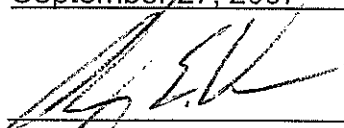


**Memorandum
from the
Bonita Springs City Attorney's Office**

Date: September 27, 2007To: Bonita Springs City CouncilFrom: 
Audrey E. Vance
City AttorneyRe: Bonita Bay DRI Amendment – Petition for Formal Administrative Hearing
Mediation Discussion

Attached to this memorandum is correspondence from Ken Oertel representing Bonita Bay Properties to Jake Varn, exploring the possibility of mediation. While staff would never agree to any binding proceedings (and paying no attention to Attorney Oertel's repetitive assertion of his case), as mentioned to you previously, I am always willing to discuss potential settlement to bring back to City Council. Unless I hear otherwise, I have advised special counsel Jacob Varn to schedule the mediation, with Barbara Barnes-Buchanan and I attending (and recognizing that final decision whether to accept the mediated settlement remains with City Council).

AEV/

Attachment

cc: Gary A. Price, City Manager
Dianne Lynn, City Clerk
Barbara Barnes-Buchanan, Assistant City Manager
Pamela Houck, Director, Zoning
Bryan Kelner, Principal Planner, Zoning
Becky Sweigart, Environmental Sciences
Above with attachment
Jake Varn, Esquire, without attachment, via facsimile and U.S. Mail

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OF COUNSEL:
PATRICIA A. RENOVITCH

September 24, 2007

Via Hand Delivery

Jacob D. Varn, Esq.
Fowler, White, Boggs & Banker, P.A.
101 North Monroe Street, Suite 1090
Tallahassee, Florida 32301

Re: Bonita Bay Group – City of Bonita Springs

Dear Jake:

I was glad to see the City hired you to represent it in Bonita Bay Group's challenge of the decision on its application for a change to its development order. We look forward to being able to address the issue presented in a professional and respectful manner. Our office will be filing a reply to your response to the petition soon. I had expected this matter to have proceeded along a bit more quickly than it has so far, but we have become accustomed to being patient.

By now, I expect that you have become familiar with the issues presented in this case so I will not go over them in detail. Bonita Bay Group only seeks to modify its eagle protection plan to the extent consistent with current U.S. Fish and Wildlife Service guidelines and policies. These have been revised by the Service to reflect more current information and data concerning the conservation needs of bald eagle nesting pairs.

Bonita Bay Group was disappointed that its application was denied by the City, particularly since it had offered much more than the current guidelines require. The Florida Fish and Wildlife Conservation Commission also agreed that Bonita Bay Group's application was satisfactory and adequate to protect the eagles in question. It appears to us the City is ready to litigate this issue regardless of whether Bonita Bay Group's application meets all accepted standards for the protection of active bald eagle nests. We hope this can be avoided.

Usually the U.S. Fish and Wildlife Service is the most difficult government agency to satisfy when it comes to the regulations of protected species. Even though the eagle is now officially de-listed from the Endangered Species Act, it is still protected under the Bald and

Jacob D. Varn, Esq.
September 25, 2007
Page 2

Golden Eagle Protection Act. In this case, the City has apparently taken the position that it is better acquainted with what this bald eagle nest needs than is the U.S. Fish and Wildlife Service. I believe this will be a difficult position for the City to sustain when this matter goes to hearing, but you probably will have a different perspective on the matter.

My client did not lightly decide to file the petition in this case. In fact, this may be the first time it has challenged a decision of a local government. In this instance, it is committed to see it through to a conclusion, if necessary. However, before the parties gear up for litigation, Bonita Bay Group has asked me to suggest a way the parties could resolve this and settle their differences in an amicable fashion.

This has led me to believe that if a settlement is worth exploring, it has the best chance of success if it is done by using the services of a professional mediator. I have been involved in litigation with City and County governments in other cases and have found them to be difficult to settle, partly because collegial governmental heads, by their nature, cannot be approached directly. Also, because of the Sunshine Law, decisions regarding litigation cannot be made without much process and delay.

I have explained this to my client and also described why I am an advocate of mediation as the best way to work toward achieving a settlement in cases like these. Bonita Bay Group has authorized me to relay to you that it is willing to voluntarily offer to engage the services of a mediator, agreeable to both parties, at its own expense, to make a good faith effort to determine whether a common understanding can be achieved in this case.

If this case can be settled, it can be settled now, before great expenses and fees are obligated by both sides. Should the case go through litigation, the additional mitigation offered by Bonita Bay Group will be off the table and the City would receive less benefit than was originally proposed by Bonita Bay Group.

I hope you will relate our offer to mediate this case to the City Council and urge it to agree to go forward in that effort. If we do not attempt to resolve it now, it will probably be more difficult to do so later, as litigation has the effect of drawing adverse parties further apart, the further a case proceeds toward trial.

Yours truly,

Brenda W. Petty for

Kenneth G. Oertel

cc: Audrey Vance

Confirmation Report - Memory Send

Time : Sep-27-2007 05:10pm
Tel line : 2399496255
Name : City Attorneys Office

Job number : 703
Date : Sep-27 05:09pm
To : 918505210720
Document pages : 001
Start time : Sep-27 05:09pm
End time : Sep-27 05:10pm
Pages sent : 001
Status : OK
Job number : 703

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