

ORDINANCE 78-19

AN ORDINANCE AMENDING ORDINANCE 76-38, THE COMPREHENSIVE ZONING REGULATIONS FOR THE UNINCORPORATED AREA OF THE COASTAL AREA PLANNING DISTRICT BY AMENDING SECTION 9-"ST" SPECIAL TREATMENT OVERLAY DISTRICT - SPECIAL REGULATIONS FOR AREAS OF ENVIRONMENTAL SENSITIVITY AND LANDS AND STRUCTURES OF HISTORICAL AND ARCHEOLOGICAL SIGNIFICANCE AND PROVIDING AN EFFECTIVE DATE.

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WHEREAS, the Collier County Planning Department petitioned the Board of County Commissioners to amend Section 9-"ST" Areas of Environmental Sensitivity of Ordinance 76-30;

NOW, THEREFORE BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY:

SECTION ONE:

Ordinance 76-30 is hereby amended as hereinafter described:

AMEND SECTION 9-SPECIAL REGULATIONS FOR "ST" AREAS OF ENVIRONMENTAL SENSITIVITY BY DELETING THE PRESENT SECTION 9 AND SUBSTITUTING THE FOLLOWING:

SECTION 9. "ST" SPECIAL TREATMENT OVERLAY DISTRICT--SPECIAL REGULATIONS FOR AREAS OF ENVIRONMENTAL SENSITIVITY AND LANDS AND STRUCTURES OF HISTORICAL AND ARCHEOLOGICAL SIGNIFICANCE.

1. Intent and Purpose:

Within Collier County there are certain areas, which because of their unique assemblages of flora and/or fauna, their esthetic appeal, historical or archeological significance or their contribution to their own and adjacent ecosystems, make them worthy of special regulations. Such regulations are directed toward the conservation, protection, and preservation of ecological, commercial, and recreational values for the greatest benefit to the people of Collier County. Such areas include, but are not necessarily limited to mangrove and fresh water swamps, barrier islands, coastal beaches, estuaries, cypress domes, natural drainage ways, aquifer recharge areas and lands and structures of historical and archeological significance.

The purpose of this overlay district regulation is to assure the maintenance of these environmental and cultural resources and to

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BRUCE A. SMITH
SECRETARY OF BOARD

encourage the preservation of the intricate ecological relationships within the systems and at the same time permit those types of development which will hold changes to levels determined acceptable by the Board of County Commissioners after public hearing.

2. "ST" as a Zoning Overlay District:

An overlay zoning classification to be known as the "ST" Special Treatment Overlay District, and to be designated on the Official Zoning Atlas by the symbol "ST" together with the symbol of the basic zoning district which it overlays, is hereby established. This overlay district classification will be used for those lands of environmental sensitivity and historical and archeological significance where the essential ecological or cultural value of the land is not adequately protected under the basic zoning district regulations established by ordinance.

The placement or removal of this overlay zoning district shall be governed by the procedure for amending the zoning ordinance and the zoning atlas as prescribed in Section 48 of Ordinance 76-30.

3. Uses Permitted on Land Designated "ST":

Land designated "ST" shall be used only for the permitted principal use, the permitted accessory use, and/or the permitted provisional use under the basic zoning classification of such land.

The consideration of an application for a permitted provisional use shall be subject to a Public Hearing. This hearing may run concurrently with any public hearing required by this Section or may be held at a separate time.

The fact that a use is permitted under the basic zoning district classification shall confer no right to the property owner for such use unless such use is specifically approved as a condition of approval of a site alteration plan and/or site development plan by the Board of County Commissioners as provided in paragraph 5, subparagraph B of this section.

4. Site Alteration Plan or Site Development Plan

Approval Required:

Prior to the clearing, alteration, or development of any land designated "ST" the property owner or his legally designated agent

shall apply for and receive approval of a site alteration plan or site development plan, as the case may be, by the Board of County Commissioners as provided in paragraph 5, subparagraph B of this section.

5. Procedure and Requirements for Site Alteration Plan or Site Development Plan Approval for Development in "ST" Designated Land.

