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ORDINANCE
NUMBER 2007 - 091

AN ORDINANCE OF CHARLOTTE COUNTY, FLORIDA, PROVIDING THAT THE CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA, BE AMENDED BY AMENDING ARTICLE XXIII, EXCAVATION AND EARTHMOVING; BY PROVIDING FOR REVISION OF DEFINITIONS, NONCONFORMING FACILITIES, GROUP III EXCAVATION LOCATION STANDARDS; PROVIDING FOR CORRECTIONS OF ERRORS; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; PROVIDING FOR SEVERABILITY; PROVIDING FOR A TERM; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on July 17, 2007, the Board of County Commissioners of Charlotte County, Florida ("Board") adopted Ordinance 2007-054 which provided for a revised Article XXIII ("Excavation and Earthmoving Code"); and

WHEREAS, in response to concerns expressed by Charlotte County citizens regarding the compatibility of large-scale excavations with adjacent land uses, the Board, during its October 23, 2007 public hearing, expressed a desire to improve the process by which the appropriateness of large-scale Group III excavations is determined; and

WHEREAS, Charlotte County staff has proposed the creation of a new zoning district, Excavation and Mining (EM), to be utilized for the purposes of properly locating future Group III excavations; and

WHEREAS, it is necessary to further amend the Excavation and Earthmoving Code to effectively reflect the Board's wishes in employing said new zoning category; and

WHEREAS, the Board finds that the abovementioned changes governing excavation activities are necessary in order to minimize any detrimental effects of such excavations upon the citizenry, natural environment, and public roadway infrastructure of Charlotte County; and

WHEREAS, after due notice and hearing, the Board finds that this Ordinance is essential to protect and preserve the public health, welfare and safety of the County and its citizenry, that it is in the County's best interests, and that it is appropriate and consistent with the Comprehensive Plan; and

WHEREAS, specific authority for the Board to adopt this Ordinance includes, but is not limited to, Article VIII, Florida Constitution of 1968, Section 125.01(h), Section 125.01(t) and Section 125.01(w), Florida Statutes.

BARBARA T. SCOTT, CLERK, CHARLOTTE COUNTY
OR BOOK 3244, PGS 2011-2019 9 PG(S)
INSTR # 1728027
Doc Type: GOV, Recorded 12/27/2007 at 02:45 PM
Rec. Fee: \$78.00
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1 **NOW, THEREFORE, BE IT ORDAINED** by the Board of County
2 Commissioners of Charlotte County, Florida:

3
4 **Section 1.** Section 3-5-472 of the Code of Laws and Ordinances of
5 Charlotte County, Florida ("Code") is hereby amended by adding the underlined
6 language and by ~~deleting the stricken~~ language to provide as follows:

7
8 Sec. 3-5-472. Definitions.

9
10 Unless specifically defined below or within the latest edition of *The*
11 *Latest Illustrated Book of Development Definitions* published by the Center for
12 Urban Policy Research, words and phrases used in this article shall be ascribed
13 a meaning which they have in common usage and which gives this article its
14 most reasonable application.

15
16 *AASHTO* means the American Association of State Highway and
17 Transportation Officials.

18
19 *Applicant* means a person (as defined hereinafter) who submits an application
20 pursuant to this article.

21
22 *Application* means a form prepared by the Charlotte County Growth
23 Management Department of ~~Community Development~~ for use in connection
24 with this article.

25
26 *BCC* means the Board of County Commissioners of Charlotte County, Florida.

27
28 *Confining Layer* means the impermeable stratum confining an aquifer.

29
30 *County* means Charlotte County, a political subdivision of the State of Florida.

31
32 *County Code* means the Code of Laws and Ordinances, Charlotte County,
33 Florida.

34
35 *County Engineer* means the County's Engineer or duly authorized
36 representative.

37
38 *Cumulative or Cumulative Impact* means the total impact on public
39 infrastructure, safety and environmental resources in the surrounding region
40 that results from a proposed excavation, when added to the impacts of other
41 past, present, and reasonably foreseeable commercial or residential
42 development activity.

