

**CITY OF BONITA SPRINGS, FLORIDA
RESOLUTION NO. 09 - ___**

**A RESOLUTION OF THE CITY OF BONITA SPRINGS, FLORIDA;
RESPONDING TO THE INVITING RESOLUTION BY THE BOARD OF LEE
COUNTY COMMISSIONERS; INITIATING NEGOTIATIONS FOR AN
INTERLOCAL SERVICE BOUNDARY AGREEMENT PURSUANT TO
CHAPTER 171, PART II, FLORIDA STATUTES; AND PROVIDING AN
EFFECTIVE DATE.**

WHEREAS, the "Interlocal Service Boundary Agreement Act" as Part II of Chapter 171, Florida Statutes §§171.20 through 171.203, provides an alternative process for annexation that allows counties and municipalities to negotiate in good faith to identify municipal service areas and unincorporated service areas, resolve which local government is responsible for providing services and facilities within the municipal service areas, and reduce the number of enclaves; and

WHEREAS, the Florida Interlocal Cooperation Act of 1969, Florida Statutes §163.01, encourages and empowers local governments to cooperate with one another on matters of mutual interest and advantage, and provides for interlocal agreements between local governments on matters such as annexation and joint planning; and

WHEREAS, the Municipal Annexation or Contraction Act, Chapter 171, Part I, Florida Statutes, and the Interlocal Boundary Agreement Act, Chapter 171, Part II, Florida Statutes, as well as the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, recognizes the use of interlocal service boundary agreements and joint planning agreements as a means to coordinate future land use, public facilities and services, and protection of natural resources in advance of annexation; and

WHEREAS, the State Comprehensive Plan requires local governments to direct development to those areas which have in place the land and water resources, fiscal abilities and service capacities to accommodate growth in an environmentally acceptable manner; and

WHEREAS, the State Comprehensive Plan requires local governments to protect the substantial investment in public facilities that already exist and to plan for and finance new facilities in a timely, orderly, and efficient manner; and

WHEREAS, the Lee County Board of Commissioners on January 20, 2009, commenced the process for negotiating an interlocal service boundary agreement through the adoption of an initiating resolution for all of the five municipalities, to wit, Bonita Springs; Cape Coral, Fort Myers, Fort Myers Beach and Sanibel; and

DRAFT FOR DISCUSSION PURPOSES

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DATE PREPARED: February 27, 2009 revised March 10, 2009

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WHEREAS, the City Manager for Bonita Springs received the initiating resolution by United States certified mail on January 22, 2009, requiring that within 60 days after the receipt of an initiating resolution, Bonita Springs must adopt a responding resolution, which:

1. Identifies any additional unincorporated area or incorporated area, or both, for discussion and may designate additional issues for negotiation;
2. The additional identified area, if any, must be specified in the responding resolution by a descriptive exhibit that includes, but need not be limited to, a map or legal description of the designated area;
3. The additional issues designated for negotiation, if any, must be listed in the responding resolution; and
4. The responding resolution may also invite an additional municipality or independent special district to be included in negotiations on the interlocal service boundary agreement; and

WHEREAS, the initiating resolutions commence the process for negotiating an interlocal service boundary agreement for the five municipalities share common factors.

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

1. Recitals: The recitals contained in the preamble above are true, correct, and incorporated herein by reference in this responding resolution ("resolution") and are made a part of this resolution as if they were set forth in full below.
2. Response to Invitation: City Council is hereby responding to the invitation by the Lee County Board of Commissioners in entering into the process of negotiating an interlocal service boundary agreement to address issues pertaining to future annexations by the City and which may include one or more of the subjects set forth in Florida Statutes §171.203, subject to the conditions contained within this resolution. This Resolution should also be deemed a response to any municipality within Lee County that is inviting the City of Bonita Springs to participate in negotiations in its reply to Lee County's invitation. Bonita Springs response is conditioned as set forth below:

Condition 1 – Retention of Home Rule Powers: Bonita Springs hereby declares its intent to retain all of its Home Rule Powers as provided for in Section 2(b), Article VIII of the Florida Constitution, as further set forth in Florida Statutes §166.021. During the negotiation process, Lee County should ~~needs to~~ identify why processes in the past did not work or otherwise were unsuccessful, ~~and that for~~ the interlocal service boundary agreement ~~is to be negotiated as a~~ to serve as a corrective document, rather than as any attempt to derogate constitutional home rule powers of municipalities.

