

1. ACTION REQUESTED/PURPOSE: Deny requested appeal of administrative determination of the Lee Plan under the Single Family Determination provision filed by Attorney Cody Vaughan-Birch (Henderson Franklin law firm) on behalf of property owner Tom Munoz, Inc.

2. WHAT ACTION ACCOMPLISHES: Upholds the determination by the Administrative Designee that the property owner is not entitled to a favorable Administrative Interpretation under the provision set forth in Lee Plan Chapter XIII to construct one single-family residence on the property that is the subject of the appeal.

3. MANAGEMENT RECOMMENDATION:

4. Departmental Category: 12 County Attorney
COMMISSION DISTRICT #1

AP #1

5. Meeting Date:
Tuesday, August 15, 2006 @ 9:30 a.m.

6. Agenda:		7. Requirement/Purpose: (specify)	
<input type="checkbox"/> Consent	<input type="checkbox"/> Statute	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Admin. Code
<input type="checkbox"/> Administrative	<input type="checkbox"/> Statute	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Admin. Code
<input checked="" type="checkbox"/> Appeals	<input checked="" type="checkbox"/> Other	<input type="checkbox"/> Lee Plan	<input type="checkbox"/> Chapter XIII
<input type="checkbox"/> Public			
<input type="checkbox"/> Walk-On			

8. Request Initiated:
Commissioner _____
Department County Attorney
Division Land Use
By: John J. Fredyma
John J. Fredyma, Asst. Cty Atty

9. Background:

Attorney Cody Vaughan-Birch has filed an appeal on behalf of property owner Tom Munoz, Inc., with regard to a 0.096 acre (4,189 sq. ft.) lot located at 7471 Thigpen Road in Bokeelia (STRAP NO.:31-43-22-00-00023.001A).

On October 18, 2005, an Administrative Interpretation of the Single Family Residence Provisions of the Lee Plan denied a single family determination for the subject property (Case No. MUD2005-00159). Additional title information was subsequently submitted to verify the legal description of the subject property; however, the re-evaluation of the request concluded the subject lot was still not entitled to a favorable single family determination.

The record shows that the subject property was created as a separate remainder in 1979 when it was retained by the predecessor-in-title upon the sale of the larger tract of property from which this lot was derived. The current owner acquired the substandard remainder lot in 2005. Although the subject property was created prior to the adoption of the Lee Plan in 1984, the unpermitted or unlawful separation or subdivision in 1979 was less than the minimum one acre (43,560 sq. ft) lot size otherwise required by the Zoning Regulations for a lot in the AG-2 zoning district. Additionally, the 4,189 sq. ft. sized lot did not comply with the 7,500 sq. foot minimum under the Lee Plan for any unplatted lot or parcel created after June 27, 1962 and prior to December 21, 1984.

(Continued on next page.)

S:\LU\JF\JFSingle Family Determinations\Blue Sheet - Tom Munoz, Inc - denial.wpd

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
				<i>Tom Munoz</i>	Analyst	Risk	Grants	Mgn.	
					<i>RK 7/11</i>	<i>of shot 7/12/06</i>	<i>7/12/06</i>	<i>7/12/06</i>	<i>7/14/06</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

CO. ATTY.
FORWARDED
TO CO. CLERK
7/10/06 4:41

RECEIVED BY
COUNTY ADMIN: *PK*

COUNTY ADMIN
FORWARDED TO: *JK*
7/14/06
JK

In reviewing an appeal, the Lee Plan provides that the Board will consider only information submitted in the administrative interpretation process and will review only whether the County Attorney's Office, as the Administrative Designee, has properly applied the facts presented and the standards set forth in the Lee Plan for such administrative interpretations. ***No additional evidence may be considered by the Board.***(Emphasis added)

The applicant seeks to argue that the standards set forth in Lee Plan Chapter XIII, Sections b.B.1., 2. and 3. would require the Board to reverse the decision of the Administrative Designee and allow one single family home to be constructed on the property. Unfortunately, such a decision would improperly validate or legitimize the 1979 attempt to unlawfully separate or subdivide the subject property from a much larger tract of land.

The provisions cited by the applicant might have some relevance if the facts underlying the creation of the subject property were different. If the creation of the subject property occurred before 1962 (and the adoption of zoning in Lee County), or if the 1979 conveyance created a lot in excess of the 7,500 sq. ft., prior to the adoption of the Lee Plan in December of 1984, then a favorable determination might have resulted. However, both the 1979 and the more recent 2005 conveyance each ignored all existing County regulations. There is no evidence in the record that would provide any factual or legal basis for a claim of equitable estoppel in this case. The 1979 conveyance was an unlawful lot split that appears to have been an independent action by the applicant's predecessor-in-title and done without any reliance or contact with the County. The 2005 acquisition of the substandard-sized lot by the applicant also appears to have occurred without regard for any County regulation. Additionally, the less than 1/10th of an acre-sized lot may even be too small to effectively accommodate a home and driveway, along with on-site potable water and an on-site septic disposal system; however, the AG-2 zoned lot is large enough for less intensive development and agricultural uses.

