

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

Blue Sheet No. 20070206

1. ACTION REQUESTED/PURPOSE: Approve a Disclosure and Waiver of Conflicts letter from the law firm of Oertel, Fernandez, Cole & Bryant. A conflict of interest could potentially arise out of the representation by Oertel, Fernandez, Cole & Bryant of Lee County in Dean & Dean Farms v. Lee County, Case No. 06-CA-5011, and of Colonial Homes, Inc. in Lee County v. Colonial Homes, Inc., Case No.: 06CA-939-H.

2. FUNDING SOURCE:

3. WHAT ACTION ACCOMPLISHES: : Allows Oertel, Fernandez, Cole & Bryant to continue to represent Lee County and Colonial Homes in the respective lawsuits.

4. MANAGEMENT RECOMMENDATION: Grant the waiver and execute the Disclosure and Waiver of Conflicts letter.

5. Departmental Category: 12

A12A

6. Meeting Date: March 20, 2007

7. Agenda:

8. Requirement/Purpose: (specify)

9. Request Initiated:

Consent

Statute

Commissioner cw

Administrative

Ordinance

Department Lee County Attorney

Appeals

Admin. Code

Division Litigation

Public

Other

By: Susan M. Henderson

Walk-On

10. Background: Kenneth G. Oertel of Oertel, Fernandez, Cole & Bryant has been engaged to defend Lee County in Dean & Dean Farms v. Lee County, a lawsuit regarding an amendment to the Lee County Comprehensive Plan applicable to Pine Island and claiming approximately \$61 million in damages. Lee County v. Colonial Homes, Inc. is an eminent domain case in which Lee County condemned property owned by Colonial Homes for the Three Oaks Parkway Extension project. The sole issue in that case is the fair market value of the property taken by Lee County. Colonial Homes is represented by Scott W. Folz, also of Oertel, Fernandez, Cole & Bryant.

Under Florida Bar Rule 4-1.7, if a law firm is representing clients with potentially adverse interests, the firm may represent both only with their consent and if the representation will not adversely affect either.

Mr. Oertel has indicated in the attached Disclosure and Waiver of Conflicts letter that Lee County's interests will not be adversely affected by Mr. Folz' representation of Colonial Homes and vice versa. Mr. Oertel will have no involvement with Lee County v. Colonial Homes, Inc. and Mr. Folz will have no involvement with Dean & Dean Farms v. Lee County.

11. Review for Scheduling:

Depart. Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
					RK 3/6	mf 3/6/07	3/6/07	3/7/07	

12. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: 3/5 2:15 MP.
COUNTY ADMIN FORWARDED TO: 3/8 8:30

CO. ATTY. FORWARDED TO CO. ADMIN. 3-5-07 2:00pm
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LAW OFFICES

OERTEL, FERNANDEZ, COLE & BRYANT, P.A.

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KENNETH G. OERTEL
TIMOTHY J. PERRY

OF COUNSEL:
PATRICIA A. RENOVITCH

February 7, 2007

Pete Farior
Colonial Homes, Inc.
2000 Interstate Park Drive
Suite 300
Montgomery, AL 36109

David M. Owen
Lee County Attorney
Lee County Attorneys Office
P.O. Box 398
Ft. Myers, Florida 33902

2007 MAR -2 AM 9:18
RECEIVED BY
LEE CO. ATTORNEY

Re: Disclosure and Waiver of Conflicts of Interest

Dear David and Pete:

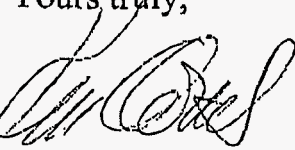
The purpose of this letter is to disclose the existence of a potential conflict of interest arising out of the representation by Oertel, Fernandez, Cole & Bryant (the "Firm") of Colonial Homes, Inc. and/or its affiliates ("Colonial Homes") and of Lee County, Florida (the "County"). As you know, the Firm is representing Colonial Homes in Lee County v. Colonial Homes, Inc., Case No.: 06CA-939-H and Lee County in Dean & Dean Farms v. Lee County, Case No. 06-CA-5011.

The applicable ethics rules permit us to represent clients with potentially adverse interests in circumstances where our responsibilities to and relationship with one client will not be adversely affected by our representation of another client, on the condition that both clients consent after consultation.

Pete Farrior
David M. Owen
February 7, 2007
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We hereby confirm to you that, under the circumstances of this matter, our current representation of Colonial Homes will not adversely affect our responsibilities to and relationship with Lee County and vice versa. We further confirm to you that the lawyers from the Firm that will be representing Lee County in connection with Dean & Dean Farms v. Lee County will have no involvement in the litigation with Colonial Homes and the lawyers from the Firm that will be representing Colonial Homes in connection with Lee County v. Colonial Homes, Inc. will have no involvement in the litigation with Dean & Dean Farms, and the Firm will not share with either client any confidential or proprietary information related to the other client.

Under these circumstances, if you agree that the Firm may undertake concurrent representation of Lee County and Colonial Homes in the matters described above, and that all conflict issues with respect to such concurrent representation are waived by you, please indicate your consent and waiver by signing below. Also, please return, via facsimile and U.S. Mail, the executed copy to me as soon as possible, keeping a copy for your records. We appreciate your assistance in this matter.

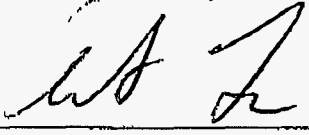
Yours truly,

Kenneth G. Oertel
Scott W. Foltz

Acknowledged and agreed to:

LEE COUNTY, a political subdivision
of the State of Florida

By: _____
Name: David M. Owen
Title: Lee County Attorney
Dated:

COLONIAL HOMES, INC.

By:  _____
Name: Alan S. Farrior
Title: President, Colonial Home
Dated: