

MINUTES REPORT
EAGLE TECHNICAL ADVISORY COMMITTEE (ETAC)
Tuesday, September 12, 2023

Committee Members Present:

Ed Elms

Betsie Hiatt, Vice-Chair

Kyle Philpot

Jacob Taminosian

Excused/Absent:

Laura Greeno, Chair

Lee County Government Staff Present:

Janet Miller, DCD Admin

Amanda Swindle, Asst. County Attorney

Becky Sweigert, Senior Manager, DCD

Outside Consultants/Members of the Public Present:

Ms. Laura Herrero, Johnson Engineering

Call to Order:

Ms. Betsie Hiatt, Vice Chair, called the meeting to order at 3:05 pm in the First Floor Conference Room 1B, of the Community Development/Public Works Building, 1500 Monroe Street, Ft. Myers, Florida. Introductions were made.

Agenda Item 2) Laura Herrero with Johnson Engineering, Inc. to Present Revised Bald Eagle Management Plan for LE-093 Formosa Commerce Center Phase 1

Ms. Sweigert announced that Mr. Philpot had a conflict of interest. He would be participating in the discussion, but would not be voting. She also noted that he would be completing the Voting Conflict Form 1B. Once completed, he will submit it to Lee County staff.

Ms. Swindle asked Mr. Philpot to state the nature of his conflict.

Mr. Philpot stated for the record that he was employed by Johnson Engineering.

Ms. Herrero distributed a site plan and noted it was the same site plan included in the Board's meeting packet, but the one being distributed is color coded in order to make it easier to visualize. She gave an overview of the project and noted the following: 1) It is going to be a commercial development; 2) there are several different end users on the property; one being a coffee shop. The owners of that coffee shop are anxious to begin construction, which is why this Bald Eagle Management Plan (LE-093) is being brought before the Board as a "*phased approach*;" 3) to the south is the Race Trac development (north of Alico Road); 4) to the north of the site plan is Lot 2 Formosa (a Bald Eagle Management Plan was previously brought before the Board for it), so this property is a busy light industrial commerce corridor; 5) as they proceed with this project, they will be proposing along the same lines of buffering as was done for Lot 2 Formosa; 6) She gave an overview of what would take place during Phase 1 and Phase 2 and illustrated the buildings and parking lots that would fall within 330' of the eagles nest; 7) In coordination with US Fish and Wildlife, it was determined to be in their best interests to obtain an Incidental Take Permit. Monitoring will take place, per the US Fish and Wildlife Service guidelines. If there are any issues

during that timeframe, construction will be stopped. Once the Incidental Take Permit is obtained, it will be brought before this Board to amend and update the Eagle Management Plan for Phase 2; and 8) They are proposing buffer plantings along the eastern edge of Phase 2 consistent with what was done with the north on Lot 2 Formosa. In closing, Ms. Herrero discussed the nest itself and noted that it had a history of being on and off to where some years it is successful and other years not. She noted it was a busy corridor and that the nest was not successful after Hurricane Ian. However, there have been sightings of eagles around the area despite all of the development taking place in that region. She asked that the Board consider approving the proposal so they could conduct work as proposed for Phase 1 with the understanding that another presentation would take place before Phase 2 commences.

Ms. Sweigert stated that this property is currently zoned for IPD and that it has had this zoning for a while. There is no active development order in-house yet.

Due to a question by Ms. Sweigert relating to the coffee shop, Ms. Herrero clarified that they would be seeking approval to build the coffee shop with the understanding that they will need a development order and would be required to go through that process, but they want the ability to develop within that area based upon other similar uses in the area.

Mr. Philpot stated that the entire building itself including the portion within 330' and outside of it is Phase 2. He noted they were not asking for that approval at this point.

Mr. Taminosian stated that the plan does make it sound as if at least a portion of the building would be in Phase 1. He referred to Page 5 under 3.1 that says *"Activities associated with Phase 1 proposed between 330' – 660' of Eagle Nest LE-093 include the construction of one ±1,000 square foot single story building as well as parking, internal roadways, and detention areas (Attachment 1)."*

Mr. Philpot stated that section was referring to the coffee shop only.

Ms. Herrero apologized for the confusion and noted that she had not highlighted the area correctly on the site plan.

Ms. Hiatt stated it was not an issue since the site plan is not part of the Bald Eagle Management Plan.

Mr. Elms asked if Phase 1 was just the detention.

Ms. Herrero stated it is the detention, the coffee shop, and parking.

Ms. Hiatt asked what the buffer was for the Lot 2 Formosa.

Mr. Philpot stated this project would have the same buffer of 150'.

Ms. Hiatt asked if Lot 2 Formosa was under construction.

Mr. Philpot stated they were not under construction yet because they are waiting for their development order.

Ms. Sweigert stated there is only some earth work going on in the northern parcel.

Ms. Hiatt asked if they obtained an Incidental Take Permit for that work.

Mr. Philpot stated that US Fish and Wildlife provided confirmation that an Incidental Take Permit is not necessary because it is a pasture being converted to a detention pond.

Ms. Herrero stated the development portion is outside of it.

Mr. Taminosian asked if there was any vertical construction proposed in the 330' for Lot 2 Formosa.

Mr. Philpot stated there was not within this phase of development.

Mr. Taminosian noted there was vertical construction proposed for LE-093, but he still felt what was being proposed was good.

Ms. Herrero stated this was why they will be obtaining an Incidental Take permit that will be brought back before this Board at some point in the future before Phase 2 takes place.

Ms. Hiatt asked if the detention would be dry or wet detention in Phase 1.

Ms. Herrero stated that although it only says "*detention*," she believed it was dry detention.

Ms. Hiatt asked how long they felt it would be before they come back for Phase 2.

Ms. Herrero stated she felt the earliest would be six months. She noted it would depend upon the permitting process and how smoothly it goes.

Ms. Hiatt referred to the landscape buffer that is proposed as part of Phase 2. She asked if the buffer could go in after the detention is built so the plants have a chance to grow and be a shield. She believed there would most likely be a maintenance easement on the berm and wondered if there was a possibility to include the buffer plantings on the western side.

Mr. Philpot stated his only concern was doing additional work without the Incidental Take Permit because heavy equipment would be used within the 330'.

Ms. Hiatt stated they would be using heavy equipment for the dry detention.

Ms. Sweigert stated that was correct, but the heavy equipment being used for the dry detention would be done outside of nesting season.

Ms. Hiatt noted there was no development order in-house. If the eagles return this nesting season, Phase 1 will probably not begin construction until the end of the nesting season assuming the eagles are there. Therefore, it may be next summer before Phase 1 begins (such as May).

Ms. Herrero stated she did not know their timing, but there was an urgency to get the coffee shop built. Therefore, the drainage and parking are important. It is the reason they want to get the detention area in. Eventually, a development order will be required. She asked Mr. Philpot if a development order had been submitted.

Mr. Philpot stated it had not been submitted yet and is still being worked on. He noted everyone is aware of the timelines and it is understood that if it gets into nesting season, the project will be on hold.

With this in mind, Ms. Herrera felt the timing mentioned by Ms. Hiatt was a fair assessment.

Ms. Sweigert noted that the development order process takes approximately six months even in instances where there is a complete/clean submittal.

Ms. Hiatt wanted to hear from other Board members on the buffer plantings. She personally felt they should be included as part of the Phase 1 plan. If the eagles do not nest, then Phase I could begin sooner. It is also possible that Phase 2 might be coming in right behind Phase 1. There are enough “*what ifs*” that she felt the buffer should be included in Phase 1.

Mr. Taminosian stated he wanted to be consistent with what the Board approved in the past for the northern parcel. He asked what approach was taken.

Mr. Elms asked why there would be an objection for the applicant to agree to having the buffer plantings as part of Phase 1.

Ms. Herrero stated she was hesitant to make a commitment without the engineer being in attendance today and without knowing what their design looks like for that area.

Mr. Elms asked if the vote could be contingent upon the possibility of the plantings taking place before Phase 2 starts.

Ms. Sweigert referred to Mr. Taminosian’s question. She pulled up the Plan for Lot 2 Formosa and stated it looked as if there were general tree plantings of cabbage palms. She recalled that this Board made a motion to change some of them to slash pines and that she believed they were planted on the berm. She stated one option would be to make a recommendations that will be taken before the Board of County Commissioners. Another option would be to table the item for next month.

Ms. Hiatt asked if the cabbage, palm/slash pines, or oaks were installed along the west side of the dry detention outside 330’ to provide visual screening from the nest.

Ms. Sweigert stated the Phase 2 plan will include it within the 330’.

Ms. Herrero noted that as part of the Incidental Take Permit, they will be describing everything that is going on with the project. When it comes back to this Board, the application that was submitted to US Fish and Wildlife will be included in the packet.

Ms. Hiatt stated that if a motion is made it does not have to be absolute. It could be a recommendation that the buffer plantings be installed at the completion of Phase 1 on the western side of the detention area.

Ms. Herrero stated that would give them an opportunity to take it to the owner and engineers to make sure it will work with their site plan.

Ms. Swindle recommended they use the words “*if feasible*” in the motion.

Ms. Hiatt stated that if for some reason it is not feasible it can be discussed with staff as part of the development order review. If it is not feasible, she would assume it was for a good reason. Regarding landscape standards, she asked Ms. Sweigert if the applicant would be required to put a buffer along the eastern side as part of their development order.

Ms. Sweigert stated they would most likely not be required to put in a buffer if it is from Industrial to Industrial. This will be going from Industrial to AG-2, which requires general tree plants. Therefore, the general tree plantings could be placed along the eastern side since no buffer is required.

Mr. Philpot asked for clarification on whether they wanted the general tree plants to be on the western berm or the eastern berm.

