

Minutes Attached

BOARD OF COUNTY COMMISSIONERS
INDIAN RIVER COUNTY, FLORIDA

A G E N D A

SPECIAL MEETING

WEDNESDAY, MAY 15, 1991

5:01 P.M. - COUNTY COMMISSION CHAMBER

**COUNTY ADMINISTRATION BUILDING
1840 25TH STREET
VERO BEACH, FLORIDA**

COUNTY COMMISSIONERS

Richard N. Bird, Chairman
Gary C. Wheeler, Vice Chairman
Margaret C. Bowman
Carolyn K. Eggert
Don C. Scurlock

James E. Chandler, County Administrator
Charles P. Vitunac, County Attorney
Jeffrey K. Barton, Clerk to the Board

5:01 P.M.

**"SECOND ROUND": MINOR AMENDMENTS TO THE LAND
DEVELOPMENT REGULATIONS (LDRs): STAFF INITIATED
CHANGES AND MC DOWELL REQUEST**

ANYONE WHO MAY WISH TO APPEAL ANY DECISION WHICH MAY BE MADE
AT THIS MEETING WILL NEED TO ENSURE THAT A VERBATIM RECORD OF
THE PROCEEDINGS IS MADE WHICH INCLUDES THE TESTIMONY AND
EVIDENCE UPON WHICH THE APPEAL WILL BE BASED.

Wednesday, May 15, 1991

The Board of County Commissioners of Indian River County, Florida, met in Special Session at the County Commission Chambers, 1840 25th Street, Vero Beach, Florida, on Wednesday, May 15, 1991, at 5:01 o'clock P.M. Present were Gary C. Wheeler, Vice Chairman; Margaret C. Bowman; and Don C. Scurlock, Jr. Absent were Richard N. Bird, Chairman, and Carolyn K. Eggert. Also present were James E. Chandler, County Administrator; Charles P. Vitunac, Attorney to the Board of County Commissioners; and Virginia Hargreaves, Deputy Clerk.

The Vice Chairman apologized for having been delayed at another meeting and called the meeting to order at 5:08 P.M. He announced that, as advertised, this is the second hearing on minor amendments to the LDRs - staff initiated changes and the McDowell request.

Planning Director Boling made the following presentation:

TO: James E. Chandler
County Administrator

DEPARTMENT HEAD CONCURRENCE:


Robert M. Keating, AICP
Community Development Director

FROM: Stan Boling, ^{SB}AICP
Planning Director

DATE: May 6, 1991

SUBJECT: "Second Round" Minor Amendments to the LDRs:
Staff-initiated Changes and McDowell Request

It is requested that the data herein presented be given formal consideration by the Board of County Commissioners at its special night meeting (second, final hearing) of May 15, 1991.

BACKGROUND AND CONDITIONS:

At its special meeting of May 1, 1991, the Board considered the above-referenced proposed LDR amendments. The Board indicated that only one section of the proposed ordinance, Section 12 (McDowell-initiated request regarding dock/boat shelter regulations) required further research and analysis. Staff have researched the issues that concerned the Board and are proposing some changes to the May 1st draft. All other sections of the ordinance remain as presented

at the May 1st meeting. The Board is now to again consider the entire ordinance and the new changes, and take action on the ordinance proposal.

ANALYSIS:

At the May 1st meeting, the Board expressed concerns related to the Section 12 (McDowell-initiated) amendments to Chapter 932. The concerns were as follows:

1. The restrictions on the size of unwallied boat shelters;
2. The requirement of a 5' dock/boat shelter height above mean high water level; and
3. The effect of any new, stricter requirements (especially the 5' height requirement) to existing dock/boat shelter structures ("grandfathering-in").

Staff have again contacted representatives of the Army Corps of Engineers (ACOE) and the Florida Department of Natural Resources (FDNR) regarding these issues. Also, staff have contacted a local dock builder to ascertain some of the construction-related impacts of a new 5' height requirement. Staff have addressed the Board's concerns and have amended Section 12 of the proposed ordinance as follows.

•Boat Shelter Size Restriction

The FDNR presently requires that, within an aquatic preserve, the combined surface area of a terminal platform and unwallied boat shelter not exceed 160 square feet. However, discussions with various FDNR staff members reveal that the 160 square foot restriction is in the process of being revised to allow a larger square footage in areas of a preserve that are outside of "Resource Protection Areas" (RPAs) containing significant marine resources such as grassbeds. The McDowell dock is outside of the referenced RPAs.

The FDNR's proposed larger square footage allowance is still in a state of flux, although the two figures of 330 square feet and 490 square feet (including the terminal platform) are being discussed on the FDNR staff level.

