

PLANNING AND ZONING BOARD/LOCAL PLANNING AGENCY MINUTES

The Brevard County Planning & Zoning Board met in regular session on **Monday, January 10, 2022**, at **3:00 p.m.**, in the Florida Room, Building C, Brevard County Government Center, 2725 Judge Fran Jamieson Way, Viera, Florida.

The meeting was called to order at 3:00 p.m.

At the outset of the meeting, nine Board members were present and voted on all items on the agenda: Henry Minneboo (D1); Ron Bartcher (D1); Robert Sullivan (D2); Ben Glover (D3); William Capote (D3); Mark Wadsworth, Chair (D4); Liz Alward (D4); Peter Filiberto, Vice Chair (D5); and John Hoppengarten (BPS).

Bruce Moia (D5) was present for Items H.14 & H.15 only.

Lorraine Koss (D2 - Alt) was present, but did not participate from the dais.

Staff members present were: Tad Calkins, Planning & Development Director; Jeffrey Ball, Planning and Zoning Manager; George Ritchie, Planner III; Kyle Harris, Associate Planner; Virginia Barker, Natural Resources Management Director; Amanda Elmore, Natural Resources Management Deputy Director; Darcie McGee, Natural Resources Management Assistant Director; Alex Esseeesse, Assistant County Attorney; and Jennifer Jones, Special Projects Coordinator.

Excerpt from Complete Minutes

Public Hearing, Re: Adoption of EAR Based Amendments, 2017-2.2. DEO #17-3ER

Jeffrey Ball, Planning and Zoning Manager, introduced the item and stated the proposed amendment, 2017-2.2, includes 13 new Coastal Management Element policies developed specifically to comply with Section 163.3178(2)(f), Florida Statutes, Peril of Flood, as well as text modifications that were previously transmitted to DEO in 2017.

Darcie McGee, Natural Resources Management, Assistant Director, stated inadvertently, during transmittal, there was part of the floodplain protection and a couple of other sections that for some reason were omitted. There are things in the agenda packet highlighted in yellow that was put back in and although it looks new things were added, the only real new element is the Peril of Flood.

Ron Bartcher asked if the County's stormwater utilities program for periodic and scheduled inspections cover only stormwater facilities on County land the County maintains, or is it also on private land.

Virginia Barker, Natural Resources Management Director, stated every other year staff inspects all of the permitted stormwater treatment systems to determine whether they comply, and they can get a 25% credit for maintaining their stormwater, and they can get a larger fee-based credit if they go above and beyond the minimum treatment requirements. She noted it applies to private as well as government.

Ron Bartcher asked since the document is from 2009, have all the various developmental requirements listed been put into land development regulations.

Mr. Ball stated right now, it's just the policies being dealt with, and the next step, if the Board decides to move forward and DEO accepts it, is to address the policies in the land development codes.

Ron Bartcher stated in the Parks Recreation Open Space Element, it appears that it is being changed so that the number of acres per 1,000 people is now countywide as opposed to being in each one of the three recreation districts.

Tad Calkins, Planning and Development Director, stated that change was proposed by Parks and Recreation during transmittal. The document was transmitted in 2017 and staff received several comments back from the State, mainly regarding the Peril of Flood, so everything was put on hold. Normally, there is a 40-day window after transmittal, but because Peril of Flood had to be addressed, DEO sent an ORC letter, and then staff obtained grants to get information to build a database. The changes the board is considering today are the changes that have been proposed by the departments. They were transmitted in 2017 and they were approved by the LPA and also by the Board of County Commissioners.

Mr. Bartcher stated in Policy 1.8, it used to say a greenway network will be created, and then the wording changed to, 'we're not going to create this network, but if someone else does we'll work with them'. He said that to him, it says the County doesn't want a greenway network.

Mr. Calkins stated Parks and Recreation are saying there isn't the ability to have that greenway network, but there are many programs, such as EELs, that has obtained a lot of environmentally sensitive land. The wetland impact ordinance is very restrictive, so there is that conservation element and the County has proactively sought out lands to manage, which would essentially be a greenway network, just not connected.

Henry Minneboo asked if it is helpful for Parks and Recreation. Mr. Calkins replied he believes it is. Parks and Recreation sat down with the document and updated it, and the updates the board is seeing are the proposed updates.

