

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

Blue Sheet No. 20031311

1. REQUESTED MOTION:

ACTION REQUESTED: Adopt a resolution approving a proposed interpretation of Lee Plan Policy 17.1.3, relating to minimum lot size.

WHY ACTION IS NECESSARY: The Board of County Commissioners must render the final decision as to the correct interpretation of provisions of the Lee Plan. (Chapter XII, Lee Plan)

WHAT ACTION ACCOMPLISHES: See above.

2. DEPARTMENTAL CATEGORY:
COMMISSION DISTRICT # 5

A4B

3. MEETING DATE:

11-18-2003

4. AGENDA:

5. REQUIREMENT/PURPOSE:
(Specify)

6. REQUESTOR OF INFORMATION:

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

- STATUTE
- ORDINANCE
- ADMIN. CODE
- OTHER
Lee Plan, Chapter XIII

- A. COMMISSIONER
- B. DEPARTMENT *Community Development*
- C. DIVISION *Planning*
- BY: *Paul O'Connor, AICP, Director*
POC 11/5/03

7. BACKGROUND:

The Director of Planning requested a legislative interpretation of the provisions of Policy 17.1.3. The Comprehensive Plan Annotation Committee held an advertised public meeting on July 8, 2003, where interested parties were allowed to participate. The meeting was held. Following public input and arguments from attorneys representing interested parties the committee offered both a majority and minority opinion. The Local Planning Agency heard the matter at its August 25, 2003 meeting and voted 6 to 0 to accept the majority opinion, with one LPA member abstaining. The majority opinion states that lots cannot use portions of common lakes to achieve the minimum lot size.

Attachments:

- Memo to Board of County Commissioners from Paul O'Connor
- Excerpt from the Lee Plan "Legislative Interpretations of the Plan"
- Resolution to Adopt the Interpretation

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
<i>Mam G. G. G.</i>	N/A	N/A	N/A	<i>[Signature]</i>	<i>OA</i> <i>11/5/03</i>	<i>ADM</i> <i>11/5/03</i>	<i>Risk</i> <i>11/5/03</i>	<i>GC</i> <i>11/5/03</i>	<i>[Signature]</i>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty
Date: *11/5/03*
Time: *10:27*
Forwarded To:
Co. AD 11/5/03
11-5-03 11:20

RECEIVED BY
COUNTY ADMIN: *10*
11/5/03
11:25 am 503
COUNTY ADMIN
FORWARDED TO: *10*
11/5/03

DIVISION OF PLANNING



LEE COUNTY

MEMORANDUM

S O U T H W E S T F L O R I D A

to: Board of County Commissioners
from: Paul O'Connor, ^{POC} AICP, Director
subject: Annotation of Lee Plan Policy 17.1.3
date: Friday, October 31, 2003

The Lee Plan Comprehensive Plan Annotations Committee conducted a public meeting on July 8, 2003 to consider an annotation of the following Lee Plan policy.

LEE PLAN POLICY 17.1.3 STATES:

Any lot created in the Rural Community Preserve land use category after the adoption of this amendment must have a minimum area of 43,560 square feet. Any residential planned development zoning granted in the Rural Community Preserve land use category will require a minimum size of one acre (43,560 square feet) for every residential lot. (Amended by Ordinance No. 00-22)

QUESTION:

Do the provisions of Policy 17.1.3, which require that any lot created in the Rural Community Preserve land use category must have a minimum area of 43,560 square feet, allow the platting of lots that include portions of common lakes to achieve the one acre size?

ANSWERS:

Majority Opinion:

No. The *Buckingham Sector Plan*, conducted by the "Buckingham Preservation Committee" was the planning study that provided the data and analysis to support the Buckingham Goal and its subsequent policies. A review of this document was conducted to insure that the legislative intent of the Board of County Commissioners, which adopted the Buckingham Plan, would be understood and applied.

Clearly, the overriding intent of the Buckingham Plan was to maintain and enhance the historic rural character of the Buckingham area. One of the main tools to assure this is Policy 17.1.3. The plan states, on page 16, that "in order to maintain the integrity of the community as an agricultural area, it is important that new residences reside on at least one acre of land. Anything less than one acre of land would encourage people who are merely looking for a house in suburbia and not a true rural lifestyle." Allowing common lakes to be included in the lot area violates the intent of the policy. This is not to say that a one acre lot may not contain a lake or lakes. If the applicable provisions of the Land Development Code such as setbacks, depth and slope of banks are met or exceeded, internal lakes are allowed.

Minority Opinion:

Yes. When the Buckingham Plan was adopted, the intent of the Board of County Commissioners was to have one-acre parcels of land in order to construct a dwelling unit. The Buckingham Sector Plan specifically mentions "one acre of land." The intent was not to allow, for example, a half acre lot with the remaining half acre of water (a common lake). However, the language in Policy 17.1.3 only contains a minimum square footage requirement and is not as clear as it could be. There is no clear indication that this area must be actual land and not common water bodies. The language of the policy should be clarified.

