

Board of County Commissioners

Agenda Request

Date of Meeting: April 5, 2010

Date Submitted: March 26, 2010

To: Honorable Chairman and Members of the Board

From: Benjamin H. Pingree, County Administrator
Heather J. Encinosa, County Attorney
Bethany A. Burgess, County Attorney's Office
Lindsay E. Stevens, Assistant County Administrator
Somerset Strickland, Planner

Subject: Request Board Ratification of the March 25, 2010 Workshop Regarding the Draft Proposed Wetlands Protection Ordinance and Requests Board Direction

Statement of Issue:

This agenda item requests Board ratification of the March 25, 2010 Workshop regarding the draft proposed Wetlands Protection Ordinance, requests Board direction on certain specific issues and direction to advertise the Wetlands Protection Ordinance for a public hearing before the Planning Commission and Board of County Commissioners at the next practicable date.

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.

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"). The Committee consisted of five citizens who served as voting members, and one staff member who served as a non-voting member. The Committee members were:

- Victor Lambou, Chairman
- Leslie Hope
- Teresa Kramer
- Katherine Gilbert
- Hugh Taylor
- Somerset Strickland, non-voting member
- Deanna Green, secretary

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”).

During the January 25, 2010 Board Meeting, the Board directed staff to schedule a Workshop to be held on March 25, 2010 to review and consider the Proposed Ordinance.

Analysis:

On March 25, 2010, the Board of County Commissioners held a workshop to review and discuss the Proposed Ordinance, drafted and approved by the Wetlands Advisory Committee.

The Workshop began with a presentation by Victor Lambou, Chairman of the Committee, who described the Proposed Ordinance created by the Committee. The Board next heard a presentation by the County Attorney, who described additional staff and legal revisions to the Proposed Ordinance, which follows:

Section 1

1. The addition of a definition for “Owner”.
 - The Board appeared to agree to add this definition, as recommended by the County Attorney and staff.
 - Other minor amendment changes (non-substantive).
2. Incorporating more specific language regarding the specific manuals which will be used to determine what constitutes Best Management Practices into the definition of Best Management Practices.
 - The Board appeared to agree to this change in the definition to incorporate the specific manual names from the Florida Department of Agriculture and Consumer Services and the Florida Department of Environmental Protection, as recommended by the County Attorney and staff.

Section 4

1. The ordinance will apply to the entire County, including the local municipalities within the County.
 - The Board did not appear to reach consensus on this issue, and therefore staff is requesting direction on this issue.

Section 6

1. The addition of the word “likely” to the term “Preliminary Wetlands Determination” 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.
 - The Board appeared to agree to this change, as recommended by the County Attorney and staff.
2. A member of the Committee questioned whether a developer who obtained a formal wetlands

determination from DEP would be exempted out of the Preliminary Wetlands Determination letter process of Section 6. The County Attorney and staff suggested that language be added to the Ordinance to clarify that a developer who obtained a formal wetlands determination from DEP or wetlands delineation prior to applying to the County for permitting, would be exempted out of the Preliminary Wetlands Determination letter process of Section 6.

- The Board appeared to agree to this change, as recommended by the Committee, County Attorney and staff.
3. Staff suggested that applicants for certain minor permits, such as reroofs and A/C unit repairs, should not be required to obtain a Preliminary Wetlands Determination letter required by Section 6.
 - The Board appeared to agree to this change, as recommended by the County Attorney and staff.
 4. A member of the Committee suggested that Section 6, Subsection (b)1 should be amended to add "... and other Surface Waters and buffers within the subject property or within 75 feet of the Property."
 - The Board appeared to agree to this change, as recommended by the Committee.

Section 7

1. The County Attorney and staff recommended that paragraphs (11) and (12) be deleted from the Allowable Uses section since it does not fall under the definition of development, as defined by the Wakulla County Code.
 - The Board appeared to agree to this change, as recommended by the County Attorney and staff.

