

# **Chapter 1**

## **GENERAL PROVISIONS**

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### **Section 101 Title**

This is the third Article of the Polk County "Integrated Development Management System." Article I is the "Polk County Comprehensive Plan." Article II is the "Polk County Capital Improvements Program" (CIP). This ordinance shall be known as Article III and shall be entitled and cited as the "Polk County Land Development Code" (LDC).

### **Section 102 Authority**

This ordinance is enacted pursuant to the requirements and authority of:

Chapter 163, Florida Statutes (F.S.), "Local Government Comprehensive Planning and Land Development Regulation Act" (Growth Management Act), and specifically Section 163.3202, F.S., "Land Development Regulations;"

Rule 9J-24, Florida Administrative Code (F.A.C.), "Procedures and Criteria for the Review of Local Government Land Development Regulations;"

Polk County Charter;

Chapter 125, F.S. "County Government;" and

Polk County Ordinance 92-36, "Polk County Comprehensive Plan."

### **Section 103 Purpose and Intent**

The purpose of the Polk County Land Development Code is to establish regulations, standards, and review procedures for the "use" of land and the "development" of land and to encourage the utilization of lands as agriculture. It is the intent of this Code that the use and development of land comply with the requirements of those documents listed above and that the most appropriate use of land, water, and resources, consistent with the public interest be allowed. Furthermore, it is the intent of this Code to preserve, promote, and improve the public safety, health, comfort, good order, appearance, convenience, law enforcement, fire prevention, and general welfare of the citizens of Polk County; to facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreational facilities, housing, and other required services; and to conserve, develop, utilize, and protect natural resources. It is not the intent of this regulation to restrict, confine or otherwise limit the agricultural use of the land. In addition to improving the quality of life for Polk County citizens, it is the intent of this Code to provide a streamlined yet effective review and approval process while protecting the citizens of Polk County and respecting the rights of property owners.

## **Section 104 Conflict With Comprehensive Plan**

In the event of a conflict between the Polk County Comprehensive Plan and this Code, the Comprehensive Plan shall control.

## **Section 105 Relationship to Other Regulations**

### **A. *Maps (Rev. 9/26/01 - Ord. 01-69; Rev. 12-08-03 Ord. 03-66)***

The following are hereby incorporated by reference and made a part of this Code as though fully set forth herein:

The "Comprehensive Plan Map Series" (Volume 2 of the Polk County Comprehensive Plan), including the "Future Land Use Parcel Level Detail Maps" (Volume 3), which designate the placement of land use categories established within the Future Land Use Element of the Comprehensive Plan and this Code. This map is also referred to as the "District Map."

The "Sub-District Map Series" (to establish Land Use Category Sub-Districts such as "RL-1," "RLB2," "RL-3," "RL-4," "BPC-1," "BPC-2," "INST-1," "INST-2," and RCC-R").

The Sub-district boundaries indicated on the Districts map are not subject to the amendment requirements of Chapter 163 F.S. so long as the Comprehensive Plan Future Land Use Map boundaries are not changed. Amendments to the Sub-District map Series shall adhere to the processes listed in Chapter 9 of the Land Development Code.

The "Sidewalk District Map" identifies areas within the unincorporated portion of the County where sidewalks are required of new development along the frontage of arterial and collector roads abutting the site under development. This map represents areas located within two miles of a public or charter school in the Urban Development Area (UDA), Urban Growth Area (UGA), and Suburban Development Area (SDA) depicted on the Development Areas Map of the Future Land Use Map Series of the Polk County Comprehensive Plan. It also includes the Rural Cluster Center (RCC) Future Land Use category as depicted on the "Comprehensive Plan Map Series" (Volume 2 of the Polk County Comprehensive Plan). The policies referencing the Sidewalk District Map are located in Section 707, Sidewalks, in Chapter 7, Development Standards, of the Polk County Land Development Code.

### **B. *More Stringent Regulation Shall Apply***

Adherence to the regulations herein does not eliminate compliance with applicable Federal, State or other governmental authority regulations. If a conflict with those and this Code exists, the most stringent shall apply.

## Section 106 Repeals

The ordinances listed in Table 1.1 are hereby repealed.

**Table 1.1 Repealed Ordinances**

<b>Ordinance #</b>	<b>Ordinance Title</b>
72-13	Mobile Home, RV, and Camping Standards Ordinance
75-4	Alcohol Beverage License
75-02	Lime Rock Mining Ordinance
75-19	Alcohol Beverage License
78-21	Regulation of Hours of Sale of Alcoholic Beverages
79-39	Subdivision Regulations
81-07	Sign Ordinance
82-19	Pool Barrier Ordinance
82-34	Sign Ordinance Amendment
83-01	Alcohol Beverage License
83-02	Zoning Ordinance
83-03	Sand Mining Ordinance
83-13	Minimum Road Frontage Ordinance
83-21	Nude Dancing Ordinance
83-30	Subdivision Regulation Amendment: Re: RC-2 & RC-5 Zoning
84-04	Subdivision Regulation Amendment: Re: RC-2 Road Sections
85-23	Property Maintenance and Disposal Yard Ordinance
86-40	Driveway Ordinance
87-05	Zoning Ordinance Amendment
87-06	Adult Use Ordinance
88-04	Surface Water Management Ordinance
89-47	Surface Water Protection Ordinance
90-09	Property Maintenance and Disposal Yard Ordinance Amendment
90-46	Zoning Ordinance Amendment: Re: Conditional Zoning
91-02	Vested Rights Ordinance
91-03	Development Agreement Ordinance
92-04	Subdivision Regulation Amendment: Re: Subdivision Definitions
92-05	Road Frontage Ordinance

**Table 1.1 Repealed Ordinances**

<b>Ordinance #</b>	<b>Ordinance Title</b>
92-06	Driveway Ordinance Amendment: Re: Commercial Access
92-08	Zoning Ordinance Amendment: Re: Plan Relationship
92-10	Concurrency Management Ordinance
93-02	Property Maintenance and Disposal Yard Ordinance Amendment
93-04	Concurrency Management Ordinance Amendment
93-05	Zoning Ordinance Amendment: Re: Non-Conformities
94-03	Subdivision Regulation Amendment: Re: Access Through Lots
94-35	Property Maintenance and Disposal Yard Ordinance Amendment
94-84	Pool Barrier Ordinance Amendment
98-31	Septic Tank Inspection in the Green Swamp

