

Brevard County Surface Water Protection Ordinance Working Group
August 27, 2008 Meeting Minutes

Working Group Members Present

1. Mark Bowes, Alternate Representative, Home Builders and Contractors Association
2. Jim Durocher, Primary Representative, Brevard Nature Alliance
3. Jim Egan, Primary Representative, Marine Resources Council
4. Pete Kaiser, Primary Representative, District 2
5. Ana Nesbitt, Alternate Representative, Florida Marine Contractors Association
6. Troy Rice, Primary Representative, District 3
7. Suzanne Valencia, Primary Representative, Partnership for a Sustainable Future
8. Andy Wolter, Primary Representative, District 4

Working Group Members Absent

1. Don George, Alternate Representative, Brevard Nature Alliance
2. Franck Kaiser, Primary Representative, Home Builders and Contractors Association
3. Ewan Leighton, Alternate Representative, Florida Aquaculture Association/Shellfish Farmer's Association Aquaculture
4. Beth McMillen, Alternate Representative, Marine Resources Council
5. Joanna Stone, Primary Representative, Marine Industries Association
6. Steven Webster, Primary Representative, Florida Marine Contractors Association
7. George Wilson, Primary Representative, District 5
8. Phyllis Woodford, Primary Representative, Florida Aquaculture Association/Shellfish Farmer's Association Aquaculture Position
9. 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, Secretary, NRMO
Madeline Donato, Secretary, NRMO

Members of the Public

Jim Staylor
Jennifer Grissom

Unofficial Call to Order

Since there was not a quorum, Tim Franta unofficially convened the meeting at 9:10 AM to review the handouts and discuss topics with the understanding that no formal decisions could be made.

Darcie McGee handed out a matrix of Surface Water Protection Ordinance definitions that the working group identified previously as needing to be addressed. The matrix also listed the relevant sections of code in which the defined phrases or words were used. The

working group discussed the process for using the Targeted Definitions document with the Comp Plan, Zoning and Surface Water Code Definitions Comparison Matrix; the Comp Plan/Ordinance Comparison Matrix; the Comp Plan; and the Surface Water Protection Ordinance. The group then discussed the definition for docks, the permitting process for docks and issues surrounding renting private docks. The group tentatively developed the following approach for addressing the targeted definitions:

1. Identify issues
2. Goal
 - a. Use clear language.
 - b. Ensure consistency with the Comp Plan, the existing Surface Water Protection Ordinance and other state and federal laws. (The ordinance cannot be less stringent than state and federal laws.)
 - c. Draft definitions going from the broad to the specific.
 - d. Define-not regulate. (Definitions should not be regulation tools. Regulations should be in the body of the ordinance.)
 - e. Review existing code from other counties. (Staff will research other county codes and distribute them to the group.)

Public Comments

Jim Staylor stated that definitions should be clear and not so restrictive that they limit the goals of the ordinance.

Official Call to Order

At 10:26 AM the quorum was reached (eight members) and the meeting was officially called to order. There was a consensus to approve the 8/13/08 minutes without changes.

Targeted Definitions Discussion

The group decided to use the Targeted Definitions document as its working platform and started discussing its approach. The Targeted Definitions document lists the definitions that the working group has identified as needing work and includes the ordinance sections in which the definitions are referenced.

Public Comment

Jim Staylor communicated the following definition issues to the working group:

- There are three types of public interest defined in the ordinance: Best Public Interest, Public Interest, and Overriding Public Benefit. Three definitions make it difficult to determine when to apply the appropriate term. He suggested developing one definition that applies throughout the ordinance.
- Accessory Use is not defined in the Comp Plan.
- Change Public Access to Public Use.
- Shoreline hardening is not defined. Perhaps “protection measures for the shoreline protection buffer zone” would be a better term to use.
- The definition of Erosion in the ordinance does not agree with the Comp Plan.
- Hardening is not defined in the Comp Plan. It can mean hardening of the shoreline protection buffer as well as hardening of the shoreline.
- Boat slips are not defined.

