

FORUM TO GATHER PUBLIC COMMENT RE: CONSERVATION ELEMENT/FLOOD HAZARD AREAS

Wednesday, May 5, 2010, 5:30 p.m.

Staff members present were Mel Scott, Asst. County Manager; Ernie Brown, Director, Office of Natural Resources Management; Darcie McGee, Office of Natural Resources Management; Amanda Elmore, Office of Natural Resources Management; Frank Skarvelis, Transportation Engineering Department; Candy Hanselman, Planning & Development Department.

Public attendance was as follows: Lyle Zody; Carol Hamilton; Troy Rice; Shirley Beasley, Police Foundation neighborhood; Mary Hillberg; Bill Hillberg; Doug Sphar; Mary Sphar; Glenn Storch; Steve Woodlong, Police Foundation neighborhood; Michelle Woods, Micco Homeowner's Association; Johnson Hare; Joel Ivey, Ivey Planning Group; Tres Holton, The Holton Group; Jim Egan, Marine Resources Council; Claire Gambao; Jim Zuhlke; Robert Day; Jim Durocher, Audubon Society; Jason Steele; Maureen Rupe, Partnership for a Sustainable Future; Leroy Wright, Florida Wildlife Federation; Marilyn Wetmore; Katie Tripp, Save the Manatee Club; Ty Harris.

Ernie Brown narrated a Power Point presentation regarding the Brevard County Comprehensive Plan, Conservation Element, Flood Hazard Areas, as follows: /1/ Current Objective 4; /2/ Why Brevard County has a Comprehensive Plan; /3/ Why Brevard County regulates flood hazard areas; /4/ Types of floodplains; /5/ What can happen when we impact floodplains; /5/ Compensatory storage; /6/ Proposed riverine floodplain policies; /7/ 100-year riverine, current and proposed policies; /8/ 25-year riverine, current and proposed policies; /9/ 10-year riverine, current and proposed policies; /10/ Mean annual riverine, Policy 4.2; /11/ Estuarine/isolated/coastal floodplains, grammatical and cleanup with no actual changes. Mr. Brown answered questions from the audience regarding the points made in the presentation.

The audience was invited to participate in a poll, with results as follows:

Agree with proposed policies – 4
Disagree with proposed policies – 18
Submit document, as is – 4
Document needs more work - 16

Public comment was given as follows:

Mary Sphar – Ms. Sphar stated that an often-heard justification for amending the Conservation Element policies is to level the playing field with municipalities to prevent annexation. She acknowledged there is an uneven playing field with regard to floodplain requirements that definitely exists between the County and certain municipalities. She expressed concern that it could be a tempting solution to some people to even the playing field by making County floodplain regulations just as weak as those of the municipality with the least stringent floodplain requirements, which would exacerbate the County's already serious flooding problems, causing unavoidable harm to County residents. She added that the playing field needs to be leveled, while at the same time providing adequate protection for people and property within the 100-year floodplain. She said there are three promising methods for dealing with this: /1/ revive the joint planning agreement coordination; /2/ enact a County-wide floodplain protection ordinance, including all municipalities; /3/ adopt a charter amendment to give the County preemptive rights over land use designations and possibly over floodplain regulations. Ms. Sphar said that the proposed language removes the development density restrictions for the 100-year riverine floodplain, but adds one good sentence about compensatory storage. She added that it is important to recognize that development density restrictions and compensatory storage requirements work hand in hand to protect property from flooding and preserve a quality of life, which is recognized in the City of Titusville's comprehensive plan, with no distinction made between the riverine, isolated and estuarine floodplain. She said that the best approach is to keep the development density requirements for the 100-year riverine floodplain in the Comprehensive Plan and add the proposed language for compensatory storage to the section on the 100-year riverine floodplain and, in addition, add compensatory storage requirements for the

isolated floodplain, and appropriate compensatory storage requirements for the 100-year estuarine floodplain. Ms. Sphar asked staff to provide the County Commission with some really effective Comprehensive Plan policies for food hazard areas.