A. Procedure:

- (1) Pre-application Conference: Prior to filing a petition for site alteration or site development approval of "ST" land, the petitioner shall request and hold a pre-application conference with the Director and County Staff the Director determines appropriate. The pre-application conference is for the purpose of guidance and information, and for insuring insofar as is possible, that the petition is in conformity with these regulations.

No petition for the site alteration or site development approval will be accepted for formal processing until the Director has reviewed the petition to determine that all required data is included; a minimum of thirty (30) days should be allowed for this phase of the review process.

- (2) The Site Alteration Plan or Site Development Plan shall be submitted to the Director who shall have it reviewed by the appropriate County Staff and Advisory Boards. The Director shall then forward the Site Alteration Plan or Site Development Plan and the Advisory Board's recommendations to the Coastal Area Planning Commission for its review and recommendation to the Board.

The Planning Commission review shall not require a public hearing nor notice to the abutting property owners, but shall be held in a regular meeting.

- (3) Final action on the Site Alteration Plan or Site Development Plan lies with the Board of County Commissioners. The Board shall review the proposed Site Alteration Plan or Site Development Plan in regular

session and shall act formally by resolution stipulating reasons for approval, or approval with modification, or denial of the Site Alteration Plan or Development Plan.

(4) Upon approval by the Board, the petitioner may apply for the appropriate local, state and federal permits for the alteration or development of the subject premises.

(5) Commencement of Site Alteration or Site Development:

Upon obtaining all required local, state and federal permits in order to alter or develop the subject property, the petitioner may commence alteration or development in accordance with the conditions and requirements of said permits.

B. Requirements:

- (1) Submission and approval of a Site Alteration Plan or Site Development Plan containing the following as determined applicable to the petition by the Director.
 - (a) Title of the project
 - (b) Names of the project planner and developer
 - (c) Date
 - (d) North directional arrow
 - (e) Exact survey showing the project boundaries, any existing street, water courses or easements within or adjacent to the proposed development
 - (f) Location of all proposed buildings and structures with dimensions showing setbacks to property lines, roads, water courses and other structures adjacent to the building(s)
 - (g) Access and traffic flow plan
 - (h) Off-street parking and off-street loading areas
 - (i) Proposed screening and buffering
 - (j) Refuse collection areas and solid waste
 - (k) Access to utilities and points of utilities hookups
 - (l) Locations for beach access as required by the Beach Access Ordinance No. 76-20.

- (2) Tabulation of total gross acreage in the project and the percentages thereof proposed to be devoted to the various permitted uses; ground coverage by structures and impervious surface coverage.
- (3) Architectural definitions for types of buildings in the development; number of dwelling units, sizes, and types, together with typical floor plans of each type.
- (4) Computation sheet including the following data:
 - (a) Lot area
 - (b) Totally enclosed area of each floor
 - (c) Number and floor area of units by type
 - (d) Landscaped areas to be provided including any existing areas of native vegetation
 - (e) Parking area
 - (f) Number of parking spaces
 - (g) Indoor and outdoor recreation areas
- (5) Plans for providing potable and irrigation water requirements.
- (6) Storm drainage and sanitary sewage plans.
- (7) Plans for signs, if any.
- (8) Such additional data as the Director may believe is pertinent to the review and evaluation of the Site Alteration or Site Development Plan.

Items (1), (2), (3), (4), (5), and (6) above shall be prepared by a Florida registered surveyor, engineer, or architect or practicing land planner as may be appropriate to the particular item.

- (9) Transfer of development rights data required in Paragraph 9, as determined appropriate by the Director.
- (10) Submission and approval of an Environmental Impact Statement as required by County ordinance.
- (11) Submission and approval of a tree removal plan as required by County ordinance, if applicable.
- (12) Submission and approval of an excavation plan as required by County ordinance, if applicable.

- (13) A Development of Regional Impact review as required by Chapter 380.06 of the Florida Statutes, if applicable.