Condition 2 – Retain Statutory Framework: ~~Bonita Springs finds that All parties should follow~~ Florida Statutes §171.201 ~~sets forth the purpose of entering into~~ during negotiations for the interlocal service boundary agreement process as stated below, and condition negotiations upon staying within the intent of the statute:

- (a) To encourage local governments to jointly determine how to provide services to residents and property in the most efficient and effective manner while balancing the needs and desires of the community.
- (b) Establish a more flexible process for adjusting municipal boundaries and to address a wider range of the effects of annexation.
- (c) Encourage intergovernmental coordination in planning, service delivery, and boundary adjustments and to reduce intergovernmental conflicts and litigation between local governments.
- (d) Promote sensible boundaries that reduce the costs of local governments, avoid duplicating local services, and increase political transparency and accountability.
- (e) Prevent inefficient service delivery and an insufficient tax base to support the delivery of those services.

Condition 3 - Conflict Resolution Process: So as to minimize the cost and burdens of a proceeding under the Florida Governmental Conflict Resolution Act, Florida Statutes §§164.101-164.1057, Bonita Springs City Council is willing to enter into negotiations only if disputes are handled under Florida Statutes §163.01, the Florida Interlocal Cooperation Act of 1969, except in the event that within six months after the commencement of negotiations, either of the initiating local governments or both, the county, or any of the invited municipalities or special districts must declare an impasse in the negotiations and seek a resolution of the issues in accordance with Florida Statutes §171.203(13). In other words, negotiations and resolving disputes for all subject matter in the interlocal service boundary agreement will exclude the need for the parties to go through the Florida Governmental Conflict Resolution Act as the method for remedies.

Condition 4 – Participation of all Municipalities: Bonita Springs recognizes that Lee County has common objectives with its goal to enter into the interlocal service boundary agreement with each of the municipalities, and hereby invites the other four municipalities to the negotiations for the interlocal service boundary agreement, to wit, Cape Coral, Fort Myers, Fort Myers Beach and Sanibel; and respectfully requests that Lee County coordinates the scheduling by having on the agenda of the negotiations only one or two topics for that meeting, with any topic discussed but not on the agenda automatically excluded from the interlocal service boundary agreement with a municipality not present, should ~~Lee County~~ the parties otherwise attempt to treat that municipality as waiving its right to participate in the negotiation process.

Condition 5 – Participation of Independent Districts: To the extent the interlocal service boundary agreement may impact the following independent districts as to emergency services, water control, stormwater, drainage or roads, Bonita Springs

hereby invites the following independent districts to the negotiations for the interlocal service boundary agreement, and respectfully requests that Lee County coordinates the scheduling by having on the agenda of the negotiations matters specific to that independent district, with any topic discussed but not on the agenda automatically excluded from the interlocal service boundary agreement with an independent district not present, should Lee County attempt to treat that independent district as waiving its right by its absence to participate in the negotiation process.

- (a) Bonita Springs Fire Control & Rescue District
- (b) Estero Fire Control & Rescue District
- (c) San Carlos Fire Control & Rescue District
- (d) San Carlos Estates Drainage District
- (e) Bay Creek Community Development District
- (f) Bayside Improvement Community Development District
- (g) Brooks of Bonita Springs Community Development District
- (h) East Bonita Community Development District
- (i) Beach Road Golf Estates Community Development District
- (j) Beach Road Estates Community Development District
- (k) Mediterra North Community Development District
- (l) Vasari Community Development District
- (m) Villagewalk Community Development District
- (n) Parklands Lee Community Development District
- (o) Parklands West Community Development District
- (p) East Mulloch Water Control District
- (q) Any other independent district Lee County Board of County Commissioners may have created within the Bonita Springs proposed Joint Planning and Urban Reserve Area, or formed through the Florida Water and Adjudicatory Commission not listed above

Condition 6 – Equal Treatment: Bonita Springs City Council requests that Bonita Springs be treated similarly as other local governments within the territorial limits of the County, with no differentiation as regards to rates and charges for services by Lee County for residents located within or outside the City. The objective is that if, in the future, the boundaries of the City of Bonita Springs change, the transition for residents in service provisions will be orderly and nondisruptive.

