

CITY OF BONITA SPRINGS, FLORIDA

ORDINANCE NO. 17-12

AN ORDINANCE OF THE CITY OF BONITA SPRINGS, FLORIDA; DECLARING A TEMPORARY MORATORIUM RELATED TO THE BONITA BEACH ROAD VISIONING STUDY AND QUADRANT STUDY IN THE COMPREHENSIVE PLAN AMENDMENT APPROVED MAY 3, 2017 AS ORDINANCE NO. 17-06; ESTABLISHING A MORATORIUM ON THE PROCESSING OF ANY ZONING OR OTHER COMMUNITY DEVELOPMENT APPLICATIONS WITHIN THE BONITA BEACH ROAD QUADRANT MAP OR BONITA BEACH ROAD CORRIDOR AREA (NETWORK ZONE MAP); PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, pursuant to Article VIII, Section 2 of the Florida Constitution, and Chapter 166, *Florida Statutes*, the City of Bonita Springs is authorized to protect the public health, safety, and welfare of its citizens and has the power and authority to enact ordinances and regulations for valid governmental purposes that are not inconsistent with general or special laws; and

WHEREAS, on December 3, 2014, the Bonita Springs City Council directed City staff to prepare a proposed RFP/Q for visioning services for the City to move toward planning for “complete streets,” whereby the City of Bonita Springs would plan and prepare for a future with additional travel options besides vehicles, including walking, bicycling, and mass transit, to develop a workable vision of Bonita Beach Road and its major north/south intersections, emphasizing development of inviting and friendly pedestrian walkways, bikeways, and convenient mass transit loading and unloading areas in combination with traffic calming roadway designs; and

WHEREAS, the City selected Toole Design Group, LLC, for such visioning services, who provided its final report on the Bonita Beach Road Visioning Study in November 2016; and

WHEREAS, in addition to the Bonita Beach Road Visioning Study, the City of Bonita Springs authorized additional work pursuant to the Professional Services Agreement with McMahon and Associates, who designed a Quadrant Plan for Network Enhancement Alignment; and

WHEREAS, the City first held public workshops and then held public hearings on proposed comprehensive plan amendments related to the Bonita Beach Road Visioning Study, including a public hearing before the City's Local Planning Agency at its meeting on January 19, 2017, and a transmittal hearing by the Bonita Springs City Council at its meeting on February 1, 2017, and an adoption hearing by the Bonita Springs City Council at its meeting on May 3, 2017; and

WHEREAS, on May 3, 2017, the Bonita Springs City Council adopted the proposed comprehensive plan amendments related to the Bonita Beach Road Visioning Study, thereby amending the following elements of the City's Comprehensive Plan: (1) Future Land Use Element: creating Objective 1.16 related to the Bonita Beach Road Corridor; (2) Transportation Element: amending Goal 1 for integration of bicycles, pedestrian, transit and vehicular infrastructure; amending Policy 1.1.6 to add Bonita Beach Road as a constrained road; amending Policy 1.1.12 for additional criteria for access; amending Objective 1.2 to incorporate bicycles, pedestrian and, transit, along with vehicular infrastructure; amending Objectives 1.3 and 1.4 for "complete streets" and public viewsheds; amending Policy 1.7.4 for the Bicycle and Pedestrian Master Plan, and the Bonita Beach Road Visioning Study; creating Goal 2 with Objectives and Policies related to the Bonita Beach Road Vision Study; and adding the Bonita Beach Road Quadrant Map and Corridor Network Zones Map; (3) Capital Improvements Element: amending priorities to implement vision for a walkable community; and (4) Intergovernmental Element: amending Goal 4 to specify cooperative plans ("Comprehensive Plan Amendments"); and

WHEREAS, the Bonita Springs City Council desires to enact a temporary moratorium on applications for development orders to preserve the status quo, to prevent inconsistent development, and to allow for the Comprehensive Plan Amendments to become effective; and

WHEREAS, the Bonita Springs City Council finds that it is in the best interests of the City's residents to enact a temporary moratorium on applications for development orders within the areas identified on attached Exhibit A-1 Quadrant Map and on attached Exhibit A-2 Network Zone Map until such time as the Comprehensive Plan Amendments

become effective and to provide adequate time for the Bonita Springs City Council to consider land development regulations to implement the Comprehensive Plan Amendments' requirements related to the Bonita Beach Road Visioning Study; and

