

# **Board of County Commissioners**

## **Agenda Request**

Date of Meeting: July 19, 2010

Date Submitted: July 2, 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  
Somerset Strickland, Planner

Subject: Request Board Approval to Conduct the First of Two Public Hearings on the Proposed Revised Wetlands Protection Ordinance

---

### **Statement of Issue:**

On Monday, May 17, 2010, the Board of County Commissioners ("BOCC") ratified the BOCC workshop held on May 6, 2010, regarding the draft Wetlands Protection Ordinance ("Proposed Ordinance"), attached hereto as Attachment "A". In addition to ratifying the draft Ordinance and approving certain modifications, the BOCC referred the Proposed Ordinance with certain modifications discussed at that meeting, to the Wakulla County Planning Commission for its consideration at a duly noticed public hearing, as required for proposed land development regulations pursuant to the Wakulla County Land Development Code. The Planning Commission held its public hearing on June 14, 2010, and voted with 3 members recommending approval of the proposed Wetlands Protection Ordinance and 3 members not recommending approval of the Proposed Ordinance.

Due to the great public concern regarding this Ordinance, it is requested that the Board hold two public hearings to provide an opportunity to receive additional input from citizens of Wakulla County prior to voting. This item seeks Board approval to conduct the first of these two public hearings.

### **Background:**

The BOCC 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 BOCC 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").

Request Board Approval to Conduct the First of Two Public Hearings on the Proposed Revised Wetlands Protection Ordinance

July 19, 2010

Page 2 of 8

---

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

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, which has since been modified by the BOCC into the Ordinance presented at this public hearing.

On March 25, 2010, the BOCC 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, the BOCC considered and ratified changes discussed 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 BOCC 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 BOCC 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.

The May 6, 2010, workshop was ratified on May 17, 2010, additional changes were discussed, and the draft Ordinance was referred to the Planning and Zoning Commission with certain changes, for the Commission's review, consideration, and recommendations.

On June 14, the Planning and Zoning Commission held a public hearing to review the ordinance and determine whether it is consistent or inconsistent with the Wakulla County Comprehensive Plan. The Planning Commission failed to obtain a majority vote either recommending or not recommending the ordinance.

Request Board Approval to Conduct the First of Two Public Hearings on the Proposed Revised Wetlands Protection Ordinance

July 19, 2010

Page 3 of 8

---

**Analysis:**

This public hearing is for the consideration of the proposed Wetlands Protection Ordinance by the BOCC and for the receipt of public testimony and input regarding the Ordinance. It is requested that this be the first of two public hearings for consideration of this Ordinance.

The Proposed Ordinance is intended to implement policies 2.3 and 4.1 of the Conservation Element of the Wakulla County Comprehensive Plan. Policy 2.3 states, generally, that the County will protect the natural functions of all surface waters, including wetlands, within the County, and will work to minimize adverse impacts to such surface waters. It further establishes a buffer requirement around wetlands and other surface waters (excluding karst features, which are addressed separately in the Comprehensive Plan and exempt from application of this ordinance), consisting of two sections. The first section of the buffer is 35 feet wide and is adjacent to the wetland or other surface water. The first buffer is intended to remain free from development. The second buffer is 40 feet wide and exists around the first buffer. Policy 2.3 anticipates that development may occur within the second buffer in circumstances where a failure to allow development will result in a taking. Policy 2.3 further prohibits the use of septic systems within the buffers and also states that within the buffers, existing grading and native vegetation shall be maintained.

Policy 4.1 of the Conservation Element of the Comprehensive Plan also addresses wetlands, and provides standards for development that will disturb wetlands. This section provides that if development is allowed to avoid a taking, that any impacts must be mitigated.

The County has proposed changes to Policies 2.3 and 4.1 in its recent Evaluation and Appraisal Report submitted to the Florida Department of Community Affairs. These changes have been incorporated into the draft of the Proposed Ordinance approved by the Wetlands Advisory Committee.

What follows is an analysis of each section of the Proposed Ordinance, which provides a comparison between the Proposed Ordinance as referred to the Commission by the BOCC and the Original Ordinance:

*Section 1. Definitions*

The Definitions section of the Proposed Ordinance is more extensive than the Definitions section included in the Original Ordinance. It includes a number of terms which were either not defined in the Original Ordinance or which have been added. Definitions help provide additional clarity to the Ordinance and will aid in its interpretation.

Where possible, the definitions are reflective of definitions adopted in the Florida Administrative Code, the Florida Statutes, or the Wakulla County Land Development Code.

*Section 2. Interpretation*

This is a new section added to assist in the interpretation of the Proposed Ordinance.