In that FDNR's proposed size revision is still a "moving target", staff have revised Sec. 932.07(3) to emphasize that the unwallied boat shelter and terminal platform area shall not exceed FDNR limitations in aquatic preserves. Staff have added a restriction on the size of unwallied boat shelters (not including terminal platforms) at 400 square feet, regardless of location, in an effort to prevent an abusive size in areas of the river where size would otherwise be unrestricted. These areas that are unrestricted by jurisdictional agency size criteria are largely limited to manmade waterways.

•Five Foot (5') Height Requirement

ACOE and FDNR presently require dock structures to be constructed at least 5 feet above mean high water when such structures occur over existing submerged aquatic vegetation. Neither of the agencies require the 5 foot height in areas of potential aquatic vegetation, although both agencies' staff thought it was a good idea. They did not think the 5 foot height should be required in all cases, but only when such vegetation is in the vicinity and could reasonably be expected to expand into the dock area. County environmental planning staff concur with this viewpoint.

A number of factors - such as water depth, turbidity, bottom conditions, water quality, and distance from existing grassbeds - influence whether or not grassbeds will expand into areas not presently occupied by seagrasses. In developing the wording of the ordinance, the county could attempt to set specific parameters to account for these factors, to determine where the 5 foot height should or shouldn't be required. However, to do so would be extremely difficult due to site specific conditions and the variability of factor combinations.

Areas of "extreme" conditions that prevent the possibility of grassbed establishment, such as relatively deep dredged manmade canals, could be eliminated in general. Other areas are not "cut and dry", and require site specific review. Therefore, staff recommend that, rather than include specific criteria in the ordinance, Section 932.07(5) be worded to allow the flexibility of a site specific review by county environmental planning staff (in coordination with the applicant) for sites in the vicinity of existing grassbeds.

Staff would utilize existing and forthcoming seagrass inventory maps to aid in determining whether or not the 5 foot height would be required, in combination with site specific review.

•Effect on Existing Structures: "Grandfathering-in"

While the FDNR and ACOE now have restrictions on waterfront structure size and height above submerged aquatic vegetation, docks have been built in Indian River County that contravene these requirements, largely due to agency enforcement difficulties and deficiencies. As such, the question has arisen as to the "grandfathering" status of existing docks that would not satisfy the proposed county size and height restrictions.

It is staff's position that Chapter 904, "Nonconformities," of the County Land Development Code will sufficiently grandfather docks that were built in legal conformance with county regulations at the time they were built. Docks built illegally, either without required county permits or not in conformance with an issued county permit, should be required to satisfy the revised regulations as adopted. Staff do not recommend enacting any exceptions to grandfather-in illegally constructed docks.

RECOMMENDATION:

Staff recommends that the Board of County Commissioners adopt the revised proposed ordinance amending the land development regulations (LDRs).

In regard to the 3 concerns related to Section 12, Director Boling advised that, with regard to the restriction on the size of unwallied boat shelters, our ordinance as it exists today does not allow for unwallied boat shelters out over the water; therefore, anything that is added in now to allow that would allow a little more flexibility. We now also are proposing that the 160 sq. ft. area we originally suggested for such shelters be increased to 400 sq. ft., not including the terminal platform. The requirements the state is looking at include the terminal platform so what we propose would be less restrictive than the state.

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Commissioner Scurlock noted that when the state comes in, they could override our approval, and this was confirmed.

Director Boling next addressed the 5' height requirement for dock structures, explaining this is added to a Section we already have in the Code about locating structures and designing them so they have minimum impact on grass beds and other things. What we have gone to there is requiring 5' above mean high water level where aquatic vegetation exists or potentially exists and then determining that either through site inspections or grassbed inventory maps.

Vice Chairman Wheeler did not like including the word "potentially."

Roland DeBlois, Chief of Environmental Planning, noted that when this was brought up at the first hearing, we pretty much reflected the state's policy in requiring the 5' height just where grassbeds existed. After talking with Army Corps and DNR representatives, it was felt it was a little too much to require this in all cases in the river because there are certain areas where it definitely could not occur, such as dredged areas and that this should mostly come into play when grassbeds exist within the vicinity of the dock. It is not an exact science to determine in what amount of time a grassbed could extend from an existing bed; so, Mr. DeBlois felt that having this dealt with by site specific review in conjunction with the grassbed inventories was a reasonable approach.

Director Keating commented that although he generally does not like having statements in ordinances which aren't specific and allow staff a lot of discretion, when you look at the alternative of having this discretionary with general parameters as opposed to a lot of specific criteria, he felt what is proposed is the best way.

Director Boling continued that the third matter of concern was basically what kind of structures would be grandfathered in. Staff's recommendation is that there is no need to address this specifically in this ordinance, but just allow our existing non-conformity section in the LDRs to address it. Under that section, anything legally established in terms of county approvals required when a structure was built would be grandfathered in, and this would affect only things that are developed after the effective date of this ordinance.

County Attorney Vitunac pointed out that if someone put up a dock without a permit, that then was not legally established, and they would have to comply with the new ordinance.

