

ORDINANCE NO. 08- 25

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING CHAPTER 10 OF THE CODE OF LAWS OF LEON COUNTY, FLORIDA, RELATING TO THE LAND DEVELOPMENT CODE, AMENDING SECTIONS 10-4.206, TREE REMOVAL APPLICATION REQUIREMENTS, 10-6.305, SUPPLEMENTAL NONCONFORMITY REGULATIONS, 10-6.309, SCHEDULE OF NONCONFORMITY REGULATIONS, AND 10-7.707, CANOPY ROADS OVERLAY DISTRICT, FOR THE PURPOSE OF PROVIDING STANDARDS FOR THE REPAIR AND MAINTENANCE OF EXISTING STRUCTURES AND FENCES WITHIN DESIGNATED CANOPY ROAD OVERLAY DISTRICTS, PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Leon County is endowed with historical roadways through its countryside bounded by a great number of oak and other trees, creating a resplendent canopy above the road;

WHEREAS, Leon County's Comprehensive Plan recognizes the aesthetic and historical value of these canopy roadways and enumerates certain specific roads as "Canopy Roads;"

WHEREAS, Leon County's Comprehensive Plan establishes Objectives and Policies to protect the vegetative and historical resources located within the corridors of designated Canopy Roads and extending 100 feet from the centerline of value of these roadways;

WHEREAS, Leon County's Code of Laws establishes the Canopy Road Protection Zone overlay to implement the Objectives and Policies of the Comprehensive Plan to protect the vegetative and historical resources located within the corridors of designated Canopy Roads by limiting development impacts within the area extending 100 feet from the centerline of value of these roadways;

WHEREAS, Leon County finds that fences and other structures are presently located within the Canopy Road Protection Zone overlay adjacent to all of the Canopy Roads within Leon County and that many of these fences and structures have been so located prior to the special confirmation of “designated Canopy Road” within the Comprehensive Plan;

WHEREAS, Leon County finds that efforts to compel the owners of these fences and other structures presently located within the Canopy Road Protection Zone overlay adjacent to Canopy Roads to remove them from the Canopy Road Protection Zone overlay or to prohibit their repair and maintenance so as to maintain their functionality could produce the following adverse and detrimental effects: 1) reduction or loss of the ability to utilize lawfully established structures, including residential dwelling units, for their intended, approved use; 2) reduction of the personal safety of the affected property owners and security of their properties, including, in some instances, their homes; 3) adversely impacting the welfare of those affected property owners whose unsecured livestock may wander away from the property and be lost and whose agricultural stocks may be stolen; and, 4) exposure of property owners, the property owners’ livestock, and the general public to danger wherein heretofore the fencing provided a boundary from a hazard; and

WHEREAS Leon County finds that efforts to compel the owners of these fences and other structures presently located within the Canopy Road Protection Zone overlay adjacent to Canopy Roads to relocate and reconstruct them outside of the Canopy Road Protection Zone overlay could be impose an unfair burden on such potentially adversely affected persons, given the significant costs associated with relocation and reconstruction of such structures and fences;

WHEREAS Leon County finds that it can meet its Objectives and Policies to protect the resources within the Canopy Road Protection Zone overlay adjacent to Canopy Roads and provide within these areas, for the repair and maintenance of existing lawfully established structures and, of existing fences, while allowing the structures and fences to be repaired and maintained, so long as the County's Code of Laws is amended to establish those substantive criteria and procedural requirements necessary to provide the surety that such repair and maintenance will be done in such manner as to not adversely impact the resources within the Canopy Road Protection Zone overlay;

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

SECTION 1. Section 10-4.206, of Chapter 10 of the Code of Laws of Leon County, Florida, entitled "Tree removal application requirements" is hereby amended to read as follows:

Sec. 10-4.206. ~~Tree removal~~ Application requirements for the removal of trees, generally; and, for the repair and maintenance of existing lawfully established structures and fences for lands within the canopy road protection zone application requirements.

(a) *Scope.* Any request to remove or relocate any protected tree shall be made through submission of an environmental management permit application, unless a general permit, a right-of-way placement permit, or a silviculture permit has been issued as provided for in section 10-4.201.