LOCAL PLANNING AGENCY:

The Local Planning Agency reviewed the Annotations Committee majority and minority opinions at their regular meeting of August 25, 2003. After hearing public comments from three interested parties and deliberation by the Agency they voted 6 to 0 to accept the majority opinion, with one LPA member abstaining.

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, then both a majority and minority recommendation will be made to the Local Planning Agency. Similarly, if the committee cannot reach a majority position with respect to an interpretation, then each official will submit a separate recommendation to the Local Planning Agency. In accomplishing its work, the committee will operate as follows:

1. Organization

The committee will meet regularly at such times and places as it may choose. Its meetings will be either private or open to the public, or a combination thereof, as the committee chooses. The committee will have total discretion in this matter. No public notices of its meetings will be required. It may invite to its meetings such persons as it believes will best assist it in its work. It is intended that the committee will function in an informal workshop atmosphere, with emphasis to be placed on the timely production of concise, written recommendations to the Local Planning Agency in response to requests for interpretations of specific provisions in the plan. The County Attorney will be responsible for reducing the recommendations of the committee in writing, unless he is in the minority, in which case the Planning Director will be responsible for reducing the majority recommendation to writing. In every case, the Planning Director will be responsible for delivering the recommendations to the Local Planning Agency on a timely basis as part of the published agenda of the Local Planning Agency.

2. Requests for Interpretations

Requests for interpretations will be placed before the Comprehensive Plan Annotations Committee by any one of its three members 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 who is responsible for administering the plan, by the Local Planning Agency, by the Lee County Hearing Examiner, or by any applicant for a type of development regulated by the plan. In each case, the Planning Director will be

responsible for reducing the questions to writing and, to the extent possible, linking them to specific plan provisions which might affect the answer.

B. LOCAL PLANNING AGENCY.

Upon receiving the recommendations from the Comprehensive Plan Annotations Committee, the Local Planning Agency will review the same and forward them to the Board of County Commissioners with such comments and recommendations of its own that the Local Planning Agency believes to be appropriate.

C. BOARD OF COUNTY COMMISSIONERS.

Upon receiving the recommendations of the Comprehensive Plan Annotations Committee, with such other comments and recommendations as the Local Planning Agency submits with the committee's recommendations, the Board of County Commissioners will render a final decision as to the correct interpretation to be applied. This interpretation will be that which is adopted by absolute majority of the Board of County Commissioners and, upon being reduced to a board resolution drafted by the County Attorney in response to the board majority, it will be signed by the Chairman and recorded in the county's Official Records. The Planning Director will be responsible for maintaining copies of all such resolutions in a single document which will be appropriately indexed and provided to all persons upon request. The document will be updated regularly and the latest version thereof furnished to all persons requesting copies of the plan itself.

D. LEGAL EFFECT OF ANNOTATIONS.

Any provision of the plan specifically construed in accordance with the foregoing procedures may not be re-interpreted or modified except by a formal amendment of the plan itself. Once formally adopted in accordance with these procedures, the annotation will have the force of local law and all persons will be placed on constructive notice of it. Any development orders issued in reliance on legislative interpretations of this plan are subject to challenge under the provisions of Section 163.3215, Florida Statutes. (Amended by Ordinance No. 00-22)

RESOLUTION NO. 2003- _ - _

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, WHICH ADOPTS AN INTERPRETATION OF THE COMPREHENSIVE PLAN.

WHEREAS, the Board of County Commissioners of Lee County, Florida, adopted a Comprehensive Plan known as "The Lee Plan" by Ordinance No. 89-02 which became effective on March 1, 1989; and

WHEREAS, the Lee Plan provides for procedures for legislative interpretations of the Lee Plan as set forth in Chapter XIII, Section (c); and

WHEREAS, a request for interpretation of the Lee Plan was considered by the Comprehensive Plan Annotations Committee; and

WHEREAS, the Committee recommended approval of the proposed interpretation set forth herein; and

WHEREAS, the Local Planning Agency reviewed the proposed interpretation and recommended approval; and

WHEREAS, the Board of County Commissioners has determined that the proposed interpretation of the Lee Plan is the correct interpretation to be applied to the affected provisions of the Lee Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, THAT:

The provisions of Policy 17.1.3 require that any lot created in the Rural Community Preserve land use category must have a minimum area of 43,560 square feet and does not allow the platting of lots that include portions of common lakes to achieve the one acre size.

The foregoing Resolution was adopted by the Lee County Board of County Commissioners upon a motion made by _____, and seconded by _____ and, upon being put to a vote, the result was as follows:

John Albion _____
Andrew Coy _____
Robert Janes _____
Ray Judah _____
Douglas St. Cerny _____

DONE AND ADOPTED THIS 18TH DAY OF NOVEMBER, 2003.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of The County Attorney