produce the authorization, staff will schedule an appeal hearing before the Planning
& Zoning Commission. If you are not able to produce the authorization, staff will schedule an appeal dismissal hearing before the Planning & Zoning Commission based on the fact that you are no longer the owner of the subject property and do not have written authorization from the owner (LNV Corporation) to proceed.

If, within 30 days, staff has not received the written authorization from LNV for you to proceed with the site plan appeal, staff will schedule the dismissal hearing. If you need more than 30 days, please let me know in writing.

If you require any additional information, please contact this office at 226-1254.

Sincerely,

Robert M. Keating, AICP
Community Development Director

Attachments: 1. Court Order
2. U.S. Marshals Deed

cc: Board of County Commissioners
    Joseph A. Baird (via e-mail)
    Stan Boling, AICP
    John W. McCoy, AICP (via e-mail)
    David Hays, P.E. (via e-mail)
    Jeanne Brescett (via e-mail)
    Alan S. Polackwich, Sr., County Attorney (via e-mail)
    Geoffrey Smith, Smith & Associates (via e-mail)
    Todd Smith (via e-mail)
    Al Minner, City of Sebastian (via e-mail)
    Ralph Brown (via e-mail)
    Sam Block, Esq. (via e-mail)
    Richard Brown (via e-mail)
    Deb Robinson (via e-mail)
    Helene Caseltine (via e-mail)
    Ruth Stanbridge (via e-mail)
    George Simons (via e-mail)
    Kelly Mather (via e-mail)
    Robert A. Ginsburg (via e-mail)
    Deborah C. Menotte, Bankruptcy Trustee (via e-mail)
    LNV Corporation (US Mail)
    Kelly Mather (via e-mail)
MEMORANDUM

TO: Robert Keating, Community Development Director  
FROM: Alan S. Polackwich, Sr., County Attorney  
DATE: January 31, 2012  
SUBJECT: Appeal of Denial of George Maib Site Plan Application

On May 9, 2011, you, as Community Development Director, issued a written denial of George Maib's site plan application to construct a concrete batch plant on property located in the unincorporated County, south of the City of Sebastian ("subject property"). On May 31, 2011, Mr. Maib filed an appeal of your decision to the Planning and Zoning Commission ("P&Z").

At the time the appeal was filed, two legal proceedings involving Mr. Maib were pending: (1) a personal bankruptcy filed in December 2010, and (2) a foreclosure of the mortgage on the subject property, filed in July 2009 by the mortgage holder, LNV Corporation ("LNV"). The foreclosure, which had been delayed temporarily by the bankruptcy filing, was scheduled for a foreclosure sale on July 7, 2011. The sale was held on that date and LNV was the high bidder. Title to the subject property would normally have transferred to LNV later in July 2011; however, the transfer of title was delayed because Mr. Maib filed an objection to the sale. On October 11, 2011, the foreclosure court entered an order denying Mr. Maib’s objection and directing that title be issued to LNV. Title was issued to LNV by U.S. Marshal’s deed dated November 10, 2011.

During the foreclosure process, you requested my opinion on the effect of the foreclosure sale and transfer of title to LNV, on Mr. Maib’s pending appeal to P&Z. I verbally advised you that under the IRC Code, Mr. Maib could not proceed with his site plan application if he was no longer the owner of the subject property, unless he had written authorization to proceed from the owner (LNV). Based upon this advice, by correspondence dated November 28, 2011, you advised Mr. Maib that because he no longer owned the subject property, he could only proceed with his application and appeal if he produced written authorization from the owner. You gave Mr. Maib 30 days to produce the authorization, and advised him to contact you if he needed more time to do so. I understand that you never received any response to the November 28 letter. I also understand that on January 12, 2012, you sent a second letter to Mr. Maib advising that in light of his lack of response, you would schedule the appeal for dismissal at the February 9, 2012 P&Z meeting. To date, you have had no response to the January 12 letter either.
In advance of the upcoming P&Z meeting, you have asked that I provide this memo setting forth in writing the previous verbal advice which I rendered during the foreclosure proceedings – namely, that in the absence of ownership of the subject property or written authorization from the owner, Mr. Maib has no authority under the IRC Code to proceed with his application or appeal. This memo is in response to your request.

IRC Code sections 914.06(4)(a)(3) and (4) make clear that only the owner of the subject property, or a person with written authority from the owner, is authorized to file and pursue a site plan application. These provisions are based on the common sense fact that a person who does not own a parcel of property, or have authority from the owner, cannot develop the property in any way. This rule applies at all stages of the application process, including appeals. Because Mr. Maib no longer owns the property, and has not obtained authority from the owner, the county can no longer entertain or grant his site plan application.

Accordingly, it is my opinion that sections 914.06(4)(a)(3) and (4) of the IRC Code require dismissal of the appeal.

ASP:LAC
viewing departments and agencies. Incomplete submittals shall not be routed. The planning division shall contact the applicant regarding any incomplete items or materials, so that the applicant can then complete the submittal.

(d) Submittal requirements. The following shall be provided by the applicant, in the appropriate written or graphic form:

1. A complete application;
2. Ten (10) plan sets (twenty-four (24) inches by thirty-six (36) inches) depicting:
   a. Proposed buildings and structures;
   b. Proposed parking areas, vehicular and pedestrian circulation systems;
   c. Location map;
   d. All driveways and roadways near the site;
   e. Open space and all required buffer areas, and native vegetation preservation areas;
   f. Right-of-way and traffic improvements, existing conditions and proposed improvements;
   g. Drainage features, environmentally sensitive areas and environmentally significant areas;
   h. Conceptual stormwater management systems;
   i. All fire lanes and emergency access ways;
   j. Location of existing and proposed fire hydrant(s) within five hundred (500) feet.
   k. Provisions for fire protection water supply.
3. Written data including:
   a. Parcel size and proposed uses(s);
   b. Proposed number of dwelling units and density (if applicable);
   c. For non-residential uses, the proposed area in square feet for each use proposed;
   d. Provisions for water and wastewater;
   e. Zoning, land use designation, and existing use(s) of the subject site and adjacent properties;
   f. Demonstration that any and all applicable specific land-use criteria can be satisfied by the proposed project;
   g. Name, address and telephone number of the applicant, surveyor and engineer and a list of all the owners of the property (must be on the application and the drawings);

(3) Formal pre-application conference optional. For all site plan applications not requiring a formal pre-application conference prior to application submission pursuant to section 914.06, a formal pre-application conference is recommended by staff but is solely an option available to an applicant. Applicants should confer with planning staff to discuss any applicable site plan requirements.

(4) Submission of formal site plan application and fees.

(a) Application submittals. All applications for major site plans, minor site plans and administrative approvals shall include:

1. All required fees as established by the board of county commissioners;
2. All other necessary county permit applications and information (such as right-of-way, land clearing, tree removal, stormwater, traffic impact statement or study);
3. A deed for the subject property;
4. Authorization from the owner for the applicant/agent if different from the owner; and
5. A concurrency certificate or evidence of application for a certificate, a de-
Section 902.05. Role of planning and zoning commission in planning and development.

(1) The planning and zoning commission shall act as the designated local planning agency.

(2) The planning and zoning commission of Indian River County shall have the power to recommend to the board of county commissioners land development regulations, ordinances, and amendments to land development regulations which are designed to promote orderly development and implement the Indian River County Comprehensive Plan.

(3) The planning and zoning commission shall consider whether or not any proposed amendments to the Indian River County Comprehensive Plan are consistent with the overall growth management goals and objectives of the county, and shall make recommendations regarding all such amendments to the board of county commissioners.

(4) The planning and zoning commission shall consider whether or not any proposed rezoning requests are consistent with the Indian River County Comprehensive Plan and make recommendations regarding all rezonings to the board of county commissioners.

(5) The planning and zoning commission shall consider whether or not specific proposed developments conform to the principles and requirements of the county's land development regulations and the comprehensive plan, shall make decisions on development applications, and shall make recommendations to the board of county commissioners based thereon.

(6) The planning and zoning commission shall keep the board of county commissioners and the general public informed and advised on matters relating to planning and development.

(7) The planning and zoning commission shall conduct such public hearings as may be required to gather such information for the drafting, establishment and maintenance of the various components of the comprehensive plan, and such additional public hearings as are specified under the provisions of these land development regulations.

(8) The planning and zoning commission shall review and make decisions regarding applications for preliminary plat and site plan approval.

(9) The planning and zoning commission shall receive petitions for special exception uses; review these petitions pursuant to the applicable special exception use criteria; receive input at an advertised public hearing; and recommend approval, approval with conditions, or denial of the petitions to the board of county commissioners.

(10) The planning and zoning commission shall consider whether proposed administrative permit uses requiring planning and zoning commission review and approval conform to the specific use requirements and make decisions related thereto.

(11) The planning and zoning commission may recommend that the board of county commissioners direct the planning staff to undertake special studies on the location, condition and adequacy of specific facilities. These may include, but are not limited to, studies on housing, commercial and industrial facilities, parks, playgrounds, beaches and other recreational facilities, public buildings, public and private utilities, transportation, parking, and development of regional impact (DRI) applications.
(12) The planning and zoning commission of Indian River County shall have the power to hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these land development regulations. The decision of the planning and zoning commission is final unless appealed to the board of county commissioners.

(13) The planning and zoning commission shall interpret these land development regulations at the request of the community development director.

(14) The planning and zoning commission shall perform any other duties which may be lawfully assigned to it.

(15) The commission shall have and exercise the powers of the airport zoning commission as specified in F.S. § 333.05, under rules consistent with said section and with the Code of Indian River County.

Section 902.07. Appeals from decisions of the community development director or his designee.

(1) Purpose and intent. This section is established to provide a mechanism for the hearing and resolution of appeals of decisions or actions by the community development director or his designee and for further appeals from decisions and actions from the planning and zoning commission.

(2) Authorization.

(a) The planning and zoning commission of Indian River County shall be authorized to:

1. Hear and decide appeals when it is alleged that there is an error in any order, requirement, decision, or determination made by the community development director or his designee in the application and enforcement of the provisions of the land development regulations.

Hear and decide appeals when it is alleged that there is an error in the interpretation or application of a provision(s) of these land development regulations in relation to a development application. Decisions rendered by the planning and zoning commission may be appealed to the board of county commissioners which shall have the power to hear and decide such appeals.

(b) Upon appeal and in conformance with land development regulations, the planning and zoning commission in exercising its powers may reverse or affirm wholly or partly or may modify the order, requirement, decision, interpretation, application or determination of the community development director or his designee.

(c) Any action reversing the community development director's decision shall require four (4) affirmative votes of the planning and zoning commission.

(3) Appeal procedures.

(a) The applicant, or any other person(s) whose substantial interests may be affected during the development review process, may initiate an appeal.
(b) Appeals must be filed within twenty-one (21) days from the date of notification letter rendering the decision by the respective official. Appeals may be concurrent with requests for approval of a development application(s).

(c) An appeal must be filed within the specified time limit with the planning division on a form prescribed by the county. All such appeals shall recite the reasons such an appeal is being taken. The appeal should identify: the error alleged; the ordinance allegedly improperly interpreted or the requirement decision or order allegedly improperly issued; the land development regulations supporting the applicant's position; and the goals, objectives and/or policies of the comprehensive plan supporting the applicant's position. The appeal shall be accompanied by a fee to be determined by resolution of the board of county commissioners. The community development director shall schedule the appeal at the earliest available meeting of the planning and zoning commission.

(d) Notice of the appeal, in writing, shall be mailed by the planning division to the owners of all land which abuts the property upon which an appeal is sought, at least seven (7) days prior to the hearing. The property appraiser's address for said owners shall be used in sending all such notices. The notice shall contain the name of the applicant for the appeal, a description of the land sufficient to identify it, a description of the appeal requested, as well as the date, time and place of the hearing.

(e) All appeals shall be heard at a meeting of the planning and zoning commission. All interested parties shall have a right to appear before the planning and zoning commission and address specific concerns directly related to the appeal. Any person may appear by agent or attorney. All such hearings shall be conducted in compliance with the rules of procedure for the planning and zoning commission. The time and place scheduled for hearing shall be given to the applicant in writing after an appeal application is submitted.

(4) Action by the planning and zoning commission, findings of fact. At the hearing scheduled for the purpose of considering the appeal, the planning and zoning commission may, in conformity with the provisions of law and these land development regulations, uphold, development director or his designee from whom the appeal is taken. In reviewing an appeal of a decision by the community development director or his designee, the planning and zoning commission must make findings in the following areas:

(a) Did the reviewing official fail to follow the appropriate review procedures?

(b) Did the reviewing official or commission fail to properly apply the use or size and dimension regulations for the respective zoning district(s)?

(c) Did the reviewing official fail to consider adequately the effects of the proposed development upon surrounding properties, traffic circulation or public health, safety and welfare?

(d) Did the reviewing official fail to evaluate the application with respect to the comprehensive plan and land development regulations of Indian River County?
The decision of the planning and zoning commission shall be final unless further appealed. Notwithstanding findings (a) through (d) above, the planning and zoning commission may make additional findings of fact.

(5) **Further appeals from actions by the planning and zoning commission.** At any time within twenty-one (21) days following action by the planning and zoning commission, the applicant, the county administration, or any department thereof, or any other person whose substantial interests may be affected by the proceeding may seek review of such decision by the board of county commissioners. The decision of the board of county commissioners shall be final. At the hearing scheduled for the purpose of considering an appeal of the planning and zoning commission's action, the board of county commissions may, in conformity with the provisions of law and these land development regulations, uphold, amend, or reverse wholly or partly, the decision by the planning and zoning commission which is being appealed. Appeals of planning and zoning commission decisions to deny rezoning applications are regulated in section 902.12. All other types of appeals to the board of county commissioners shall be followed in accordance with the same provisions of appeal procedures to the planning and zoning commission, section 902.07(3), and the board of county commissioners shall review the appeals with respect to the findings criteria of section 902.07(4). Any action by the board of county commissioners reversing a planning and zoning commission decision shall require three (3) affirmative votes.

(6) **Effect of filing an appeal.** The filing of an appeal shall terminate all proceedings which further the action appealed until the appeal is resolved, except when the halting of such action poses a threat to life or property. The planning and zoning commission shall make this determination. Notwithstanding this provision, proceedings involving review of a development application may proceed when an appeal of an administrative decision has been filed and will be considered concurrent with the development application request.

(7) **Transmittal of the record.** Staff shall forthwith compile and transmit to the planning and zoning commission all information documented which constitutes the record of action from which the appeal is taken.
TO: The Honorable Members of the Planning and Zoning Commission

DEPARTMENT HEAD CONCURRENCE:

Robert M. Keating, AICP; Community Development Director

FROM: Stan Boling, AICP; Planning Director

DATE: February 2, 2012

SUBJECT: Consideration of Draft LDR Amendments: Set 3

It is requested that the data herein presented be given formal consideration by the Planning and Zoning Commission (PZC) at its regular meeting of February 9, 2012.

BACKGROUND

On October 12, 2010, the Board of County Commissioners (BCC) adopted comprehensive plan amendments that were based on the county's previously approved EAR (Evaluation and Appraisal Report). As the next step in the overall EAR process, the county's land development regulations (LDRs) need to be amended to correspond to the EAR based amendments to the comprehensive plan. In addition to "EAR-based LDRs", staff has identified various LDR amendments that are needed to clean-up, clarify, or update the county's land development regulations.

Since adoption of the EAR based comprehensive plan amendments, staff has worked on drafting EAR-based and clean-up LDR amendments. Now that the proposed LDR amendments have been drafted, the process to adopt those amendments has begun. Because of the number of amendments proposed, staff has divided the amendments into multiple sets. To allow sufficient time for the PZC to adequately review the proposed amendments, staff is presenting sets of LDR amendment drafts to the PZC for discussion and input prior to holding a public workshop and formal hearings on the proposed LDR amendments.

One set of draft amendments (Set 1) was presented to the PZC on August 25, 2011. That set of amendments included proposed changes to LDR Chapters 901, 902, 904, 910, 911, 912, 913, 914, 952, and 971. A second set of draft amendments (Set 2) was presented to the PZC on December 10, 2011. That set of amendments included changes to Chapter 915, PD (Planned Development) regulations, Chapter 972, regulations for temporary uses, and changes related to flood protection and vertical datum conversion (Chapters 901, 913, 914, and 930). Based upon input received during the August and December PZC discussions, staff revised the Set 1 and Set 2 drafts and sent updated drafts to PZC members on December 30, 2011.

Staff is now presenting Set 3 of the LDR draft amendments for PZC discussion and input.
ANALYSIS

Set 3 of the draft LDR amendments includes changes to "countywide" aesthetic regulations (Chapter 911); sidewalk regulations (Chapters 913, 914); wall and fence regulations (Chapters 912, 917); regulations for effluent re-use, water and sewer service, and irrigation (Chapters 918, 926); wetland assessment regulations (Chapter 928); shoreline buffer regulations (Chapter 929); parking regulations (Chapter 954); sign regulations (Chapter 956); bio-fuel processing plant regulations (Chapters 901, 971), and a BCC-directed update of tree protection regulations (Chapter 927). Wording below in bold & italic relates to proposed LDR changes needed to implement recently adopted EAR-based comprehensive plan amendments that are already in effect.

"Countywide" aesthetic regulations (Chapter 911)

- Implements FLUE (Future Land Use Element) Policy 9.12 (see attachment #11) which mandates "countywide" application of corridor standards for foundation landscaping, building color, pitched roofs, signage, screening, and lighting with certain exemptions for multi-family and industrial development. The proposed regulations expand the existing "Other Corridors" regulations, which contain certain exemptions for multi-family and industrial development, to sites adjacent to 24 additional arterial and collector roadway segments (e.g., 27th Avenue, 16th Street, 26th Street) that lie within the Urban Service Area. Those 24 arterial collector road segments are in addition to major roadways (e.g., US1, Oslo Road, CR512) already referenced in the existing "Other Corridor" regulations.

Sidewalk and final lift of asphalt regulations (Chapters 913, 914)

- Codifies the existing policy allowing developers to transfer the obligation to construct certain sidewalk segments to home builders or lot owners, under certain conditions.

- Clarifies the existing allowance for extending sidewalk construction contracts and reducing the amount of posted security guaranteeing sidewalk construction, under certain conditions.

- Codifies the existing policy allowing extension of contracts to construct a final lift of asphalt on subdivision roads.

Wall and fence regulations (Chapters 912, 917)

- Revises and clarifies criteria for allowing additional height for walls or fences located within required front, side, and rear setback areas. The proposed regulations provide more objective criteria for allowing extra fence height.

- Clarifies allowances for barbed wire fencing.

Effluent re-use, water and sewer service, and source of irrigation regulations (Chapters 918, 926)

- Updates re-use connection requirements for new developments that have a large peak irrigation demand (10,000 gallons or more per day), using the existing 1 mile distance standard and a determination by County Utilities regarding re-use system availability.
• Updates existing water and sewer connection requirements by eliminating obsolete terms and references.

• **Implements the following policies**
  - Sanitary Sewer Sub-Element (SSS) Policy 4.4, and Potable Water Sub-Element (PWS) Policy 4.8 which require new development with 25 or more units to connect to any re-use line within \( \frac{1}{4} \) mile of the development project.
  - PWS Policy 4.10 which requires new development to use water from retention ponds as a source of irrigation rather than water from wells.

The proposed regulations establish effluent re-use system connection requirements for new residential development based on the \( \frac{1}{4} \) mile distance standard and a determination by Utility Services regarding re-use system availability. In addition, the proposed regulations require new development to use re-use water and/or stormwater ponds as the project's primary source of irrigation, and provides an exception by Utility Services, Public Works, and Community Development where re-use and stormwater ponds are not available as the primary source of irrigation.

**BCC-directed update of tree protection regulations (Chapters 927)**

In August 2011, the Board of County Commissioners considered a request from a commercial landowner to rescind a $1,500 code enforcement fine that was imposed against the landowner for removing three cabbage palms from an undeveloped commercial property without a required permit. In light of the fact that the landowner had planted three replacement cabbage palms, the Board voted to reduce the fine to $500. At that time, the Board also directed staff to review the County’s tree removal penalties and to report back to the Board, which staff did at an October 2011 Board meeting (see Attachment 5, BCC 10/4/11 meeting minutes). At the October 2011 meeting, the Board of County Commissioners directed staff to:

- Revise county tree protection requirements to exempt single-family home sites from permitting;
- Reduce the penalty for unpermitted removal of protected cabbage palms from $1,000 to $250 per palm; and
- Expand the after-the-fact permitting allowance to include commercial properties as well as individual single-family residential lots.

The proposed amendments to LDR 927 address the BCC’s directive to staff.

**Wetland protection regulations (Chapter 928)**

- Updates list of agencies to contact for assistance in identifying the extent and functional values of wetlands and deepwater habitats.

- Clarifies that wetland mitigation shall be consistent with the Uniform Mitigation Assessment Method (UMAM) set forth in the Florida Administrative Code.
Shoreline buffer regulations (Chapters 929)

- Clarifies that St. Sebastian River and Indian River Lagoon Aquatic Preserve shoreline protection buffers shall not apply to riverfront properties with permitted seawalls.

Parking regulations (Chapters 954)

- Updates parking rates for a number of uses, including auto repair, building supply, places of worship in commercial centers, nursing homes, ALFs, manufacturing (large facilities), restaurants, and shopping centers. In most cases, the update will slightly reduce the number of spaces currently required.

- Updates parking study criteria by clarifying certain terms and providing additional flexibility with respect to study methodology.

- Updates unpaved vehicular storage area criteria to current buffer standards.

Sign regulations (Chapters 956)

- Defines “carried signs” and “free expression signs”, and includes those types of signs in the list of signs exempt from permitting.

- Amends prohibited signs to address mobile electronic signs.

- Amends the number of temporary signs allowed for special events and specify duration of display of temporary signs.

- Creates a time limitation for display of active subdivision or real estate development signs.

- Adds a reference to the special sign regulations contained in the Chapter 911 corridor sections.

Bio-fuel processing plant regulations (Chapters 901, 971)

- Implements FLUE Policy 6.9 (see attachment #14) which requires adoption of regulations for small-scale bio-fuel processing plants in AG-2 and AG-3 areas, providing for staff-level approval, a 300' setback, and limitations on plant area (20 acres or 10% of site, whichever is less). In addition, the policy requires adoption of regulations for large-scale bio-fuel plants in AG-1, AG-2, and AG-3 areas, providing for special exception approval.

The proposed regulations establish definitions for “small-scale” and “large-scale” bio-fuel plants based on the size criteria contained in FLUE Policy 6.9. In addition, the proposed regulations establish a staff level administrative permit process for small-scale plants and a special exception process for large-scale plants. Also, specific criteria for plants are proposed to address separation from the Urban Service Area (1 mile or more); special setbacks; haul routes for plant-associated truck traffic; compliance with air emissions, environmental, and fire safety regulations; water supply and water use; and regulations for power generation facilities associated with bio-fuel plants.
RECOMMENDATION

Staff recommends that the PZC review the “Set 3” draft LDR amendments and provide staff with input on possible revisions.