Mr. Minneboo asked if they are not more restrictive. Mr. Calkins replied he doesn't know if they are more restrictive or not restrictive, but it's more what they're able to achieve and it's inline with what was originally in the comprehensive plan.

Mr. Bartcher stated in the Coastal Management Element, the coastal high hazard areas, Policy 6.2 says in part, "improvements may only be considered when facilitation of such improvements is needed to support the densities in the future land use", and asked staff to explain.

Ms. McGee stated that is a policy that can be found throughout the comprehensive plan when talking about County infrastructure and putting infrastructure in a riverine floodplain or a wetland or surface water buffer, because sometimes government needs a little extra wiggle room to get into areas that it normally wouldn't want to.

Mr. Bartcher stated what concerned him is the language that says, "support densities programmed on the future land use." It seems to him that the County is saying because the future land use allows a certain density, they don't care if it's in the coastal high hazard area.

Mr. Calkins stated it is a concern when considering a future land use that you wouldn't have the ability to take the coastal high hazard into consideration.

Mr. Bartcher stated it's like saying there is a coastal high hazard area but the County doesn't build in it, they want to restrict the building, but if the future land use says a certain amount of density can be

on it then it doesn't make a difference if it's in a coastal high hazard area or not. He said future land use is the number one requirement, as opposed to a coastal high hazard area being the number one requirement.

Mr. Calkins stated there would be multiple policies that would come into effect in making that determination. When looking at the coastal high hazard area there is multiple policies, and there is one that says there can't be any public infrastructure in that area, and then with the peril of flood, when there is density on property that has been established there is some development rights. Staff had to be careful when coming up with the peril of flood policies, and provide some engineering ways for people to still be able to maintain the ability to get some of that density. If the comp plan says 10 units per acre, a development rarely gets to 10 units per acre because of infrastructure needs, so there are going to be other restrictions.

Ms. McGee stated sometimes a future land use supports a higher density than the zoning, so someone has to come in to ask permission to change the zoning and at that point the infrastructure can be looked at.

Mr. Calkins stated on just about all of the zoning changes the board heard today, the staff reports says that a zoning classification may be considered compatible. It may be considered compatible by the matrix; however, the whole comprehensive plan has to be taken into consideration when determining whether it is compatible or not compatible.

Mr. Bartcher stated in the Coastal Management Element, the coastal development and redevelopment section, the word 'should' is used instead of the word 'shall', and asked why.

Ms. McGee stated using 'should' is not as definitive as using 'shall'. If there were to be 'shall' for all of these policies and staff had to implement them all right away, they would be in violation of the comprehensive plan because there are 13 policies and staff is going to have to take steps to get to each of these things, so using 'should' gives staff a chance to figure out what the Board sees as priorities. She said just because it says 'should' doesn't mean the County is not doing it.

Mr. Calkins stated staff deliberated on 'should' and 'shall' for quite some time, and the feeling was that since a new element was being introduced to the Board, 'should' would be more palatable with some of the things being recommended, but there is the opportunity for 'shall' in the second step, which is when codes are drafted. He said once staff gets creates the land development codes and the engineering practices, that's when the board will see 'shall'.

Mr. Bartcher asked why the coastal high hazard map was deleted.

Ms. McGee replied it was deleted because if there was a static map in the document it could become outdated. Instead, there are GIS layers that if anyone needs to know where a coastal high hazard area is, then staff would provide them with that information.

Mr. Bartcher asked if the map is updated periodically. Ms. McGee replied, yes, the Regional Planning Council is constantly making updates.

John Hoppengarten asked if there has been a budget analysis on the proposed requirements. Ms. McGee replied not a budget analysis, but staff is aware that some of the items could cost a lot of money. She said grants may be applied for to help with additional costs.

Mr. Hoppengarten asked if there were any design architects involved in preparing any of the document.

Ms. McGee stated the Regional Planning Council had Randall Parkinson, who is an engineer; there were two public hearings, there was an online survey, and staff encouraged the development community to be involved.

Mr. Hoppengarten stated he would have thought architects would have been more forthcoming to come up with solutions to some of these issues. Ms. McGee stated when staff gets to the Land Development Regulations, there will be a lot more participation and that's when the professionals will get into the details.

