

SARASOTA COUNTY GOVERNMENT
Natural Resources

TO: Sarasota County Commission
THROUGH: Randall H. Reid, County Administrator
FROM: Amy H. Meese, Director, Natural Resources
Matt Osterhoudt, Manager, Conservation and Environmental Permitting
DATE: October 22, 2013
SUBJECT: **Authorization to Advertise Amendments to the Environmental Technical Manual of the Land Development Regulations**

RECOMMENDED MOTION(S) OR ACTION(S):

To consider authorization to advertise a public hearing to consider a proposed Ordinance, amending Ordinance No. 81-12, the Land Development Regulations, and amending Ordinance No. 2007-097, the Environmental Technical Manual, as amended and codified in Chapter 74 of the County Code, to revise the Environmental Technical Manual of the Land Development Regulations relating to littoral zones requirements.

BACKGROUND:

Many stormwater ponds in Sarasota County have littoral zones, which are shallow water areas that support aquatic vegetation intended to offer similar values and functions of natural wetlands. ENV Policy 4.8.2. of the Sarasota County Comprehensive Plan and Section A of the Environmental Technical Manual contained in the Land Development Regulations require these vegetated littoral zones.

RELEVANT PRIOR BOARD ACTION:

On January 29, 2013, the Sarasota County Commission recognized there may be potential to reduce the littoral zone standards and associated maintenance/management costs while maintaining many of the intended values and functions. As such, the commission directed staff to prepare draft language to consider amending the Land Development Regulations.

ANALYSIS:

Summary of Changes Requested by the Commission

On January 29, 2013, the commission directed staff to address five specific items, which have been described below.

- 1. Eliminate water quality as a primary function.** Current language speaking to littoral zones providing water quality treatment has been removed. The standards now focus on natural systems and seek to provide riparian and/or wildlife habitat, prevent erosion, and other environmental benefits. This modification provides clarification of the desired outcome.
- 2. Allow for alternatives to littoral zones.** New language has been added to allow alternatives to littoral zones if a community or developer wishes to employ a different strategy to achieve similar environmental benefits. Options include perimeter or shoreline plantings, upland

vegetated buffers, bio-swales, habitat management or enhancement, etc. This new language recognizes there is not a one-size fits all approach and provides greater flexibility in designing systems and promoting outcome ownership and environmental stewardship.

3. Focus littoral zone requirements on ponds of certain size (e.g. one acre) and/or those that are connected to natural assets. New language has been added to only require a littoral zone or an alternative design if a pond (or series of ponds in a development) is greater than one acre in size or is directly connected to a native habitat area or watercourse. This new language recognizes that if a pond is less than one acre in size, there are limited benefits of providing a littoral zone, unless the site is directly connected to a natural system (e.g. wetland, stream, native upland, etc.) and could negatively or positively influence the natural system. This new language will result in some developments not having any County littoral zone vegetation requirements, particularly those in the urban area where stormwater ponds are small and natural assets limited.

4. Reduce the desirable plant coverage requirement. Current language specifying the desirable vegetative coverage of a littoral zone has been reduced from 85% to 65%. In other words, a successful littoral zone will have 65% covered in desirable vegetation. This modification provides a means of reducing the standards and associated costs for property owners while maintaining many of the intended values and functions.

5. Allow administrative variances. New language has been added to allow administrative variances for property owners if they demonstrate that an approved and constructed plan cannot reasonably be successful. This language recognizes that while some littoral zones are healthy and vibrant with reasonable management oversight, others have long standing management issues that are challenging and not a result of land-owner action or inaction. This new language provides flexibility in implementation and a streamlined, staff administered process for property owners who are seeking an alternative design.

Summary of Additional Major Changes Identified by Staff

As part of the process to prepare the ordinance amendments, staff identified the following other potential amendments for consideration.