Director Boling confirmed that if someone was to come in now for an application that was after the fact to legalize something

that was there, the regulation in place when they came in for the application would be what we would apply.

Attorney Vitunac noted that is exactly what our non-conforming use standard has been for years.

Commissioner Bowman assumed there would have to be some record that they received a permit before they built the dock and wondered how long our records on this go back.

Planner DeBlois advised that it has been his experience from Code Enforcement that we tend to go to at least 1970 where we have good records. Before that, if neither the county or the person can produce a permit, we look at this closely and generally favor the public.

Commissioner Bowman commented that a lot of docks were replaced after the last big blow we had in the county.

Attorney Vitunac noted that replacing a dock after it is totally destroyed would require a new permit.

Commissioner Scurlock believed that if anything is 50% destroyed, it has to come into conformity with the existing regulations, and that was confirmed.

Vice Chairman Wheeler opened the public hearing and asked if anyone wished to be heard.

George McDowell, 135th Lane, requested that he be allowed whatever the state says is permitted for docks and boat covers.

Commissioner Scurlock advised Mr. McDowell that the restrictions we are considering adopting would be less restrictive than the state's, and since Mr. McDowell is just asking for at least state standards, he would be all right.

Planner DeBlois informed the Board that the criteria the state is requiring Mr. McDowell to meet would satisfy our regulations.

Commissioner Bowman noted that Mr. McDowell had been asking for 640 sq. ft., and Mr. DeBlois agreed that was right but explained that the state is now requiring him to modify his shelter back to a total of 490 sq. ft., which includes the terminal platform.

Vice Chairman Wheeler determined that no one else wished to be heard and thereupon closed the public hearing.

ON MOTION by Commissioner Scurlock, SECONDED by Commissioner Bowman, Chairman Bird and Commissioner Eggert being absent, the Board unanimously (3-0) approved staff's recommendation and adopted Ordinance 91-23 amending the LDRs.

ORDINANCE NO. 91- 23

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA, AMENDING VARIOUS SECTIONS OF TITLE IX OF THE COUNTY CODE, LAND DEVELOPMENT REGULATIONS (LDRs), CHAPTER 901, DEFINITIONS; CHAPTER 902, ADMINISTRATIVE MECHANISMS; CHAPTER 904, NONCONFORMITIES; CHAPTER 910, CONCURRENCY MANAGEMENT SYSTEM; CHAPTER 911, ZONING; CHAPTER 913, SUBDIVISIONS AND PLATTING; CHAPTER 914, SITE PLAN REVIEW AND APPROVAL PROCEDURES; CHAPTER 915, PLANNED DEVELOPMENTS; CHAPTER 918, SANITARY SEWER AND POTABLE WATER REGULATIONS; CHAPTER 932, COASTAL MANAGEMENT; AND PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS, CODIFICATION, SEVERABILITY, AND EFFECTIVE DATE.

Be it ordained by the Board of County Commissioners of Indian River County, Florida that:

Section 1: Section 901.03 definition of "Breakaway Wall or Frangible Wall" is hereby amended to read as follows:

Breakaway Wall or Frangible Wall - A partition independent of supporting structural members that will withstand design wind forces, but will fail under hydrostatic, wave, and run-up forces associated with the design storm surge. Under such conditions, the wall shall fail in a manner such that it breaks up into components that will minimize the potential for damage to life or adjacent property. ~~It shall be a characteristic of a breakaway or frangible wall that it shall have a horizontal design loading resistance of no less than ten (10) nor more than twenty (20) pounds per square foot.~~

Section 2: Section 902.12 of Administrative Mechanisms is hereby amended to read as follows:

(1) Purpose and Intent

The purpose of this section is to provide a means for changing the text of zoning chapter Land Development Regulations or the official zoning atlas. It is not intended to relieve particular hardships or confer special privileges or rights to any person.

(2) Changes and Amendments

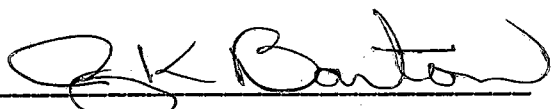
The Board of County Commissioners may from time to time, on its own motion, the motion of the Indian River County Planning and Zoning Commission, or the petition of the owner or the owner's authorized agent, amend, supplement, change, modify, or repeal by ordinance, pursuant to the authority and in the manner provided herein, any of the provisions of the Land Development Regulations or any boundaries within the zoning atlas.

Coding: Words in ~~blocked-out~~ type are deletions from existing law. Words underlined are additions.

ORDINANCE 91-23 IS ON FILE IN THE OFFICE OF CLERK TO THE BOARD
IN ITS ENTIRETY.

There being no further business, on Motion duly made,
seconded and carried, the Board adjourned at 5:20 o'clock P.M.

ATTEST:


Clerk


Chairman