WHEREAS, the Bonita Springs City Council finds that a temporary moratorium on applications for development orders within the areas identified on attached Exhibit A-1 Quadrant Map and on attached Exhibit A-2 Network Zone Map is necessary to allow adequate time for the Comprehensive Plan Amendments and any necessary land development regulations to become effective; and

WHEREAS, the Bonita Springs City Council desires to establish an administrative remedy for any property owner who contends that the application of this Ordinance to his or her property constitutes a temporary regulatory taking or illegally interferes with a vested right; and

WHEREAS, failure to impose such a temporary moratorium may result in development and/or uses that would be inconsistent with the purpose of the adopted Comprehensive Plan Amendments, and, thereby, undermine the Bonita Beach Road Visioning and Quadrant Studies and the City's ability to plan for "complete streets."

NOW, THEREFORE, THE CITY OF BONITA SPRINGS HEREBY ORDAINS:

SECTION ONE: RECITALS

The recitals set forth above, incorporated herein, are hereby found true and correct.

SECTION TWO: PURPOSE

The purpose of this temporary moratorium is to provide a reasonable amount of time for the Comprehensive Plan Amendments to become effective pursuant to Section 163.3184, *Florida Statutes*, and to provide adequate time for the Bonita Springs City Council to adopt land development regulations to implement the Comprehensive Plan Amendments' requirements related to the Bonita Beach Road Visioning Study.

SECTION THREE: TEMPORARY MORATORIUM DECLARED

- a. A moratorium on the submittal and processing of applications for development orders is hereby established and applicable to all properties located within the areas identified on attached Exhibit A-1 Quadrant Map and/or located within the areas identified on attached Exhibit A-2 Network Zone Map located in the City of Bonita Springs.
- b. The moratorium is for a time period of eleven (11) months, beginning July 21, 2017, and will remain in effect through June 21, 2018, unless automatically dissolved upon the effective date of Bonita Springs Ordinance No. 17-06, the Comprehensive Plan Amendments addressing the Bonita Beach Road Visioning and Quadrant Studies, and the City's adoption of land development regulations implementing the Comprehensive Plan Amendments.
- c. Notwithstanding section three (b), City Council may by resolution rescind this moratorium if it determines that the land development regulations are completed and in effect, or sufficiently in process to implement the goals, objectives and policies of this Comprehensive Plan Amendments.
- d. The Bonita Springs City Council may extend this moratorium by ordinance if it makes a legislative determination that it is in the best interests of the citizens of Bonita Springs to do so.
- e. No applications for development orders (including those that may be submitted prior to the Effective Date of this Ordinance) for properties subject to the temporary moratorium established herein may be processed by City staff or any City Board until the conclusion of this moratorium, unless Council provides direction, either through this ordinance, through approval of zoning or site plans, or staff determination it meets the intent of the Vision.
- f. Any applications for development orders for properties subject to the temporary moratorium established herein received by the City on or before the Effective Date of this Ordinance will be held in abeyance until the conclusion of the moratorium, unless Council provides direction, either through this ordinance or through approval of zoning or site plans, or staff determination it meets the intent of the Vision.

- g. No rezoning or permit applications for properties subject to the temporary moratorium established herein, including, but not limited to, local development orders or development permits as defined in §380.031, *Florida Statutes*, planned developments, conventional rezonings, special exceptions, and/or variances will be processed by the City and no further submittals for development orders for properties subject to the temporary moratorium established herein will be accepted during the moratorium period. The term “development permit” does not include building permits that are requirements of the Florida Building Code or other technical codes, such as HVAC, fire, mechanical, plumbing or Life Safety.
- h. Notwithstanding the above, City staff may process any permitting and rezoning applications that are consistent with the Bonita Beach Road Visioning and Quadrant Studies and the Comprehensive Plan Amendments, if the applicant is willing to voluntarily comply with the Goals, Objectives, and Policies contained within the Comprehensive Plan Amendments, as adopted in Ordinance No. 17-06. If the zoning ordinance has a condition requiring compliance with the Bonita Beach Road Visioning Study or will be approved with such condition, the development may continue to be processed.

Further, City staff may process any permitting and rezoning applications within the geographic area of Section Five when a specific permit or rezoning application has no direct relationship with the Bonita Beach Road Visioning and Quadrant Studies and the Comprehensive Plan Amendments (for example, development permits necessary for use or interior portions of an existing structure).