43
44 ~~*Department of Community Development* means the County's Department that~~
45 ~~processes Applications under this article.~~

1 *Depth* means the vertical distance between natural grade and the bottom of an
2 excavation.
3
4 *Detention* means the collection and storage of surface water above the water
5 table for subsequent controlled discharge.
6
7 *Development Review Committee (DRC)* means a committee appointed by the
8 County Administrator from Zoning, Planning, Engineering, Fire Prevention,
9 Utilities and any other County departments.
10
11 *Discharge or Discharge Point* means the point of outflow of water from an
12 excavation site.
13
14 *Ditch* means a linear trench not exceeding seven (7) feet in depth as measured
15 from natural grade and twenty (20) feet in width.
16
17 *Earthmoving* means any and all activities resulting in the repositioning of terrain
18 including the excavation of lakes, pits, and depressions; mounding, stockpiling,
19 the creation of berms; and the transporting and installing of fill.
20
21 *Engineer* means a professional engineer registered and certified to practice in
22 the State of Florida who is retained by the Permittee, or an agent of the
23 Permittee.
24
25 *Environmental Impact Statement ("EIS")* means a narrative report acceptable to
26 the Excavation Administrator accompanied by graphic illustrations which
27 discusses and depicts the impact of a proposed excavation upon vegetation,
28 wildlife, wildlife habitat, endangered or threatened species, air quality, surface
29 and groundwater quality, projected contaminants, tailings or other by products
30 and other issues concerning the public's health, safety and welfare. The EIS
31 shall include a Florida Land Use Cover and Forms Classification System
32 (FLUCCS) map.
33
34 *Erosion* means the weathering away of soil by the action of wind and/or water.
35
36 *Excavation* means the removing of material below the seasonal high
37 groundwater table, unless such removal is expressly excepted herein:
38
39 *Group I Excavation* means the excavation for noncommercial purposes
40 (there is neither sale nor transport of the excavated material off-site except that
41 up to 10,000 cubic yards may be transported or sold off-site).
42
43 *Group II Excavation* means the excavation and off-site transport for
44 commercial purposes in furtherance of a DRC final approved development
45 activity.
46

1 *Group III Excavation* means the excavation and off-site transport for
2 commercial purposes, consisting of extracting material and transporting it
3 offsite. Group III excavations may only be sited on land zoned Extraction and
4 Mining (EM) for agriculture.
5
6 *Group IV Excavation* means the excavation and off-site transport of
7 material for agricultural purposes in accordance with a Qualified Agricultural
8 Assistance Program. Group IV excavations may only be sited on land zoned for
9 agriculture.
10
11 *Excavation Area* means the area in which an excavation does or is proposed to
12 occur.
13
14 *Excavation Administrator* means the Director of ~~Community Development~~
15 Growth Management or his/her designee.
16
17 *Excavation Site* means the parcel or parcels on which excavation activity does
18 or is proposed to occur.
19
20 *Fee Resolution* – Resolutions passed by the BCC from time to time pursuant to
21 this article that set forth fees, bond amounts, Performance Assurance
22 requirements and other amounts payable by an Applicant and Permittee.
23
24 *Fill* means the installation or deposition of man-made deposits of earth to
25 increase the vertical or horizontal extent of land or to build embankments.
26
27 *FDEP* means the Florida Department of Environmental Protection or its
28 successor agency.
29
30 *FDOT* means the Florida Department of Transportation.
31
32 *Final Application Process* means the final evaluation of an Application for a
33 Group II Excavation or a Group III Excavation by the County and the Excavation
34 Administrator to determine if the Applicant has complied with the requirements
35 of this article that were not addressed during the Preliminary Application
36 Process and other applicable laws necessary for the issuance of a Group II
37 Permit or a Group III Permit.
38
39 *Final Hearing* means a hearing held subsequent to the Final Application
40 Process during which an Application for a Group II Excavation or a Group III
41 Excavation is adjudicated by the Hearing Examiner for compliance with the
42 Final Application Process.
43
44 *FLUCFCS OR FLUCCS* means the Florida Land Use Cover and Forms
45 Classification System as developed by the Florida Department of
46 Transportation.

