

JEFFREY R. SMITH
Clerk to the Board



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BOARD OF COUNTY COMMISSIONERS

JULY 18, 2013

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SPECIAL CALL MEETING OF THE INDIAN RIVER COUNTY
BOARD OF COUNTY COMMISSIONERS

PROPOSED FERTILIZER AND LANDSCAPE MANAGEMENT
ORDINANCE - PUBLIC HEARING/CONSIDERATION OF FINAL
ADOPTION

The Board of County Commissioners of Indian River County, Florida, met in a Special Session at the County Commission Chambers, 1801 27th Street, Vero Beach, Florida, on Thursday, July 18, 2013, to consider final adoption of a proposed Fertilizer and Landscape Management Ordinance. Present were Chairman Joseph E. Flescher, Vice Chairman Wesley S. Davis, and Commissioners Peter D. O'Bryan, Bob Solari, and Tim Zorc. Also present were County Administrator Joseph A. Baird, County Attorney Dylan Reingold, and Deputy Clerk Leona Adair Allen.

1. CALL TO ORDER

Chairman Flescher called the meeting to order at 9:00 a.m.

2. INVOCATION

Vice Chairman Davis delivered the Invocation.

3. PLEDGE OF ALLEGIANCE

Chairman Flescher led the Pledge of Allegiance to the Flag.

4. PUBLIC ITEMS

4.A. PUBLIC HEARING

4.A.1. PROPOSED FERTILIZER AND LANDSCAPE MANAGEMENT ORDINANCE – PUBLIC HEARING/CONSIDERATION OF FINAL ADOPTION (LEGISLATIVE)

PROOF OF PUBLICATION OF ADVERTISEMENT FOR HEARING IS ON FILE IN THE
OFFICE OF THE CLERK TO THE BOARD

County Attorney Dylan Reingold provided background and recalled that at the July 2, 2013 Board of County Commission meeting, the Board gave direction to former County Attorney Alan Polackwich to draft an ordinance consistent with the Florida Department of Environmental Protection's (FDEP) Model Ordinance for Florida-Friendly Fertilizer Use on Urban Landscapes, with minor modifications, addressing two key components - education and enforcement. He said that his office drafted an education provision that directs the County Administrator to provide community outreach by: (1) posting the Regulations on the County's website; (2) producing brochures and other printed material for the public; and (3) going out to the public, civic associations, and community organizations to discuss the fertilizer regulations. He also included an enforcement provision not only for the Code Enforcement Officer (acting through the Code Enforcement Board) to enforce the regulations, but also the Environmental Control Officer (acting through the Environmental Control Hearing Board). He elaborated on the Florida Administrative Code; there not being enough guidance for the Code Enforcement Officer or the public; and his office adding provisions (from the Code) for further guidance. He also pointed out the minor technical changes that were made for clarity, such as the references of "springs" to "canals".

The Chairman opened the Public Hearing.

The following individuals supported the proposed Fertilizer Ordinance or a stronger version thereof. Most speakers expressed concerns over the health of the Indian River Lagoon and its preservation, and some presented research/data (on file).

Jack Casselberry, 611 Mallow Scrub Way, Sebastian

Honey Minuse, 27 Starfish Drive, Vero Beach, representing the Indian River Neighborhood Association (IRNA)

Diane Morgan, volunteer at Harbor Branch Oceanographic Institute, with the Manatee project; a naturalist at the Manatee Center; volunteer with the Pelican Island Autobahn Society, and active volunteer for the Save the Manatee Club

Patricia Casselberry, 611 Mallow Scrub Way, Sebastian

Brian Carman, 1190 Ansley Avenue, SW, Vero Beach

John Davis, 2400 3rd Place, SW, Vero Beach, Treasure Coast Progressive Alliance

Judy Orcutt, 4665 Pebble Bay South, Vero Beach (provided data sheet – on file)

William Menzies, Tamara Gardens, Vero Beach

Richard Bialosky, Reef Road, Vero Beach

John Beukers, 6530 36th Place, Vero Beach, member of Indian River Lagoon and Water Committee, and Master Gardner

Todd Josko, 2900 West Azeele Street, Tampa, representing the Florida Turf Grass Association (provided research information – on file)

Linda Behret, Chairperson of the Turtle Coast Sierra Club which covers Indian River and Brevard Counties

Ray Hooker, owner/operator of Other Side Services, LLC, Vero Beach

Mary Sphar, 819 Heron Road, Cocoa

Susan Boyd, 8025 24th Street, Vero Beach

Greg Pheneger, 607 Cypress Road, Vero Beach

John Orcutt, 4665 Pebble Bay South, Vero Beach (presentation on file)

The Chairman called for a break at 10:58 a.m., and reconvened the meeting at 11:18 a.m., with all members present.