ATTACHMENTS:

1. Countywide aesthetic regulations (Chapter 911)
2. Sidewalk and final lift of asphalt regulations (Chapters 913, 914)
3. Wall and fence regulations (Chapters 912, 917)
4. Effluent re-use, water and sewer service, and source of irrigation regulations (Chapters 918, 926)
5. BCC-directed update of tree protection regulations and BCC minutes (Chapter 927)
6. Wetland assessment regulations (Chapter 928)
7. Shoreline buffer regulations (Chapter 929)
8. Parking regulations (Chapter 954)
9. Sign regulations (Chapter 956)
10. Bio-fuel processing plant regulations (Chapter 911, 971)
11. FLUE Policy 9.12
12. SSS Policy 4.4
13. PWS Policy 4.8 and 4.10
14. FLUE Policy 6.9
ORDINANCE 2012-

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA CONCERNING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS (LDRs); PROVIDING FOR AMENDMENTS TO CHAPTER 911, ACCESSORY USES AND STRUCTURES, BY AMENDING PORTIONS OF SECTION 911.22, OTHER CORRIDORS SPECIAL DEVELOPMENT; AND BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRs) BE AMENDED AS FOLLOWS:

SECTION #1:

Amend LDR Section 911.22(1), 911.22(2), and 911.22(3), to read as follows:

(1) **Purpose and intent.** The overall purpose and intent of these regulations is to:

(a) Promote an attractive and inviting corridor that accommodates mass transit, pedestrians, bicycles, and other transportation alternatives, as well as automobiles;

(b) Provide for a sufficient amount of attractive and well-maintained landscaping to complement and enhance the visual quality of buildings, parking areas, and other structures within the corridor;

(c) Encourage development of attractive buildings within the corridor;

(d) Ensure unobtrusive and orderly signage that avoids a garish and visually cluttered appearance along the corridor;

(e) Encourage creative designs and buildings of quality that are articulated and presented at a human scale; and

(f) Foster creative approaches that result in buildings of enduring character through use of quality design and building materials; and

(2) **Boundaries of other corridors.** The boundaries of the "other corridors" subject to these regulations (911.212) are defined as follows:

(a) All commercial/industrial, multi-family, and non-residential sites adjacent to the following roadway segments:

1. Oslo Road east of I-95.

2. "North" US Highway 1 between the Roseland Corridor and Wabasso Corridor boundaries.

4. 53rd Street east of 58th Avenue.

5. "South" US Highway 1, south of the Vero Beach city limits.


7. "South" Indian River Boulevard, south of the Vero Beach city limits.

8. 37th Street between US Highway 1 and Indian River Boulevard.

9. "West" CR510 from the Wabasso Corridor (66th Avenue) to CR512.

10. "West" CR512 from the Sebastian city limits to the western edge of the commercial/industrial area at I-95.

11. 20th Avenue, south of the Vero Beach city limits.

12. 27th Avenue, south of the Vero Beach city limits.

13. 43rd Avenue, south of 53rd Street.

14. 58th Avenue, south of CR510.

15. The following streets east of 58th Avenue:

   a. 16th Street
   b. 12th Street
   c. 8th Street
   d. 4th Street
   e. 1st Street SW
   f. 5th Street SW
   g. 13th Street SW
   h. 17th Street SW
   i. 21st Street SW
   j. 25th Street SW

16. The following streets east of 66th Avenue:

   a. 26th Street
   b. 33rd Street
   c. 37th Street
   d. 41st Street
   e. 45th Street
   f. 49th Street
   g. 53rd Street
   h. 57th Street
   i. 61st Street
(b) All commercial/industrial designated areas within the following "nodes":

- Oslo Road/43rd Avenue **Node**
- Oslo Road/27th Avenue **Node**
- Oslo Road/20th Avenue **Node**
- Oslo Road/I-95 and 74th Avenue **Node**
- Indian River Memorial Hospital Medical and Commercial/Industrial Node

(3) *Exemptions:*

1. Multi-family development shall be exempt from foundation planting landscaping requirements, from prohibitions on textured plywood as a finish product, and from requirements to screen roof vents.

2. Industrial and storage buildings located in the CH, IL, and IG zoning districts shall be exempt from foundation planting landscaping requirements and architectural/building requirements for building facades that do not abut residentially designated areas or front on public roads. However, all sides of industrial buildings shall satisfy the color requirements.

3. Electrical substations and similar uses that prohibit access by the public onto the site may be exempted from architectural/building requirements, if the exempted building(s) and equipment will be visually screened from adjacent properties and roadways.

4. Historic buildings and resources: In accordance with future land use element objective 8 and LDR Chapter 933, historic buildings and resources identified in the "Historic Properties Survey of Indian River County, Florida," and located within the corridor are exempt from special corridor requirements to the extent that applying the special corridor requirements would:

   a. Conflict with the preservation or restoration of a historic building or resource; or

   b. Threaten or destroy the historical significance of an identified historic building or resource.
ORDINANCE 2012-

Said exemption shall be reviewed by and be granted by the planning and zoning commission upon receiving a recommendation from staff.

SECTION #2: SEVERABILITY.

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

SECTION #3: REPEAL OF CONFLICTING ORDINANCES.

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION #4: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION #5: EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the _____ day of _______ 2012, for a public hearing to be held on the ____ day of ____________, 2012, at which time it was moved for adoption by Commissioner ____________, seconded by Commissioner ________, and adopted by the following vote:

Chairman Gary C. Wheeler
Vice Chairman Peter D. O'Bryan
Commissioner Bob Solari
Commissioner Wesley S. Davis
Commissioner Joseph E. Flescher

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY

BY: ________________________________
Gary C. Wheeler, Chairman
ORDINANCE 2012-_____

ATTEST BY: _____________________________
Jeffrey K. Barton, Clerk

This ordinance was filed with the Department of State on the following date: ________________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Alan S. Polackwich, Sr., County Attorney

APPROVED AS TO PLANNING MATTERS

Robert M. Keating, AICP; Community Development Director
CHANGES TO INTERNAL SIDEWALK BONDING-OUT REQUIREMENTS

Section 913.09(5)(b)2.

2. Internal sidewalk segments along local roadways.

   a. Responsibility. The developer shall be responsible for providing internal sidewalks along internal project roadways adjacent to project entrances and common areas. These developer-provided sidewalks shall be depicted on the approved project preliminary plat and land development permit.

   The builder/lot owner shall be responsible for providing the sidewalk required along his lot's street frontage, as depicted on the approved project preliminary plat and land development permit. For subdivisions platted prior to adoption of this provision (9-8-2009) and that have outstanding obligations for providing internal sidewalks, the provision for builder/lot owner responsibility may be applied if authorized by recorded covenants, restrictions, and lot owner consent and, if applicable, mortgagee consent, in a manner acceptable to the county attorneys office, including a covenant that the applicable covenants and restrictions cannot be modified or terminated without county approval. The sidewalk segment shall be constructed and inspected prior to the issuance of a certificate of occupancy (C.O.) for the residence(s) on the builder's/lot owner's lot.

   b. Multiple phase projects. In addition to the requirements of subsection 913.09(5)(b)2.a., above, the following requirements shall apply to multiple phase projects that are under unified control. If a subdivision consists of multiple phases that are under unified control, sidewalks must be completed on ninety (90) percent of the lots in the preceding phase prior to the issuance of a certificate of completion (C.C.) for the next phase of the project. If a certificate of completion on a subsequent phase is needed prior to the completion of ninety (90) percent of the sidewalks in the preceding phase, then security, in conformance with subsection 913.10(1), construction security requirements, shall be posted to guarantee construction of sidewalks needed to meet the ninety (90) percent completion requirement for the preceding phase.

   For purposes of calculating the ninety (90) percent threshold, sidewalks adjacent to lots shall be considered completed if:

   i. A valid reservation agreement (as determined by the county attorney) with deposit has been signed by the end user of the lot;
CHANGES TO INTERNAL SIDEWALK BONDING-OUT REQUIREMENTS

ii. A valid contract (as determined by the county attorney) to build with deposit has been signed by the end user of the lot; or

iii. A building permit application has been applied for construction of a residence on the lot.

c. Exemptions.

i. A developer is exempt from providing a required internal sidewalk segment(s) along a local roadway which serves no more than twenty (20) lots and terminates in a cul-de-sac where a future extension of the street beyond the cul-de-sac is not required or possible as determined by the county public works director or the director's appointed designee.

ii. A developer may obtain a waiver from providing a required internal sidewalk segment(s) by submitting a written request for such waiver from the community development director and the public works director based upon one (1) or more of the following criteria:

A. It is anticipated that the use(s) (nonresidential projects only) will not attract or generate significant pedestrian traffic;

B. A nearby existing or planned sidewalk will adequately serve anticipated pedestrian traffic attracted or generated by the corresponding subdivision project;

C. The anticipated use(s) (nonresidential project only) or vehicular traffic characteristics of the subdivision are incompatible with pedestrian traffic;

D. The location of the subdivision or existing street conditions are such that it is anticipated that sidewalks could not be effectively integrated into an existing or planned sidewalk system;

E. The developer provides for an alternate route and/or improvement that adequately accommodates pedestrian traffic and movement and coordinates with existing and planned sidewalks.
CHANGES TO INTERNAL SIDEWALK BONDING-OUT REQUIREMENTS

Decisions by the community development director and the public works director to approve, approve with conditions, or deny an exemption request may be appealed to the planning and zoning commission pursuant to the provisions of section 902.07. Planning and zoning commission decisions regarding exemption requests may be appealed to the board of county commissioners pursuant to the provisions of section 902.07.

d. Method. When required to construct or provide an internal sidewalk segment(s), the developer shall:

i. Construct the required sidewalk segment(s) along the local internal roadway or alternative route approved under subsection 913.09(5)(b)2.c.ii.E. As an alternative to "up front" construction, the developer may delay construction by "bonding-out for construction" of the segment(s) as described in subsection 913.09(5)(b)2.e.

e. Timing. The developer shall be responsible for providing his required internal sidewalk segment(s) in compliance with subsections 913.09(5)(b)2.b. and 913.09(5)(b)2.d.i. above, prior to receiving a certificate of completion for required subdivision improvements, with the following exceptions:

i. The developer may delay construction of the required sidewalk segment(s) beyond the final plat approval date of the corresponding subdivision development if such delay is needed to accommodate development of the common area or meet sidewalk requirements for multiple phase projects. If the developer qualifies for delay and elects to delay, then the developer shall provide a completed contract for construction for remaining required sidewalk improvements and post security to guarantee the completed contract in conformance with subsection 913.10(1). The construction contract shall be for a period of two (2) years and may be extended subject to payment of the applicable extension fee adopted by the board of county commissioners and the conditions and timeframes provided in these regulations. The construction contract and security arrangement may provide for annual reductions in the posted security amount based on completed and inspected sidewalk segments. Reduction requests are subject to payment of the applicable reduction fee adopted by the board of county commissioners and the conditions and timeframes provided in these regulations. The developer may delay construction of the required sidewalk segment(s) for a period...
CHANGES TO INTERNAL SIDEWALK BONDING-OUT REQUIREMENTS

of up to two (2) **four (4)** years following final plat approval. **A one time construction contract extension of 2 years may be granted for any project with a contract in effect prior to June 30, 2012, subject to payment of the applicable extension fee adopted by the board of county commissioners and the conditions and timeframes provided in these regulations.**

i. For projects platted prior to February 17, 2009, the developer (owners) and the county may agree to defer both sidewalk construction and the posting of security for future sidewalk construction if the following criteria are met:

A. Existing project residents are provided a functional continuous sidewalk system or sub-system in a timely manner.

B. The developer (owners) defines the area of the subdivision where sidewalk construction and security posting are to be deferred, and agrees to not sell any lots/units or obtain any building permit for construction within the "deferral" area until sidewalks are constructed or security is posted.

C. The agreement is in a form acceptable to the county attorneys office, and is structured as a covenant that cannot be terminated or modified without county approval.

D. The agreement/covenant is recorded in the public records.

iii. The developer meets the requirements for "multiple phase projects" in subsection 913.09(5)(b)2.b., above.

Section 914.15(6)(b)2.a.

a. Responsibility. The developer shall be responsible for providing internal sidewalks along internal project roadways adjacent to project entrances and common areas. These developer-provided sidewalks shall be depicted on the approved project preliminary plat and land development permit.

The builder/lot owner shall be responsible for providing the sidewalk required along his lot's street frontage, as depicted on the approved project preliminary plat and land development permit. **For**
CHANGES TO INTERNAL SIDEWALK BONDING-OUT REQUIREMENTS

subdivisions platted prior to adoption of this provision (9-8-2009) and that have outstanding obligations for providing internal sidewalks, the provision for builder/lot owner responsibility may be applied if authorized by recorded covenants, restrictions, and lot owner consent and, if applicable, mortgagee consent, in a manner acceptable to the county attorneys office, including a covenant that the applicable covenants and restrictions cannot be modified or terminated without county approval. The sidewalk segment shall be constructed and inspected prior to the issuance of a certificate of occupancy (C.O.) for the residence(s) on the builder's/lot owner's lot.

Section 914.15(6)(b)2.e.

c. Timing. The developer shall be responsible for providing his required internal sidewalk segment(s) in compliance with subsections 914.15(6)(b)2.b. and 914.15(6)(b)2.d.i., above prior to receiving an equivalent certificate of occupancy for the project. However, in the event the developer is required to construct the required sidewalk segment(s) (subsection 914.15(6)(b)2.b.i.), the developer may delay construction of the required sidewalk segment(s) for a period of up to two (2) four (4) years beyond the date of issuance of an equivalent certificate of occupancy for the project if such delay is needed to accommodate development of the common area or meet sidewalk requirements for multiple phase projects. If the developer qualifies for delay and elects to delay, then the developer shall provide a completed contract for construction for remaining required sidewalk improvements and post security to guarantee the completed contract in conformance with subsection 913.10(1). The construction contract shall be for a period of two (2) years and may be extended subject to payment of the applicable extension fee adopted by the board of county commissioners and the conditions and timeframes provided in these regulations. The construction contract may provide for annual reductions in the posted security amount based on completed and inspected sidewalk segments deemed acceptable to the county. Reduction requests are subject to payment of the applicable reduction fee adopted by the board of county commissioners and the conditions and timeframes provided in these regulations. The developer may delay construction of the required sidewalk segment(s) for a period of up to four (4) years following final plat approval. A one time construction contract extension of 2 years may be granted for any project with a contract in effect prior to June 30, 2012, subject to payment of applicable extension fee adopted by the board of county commissioners and the conditions and timeframes provided in these regulations.
Section 913.10(1)(F)

(F) No certificate of occupancy for residential occupancy for any structure within a subdivision shall be issued until a certificate of completion has been issued for all required improvements, including required buffers, of the subdivision serving the residence, with the exception of sidewalks fronting lots rather than common areas, and any final lift of asphalt in excess of the amount required by county development regulations as of the date of issuance of the land development permit for the subdivision. Prior to issuance of a certificate of completion, the required code minimum layer of asphalt must be in place or the developer shall provide to the county either an irrevocable letter of credit or cash escrow in the amount of one hundred twenty-five (125) percent of the estimated cost of the final lift including striping and resetting survey PCPs, as certified by the developer's engineer and approved by the county engineer. Security for a final lift of asphalt shall be by contract for construction of final lift of asphalt and either an irrevocable letter of credit or cash deposit and escrow agreement. The construction contract shall be for a period of two (2) years and may be extended subject to payment of the applicable extension fee adopted by the board of county commissioners and the conditions and timeframes provided in these regulations. A one time construction contract extension of 2 years may be granted for any project with a contract in effect prior to June 30, 2012. The final lift of asphalt must be installed prior to two (2) four (4) years from the date of issuance of the project's certificate of completion; prior to issuance of a certificate of occupancy for the last residence within the subdivision (or a separately platted phase of a subdivision); or sixty (60) days prior to turnover to a homeowners' association, whichever occurs first.
AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA CONCERNING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS (LDRs); PROVIDING FOR AMENDMENTS TO CHAPTER 912, SINGLE-FAMILY DEVELOPMENT, AND CHAPTER 917, ACCESSORY USES AND STRUCTURES, BY AMENDING FENCES AND WALLS SECTION 912.14, AND SPECIFIC ACCESSORY USES AND STRUCTURES SECTION 917.06(12); AND BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRs) CHAPTER 912, SINGLE-FAMILY DEVELOPMENT, AND CHAPTER 917, ACCESSORY USES AND STRUCTURES, BE AMENDED AS FOLLOWS:

SECTION #1:

Amend LDR Section 912.14, Fences and walls, to read as follows:

No walls or fences may be erected or replaced without first obtaining a permit issued by the building division.

(1) Location. Generally, walls and fences cannot be placed or replaced within road rights-of-way or within any type of drainage or utility easement, except as provided below:

(a) [Generally.] Subject to easements and height restrictions specified herein, walls and/or fences may be located up to or on a property line, or along a property line if a common easement exists among adjacent property owners that allows for the "sharing" of a wall and/or fence.

(b) Height of walls and fences. Height of walls and fences shall be the vertical distance from the grade of the lot at the wall or fence location to the top of the wall or fence. If the wall or fence is to be located on a berm or fill added above the finished lot grade, then the height of the berm or added fill shall be included in the height of the wall or fence.

Walls or fences located outside of required front, side, and rear yard setback areas are subject to the building height regulation applicable to the property on which the wall or fence is located.

1. Front yard. Walls and fences not exceeding forty-eight (48) inches in height may be erected in the front yard of any lot.

2. Side yard. Walls and fences not exceeding six (6) feet in height may be erected in the side yard of any lot provided they do not extend beyond into the required front yard setback area line and are not erected within a drainage or utility easement unless a covenant for removal of the wall or fence has been approved by the County.
3. **Rear yard.** *Walls and fences* not exceeding six (6) feet in height may be erected in the rear yard of any lot within a zoning district, provided that no fence shall be erected in a drainage or utility easement unless a covenant for removal of the wall or fence has been approved by the County.

4. Fences not exceeding six (6) feet in height may be erected in the front yard of any corner lot when that yard does not provide the main entrance to the lot and is adjacent to a road classified as a collector road on the county's thoroughfare plan map. The following are exceptions to the maximum wall and fence height requirements provided in sub-sections 1 through 3 above.

   a. A wall or fence up to six (6) feet in height may be erected in the front yard setback area of a multi-frontage lot where the lot abuts a collector or arterial road classified on the county's thoroughfare plan map and the main access to the lot is not from the collector or arterial road.

   b. A wall or fence that replaces a wall or fence previously approved by the county, where the replacement wall or fence does not exceed the approved height of the original wall or fence and meets conditions placed on the original wall or fence approval, if any.

   c. A wall or fence up to five (5) feet in height may be located within the front yard setback area if the wall or fence is placed five (5) feet or more from the front property line. The height of the wall or fence may be increased to six (6) feet if vegetation or a vegetated berm is preserved or installed between the wall or fence and the front property line in a manner that visually screens at least 20% of the total area of the wall or fence/berm.

   d. A wall or fence up to eight (8) feet in height may be erected in a required side or rear yard setback area upon issuance of an administrative approval and a determination by the Community Development director or his designee that additional wall or fence height is justified due to grade differences of adjacent residences or to provide adequate buffering between a residential and non-residential use.

   e. Gates, posts, columns, and similar wall or fence appurtenances may exceed the maximum fence or wall height by up to two (2) feet.

   f. All fences in agricultural districts and temporary fences used at construction-sites for the purpose of security shall
be exempt from the height provisions of this section, provided corner visibility is maintained.

(c) Prohibited walls and fences; residential districts. No barbed wire, electrical element, or other hazardous materials shall be maintained as a fence or part of a fence or wall in a residential district, except as provided for barbed wire fencing in section (d), below.

(d) Agricultural and temporary construction fences. All fences in agricultural districts and temporary fences used at construction sites for the purpose of security shall be exempt from the height provisions of this section, provided corner visibility is maintained.

(e) Increased height of walls and fences:

1. Administrative approval. Higher fences and walls than listed above and all barbed wire fences shall require prior administrative approval by the community development director. Before administrative approval may be issued, the community development director must first determine that the structure will be visually compatible in the area in which the fence or wall is to be located and that the additional security provided by such fence is reasonably necessary, given the location or use of the property. A determination as to the visual compatibility of a fence or wall with increased height shall be based upon:

   a. The number of existing walls/fences located on surrounding properties;

   b. The proximity of the wall/fence relating to the property; and

   c. The height and design of the wall/fence in relation to other fences/walls in the area.

If mandatory approval by an architectural control or review board having authority in the neighborhood or subdivision is required, then such recommendation shall be received prior to a determination by the community development director under this provision. Any such architectural review board decision shall be given substantial weight in the county's review process.

2. Application and fee. The applicant shall submit an application and fee for administrative approval. The application shall be provided by the planning division, and the fee shall be established by resolution of the board of county commissioners.

3. Appeals of decision. If an applicant disagrees with a determination made by the community development director under these provisions,
review shall be available to the applicant by way of written appeal to the
planning and zoning commission:

(d) **Barbed wire fences.** Barbed wire fences are allowed anywhere on an
agriculturally zoned parcel and on lots within any non-agricultural
zoning district if the fence is located outside of the required front, side,
and rear yard setback area of the lot. Within industrial or commercial
zoning districts, barbed wire fences may be allowed within required
front, side, and rear yard setback areas, subject to site plan approval,
where needed for security and designed to be visually compatible with
the surrounding area. Within residential zoning districts, barbed wire
fences may be allowed within required front, side, and rear setback
areas, subject to site plan approval, if the proposed barbed wire fence:

1. Is necessary to maintain an allowable agricultural use (e.g. horse
pasture); and

2. Abuts a residentially zoned property that has a lot area of at least
40,000 square feet, or is physically separated from abutting
residentially zoned property by a ditch/canal, heavily vegetated
area, wall, or similar structure.

SECTION #2:

Amend LDR Section 917.06(12), Walls and fences, to read as follows:

(12) **Walls and fences.**

(A) **Generally:** Fences and walls shall not be constructed on or over any dedicated public
drainage or utility easements or public rights-of-way, except:

1. In agricultural districts where such walls and fences may be authorized upon
written consent of the public authority to which the easement is dedicated, or

2. Where a covenant for removal of structure request has been approved by the
county, or

3. Where public works department approval has been granted or a right-of-way
permit has been issued for placement of a structure(s) within an easement or
right-of-way.

(B) **Height of walls and fences.** Height of walls and fences shall be the vertical distance
from the grade of the lot at the wall or fence location to the top of the wall or fence.
If the wall or fence is to be located on a berm or fill added above the finished lot
grade, then the height of the berm or added fill shall be included in the height of the
wall or fence.
Walls or fences located outside of required front, side, and rear yard setback areas are subject to the building height regulation applicable to the property on which the wall or fence is located.

