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[ARTICLE II. - ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS AND WATER WELL PERMITTING*](#)

Editor's note—

Ord. No. 2002-28, § 1, adopted July 9, 2002, changed the title of article II from "Onsite Sewage Disposal" to "Onsite Sewage Treatment and Disposal Systems and Water Well Permitting." The historical notation for article II has been retained for reference purposes.

Cross reference—Water and sewer systems, § 110-36 et seq.; stormwater utility, § 110-361 et seq.

State law reference—Authority to regulate sewage collection and disposal, F.S. § 125.01(1)(k); onsite sewage disposal systems, F.S. § 381.0065.

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[DIVISION 1. - GENERALLY](#)

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For the purposes of this article, the following words and phrases shall have the same meaning as defined in F.S. ch. 381, F.S. ch. 373, F.A.C. ch. 64E-6, F.A.C. ch. 64E-8, F.A.C. ch. 40-C, and F.A.C. ch. 62-555 except as noted below, unless from the context a different meaning is clearly intended. In addition, section 1-2 applies to this article.

Alternative or emergency use well means a well, which may be used as a potable water supply that is not the primary water supply.

Block means a lot or group of lots entirely and immediately surrounded by streets or highways, railroad rights-of-ways, road rights-of-ways, watercourses, drainage easements, subdivision boundaries, multifamily boundaries, or any combination thereof. In the absence of above criteria, a block shall be considered to be 500 feet from the subject property boundaries.

County health department means the county health services section.

Department means the county's natural resources management office or the county health department's, environmental health services section.

Health officer means any person appointed by the board of county commissioners to carry out the duties and enforce the provisions of this article. The health officer shall include, but not be limited to, employees of the county health department's, environmental health services section, the county office of natural resource management, and county code enforcement division.

Water well means a well as defined in F.S. ch. 373.303(7), which includes any excavation that is drilled, cored, washed, driven, dug, jetted, or other wise constructed when the intended use of such excavation is for the location, acquisition, development or artificial recharge of groundwater.

(Code 1979, § 23-125; Ord. No. 96-14, § 2, 3-26-96; Ord. No. 2002-28, § 2, 7-9-02)

Cross reference—Definitions generally, § 1-2.

Sec. 46-37. - Penalty.

Any person found to be in violation of this article shall be punished as provided in section 1-7. The county shall have the authority to enforce compliance with the provisions of this article by appropriate legal action in a court of competent jurisdiction, or by enforcement through the county code enforcement board, pursuant to the provisions of chapter 2, article VI, division 2.

(Code 1979, §§ 23-133, 23-134)

Sec. 46-38. - Declaration of intent.

It is hereby declared to be the intent of the board of county commissioners in enacting this article to establish minimum standards concerning health, safety and general welfare in regard to the construction, installation, utilization, operation, alteration, modification, repair and maintenance of onsite sewage treatment and disposal systems within the county; to protect the groundwater, surface water and the environment from harmful contamination from onsite sewage treatment and disposal systems and increased levels of protection for properties lying below the 100-year base flood elevation; to establish standards for onsite sewage treatment and disposal systems which meet or exceed the minimum standards established by F.S. ch. 381 and the state department of health, under F.A.C. ch. 64E-6, as such standards may be amended from time to time; to designate the county health department's environmental health services section as the local permitting agency; to provide a method and procedure for the permitting of such onsite sewage treatment and disposal systems, so as to ensure strict compliance with applicable, minimum standards; to provide special requirements and environmental protection for onsite sewage treatment and disposal systems in industrial, manufacturing and commercial land use classifications; to ensure full compliance with groundwater monitoring requirements of the Federal Resource Conservation and Recovery Act; to protect, control and conserve the quality and availability of groundwater supplies in the county; in the interest of the public health, safety and welfare of the citizens and visitors of the county provide necessary regulation for the location, construction, repair, and abandonment of water wells less than six inches in diameter except potable wells within F.A.C. ch. 524 delineated areas through delegation from the water management district; and to reduce the risk of contamination to potable water wells from inundated flood waters.

(Code 1979, § 23-123; Ord. No. 96-14, § 3, 3-26-96; Ord. No. 2002-28, § 3, 7-9-02)

Sec. 46-39. - Incorporation of applicable Florida Statutes and Florida Administrative Code sections.