In law, the doctrine of "unclean hands" requires a party seeking relief to be "innocent" in the creation of the circumstances complained of. In this case, neither the applicant nor their predecessor-in-title are innocent in past actions insofar as the prior conveyances have each been contrary to the adopted provisions of both the County's zoning regulations and the Comprehensive Plan. The current property owner wants the Board to forget or ignore past "bad" actions and grant them relief from density requirements of the Lee Plan. The property owner has attempted to characterize their circumstance as worthy of consideration (and relief) under the provision of Chapter XIII of the Lee Plan. Unfortunately, the applicant has not demonstrated a factual basis for entitlement to such relief.

Based upon the above, the County Attorney's Office is of the opinion that the single family interpretation (denial), as issued, meets the criteria, standards and intent of the Lee Plan minimum use determination provisions. Consequently, the appeal should be denied and the decision of the Administrative Designee should be upheld. A single family residence should not be allowed to be constructed on the subject property.

Attachments:

1. Applicant's Appeal of Administrative Interpretation
to the Lee County Board of County Commissioners, including copies of:
Administrative Interpretation of the Single Family Residence Provisions of the Lee Plan (MUD2005-00159)
2. Staff memo dated July 12, 2005, including copies of:
Determination of the Application of the Minimum Use Provision (original staff determination)
and Application for Administrative Action - Minimum Use Determination
3. Boundary Survey
4. Aerial of neighborhood
5. GIS Map of Neighborhood
6. Lee Plan Chapter XIII, Section b.
7. Draft Decision on Appeal

**APPLICANT'S APPEAL OF ADMINISTRATIVE INTERPRETATION TO THE
LEE COUNTY BOARD OF COUNTY COMMISSIONERS**

CASE NO: MUD2005-00159

Pursuant to Chapter XIII of the Lee County Comprehensive Plan (the Lee Plan), and on behalf of Tom Munoz, owner of 7471 Thigpen Road, the undersigned hereby requests appellate review of the administrative interpretation set forth in case number MUD2005-00159. This decision was rendered October 18, 2005, and pursuant to Chapter XIII of the Lee Plan, this appeal is timely filed fifteen (15) days after the administrative interpretation was made.

It is our contention that the individual has not properly applied the facts of the instant matter to the Lee Plan as a whole. The applicant submitted an application for a Minimum Use Determination on July 6, 2005 for property located at 7471 Thigpen Drive in Bokeelia, and having a STRAP no. 31-43-22-00-00023.001A. After comparing the application and submittal materials regarding the subject parcel with the Single Family Residence Provisions of the Lee Plan, the Lee County Attorney's Office denied the request. Per Chapter XIII, subsection (b) of the Lee Plan, "(a)dmistrative 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." Chapter XIII(b)(B), subsection (b) provides four standards for administrative interpretations, one of which is known as the "Single-Family Residence Provision." The other three standards include:

- 1. deny all economically viable use of property will be avoided;*
- 2. Interpretation 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;*

The applicant requests the Board of County Commissioners, acting in its appellate capacity, to re-evaluate this request for administrative interpretation considering all of the applicable standards set forth in the Lee Plan.

Standard 1. emphasizes that administrative interpretations that "deny all economically viable use of (the) property *will be avoided*" (emphasis added). This standard, through the use of the word "will" indicates that the avoidance of economic waste must be avoided in an administrative interpretation. The applicant contends that an

administrative interpretation denying the request to construct a single-family residence on the parcel denies the applicant of his economically viable use of the property. There is no other economically viable use of this property other than residential uses because of the size, location, and surrounding uses in the immediate area.

Standard 2. requires that the "interpretation should be consistent with background data, other policies, and objectives of the plan as a whole." The first element of this standard requires one to look at "background data." A cursory review of the surrounding area will reveal that the immediate area is developing as single-family residential lots. The parcel is zoned RS-1, but does not meet the minimum lot requirements for this zoning category, as its total lot area is approximately 4,250 square feet. There are two lots of similar size that face the same problem as the subject parcel, located immediately to the west of the subject parcel (7481 Thigpen Road, Strap 31-43-22-00-00023.0030; and 7491 Thigpen Road, Strap 31-43-22-00-00023.0020). These three lots represent an isolated problem within this emerging residential area, and the denial of this administrative interpretation creates a small oasis of unusable property within a vast area of buildable residential lots.