Condition 7: Unacceptable Terms: Bonita Springs City Council is prepared to enter into negotiations for the interlocal service boundary agreement provided that the parties ~~Lee County Board of County Commissioners~~ understands that ~~Bonita Springs would find~~ any of the following as is unacceptable terms:

- (a) An agreement giving Lee County ~~any~~ veto rights of final land use decisions within the territorial limits of the City of Bonita Springs, since this does not serve any purpose under Florida Statutes §171.203.
- (b) Threatening an impasse for the purpose of bringing a Charter Amendment to the

electors, seeking final control through the County Charter for voluntary annexations. Bonita Springs is coming to the negotiation table in good faith, and does not want to waste its limited staff resources ~~on a political ploy for Lee County to ultimately~~ on an attempt for veto rights, prohibiting the public itself from determining whether they desire to be within a municipality.

- (c) Renegotiating terms of existing Interlocal Agreements, franchises, etc., for service delivery. While these documents may be amended in accordance with the individual terms as specified in these agreements, the purpose of the interlocal service boundary agreement is not to revisit existing obligations of the parties, especially with third party service providers.
3. Joint Planning and Urban Reserve Area: In its Inviting Resolution, Lee County Board of County Commissioners provided a Map identifying its proposed Joint Planning (“JPA”) and Urban Reserve Areas (“URA”). ~~Bonita Springs is of the opinion that map was insufficient to demonstrate the areas that should be considered for Joint Planning or Urban Reserve.~~ Bonita Springs has attached to this resolution a series of Maps as Composite Exhibit A to identify and explain its proposed Joint Planning and Urban Reserve Areas, depicting the City’s municipal service area and planning service area proposed by the City of Bonita Springs which the City identifies for discussion. The Maps are ~~broken down~~ as follows:
- A-1 Bonita Springs’ proposed Joint Planning and Urban Reserve Area Compared to Lee County Plan. The areas cross-hatched in the Urban Reserve Area (URA) identify the limits of the Lee County map. Bonita Springs is not identifying for urban reserve any area north of Lee County’s Map to Williams Road, but is extending the URA in an eastern direction to the Collier / Lee eastern county line. The Joint Planning Area (JPA) is expanded to one mile north of Alico Road, and can be explained by the other maps attached.
 - A-2 Lee County EMS Division for South Lee – The northern boundaries of the JPA and County’s EMS Division for South Lee coincide.
 - A-3 Fire Districts - The northern boundaries of the JPA and the three fire districts currently addressing consolidation coincide.
 - A-4 Road Impact Fee Benefit District - The northern boundaries of the JPA and road impact fee benefit district coincide.
 - A-5 Park Impact Fee Benefit District - The northern boundaries of the JPA and the park impact fee benefit district coincide.
 - A-6 Future Utility Service Area: The proposed area for future utility services (water and sewer) extends from the southern line of the JPA northwards. All areas within the URA already have services provided for or available by Bonita Springs Utilities, making it unnecessary for the parties to address water or sewer service in the interlocal service boundary agreement (there is an existing three party franchise agreement).
 - A-7 The watershed boundaries coincide with the JPA.
 - A-8 The generalized boundaries for parks coincide with the northern boundary of the JPA.

- A-9 The proposed County Road 951 Study Area is encompassed within the northern boundary of the JPA.
- A-10 A majority of public acquisition and privately funded infrastructure identified by Lee County Planning Department as "Special treatment Areas" is encompassed within the northern boundary of the JPA.
- A-11 The water treatment plant service area is outside the URA, but is encompassed in a majority of the JPA.
- A-12 The map of all planning area overlays within the southern portion of Lee County.

