

Brevard County Surface Water Protection Ordinance Working Group
August 13, 2008 Meeting Minutes

Working Group Members Present

1. Mark Bowes, Alternate Representative, Home Builders and Contractors Association
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
8. Phyllis Woodford, Primary Representative, Florida Aquaculture Association/Shellfish Farmer's Association Aquaculture

Working Group Members Absent

1. Jim Durocher, Primary Representative, Brevard Nature Alliance
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. Ewan Leighton, Alternate Representative, Florida Aquaculture Association/Shellfish Farmer's Association Aquaculture
6. Joanna Stone, Primary Representative, Marine Industries Association
7. George Wilson, Primary Representative, District 5
8. Position open, District 1

Support Staff

Tim Franta, Facilitator

Ernie 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

Jim Staylor

Paul Pettit

Call to Order

Tim Franta called the meeting to order at 9:10 AM. Group members, staff members and members of the public introduced themselves for the benefit of new members. The group then reviewed the tentative agenda for today's meeting and, at the request of staff, switched the order of items four (definitions that need work) and five (highlighted problems identified through section 62-3662 of the ordinance).

Minutes review and approval

There was 100% consensus to approve the 7/30/08 minutes without changes.

Recap and approval of procedures

The group reached 100% consensus on the following items:

1. Quorum: A quorum is 8 out of the 12 voting representatives. Members were encouraged to have alternate representatives appointed to ensure that there is still voting representation if a primary representative can't make a meeting. Each organization may appoint one primary and one alternate to represent its interests. Ernie Brown stated that the county appreciated the members' willingness to participate in this process as volunteers. He also stressed that commitment to this process will be important in order to succeed. Ernie asked all primary representatives to keep their alternates up to speed in case the alternates needed to step in.
2. Working Methodology
The group members decided to use a linear approach and start at the beginning of the ordinance. In addition, members also agreed that the definitions section will be skipped, except for specific definitions that have been identified by the group. (Those definitions were identified later in the meeting and are listed in another section of these minutes.) Issues that have been identified by staff or the work group will be brought up for discussion when the relevant section of the ordinance is addressed. (Issues identified by staff are summarized in another section of these minutes.)
3. Consensus process: The group will use thumbs up (support), thumbs down (don't support) or thumbs sideways (neutral) to determine consensus. The group will wait to establish its minority report rules until it encounters an issue on which a consensus can't be reached.
4. Public input rules:
 - a. The public may address the working group for one minute at the beginning of each meeting to discuss non-agenda items.
 - b. The public may address the working group for one minute prior to the group discussing an item.
 - c. After the group discusses an item, but before it votes, the public may address the group for two minutes.
 - d. The working group may waive the time requirement for any speaker if there is a consensus, which was defined for this purpose as a simple majority.
 - e. There are no restrictions on submitting material to staff for distribution to the working group members.

Review material/binders

At the last meeting the group requested several items from staff to help them with the ordinance review process. Darcie McGee compiled the requested material and assembled notebooks that were distributed to the representatives at today's meeting. One notebook was issued per organization, so if a primary representative cannot make a future meeting, he or she may want to leave the notebook at NRMO for the alternate to pick up at the next meeting. Darcie is still in the process of compiling three items that were requested by the group: maps showing permitting jurisdictions; identification of the ordinance's definition sources and highlighting of the definitions that can be changed; and surface water standards from DEP, St. John's Water Management District, and the municipalities. Darcie gave a summary of the material in the notebook and added that all

notebook material is also published on the web at <http://natres.brevardcounty.us/SurfaceWaterWorkingGroup.cfm>. Please email Darcie at darcie.mcgee@brevardcounty.us if you know of any other documents that would be helpful to the Surface Water Working Group.

Darcie noted that the Comp Plan/Code Comparison Document in the notebook was updated from the one that was distributed at the previous meeting. Darcie removed the definition section and published it as a separate document. She also added relevant zoning definitions. The new definition document's title is "Comp Plan, Zoning, and Code Definitions Comparison Matrix." Darcie also clarified that the updated Comp Plan/Code Comparison Document is written from the Surface Water Protection Ordinance perspective. The ordinance, from beginning to end, is printed on the right side of the page and when the Comp Plan has a corresponding section, it is printed on the left side of the page.