- (a) The provisions of F.S. ch. 381 and F.A.C. ch. 64E-6, Standards For Onsite Sewage Treatment and Disposal Systems, except for F.A.C. ch. 64E-6.030, are hereby specifically adopted and incorporated in this article by this reference, as the minimum standards for the permitting, construction, installation, utilization, operation, alteration, modification, repair and maintenance of onsite sewage disposal systems in the county; provided, however, that to the extent such standards do not meet or exceed the provisions of this article, the requirements of this article shall control. Further, all references to state forms set forth in F.S. ch. 381, F.S. ch. 373, F.A.C. ch. 64E-6, F.A.C. ch. 64E-8, F.A.C. ch. 40 C-3, or F.A.C. ch. 62-555 shall be construed, for the purposes of this article, to refer to the equivalent state or county forms.
- (b) The following modifications to F.A.C. ch. 64E-6 shall apply to all onsite sewage disposal systems installed in the county:
- (1) All septic tanks installed in the county shall be divided into, or have the equivalent of, two compartments, designed in accordance with applicable sections of F.A.C. ch. 64E-6.
 - (2) All septic tanks installed and all septic systems repaired in the county shall be equipped with a state department of health (DOH) approved tank outlet filter device.
 - (3) In addition to the soil replacement provisions set forth in F.A.C. ch. 64E-6, a soil excavation inspection shall be required for systems where severely or moderately limiting soil textures exist.
 - (4) In addition to the provisions of F.S. ch 381.0065(4)(a) through (f), subdivisions and lots may be developed with onsite sewage disposal systems provided that there are no more than four lots per acre or such subdivisions and lots fully comply with the variance provisions, procedures, and requirements set forth in section 46-69.

(Code 1979, § 23-124; Ord. No. 96-14, § 1, 3-26-96; Ord. No. 2002-28, § 4, 7-9-02)

Editor's note—

Ord. No. 09-01, § 1, adopted Jan. 13, 2009, repealed § 46-40, which pertained to onsite sewage treatment and disposal system floodplain management for new construction. See the Code Comparative Table for complete derivation.

| [Secs. 46-40—46-60.](#) - Reserved.

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DIVISION 2. - PERMIT

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| [Sec. 46-61.](#) - Required; application generally.

- (a) No person shall cause, nor allow the construction, installation, alteration, modification or repair of an onsite sewage disposal system without first applying for and obtaining an onsite sewage disposal permit. Application for approval for the use of individual sewage disposal facilities for a single lot, property or building shall be made by the owner, or the owner's legally authorized representative, on such form as provided by the department. The application shall be completed in full, attested to and signed by the applicant, and shall be accompanied by all required exhibits and fees, prior to, and as a condition for, acceptance by the department.
- (b) The department shall be provided with the mean annual flood elevation or 100-year base flood elevation for the proposed site location of the onsite sewage treatment and disposal system or the proposed potable water well whichever is appropriate.
- (c) No person shall cause, nor allow the location, construction, repair, and abandonment of water wells less than six inches in diameter within the geographic boundaries of the county after the effective date of both this division and the delegation agreement with the water management district without first applying for and obtaining a well permit. The application shall be completed in full, attested to and signed by the applicant, and shall be accompanied by all required exhibits and fees, prior to, and as a condition for, acceptance by the department.
 - (1) The following well types are exempt from the provisions of this section.
 - a. Any well, pump or other equipment used temporarily for dewatering purposes, provided the well does not penetrate a confining layer.
 - b. A well constructed solely for the purpose of a test hole.
 - c. Temporary monitoring wells installed in the surficial aquifer system as part of approved contamination or environmental assessment activities.
 - d. Wells within F.A.C. ch. 524 delineated areas.
 - e. Wells six inches in diameter or greater.
 - (2) Each property is allowed one potable and one nonpotable well. Installation of additional water wells that prevent development of adjacent properties are prohibited. If all the following conditions are met an administrative waiver may be granted after review of existing and proposed well locations and uses.
 - a. No improperly abandoned water wells exist on the property.
 - b. Existing and proposed water wells are or will be utilized.
 - c. Proposed water wells are placed to meet setback requirements and are not intentionally located to prohibit development of adjacent properties.
 - (3) Permits are required for the following alternative and emergency use wells:
 - a. New alternative or emergency use wells.
 - b. Existing nonpotable wells converted to an alternative or emergency use well.
 - c. Existing potable wells used as an alternative or emergency use well after connection to a public water supply.

- (4) One or more state approved backflow prevention devices will be required for alternative and emergency use wells.

(Code 1979, § 23-126(a); Ord. No. 2002-28, § 6, 7-9-02)

Sec. 46-62. - Soil profile test.

