ORDINANCE NO. 08-12

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, AMENDING ORDINANCE NUMBER 04-41, AS AMENDED, THE COLLIER COUNTY LAND DEVELOPMENT CODE, WHICH INCLUDES THE COMPREHENSIVE LAND REGULATIONS FOR THE UNINCORPORATED AREA OF COLLIER COUNTY, FLORIDA, BY PROVIDING FOR: SECTION ONE, RECITALS; SECTION TWO, FINDINGS OF FACT; SECTION THREE, ADOPTION OF AMENDMENTS TO THE LAND DEVELOPMENT CODE, MORE SPECIFICALLY AMENDING THE FOLLOWING: CHAPTER 1 - GENERAL PROVISIONS, INCLUDING SECTION 1.04.04 REDUCTION OF REQUIRED SITE DESIGN REQUIREMENTS; SECTION FOUR, CONFLICT AND SEVERABILITY; SECTION FIVE, PUBLICATION AS THE COLLIER COUNTY LAND DEVELOPMENT CODE; AND SECTION SIX, EFFECTIVE DATE.

Recitals

WHEREAS, on October 30, 1991, the Collier County Board of County Commissioners adopted Ordinance No. 91-102, the Collier County Land Development Code (hereinafter LDC), which was subsequently amended; and

WHEREAS, the Collier County Board of County Commissioners (Board) on June 22, 2004, adopted Ordinance No. 04-41, which repealed and superseded Ordinance No. 91-102, as amended, the Collier County Land Development Code, which had an effective date of October 18, 2004; and

WHEREAS, the LDC may not be amended more than two times in each calendar year unless additional amendment cycles are approved by the Collier County Board of Commissioners pursuant to Section 10.02.09 A. of the LDC; and

WHEREAS, this is the second amendment to the LDC for the calendar year 2007; and

WHEREAS, on March 18, 1997, the Board adopted Resolution 97-177 establishing local requirements and procedures for amending the LDC; and

WHEREAS, all requirements of Resolution 97-177 have been met; and

WHEREAS, the Board of County Commissioners, in a manner prescribed by law, did hold an advertised public hearing on February 26, 2008 and did take action concerning these amendments to the LDC; and

WHEREAS, the subject amendments to the LDC are hereby determined by this Board to be consistent with and to implement the Collier County Growth Management Plan as required by Subsections 163.3194 (1) and 163.3202 (1), Florida Statutes; and
WHEREAS, this Ordinance is adopted in compliance with and pursuant to the Local Government Comprehensive Planning and Land Development Regulation Act (F.S. § 163.3161 et seq.), and F.S. § 125.01(1)(l) and (1)(w); and
WHEREAS; this Ordinance is adopted pursuant to the constitutional and home rule powers of Fla. Const. Art. VIII, § 1(g); and
WHEREAS, all applicable substantive and procedural requirements of the law have otherwise been met.

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

SECTION ONE: RECITALS
The foregoing Recitals are true and correct and incorporated by reference herein as if fully set forth.

SECTION TWO: FINDINGS OF FACT
The Board of Commissioners of Collier County, Florida, hereby makes the following findings of fact:

1. Collier County, pursuant to Sec. 163.3161, et seq., Fla. Stat., the Florida Local Government Comprehensive Planning and Land Development Regulations Act (herein after the “Act”), is required to prepare and adopt a comprehensive plan.

2. After adoption of the Comprehensive Plan, the Act and in particular Section 163.3202(1). Fla. Stat., mandates that Collier County adopt land development regulations that are consistent with and implement the adopted comprehensive plan.

3. Section 163.3201, Fla. Stat., provides that it is the intent of the Act that the adoption and enforcement by Collier County of land development regulations for the total unincorporated area shall be based on, be related to, and be a means of implementation for, the adopted comprehensive plan.

4. Section 163.3194(1)(b), Fla. Stat., requires that all land development regulations enacted or amended by Collier County be consistent with the adopted comprehensive plan, or element or portion thereof, and any land regulations existing at the time of adoption which are not consistent with the adopted comprehensive plan, or element or portion thereof, shall be amended so as to be consistent.

5. Section 163.3202(3), Fla. Stat., states that the Act shall be construed to encourage the use of innovative land development regulations.

6. On January 10, 1989, Collier County adopted the Collier County Growth Management Plan (hereinafter the “Growth Management Plan” or “GMP”) as its comprehensive plan pursuant to the requirements of Sec. 163.3161 et seq., Fla. Stat., and Rule 9J-5 F.A.C.
7. Section 163.3194(1)(a), Fla. Stat., mandates that after a comprehensive plan, or element or portion thereof, has been adopted in conformity with the Act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such comprehensive plan, or element or portion thereof shall be consistent with such comprehensive plan or element or portion thereof.

