

Board of County Commissioners

Workshop

Date of Meeting: March 25, 2010

Date Submitted: March 19, 2010

To: Honorable Chairman and Members of the Board

From: Benjamin H. Pingree, County Administrator
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Subject: Workshop to Discuss the Proposed Draft Wetlands Protection Ordinance

Statement of Issue:

This workshop is for discussion of the draft of the proposed wetlands and other surface waters ordinance approved by the Wetlands Advisory Committee on February 27, 2010, and comments to such ordinance from staff and the County Attorney's office. The Board shall have an opportunity to review the proposed changes to the ordinance and to provide direction to staff and the County Attorney's office regarding any recommendations or proposed changes to the draft ordinance.

Background:

The Board of County Commissioners adopted the original Wetlands Protection Ordinance, Ordinance No. 06-27, on May 1, 2006 (the "Original Ordinance"). The Original Ordinance operated for a period of approximately three years before being challenged on the basis that it was improperly adopted. Attached hereto as **Attachment "A"** is the Original Ordinance.

On June 16, 2009, the Board adopted Resolution No. 09-22, approving the creation of a citizens' review committee to review and make recommendations regarding the original wetlands ordinance. This committee was known as the Wetlands Advisory Committee. The Committee consisted of five citizens who served as voting members, and one staff member who served as a non-voting member. The Committee met at least twice each month beginning in the month of August 2009, and extending until the end of February 2010, at which time it approved a proposed revised wetlands and other surface waters ordinance ("Proposed Ordinance"). Attached hereto as **Attachment "B"** is the Proposed Ordinance.

Analysis:

This workshop is intended to provide an overview of the changes to the Original Ordinance recommended by the Wetlands Advisory Committee as a means of implementing sections of the adopted Comprehensive Plan, specifically, policies 2.3 and 4.1 of the Conservation Element. Attached hereto as **Attachments "C"** and **"D"** are Policies 2.3 and 4.1, respectively.

Policy 2.3 states, generally, that the County will protect the natural functions of all surface waters, including wetlands, within the County, and will work to minimize adverse impacts to such surface waters. It further establishes a buffer requirement around wetlands and other surface waters (excluding karst features, which are addressed separately in the Comprehensive Plan), consisting of two sections. The first section of the buffer is 35 feet wide and is adjacent to the wetland or other surface water. The first buffer is intended to remain free from development. The second buffer is 40 feet wide and exists around the first buffer. Policy 2.3 anticipates that development may occur within the second buffer in circumstances where a failure to allow development will result in a taking. Policy 2.3 further prohibits the use of septic systems within the buffers and also states that within the buffers, existing grading and native vegetation shall be maintained.

Policy 4.1 of the Conservation Element of the Comprehensive Plan also addresses wetlands, and provides standards for development that will disturb wetlands. This section provides that development may only occur within or adjacent to a wetland if necessary to avoid a taking, and requires that if development does occur, that the impacts to the wetland be mitigated.

The County has proposed changes to Policies 2.3 and 4.1 in its recent Evaluation and Appraisal Report submitted to the Florida Department of Community Affairs. These changes have been incorporated into the draft of the Proposed Ordinance approved by the Wetlands Advisory Committee.

What follows is (1) an analysis of each section of the Proposed Ordinance, intended to provide a comparison between the Proposed Ordinance and the Original Ordinance and (2) a summary of changes recommended by County planning staff and the County Attorney's office to the Proposed Ordinance (a draft ordinance incorporating these recommendations is attached hereto as **Attachment "E"**):

Recommendations of Wetlands Advisory Committee

Section 1. Definitions

The Definitions section of the Proposed Ordinance is more extensive than the Definitions section included in the Original Ordinance. It includes a number of terms which were either not defined in the Original Ordinance or which have been added. Definitions help provide additional clarity to the Ordinance and will aid in its interpretation.

Where possible, the definitions are reflective of definitions adopted in the Florida Administrative Code, the Florida Statutes, or the Wakulla County Land Development Code.

Section 2. Interpretation

This is a new section added to assist in the interpretation of Proposed Ordinance.