- (a) Within 15 days after the date of acceptance of an application by the department, the applicant shall dig one or more soil profile test holes, at least 12 inches in diameter, to a depth of at least six feet, within the proposed drainfield area or areas of the subject property. If more than one drainfield is required, the department may require a separate soil test hole for each drainfield area. Soil materials from soil test holes shall be deposited adjacent to the holes for the purpose of obtaining a soil profile delineating the soil classification within the absorption field.
- (b) The department shall not inspect any soil profile test hole, which has been excavated prior to the date of acceptance of an application by the department. Further, the applicant shall notify the department after preparation of the required soil profile test holes. The department shall then inspect the soil test holes; provided, however, that soil test holes shall not be inspected prior to 24 hours after excavation. The applicant shall take all steps necessary to prevent injury to persons or property, which may result from the test hole excavation. The applicant shall fill all soil test holes within five calendar days following inspection by the department. The department shall not issue any onsite sewage treatment and disposal permits until the applicant has presented an affidavit that the test hole has been properly filled. Failure to dig the test hole and to notify the department within 15 days of the date of submission of the application shall render the application void. The applicant must thereafter submit a new application and fee, in the same manner as an original application, for further consideration by the department for a permit. Violations of the requirement to fill all soil test holes within five calendar days following inspection by the department may be prosecuted against both the applicant and the owner of the property upon which the unfilled soil test hole is located, pursuant to the provisions of section 46-37.

(Code 1979, § 23-126(b); Ord. No. 2002-28, § 7, 7-9-02)

Sec. 46-63. - Conditions for issuance.

- (a) The department shall issue an onsite sewage treatment and disposal permit only upon its determination that the applicant has completed the required application procedure, and has fully complied with all of the applicable requirements set forth in this article, as well as F.S. ch. 381 and F.A.C. ch. 64E-6.
- (b) All onsite sewage treatment and disposal permits issued by the department shall be on an interim basis only, and shall be deemed void 365 days after the date of official notice that public sewer is available to the subject property, pursuant to the provisions of F.S. § 381.00655.
- (c) Onsite sewage treatment and disposal and water well permits issued by the department are nontransferable to another location. In compliance with the requirements of F.S. § 381.0065(4) permits may be transferred with the original applicant's written approval.
- (d) All onsite sewage treatment and disposal permits issued by the department shall be deemed to automatically expire and terminate upon the occurrence of one or more of the following:
- (1) A building permit for construction of a habitable structure on the subject property is not obtained from the appropriate governmental authority within 120 days after the date of issuance of the onsite sewage treatment and disposal permit.
 - (2) Construction is not commenced on the subject property within one year of the date of issuance of the onsite sewage disposal permit. For the purpose of this subsection, commencement of construction shall be deemed to mean the pouring of a foundation and slab, or other comparable work, as determined by the department.
 - (3) The building permit for construction on the subject property expires or is revoked by the appropriate governmental authority.
 - (4) The violation of any condition included in any variance granted by the county onsite sewage disposal variance board, pursuant to the provisions of section 46-69.
 - (5) Pursuant to F.A.C. ch. 64E-6.003(1) an onsite sewage treatment and disposal system permit shall not exceed a period of 21 months. If the onsite sewage treatment and disposal system is not completed within the 21-month period, the applicant must reapply for a new permit and submit associated fees.
- (e) If a building permit has not been obtained within 120 days after the date of issuance of the onsite sewage treatment and disposal permit, the department may, upon written request and justification by the applicant, as determined by the department, renew or extend the onsite sewage disposal permit for a period of time not to exceed six months from the date of issuance of the onsite sewage disposal permit. Any such request for a renewal or extension by the applicant shall be accompanied by a renewal fee, which fee shall be equal in amount to the original permit fee as specified by the board of county commissioners.
- (f) No person may submit a new application for an onsite sewage disposal permit for a specific parcel of property until 30 days after a prior application for permit has been denied or until 30 days after the expiration of a previously issued onsite sewage disposal permit for the same subject property. For the purpose of this subsection, the issuance of a notice of deficiency shall not constitute denial of an application for onsite sewage disposal permit.
- (g) If the department denies the issuance of any onsite sewage treatment and disposal permit upon its determination that the

applicant does not fully comply with the density restrictions or minimum lot area requirements of F.S. 381.0065(4), the applicant may request a hearing before the county onsite sewage disposal variance board, which may uphold the department's denial or approve the issuance of an onsite sewage disposal permit under the terms and conditions set forth in section 46-69.

(Code 1979, § 23-127; Ord. No. 2002-28, § 8, 7-9-02)

Sec. 46-64. - Connection to public sewer required.

- (a) The department shall not issue onsite sewage treatment and disposal permits for any property to which public sewerage service is available; except as provided in F.S. § 381.00655 and for the property located in limited capacity sewer service areas, under the provisions of section 46-65.
- (b) It shall be the responsibility of the applicant of a new system or modification to contact the nearest public sewerage system to determine the availability and feasibility of service, and no onsite sewage treatment and disposal permit shall be issued unless, and until, the appropriate public sewerage system certifies, in writing, to the department that sewer service is not available within the parameters set forth in F.S. § 381.00655, and this article.