Doug Sphar – Mr. Sphar stated that the floodplain amendment should try to head off flooding, and not make it worse. He discussed the substantial flooding caused by Tropical Storm Fay. He said that if density rules are eliminated, the County will be doing a great disservice by enticing unwitting individuals to move into new subdivisions located in high-risk floodplains. He added that the County budget would also be put at risk, as the County acts to provide emergency and remedial service to flood-impacted areas. He said that insurance would also probably go up. Mr. Sphar stated that density restrictions also serve many important functions beyond preventing flooding, as they contribute to quality of life, attractiveness of the community, and promote the economic vitality of the County, as follows: providing a transition zone between urban areas to the east and the St. Johns Water Management District plans to the west; preventing Brevard from becoming another Broward County with wall-to-wall urban development on the non-public lands; enabling recreational enjoyment of the land near the St. Johns, such as boating, fishing, birding and duck hunting; facilitating ecotourism by providing attractive natural areas for tourists and residents; mitigating storm water runoff and providing filtration for pollutants, making the water better in the St. Johns; protecting the drinking water source; and maintaining the health of the St. Johns River ecosystem.

Carol Hamilton - Ms. Hamilton described the devastation of the current flooding in Tennessee, which has reached levels not seen since the early 1960's, and she stated that it could happen here. She said that the river in Tennessee went from 19 feet to 50 feet, over the flood stage by more than ten feet, which goes way beyond what the Brevard County charts show. She added that just because there is a floodplain, that does not mean it cannot go above that. Ms. Hamilton read an article from a Baltimore newspaper, which made the point that when flooding takes place, which is the worst in 50 years, there will have been many buildings constructed in that time period by people knowing they would be washed away. She questioned how much flood water is due to waters being forced downstream by those living in an actual floodplain. Ms. Hamilton stated that it is irresponsible for government to allow people to build on low lands that flood from time to time over a 100-year span. She added that she disagrees with the proposed language.

Marilyn Wetmore – Ms. Wetmore stated that Policy 4.1 talks about infrastructure, human lives, storage capacities and the quality of water shed, but it does not talk about the natural habitat. She further stated that Mr. Brown had made a comment that digging a hole is not necessarily all bad. She said that every time a hole is dug on the floodplain, they are affecting the natural habitat, and she would like to see that referenced. She asked how the no net change in rate and volume of flood water discharge is measured.

Frank Skarvelis stated that based upon flood insurance studies that have been done for the County, they already have a very good idea of the capacity of the system. He added that it is somewhat complicated, but it gets down to a pure statistical analysis of how much the flood level is affected by a certain amount of water being put into the system. He said that based upon these studies, they know what the 100-year flood level is and, within that, they know what the 50-year, 25-year, 10-year and the mean annual is, with each one more stringent than the one contained within. Mr. Skarvelis said that this is the reason why the proposed regulations become more stringent as you get into a more critical floodplain. He added that it is a standard engineering practice to be able to identify a floodplain elevation, and if property is to be developed, to come up with comprehensive topography to quantify the floodplain areas to figure out how much storage there is.

Ms. Wetmore stated that they have a little project in her neighborhood that was engineered, looks good on paper, but it is not working for the neighbors, and the enforcement is not happening. She said that she is concerned that there is not enough staff in this County to enforce the looser criteria that is proposed. She described damage by Hurricane Katrina that was sustained by a relative in Louisiana. She said that back in

the 1700's, an engineer had warned people not to build in that area. Ms. Wetmore stated that government has a big responsibility not to allow this to happen, because even if it happens only in a 100-year period, people are there.

Jim Egan – Mr. Egan stated that compensatory storage is a valuable tool to ensure that new development does not create a greater impact on existing development, or existing properties, in the floodplain; however, it does not do anything in terms of ensuring that the properties that are built there are somehow safer. He added that if the density restrictions are removed with the idea that it is okay because compensatory storage is ensured, all that does is say that the new home will not increase the flooding of the existing homes. He said that putting a new home in a 10-year, or 25-year, floodplain is basically increasing density in an area that is a high-hazard area. Mr. Egan stated that a 10-year floodplain currently allows only one unit per ten acres but has a zoning that is very similar to the zoning of the surrounding community that has no flooding problems, which means that the density could very easily be increased by 20 times. He said that this would be putting 20 times as many people into a high-hazard area, which is going to be subject to serious flooding every ten years, and it takes only an average storm to wipe out a home or a life. Mr. Egan stated that the first rule of planning is to keep people out of dangerous areas, and it is never an incentive to a community to allow a developer to develop a marginal property, if it means that people and property are going to end up being destroyed on a regular basis. He added that the change in the 100-year floodplain to allow for no net loss of flood storage would be a positive change. He said that the County already has flooding problems, and he questioned if we really need more people in the high-hazard areas. He added that compensatory storage should be used to actually handle existing flooding problems, and the people living in these floodplains should be incentivized to create storage now.