1. **Front yard.** Walls and fences not exceeding forty-eight (48) inches in height may be erected in the front yard of any lot.

2. **Side yard.** Walls and fences not exceeding six (6) feet in height may be erected in the side yard of any lot provided they do not extend beyond the required front yard setback area and are not erected within a drainage and utility easement unless a covenant for removal of the wall or fence has been approved by the county.

3. **Rear yard.** Walls and fences not exceeding six (6) feet in height may be erected in the rear yard of any lot within a zoning district, provided that no fence shall be erected in a drainage or utility easement unless a covenant for removal of the wall or fence has been approved by the county.

4. **Exceptions.** The following are exceptions to the maximum wall and fence height requirements provided in subsections 1 through 3 above. Fences not exceeding six (6) feet in height may be erected in the front yard of any multi-frontage lot when that yard does not provide the main entrance to the lot and is adjacent to a road classified as a collector road or higher in the county's thoroughfare plan map.
   a. A wall or fence up to six (6) feet in height may be erected in the front yard setback area of a multi-frontage lot where the lot abuts a collector or arterial road classified on the county's thoroughfare plan map and the main access to the lot is not from the collector or arterial road.
   b. A wall or fence that replaces a wall or fence previously approved by the county, where the replacement wall or fence does not exceed the approved height of the original wall or fence and meets conditions placed on the original wall or fence approval, if any.
   c. A wall or fence up to five (5) feet in height may be located within a front yard setback area if the wall or fence is placed five (5) feet or more from the front property. The height of the wall or fence may be increased to six (6) feet if vegetation or a vegetated berm is preserved or installed between the wall or fence and the front property line in a manner that will visually screen at least 20% of the total area of the wall or fence/berm.
   d. A wall or fence up to eight (8) feet in height may be erected in a required side or rear yard setback area upon issuance of an administrative approval and a determination by the Community Development director or his designee that additional wall or fence...
height is justified due to grade differences of adjacent residences or to provide adequate buffering between a residential and non-residential use.

e. Gates, posts, columns, and similar wall or fence appurtenances may exceed the maximum fence or wall height by up to two (2) feet.

f. All fences in agricultural districts and temporary fences used at construction-sites for the purpose of security shall be exempt from the height provisions of this section, provided corner visibility is maintained.

(C) Prohibited walls and fences; residential districts. No barbed wire, electrical element, or other hazardous materials shall be maintained as a fence or part of a fence or wall in a residential district, except as provided for barbed wire fencing in section (D), below.

(D) Agricultural and temporary construction fences. All fences in agricultural districts and temporary fences used at construction-sites for the purpose of security shall be exempt from the height provisions of this section, provided corner visibility is maintained.

(E) Increased height of walls and fences:

1. Administrative approval. Higher fences and walls than listed above and all barbed wire fences shall require prior administrative approval by the community development director. Before administrative approval may be issued, the community development director must first determine that the structure will be visually compatible in the area in which is to be located and that the additional security provided by such fence is reasonably necessary given the location or use of the property. A determination as to the visual compatibility of a fence or wall with increased height shall be based upon:

a. The number of existing walls/fences located on surrounding properties;

b. The proximity of the wall/fence relating to the property; and

c. The height and design of the wall/fence in relation to other fences/walls in the area.

If mandatory approval by an architectural control or review board having authority in the neighborhood or subdivision is required, then such recommendation shall be received prior to a determination by the community development director under this provision, and any such architectural review board decision shall be given substantial weight in the county’s review process.
2. Application and fee. The applicant shall submit an application and fee for administrative approval. The application shall be provided by the planning division, and the fee shall be established by resolution of the board of county commissioners.

3. Appeals of decision. If an applicant disagrees with a determination made by the community development director under these provisions, review shall be available to the applicant by way of written appeal to the planning and zoning commission.

(D) Barbed wire fences. Barbed wire fences are allowed anywhere on an agriculturally zoned parcel and on lots within any non-agricultural zoning district if the fence is located outside the required front, side, and rear yard setback areas of the lot. Within industrial or commercial zoning districts, barbed wire fences may be allowed within required front, side, and rear yard setback areas, subject to site plan approval, where needed for security and designed to be visually compatible with the surrounding area. Within residential zoning districts, barbed wire fences may be allowed within required front, side, and rear setback areas, subject to site plan approval, if the proposed barbed wire fence:

1. Is necessary to maintain an allowable agricultural use (e.g., horse pasture); and

2. Abuts a residentially zoned property that has a lot area of at least 40,000 square feet, or is physically separated from abutting residentially zoned property by a ditch/canal, heavily vegetated area, wall, or similar structure.

(FE) Use of easements; removal agreement.

1. Administrative Staff approval. No fence or wall shall be built in a utility or drainage easement without prior administrative staff level approval from the planning division. Upon request for such administrative staff level approval, the division shall contact all present or intended users of the easement within which a fence approval has been requested to determine if the construction of such fence or wall conflicts with use of the easement. Based upon this information, the division may approve, deny or approve with conditions any requests.

2. Application and fee. Request for administrative approval shall require the applicant to submit an application and fee to the planning division. The application shall be available from the planning division. The fee will be established by the board of county commissioners.
3. **Removal agreement.** No fence or wall shall be approved for construction in a drainage or utility easement unless the owner of the underlying fee property shall first execute a removal agreement to be recorded in the public records, providing for preservation of the use of the easement. The removal agreement shall be in the nature of a covenant running with the land in favor of the parties to whom the easements have been dedicated. The covenant shall bind the owner and all successors to bear the expense of any removal or alterations of the fence or wall if such removal or alterations are determined necessary to make use of the easement, and the covenant shall provide a hold harmless clause applicable to the county or any other entity removing the fence or wall, pursuant to terms of the agreement, in order to make lawful use of the easement. The cost of recording the covenant shall be borne by the applicant.

**SECTION #3: SEVERABILITY.**

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

**SECTION #4: REPEAL OF CONFLICTING ORDINANCES.**

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

**SECTION #5: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

**SECTION #6: EFFECTIVE DATE**

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the ______ day of ______ 2012, for a public hearing to be held on the ______ day of ______ 2012, at which time it was moved for adoption by Commissioner ________, seconded by Commissioner ________, and adopted by the following vote:

- Chairman Gary C. Wheeler
- Vice Chairman Peter D. O'Bryan
- Commissioner Bob Solari
- Commissioner Wesley S. Davis
AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA CONCERNING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS (LDRS); PROVIDING FOR AMENDMENTS TO CHAPTER 918, SANITARY SEWER AND POTABLE WATER REGULATIONS, AND CHAPTER 926 LANDSCAPE AND BUFFERING REGULATIONS, BY AMENDING THE CHAPTER 918 TITLE, BY AMENDING SANITARY SEWER AND POTABLE WATER REGULATIONS SECTION 918.04, BY AMENDING WATER AND WASTEWATER REQUIREMENTS FOR NEW DEVELOPMENT SECTION 918.05, BY ADDING EFFLUENT RE-USE WATER CONNECTION REQUIREMENTS FOR NEW DEVELOPMENT SECTION 918.06, BY ADDING USE OF WATER FROM RETENTION PONDS SECTION 918.07, BY AMENDING IRRIGATION STANDARDS SECTION 926.11(2)(F); AND BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRS) BE AMENDED AS FOLLOWS:

SECTION #1:

Amend LDR Chapter 918 title, to read as follows:

CHAPTER 918. SANITARY SEWER, AND POTABLE WATER, AND EFFLUENT RE-USE WATER REGULATIONS

SECTION #2:

Amend LDR Chapter 918 Section titles, to read as follows:

<table>
<thead>
<tr>
<th>Sec. 918.01</th>
<th>Short title.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 918.02</td>
<td>Purpose and intent.</td>
</tr>
<tr>
<td>Sec. 918.03</td>
<td>Definitions.</td>
</tr>
<tr>
<td>Sec. 918.04</td>
<td>Sanitary sewer, and potable water, and effluent re-use water regulations.</td>
</tr>
<tr>
<td>Sec. 918.05</td>
<td>Water and wastewater connection requirements for new development.</td>
</tr>
<tr>
<td>Sec 918.06</td>
<td>Effluent re-use water connection requirements for new development</td>
</tr>
<tr>
<td>Sec 918.07</td>
<td>Use of water from retention ponds</td>
</tr>
</tbody>
</table>

SECTION #3:

Amend LDR Section 918.04 Sanitary sewer and potable water regulations, to read as follows:

(1) Single-family dwelling units and nonresidential projects utilizing less than two thousand (2,000) gallons of potable water per day may use private wells where such wells are approved by regulatory agencies including the county environmental health department and utilities department, in accordance with the connection regulations set out in section 918.05 below.
(2) Single-family dwelling units and nonresidential projects generating less than two thousand (2,000) gallons of wastewater per day may utilize septic tanks for disposal of domestic waste only, where those septic tanks are approved by the county environmental health and utilities departments, and where consistent with the connection regulations set out in section 918.05 below.

(3) When effluent re-use is required and permitted by the department of environmental regulation and the county utilities department, developers of projects having open space areas utilizing or projected to utilize ten thousand (10,000) gallons or more water per day on a peak day for irrigation, including golf courses, parks, medians, and other such areas, which are located within a county utility department service area and are within one mile of the nearest effluent line containing irrigation-quality effluent, shall construct effluent re-use lines on-site and effluent re-use lines off-site to connect to treated wastewater to be used for spray irrigation of the open space areas within the development project.

Such large-volume irrigation users shall be required to take re-use water for spray irrigation. The effluent re-use lines constructed for treated wastewater shall be dedicated to Indian River County.

Developments located more than one mile from the nearest irrigation quality effluent line and having open space areas requiring irrigation shall install dry lines if they are within the county utilities department service area and irrigation-quality effluent water is or will be available for re-use.

(4) Regional potable Centralized water service shall be limited to the service areas shown on Figures 3.B.7, 3.B.8, and 3.B.9 of the potable water sub-element of the Indian River County Comprehensive Plan, and to Urban Service Area, to areas where the county has legal commitments to provide facilities and services, and to areas and development projects located outside the Urban Service Area that meet the requirements of Potable Water Sub-Element Policy 5.7, as of February 13, 1990.

Regional Centralized sanitary sewer service shall be limited to the service areas shown on Figures 3.A.8, 3.A.9, and 3.A.10 of the sanitary sewer sub-element of the Indian River County Comprehensive Plan, and to Urban Service Area, to areas where the county has legal commitments to provide facilities and services, and to areas and development projects located outside the Urban Service Area that meet the requirements of Sanitary Sewer Sub-Element Policy 5.8, as of February 13, 1990.

(5) No existing on-site wastewater treatment systems or water treatment systems may be replaced or expanded without the issuance of a permit conditioned upon compliance with the most updated versions of applicable county utility construction standards and DER/DEP and HRS/Health Department regulatory requirements, and--federal and state water quality and wastewater treatment standards (including the Federal Safe Drinking Water Act, and the Florida Safe Drinking Water Act), for sanitary sewer, and in compliance with the most updated version of DER, and SJRWMD regulatory requirements, and federal--and--state water quality standards as found in the Federal Water Pollution Control Act of 1972 (P.L. 92-500) and its amendments by the Clean Water Act of 1977 (P.L. 95-217). State drinking water standards are also set in the Florida Safe Drinking Water Act, F.S. 403.850-403.864. The Federal-Safe
Drinking Water Act may be found at P.L. 93-523. The applicant must also obtain a Prior to commencement of system replacement or expansion, a county utility construction permit and, if applicable, as determined by the utilities department, obtain a utility franchise approval shall be obtained by the system owner/operator.

(6) All new developments within the 2010 Urban Service Areas which do not have access to existing county potable water systems or existing county regional sewer systems, which have obtained county permits to build water treatment plants or sanitary sewer package treatment plants, must dedicate the plants to the county for operation and maintenance.

(75) No development requiring connection to a regional centralized system shall will be approved if the development's demand exceeds the available capacity for either water or sewer service. Development orders may be issued for subdivision land development permits and similar project construction permits if capacity for water or sewer service is existing or is designed, under construction and contracted to come on line prior to the impacts of the permitted subdivision development project. No building permits shall be issued for the subdivision development until the capacity for water and sewer service serving the project is on line.

SECTION #4:

Amend LDR Section 918.05 Water and wastewater requirements for new development, to read as follows:

All new developments in Indian River County shall connect to regional centralized sanitary sewer and potable centralized water facilities, unless the connection matrix and this chapter provide for an alternative method of utility-service. The following connection criteria shall apply to the various developments:

(1) General provisions. The following general connection provisions will be applied to all new development:

(a) Distance determination. Distance determinations for the purpose of this chapter are made from the nearest point of the project site to the public facility directly through public easements or public rights-of-way.

(b) All developments which do not connect to a regional centralized system must shall construct a wet line (in the case of package treatment plants), pumps and lift stations, or a dry line, as if required by the County Utility Services Department, the utilities department at the time of construction.

(c) All applications for septic tanks and package treatment plants shall demonstrate—compliance with applicable federal, state and local requirements. All applicable federal, state, and local permits shall be obtained.

(d) All wet lines and package treatment plants must shall be dedicated to the County. This shall not include on-site aerobic treatment units.
(e) All provisions of section 918.05 must **shall** apply to potable water wells and on-site public water plants as well as septic tanks and package treatment plants.

(f) The final determination for the type of commercial, institutional, and industrial establishments which can **may** obtain permits for treatment plants or septic tanks must **shall** be made **jointly** by the utilities department **County Utility Services Department** director, and **Community Development Department** director, and **Environmental Health Department** director.

(g) The utilities department shall update the existing wastewater service area and potable water service area boundaries annually.

(h) Existing developments within the 2010 Urban Service Area which do not have access to the existing county system and have a DER permit for a treatment system, may expand if the DER and county utilities department issue permits for expansion, and if the developer or property owners association signs an agreement to connect to the regional system when it is available.

(i) The utilities department, environmental **The County Utility Services Department**, the **Health Department**, and the **Community Development Department** will **shall** enforce connection requirements to the regional **centralized water and wastewater** systems for both residential (including individual single-family units) and non-residential developments.

(j) The utilities department, environmental health department, and community development department will enforce connection requirements for single-family units to the regional system. Permits for single-family units not connecting to a regional system shall indicate that they must connect to the county system when it is available within two hundred (200) feet of the property line.

(kh) The appropriate type and size of package treatment plants will **shall** be determined by **the County Utility Services Department in coordination with the Health Department**, the utilities department, and/or the environmental health department.

(ll) Any development **not required to connect to the centralized water or wastewater system** shall meet applicable state and **Health Department requirements for on-site systems**, must meet the above general provisions, Florida Administrative Code 10 D 6 requirements, and county environmental health requirements to qualify for any of the specific exceptions listed below.
(2) **Connection criteria for single-family residential dwelling units.** No building permit for a new single-family residential unit within two hundred (200) feet of the **regional centralized** system shall be issued unless the unit connects to the **regional centralized** system.

(a) Single-family residential dwelling units located more than two hundred (200) feet from a collection line of the Indian River County sanitary sewer system may utilize an on-site septic system if any of the following conditions are met:

1. The single-family residential unit is in an area having a density of two (2) units per acre or less.

2. The single-family residential unit will utilize public water and is in an area with a density of four (4) units per acre or less.

3. Undersized lots in existing subdivisions not meeting the requirements of subsections 1 and 2 above may utilize an on-site septic system if the single-family unit satisfies the requirements of the **Health Department**, public-health unit, division of environmental health.

4. The single-family residential unit is in the agricultural (one unit/five (5) acres, one unit/ten (10) acres, and one unit/twenty (20) acres) or rural (one unit/acre) area of the county, as designated by **on the future** land use map of the comprehensive plan.

(3) **Connection criteria for residential projects (subdivision, multifamily, site plan, PD, DRI).** No new residential project within one-quarter (1/4) mile of the **regional centralized** system shall be approved unless the project connects to the **regional centralized** system. Residential projects located outside of one-quarter (1/4) of the system meeting the criteria of subsections (a) or (b) below may be approved without connection to the **regional centralized** system.

(a) The following residential projects located within the Urban Service Area and outside of one-quarter (1/4) mile of the system may **utilize septic tanks and private wells**:

1. **Residential projects with less** than twenty-five (25) lots/units, with a density of less than two (2) units/acre or less than four (4) units per acre if public water is provided. Notwithstanding this provision, no residential projects shall be approved without connecting to a **regional centralized** system if the proposed **subdivision development** is located within the 2010 Urban Service Area, if the tract proposed for subdivision development was part of a tract which existed on February 13, 1990, and the total number of lots/units existing on that parent tract would exceed twenty-five (25) with the approval of the subject residential project.
(b) The following residential projects located within the Urban Service Area and outside of one-quarter (1/4) mile from the system can **may** utilize package treatment plants dedicated to the county:

1. Residential projects with twenty-five (25) or more lots/units.
2. Residential projects with less than twenty-five (25) lots/units with a lot size of less than one-half (1/2) acre.

(4) **Connection criteria for nonresidential projects.** No new site plan for any commercial, industrial or institutional establishment shall be approved unless connected to the regional **centralized** system, except as provided in subsections (a) or (b) below.

(a) The following nonresidential projects within the 2010 Urban Service Area and outside of one-quarter (1/4) mile of the regional **centralized** system **may** utilize septic tanks.

1. Nonresidential projects **which generating** less than two thousand (2,000) gallons of domestic wastewater per day.

(b) The following nonresidential projects within the 2010 Urban Service Area and outside of one-quarter (1/4) mile of system **may** utilize package treatment plants.

1. Nonresidential projects **which generating** less than two thousand (2,000) gallons of nondomestic wastewater per day if approved by the **environmental Health Department director.**
2. Nonresidential projects **which generating** more than two thousand (2,000) gallons of only domestic wastewater per day, and satisfying the requirements of section 918.05(1)(f).

Table 3.A.16 and 3.B.19
Water and Wastewater Connection Matrix for a New Development

<table>
<thead>
<tr>
<th></th>
<th>Inside of the Urban Service Area</th>
<th>Not Connect</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Single-Family:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Within 200 ft. of system</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Outside of 200 ft. of system</td>
<td></td>
<td>X**</td>
</tr>
<tr>
<td><strong>Residential Projects:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Subdivision, multi-family site plan, PD, DRI</td>
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<tr>
<td>Within 1/4 mile of the system</td>
<td></td>
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</tr>
<tr>
<td>25 units or more</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Less than 25 units</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>
### ORDINANCE 2012-___

<table>
<thead>
<tr>
<th>Outside of 1/4 mile of system</th>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>25 units or more</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Less than 25 units</td>
<td>X**</td>
<td></td>
</tr>
</tbody>
</table>

*Daily flow refers to water consumption or sewer generation.

**The applicant for any development project, where such project will not connect to a centralized system, must sign a developer's agreement with the Indian River County Utilities Department the County Utility Services Department to operate on a private system with a commitment to connect to the regional centralized system when service is available. These agreements shall be conditioned upon demonstration of compliance with applicable federal, state, and local permit requirements. When using a private system or on-site facilities, the developer must construct a dry line or wet line at the time of construction, if required by the County Utility Services the Utilities Department. The final determination for the type of nonresidential establishment which can utilize a private system shall be made jointly by the Utilities Department the County Utility Services Department, the Community Development Department, and Environmental the Health Department.

**System availability: A system is considered available when a collection or distribution line exists in a public easement or right-of-way and the line can be used to provide adequate service to the development being served as determined by the County Utility Services Department.

**Distance Determination:** Distance determinations are made from the nearest point of the project (area of development) to the public facility directly through public easements or public right-of-way.

### SECTION #5:

Add LDR Sections 918.06 and 918.07, to read as follows:

**Section 918.06. Effluent re-use water connection requirements for new development**

(1) **Developments with large volume irrigation demand.** The developer of a project estimated to have a peak irrigation demand of 10,000 gallons or more per day shall construct effluent re-use lines on-site and off-site, as required by the County Utility Services Department, when the development project:

(a) **Lies within the Urban Service Area, and**
(b) Lies within one (1) mile of an effluent re-use line or a facility that is available to supply re-use water to the project, as determined by the County Utility Services Department.

Project irrigation demand shall be estimated by the project engineer using a method approved by the Utility Services Department.

(2) Residential development. All new residential subdivisions and residential projects of 25 or more lots/units located within one-quarter of a mile of an effluent re-use line that is available to supply re-use water shall connect to the re-use line and provide for reuse service within the development. In addition, the developer shall install the infrastructure necessary to provide re-use water service to each residential lot and green space that will generate irrigation demand. Connections to the re-use system and development of re-use service infrastructure shall be approved through the County Utility Services Department.

Section 918.07. Use of water from retention ponds.

All new development projects shall use effluent re-use water or water from project retention ponds, instead of water from wells, as the primary source of irrigation. All such irrigation systems shall be designed in a manner approved by the County Utility Services Director or his designee in coordination with the Public Works Director or his designee. Use of an irrigation well as the primary source of irrigation for a project may be approved by a joint decision of the County Utility Services Director, Public Works Director, and the Community Development Director when it is determined that there is no adequate available primary source of irrigation from a retention pond or effluent re-use water.

SECTION #6:

Amend LDR Section 926.11(2)(t), Sources of irrigation water, to read as follows:

(f) Sources of irrigation water.

1. Reclaimed or other non-potable water source shall be used in accordance with the requirements for subsection 918.04(3) in order to supplement the retention system, property owners may utilize wells when the county system cannot meet their needs. When the water supply for the irrigation system is from a well, a constant pressure flow control device or pressure tank with adequate capacity shall be required to minimize pump cycling.

2. All new landscape irrigation systems shall be required and all existing irrigation systems shall be encouraged to connect to wastewater effluent lines when determined to be available. The reuse of wastewater effluent in such cases shall be required.

3. All new landscape irrigation systems shall be designed for ultimate connection to proposed wastewater effluent lines.
4. Developments with wet retention/detention areas are required to use this water to meet project irrigation needs or justify why this water cannot be used as an irrigation source.

5. All new development projects shall use effluent re-use water or water from project retention ponds, instead of water from wells, as the primary source of irrigation. All such irrigation systems shall be designed in a manner approved by the Utility Services Director or his designee in coordination with the Public Works Director or his designee. Effluent re-use water connection requirements are set forth in Section 918.06. Use of an irrigation well as the primary source of irrigation for a project may be approved by a joint decision of the County Utility Services Director, Public Works Director, and the Community Development Director when it is determined that there is no adequate available primary source of irrigation from a retention pond or effluent re-use water.

SECTION #7: SEVERABILITY.

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

SECTION #8: REPEAL OF CONFLICTING ORDINANCES.