**Table 1.1.1 Repealed Ordinances - Alphabetically Ordered**

<b>Ordinance #</b>	<b>Ordinance Title</b>
87-06	Adult Use Ordinance
92-10	Concurrency Management Ordinance
93-04	Concurrency Management Ordinance Amendment
91-03	Development Agreement Ordinance
86-40	Driveway Ordinance
92-06	Driveway Ordinance Amendment: Re: Commercial Access
75-02	Lime Rock Mining Ordinance
83-13	Minimum Road Frontage Ordinance
72-13	Mobile Home, RV, and Camping Standards Ordinance
83-21	Nude Dancing Ordinance
82-19	Pool Barrier Ordinance
94-84	Pool Barrier Ordinance Amendment
85-23	Property Maintenance and Disposal Yard Ordinance
90-09	Property Maintenance and Disposal Yard Ordinance Amendment
93-02	Property Maintenance and Disposal Yard Ordinance Amendment
94-35	Property Maintenance and Disposal Yard Ordinance Amendment
92-05	Road Frontage Ordinance
83-03	Sand Mining Ordinance

**Table 1.1.1 Repealed Ordinances - Alphabetically Ordered**

<b>Ordinance #</b>	<b>Ordinance Title</b>
98-31	Septic Tank Inspection in the Green Swamp
81-07	Sign Ordinance
82-34	Sign Ordinance Amendment
79-39	Subdivision Regulations
83-30	Subdivision Regulation Amendment: Re: RC-2 & RC-5 Zoning
84-04	Subdivision Regulation Amendment: Re: RC-2 Road Sections
92-04	Subdivision Regulation Amendment: Re: Subdivision Definitions
94-03	Subdivision Regulation Amendment: Re: Access Through Lots
88-04	Surface Water Management Ordinance
89-47	Surface Water Protection Ordinance
83-02	Zoning Ordinance
87-05	Zoning Ordinance Amendment
90-46	Zoning Ordinance Amendment: Re: Conditional Zoning
92-08	Zoning Ordinance Amendment: Re: Plan Relationship
93-05	Zoning Ordinance Amendment: Re: Non-Conformities
91-02	Vested Rights Ordinance

**Section 107 Rules of Interpretation**

The interpretation and application of the provisions of this ordinance shall be construed in order that the true intent and meaning of the Board of County Commissioners (BoCC) may be fully carried out, and neither limits nor repeals any other powers granted the BoCC by other law. The interpretation and application of any provision of this ordinance shall be held to be the minimum requirement adopted for the promotion of the public health, safety, comfort, convenience, and general welfare.

A. ***Delegation of Authority***

If a provision requires the County Manager or Director to act or perform some duty, it is construed to authorize delegation to professional level subordinates to perform the required act or duty, unless the terms of the provision specify otherwise.

B. ***Gender***

Words importing the masculine gender shall be construed to include the feminine and neuter.

C. ***Number***

A word importing the singular number only may extend and be applied to several persons and things as well as one person and thing. The use of the plural number may be deemed to include any single person or thing.

D. ***Shall and May***

The word "shall" is mandatory and the word "may" is permissive. The word "includes" or "including" shall not limit a term to the specific examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

E. ***State, County, Board, Plan, F.S., F.A.C.***

The word "State" means the State of Florida and its authorized agents. The word "County" means the County of Polk, Florida, and its authorized agents. The word "Board" means the Polk County Board of County Commissioners. The word "Plan" means the Polk County Comprehensive Plan. The initials "F.S." mean Florida Statutes, and "F.A.C." means Florida Administrative Code.

F. ***Tense***

Words used in the past or present tense include the future as well as past or present.

G. ***Time, Day, Month, Year***

Unless stated otherwise within this Article, the computing of any period of time shall adhere to the following:

1. The day of the act or event from which a designated period begins to run shall not be included. For example, the day of receipt of an application or document, does not count as a day.
2. The word "day" shall mean:
  - a. "Calendar days" unless specified as "working days."
  - b. "Working days" when so specified shall not include Saturday, Sunday, or county government observed holidays.
  - c. In all cases it will not include days when normal county business is not conducted at the location or site where the subject product is being processed due to evacuation, emergencies, or acts of God.
3. The word "month" shall mean 30 calendar days.
4. The word "year" shall mean 365 days (366 days if a leap day occurs).

## H. *Boundaries*

Interpretations regarding boundaries of land use districts or other geographic districts shall be made in accordance with the following:

1. Boundaries shown as following, or approximately following, any road shall be construed as following the centerline of the road.
2. Boundaries or roadways shown as following, or approximately following, any platted lot line or other property line shall be construed as following such line.
3. Boundaries shown as following, or approximately following, section lines, half section lines, or quarter-section lines shall be construed as following such lines.
4. Boundaries shown as following, or approximately following, any meandering, natural area shall be construed as following such natural feature as verified by field inspection.
5. Boundaries in or adjacent to bodies of water.
  - a. Where district boundaries appear to follow shorelines or center lines of bodies of water, they shall be construed as following such shore lines or center lines. In case of change in shore lines or course or extent of water, the boundaries shall be construed as moving with the change.
  - b. Boundaries indicated as entering any body of water, but not continuing to intersect with other zoning boundaries or with the limits of jurisdiction of the County, shall be construed as extending in the direction in which they enter the body.
  - c. Where distances are not specifically indicated, such distances shall be determined by the scale of the Future Land Use Maps Series (FLUMS).
6. Where a parcel or lot existing as of May 1, 1991, is divided into two or more areas, by a Development Area boundary line, or a land use classification boundary line, or sub-district boundary line, either of the following applies:
  - a. The subject rules shall be applied to each section of property separately; or
  - b. At the owner's discretion, rules governing that portion of the largest area of the parcel or lot shall be applicable to the entire property; and
  - c. This interpretation shall not be applicable where it is determined to be a significant expansion of a Linear Commercial Corridor, Commercial Enclave, or Utility Enclave.

I. ***Internal Conflicts***

More specific provisions of this Code shall be followed in lieu of more general provisions that may be more lenient than, or in conflict with, the more specific provision. The specific shall control the general. Where differences of meaning or implication between the text of this Code and any caption, illustration, map, summary table, or illustrative table, the text shall supersede. Clarifications or interpretations may be requested through the Administrative Determination procedures in Section 917.

J. ***Sections and Headings***

All descriptive headings of sections within this ordinance are inserted for convenience of reference only and shall not affect the construction or interpretation thereof.

K. ***Article and Code***

This document and other adopted reference shall be known as the Polk County Land Development Code which is Article III of the Integrated Development Management System. Any reference to this Code, article or regulations shall be used inter-changeably.

L. ***Department (Revised 5/20/09 – Ord. 09-023)***

The terms Department and Director refer to the Growth Management Department and Growth Management Director, respectively. The terms shall include any department or agency which succeeds the Growth Management Department in the performance of this function.

M. ***Division (Revised 5/20/09 – Ord. 09-023)***

The term Division refers to the Land Development Division. The term shall include any division or agency which succeeds the Land Development Division in the performance of this function.