Jim Durocher – Mr. Durocher stated that he agreed with Mr. Egan. He further stated that in a climate of weather extremes, things should be made safer and less costly for lives and property by having more restrictions in floodplain areas. He said that compensatory storage should be part of the strategy and development of the estuarine, isolated and coastal properties. He added that buildings can last 25 to 100 years, so ten years is kind of a ridiculous number to be considered the life of a building. Mr. Durocher said that he agreed with Ms. Sphar that there should be a County-wide ordinance, because municipalities are a part of the County, and if there is a problem in a municipality, it affects the County financially, and safety-wise.

Leroy White – Mr. White spoke on behalf of the Florida Wildlife Federation, as past president of the Save the St. Johns River Group, Inc., and also as a member of the Board of Directors of the St. Johns River Alliance. He said that as a conservationist and environmentalist, he has determined that for the past 29 years, his time should be spent on the annual, 10-year and 15-year floodplain of the St. Johns River. Mr. White said that he has been through a number of court cases, including a 1990 lawsuit against a developer who wanted to build 1,100 homes and a championship golf course behind a three-mile long illegal dike on Lake Poinsett, which lay within the annual, 10-year and 25-year floodplains. He stated that after 15 years of effort, a judge found that there was no waterborne vegetation inside the dike; therefore, it was not floodplain, and even though the dike was illegal, it would support the project. Mr. White said that for years, the project functioned off of the dikes with several heavy-duty pumps, and destroyed the outside of the dikes for the northeast shoreline of the river. He said that the Brevard County Commission had agreed to take charge of the dike pumps and operate them, in exchange for the golf course, once all the homes were sold, but he got the Commission to pull out of that deal due to the revelations he made to them. Mr. White said that he supports Jim Egan's, and Mary and Doug Sphar's comments. He added that he was a guide on the river and held professional bass tournaments for many years, but people do not come there today, because the fish have been almost depleted through 75 years of pumping agricultural runoff into the river. He said that the District, in 1987, spent 250-million dollars on a restoration plan for the upper basin, buying back some of the properties that were being pumped, removing dikes and closing canals. He added that today, they are on the way to a better river and better ecosystem. He questioned why the idea would be entertained of expanding the removal of the protections in

the 10- and 15-year floodplains. He said that he is totally opposed to it, and the groups he speaks for are totally opposed.

Claire Gambao – Ms. Gambao stated that it is unfortunate, but necessary, that the government has to look after the masses. She added that if you build it, they will buy it, and then the rest of the community has to bear the financial burden, while the developer takes the profits and leaves to strike again. She said that more enforcement of the rules is needed to keep it a lot more difficult to build.

Joel Ivey – Mr. Ivey stated that he had heard concern about flooding. He said his understanding of the proposed rule changes is that they do not authorize development in the floodplain, they do not necessarily increase the density in the floodplain, they do not authorize filling in the floodplain, and they really do not change much of anything in terms of what can be done. He added that construction that is geographically located in an area that is floodplain would have to be elevated, just like it is today, but it would have to be done in a way that would not diminish the function of the floodplain. Mr. Ivey stated that he does not get a lot of the concerns associated with the proposed changes, as they are not really changing the lines, and not proposing more development in the floodplain. He added that if function is not being changed, and location is not being changed, and people are allowed better use of their property, he would be for the changes.