6. Eliminate the requirement to show littoral zones on plats. Current language requiring littoral zones to be shown on plats has been removed. This modification is recommended by staff as there is no regulatory need to show littoral zones on plats and such a practice is not consistent with the general intent of a plat which is to describe specific tracts of land, lots, streets, etc. Littoral zones will still be shown on construction plans approved through the LDR process.

7. Eliminate the requirement to provide a monitoring and maintenance bond. Current language requiring a developer to provide a bond to cover two years of monitoring and maintenance of the littoral zones has been removed. Staff recommends this modification because the LDR accomplishes the same outcome through enforcement provisions if monitoring and maintenance do not occur.

Community Engagement

A substantial community engagement effort was conducted prior to the most recent commission discussion, which resulted in significant input. If the commission authorizes advertisement of a public hearing to consider the draft language, staff will re-engage the community and obtain additional feedback on the draft language prior to the public hearing consistent with the following approach:

- 1. Advisory Councils.** Staff has scheduled time to visit with the Development Services Advisory Council (DSAC) and the Stormwater Environmental Utility Advisory Council.
- 2. Professional Stakeholders Workshop.** A workshop has been tentatively scheduled for October 24, 2013 to receive input from professional engineers, environmental consultants, builders, developers, etc.
- 3. Homeowners Workshop.** A workshop has been tentatively scheduled for October 24, 2013 to receive input from homeowner representatives.

Economic Impact Statement and Comprehensive Plan Consistency

If the commission authorizes advertisement of a public hearing, an Economic Impact Statement and Comprehensive Plan consistency determination will be completed prior to the public hearing.

Attachments:

Draft Ordinance Amendments
Public Hearing Notice
Staff Presentation

ORDINANCE NO. 2013-_____

AN ORDINANCE OF THE COUNTY OF SARASOTA, FLORIDA, RELATING TO REGULATIONS GOVERNING SUBDIVISIONS AND THE DEVELOPMENT OF LAND; AMENDING SARASOTA COUNTY ORDINANCE NO. 81-12, AS CODIFIED IN CHAPTER 74 OF THE SARASOTA COUNTY CODE; AMENDING THE ENVIRONMENTAL TECHNICAL MANUAL AS INCORPORATED THROUGH SECTION 74-212; AMENDING SECTION A OF THE ENVIRONMENTAL TECHNICAL MANUAL RELATING TO LITTORAL ZONES; PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA:

Section 1: This Ordinance amends Sarasota County Ordinance No. 81-12, as amended and as codified in Chapter 74 of the Sarasota County Code. In this ordinance, deleted text is shown in ~~strikethrough~~ and new text is underlined.

Section 2: Chapter 74, the Land Development Regulations, Section A of the Environmental Technical Manual, is hereby amended to read as follows:

A. *Littoral Zone Plan.* ~~In order to provide optimum water quality for surface waters of Sarasota County and to provide desirable aquatic habitat, the following is required:~~

1. *Littoral Zone Requirements.*

a. An applicant shall create a vegetated littoral zone for any development, as that term is defined in section 380.04, Florida Statutes, for any project that either singularly, or cumulatively when a project is constructed in phases, includes a stormwater detention pond or pond system greater than or equal to one (1) acre. If the singular or cumulative size of a stormwater detention pond or pond system is less than one (1) acre in size, then the applicant shall not need to include a littoral zone unless the stormwater detention pond or pond system directly connects to a native habitat area or watercourse.

b. No less than 30 percent of ~~Except as permitted elsewhere in this Environmental Technical Manual, an applicant shall set aside at least thirty percent (30%) of the surface area reserved for each stormwater detention pond, or series of ponds if connected with equalizer pipes, measured at normal water level, shall consist of to be used as a littoral zone.~~ In cases where a retention pond exceeds the minimum area needed to treat stormwater runoff, the area of littoral zone shall be based on the minimum pond size that would have been required for stormwater treatment. Littoral zones will not be required in dry retention facilities (e.g., sodded depressions designed to hold stormwater for a fixed period of time, then dry out as water is lost through percolation and evaporation) or underground vaults. Littoral zones are required, but need not be planted in lakes less than one

acre created solely for aesthetic or attenuation purposes (e.g. do not receive untreated stormwater discharges).