(Code 1979, § 23-128; Ord. No. 2002-28, § 9, 7-9-02)

Sec. 46-65. - Additional criteria for permits in limited capacity sewer service areas.

- (a) A limited capacity sewer service area shall mean those areas of the county in which the board of county commissioners, by ordinance or resolution, determines that limited or no capacity exists for additional sewer service connections.
- (b) An onsite sewage treatment and disposal permit shall only be issued in a limited capacity sewer service area under the following conditions:
 - (1) That the applicant for an onsite sewage treatment and disposal permit in a limited capacity sewer service area has submitted a completed application for public sewerage service, and has paid all required fees, but has been denied a sewer connection permit due to the lack of adequate sewage capacity to allow the applicant to connect immediately to the available public sewer.
 - (2) That the property for which the application has been filed receives its water supply from a public water supply system.
 - (3) That the subject property has an existing dry line sewage connection to a fully constructed sewer collection system, with a plug placed in the dry line to prevent the flow of sewage wastes to the sewer collection system.
 - (4) That the applicant has filed a fully completed application for onsite sewage treatment and disposal permit with the department, and has paid all applicable fees for issuance of an onsite sewage treatment and disposal permit in a limited capacity sewer service area. All onsite sewage treatment and disposal systems in a limited capacity sewer service area shall be sized in accordance with all provisions of applicable sections of F.A.C. ch. 64E-6 and this article.
- (c) Any onsite sewage treatment and disposal permit issued for property located in a limited capacity sewer service area shall expire and terminate upon the issuance of a sewer permit or permits to all of the holders of, or persons utilizing, a limited capacity service area onsite sewage treatment and disposal permit. Further, any onsite sewage treatment and disposal permit issued for property located within a limited capacity sewer service area shall automatically expire 120 days after the mailing of a notice of approval of an application for sewer service by the county utility services department to the holders of, or persons utilizing, a limited capacity service area onsite sewage treatment and disposal permit.
- (d) After the expiration or termination of an onsite sewage treatment and disposal permit for a limited capacity sewer service area, it shall be unlawful to dispose of sewage waste from the subject property other than to the public sewer.

(Code 1979, § 23-129; Ord. No. 2002-28, § 10, 7-9-02)

Sec. 46-66. - Onsite sewage disposal systems in commercial, manufacturing and industrial areas.

- (a) No onsite sewage treatment and disposal permit shall be issued for disposal of any industrial, manufacturing, or commercial waste liquid, including, but not limited to: process water, chemicals, oil, gasoline or any other similar substance. All such liquid waste must be handled by a separate collection and disposal system designed to protect surface water and groundwater quality, and must be approved and permitted by the state department of environmental protection.
- (b) No initial, annual or temporary business tax receipt shall be issued by the county tax collector for any business, business location, profession or occupation, for any property within the county located in a commercial, manufacturing or industrial land use classification, as defined in chapter 62, article VI (zoning), or its equivalent, where such business, business location, profession or occupation on the property is served by an onsite sewage treatment disposal system, until such application for initial, annual or temporary business tax receipt has been reviewed and approved by the county's office of natural resource management and county health department's environmental health services section.
- (c) Any person applying for an initial, annual or temporary business tax receipt for any business, business location, profession or occupation on property located within a commercial, manufacturing, or industrial land use classification, shall also

complete an information form provided by the department.