Section 8 and 9

1. The County Attorney and staff recommended adding "and processed" to the subsection (E), to clarify that applications for Conditional Uses and Variances will be processed pursuant to Section 3-21 of the Land Development Code. Additionally, including the word "proposed" in subsection (E) when referring to applications.
 - The Board appeared to agree to this change, as recommended by the County Attorney and staff.

Section 10

1. The County Attorney and staff recommended that subsection (A) be removed in its entirety, as it could be legally challenged.
 - The Board did not appear to reach consensus on this issue, and therefore staff is requesting direction on this issue.
2. The County Attorney and staff recommended removal of conservation easement language in its entirety, as it appears in subsection (B).
 - The Board did not appear to reach consensus on this issue, and therefore staff is requesting direction on this issue.

Section 12

1. The County Attorney and staff recommended adding some additional clarifying language regarding mitigation requirements.
 - The Board appeared to agree to this change, as recommended by the County Attorney and staff.

Section 14

1. **The County Attorney and staff recommended that the term “degraded” to “Adversely Impacted”, in subsection (A).**
 - The Board appeared to agree to this change, as recommended by the County Attorney and staff.

Additionally, some concern was raised about limiting the size of wetlands that will be regulated under the proposed ordinance. It was suggested that language be added which states that only isolated wetlands that are 1,000 square feet or larger will be regulated. It did not appear that the Board reached a consensus on this issue, and therefore staff is requesting direction at this time.

Summary

At this time, the County Attorney and staff are comfortable proceeding to incorporate the above-noted items the Board appeared to reach consensus on into the final draft of the Wetlands Protection Ordinance, should the Board elect to ratify this item. However, in addition to the ratification of the Wetlands Protection Ordinance Workshop, specific direction is requested from the Board at this time on the following items in an effort to finalize the Wetlands Ordinance for public review and hearing:

- Whether to apply the Wetlands Protection Ordinance to the entire County, including the local municipalities.
- Minimum buildable area for lots including wetlands, surface waters or buffers, platted after the effective date of the ordinance.
- The requirement of conservation easements within subdivisions platted after the effective date of this ordinance.
- Addition of language limiting the regulation of wetlands to those that are 1,000 square feet or larger in size.

This item also requests Board direction to staff to advertise the final Wetlands Ordinance for a public hearing before the Planning Commission and the Board of County Commissioners at the next practicable date.

Additionally, since the workshop was held, the County Attorney has solicited and received additional input from DEP on the ordinance, particularly on the mitigation sections. The County

Attorney has prepared a new draft of the ordinance incorporating these changes (and the recommendations from staff and the county attorney) and is requesting Board direction on their inclusion. This version of the ordinance is attached (Attachment #1) for your reference. In sum, these changes include the following:

- New definition for “Artificially Created Waterbody”
- Deletion of definition for “Bona Fide Land Preservation Entity”
- New definition for “Corrective Action Plan”
- Revised definitions for “Dock” and “Pier”
- New definition for “Terminal Platform”
- New definition for “Water Dependent Activity”
- The incorporation of these new definitions, as appropriate, within the body of the ordinance
- Inclusion of revised Design Standards in Section 10 regarding boundary fences
- Inclusion of optional Mitigation banking in Section 12
- Inclusion of compliance monitoring in Section 12
- Modifications in Section 13, Administration and Enforcement, to exempt activities that have been approved by the state
- Modifications in Section 14, Penalties, to clarify the requirements of Corrective Action Plans and to provide for compliance monitoring

Options:

1. Ratify the March 25, 2010 Wetlands Protection Ordinance Workshop; provide specific direction for the above noted issues and direct staff to advertise the proposed Wetlands Protection Ordinance for Public Hearing before the Planning Commissioner and the Board at the next available dates.
2. Do not Ratify the March 25, 2010 Wetlands Protection Ordinance Workshop; do not provide specific direction for the above noted issues and do not direct staff to advertise the proposed Wetlands Protection Ordinance for Public Hearing at the next available dates.
3. Board Direction.

Recommendation:

Option # 1

Attachment(s):

1. Draft Ordinance Incorporating Comments from Staff, County Attorney, and DEP