(b) *Canopy road tree protection zone tree or vegetation removal applications.*

(1) *Required information.* All permits for removal or relocation of trees, for the repair and maintenance of existing lawfully established structures and fences,

or for pruning or vegetation management, within the canopy road tree protection zone (unless such activity is conducted under an approved general permit), shall be obtained by making application to the county administrator or designee, providing the same material to be submitted for permits for other protected trees as set forth in subsection (c). All applications pursuant to this section shall undergo review by the Canopy Roads Citizen Committee. Emergency repairs to existing fences that are necessary due to public health, welfare and safety issues, as approved by the County Administrator or designee, are exempt from permitting requirements if the repairs do not impact protected trees, do not increase the encroachment within the canopy road protection zone, and the fence material is the same or less visually intrusive than that used to construct the original fence.

- (2) *Mitigation requirements.* The permit application for removal of trees or vegetation in the canopy road tree protection zone must be accompanied by a mitigation plan which shall include at a minimum, the following:
- a. An analysis documenting the purpose which necessitates the tree removal and explaining why the project cannot be modified to avoid the need for the tree removal.
 - b. An analysis of the canopy road section to be impacted by the proposed activity within the canopy road tree protection zone. The analysis shall include a narrative description of the affected roadway section together with other material helpful in assessing the impact of the intrusion on the existing canopy road effect. Such characteristics

as understory density and species composition, tree species and size distribution, high bank areas and opacity should be included as appropriate.

c. A replanting and management plan designed to mitigate the visual and vegetational impacts identified in Subsection (b)(2)a.

(3) *Inspection.* Prior to determination on a permit application, the county administrator or designee shall conduct an on-site inspection.

(4) *Application review.* Only the board shall have power to grant or deny permit applications for removal of trees within a canopy road tree protection zone, except that the county administrator or his or her designee shall have the power to grant or deny permit applications for the removal of trees or other vegetation under the additional conditions listed in subsection d below. The following standards must be met at a minimum in order to receive permit approval:

a. Applicant must show that the proposed clearing or tree removal is necessary for protection of the health, safety, and welfare of the public.

b. As part of the proposed mitigation plan, any part of the canopy road tree protection zone that is cleared or has trees removed from it must be widened by the same amount that was removed, with such replacement area to be replanted in a manner sufficient to reestablish the canopy effect and the understory density, species composition, and species and size distribution of the impacted area within a

reasonable time, and to be protected by a conservation easement.

- c. The applicant must show that any proposed cut into the canopy road will be designed and dedicated to serve more than one property unless the applicant can show that such joint access would be impossible under the circumstances of the specific site.
- d. In addition to the standards above, the county administrator or his or her designee shall grant permit applications for the removal of trees or other vegetation only when one of the following conditions exist:
 1. *Diseased or pest-infested trees.* Necessity to remove a diseased or pest-infested tree to prevent the spread of the disease or pest. The need to remove trees because of insect and disease damage must be determined by a forester with a B.S. degree or higher, from a Society of American Foresters accredited college or by an arborist certified by the International Society of Arboriculture.
 2. *Good forestry/silviculture practices.* Necessity to provide silviculture practice or operation under a silviculture management plan in order to enhance the overall canopy, reduce competition between trees and to remove exotic species and replace them with native species. The following special conditions shall further limit the removal of trees under good forestry/silviculture practices:

- i. Clear-cut harvesting is prohibited.
- ii. Selective harvesting may be conducted to the extent that no more than 25 percent of all trees within 25 feet to 50 feet of the centerline of the road or 50 percent of all trees from 51 feet to 100 feet from the centerline of the road shall be removed. The residual stand shall maintain the approximate proportion of diameter classes present prior to harvesting.
- iii. Repeated entry into a harvested canopy road zone shall be limited to once every ten years, less if exclusively for the purposes of minimizing competition between trees.
- iv. No trees will be harvested or significantly damaged, as defined under section 10-1.101, Tree removal, on the road bank, shoulder or county right-of-way.
- v. Removal techniques will be utilized that minimize any adverse impacts or damage to the residual trees.

