

Board of County Commissioners

Agenda Request

Date of Meeting: April 21, 2009

Date Submitted: April 16, 2009

To: Honorable Chairman and Members of the Board

From: Benjamin H. Pingree, County Administrator
Lindsay Stevens, Assistant County Administrator

Subject: Board Consideration to Direct Staff to Amend Certain Provisions Within Chapter 32, of the *Wakulla County Code* (commonly referred to as the “Wetlands Ordinance”)

Statement of Issue:

Request Board consideration to direct staff to amend certain provisions within Chapter 32, of the *Wakulla County Code* (commonly referred to as the “Wetlands Ordinance”), and bring these revisions back to the Board for further consideration and approval.

Background:

At the April 7, 2009 meeting, the Board considered the revocation of a Conditional Use for the proposed Muir Woods subdivision. This Conditional Use was approved by the Planning Commission to permit the construction of a roadway through wetlands. Currently, Chapter 32 of the *Wakulla County Code* establishes that the Planning Commission has the sole authority to consider Conditional Use request for wetlands. At the public hearing, the Board expressed a desire for staff to review the existing process of Conditional Use approvals and potentially present the Board with alternatives for the Board to obtain the authority to either approve or have a review of the Planning Commission’s approval of Conditional Uses involving wetlands.

On April 8, 2009, the Wakulla County Code Enforcement Board heard a case involving a potential violation of Chapter 32, *Wakulla County Code*. During the course of this public hearing, the Code Enforcement Board requested that staff obtain Board direction to amend the Wetlands Ordinance after a prolonged discussion about the intent of the existing ordinance and the fact that the existing language does not contain exemptions for clearing activities within the seventy-five (75) foot wetland setback buffer that pre-date the effective date of the ordinance (May 1, 2006).

Additionally, Code Enforcement staff received a complaint against the Wakulla County Public Works Department regarding clearing activities taking place during road maintenance activities which are occurring within the required seventy-five (75) foot setback buffer area around wetlands required by the Wetlands Ordinance. Under the Wetlands Ordinance, a Conditional Use permit can be granted for these activities by the Planning Commission. See, Section 32.005(b)(1), *Wakulla County Code*. It should be noted that the Parks and Recreation Department obtained a Conditional Use for the construction and replacement of the public dock located on Rock Landing Road in Panacea in 2007.

Aside from the immediate Code Enforcement complaint, additional activities are taking place in many areas around the County that could arguably be in violation of the Wetlands Ordinance since the County has not applied for a Conditional Use approval through the Planning Commission. These activities include the maintenance of existing public right-of-ways and mowing of existing County Parks located near water bodies.

The above-described events have led staff to seek Board direction on approving potential revisions to certain specific provisions contained in the Wetlands Ordinance that would enable staff to better implement the Wakulla County Code.

Analysis:

During the process of implementing the Wetlands Ordinance, staff has encountered many issues related to processing applications, allowing for exemptions, enforcement actions and penalties for violations. Slight revisions would allow staff to better implement the Wetlands Ordinance in the manner in which benefits the environment and ultimately the citizens of Wakulla County. Staff generated the following suggestions to revise/clarify the Wetlands Ordinance:

- 1) Clarify that the ordinance applies only to those new clearing activities within the wetlands and the required seventy-five (75) foot buffer areas that occur after the effective date of the ordinance May 1, 2006.
 - The County has aerials dated January 2007 that could serve as a baseline.
- 2) Provide for the Board of County Commissioners to either:
 - a. Review Conditional Uses approved by the Planning Commission.
 - b. All Conditional Uses must be approved by the Board of County Commissioners.
 - Currently, the ordinance establishes that the Planning Commission has the authority to approval conditional uses.
- 3) Establish stronger penalties and increased fines for violations of the Wetlands Ordinance.
 - Currently, the ordinance provides that the Code Enforcement Board has the authority to levy fines, require restitution, and mitigation.
 - Established fines are based on whether the violation is irreparable, irreversible or a repeat violation.
 - The current ordinance does not provide specific guidance regarding penalties such as fines and restoration of impacted areas.
- 4) Exempt Wakulla County activities from the Wetlands Ordinance.
 - Currently, the Wetlands Ordinance provides that Wakulla County “*shall not be exempt from this chapter nor from the rules and regulations found therein.*” See, Section 32.006(d), Wakulla County Code.

Options:

1. Direct staff to:
 - a.) Begin research and construct language for the Board’s consideration at a Public Hearing at a later date, to:
 - i. Clarify that the ordinance applies only to those new clearing activities within the wetlands and the required seventy-five (75) foot buffer areas that occur after the effective date of the ordinance May 1, 2006.
 - ii. Provide for the Board of County Commissioners to either:
 - a. Review Conditional Uses approved by the Planning Commission.
 - b. All Conditional Uses must be approved by the Board of County Commissioners.
 - iii. Establish stronger penalties and increased fines for violations of the Wetlands Ordinance.
 - iv. Exempt Wakulla County activities from the Wetlands Ordinance.
 - b.) Direct Public Works to make an Application for Conditional Use for continuing maintenance of all existing rights-of-way and drainage facilities within wetlands and the required seventy-five (75) foot buffer area throughout Wakulla County.
 - c.) Direct the Parks and Recreation Department to make an Application for Conditional Use for continued maintenance of all the public park areas within wetlands and the required seventy-five (75) foot buffer area throughout Wakulla County.
2. Do not direct staff to:
 - a.) Begin research and construct language for the Board’s consideration at a Public Hearing at a later date, to:
 - i. Clarify that the ordinance applies only to those new clearing activities within the wetlands and the required seventy-five (75) foot buffer areas that occur after the effective date of the ordinance May 1, 2006.
 - ii. Provide for the Board of County Commissioners to either:
 - a. Review Conditional Uses approved by the Planning Commission.
 - b. All Conditional Uses must be approved by the Board of County Commissioners.
 - iii. Establish stronger penalties and increased fines for violations of the Wetlands Ordinance.
 - iv. Exempt Wakulla County activities from the Wetlands Ordinance.

b.) Direct Public Works to make an Application for Conditional Use for continuing maintenance of all existing rights-of-way and drainage facilities within wetlands and the required seventy-five (75) foot buffer area throughout Wakulla County.

c.) Direct the Parks and Recreation Department to make an Application for Conditional Use for continued maintenance of all the public park areas within wetlands and the required seventy-five (75) foot buffer area throughout Wakulla County.

3. Board Direction.

Recommendation:

Option #1 Staff recommends the Board direct staff to make revisions to specific provisions of the Wetlands Ordinance and to specify which revisions the Board desires staff pursue. Additionally, staff recommends the Board direct both Public Works and Parks and Recreation immediately apply for Conditional Use for continued maintenance activities for areas with existing clearing within the wetlands and the required seventy-five (75) foot buffer area in areas throughout Wakulla County.

Attachment(s):

1. Chapter 32, *Wakulla County Code* (the “Wetlands Ordinance”)