

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20020674

1. REQUESTED MOTION:

ACTION REQUESTED: Deny appeal of administrative interpretation of the Lee Plan under the single-family determination provision filed by Norman R. Bloxham on behalf of David and Chris Stevenson.

WHY ACTION IS NECESSARY: Mr. Bloxham has filed an appeal of the denial of his request for a favorable administrative interpretation of the Lee Plan under the single-family residence provision.

WHAT ACTION ACCOMPLISHES: The Board's Action will uphold the determination that the property is ineligible for a favorable administration interpretation of the Lee Plan under the single-family residence provision.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT # 4

AP #1

3. MEETING DATE:

06-25-2002

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:
(Specify)

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER Lee Plan Ch. XIII

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT County Attorney
- C. DIVISION

BY: Donna Marie Collins
Assistant County Attorney

[Signature]

7. BACKGROUND:

Norman R. Bloxham, as President of Bloxham Homes, has filed an appeal on behalf of David and Chris Stevenson. The appeal seeks relief from the County Attorney's denial of a request for a favorable administrative interpretation of the Lee Plan pursuant to the single-family residence provision. In May 2002, the Office of the County Attorney concluded that the parcel at issue did not qualify for relief from the standards set forth in the Lee Plan governing residential density in the Open Lands Future Land Use Category.

The subject parcel was created subsequent to the adoption of the Lee Plan Amendment establishing the Open Lands Land Use Category in 1996. The parcel was a remainder piece after two 10-acre parcels were split off from a parent tract consisting of

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
n/a	n/a	n/a	n/a	<i>[Signature]</i>	OA	OM	RISK	GC	<i>[Signature]</i> 2-12-02
					<i>6/11/02</i>	<i>6/11/02</i>	<i>6/12/02</i>	<i>6/12/02</i>	

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

CO. ATTY.
FORWARDED
TO CO. ADMIN.
6/11/02 10:00 am

RECEIVED BY
COUNTY ADMIN.
6/11 10:10 CA
COUNTY ADMIN.
FORWARDED TO:
6/13/02 10:05 AM

slightly more than 28 acres. The remainder parcel complies with the property development regulations for the agricultural zon district and may be used for agricultural purposes consistent with both The Lee Plan and the Land Development Code. Howe it does not contain enough acreage to support a single-family residential use. This is because the density limitations of the O Lands Future Land Use Category requires ten acres to support one dwelling unit.

The Procedures for Administrative Interpretation govern the Board's consideration of the requested appeal. These guidel are set forth in Chapter XIII of the Plan and require the Board to consider only the information submitted in the administra interpretation process. The Board must determine whether the County Attorney's Office has properly applied the criteria set f in the Plan to the facts presented in the application. No additional evidence may be considered by the Board.

The appellant has not demonstrated any factual basis for relief on the grounds of equitable estoppel. Therefore, since parcel is not in compliance with the Lee Plan for use as a single family dwelling, the Board cannot approve the request. To do would violate the provisions of the Lee Plan.

Attachments:

1. *Norman R. Bloxham's Letter requesting Appeal*
2. Administrative Interpretation of the Single Family Residence Provision of the Lee Plan Case No. MUD 2002-00049.
3. Staff Report
4. Application
5. Lee Plan Chapter XIII b.



02 MAY 30 AM 11:47
Lee Co. Attorney

May 29, 2002

Donna Marie Collins
Assistant County Attorney
2115 Second Street
Ft. Myers, FL 33901

RE: Stevenson Property
7601 Rich Road
08-43-25-00-00001.0000
Case No: MUD2002-00049

County Attorney's Office:

Please be advised that my name is Norman R. Bloxxham, President of Bloxxham Homes, Inc. I am the agent/builder for the owners of the property David & Chris Stevenson. The property address is 7601 Rich Road, Ref. Case No.: MUD2002-00049.

We are in receipt of your denial letter dated May 2, 2002. Please note that we disagree with this denial and request a date to appeal to the Board of County Commissioners at their earliest convenience (time is of the essence).

Should you need to contact me or need any additional information my office number is 941-728-2143 and my mobile number is 941-770-4304.