- i. The following properties are specifically or conditionally exempt from this moratorium:
 - 1. Developments within the two square miles (1,299+ acres), Township 48 – Range 26 – Sections 1 and 2 (“Sections 1 & 2”) which were subject to statutory development agreements.
 - 2. The Bonita Beach Road Vision will not apply to Bernwood Park of Commerce as it relates to the building placement and setbacks.
 - 3. Bonita Exchange – Development Orders may be processed, in conformance with the following:

- i. Apartment complex may proceed to development order due to it being recently approved as gated and not open to the public.
- ii. Commercial portion may be exempt from moratorium as long as building locations and setbacks are consistent with adjacent properties along Bonita Beach Road and recent approvals such as Horizon Park CPD. This will allow for a single drive-way with parking on either side, between the right-of-way and the building.
- iii. Any drive-through facilities must be completely screened from view from Bonita Beach Road.

SECTION FOUR: CREATION OF REGULATIONS AND STAFF DIRECTION

During the temporary moratorium period, the Bonita Springs City Council shall permit City staff to perform the following:

- a. Provide notification of this moratorium to all applicants for properties subject to the temporary moratorium established herein.
- b. Continue with the capital improvement programs in the Northeast and Northwest Quadrants of the intersection of Bonita Beach Road and U.S. 41.
- c. Prepare land development regulations consistent with the Goals, Objectives, and Policies contained within the Comprehensive Plan Amendments, as adopted in Ordinance No. 17-06, including review and public hearings by the Local Planning Agency and the Bonita Springs City Council, provided such land development regulations are either made contingent upon the Comprehensive Plan Amendments becoming effective or are otherwise consistent with the City's current Comprehensive Plan.
- d. Create and implement a strategy for additional improvements, regulations, and financing to meet the Goals, Objectives, and Policies contained within the Comprehensive Plan Amendments, as adopted in Ordinance No. 17-06, provided such actions are legally permissible under current state and local laws.

SECTION FIVE: GEOGRAPHICAL APPLICATIONS

The temporary moratorium established by this Ordinance shall be effective throughout the areas of the City of Bonita Springs as shown on attached Exhibit A-1 Quadrant Map and on attached Exhibit A-2 Network Zone Map subject to the exceptions in Section Three (i) of this Ordinance.

SECTION SIX: **REMEDY PROVISION**

- a. Any property owner who contends that the application of this Ordinance to his or her property constitutes a temporary regulatory taking or illegally interferes with a vested right shall submit an application to the City Manager, or his designee, for relief from this ordinance. The application shall contain all evidence known to the property owner that supports the property owner's contention that the imposition of this Ordinance to his or her property constitutes a temporary regulatory taking or illegally interferes with a vested right.

- b. An application which contains an allegation of a temporary regulatory taking shall be evaluated pursuant to the criteria described in *Reahard v. Lee County*, 968 F.2d 1131 (11th Cir. 1992), which include:
 1. Whether the property owner will be denied substantially all beneficial use of the property;

 2. Consideration of economic impact of the temporary moratorium; and

 3. The extent to which the temporary moratorium has interfered with the property owner's investment-backed expectations.

- c. The following is a non-exclusive list of the factors to be analyzed under these criteria:
 1. The history of the property;

 2. The history of the development;

 3. The history of the property's Future Land Use Map classification;

 4. The history of the property's zoning;

5. Any change in development when ownership changed;
 6. The present nature and extent of the property;
 7. The reasonable expectations of the property owner and the neighboring property owners; and
 8. Any diminution of the property owner's investment-backed expectations.
- d. The City Manager, or his designee, shall make a written determination within thirty (30) days of receipt of a complete application, and schedule within twenty (20) days for the next available City Council meeting, for City Council to determine whether to grant or deny such an application.

SECTION SEVEN: CONFLICTS OF LAW

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted City of Bonita Springs ordinance or *Florida Statutes*, the more restrictive requirement shall apply.

SECTION EIGHT: SEVERABILITY

It is the intent of the Bonita Springs City Council that if any section, subsection, clause, phrase, portion, or provision of this Ordinance is deemed invalid or found unconstitutional by a court of competent jurisdiction, such part, section, subsection, clause, phrase, portion, or other provision shall be severable, and the remaining provisions of this Ordinance, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect. The City declares that no invalid or void provision or application thereof was an inducement to enactment of this Ordinance, and that the City would have enacted this Ordinance regardless of the invalid or void provision or application thereof.

SECTION NINE: EFFECTIVE DATE

The effective date of this Ordinance shall be thirty (30) days from its adoption date, pursuant to Section 29(c) of the City Charter, which requires ordinances to have effective

dates of thirty (30) days after their adoption or at any later date as specified in the ordinance.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Florida, this 21st day of June 2017.