8. Pursuant to Sec. 163.3194(3)(a), Fla. Stat., a development order or land development regulation shall be consistent with the comprehensive plan if the land uses, densities or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

9. Section 163.3194(3)(b), Fla. Stat., requires that a development approved or undertaken by a local government shall be consistent with the comprehensive plan if the land uses, densities or intensities, capacity or size, timing, and other aspects of development are compatible with, and further the objectives, policies, land uses, densities, or intensities in the comprehensive plan and if it meets all other criteria enumerated by the local government.

10. On October 30, 1991, Collier County adopted the Collier County Land Development Code, which became effective on November 13, 1991 and may be amended twice annually. The Land Development Code adopted in Ordinance 91-102 was recodified and superseded by Ordinance 04-41.

11. Collier County finds that the Land Development Code is intended and necessary to preserve and enhance the present advantages that exist in Collier County; to encourage the most appropriate use of land, water and resources consistent with the public interest; to overcome present handicaps; and to deal effectively with future problems that may result from the use and development of land within the total unincorporated area of Collier County and it is intended that this Land Development Code preserve, promote, protect and improve the public health, safety, comfort, good order, appearance, convenience and general welfare of Collier County; to prevent the overcrowding of land and avoid the undue concentration of population; to facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing and other requirements and services; to conserve, develop, utilize and protect natural resources within the jurisdiction of Collier County; to protect human, environmental, social and economic resources; and to maintain through orderly growth and development, the character and stability of present and future land uses and development in Collier County.

12. It is the intent of the Board of County Commissioners of Collier County to implement the Land Development Code in accordance
with the provisions of the Collier County Comprehensive Plan, Chapter 125, Fla. Stat., and Chapter 163, Fla. Stat., and through these amendments to the Code.

SECTION THREE: ADOPTION OF AMENDMENTS TO THE LAND DEVELOPMENT CODE

SUBSECTION 3.A. AMENDMENTS TO SECTION 1.04.04 REDUCTION OF REQUIRED SITE DESIGN REQUIREMENTS

Section 1.04.04 Reduction of Required Site Design Requirements, of Ordinance 04-41, as amended, the Collier County Land Development Code, is hereby amended to read as follows:

1.04.04 Reduction of Required Site Design Requirements

A. No part of a required yard, required open space, required off-street parking space, or required off-street loading space, provided in connection with one building, structure, or use shall be included as meeting the requirements for any other structure, or use, except where specific provision is made in this LDC.

B. Minimum standards; nonconformities created by public acquisition.

1. All lots or yards created after the effective date of this Code [Feb. 14, 2006] must comply with the requirements then established by this Code.

2. No lot, even though it may consist of one or more abutting lots of record, or yard, existing at the effective date of this Code [Feb. 14, 2006] or lawfully existing on the effective date [Feb. 14, 2006] of applicable amendments to this Code shall thereafter be reduced in its degree of compliance, including its size, dimension, or area, below the minimum requirements then set forth in this Code, except by reason of a portion thereof being acquired for present or planned public use by the following party or parties: (i) Collier County; (ii) another governmental entity or entities including the State of Florida, Big Cypress Basin, South Florida Water Management District, Florida Department of Transportation and public utility companies providing public service; (iii) private utility companies providing public service; and/or (iv) a private party or parties under an agreement with Collier County or another governmental entity or entities containing provisions for said private party or parties to make such acquisition and for the future transfer of ownership (fee or easement interest) to Collier County or another governmental entity or entities, in any manner, including dedication, condemnation, purchase, and the like.

a. Required yards on improved lots, lot area, lot coverage on improved lots, and lot dimensions rendered nonconforming or more legally nonconforming as a result of being acquired for present or planned public use by the party or parties described in B.2. above may be reduced by the same dimension, area, or amount involved in the dedication, condemnation, purchase, or similar method of acquisition for public use, but shall not result in a front yard of less than ten feet (10') in depth. Accordingly, the resulting degree of nonconformity of the area and dimensions of a lot and the required yards with this Code's then current requirements will be deemed lawful unless or until the remaining lot or yard is recreated, typically by re-development, re-plat or lot re-combination, at which time such lots and yards must comply with the requirements.

