ORDINANCE NO. 03-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 10, SECTION 10-954 OF THE LEON COUNTY CODE OF LAWS; PROVIDING THAT ALL SPECIAL EXCEPTION USES SHALL REQUIRE REVIEW AND APPROVAL BY THE BOARD OF COUNTY COMMISSIONERS; AMENDING CHAPTER 10, SECTION 10-1479.1 OF THE LEON COUNTY CODE OF LAWS; PROVIDING THAT ALL SPECIAL EXCEPTION USES IN ANY ZONING DISTRICT SHALL BE REVIEWED PURSUANT TO THE PROCEDURES FOR A TYPE C SITE AND DEVELOPMENT PLAN; AMENDING CHAPTER 10, SECTION 10-1489 OF THE LEON COUNTY CODE OF LAWS; PROVIDING FOR PROCEDURES FOR HEARINGS ON TYPE C SITE AND DEVELOPMENT PLANS BEFORE THE BOARD OF COUNTY COMMISSIONERS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA:

SECTION 1. Chapter 10, Section 10-954 of the Code of Laws of Leon County, Florida, is hereby amended to read as follows:

Sec. 10-954. Special exception uses.

Due to the nature of special exception uses tertiary, special criteria shall be applied to ensure compatibility of the proposed use with adjacent and nearby uses and developments:

(1) If the proposed use is regulated by the supplemental regulations in Division 8 of this article, the development review will include those specific requirements in Division 8 ~~and shall require review and approval by the Board of County Commissioners~~.

(2) If the proposed use is not regulated by the supplemental regulations in Division 8 of this article, such special exception uses shall include a statement with the application for site plan approval which addressed the following factors:

a. Physical factors by which the environmental impact of the project on the site and adjacent site can be assessed.

b. Scale and character compatibility factors by which the viability of the development in terms of use, scale, height, setbacks, open space and architectural design can be assessed.

c. Relationship to other special exception in the vicinity of the subject site.

d. Transportation access and location with respect to abutting transportation facilities. Unless otherwise specified, the development shall not access to or from any minor local street.

e. Other factors as deemed appropriate by the County Administrator or designee, planning commission or Board of County Commissioners due to the nature of the proposed development.

(3) Notwithstanding Sections 10-1478 and 10-1479 of this chapter, all proposed special exception uses shall require review and approval by the Board of County Commissioners.

SECTION 2. Chapter 10, Section 10-1479.1, of the Code of Laws of Leon County, Florida, is hereby amended as follows:

Sec. 10-1479.1. Type C review.

Type C review shall be applied to the types of site and development plans listed in Subsections 1. through 7., below, and to all site and development plans listed as special exception uses within any zoning district. For the purpose of this section, non-residential site and development plans include, but are not limited to, commercial, office, institutional, and industrial development.

1. Properties in the Residential Preservation, Lake Protection, R-1, R-2, R-3, R-4, R-5, and OS Zoning Districts:

(a) *Residential site and development plan:* Proposed residential site and development plans containing 50 or more residential dwelling units.

(b) *Additions to or new construction of churches or schools or institutional facilities:* Proposed site and development plans for the expansion of existing churches or schools or institutional facilities, or the construction of new

churches, schools, or institutional facilities, containing 25,000 or more gross building square feet.

(c) Other non-residential uses containing 25,000 or more gross building square footage.

2. Properties in the OR-1, OR-2, C-1, BC-1, BC-2, BCS, BOR, Urban Fringe, Lake Talquin Urban Fringe or Rural Zoning Districts:

(a) *Residential site and development plans:* Proposed residential site and development plans containing 150 or more residential dwelling units.

(b) *Non-residential site and development plans:* Proposed non-residential site and development plans containing 150,000 or more gross building square footage.

3. Properties in the OR-3, CM, MR-1, C-2, undeveloped sites in CP (redevelopment sites in CP are addressed in [Section] 10-1478), IC (with an approved concept plan pursuant to Section 10-1480), UP-1, UP-2, OA-1, DRI, PUD, and M-1 Zoning Districts:

(a) *Residential site and development plans:* Proposed residential site and development plans containing more than 300 residential dwelling units.

(b) *Non-residential site and development plans:* Proposed non-residential site and development plans containing 250,000 or more gross building square footage.

4. *Properties in the Activity Center Zoning District:*

(a) *Residential site and development plans:* Proposed residential site and development plans containing 500 or more residential dwelling units.

(b) *Non-residential site and development plans:* Proposed non-residential site and development plans containing 500,000 or more gross building square footage.

5. *Industrial Zoning District:* New or expansion of existing industrial uses or development of 250,000 gross building square footage or greater.

6. *Rural Community Zoning District:*

(a) Residential development of not less than fifty dwelling units;

(b) Non-residential development not less than 99,999 building square footage.