Targeted Definitions Discussion (cont.)

Accessory Use is defined in the zoning regulations and the surface water ordinance, but not in the Comp Plan. The Comp Plan references Accessory Use in several sections and states that “accessory uses shall be allowable only on existing bulkheaded lots utilizing required stormwater management techniques.” The Comp Plan states that Bulkheads are prohibited on the Indian River Lagoon except for man-made canals. Jim Egan and Andy Wolter suggested revising “accessory uses shall be allowable only on existing bulkheaded lots” to “accessory uses shall be allowable only on existing bulkheaded, nonvegetated or rip-rap lots.” The group also discussed deleting “existing bulkhead lots” from the statement in the Comp Plan. The restriction on Accessory Uses “unless required stormwater management techniques are utilized” was also discussed. These issues were placed in the “Comp Plan Parking Lot” list of items that the group may want to recommend to the Board. For its current purpose, the working group must address Accessory Uses with the Comp Plan prohibitions because its charter is to revise the ordinance-not the Comp Plan.

After a general discussion of definition terms and related issues, the working group proposed the following groupings and rankings, as listed below.

1. Shoreline Protection Buffer
 - a. Purpose
 - b. Reasonable Access
 - c. Alteration of Mangroves
 - d. Native Vegetation
2. Hardening
 - a. Re-enforced Rock Habitat
3. Impervious
4. Docks
 - a. Accessory Access
 - b. Alteration of Mangroves
 - c. Marinas (dock related only)
 - d. Structure
 - e. Reasonable Access
5. Marinas
6. Public Interest

Public Comment

None

The working group reached consensus on the proposed groupings and their priorities.

Ordinance Review Process

The group reached consensus on its process. Members will address targeted definitions and the sections of the ordinance that are affected by those definitions.

Quorum

The working group changed its quorum from a set number of eight to 65% of its voting members. The result of this action is that seven is the new quorum because there are now 11 organizations participating in this effort.

Mean High Water Line (MHWL) / Ordinary High Water Line (OHWL)/ Safe Upland Line

The group discussed references to the MHWL, OHWL and the Safe Upland Line and how they relate to measuring the shoreline protection buffer. The references to Mean High Water Line are outdated since the MHWL is not certified by the State anymore. One suggestion was to add a qualifier such as “when the MHWL is not determinable by the State, use” and then reference a set elevation or another determinable line. The spot from which the buffer is measured can give the property owner greater or less flexibility of use, but it does not affect property boundaries. Ana Nesbitt and Jim Egan thought that .4 or .5 tends to be where the MHWL in our area and that it would be better to err on the lower side to make it easier on the property owner. Andy Wolter added that if the line was pushed further inland, the seawall would not be in the buffer area. Pete Kaiser added that it would be an added expense if the owner needed to get a survey to determine the Safe Upland Line before any work was done, but other group members stated that requiring a survey is not a change to the existing ordinance and Darcie McGee agreed. Darcie said that she would check with the State to see if .4 or .5 is referenced instead of the Mean High Water Line (used when the water is tidal) or the Ordinary High Water Line (used when the water is non-tidal). Pete Kaiser said that he would check with other counties to see what they are using. The goal is to move the measuring starting point more waterward than the Safe Upland Line. Darcie McGee reminded the group that this discussion also includes Lake Washington since the Surface Water Protection Ordinance also applies to it.

Public Comment

None

Summary of Progress

In today’s meeting, the working group accomplished the following items:

1. Grouped the targeted definitions and ranked them.
2. Decided to address the ordinance in parallel with the definitions.
3. Decided to research using .4 or .5 elevation instead of the Mean High Water Line.
4. Changed the quorum from 8 to 7 because the voting membership dropped from 12 to 11.

Next meeting

The next meeting will be held on Wednesday, September 10th in the NRMO conference room, Building A, second floor, suite 219, at the Government Center in Viera. The working group will address the Shoreline Protection Buffer group and the affected parts of the ordinance.

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

The meeting was adjourned at 11:50 AM.