1 *Geologist* means a professional geologist registered and certified to practice in
2 the State of Florida who is retained by the Permittee or an agent of the
3 Permittee.

4
5 *Groundwater* means water beneath the surface of the ground.

6
7 *Growth Management Department* means the County's department that
8 processes Applications under this article.

9
10 *Haul Route* means paved or unpaved roads within and outside the excavation
11 site which the Permit specifies can be utilized to transport excavated materials
12 to an on-site or off-site destination. In cases where material will be hauled to
13 multiple locations, the terminus of the haul route shall be the nearest Road and
14 Bridge road or State maintained road.

15
16 *Health Department* means the County's Health Unit and the Florida HRS
17 Department, as applicable.

18
19 *Hearing Examiner* means an individual selected pursuant to ~~Section 3-5-485~~ by
20 the BCC to adjudicate Preliminary Applications at Preliminary Hearings and
21 Final Applications at Final Hearings.

22
23 *Lake* means a body of standing water occupying a natural basin or manmade
24 depression in the earth's surface. The term "lake" does not include a body of
25 water as defined by the word "detention".

26
27 *Landowner(s)* means a Person or Persons, other than the Applicant, who owns
28 the land that is the subject of the proposed excavation activity.

29
30 *Littoral Zone* means that portion of a water body which contains rooted
31 emergent aquatic plants.

32
33 *Maintenance Dredging* means the excavation of sediments or other materials
34 from presently existing and functional channels, ditches, canals, lakes,
35 impoundments or other waterways of artificial construction to original design
36 elevations.

37
38 *Master Report* means a report compiled by the Excavation Administrator from
39 Application reviews by the various County departments.

40
41 *NGVD* means the National Geodetic Vertical Datum.

42
43 *Performance Assurance* means a surety bond, irrevocable letter of credit or
44 other collateral acceptable to the County Attorney provided by the Permittee as
45 security for the Permittee's performance of its obligations in the Permit and the
46 Development Agreement.

1 *Permit* means a written authority issued pursuant to this article that authorizes
2 excavation and/or earthmoving.
3
4 *Permit Amendment* means the written authority issued pursuant to this article
5 that authorizes a change in the terms or conditions of a permit. A Permit
6 Amendment may be either Non-Administrative or Administrative.
7
8 *Non-Administrative Permit Amendment* means a permit amendment that
9 changes a Specific Permit Condition(s).
10
11 *Administrative Permit Amendment* means a permit amendment that does
12 not change a Specific Permit Condition(s).
13
14 *Permittee* means the Person to whom the Permit is issued by the County.
15
16 *Person* means individuals, firms, partnerships, corporations, associations,
17 organizations, trusts, companies, governmental agencies or any other entity.
18
19 *Preliminary Application Process* means the initial evaluation of an Application
20 for a Group II, III or IV Excavation by the County and the Excavation
21 Administrator to determine if the proposed excavation meets the requirements
22 of this article in respect to location, setbacks, quantity of fill, proposed haul
23 route(s), hours of operation, blasting requirements, rock crushing and
24 necessary variances.
25
26 *Preliminary Hearing* means a hearing held subsequent to the Preliminary
27 Application Process during which an Application for a Group II, III or IV
28 Excavation is adjudicated by the Hearing Examiner for compliance with the
29 Preliminary Application Process.
30
31 *Qualified Agricultural Assistance Program* means a National, State, or local
32 government program that provides assistance to agricultural operators to
33 reduce point and nonpoint source pollution, such as nutrients, sediment,
34 pesticides, or excess salinity in impaired watersheds consistent with Total Daily
35 Maximum Loads (TMDLs), where available; reduces Floridian aquifer
36 withdrawals; and/or conserves, restores or augments the area's water
37 resources and ecology by promoting surface water and groundwater resource
38 sustainability.
39
40 *Qualified Environmental Professional* means an individual, acceptable to the
41 Florida Fish and Wildlife Conservation Commission, United States Fish and
42 Wildlife Service or to the County who can show demonstrated expertise in
43 conducting local, state or federally protected/listed species surveys.
44