7. *Review requirements.*

(a) *Preapplication:* The applicant shall obtain a permitted use verification, as applicable, prior to filing a Type C site and development plan application The applicant shall schedule an appointment and meet with the county administrator or designee and technical assistance staff to discuss the application, the procedures for review and approval, and the applicable regulations and requirements for the review type. The county administrator or designee shall determine the level of application detail and specific methodologies required for petitions seeking Type C development approval. Interested parties are permitted to attend and participate in the preapplication meeting. Public notice shall be mailed at least five calendar days in advance of the preapplication meeting to the current address (based upon the most current tax rolls in the office of the Leon County Property Appraiser) of each property owner within 500 feet of the project and to neighborhood and business associations.

(b) *Application:* The applicant shall submit the required site and development plan to the county administrator or designee for distribution to the DRC.

(c) *Determination of completeness:* Within ten working days after receipt of the application for site and development plan approval, the director of growth and environmental management or designee shall determine whether the application contains all require information at the required level of detail; and shall advise the applicant of all areas of deficiency. This notification shall specify the additional information and level of detail required in order to meet the requirements of this section.

In the event that an applicant fails to submit the required additional information within 30 calendar days of the date of the notice of deficiency, the director of growth and environmental management or designee shall consider the application to be withdrawn. The director of growth and environmental management or designee may grant extensions of up to 30 days at the request of the applicant; provided any such request for an extension is received prior to the expiration of the relevant time period.

Upon a determination of completeness, the county administrator or designee shall refer the application to the DRC.

(d) *Public notice:* Public notice of the DRC meeting shall be given at least five calendar days in advance of the meeting by publication in a newspaper of regular and general circulation in the county. In addition, written notice shall

be mailed at least five calendar days in advance of the DRC meeting to the current address (based upon the most current tax rolls in the office of the Leon County Property Appraiser) of each property owner within 500 feet of the project and to registered neighborhood and business associations. The public notice shall advise such persons of the application, and specify that no testimony may be heard by the DRC at their meeting since it is an administrative review and not subject to quasi-judicial provisions.

(e) *DRC meetings:* Meetings of the DRC are administrative in nature and not subject to quasi-judicial provisions. No testimony shall be received from any applicant or member of the public during the course of the DRC meeting, although the meetings shall be open to public attendance. Each member of the DRC is responsible for providing proposed written findings which identify whether a development meets the applicable criteria and standards of this chapter and those imposed by other applicable ordinances, regulations and/or adopted standards of the county. The proposed written findings shall be transmitted to other members of the DRC, the applicant, and made available for public inspection at least one working day prior to consideration by the DRC. The proposed written findings shall be the basis for a recommendation by each DRC member to the DRC as a whole to approve, approve with conditions, deny, or continue consideration of an application to a date and time certain.

(f) *DRC review:* The DRC shall review the plans at any scheduled meeting, and shall prepare an itemized list of findings of fact which support a recommendation of approval, approval with conditions, or denial of the application; or shall request additional material and data determined to be necessary to undertake the required review and continue its review to a date and time certain. The DRC shall <u>issue a written recommendation to the applicant and the Board of County Commissioners to approve, approve with conditions, or deny the application. The application shall be advertised and scheduled to be heard at the next available date for public hearings before the Board of County Commissioners. However, the public hearing on the application shall be continued if the applicant, or any other person qualifying as a party as defined in Article XI of Chapter 10 at Division 9 of this Code who has filed comments in response to subsection (d) above, requests a quasi-judicial hearing on the recommendations of the DRC within 15 days of issuance of the DRC recommendations. Requests shall be made in writing and directed to the Office of the County Attorney, and shall include the project name, application number, and a description of the facts upon which the recommendation is challenged and any argument in support thereof. Failure to timely file a request will result in waiver of a quasi-judicial hearing on the application. Hearings shall be conducted in accordance with the procedures outlined in Section 10-1485, except that the hearing officer shall</u>

issue a recommended order to the Board of County Commissioners, including written findings of fact, conclusions of law, and a recommendation to approve, approve with conditions or deny the application. ~~make a recommendation on the application to the Board of County Commissioners. After a public hearing, the Board of County Commissioners shall approve, approve with conditions, deny the application, or continue their consideration to a date and time certain.~~

(g) *Hearings before the Board of County Commissioners.* Upon receipt of the recommended order from the hearing officer, the Board of County Commissioners shall take up the matter in accordance with the procedures outlined in Section 10-1849 of this Code.

(h) ~~(g)~~ *Finality of decision.* The decision of the Board of County Commissioners may be reviewed by the Circuit Court.

SECTION 3. Chapter 10, Section 10-1489, of the Code of Laws of Leon County, Florida, is hereby amended as follows:

Sec. 10-1489. Hearings before the ~~Appeals to~~ Board of County Commissioners.

