

2. **Petition 95TCH-02 PB** City Plan Board. Amend the City of Gainesville Land Development Code, Article II (Definitions and Rules of Construction) and Article VIII (Environmental Management) to implement adopted Gainesville Comprehensive Plan requirements for street trees, wetlands and surface waters.

Mr. Dean Mimms was recognized. Mr. Mimms explained that the petition had been presented to the Plan Board on October 17, 2002, and at that time, the revised Conservation Element was still under review. He noted that the proposed Element was challenged, and the petition was not brought back to the Plan Board until the challenge was resolved. He indicated that the Comprehensive Plan took effect in April 2003. Mr. Mimms explained that the LDRs before the board were very close to those presented to the board at the previous meeting. He indicated that they were also very close to the regulations proposed by the Ad Hoc Committee on Creeks and Wetland Regulations, which was established by the City Commission in 2002. He stated that Planning staff, with advice from other City departments, had made some changes in the proposed regulations. Mr. Mimms reviewed the proposed modifications to the regulations and presented schematics of the proposed changes regarding wetland buffers. He offered to answer any questions from the board.

Mr. Pearce asked that Mr. Mimms point out the differences between the Ad Hoc Committee's recommendations and Planning Staff's recommendations.

Mr. Mimms referred to Attachment B and noted that the Ad Hoc Committee had a lengthy verbatim definition of wetlands. He explained that the Law Department advised that the definition should reference the applicable Administrative Code Rule. He indicated that references to wetland function were moved from Section 30-300 to the regular definitions section of the Code. Mr. Mimms referred to page B-5, and noted that the Ad Hoc Committee did not address the tree diversity language. He indicated that on page B-6, Section 30-300 was reserved to maintain the integrity of numbering and placement of future language. He pointed out that the language in Section 30-301(a)(1), added the language, "and other creeks and lakes as determined by appropriate local, state or federal agencies." He explained that the added language was not limited to a map originally drawn in 1992.

Mr. Pearce asked why the map was not changed.

Mr. Mimms explained that the map was in the Comprehensive Plan as part of the adopted Future Land Use series, which only established a minimum. He noted that changes in the map would require a Comprehensive Plan change. He indicated that the Public Works Department was currently updating the creek map. He discussed the consistency of language recommended by the Law Department regarding use of the wording on buffers and setbacks. He pointed out additional language in Section 30-302 (a), and 30-304 (a), regarding wetland buffer encroachment and limitations on exemptions for stormwater management systems in buffers.

Chair Polshek suggested that the language in Section 30-302 (4), last sentence, be changed to read, "one that is technically capable of being accomplished, is economically viable," rather than "one that is technically capable of being ~~done~~, is economically viable."

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Mr. Mimms agreed with the change.

Chair Polshek asked if changes were still anticipated in State regulations.

Mr. Mimms indicated that he anticipated changes in the mitigation methodology, but those changes would probably not take place until January 2004.

Mr. Pearce asked why Section 30-302 (e) (6) a., proposed a 5:1 mitigation ratio if the purpose of the ordinance was to "...avoid loss or degradation of wetland function..." as was stated in Section 30-302 (1).

Chair Polshek pointed out that, "no net loss," did not preclude gaining wetlands.

Mr. Mimms explained that the Water Management Advisory Committee recommended the 5:1 mitigation ratio, and the Ad Hoc Committee did not change the recommendation. He suggested that it set a high bar for development impacting wetlands. He noted that when the Uniform Mitigation Assessment Methodology (UMAM), regulation is implemented, the ratio would no longer apply.

There was discussion of the 5:1 mitigation ratio.

Mr. Mimms noted that the 5:1 mitigation ratio was specified in the Comprehensive Plan.

Mr. Gold and Mr. Cole indicated that they supported the petition.

Chair Polshek opened the floor to public comment.

Mr. Ralph Eng was recognized. Mr. Eng explained that the City presently had a map defining which creeks were regulated creeks. He pointed out that the Water Management District did not have a definition for a creek, and considered wetlands jurisdictional wetlands. He cited a concern about the application of 150-foot setbacks if there was some dispute over whether an area was a creek or a wetland.

Mr. Mimms explained that, should the situation arise, the local and state authorities would meet to determine the actual status of the site, and discussion would proceed from that point. He suggested that there was not a clear answer to the question at the present time. He pointed out that the change in rules did not negate the map, but would represent the minimum, and delineations made by other appropriate agencies would build upon that minimum.

Ms. Mary Jane Angelo, attorney for the St. John's River Water Management District, was recognized. Ms. Angelo stated that the state delineation methodology applied to water and wetlands, not just wetlands, and did encompass creeks, lakes and other water bodies. She explained that it addressed the water body and the landward extent of the adjacent wetlands. She agreed that there was no definition of creek in the District's regulations.

Mr. Mimms explained that the regulated creek map was established in 1992, and did not reflect annexations since that time. He reiterated that the Public Works Department continued to review and expand the map. He pointed out that the setbacks ranged from 35 to 150 feet, and would not always be 150 feet.