Just three other lots within the area share similar lot size problems, but are not precluded from residential construction due to either a plat, the construction of residences prior to the implementation of the Land Development Code, or another reason. These lots include one on the same street (7421 Thigpen Road, Strap 31-43-22-00-00023.0040) that allowed a residence on a 4,250 square foot parcel, two lots at the end of the street directly north of the subject parcel that are 3,854 square feet each (7419 Pentz Road; STRAP 31-43-22-00-00018.0100; and 7420 Pentz Road; STRAP 31-43-22-00-00018.0110). These properties may comply with the Single Family Provision, but are representative of the isolated nature of this request, in that the background data supports this request because there are other existing lots in the immediate area that are permitted for residential use that do not meet current or previous lot size standards.


"Other policies" and "objectives of the Plan as a whole" referenced in Standard 2. also support a favorable review of this request. This parcel is located within the Outlying Suburban Future Land Use category, and a review of Policy 1.1.6 reveals that these areas are anticipated to receive residential growth where it is appropriate to protect existing or emerging residential neighborhoods. This "protection" directive, implemented through the Lee Plan in 1984, is properly applied to this area, however it is not practically applied to a handful of lots existing prior to 1984 that are surrounded by a sea of other larger lots. The lots immediately surrounding the subject parcel are generally 12,000 square feet, which is still short of the 14,520 square feet currently required by the Lee Plan. In addition, Goal 14 of the Lee Plan sets forth several policies and objectives applicable to Pine Island as a whole. A review of these policies and objectives directs residential development into the area where this subject parcel is located, and specifically directs all other types of development away from this area. Therefore, Goal 14 implicitly directs that this parcel be used for a single family residence, or no use at all.

Standard 3. requires that an administrative interpretation be consistent *to the extent practicable* with prior interpretations. While this interpretation may be consistent with other interpretations of the Single Family Provision, the applicant contends that such a finding cannot be supported as practical. The denial of the Minimum Use Determination request denies economic use of effectively three small parcels located amongst several parcels that support residential construction. The decision to deny this use to parcels that have been in existence for over 25 years does not seem to conform with the above-referenced standard for such an administrative interpretation.

Regarding the analysis under Standard 4, the Single Family Provision, the application included deeds purporting to create the subject parcel, however a complete title search of the area in question is currently pending in order to conclusively determine the actual creation date of the subject parcel. The applicant and John Fredyma of the Lee County Attorney's Office have agreed to allow the completion of this title examination before beginning the 30 period required to review this appeal and schedule it for a meeting before the Board of County Commissioners. Therefore, this 30-day requirement is mutually deemed tolled until the applicant provide the results of this search within a reasonable time, and the applicant warrants that he will diligently pursue and promptly provide such information.

In sum, the applicant requests the Board to review the administrative interpretation rendered in light of all standards contained within the Lee Plan. The applicant contends that an examination of the subject parcel along with background data, other policies and objectives of the plan, and the economically viable use of the property will reveal that the only practicable solution is to grant the minimum relief available and directed through the Lee Plan - allowing the construction of one single-family residence on the subject parcel.

Sincerely,



Cody B. Vaughan-Birch, Esq.
Henderson, Franklin, Starnes & Holt
1715 Monroe St. Fort Myers, FL 33902
(239) 344-1249

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

CASE NO.: MUD2005-00159

DATE OF
APPLICATION: July 6, 2005

APPLICANT/
AGENT: Richard E. Moore
P.O. Box 563
St. James City, FL 33956

OWNER: Tom Munoz
100 Montrose Drive
Fort Myers, FL 33919

PROPERTY IN
QUESTION: 7471 Thigpen, Bokerelia, FL 33922 more particularly described as:

The West 50 feet of the East 378 feet of the South 1/2 of
the North 1/2 of the South 1/2 of the South 1/2 of the
West 1/2 of the Northwest 1/4 of the Northeast 1/4 of
Section 31, Township 43 South, Range 22 East, Lee
County, Florida.

STRAP NO.: 31-43-22-00-00023.001A

FINDINGS OF
FACT: The documentation provided with the application shows that the current owner acquired the parcel in April 2005, via a Warranty Deed recorded in the Public Records of Lee County in Official Records (OR) Book 4748, Page 3828. For the purpose of calculating density, the parcel comprises approximately .096 acres (4,189 sf.) of land and is zoned AG-2. The parcel is located in the Outlying Suburban Future Land Use Category, which requires a minimum of 14,520 square feet per dwelling unit. For this reason, the owner must obtain a favorable administrative interpretation of the single family residence provisions of the Lee Plan to construct a dwelling on the property. The property was created as a separate remainder parcel in 1979, by virtue of a Warranty Deed recorded in the Public Records of Lee County in OR Book 1434, Page 1388.

The subject parcel was created as a remainder parcel in 1979 when the property owner transferred all the property he owned except the subject parcel. The 2005 deed transferred the subject (remainder) parcel to the current property owner.