- (d) The county tax collector may renew a business tax receipt for any business, which has not changed ownership, nor materially changed in its operation, unless otherwise notified by the county's office of natural resource management or county health department's environmental health services section. If a request for renewal of a business tax receipt is denied pursuant to this subsection, the application shall be processed in the same manner as a new application.
- (e) The county office of natural resource management shall review all applications for a business tax receipt for any business, business location, profession or occupation, on property located in a commercial, manufacturing, or industrial land use classification, as specified in subsection (a). Such review shall include, at a minimum, the type and method of operations, complete inventory of chemicals or raw material to be used, waste or byproducts produced, methods of recovery, and storage or disposal of waste or byproducts. The division of natural resource management shall, as a condition of approval of the business tax receipt, specify methods of collection, storage, transportation and disposal of all hazardous waste or byproducts.
- (f) As a condition of approval of a business tax receipt for those businesses and properties which fall within this section, the applicant shall be required to install one or more groundwater monitoring wells, which shall be installed down gradient from each onsite sewage disposal system.
 - (1) The property owner or applicant shall have a registered professional engineer prepare sealed plans for the location and design of all monitoring wells. These plans shall be submitted to the department for approval prior to installation. Approval shall be based on full compliance with the latest edition of the Federal EPA Resource Conservation Recovery Act, Groundwater Monitoring Technical Guidance Document, a copy of which shall be on file in the division of natural resource management.
 - (2) The office of natural resource management shall specify the parameters to be checked and the frequency of monitoring of all groundwater monitoring wells installed under this provision. These parameters shall be based on the water types indicated in the latest edition of the Federal EPA List of Potential Hazardous Waste Generators by SIC Code, a copy of which shall be on file in the division of natural resource management. Based on changes in operations, or results from previous analyses, such parameters may be amended from time to time by the department, and the public shall be promptly notified of such changes in such parameters. A copy of any list of potential hazardous waste generators, as amended, shall be kept on file in the division of natural resource management.
 - (3) Representatives the office of natural resource management may also take additional samples from any monitoring well, and have the samples analyzed for any other substances.
- (g) If the office of natural resource management determines that such toxic or hazardous chemicals or wastes, other than domestic sewage, shall not be produced onsite, or disposed of into the onsite sewage treatment and disposal system, the department may temporarily waive the requirement for a monitoring well. Such waiver shall be reviewed by the department on an annual basis, or more frequently as needed. If at any time, conditions change, one or more monitoring wells may be required, pursuant to the provisions of this article. For applications where existing monitoring wells have been installed, it shall be the responsibility of the applicant to provide documentation of the monitoring plan, including details of the well construction, and any other reasonable, relevant information requested by the department. The office of natural resource management may approve the existing plan, or may require the plan to be updated by a registered professional engineer, which may include the requirement for additional monitoring wells to be installed.
- (h) The county health and social services division shall not recommend that any business tax receipt be issued, nor issue any onsite sewage treatment and disposal permit in an industrial, manufacturing, or commercial land use classification, until such operation has been reviewed and approved by the office of natural resource management. Upon receiving notification of such approval by the office of natural resource management, the environmental health services section shall review the onsite sewage treatment and disposal system for compliance with all applicable state or local laws, rules or regulations. If the environmental health services section determines that the system is in full compliance, the health services section shall recommend the issuance of a business tax receipt.
- (i) It shall be the responsibility of the holder of a business tax receipt for any business, business location, profession or occupation on property located in a commercial, manufacturing or industrial land use classification, to sample each monitoring well at least quarterly, or more often if deemed necessary by the department, so as to have the samples analyzed by a certified laboratory, and to submit the written results within 15 days to the division of natural resource management. The cost of all sampling shall be paid by the holder of the subject business tax receipt.
- (j) It shall also be the responsibility of the holder of a business tax receipt which is subject to these regulations to fully and continuously operate in accordance with this article, as well as all information provided on the application forms, the approved monitoring plan, and any other relevant, reasonable condition imposed by the office of natural resource management or environmental health services section.
- (k) Before any change in operation, process, use of raw materials or chemicals, waste or byproducts produced, or methods of recovery, storage or disposal, the holder of a business tax receipt subject to these regulations shall immediately notify the division office of natural resource management in writing. The office of natural resource management shall review any proposed change before said change is implemented, and may request that the monitoring plan be updated by a registered professional engineer, including the installation of additional wells, or a modification in monitoring frequency or parameters.

(Code 1979, § 23-130; Ord. No. 96-14, §§ 4, 5, 3-26-96; Ord. No. 2002-28, § 11, 7-9-02; Ord. No. 2007-003, § 11, 2-20-07)

Sec. 46-67. - Fees.

The board of county commissioners may, by resolution or ordinance, authorize the levying and collection of fees by the office of natural resource management and county health department's environmental health services section, for the review of all applications, and any services required under this article. Such fees shall be nonrefundable, and shall accompany all applications, and shall be paid prior to the performance of any service requested.

(Code 1979, § 23-131; Ord. No. 96-14, 3-26-96; Ord. No. 2002-28, § 12, 7-9-02)

Sec. 46-68. - Suspension or revocation.

