

Brevard County Surface Water Protection Ordinance Working Group

November 5, 2008 Meeting Minutes

(Consensus items are highlighted in yellow)

Working Group Members Present

1. Jim Durocher, Primary Representative, Brevard Nature Alliance
2. Pete Kaiser, Primary Representative, District 2
3. Beth McMillen, Alternate Representative, Marine Resources Council
4. Troy Rice, Primary Representative, District 3
5. Suzanne Valencia, Primary Representative, Partnership for a Sustainable Future
6. Steven Webster, Primary Representative, Florida Marine Contractors Association
7. Andy Wolter, Primary Representative, District 4

Working Group Members Absent

1. Mark Bowes, Alternate Representative, Home Builders and Contractors Association
2. Jim Egan, Primary Representative, Marine Resources Council
3. Don George, Alternate Representative, Brevard Nature Alliance
4. Franck Kaiser, Primary Representative, Home Builders and Contractors Association
5. Ana Nesbitt, Alternate Representative, Florida Marine Contractors Association
6. Maureen Rupe, Primary Representative, District 1
7. Joanna Stone, Primary Representative, Marine Industries Association
8. George Wilson, Primary Representative, District 5

Support Staff

Tim Franta, Facilitator

Ernest Brown, Director, Natural Resources Management Office (NRMO)

Amanda Elmore, Supervisor, Environmental Permitting, NRMO

Darcie McGee, Environmental Permitting, NRMO

Liz McDuffee, Administrative Assistant, NRMO

Members of the Public

Paul Pettit

Jim Staylor

Handouts

- 11/5/09 Agenda
- Surface Water Protection Ordinance draft with changes incorporated from previous meetings
- Draft Conditional Use Permit for Private Docks Ordinance from the Planning & Zoning Office
- 10/22/08 draft minutes

Informal Call to Order

At 9:09 AM, with only six members present, the meeting was informally called to order. (Seven voting members must be in attendance for a quorum.)

Surface Water Protection Ordinance Work Group Deadline Extension

Staff is asking the Board of County Commissioners to extend the work group deadline from December 31, 2008 to May 31, 2009 to ensure enough time is allocated to complete the Surface Water Protection Ordinance review. It is not expected that the group will need all of the requested time.

Review of previous consensus items

The group members reviewed the definition terms on which they have previously reached consensus:

1. Buffer Access (replaced Reasonable Access)
2. Temporary Access
3. Permanent Access
4. Public Interest (replaced Best Public Interest and Overriding Public Benefit)
5. Native Vegetation
6. Alteration of Mangroves
7. Dock (replaced Dock, Private)
8. Erosion
9. Shoreline Stabilization (replaced Hardening)

Overriding Public Interest definition

The group discussed the deletion of Overriding Public Interest and asked that staff confirm that the term was not used in either the Comp Plan or the ordinance.

Native Vegetation definition

Staff stated that the “Atlas of Florida Native Plants” is now called “Atlas of Florida Vascular Plants.” The work group recommended that the correction be made to the Native Vegetation definition. This recommendation will be addressed when a quorum is present.

Pier definition

At the request of the work group, staff developed the following proposed definition of Pier:

Pier means a fixed or floating structure extending into navigable water used to provide over-water pedestrian access from the land for recreational purposes including walking, fishing, swimming, or observing. The berthing of buoyant vessels, either temporarily or indefinitely, is not permitted.

After some discussion, the group recommended that “extending into navigable water” be removed from the proposed definition. This recommendation will be addressed when a quorum is present.

Proposed Dock Ordinance

The work group discussed the new ordinance proposed by Planning and Zoning that would create conditional use permits for private docks. The group felt that currently, the main issues associated with docks are unlicensed contractors and the fact that construction of docks is regulated only in canals.