4. Service Delivery: Lee County identified that it will remain responsible for the delivery of service and funding for certain services in the Urban Reserve Area, excepting out only state roads, unless the interlocal service boundary agreement (referenced by Lee County in its inviting resolution as the Urban Reserve Area Joint Planning Agreement) stated otherwise. During negotiation, it is intended that these issues will be addressed, as identified by Bonita Springs below:

- a. Creation by the County of a clear, mathematical formulation for computation of fair share development contributions, amenable to understanding by persons of reasonable, ordinary intelligence, so as to conform with requirements of state law.
- b. Creation by the County of a listing of outstanding obligations for impact fee credits (or other acceptance requirements by Lee County Board of County Commissioners or the successor government, i.e., Bonita Springs) within the City of Bonita Springs made prior to its incorporation, and a current listing for the Urban Reserve Area and Joint Planning Area.
- c. Conveyance by the County in fee simple to the City of park lands within the beach areas, including, but not limited to the beach accesses, Pine Lake Preserve, the boat ramp at Lover's Key and certain other properties.
- d. Implementation by the County of a plan to address the Manna Christian property on Bonita Beach Road, so as to transition the property in a manner to reduce the blight caused on Bonita Beach Road.
- e. Cessation by the County of any further approval of any community development districts or other independent districts within the urban service areas and joint planning areas, unless consent is obtained from Bonita Springs, inasmuch as such communities may not be conducive to the creation of a unified whole with respect to municipal services and prevent the inhabitants of such communities from fully associating and trading with others within the City, socially and economically.
- f. Cessation by the County of any further approval of any MSBU/MSTU dependent districts within the urban service areas and joint planning areas,

unless consent is obtained from Bonita Springs, with respect to providing enhanced municipal services since this also prevents the inhabitants of such communities from fully associating and trading with others within the City, socially and economically.

- g. Correction by the County of certain deficiencies with drainage and paving on County residential roads, both within the City limits and adjacent to City limits, upon understanding that once such deficiencies are cured the City may then address County concerns about the City assuming responsibility for such roads incident to annexation of adjoining lands of such roads.
- h. No opposition by the County for legislative annexation of various areas of the Urban Reserve Area so as to annex residents who have to go through the City to access any services.
- i. Cessation by the County of any further approvals for storm water retention/detention ponds located along public roadways unless water features, enhanced landscaping, and other requirements are provided for consistency with the City's storm water retention/detention ordinance.
- j. Cessation by the County of any further approvals of buildings and implement design review standards that are incompatible with the City's design review standards.
- k. Improve the Site Plan and Concurrency Review process by sending the City all site development applications to City Staff for review for properties within the Urban Reserve Area and Joint Planning Area.
- l. Assist by considering a governmental annex for the constitutional officers within the City, Urban Reserve Area or Joint Planning Area for a Courthouse, Clerk of Courts, and centralizing the other offices so as to be efficient and green (e.g., less travel for traffic tickets).
- m. Implementation of the County to coordinate and exchange GIS database information with the City as the City implements its GIS system.
- n. Improve coordination with the City on all projects that may be part of the Conservation 20/20 for the City of Bonita Springs walkway adjoining the start of the Caloosa Blueway. The existing Conservation 20/20 penalizes urban acquisitions for their smaller size, yet critical acquisition by Lee County Board of County Commissioners is lacking, although the residents of Bonita Springs, the Urban Reserve Area and Joint Planning Area, all contribute a large part of the revenue.
- o. Given the coastal and riverine environment of both unincorporated Lee County and the municipalities, provide overall waterway planning to fully

implement the Clean Water Act and environmental regulations.

- p. The County may coordinate efforts with the City to look for additional trails and connections within the City for pedestrian and mass transit access.
- q. Restoration of County roadways located within City limits to include drainage improvements, construction of sidewalks for pedestrian connectivity and resurfacing of roadways in poor condition.
- r. Provide maintenance and necessary improvements to drainage facilities under County jurisdiction which are located within the City limits.
- s. Establish policy with regards to jurisdiction and maintenance responsibilities of street right-of-ways and drainage right-of-ways/easements for newly annexed parcels into the City.

5. The City Manager or his designee is hereby directed to provide a copy of this Resolution by United States Certified Mail to the County Administrator for Lee County, as the Chief Administrative Officer of the County in its initiating capacity, and to the City Managers, as the Chief Administrative Officer of their respective municipalities and the independent districts listed in Condition 5 of this Resolution.

This Resolution shall become effective immediately upon its adoption by City Council.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this __ day of March, 2009.

AUTHENTICATION:

Mayor

City Clerk

APPROVED AS TO FORM: _____

City Attorney

Vote:

Ferreira	_____	Nelson	_____
Lonkart	_____	Simons	_____
Martin	_____	Spear	_____
McCourt	_____		

Date filed with City Clerk: _____