- (a) Any onsite sewage treatment and disposal permit issued under this article may be suspended by the department upon the occurrence of any of the following:
 - (1) Nonpayment of any fee established by the board of county commissioners pursuant to the provisions of section 46-67.
 - (2) Submission of false or erroneous information in an application, or in plans or other documents, which served as a basis for the issuance of the subject permit.
 - (3) The failure of a permit holder to comply with any of the requirements of this article, or any terms or conditions placed upon the issuance of the permit by the department.
- (b) Any onsite sewage treatment and disposal permit issued pursuant to this article may be revoked by the department upon the occurrence of any of the following:
 - (1) Nonpayment of any fee established by the board of county commissioners pursuant to the provisions of section 46-67.
 - (2) Submission of false or erroneous information in an application, or in plans or other documents, which served as a basis for the issuance of the subject permit, and failure of the permit holder to correct such information within the time period specified by the department.
 - (3) The failure of the permit holder to comply with any of the requirements of this article, or any of the terms and conditions of the permit issued, after the permit holder has been notified of such noncompliance by the department, and has failed to correct the deficiencies within the time period specified in the notice.
- (c) If an onsite sewage treatment and disposal permit has been revoked, the permit shall not be reissued until the applicant has filed a new application and has paid an additional application fee.
- (d) No person shall operate under any onsite sewage treatment and disposal permit that has been suspended or revoked pursuant to this section.

(Code 1979, § 23-132; Ord. No. 2002-28, § 13, 7-9-02)

Sec. 46-69. - Variance board.

- (a) There is hereby created and established the Brevard County Onsite Sewage Disposal Variance Board. This board shall be comprised of seven members, including the following: the director of the natural resources management office or authorized designee; the director of the building department or authorized designee; the director of the county health department or authorized designee; one individual representative of the county building and construction industry, appointed by the board of county commissioners; one individual representative of the septic industry or a professional engineer appointed by the board of county commissioners; and two individual representatives of the county homeowners, appointed by the board of county commissioners.
- (b) The individual representatives shall be appointed by the board of county commissioners, as set forth above, to serve one-year terms, but shall serve at the pleasure of the board of county commissioners, or until their successors are appointed. With the exception of the chairman, each commissioner shall appoint one individual representative.
- (c) The presence of four members of the variance board at any meeting or hearing shall constitute a quorum.
- (d) The variance board may adopt further rules and procedures by which the board shall operate.
- (e) Any applicant who is denied the issuance of any onsite sewage disposal permit by the department on the grounds specified in section 46-63(g), may file with the department a written application for a variance and a hearing before the county onsite sewage disposal variance board. The written application shall be submitted on forms provided by the department, and filed within 30 days after the date of denial of the requested permit for an onsite sewage treatment and disposal system.
- (f) All applications for variances shall be accompanied by a non-refundable filing fee, the amount of which shall be established by resolution of the board of county commissioners.
- (g) Meetings of the variance board shall be held at the call of the department, and at such other times as the board may determine. The department shall provide each variance applicant with notice of their scheduled hearing time, date, and location before the board. This notice will be sent by U.S. mail to the address stated on the variance application at least ten days prior to the scheduled hearing date.
- (h) The variance applicant may present any pertinent information to the variance board for its consideration at the scheduled hearing.
- (i) All hearings before the variance board shall be open to the public and the records of the board shall constitute public

records.

- (j) The variance board shall consider the merits of each variance application, and if it determines that a variance is warranted, such variance shall only be granted conditioned upon full compliance with any or all of the following restrictions which the variance board deems necessary to insure that the permitted onsite sewage treatment and disposal system will not adversely affect the health of the applicant or other members of the public, or significantly degrade groundwater or surface water:
- (1) Public water completely loops the applicable block, is available and there is sufficient capacity to serve all properties within said block. The applicant must connect the subject property to said public water system, when available. Blocks which abut canals or major areas of green space, such as parks or schools, do not need to satisfy the complete looping requirement.
 - (2) An NSF listed Class I aerobic system, or other comparable advanced wastewater treatment system, in any soil or area classified by the United States Department of Agriculture, Soil Conservation Service, as having severe or very severe limitations for absorption fields, regardless of the extent to which such soil is improved or replaced, or on any lot where any part of the system will be located laterally within 75 feet from wetlands or any stream or canal which is connected to the Indian River Lagoon System. The county onsite sewage disposal variance board may also require such aerobic or other comparable advanced onsite sewage disposal systems in any location where it deems a higher level of sewage treatment necessary to protect the public health or environment.
 - (3) The installation of water wells, including dry wells, may be limited in number, location or character, as deemed necessary to protect the public health or environment.
 - (4) Maintenance of space for absorption and expansion by prohibiting or limiting the construction of patios, walks, drives, sheds, pools or other ancillary improvements or covered areas.
- (k) As a condition(s) of approval, the county onsite sewage disposal variance board may impose other additional setbacks from Class I or Class II water-bodies, and/or larger tanks or drainfields, and/or nutrient reducing systems, and/or additional buffers deemed necessary to insure protection of wetlands, the groundwater and surface water, including the Indian River Lagoon System, and to ensure the protection of the public health and environmental quality.
- (l) It shall require an affirmative vote of a majority of the variance board members present at a hearing to grant a requested variance. A tie vote will result in a decision upholding the department's previous denial of the permit.
- (m) If an applicant certifies to the department that the applicant shall fully comply with all four restrictions listed above, the application may be administratively approved by the department without reference of the application to the variance board. For property at least 0.25 acres and a public water supply does not completely loop the block, the application may be administratively approved by the department excluding subsection 46-69(j)(1).
- (n) If no more than 30 percent of all other lots in the same block as that of the applicant's lot have been granted any onsite sewage treatment and disposal permit, the application may be administratively approved by the department without the public water and NSF listed Class I aerobic system requirements. Further, if no more than 66 percent of all other lots in the same block as that of the applicant's lot have been granted any onsite sewage treatment and disposal permit, the application may be administratively approved by the department without the NSF listed Class I aerobic system requirement.
- (o) In the event of a tie vote for the variance board or any applicant is not satisfied with the conditions of approval required by the county onsite sewage disposal variance board, such applicant may thereafter appeal the decision to the board of county commissioners.
- (p) The county onsite sewage disposal variance board shall only have the authority to grant such relief as specifically provided in this section. All other applications or requests for relief shall vest in the state advisory review variance board, pursuant to applicable provisions of the Florida Administrative Code.