2. **Alternative Designs.**

- a. The Natural Resources Department may consider alternative designs to planted littoral zone areas in lieu of or in combination with planted littoral zones, so long it determines in its best professional judgment that an alternative design promotes a healthy stormwater detention pond or pond system and provides similar or greater ecological benefits than the standard littoral zone requirements. In exercising their best professional judgment, Natural Resources staff shall use the Evaluation Parameters contained in Section G.7 of this Environmental Technical Manual to evaluate whether alternative designs provide similar or greater ecological benefits.
- b. Alternative designs are site-specific to the proposed project and may include, but are not limited to: upland buffers, shoreline plantings, bio-swales, floating wetland islands, wildlife corridors, habitat management, habitat enhancement, habitat conservation, rain gardens, and other native vegetated areas.
- c. An applicant shall not include in any alternative design areas protected or set aside from development pursuant to other provisions of this Code.
- d. An applicant may submit an alternative design for all existing and future developments.

32. **Littoral Zone Plan and Location.** An applicant shall submit a plan shall be submitted showing the proposed location(s) of the littoral zone(s) or alternative design, including and a typical cross-section. An applicant should locate littoral zones and alternative designs should be located away from residential lots whenever possible to the greatest extent practicable, with a preference and shall be concentrated toward areas that support ecological values and functions near the outfall of each pond when practical. Perimeter or fringe littoral shelves are discouraged.

3. **Platting.** Tracts of land identified on proposed plats that contain stormwater ponds shall have a note placed on the plat identifying that planted littoral shelves may be located with these tracts.

4. **Maintenance.** Required littoral zone vegetation shall be maintained in perpetuity by a designated responsible entity or the owner of the property.

5. **Bond and Maintenance Easements.** A monitoring and maintenance bond in a form acceptable to the Board shall be submitted to the County prior to the excavation of the on-site lakes. The bond shall be in the amount to cover 100 percent of the estimated cost for two years of monitoring and maintenance of the littoral zones. The applicant shall also provide a temporary maintenance easement to the County in the event that the littoral zone bond must be used to properly maintain the littoral shelf. Littoral zone bonds are not required for non-residential commercial projects.

56. **Species to be Planted-Planting Plan.** The applicant shall submit a planting plan that includes the location and species to be planted in littoral zones and/or alternative designs. For littoral zones, initial planting shall include at least three different herbaceous

emergent native species for each littoral zone. No species shall constitute more than 50 percent of the number of plants to be planted.

~~7. **Installation.** Plants should be installed in that portion of the littoral zone between normal water level and a depth of two feet unless otherwise approved by the Natural Resources Department.~~

~~8.a. *Source of Plants.* If plants are to be obtained from a nursery, the plan must indicate the source. If plants are to be obtained from the wild, the applicant must provide proof that the appropriate permit has been obtained from the Florida Department of Environmental Protection.~~

~~9.b. *Proposed Spacing.* For littoral zones, cCenters of vegetation shall be no farther apart than three feet for herbaceous individual plants or clumps or five feet for floating-leaved species. For alternative designs, herbaceous plants shall be on three foot centers, shrubs shall be planted on five foot centers, and trees shall be planted on ten foot centers, unless otherwise approved by the Natural Resources Department.~~

~~10.c. *Planting Schedule.* A planting schedule is required in all planting plans. Plantings for littoral zones and alternative designs shall be conducted during conditions that support the success of the planting efforts. All planting timeframes are subject to approval by the Natural Resources Department.~~

~~1) *Littoral Zones.* Littoral zones should be planted during the months of June through October. Littoral zones in lakes excavated during these months shall be planted within 30 days following excavation, provided that normal water level is or is likely to be attained within that time period. Littoral zones in lakes excavated in November through May shall be planted by June 15 unless otherwise decided by the Natural Resources Department based on existing environmental conditions. The County shall be notified within seven days of planting.~~