Surface Water Protection Ordinance issues identified by staff

At the previous meeting, the surface water working group asked staff members to compile a list of issues that they have identified or that were brought to their attention. The 13 issues in the list were identified by citizens, contractors, staff and the Board of County Commissioners. Some of the issues are based on the ordinance being more restrictive than the Comp Plan. Staff noted that, while the ordinance can be more restrictive, it cannot be less restrictive than the Comp Plan. There may be issues on which the Comp Plan is silent that the working group could address in draft language that would subsequently be forwarded to the County Attorney's Office for approval. Staff also included potential solutions for the issues to give the working group a starting point for discussion. Darcie McGee and Ernie Brown briefly summarized each item, as listed below.

1. Exemption of residential canals: The ordinance is less restrictive than the Comp Plan. The ordinance exempts existing canals within residential neighborhoods, but the Comp Plan has no provisions for exemptions. Language needs to be crafted that is specific to canals. Just deleting the exemption would not solve the issue.
2. Reference to Best Public Interest: The ordinance is more restrictive than the Comp Plan. The Comp Plan refers to "public interest," and the ordinance refers to "best public interest." The ordinance's use of "best public interest" makes it more restrictive than the Comp Plan because "best public interest" means public projects only.
3. Replacement bulkheads on lots with no structures: The ordinance is more restrictive than the Comp Plan. The ordinance states that bulkheads can be replaced by building a new one in front of the old, dilapidated one if a home is on the lot. However, if there is no home on the lot, the old bulkhead must be removed and a new one built. The Comp Plan does not require different handling for a vacant lot and a lot with a residence.
4. Marine permitting: This issue was brought before the Board by Steven Webster and involves streamlining the marine permitting process. There are

inconsistencies between the requirements for building docks on the river and on canals.

5. Minimal standards in code for marine construction: There are only minimal marine construction standards in the ordinance which makes it difficult to enforce and to provide guidance to homeowners. Staff also added new information to this item under the Bulkheads heading. The addition, based on a recent call from a marine contractor, pertains to replacement of bulkheads on natural bodies of water (e.g., lakes). How should they be treated and what should the design criteria be? The contractor also wanted clarification on the maximum height of bulkhead above grade.
6. Unpermitted/poor quality/illegal work: Unpermitted work is something that was built without a permit, but a permit would have been granted if application had been made. The owner must pay three times the permit cost to have a permit issued after the fact. Illegal work refers to something that was built that would not have been permitted. It must be taken out and the buffer must be restored.
7. Limited guidance on redevelopment within the shoreline protection buffer: The ordinance requires redevelopment to be completed on the existing footprint of the old structure because impervious area can't be expanded. The Board recently gave direction regarding a homeowner's request that redevelopment areas could be moved around in the buffer if the amount of the impervious area remained the same. The working group needs to discuss whether the Board's direction should be codified or be revised and codified.
8. Limited or unclear guidance on allowable development within the shoreline protection buffer: The Comp Plan defines accessory uses on bulkheaded lots, but does not define accessory uses on non-bulkheaded lots. In addition, accessory use and reasonable access need to be defined. Acceptable standards for erosion protective measures in the buffer also need to be developed.
9. Channelization and dredging: There is not a lot of information in the ordinance concerning channelization and dredging.
10. Protection of water quality by stormwater management: This relates to everything that can drain into the river including irrigation water, rubbish, yard waste, fertilizer, and chlorinated water. The challenge is to draft language that will allow better use of the homeowner's property through stormwater management in the buffer. The State does not regulate the use of fertilizers, but it does regulate the discharge of chlorinated water from pools. Possible solutions include requiring a stormwater system to treat water before it goes into the river or banning fertilizer.
11. Inconsistent or outdated references: Staff will compile a list of outdated or obsolete regulation references in the Surface Water Protection Ordinance for the working group to address.
12. Marinas and the Manatee Protection Plan: (see issue no. 13)
13. Marinas and working waterfronts: Currently, three documents must be accessed to determine all requirements for issue no. 12 and issue no. 13 (the Comp Plan,

the ordinance and the Manatee Protection Plan). Staff recommends that the group focus on higher priority issues before tackling issues 12 and 13.

There were no additional issues added by the working group members or the public.

Public comment: staff issues list

During the staff issue list discussion, Paul Pettit asked how Class III water classification of waters was set because waters near his home no longer had shellfish. Pete Kaiser stated that water classifications were determined by the state and were outside the scope of this working group. Phyllis Woodford added that the classifications were based on water quality, not shellfish.