Quorum reached at 10:15

The group reached 100% consensus on the following items:

- Approved the 10/22/08 minutes with no corrections.
- Changed “Atlas of Florida Native Plants” to “Atlas of Florida Vascular Plants” in the Native Vegetation definition.
- Kept the definition of Overriding Public Benefit because it was confirmed that it is used in the ordinance.
- Approved the definition of Pier after deleting “extending into navigable water.”

Parcels with and without mangroves

The work group discussed the revisions made to the ordinance (page 17 of the draft ordinance handout) that staff made as the result of last meeting’s discussion of the alteration of mangroves language. New item #7 (old #6) pertains to lots without mangroves and new item #8 (old #7) pertains to lots with mangroves. Staff stated that the County cannot be more restrictive than the Mangrove Protection Act without State delegation. The group discussed the language found in the new item #7 on page 17 of the handout that is related to projects or parcels without mangroves. The reference to “offshore emergent vegetation” in this section was questioned. Staff stated that it is included in the ordinance because it is referenced in the Comp Plan; however, “offshore emergent vegetation” would not be part of the buffer. The work group asked staff to determine if the County has any jurisdiction over “offshore emergent vegetation” and decided to leave the reference in the ordinance until staff completes its determination.

The group reached 100% consensus on items 7 (old #6) and 8 (old #7) in *Section 62-3668, Class II waters, Outstanding Florida Waters, aquatic preserves, conditionally approved Class III shellfishing waters and Class III waters* (page 17 of the handout).

The approved language is included below:

- (7) No more than 20 percent of the lot width or 25 linear feet, whichever is greater, of any shoreline protection buffer or associated offshore emergent vegetation, may be altered for allowable uses and associated access. All alterations shall demonstrate avoidance and minimization of impacts. The remainder of the shoreline protection buffer shall be maintained in unaltered vegetation, except for removal of non-native invasive and undesirable plant species.* This shall not preclude mitigation projects, the planting of native vegetation, or the development described in applicable sections of this division within the shoreline protection buffer areas. Approved shoreline protection systems and temporary access are not subject to the provisions of this section.
- (8) For projects or parcels with mangroves, mangrove alteration shall be in compliance with the Mangrove Trimming and Preservation Act as implemented through Florida Administrative Code. The remainder of the shoreline protection buffer shall remain unaltered, except as provided in this division for the removal of non-native invasive plant species and undesirable species.* This shall not preclude mitigation projects or the planting of native vegetation.

***Note: Staff will cite the Landscaping, Land Clearing and Tree Protection Ordinance definition of non-native invasive and undesirable plant species. Staff will also replace all references to “noxious species” with “non-native invasive and undesirable plant species.”**

Development within the shoreline protection buffer

The work group discussed item #5 (Section 62-3668) on page 16 of the draft ordinance handout pertaining to development within the shoreline protection buffer. The group acknowledged that the intent of the section is to allow vegetation to be maintained and to propagate; however, requiring elevated walkways to be a minimum of three feet may not be reasonable. An elevated walkway that is three feet will require a handrail. The group discussed whether a height needed to be specified and asked staff’s opinion. Staff stated that a specified minimum elevation would be more efficient for code application. The group agreed to use a building code term, “minimum floor elevation,” to refer to the required height and to measure from natural grade. Staff was asked to investigate at what points the measurements should be taken. **There was 100% consensus for the following language under item 5a:**

- a. **Elevated walkways shall be no wider than four feet with a minimum floor elevation no less than 2 feet above natural grade.**

The group then discussed item 5b and pervious pavers. It was stated that the existing language seemed to exclude the use of all pavers or walkways. The group decided to add “except for approved pervious systems” (in other words, pavers that meet the permeability standard). **The work group reached 100% consensus for the following language under item 5b:**

- b. **Pervious walkways shall be no wider than four feet. Pavers shall not be considered pervious, except for approved pervious systems.**