Section 3. General Findings

This section replaces the Findings and Statement of Intent section in the Original Ordinance. It provides a general statement of the Board's authority to adopt the ordinance. It also lists some of the functions which Wetlands and Surface Waters serve including economic, hydrological, and ecological functions. This section further provides a list of objectives which the Proposed Ordinance is intended to achieve. These objectives reflect the Committee's intent that the Ordinance balance the interests of conservation and preservation and development in Wakulla County.

Section 4. Application

The Application section of the Proposed Ordinance states that the ordinance applies to all "Development" as defined in the ordinance that may occur within wetlands or other surface waters or buffers within Wakulla County. Unlike the Original Ordinance, which applied to all wetlands, this section more clearly applies to activities being conducted within or near wetlands or other surface waters that may be regulated by the County. The term "Development" as used throughout the Ordinance is defined to have the same meaning it has in section 2-4(51) of the County's Land Development Code. This definition is attached to this Agenda Item as **Attachment "F"** and includes activities in addition to the actual construction of a building or other structure.

The exceptions included in the Application section of the Original Ordinance have been moved to a newly created Exemption Section.

Section 5. Development in Wetlands and Other Surface Waters and Buffers

Section 5 is a new section created in the Proposed Ordinance. It is made up of two provisions from the Original Ordinance which fit better in a separate section. Paragraph (A) of this section clearly prohibits all Development within wetlands and other surface waters and buffers, except as otherwise allowed in the ordinance. Paragraph (B) describes the buffer requirements. It should be noted that the proposed ordinance expands regulation to include activities in or near surface waters, in addition to those in or near wetlands.

Section 6. Wetlands Determination

Section 6 is a revision of the former Process section in the Original Ordinance. This section proposes a new process by which a property owner seeking to develop his or her property will apply for a letter from the Department of Planning and Community Development which functions as a determination of whether wetlands or other surface waters or buffers are likely to exist on the property. Staff will look at inventory maps, aerial photographs, and topographic surveys, conduct site visits if necessary, and make use of any other available information, and provide an initial determination of whether such features are likely to exist. If staff believes they probably exist, the property owner will be required to obtain a full delineation of the property identifying the extent of wetlands and other surface waters and buffers on the property. This

section does provide for imposition of a fee, by resolution of the Board, for this initial determination.

Section 7. Allowable Uses

The Proposed Ordinance separates the Use of Wetlands section in the Original Ordinance into three separate sections, addressing those uses which are allowable, those which require a conditional use permit, and those which require a variance, separately.

The Allowable Uses section allows a number of the same uses in wetlands and other surface waters that are allowed in the Original Ordinance, however, it also allows the following:

1. The construction, repair, replacement, or maintenance of docks and other similar structures so long as they are consistent with the design standards provided later in the ordinance, and so long as the developer has obtained all applicable state and federal permits.
2. The construction of a private seawall on an artificially constructed waterway, where such seawall will adjoin two existing seawalls that are not more than 150 feet apart.
3. Development activity for which the developer has already received a valid development order from the County.
4. The renewal, improvement, or alteration of 50% or less of any structure, within the same footprint as the original structure.
5. The repair or replacement of any legally constructed structure damaged by a fire or natural disaster, within the same footprint as the original structure.
6. Certain work by utilities within easements and rights-of-way established and maintained prior to the adoption of the ordinance.

While these activities are allowable, a property owner is still required to obtain any necessary building permits or approvals from the County's Building Department, as well as any other permits required by state administrative agencies.

The Allowable Uses section allows additional uses in the buffers. In the first buffer, Buffer Zone One, it allows access for utilities to serve upland areas, other than septic systems, and uses of the buffer which were continuous and lawful prior to the effective date of the ordinance. In the second buffer, Buffer Zone Two, new landscaping and yard maintenance activities are allowed within an area around the principal structure on the property extending twenty-five feet in the front, fifteen feet in the back, and eight feet on either side of the structure, so long as such activities are consistent with the design standards.