The parcel has less than 7,500 square feet and did not comply with the governing zoning requirements when created as a lot in 1979 prior to the Lee Plan's effective date of December 21, 1984. In 1979, the minimum lot area required to construct a single family residence on an AG-2 lot was one acre or 43,560 square feet.

The Lee Plan requires that the parcel front on a road with a graded surface of shell, marl, gravel base rock, or other compacted fill material, suitable for year-round use. The parcel must also be served by drainage swales or equivalent drainage measures. The parcel has access via Thigpen Road, a road of compacted surface materials.

DETERMINATION:

The subject parcel does not qualify for a favorable Administrative Interpretation under the provisions set forth in Lee Plan Chapter XIII.

The subject parcel was created in 1979 as a remainder tract when it was split from the adjacent parcel to the east. Although created prior to the adoption of the Lee Plan in 1984, the parcel did not meet the minimum acreage requirements (one acre for a single family residence) in place at that time. Under the Lee Plan, any unplatted lot or parcel created after June 27, 1962 and prior to December 21, 1984 is required to encompass a minimum of 7,500 square feet in order to qualify for a favorable minimum use determination. The subject lot has only 4,189 square feet. Therefore, the subject parcel does not meet the criteria for a favorable Administrative Interpretation of the single family residence provision set forth in Lee Plan Chapter XIII. Accordingly the request is denied.

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

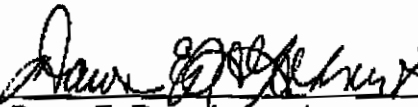
interpretations. No additional evidence will be considered by the Board. The Board of County Commissioners will conduct such appellate review at a public hearing."

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 Department of Community Development, 1500 Monroe Street, Fort Myers, Florida, along with the filing fee, no later than 15 days from the date of this Administrative Interpretation, stating the reasons for your disagreement.

Dated this 18th day of October, 2005.

LEE COUNTY ATTORNEY'S OFFICE
AS ADMINISTRATIVE DESIGNEE

BY:

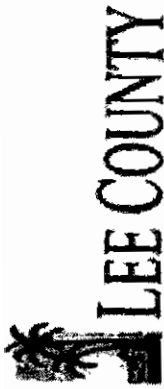


Dawn E. Perry-Lennert
Assistant County Attorney

DPL:tlb

cc: Timothy Jones, Chief Assistant County Attorney
Donald D. Stilwell, County Manager
Paul O'Connor, Director, Planning Division
Peter Blackwell, Planning Division
Julie Dalton, Property Appraiser's Office
Debbie Carpenter, DCD
Tidemark

Sent to Applicant via Certified Mail #7003 0500 0002 6651 8227, and regular mail.
Sent to Owner via Certified Mail #7003 0500 0002 6651 8548, and regular mail.



Fee History

Case #: MUD2005-00159

Case #: MUD2005-00159
Property Owner: TOM MUNOZ INC
Property Address: 7471 THIGPEN RD BOKEELIA 338
Contractor:
License Number:
Fax Number:

Permit Description: APPLICATION FOR a minimum use determination to build one SFR

Permit Description	Permit Number	Fee	Date Paid	Balance
Minimum use / single family	LC5150015500.341900.9021	135.00	7/6/2005	0.00
Appeal of a MUD	LC5150015500.341900.9009	75.00	11/2/2005	0.00
Total Fees: \$210.00		Paid: \$ 210.00	TOTAL REMAINING DUE:	\$0.00

Documents Required for Pick-up:

**MEMORANDUM
FROM
THE DEPARTMENT OF
COMMUNITY DEVELOPMENT
DEVELOPMENT SERVICES DIVISION**



DATE: July 12, 2005

TO: Joan Henry
Assistant County Attorney

FROM: Peter Blackwell
Planner

Re: Minimum Use Determination

Please find Two Minimum Use Determination applications for your review.

MUD2005-00156
MUD2005-00159

The first case is recommended for denial because it does not meet the minimum lot size due to being created as an access way rather than a residential lot. The second case is more complicated. The lot is not properly recorded in OR Books and even if it was it would not meet the minimum lot size due to the late creation date.