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION #9: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION #10: EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the ______ day of ________ 2012, for a public hearing to be held on the _____ day of __________, 2012, at which time it was moved for adoption by Commissioner ______________, seconded by Commissioner __________, and adopted by the following vote:

Chairman Gary C. Wheeler

Vice Chairman Peter D. O'Bryan
ORDINANCE 2012-____

Commissioner Bob Solari
Commissioner Wesley S. Davis
Commissioner Joseph E. Flescher

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY

BY: __________________________________________
Gary C. Wheeler, Chairman

ATTEST BY: __________________________________
Jeffrey K. Barton, Clerk

This ordinance was filed with the Department of State on the following date: ________________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

________________________
Alan S. Polackwich, Sr., County Attorney

APPROVED AS TO PLANNING MATTERS

________________________
Robert M. Keating, AICP; Community Development Director
AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA CONCERNING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS (LDRs); PROVIDING FOR AMENDMENTS TO CHAPTER 927, TREE PROTECTION AND LAND CLEARING, BY AMENDING SECTION 927.06, EXEMPTIONS, BY EXEMPTING SINGLE-FAMILY RESIDENTIAL LOTS ONE ACRE OR LESS IN AREA FROM TREE REMOVAL PERMITTING; BY AMENDING SECTION 927.17, PENALTIES AND ENFORCEMENT, BY CHANGING THE PENALTY FOR UNPERMITTED REMOVAL OF PROTECTED CABBAGE PALMS AND MODIFYING AFTER-THE-FACT PERMITTING ALLOWANCES; AND BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRS) BE AMENDED AS FOLLOWS:

SECTION #1:

Amend LDR Chapter 927, Tree Protection and Land Clearing, Section 927.06, Exemptions, to read as follows:

Section 927.06. Exemptions.

Notwithstanding anything to the contrary in this chapter, the following activities shall be lawful without application for or issuance of a tree removal or land-clearing permit. None of these exemptions shall apply to any mangrove, dune vegetation, historic tree, or upland native plant community conservation area, unless otherwise stated below. In the event the exempted activity ever becomes subject to an enforcement proceeding, the burden of proving entitlement to the particular exemption shall lie with the person claiming use of the exemption.

(1) The removal, trimming, pruning, or alteration of any non-protected tree, non-specimen tree, or other vegetation as necessary for:

(a) The clearing of a path not to exceed four (4) feet in width to provide physical access or view necessary to conduct a survey or site examination for the preparation of subdivision plans, site plans, or trees surveys. Under this permit exemption, no disturbance shall occur to protected trees or specimen trees, or to the critical root zones of protected trees or specimen trees.

(b) The clearing of a path not to exceed ten (10) feet in width to provide vehicular access necessary to conduct soil percolation and/or soil bore tests on a property, provided such clearing or removal is conducted under the direction of a Florida registered surveyor or engineer. Under this permit exemption, no disturbance shall occur to protected trees or specimen trees, or to the critical root zones of protected trees or specimen trees.
ORDINANCE 2012-____

(c) The removal, pruning, trimming or alteration of any tree not classified as protected or specimen, or vegetation for the purpose of maintaining existing access to a property.

(2) Routine landscape maintenance such as trimming or pruning of protected trees, specimen trees, or other vegetation, mowing of yards or lawns, or undertaking any other landscaping or gardening activity which is commonly recognized as routine maintenance or replacement.

(3) The removal, trimming, pruning or alteration of protected trees, specimen trees, or other vegetation in an existing utility easement or right-of-way, provided such work is done by or under the control of the operating utility company and said company has received all necessary licenses or permits to provide utility service within the easement.

(4) Any activity conducted by a lawfully operating and bona fide commercial nursery, tree farm, agricultural operation, silvicultural operation, ranch, or similar operation, when the activity occurs on the property owned or lawfully occupied by the person conducting said activity and is done in pursuit of said activity. This exemption shall include the purposeful removal of a tree or trees for their permanent relocation at another site undergoing development. When land-clearing or tree removal has been performed under this exemption based upon the use of the property for an agricultural or silvicultural operation, the following shall apply:

(a) No land development order shall be approved for any non-agricultural or non-silvicultural use or improvement on the same site within two (2) years of the completion of such land clearing or tree removal.

(b) Pertaining to silviculture, operations shall implement a state division of forestry approved management plan, including a reforestation plan for harvested lands.

(c) Pertaining to agriculture, operations shall implement a soil and water conservation district approved conservation plan, including the use of Best Management Practices, as applicable to the specific area being cleared.

(5) The removal of any protected tree, specimen tree, or other tree which has been destroyed or damaged beyond saving, or which constitutes an immediate peril to life or property.

(6) Tree removal, land clearing, or grubbing of any vegetation, including protected trees and specimen trees, but not including mangroves or dune vegetation, within ten (10) feet of a house.

(7) Land-clearing or grubbing of vegetation, except for protected trees, specimen trees, mangroves, dune vegetation, or any native vegetation in a conservation easement,
upon any detached single-family residential lot or parcel of land having an area of one (1.0) acre or less, provided this exemption shall not be construed to allow land-clearing or grubbing without permit on any such lot or parcel by its subdivider unless the subdivider intends in good faith to forthwith begin construction of a dwelling unit or units upon said lot. Advertisement or listing for sale of the particular lot or parcel without the dwelling unit shall create a presumption that the subdivider does not intend to forthwith begin such construction and that the intent is for the lot or parcel to be developed by a subsequent purchaser.

(8) Tree removal, except for mangroves, dune vegetation, or native trees in a conservation easement, upon any detached single-family residential lot or parcel of land having an area of one (1.0) acre or less.

- any detached single-family residential lot or parcel of land having an area of one-quarter (1/4) acre (ten thousand eight hundred ninety (10,890) square feet) or less; or

- any homesteaded single-family lot or parcel one (1) acre or less in size; or

- any single-family lot one third (1/3) acre (fourteen thousand five hundred twenty (14,520) square feet) or less in size where public water or public sewer is not available to serve the lot.

This exemption shall not be construed to allow tree removal without permit on any such lot or parcel by its subdivider unless the subdivider intends in good faith to forthwith begin construction of a dwelling unit or units upon said lot. Advertisement or listing for sale of the particular lot or parcel without the dwelling unit shall create a presumption that the subdivider does not intend to forthwith begin such construction and that the intent is for the lot or parcel to be developed by a subsequent purchaser.

SECTION #2:

Amend LDR Chapter 927, Tree Protection and Land Clearing, Section 927.17, Penalties and enforcement, to read as follows:

Section 927.17. Penalties and enforcement.

(1) It shall be a violation of this chapter for any person:

(a) To fail to obtain any permit required by this chapter, or to violate or fail to comply with the provisions of any permit issued under this chapter;

(b) To, without a required permit, remove, destroy, or kill a protected tree(s);

(c) To, without a required permit, remove, destroy, or kill a specimen tree(s);
(d) To, without a required permit, perform any land clearing or grubbing;

(e) To, with or without a permit, not properly dispose of tree removal or land clearing debris;

(f) To not properly install and maintain tree protection barriers around each tree to be saved, or groups of trees, as described in section 927.05(3).

(2) The violation described in section 927.17(1)(c) above shall be deemed to be irreparable and irreversible [see Chapter 162.09, Florida Statutes (F.S.)].

(3) Any person who commits a violation specified in paragraph (1)(a) above shall be subject to a fine of up to two hundred fifty dollars ($250.00) for each day the violation continues to exist beyond a code enforcement board established date of compliance. This fine can be in addition to any other fine and/or penalty specified by the Code of Indian River County.

(4) Any person who commits a violation specified in paragraph (1)(b) above, except as pertaining to protected cabbage palms (Sabal palmetto), shall be subject to a fine of one thousand dollars ($1,000.00). Any person who without a required permit removes, destroys, or kills a protected cabbage palm shall be subject to a fine of two hundred fifty dollars ($250.00). The removal, destruction, or killing of each protected tree under this chapter shall be considered a separate offense.

(5) Any person who commits a violation specified in paragraph (1)(c) above shall be subject to a fine of up to fifteen thousand dollars ($15,000.00). The removal, destruction, or killing of each specimen tree under this chapter shall be considered a separate offense.

In determining the fines provided for in this subsection, the code enforcement board shall consider:

(a) The gravity of the violation;

(b) Any actions taken by the violator to correct the violation; and

(c) Any previous violations committed by the violator.

(6) Any person who commits a violation specified in paragraph (1)(d) above shall be subject to a fine of not less than one hundred dollars ($100.00) and not greater than fifteen thousand dollars ($15,000.00) per separate offense. The amount of the fine shall be calculated as follows [sections (a), (b), and (c)]:

(a) For low quality vegetation removal, a base fee of fifty cents ($0.50) per square foot of area illegally cleared land shall be charged. Low quality vegetation generally consists of plants such as dog fennel, grape vine, goose-foot grass, or non-native vegetation such as Brazilian pepper.
(b) For high quality vegetation removal, a base fee of seventy-five cents ($0.75) per square foot of area illegally cleared land shall be charged. High quality vegetation generally consists of native vegetation such as palmettos, gallberry, or wax myrtle.

(c) In the event that the quality of vegetation removed cannot be determined, a base fee of sixty-two and one-half cents ($0.625) per square foot of area illegally cleared land shall be charged.

(d) In addition to the above penalty, the area that was illegally cleared or on which protected trees or specimen trees were illegally removed shall be revegetated under the following circumstances:

1. The property on which the illegal land clearing and/or tree removal occurred is five (5) acres or larger and the area of illegal land clearing and/or tree removal was done within native uplands, as defined in section 929.05; or

2. The area of the illegal land clearing and/or tree removal was within a conservation easement, a conservation tract, the Jungle Trail Buffer, or other similar protected area.

Under circumstance (6)(d)1. above, the area of revegetation shall be that area that would have been required to have been set aside as detailed in section 929.05. No fee-in-lieu of payment will be accepted.

Under circumstance (6)(d)2. above, the area of revegetation shall be that area where the illegal activity occurred within the conservation easement, the conservation tract, the Jungle Trail Buffer, or other similar protected area.

The area shall be revegetated with plant material that is native to Florida, consistent with surrounding plant material, and suitable for the area of revegetation. A revegetation plan must be submitted and approved by environmental planning staff. This plan shall include:

- a plan view showing the areas of revegetation, to include location of different species;
- the type, size, and spacing of the plants to be used, canopy, subcanopy, ground cover in proportion to that illegally cleared;
- a schedule for completion; and
- a maintenance plan, to include success criteria for a period of up to three (3) years after revegetation.

The purpose of the revegetation plan is to establish a native plant community to
ORDINANCE 2012-_____

replace the plant community destroyed by the illegal activity. For the lost of mature native plant communities, only the largest plants that can reasonably be expected to survive (and can be procured) will be authorized for revegetation.

(7) Any person who commits a violation specified in paragraph (1)(e) above shall be subject to a fine of two hundred fifty dollars ($250.00) per day starting on the 61st day after commencement of the tree removal or land clearing. If the date of the commencement of activities cannot be determined, the fine shall start ten (10) days after the landowner and/or agent for the landowner is notified in writing that the debris must be removed. If an extension has been granted, the fine shall commence on the day after the end of the extension.

(8) Any person who commits a violation specified in paragraph (1)(f) above shall be subject to a fine of two hundred fifty dollars ($250.00) per day for each saved tree that does not have properly installed and maintained protective barriers installed. The fine shall commence on the date that any development activity begins on the property associated with the project and the protective barriers are either improperly installed or not installed at all. In the event that the date the development activity cannot be established, the fine shall commence on the date that Indian River County staff has verified that development activity has begun and that the protective barriers are either improperly installed or not installed at all.

(9) Permits required by this chapter may be obtained after-the-fact by owners of individual single-family lots or parcels for protected or specimen tree removal activities on individual single-family lots or parcels, upon determination by the environmental planner that such activities were performed in accordance with permit issuance criteria specified in section 927.07. The issuance of an after-the-fact permit abates the penalties described in this section for those actions or activities authorized by the after-the-fact permit. The fee for an after-the-fact permit shall be three (3) times the amount of the normal administrative fee as provided for in section 927.11(1)(f). After-the-fact permits shall not be issued for unpermitted land-clearing or tree-removal activities associated with non-individual single-family lot or parcel land-clearing.

(10) With respect to any violation of this chapter, the owner of the property on which the violation occurred is presumed to have undertaken, caused to be taken, or authorized the illegal activity. The owner may present evidence proving that the presumption is incorrect in their case.

(11) A violation of any provision of this chapter shall be punishable upon conviction by a fine not less than five hundred dollars ($500.00), or by imprisonment in the county jail up to sixty (60) days, or both such fine and imprisonment. One (1) or all of the penalties listed above shall apply to property owners and contractors found in violation of this chapter. The destruction or alteration of each tree or plant under this chapter shall be considered a separate offense. The destruction of an historic or a specimen tree or any dune vegetation, contrary to this chapter shall receive the maximum penalty provided by law.

(12) The county or any aggrieved party having a substantial interest in the protection provided by this chapter may apply directly to a court of competent jurisdiction for mandatory or prohibitive injunctive relief. In any enforcement proceeding, the adjudicating body may consider mitigating measures voluntarily undertaken by the alleged violator such as replacement or
relocation of trees or vegetation, or other landscaping improvements, in fashioning its remedy. Such body may also require such restorative measures.

SECTION #3: SEVERABILITY.

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

SECTION #4: REPEAL OF CONFLICTING ORDINANCES.

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION #5: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION #6: EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the _____ day of _____ 2012, for a public hearing to be held on the _____ day of _________, 2012, at which time it was moved for adoption by Commissioner ____________, seconded by Commissioner ____________, and adopted by the following vote:

Chairman Gary C. Wheeler
Vice Commissioner Peter D. O'Bryan
Commissioner Wesley S. Davis
Commissioner Joseph E. Flescher
Commissioner Bob Solari
ORDINANCE 2012-____

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY

BY: ___________________________
    Gary C. Wheeler, Chairman

ATTEST BY: _______________________
    Jeffrey K. Barton, Clerk

This ordinance was filed with the Department of State on the following date: __________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

________________________________________
Alan Polackwich, Sr., County Attorney

APPROVED AS TO PLANNING MATTERS

____________________________
Robert M. Keating, AICP; Community Development Director
±20.11 ACRES, LOCATED APPROXIMATELY ±1300 FEET SOUTH OF 65TH STREET AND WEST OF THE FEC RAILROAD, FROM C/L COMMERCIAL AND INDUSTRIAL, TO L-2, LOW DENSITY RESIDENTIAL-2 (UP TO 6 UNITS/ACRE) (LEGISLATIVE)

10.C.1.B. COUNTY INITIATED REQUEST: TO AMEND TEXT OF SEVERAL ELEMENTS OF THE COUNTY’S COMPREHENSIVE PLAN (LEGISLATIVE)

County Attorney Alan S. Polackwich, Sr. read the notices into the record.

11. COUNTY ADMINISTRATOR MATTERS - NONE

12. DEPARTMENTAL MATTERS

12.A. COMMUNITY DEVELOPMENT

12.A.1. REPORT ON INDIAN RIVER COUNTY TREE REMOVAL VIOLATION PENALTIES

Roland DeBlois, Chief of Environmental Planning and Code Enforcement, recalled that on August 16, 2011, the Board considered a matter involving a code enforcement fine for the removal of three cabbage palm trees, and staff had been directed to return with a report on the County’s tree removal penalties. Through a PowerPoint Presentation (copy on file), he reviewed the history of the County’s tree removal and land clearing ordinance, and compared the County’s fines, mitigation requirements, and after-the-fact (ATF) permit regulations with those of the City of Vero Beach, and St. Lucie and Brevard Counties. He reported that the penalty for the illegal removal of protected trees, including cabbage palms (not protected prior to 2004), is $1,000 per palm tree. He thereafter presented staff’s recommendation for the Board to direct staff to initiate

October 4, 2011 20
Land Development Regulation amendments to reduce the fine for removing cabbage palm trees from $1,000 to $250; and to allow ATF permits for non-single family residential parcels.

Board members sought and received additional information from Chief DeBlois on the tree removal and land clearing regulations, and on the permitting requirements for single family homeowners who want to remove a tree.

Chairman Solari believed that imposing penalties on single family homeowners for tree removal was an infringement of personal property rights.

ON MOTION by Commissioner Davis, SECONDED by Commissioner Flescher, the Board unanimously directed staff to revisit the tree protection and land clearing ordinance with the idea of exempting single-family homes.

ON MOTION BY Commissioner O'Bryan, SECONDED by Vice Chairman Wheeler, the Board unanimously directed staff: (1) to initiate a Land Development Regulation (LDR) amendment to change the fine for illegal removal of protected cabbage palms from $1,000 to $250 per palm; and (2) directed staff to initiate an LDR amendment to allow after-the-fact permits for non-single-family residential parcels, as recommended in the memorandum of September 23, 2011.
ORDINANCE 2012-_____

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA CONCERNING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS (LDRs); PROVIDING FOR AMENDMENTS TO CHAPTER 928, WETLANDS AND DEEPWATER HABITAT PROTECTION, BY AMENDING DETERMINATION OF WETLANDS AND DEEPWATER HABITATS DELINEATION AND FUNCTIONAL VALUE SECTION 928.04; AND BY AMENDING ACTIVITIES SUBJECT TO REGULATIONS AND RESTRICTIONS SECTION 928.05, AND BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRs) CHAPTER 928, WETLANDS AND DEEPWATER HABITAT PROTECTION, BE AMENDED AS FOLLOWS:

SECTION #1:

Amend LDR Section 928.07, Determination of wetlands and deepwater habitats delineation and functional, to read as follows:

(1) The definition of wetlands and deepwater habitats shall be based upon the publication "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin et al, 1979), and shall be consistent with the broadest jurisdiction of federal, state, and regional regulatory agencies. (see Chapter 901, Definitions, County Land Development Code).

(2) Representatives of the Department of Environmental Protection, Regulation, Department of Natural Resources, U.S. Army Corps of Engineers, and the St. Johns River Water Management District, Soil and Water Conservation District, Florida Game and Freshwater Fish Commission, U.S. Fish and Wildlife Service, FDAC Division of Forestry, Indian River County Mosquito Control District, and/or other applicable agencies will be contacted for assistance in identifying the extent and functional values of wetlands and deepwater habitats.

(3) USFWS National Wetlands Inventory Maps (1984), submersgent aquatic vegetation inventories, infrared aerials and property appraiser aerials shall be utilized for general identification of wetlands and deepwater habitats in Indian River County. It is recognized, however, that such graphic sources do not depict the full extent of wetland and deepwater habitat delineations and function characteristics. Wetlands and deepwater habitats shall be identified by survey at the time of site development review on a site-by-site basis.

(4) Factors to be considered in evaluating the present or future functions and values of wetlands and deepwater habitats shall include, but not be limited to:

(a) Relationship to similar or complementary habitats,

(b) Proximity to adjacent urban land uses,

(c) Degree of disturbance or invasion by exotic plant species,

(d) Importance to wildlife species, including aquatic species (as applicable),
(e) Frequency and length of inundation, and

(f) Degree of flushing or tidal influence (applying to estuarine wetlands).

SECTION #2:

Amend LDR Section 928.05, Activities subject to regulations and restrictions, to read as follows:

(1) No activity shall be allowed that results in the alteration, degradation, or destruction of wetlands or deepwater habitats except when:

(a) Such an activity is necessary to prevent or eliminate a public hazard, provided wetland and deepwater habitat functional loss is unavoidable and minimized; or

(b) Such an activity would provide direct public benefits which would exceed the loss of wetland or deepwater habitat functions and values, provided there is a public need, and wetland and deepwater habitat functional loss is unavoidable and minimized; or

(c) Such an activity is proposed for wetlands or deepwater habitats in which the functions and values currently provided are significantly less than those typically associated with such habitats and cannot be reasonably restored, and preservation of the habitat is not in the public interest.

(2) Mitigation shall be required for any activity that results in the alteration, degradation, or destruction of wetlands or deepwater habitats, as provided for in Section 928.06 of this chapter. Mitigation required pursuant to this chapter shall be consistent with the Uniform Mitigation Assessment Method (UMAM) set forth in Florida Administrative Code Chapter 62-345, as may be amended.

SECTION #3: SEVERABILITY.

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

SECTION #4: REPEAL OF CONFLICTING ORDINANCES.

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION #5: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relabeled to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.
ORDINANCE 2012-____

SECTION #6: EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the _____ day of ___________ 2012, for a public hearing to be held on the _____ day of ___________, 2012, at which time it was moved for adoption by Commissioner ______________, seconded by Commissioner ______________, and adopted by the following vote:

Chairman Gary C. Wheeler
Vice Chairman Peter D. O’Bryan
Commissioner Bob Solari
Commissioner Wesley S. Davis
Commissioner Joseph E. Flescher

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY

BY: ______________________________
    Gary C. Wheeler, Chairman

ATTEST BY: ______________________________
    Jeffrey K. Barton, Clerk

This ordinance was filed with the Department of State on the following date: _____________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Alan Polackwich, Sr., County Attorney

APPROVED AS TO PLANNING MATTERS

Robert M. Keating, AICP; Community Development Director
AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA CONCERNING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS (LDRs); PROVIDING FOR AMENDMENTS TO CHAPTER 926, UPLAND HABITAT PROTECTION, BY AMENDING ST. SEBASTIAN RIVER AND INDIAN RIVER LAGOON AQUATIC PRESERVE SHORELINE PROTECTION BUFFER ZONE SECTION 929.07, AND BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRs) CHAPTER 929, UPLAND HABITAT PROTECTION, BE AMENDED AS FOLLOWS:

SECTION #1:

Amend LDR Section 929.07, St. Sebastian River and Indian River Lagoon Aquatic Preserve Shoreline Protection Buffer Zone, to read as follows:

(1) For parcels created after June 18, 1991 along the St. Sebastian River, a one hundred-foot shoreline protection buffer is hereby established measured from the mean high water mark of the river or fifty (50) feet from the landward boundary of jurisdictional wetlands along the river or any tributary, whichever is greater (cross reference section 911.12(4)(e)). For parcels of record which existed prior to June 18, 1991, a fifty-foot shoreline protection buffer for unplatted parcels, and a twenty-five-foot buffer for existing platted lots is hereby established on land parcels bordering the St. Sebastian River or the Indian River Lagoon Aquatic Preserve, measured from the mean high water line. In no case, however, with reference to parcels or lots of record, which existed prior to June 18, 1991, shall the buffer(s) exceed twenty (20) percent of the parcel or lot depth perpendicular to the applicable waterway. The shoreline protection buffer(s) described in this section shall not apply to riverfront properties with permitted seawalls.

(2) Within the shoreline protection buffer, no development shall be permitted with the exception of docks, boat ramps, pervious walkways and elevated walkways which provide the property owner with reasonable access to the waterway.

(a) No more than twenty (20) percent or twenty-five (25) feet, whichever is greater, of any shoreline may be altered for reasonable access. Native vegetation in the remainder of the shoreline protection buffer shall remain unaltered, except as may be allowed through county trimming regulations.

(3) Shoreline alteration shall be prohibited, unless it is in the public interest or prevents or repairs erosion damage, or provides reasonable access to the water, does not adversely impact water quality, natural habitat or adjacent shoreline uses, and is permitted by all applicable jurisdictional regulatory agencies. Any native vegetation removed in such instances except as may be allowed in subsection 929.07(2)(a), shall be relocated or replaced on-site with comparable vegetation and amount.
SECTION #2: SEVERABILITY.

