

FORUM TO GATHER PUBLIC COMMENT RE: CONSERVATION ELEMENT/SURFACE WATER

Friday, May 7, 2010, 5:30 p.m.

Staff members present were Ernie Brown, Director, Natural Resources Management Office; Darcie McGee, Natural Resources Management Office, Amanda Elmore, Natural Resources Management Office; Candy Hanselman, Planning & Development Department.

Public attendance was as follows: Suzanne Valencia; Patricia Tierney; Jim Zuhlke; Claire Gambao; Maureen Rupe; Glenn Storch, Farmton; Jim Durocher, Audubon Society; Troy Rice, St. Johns River Water Management; Pete Kaiser, Shoreline Construction; Beth McMillen.

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

Agree – 8 (100%)
Disagree - 0 (0%)
Send, as is – 5 (62.5%)
Needs more work – 3 (37.5%)

Ernie Brown narrated a Power Point presentation regarding the Brevard County Comprehensive Plan, Conservation Element, Surface Water, as follows: /1/ Objective 3; /2/ Why Brevard County has a Comprehensive Plan; /3/ Why Brevard County regulates surface waters; /4/ Why NRMO is proposing modifications to Objective 3; /5/ Surface Water Working Group; /6/ Indian River Lagoon facts; /7/ Class I & II Waters; /8/ Aquatic Preserves; /9/ Outstanding Florida Waters; /10/ Why shoreline protection barriers are needed; /11/ Policy 3.1; /12/ Policy 3.2; /13/ Policy 3.3; /14/ Policy 3.4; /15/ Policies 3.5 & 3.6; /16/ Types of shoreline stabilization; /17/ Living shorelines; /18/ Policy 3.7; /19/ Policy 3.8; /20/ Policies 3.9 through 3.11; /21/ Policies 3.12 through 3.14; /22/ Policy 3.15. Mr. Brown answered questions from the audience regarding the points made in the presentation, and the process for transmittal and adoption of the changes.

Public comment was given, as follows:

Beth McMillen – Ms. McMillen, Assistant Director of the Marine Resources Council, stated that the Council participated in the working group. She said that they support these Comprehensive Plan changes in the current version, with just one question regarding the case where a property owner seeks to put an unusually large primary structure on a small lot. She asked if the small lot would be considered inadequate in depth, and thus have a shoreline buffer reduced to 25 feet. She further asked if a property owner could argue that his neighbors' houses are huge on their large lots, so he would be entitled to a huge house on his small lot. Ms. McMillen asked if this is true, would they be inadvertently encouraging the overbuilding on lots, instead of limiting the lot to a building appropriate to its size. She said that if there is nothing to deal with that, they would like to suggest more work but, overall, they agree to send, as is.

Suzanne Valencia - Ms. Valencia stated that she agrees with the changes. She added that the group and staff did a great job. She said that she would agree to send, as is.

Maureen Rupe – Ms. Rupe stated that she was a member of the Surface Water Working Group. She said that she does agree with a lot of the changes, but there are things that she does not agree with. She added that at the time the Surface Water Group was talking about this, she thought that it was not written in stone to go ahead with the Comp Plan, and she thought that it would be brought back up, as the group was told, for a final vote. She said that, basically, she does not mind any of the changes, except the septic. Ms. Rupe stated that she was hoping that when it came back, they could discuss something like what they have in the Keys – separate, individual, sewer contained systems, package plants, or something. She added that if this is not mandated, she had wanted it to go through with more restrictions. She said that the lagoon is contaminated and extremely fragile, and it certainly does not need any more septic tanks failing near it. She added that the ordinances are written to comply with the Comp Plan, and it seems like the County is doing this in reverse, because if the Comp Plan is changed with no ordinance to back it up, that is how they get into trouble with

noncompliance with the Comprehensive Plan. Ms. Rupe reminded staff of an incident a few years ago, when they were working on an ordinance for eagles, and it was stopped, and a court case was lost because there was no ordinance to back up the Comp Plan. She stated that she feels that the ordinance should be in place, because the Comp Plan is kind of a summary, and the ordinance is the details. She said that she honestly feels that the County has this in the wrong order, and they should prepare the ordinance and then the Comprehensive Plan. She said that, in the last year, the noncompliance with the Comprehensive Plan was massive. She added that when this happens, the County does the same trick that the State does, which is extending the time limit for compliance.

Ernie Brown responded that there is currently an existing Comp Plan in place. He said that this is a little bit different than the eagle issue, because they had Comp Plan, but no ordinance, and in this current situation, there is Comp Plan in place, and ordinance in place. He added that they had started working on the ordinance with the Surface Water Working Group with full expectation that no Comp Plan changes were in their future, and they were trying to improve the ordinance to implement the existing Comp Plan. Mr. Brown said that that process stalled because of budgetary constraints and staffing issues. He added that the Board then said to change the Comp Plan. He said that legally, they are okay, because there is Comp Plan and ordinance in place. He added that the ordinance can only be developed after the Comp Plan is completed, because an ordinance cannot be developed that is inconsistent with the Comp Plan. He said that after the Comp Plan is complete, they will have to go back with the Surface Water Working Group and revise the ordinance to reflect any amendments to the Comp Plan. In answer to a question from Ms. Rupe, he responded that the County is legally in compliance with the existing Comp Plan and ordinance.

Ms. Rupe said that she had thought that they would have a chance to come back regarding some of the things that had been put in the Comp Plan.

Ernie Brown clarified, for the record, that the working group had been told that they would come back with the final changes, after they came out of the Attorney's Office, as it relates to the ordinance. He added that that was before the Board told them to change the Comp Plan.

Ms. Rupe stated that the Surface Water Working Group should be reconvened.

Ernie Brown replied that staff would make that recommendation to the Board.