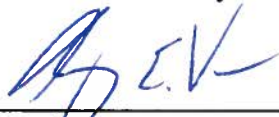
AUTHENTICATION:



Mayor



City Clerk

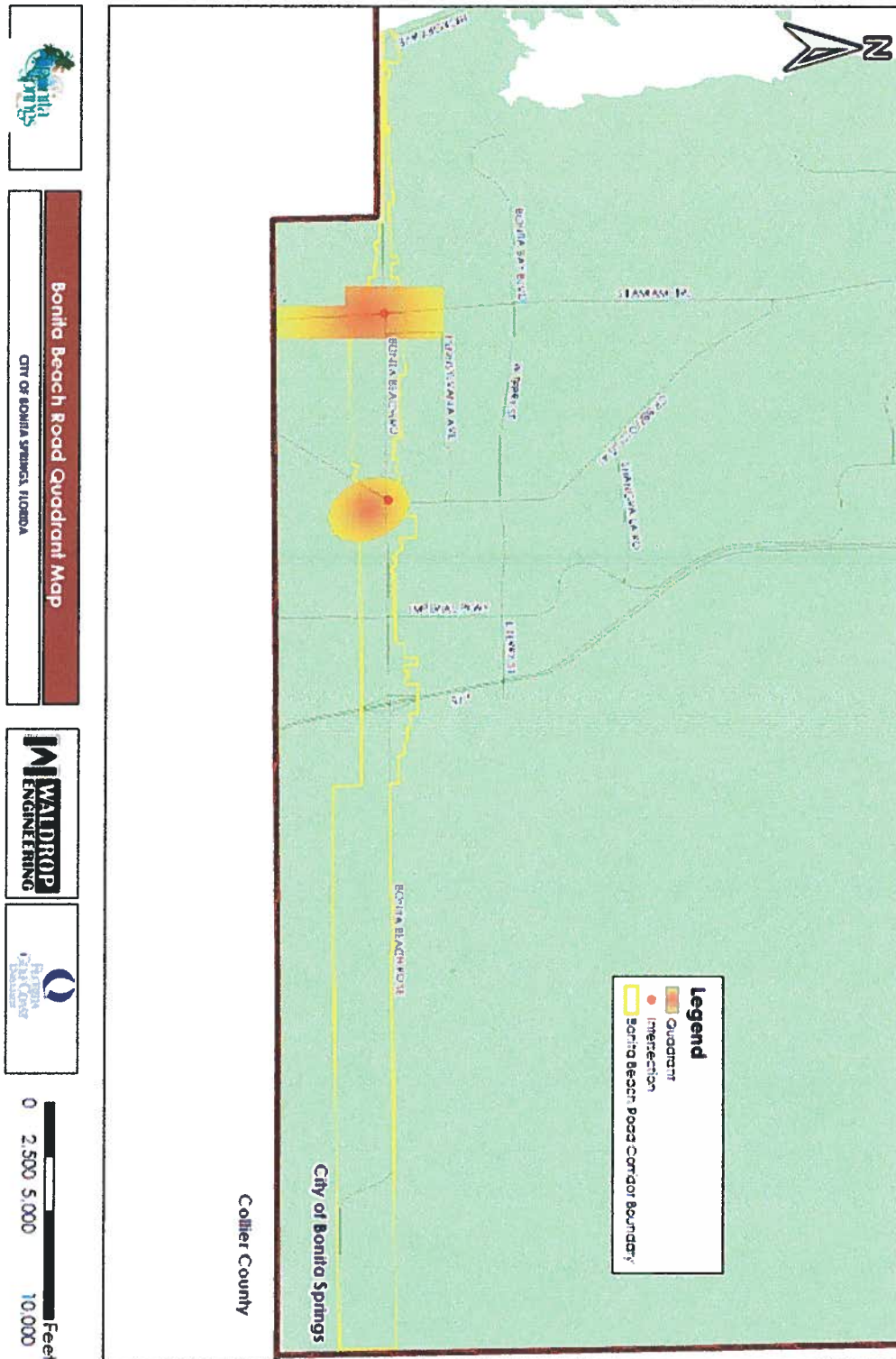
APPROVED AS TO FORM: 

City Attorney

Vote:
DeWitt Aye Quaremba Aye
Forbes Aye Simmons Aye
Gibson Aye Slachta Aye
O'Flinn Nay

Date filed with City Clerk: 6/27/17

Exhibit A-1 Quadrant Map



Network Zone Map

