

**MINUTES REPORT
EAGLE TECHNICAL ADVISORY COMMITTEE
(ETAC)
Tuesday, December 08, 2020**

Committee Members Present:

Laura Greeno, Chair
Mike Myers
Ed Elms
Betsie Hiatt, Vice-Chair

Excused / Absent:

None

Lee County Government Staff Present:

Becky Sweigert, DCD Planning
Nic DeFilippo, DCD Planning
Amanda Swindle, Assistant County Attorney
Debbie Carpenter, DCD Administration

Outside Consultants/Members of the Public Present:

Paul Owen, Dex Bender
Jason DeBello, Neal Communities
Tim Oak, Neal Communities

CALL TO ORDER:

Ms. Laura Greeno called the meeting to order at 3:03 pm in the first floor conference room 1B of the Community Development/Public Works Center, 1500 Monroe Street, Ft. Myers, Florida and introductions were made.

Ms. Greeno announced that discussion would start with Item #3, and that Item #2, approval of the minutes, would be done later.

11480 MCGREGOR NEST LE-069 (ROBALO DRIVE)

Mr. Paul Owen with Dex Bender Associates, said the plan had been brought to the committee by Boylan Associates in August. The Committee had provided good feedback which was taken back to the client and incorporated into this revised management plan. He said he had visited the site to confirm the location of the nest. The nesting history report indicated that this eagle pair has nested 15 of the last 16 nesting seasons, which seemed to indicate that the birds were quite tolerant of close human disturbance since, as he pointed out on the aerial, the closest home and pool cage were approximately 133 feet east of the nest. The owner is proposing development of six lots, five of them within the 660' zone. Other than a dock access and retaining wall, no structures were proposed within the 150' zone. All homes within the 660' zone would be single story consistent with the 2007 FWS National Bald Eagle Management Guidelines. A permit with FWS should not be necessary; however the agency has been contacted for confirmation. He went over the existing vegetation on the site stating that any mature pines will remain, but that as discussed, the exotics would be removed in phases. There will be a buffer area along the edge of the 150' zone to obscure the view of the lots. Any

exterior construction activity during nesting season will be monitored according to the Bald Eagle Monitoring Guidelines.

Ms. Sweigert asked if the applicant had considered some sort of construction phasing plan, especially with respect to Lot 6 the closest to the nest, since that was part of the previous discussion. He was not aware of that specifically, stating that his understanding was that once the infrastructure was in, the owners would have no control over when the lots were sold or which houses would be built when, but he could take it back to the owner if necessary. Ms. Sweigert said the infrastructure will require a development order and that might provide some insight going forward. With respect to the pair being tolerant of activities, Ms. Sweigert asked if Mr. Owen had looked into what other construction had been done in the area since she believed it was, for the most part, a built environment. In response to Mr. Elms' question about how disturbances during construction would be handled, Mr. Owen said that for minor things like nail guns or banging, the offending activity would be discontinued or done a different way, however if monitoring determined the birds were agitated or intolerant then work would be discontinued until the situation could be resolved.

Mr. Myers thought it was a good plan but recalled during the August meeting discussion about the exotics within the 150' zone and keeping anything that might be used as perch trees. Ms. Sweigert referred to the Plan's reference to 25% exotic removal per year, thinking that may need to be addressed during the development order process, either as a deviation or somehow get worked out in order to keep this as a conventional plan. She said that because there is no active application and no permits, there is nothing on which to base this Plan; there has been no determination about wetlands, no calculations as to whether the site meets density, or if the site complies with land use or land development requirements. Ms. Greeno stated she would not be comfortable approving the plan without benefit of a site plan. Mr. Owen said that the owner is looking for a confirmation that it is feasible to move forward with a development order submittal. Ms. Sweigert's recommendation would be to meet with Development Services staff for a pre-app, submit for the DO and get the first round of DO comments, then return here with a Bald Eagle Management Plan (BEMP) that is based on a proposed site plan.

Ms. Greeno asked if they would be applying for a take permit, Mr. Owen responded if needed. Although she was not sure how much of the buffer was exotics, Ms. Hiatt asked if it would be possible to consider leaving the 20' wide buffer around Lot 6 to obscure the view during construction then putting in the planted buffer after construction. Ms. Sweigert reviewed some possible timing issues, some of which could result in delays affecting the sale of the lots.

Ms. Greeno summarized the discussion which included a construction phasing plan where Lot 6 would be done last as discussed at the previous meeting. This would give the birds some time to get used to the new activity. Also, address the boardwalk and dock lighting to be sure it is minimal. Inspect the buffer and determine, of the exotics, what might be saved, and also consider wrapping the buffer closer to the 150' zone to block the view and also to prevent people from walking into that area. Ms. Hiatt suggested, as an alternative to constructing Lot 6 last, consider getting most of the exterior construction done during non-nesting season with only interior work being done during nesting season.