Sincerely,

Norman R. Bloxxham
President

RECEIVED
JUN 05 2002

cc: David & Chris Stevenson - Owner
Tom Veal - Dick Pritchard Realty - 543-2122

COMMUNITY DEVELOPMENT

ADM 2002-00003

Bloxxham Homes Inc., 1860 Carbonata Drive, Alva, Florida 33920
Tel: (941) 728-2143 Fax: (941) 728-3889 Lic: CGC024853

JUN - 3 AM 7:53
COMM. DEV/
PUB. WRKS. CNTR.
SECOND FLOOR
LEE COUNTY
RECEIVED

ADMINISTRATIVE INTERPRETATION OF
THE SINGLE FAMILY RESIDENCE PROVISIONS OF
THE LEE PLAN

CASE NO.: MUD2002-00049

DATE OF
APPLICATION: May 2, 2002

APPLICANT/
AGENT: NORMAN BLOXHAM
Bloxham Homes, Inc.
1860 Carbonata Drive
Alva, FL 33920

OWNER: DAVID A. & CHRIS STEVENSON
1860 Carbonata Drive
Alva, FL 33920

PROPERTY IN
QUESTION: 7601 Rich Road, more particularly described as the West three quarters
of the Southwest quarter of the Southeast quarter of Section 8,
Township 43 South, Range 25 East, Lee County, Florida, less the
Northerly 890.00 feet and less Rich Road right-of-way.

STRAP NO.: 08-43-25-00-00001.0000

FINDINGS OF
FACT: The documentation provided with the application reflects that the
current owners acquired the parcel in January 2001 via a Warranty
Deed recorded in the Public Records of Lee County in Official Records
(OR) Book 3351, Page 312. For the purposes of calculating density,
the parcel comprises approximately 8.4± acres. The property is zoned
AG-2 and is located in the Open Lands Future Land Use Category.

The property was originally part of a parcel created in December 1986
by a Warranty Deed recorded in the Public Records of Lee County in
OR Book 1888, Page 1419. Subsequently, this parent parcel was
reduced in size by two conveyances in 1997 and 1998, respectively.
The 1997 and 1998 conveyances were parcels consisting of ten or
more acres. Accordingly, no lot split approvals were required by the
County. However, the residual parcel that was created by virtue of the
two conveyances did not comply with the residential density limitations
of the Lee Plan for the governing future land use designation. The

residual parcel and the subject parcel are one and the same. Since the "creation" date of the subject (residual) parcel post dates the adoption of the Open Lands Future Land Use classification, the parcel does not qualify for a favorable finding pursuant to the single-family residential provisions of the Lee Plan.

DETERMINATION:

The single family residence provisions of Chapter XIII of the Lee Plan does not apply to the property.

APPEAL PROCEDURE:

"An administrative interpretation may be appealed to the Board of County Commissioners by filing a written request within fifteen (15) days after the administrative interpretation has been made. In reviewing such an appeal, the Board will consider only information submitted in the administrative interpretation process and will review only whether the designated individual has properly applied, to the facts presented, the standards set forth in the Plan for such administrative interpretations. No additional evidence will be considered by the Board. The Board of County Commissioners will conduct such appellate review at a public hearing."

Based upon this quoted language, if you disagree with this administrative interpretation, you have the right to an appeal to the Board of County Commissioners. In order to exercise this right of appeal, a written Notice of Appeal must be delivered to the County Attorney's Office, at 2115 Second Street, Fort Myers, Florida, no later than 15 days from the date of this Administrative Interpretation, stating the basis of disagreement.

Dated this 21st day of May, 2002.

LEE COUNTY ATTORNEY'S OFFICE
AS ADMINISTRATIVE DESIGNEE

BY:



Donna Marie Collins
Assistant County Attorney

DMC/amp

cc: Timothy Jones, Chief Assistant County Attorney

Donald D. Stilwell, County Manager
Paul O'Connor, Director, Planning Division
Peter Blackwell, Planning Division
Joan Schultz, Property Appraiser's Office
Rebecca Tatlock, Zoning
Tidemark

**DETERMINATION OF
THE APPLICATION OF THE
MINIMUM USE PROVISION**

CASE # MUD2002-00049

DATE RECEIVED BY ZONING DIVISION: May 2, 2002

STRAP NUMBER: 08-43-25-00-00001.0000

APPLICANT: Norman Bloxham, Bloxham Homes, Inc.

