

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

<u>CATEGORY:</u> Development/Planning/Zoning	<u>CODE NUMBER:</u> AC-13-2
<u>TITLE:</u> Procedures for Administrative and Legislative Interpretations of the Lee County Comprehensive Plan	<u>ADOPTED:</u> 01/16/18
	<u>AMENDED:</u>
	<u>ORIGINATING DEPARTMENT:</u> Community Development

A. PURPOSE/SCOPE:

This administrative code establishes procedures for administrative and legislative interpretations of the Lee County Comprehensive Plan (the Lee Plan). These procedures supplement the Administration Chapter of the Lee Plan. If there is a conflict between this code and the Lee Plan, the Lee Plan will prevail.

B. APPLICABILITY:

Administrative Interpretations. The Lee Plan provides an applicant of a development permit whose property rights are directly affected by the Plan the right to an administrative interpretation of the Plan as it affects their property.

Legislative Interpretations. The Lee Plan provides requests for legislative interpretations by any one member of the Comprehensive Plan Annotations Committee (CPAC), as described in the Lee Plan, in response to a question raised by the Board of County Commissioners, collectively or by any one commissioner, by any member of the county administration responsible for administering the Plan, by the Local Planning Agency (LPA), by the Lee County Hearing Examiner, or by any applicant for development regulated by the Plan.

C. PROCEDURE FOR ADMINISTRATIVE INTERPRETATIONS OF THE LEE PLAN:

(1) Interpretation Request. Applicants seeking an administrative interpretation must submit a written request, on a form provided by the County, with the necessary information specified in the application for the subject matter of the interpretation, and, the following:

- a. The Request must clearly and concisely state the Lee Plan provision(s) in question, the affected property and property rights, the proposed development parameters subject to the interpretation, and the specific question to be answered. If the Request is predicated on a particular set of facts or circumstances, these must be fully explained.
- b. The Request must include an opinion or memorandum of law providing the Applicant's interpretation of the Lee Plan provision(s) and a discussion of the legal issues involved. A separate planning analysis must also be provided demonstrating the applicant's interpretation is consistent with other provisions of the Lee Plan.

- c. Requests that do not sufficiently demonstrate that property rights of a specific property will be directly affected by the Lee Plan will not be processed.

(2) Submittal and Filing Fee.

- a. *Submittal.* The request and required materials must be submitted to the Department of Community Development. Upon receipt of the request, the Department will assign a case number and date-stamp it received.
- b. *Filing Fee.* All requests must be submitted in conjunction with the required filing fee, as set forth in the Lee County External Fees and Charges Manual, as amended. A separate application fee will not be required if the request for a Minimum Use or Wetlands determination is in conjunction with an application for a building permit, development order, or planned development rezoning. The interpretation will be noted on the development permit approval, or included in a letter of denial.

(3) Administrative Interpretation. Staff will issue an administrative interpretation in writing within sixty (60) days after submittal of a complete application. The interpretation will contain findings and set forth the basis for the interpretation.

(4) Appeal. The Board will consider information submitted during the administrative interpretation process and will review only whether the standards set forth in the Lee Plan have been properly applied to the facts.

- a. Administrative interpretations may be appealed to the Board of County Commissioners by filing a written request within fifteen (15) days after issue date of the administrative interpretation.
- b. The Board will consider the appeal at a public hearing held within thirty (30) days after the written request for appeal. The Board may affirm or overrule the administrative interpretation. The Board's decision to overrule an administrative interpretation will be in writing and will be rendered within thirty (30) days after the date of the hearing.
- c. Once rendered, administrative interpretations are subject to challenge under the provisions of Chapter 163.3215, F.S.

D. PROCEDURE FOR LEGISLATIVE INTERPRETATIONS OF THE LEE PLAN:

(1) Interpretation Request. Applicants seeking an legislative interpretation must submit a written request, on a form provided by the County, with the necessary information specified in the application for the subject matter of the interpretation, and, the following:

- a. The Request must clearly and concisely state the Lee Plan provision(s), the affected property and property rights, the proposed development parameters subject to the interpretation, and the specific question to be answered. If the Request is predicated on a particular set of facts or circumstances, these must be fully explained.
- b. The Request must include an opinion or memorandum of law providing the Applicant's interpretation of the Lee Plan provision(s) and a discussion of the legal issues involved. A separate planning analysis must also be provided demonstrating the applicant's interpretation is consistent with other provisions of the Lee Plan.

c. Requests that do not sufficiently demonstrate that property rights of a specific property will be directly affected by the Lee Plan will not be processed.

- (2) CPAC Recommendation. The County Attorney will reduce the recommendations of the CPAC in writing, unless he or she is in the minority, in which case the Planning Manager will reduce the majority recommendation to writing. The Planning Manager will deliver the recommendations to the LPA for consideration as an agenda item at a future meeting of the LPA. If the committee cannot recommend an interpretation unanimously, then both a majority and minority recommendation will be made to the LPA. If the committee cannot reach a majority position, then each official will submit a separate recommendation to the LPA.
- (3) LPA Recommendation. The LPA will review the recommendation of the CPAC at a publicly noticed meeting. The LPA will then consider the CPAC's recommendation (including minority recommendation, if applicable) and forward the LPA's recommendation and comments to the Board of County Commissioners.
- (4) Final Interpretation. The Board of County Commissioners will render a final decision as to the interpretation to be applied, which will be memorialized in a resolution, and will direct Department of Community Development staff to initiate a Comprehensive Plan Amendment consistent with the interpretation.
- (5) Legal Effect of Legislative Interpretation. Once a Final Interpretation is approved by the Board, the interpretation will have the force of law, unless the Lee Plan is amended to change the effect of the Final Interpretation. The resolution will control until such time the resulting Comprehensive Plan Amendment goes into effect or an alternative Lee Plan amendment nullifying the Final Interpretation is adopted.