3. Reasonable access. Removal of protected trees may be allowed under this section, if the proposed single-family residential development activity is found to be in compliance with the special restrictions as defined under Subsection 10-6.708 (c) Development standards.

4. *Repair and maintenance of existing lawfully established structures*

and fences. Repair and maintenance of existing lawfully established structures and fences may be allowed if there is no substantial impact to protected trees. The Canopy Roads Citizen Committee shall evaluate such applications and may provide a positive recommendation upon finding in the affirmative in regard to the following factors: a) that the application is not in conjunction with a change of use of the subject property; b) that, if the application is in conjunction with a fence, that the application proposes repair with the same or less visually intrusive materials as the fence was originally constructed; c) that the application does not represent a negative change in the visual impacts to the canopy road protection zone; and, d) that application proposes methods and techniques for repair and maintenance that will not be detrimental to canopy road protection zone resources. In determining whether to approve, deny, or approve the application subject to conditions, the County Administrator or designee shall consider the Canopy Roads Citizen Committee's recommendation.

- e. The Board of County Commissioners (or the county administrator or his or her designee in cases of tree removal or other vegetation removal applications) shall make its determination to approve, deny, or approve on the permit application subject to condition, within 20 working days after receipt of the application or ~~the county administrator or his or her designee shall request that additional~~

information from the applicant, as is necessary to allow such determination to be made. ~~within 20 working days after receipt of the application.~~ In the event the director requests additional information, the permit application shall be granted or denied by the Board of County Commissioners (or the county administrator or his or her designee in cases of tree removal or other vegetation removal applications) within ten working days after the receipt of the requested information, or, if the request is not complied with by the applicant within 14 calendar days after mailing, the application shall be deemed withdrawn. If the application is denied, the reason for such action shall be specified and provided to the applicant in writing. If no additional information is requested and no final action is taken within the required 20 working days, the application shall be deemed to have been approved to the extent that it is in compliance with the requirements of this article, provided no stop work order is in effect on the site.

- (5) *Removal applications affecting city right-of-way or city property.* If a patriarch or canopy road tree protection zone tree which is proposed for removal is located on a right-of-way or other property belonging to the City of Tallahassee but located outside of the incorporated area of the city, any permit for removal shall be conditioned upon the applicant obtaining approval of the removal from the city commission.

(c) *Other protected tree removal, patriarch tree removal, and vegetation management applications.*

(1) *Required information.* Permits for removal or relocation of protected trees, other than trees located within a canopy road tree protection zone, and applications for vegetation management plan approval for areas other than those located within a canopy road tree protection zone, shall be obtained by making application for permit to the county administrator or designee. Applications for vegetation management plan approval shall be accompanied by a diagram depicting the area to be subject to the plan and the existing vegetation therein, and a description of the nature and purpose of the plan. The application for tree removal shall be accompanied by a written statement indicating the reasons requiring removal or relocation of each protected tree and an area map indicating the location of trees to be removed or relocated and any existing and proposed structures or vehicular use areas. In addition, the application shall contain a signed acknowledgment by the applicant verifying that no protected trees will be removed on the site except as noted on the approved application and permit. If the proposed tree removal is associated with development requiring a stormwater management application as part of the environmental management permit application, the written statement and area map mentioned above shall include, at a minimum, the following:

a. Written, detailed justification for the proposed removal of each protected tree, which shall reference the development area where the

trees are to be removed. Each tree that is 36-inch DBH or greater and any dogwood 4-inch DBH or greater must be shown on the required development area map by map number designation for each such tree.

- b. The locations and dimensions of all existing and proposed vehicular use areas and other improvements, including finished elevations for each.
- c. Significant natural site features.
- d. Existing and proposed site contours.
- e. If the applicant chooses the option of obtaining credit for preserved trees onsite instead of replanting the developed area with 40 trees per acre, the preserved trees must be identified on the plans. Existing protected or required trees to remain on-site, and protected trees proposed to be removed, shall be indicated by a number assigned to each tree and noting DBH, species and critical protection zone. Indication of the general location of the trees, including blocks of trees, may be acceptable depending on-site conditions and provided that a listing of individual trees by species and size is submitted.
- f. Existing and proposed utilities, underground and overhead, and location of any other known man-made on-site features, such as underground tanks or old building foundations.
- g. Building and other setbacks.
- h. Protected trees on adjacent property which may be affected by proposed development activity within the critical protection zone of

such trees.