**Section 108 Periodic Code Review**

The Department of Community Services shall review the provisions of this Code at least twice each calendar year and evaluate said provisions in a report to the BoCC. The report and resulting Code amendments, if any, are intended to identify changed conditions or changes to public policy. After the first 24 months following the effective date of this Code the reporting period shall be at least one time per year. The report shall recommend amendments to this Code, if any.

**Section 109 Dedications and Exactions**

A. ***Purpose and Intent***

New development may impose substantial additional costs to provide off-site community services and Facilities which are needed to support the development, but cannot and should

not be financed through general revenues. It is the purpose of this Section, through the condition for land use approval, that the County impose conditions of development to ensure that costs created by the approval of a development does not place an undue burden or obligation on the County, whereby the burden or obligation would reduce or delay delivery of previously necessary community services, or delay capital investment in new infrastructure. Exactions are not intended, in themselves, to prohibit the future subdivision of land or deny development approval. Rather, they are intended to ensure that new development pays its "fair share" to expand the required capacity of public services or public Facilities.

**B. *Definition***

"Exactions" is the term applied to various dedications, conditions, fees, or charges for off-site improvements to public services and Facilities necessary to accommodate the impacts of development. Typical exactions include the provision of services and supporting facilities like water and sewer, recreation and open space, public resource access, road improvements, and flood control.

**C. *Dedications***

All dedications shall be used to meet the service needs originated by the development and used to assure that concerns of health, safety, and welfare are met. Dedications imposed through an exaction shall be agreed upon prior to Final Development Plan approval, and shall not be imposed after plat approval.

**D. *Dedication Acceptance***

1. No dedication shall be deemed complete until Final Development Order is granted.
2. The County may elect to make only a partial acceptance of lands dedicated; whereby obligations such as maintenance, facility provision, or some other agreed upon provision, remain with the interest residing with the development. Agreements to accept only partial dedications shall be finalized prior to final development approval, and shall not occur after plat approval.
3. The acceptance of the dedication further relieves the dedication from payment of ad valorem taxes on the dedicated land.
4. Completion of a mandatory dedication shall waive the right to subsequently litigate the respective exaction.
5. Title of ownership of the dedication shall be transferred to the County when:
  - a. Compliance with all applicable standards are met; and
  - b. The development is platted, or the Final Development Order approval for non-residential development is issued.

- c. In the case of additional right-of-way along an existing public road, the right-of-way may be accepted after the issuance of the Final Development Order if it is deemed beneficial to the County by the County Engineer to accept the additional right-of-way prior to acceptance of the plat.

E. ***Revocation***

Prior to formal dedication acceptance, the County may elect not to accept a dedication after reconsideration of the limited need for the property and the loss of revenue and expense of upkeep that accompanies the acceptance. Revocation may also follow a change in community policy that alters the manner in which the needs originally identified by the development are to be met. Alternatively, where the dedication is a condition to final development approval, and subsequent to the dedication the County's Code is altered as to thwart the proposed and conditionally approved project, the interest with the development may revoke the earlier dedication. Although final development approval may be contingent upon a dedication, until formal acceptance is granted the grantor may revoke the offer of dedication by conveyance or other use of the property.

F. ***Abandonment and Vacation***

1. Once formal approval for dedication is granted, the County may elect to abandon or vacate the dedication. Abandonment or vacation may occur where it is consequently decided not to complete the facilities for which the dedication was required, or where the development for which the subdivision was approved is not developed. Such dedication abandonment or vacation is effectuated by a vacation or abandonment document amounting to a deed back to the applicant or development interest (may include individual lot owners). It is also possible that the dedication may be vacated by abandonment where the facility is never completed, the development is not approved and a substantial time passes, or where the improved facility is allowed to deteriorate and is unused for a lengthy period of time. The time period is to be determined by the Director of Community Services and shall be consistent with applicable development review requirements.
2. The County may elect to use its powers to vacate streets. Following street vacation, title to the property shall be divided and, upon acceptance, rests with the respective abutting landowners.
3. The applicant shall be precluded from revoking any dedication once lots are sold.

G. ***Reservations***

There shall be no areas without designations on a plat. Areas shall be designated lots, tracts and or right-of-way.

H. ***Coordination of Land Dedications***

Land dedications exacted for the creation of conditions favorable to the health, welfare and prosperity of the County shall be coordinated through the Director of Community Services to ensure that dedications will provide a maximum benefit to the County.

**I. *Dedication of Public Improvements and Facilities***

1. The dedication of Facilities in lieu of land, or in addition to the provision of land, shall be used to meet the service needs originated by the development and used to assure that concerns of health, safety, welfare, and morals are met. Facility dedications imposed through an exaction shall be finalized prior to final development approval and permit issuance, and shall not be imposed after plat approval. Unless otherwise authorized by the Director of Community Services, Facility dedications shall typically be on-site, or agreed upon adjacent land, and be used to meet the needs of the approved development.
2. Conveyance of ownership of the Facility shall be transferred to the County after final development approval and compliance with all applicable standards are met.

**J. *Exactions***

1. Exacted fees shall be used to meet the service needs originated by the development such as recreation, open space, streets, transit, flood control, sidewalks, water, and sewer facilities.
2. All provisions contained within this Section, unless otherwise indicated herein, shall be imposed prior to the approval of construction plans or other development order.
3. Exacted fees shall reflect the benefit bestowed on the development and shall be earmarked for the timely execution of capital facility expansion.
4. Exactions may be imposed by requiring payment of fees, utility connection fees, in lieu of a dedication, land dedications or donations, or converting existing facilities from private to public use.
5. Development standards and Level-of-Service standards, which are used to measure existing public services to determine if additional services or facilities are required, are identified within the following adopted Articles of Polk County:
  - a. Polk County Comprehensive Plan -- Article I;
  - b. Development Regulations -- Article III;
  - c. Impact Fee Ordinance; and
  - d. Polk County Utilities Code.

K. *Relationship to Other Ordinances*

Exactions imposed due to County ordinances which are not contained in this Code shall be enacted pursuant to the requirements of the authorizing ordinance.

1. The following list identifies those areas in which exactions may be imposed and administered to ensure consistency with the Comprehensive Plan, and to confer development approval pursuant to Section 703 of this Code:
  - a. Concept Development Plan approval,
  - b. Final Development Order for commercial or residential development, and
  - c. Any Polk County approval that includes a binding site plan to determine the impacts of the development.
2. The following list identifies those areas in which exactions may be imposed and administered to ensure consistency with the Comprehensive Plan, and to confer development approval pursuant to this Code:
  - a. Access easements;
  - b. Pedestrian ways and bike paths;
  - c. Right-of-way requirements; and
  - d. Drainage requirements.
3. The following list identifies those areas in which exactions may be imposed and administered to ensure consistency with the Comprehensive Plan and to confer development approval pursuant to the Polk County Comprehensive Impact Fee Ordinance:
  - a. Emergency Medical Systems;
  - b. Roads; and
  - c. Correctional Facilities.
4. The following list identifies those areas in which exactions may be imposed and administered to ensure consistency with the Comprehensive Plan and to confer development approval pursuant to the Polk County Utilities Code:
  - a. Utility systems;
  - b. Capacity reservation;

- c. Capacity maintenance of system;
  - d. Utility service provision;
  - e. Connection to system; and
  - f. Easements to support system.
5. Exactions will be imposed pursuant to the requirements and procedures set forth in this Code.
  6. The following list identifies those areas in which exactions may be imposed and administered to ensure consistency with the Comprehensive Plan and to confer development approval pursuant to the Polk County Comprehensive Plan -- Article I:
    - a. Development policies; and
    - b. Public Facilities policies.

L. ***Rational Nexus, Reasonableness, Uniquely Attributable***

All provisions within this Code are intended to be reasonable requirements, imposed to off-set public service needs generated by approved development, and where appropriate, imposed to meet the express needs of those that will benefit from the service provided.

M. ***Refunds***

The applicant may obtain refunds of exactions that have been proven to exceed the cost of the fairly apportioned benefit of the regulated and approved development. The refund shall be returned and proportionately distributed to all interests in the approved development, which may include lot owners if applicable.

N. ***Credits***

The applicant may obtain credits on exactions that have been proven to exceed the value of the dedication of the fairly apportioned benefit of the regulated and approved development. The credit shall be returned and proportionately distributed to all interests in the approved development, which may include lot owners if applicable.

O. ***Incidental Benefits***

An increase in value to a dedication due to meeting the requirements of an exaction, shall be considered incidental to the purpose of the exaction. The incidental benefit shall not obligate the County to refund or credit the interested parties of the development without an agreement with the County prior to final development approval.

P. ***Inconsistent Provisions***

1. Notwithstanding any other ordinance or requirements of the Polk County Land Development Code to the contrary, the provisions of this Code establish the procedures to be followed in connection with assessing the public costs associated with the provision of services for the development of land.
2. Administrative approvals of a development application shall not negatively impact previously dedicated or reserved land for recreation, open spaces, or public service facility needs; or result in the misalignment of roads connecting to adjacent land included in an approved tentative plan or final plat; or increase capacity above the Level-of-Service capacity of an existing or funded facility.

**Section 110 Applicability**

A. ***Code Applicability***

The provisions of this Code shall be applicable throughout the unincorporated area of Polk County, Florida unless otherwise provided herein.

B. ***Development Shall Conform (Rev. 12/17/03 - Ord. 03-96)***

No building, structure, land or water shall hereafter be developed, redeveloped, used or occupied, and no building, structure, or part thereof shall hereafter be erected, reconstructed, constructed, moved, located, or structurally altered except in conformity with the regulations set out herein. All floating structures and buildings, as well as development, buildings and structures built over or in water, shall meet all the requirements of this Code and other applicable regulations.

1. A building permit shall be obtained prior to the construction of any structure.
2. Prior to the placement or re-location of a manufactured home on a lot, parcel, tract, or in mobile home park, within the unincorporated area of Polk County, a set-up permit is required. Such home shall not be parked, stored, placed on a foundation, or connected to utilities until a permit has been issued for the placement of the home.

C. ***Exceptions***

1. The provisions of this Code and any amendments hereto shall not affect the validity of any lawfully issued and unexpired building permit or mobile home set-up permit issued prior to the effective date of this Code.
2. All uses and structures legally existing on the effective date of this Code that are not in compliance with the provisions herein shall be considered non-conforming under the terms of this Code, except as otherwise provided. Said uses and structures may continue to exist but may not be intensified, expanded, enlarged or significantly altered as prescribed in Section 120.

## **Section 111 Vested Rights**

### **A. *Purpose and Intent***

It is the intent of this Section to provide a process to determine whether certain land development rights of property owners are vested with respect to the Polk County Comprehensive Plan, this Land Development Code, and the requirements for determination of the availability and adequacy of capacity of public facilities (“Concurrency”).

### **B. *Scope of this Section***

This Section does not address impact fees and any determination of vested rights pursuant to this Section shall have no effect upon impact fees or impact fee credits or the determination of impact fees or impact fee credits.

### **C. *Vesting for Consistency with the Comprehensive Plan***

1. Pursuant to Section 163.3167(8), F.S., nothing in the Comprehensive Plan, including Comprehensive Plan Amendments, shall limit or modify the rights of any person to complete any project that has been authorized as a Development of Regional Impact (DRI) pursuant to Chapter 380, Florida Statutes, or who has been issued a final local development order and development has commenced and is continuing in good faith.
2. The purpose and intent of this Section is to grant persons the same rights as provided by the common law of Florida. Common law vesting is generally found to exist when an applicant proves, that the owner of the land within a proposed project or owner of a parcel of land, acting in good faith and reliance upon some act or omission of Polk County, has made a substantial change in position or has incurred such extensive obligations or expenses that it would be inequitable and unjust to destroy the right to develop or to continue development of the property.

### **D. *Prior Permits***

Development specifically authorized with a valid, unexpired building construction permit or mobile home setup permit issued by Polk County is vested for the following:

1. Consistency with the Comprehensive Plan, if the permit was issued prior to the effective date of the Polk County Ordinance adopting the Comprehensive Plan or any Comprehensive Plan Amendments, respectively.
2. Concurrency, if the permit was issued prior to the effective date of the Polk County ordinance establishing the Concurrency Management System.
3. The Land Development Code, with respect to intensity and density, if the permit is issued prior to the effective date of this Code.

E. ***Subdivision Construction Plans***

1. Subdivisions with a valid, unexpired construction plan permit, issued prior to the effective date of the ordinance adopting the Comprehensive Plan or any amendment thereto, shall be vested for compliance with land use intensity and density established by the Comprehensive Plan or Comprehensive Plan Amendment respectively.
2. Subdivisions with a valid, unexpired construction plan permit, issued prior to the effective date of this Code shall be vested for any development standard which would apply to those construction plans.

F. ***Subdivision Plats***

1. Subdivision plats which have been recorded prior to the effective date of the ordinance adopting the Comprehensive Plan or any amendment thereto, shall be vested for compliance with land use intensity and density established by the Comprehensive Plan or Comprehensive Plan Amendment respectively.
2. Subdivision plats which have been recorded prior to the effective date of this Code shall be vested for any development standard which would apply to the subdivision.

G. ***Prior Variances***

Any variances granted by Polk County prior to the adoption of this Code for any development criteria or standard included within this Code, but not used or implemented, may be reinstated for a period not to exceed two years from the effective date of this Code. When the applicant submits an application for any subsequent approval, the prior variance will be reviewed to determine if the variance is still necessary. If it is determined that the prior variance is no longer necessary, the applicant shall amend the plans or apply for a new variance or waiver as provided in Chapter 9 of this Code.