The Allowable Uses in the Buffers will grandfather activities taking place within both buffers prior to adoption of the ordinance, and also allows the creation and maintenance of a yard around a house or other structure, where such structure is within or close to Buffer Zone Two.

Section 8. Conditional Uses

The Conditional Uses section of the Proposed Ordinance allows the Planning and Zoning Commission to grant a conditional use permit within wetlands or other surface waters or buffers for wetlands restoration, construction of docks and other similar structures which do not meet the design standards, and construction of driveways and installation of utilities where no upland alternative access exists in a manner consistent with design standards. It further allows the construction of stormwater management facilities within the buffers and shoreline armoring, including seawalls, so long as such armoring is not located along the shoreline of geographically isolated wetlands and so long as they are designed to minimize adverse impacts to wetlands.

This section further provides the process for obtaining a conditional use permit under the ordinance (using the process for obtaining a conditional use permit under other provisions of the Land Development Code) and requires mitigation for any approved conditional uses which will have an adverse impact on the wetland or other surface water, as determined by County staff.

Section 9. Variances

The Proposed Ordinance allows the Board to grant a variance for development within wetlands and other surface waters or buffers when a failure to allow such development will constitute a taking, as defined using the “partial takings” standard approved by Florida courts. It also allows the granting of a variance for the construction of boat ramps, and for the construction of new roads and utilities within the wetland or other surface water or buffer when there may be alternative upland access or when such construction is not consistent with the provided design standards.

This section also provides the process for obtaining a variance (using the process for obtaining a variance under other provisions of the Land Development Code) and requires mitigation for any approved variances which will have an adverse impact on the wetland or other surface water, as determined by County staff.

Section 10. Design Standards

The Original Ordinance provided a limited number of standards for development involving wetlands. The Proposed Ordinance significantly expands the design standards to include standards for most of the development being allowed as an allowable use or conditional use. It was intended that standards for variances would be recommended by the technical review committee and included in any approved variance.

Section 11. Exemptions

The Exemptions section of the Proposed Ordinance is a new section incorporating and clarifying the exceptions listed in the Application Section of the Original Ordinance.

Section 12. Mitigation

The Original Ordinance stated that in those situations involving conditional uses and variances, mitigation would be required, but it did not provide standards or requirements for mitigation. This section of the Proposed Ordinance outlines the purposes of Mitigation -- compensating for natural resource losses associated with adverse impacts to wetlands or other surface waters -- and provides requirements for mitigation plans. It provides that the amount of mitigation will be determined in accordance with the Uniform Mitigation Assessment Method adopted by the Florida Department of Environmental Protection and requires that a mitigation plan set forth criteria for success, a monitoring plan, maintenance requirements, and bonding requirements. It also provides that a failure to comply with an approved mitigation plan is a violation of the ordinance.

Section 13. Administration and Enforcement

This section of the Proposed Ordinance expands the Administration and Enforcement provisions in the Original Ordinance. It provides that it will be administered by the County Administrator and the Department of Planning and Community Development and that it will be enforced in by the County Code Enforcement Officer and the Code Enforcement Board. It also allows the County to seek injunctive relief and provides that the County is subject to the provisions of the ordinance.

Section 14. Penalties

The Penalties section of the Proposed Ordinance defines a violation of the ordinance to be any unauthorized alteration of or adverse impact to wetlands or other surface waters or buffers in any manner up to 5,000 square feet in extent. It further provides that the alteration of or adverse impact of each additional one to 5,000 square feet of wetlands or other surface waters or buffers shall constitute a separate violation.

This section further provides that if a violation is found, the property owner will be required to enter into a restoration plan with the county before a compliance date specified by the Code Enforcement Board, and that a failure to enter into such plan before the compliance date will subject the property owner to daily penalties in an amount equal to the maximum daily fine the Code Enforcement Board may impose. It also provides requirements for a restoration plan which are similar to those required for a mitigation plan.