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Mr. Samuel Mutch was recognized. Mr. Mutch indicated that he was a resident and attorney practicing in Gainesville. He stated that he saw a number of legal problems in the proposed LDRs before the board. He pointed out that the document contained a self-amending ordinance, which was illegal. He explained that the ordinance permitted the Water Management District, through Chapter 62 of the Florida Administrative Code, to amend the City's definition whenever it amended its own. He agreed that the rule could be adopted, but only as of a specific date.

Chair Polshek asked if the proposed ordinance was reviewed by the City Attorneys Office.

Mr. Mimms indicated that the language Mr. Mutch referred to came from the City Law Department.

Ms. Mary Jane Angelo, attorney for the St. John's River Water Management District, was recognized. Ms. Angelo stated that the State Legislature had ratified Chapter 62 and the Water Management District could not make changes without legislative approval.

Mr. Mutch referred to Section 30-301, regulated surface waters and wetlands, and indicated that the language, "and other creeks and lakes as determined by appropriate local, state or federal agencies," did not define the agencies. He agreed with Mr. Eng's concerns about the creek map. He cited concerns about further references to self-amending ordinances.

Chair Polshek asked the legal basis for Mr. Mutch's comments on a self-amending ordinance.

Mr. Mutch stated that he had been a city and county attorney and he had attempted to create such an ordinance, which was struck down.

Chair Polshek pointed out that the City Attorney reviewed the ordinance and he assumed there was case law to back it up.

Mr. Pearce agreed that, while the issues were valid, the City Commission should address them. He pointed out that there was no member of legal staff present to advise the board on the matter.

Mr. Mutch indicated that he wished it on the record that the petition was not ready to go forward to the City Commission. He noted that Section 30-302 (e)(5) a., referred to listed species, but did not specify a list. He discussed Section 30-302 (e)(5) g., public interest criteria, and noted that basic functions of development activity, were not defined, and there was nothing in the following criteria to define thresholds for the effects of development activity on wetlands. He suggested that Section 30-301 (5)(e) g. 9., should include the Goals, Objectives, and Policies of the Comprehensive Plan, rather than just referring to the goals of the Comprehensive Plan. Mr. Mutch reviewed other aspects of the petition and reiterated that he did not believe it was ready to go to the City Commission.

Chair Polshek pointed out that a number of experts from the City, County and University, had discussed the existing scientifically supportable criteria stated in much of the petition. He agreed that much of the work could be specifically referenced in some way, but there had also been concern about the possibility of an extensive appendix.

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Mr. Mutch stated that the petition gave too much control to the City Manager or the City Manager's designee.

Chair Polshek noted that Mr. Mutch had made extensive comments and he suggested that they be submitted in writing to staff and the Commission.

Mr. Rob Brinkman was recognized. Mr. Brinkman requested that the board continue the petition. He pointed out that the petition was dated October 2002, and the City of Gainesville Basin Planning Initiative was dated March 2003. He noted that there were many recommendations in the Basin Planning Initiative that were relative to the petition, but were not incorporated. He suggested that the petition be referred back to staff for more input from the legal department and the public. Mr. Brinkman indicated that the process needed to be more open and better advertised.

Mr. Dink Henderson was recognized. Mr. Henderson stated that he was an engineer in the community. He stated that he had been to at least 25 meetings on the proposed LDRs, and it had been thoroughly discussed by the public, the City Commission and the Plan Board. He agreed that there might be flaws in the document as presented and some minor changes might have to be made. He also agreed with Mr. Eng's concerns about the designation of a site as a creek or a wetland. He suggested that there needed to be some limitations on the definition of a creek.

Ms. Christina Jackson, wetlands ecologist, was recognized. Ms. Jackson praised the work of the Ad Hoc Committee in drafting the proposed LDRs. She discussed the Basin Management Plan and noted that it was requested by the City Commission and was supposed to supplement the Ad Hoc Committee's information. She noted that both the Ad Hoc Committee and the Basin Management Plan recommended that wetlands be prioritized for preservation and restoration for planning purposes before the LDRs were established. Ms. Jackson explained that it would not only aid staff in their determinations but also make landowners aware that certain activities may not be permitted on their properties. She referred to the Buck Bay complex of wetlands as a site for preservation and enhancement.

Chair Polshek asked that Mr. Mimms clarify the status of the Basin Management Plan prepared by the Conservation Clinic at the University.

Mr. Mimms stated that the Basin Management Plan was a student project and was not an official City project. He explained that staff did not believe an attempt should be made to incorporate the Basin Management Plan into the LDRs at the present time. He noted that the Comprehensive Plan called for the City and County to work toward those goals. He agreed that there were good comments, but he was not prepared to recommend that they be included at the present time.

Ms. Marilyn Walker was recognized. Ms. Walker requested that the board postpone the petition. She discussed the recommendations of the Basin Management Plan, and noted that certain aspects of it should be identified before the LDRs are adopted.

Chair Polshek asked if Professor Ankersen or the Conservation Clinic had approached Mr. Mimms on the matter. He noted that there seemed to be several different issues involved.