(Code 1979, § 23-135; Ord. No. 94-15, § 1, 6-21-94; Ord. No. 2002-28, § 14, 7-9-02)

Sec. 46-70. - Well construction permits.

Wells requiring a well permit shall meet the following standards in addition to those referenced in section 46-39.

- (1) Potable water well heads are required to be at least 36 inches above the mean annual flood elevation or six inches above the 100-year base flood elevation whichever is higher.
- (2) The well head shall extend a minimum of 12 inches above the finished grade other than public wells.
- (3) External pumps and associated electrical service connections serving potable wells shall be located no less than six inches above the 100-year base flood elevation.
- (4) A certificate of occupancy will not be issued for any construction for which a water well permit has been issued until the following conditions are met.
 - a. Satisfactory water sample results are required prior to final construction approval for potable water wells.
 - b. An inspection has been conducted of the potable water well to verify that the well is constructed as permitted.
 - c. Well completion report must be submitted to the department.

(Ord. No. 2002-28, § 15, 7-9-02)

Secs. 46-71—46-79. - Reserved.

Brevard County, Florida, Code of Ordinances >> PART II - CODE OF ORDINANCES >> Chapter 46 - ENVIRONMENT >> ARTICLE II. - ONSITE SEWAGE TREATMENT AND DISPOSAL SYSTEMS AND WATER WELL PERMITTING >> DIVISION 3. - LAKE WASHINGTON AREA >>

DIVISION 3. - LAKE WASHINGTON AREA

[Sec. 46-80. - Area encompassed.](#)

[Sec. 46-81. - Definitions.](#)

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Sec. 46-80. - Area encompassed.

This division shall effect all properties within the unincorporated area of Brevard County within two miles of Lake Washington, west of I-95, and within the riverine floodplain of the St. Johns River.

(Ord. No. 2000-57, § 3, 11-28-00)

Sec. 46-81. - Definitions.

Accessory use means a building, structure or use as defined in, and consistent with, section 62-1102. Accessory uses shall include but not be limited to all impervious surfaces within the shoreline protection buffer requiring a county building permit.

Building area shall be defined as property that is under single ownership and consists of one or more contiguous lots in a platted subdivision, combined to meet or exceed the minimum area requirements of this ordinance. The area waterward of the ordinary high water level shall not be included when calculating the minimum building area requirements.

Class III waters means waters designated by the state for recreation, propagation and maintenance of a healthy, well-balanced population of fish and wildlife. This includes all waters within the county, except:

- (1) Those designated as class I or class II waters, class III shellfish areas, Outstanding Florida Waters, and Aquatic Preserves as described in this section;
- (2) Those waters that are part of a designated stormwater management system, which are utilized only for stormwater management and are not considered class III waters by the state department of environmental regulation;
- (3) Those waters that are manmade water bodies that do not have a direct surface water connection to natural water bodies;
- (4) Existing manmade water bodies not connected to the Indian River lagoon system that are incidental to bona fide agricultural operations utilizing best management practices (BMP's), on lands having been granted an agricultural tax exemption; and
- (5) Those existing manmade water bodies defined in subsection (4) of this definition which are undergoing conversion during development, as evidenced by an approved development order, to approved designated stormwater management systems not designed to outfall to waters of the state, and which do not increase sediment or pollutant loading to the receiving water body during construction.