Recommendations of Staff and the County Attorney

After receiving the Proposed Ordinance from the Wetlands Advisory Committee, planning staff and the County Attorney's office reviewed the Proposed Ordinance and has suggested further

revisions, included in **Attachment “E”**. A black-lined copy reflecting these suggestions is attached as **Attachment “G”** (~~stricken~~ words are deleted in **Attachment “G”**, underlined words are added). Only sections including these suggested changes are discussed below:

Section 1. Definitions

The term “Owner” has been added as a defined term to correspond with a clarifying change to the Penalties section of the Proposed Ordinance.

Section 4. Application

The Application section has been clarified to state that the ordinance applies to all Development within Wakulla County, not simply Development in wetlands or other surface waters, because all Development will be required to comply with Section 6, relating to Preliminary Wetlands Determinations.

Section 6. Preliminary Wetlands Determination

The recommended changes to Section 6 of the Proposed Ordinance are intended to clarify that staff’s determination is only a determination of whether wetlands are likely to exist, as opposed to whether they definitely exist on a parcel of property. This reduces the burden on staff and potential liability to the County.

Section 7. Allowable Uses

It is recommended that paragraphs (11) and (12) be deleted from the Allowable Uses section, as the activities included in these paragraphs are expressly excluded from the definition of “Development” included in the Land Development Code and it is not necessary to “allow” them, as only “Development” is regulated under the Proposed Ordinance (see **Attachment “F”**).

It is also recommended that the sentence pertaining to septic systems in paragraph (B)(1)(a) be deleted as the County has another ordinance requiring a larger buffer (100 feet) between wetlands and other surface waters and septic systems than that required in the Proposed Ordinance. Inclusion of this sentence could create confusion as to the buffer requirements for septic systems.

Staff further recommends allowing Yard Maintenance Activities and Landscaping within both Buffer Zones One and Two in paragraph (B)(2), on the basis that if a Developer is granted a variance to build a structure in Buffer Zone One or Two, they should be able to conduct such activities in the defined area around that structure.

Sections 8 and 9. Conditional Uses and Variances

Identical changes are recommended in Sections 8 and 9, clarifying that applications for conditional uses and variances should be filed and processed in accordance with the conditional use and variance provisions in Sections 3-21 and 3-22 of the Land Development Code, and to

clarify that a Developer shall submit a proposed plan demonstrating that impacts have been minimized to the maximum extent possible.

Section 10. Design Standards

Staff and the County Attorney's office recommend that Paragraph (A) be modified to require only 1,200 square feet of buildable area instead of 4,000 square feet of buildable area. This change is recommended due to concerns that requiring 4,000 square feet of buildable area may limit the construction of affordable housing.

It is also suggested that reference to Buffer Zone One be added in Paragraph (G) relating to Landscaping and Yard Maintenance Activities, to reflect the suggested change in the Allowable Uses section which would allow these activities in Buffer Zone One as well as Buffer Zone Two.

Section 12. Mitigation

A change is recommended to paragraph (A) to clarify that except for restoration required under Section 14 of the Proposed Ordinance, mitigation is only allowed in instances where a conditional use permit or variance has been approved for Development activity creating adverse impacts to wetlands or other surface waters or buffers.

Section 14. Penalties

Clarifying changes are recommended for Section 14 to reflect that any penalties imposed under the Proposed Ordinance would be imposed against the Owner of a parcel of property, as the Code Enforcement Board may only enforce code provisions against the Owner of property. In addition, it clarifies that Restoration would be required for those wetlands or other surface waters or buffers that have been degraded and that penalties would be imposed only for unauthorized activity.

Attachments

- A. Ordinance No. 06-27.
- B. Proposed Ordinance prepared by the Wetlands Advisory Committee.
- C. Policy 2.3 of the Conservation Element of the Comprehensive Plan.
- D. Policy 4.1 of the Conservation Element of the Comprehensive Plan.
- E. Draft incorporating changes recommended by Staff and the County Attorney's office to the Wetlands Advisory Committee's Proposed Ordinance.
- F. Definition of "Development" from Chapter 2 of the Land Development Code.
- G. Blackline of Proposed Ordinance reflecting suggestions of Staff and the County Attorney's office.