If you have any questions, feel free to contact me at 479-8312.

cc: file
MUD2005-00156
MUD2005-00159

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

CASE # MUD2005-00159

DATE RECEIVED BY ZONING DIVISION: 7/06/05

STRAP NUMBER: 31-43-22-00-00023.001A

APPLICANT: Rick Moore

OWNER: ~~Rick Moore~~ Tom Munoz

OWNERSHIP

- a) DATE WARRANTY DEED OR AGREEMENT FOR DEED RECORDED IN OWNER/PURCHASER NAME: June 2005
- b) PLACE RECORDED: OR Book 4748 Page 3828

CREATION OF PARCEL

- a) DATE PARCEL CREATED/RECORDED: July 1977
- b) PLACE RECORDED: OR Book 1209 Page 123 (See Below)
 - 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 ___ NO X 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: _____ Outlying Suburban _____

- 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 legal description of the subject lot (Lot .001A) currently listed by the property appraisers describes a lot that is 85 feet deep by 50 feet wide. This is corroborated by the applicant on Form "D" of the Minimum Use Determination Application. All three of the legally recorded documents conveying the property describe a property that is 85 feet deep by 328 feet wide. These include OR Book 4748 Page 3828 recorded 6/10/2005, OR Book 4718 Pages 4233-34 recorded 5/20/2005, and OR Book 1209 Page 123 recorded 6/12/1977. According to the Property Appraiser records, the 1977 warranty deed describes both the subject property and the property abutting it on the east (Lots .001A and .0010). Therefore, either the subsequent deeds recorded the wrong legal description of the subject parcel or the subject parcel was split off and not legally recorded in County records. If the subsequent legal conveyances were improperly recorded, a corrective deed will not alleviate the lots non-conformance to the Single Family Provision. This is because the earliest deed (describing both the subject parcel and the abutting lot) dates from 1977. If the subject property was split off after that date, it would have to be at least 7,500 square feet. The subject lot is only 4,250 square feet. Therefore, the subject lot does not conform to the minimum lot size requirement of the Single Family Provision. The lot is accessed by Thigpen Road, a road of compacted surface

CASE #MUD2005-00159

Page 2

materials. Due to the deed discrepancies and insufficient lot size, this lot does not qualify for a single family residence under the Single Family Provision of the Lee Plan.

APPLICATION FOR ADMINISTRATIVE ACTION

APPLICATION FOR:

- Administrative Variance (attach Supplement A)
- Commercial Lot Split (attach Supplement B)
- Consumption On Premises (attach Supplement C)
- Minimum Use Determination (attach Supplement D)
- Ordinance Interpretation (attach Supplement E)
- Relief for Designation Historic Resources (attach Supplement F)
- Relief for Easement Encroachment (attach Supplement G)
- Administrative Amendment PUD or PD (attach Supplement H)
- Administrative Deviation from Chapter 10 (attach Supplement I)
- Placement of Model Home/Unit or Model Display Center (attach Supplement J)
- Dock & Shoreline Structures (attach Supplement K)
- Wireless Communication Facility (attach Supplement M and Shared Use Plan Agreement)
- Final Plan Approval per Resolution: # _____

RECEIVED
JUL 06 2005
la
PERMIT COUNTER

Applicant's Name: Rick Moore Phone #: (239) 910-0088
 Project Name: Thomas Lot
 STRAP Number: 31-43-22-00-00023.001A

STAFF USE ONLY

Case Number: MVD 2005-00159 Commission District: 1
 Current Zoning: AG-2 Fee Amount: \$ 35-
 Land Use Classification: Outlying Sub. Intake by: la
 Planning Community: Pine Is. C

LEE COUNTY
COMMUNITY DEVELOPMENT
P.O. BOX 398 (1500 MONROE STREET)
FORT MYERS, FLORIDA 33902
PHONE (239) 479-8585

MUD 2005-00159

PART I - GENERAL INFORMATION

1. APPLICANT'S NAME: Rick Moore (Richard E. Moore)
Mailing Address: PO Box 563
Street: PO Box 563
City: ST. James City State: FL Zip: 33956
Phone Number: Area Code: 239 Number: 910-0088 Ext. _____
Fax Number: Area Code: 239 Number: 282-5203
E-mail address: R.Moore@SellstatePinelIsland.com

2. Relationship of applicant to property*:

Owner Trustee
 Option holder Contract Purchaser
 Lessee Other (Indicate) Agent

Applicant must submit an Affidavit that he is the authorized representative of the owner [see Part I (attached) and please complete the appropriate Affidavit form (A1 or A2) to the type of applicant].

3. AGENT'S NAME(S): (Use additional sheets if necessary): Rick (Richard E.) Moore

Mailing Address: P.O. Box 563
Street: P.O. Box 563
City: ST. James City State: FL Zip: 33956
Contact Person: Same as Above
Phone Number: Area Code: _____ Number: Same 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)
- Wireless Communication Facility (requires supplement M and Shared Use Plan Agreement)
- Final Plan Approval (no supplement)

5. NATURE OF REQUEST (please print): M.U.D.

MUD 2005-00159

RECEIVED
JUL 06 2005

PERMIT COUNTER

PART II - PROPERTY INFORMATION

Is this request specific to a particular 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: _____

2. Name of owner of property: TOM MUNOZ
 Mailing Address: Street: 100 Montrose Dr.
 City: FT. MYERS State: FL Zip: 33919
 Phone Number: Area Code: 239 Number: 770-6509 (agent) Ext.: _____
 Fax Number: Area Code: _____ Number: _____

3. Legal Description: Is property one or more undivided platted lots within a subdivision recorded in the official Plat Books of Lee County?
 NO. Attach a legible copy of the metes and bounds property description and boundary survey (10 acres or more) or certified sketch of description (less than 10 acres) meeting the minimum technical standards set out in chapter 61G 17-6.006, Florida Administrative Code.