~~11.d. *Guarantee of Coverage.* Supplemental planting will be required on an annual basis if coverage is less than ~~85~~65 percent and the littoral shelf or alternative design fails to show progress toward success, unless otherwise determined by the Natural Resources Department based on existing conditions. Desirable native herbaceous emergent plants that recruit within a littoral zone or alternative design will be counted towards the coverage requirement.~~

~~612. **Proposed Monitoring.** The success of the littoral zone plantings shall be assessed twice a year during the growing season (April through November). An annual littoral zone monitoring report shall be submitted to the County summarizing the results of the two monitoring events. Monitoring schedules for alternative designs will be determined by the Natural Resources Department during the review of the alternative design proposal. An annual monitoring report for alternative designs shall be submitted to the County summarizing the required monitoring. The aAnnual monitoring reports may be submitted via mail or e-mail attachment [PDF, Word]. Each monitoring report shall include all of~~

the applicable elements reflected in the monitoring report guidelines located in Appendix I of the Environmental Technical Manual. Monitoring reports that do not include all of the required information shall be deemed incomplete and require a re-submittal. The monitoring report shall be prepared by an environmental scientist, ecologist, biologist or person with similar training.

743. ***Success Criteria.*** The littoral zone or alternative design shall be deemed successful and monitoring may cease when the ~~herbaceous emergent~~ native vegetation equals or exceeds ~~865~~ 65 percent coverage and nuisance/invasive species coverage constitute less than 15 percent. For littoral zones, the 65 percent coverage shall consist of herbaceous emergent native vegetation.

844. ***Nuisance/Invasive Species Criteria.*** Nuisance/invasive species (e.g., cattails, primrose willow, torpedo grass, ~~Brazilian pepper, melaleuca, air potato~~) shall be removed from the littoral shelves and alternative designs whenever they constitute more than 15 percent of the vegetative cover of in the littoral zone area. If the nuisance/invasive species impede the establishment of native plants, they shall be physically removed ~~from the littoral shelves~~ and properly disposed. Native woody species that invade a littoral zone planted area and trend toward becoming a monoculture shall physically be removed from the system.

9. ***Administrative Variance .***

a. ***Requests for an Administrative Variance.*** An applicant may apply for an administrative variance from the Littoral Zone Requirements of this Environmental Technical Manual if an approved and implemented littoral zone or alternative design cannot reasonably reach success criteria. An applicant shall submit a variance application by letter directed to the Natural Resources Department. The variance application must include a written explanation why good cause exists for relief, including a demonstration of any impediments that prevent a site from achieving success criteria. The Natural Resources Department shall evaluate a variance request, and may request additional information from the applicant. No later than thirty (30) days after receiving a complete variance application, the Natural Resources Department shall then issue a letter granting or denying the administrative variance, with a written explanation for its conclusion.

b. ***Variance Criteria.*** The Natural Resources Department may grant an administrative variance if it determines that each of the following criteria have been met:

- 1) Success criteria have not been achieved due to uncontrollable environmental factors (e.g. weather, birds, fish, deep holes, water level variations, improper design/construction, etc.).
- 2) There has been a significant level of effort by the property owner to achieve success criteria (e.g. number of planting events, number of monitoring reports, costs, etc.).
- 3) The lack of success is a not result of land-owner actions or inactions.

c. Alternatives.