OWNER: Dave & Chris Stevenson

OWNERSHIP

- a) DATE WARRANTY DEED OR AGREEMENT FOR DEED RECORDED IN OWNER/PURCHASER NAME: January 2001
- b) PLACE RECORDED: OR Book 3351 Page 312

CREATION OF PARCEL

- a) DATE PARCEL CREATED/RECORDED: December 1986
- b) PLACE RECORDED: OR Book 1888 Page 1419
- 1) LOT WAS CREATED/RECORDED IN PLAT BOOKS PRIOR TO December 21, 1984 AND HAS NOT BEEN ALTERED: YES ___ NO ___ N/A X
- 2) A LEGAL DESCRIPTION OF THE LOT WAS LAWFULLY RECORDED IN O.R. BOOKS PRIOR TO DECEMBER 21, 1984: YES ___ NO X N/A ___
- 3) LOT WAS LAWFULLY CREATED AFTER DECEMBER 21, 1984 AND IS IN COMPLIANCE WITH THE LEE PLAN: YES ___ NO ___ N/A X

ZONING WHEN CREATED/RECORDED: AG-2

- a) COMPLIED WITH ZONING WHEN CREATED/RECORDED: YES X NO ___ N/A ___
- b) CREATED PRIOR TO JUNE 27, 1962 AND HAS A MINIMUM OF 4,000 SQUARE FEET: YES ___ NO ___ N/A X
- c) CREATED AFTER JUNE 27, 1962 AND PRIOR TO DECEMBER 21, 1984 AND HAS A WIDTH NOT LESS THAN 50 FEET AND HAS AN AREA NOT LESS THAN 5,000 SQUARE FEET AND RECORDED IN A PLAT BOOK: YES ___ NO ___ N/A X
- d) CREATED AFTER JUNE 27, 1962 AND PRIOR TO DECEMBER 21, 1984, HAS A MINIMUM OF 7,500 SQUARE FEET AND RECORDED IN O.R. BOOK: YES ___ NO X N/A ___

LAND USE CATEGORY: Open Lands

- a) LOT IS CONSISTENT WITH DENSITY REQUIREMENTS: YES ___ NO X

REAPPORTIONING LOTS: YES ___ NO X

RECOMMENDATION:



THE LOT IS NOT CONSISTENT WITH THE MINIMUM USE PROVISION BASED ON THE FOLLOWING:

The parcel conforms to the AG-2 zoning district and has access onto Rich Road, a paved road with open drainage swales.

However, The creation deed for this parcel, OR Book 1888 Page 1419 refers to an area now split into three parcels. These are:

- 08-43-25-00-00001.0000 (subject parcel)
- 08-43-25-00-00001.7050 (1997)
- 08-43-25-00-00001.7060 (1998)

There is a correction deed for the subject property recorded in OR Book 1906 Page 3421, but it does not amend the actual legal description. Parcel .7050 shows a subsequent split date of September 1997 while parcel .7060 shows a split date of February 1998. A single family residence was built on parcel .7060 but it exceeded the minimum 10 acres required for a single residential unit so no minimum Use Determination was performed on it. [The current deed on the subject parcel is the first one since the creation deed.] Therefore, the subject parcel was created in January 2001, This is after the adoption of both the Lee Plan and the

*Incorrect, no
It was created in 1998
by virtue of
the 1998 lot
split.*

CASE #MUD2002-00049

Page 2

Open Lands future land use category. For this reason, this parcel does not qualify for a single family residence under the Single Family Provision of the Lee Plan.