Ms. Herrero thought they were discussing the western side.

Ms. Hiatt stated she was referring to the line of site and was in favor of leaving the detention area open for the eagles to forage.

Mr. Taminosian made a motion to approve the Bald Eagle Management Plan for nest LE093 Formosa Commerce Center Phase 1 with the recommendation that “if feasible” buffer plantings be installed at the completion of Phase 1 along the western border of the detention area depicted in the Bald Eagle Management Plan, seconded by Mr. Elms. The motion was called and passed 3-0. Mr. Philpot abstained.

Agenda Item 3 – Approval of Meeting Minutes from July 11, 2023

Mr. Philpot corrected the spelling of his last name on Pages 2 and 3.

Mr. Taminosian made a motion to approve the July 11, 2023 meeting minutes with the corrections noted by Mr. Philpot. The motion was seconded by Mr. Philpot. The motion was called and passed 4-0.

Agenda Item 4 – 2022-2023 Nesting Season Summary

Ms. Sweigert asked the members to review the Nesting Season Summary to make sure it is correct and accurate. She asked that they notify staff of any errors. She noted that Mr. DeFilippo had not finished the mapping yet, so she did not have that available for the Board to view at this time.

Mr. Taminosian asked if the map would be for updates to Lee Spins.

Ms. Sweigert stated that was correct.

Mr. Taminosian noted that some of his nests were either determined to be abandoned or lost. He was not certain whether or not those nests should be removed from the summary.

Ms. Sweigert stated she would update the summary to remove those nests that were declared lost in the past season.

Mr. Taminosian noted that one of the trees was cut down that used to have an eagles nest in it along McGregor Boulevard (Robalo); however, he will continue to survey the territory.

Ms. Sweigert stated she had received several reports from citizens claiming they have seen eagles in that area, but no locations have been documented yet.

Agenda Item 5 – Nest Assignments

Ms. Sweigert asked if everyone was fine with keeping their territories.

The Board stated that was correct.

Mr. Philpot asked if it was Creekside Preserve that had a management plan that was brought before this Board twice. He recalled that the applicants were hoping the nest would be determined to be lost in the future.

Ms. Sweigert stated that was correct, but staff had not done that yet.

Mr. Philpot asked for confirmation that as far as staff is aware the eagles nest is still not there.

Ms. Sweigert stated that was correct. She believed the zoning case went before the Board of County Commissioners last week where the applicants representatives referred to it as *“the nest.”*

Mr. Elms referred to the St. Jude nest and noted there is no longer a nest there because the tree is gone. No one knows where the pair went.

Ms. Sweigert asked that he continue to drive through the area to see if they show up somewhere else. She believed they might go into the Calusa Land Trust property where the mangroves are.

Mr. Elms noted that *“Vacation Lane”* is called *“5th and Palm.”* It is located by the Trailer Park. Regarding the St. Jude nest, he noted that Ms. Greeno received a report from someone that the eagles were seen near the helipad near York Avenue. However, it was later retracted and it was stated that there is no nest there.

Ms. Sweigert confirmed that it was looked into, but they were never located. She pulled up a slide and showed another area with many eagles sightings. It was a street near Crestwell. She noted there were times it has been a heavy location for adult eagles, so she recommended that area being periodically surveyed.

Mr. Elms noted there is a trail in that area, but it ends by the mangroves. He noted that the York Avenue area where the helipad is has many slash pines in the area, but the area has limited access. You are able to see about 100-150 yards off of Stringfellow, but there are only a few vantage points, so it is a difficult area to survey. He hoped they would nest in another tree.

Agenda Item 6 – Chair and Vice Chair Elections

Ms. Sweigert asked if the Board wanted to table this item to next month since Ms. Greeno is not in attendance.

The Board preferred to table it to next month.

Ms. Sweigert stated that in her last conversation with Ms. Greeno, she was willing to continue serving as Chair. However, she had not spoken to her recently on the matter.

Agenda Item – Member Reports

Ms. Sweigert stated she did not expect that anyone would have member reports at this point since nesting season just began.

Ms. Hiatt stated she had not seen anything on Pine Island, but she did receive word yesterday that an eagle landed on one of the nesting territories on Sanibel. She felt that was an early return especially in light of the heat.

Mr. Elms stated two adult eagles have nested in Cape Coral.

Ms. Hiatt noted that the Bank of America area is wide open now so if the eagles decide to nest in that area, she will see them.

Ms. Sweigert stated she had received a couple of random reports that citizens are seeing the birds, but just in general, nothing specific. She did not feel the intense heat we are experiencing right now would be conducive for egg laying.

Agenda Item 8 – Public Input

No members of the public were present, so there was no public input.

Agenda Item 9 – Adjournment – Next Tentative Meeting Date: October 10, 2023

Ms. Sweigert stated that no management plans have been submitted to-date, so there may not be a meeting next month. She would update the Board shortly on whether or not there would be a meeting..

The meeting adjourned at 3:51 p.m.