- 1) If the Natural Resources Department determines that a variance is warranted, then it may require an alternative design concept consistent with Section A.2. from the applicant to compensate for the unsuccessful areas. The applicant must provide, at a minimum, a sketch and cross-section showing the proposed alternative design. If the County determines that the proposed alternative design requires modification of the permitted stormwater facility design, then it may require the applicant to submit engineered plans in addition to modifications to the approved construction plans to meet the Land Development Regulations.
- 2) If the Natural Resources Department determines that an alternative design is not viable due to special conditions and circumstances that exist, which are peculiar to the land, it may reevaluate the success criteria based on site specific factors.

d. Appeals. A written determination of the Natural Resources Department made under the provisions of this section shall be final, provided that the owner or applicant may, within 30 days of the determination, appeal that determination to the Board of County Commissioners in the same manner as Chapter 74, Section 74-93 of the Sarasota County Code of Ordinances.

105. **Stocking of Exotic Fish.** Stocking of exotic fishes such as Tilapia (*Oreochromis sp.*, *Sarotherodon sp.*, and *Tilapia sp.*), grass carp (*Ctenopharyngodon idella*), suckermouth catfish (*Hypostomus sp.*) and others, shall be prohibited in ponds with littoral zones. If such species are introduced by other means (cross contamination by maintenance boats, birds, etc.) and are impacting the success of the littoral zone, they shall be removed from the stormwater system ~~where~~ to the extent practical.

116. **Water Withdrawals for Irrigation.** If water withdrawals for irrigation purposes are proposed from stormwater ponds that contain littoral zones, the County may require an irrigation plan to establish minimum water levels and control withdrawals to ensure the success of the littoral zone.

Section 3. Effective Date: This Ordinance shall take effect immediately upon receipt by the Office of the Secretary of the State of Florida.

PASSED AND DULY ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SARASOTA COUNTY, FLORIDA, this _____ day of _____ 2013.

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

BY: _____

Chair

ATTEST:

KAREN E. RUSHING, Clerk of
Circuit Court and Ex-Officio Clerk
to the Board of County Commissioners
of Sarasota County, Florida

BY: _____
Deputy Clerk

**NOTICE OF PUBLIC HEARING FOR
INTENT TO CONSIDER AMENDMENTS TO
CHAPTER 74 OF THE SARASOTA COUNTY CODE
THE LAND DEVELOPMENT REGULATIONS
THE ENVIRONMENTAL TECHNICAL MANUAL**

**BOARD OF COUNTY COMMISSIONERS
SARASOTA COUNTY, FLORIDA**

NOTICE IS HEREBY GIVEN, that the Sarasota County Commission, at their regularly scheduled meeting on December 10, 2013 at the Sarasota County Commission Chambers, R.L. Anderson Administration Center, 4000 South Tamiami Trail, Venice, Florida at 1:30 p.m., or as soon thereafter as possible, will consider and act upon the adoption of the following proposed Ordinance:

ORDINANCE NO. 2013-__

AN ORDINANCE OF THE COUNTY OF SARASOTA, FLORIDA, RELATING TO REGULATIONS GOVERNING SUBDIVISIONS AND THE DEVELOPMENT OF LAND; AMENDING SARASOTA COUNTY ORDINANCE NO. 81-12, AS CODIFIED IN CHAPTER 74 OF THE SARASOTA COUNTY CODE; AMENDING THE ENVIRONMENTAL TECHNICAL MANUAL AS INCORPORATED THROUGH SECTION 74-212; AMENDING SECTION A OF THE ENVIRONMENTAL TECHNICAL MANUAL RELATING TO LITTORAL ZONES; PROVIDING FOR AN EFFECTIVE DATE.

All interested parties are invited to appear and be heard. Complete drafts of the proposed Ordinance and/or details are available for public inspection in the office of Sarasota County Conservation & Environmental Permitting, 1001 Sarasota Center Blvd., Sarasota, Florida, 34240. Written comments will be heard and considered and may be sent or delivered to Sarasota County Conservation & Environmental Permitting at the above address prior to the date of the hearing. Said public hearing may be continued from time to time as announced at the aforementioned hearing or as may be found necessary.

The following time limits for speaker presentations are in effect, pursuant to County Resolution No. 91-22: 20 minutes for petitioner presentation; 5 minutes for citizen comments per speaker; 5 minutes for petitioner rebuttal. The Chairman may modify time limits to ensure due process to all participants.

