

CITY OF BONITA SPRINGS, FLORIDA  
ZONING RESOLUTION NO. 07-02

A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA; DENYING A REQUEST BY THE BONITA BAY GROUP IN REFERENCE TO THE BONITA BAY PUD TO AMEND THE BALD EAGLE MANAGEMENT PLAN ADOPTED AS PART OF THE 3RD AMENDMENT TO THE DEVELOPMENT OF REGIONAL IMPACT (DRI) DEVELOPMENT ORDER, STATE DRI#6-8182-18; ON 2,422.00 +/- ACRES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Bonita Springs Zoning Board for Land Use Hearings and Adjustments and Zoning Board of Appeals ("Zoning Board") gave full consideration to the evidence available, and recommended approval; and

WHEREAS, City Council held a public hearing and gave full and complete consideration of the record, consisting of the recommendation of staff, the zoning board, the documents on file with the City and the testimony of all interested parties.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Bonita Springs, Lee County, Florida:

SECTION ONE: DENIAL OF REQUEST

City Council of Bonita Springs hereby denies the request to amend the Bald Eagle Management Plan adopted as part of the 3rd Amendment to the Development of Regional Impact (DRI) Development Order, State DRI#6-8182-18, and makes the following findings of fact.

1. Bonita Bay proposed changes that did not have regional impact to a small portion of its approved development of regional impact (DRI).
2. Bonita Bay proposed to amend the bald eagle management plan to reduce the existing bald eagle nest protection zone from a 1,000 foot primarily (no-build) zone to a 330 foot primary zone. The Bonita Springs Comprehensive Plan policies that relate to the Southern Bald Eagle include:

**Policy 7.6:** Southern Bald Eagles - The City shall use its bald eagle habitat protection regulations to protect Southern bald eagle nesting sites and request the County to monitor Southern bald eagle nesting activity.

**Policy 7.6.1:** The City shall maintain a policy of negotiations with owners of land surrounding eagle nests to provide an optimal management plan within which all development within critical eagle nesting habitat and buffer areas must be consistent. The management plans shall address at a minimum:

- a. A description of the land around the critical eagle nesting habitat, including locations of nest tree(s) and perch tree(s), vegetation types, and a description of the type and density of understory and canopy vegetation;
- b. A history and behavior patterns of the eagle pair;
- c. An aerial map and a map at the scale of the development which shows the location of the eagle's nest and other critical eagle nesting habitat features as well as the proposed development;
- d. The size and shape of the buffer area;
- e. Measures to reduce potential adverse impacts of the development on the nesting bald eagles;
- f. A critical eagle nesting habitat management plan, which shall include techniques to maintain viable nesting habitat. These techniques may include controlled burning, planting, or removal of vegetation, invasive exotic species control, maintaining hydrologic regimes, and monitoring;
- g. Deed restrictions, protective covenants, easements, or other legal mechanisms, ensuring that the approved management plan will be implement and followed.
- h. A commitment to educate future owners, tenants, or other users of the development about the specific requirements of the approved eagle management plan and the state and federal eagle protection laws.

The eagle technical advisory committee will consider the guidelines promulgated by FFWCC and the U.S. Fish and Wildlife Service in the review of management plans and may request technical assistance from these agencies whenever necessary.

3. Bonita Springs staff recommended a condition to protect the fly zone of the eagles, which was not acceptable to Bonita Bay Group, which would have required the "development to be limited to the areas labeled as lots 1-6, lots 12-15, the expanded lake, and roadway to provide access to the lots as depicted in the staff EXHIBIT "C" entitled "Staff Recommended Development Area" and the Best Management Practices set forth in the revised Baywood Phase Two Best Management Practices (BMPs) Handbook (EXHIBIT "D") must be followed." [Note: Exhibits to the staff report not contained in this Resolution, but are contained in the record.]
4. Pursuant to Florida Statutes §§163.3167(8), 163.3194(1)(a), 380.06(19)(f), developments of regional impacts (DRIs) previously authorized may be

completed, but changes must obtain approval, and must comply with the comprehensive plan of the local government.

5. Bonita Bay Group did not prove entitlement for the amendment to the Third Amendment of the DRI Development Order by demonstrating compliance with the Bonita Springs Comprehensive Plan, with the conditions referenced in this Resolution and other Bonita Springs Comprehensive Plan Goals, Objectives and Policies.
6. The requested amendment to the Third Amendment of the DRI Development Order; as conditioned, was not compatible with existing or planned uses in the surrounding area; will adversely affect environmentally critical areas or natural resources, in particular, gopher tortoise and eagle habitat, both species protected by the State of Florida. City Council further found that the proposed development order amendment would have an unfavorable impact upon the environment and natural resources of the area and that this negative environmental impact would override the positive value of the proposed development order amendment.
7. The proposed use is not appropriate at the subject location within the DRI.
8. The recommended conditions considered for the eagle management plan, gopher tortoises and other applicable regulations did not provide sufficient safeguards to the public interest. For purposes of Florida Statutes §380.08(3), Bonita Bay Group is eligible for development within its DRI consistent with its existing Development Orders, such as re-routing the location so as to avoid close proximity of dwelling units to the gopher tortoise and eagle habitat.
9. As a result of City Council denying the request to amend the Bonita Bay Development of Regional Impact, State Development Order #6-8182-18, as amended, to amend the Bald Eagle Management Plan adopted as part of the Third amendment to the Bonita Bay Development of Regional Impact (DRI) Development Order, City Council did not consider nor make a finding whether the proposed change constituted a substantial deviation from the original development approvals thereby warranting further Development of Regional Impact review.

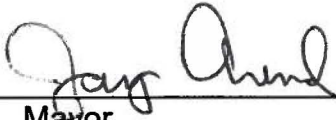
**SECTION TWO: EFFECTIVE DATE**

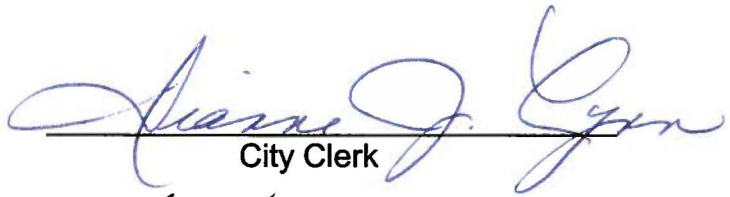
This resolution shall take effect immediately upon adoption. Certified copies of this resolution shall be sent by the City Clerk to the Florida Department of Community Affairs, Bureau of Local Planning, 2555 Shumard Oak Boulevard, Tallahassee, FL 32399-2100 and the Southwest Florida Regional Planning Council, 1926 Victoria Avenue Fort Myers, Florida 33901.

**DULY PASSED AND ENACTED** by the City Council of the City of Bonita Springs,

Lee County, Florida, this 25<sup>th</sup> day of June, 2007.

AUTHENTICATION:

  
\_\_\_\_\_  
Mayor

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

Vote:

Arend	Aye	Joyce	Aye
Ferreira	Nay	Simons	Nay
Grantt	Nay	Nelson	Nay
McCourt	Nay		

Date filed with City Clerk: 6-27-07