Lange Sykes, 836 Riomar Drive, Vero Beach, President of the Treasure Coast Chapter of the Coastal Conservation Association

Bob Ulevich, representing the St. Johns Improvement District and the Sebastian River Improvement District

Herb Whittall, 19 Park Avenue, Vero Beach

Paul Sagraue, Technical Director and entomologist on staff for Nozzle Nolen Pest Control

Marty Baum, 1192 N.E. Frances Street, Jensen Beach, and Indian River Keeper

Tomas Aiello, 9670 East Maiden Court, Landscape Contractor with offices in Hobe Sound and Vero Beach

Chris Reynolds, Reynolds Pest Management, Inc., Port Saint Lucie

Stephen Sczurek, 945 37th Avenue, Vero Beach

Jens Tripson, 2525 14th Street, Vero Beach

Renee Renzi, Waverly Place, Vero Beach

Ian Rodriguez, Technical Director, Valley Crest Landscape Companies (provided data publications - on file)

Dr. Leesa Souto, Executive Director of the Marine Resource Council (provided University of Florida scientific literature – on file)

The Chairman called for a break at 12:26 p.m., and reconvened the meeting at 12:45 p.m., with all members present.

Dr. Richard Baker, President of the Pelican Island Audubon Society

Bob Bruce, 12396 Highway A1A, Vero Beach, Board Member of the Indian River Neighborhood Association, Save Our Shores, and the Audubon Society

Robert Schleis, 885 23rd Place SW, Vero Beach

Dr. Edie Widder, Ocean Research and Conservationist Association (ORCA)

Macy Zander, 35 Hill Avenue, Orlando, representing the Sierra Club (provided information – on file)

Dean Tailer, North Florida Regional Turf Manager, representing Arrow Exterminators

Scott Bell, 4746 Pebble Bay Circle, Indian River Shores

Brian Combs, 2303 Atlantic Beach Blvd, Fort Pierce

James Callaghan, 555 33rd Avenue, Vero Beach, Golf Superintendent at Riomar County Club

No one spoke in opposition to adopting the Fertilizer Ordinance.

Throughout the individual presentations, discussions ensued pertaining to current research, leaching of nitrogen into the Lagoon, slow release fertilizers, the restricted season (also referred to as the rainy season “blackout period” which runs from June 1 through September 30), Best Management Practices (BMP) Training; Counties and Cities that have implemented strong Urban Fertilizer Ordinances; and whether there is enough evidence and documentation to adopt a more stringent ordinance.

There being no additional speakers, the Chairman closed the Public Hearing.

After public comments, the Commissioners discussed the Kilroy monitoring system, and voiced their concerns with not receiving the required permits from the Florida Department of Transportation (FDOT) expeditiously, so the monitoring systems can be installed on FDOT’s bridges.

ON MOTION by Commissioner Solari, SECONDED by Chairman Flescher, the Board unanimously authorized the Chairman to send a letter to the Florida Department of Transportation (FDOT), requesting they expeditiously move forward with Indian River County’s authorization to install the Kilroy Monitoring Systems on FDOT’s structures (in the North, South, and Main Relief Canals).

Commissioner Zorc suggesting sending a copy of the letter to Representative Debbie Mayfield's office for assistance in getting FDOT to move quickly.

Further discussion ensued regarding the demise of marine life, the Model Ordinance, fines and penalties for non-compliance, septic tank leakage, testing requirements for landscapers, requirements for golf courses, and the proposed modifications to the State Model Fertilizer Ordinance (no phosphorus without soil testing, maintaining a 10-foot restriction from all water bodies, requiring fertilizer content to be at least 50% slow release nitrogen, and prohibiting the use of fertilizer during Florida's rainy season).

Commissioner Zorc offered suggestions on moving forward with the adoption of the Model Ordinance.

Vice Chairman Davis supported education versus regulation, and adopting a stronger version of the Model Ordinance, but without the blackout dates. He believed that BMP certified individuals should be exempt from the blackout period.

Chairman Flescher voiced concern over additional staffing to ensure compliance, which prompted discussion about enforcement.