1 *Reclamation Plan* means the plan submitted to the Excavation Administrator
2 which describes the manner in which the excavation site will be restructured,
3 reshaped, re-vegetated and otherwise restored.
4

5 *Retention* means the collection and storage of surface water at or above the
6 water table without subsequent surface discharge.
7

8 *Roadway Service Life Reduction (RSLR)* means the reduction in the interval(s)
9 of time within which haul route(s) or portions thereof require rehabilitation due to
10 intensive, accelerated wear and tear on their pavement structure as a result of
11 earthmoving authorized under an excavation Permit.
12

13 *Roadway Service Life Reduction Fee (RSLR fee)* means a fee collected for
14 mitigating Roadway Service Life Reduction and rehabilitating haul routes or
15 portions thereof.
16

17 *Settling Pond* means any structure or area that is designed to hold runoff water
18 or pump discharge until suspended sediments have settled.
19

20 *Site* means any tract, lot, or parcel of land, or combination of tracts, lots, or
21 parcels of land ~~or combination of tracts, lots or parcels of land~~ which are
22 included in a proposal for an excavation operation.
23

24 *Specific Permit Conditions* means the provisions of a permit that govern the
25 following matters:
26

27 (1) Operating days and times.
28 (2) Permit duration.
29 (3) Quantity of material to be excavated.
30 (4) Maximum depth of excavation.
31 (5) Blasting and rock crushing restrictions.
32 (6) Any additional conditions or stipulations imposed by the Excavation
33 Administrator or the Hearing Examiner.
34

35 *Unauthorized Communication* means any direct or indirect communication, in
36 any form, whether written, verbal or graphic, concerning a substantive issue by
37 any person with the Hearing Examiner.
38

39 *Water Management District* means the South Florida Water Management
40 District or the Southwest Florida Water Management District, as applicable.
41

42 *Water Table* means the top of the saturated zone of the surficial aquifer.
43
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1 **Section 2.** Section 3-5-474 of the Code is hereby amended by adding
2 the underlined language and by ~~deleting the stricken~~ language to provide as
3 follows:
4

5 Sec. 3-5-474. ~~Nonconforming Facilities~~ Nonconformities.
6

7 An excavation approved by the County, which is in operation on the
8 effective date of this article, or any subsequent revisions thereto, and is made
9 nonconforming by this article, may continue to operate in accordance with its
10 Permit. However, the excavation may not be expanded, extended or otherwise
11 modified unless the excavation operation complies with the provisions of this
12 article.
13

14 Previously permitted excavations and Applications that have been
15 deemed complete, as determined by the Excavation Administrator, per Section
16 3-5-482 of the Code on the effective date of this article, as amended, which are
17 located in agricultural zoning districts (AE and AG) as defined in Chapter 3-9 of
18 the Code shall be treated as nonconformities as provided for by Section 3-9-10
19 of the Code.
20

21 **Section 3.** Section 3-5-479 of the Code is hereby amended by adding the
22 underlined language and by ~~deleting the stricken~~ language to provide as
23 follows:
24

25 Sec. 3-5-479. Group III Location and Operation Standards.
26

27 In addition to the General Location and Operation Standards set forth in
28 this article, the following Location and Operation Standards shall apply to Group
29 III Excavations:
30

31 (a) Group III Excavations are permissible only in an Excavation and
32 Mining (EM) zoning district ~~agriculture zoning districts (AE and AG)~~ as
33 defined in Chapter 3-9 of this code.
34

35 (b) The term of a Group III Permit shall not exceed ten (10) years.
36

37 (c) No excavation, except for ditches permitted by the applicable Water
38 Management District, is permitted within:
39

40 (1) One hundred (100) feet of any public or private right-of-way.
41

42 (2) Twenty-five (25) feet of the side or rear property line of abutting
43 property located in areas zoned other than residential.
44

45 (3) One thousand (1000) feet of residential or institutional
46 structures.

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(A) A waiver from this setback may be permitted by the Hearing Examiner upon a showing that the occupants of the affected structures consent to a reduced setback.

(4) Seventy-five (75) feet of any side or rear property line of abutting property located in areas zoned residential.

(d) All loads of material leaving the excavation site must be weighed on-site by FDOT approved scales and each driver given a weight ticket for the correct weight of the load.

Section 4. Conflict With Other Ordinances. The provisions of this article shall supersede any provisions of existing ordinances in conflict herewith to the extent of said conflict.

Section 5. Severability. In the event that any portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this article.

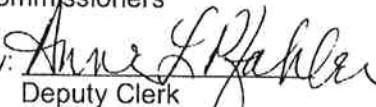
Section 6. Effective Date. This Ordinance shall take effect upon its filing with the Office of the Secretary of State, State of Florida.

PASSED AND DULY ADOPTED this 11th day of DECEMBER, 2007.

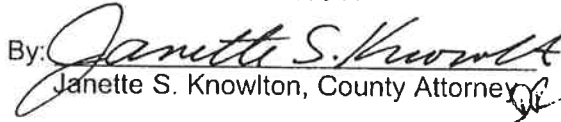
BOARD OF COUNTY COMMISSIONERS OF
CHARLOTTE COUNTY, FLORIDA

By: 
Thomas C. D'Aprile, Chairman

ATTEST:
Barbara T. Scott, Clerk of
Circuit Court and Ex-Officio
Clerk to the Board of County
Commissioners

By: 
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By: 
Janette S. Knowlton, County Attorney

2:00 PM PHQ
Ord 2007-091

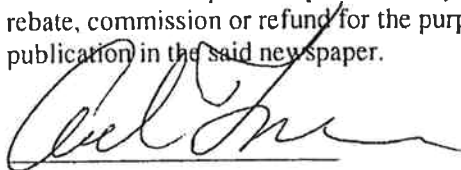


PUBLISHER'S AFFIDAVIT OF PUBLICATION
STATE OF FLORIDA
COUNTY OF CHARLOTTE:

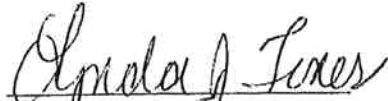
Before the undersigned authority personally appeared Amber Freeman, who on oath says that she is legal clerk of the (Charlotte Sun, Englewood Sun, DeSoto Sun, North Port Sun, Venice Gondolier Sun), a newspaper published at Charlotte Harbor in Charlotte County, Florida; that the attached copy of advertisement, being a Notice of Hearing, was published in said newspaper in the issues of:

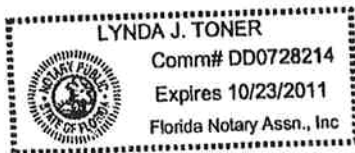
November 26, 2007

Affiant further says that the said newspaper is a newspaper published at Charlotte Harbor, in said Charlotte County, Florida, and that the said newspaper has heretofore been continuously published in said Charlotte County, Florida, Sarasota County, Florida and DeSoto County, Florida, each day and has been entered as periodicals matter at the post office in Punta Gorda, in said Charlotte County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

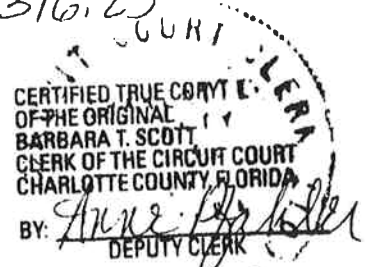
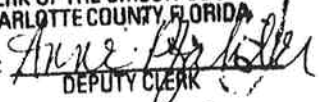

(Signature of Affiant)

Sworn and subscribed before me this 26th day of November, 2007.