YES. Property is identified as:
 Subdivision Name: _____
 Plat Book _____ Page _____ Unit _____ Block _____ Lot _____

4. STRAP NUMBER: 31-43-22-00-00023.001A

5. Property Dimensions:
 Area: 4,250 square feet or _____ acres.
 Width along roadway: 50 feet.
 Depth: 85 feet.

6. Property Street Address: 7471 Thie Pen Bokeelia, FL 33922

7. General Location Of Property: String Fellow Rd To Right on Tortuga. Right on Thie Pen. Lot is on Right at 7471

MUD 2005-00159
RECEIVED

AFFIDAVIT FOR ADMINISTRATIVE ACTION
APPLICATION IS SIGNED BY AN INDIVIDUAL OWNER OR APPLICANT

I, Richard E. Moore, swear or affirm under oath, that I am the owner or the authorized representative of the owner(s) of the property and that:

1. I have full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of any action approved by the County in accordance with this application and the Land Development Code;
2. All answers to the questions in this application and any sketches, data or other supplementary matter attached hereto and made a part of this application are honest and true;
3. I have authorized 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; and that
4. The property will not be transferred, conveyed, sold or subdivided unencumbered by the conditions and restrictions imposed by the approved action.

Richard E. Moore
Signature

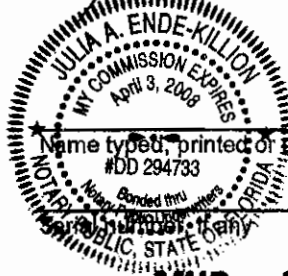
Richard E. Moore
(Type or printed name)

STATE OF FLORIDA
COUNTY OF Lee

The foregoing instrument was sworn to (or affirmed) and subscribed before me this 7-6-05 (date) by Richard E. Moore (name of person providing oath or affirmation), who is personally known to me or who has produced DL. MUD-745-54-174-0 (type of identification) as identification.

Julia A. Ende-Killion
Signature of person taking oath or affirmation

Title or rank



Name typed, printed or stamped
#DD 294733

MUD 2005-00159
RECEIVED
JUL 07 2005
PERMIT COUNTER



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): 50' X 85'
- c. Comprehensive Plan Land Use designation for the subject property: OUTLYING SUBURBAN
- 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 29A.992, RS 1.01%

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).

RECEIVED
JUL 05 2005
PERMIT COUNTER Page 1 of 1

MUD 2005-00159

BOUNDARY SURVEY

A PORTION OF LAND LOCATED IN
SECTION 31, TOWNSHIP 43 SOUTH, RANGE 22 EAST
LEE COUNTY, FLORIDA

KRIS A. SLOSSER
PROFESSIONAL LAND SURVEYOR
4880 TILLA CREEK LAKE
BOHITA SPRINGS FLORIDA 34134 (941) 947-0284

CERTIFICATION:
I HEREBY CERTIFY THAT THIS BOUNDARY SURVEY OF THE PROPERTY DESCRIBED
HEREIN WAS COMPLETED UNDER MY RESPONSIBLE CHARGE ON 9/26/08. THIS
SURVEY WAS PERFORMED IN ACCORDANCE WITH THE STANDARDS AND PRACTICES
OF PROFESSIONAL LAND SURVEYING AS SET FORTH BY THE
BOARD OF PROFESSIONAL LAND SURVEYORS IN CHAPTER 601.01-4, F.A.C. PURSUANT
TO SEBANKS 2007 FLORIDA STATUTES.

CERTIFIED TO:
LAWYERS
OLD REPUBLIC NATIONAL TITLE INSURANCE
PLATYMIN LAND TITLE AGENCY, INC.