H. ***Prior Conditional Approvals***

1. All previously approved Special Exceptions, Conditional Use Permits and Temporary Special Exceptions, unless developed, implemented, or used within the time frame set forth by the original approval are hereby rescinded. In the case of a Conditional Use Permit, or other approval with a time limit, the applicant shall apply for appropriate permits for implementation prior to the expiration of the approval. Conditional Use Permits needing additional approvals (Level 3 or Level 4) and all modifications to County approvals (Level 3 or Level 4) shall conform to the Comprehensive Plan, Concurrency, and this Code.
2. All sites with a previously approved Zone Change, approved with conditions, shall develop in conformance with the prior conditions or the requirements of this Code, whichever are more restrictive. Prior conditions may only be modified or removed by a Level 4 Review with Board of County Commissioner approval.

I. ***Planned Unit Developments (PUD)***

1. A PUD which had a valid, unexpired concept, tentative or final level of approval prior to the effective date of the ordinance adopting the Comprehensive Plan or Comprehensive Plan Amendment, respectively, shall be vested for permitted uses, density and intensity.
2. A PUD which has a valid, unexpired concept approval, including approvals which have been reinstated by the Board of County Commissioners, prior to the effective date of this Code shall be vested for permitted uses, density and intensity. Any future PUD approvals shall be processed in compliance with this Code.
3. A PUD which has a valid, unexpired tentative or final level of approval, including approvals which have been reinstated by the Board of County Commissioners, prior to the effective date of this Code shall be vested for consistency with respect to this Code with respect to permitted uses, land use density and intensity, and Planned Development requirements. Such vested rights shall be applied within the limits of the approvals and conditions of the PUD approval.
4. A property owner with a PUD which has an expired tentative or final level of approval may make an application for an extension of the approval, provided such an extension is consistent with the Comprehensive Plan. The Board of County Commissioners may grant an extension of the approval pursuant to Section 905. Such extensions may include conditions which specifically address the time limit of the extension and items or sections of this Code for which a development is vested. In no instances shall extensions exceed two years from the effective date of this Code.
5. All conditions of approval of a vested PUD shall remain in full force and effect.
6. A PUD reinstated prior to the adoption of this Code where no construction has occurred may be reinstated for a period not to exceed two years from the effective date of this Code.
7. A reinstatement or extension shall be a Level 2 Review as provided in Chapter 9 and placed on the BoCC=s regular agenda for final approval.

J. ***Developments of Regional Impact (DRI)***

A DRI shall be vested for intensity and density if any of the following exist:

1. Development with a valid, unexpired Development Order issued by Polk County pursuant to Section 380.06, F.S., prior to the effective date of the ordinance adopting the Comprehensive Plan or any Comprehensive Plan Amendment, respectively, is vested with respect to consistency with the Comprehensive Plan or Comprehensive Plan Amendment. Such vested rights shall be applied within the limits of the

approvals and conditions of the Development Order pursuant to Sections 380.06 and 163.3167, F. S.

2. Development with a valid, unexpired Development Order issued by Polk County pursuant to Section 380.06, F. S. prior to the effective date of this Code, is vested with respect to permitted uses, density and intensity. Such vested rights shall be applied within the limits of the approvals and conditions of the Development Order pursuant to Sections 380.06 and 163.3167, F. S.
3. A binding letter of vested rights has been issued by the Florida Department of Community Affairs (or State Planning Agency) for the development, and such rights are valid and have not expired.

**K. *Lots of Record***

Nothing in this Code shall prevent the use of a Lot of Record, as defined herein, provided the required setbacks can be met. Lots of Record shall be vested for consistency unless otherwise indicated in this Code.

**L. *Other Projects (Common Law Vesting or “Equitable Vesting”)***

1. The Board of County Commissioners may determine that any other project is vested for consistency with the Comprehensive Plan or any Comprehensive Plan Amendment if there is proof that the following existed prior to the effective date of the ordinance which adopted the Comprehensive Plan or Comprehensive Plan Amendment, respectively.
  - a. The applicant either owned the parcel of land proposed for development or had the right to purchase such parcel of land pursuant to an agreement or option to purchase entered into prior to the ordinance adopting the Comprehensive Plan or Comprehensive Plan Amendment, respectively;
  - b. A final development order has been issued or Polk County has otherwise taken official action specifically with respect to development of the property;
  - c. Extensive obligations or expenses (other than land purchase cost and payment of taxes) including, but not limited to, professional expenses related directly to the development, expenses associated with installation of utility infrastructure or public improvements, or expenses related to the dedication of land to a government entity, have been incurred or there has otherwise been a substantial change in position;
  - d. Such obligations, expenses, and change in position were undertaken by the property owner in good faith reliance on the actions taken by Polk County; and

- e. It would be inequitable, unjust, or fundamentally unfair to deny the property owner the opportunity to complete the project.
2. A written determination of vested rights shall include criteria, standards, thresholds and guidelines, as may be specifically applicable to the particular project, to assist in determining whether and when the project is no longer “continuing in good faith.”
3. An application for a vested rights determination that does not satisfy the criteria for presumptive vested rights pursuant to this Section shall be approved if the applicant has demonstrated the following:
  - a. That the applicant has presented facts indicating that it would be inequitable, unjust or fundamentally unfair to deny an application for vested rights where the applicant acquired ownership after the date of the adoption of the Plan, or to destroy rights acquired by the applicant;
  - b. That the applicant has relied in good faith upon a valid, unexpired approval by Polk County indicating that the proposed development of the property is in compliance with, or is allowed within, the law and regulations administered by Polk County;
  - c. That the applicant, in reliance upon a valid, unexpired approval by Polk County, has made a substantial change in position and has incurred extensive obligations or substantial expenditures prior to March 21, 1991, except for development which was re-zoned after January 1, 1990, in which case the applicant shall have made a substantial change in position and have incurred extensive obligations prior to July 1, 1991; and
  - d. In making this determination, Polk County may consider a number of factors, including, but not limited to:
    - i. Whether construction or other development activity, including the acquisition of development approvals has commenced and is continuing in good faith; or
    - ii. Whether the expense or obligation incurred cannot be substantially saved by use and application of the plans, materials, studies, permits, approval and services acquired by such expense.
4. The following shall not be considered development expenditures or obligations:
  - a. Expenditures for legal and other professional services that are not related to the approval, design, permitting or construction of improvements;
  - b. Taxes paid; and
  - c. Expenditures for initial acquisition of the land.

5. The vested status of a phased development project shall be determined with reference to each phase. In considering whether an individual phase is vested the following standards shall be considered:
  - a. The level of regulatory approval for each phase;
  - b. The expense, as defined by this Section, which has been incurred in connection with any or all phases of the development; and
  - c. The extent of construction of infrastructure in each or any phase to support that phase and future phases.