BY: _____, 2002

Pam Houck, Director
Division of Zoning
Department of Community Development



APPLICATION FOR ADMINISTRATIVE ACTION

APPLICATION FOR:

- | | |
|--|--|
| <input type="checkbox"/> Administrative Variance (Sup A) | <input checked="" type="checkbox"/> Commercial Lot Split (Sup B) |
| <input type="checkbox"/> Consumption On Premises Per. (Sup C) | <input checked="" type="checkbox"/> Mini. Use Determination (Sup D) |
| <input type="checkbox"/> Ordinance Interpretation (Sup E) | <input type="checkbox"/> Relief for Desig. Hist. Res. (Sup F) |
| <input type="checkbox"/> Relief for Easement Encroachment (Sup G) | <input type="checkbox"/> Adm. Amend. PUD or PD (Sup H) |
| <input type="checkbox"/> Admin. Deviation from Chapter 10 (Sup I) | <input type="checkbox"/> Placement of Model Home/Unit or Model Display Center (Sup. J) |
| <input type="checkbox"/> Dock & Shoreline structures (Sup. K) | <input type="checkbox"/> Redevelopment District (Sup L) |
| <input type="checkbox"/> Final Plan Approval per Resolution: # _____ | |

Applicant's Name: NORMAN R Bloxham Phone #: 941-770-4304

Project Name: STEVENSON JOB # 515

STRAP Number: 08-43-25-00-00001-0000

Application Form: Computer Generated* County Printed

* By signing this application, the applicant affirms that the form has not been altered.

STAFF USE ONLY

Commission District: _____ Land Use Classification: _____

Current Zoning: _____ Lee Plan Density Range: _____

Case Number: M: D2002-00049 Fee: RES 2002-02641

Date of Application: _____ Date Fee Paid: _____

Intake by: _____ Receipt Number: _____

Tracking System: _____ Zone* _____ DSO**

*Supplements "A" through "H" & "J through L" & Final Plan Approval only ** Supplement "I" only

LEE COUNTY
COMMUNITY DEVELOPMENT
P.O. BOX 398 (1600 MONROE STREET)
FORT MYERS, FLORIDA 33902
PHONE (941) 479-8585

1. APPLICANT'S NAME: Norman R Bloxham / Bloxham Honey
Mailing Address:

Street: 1860 CARBONARA DRIVE

City: ALVA State: FLA Zip: 33920

Phone Number: Area Code: 941 Number: 728-2143 Ext. _____

Fax Number: Area Code: 941 Number: 728 3889

E-mail address: - NA -

2. Relationship of applicant to property:

- Owner
- Option holder
- Lessee
- Trustee
- Contract Purchaser
- Other (indicate) Builder

If applicant is NOT the owner, submit a Notarized Authorization Form from the owner to the applicant.

3. AGENT'S NAME(S): (Use additional sheets if necessary): Norman R Bloxham

Mailing Address:

Street: 1860 CARBONARA DRIVE

City: ALVA State: FLA Zip: 33920

Phone Number: Area Code: _____ Number: - SAME - AS ABOVE Ext.: _____

Fax Number: Area Code: _____ Number: _____

E-mail address: _____

4. TYPE OF REQUEST (please check one)

- Administrative Variance (requires supplement A)
- Commercial Lot Split (requires supplement B)
- Consumption On Premises (requires supplement C)
- Minimum Use Determination (requires supplement D)
- Ordinance Interpretation (requires supplement E)
- Relief for Designated Historic Resources (requires supplement F)
- Easement Encroachment (requires supplement G)
- Administrative Amendment to a PUD or Planned Development (requires supplement H)
- Administrative Deviation from Chapter 10 of the LDC (requires supplement I)
- Placement of Model Home/Unit or Model Display Center (requires supplement J)
- Dock & Shoreline Structure (requires supplement K)
- Redevelopment District (requires supplement L)
- Final Plan Approval (no supplement)

5. NATURE OF REQUEST (please print):

Is this request specific to a parcel or tract of land? NO YES. If the answer is yes, please complete the following:

1. Is this action being requested as a result of a violation notice? NO YES.

a. If yes, date of notice: _____

b. Specific nature of violation: SIZE OR PARCEL

2. Relationship of applicant to property: _____ Owner Other (please indicate): Buyer

3. Name of owner of property: DAVE & CHRIS STEWARTSON

Mailing Address: Street: 1860 CORCORAN DRIVE

City: AUDA State: FLA Zip: 33920

Phone Number: Area Code: 941 Number: 728-2143 Ext.: _____

Fax Number: Area Code: 941 Number: 728-3889

4. Legal Description: Is property description clearly shown within a platted subdivision recorded in the official Plat Books of Lee County?

