

TOWN OF LOXAHATCHEE GROVES

155 F Road Loxahatchee Groves, FL 33470



AGENDA MEMO

TO: Town Council of Town of Loxahatchee Groves

FROM: Glen J. Torcivia, Town Attorney

DATE: August 6, 2024

SUBJECT: Discussion Item: Review of Proposed Culvert Ordinance (revised)

Background:

As the Council is aware, the special acts that provided for the duties and other provisions governing the Loxahatchee Groves Water Control District (“District”) became an ordinance of the Town when the District became a dependent district and are set forth in the Town’s Code of Ordinances as Chapter 46 “Special Districts”. To ensure proper drainage in the Town, the safety of its residents, and the protection of both public and private property, the Town must have the ability to address failing private culverts, to repair, replace, or remove the same if the responsible property owner(s) fails to correct such deficiencies, and to charge the costs of this abatement to the owner. Chapter 46 includes these powers, but is lacking procedures to legally accomplish the same.

Revisions to Chapter 46 were initially drafted to (1) reorganize Chapter 46 to be user friendly; (2) ensure that its procedures and protections for property owners were legally sufficient; (3) include a voluntary culvert assessment program for residents; and (4) add other updates (collectively “Culvert Ordinance”). The Culvert Ordinance was presented to the Council for discussion at its meeting on May 21, 2024. Based upon comments from the Council, it was determined that the Culvert Ordinance be revised to include only those revisions currently needed to ensure that it includes adequate due process provisions and procedures to better protect property owners and to ensure the chapter is in compliance with current law and user friendly. Those revisions have been made and, generally, most of the original “special acts” of the District remain, although reorganized and updated, and only legally required procedures and protections for property owners have been added in this revised Culvert Ordinance.

Some of the substantial revisions are highlighted below:

1. Section 46-1:

- a. Subsection (d) - For legal and other purposes, **new** language clarifies the relationship between the Town and the District as it relates to the implementation and enforcement of the Ordinance.

- b. Subsection (e) - The current ordinance uses certain key words, but does not define those words. **New** language has been added to provide residents clear guidance regarding how these key words are defined.
- 2. Section 46-2: Chapter 46 currently allows for a single entity to represent all property owners who use the same culvert, but it does not address all owners' responsibilities to maintain the culvert. **New** language requires a maintenance agreement which puts all affected property owners on notice of their responsibilities so the maintenance of the private culvert does not fall on the Town or an unsuspecting property owner.
- 3. Section 46-3:
 - a. Chapter 46 currently authorizes the District to (1) notify a property owner of a violating culvert; (2) give the owner a set number of days to fix the issue (e.g. 30 days, 60 days); (3) enter the property, if not timely fixed by the owner, and perform the work; and (4) assess the a lien against the property for the costs of the work. **New** language addresses due process protections for property owners, including but not limited to, proper notice of the violation, the right to appeal the violation before the special magistrate, proper procedures/protections for such appeal, a requirement that owners be given a reasonable amount of time to comply the violation, etc.
 - b. Chapter 46 currently authorizes the District to assess properties when the Town abates a private culvert violation. **New** language provides a more detailed legal basis for such assessments. See subsection (c).
 - c. Chapter 46 currently authorizes the District to address emergency situations but does not include detailed procedures. **New** language provides needed procedures and protections for property owners.

Recommendation:

Discuss and provide direction to staff to bring the proposed ordinance back for First Reading.