Incentives and Impediments

Steven Webster stated that the group needs to create incentives for people to do the things that are required to help stop stormwater and nonpoint runoff. Pete Kaiser said that he sees a lot of people who can't afford to make repairs and their seawalls and revetments will continue to go into the river. Ernie Brown suggested looking at things like whether the lot existed before the law went into effect and the possibility of taking a reduction off of its assessed value if it is brought up to code. Pete Kaiser stated that the \$750 permit fee and the requirement to buy native vegetation is too expensive for some homeowners. It can result in native vegetation being planted and then removed later. It also can make unlicensed contractors who do not adhere to the requirements seem a better bargain to homeowners. The homeowner is presented with a cheaper deal if an unlicensed contractor does the work, but it is more expensive if the homeowner is caught later. Several members of the working group said that they would like the County to produce an informational brochure that could be given to their customers. The brochure could contain the County's rules and any incentives that might be developed. It could also include a caution about using unlicensed contractors.

Definitions that need work

Following are the definitions that were identified by the working group and the public as needing work. Also included are points brought up by the working group. For the next meeting, staff will highlight the code that is associated with the identified definitions. The group agreed that this task should take priority over other staff homework tasks.

1. Alteration of mangroves: The working group discussed adding "unauthorized," or having one definition for legal alteration and another for illegal alteration. The group decided to wait to see how the phrase is used in the ordinance before deciding.
2. Aquatic preserves: This is set by the state and staff will obtain the statute for the working group.
3. Best public interest: Should "public interest" be substituted for "best public interest"? The Comp Plan only requires "public interest."
4. Dock, private: The ordinance specifies that there can be no more than two slips and they shall not be utilized for purposes of generating income. Zoning should control business activity and nuisance regulations should take care of neighborhood problems. Lots of people rent slip space behind their homes. In fact, this is one way to help address public access to the waterways. The current Department of Environmental Protection permitting process requires deed restrictions with regard to the use of the two slips. Steven Webster noted that

while the regulations are usually geared towards power boats, sailboats can be kept in the two slips. Darcie McGee stated that it appears that zoning restrictions were put into the definition. She will check with Zoning regarding their code about the generation of income.

5. Impervious surface: The group discussed taking out the examples and focusing on making the definition more scientific.
6. Marina: This includes regulation in its definition.
7. Native vegetation: Contractors need to be educated. Brochures would be helpful to give to homeowners. Waterwise plants should also be considered.
8. Overriding public benefit: This needs more clarification.
9. Public interest: This needs more clarification.
10. Reinforced rock revetment habitat: Look at other types of reinforced habitat, like reef balls. Studies have been done on habitats that show other items can be used.
11. Structure: The Comp Plan definition is different.

Public comment: definitions that need to be worked on

Jim Staylor asked for the following definitions to be added to the list:

12. Reasonable access: This definition is not currently included in the ordinance. Paul Pettit stated that he looked this definition up in Black's Law (as was suggested in the previous meeting) and it was just as confusing. Ernie Brown stated that the group could discuss and develop a definition for reasonable access as long as the final product was not in conflict with other regulations.
13. Accessory uses
14. Best public interest, public interest, and overriding public benefit: Maybe these could be combined.
15. Erosion: There is a different definition in the Comp Plan. This definition could exclude erosion caused by hurricanes.
16. Hardening: There is not a definition for hardening in the Comp Plan. The current definition only applies to shoreline. It should also apply to the buffer. Maybe a definition for shoreline buffer protection zone should be included.

The working group agreed to add Jim Staylor's definitions to its list.

Sunshine Law Reminder

Representatives were reminded that they can talk freely with members of the public and with staff about issues that are being or will be discussed before the group, but they cannot have their discussion if it may be overheard by another representative on the working group. In addition, representatives cannot speak to each other about the issues during the break or at any other time outside of the meeting. All discussions must occur during the legally noticed meeting.

Open staff action items

1. Highlight the code that is associated with the definitions identified by the group as needing work. (Priority)
2. Identify the ordinance's definition sources and highlight the definitions that can be changed
3. Compile maps showing permitting jurisdictions
4. Compile surface water standards from DEP, St. John's Water Management District, and the municipalities.

5. Compile a list of outdated and obsolete regulation references in the Surface Water Protection Ordinance.
6. Obtain the aquatic preserves statute.

Next meeting

The next meeting will be held on Wednesday, August 27th in the NRMO conference room, Building A, second floor, suite 219, at the Government Center in Viera. The working group agreed to spend the first hour discussing the definitions and the rest of the time on reviewing the ordinance in a linear manner.

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

The meeting was adjourned at 12 PM.