Mr. Rupe said that she would vote to agree, but with the changes still needing work. She stated that she wants Policy 3.8 pulled out, entirely.

Glenn Storch – Mr. Storch stated that he was appointed to the first Indian Marine Lagoon Estuary Board about 15-20 years ago. He said that he had looked at the changes, and he thinks staff and the committee did a fine job. He said that these are things that they did in the first place, and they had known that it would take some tweaking while going through the process of seeing what worked and what did not work. He added that what ordinances and comp plans do is constantly maneuver, depending on what is working and what is not working. He said that staff and the committee have tried to deal with some of the issues they have had, especially the noncompliance issue, to make those things clear. Mr. Storch stated that comp plans are supposed to be a vision, not just an ordinance. He added that one of the visions the County can have is to encourage connection to sewer systems, and avoid septic tanks. He said studies that have been done regarding the community of Bethune Beach, in Volusia County, which is a community of 50-foot lots along the lagoon, show an amazing amount of affluent going into the lagoon, and far out into the lagoon. He added that they convinced the residents and the county council to take out that area and put in a sewer system, and have the residents pay for it over ten years. He said that that was a major accomplishment, and they were able to do it because the area was so compact. He added that some areas on the other side of the lagoon were not as compact, as far as the residences, but they put provisions in that indicated that once a septic system failed, or

after a certain amount of time, it had to be replaced by an aerobic system, or a system that was far more efficient, as far as the affluent going into the lagoon. Mr. Storch said that that was something that could be put in as a vision, or a goal. He added that the issue of large houses on small lots could be dealt with by lot coverage percentages, which is what is done in Volusia, where you are not allowed to cover more than 30 percent of your lot with a house or accessory structures. He said that he does not have a problem with large house, small house, large house, as it makes a much more diverse and interesting neighborhood, rather than having everything cookie cutter. Mr. Storch said that he agrees with the changes, and thinks they should go, as is. He reminded the audience that changes can be made after transmittal.

Patricia Tierney – Ms. Tierney stated that she is a new Brevard County resident, and a storm water consultant. She said that her only comment would be to just make sure that the language is clear, because there are so many different pieces of paper that homeowners are trying to decipher to know what they need to do to be in compliance. She added that you cannot depend on your builders, and your engineers, all the time, because they have their agendas, and a lot of homeowners will fight them, not wanting to do anything extra. Ms. Tierney said that it was hard for her to look through all the ordinances, and all the different rules in this county, and understand exactly what she needed to do to be in compliance and to protect the waters, because that is what she wants to do. She added that there was the question of what specific area needed to be measured for the required one inch of retention. She said that she agrees with the changes to be sent, as is.

Pete Kaiser – Mr. Kaiser, marine contractor, stated that he was on the Surface Water Ordinance Board, and he agrees with Ms. Rupe in that he thought the group's time was going to last longer so that they would have more time to make changes. He referred to written comments that had been provided by Jim Staylor. Mr. Kaiser said that he agrees with Mr. Staylor and thinks he likes the Comprehensive Plan, as it is. Mr. Kaiser that Mr. Staylor had mentioned quite often that some of the language is confusing because sometimes the term "surface water protection ordinance" is used, and sometimes it is "shoreline protection buffer", and those terms should be straightened out. He added that the group had talked about removing the word "hardening", and it is still in there. Mr. Kaiser stated that the ordinance is confusing for the homeowner. He added that he also agrees with the comments made about septic tanks and planning for the future with sewer systems. He said that, on Merritt Island, a pipe going straight down Tropical Trail to connect with septic would be a good goal. He stated that he basically agrees with the changes, with wording changes, and possibly some future amendments to take care of the big problem.

Ernie Brown stated that they had gotten some very pointed comments that will help staff to present the recommended changes to the Board for them to decide whether or not they want to integrate them in now, and move it forward as an adoptable form, or send it back for more work.

Jim Durocher – Mr. Durocher stated that he was also on the committee. He added that that on Policies 3.4.B and 3.3.B, he would recommend changing the "county" to "appropriate county agency". He further added that on 3.8, he had come up with a couple of things that need to be in there, and they had talked about that in the committee meeting. He said that the following should be added: "When available, and within reasonable expense, properties along surface waters must connect to municipal sewage systems, and when not possible, then septic systems should be changed to the newer systems." He reiterated that 3.8 is in contention. Mr. Durocher said that he would suggest to the County Commission that they convene a working group for floodplains and wetlands, similar to what they had for surface water, so that staff can take their recommendations and suggestions and come up with a good plan. He concluded by saying that he agrees with the changes, but they need a little more work.

Ernie Brown told the audience that staff would pull the comments together for the Board. He said that straightening out the terms to make them consistent throughout the document is something that can go as a recommendation. He added that streamlining is a critical point that was brought up, and if these changes move along, then staff can focus on streamlining it and making it less confusing. Mr. Brown said that there had

been a lot of discussion on 3.8. He added that the general concept that he had heard was to encourage advanced wastewater treatment systems along the waterways, and encourage simpler sewer hookups along the shoreline, as well. He said that the specific comments that had been made regarding this will be made available to the Board. Mr. Brown stated that if this gets transmitted, there will be comments, recommendations, and potentially objections, from DCA. He said that what he would like to see when it does come back, if the Board chooses to transmit, is having this kind of forum to encourage conversation about the solutions. He told the audience that he would greatly appreciate anything they would want to put in writing, relating to this. He asked them to send their comments to Darcie McGee. He reminded them that the wetland public forum will take place on May 19, 2010, and any comments regarding tonight's issues should be provided before that. He said that the Commission meeting regarding this is on May 27, 2010, at 5:00 p.m.

The forum ended at 7:10 p.m.