**M. *Procedure for Vesting (Common Law Vesting or “Equitable Vesting”)***

1. An application for a Common Law Vesting or “Equitable Vesting” Permit to determine vested rights shall be submitted to the Department on forms provided by the Department.
2. Such applications shall be submitted with copies of such valid, unexpired development permits and other evidence of vested rights.
3. The Department shall review the application for compliance with the criteria set forth in this Section. The staff shall have 30 days to review the application and prepare a report.
  - a. If the Department determines that the applicant has satisfied the standards established in Section 111.L. then a Vested Rights Permit shall be issued within five working days. The Permit shall specify whether the development is vested for purposes of consistency, or land development regulations. If vested for more than one purpose the Department may issue a single Vested Rights Permit.
  - b. If the Department determines that the development is not vested, the Department will notify the applicant by certified mail. An appeal of such decision shall be pursuant to Section 921.

**Section 112 Reserved**

**Section 113 Development of Regional Impact (DRI) Relationship to this Code**

Developments of Regional Impact approved by the BoCC shall, at a minimum, be consistent with Chapter 380, Florida Statutes. Projects meeting the definition of Developments of Regional Impact or amendments to Development of Regional Impact as provided in Florida Statutes shall be reviewed according to Chapter 380, F.S. and other applicable local ordinances. All zoning actions within a Development of Regional Impact shall be consistent with Code. At a minimum, all Development Orders and any amendments thereto shall include the following:

- A. Phasing schedule by year, land use, trip ends generated, geographic area;
- B. Public facilities and services to be provided by others;
- C. Available capacity of public facilities and services;
- D. A capital improvement plan for providing public facilities and services; and
- E. In addition to the requirements of Section 380.0615(f), F.S. the Development Order shall also be recorded and a copy of the Development Order and Notice shall be forwarded to County.

**Section 114 - 119 Reserved**

**Section 120 Non-conformities**

**A. *Applicability***

This Section shall apply to all development that does not conform to the Polk County Comprehensive Plan or the development, design and improvement standards in this Code.

**B. *Classification (Rev. 2/21/12 – Ord. 12-006)***

- 1. Non-conformities shall be classified as:
  - a. Lots;
  - b. Uses of land without structures or with minor structures;
  - c. Uses of major structures and premises;
  - d. Structures; and
  - e. Characteristics of use.
- 2. To be considered a non-conformity, it must have been in compliance with the requirements which were lawful when it was established, but would be prohibited, regulated or restricted by the enactment of the Comprehensive Plan, this Code or subsequent amendments. A non-conformity shall be established by one of the following modes:
  - a. The non-conformity must have been legal non-conforming under previous regulations and continue to be designated non-conforming under the provisions of the Comprehensive Plan, this Code or subsequent amendments hereto.

- b. The non-conformity must have been legal conforming under the previous regulations and the Comprehensive Plan, and made non-conforming by the provisions of this Code or subsequent amendments.
- 3. A non-conformity may also be created where lawful public taking or actions pursuant to a court order have the same effect as violation of this Code.
- 4. If a non-conforming lot is created by governmental acquisition, required set-backs shall be measured from the property line location prior to acquisition.

**C. *Cessation of Non-Conforming Use (Rev. 7/23/15 – Ord. 15-039; 2/21/12 – Ord. 12-006)***

- 1. A legal non-conforming use shall cease under the following circumstances:
  - a. the establishment of a use conforming to the current land use district;
  - b. the cessation of the non-conforming use for any reason for more than 24 consecutive months; or
  - c. the designation of an Extended Rights Parcel for the non-conforming use pursuant to Section 120G.

Thereafter, subsequent occupancy and use of the land, the building, and the structure shall conform to the regulations of the districts in which the property is located or the conditions of the Extended Rights Parcel. Cessation of use includes, but is not limited to, vacancy of the building or structure in which the non-conforming use was conducted, or discontinuance of the activities consistent with or required for the operation of such non-conforming use. The determination of cessation of use or change to a conforming use will be determined irrespective of whether or not an intention to cease or abandon the non-conforming use may exist.

- 2. Agricultural and Agricultural Support uses shall retain rights to their use for up to five (5) years after cessation.

**D. *Intent Concerning Non-Conformities (Rev. 2/21/12 – Ord. 12-006)***

It is the County’s intent to encourage development consistent with the Comprehensive Plan and Land Development Code (LDC) while providing owners with reasonable use of their land. Therefore, it is in the best interest of the public to allow uses, structures, signs, lots and other situations that came into existence legally, in conformance with then applicable requirements, to continue to exist and be put to productive use, but to bring as many aspects of such situations into compliance with existing regulations as is reasonably possible in a manner consistent with the Comprehensive Plan and LDC. It is further the intent of this section to:

- 1. recognize the interests of owners in continuing to use their property;
- 2. promote the reuse and rehabilitation of existing buildings; and

3. prohibit the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the community as a whole.

E. ***Documentation of Legal-Non Conformities (Rev. 2/21/12 – Ord. 12-006)***

Polk County’s land development records are open to the public during normal business hours; staff can provide assistance in gathering information as to the status of a legal non-conforming use. In many cases, such documents will suffice for securing future permitting under the terms provided herein. Where a legal non-conformity is not clearly evident, a formal determination may be pursued in accordance with Section 917. The burden of demonstrating compliance with the land development requirements in place at the time a use was established shall rest solely with the applicant for a development decision.

F. ***Common Rights to All Legal Non-Conformities (Rev. 2/21/12 – Ord. 12-006)***

The following development rights apply to all legal non-conforming uses;

1. Repair and Maintenance

- a. Incidental repairs and normal maintenance necessary to keep a nonconforming structure in sound condition are permitted unless such repairs are otherwise expressly prohibited by County, State, or Federal Regulations.
- b. Nothing in this Section will be construed to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of a public official.
- c. Building permits may be required and all repair and maintenance must be conducted in accordance with current building codes and the Florida Life Safety Code.

2. Alterations

- a. Interior alterations are permitted as long as they do not generate noise, odor, dust, or vibration that can be discerned from the exterior of the structure.
- b. External alterations and accessory structures
  - i. Incidental appurtenances necessary to maintaining the function and market competitiveness of the use may be added to structures so long as they meet district setbacks and do not extend more than five (5) feet from the front (road side) of the structure, three (3) feet from the side or ten (10) feet of the rear. These may be approved through a Level 1 Review in accordance with current building codes and the Florida Life Safety Code.

