

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

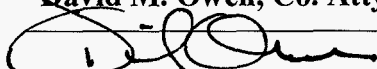
**Blue Sheet No. 20070669**

**1. ACTION REQUESTED/PURPOSE:** Request Board authorize the continued use of the law firm of Oertel, Fernandez, Cole & Bryant for the defense of *Dean & Dean Farms, Inc. vs. Lee County*, Case No. 06-CA-5011, and to provide consulting legal services in the case of *Schwab Materials, Inc. vs. Lee County*, Case No. 06-CA-3003.

**2. FUNDING SOURCE:** County Attorney and Department of Community Development internal funding.

**3. WHAT ACTION ACCOMPLISHES:** Provides the County Attorney's Office with authorization to continue to utilize Ken Oertel, Esq. to pursue the defense of Dean & Dean Farms, Inc. challenging the Pine Island Community Plan and Amendment, and to assist with the "Schwab" case.

**4. MANAGEMENT RECOMMENDATION:** Approve authorization to continue the defense of the Pine Island Community Plan, and to provide consulting assistance in the "Schwab" case utilizing Ken Oertel, Esq..


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|---|---|--|
| <b>5. Departmental Category:</b> <span style="font-size: 1.5em; font-weight: bold;">A12B</span> |   | <b>6. Meeting Date:</b> May 8, 2007  |
| <b>7. Agenda:</b>   | <b>8. Requirement/Purpose: (specify)</b>  | <b>9. Request Initiated:</b>   |
| <input type="checkbox"/> Consent  | <input type="checkbox"/> Statute  | <b>Commissioner</b> _____  |
| <input checked="" type="checkbox"/> Administrative  | <input type="checkbox"/> Ordinance  | <b>Department</b> DCD/County Attorney  |
| <input type="checkbox"/> Appeals  | <input type="checkbox"/> Admin. Code  | <b>Division</b> _____  |
| <input type="checkbox"/> Public   | <input checked="" type="checkbox"/> Other <span style="margin-left: 20px;">Utilize<br/>Outside<br/>Counsel</span> | <b>By: Mary Gibbs, Dir., DCD<br/>David M. Owen, Co. Atty.</b>                        |
| <input type="checkbox"/> Walk-On  |   |  |

**10. Background:**

1. The Pine Island Community Plan containing the "Coastal Rural" zoning classification was adopted by the Board of County Commissioners on January 9, 2003 with DCA Acceptance/Filing on December 27, 2004. A "compromise amendment" was adopted on October 12, 2005 with DCA Notice of Filing on December 19, 2005.

(Continued on Page 2)

**11. Review for Scheduling:**

| Dept. Director    | Purchasing or Contracts | Human Resources | Other | County Attorney   | Budget Services |           |           |           | County Manager/P.W. Director |
|-------------------|-------------------------|-----------------|-------|---|-----------------|-----------|-----------|-----------|------------------------------|
| <i>Mary Gibbs</i> |                         |                 |       | <br><i>4/26/07</i> | Analyst         | Risk      | Grants    | Mgr.      | <i>4-27-07</i>               |
|                   |                         |                 |       |   | <i>MP</i>       | <i>MP</i> | <i>MP</i> | <i>MP</i> |                              |

**12. Commission Action:**

- Approved
- Deferred
- Denied
- Other

CO. ATTY'S  
FORWARDED 4/25/07  
TO CO. ADMIN.  
*T. JOAN*

RECEIVED BY  
COUNTY ADMIN: *MP*  
*4/25/07* *10:55*

COUNTY ADMIN  
FORWARDED TO:  
*A/ CMB.*  
*4/26/07* *to RB.*

**BACKGROUND:** (Continued)

On March 21, 2007, an amended Complaint in the case of *Dean & Dean Farms, Inc. vs. Lee County* was filed in Circuit Court challenging the Pine Island Plan and claiming \$61 million in damages to affected property owners.

From January through March, 2006, County staff and the Board went through an Annotation process relating to the Pine Island portion of the Comprehensive Plan, in particular, Objective 14.2 and Policies 14.2.1 and 14.2.2 relating to development on Pine Island. The Board ultimately adopted County Resolution No. 06-03-24 on March 14, 2006, accepting the Minority Opinion of the Annotation Committee thereby implementing certain parameters for Pine Island development pursuant to the Annotated Objective and Policies. Part of the adoption process included Board direction to secure outside counsel if the annotation to the Plan were to be challenged.

Because of the potential financial exposure in the Dean & Dean Farms case and the Board's direction with respect to the need for outside counsel in the Pine Island Comprehensive Plan Annotation matter, the law firm of Oertel, Fernandez, Cole & Bryant of Tallahassee through the person of Ken Oertel, Esq., was engaged within a few weeks after the amended Complaint was filed by the attorneys for Dean & Dean Farms, Inc.

2. Similarly, the case of Schwab Materials, Inc. (claiming \$18.5 million in damages) requires additional legal input and insight with respect to the legal theory being advanced by the Plaintiff in the case. It is being requested that Ken Oertel, Esq. also be utilized on a limited consulting basis to supplement the County Attorney's Office defense of that case.

Authorization for the continued use of Ken Oertel, Esq., is being sought prior to the County Attorney's Office spending authorization is exceeded. No funding is being requested at this time. The County Attorney's Office and the Department of Community Development will be sharing the costs from available internal funds for the retention of Mr. Oertel in the two cases.

Request approval of authorization to continue to use Ken Oertel, Esq. in the "Dean Farms" and "Schwab" cases.