(A) The provisions of this section apply to hearings before the Board of County Commissioners to review the recommended order of a hearing officer following a quasi-judicial hearing on a Type C site and development plan application, pursuant to Section 10-1479.1 of this Code. ~~the following appeals:~~

~~(1) In the event that a site and development plan review decision has been appealed to the Board of County Commissioners on or before the effective date of this ordinance, but has not been heard by the Board of County Commissioners.~~

~~(2) Appeals filed after the effective date of this ordinance.~~

(B) Prior to the Board of County Commissioners' hearing on a Type C site and development plan application ~~review on appeal of a decision on a site and development plan~~, no party ~~person~~ may communicate with any commissioner regarding the case.

~~(C) All determinations of standing will be made by the county attorney.~~

(C) ~~(D)~~ All hearings shall be open to the public and shall be advertised in a newspaper of general circulation not less than 14 days prior to the date of the hearing. Public comment on the recommended order shall be taken prior to the argument by the parties pursuant to subsection (G). Public comment shall be limited to three minutes per person.

(D) ~~(E)~~ All hearings will be scheduled within 30 days of receipt of the recommended order and record of the decision being reviewed ~~appealed~~.

(E) ~~(F)~~ The record before the Board of County Commissioners shall consist of the complete record of the proceedings before the hearing officer ~~lower reviewing body~~.

(F) ~~(G)~~ The participants before the Board of County Commissioners shall be the parties ~~applicant, appropriate county staff, and any other party, as that term is defined in section 10-1621, Leon County Code of Laws,~~ who participated at the hearing before the hearing officer ~~lower reviewing body~~.

(G) ~~(H)~~ The applicant shall be limited to a total of 20 minutes to present his or her argument, as shall the county staff. Any other party, as that term is defined in section 10-1621, Leon County Code of Laws, who participated at the hearing before the hearing officer ~~lower reviewing body~~ shall be limited to three minutes to present his or her argument. For good cause shown the chairman may grant additional time.

(H) ~~(I)~~ At the conclusion of the hearing, the Board of County Commissioners shall render a decision approving, approving with conditions, or denying the application for site and development plan. The Board may adopt the hearing officer's recommended order as its final order and must include written findings of fact and conclusions of law to support its decision. In its final order, the Board may modify or reject the hearing officer's conclusions of law which are based upon sections of the Leon County Code of Laws, 2010 Comprehensive Plan or any other rule, ordinance or law of the County. When rejecting or modifying such conclusion of law, the Board must state with particularity its reasons for rejecting or modifying such conclusion of law and must find that the substituted or modified conclusion of law is more reasonable that that which was rejected or modified. The Board may not reject or modify the hearing officer's findings of fact unless the Board determines from a review of the entire record, and states with particularity in its final order, that the findings of fact were not based on competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. If the Board issues a final order approving the application with conditions different from those in the recommended order, it shall state with particularity in its final order the reasons for requiring additional conditions with citations to the record to support that decision. ~~affirming the decision of the lower reviewing body, reversing the decision of the lower reviewing body, or remanding the case to the lower reviewing body for further consideration. In the event the denial of an application by the lower reviewing body is reversed by the Board of County Commissioners, the lower reviewing body shall be directed to issue an approval of the application~~.

(I) ~~(J)~~ *Judicial review.* Any person aggrieved by a decision of the Board of County Commissioners on an application under appeal may challenge the decision in the Circuit Court for the Second Judicial Circuit, but only if the person participated at the hearing. If the aggrieved person decides to challenge the decision, he or she shall file a petition for writ of certiorari with the clerk to the circuit court not later than 30 days after the decision of the Board of County Commissioners is

filed with the clerk to the Board of County Commissioners. The record before the circuit court shall consist of the complete record of the proceedings before the Board of County Commissioners.

SECTION 4. All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict, except to the extent of any conflicts with the Tallahassee-Leon County 2010 Comprehensive Plan as amended, which provisions shall prevail over any part of this ordinance which is inconsistent, either in whole or in part, with the said Comprehensive Plan.

SECTION 5. If any word, phrase, clause, section or portion of this ordinance shall be held invalid or unconstitutional by a court of competent jurisdiction, such portion or words shall be deemed a separate and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 6. This ordinance shall become effective as provided by law.

DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County, Florida, this _____ day of _____, 2003.

LEON COUNTY, FLORIDA

By:_____
Tony Grippa, Chairman
Board of County Commissioners

ATTESTED BY:
BOB INZER, CLERK OF THE COURT

By:_____
CLERK

APPROVED AS TO FORM:
COUNTY ATTORNEY'S OFFICE
LEON COUNTY, FLORIDA

By:_____
HERBERT W.A. THIELE
COUNTY ATTORNEY

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