SECTIONAL DATA
NOT TO SCALE



LEGEND

- F.N. FOUND NAIL
- C/L. CHAIN LINK FENCE
- F.I.R. FOUND 3/4" IRON ROD
- F.C.M. FOUND CONCRETE MONUMENT
- F.P.A. FOUND PINE APPLES BUSH
- F.P.A. FOUND PINE APPLES BUSH
- ELEC. ELECTRIC SERVICE
- L.S. LICENSED SURVEYOR
- P.E.S. PROFESSIONAL SURVEY & MAPPER
- CALCULATED
- F.A.C. FLORIDA ADMINISTRATIVE CODE
- U.E. UTILITY EASEMENT
- CONC. CONCRETE ROAD
- W.M. WATER METER
- W.P.P. WOOD POWER POLE
- GLD. WIRE. GLASS WIRE
- S.L.D. SPLIT POLE
- PD. FOUND
- F.N. FOUND NAIL
- U.T.E. UNITED TELEPHONE SERVICE
- O.R. OFFICIAL RECORDS BOOK

NOTES:

- 1) BEARINGS SHOWN HEREON REFER TO THE WEST LINE OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 31, TOWNSHIP 43 SOUTH, RANGE 22 EAST, AS BEING AN ASSURED BEARING OF RECORD OR A RESTRICTION OF RECORD.
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- 3) DIMENSIONS SHOWN HEREON ARE IN FEET AND DECIMALS THEREOF.
- 4) IMPROVEMENTS OTHER THAN THOSE SHOWN WERE NOT LOCATED.
- 5) THIS SURVEY IS NOT VALID WITHOUT THE SIGNATURE AND THE ORIGINAL MAPPED SEAL OF A FLORIDA LICENSED SURVEYOR AND MAPPER.
- 6) THIS PROPERTY IS LOCATED IN FLOOD ZONE AS HAVING A BASE FLOOD ELEVATION OF 6.6 PER F.I.E.M. 120124 0132 & SEPTEMBER 19, 1984.
- 7) UNLESS A COMPARISON IS MADE ALL BEARINGS AND DISTANCES ARE PER LEGAL

LINE TABLE

Line	Bearing	Distance
L1	S00°26'09" W	83.78'
L2	S00°26'09" W	83.78'
L3	S00°26'09" W	83.78'
L4	S00°26'09" W	83.78'
L5	S00°26'09" W	83.78'
L6	S00°26'09" W	83.78'
L7	S00°26'09" W	83.78'
L8	S00°26'09" W	83.78'
L9	S00°26'09" W	83.78'
L10	S00°26'09" W	83.78'
L11	S00°26'09" W	83.78'
L12	S00°26'09" W	83.78'
L13	S00°26'09" W	83.78'
L14	S00°26'09" W	83.78'
L15	S00°26'09" W	83.78'
L16	S00°26'09" W	83.78'

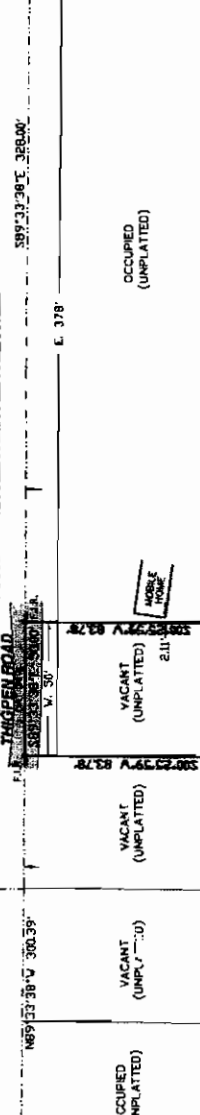
PROPERTY DESCRIPTION:

THE WEST 30 FEET OF THE EAST 376 FEET OF THE NORTH 1/4 OF THE SOUTH 1/4 OF THE SOUTH 1/4 OF THE WEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 31, TOWNSHIP 43 SOUTH, RANGE 22 EAST, LEE COUNTY, FLORIDA.