- i. All applicable land use requirements pertaining to property use or restrictions, including easements, zoning, rezonings, site and development plan or plat reviews and development orders.
- (2) *Inspection.* Subsequent to application, but prior to the issuance of a permit for tree removal or relocation, the county administrator or designee shall conduct an on-site inspection.
- (3) *Application review.* The county administrator or designee shall have 20 working days after receipt of a complete application filed pursuant to this subsection to approve or deny the requested permit, or to request additional information from the applicant, unless the application is accompanied by a short-form application as part of the environmental management permit, in which case approval, denial, or request for additional information shall be made according to the short-form timelines. Where additional information is requested, the county administrator or designee shall grant or deny the permit request within ten working days after the information is provided by the applicant. If the applicant fails to provide such information within 14 days of the request, the application shall be deemed to have been withdrawn. In the event the county administrator or designee denies an application, the county administrator or designee shall specify to the applicant in writing the reason for such action. If no additional information is requested and no final action with respect to a complete application is taken within the required 20 working days, the application shall be deemed to have been approved to the

extent that it is in compliance with the requirements of this article, provided that no stop work order is in effect on the site.

SECTION 2. Section 10-6.305(c) of Chapter 10 of the Code of Laws of Leon County, Florida, entitled “Supplemental nonconformity regulations; non-conforming uses of land” is hereby amended to as follows:

Sec. 10-6.305. Supplemental nonconformity regulations.

(c) *Nonconforming uses of land.*

- (1) A nonconforming use of open land may not be enlarged or increased, nor may it be extended to cover more land than was occupied by that use when it became nonconforming.
- (2) A nonconforming use shall not be moved in whole or in part to any other portion of the parcel occupied by such use which it became nonconforming, except fences located within the canopy road overlay zone as of April 8, 2008.
Fences located within the canopy road overlay zone as of April 8, 2008, may be moved in whole or in part to any other portion of the parcel located outside of the canopy road overlay zone, pursuant to any and all applicable criteria and standards set out in section 10-4.206.
- (3) A nonconforming use shall not be converted to another less intensive nonconforming use, except pursuant to a nonconformity relief granted pursuant to section 10-6.306. In no event shall a nonconforming use be

changed to a more intensive nonconforming use.

- (4) A nonconforming use may be changed to a conforming use regardless of whether the new use conforms with the development standards or other dimensional requirements of this article.
- (5) If a nonconforming use is discontinued, it may be resumed without further review by the county. If, however, a nonconforming use is abandoned, any subsequent use of the land shall conform with the use and the development standards or other dimensional requirements of this article.
- (6) Upon compliance with the procedures set forth in section 10-6.308, the county may determine that the legal nonconformity status of a nonconforming use of land has been lost under any of the following circumstances:
 - a. Abandonment of the use.
 - b. Unlawful extension or expansion of the use.
 - c. Change of occupancy to a more intensive use.

SECTION 3. Section 10-6.305(d)(2) of Chapter 10 of the Code of Laws of Leon County, Florida, entitled “Supplemental nonconformity regulations; non-conforming buildings and structures; all other uses” is hereby amended to as follows:

Sec. 10-6.305. Supplemental nonconformity regulations.

- (d) *Nonconforming buildings and structures.*
 - (2) All other uses.
 - a. Any existing multiple-family residential building or structure or a

nonresidential building or structure, except any fence located within the canopy road overlay zone as of April 8, 2008, made nonconforming as to development standards or other dimensional requirements and/or site improvement requirements by this article may be continued indefinitely, unless such building or structure is made subject to amortization by adoption by Board of County Commissioners of an amortization ordinance and schedule, after proper notice and public hearing and receipt of a report and recommendation from the planning commission as set forth in section 10-6.307.

