

Board of County Commissioners

Agenda Request

Date of Meeting: April 19, 2010

Date Submitted: April 12, 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
Sommer Strickland, Planner

Subject: Request Ratification of Board Discussion During the March 25, 2010
Proposed Wetlands Ordinance Workshop and Board Direction

Statement of Issue:

This agenda item requests ratification of Board discussion during the March 25, 2010 Proposed Wetlands Ordinance Workshop, 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. A blacklined copy of the draft ordinance incorporating all comments to the Wetlands Protection Ordinance proposed by staff, the County Attorney's Office, and the Florida Department of Environmental Protection is attached hereto as Attachment #1. The Ordinance as adopted by the Wetlands Advisory Committee is attached as Attachment #2.

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 are listed as follows:

- Victor Lambou, Chairman
- Leslie Hope
- Teresa Kramer
- Katherine Gilbert

- Hugh Taylor
- Somer Strickland, non-voting member
- Deanna Green, secretary (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”).

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.
2. Clarification that the Ordinance applies to all Development, as all Development must go through the process for Preliminary Wetlands Determination in Section 6.
 - The Board appeared to agree to this change, as recommended by the County Attorney and Staff.

Section 6

1. The addition of the word “likely” to the “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.

Sections 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.
 - The County Attorney's office is now suggesting that if the Board chooses to keep a minimum buildable area requirement, that it be 2,800 square feet.
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 the limiting the size of wetlands that will be regulated under the proposed ordinance. It was suggested that language be added which states that only Wetlands that are 1,000 square feet or larger will be regulated (see Section 11(E) of Attachment #1). 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:

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- 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 over a certain 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 section. 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 as Attachment #1 for your reference. In sum, these changes include the following:

Section 1

- Addition of definitions for the following terms:
 - Armoring
 - Artificially Created Waterbody
 - Boat Ramp
 - Corrective Action Plan
 - Exotic Invasive Plants
 - Minimal Impact
 - Observation Deck
 - Seawall
 - Terminal Platform
 - Water Dependent Activity
- Deletion of definition of “Bona Fide Land Preservation Entity” if conservation easement paragraph is deleted.
- Revision of definitions for the following terms:
 - Boardwalk
 - Delineation
 - Developer
 - Dock
 - Mitigation
 - Pier

- Incorporation of these new definitions, as appropriate, within the body of the ordinance.

Section 6

- Deletion of paragraph (E) in Section 6, as it could create confusion, as this same basic statement is already included in paragraph (A).

Section 7

- Addition in Section 7, paragraph (A)(6), of reference to design standards for boundary fences. The design standards are included in Section 10.
- Non-substantive rewording in Section 7, paragraph (B) to more clearly reflect which activities are permitted in each Buffer.

Section 8

- Modification of paragraph (A)(1) to remove “fire prevention and suppression” as it is unclear what activities this would involve.
- Modification of paragraph (A)(2) to only allow stormwater management facilities within Buffer Zone Two, as construction of such facilities would likely require significant modification of Buffer Zone One, which is supposed to remain untouched.
- Inclusion of new paragraphs (A)(4) and (6) in Section 8 to provide for a conditional use permit for boundary fences and removal of Exotic Invasive Plants that do not meet the design standards in Section 10.
- Inclusion of a new paragraph (A)(5) in Section 8 to allow a conditional use permit for construction of Boat Ramps meeting the design standards specified in Section 10.

Section 9

- Modification of paragraph (A)(1) to only allow a variance for Development of residential and non-residential properties in Buffer Zone Two.
- Modification of paragraph (A)(2) to remove Boat Ramps, as it is recommended that Boat Ramps meeting the design standards be a conditional use.
- Addition of a new paragraph (A)(3) to allow a variance for a Boat Ramp not meeting the design standards.
- Addition of a new paragraph (A)(4) to allow a variance for a reduction or modification of the minimum buildable area requirement in Section 10(A).
- Addition of the words “and Mitigation plan” in Section 9(F) to clarify that the Mitigation plan is approved by the BoCC along with an application for a variance.

Section 10

- Modification of paragraph (A) to require a minimum of 2,800 square feet of buildable area.
- Division of design standards in Section 10 for Docks and Piers into two sections, and clarification of the standards for both Docks and Piers.
- Clarification of design standards for Boardwalks, Observation Decks and other elevated walkways.
- Addition of design standards in paragraph (C) for boundary fences.
- Deletion of design standard in paragraph (D)(2) for Driveways requiring pre-treatment of drainage.
- Deletion of design standard in paragraph (F)(5) pertaining to removals requiring a major disruption, as it is inconsistent with other design standards allowing only the use of hand tools.
- Addition of paragraph (H) to provide design standards for Boat Ramps.

Section 11

- Modification of paragraph (A), to clarify that Development within certain water features are exempt, as opposed to stating those features are not “Wetlands” or other “Surface Waters”, in order to be consistent with express statutory preemption from modifying those definitions.
- Modification of paragraph (C) pertaining to Bona Fide Agricultural Uses and Silviculture activities, as such activities should be exempt so long as they are regulated through Best Management Practices and other regulations adopted by the Florida Department of Environmental Protection and the water management district.
- Addition of paragraph (E) exempting Development activities occurring within Wetlands or other Surface Waters which are smaller than 500 square feet in size or within a Buffer adjacent to a Wetland or other Surface Water smaller than 500 square feet in size.

Section 12

- Modifications throughout Section 12 to clarify provisions pertaining to Mitigation, including inclusion of compliance monitoring, and provision for a determination of success.
- Inclusion of optional Mitigation banking in Section 12 and criteria for determining when and if Mitigation banking is appropriate.

Section 13

- Modifications in Section 13, Administration and Enforcement, to exempt activities that have been approved by the state from the reporting requirement.

Section 14

- Modifications in Section 14, Penalties, to require a Corrective Action Plan which may include Restoration and Mitigation, along with the requirement that an Owner of property obtain any necessary permits; to clarify the enforcement process and requirements of Corrective Action Plans; and to provide for compliance monitoring

Additionally, the County Attorney's office is suggesting several other minor, non-substantive wording changes.

Options:

1. Ratify the 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 at the next available dates.
2. Do not Ratify the 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
2. Draft Ordinance transmitted by the Wetlands Advisory Committee

[LS/ss]