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

SECTION #3: REPEAL OF CONFLICTING ORDINANCES.

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION #4: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relabeled to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION #5: EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the _____ day of _______ 2012, for a public hearing to be held on the ____ day of ________, 2012, at which time it was moved for adoption by Commissioner ____________, seconded by Commissioner _____________, and adopted by the following vote:

Chairman Gary C. Wheeler

Vice Chairman Peter D. O'Bryan

Commissioner Bob Solari

Commissioner Wesley S. Davis

Commissioner Joseph E. Flescher

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY

BY: __________________________________________

Gary C. Wheeler, Chairman
ORDINANCE 2012- ___

ATTEST BY: ______________________
Jeffrey K. Barton, Clerk

This ordinance was filed with the Department of State on the following date: ____________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Alan Polackwich, Sr., County Attorney

APPROVED AS TO PLANNING MATTERS

Robert M. Keating, AICP; Community Development Director
AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA CONCERNING AN AMENDMENT TO ITS LAND DEVELOPMENT REGULATIONS (LDR); PROVIDING FOR AMENDMENTS TO CHAPTER 954, OFF-STREET PARKING, BY REVISING PARKING STANDARDS; AUTOMOTIVE VEHICLES SECTION 954.05; BY REVISING NON-CONCURRENT PARKING STUDY SECTION 954.08(2); BY REVISING NO SIMILAR USE STUDY SECTION 954.08(3); BY REVISING UNPAVED VEHICLE STORAGE LOTS SECTION 954.08(6); AND BY REVISING OFF-STREET LOADING REGULATIONS SECTION 954.09; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRS) CHAPTER 954, OFF-STREET PARKING, BE AMENDED AS FOLLOWS:

SECTION #1:

Amend LDR Section 954.05, Parking standards; automotive vehicles, to read as follows:

The following standards shall apply to the uses as noted:

(1) *Amusement game parlors, pool halls, and other similar recreational buildings.* One space per two hundred (200) square feet of gross building area.

(2) *Automotive, boat, and trailer sales.* One space per five hundred (500) square feet of gross building area plus one space per twenty-five hundred (2,500) square feet of outside display area. The display area for boat sales shall be either paved, fully sodded or otherwise stabilized as approved by the public works director.

(3) *Auto repair, auto body, and diagnostic shops.* A minimum of six (6) parking spaces is required for buildings under two thousand (2,000) square feet in size. For buildings two thousand (2,000) square feet or larger one parking space shall be required for every four hundred (400) square feet of gross building area. All customer parking shall be clearly marked. **In addition to required parking spaces and driveway lanes, paved staging area for vehicles awaiting service or after-service pick up shall be provided at a rate of one hundred fifty (150) square feet per one thousand (1,000) square feet of building area.** Service bays may not be counted as parking spaces.

(4) *Banks and other financial institutions frequented by the public.* One space per two hundred (200) square feet of gross building area.

(5) *Beauty parlor, barber shop, or other personal services.* One space per two hundred (200) square feet of gross floor area.

(6) *Bed and breakfast.* Two (2) spaces plus one space per rentable room. In the A-1, A-2, A-3, RS-6, and RT-6 zoning districts, parking spaces may be stabilized as approved by the public works director.
(7) **Bowling alleys.** Five (5) spaces per each bowling lane.

(8) **Building supply.** One space per **two** three hundred (300) square feet of enclosed gross floor area and one space per five hundred (500) square feet of outdoor garden center, outdoor or covered storage. One space per five hundred (500) square feet of gross floor area is required for detached accessory storage buildings.

(9) **Bus terminal.** One space per two hundred (200) square feet of building area, up to fifty (50) percent of which may be fully sodded or otherwise stabilized as approved by the public works director. For any such facility, a minimum of six (6) spaces shall be provided.

(10) **Car wash.** Two (2) spaces per bay, plus two (2) car lengths paved queuing area for each bay. Half of the total spaces may be provided at vacuum or other car preparation stations.

(11) **Carry-out restaurant.** One space per two hundred (200) square feet of gross floor area.

(12) **Churches, temples, places of worship, public buildings, auditoriums, stadiums and other places of public assembly.** One space for every three (3) seats. **For places of worship that occupy multi-tenant commercial buildings, up to 80% of the required spaces for the place of worship can be shared with other uses and satisfy parking demand for commercial uses on the same site, provided that regular worship services are not scheduled on weekdays from 8:00 am to 5:00 pm.**

(13) **Contractors office or trades building.**

(a) Buildings of three thousand (3,000) square feet or less shall require one space per three hundred (300) square feet of gross floor area. A minimum of five (5) spaces are required for any building.

(b) Buildings greater than three thousand (3,000) square feet shall require one space per three hundred (300) square feet of gross floor area for the first three thousand (3,000) square feet, and one space per five hundred (500) square feet of gross floor area for building area over three thousand (3,000) square feet.

(14) **Convalescent homes, homes for the aged, retirement homes, nursing homes and other similar health care facilities.** **0.65 spaces per bed shall be provided.** One space shall be provided and reserved for doctors for each fifteen (15) patient/resident beds, plus one space per ten (10) patient/resident beds, plus one space per two and one half (2 1/2) employees, exclusive of doctor parking spaces. A loading zone is required for these uses.
(15) **Convenience stores.** One space per one hundred fifty (150) square feet of gross floor area.

(16) **Electronic telephone switching stations.** One space per station; the space shall be either paved or fully sodded or otherwise stabilized as approved by the public works director.

(17) **Fire stations.** One space per five hundred (500) square feet of gross floor area.

(18) **Flea markets and farmer's markets.** There shall be one and one-half (1 1/2) parking spaces for each booth or stand. In addition, each stand or booth shall have one backup loading parking space adjacent to each stand or booth. All parking spaces and driveway aisles shall be either paved or otherwise stabilized as approved by the public works director.

(19) **Funeral chapel.** One space per three (3) seats within the chapel.

(20) **Funeral homes, mortuaries and crematoriums.** There shall be one space per three (3) seats within the chapel, plus one space per three hundred (300) square feet of gross floor area for all other building areas or uses.

(21) **Furniture, carpet and major appliance stores.**

   (a) One space per three hundred (300) square feet of gross floor area for the showroom, plus one space for every seven hundred fifty (750) square feet of gross floor area for product storage area for stores containing display and storage area.

   (b) One space per four hundred (400) square feet of gross building area for stores containing display area only.

(22) **Gas station.** One space at each fueling position. The space cannot conflict with the overall traffic circulation system for the site.

   (a) With automotive repair. One space per four hundred (400) square feet of building are devoted to automotive repair in addition to spaces for other uses. The spaces cannot conflict with overall traffic circulation system for the site. Service bays or other areas devoted to automotive repair/storage shall not be credited towards satisfying parking requirements.

   (b) Gas station with accessory retail sales. One space per one hundred seventy-five (175) feet of gross floor area devoted to retail sales in addition to spaces for other uses. The spaces cannot conflict with the overall traffic circulation system for the site.

   (c) With fast food with drive through: One space per one hundred (100) square feet of gross floor area devoted to fast food in addition to spaces required for other uses. The spaces cannot conflict with the overall traffic circulation system for the site.
(d) With accessory car washes, parking and/or queuing as specified for car washes shall be provided in addition to the requirements for gas stations.

(23) **General commercial.** One space per two hundred (200) square feet of gross floor area.

(24) **Golf courses.**

(a) Private courses not open to the public or serving primarily on-site users: An executive course requires three (3) spaces per hole; a championship course requires four (4) spaces per hole. Up to twenty-five (25) percent of the spaces may be fully sodded or otherwise stabilized as approved by the public works director.

(b) Courses open to the public. An executive course requires four (4) spaces per hole and a championship course requires five (5) spaces per hole. Up to twenty-five (25) percent of the spaces may be fully sodded or otherwise stabilized as approved by the public works director.

(25) **Golf driving range.** One and three-tenths (1 3/10) spaces per tee; twenty-five (25) percent of the spaces may be fully sodded or otherwise stabilized as approved by the public works director.

(26) **Governmental and institutional, frequented by the public.** One space per two hundred sixty (260) square feet of gross floor area.

(27) **Group home, including adult living facilities (ALF).** One space per two (2) beds.

(27.1) **Health and fitness center.** One space per two hundred (200) square feet of building area, for any health and fitness center without outdoor facilities (e.g. pools, tennis courts, etc.).

One space per three hundred (300) square feet of building area for centers with outdoor facilities, plus additional spaces as required based in the type of outdoor facilities.

(28) **Hospitals, sanitariums and other similar health care facilities.** One space shall be provided and reserved for doctors for each ten (10) patient beds, plus one space per four (4) patient beds, plus one space per one and one-half (1 1/2) employees (total for all shifts), exclusive of doctor parking spaces.

(29) **Hotels and motels.** One space per rentable room, plus one space for each three (3) seats for accessory restaurant or lounge area.

(30) **Junkyard.** Junkyards shall require a minimum of six (6) spaces, and shall require one space per five thousand (5,000) square feet of junkyard area.
(31) **Laundromats.** One space per three hundred (300) square feet of gross building area, or one space per three (3) washers, whichever is greater.

(32) **Libraries and museums.** One space per three hundred (300) square feet of gross building area.

(33) **Malls, regional (developments of regional impact).** One space per two hundred (200) square feet of gross leasable area, and including kiosks, food court areas, offices and administration areas. Other independent "stand alone" uses (e.g. a restaurant on an out-parcel) will require parking for the individual use(s) as specified in this chapter.

Up to twenty-five (25) percent of the total number of required spaces may be fully sodded or otherwise stabilized as approved by the public works director. Such spaces shall only be those located the greatest distance from the building(s) served.

(34) **Manufacturing, wholesaling and storage businesses which do not sell over the counter products to the general public from the premises.**

(a) Single use buildings of ten thousand (10,000) square feet or less shall require one space per five hundred (500) square feet of gross floor area. A minimum of four (4) spaces is required.

(b) Single use buildings greater than ten thousand (10,000) square feet shall require one space per five hundred (500) square feet of gross floor area for the first ten thousand (10,000) square feet, and one space per seven hundred fifty (750) square feet of gross floor area for the next building area, and one space per twelve hundred (1,200) square feet of gross floor area over twenty thousand (20,000) square feet of building area.

(c) Multiple use (business) buildings shall provide one space per five hundred (500) square feet of gross area.

(35) **Marinas.** One space per three hundred (300) square feet of principal building area plus one space per three (3) boat storage spaces or slips and one (1) space per boat slip designated for live-aboard vessel use.

(36) **Medical and dental offices and outpatient clinics.** General requirement of one (1) space per one hundred and seventy-five (175) square feet of gross floor area.

(37) **Medical labs and diagnostic or research facilities not frequented by the public.** One space per three hundred (300) square feet of gross floor area.

(38) **Miniature golf courses.** Two (2) parking spaces per hole for the first eighteen (18) holes, one parking space per hole for every additional hole, plus one parking space per two hundred (200) square feet of interior floor area devoted to accessory commercial or amusement area. The site design shall provide for a customer drop-off area.
(39) **Mini storage facilities.** Mini storage facilities shall have a minimum of four (4) parking spaces or one (1) space per one hundred (100) storage units, whichever is greater. All spaces shall be located in the proximity of the office. Two (2) additional spaces shall be provided if a manager/watchman residence is included on site. A minimum twenty-eight-foot drive aisle for two-way traffic or twenty (20) feet for one-way traffic shall be provided contiguously along the side of the self-storage facility containing the access points or doors to the individual storage areas.

(a) Outdoor storage of vehicles may occur on paved surfaces or stabilized surfaces as approved by the public works director. The outdoor storage area must be screened from any public rights-of-way or adjacent residentially zoned areas by a Type "B" buffer.

(40) **Mobile home or recreational vehicle sales.** One space per five hundred (500) square feet of gross floor area plus one space per twenty-five hundred (2,500) square feet of outside display area. The display area shall be fully sodded.

(41) **Multiple-family dwellings.**

(a) Two (2) spaces per each dwelling unit; for each dwelling unit over forty (40) units, one-half (1/2) space per unit of the required parking may be fully sodded or otherwise stabilized as approved by the public works director.

1. All parking spaces required for multifamily residential uses should be located no further than the following distances from the units they serve:

   Resident parking: Two hundred (200) feet.

   Visitor parking: Two hundred fifty (250) feet.

   Distances shall be measured from a dwelling unit’s entry to the parking space. Where a stairway or elevator provides access to dwelling units, the stairway or elevator shall be considered to be the entrance to the dwelling unit. For purposes of measuring these distances, each required parking space shall be assigned to a specific unit on the development plan, whether or not the developer will actually assign spaces for the exclusive use of the specific unit.

(b) No recreational vehicles may be parked in required parking spaces but may be stored in areas that are specifically designed for the storage of recreational vehicles. Such recreational vehicle storage areas shall be buffered from adjacent rights-of-way and with a Type "C" buffer.

(42) **Multi-slip dock.** One parking space per three (3) slips.
(43) Nurseries or greenhouses. One space per one hundred fifty (150) square feet of gross floor area of enclosed buildings where merchandise is displayed or where transactions occur. Pole barns, mist houses, shade houses, and accessory structures shall not be included for purposes of determining parking requirements.

(44) Nursery schools, kindergartens, and child care facilities. One and one-half (1 1/2) spaces per staff person (total number) required for the licensed capacity of the facility pursuant to local or state agency staff ratio requirements.

(45) Packing house. One space per five hundred (500) square feet of gross floor area for the first thirty thousand (30,000) square feet of building area and one space per one thousand (1,000) square feet after the first thirty thousand (30,000) square feet. Up to thirty (30) percent of the parking for the packing house may be fully sodded or otherwise stabilized as approved by the public works director.

(a) Tractor trailer spaces, having a minimum dimension of fourteen (14) feet by thirty (30) feet shall be provided at a rate of one space per two thousand (2,000) square feet of gross floor area.

(b) Other associated uses within the packing house facility or complex shall require parking as follows:

   (1) Retail sales. One space per two hundred (200) square feet of gross floor area;

   (2) Office, administration, marketing. One space per three hundred (300) square feet of gross floor area.

(46) Private club or country club.

(a) One space per three hundred (300) square feet of gross floor area, plus the required parking area for each associated structure or use creating user parking demand.

(b) Private clubs located within residential projects serving primarily on-site users are required to provide one space per three hundred (300) square feet of gross floor area, plus the required parking area for each associated structure or use creating user parking demand. Up to twenty-five (25) percent may be fully sodded or otherwise stabilized as approved by the public works director.

(47) Professional and general offices. One space per three hundred (300) square feet of gross building area.

(48) Public parks or private commercially operated recreational complexes and associated structures not including stadiums. Two (2) spaces per gross acre for each acre of open space generating user parking demand, plus one space per one hundred (100) square feet of gross floor area for associated support buildings, plus the required number of spaces for each recreational use specified in Chapter 954. Up to
fifty (50) percent of the required spaces may be fully sodded or otherwise stabilized as approved by the public works director.

(49) Racquetball and tennis courts.

(a) Open to the public. Three (3) spaces per court;
(b) Private. Two (2) spaces per court;
(c) With spectator seating. Two (2) spaces per court plus one space per three (3) seats. Spectator seating parking spaces may be fully sodded or otherwise stabilized as approved by the public works director.

(50) Radio and other communications towers (unmanned). One space per tower. The space and driveway serving the space may be fully sodded or otherwise stabilized as approved by the public works director.

(50.1) Residential migrant housing facility.

(a) For facilities utilizing a single-family, multiple-family or mobile homes residential structures: Two (2) parking spaces for each residential unit, either single-family, multiple-family or mobile home.
(b) For facilities utilizing dormitory or barracks residential structures: One (1) parking space for every three (3) residents of the facility's maximum licensed capacity, whether or not the facility is fully occupied.
(c) For facilities utilizing both residential structure types previously listed in (a) and (b), the facility shall utilize both calculation methods as appropriate for each structure to obtain the total parking liability.

(51) Restaurants or bars. One space per seventy-five (75) square feet of gross floor area, and one-half (1 1/2) spaces per one hundred (100) square feet of gross floor area.

(52) Rooming and boardinghouses, or dormitories. Two (2) spaces plus one space per two (2) beds.

(53) Schools.

(a) Colleges, universities, and technical/vocational schools. One space per two (2) seats of classroom seating capacity.
(b) High schools. Twelve (12) spaces for each classroom plus one space per each teaching, administrative or staff position.
(c) Junior high and elementary schools. Two and one-half (2 1/2) spaces per each classroom, plus one space per each teaching, administrative or staff position.
(d) **Business schools.** One space for each two (2) seats of classroom capacity, plus one space per each teaching, administrative or staff position.

(54) **Sewer and water plants (major utility uses).** A minimum of five (5) spaces of which two (2) shall be paved; the remaining spaces may be fully sodded or otherwise stabilized as approved by the public works director.

(55) **Shopping centers greater than one-hundred-thousand (100,000) forty thousand (40,000) square feet.** For all uses within the center, one space per two hundred (200) square feet of gross floor area is required. Other independent "stand alone" uses (e.g. a large restaurant) on an outparcel will require parking to be provided for those uses as specified in this subsection.

(56) **Single-family dwellings and duplexes.** Two (2) spaces for each dwelling unit; single-family dwellings and duplexes shall be exempted from all other requirements in subsection 954.07(4) and 954.10. Uncovered parking spaces shall be exempted from the front yard setback requirements.

(57) **Skating rinks.** One space per two hundred (200) square feet of gross floor area. The design shall provide for a customer drop off area.

(58) **Shuffleboard courts.** Four (4) spaces per five (5) courts.

(59) **Stadiums.** One space per three (3) seats of the seating capacity.

(60) **Swimming pools.** One space per one hundred seventy (170) square feet of pool area.

(60.1) **Tenant dwellings.** Two (2) spaces for each dwelling unit.

(61) **Theaters.**

(a) **Single theaters.** One space per three (3) seats.

(b) **Multiplex theaters.** One space per four (4) seats. Theaters located within shopping centers having twenty-five thousand (25,000) square feet or more of floor area and a minimum of one hundred twenty-five (125) common parking spaces shall provide parking according to the following standards:

<table>
<thead>
<tr>
<th>Gross Retail Area sq. ft.</th>
<th>Parking Standard</th>
</tr>
</thead>
<tbody>
<tr>
<td>25,000--49,999</td>
<td>1 space per 5 seats</td>
</tr>
<tr>
<td>50,000--79,999</td>
<td>1 space per 6 seats</td>
</tr>
<tr>
<td>80,000--99,999</td>
<td>1 space per 7 seats</td>
</tr>
<tr>
<td>100,000 and over</td>
<td>1 space per 8 seats</td>
</tr>
</tbody>
</table>

(62) **Veterinary hospitals or boarding kennels.** One space per three hundred (300) square feet of gross building area excluding animal runs.
(63) Other uses. Off-street parking requirements for any use not specifically mentioned in this section shall be the same as for the most similar use listed. The most similar use will be determined by the community development director. If an applicant for approval of a use not specifically listed in section 954.05 does not agree that the community development director's determination of the most similar use listed accurately reflects the parking demand of his use, the applicant may at his expense prepare a parking study in accordance with section 954.08.

SECTION #2:

Amend LDR Section 954.08(2), Non-current parking (shared over time) study, to read as follows:

(2) Non-concurrent parking (shared over time) study. The required amount of parking for a project with a mix of uses having different peak parking demand characteristics may be reduced from the requirements of section 954.05, as specified herein, upon submittal and review of the following information, a determination by the public works director or his designee, in coordination with the community development director or his designee, that the standards specified herein have been met, and approval by the planning and zoning commission.

(a) A parking accumulation study must be prepared by a registered Florida-licensed professional engineer and submitted with the site plan application. The study must be signed and sealed by a Florida-licensed professional engineer.

(b) A pre-study meeting is required between the petitioner's engineer and the county public works director or his designee to set forth the parameters of the study (number of days, hours of the day, site(s) to be studied).

(c) All parking studies at a minimum shall:

1. Cover at least a three-day period;
2. a. Proposed projects. Cover at least three (3) existing project sites having a similar mix of uses and design characteristics as the proposed use;
   b. Existing projects: Cover at least three (3) existing project sites having a similar mix of uses and design characteristics as the subject project; may use one of the three sites, used being the existing subject project site;
3. Record occupied parking spaces within the study area at fifteen-minute increments;
4. Record the information on sketch;
5. Summarize the information for each day of the study and compile the information for analysis; and
6. Factor in a peak season demand;
7. Include an analysis section that derives a total parking demand number and compares that number plus the fifteen (15) percent safety factor referenced in [8].

8. Include a conclusions section which, based upon the date and analysis, proposes a reduced total parking number, if warranted.

(d) In lieu of the information required in (c) above, the public works director or his designee may accept empirical studies of parking rates for a land use that is the same as or similar to the proposed use, if the study conforms to methodological Standards acceptable to the traffic engineering and planning professions.

(de) Fifteen (15) percent of the highest fifteen-minute accumulation period shall be added as a safety factor to the maximum number of spaces occupied during the highest fifteen-minute period.

(ef) The signed and sealed parking accumulation study shall be reviewed by the county public works director or his designee, in coordination with the community development director or his designee. The petition and the recommendations of the county public works director or his designee, in coordination with the community development director or his designee shall then be forwarded to the planning and zoning commission for final action. Any appeal shall be handled the same as a site plan appeal pursuant to Chapter 902.

SECTION #3:

Amend LDR Section 954.08(3), No similar use study, to read as follows:

(3) No similar use study. For uses which are not listed in section 954.05 of this chapter and where the applicant so desires, the applicant may conduct a parking accumulation study to determine a parking standard for the subject use. The parking standard for the subject use shall be determined after submittal and review of the following information, a determination by the public works director or his designee in coordination with the community development director or his designee, that the standards specified herein have been met, and approval by the planning and zoning commission.

(a) A parking accumulation study shall be prepared by a registered engineer and submitted with a site plan application. The study shall be signed and sealed by a Florida-licensed professional engineer.

(b) A pre-study meeting is required between the petitioner's engineer and the county public works director or his designee to set forth the parameters of the study (number of days, hours of the day, site(s) to be studied).

(e) The site(s) to be studied must be occupied by uses similar to the uses proposed by the applicant.
(dg) All parking studies at a minimum shall:

1. Cover at least a three-day period;

2. Cover at least three (3) site(s) having a similar mix of uses and design characteristics as the proposed use;

3. Record occupied parking spaces within the study area at fifteen-minute increments;

4. Record the information on a sketch;

5. Summarize the information for each day of the study and compile the information for analysis;

6. Factor in a peak season demand;

7. Include an analysis section that states the parking demand number for each use on each site, along with the average parking demand number for each use studied (all sites). Said numbers shall include the fifteen (15) percent safety factor in (d) below;

8. Include a conditions section which, based upon the data and analysis, proposes a standard parking rate (a certain number of spaces per a certain number of square feet gross building area) for a particular use category.