*Section 3. General Findings*

This section replaces the Findings and Statement of Intent section in the Original Ordinance. It provides a general statement of the Board's authority to adopt the ordinance. It also lists some of the functions which Wetlands and Surface Waters serve including economic, hydrological, and ecological functions. This section further provides a list of objectives which the Proposed Ordinance is intended to achieve. These objectives reflect the intent that the Ordinance balance the interests of conservation and preservation and development in Wakulla County.

*Section 4. Application*

The Application section of the Proposed Ordinance states that the ordinance applies to all "Development" as defined in the ordinance that may occur within wetlands or other surface waters or buffers within Wakulla County, both within the incorporated and unincorporated area. Unlike the Original Ordinance, which applied to all wetlands, this section more clearly applies to activities being conducted within or near wetlands or other surface waters that may be regulated by the County. The term "Development" as used throughout the Ordinance is defined to have the same meaning it has in section 2-4(51) of the County's Land Development Code.

The exceptions included in the Application section of the Original Ordinance have been moved to a newly created Exemption Section.

*Section 5. Development in Wetlands and Other Surface Waters and Buffers*

Section 5 is a new section created in the Proposed Ordinance. It is made up of two provisions from the Original Ordinance which fit better in a separate section. Paragraph (A) of this section clearly prohibits all Development within wetlands and other surface waters and buffers, except as otherwise allowed in the ordinance. Paragraph (B) describes the buffer requirements. It should be noted that the proposed ordinance expands regulation to include activities in or near surface waters, in addition to those in or near wetlands.

*Section 6. Wetlands Determination*

Section 6 is a revision of the former Process section in the Original Ordinance. This section provides a new process by which a property owner seeking to develop his or her property will apply for a letter from the Department of Planning and Community Development which functions as a determination of whether wetlands or other surface waters or buffers are likely to exist on the property. Staff will look at inventory maps, aerial photographs, and topographic surveys, conduct site visits if necessary, and make use of any other available information, and provide an initial determination of whether such features are likely to exist. If staff believes wetlands probably exist, the property owner will be required to obtain a full delineation of the

Request Board Approval to Conduct the First of Two Public Hearings on the Proposed Revised Wetlands Protection Ordinance

July 19, 2010

Page 5 of 8

---

property identifying the extent of wetlands and other surface waters and buffers on the property.

This section further provides that applicants for certain minor permits, such as re-roofs and A/C unit repairs will not be required to obtain a Preliminary Wetlands Determination. Developers may also avoid this process by submitting a formal wetlands determination from the Florida Department of Environmental Protection or a wetlands delineation less than five years old prior to applying to the County for permitting or other development approval.

In addition to the above exceptions from this process, a developer on whose property wetlands or other surface waters are likely to exist must only obtain a delineation of the entire parcel of property 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.

*Section 7. Allowable Uses*

The Proposed Ordinance separates the Use of Wetlands section in the Original Ordinance into three separate sections, addressing those uses which are allowable, those which require a conditional use permit, and those which require a variance, separately.

The Allowable Uses section allows a number of the same uses in wetlands and other surface waters that are allowed in the Original Ordinance; however, it also allows the following:

1. The construction, repair, replacement, or maintenance of docks and other similar structures so long as they are consistent with the design standards provided later in the ordinance, and so long as the developer has obtained all applicable state and federal permits.
2. The construction of a private seawall on an artificially constructed waterway, where such seawall will adjoin two existing seawalls that are not more than 150 feet apart.
3. Development activity for which the developer has already received a valid development order from the County.
4. The renewal, improvement, or alteration of 50% or less of any structure, within the same footprint as the original structure.
5. The repair or replacement of any legally constructed structure damaged by a fire or natural disaster, within the same footprint as the original structure.

Request Board Approval to Conduct the First of Two Public Hearings on the Proposed Revised Wetlands Protection Ordinance

July 19, 2010

Page 6 of 8

---

While these activities are allowable, a property owner is still required to obtain any necessary building permits or approvals from the County's Building Department, as well as any other permits required by state administrative agencies, and may be required to conform the activities to certain design standards provided in a later section of the Ordinance.

The Allowable Uses section allows additional uses in the buffers. Within both buffers a developer may perform activities necessary for providing access in order to serve upland areas with only a minimal impact to the buffer, in addition to uses of the buffers which were continuous and lawful prior to the effective date of the ordinance. In the second buffer, Buffer Zone Two, new landscaping and yard maintenance activities are allowed within an area around the principal structure on the property extending twenty-five feet in the front, fifteen feet in the back, and eight feet on either side of the structure, so long as such activities are consistent with the design standards.

Some allowable uses included in the Original Ordinance have been deleted, as they do not meet the definition of "Development" as defined in the Land Development Code.