NO. Attach a legible copy of the legal description and certified sketch of description as set out in chapter 61G 17-6.006, Florida Administrative Code.

YES. Property is identified as:

Subdivision Name: _____

Plat Book _____ Page _____ Unit _____ Block _____ Lot _____

5. STRAP NUMBER: 08-43-25-00-00001-0000

6. Property Dimensions:

Area: _____ square feet or 8.39 acres.

Width along roadway: 976 feet.

Depth: 360 feet.

7. Property Street Address: 1601 Rich Road North Fort Myers

8. General Location Of Property: 084325000001, 0000th

SEE MAP ON SURVEY AND PLAT FRONT PAGE



**ADMINISTRATIVE ACTION REQUEST
SUPPLEMENT D**

MINIMUM USE DETERMINATION

If the request is for a Minimum Use Determination please submit the "Application for Administrative Action" form and the following:

1. PROPERTY INFORMATION

- a. Number of parcels (lots) involved in the request: 1
- b. Size of parcels (please submit a site plan, plat, or survey indicating dimensions and area of each lot as well as the total area of all lots involved): 976 x 360
- c. Comprehensive Plan Land Use designation for the subject property: Open Land
- d. Zoning: Indicate the zoning on the parcel(s) when the parcel(s) was created (split out into its present dimensions from a larger parcel): AG-2

2. INTENDED USE

- a. Do you wish to construct one single family residence on each of the above parcels? NO. YES

If the parcel on which you wish to construct one home is some combination of lots, indicate which lots will comprise the final single family parcel: _____

- b. Do you wish to reapportion lots? NO YES. If yes, on the site plan or map submitted for 2 above, please indicate the changes you wish to make in compliance with this provision.

3. ADDITIONAL DOCUMENTATION REQUIRED

- a. Copy of the recorded deed, agreement for deed, or other official documentation indicating the date you acquired the property and the date the deed was recorded in the Lee County Clerk's office.
- b. If the parcel(s) is not in a platted or unofficial recorded subdivision, please provide a copy of the recorded deed (or other official documentation) establishing the date the parcel(s) was created (i.e. split out from a larger parcel into its present dimensions).

AFFIDAVIT

I, Norman R Bloxham, certify that I am the owner or authorized representative of the property described herein, and that all answers to the questions in this application and any sketches, data or other supplementary matter attached to and made a part of this application, are honest and true to the best of my knowledge and belief. I also authorize the staff of Lee County Community Development to enter upon the property during normal working hours for the purpose of investigating and evaluating the request made thru this application.

Norman R Bloxham
Signature of owner or owner-authorized agent

4-19-2002
Date

Norman R Bloxham
Typed or printed name

STATE OF FLORIDA)
COUNTY OF LEE)

The foregoing instrument was certified and subscribed before me this 19th day of April,
to ADA, by Norman R Bloxham, who is personally known to me
or who has produced _____ as identification.

(SEAL)

Kimberly B Deetscreek
Signature of notary public

Kimberly B Deetscreek
Printed name of notary public



Notary Public, State of Florida
KIMBERLY B. DEETSCREEK
Commission # CC 745950
Comm. Expires July 6, 2002

This instrument Prepared by & return to:

Name: Kim T. Reaney, an employee of
GLOBAL TITLE COMPANY
Address: 2154 TRADE CENTER WAY, SUITE 4
NAPLES, FL 34109
32910003
Parcel I.D. #: 08-43-25-00001.0000

Grantees' S.S. #'s:
Grantors' S.S. #'s:

SPACE ABOVE THIS LINE FOR PROCESSING DATA

SPACE ABOVE THIS LINE FOR RECORDING DATA

THIS WARRANTY DEED Made the 10th day of January, A. D. 2001, by **HELEN KIKIS** and **ALLAN WEINTRAUB, D/B/A S.W.K. PARTNERS**, hereinafter called the grantors, to **DAVID A. STEVENSON** and **CHRIS STEVENSON, HUSBAND AND WIFE**, whose post office address is **27 DEWEY, IRVINE, CA 92620-3334**, hereinafter called the grantees:

(Wherever used herein the terms "grantors" and "grantees" include all the parties to this instrument, singular and plural, the heirs, legal representatives and assigns of individuals, and the successors and assigns of corporations, wherever the context so admits or requires.)

Witnesseth: That the grantors, for and in consideration of the sum of \$10.00 and other valuable consideration, receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, alien, remise, release, convey and confirm unto the grantees all that certain land situated in **LEE County, State of FLORIDA**, viz:

THE WEST THREE QUARTERS OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 43 SOUTH, RANGE 25 EAST, LEE COUNTY, FLORIDA, LESS THE NORTHERLY 890.00 FEET AND LESS RICH ROAD RIGHT-OF-WAY.

SUBJECT TO TAXES FOR THE YEAR 2001 AND SUBSEQUENT YEARS, RESTRICTIONS, RESERVATIONS, COVENANTS AND EASEMENTS OF RECORD, IF ANY.

THIS IS VACANT LAND AND NOT THE HOMESTEAD OF THE GRANTOR.

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold the same in fee simple forever.

And the grantors hereby covenant with said grantees that they are lawfully seized of said land in fee simple; that they have good right and lawful authority to sell and convey said land, and hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever, and that said land is free of all encumbrances, except taxes accruing subsequent to December 31, 2000.

1/07

4. The ordinance may establish procedures to document actual uses, densities, and intensities, and compliance with regulations in effect at the time of construction, through such means as photographs, diagrams, plans, affidavits, permits, appraisals, tax records, etc.
5. No provision is made to redevelop property containing damaged structures for a more intense use or at a density higher than the original lawful density except where such higher density is permitted under current regulations.

(Added by Ordinance No. 94-30, Relocated and Amended by Ordinance No. 00-22)

b. Administrative Interpretations of the Plan

Persons or entities whose interests are directly affected by the Lee Plan have the right to an administrative interpretation of the plan as it affects their specific interest. Such an interpretation, under the procedures and standards set forth below, will remain in effect and thereafter be binding upon the county only as to the legally described property and any plan of development upon which the interpretation was based. If the plan of development is proposed to be, or is changed, through any action of any owner or developer of the property, then the administrative interpretation is no longer binding on the county. Actions that will render a previous interpretation no longer binding include any of the following: significant changes in parcel or platted lot(s) configuration; changes to land uses; decreases in the amount of open space or preserved land; increases in density or intensity of use; increases in the size or acreage of the property; or any other change that makes the plan of development less consistent with the current Lee Plan. (Note: combining lands consistent with XIII.b.B.4.b.(4) is allowed.) A determination of whether or not a plan of development has been, or would be changed sufficiently to render the previous interpretation no longer binding on the county will be made on a case by case basis by the Administrative Designee using the above-described criteria.

Administrative interpretations are intended to expedite and reduce disputes over interpretations of the Lee Plan, resolve certain map or boundary disputes, avoid unnecessary litigation, ensure consistency in plan interpretation, and provide predictability in interpreting the plan. All such administrative interpretations, once rendered, are subject to challenge under the provisions of Section 163.3215, Florida Statutes.

Anyone seeking an administrative interpretation must submit an application with requested information and will have the burden of demonstrating compliance with the standards set forth below.

(Amended by Ordinance No. 00-22)

A. Subject Matter of Administrative Interpretations

Administrative interpretations will be provided only as to the matters set forth below. In no event will administrative interpretations hereunder involve questions of the consistency of development or land use regulations with the Lee Plan. Administrative interpretations will be limited to:

1. County Attorney's Office:
 - a. Whether the single-family residence provision as hereinafter defined applies and the applicant desires a written opinion for future use, or a concurrent building permit application has not been approved under 2.a. below.