Michelle Woods – Ms. Woods, President of Micco Homeowner's Association, stated that they have three main issues: water, density, and saving the natural environment. She said that Brevard County needs to see the whole picture, and they do not feel that the County is always doing that. She added that when one change is made, it always affects several other changes that may not be seen right away. Ms. Woods said that there is floodplain sensitivity that needs to be preserved, as it is, because there is a reason for it. She said that the San Sebastian River rises to an unbelievable height when there are flooding issues from storms and hurricanes, and after Tropical Storm Fay, they pumped 1,500 gallons a minute for several weeks. Ms. Woods said that they feel that they need to keep the flood designation they have, especially the 25-year floodplain, because their area is right in the middle of a nature conservation area and the San Sebastian River State Park. She added that the park area flows into the San Sebastian River, which then flows into the Indian River Lagoon, which flows into the ocean.

Glenn Storch – Mr. Storch stated that he represented Farmton, when they were looking at this issue. He said that Farmton has 12,500 acres in Brevard County, and they are clustering everything to preserve 80 percent of the entire area. He added that if the goal is to protect the floodplain, and make sure there is sufficient flood storage, then this does not do that. He added that this provides density criteria at two units per acre, but there can be septic tanks within that floodplain area, which means if it floods, the septic tanks also would be flooded. He said that you can also have 15,000 square feet of fill for commercial, industrial and institutional density, and that means it discourages clustering and preserving large areas of land. He stated that he does not understand the purpose of that. He added that if, instead of destroying economic development, the purpose is to actually make sure there is sufficient floodplain preserved, cup for cup, then what this does is create a requirement for compensating storage. Mr. Storch stated that if you are within a 100-year floodplain, you have to fill a section to get out of that floodplain, and that is a safety issue. He added that for all the area that is filled, there has to be additional compensating storage to make sure that no one else is affected and that the floodplain itself is still sacrosanct. He said that this is what these proposed changes do. He added that there was a time when people thought that keeping low densities across vast areas of land actually preserved areas, but it does not, as evidenced by all of the five-acre, ten-acre, and 20-acre ranchettes surrounding Farmton. He said that that area is dead, from an environmental standpoint, and a lot of the floodplain is taken away by all the buildings, such as big barns, and roadways, creating an impervious surface. Mr. Storch stated that if the planning is increased, with clustering and preservation of large areas of land required, and with compensating storage incorporated as part of the designs, that will solve the problem. He added that that is consistent with the policy to protect infrastructure and human life, conserve flood storage capacities, and improve, where

feasible, the quality of water within the watershed. He said that that is what should be done, and can be done, by raising those areas to be built on out of the floodplain and then providing compensation to make sure that the raising is dealt with. Mr. Storch stated that he has an issue with the fact that you can fill in the 25-year floodplain for other uses, but not for industrial land uses. He said that that does not seem to make much sense, especially in Brevard County, where some way needs to be found to marry economic development to environmental preservation. He added that the County should be encouraging economic development in any way that does not discourage environmental preservation. He said that he does share some concerns regarding the things below the 100-year, but they will be working those out.

Mary Hillberg – Ms. Hillberg stated that she was speaking on behalf of the North Merritt Island Homeowner's Association. She said that she agreed with Mr. Egan, Mr. & Mrs. Sphar, Mr. Durocher, and Mr. Wright. She added that the potential for unintended consequences with these changes is substantial. She said that we have changing weather patterns, and the weather is predicted to be even more severe as time goes on. She added that they are supportive of no changes in density restrictions in any area, and they prefer to have further efforts made to remedy the current flooding areas, and vigorous enforcement of the current rules and limits. Ms. Hillberg stated that there are 3,400-3,500 people on North Merritt Island, and they are not anxious to have further impacts from flooding. She added that Tropical Storm Fay did a massive amount of damage, and it was very expensive. She said they would prefer that the County take care of the current problems, before they make new ones.