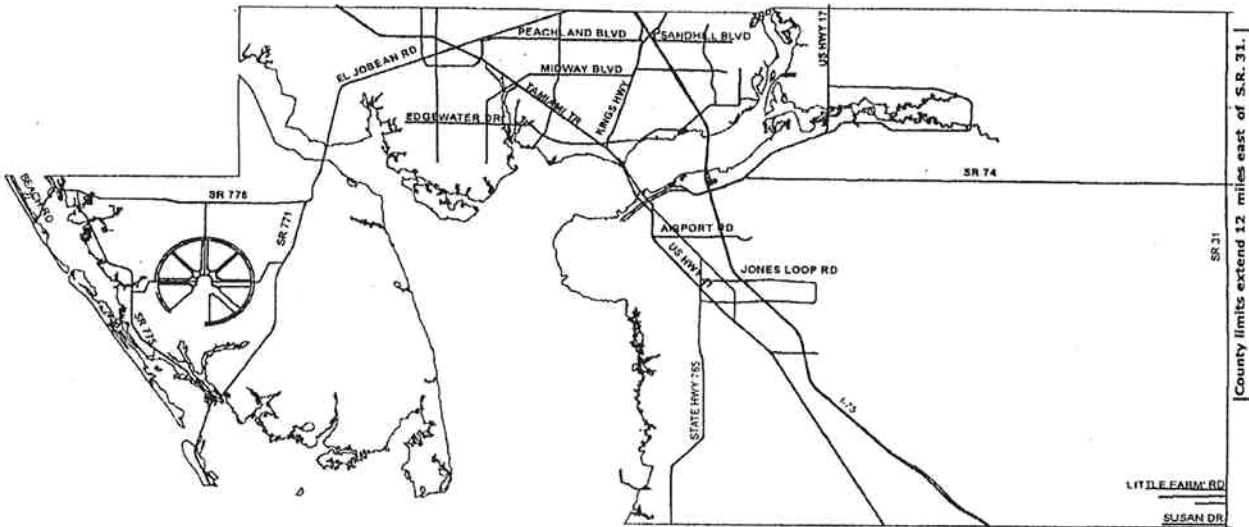

(Signature of Notary Public)



5X 11 X 5.75 = \$316.25


CERTIFIED TRUE COPY
OF THE ORIGINAL
BARBARA T. SCOTT
CLERK OF THE CIRCUIT COURT
CHARLOTTE COUNTY, FLORIDA
BY: 
DEPUTY CLERK

NOTICE OF PUBLIC HEARING FOR AMENDING CHAPTER 3-9 OF THE CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, TO CREATE A NEW ZONING DISTRICT, AND FOR AN ORDINANCE AMENDING CHAPTER 3-5 OF THE CODE OF LAWS AND ORDINANCES OF CHARLOTTE COUNTY, FLORIDA, BY AMENDING ARTICLE XXIII, EXCAVATION AND EARTHMOVING; BY PROVIDING FOR REVISIONS OF DEFINITIONS, NONCONFORMING FACILITIES, GROUP III EXCAVATION LOCATION STANDARDS; PROVIDING FOR CORRECTION OF ERRORS; PROVIDING FOR CONFLICT WITH OTHER ORDINANCES; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.



A PUBLIC HEARING ON PROPOSALS AND PETITIONS AS DESCRIBED BELOW WILL BE CONDUCTED BY THE BOARD OF COUNTY COMMISSIONERS AT A REGULAR MEETING ON TUESDAY, DECEMBER 11, 2007, AT 2:00 P.M. OR AS SOON THEREAFTER AS THE MATTER MAY BE HEARD DURING THE COURSE OF ACTION. THE HEARING WILL BE HELD IN COMMISSION CHAMBERS, ROOM 119, FIRST FLOOR, BUILDING A, THE CHARLOTTE COUNTY ADMINISTRATION CENTER, 18500 MURDOCK CIRCLE, PORT CHARLOTTE, FLORIDA. THE BOARD IS NOT BOUND TO CONSIDER THE PETITIONS IN THE ORDER LISTED IN THIS NOTICE. ANY OF THESE PETITIONS MAY BE CONSIDERED AS SOON AS THE MEETING COMMENCES.