2. County Administrator (or his designee):

- a. Whether the single-family residence provision as hereinafter defined applies and the applicant is also applying for a building permit. If said permit application is not approved, a separate application for the single-family residence provision may be submitted to the County Attorney's Office for final review and, if applicable, written denial.
- b. Whether an area has been (or should have been) designated Wetlands on the basis of a clear factual error. A field check will be made prior to the issuance of such an interpretation.
- c. Clarification of land use map boundaries as to a specific parcel of property.

(Amended by Ordinance No. 94-30, 00-22)

B. Standards for Administrative Interpretations

Administrative interpretations of the Lee Plan will be determined under the following standards:

1. Interpretations which would be confiscatory, arbitrary, capricious, unreasonable, or which would deny all economically viable use of property will be avoided;
2. Interpretations should be consistent with background data, other policies, and objectives of the plan as a whole;
3. Interpretations should, to the extent practical, be consistent with comparable prior interpretations;
4. Single-Family Residence Provision:
 - a. Applicability

Notwithstanding any other provision of this plan, any entity owning property or entering or participating in a contract for purchase agreement of property, which property is not in compliance with the density requirements of the Lee Plan, will be allowed to construct one single-family residence on said property PROVIDED THAT:

(1) Date Created:

- (a) the lot or parcel must have been created and recorded in the official Plat Books of Lee County prior to the effective date of the Lee Plan (December 21, 1984), and the configuration of said lot has not been altered; OR
- (b) a legal description of the lot or parcel was lawfully recorded in the Official Record books of the Clerk of Circuit Court prior to December 21, 1984; OR
- (c) the lot was lawfully created after December 21, 1984, and the lot area was created in compliance with the Lee Plan as it existed at that time.

- (2) **Minimum Lot Requirements:** In addition to meeting the requirements set forth above, the lot or parcel must:
- (a) have a minimum of 4,000 square feet in area if it was created prior to June 27, 1962; OR
 - (b) have a width of not less than 50 feet and an area of not less than 5,000 square feet if part of a subdivision recorded in the official Plat Books of Lee County after June 27, 1962, and prior to December 21, 1984; OR
 - (c) have a minimum of 7,500 square feet in area if it was created on or after June 27, 1962, and prior to December 21, 1984, if not part of a subdivision recorded in the official Plat Books of Lee County; OR
 - (d) have been in conformance with the zoning regulations in effect at the time the lot or parcel was recorded if it was created after December 21, 1984; OR
 - (e) have been approved as part of a Planned Unit Development or Planned Development.
- (3) **Access and Drainage:** In addition to meeting the requirements set forth above:
- (a) the road that the lot or parcel fronts on must have been constructed and the lot must be served by drainage swales or equivalent drainage measures. The road must have, at a minimum, a graded surface of shell, marl, gravel base rock, or other compacted fill material, suitable for year-round use; OR
 - (b) the lot or parcel must be located within a subdivision which was approved under Chapter 177, Florida Statutes, as long as the subdivision improvements have been made or security for their completion has been posted by the subdivider.
- If the lot or parcel cannot meet the requirement of access and drainage, this requirement will not apply to the extent that it may result in an unconstitutional taking of land without due process.
- (4) **Interchange, Airport Commerce, and Industrial Development land use categories:** In addition to the requirements set forth above, a residential use must be the only reasonable use of the lot or parcel. The existence of a reasonable commercial or industrial use will be determined by reference to all of the applicable facts and circumstances, including, but not limited to, the nature of the surrounding uses, the adequacy of the lot size (pursuant to Chapter 34 of the Land Development Code) for commercial or industrial uses, and whether adequate infrastructure exists or can reasonably be provided to serve a commercial or industrial use at the location in question. (Added by Ordinance No. 94-30)

b. Construction Regulations

Subsequent to a property owner establishing the right to build a single-family residence on a lot through the procedures set forth in this plan, the following policies will prevail:

- (1) The residential structure must be in compliance with all applicable health, safety, and welfare regulations, as those regulations exist at the time the application for construction of the residence is submitted.
- (2) Lots or parcels which qualify for the right to construct a residence and which contain wetlands will be subject to special provisions of the Wetlands Protection Ordinance.
- (3) If two or more contiguous lots or parcels have each qualified for the right to build a single-family residence, the property owner is permitted and encouraged to reappportion properties if the result of the reappointment is a lot or lots which come closer to meeting the property development regulation standards for the zoning district in which it is located and as long as no property becomes non-conforming or increases in its non-conformity as a result of the reappointment and as long as the density will not increase.
- (4) If a lot or parcel has qualified for the right to construct a single-family residence, nothing herein will be interpreted as prohibiting the combining of said lot or parcel with other contiguous property provided the density will not increase.
- (5) If two or more contiguous properties have each qualified for the right to construct a single-family residence and if the lots or parcels are located in a zoning district which permits duplex or two-family dwellings, the property owner(s) may combine the lots to build a single duplex or two-family building in lieu of constructing two single-family residences.

c. Transferability

This right will run with the land and be available to any subsequent owner if the property which qualifies for the single-family provision is transferred in its entirety.

(Amended by Ordinance No. 00-22)

C. Procedure for Administrative Interpretations

The following procedures will apply in obtaining administrative interpretations:

1. Except as provided in 3. below, anyone seeking an administrative interpretation of the plan will submit an application, on an appropriate form provided by the county, with all requested information to the Zoning and Development Review Division (single-family residence provision) or the Planning Division (all other applications), or to their successor agencies.
2. The person authorized by Section A.1. or 2. above will review such information and issue an administrative interpretation in writing within sixty (60) days after submittal of the application

and all requested information to the appropriate division. The interpretation will contain findings and reasons for the interpretation rendered.

3. If the request for a single-family residence provision or Wetlands determination is in conjunction with an application for a building permit, development order, or planned development rezoning, a separate application will not be required. The interpretation will be noted on the building permit, development order, or planned development rezoning approval, or will be contained in the reasons for denial where applicable.
4. An administrative interpretation may be appealed to the Board of County Commissioners by filing a written request within fifteen (15) days after the administrative interpretation has been made. In reviewing such an appeal, the Board will consider only information submitted in the administrative interpretation process and will review only whether the designated individual has properly applied to the facts presented and the standards set forth in the plan for such administrative interpretation. No additional evidence will be considered by the Board. The Board of County Commissioners will conduct such appellate review at a public meeting.
5. The Board of County Commissioners will consider the appeal at a hearing to be held within thirty (30) days after the date of the written request for appeal. A decision overruling the written interpretation will be in writing and will be rendered by the Board within thirty (30) days after the date of the hearing. Alternatively, the Board may adopt the administrative interpretation being appealed.
6. Where appropriate and necessary all administrative interpretations rendered by the designated persons (or upon appeal, approved by the Board of County Commissioners) will be incorporated into the Plan during the next amendment cycle.

(Amended by Ordinance No. 94-30, 00-22)

c. Legislative Interpretations of the Plan

In order to apply the plan consistently and fairly, it will be necessary from time to time to interpret provisions in the plan in a manner which insures that the legislative intent of the Board of County Commissioners which adopted the plan be understood and applied by subsequent boards, county employees, private property owners, and all other persons whose rights or work are affected by the plan. When the plan is interpreted, it should be done in accordance with generally accepted rules of statutory construction, based upon sound legal advice, and compiled in writing in a document which should be a companion to the plan itself. These goals will be accomplished by the procedures which are set forth below:

A. Comprehensive Plan Annotations Committee

The Director of Community Development, the Planning Director, and the County Attorney will together be empowered to sit as the Comprehensive Plan Annotations Committee. In each instance, these persons may designate one or more subordinates to serve in their place, but only one vote may be cast by or on behalf of each of the aforementioned officials. The purpose of the committee is to make written recommendations to the Local Planning Agency in response to requests for interpretations of specific provisions in the plan. If the committee cannot recommend an interpretation unanimously,