- ii. Accessory structures necessary to maintaining the function and market competitiveness of the use may be added to the site of a legally non-conforming use so long as they:
  - (1) are not located within 50 feet or less of the property line.
  - (2) do not generate noise, odor, dust, or vibration. The addition of these structures shall be counted towards the cumulative expansion percentage in Section 120.E.
  - (3) Building permits are required for accessory structures and must be conducted in accordance with current building codes and the Florida Life Safety Code.
- iii. Fencing is permitted provided it meets the terms of Section 210.
- iv. Any alterations that will bring existing structures into greater compliance with the development standards of Chapters 6 and 7 or dimensional standards of the district are permitted in accordance with current building codes and the Florida Life Safety Code.

### 3. Reconstruction

In the event of calamity or the owner's own accord a legally non-conforming structure is significantly damaged or demolished, it may be replaced within its original foundation or footprint provided that a building permit is issued prior to 24 months from the date of demolition or calamity and construction meets applicable development standards in Chapter 6 and 7 of the Land Development Code as well as any applicable building or environmental health codes. Once a building permit for reconstruction is issued, the terms of the standard building permit life shall apply. If the building permit is to lapse or otherwise be revoked after the 24 month period has expired, rights to replace the structure shall be null and void.

### 4. Deferment of Cessation

In the event that a legally non-conforming use is rendered inactive and not allowed to resume activity for a period of more than 24 months due to criminal investigation, litigation, government mandated environmental cleanup, or similar development impediment, the rights to the non-conforming use may be retained until such external matters are resolved. Once the impending action no longer restricts use of the property or the government entity has approved the property for use, the owner or occupant shall have 60 days in which to resume activity of the non-conforming use.

### 5. Change in Ownership or Tenancy

Nonconformity status runs with the land and is not affected by changes of tenancy, ownership, or management.

6. Districts Where Single-Family Residential Is Not Permitted

A legally established vacant lot intended for residential purposes may be developed for a single family use regardless of the land use district provided all prior development approval conditions can be met.

G. ***Extended Rights Parcels (Rev.7/23/15 – Ord. 15-039; 2/21/12 – Ord. 12-006)***

As an alternative to pursuing an amendment to the Future Land Use Map for a district that is consistent with the legal non-conforming use of a property, an extension of the legal non-conforming rights may be granted pursuant to this section. A legal non-conforming use may be recognized as conforming as part of an Extended Rights Parcel subject to its approval as a Level 3 conditional use. Consistent with Section 120D., this process will allow certain non-conforming uses to continue in a productive manner unless and until such use has ceased.

1. Evaluation Criteria

The Planning Commission shall evaluate the extension of legal non-conforming use rights as an Extended Rights Parcel with consideration of the following criteria:

- a. Substantiation that the subject use is a legal non-conforming use;
- b. Site improvements, e.g., buildings or structures, were made to support the legal non-conforming use;
- c. The extent to which the non-conformity is conforming with the surrounding uses;
- d. The availability of infrastructure and community services to support the non-conforming use;
- e. Compatibility with neighboring properties and their land uses;
- f. The impacts of the historical uses on the surrounding area;
- g. The applicant's future plans for the property relative to the character of the surrounding area; and,
- h. The need or potential for site or infrastructure improvements that may result from extension of the use.

2. Granting of Extended Rights Parcel

- a. Through the Level 3 Review process, the Planning Commission may grant permanent recognition to a non-conforming use after consideration of the

Evaluation Criteria set forth above. Such an approval shall be recognized as a conforming use regardless of its district provided the applicant adheres to the conditions under which it is granted. The decision to grant or deny permanent recognition may be appealed to the Board of County Commissioners in accordance with Section 921.

- b. The approval of an Extended Rights Parcel shall include a description of the conditional use and its density or intensity along with any conditions of approval.

3. Cessation of Extended Rights Parcel

The recognition of an Extended Rights Parcel shall cease upon the establishment of a different use conforming to the current land use district.

H. *Recognition of a Former Legal Non-Conforming Use as an Extended Rights Parcel (Added 7/13/15 – Ord. 15-039)*

A former legal non-conforming use that has ceased, pursuant to Section 120C.1.b. may be recognized as conforming as part of an Extended Rights Parcel subject to its approval as a Level 4 conditional use. The BoCC may grant permanent recognition to a former legal non-conforming use after consideration of the following criteria:

- a. Substantiation that the subject use was a legal non-conforming use;
- b. Site improvements, e.g., buildings or structures, were made to support the former legal non-conforming use;
- c. The extent to which the non-conformity is conforming with the surrounding uses;
- d. The availability of infrastructure and community services to support the non-conforming use;
- e. Compatibility with neighboring properties and their land uses;
- f. The impacts of the historical uses on the surrounding area;
- g. The applicant's future plans for the property relative to the character of the surrounding area; and
- h. The need or potential for site or infrastructure improvements that may result from extension of the use.

The approved conditional use shall be recognized as a conforming use regardless of its district provided the applicant adheres to the conditions of approval. The Extended Rights Parcel approval shall cease upon the establishment of a different use conforming to the current land use district.

I. *Expansion of Residential Uses (Rev. 2/21/12 – Ord. 12-006)*

Non-conforming residential development may not be intensified, enlarged, or expanded except as provided in this Section.

1. One and Two Family Residential including Mobile Homes

- a. Expansion – Expansion of a single family, duplex, or mobile home development may not exceed the maximum density limits of the Future Land Use Map district. In districts where a minimum density is required and the legally non-conforming development does not meet the minimum density, additional units may be developed even if the resulting density remains below the minimum provided that all other required development standards are met. Individual residential units may be expanded provided such units meet district setback, height limits, and the standards in Chapter 6 of the Code.
- b. Planned Approval Status – Planned Development and Planned Unit Developments that have constructed a portion or phase may be expanded consistent with the provisions in Section 906.E & F of this Code and the Future Land Use Map district densities. In the event that the development does not meet the minimum density of the district, additional units may be developed even if the resulting density remains below the minimum provided that all other required development standards are met and the PD or PUD is modified or abrogated.
- c. Multiple Units (on one lot) – Properties with more than one detached dwelling unit may be permitted to add additional units if the Future Land Use Map district allows such density; however,
  - i. the land for which the additional units are placed shall be consistent with Section 221.A and Chapter 8 of this code; and,
  - ii. the residual parent parcel shall meet the minimum lot size standards.
- d. Accessory Uses – On any property where a legally non-conforming single family, duplex, or mobile home is located, accessory structures and uses customary to a residence may be permitted as well. Such uses and structures include, but are not limited to, swimming pools, sheds, and home occupations.
- f. Individual Unit Expansion – Whether single-family, two-family or mobile home, an individual unit may be expanded so long as it does not change the unit type or violate the development standards of the district including, but not limited to setbacks, height limits, and flood zone requirements.