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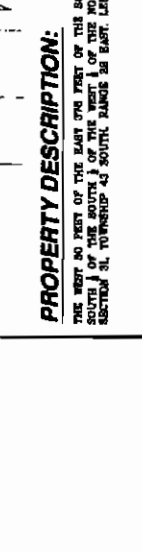
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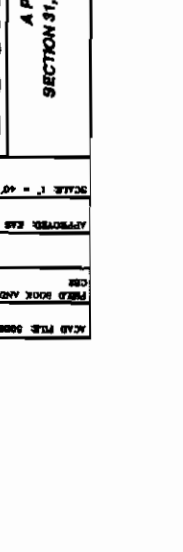
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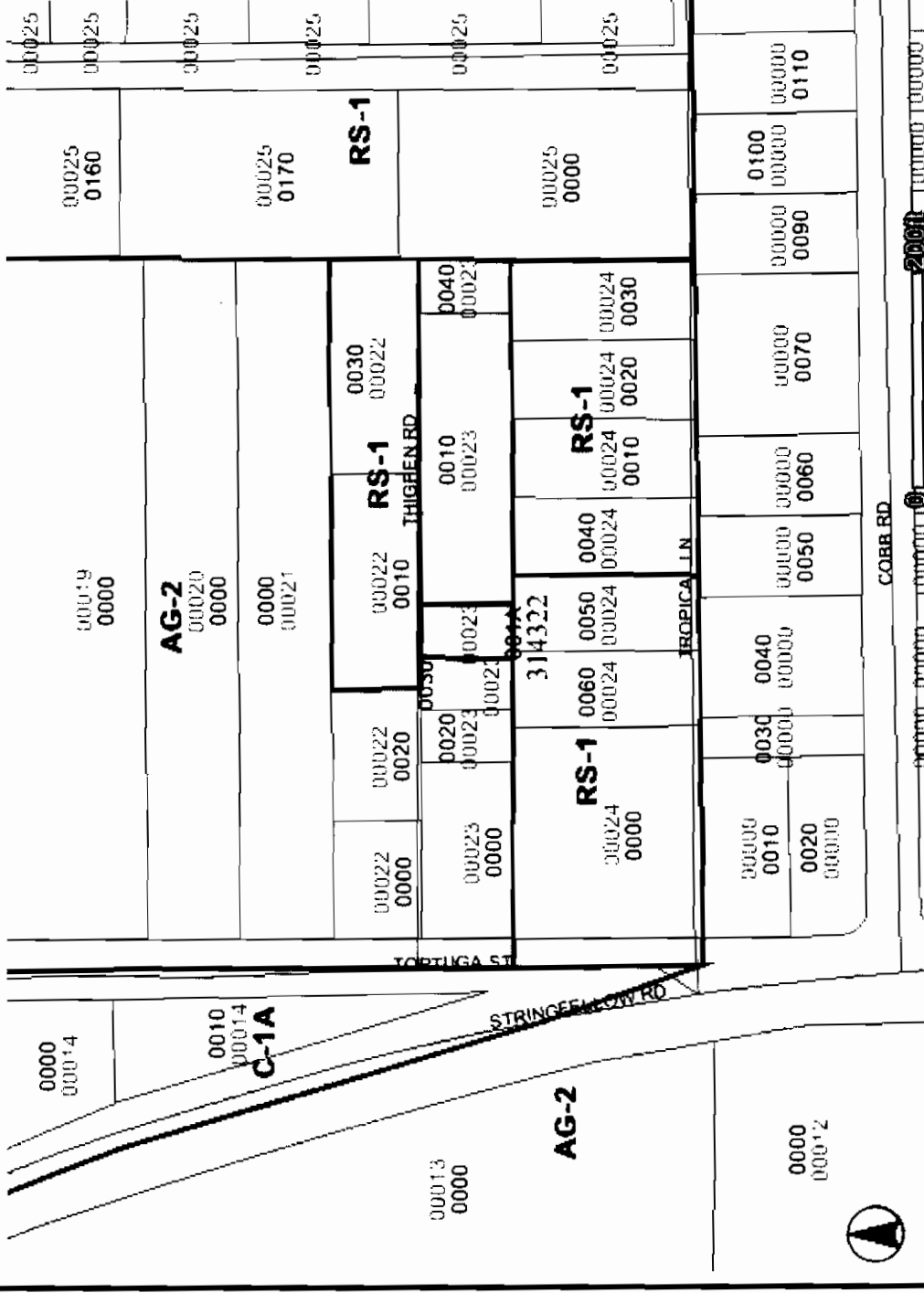
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Tom Munoz, Inc.



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: combing 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, Tradeport, 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.

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 reapportion 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, 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

BEFORE THE BOARD OF COUNTY COMMISSIONERS, LEE COUNTY, FLORIDA

IN RE: TOM MUNOZ, INC.

CASE NO. MUD2005-00159

APPEAL OF ADMINISTRATIVE INTERPRETATIONS
OF SINGLE FAMILY RESIDENCE

DECISION ON APPEAL

THIS APPEAL came before the Board of County Commissioners of Lee County acting in its capacity as the appellate reviewer of the Single Family Residence Interpretation of the Administrative Designee pursuant to Chapter XIII of the Lee County Comprehensive Land Use Plan; and

THE BOARD has considered the information submitted in the Administrative Interpretation process, as well as, the Administrative Interpretation of the Single Family Residence Provisions rendered by the Administrative Designee and the response submitted by the petitioner; and

THE BOARD considered whether the Administrative Designee properly applied the standards for Administrative Interpretations to the facts presented.

THE BOARD finds the subject parcel that was attempted to be created as separate parcel does not comply with the Lee County Comprehensive Plan.

THE BOARD finds the Interpretations rendered by the Administrative Designee was appropriate and does not result in an unconstitutional taking of property. The Administrative Designee's decision is hereby upheld and the appeal denied.

DONE AND ADOPTED this ____ day of _____, 2006.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Tammara Hall, Chairwoman

Approved as to form by the
Lee County Attorney's Office

By: _____
John J. Fredyma
Assistant County Attorney