Minor structures means non-habitable structures such as storage sheds, pump-houses and gazebos, and which do not exceed 400 square feet in total area.

Riverine floodplain means lands which have a surface water connection to a major surface water body during the 100-year flood.

(Ord. No. 2000-57, § 4, 11-28-00)

Sec. 46-82. - Minimum building area requirements, variance from the minimum building area requirements, habitable first floor elevations, and setbacks for the ordinary high water levels.

- (a) No building permits shall be issued after the effective date of the ordinance from which this division derives for those properties within the encompassed area unless:
- (1) The property for which a building permit is sought is served by a central sewage treatment facility, or a State approved onsite sewage disposal systems is used satisfying the following requirements:
 - a. If the property is being serviced by a public water system, then there must be a minimum building area of at least 10,890 square feet (.25 acre).
 - b. If the property is being serviced by a private well, then the minimum building area must be at least 18,000 square feet (.41 acre).
 - c. All onsite sewage disposal systems shall comply with the standards and provisions of within Section 381.065 Florida Statutes, Chapter 64E-6 Florida Administrative Code and sections 46-36 through 46-69 of this Code.
 - (2) The county onsite sewage disposal variance board shall hear variances relating to the minimum building area requirements of this section under the following conditions provided that no topographic or water table conditions exist on the subject property that would present a health hazard.
 - a. All other requirements and provisions of this division are met.
 - b. The property owner seeking a variance has submitted to the variance board sufficient written documentation to demonstrate that a reasonable, but unsuccessful, effort has been made to purchase contiguous property to comply with the minimum building area requirement.
 - (3) The minimum elevation of the first habitable floor for all structures located on any affected property shall be no less than the 100-year flood elevation for the subject area, as established by the Federal Emergency Management Agency (FEMA).
 - (4) All habitable structures located on the subject property shall be setback a minimum of 30 feet from the ordinary water level of any Class III adjacent body of water. Accessory uses as defined by section 62-1102 may be permitted closer to the ordinary high water level in accordance with the provisions of the section 62-3668.
 - (5) Properties shall, through the use of swales, berms, native vegetation or other appropriate methods, detain stormwater runoff prior to discharge to the surface water. A professional engineer shall design a stormwater system to retain the first one inch of runoff from impervious surfaces that drain to the shoreline. All requirements for stormwater management shall be reviewed and approved by the county manager or designee(s) and shall be inspected as necessary.

(Ord. No. 2000-57, § 5, 11-28-00)

Sec. 46-83. - Exemptions.

The restrictions in this division do not pertain to minor structures or accessory uses that do not require a connection to a public sewer or onsite sewage disposal system. Such exempted structures may include but are not limited to sheds, fences, boat docks, elevated walkways, pervious walkways, and the location of such structures are not prohibited under the provisions of sections 62-1102 and 62-3668.

(Ord. No. 2000-57, § 6, 11-28-00)

Sec. 46-84. - Appeals.

In the event a property owner is not satisfied with any administrative decision or decision of the county onsite sewage disposal variance board regarding the implementation of this division, such property owner may appeal the decision to the board of county commissioners. If so requested, the county onsite sewage disposal variance board may hear the appeal, take public comment and make a recommendation to the board of county commissioner as to the appropriateness of the interpretation or decision implementing this division. The board of county commissioner shall hold a second public hearing and shall make the final decision approving or disapproving the administrative decision or interpretation. An appeal from the decision of the county onsite sewage disposal variance board may proceed directly to the board of county commissioner. A written request for an appeal shall be filed with the county manager's office within 30 days of rendition of the decision or interpretation. The written decision or interpretation shall specify the precise basis for the determination and supporting rationale therefore.

(Ord. No. 2000-57, § 7, 11-28-00)

Sec. 46-85. - Penalties.

Violations of this division shall be enforced pursuant to F.S. § 125.69, or Chapter 2, Article VI, Division 2. of this Code. The

provisions of this section are an additional and supplemental means of enforcing county codes and ordinances. Nothing in this section shall prohibit the county from enforcing this section by injunctive relief, or by any other means provided by law.

(Ord. No. 2000-57, § 8, 11-28-00)

Sec. 46-86. - Administration.

The Environmental Health Services Section of the Brevard County Health Department, and the county manager or designee (s) shall be responsible for the general administration of this division of this article. Review of applications and all administrative decisions shall be coordinated by the appropriate agency. Written confirmation of any decision or finding relating to applications or review made pursuant to this division and letters of interpretation or intent shall be provided upon request.

(Ord. No. 2000-57, § 9, 11-28-00)

Secs. 46-87—46-90. - Reserved.