6. Exceptions:

A. Where land has an "ST" designation and the proposed alteration or development area contains twenty (20) acres or less in gross area, and where no transfer of residential rights are involved, the Director may approve a Site Alteration Plan or a Site Development Plan. Prior to such approval the Director shall make a finding that one or more of the following conditions exists:

- (1) The proposed site alteration or site development will improve ecological deficiencies existing on the area.
- (2) The proposed site alteration or site development will not require any significant modification of the topography, drainage, or flora, or fauna on the site.
- (3) No pollutants will be discharged from the area that will degrade the air, water or soil below the levels existing at the time of application.
- (4) Naturally occurring phenomena, such as hurricanes, floods or fires have changed the previously existing flora and fauna, or that the topography and drainage pattern have been altered by man prior to the adoption of this ordinance or by nature to such a degree that there is no reasonable probability of ecological regeneration.
- (5) The site is surrounded by lands not designated "ST" and where the effects of legal use of the surrounding land exerts a continuing environmental deterioration of the "ST" area that cannot be legally or justifiably corrected.

B. Where land has an "ST" designation and the proposed alteration or development area contains over twenty (20) acres and not more than forty (40) acres of gross area, and where no transfer of development rights are involved, the CAPC shall review and approve the site alteration or development plan prior to proceeding with any site alteration or development. Such review and approval shall not require notice or public hearing.

C. All site alteration or site plan approvals of over forty (40) acres shall be as required in Paragraph 4 and 5 of this ordinance.

7. Modification of Site Alteration Plan or Site Development Plan:

A. Any modification of the Site Alteration Plan or Site Development Plan as approved by the County, which would, in the opinion of the Director, substantially alter the intent and purpose of these "ST" regulations requires the procedure and approval as if for a new petition.

Minor modifications consistent with the intent and purpose of these regulations may be made upon approval by the Director.

8. Transfer of Residential Development Rights:

An owner of land designated as "ST" may elect to transfer some or all of the residential development rights of his "ST" land to non-"ST" property, as provided herein, as an alternative to the development of the "ST" lands in conformity with the "ST" regulations.

A. The residential development rights shall be considered as interests in real property and may be transferred in portions or as a total as provided in this Section. Once used, the residential development rights shall not be used again and the residential development rights of the subject "ST" lands providing them shall be considered severed forever.

B. The transfer of residential development rights to be used for non-"ST" land shall be from "ST" designated land to non-"ST" land located in RM-1, RM-1A, RM-2, and RT zoning districts and shall be subject to all of the requirements of the basic zoning district unless specifically approved otherwise as provided by law.

(1) The Zoning Director is hereby directed to waive the land area requirement for the landscaping, off-street parking or open space to the extent necessary to accommodate the number of residential units permitted in 8, F, (1) of this section.

- C. The minimum area of "ST" land eligible for the transfer of development rights shall be two (2) acres of land excluding submerged land.
- D. Upon the approval of the transfer of residential development rights for an "ST" land by the Director, the property owner of the "ST" land is strongly encouraged to donate the land to the county; however, if the owner chooses otherwise, the approval may be conditioned upon an agreement by the county which will guarantee that said "ST" lands will be forever retained in its natural condition and will never be developed in any manner whatsoever by anyone except as stipulated in the agreement.
- E. The maximum number of residential units which may be transferred from "ST" land to non-"ST" land shall be compiled on the basis of each acre of "ST" land at the following rate:
- One half (0.5) of a residential unit for each one (1) acre of "ST" land.
- F. Maximum number of residential units which eligible non-"ST" lands may receive.

- (1) Non-"ST" lands in RM-1, RM-1A, RM-2, and RT zoned districts are eligible to receive residential development units provided that the maximum number of residential units which may be transferred to the non-"ST" land does not exceed 20% of the maximum number of residential units permitted under the basic zoning of the RM-1 and RM-1A district or 10% of the maximum number of residential units permitted under the basic zoning of the RM-2 and RT district as the case may be. For the purpose of determining the number of residential units which non-"ST" land is capable of receiving, the following formula shall apply:

RM-1 District
 $6.22 \text{ units} \times 20\% = 1.24 \text{ units per acre}$

RM-1A District
 $6.22 \text{ units} \times 20\% = 1.24 \text{ units per acre}$

RM-2 District
 $16 \text{ units} \times 10\% = 1.6 \text{ units per acre}$
or $10\% \times \text{units permitted under basic zoning, whichever is the greater.}$

RT District

20 units x 10% = 2.00 units per acre^{1/}
30 units x 10% = 3.00 units per acre^{2/}

- (2) For the purpose of calculating the final fractional residential unit of the total number of residential units eligible for transfer to a non-"ST" property, the following shall apply: Any fractional residential unit shall be converted upward, if 1/2 or more of a whole unit, or downward, if less than 1/2 of a whole unit, to the nearest whole unit value.