Maureen Rupe – Ms. Rupe, Partnership for a Sustainable Future, stated that when she first read the proposed changes, she thought it was April Fools' Day. She said that it needs to be more restrictive. She presented over 60 photographs of the low-lying areas of North Merritt Island. She said that this is not just an environmental issue, as it is one of public safety. Ms. Rupe stated that if large areas of the floodplain are filled, there will be an increase in the land area needed to store floodwaters, and this means many more homes and businesses will be liable to floods. She added that allowable uses include, but are not limited to, agricultural, but if code ends up allowing non-ag residential, like subdivisions, in the 10-year floodplain, higher densities would be self-limiting, due to the compensatory storage requirement. Ms. Rupe stated that she does not understand why the St. Johns Water Management District does not comment on this, because it will definitely affect the 100-year St. Johns floodplain. She asked how the buildings will be able to obtain flood insurance, without a great expense. She said that one of the uses listed as not being compatible with the resource requirements of the riverine floodplain, and not to be permitted, is placing, depositing or dumping of solid waste, except for treated municipal solid sludge. She said that she would like to know the hydraulically equivalent volume of storage within the 100-year floodplain that is used to balance the loss of natural storage capacity when artificial fill, or structures, are placed within the floodplain. Ms. Rupe stated that compensatory storage cannot be anywhere, and it surely has to be up or down stream.

Darcie McGee replied that it has to be hydraulically-connected.

Ms. Rupe stated that she did not want digging of a hole for drainage. She added that the whole thing needs to be left alone, especially on the floodplain. She said that the changes are irresponsible, and she will hold the Commissioners who vote for this personally responsible, when the floods come.

Ms. Rupe agreed to submit her photographs for the package to be distributed to the County Commission.

Ernie Brown told the audience that anything they wanted to submit in writing to support their comments would be greatly appreciated, and they would go in the package for the Board, along with the summary minutes.

Ms. Rupe stated that the changes need more work to be more restrictive, and if not, then she wants it dead.

Katie Tripp – Ms. Tripp, Director of Science and Conservation for the Save the Manatee Club, stated that she would like to reiterate the great points that she had heard. She added that, as Mary Sphar stated, there are better ways for the County to address annexation. Ms. Tripp stated that the County does have a responsibility to protect its citizens, and the density restrictions and compensatory storage help to provide that needed protection. She said that Ms. Wetmore had made an excellent comment about protecting habitat. Ms. Tripp stated that, as humans, we tend to think that we are smarter than nature, but we have examples in Florida, and around the world, that show that you cannot always out-engineer Mother Nature. She added that a new hole that we dig is not going to necessarily work as well as the hole that we fill. She said that she had submitted written comments to the Board before their last meeting, addressing climate change, and she believes that the County needs to be thinking proactively on this topic, and looking at the big picture, and limiting development in the high-hazard areas. She added that the 100-year flood is not going to be a 100-year flood, as it will be happening more frequently than that. She said that the best way to protect that is not to build and put more people in these high-hazard areas. Ms. Tripp said that people seem to feel that the density restrictions are working, and they need to be continued. She added that advertising that the County is protecting people from flooding is a good advertisement for the County to have. She said that Ms. Woods made a great comment that one change leads to another, and that is the issue for everyone in the room, and is the world that she lives in. Ms. Tripp stated that citizens and environmental groups want to fight the minor changes so that they do not have to come back later and fight some uphill battle that they do not think they can win. She added that that is what is bringing people out on this issue, as they see it as a gateway into potentially more detrimental changes. She said that the people who disagree and feel the changes need more work are talking about preventative medicine for the County to protect a way of life, and protect the things that keep people wanting to come to Brevard County.

Bob Day – Mr. Day said that he was on the other side of the microphone in 1988, when this was put together. He told Mr. Storch that the concern regarding industrial use was that that would perhaps be a more intense use, with more potential for pollution in the lower floodplain. Mr. Day said that the ordinance had been cleaned up to flow better, and read better, with the definition for compensatory storage improved. He added that the issue was raised in 1988, about compensatory storage for isolated, or estuarine and coastal wetlands. He said that argument that was made then is probably still true today, and that is that when the water rises, you are going to get wet, and you do need compensatory storage, regardless of where you are. Mr. Day said that he would encourage the County to go forward with compensatory storage in all floodplains. He said that regarding the density, Mr. Storch had made some excellent comments about clustering, but they need to start with the density, using clustering to offer some relief from that. Mr. Day added that the density issues need to be in the Code. He concluded by saying that he would submit written comments at a later date.

Ernie Brown addressed further requests from the audience for clarification of the proposed changes. He explained the procedure for transmittal and adoption of the changes.

The forum ended at 7:20 p.m.