2. Multifamily

- a. Onsite Expansion – Expansion of a multifamily development or structure may not exceed the maximum density limits of the Future Land Use Map district. In districts where a minimum density is required and the legally non-conforming development does not meet the minimum density, additional units may be developed even if the resulting density remains below the minimum provided that all other required development standards are met.
- b. Land Expansion – The addition of land to support addition or expansion of structures both primary and accessory for a legally non-conforming multifamily use shall require a Comprehensive Plan Amendment to a district allowing such density of development.
- c. Planned Approval Status – Planned Development and Planned Unit Developments that have constructed a portion or phase may be expanded consistent with the provisions in Section 906.E & F of this Code and the Future Land Use Map district densities. In the event that the development does not meet the minimum density of the district, additional units may be developed even if the resulting density remains below the minimum provided that all other required development standards are met and the PD or PUD is modified or abrogated.
- d. Accessory Uses – On any property where a legally non-conforming multifamily structure is located, accessory structures customary to a multifamily residential development may be permitted as well. Such structures include, but are not limited to, community swimming pools, automated laundry facilities, and clubhouses. However, if such structures extend offsite, a Level 3 Review shall be required. The Planning Commission shall use the criteria set forth in Section 120.I to evaluate the merits of the expansion.
- f. Individual Unit Expansion – An individual unit within a multifamily structure may be expanded so long as it does not violate the development standards of the district including, but not limited to setbacks, height limits, and flood zone requirements.

**J. *Expansion of Non-residential Development (Rev. 2/21/12 – Ord. 12-006)***

- 1. Onsite Expansion – Legal non-conforming non-residential establishments may expand under the following parameters:
  - a. The addition or expansion of structures, impervious surface, or outdoor storage or display areas less than 20% (cumulatively) of the total amount existing onsite since the September 1, 2000, effective date of the Land Development Code may be approved administratively through Level 2 Review.

b. The total or cumulative addition or expansion of structures, impervious surface, or outdoor storage or display areas of more than 20% of the total amount existing onsite since the September 1, 2000, effective date of the Land Development Code may be approved by the Planning Commission through a through Level 3 Review as a conditional use. The Planning Commission shall consider the evaluation criteria listed in Section 120.I.1.c to follow.

c. Evaluation Criteria

The Planning Commission shall evaluate the expansion of legal non-conforming use rights with consideration of the following criteria:

- i. The degree to which the non-conformity can become more conforming;
- ii. The extent of a government's obligation or liabilities including, but not limited to, infrastructure improvement, infrastructure maintenance, and public safety;
- iii. The potential impact that the expansion may pose to neighboring properties;
- iv. The extent of the use's longevity (i.e. how long has it been there and how long is it to continue at its location);
- v. The applicant's future plans for the property relative to the County's plans; and,
- vi. The improved development standards or infrastructure that may result from expansion of the use.

2. Land Expansion – The addition of land to support an addition or expansion of structures, storage, or activity of a legally non-conforming use shall require a Level 4 Review. The Planning Commission shall make recommendation and the Board shall render a decision based on the criteria set forth in Section 120.I.1.c. Land expansions are allowed for the purpose of meeting local, state or federal requirements that do not expand or introduce activities, vertical structures, or storage area onto the property addition. Such development including drainage structures, stormwater ponds and wastewater lift stations may be approved administratively through Level 2 Review.

3. Effect of Approval – Legally non-conforming uses, once approved for expansion by the Planning Commission or the Board of County Commissioners, are considered Conditional Uses and may be modified consistent with the provisions in Section 906.E & F of this Code provided that such expansion is consistent with the Future Land Use Map district floor-area-ratio (FAR) requirements or limitations. If final approval of the legally non-conforming use expansion was granted by the Board of

County Commissioners either through Level 4 Review or De Novo appeal, expansion of such use beyond a minor modification (see Section 906.E) shall require Board of County Commissioner approval through a Level 4 Review. This shall apply to all non-conforming use expansions approved through a public hearing process since the adoption of the first zoning ordinance (11/4/70).

4. Addition of Permitted Uses – The addition of uses otherwise permitted by right in the Future Land Use Map district, as well as uses that are conditional through administrative approval (C1 or C2 in Table 2.1 et.al.), may be approved onsite of a legally non-conforming use without jeopardizing the development entitlements of the property.

## **Section 121 Eminent Domain Actions**

### **A. *Purpose and Intent***

It is the intent of this Section to establish a fair procedure by which the County may grant waivers and variances to development, sign and technical regulations, to provide relief to owners of land affected by government condemnation of land where non-conformities are created. Further, it is the intent of this Section to establish procedures which will reduce the cost of government acquisitions of real property needed for public improvements.

### **B. *Waivers***

If, as a result of a governmental taking, either by negotiation or condemnation, existing lots, parcels, or structures become non-conforming with the provisions of this Code, the following provisions shall apply:

1. Existing building or site characteristics which become non-conforming or increase in non-conformity as a result of a taking, including but not limited to minimum lot size, setbacks, open space, off-street parking, landscape requirements, signs, drainage and retention, shall be required to meet Code requirements to the greatest extent possible, to the satisfaction of the Director. Any further expansion or enlargement thereof shall be in accordance with all applicable Code requirements.
2. In granting any waiver to Code requirements, the Director shall:
  - a. Determine that the requested waiver will not adversely affect visual, safety, aesthetic or environmental concerns of neighboring properties;
  - b. Determine that the requested waiver shall not adversely affect the safety of pedestrians or operators of motor vehicles; and
  - c. Preserve required off-street parking requirements to the greatest extent practicable. The reconfiguration, reduction, or removal of landscape or open space requirements may be considered to preserve off-street parking.

3. Any alterations, repairs or rehabilitation work necessitated by a governmental or public agency acquisition or condemnation or real property may be made to any existing structure, building, electrical, gas, mechanical or plumbing system without requiring the entire building, structure, plumbing, electrical, mechanical or gas system to comply with all the current requirements provided that the work conforms to the requirements of the technical codes for new construction. The Building Official shall determine the extent to which the existing system shall be made to conform to the requirements of the technical codes for new construction.
4. The condemning authority or the property owner may apply for waivers or variances necessary to replace the structure or site improvements affected by the eminent domain action.
5. Nothing in this Section precludes the owner or the condemning authority from applying for a variance to the appropriate board where a waiver is denied or is not applicable.

#### **Section 122-129 Reserved**

#### **Section 130 Administrative Fees**

The County may adopt, by resolution, administrative fees necessary to implement this Code. Such fees may include, but are not limited to: application fees, review fees, inspection fees, and appeal fees.

#### **Section 131 Severability**

If any section, paragraph, sentence, clause, or phrase of this ordinance shall, for any reason, be held to be unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance, which shall continue in full force and effect.

#### **Section 132 Effective Date and Amendments**

This ordinance shall be effective on September 1, 2000.

#### **Section 133 Use of Document Reserved**