COPIES OF SAID PETITIONS WITH COMPLETE LEGAL DESCRIPTIONS AND SUBSEQUENT STAFF REPORTS WILL BE AVAILABLE FOR REVIEW AT THE CHARLOTTE COUNTY COMMUNITY DEVELOPMENT DEPARTMENT, AND ALL CHARLOTTE COUNTY PUBLIC LIBRARIES.

A MEETING AGENDA AND PETITION PACKETS MAY BE REVIEWED AT THE FOLLOWING INTERNET ADDRESS: <http://www.charlottecountyfl.com/agenda.asp>

ALL INTERESTED PERSONS ARE URGED TO ATTEND THESE PUBLIC HEARINGS. THE PUBLIC IS WELCOME TO SPEAK; THERE WILL BE A FIVE-MINUTE TIME LIMIT FOR EACH CITIZEN'S PRESENTATION ON AN AGENDA ITEM. IF YOU HAVE SPECIFIC QUESTIONS OR COMMENTS, YOU ARE ENCOURAGED TO CONTACT A STAFF PERSON AT ANY TIME IN ADVANCE OF THE PUBLIC HEARING(S). PLEASE CALL 941-764-4903 AND MENTION THE PETITION NUMBER OF THE MATTER YOU WISH TO DISCUSS.

PETITION

New Excavation Zoning District

Legislative

Commission Districts I, II, III, IV & V

An ordinance amending Chapter 3-9 of the Code of Laws and Ordinances of Charlotte County, Florida, creating a new Excavation Zoning District, Section 3-9-55, to accommodate mining operations; providing for conflict with other ordinances; providing for severability; and providing an effective date; Commission Districts I, II, III, IV and V; applicant Charlotte County Board of County Commissioners.

Ordinance Amendment

Commission District I, II, III, IV & V

An ordinance amending Chapter 3-5 of the Code of Laws and Ordinances of Charlotte County, Florida, by amending Article XXIII, excavation and earthmoving; by providing for revisions of definitions, nonconforming facilities, Group III Excavation location standards; providing for correction of errors; providing for conflict with other ordinances; providing for severability; and providing an effective date; Commission Districts I, II, III, IV and V; applicant Charlotte County Board of County Commissioners.

SHOULD ANY AGENCY OR PERSON DECIDE TO APPEAL ANY DECISION MADE BY THE BOARD WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING A RECORD OF THE PROCEEDING, AND FOR SUCH PURPOSE, A VERBATIM RECORD OF THE PROCEEDING IS REQUIRED, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.



FLORIDA DEPARTMENT of STATE

CHARLIE CRIST
Governor

STATE LIBRARY AND ARCHIVES OF FLORIDA

KURT S. BROWNING
Secretary of State

December 21, 2007

Ms. Barbara T. Scott
Clerk of the Circuit Court
Charlotte County
18500 Murdock Circle, Room 416
Port Charlotte, Florida 33948-1094

Attn: Anne L. Pfahler, Deputy Clerk

Dear Ms. Scott:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated December 17, 2007 and certified copies of Charlotte County Ordinance Nos. 2007-086 through 2007-091, which were filed in this office on December 19, 2007.

Sincerely,

[Handwritten signature: Liz Cloud]

Liz Cloud
Program Administrator

RECEIVED AT
MURDOCK BRANCH
2007 DEC 26 PM 4:42
BARBARA T. SCOTT
CLERK OF CIRCUIT COURT
CHARLOTTE COUNTY, FL

LC/jru

IMAGED
1-2-08
AP

DIRECTOR'S OFFICE
R.A. Gray Building • 500 South Bronough Street • Tallahassee, Florida 32399-0250
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ADMINISTRATIVE CODE AND WEEKLY
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