(ed) Fifteen (15) percent of the highest fifteen-minute accumulation period must be added as a safety factor to the maximum number of spaces occupied during the highest fifteen-minute period.

(ef) The signed and sealed parking accumulation study will be reviewed and approved by the county public works director or his designee in coordination with and the community development director or his designee and shall then be. The petition will then be forwarded to the planning and zoning commission for final action. Any appeal shall be handled the same as a site plan appeal pursuant to Chapter 902.

SECTION #4:

Amend LDR Section 954.08(6). Unpaved vehicle storage lot regulations, to read as follows:

(6) Unpaved vehicle storage lots. Unpaved vehicle storage lots may be approved and established via the provisions of Chapter 914 subject to the following conditions:

a. The vehicle storage lot use is allowed in the zoning district in which the storage lot is proposed.
b. The storage lot surface shall be stabilized, in a manner suitable for the proposed use, as approved by the public works director or his designee.

c. A type "C9" buffer with six (6) foot (or greater) opaque feature shall be provided on the storage lot site where the site abuts a collector or arterial roadway, or a local roadway where property opposite the storage lot site is not zoned CH, IL, or IG. Along a local roadway where property opposite the storage lot site is zoned CH, IL, or IG, a type "C6" buffer with three (3) foot (or greater) opaque feature shall be provided.

d. The storage lot shall be buffered from any residentially designated property as required in Chapter 911.

e. Stormwater management facilities shall provide the greater of:

1. Detention or retention of the increase in runoff from the mean annual twenty-four-hour storm; or

2. One (1) inch of runoff.

f. The site plan shall note that all required parking spaces are provided separately from the storage lot surface and that the required parking space surface conforms with the requirements for such parking spaces.

SECTION #5:

Amend LDR Section 954.09. Off-street loading regulations, to read as follows:

These requirements shall apply to all commercial and industrial uses.

(1) A minimum number of loading spaces or berths shall be provided and maintained as follows:

<table>
<thead>
<tr>
<th>Building(s) Size in sq. ft. Over</th>
<th>but not over</th>
<th>No. of Spaces/Berths</th>
</tr>
</thead>
<tbody>
<tr>
<td>5,000</td>
<td>24,999</td>
<td>Restaurants and Industrial: 1</td>
</tr>
<tr>
<td>25,000</td>
<td>59,999</td>
<td>Industrial and Commercial: 2</td>
</tr>
<tr>
<td>60,000</td>
<td>119,999</td>
<td>Industrial and Commercial: 3</td>
</tr>
<tr>
<td>120,000</td>
<td>199,999</td>
<td>Industrial and Commercial: 4</td>
</tr>
<tr>
<td>200,000</td>
<td></td>
<td>Industrial and Commercial: 5</td>
</tr>
</tbody>
</table>

Note: packing houses shall provide loading spaces as specified in section 954.05, also convalescent homes shall provide a loading space as specified in section 954.05.

(2) Loading spaces or berths shall have minimum dimensions of fourteen (14) feet by thirty (30) feet, or eleven (11) feet by forty (40) feet, plus each space or berth shall have an additional two hundred fifty (250) square feet of loading or maneuvering area immediately contiguous to the space or berth.
(3) Any facility required to have loading facilities may be permitted to have a driveway of a width adequate to handle the size of the delivery vehicles. The width of the driveway is to be approved by the public works director or his designee.

(4) Service alleys or driveways shall have minimum width of twenty (20) feet.

SECTION #6: SEVERABILITY.

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

SECTION #7: REPEAL OF CONFLICTING ORDINANCES.

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION #8: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION #9: EFFECTIVE DATE.

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the _____ day of _________ 2012, for a public hearing to be held on the _____ day of _________, 2012, at which time it was moved for adoption by Commissioner ____________, seconded by Commissioner ____________, and adopted by the following vote:

Chairman Gary C. Wheeler
Vice Chairman Peter D. O'Bryan
Commissioner Bob Solari
Commissioner Wesley S. Davis
Commissioner Joseph E. Flescher
ORDINANCE 2012----

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY

BY: _______________________________________

Gary C. Wheeler, Chairman

ATTEST BY: _______________________________________

Jeffrey K. Barton, Clerk

This ordinance was filed with the Department of State on the following date: ________________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

__________________________________________
Alan S. Polackwich, Sr., County Attorney

APPROVED AS TO PLANNING MATTERS

__________________________________________
Robert M. Keating, AICP; Community Development Director
ORDINANCE 2012-____

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA CONCERNING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS (LDRs); PROVIDING FOR AMENDMENTS TO CHAPTER 956, SIGN REGULATIONS, BY AMENDING EXEMPTIONS TO PERMITTING PROCEDURES TO INCLUDE CARRIED SIGNS AND FREE EXPRESSION SIGNS, BY AMENDING PROVISIONS FOR CERTAIN PROHIBITED SIGNS, BY AMENDING TEMPORARY SIGN PERMIT PROVISIONS, BY ADDING A TIME LIMITATION FOR DISPLAY OF ACTIVE SUBDIVISION OR REAL ESTATE DEVELOPMENT SIGNS, BY CREATING SECTION 956.19 TO REFERENCE ADDITION SIGN REGULATIONS IN DESIGNATED CORRIDORS, AND BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRs) CHAPTER 956, SIGN REGULATIONS, BE AMENDED AS FOLLOWS:

SECTION #1:

Amend LDR Section 956.11, Exemptions to permitting procedures, to read as follows:

(1) **Provisions regulating exempted signs.** The following types of signs do not require a permit provided the sign shall: comply with applicable requirements in the zoning district where placed; comply with other provisions in this subsection; and be consistent with the spirit, intent and purpose of this chapter. All sign copy shall be considered exempt from the provisions of this chapter. This chapter shall not apply when state or federal regulation requires other specific posting standards.

(2) **Signs exempted from permitting procedure.**

(a) **Identification signs.** Exempted signage shall include signs identifying only the name and/or address of the owners, occupants or buildings and having an area not exceeding two (2) square feet for a single-family residential structure or four (4) square feet for a multiple-family, nonresidential, or mixed use structure.

(b) **Traffic regulatory and directional signs.** Traffic regulatory and directional signs erected by authorized agents of the county, state, federal government or private development for the public safety and welfare. Such signs must comply with all applicable standards of the Manual of Uniform Traffic Control Devices.

(c) **Instructional signs.** Instructional signs not to exceed one square foot for residential uses and four (4) square feet for nonresidential uses.

(d) **Memorial signs.**

(e) **Window signs.** Except in residential zoning districts, a temporary window sign or signs having a total area not exceeding twenty (20) percent of each window, calculated separately for each window. Non-profit special event signs shall be totally exempt and need not be calculated as part of the twenty (20) percent area.

**Bold Underline:** Additions to Ordinance

**Strike-through:** Deleted Text from Existing Ordinance

F:\Community Development\Users\ROLAND\LDR\2012____956 Sign Regulations 02-01-12.RTF
(f) **Gasoline and fuel pricing signs.** Gasoline and fuel pricing signs shall be exempt when required by law to be posted. The size of such signs shall not exceed the dimensions specified in appropriate federal regulations.

(g) **No smoking signs.**

(h) **Real estate for sale, lease, or rental signs.**

1. **Number of signs.** One sign per street frontage advertising the sale, lease, rental or exchange of real property or a business opportunity may be placed on the property advertised in any district. One additional sign may be placed where the street frontage exceeds three hundred (300) linear feet along a common road right-of-way.

2. **Area requirements.** Said signs shall not exceed four (4) square feet for single-family residential uses, six (6) square feet for multiple-family or institutional uses, and sixteen (16) square feet for commercial or industrial sites.

3. **Required setbacks.** Said signs shall be located outside rights-of-way within the applicant's property lines and shall have a ten-foot setback from all other adjacent property lines, excepting adjacent road rights-of-way from which no setback is required.

4. **Height requirements.** Residential or institutional real estate signs shall not exceed five (5) feet in height. Commercial or industrial real estate signs or allowable real estate directory signs shall not be placed within the road right-of-way, and shall not exceed the height restrictions as set forth in Table 1 of this chapter.

5. **Restrictions on copy.** Real estate for sale, lease, or rental signs shall contain only the following or any combination thereof at the option of the sign owner:

   a. House, apartment, unit, business, or other short description of the property.

   b. The words "for sale," "for lease," "for rent," "for exchange," "see your broker," or similar phrase.

   c. The registered name of the broker and the term "broker," "Realtor," or logo, as the case may be, if the offer is through an agent, or the words "by owner" if the offer is not through an agent.

   d. Two (2) telephone numbers and/or "inquire within," or a similar phrase, and a room, apartment, or unit number, if needed.
ORDINANCE 2012-_____

6. **Additional regulations for real estate open to inspection signs.** One on-premise sign not to exceed four (4) square feet in area inviting the inspection of said property in all zoning districts may be placed in addition to the sign permitted in subparagraph 956.11(2)(h).

Two (2) additional off-premise open house signs may be placed per open house; however, no more than two (2) such signs may be placed per intersection. Such signs may be located within a road right-of-way, provided the sign is:

a. Located at least eight (8) feet from any roadway;

b. Constructed as a break away sign; and

c. No more than three (3) feet above the crown of the adjacent road.

All open house signs shall be placed only when the property is actually open for inspection and shall be displayed only between the hours of 8:00 a.m. and 7:00 p.m. Said signs shall be limited to the words "open house," "open for inspection," or other similar words or phrases.

7. **General restriction.** It shall be unlawful for any person to place on any lot, parcel of land, building, or structure any sign or similar advertisement offering real estate or a business opportunity for sale, exchange, lease, rent, or business opportunity for sale, exchange, lease, rent, or inspection, except as specifically authorized in this chapter, excepting allowable active subdivision or real estate development signs approved pursuant to section 956.15(3) or off-premise directional signs permitted pursuant to section 956.16(2)(e) of this chapter. The provisions of subsection 956.11(2) shall not apply to signs at the principal office or branch office of any real estate business brokerage firm. However, such signs are subject to the sign restrictions applicable within the zoning district where the office is located.

8. **No illumination.** Real estate for sale, lease, or rental signs shall not be illuminated in residentially designated areas.

(i) **Flags.** The flag of the United States of America, flags of the other nations, states, counties, cities, veteran and civic organizations, schools and public and non-profit private institutions.

(j) **Non-commercial decorative art.** Decorative or architectural features which are an integral element of a building or works of art so long as such features do not contain letters, trademarks, moving parts, exhibit merchandise for sale on premises, and do not contain lights. Religious emblems shall be construed as being non-commercial decorative art and shall be exempt from this chapter.
(k) **Holiday signs.** Holiday signs and decorations that are clearly incidental to and customarily associated with any national, local, or religious holiday observance, may be displayed no sooner than thirty (30) days before the holiday and must be removed within ten (10) days after the event.

(l) **Garage sale signs.** One on-premise garage sale sign per street frontage may be displayed between the hours of 6:00 a.m. and 5:00 p.m. The sign shall not exceed four (4) square feet. Said signs shall be located outside rights-of-way, within property lines, and shall maintain a ten-foot setback from all other adjacent property lines, excepting the road right-of-way from which no setback is required.

One additional off-premise garage sale sign may be erected per entry into a subdivision or development in which a garage sale is taking place. No more than one such sign may be placed at each respective point of entry to a subdivision or development. Such sign may be located within a road right-of-way provided the sign is:

1. Located at least eight (8) feet from any roadway;
2. Constructed as a break away sign;
3. No more than three (3) feet in height measured from the crown of the adjacent road;
4. Displayed only during the hours of 6:00 a.m. to 5:00 p.m.; and
5. No greater than four (4) square feet.

No on or off premises garage sale signs shall be displayed for a period exceeding three (3) consecutive days and shall not be displayed for more than a total of nine (9) days during a calendar year.

(m) **Temporary construction sign.** Temporary construction signs advertising the construction or improvement of the property upon which such sign is located may be erected upon issuance of a building permit for the subject project subject to compliance with the following conditions:

1. **Character of sign.** A construction sign shall not exceed a cumulative area of sixteen (16) square feet, and no more than three (3) such signs per premises shall be permitted. Such sign(s) shall not be illuminated. These signs must be located on the developing premises, at least five (5) feet from all rights-of-way, and at least twenty (20) feet from other property lines. Construction signs are otherwise subject to the regulations applicable to the district where erected. Construction signs shall otherwise comply with provisions of this chapter.
ORDINANCE 2012-______

2. **Timing of removal.** Any construction sign shall be removed prior to the issuance of a final certificate of occupancy.

(u) **Change of copy.**

(o) **Right-of-way acquisitions.** Signs located within recently acquired rights-of-way may be relocated without obtaining a permit.

(p) **Carried sign.** A sign that is carried or held by a person on private property or on a public sidewalk.

(q) **Free expression sign.** A sign related to any non-commercial message that is otherwise lawful, subject to the following conditions:

1. **One free expression sign per premises.**

2. **In residential zoning districts, such signs shall either be freestanding or window signs.** If displayed as a freestanding sign, such sign shall be no more than nine (9) square feet in area, and shall not exceed five (5) feet in height. Each window sign shall be no more than two (2) square feet in area and the cumulative area of all window signs shall be no more than 20 percent of the total area of each window. Such signs shall not be illuminated.

3. **In non-residential zoning districts, such signs shall either be freestanding or window signs.** If displayed as a freestanding sign, such sign shall be no more than sixteen (16) square feet in area and shall not exceed ten (10) feet in height. Each window sign shall be no more than four (4) square feet in area and the cumulative area of all window signs shall be no more than 20 percent of the total area of each window. Such signs shall not be illuminated.

4. **Such free expression signs, unless carried or held on a public sidewalk, shall be located wholly on private property with the prior consent of the property owner or lawful occupant of the property.** Such signs, when freestanding, shall be at least five (5) feet from all public rights-of-way.

SECTION #2:

Amend LDR Section 956.12, Prohibited signs, to read as follows:

(1) The Following signs are prohibited as of the effective date of this chapter. Such signs have been found to violate the purpose, intent, and specific provisions of the sign regulations and shall be removed in accordance with notice rendered by the code enforcement officer.

(a) A sign which falsely simulates emergency vehicles, traffic-control devices, or official public signs;
ORDINANCE 2012—____

(b) Snipe signs, sandwich signs, other portable signs, and add-on signs;

(c) A sign found by the code enforcement official to be structurally unsafe or a hazard to public safety or to life or limb, including signs creating a fire hazard;

(d) A sign obstructing any motorist’s view of a street or intersection. The minimum allowable site distance shall be in accordance with county landscape traffic sight-line regulations;

(e) An abandoned off-premise sign; any abandoned, nonconforming on-premise sign;

(f) A series of two (2) or more signs which must be read together to obtain a single message;

(g) Flashing signs except for public signs permitted pursuant to subsection 956.11(2)(b);

(h) Animated signs, including swinging signs;

(i) A sign which obstructs any fire escape, any window, or door or other opening used as a means of ingress or egress so as to prevent free passage of persons;

(j) Any sign which interferes with openings required for ventilation;

(k) Banners, flags, or balloons used to attract attention to industrial, commercial or residential establishments, excepting flags pursuant to section 956.11(2)(i);

(l) Any sign placed without a permit after the effective date of this chapter when a permit is required;

(m) Signs in violation of subsection 956.14. If a sign is prohibited and the sign is a type that can be brought into conformance with this chapter, the owner or lessee of the sign can elect to bring the sign into conformity rather than remove the sign;

(n) Buildings and/or signs which resemble represent in configuration or design a product or service offered for sale such as, but not limited to, hot dogs, hamburgers, ice-cream cones, shoes or automobiles; are prohibited in the unincorporated areas of Indian River County;

(o) Roof signs (excepting allowable mansard roof and parapet signs and religious symbols incorporated as part of the building plan for a steeple or other similar structural component of a place or workshop of worship). No sign or portion of a sign shall project more than four (4) feet above a roof line or deck line for on buildings with mansard roofs or parapets. In all cases, no sign or portion of a sign shall be located closer than one (1) foot from the top of a parapet wall or mansard roof. The portion of a mansard roof located below the deck line shall be
ordinance 2012-

eligible for placement of a facade sign. Indian River County is located in a Florida coastal region confronted with the annual threat of hurricanes and related destructive natural events. Therefore, special limitations against rooftop signs are deemed within the public interest in order to minimize future hazard potential.

(p) A sign four (4) square feet or larger in size which is affixed to, attached to, or located on a parked vehicle or trailer such that the sign is visible from a public right-of-way, unless said vehicle or trailer is parked in a designated parking area and is used in the normal day-to-day operations of the premises business or unless said vehicle or trailer is involved in a visit to the site related to regular business operations. An electronic sign which is affixed to, attached to, or located on a vehicle or trailer shall not be activated when such vehicle or trailer is parked. This prohibition does not apply to signs required by law, ordinance or regulation. The intent of this prohibition is to prohibit vehicles or trailers from being utilized as on-premise or off-premise signs except as incidental to bona fide vehicle use.

section #3:

amend ldr section 956.15, regulations for temporary signs requiring permits, to read as follows:

the requirements of this section apply to temporary signs erected for political campaigns and for special events. for purposes of this section, special event signs are temporary signs announcing special events to be sponsored by a charitable, educational, or religious institution, or a commercial entity. said temporary signs shall require issuance of a permit by the code enforcement official, except as otherwise specified herein. prior to the placement of any of the described temporary signs all relevant provisions of this chapter shall be satisfied.

(1) Sign permit required. No temporary political campaign sign or special event sign shall be displayed in the unincorporated area of Indian River County unless a county sign permit has been obtained subject to the provisions of this section. A single overall sign permit may be obtained for placement of more than one temporary sign, including multiple signs displayed as part of a county-wide countywide campaign or advertisement of a special event. No more than twenty (20) signs shall be displayed in the unincorporated county for a special event. For political campaigns, there is no limit on the total number of signs displayed in the unincorporated county when such signs are otherwise displayed in compliance with the requirements of this section.

(2) Application. The applicant shall submit a written application on a form to be provided by the code enforcement official which stipulates the conditions under which the temporary sign(s) are being requested. In addition to sign application information required pursuant to section 956.05, the application should include the following:

(a) Nature of the temporary sign(s). If the temporary sign(s) relate to a special...
ORDINANCE 2012-____

event, include the location of the special event and daily schedule of activities;

(b) **Duration of special event or campaign.** Include dates of commencement and termination of the special event or political campaign;

(c) **Sign distribution.** Include the proposed distribution of signage and such other information as the county may require to ensure consistency with the spirit, intent, and purpose of this chapter;

(d) **Responsible agents.** Identify the name of the sponsoring entity and principal contacts responsible for erecting and removing signage.

(3) **Duration of sign display restricted.** Temporary special event signs may be erected for a period of time not to exceed seven (7) calendar days within any six-month period. **Temporary signs associated with a Temporary Use Permit issued under County Code Chapter 972, Temporary Uses, may be erected for a period of time concurrent with the timeframe of the approved event.** Temporary political campaign signs may be displayed no more than thirty (30) ninety (90) days prior to the election in which the candidate's name or the issue will appear. Any unopposed candidate in the first primary who will face opposition in the following general election may erect temporary political signs thirty (30) ninety (90) days prior to the first primary, notwithstanding the fact that the candidate's name will not appear on the first primary ballot.

(4) **Temporary signs in residential districts.** Temporary signs for political campaigns or special events are allowed in residential districts, as defined in Chapter 901, Definitions, subject to the following provisions:

(a) One (1) sign **per special event, candidate or issue is allowed** not exceeding four (4) square feet in size per lot or parcel of land. The allowable signage shall not exceed nine (9) square feet per sign;

(b) Signs shall not be illuminated and shall be freestanding;

(c) Signs shall be located wholly on the private property and shall be placed at least five (5) feet from all rights-of-way and fifteen (15) feet from all other property lines, and shall not exceed five (5) feet in height.

(5) **Temporary signs in nonresidential districts.** Temporary signs for political campaigns or special events are allowed in nonresidential zoning districts subject to the following provisions:

(a) One sign per special event, candidate or issue is allowed **per lot or parcel of land,** and not more than two (2) signs per premises are allowed. The allowable signage shall not exceed (16) square feet **per sign.** These signs shall be separated by a minimum distance of fifteen (15) feet;
(b) Signs shall be located wholly on the private property and shall be placed at least five (5) feet from any right-of-way and fifteen (15) feet from all other property lines and shall not exceed ten (10) feet in height.

(6) Compliance with conditions of sign(s) placement and removal. The applicant shall agree to place signs in a manner consistent with the terms of county sign regulations and remove the same pursuant to the schedule approved as a condition of permit approved. In addition, the applicant shall agree to conditions necessary to ensure that potential issues identified by the county shall be effectively managed in order to promote the public safety, avoid excessive proliferation of signage, and protect the economic and business climate and appearance of the community. Concerning the placement and removal of temporary political campaign and special event signs, the following shall apply:

(a) All temporary signs must be removed within five (5) days after the special event or, regarding political campaign signs, after the election in which the candidate is eliminated or elected or after the resolution of the respective issues by referendum;

(b) The placement of temporary signs upon any tree, utility pole, or similar object is prohibited;

(c) The placement of any temporary sign without permission of the owner of the property upon which the sign is placed is prohibited;

(d) The placement of any temporary sign in a public or private road right-of-way is prohibited; however, the public works department may approve placement of temporary traffic/directional signs within rights-of-way in accordance with section 956.11(2)(b). For purposes of this regulation, the road right-of-way line shall be deemed to be the edge of sidewalks or utility poles furthest from the road. Where no such structure(s) are present, the right-of-way line shall be deemed to be twenty (20) feet back from the near edge of roadway pavement or, if unpaved, the near edge of unpaved roadbed surface.

SECTION #4

Amend LDR Section 956.15.1. Regulations for active subdivision or real estate development signs, to read as follows:

On-premise active subdivision or real estate development signs may be erected subject to compliance with the following conditions in addition to other applicable provisions of the sign ordinance. These signs are not subject to subsection 956.11(2)(h), "Real Estate For Sale, Lease, or Rental Signs."
Character of sign. Such signs shall not exceed forty-eight (48) square feet except in single-family residential districts where they shall not exceed twenty-four (24) square feet for model homes and sales offices only. One additional sign may be erected on a site having a street frontage in excess of three hundred (300) feet. Such sign must be located on the premises of the developing project or subdivision, at least five (5) feet from all rights-of-way, and at least twenty (20) feet from contiguous property lines of adjacent landowners. These signs may be illuminated.

Number of signs permitted. Only one such sign shall be permitted for each common roadway along the perimeter of the development. Such sign must be located on the premises of the development, at least five (5) feet from all rights-of-way, and at least twenty (20) feet from contiguous property lines of adjacent landowners. These signs may be illuminated.

Filing of plat and/or site plan. Prior to the erection of such a sign, an approved preliminary plat or a site plan for the development, as applicable, shall be placed on file with the community development department.