Mr. Owen asked if the committee could do a straw poll as to whether this may be a successful plan because the client was trying to get an idea if going forward with a development order was

feasible. Ms. Sweigert said that it was not possible to determine what obstacles there might be. Ms. Hiatt said the biggest concern seemed to be Lot 6, and her opinion, based on other homes within the 330' zone, she had no major issue with Lot 6, Mr. Myers also said he thought the eagles were tolerant enough that he had little or no concern about Lot 6, but agreed with Ms. Hiatt about the timing of exterior versus interior construction. Ms. Greeno however, stated that the eagles have had this area without activity as a safe zone for many years and when all this new construction starts they could choose to not be tolerant and the nest may be lost. Mr. Myers said that based on his observation through the years their flight plan had mostly been over the river, but agreed that was a possibility. Mr. Owen agreed to take comments back to the client. It may take some time to schedule a pre-app and prepare a site plan for submittal and return to the Committee for another review.

Ms. Greeno said the consensus seemed to be that phasing or at least getting Lot 6 built within the non-nesting season was definitely one thing that would make the committee more comfortable, as would looking at the dock and lighting, and possibly extending the buffer along the dock and walkway. Mr. Owen and Ms. Sweigert discussed construction scenarios. Ms. Sweigert recommended starting the permitting process as soon after the first of the year as possible in order to be ready to start construction as soon as the birds are done; from memory Mr. Myers thought that was typically around April, but agreed to send Mr. Owen his notes on that. As nesting season approaches staff works with builders and tries to be reasonable and sensitive to timing issues, however, whether construction continues past the nesting season deadline would depend on the extent of the remaining work. No vote was taken on the management plan and the consultant will return with a revised management plan.

MANGROVE ESTATES NEST LE-040 (WINKLER RD)

Mr. Owen presented this agenda item as well. In August this previously approved plan was brought to the Committee for review and comment due to a proposed change of the site plan. The Committee determined that the change was significant enough to warrant amending the Bald Eagle Management Plan (BEMP) for Board approval. Mr. Owen provided a summary of the changes to the amended BEMP. Ms. Sweigert had provided the previously approved plan for comparison. Mr. Owen said that 63 homes and infrastructure were planned for this development. Because of the site configuration and the location of the nest, he said it was not possible to construct the infrastructure and complete major construction of the houses within the May to October, non-nesting season, timeframe. Mr. Jason DeBello, Neal Communities, spoke briefly about the challenges, and changes that were made to the site plan in order to lessen the impacts. Mr. Owen said the nest was approximately 100 feet from the southern property line. The site plan was amended to move the lake, increase the buffer and to move things as far away from the nest tree as possible.

Historically, this pair has moved three times on the parcel, twice to the south. All three nests have been in Australian pines. There was construction to the east which occurred over a couple of nesting seasons to no effect, which seemed to indicate a tolerant pair. A vegetative buffer along the southern border obscures the view. During a site visit on 12/11/20, Mr. Owen confirmed that the pair had reconstructed the nest where it was last season. He confirmed that the FWS Permit issued in November amended the permit conditions to allow major exterior construction within the 330' – 660' during nesting season.

The general plan was for major construction, except for digging the lake, to occur anytime within the 330' to 660' zone. Mr. Owen stated that the goal was to do major infrastructure, land clearing/land changes and roads ahead of nesting season. Digging the lake was the major construction within the 330' zone. The lake will provide fill, but there will be dump trucks bringing in fill as well, which will be done outside of nesting season. Once the nesting season is done and the birds have fledged work will begin. Home construction, most of which barely touches the 330' zone, would be constructed anytime within nesting season with monitoring. No construction would occur in the 150' zone and anything within the 330' zone would be outside of nesting season.

Following discussion, Ms. Greeno asked for confirmation that construction of the lake and the hauling of fill would be done outside of nesting season and Mr. Owen confirmed that was correct. Ms. Sweigert said that was not specified in the plan and suggested that any motion include a provision that the plan would be amended to include that stipulation, which would prevent the need for Mr. Owen to schedule another review by the Committee.

Mr. Myers made the motion to approve the amended plan allowing construction within the 330' – 660' zone during nesting season, except for construction of the lake, and that this approval was contingent upon the plan being amended to include that language. Ms. Hiatt seconded, asking that the motion also include a confirmation of the commitment for monitoring in the plan. Mr. Myers agreed to amend his motion.

Ms. Greeno called the motion as made by Mr. Myers, seconded by Ms. Hiatt; it was approved unanimously.

Ms. Sweigert said she would make the arrangements for the BEMP to be presented to the Board at the next available board meeting.

APPROVAL OF MINUTES – OCTOBER 13, 2020

Ms. Greeno called for a review of the October minutes.

Mr. Elms asked for confirmation that as written in the minutes that he would be monitoring the St. James City and Pine Island nests, and that staff will monitor the North Fort Myers nests. Ms. Sweigert confirmed his understanding. If a new person is appointed to fill Ms. Bear's vacancy, that person would take over monitoring of the NFM nests.