NO STENOGRAPHIC RECORD BY A CERTIFIED COURT REPORTER IS MADE OF THIS MEETING. ACCORDINGLY, ANY PERSON WHO MAY SEEK TO APPEAL ANY DECISIONS INVOLVING THE MATTERS NOTICED HEREIN WILL BE RESPONSIBLE FOR MAKING A VERBATIM RECORD OF THE TESTIMONY AND EVIDENCE AT THIS MEETING UPON WHICH ANY APPEAL IS TO BE BASED.

Sarasota County prohibits discrimination in all services, programs or activities on the basis of race, color, national origin, age, disability, sex, marital status, familial status, religion, or genetic information. Persons with disabilities who require assistance or alternative means for communication of program information (Braille, large print, audiotape, etc.), or who wish to file a complaint, should contact: Sarasota County ADA/Civil Rights Coordinator, 1660 Ringling Blvd., Sarasota, Florida 34236; Phone: 941-861-5000; TDD 941-861-1833; Email: adacoordinator@scgov.net

Advertising Date: December 2013

Littoral Zones

Authorization to advertise a public hearing
to consider amending the
Environmental Technical Manual of the
Land Development Regulations.

Commission Direction

- **Prepare amendments for consideration.**
- **Specifically address the following:**
 - Eliminate water quality as a primary function.
 - Allow for alternatives to littoral zones.
 - Focus requirements on larger and connected systems.
 - Reduce the required plant coverage.
 - Allow administrative variances.



Additional Considerations

- **Eliminate the platting requirement.**
- **Eliminate the bond requirement for monitoring and maintenance.**

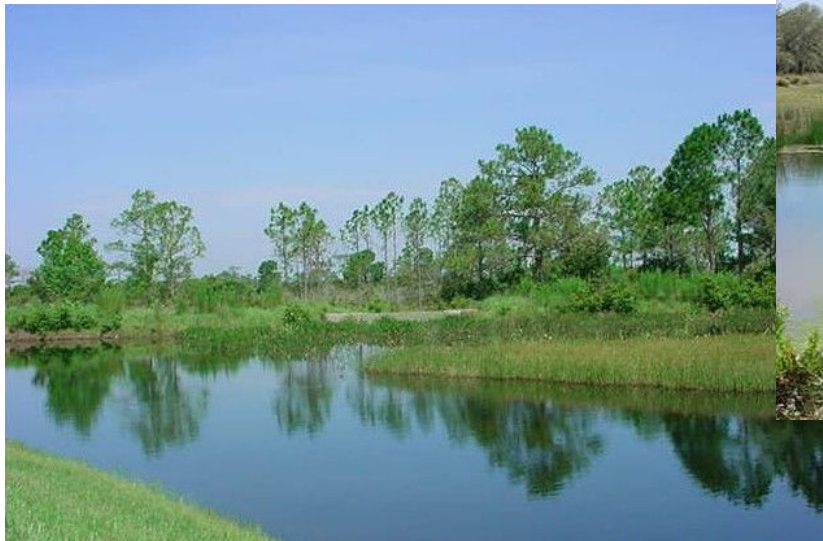


- **Substantial community input received prior to most recent Commission discussion.**
- **If a public hearing is authorized, re-engage community as follows:**
 - Development Services Advisory Council
 - Stormwater Environmental Utility Advisory Council
 - Professional Stakeholders Workshop (October 24th)
 - Homeowners Workshop (October 24th)



EIS and Comprehensive Plan

- **If a public hearing is authorized, the following will be completed:**
 - Economic Impact Statement (EIS).
 - Comprehensive Plan consistency determination.



Requested Board Action

- **To authorize advertisement of a public hearing to consider amending the littoral zone requirements contained in the Environmental Technical Manual of the Land Development Regulations.**
- **A public hearing has been tentatively scheduled for December 10, 2013.**