Authorization for sign placement. Only the exclusive agent of the developer or owner of the property shall be authorized to place a sign on the property. The property owner's signed authorization consenting to the placement of a sign representing an exclusive real estate agent on such premises shall be filed with the community development department prior to the placement of the agent's sign.

Time limitation. Active subdivision or real estate development signs shall be removed once 50 percent of the subdivision or development is sold or leased by the developer.

SECTION #5

Create new LDR Section 956.19, Additional regulations for signs in designated corridors, to read as follows:

Section 956.19. Additional regulations for signs in designated corridors.

Indian River County has adopted special development regulations for designated corridors in the unincorporated county, including special sign regulations in addition to those contained in this chapter. The special sign regulations for designated corridors are contained in the following sections of Chapter 911, Zoning:

(1) Section 911.18. Wabasso Corridor regulations.
(2) Section 911.19. SR 60 Corridor special development regulations.
(3) Section 911.20. North Barrier Island Corridor special development regulations.
(4) Section 911.21. Roseland Corridor regulations.
(5) Section 911.22. Other corridors special development regulations.
SECTION #6: SEVERABILITY.

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

SECTION #7: REPEAL OF CONFLICTING ORDINANCES.

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION #8: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relabeled to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION #9: EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the ______ day of ___________ 2012, for a public hearing to be held on the ____ day of ___________ 2012, at which time it was moved for adoption by Commissioner ______________, seconded by Commissioner ______________, and adopted by the following vote:

Chairman Gary C. Wheeler
Vice Chairman Peter D. O'Bryan
Commissioner Wesley S. Davis
Commissioner Joseph E. Flescher
Commissioner Bob Solari

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY

BY: __________________________
      Gary C. Wheeler, Chairman
ORDINANCE 2012-____

ATTEST BY: ____________________________
Jeffrey K. Barton, Clerk

This ordinance was filed with the Department of State on the following date: ________________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

_______________________________
Alan Polackwich, Sr., County Attorney

APPROVED AS TO PLANNING MATTERS

_______________________________
Robert M. Keating, AICP; Community Development Director
ORDINANCE 2012- Version 2-3-2012

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA CONCERNING AMENDMENTS TO ITS LAND DEVELOPMENT REGULATIONS (LDRs); PROVIDING FOR AMENDMENTS TO CHAPTER 901, DEFINITIONS, AND CHAPTER 971, REGULATIONS FOR SPECIFIC LAND USES, BY AMENDING SECTION 901.03, AND BY ESTABLISHING SECTION 971.08(15) AND 971.08(16); AND BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRS) BE AMENDED AS FOLLOWS:

SECTION #1:

Establish the following definitions in Section 901.03, to read as follows:

Small-scale bio-fuel processing plant a facility that produces fuel from biological materials, including but not limited to vegetative material, where the area of development (includes plant equipment, processing areas, bio-fuel storage facilities, feedstock storage and staging areas, parking areas, and transport facilities) does not exceed 20 acres.

Large-scale bio-fuel processing plant a facility that produces fuel from biological materials, including but not limited to vegetative material, where the area of development (includes plant equipment, processing areas, bio-fuel storage facilities, feedstock storage and staging areas, parking areas, and transport facilities) exceeds 20 acres.

SECTION #2:

Establish LDR Section 971.08(15), to read as follows:

(15) Small-scale bio-fuel processing plants (administrative permit: no planning and zoning commission approval required; subject to staff-level site plan approval).

(a) Districts requiring administrative permit approval (pursuant to the provisions of 971.04): A-2 A-3

(b) Additional information requirements:

1. A water supply and water use plan.

2. Design and operations information, demonstrating compliance with applicable air emissions, effluent discharge, NPDES, fuel containment, fire safety regulations, and county noise regulations applicable to agricultural areas.

3. A description of feedstock type, source, and quantities required for plant operation; transport requirements; processing plant by-products and waste management, and energy provisions (e.g. natural gas) for plant processes.

(c) Criteria for small-scale bio-fuel processing plants:

1. The processing plant site shall be located on property designated AG-2 or AG-3.

2. The processing plant area of development shall be located at least one mile from the Urban Service Area boundary and at least three hundred feet from the nearest property boundary.

   a. A power generation facility associated with the small-scale bio-fuel processing plant may be located as close as one hundred feet from the nearest high voltage powerline easement or right-of-way, or from a collector or arterial road right-of-way if the facility is screened from view of the collector or arterial roadway by a Type “C” buffer or its equivalent.

3. The overall site containing the processing plant shall be 40 gross acres or larger.

4. The plant equipment, processing areas, bio-fuel storage facilities, feedstock storage and staging areas, parking areas, and transport facilities shall occupy no more than 20 acres or 10% of the overall site containing the processing plant, whichever is less.

5. No native upland habitat or forested wetlands shall be cleared or removed in conjunction with development of the bio-fuel processing plant and any associated power generation facility.

6. The applicant shall obtain approval from the Public Works Director for the haul route. That approval may include conditions and guarantees for haul route improvements and maintenance.

7. A power generation facility that is associated with the bio-fuel plant and projected to generate 50 megawatts of power or more shall be subject to the specific land use criteria and special exception process for “Public and private utilities, heavy”.

SECTION #3:

Establish LDR Section 971.08(16), to read as follows:

(16) Large-scale bio-fuel processing plants.

   (a) Districts requiring special exception approval (pursuant to the provisions of 971.05): A-1 A-2 A-3
(b) **Additional information requirements:**

1. A water supply and water use plan together with a report signed and sealed from a professional engineer or professional geologist demonstrating that the proposed use will have no significant adverse off-site impacts to groundwater, surface water, water table levels, stormwater management systems, irrigation systems, or agricultural operations.

2. Design and operations information, demonstrating compliance with applicable air emissions, effluent discharge, NPDES, fuel containment, fire safety regulations, and county noise regulations applicable to agricultural areas.

3. A description of feedstock type, source, and quantities required for plant operation; transport requirements; processing plant by-products and waste management, and energy provisions (e.g. natural gas) for plant processes.

4. **Depiction of a haul route for trucks carrying processing plant feed stock, by-products, and fuel.**

(c) **Criteria for large-scale bio-fuel processing plants:**

1. **The processing plant site shall be located on property designated AG-1, AG-2, or AG-3.**

2. **The processing plant area of development shall be located at least one mile from the Urban Service Area boundary and at least six hundred feet from the nearest property boundary.**

   a. A power generation facility associated with the large-scale bio-fuel processing plant may be located as close as one hundred feet from the nearest high voltage powerline easement or right-of-way, or from a collector or arterial road right-of-way if the facility is screened from view of the collector or arterial roadway by a Type “C” buffer or its equivalent.

3. **The overall site containing the processing plant shall be 80 gross acres or larger.**

4. **The processing plant area of development shall include but not be limited to processing areas, bio-fuel storage facilities, feedstock storage and staging areas, parking areas, and transport facilities, and shall occupy no more than 20% of the overall site containing the processing plant.**

5. **No native upland habitat or forested wetlands shall be cleared or removed in conjunction with development of the plant and any associated power generation facility.**
6. The applicant shall obtain approval from the Public Works Director for the haul route. That approval may include conditions and guarantees for haul route improvements and maintenance.

7. Outdoor lighting of the processing plant and any associated power generation facilities shall be shielded consistent with the county's light shielding requirements for commercial corridors found in section 911.22(7)(c)4.

8. A power generation facility that is associated with the bio-fuel plant and projected to generate 50 megawatts of power or more shall be subject to the specific land use criteria and special exception process for "Public and private utilities, heavy".

SECTION #4: SEVERABILITY.

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

SECTION #5: REPEAL OF CONFLICTING ORDINANCES.

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

SECTION #6: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or retitled to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

SECTION #7: EFFECTIVE DATE

This Ordinance shall take effect upon filing with the Department of State.

This ordinance was advertised in the Press-Journal on the _____ day of __________ 2012, for a public hearing to be held on the ____ day of __________, 2012, at which time it was moved for adoption by Commissioner ______________, seconded by Commissioner ______________, and adopted by the following vote:

Chairman Gary C. Wheeler

Vice Chairman Peter D. O’Bryan

Commissioner Bob Solari
ORDINANCE 2012-_____

Commissioner Wesley S. Davis

Commissioner Joseph E. Flescher

BOARD OF COUNTY COMMISSIONERS
OF INDIAN RIVER COUNTY

BY: ____________________________
Gary C. Wheeler, Chairman

ATTEST BY: ____________________________
Jeffrey K. Barton, Clerk

This ordinance was filed with the Department of State on the following date: ________________

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

Alan S. Polackwich, Sr., County Attorney

APPROVED AS TO PLANNING MATTERS

Robert M. Keating, AICP; Community Development Director
Policy 9.3: Indian River County shall maintain corridor plans and special corridor regulations for development located along roads that serve as entranceways to the county and along other major roads, as determined by the county. The county shall continue to implement the recommendations of the Wabasso, SR 60, north barrier island, and Roseland corridor plans.

Policy 9.4: Indian River County shall coordinate with the State Department of Transportation to install landscaping within existing road rights-of-way of roads that serve as entrances to the county. That landscaping will be installed when the appropriate portions of the road are being improved.

Policy 9.5: Indian River County land development regulations shall require the use of natural and manmade buffers between incompatible land uses.

Policy 9.6: Indian River County shall enforce sign code regulation standards, including standards contained in corridor plans, for the type, location, size, number, and maintenance of signs.

Policy 9.7: Indian River County shall encourage, through its land development regulations, the use of native vegetation in meeting landscaping requirements.

Policy 9.8: Indian River County land development regulations shall include minimum landscape and maintenance requirements for all development requiring site plan approval.

Policy 9.9: Indian River County shall provide guidelines for use of landscaping and other buffers to shield parking, driveways and loading areas from surrounding development, and public rights-of-way.

Policy 9.10: Indian River County shall support the cultural enrichment of the county by evaluating community cultural facilities and, where appropriate, the design of county buildings shall incorporate artistic and cultural amenities.

Policy 9.11: Indian River County Land Development Regulations shall address aesthetic concerns regarding telecommunication towers and antennas by several means including: providing incentives for co-location of antennas on existing structures, limiting the possible location of future towers, setbacks, landscaping, camouflage, and requiring unobtrusive lighting (day/night lighting).

Policy 9.12: The county shall implement certain corridor standards on a countywide basis. Those corridor standards to be applied countywide will include standards for foundation landscaping, building color, pitched roof, signage, screening, and lighting. As is done within designated corridors, exemptions will be allowed for multi-family developments as well as industrial/warehouse projects.
POLICY 3.2: The county shall regularly monitor all centralized sanitary sewer facilities to ensure that they do not contaminate surface water or groundwater resources.

POLICY 3.3: To ensure that hazardous waste is not discharged into ground or surface water, the IRCHD shall conduct random samplings of on-site sewage systems for businesses which have been identified as hazardous waste generators. Violators shall be prosecuted according to federal, state and/or local regulations.

OBJECTIVE 4  Water Conservation

Through the time horizon of the plan, 100% of the wastewater effluent produced by the county centralized sanitary sewer facilities will be reused.

POLICY 4.1: The county shall continue to reuse wastewater by spray irrigation, with percolation ponds and wetlands as back-up.

POLICY 4.2: The county shall require large volume irrigation users, such as developments with golf courses, to use reuse water for spray irrigation.

POLICY 4.3: The county shall continue to enforce Land Development Regulations that require developments that use treated wastewater for spray irrigation to construct and dedicate to the county the effluent transmission lines needed to transport the effluent to the development.

POLICY 4.4: The county shall require all new subdivisions or residential projects of 25 or more lots/units within one-quarter of a mile of an existing re-use line to connect to the re-use line.

OBJECTIVE 5  Capital Improvements

By 2014, the county will have completed the sanitary sewer improvements listed in the county’s 5 year Capital Improvements Program in order to maximize the use of existing facilities and discourage urban sprawl (current Five Year Capital Improvements Plan shown in Appendix A).

POLICY 5.1: In conformance with the review process for the Capital Improvements Element of this plan, the county shall maintain a five-year schedule of capital improvement needs for public facilities.

POLICY 5.2: Proposed capital improvement projects shall be evaluated and ranked according to the following three priority level guidelines:
POLICY 4.4: The county shall renew its annual contract with the SJRWMD to identify and require property owners to plug or valve free flowing artesian wells.

POLICY 4.5: The county shall encourage home builders to participate in the SJRWMD’s Florida Water Star Program by expediting review of their permits.

POLICY 4.6: The county’s water pricing system shall continue to be equitable, but shall continue to charge an exponentially increasing unit rate for high volume residential users (those using more than three times the Level of Service standard established in policy 1.3).

POLICY 4.7: To quickly and efficiently respond to any leakage, the county shall continue to implement its leak detection program.

POLICY 4.8: The county shall require all new subdivisions and projects of 25 or more lots/units that are within a ¼ mile of an effluent reuse line to connect to the effluent reuse line. When a project meets above criteria, developer shall be required to construct an effluent reuse line.

POLICY 4.9: By 2011, the Utilities Department shall revise its current pricing plans to further discourage excessive water use and to provide incentives to customers for saving water.

POLICY 4.10: The county shall require new developments to use water from retention ponds, instead of water from wells, for irrigation.

OBJECTIVE 5 Capital Improvements

Throughout the time horizon of the plan, the county will have completed all programmed capital improvements shown in Appendix “A” of the Potable Water Sub-Element in order to maximize the use of existing facilities and discourage urban sprawl.

POLICY 5.1: In conformance with the review process for the Capital Improvements Element of this plan, the county shall maintain a five-year schedule of capital improvement needs for public facilities.

POLICY 5.2: Proposed capital improvement projects shall be evaluated and ranked according to the following priority level guidelines:

- Level One - whether the project is needed to protect public health and safety, to fulfill the county's legal commitment to provide facilities and services, or to preserve or achieve full use of existing facilities.
Policy 6.6: Residential projects created via the affidavit of exemption process shall be limited to nineteen or fewer lots.

Policy 6.7: The county shall maintain its land development regulations requiring additional public notification of mining applications in agricultural areas.

Policy 6.8: To facilitate the preservation of agricultural land, the county shall allow the transfer of development rights from agriculture property to eligible receiving sites. Density credits eligible for transfer shall not exceed 1 unit per acre for AG-1 sending areas, 1 unit per 2 acres for AG-2 sending areas, and 1 unit per 4 acres for AG-3 sending areas. Additional density allowances up to 1 unit per 2 acres may be allowed for environmentally significant portions of AG-3 designated land.

Eligible receiving sites are new town projects, Traditional Neighborhood Design (TND) projects, and projects within the urban service area which are located on land suited for high density. Receiving sites within the urban service area shall be within or adjacent to a commercial/industrial node; shall be designated L-2, M-1, or M-2; and shall not be located within the Coastal High Hazard Area.

Individual sending and receiving sites shall be approved through the PD rezoning process. With the exception of new towns, transferred density shall not increase a receiving site’s density by more than 20% of its base density. In cases where transferred density is being used in conjunction with other density bonuses (e.g. TND, affordable housing), the combined density bonus may exceed 20% of the base density.

Policy 6.9: By 2011, the county shall adopt development regulations allowing small-scale biofuel processing plants as accessory agricultural uses in areas designated AG-2 and AG-3. The equipment, processing areas, and transport facilities of accessory biofuel-processing plants shall occupy no more than 20 acres or 10% of a site, whichever is less. Such facilities shall be subject to staff-level site plan approval and shall be located at least 300' away from nearby residential uses. Larger scale biofuel processing plants shall be allowed in areas designated AG-1, AG-2, and AG-3 if approved through the special exception process.

Policy 6.10: Because reservoirs and water farming allow the reuse of stormwater for irrigation or other uses while also attenuating the flow of stormwater into the Indian River Lagoon, the county’s land development regulations shall permit the development of reservoirs and water farming in agricultural areas. The county acknowledges that public or private utilities may be a necessary mechanism for water farming to occur.

**OBJECTIVE 7: PROTECTION OF NATURAL RESOURCES**

By 2015, there will be at least 108,500 acres of environmentally important land under federal, state, or county ownership or control within the unincorporated portion of Indian River County. In 2007, there were 105,186 acres of conservation land in public ownership.
MEMORANDUM

INDIAN RIVER COUNTY, FLORIDA

TO: The Honorable Members of the Planning and Zoning Commission

FROM: Stan Boling, AICP
Planning Director

DATE: February 3, 2012

SUBJECT: Planning Information Package for the February 9, 2012 Planning and Zoning Commission Meeting

For this meeting’s packet, the following articles are provided:


(5) “Space Coast economy moves on from shuttle’s end” Florida Today, January 30, 2012.


cc: Board of County Commissioners
Joe Baird
Michael Zito

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South Florida’s housing crash may be old news, but recent data offer some valuable perspective.

The Federal Housing Finance Agency maintains appreciation indices for metropolitan areas, which are similar to the famous Case-Shiller index but more local. By stacking up Broward and Miami-Dade’s indices to the nation’s, the warning signs are hard to miss.

The chart anchors all three indices to the first quarter of 2000, so the numbers show appreciation since then. Real estate got out of hand across the country, with appreciation peaking nationally at 166 percent in 2007. But in Broward, values soared 272 percent. Miami-Dade did even better, up 283 percent.

It’s easy to see how quickly values collapsed, but the chart also points out something that tends to be overlooked amid the wreckage of real estate. Home values are still ahead of where they were in 2003.

But perhaps more surprising, local property has actually held its value better than the average home in the United States. According to the FHFA, the average U.S. home is worth about 40
percent more than it was at the start of 2000. In Broward, the average home is worth 49 percent more. In Miami-Dade, it’s 56 percent more valuable.

A sign of resiliency, or a hint that South Florida still has some dropping to do? We’ll probably find out this year.

The Miami Herald’s Economic Time Machine charts South Florida’s recovery from the Great Recession by comparing current conditions to levels set before the downturn.

The ETM crunches 60 local indicators to measure the economic activity, then finds when each indicator was at that level before the 2007-2009 recession. At the moment, the current economy most resembles where it was in June 2002. Visit miamiherald.com/economic-time-machine for updates and analysis of the latest economic data.
Florida growth at '06 levels, Philly Fed says

An index of economic growth tied to Florida's hiring market hits a nearly three-year high.

BY DOUGLAS HANKS
DHANKS@MIAMHerald.COM

Florida's rebound shifted into high gear at the end of last year, with an index of economic growth increasing faster than it has since 2006.

The Federal Reserve's state-by-state index of economic activity posted a 32-month high in Florida for December as hiring expanded and wages improved. The index, calculated by the Fed's Philadelphia branch, tracks payroll levels, manufacturing hours, the unemployment rate and pay statistics.

As you can see from the chart above, the Philly Fed's index does a pretty good job of tracking conventional wisdom about the economy's ups and downs since the recession. There was the collapse, of course, during the downturn. Then the iffy recovery in 2010, followed by a stall.

A strong growth spurt in 2011 gave way to the doldrums at the end of summer. Washington's debt crisis and a slowdown in spending sparked warnings of a second downturn.

The so-called "double-dip" recession never arrived — at least not yet (we're watching you, Europe). The
Florida growth at '06 levels, Philly Fed says - The Economic Time Machine...

The Miami Herald's Economic Time Machine tracks 60 local indicators in an effort to chart South Florida's recovery from the Great Recession. By comparing current conditions to where they were before the downturn, the ETM attempts to measure how far back the recession set the economy. The answer so far: June 2002. Visit ETM headquarters at miamiherald.com/economic-time-machine for the latest updates.

Join the discussion
The Miami Herald is pleased to provide this opportunity to share information, experiences and observations about what's in the news. Some of the comments may be reprinted elsewhere in the site or in the newspaper. We encourage lively, open debate on the issues of the day, and ask that you refrain from profanity, hate speech, personal comments and Remarks that are off point. Thank you for taking the time to offer your thoughts.

We have introduced a new commenting system called Disqus for our articles. This allows readers the option of signing in using their Facebook, Twitter, Disqus or existing MiamiHerald.com username and password.

Having problems? Read more about the commenting system on MiamiHerald.com.
Agents say buyers are pouring in

By Hamid Huhil
Real Estate Editor
Published: Saturday, January 28, 2012 at 5:18 p.m.

Real estate agents, normally an upbeat group, are simply gushing at the market conditions right now.

Walking down Main Street the other day, I was stopped by Kim Ogilvie, a top-selling Michael Saunders agent who spotted my fedora and called out.

"We are in a whole new market," she said. "Un-buh-liable. People are here and I am showing my top listings. The Canadians are crazy. Really big money is coming ... smart money is starting to pull the trigger."

Ogilvie, who works with her husband, Michael, doesn't claim to have all the answers as to why the market is starting to cook. She just knows that her phone is ringing and her car is full of new people with deep pockets.

"Here's the thing," she said. "Properties that are priced for today's market — the buyers are now pulling the trigger on those properties. I talk to agents and they say the flood gates are open. The sellers who are lined up properly in their price are going to reap the benefits."

"I took my own advice," she said. "When our house came on the market, we priced it at $350,000 and sold it to the first person at $335,000." That was in August 2011.

"If it is priced right and looks good, it sells. Two years ago, if it was priced right and looked good, it did not sell. We have the audience here now that is ready."

The Ogilvies wade in the deep end of the market, and there, the pool is full of cash buyers. Buyers are catching on that real estate is on sale now, said Kim Ogilvie.

"They are in my car and are calling on all my expensive properties. We have dual offers on a lot (a Gulfmead Drive property on Siesta Key), and I haven't had two offers on a property in five years."

While local home builders are starting to build again, bucking national statistics that show a decline in housing starts, they are more guardedly optimistic about the market than resale agents, who are telling me they can hardly afford to take a day off.

Veteran agent Lynn Robbins of Coldwell Banker is finding that out the hard way. She has been sidelined with the flu, which she does not want to make worse by returning to work too soon.

"It comes back if you do too much," she said. "I showed property on Monday, five
houses, and that night I paid the price."

Bad timing, because the demand for realty agent services is there. "I've been referring people out because I have too many customers here at the same time.

"It is going to be worse: Wait until February and March, when the tourists and the snowbirds are here."

Robbins just secured an all-cash contract for a $1 million-plus house, and is dealing with several other buyers. "A lot of what I am dealing with is second-home buyers," she said. "They are sophisticated and feel this is a safe place to invest.

"The resale market is really hot right now. I am trying to get this message out to buyers who are seeing the national stories" of further market stagnation. "There is a shortage of inventory. If it is not one thing, it's another."

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Census: Florida has 3rd-largest population growth

By Amy Stuart
Published: Wednesday, December 21, 2011 at 10:40 a.m.

After a three-year slowdown, Florida's historic growth engine - attracting well-to-do retirees - appears to revving up again.

A new U.S. Census estimate of population growth shows that Florida added 256,000 new residents from April 1, 2010 to July 1, 2011, ranking the state third behind Texas and California in adding population, but only ninth in terms of percentage growth.

But what stands out in the new estimate released Wednesday is the number of new residents that Florida drew away from other states.