Item 5b states that fences are permitted within the shoreline protection buffer; however, the Comp Plan does not address fences. It was noted that the ordinance does not permit walls, but fences are permitted. Mr. Staylor asked if the ordinance was in conflict with the Comp Plan regarding allowing fences in the shoreline protection buffer. Staff replied that it was in conflict because the ordinance was less stringent than the Comp Plan. This conflict should be brought to the attention of the Board so it can decide whether fences should be deleted from the code or if fences should be added to the Comp Plan. The group also discussed adding a reference to approved accessory uses. Mr. Webster stated that there are accessory uses that should be allowed that aren’t on the list and things on the list that should not be allowed. This topic will be addressed when the group discusses the definition of accessory uses. **The group reached 100% consensus for the following language.**

- (5) **Development within the shoreline protection buffer is limited to [fences], docks, boat ramps, pervious walkways, and elevated walkways. All development shall demonstrate avoidance and minimization of impacts. In addition, approved accessory uses are permitted only in nonvegetated**

bulkheaded canals adjacent to class II and class III waters which utilize approved stormwater management techniques.

- (6) The Director may consider alternatives to the design criteria in subparagraphs (5)a and (5)b with the purpose of meeting the minimum American with Disabilities Act Standards.

Homework

The group agreed to review the draft ordinance and identify problem sections to help expedite the review process during the meeting.

Open items (all meetings - items from the last meeting are in italics)

1. *Staff will investigate to determine where measurements should be taken if the minimum floor elevation for an elevated walkway is required to be no less than 2 feet above natural grade.*
2. *Staff will cite the Landscaping, Land Clearing and Tree Protection Ordinance definition of non-native invasive and undesirable plant species. Staff will also replace all references to “noxious species” with “non-native invasive and undesirable plant species.”*
3. *The work group asked staff to determine if the County has any jurisdiction over “offshore emergent vegetation” and decided to leave the reference in the ordinance until staff completes its determination.*
4. Staff to ask legal if the proposed erosion definition includes the entire buffer and if “shoreline or side slopes” could be replaced with “land.”
5. Defer impervious surface discussion until receive EAR definition.
6. Get new proposed dock ordinance from Zoning.
7. Staff to draft definition of pier.
8. Staff to add a link to the Mangrove Trimming and Preservation Act to the Surface Water web page.
9. Staff to update draft ordinance with latest approved changes.
10. Staff to search code for references to residential (as opposed to private).
11. Referred the alteration of mangroves draft language to staff and the County Attorney’s Office for review.
12. Asked staff to find the appropriate location for the following language:
Temporary access shall be limited to minimum alteration(s) necessary to accomplish the allowable use and shall require an approved restoration plan.
13. Asked staff to communicate the changes to the Native Vegetation definition to the LLTP Task Force and ask for their concurrence for consistency’s sake.
14. Review and discuss with working group: permitted versus allowable.
15. Staff list of permitted uses in buffer
16. Definition of impervious
17. Staff list of accessory uses
18. Ensure buffer is consistent with landscaping code (land clearing versus buffer clearing)

19. Restoration after removal is not addressed in code

BOCC Recommendations (all meetings - items from the last meeting are in italics)

1. *A conflict between the Comp Plan and the Surface Water code with regard to allowing fences in the shoreline protection buffer should be brought to the attention of the Board so it can decide whether fences should be deleted from the code or if fences should be added to the Comp Plan.*
2. Recommend to the County Commission to change the Comp Plan by deleting “gradual and imperceptible” from the definition of erosion.
3. Recommend that “Mean High Water Line” references in the Comp Plan be deleted because the DEP no longer uses this for certifications.

Next meeting

The next meeting will be held on Wednesday, November 19^h in the NRMO conference room, Building A, second floor, suite 219, at the Government Center in Viera. The Government Center is located at 2725 Judge Fran Jamieson Way, Viera, FL 32940.

Information on the Surface Water Protection Working Group can be found at <http://natres.brevardcounty.us/SurfaceWaterWorkingGroup.cfm>

The meeting was adjourned at 12:00 PM.