Ms. Greeno provided clarification of her member report on page 3, confirming that *Galt* birds was correct and that the trail was closed; confirmed Pine Island *Flatwoods* was correct, and that the wording for the old nests on Pine Island should be changed to "be declared abandoned or lost". Mr. Myers asked that his monitoring report be corrected to show *Sora Drive* versus *Sword*.

Ms. Hiatt made a motion to approve the October minutes with revisions as noted. Mr. Elms seconded. The motion was called and approved unanimously.

Member Reports

Ms. Sweigert distributed a list of nests with construction going on, including Lexington Middle School (interior work), Pub & Pickle/Suntrust (minor work), Calusa Cay is gearing up; Vacation Lane, doing some remodeling, exterior stairwells. All outside 660'.

Mr. Elms:

- Pine Island Flatwoods – According to Ms. Greeno, the nest is about half a mile back off the trail and the birds are using it, so he will look for that.
- Ms. Sweigert asked about the Post Office nest and Ms. Greeno said that the birds are back in the original old nest at St. James Creek. Mr. Elms said that according to Ms. Greeno he should look for the nest just below the remnants of the old platform. Ms. Sweigert had thought that this one may have been lost because the tree is dead, so this was good to know.
- Galt Preserve - He thought the pair had been on eggs for about 10 days.
- Vacation Lane – He saw 2 adults there. The nest is in an Australian Pine and looks good. Has not seen incubating yet.
- St. Jude – They have been on eggs for the last couple weeks.
- N F M / Pritchett – He said there is a lot of activity but no eggs yet. They built another nest on the west side of the pasture, near the church, in a dead tree. They haven't done anything there but that may be because the one fledgling keeps coming back.
- Bayshore Commons – The birds are around. He has seen them perched on the tower at Coon and Donald Roads.
- Cell Tower – The nest is there and he has seen one eagle on the tower several times but it is hard to see whether they are incubating.

Ms. Hiatt had questions about the Flatwood nests, asking if the birds had moved and how many were there. Ms. Greeno confirmed that the newer nest was over by the shrimp ponds and might have been there for two seasons.

Ms. Hiatt:

- Bank of America – She has not seen the pair at all, although it is very hard to see the nest. She and Ms. Sweigert wondered if they had moved since they used to perch in an Australian Pine near the lake. Ms. Hiatt said she would check that out. The nest is very hard to see and she has not seen the pair at all.
- Gloria – That nest came down 2 years ago and it has not been rebuilt that she can find.
- Barrancas – The nest looks good and there is one adult perched nearby in a Norfolk Pine.
- Quail Trail – She has seen one adult perched on a nest branch.
- Helen Road – This is the second year she hasn't found the nest, it might be there but there are a lot of Australian Pines.
- Pacosin - That nest has not been rebuilt and she has not seen the eagles. She was concerned because they have always rebuilt by now.
- Esther - The nest looks good. She has seen one adult perched on one of the nest branches.

Ms. Greeno:

- The Lehigh nest is incubating.
- Nalle Road, NFM – This nest is near Rosie's Farm. She has seen the pair carrying Spanish moss up to the nest. Although this nest is new for staff, apparently there was a pair there last year. Ms. Sweigert said she had been unable to get back there to see it because the facility has been closed and she and Ms. Greeno had a conversation about when to try making contact with the owner to get on the property
- St. James Preserve nest – she sent a picture of the tree which was totally dead.

Mr. Myers:

- St. Charles Harbor - He has seen one adult incubating, but he thought they might be switching duties.
- Calusa Palms – The tree fell over.
- Daniels Marketplace: There is no nest material. Has not seen any activity in the area.
- Jonathan Harbor – He has spent time there, but the nest is hard to see. One of the adults was perched about 100 feet away from the nest. He went by the old nest location and there were none perched there.
- Sanibel Sunset – No nest material or birds there.
- Alico Road – He saw an adult incubating there.
- Lakes Park – He has not seen any adults on the tower.
- Pub & Pickle – He saw both adults perched 300' south of the nest.
- Lexington Middle – He saw one adult incubating.
- Sora Drive – There is a nest and the pair is incubating.
- Tortuga - He saw one adult that looked to be incubating. The other bird was perched about a couple 100 feet to the north in a dead pine snag.

Ms. Sweigert said the next meeting is tentatively scheduled for January 12th but if there were no requests or public it may be postponed.

There was a brief discussion about development and how many nests are still in areas with land left to be developed around them. Pine Island has a lot of area yet to be developed; rural areas east and northeast still have large tracts of land, but no access, so until a neighbor calls or there is a sighting it is not known what is there. Discussed that rural versus urban birds act differently. The Skyline Woods birds (aka Moody Birds) nested right near the school with kids in the playground nearby, however they incubated during the school's winter break. Ms. Sweigert did think that the Moody nest tree had died. It was struck by lightning just before nesting season. She is convinced that the birds are still there somewhere between Hancock and Pondella.

There was no public present and no further discussion. Ms. Greeno adjourned the meeting at 4:30 p.m.

The next meeting was tentatively scheduled for January 12, 2021.