9. Procedure For Obtaining Transfer of Residential Development Rights.

- A. Any owner of "ST" land may apply for a transfer of residential development rights either separately or concurrently with a building permit for their use in connection with the construction of the transferred residential units on non-"ST" land as provided in this section.

Prior to the approval of any transfer of residential development rights or the issuance of any building permits in connection with the use of any transfer of residential development rights, the petitioner shall submit the following information and data, as applicable to the petition, to the Director for his review and action.

- (1) Name and address of "ST" property owner
- (2) Name and address of non-"ST" property owner
- (3) Legal description of "ST" land from which transfer of residential development rights is petitioned.
- (4) Survey of "ST" property from which transfer of residential development rights is requested.
- (5) Legal description of non-"ST" land which receives the transfer of residential development rights.
- (6) Survey of the non-"ST" land which receives the transfer of residential development rights.
- (7) Three copies of an executed deed of transfer of ownership of the "ST" property to the county in a form

^{1/}With cooking facilities.

^{2/}Without cooking facilities.

approved by the county attorney, or, if the owner elects not to deed the "ST" land to the county, the "ST" owner shall provide a guarantee, agreeable to and approved by ordinance of the Board of County Commissioners, that the "ST" land will be forever retained in its natural condition and will never be developed in any manner whatsoever by anyone. Such a guarantee shall be recorded with the Clerk of the Circuit Court of Collier County, Florida as a recorded restriction of the use of such land and shall be binding to all present and subsequent owners, heirs, or assigns of such property. Such restriction may not be amended, deleted, or otherwise altered except by an affirmative vote of all members of the Board of County Commissioners.

10. Time Limitations on Director's Approval of Transfer of Residential Development Rights or Authorization to Proceed with the Processing of a Building or Construction Permit.

- A. The Director's approval of a transfer of residential development rights or authorization to proceed with the processing of a building or construction permit shall be valid so long as such approval is permitted by law.

The failure to act on the part of the petitioner to exercise the transfer of residential development rights or obtain and culminate an authorized building or construction permit within the time period provided by law shall automatically terminate such approval and the county shall be held harmless for any damages arising out of the petitioner's failure to act.

11. Sequential Use of Residential Units Approved For Transfer by the Director.

- A. Upon the issuance of any permit for the construction of residential unit(s) upon a non-"ST" receiving land, the first residential units built thereon shall be considered to be the residential units approved for transfer by the Director. Upon completion of all eligible residential units

approved by the Director for transfer, the succeeding residential units constructed shall be considered the residential units permitted under the basic zoning district regulations.

12. Appeal of Director's Decisions Or Interpretations

- A. Any person aggrieved by any decision or interpretation made by the Director in the enforcement of this ordinance may appeal such grievance as provided in Section 41 of Ordinance 76-30.

SECTION TWO:

This Ordinance shall become effective upon receipt of notice that it has been filed with the Secretary of State.

DATE: May 9, 1978

BOARD OF COUNTY COMMISSIONERS
COLLIER COUNTY, FLORIDA

BY: Russ Winer

APPROVED AS TO FORM AND LEGALITY

Donald A. Pickworth
County Attorney

STATE OF FLORIDA)
COUNTY OF COLLIER)

I, WILLIAM J. REAGAN, Clerk of Courts in and for the Twentieth Judicial Circuit, Collier County, Florida, do hereby certify that the foregoing is a true original of Ordinance No. 78-19 which was adopted by the Board of County Commissioners during Regular Session May 9, 1978.

WITNESS my hand and the official seal of the Board of County Commissioners of Collier County, Florida, this 10th day of May, 1978.

WILLIAM J. REAGAN
Clerk of Courts and Clerk
Ex-officio to Board of
County Commissioners

By Virginia Maggi
Deputy Clerk

This ordinance filed with the Secretary of State's office the 16th day of May, 1978 and acknowledgment of that filing received this 18th day of May, 1978.

By Virginia Maggi
Deputy Clerk