*Section 8. Conditional Uses*

The Conditional Uses section of the Proposed Ordinance allows the Planning and Zoning Commission to grant a conditional use permit within wetlands or other surface waters or buffers for wetlands restoration, construction of docks and other similar structures, as well as for construction of boundary fences and the removal of exotic invasive plants where such activities do not meet the design standards, and construction of driveways and installation of utilities where no upland alternative access exists in a manner consistent with design standards. It further allows the construction of stormwater management facilities within Buffer Zone Two and shoreline armoring, including seawalls, so long as such armoring is not located along the shoreline of geographically isolated wetlands and so long as they are designed to minimize adverse impacts to wetlands. It also authorizes a conditional use permit for the construction of boat ramps meeting the design standards. The conditional use permit for "fire prevention and suppression" activities was removed, as it was unclear what activities this comprised.

This section further provides the process for obtaining a conditional use permit under the ordinance (using the process for obtaining a conditional use permit under other provisions of the Land Development Code) and requires mitigation for any approved conditional uses which will have an adverse impact on the wetland or other surface water, as determined by County staff.

*Section 9. Variances*

The Proposed Ordinance allows the Board to grant a variance for development within Buffer Zone Two when a failure to allow such development will constitute a taking, as defined using the "partial takings" standard approved by Florida courts. It also allows the granting of a variance

for the construction of boat ramps not meeting the design standards and for a reduction or modification of the minimum buildable area requirement under the design standards section.

This section also provides the process for obtaining a variance (using the process for obtaining a variance under other provisions of the Land Development Code) and requires mitigation for any approved variances which will have an adverse impact on the wetland or other surface water, as determined by County staff.

#### *Section 10. Design Standards*

The Original Ordinance provided a limited number of standards for development involving wetlands. The Proposed Ordinance significantly expands the design standards to include standards for most of the development being allowed as an allowable use or conditional use. It was intended that standards for variances would be recommended by the technical review committee and included in any approved variance.

In addition to the specific requirements for the specified structures or activities, the design standards section requires a minimum of 2,800 square feet of buildable area, as opposed to the minimum lot size requirement in the Original Ordinance. This section also permits the dedication of wetlands and other surface waters into conservation easements.

#### *Section 11. Exemptions*

The Exemptions section of the Proposed Ordinance is a new section incorporating and clarifying the exceptions listed in the Application Section of the Original Ordinance. In addition, Development activities occurring within a Wetland or other Surface Water which is smaller than 500 square feet in size are exempted, as are activities occurring within a karst feature or spring which are subject to more stringent requirements under the Future Land Use Element of the Comprehensive Plan.

#### *Section 12. Mitigation*

The Original Ordinance stated that in those situations involving conditional uses and variances, mitigation would be required, but it did not provide standards or requirements for mitigation. This section of the Proposed Ordinance outlines the purposes of Mitigation -- compensating for natural resource losses associated with adverse impacts to wetlands or other surface waters -- and provides requirements for mitigation plans. It provides that the amount of mitigation will be determined in accordance with the Uniform Mitigation Assessment Method adopted by the Florida Department of Environmental Protection and requires that a mitigation plan set forth criteria for success, a monitoring plan, maintenance requirements, and bonding requirements. It also provides that a failure to comply with an approved mitigation plan is a violation of the ordinance. In addition, it includes the option of mitigation banking and provides criteria for determining when mitigation banking is appropriate.

Request Board Approval to Conduct the First of Two Public Hearings on the Proposed Revised Wetlands Protection Ordinance

July 19, 2010

Page 8 of 8

---

*Section 13. Administration and Enforcement*

This section of the Proposed Ordinance expands the Administration and Enforcement provisions in the Original Ordinance. It provides that it will be administered by the County Administrator and the Department of Planning and Community Development and that it will be enforced by the County Code Enforcement Officer and the Code Enforcement Board. It also allows the County to seek injunctive relief and provides that the County is subject to the provisions of the ordinance.

*Section 14. Penalties*

The Penalties section of the Proposed Ordinance defines a violation of the ordinance to be any unauthorized alteration of or adverse impact to wetlands or other surface waters or buffers in any manner up to 5,000 square feet in extent. It further provides that the alteration of or adverse impact of each additional one to 5,000 square feet of wetlands or other surface waters or buffers shall constitute a separate violation.

This section further provides that if a violation is found, the property owner will be required to enter into a corrective action plan which may include restoration and mitigation, along with the requirement that the property owner obtain any necessary permits. The corrective action plan must be entered into with the County by a compliance date set by the Code Enforcement, and a failure to enter into such plan will subject the property owner to daily penalties in an amount approved by the Code Enforcement Board.

**Options:**

1. Conduct the First of Two Public Hearings on the Proposed Revised Wetlands Protection Ordinance.
2. Do Not Conduct the First of Two Public Hearings on the Proposed Revised Wetlands Protection Ordinance.
3. Board Direction.

**Recommendation:**

Option #1.

**Attachment(s):**

- A. Proposed Wetlands Protection Ordinance