Commissioner O'Bryan felt that regarding enforcement, the simpler the better. He supported the professionals who fertilize on an as needed basis, rather than those who fertilize on a schedule.

Commissioner O'Bryan asked Attorney Reingold if the State Statute requires a window for further investigation before formally adopting a stricter ordinance.

Attorney Reingold revealed that there would be hurdles to overcome if the Board wishes to adopt a more stringent ordinance. He said that based on the Comprehensive Plan, the Board must demonstrate with documents, that relevant and scientific information has been considered and made part of the public record. He told the Commissioners that if they feel they have met the analysis, they could move forward with the draft ordinance today, and revisit it later if necessary.

Commissioner O'Bryan wanted to know if the information received today, along with the public testimony, which is part of the public record, would meet the required criteria to move forward.

Attorney Reingold disclosed that Florida Legislation requires the Board to document before adopting the ordinance, and believed that the scientific information heard today may constitute enough documentation to move forward with something more stringent.

Chairman Flescher felt there was sufficient scientific data presented for the proposed modifications, but not for the blackout period.

MOTION WAS MADE by Commissioner Solari, SECONDED by Chairman Flescher to: (1) move forward with the Model Ordinance, and (2) add the three proposed modifications: (a) applying no phosphorus without soil testing; (b) maintaining a 10-foot restriction from all water bodies; and (c) requiring fertilizer to contain at least 50% slow release nitrogen.

Commissioner O'Bryan wanted to know if Commissioner Solari's intention was to bring the blackout period back at a later time. He asked Commissioner Solari if he would amend his Motion to direct the Administrator to fund the appropriate enforcement position as outlined in

the Backup, and add the additional exemptions recommended by Mr. Orcutt: golf courses, athletic fields, vegetable gardens, and fruit trees.

MOTION WAS AMENDED by Commissioner Solari, SECONDED by Chairman Flescher to: (1) move forward with the Model Ordinance; (2) add the three proposed modifications: (a) applying no phosphorus without soil testing; (b) maintaining a 10-foot restriction from all water bodies; and (c) requiring fertilizer to contain at least 50% slow release nitrogen; (3) direct the Administrator to fund the appropriate Enforcement Position as outlined in the Backup; and (4) add the additional exemptions of golf courses, athletic fields, vegetable gardens, and trees grown for edible fruit.

Chairman Flescher clarified that the Motion includes the modifications that Mr. Orcutt presented (on file), with the exclusion of the blackout period.

Attorney Reingold explained for **Judy Orcutt** that the advertisement for a Special Call Meeting, for the consideration of adopting a proposed ordinance with minor modifications, was within the scope of purpose for what was advertised.

Commissioner Solari emphasized that the Board has been open and transparent with the Fertilizer Ordinance, and that the three modifications in his Motion fall within the general purpose of the ordinance that was properly noticed.

The Chairman CALLED THE QUESTION and the Motion carried unanimously.

A brief discussion ensued regarding the application of fertilizers, violators, and BMP training.

MOTION WAS MADE by Vice Chairman Davis, SECONDED by Commissioner Zorc, that an individual can use Best Management Practices if they attended the six-2hour certification training.

Commissioner O'Bryan said he would not support the Motion because he wanted to see the blackout window included.

The Chairman CALLED THE QUESTION, by a 4-1 vote (Commissioner O'Bryan opposed), the Motion carried.

Chairman Flescher reiterated that each Commissioner has been extremely open-minded and aggressive on the Lagoon, to ensure that they capture the best information in moving forward. He noted that when further scientific data becomes available, the Board will examine and decide whether to include a blackout period.

Attorney Reingold sought and received clarification on the Board's direction for the Model Ordinance, and stated that he would bring the draft back to the August 20, 2013 Board of County Commission meeting for review.

(Clerk's Note: Prior to adjournment, Administrator Baird requested and received permission to offer a \$10,000 reward to anyone who provides information leading to the conviction of the person(s) who has been vandalizing the Water Plant.)

ALL BACKUP DOCUMENTATION IS ON FILE IN THE OFFICE OF THE CLERK TO THE BOARD AND
ARE HEREBY MADE A PART OF THESE MINUTES

5. ADJOURNMENT

There being no further business, the Chairman declared the meeting adjourned at
2:44 p.m.

ATTEST:

Jeffrey R. Smith
Clerk of Circuit Court and Comptroller

Joseph E. Flescher, Chairman

Minutes Approved: _____

BCC/LA/2013Minutes