Robert Sullivan commended staff on the comprehensive report. He stated he is a First Responder with Florida Task Force One and he responded to Hurricane Florence in South Carolina. He noted that one of the issues for the County's GIS is that it needs to have the same vertical datum. One of the issues, particularly for the coastal flooding zones, the surveying datum should be the same for GIS, and the same for the markers. He said he can understand where the interactive maps would be difficult, particularly if one section is using NGVD 1929 and another one is 1984, so staff should make sure that when it comes time for the details, there should be the same vertical datums and put EOC on the map with evacuation routes.

Public comment.

Mary Sphar, 825 Clifton's Cove Court, Cocoa, stated she supports the effort to improve the policies and include peril of flood considerations. [Ms. Sphar provided a handout to the board. The handout can be located in the Planning and Development Department] She said she hopes the LPA will consider some of her changes. She stated one of her suggested changes would be to Policy 14.6, to change the word 'should' to 'shall'. She stated she believes the environmental community and the engineers could benefit by the County 'shall' amend the Land Development Regulations to reduce obstacles that hinder nature-based design standards and/or Low Impact Development. She stated her suggested change for Policy 14.7, is to replace 'should identify' with 'shall adopt'. She pointed out that the County's stormwater management policies were adopted in 1993, they are inadequate, and she has heard developers cite this problem. The suggested change for Policy 14.9, is to replace the word 'should' with the word 'shall'. She stated the City of Titusville has done what is in Policy 14.9, which is to encourage or require nature-based design standards and/or Low Impact Development design for development and redevelopment within areas vulnerable to current and future flooding impacts. She said her suggestion for Policy 14.3, is to also change the word 'should' to 'shall', and stated it should be easy to do because the Regional Planning Council has done a lot of the work. She said the County has flood maps and has done analysis, so it would not be difficult to identify the vulnerable areas. She said her last suggestion is for Policy 7.1, and she recommends, "Brevard County shall not increase residential density to these vulnerable properties on the south beaches or properties in the coastal high hazard area", which is what would be inundated by a Category 1 storm.

Motion by Robert Sullivan, seconded by Liz Alward, to approve the plan with the inclusion of the items brought forward to identify 'shall' instead of 'should'.

Bruce Moia stated going through every property in the County as opposed to what has already been done in the south beaches will impose density restrictions on every piece of property in the coastal

high hazard area. He said he would be against that without a lot of input and research by staff. He noted that the word 'should' is in the plan for a reason, and holding the County accountable to implement all of the items by using 'shall' will put them on the hook to have to implement them, not including the additional requirements staff would be forced to do. He said it would be a burden on staff to have to develop the new incentives and program requirements. He stated when staff brings back the Land Development Regulations, that is when things will be required. He said he does not support the motion.

Ben Glover stated he agrees with Bruce and he does not support the motion.

Liz Alward asked if the board can make a recommendation to look at Ms. Sphar's suggestions, but the County Commission will have the final vote.

Bruce Moia clarified that the City of Titusville did not put this in their comprehensive plan, they passed an ordinance to add Low Impact Development allowances in their code, not in their comprehensive plan. He said if the County Commission directs staff to start looking at these items and come up with language to address it, that's fine, but he doesn't want to force staff to have to do these things if it's not something the Board wants to do.

Henry Minneboo stated he has always been reluctant to have a situation where somebody from the audience comes in and adds an attachment to what the board has reviewed and analyzed and now all of a sudden it looks like the board supports it.

Mr. Bartcher stated when he addressed 'shall' and 'should', he heard comments from staff that this is something they would like to see changed, and there will be an EAR in 2023, and because of the comments he heard from staff it's likely that some of the 'shoulds' will change to 'shall' in that next iteration.

Mark Wadsworth asked if Ms. Alward is still in support with her second of the motion.

Ms. Alward stated she is conflicted because she hasn't had a chance to talk to staff about how it will affect their ability to implement, so she is withdrawing her second to the motion.

Mark Wadsworth called for a second to Mr. Sullivan's motion, and seeing none, the motion failed for lack of second.

Motion by Ben Glover, seconded by Bruce Moia, to recommend approval of the Adoption of EAR Based Amendments, 2017-2.2. DEO #17-3ER, as-is.

Mark Wadsworth called for a vote on the motion as stated, and passed unanimously.