- b. Any existing multiple-family residential building or structure or a nonresidential building or structure, except any fence located within the canopy road overlay zone as of April 8, 2008, made nonconforming as to development standards or other dimensional requirements and/or site improvement requirements by this article may be repaired and maintained, remodeled and reconstructed so long as the cost of the work is less than 50 percent of the structural value of the building or structure.
- c. Any existing multiple-family residential building or structure or a nonresidential building or structure, except any fence located within the canopy road overlay zone as of April 8, 2008, made nonconforming as to development standards or other dimensional requirements and/or site improvement requirements may be extended

or enlarged by up to ten percent so long as said extension or enlargement does not contribute to nor increase the specific nonconforming dimensional or site improvement requirement.

- d. The use of any existing multiple-family residential building or structure or nonresidential building or structure made nonconforming as to development standards or other dimensional requirements and/or site improvement requirements by this article may not be changed to another more intensive use. A change to another less intensive use shall be permitted provided that such use is permitted by this article, the extent of the nonconformity is decreased and the use complies with all other applicable requirements, including dimensional requirements and site improvement requirements.
- e. If any existing multiple-family residential or nonresidential buildings or structures made nonconforming as to development standards or other dimensional requirements and/or site improvement requirements by this article are discontinued, they may be resumed without further review by the county. If, however, such building or structure is abandoned, any subsequent use involving an expenditure of 50 percent or more of the structural value of the building or structure shall not be permitted except in compliance with all applicable zoning district regulations. Subsequent use involving an expenditure of less than 50 percent of the structural value of the building or structure shall be permitted only by nonconformity relief granted pursuant to

section 10-6.306.

- f. Any existing multiple-family residential or nonresidential building or structure made nonconforming as to parking space requirements by this article may be continued indefinitely; provided, however, that upon the extension or enlargement of such use, repair or maintenance of such use, remodeling or reconstruction of such use with a value of 50 percent or more of the value of the building or structure, there must be compliance with the parking space requirements of this article unless a nonconformity relief from the otherwise required off-street parking is granted pursuant to section 10-6.306.
- g. Any existing multiple-family residential or nonresidential building or structure, except any fence located within the canopy road overlay zone as of April 8, 2008, made nonconforming as to development standards or other dimensional requirements and/or site improvement by this article damaged or destroyed by a catastrophic event may be restored upon application to the administrative body responsible for permitting damaged or destroyed property.
- h. Any fence located within the canopy road overlay zone as of April 8, 2008, may be:
 - 1. moved in whole or in part to another portion of the parcel occupied by such use which it became nonconforming so long as such relocation is outside of the canopy road overlay zone;
 - 2. continued indefinitely; or,

3. repaired and maintained, regardless of the cost of the materials and labor;

if, and only if, a permit for that fence is issued by Leon County, pursuant to any and all applicable criteria and standards set out in section 10-4.206.

SECTION 4. Section 10-6.309 of Chapter 10 of the Code of Laws of Leon County, Florida, entitled “Schedule of nonconformity regulations” is hereby amended to as follows:

Sec. 10-6.309. Schedule of nonconformity regulations.

Schedule of Nonconformities: Extent of Permissible Activities (Absent Nonconformity Relief)			
Type of nonconformity	Repair and maintenance	Remodeling	Discontinuance
Nonconforming building or structure	Yes, if SF or 2F, all others, <u>except fences within the canopy road overlay zone as of April 8, 2008</u> : cost not to exceed 50% of structural value; provided if more than 50% must comply with parking	Yes, if SF or 2F, all others, <u>except fences within the canopy road overlay zone as of April 8, 2008</u> : cost not to exceed 50% of structural value; provided if more than 50% must comply with parking	Yes, but not to exceed 24 months; if more than 24 months, expenditure more than 50% must be conformity with article; if less than 50% only be deviation, except SF and 2F
Nonconforming lot (undeveloped)	Not applicable	Not applicable	Not applicable
Nonconforming use of a conforming building or structure	Not applicable	Not applicable	Yes, but not to exceed 24 months
Nonconforming use of land, <u>except fences within the canopy road overlay zone as of April 8, 2008</u>	Not applicable	Not applicable	Yes, but not to exceed 24 months
<u>Fences within the canopy road overlay zone as of April 8, 2008</u>	<u>Yes, cost not limited to a percentage of original structural value</u>	<u>Not applicable</u>	<u>Not applicable</u>