During the 15-month period, 119,000 people moved to the Sunshine State from other states, a number surpassed only by Texas, at 145,000, according to an analysis of the data by the Herald-Tribune.

No other state attracted more than 45,000 new residents from other states.

California was tops, by a large margin, in attracting new residents from other countries, 164,445, with Texas second and Florida third. But the financially troubled Golden State also saw an exodus of existing residents, with 65,905 leaving during the period, a figure exceeded only by New York and Illinois.

The Census estimate caught the University of Florida's Bureau of Economic & Business Research by surprise. Earlier this year, the bureau had estimated the state's population was growing at a much slower rate.

UF estimated that Florida had grown by 104,000 people during the year that ended April 1, 2010. Adjusting for the different time periods, the university's growth rate for Florida is about half the rate in the Census' new estimate.

Scott Cody, a research demographer at the bureau, noted that the university's estimate is based largely on information from electric utility hookups while the Census Bureau uses tax returns and Medicare data.

Because of its access to Medicare data, the Census might be picking up a large number of seniors moving to Florida missed by the university's estimate.

Florida's competitors for retirees - such as Arizona, which attracted 13,000 new residents from out of state, and Nevada, which lost 11,000 residents to other states - do not have that long-standing "social" connection, Cody said.

"We have a 60-year history of people migrating from New York to Florida," he said. "We might be able to pick up our domestic migration a lot faster."

Florida's slow recovery should continue to pick up speed next year, partly because of population growth and the re-establishment of the state's allure to retiring baby boomers, said University of Central Florida economist Sean Snailh.

The Census Bureau's use of Medicare data leads Snailh to think its population estimate might be more accurate than the BEBR estimate.
"The Medicare data might have a better bead on what's happening," Snaith said. "I think with the recovery of the wealth at least through the rebound of the stock market, that has helped the flow of retirees resume."

The Census figures confirm what the market has been saying all year — that the retirees are back, said homebuilder Pat Neal, chief executive of Lakewood Ranch-based Neal Communities.

Three quarters of Neal's 390 home sales this year have been to retirees, pushing the rate to within 30 homes of the company's 2005 peak, said Neal, who expects to surpass 2005 sales next year.

As part of his optimism, Neal says he has built 106 "feature" homes, the industry term for speculative homes built for the market rather than a signed buyer.

A quarter of the market is the first-time home buyer, but the rest consists of people like the retired couple in Cincinnati who are keeping their home there, but buying a smaller home in Florida, Neal said.

Perhaps they can't sell their Ohio home for what they want, but they are tired of waiting for their move south.

"If they were 60 in 2005 when the crunch started, they'll be 67 next year," Neal said.

The Census does an annual July 1 population estimate, first releasing country and state estimates. County estimates will be released in January.

The decennial Census, which is an actual head count, was done April 1, 2010. That is why the Census is looking at a 15-month period from April 1, 2010 to July 1, 2011.

During that period, the United States' population rose 2.8 million to 311.6 million. The 0.92 percent growth rate is the slowest since the mid-1940s, according to the Census Bureau.

Texas gained the most in population at 529,000; followed by California, 438,000; Florida, 256,000; Georgia, 128,000; and North Carolina, 121,000. Those five accounted for more than half of the U.S. population gain.

While third in overall population growth, Florida's 1.36 percent rate of growth ranked ninth nationally. Texas had the highest among states at 2.1 percent, though the District of Columbia grew at a 2.7 percent clip.

Using just the annual July 1 estimates, Florida's population grew 1.2 percent during the year ending July 1, 2011.

That is the most rapid population growth that the state has seen since 2006, but still less than half the 2.5 percent growth Florida saw in 2005.
Space Coast economy moves on from shuttle's end

The shuttle program was ending and the economic forecast was dire: Unemployment would hit 16 or even 17 percent as up to 8,000 space workers entered unemployment. Foreclosures would cascade through the housing market. Home sales would erode.

And indeed, during the past three years as the Great Recession rolled across the country, dishing out its own punishment, the shuttle program hosted its final mission and those thousands of workers fell into joblessness. The housing market continued its post-bubble slump, with sale prices falling to decade-old lows.

Unemployment peaked at 12.8 percent in January 2010, the highest it has been since the Apollo era (but well short of the predictions). Foreclosure filings approached 10,000 in 2010, by far the highest total ever in Brevard County. The trends were all headed the wrong way.

Now, with another full year of economic data added to the picture, a different trend is emerging: improvement.

Brevard, it seems, has absorbed the economic blow from the end of the shuttle program, and residents can expect the economy to improve, gradually. That means a net gain of jobs, more spending and more positive impact from economic development.

In several key facets of the Brevard economy, 2011 was better than 2010, which indicates that, in many aspects, 2010 was the low point for the county since the recession began in late 2007.

Unemployment averaged 11.3 percent for 2011, down from 2010's 11.5 percent. The sale of existing homes was more than 6,800, 11 percent ahead of 2010's year-end tally of 6,110 and the highest since 2006.

And foreclosure filings in 2011, at 3,925, were down by more than 41 percent from 2010 and the lowest since 2006.

"It's encouraging," said John Hilston, associate professor of economics at Brevard Community College. "The economy is showing some signs of life."

While no large space program is planned, jobs will be created by a number of

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smaller programs that Kennedy Space Center Director Bob Cabana and Space Florida Director Frank DiBello have worked to bring to Brevard. These programs include suborbital flights, renovation at KSC and commercial companies, Jim Muncy, an independent space consultant in Virginia, said.

"They really are diversifying and trying to bring in a lot of different companies to do different things," Muncy said. "It won't be 1,000 jobs at a time. But as the suborbital vehicles start flying, I think you'll see some tourism associated with them since they'll fly so much more often. It'll gin up more activity."

As we head into 2012 and move farther from the fallout of the recession and the shuttle shutdown, here's a look at where Brevard has been and why experts say that while the worst may be over, the recovery will be slow.

Some job losses continue

Though predictions of the post-shuttle unemployment rate were off, other estimates hit the mark. Some 21,000 job losses across the county were predicted for Brevard over the course of the space changes, and 20,316 jobs actually have been lost since January 2008.

Since that time, the number of unemployed has doubled to an average of about 29,000 in Brevard. That figure peaked at 33,334 in November of 2010. The county's labor force, which is a combination of employed and unemployed workers, has shrunk by more than 6,000. While the number of jobs has not increased, the number of job hunters has decreased.

"In most cases, it's that they've left the area," Brevard Workforce Director Lisa Rice said. "Very few people just stop looking."

The exodus of space industry workers kept the unemployment numbers from rising as high as predicted. While the expected number of jobs were lost, the unemployment percentage didn't edge upward as high as expected. "When our population size shrinks, that has an impact on your unemployment rates and can lower them," Rice said.

Rice, nevertheless, said that the number of jobs in Brevard is growing, and unemployment in the county could drop to around 9 percent by January 2013. "I have confidence it will be lower next year. I wouldn't say significantly lower," Rice said. "If we get down to 9 percent, that's doing pretty good."
Recovery begins with growth

Long-time Brevard residents remember the local depression that followed President Nixon's decision to abruptly shut down the Apollo moon-landing project in the mid-1970s, leaving a six-year gap between the program's final flight and the first space shuttle launch in 1981.

In both raw numbers and the share of the countywide economy, the job losses expected from the shuttle's retirement are nowhere near what happened with Apollo. More than 20,000 space workers alone lost jobs when Apollo ended, most without the long warning shuttle workers received when President George W. Bush announced in 2005 that the program would end in September 2010. (Due to program delays, the last shuttle mission actually ended in July 2011.)

Those losses, and the smaller overall workforce, helped fuel the highest jobless rate ever in Brevard, according to the state's Department of Economic Opportunity: 14.7 percent in January 1975, right after the Apollo program ended.

Instead of creating a new NASA program to replace the shuttle, the agency will rely on commercial carriers to ferry cargo and astronauts to the International Space Station. That development has begun, and several space companies, including SpaceX, Boeing, United Launch Alliance and a.i. solutions, have announced government contracts that will expand the space industry, while other aerospace companies have hired workers in Melbourne and Titusville.

However, employment, which it is the most crucial part of the economy, is a statistic that won't improve until a broader economic recovery is more fully under way. "It tends to be one of the last things to turn around as the economy is turning around," BCC's Hilston said. "Employers tend to be tentative about going into the hiring mode."

Unemployment during the recession and shuttle retirement peaked at 12.8 percent in January 2010, the first month of a topsy-turvy year that saw the rate fall to 10.9 percent by April and rise to 12.5 percent in November. Unemployment never exceeded 12.4 percent in 2011, and December posted a 10.8 percent rate, tied for the lowest reading of the year.

Economy still below peak

Though the county economy and the space industry are improving, the economic...
damage from the end of the shuttle program will remain with Brevard residents as companies slowly rebuild the high technology positions comparable to the space industry. And many former space industry workers have not found jobs that fit their training and experience.

“Lot of people have run out of unemployment” benefits, Merrit Island bankruptcy attorney Carole Bess said. She has been swamped with cases from former space center workers and other workers who face bankruptcy and unemployment.

“They’re definitely losing their jobs,” she said.

Brevard Workforce is working to extend $15 million emergency grant funds that provides on the job training for former space industry workers. Economists had predicted that about a third of space center employees were old enough to retire.

However, the retirement plans of many have been postponed because the recession has reduced their financial security.

“We’re following up with the same people who were in the office the first time (there were layoffs),” Rice said.

“They’re saying, ‘I’ve got to go back to work.’ It’s going to be a slow course towards this recovery.”

Mike Slotkin, associate professor of economics at Florida Tech, said that even though the number of jobs has grown statewide by 140,000 in 2011, employment is still far below historic levels.

“That still puts us at 800,000 to 900,000 jobs behind where we were at our peak five years ago,” Slotkin said.

“At 100,000 jobs a year, it’s going to take a long time to get back to where we were in 2007.”

Unemployment
Average annual unemployment in Brevard County, 2008-2011:
2008: 6.4 percent
2009: 10.1 percent
2010: 11.5 percent
2011: 11.3 percent
SOURCE: Florida Department of Economic
Can developers breathe life into zombie subdivisions?

By Mark Puente, Times Staff Writer

Unfinished housing lots, abandoned since the 2007 real estate crash, are suddenly hot prospects for Tampa Bay developers.

Around Tampa Bay, zombies show signs of life. They were new subdivisions, conceived by housing boom excess, that died before they were ever born. Vistas of flat land broken only by remnants of permit boxes and lonely streetlights mark their remains. Trash litters desolate, overgrown streets that lead to nowhere - except to memories of the go-go days. But now, builders see all this as ground zero for a bay area housing renaissance, and they are buying up lots by the thousands. They have yet to start much building. But they think they will soon.

"They're anticipating in 2013 that we'll get into a full-blown recovery," said Tony Polito, a housing consultant with Tampa's Metrostudy, a national company that tracks the construction industry.

For a region long accustomed to nothing but bad financial news, Polito knows the burst of lot-buying seems hard to comprehend.

"It seems odd to talk about replacing developed lots in the midst of the worst housing downturn since the Great Depression," he said.

"But we are at a point in the market where builders and developers are beginning to do exactly that."

Some housing and real estate experts believe the lots will be gone in 18 months.

"The pickings are slim," said Bill "The Dirt Dog" Eshenbaugh, owner of the Eshenbaugh Land Co. "There's a lot of demand for these. The builders are in a little bit of a sweat right now."

Lennar Homes has bought about 2,000 lots in the bay area in the past 24 months. The firm is building in more than 25 communities; home prices range from $90,000 to $400,000. The 2,000 lots will last Lennar about two years, based on closings on about 1,000 deals last year.

Mark Metheny, president of Lennar's Central Florida Division, said cleaning the developed land is cheaper than developing raw land, adding: "The price makes sense. They're fairly complete."

Lennar's busiest areas are New Tampa, southern Hillsborough and central Pasco. Although lenders tightened mortgage standards, Metheny is seeing an uptick in consumer confidence.

"We're getting a lot of demand," he said.

Triple Creek, a development in eastern Hillsborough County, is showing signs of life again.
The market tanked as roads and signs went up on the 1,000-acre Riverview site. Developers defaulted on a $37 million loan in 2008. A few homes, barely finished and then vandalized, sat on the development until the county ordered them demolished.

A Realtor blogged about the land in 2008, calling it a ghost town. She posted a slide show of photos - overgrown grass, toppled trees and broken windows - accompanied by Chopin's Funeral March.

MI Homes bought the property last year for $15 million and started clearing the land last month.

Still, lot sales have yet to translate into much building activity.

As of June 2011, 338 active subdivisions had not started a single home in the prior year in Hernando, Pasco, Pinellas and Hillsborough counties, according to an October Metrostudy report.

But the supply of new, unsold homes in those 338 subdivision had fallen from 664 homes in June 2007 to 122 units in June 2011.

"Cleaning up the standing inventory is a major factor in moving forward in a housing recovery," Polito's report said. "At the current pace, the standing inventory in these subdivisions should be cleaned out by mid 2013."

Builders started construction on 995 homes in the bay area in the fourth quarter of 2011, a 19.4 percent increase from the fourth quarter of 2010.

The vacant subdivisions farthest from the urban areas and those having high debt on community development district bonds will take longer to sell, experts say. Price and location are the drivers of sales.

To survive the Great Recession, many builders designed smaller, lower-priced houses to attract a bigger pool of buyers. Some builders shuttered their land divisions after the housing crash, but many have restarted the operations.

Taylor Morrison Homes builds homes from Pasco County to Naples, priced from $85,000 to $700,000. The firm has bought more than 1,500 lots in the past six months and plans to bring them to life through 2014.

The firm is seeing a decline in development opportunities on Florida's West Coast, said spokeswoman Katy Walker. She described the land buys as "very strategic, that can come to market quickly."

Large swaths of land aren't the only areas gaining interest.

St. Petersburg lacks large tracts of open land, but Walker said the firm is scouring the city for property after successfully selling its Sun Ketch Townhomes in the Old Northeast neighborhood.

The community opened in October 2011; only 10 of 42 units remain unsold, she said. Prices are above $200,000.

"People want to be close to downtown," Walker said. "It's close to everything."

At the end of 2011, Pinellas, Pasco and Hillsborough counties had 14,400 developed lots ready for building, down from 17,900 at the end of 2007.

Polito stressed that job growth and the proper pricing of unsold, new homes will be the driving forces behind more lot sales and home building.

"It's a good thing that we're working our way through these developed lots," he said.

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January 23, 2012

Proposal would change public/private boundaries on Florida’s lakes and rivers
By Craig Pittman, Times Staff Writer

Critics say the public could lose access to thousands of acres along lakes and rivers.

It seems like little more than bureaucratic tinkering. Bills now filed in the Florida House and Senate would change the definition of where something called the “ordinary high water line” is measured on waterways across Florida.

But hunting and fishing groups are up in arms, calling the bills a blatant land grab that will block them from pursuing their favorite pastimes.

“This is where we hunt,” explained John Hitchcock, president of the United Waterfowlers of Florida.

Audubon of Florida, Earthjustice and 1,000 Friends of Florida have also condemned HB 1103 and SB 1362 as a stealthy move to privatize between 100,000 and 500,000 acres along the state’s rivers, lakes and streams that currently belongs to taxpayers. It does not affect oceanfront land.

The bills’ backers contend it’s the state that’s grabbing land, not private companies.

“There are thousands of acres of land out there that the state’s going to grab that people are unaware of,” said Sam Ard, who lobbies for the Florida Cattlemen’s Association.

The House version of the bill passed its first committee last week on a 9-4 vote. So far the Senate bill has no set hearings.

Since Florida became a state in 1845, the public has owned all submerged land under navigable waterways. The boundary line between underwater public land and privately owned dry land is the “ordinary high water line.”

Based on a string of court decisions dating back more than a century, the definition of where that line exists is “the ordinary or normal reach of water during the high-water season,” according to an analysis by legal research service Westlaw.

Anyone wanting to use that public land for private profit - such as building a marina - would have to pay the state for a submerged land lease. Last year such leases brought in $12 million for the state.

The two proposed bills would change the "ordinary high water line" definition so public property would no longer include areas where the water rises due to annual rains. The dry season, not the wet, would determine the boundary between public and private land.

"Boaters could be arrested for standing on the shore fishing," said Charles Pattison of 1,000 Friends of...
Florida. "Hunters could get arrested for hunting in marshes that are dry in the low water season."

That's why Hitchcock is so dismayed: Florida's flat marshes are prime hunting areas that could suddenly change owners.

"You change the location of the line by a few inches, and you could lose thousands of acres," he said.

David Guest of Earthjustice said changing the definition affects only land around freshwater bodies and not along the beaches because there tides set the boundary line.

But he warned that one phrase in the bills that refers to "swamp and overflowed lands" would give new legitimacy to poorly drawn deeds from the 1800s that would allow landowners to lay claim to half of some rivers.

The House sponsor, Rep. Tom Goodson, R-Titusville, said he intended only to bring clarity to a longstanding legal problem by getting people on both sides to discuss the best solution.

"I'm not trying to take environmental land or to take rights away from people," said Goodson, a paving contractor. "These lands are not going to be raped, pillaged and plundered."

Ranchers, major landowners, timber companies and developers have pushed for this change since the 1980s, said Charles Lee of Audubon of Florida. The most recent attempt was in 2000 when backers contended the change would simply help clear confusion over who owns what. The bill passed the House but failed in the Senate.

Ard contended that the confusion over ownership hasn't gone away. He said a rancher who had been paying taxes on 160 acres was told recently that the state owns 60 of those acres because the area was below the ordinary high water line.

He dismissed critics who say people with plans for developing what's now state-owned land are pushing the bills.

"The folks who are screaming that we're going to put a condo on every corner of the swamp, it's real far-fetched," the lobbyist said.

But to Hitchcock, what's far-fetched is that anyone would try to swipe taxpayers' property.

"This is our land," he said. "It has never been their land."

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_To learn more_

For more information on the bills and Florida's submerged lands, go to _links.tampabay.com_
How Home Builders Are Selling Green

JOHN K. McILWAIN  JAN 25, 2012  5 COMMNETS

The U.S. housing industry is much like the U.S. auto industry in its resistance to change. The design of both single-family homes and apartments is only just beginning to change, just as the American auto industry is only just now trying to figure out how to deliver newer, truly fuel-efficient cars. Unlike the auto industry, however, the housing industry doesn’t have the federal government’s fuel efficiency (CAFE) standards to prod it along.

But there are early signs of change. New single-family homes in Phoenix, Arizona, are selling even at slightly higher prices than existing homes - that is, if they have green, energy-efficient features that will significantly reduce the cost of
lighting, cooling and heating over time. This is happening in many other parts of the country as well.

The pace of technological change in housing will begin to mirror the pace of change in all other areas of technology development.

Energy efficiency is, as one developer puts it, "the new granite countertop." After all, no one asks what the payback period is for a countertop. Just as items that were once added to a new home or condo for an additional price are now standard, so too are energy-efficient equipment and design becoming standard features expected by the buyer or renter.

This shift is perhaps happening fastest in the single-family home industry as it looks for whatever it can find to move its homes. Green, it turns out, is the most effective way to sell a home. Buyers find it more appealing to buy a home that is already efficient than a less expensive home that needs major retrofitting as well as new appliances and HVAC systems.

It is still hard to show that renters will pay more for an energy-efficient apartment than for a standard one, even when they are paying for the utilities. That said, there is growing evidence that energy-efficient and green apartments rent up faster than other ones, and are experiencing less turnover, both of which drop to the bottom line.

This is a trend that the apartment industry in particular needs to watch. Its market is far younger than the homebuying market, a differentiation that will continue to grow as the young members of generation Y defer homebuying into their early and middle 30s. This, the largest generation ever, is also the one most committed and sensitive to the cost and use of energy. They are, by and large, an increasingly values-driven group, and climate considerations, sustainability, and reducing the use of energy are at the heart of their values. In short, the prime market for apartments is the greenest market in U.S. history.

So, where will these trends lead the industry? Inevitably, the green trend will lead to homes becoming energy net zero or net plus, linked to the grid and buying and selling as the day goes along. Green will no longer mean being a bit more efficient than before, but will mean that a home uses no net energy (net energy zero) or produces net energy (net energy plus). Homes that still draw all or most of their energy from the grid will see a marked decline in value, just as today's homes that are far from sources of public transit are losing value while homes proximate to transit are holding value.

Making a house or an apartment net energy zero or plus will be achieved in a variety of ways, many of which haven't been discovered yet. Even today, very few builders are experimenting with passive housing - homes that are so air tight, insulated, and sited as to need little more heat than that provided by the bodies of the residents, and can draw cooled air from the ground. Passive and active solar will become greatly more efficient, as will geothermal and wind power.

Many of the techniques will be from the past, like siting for passive solar and wind protection, shielding with trees and the like. Residences will be designed to the local environment once again - New England style in New England, adobe homes in the Southwest.
The major shift will likely begin to occur in the latter part of this decade and accelerate between 2020 and 2030. The major cause for this change is the shift in the housing market driven by the growth in generation Y households over the course of the decade and the ever-rising cost of energy.

Local governments will encourage the shift as they enact ever-higher energy efficiency standards and begin to require disclosure of a house's or an apartment's energy use in the same way automakers now must disclose the gasoline mileage of new cars. It is of course possible that the federal government could also be a factor, but rules like the federal CAFE standards for cars seem unlikely at this time.

Other design trends to anticipate include smaller homes designed for a more open lifestyle. Homes will become smarter, adjusting themselves for greater energy efficiency throughout the day, and will be operable remotely (as some are now). For instance, the new Nest thermostat will automatically sense the presence of people, will learn how a resident wants the home's temperature set over time, and can be run from a website by an iPhone or iPad, all for $250.

Lighting, heating, and cooling will be adjusted not just by machines, but also by external and internal shading, glass that changes, windows that open and close automatically to gain benefit when the outer air can be used, and other new techniques that limit human wastefulness. In short, the pace of technological change in housing will begin to mirror the pace of change in all other areas of technology development.

Meanwhile, as homes and the technology that runs them evolve, so will the landscape in which they are set. The United States is moving toward a more urban lifestyle. This does not mean that the old split between the central city and rural areas that was common during the 19th century will reemerge. It does mean, however, that metropolitan regions that are now covered by cul-de-sac suburbs will continue to change as more suburban town centers emerge, and as inner-ring, prewar suburbs are rebuilt at greater densities. Suburbs will morph from culs-de-sac into clusters of town centers linked more and more by some kind of mass transit.

Townhouses and apartments will become more common as density increases. Again, this does not mean that everyone will live in high-rise apartments as this will continue to be limited to only parts of cities like Chicago, New York, and Los Angeles. Most urban areas will achieve density through small lots, townhouses, and low- and mid-rise apartments and condos.

If all these changes seem far-fetched, remember that times of stress like the ongoing housing crisis greatly accelerate changes already underway. This means that the future is closer than it may seem. As Daniel Goleman, the author of Emotional Intelligence, says, "the future is already here, it's just not evenly distributed."

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