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Words struck through are deleted, words underlined are added.
then established by this Code. Further, no conforming lot otherwise qualifying for a lot split or lot line adjustment pursuant to Section 10.02.02, B.8; 10.02.02, B.12; 1.04.04 or 9.03.03.A.5 may be denied such approval solely on the grounds that the resulting lot or lots would be less than the required minimum area for such lot(s) in the applicable zoning district as a result of acquisition, from Feb. 14, 2006.

b. Other existing site related legal nonconformities, including those rendered more nonconforming as a result of acquisition for present or planned public use by the party or parties described in B.2 above and which pertain to this Code's or other county code requirements, such as, but not limited to, stormwater management, landscaping or buffers, preserves, on- or off-site parking, architectural design standards, etc., will be deemed legally nonconforming, and all such resulting nonconformities may be allowed to remain so nonconforming, unless or until the remaining lot or yard is subsequently re-created or re-developed, at which time such site related nonconformities and development must comply with the then existing requirements of this Code.

c. In those circumstances where acquisition for present or planned public use, by the party or parties described in B.2 above, of a portion of a lot or yard would result in one or more nonconformities that would require approval of a development order or permit in order to implement the terms of the acquisition, i.e., in order to cure or remedy the effect of an acquisition, (e.g., an SDP or building permit required to relocate a prior existing building), the County manager, or designee, is authorized to approve such development order or permit so long as any prior existing legal nonconformity of the type set forth in b. above would not be increased.

d. A legal non-conforming lot or parcel of less than five (5) acres designated as RFMU sending lands or otherwise eligible for TDR severance that was in existence as of June 22, 1999, which is later reduced in size or rendered more non-conforming as a result of a portion thereof being acquired for present or planned public use by Collier County or another party or parties as described in B.2 above, may be reduced by the same dimension, area, or amount involved in the dedication, condemnation, purchase or similar method of acquisition and the resulting lot(s) or parcel(s) not so acquired shall be deemed a legal non-conforming lot or parcel of less than five (5) acres entitled to severance of base and bonus TDR credits at a rate of 1 TDR credit per legal non-conforming lot or parcel pursuant to Section 2.03.07 D. 4. of the LDC.

3. A lot or parcel five (5) acres or larger designated as RFMU sending lands or otherwise eligible for TDR severance, which is later reduced in size as a result of a portion thereof being acquired for present or planned public use by the party or parties described in B.2 above, may be reduced by the same dimension, area, or amount involved in the dedication, condemnation, purchase or similar method of acquisition and the number of base and bonus TDR credits generated from such resulting lot(s) or parcel(s) not so acquired shall be calculated pursuant to Section 2.03.07 D. 4. of the LDC based on the lot or parcel acreage which existed prior to the dedication, condemnation, purchase or similar method of acquisition.

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34. This section may be applied to those acquisitions occurring prior to the adoption of this ordinance so long as the purchase or dedication of the property has not closed, or the condemnation proceeding relating to the property acquired has not reached final disposition.

C. Other than provided for immediately above, required off-street parking shall not be reduced in area or changed to any other use unless the permitted or permissible use that it serves is discontinued or modified, or equivalent required off-street parking is provided meeting the requirements of this LDC.

SECTION FOUR: CONFLICT AND SEVERABILITY

In the event this Ordinance conflicts with any other Ordinance of Collier County or other applicable law, the more restrictive shall apply. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding Section not affect the validity of the remaining portion.

SECTION FIVE: INCLUSION IN THE COLLIER COUNTY LAND DEVELOPMENT CODE

The provisions of this Ordinance shall become and be made a part of the Land Development Code of Collier County, Florida. The sections of the Ordinance may be renumbered or re-lettered to accomplish such, and the word "ordinance" may be changed to "section," "article," or any other appropriate word.

SECTION SIX: EFFECTIVE DATE

This Ordinance shall become effective upon filing with the Florida Department of State, Tallahassee, Florida.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida, this 26th Day of February, 2008.

ATTEST:
Dwight E. Brock, Clerk

BOARDS OF COUNTY COMMISSIONERS
OF COLLIER COUNTY, FLORIDA

By:  ________________________________________

Deputy Clerk

By:  ________________________________________

TOM HENNING, CHAIR

Approved as to form and legal sufficiency

Jeffrey A. Klatzow
Chief Assistant County Attorney

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STATE OF FLORIDA
COUNTY OF COLLIER

I, DWIGHT E. BROCK, Clerk of Courts in and for the Twentieth Judicial Circuit, Collier County, Florida, do hereby certify that the foregoing is a true and correct copy of:

ORDINANCE 2008-12

Which was adopted by the Board of County Commissioners on the 26th day of February, 2008, during Regular Session.

WITNESS my hand and the official seal of the Board of County Commissioners of Collier County, Florida, this 5th day of March, 2008.

DWIGHT E. BROCK
Clerk of Courts and Clerk
Ex-officio to Board of
County Commissioners

By: Ann Jennejohn,
Deputy Clerk