

Board of County Commissioners

Agenda Request

Date of Meeting: May 17, 2010

Date Submitted: May 7, 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 Board Ratification of the Wetlands Protection Ordinance Workshop and Approve the Modifications to Ordinance, Request to Refer Ordinance to the Planning and Zoning Commission for a Public Hearing, and Request to Advertise a Public Hearing Before the Board

Statement of Issue:

This agenda item requests Board ratification of the May 6, 2010 Workshop regarding discussion of the draft Wetlands Protection Ordinance, and approval of modifications made to the Ordinance since the April 19, 2010 Board Meeting. This item also requests that the Board refer the Revised Ordinance to the Wakulla County Planning and Zoning Commission for a public hearing and written recommendations. Finally, upon receipt of the recommendations from the Planning and Zoning Commission, staff and the County Attorney request direction to advertise the Wetlands Protection Ordinance for a public hearing before the 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
- 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”), attached hereto as Attachment “B”.

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.

On April 19, 2010, at a regular meeting of the Board of County Commissioners, the Board considered and ratified changes discussed by the Board at the March 25th workshop which were recommended by staff and the County Attorney, and also approved additional changes suggested by County staff, the County Attorney, and the Florida Department of Environmental Protection. The Board further agreed to hold a second workshop on May 6, 2010, to continue discussion of the ordinance as amended (the “Revised Ordinance”).

On May 6, 2010, the Board held its second workshop pertaining to the Wetlands Protection Ordinance and heard a presentation from the County Attorney relating to implementation of local comprehensive plans, takings and Bert J. Harris Act claims, as well as one addressing additional changes and comments to the Revised Ordinance and providing an overview of the Revised Ordinance.

Analysis:

To date, the Board has approved a number of changes to the Committee Proposal or reached consensus on the following items. In addition, at the April 19, 2010, meeting, several questions were raised which are addressed in the Revised Ordinance. All changes previously considered are outlined below, with special attention given to changes made subsequent to the April 19, 2010 Board meeting.

Section 1 - Definitions

- Addition of definitions for the following terms:
 - Armoring
 - Artificially Created Waterbody
 - Boat Ramp
 - Corrective Action Plan
 - Exotic Invasive Plants
 - Minimal Impact

- Observation Deck
- Owner
- Seawall
- Terminal Platform
- Water Dependent Activity
- Revision of definitions for the following terms:
 - Best Management Practices
 - Boardwalk
 - Delineation
 - Developer
 - Dock
 - Mitigation
 - Pier
- Incorporation of these new definitions, as appropriate, within the body of the ordinance, and other minor (non-substantive) changes to definitions.

Changes after April 19, 2010, meeting:

- The definition for “Bona Fide Land Preservation Entity” was added back to this section.

Section 4 - Application

- The ordinance will apply to the entire County, including the local municipalities within the County.
- The ordinance applies to all Development, as all Development must go through the process for Preliminary Wetlands Determination in Section 6.

Section 6 - Preliminary Wetlands Determination

- Applicants for certain minor permits, such as re-roofs and A/C unit repairs will not be required to obtain a Preliminary Wetlands Determination letter required by Section 6.
- Clarification that if a developer submits a formal wetlands determination from the Florida Department of Environmental Protection or wetlands delineation less than five years old prior to applying to the County for permitting or other development approval, he or she would not be required to obtain the Preliminary Wetlands Determination letter in Section 6 or go through the delineation requirements, if such prior delineation or DEP determination is submitted or on file with the Planning Department.
- 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.
- Deletion of paragraph (E) in Section 6, as it could create confusion, as this same basic statement is already included in paragraph (A).

Changes after April 19, 2010, BOCC meeting:

- The five year limitation on delineations or DEP formal determinations in paragraphs (A) and (C)(3) was added after the April 19, 2010, meeting. DEP only considers these valid for a period of five years, as the edge of a wetland or surface water may change.
- The Board considered whether there should be different requirements for larger parcels. Staff and the County Attorney's office researched this issue and determined that the most appropriate distinguishing concern was what type of development was being approved. Based on this staff recommends the following changes to paragraph (C):
 - Modification of the delineation requirements in paragraph (C), to only require delineation of an entire parcel if the developer is submitting an application for preliminary plat or subdivision approval.
 - A person submitting a site plan will only be required to delineate the wetlands on the portion of the lot or parcel that will be impacted by the development, including construction activities.
 - This modification applies regardless of the size of the lot or parcel, but should address the cost concerns pertaining to delineating a large parcel or lot.
- Paragraph (D) was modified to clarify that a Formal Determination from DEP may be required any time staff disputes the accuracy, completeness, or validity of a Delineation submitted by a Developer.

Changes after the May 6, 2010, BOCC workshop:

- Paragraph (B)(4) was clarified to read that the County is not bound by any Preliminary Letter, not only those that provide that Wetlands or other Surface Waters are likely to exist.