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Mr. Mimms indicated that he attended one meeting of the Conservation Clinic group in February, at which a draft report was presented. He stated that no one had approached him on the matter. He stated that he saw the Basin Management Plan as admirable and part of the overall initiative, but it was not required to be in the LDRs. He pointed out that there was language in the Comprehensive Plan on the matter. He explained that, while the City Commission set up the Ad Hoc Committee on Creeks and Wetlands, the Basin Planning Initiative was a separate matter, set up by the Conservation Clinic faculty, staff and students at the University.

Ms. Dian Deevey requested that the board delay further action on the LDRs until some attention had been paid to the need to protect some of the more important wetlands. She discussed the work of the Ad Hoc Committee and the need to identify wetlands of high value that should be preserved or enhanced. She indicated that there was nothing in the proposed LDRs to prevent development on wetlands of high value. She suggested that the effect of the destruction of wetlands on flooding had not adequately been addressed.

Ms. Paula Stahmer was recognized. Ms. Stahmer indicated that she was an attorney in the District of Columbia, and was presently employed as a paralegal in the law firm of Mr. Samuel Mutch. She explained that there had been multiple parallel processes in the public and private sector reviewing the issue for some time. She indicated that the Plan Board was one forum in which the processes had the opportunity to converge. She suggested that it was appropriate for the board to note in their recommendations to the City Commission that some items needed to be addressed.

Chair Polshak noted that, while there had been a great deal of comment on the basin plan and the LDRs, other than minor language and legal comments, no one had actually said where the LDRs were significantly deficient.

Mr. Stuart Cullen was recognized. Mr. Cullen indicated that he was a civil engineer and represented the Builder's Association of North Central Florida. He discussed the differences between the LDRs before the board and the Basin Management Plan. He pointed out that a majority of the Ad Hoc Committee that created the LDRs also developed the Basin Initiative Plan. Mr. Cullen urged the board to move the LDR's forward to the City Commission. He cited a concern about the language regarding encroachment in wetlands. He suggested that, the words, "contiguous to the encroachment," be stricken from page B-7, the second line. (Section 30-302 (a.)).

Mr. Pearce requested Mr. Mimms to comment on Mr. Cullen's request.

Mr. Mimms indicated that staff would prefer to leave the language as written. He noted that the language came from lengthy discussions with the Public Works Department. He agreed, however, that Mr. Cullen's concern did have merit. He indicated that he would discuss the matter further with the Public Works Department.

Ms. Gladys Lane, representing Women for Wise Growth, was recognized. Ms. Lane discussed her work with the Water Management Committee and development of the mitigation ratios. She stated that the board of Women for Wise Growth supported the petition and urged the Plan Board to recommend approval to the City Commission.

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Ms. Margaret Archer was recognized. Ms. Archer urge the board to consider the comments of those requesting that the petition be continued.

Chair Polshek closed the public comment.

Mr. Gold asked if planning staff wished the petition to be continued.

Mr. Mimms indicated that planning staff was comfortable with the petition and recommended that it go forward to the City Commission.

Mr. Gold explained that, while he had concerns about Mr. Mutch's comments, the board had opinions from legal staff on the matter. He agreed that the longer weaker regulations were in place, the greater the opportunity for inappropriate development.

Chair Polshek asked if the areas mentioned in the Basin Initiative Plan could, at some point, become part of an overlay district.

Mr. Mimms agreed that they could.

Mr. Cole indicated that he supported the petition. He explained that he appreciated all of the views expressed, however, he preferred Mr. Cullen's specificity to the general requests for further delay and review of the petition.

Mr. Pearce indicated that he supported the petition. He noted that there had been comments concerning references to Florida Statute, but he was sure City legal staff would address those at the City Commission meeting. He also noted that many of the concerns expressed about the regulations would be addressed at site plan review. He stated that he believed it was important that there be a reliable creek map to define regulated and unregulated creeks, and he had a concern about the language in Section 30-301 (a) (1), which stated, "and other creeks and lakes as determined by appropriate local, state or federal agencies." He stated that he would vote to approve the petition, but he requested that the concern about the language be addressed at the City Commission meeting.

Chair Polshek indicated that he too supported the petition. He agreed that there was a legal concern about the self-amending ordinance, but he thought it was a good idea since it allowed the City to take advantage of a larger body of expert legal and technical staff at the state level. Regarding the buffer contiguity, he suggested that the language be left as proposed by staff. He pointed out that, in most cases it would work, and in others it could be ironed out at the staff level. Regarding the concern about the creek map, Chair Polshek noted that maps were static and there needed to be a mechanism that allowed change with time and additional information. He indicated that he believed the language in Section 30-301 (a) (1), which stated, "and other creeks and lakes as determined by appropriate local, state or federal agencies," should be left in the ordinance.

Chair Polshek noted that he was trained as a biologist and he believed the ordinance raised the bar for development. He indicated that he approved of the street tree section of the ordinance.

<u>Motion By:</u> Mr. Pearce	<u>Seconded By:</u> Mr. Gold
<u>Moved to:</u> Approve Petition 95TCH-02 PB.	<u>Upon Vote:</u> Motion Carried 6 – 0 Ayes: Andrews, Cole, Gold, Pearce, Rwebyogo, Polshek.

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