Schedule of Nonconformities: Activities Resulting in the Loss of Legal Nonconformity Status				
Type of nonconformity	Abandonment	Extension/ expansion	Reconstruction (< 50% of Value)	Change of use (more intensive)
Nonconforming use or structure	Yes	Yes, if over 10% except SF or 2F, <u>except fences within the canopy road overlay zone as of April 8, 2008</u> :	Yes, except SF or 2F, <u>except fences within the canopy road overlay zone as of April 8, 2008</u> :	Yes, if to a more intensive use
Nonconforming lot (undeveloped)	Not applicable	Not applicable	Not applicable	Not applicable
Nonconforming use of a conforming building or structure	Yes	Yes	Not applicable	Yes, if to a more intensive use

Nonconforming use of land, <u>except fences within the canopy road overlay zone as of April 8, 2008</u>	Yes	Yes	Not applicable	Yes, if to a more intensive use
<u>Fences within the canopy road overlay zone as of April 8, 2008</u>	No	Yes	<u>No; repair cost not limited to a percentage of original structural value</u>	<u>Not applicable</u>

SECTION 5. Section 10-6.707(c) of Chapter 10 of the Code of Laws of Leon County, Florida, entitled “Canopy roads overlay district; development standards” is hereby amended to as follows:

Sec. 10-6.707. Canopy roads overlay district.

(c) *Development standards.* The canopy road overlay includes as all lands within 100 feet from the centerlines of the roadways. The following special restrictions shall apply within the canopy road overlay:

- (1) All structures shall be set back a minimum of 100 feet from the centerline of the canopy road except that a permit may be issued by Leon County for the repair or maintenance of an existing, lawfully established fence, pursuant to any and all applicable criteria and standards set out in section 10-4.206.
- (2) Any structure which exceeds 40 feet in height must be set back an additional one foot for every one foot in excess of 40 feet in height.
- (3) No clearing may occur in the canopy road overlay, (100 feet from the centerline of the road) unless authorized for health, safety or welfare of the public.
- (4) Any part of the canopy road overlay that is cleared or has trees removed from it must be widened in some other location by the same amount that was

removed.

- (5) A full analysis of the impact of a development on the affected canopy road shall be submitted by the applicant at the time of development review.
- (6) Joint access to canopy roads shall be required unless there is no alternative. New curb cuts on canopy roads shall be designed to serve more than one development.
- (7) If the site is accessible by roads other than the canopy road, it shall not have direct access to the canopy road.

SECTION 6. Conflicts. All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict, as of the effective date of this Ordinance, except to the extent of any conflicts with the Tallahassee-Leon County Comprehensive Plan, as amended, which provisions shall prevail over any parts of this Ordinance which are inconsistent, either in whole or in part, with the Comprehensive Plan.

SECTION 7. Severability . If any section, subsection, sentence, clause, phrase or 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 Ordinance.

SECTION 8. Effective date. This ordinance shall be effective according to law.

DULY PASSED AND ADOPTED BY the Board of County Commissioners of Leon County, Florida, this 25th day of November, 2008.

LEON COUNTY, FLORIDA



BY:

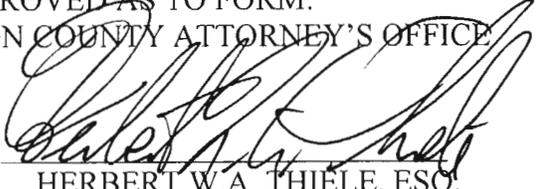

BRYAN DESLOGE, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS

ATTEST:
BOB INZER, CLERK OF THE COURT
LEON COUNTY, FLORIDA

BY:


APPROVED AS TO FORM:
LEON COUNTY ATTORNEY'S OFFICE

BY:


HERBERT W.A. THIELE, ESQ.
COUNTY ATTORNEY