Section 7 - Allowable Uses

- Deletion of paragraphs (11) and (12) from the Allowable Uses section since those activities do not meet the definition of "Development," as defined by the Wakulla County Land Development Code.
- 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 authorized in each Buffer.

Section 8 - Conditional Uses

- 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.
- Clarification in subsection (B) that applications for Conditional Uses will be processed pursuant to Section 3-21 of the Land Development Code.

Changes after the May 6, 2010, BOCC workshop:

- Clarification that the design standards required under paragraphs (A)(5) and (A)(8) for Boat Ramps and driveways and utilities constructed within or immediately adjacent to such driveways are minimum standards, and that additional conditions may be placed on such Development activities, depending on the circumstances of each individual application.

Section 9 - Variances

- 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).
- Clarification in subsection (B) that applications for Variances will be processed pursuant to Section 3-22 of the Land Development Code.
- 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.

Changes after the May 6, 2010, BOCC workshop:

- A change to paragraph (A)(2) to clarify that the installation of utilities for which a variance is required are those that may not be authorized as an allowable or a conditional use.

Section 10 - Design Standards

- 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 new paragraph (D) to provide design standards for boundary fences.
- Deletion of design standard in paragraph (E)(2) for Driveways requiring pre-treatment of

drainage.

- Deletion of design standard in paragraph (G)(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 (I) to provide design standards for Boat Ramps.

Changes after April 19, 2010, BOCC meeting:

- The paragraph pertaining to conservation easements was added back to the ordinance as paragraph (B), but was made permissive, instead of mandatory.
- Paragraph (C) and subparagraphs were made clear that only one Dock, Pier, Boardwalk or other similar structure may be approved as an allowable use, rather than a possible interpretation that one of each structure is allowed. If a Developer wants a Dock and Pier, they will be required to obtain a conditional use for the second structure.

Changes after May 6, 2010, BOCC workshop:

- A limitation was added on the length of Boat Ramps in paragraph (I)(2), to provide a maximum length of 35 feet of any Boat Ramp (however, longer Boat Ramps may be approved through a variance). This length is based on considering the maximum slope approved by the Florida Department of Environmental Protection and would be sufficient to reach the necessary depth for most navigable waters in Wakulla County.
- Language was added in paragraphs (I)(4) and a new (I)(10) to ensure that all Boat Ramps and side slopes are stabilized.
- The width of a Boat Ramp that may be built as a conditional use was reduced to 20 feet, including stabilized side slopes, for private Boat Ramps (however, wider Boat Ramps may be approved through a variance).

Section 11 - Exemptions

- 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.

Changes after April 19, 2010, BOCC meeting:

- Clarification 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 - Mitigation

- 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 - Administration and Enforcement

- Modifications in Section 13 to clarify that County staff are not required to report Development activities to the state or other administrative bodies, if those entities approved such Development.

Section 14 - Penalties

- Minor modifications of terms and clarification of the process for imposition of penalties.
- Modifications in Section 14, Penalties, to (1) require a Corrective Action Plan which may include Restoration and Mitigation, along with the requirement that an Owner of property obtain any necessary permits; (2) clarify the enforcement process and requirements of Corrective Action Plans; and (3) provide for compliance monitoring

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

Summary

At this time, the County Attorney and staff are comfortable proceeding to incorporate the above-noted changes made since the last Board meeting, should the Board elect to ratify this item. However, in addition to the ratification of these items and the workshop discussion, staff and the County Attorney also seek authority to refer the proposed Revised Wetlands and other Surface Waters Ordinance to the Planning and Zoning Commission for a public hearing and seek authority for a public hearing before the Board of County Commissioners at the next available date following receipt of the Planning and Zoning Commission's recommendations.

Options:

1. Ratify the Wetlands Protection Ordinance Workshop and Approve Modifications made by Staff and the County Attorney, Approve to Refer Ordinance to the Planning and Zoning Commission for a Public Hearing, and Approve to Advertise a Public Hearing Before the Board of County Commissioners Upon Receipt of Planning and Zoning Commission's Recommendations.
2. Do not Ratify the Wetlands Protection Ordinance Workshop and Do Not Approve Modifications made by Staff and the County Attorney, Do Not Refer Ordinance to the Planning and Zoning Commission for a Public Hearing, and Do Not Advertise a Public Hearing Before the Board of County Commissioners Upon Receipt of Planning and Zoning Commission's Recommendations.

3. Board Direction.

Recommendation:

Option #1

Attachment(s):

- A. Blacklined Draft Ordinance Incorporating Comments from Staff, County Attorney, and DEP
- B. Draft Ordinance transmitted by the Wetlands Advisory Committee
- C. Clean copy of Attachment "A"

[LS/ss]