

MINUTES OF THE MEETING OF THE BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

9:00 AM

The Board of County Commissioners of Brevard County, Florida, met in special session on January 16, 2014 at 9:00 AM in the Government Center Commission Room, Building C, 2725 Judge Fran Jamieson Way, Viera, Florida.

Call to Order

Attendee Name	Title	Status	Arrived
Robin Fisher	Vice Chairman/Commissioner District 1	Present	
Chuck Nelson	Commissioner District 2	Present	
Trudie Infantini	Commissioner District 3	Present	
Mary Bolin Lewis	Chairman/Commissioner District 4	Present	
Andy Anderson	Commissioner District 5	Present	

ITEM II., BREVARD COUNTY COMPREHENSIVE PLAN, CONSERVATION ELEMENT, OBJECTIVE 5, WETLANDS

Ernie Brown, Natural Resources Management Director, stated several years ago the Commission started working thought the issue of commercial impacts to wetlands within Brevard County; in late 2010/2011 the Board commissioned a working group to discuss what are the appropriate actions from a County perspective as it relates to the Comprehensive Plan; and the States rules and regulations that effect the Comprehensive Plan relative to wetland impacts in Brevard County. He added, through a very long and productive process some strong recommendations were provided to the Board; the Board evaluated those and made some modifications; in earlier 2012, using the recommendations the Board commissioned a Study to look at what are high functioning wetlands and what are landscape level wetlands. He went on to say in May the Board looked at a scope of work and what the tasks associated with that kind of Study, and it came up with four basic tasks that the consultant was to evaluate and bring back to the Board, and also the community at large, as the tools necessary to evaluate high functioning wetlands and to look at landscape wetlands. He pointed out in the staff report on page two, in October 2012, the Board approved policy language, as kind of a holding place, this is in an attachment; the adoption package that went to the State as it relates to the Comp Plan allows for the inclusion of the definition of high functioning wetlands and landscape level systems into the land development regulations and the Comprehensive Plan by amendment at Study completion, and prior to implementation; and this is where the Board is today. He stated the Study has been completed and thoroughly reviewed by staff and today's workshop is to walk through the Study and what it really entails so that not only the Board gets an opportunity to ask questions, also the community and the implementers, the development community, and the consulting community gets a good public view of it; and he thinks the consultants have done an extraordinary job. He added, the second element of October 2012, efforts where impacts to high functioning and landscape level wetlands are not permitted until the Study is complete and subsequent plan amendment and land development regulations are enacted to incorporate definitions that contain meaningful and predictable standards; this speaks to everyone's next steps; staff is in a holding pattern until the Study was complete; and the Board's actions today will be consideration of taking the methodologies and putting them into the Comp Plan. He stated staff has established interim guidelines, called the Green Light Doctrine, and it was put into the Comprehensive Plan; and the last year and a half there will be created in this process authorization of submittal's by applicants that they could actually propose impacts to wetlands defined by the State as, low quality of low functioning with a total cumulative of less than five

January 16, 2014

acres; or less than 0.1 acre of impact to isolated wetlands where the State not require mitigation. He explained that was the interim measure; it was very narrow in scope, but it allowed for some projects to move forward while staff was dealing with the Study, and while the Board was able to make the decisions for the next action. He noted the credit to staff and to the consultant who worked diligently to ensure that this was a well thought out, highly scientific process, and countless hours to make this a quality product for the Board to use a decision making tool in the future.

ITEM II.A., COUNTYWIDE WETLANDS STUDY PRESENTATION - BKI, INC. CONSULTING ECOLOGISTS

Bill Kerr, President of BKI, Inc. And Ecospatial Analysts, Inc., stated his appreciation in working on the project; this is the 30th year that he has been in business, consecutively in Brevard County; and the company has a wealth of experience doing wetlands, and all the changing rules and regulations. He introduced Chris Harnden, and Vickie Larson, who are probably the best Geographic Information Systems (GIS) people in the Country; and they were able to come together with staff and develop this methodology that is before the Board. He stated wetlands are a little different to define; it is easy to define a building and a plan, but wetlands change from year to year; they have tried to develop a methodology in conjunction with Ernie Brown and his staff, and they have worked very hard to come up with a methodology to identify what staff has asked them to identify, at the time it needs to be identified, because if identified this year, three of four years down the road one comes to the same wetland it is going to be different; and that was a challenge they faced.

Chris Harnden stated the Wetlands Study had four points; it was to develop the County's specific wetland assessment method; it was to provide reference examples to staff of really high functioning wetlands throughout the County; it was to develop a map of potentially landscape levels systems throughout the County; and to develop a toolbox to train staff and consultants in using the methods. He went on to say the basic assessment for wetlands has two aspects, one is the landscape level assessment, so one has to determine two things, does it meet the definition of landscape level and is it wetland high functioning; there are two criteria that wetlands are assessed on; the landscape level and high functioning; and to determine if a wetland is part of a landscape level system; and this is done by analyzing a combination of parameters that include location, hydrologic connectivity and size of the wetland. He stated this was part of the language the Commission had previously approved; the definition of landscape level, the wetland system is either five acres or greater in size, or it is located within the landscape level polygon and is defined by the Army Corps of Engineers (ACOE) as hydrologically connected to the St. Johns River or the Indian River watersheds then the system is landscape level; if a wetland is considered landscape level, the Board will have to look at it and review potential impacts; and the assessment of a wetland is to determine if it is high-functioning. He reiterated a wetland is considered landscape level if it is five acres or larger; it that is a no then continue to the location analysis. He questioned if the wetland located within the landscape level polygon and determined to be hydrologically connected to the St. Johns River or Indian River Lagoon watershed; if that is a yes, then the wetland is considered landscape level; and if a wetland does not meet the criteria to further analyze it would go to the high functioning assessment. He stated the high functioning are as follows: calculate the acreage of the surrounding land uses within a 100m (333 feet) buffer; start landscape component, input the acreage of each land use, the tool calculates LSI; estimate the water quality treatment category score; determine the hydrologic indicator score based on the indicators observed within the wetland; determine the percentage of appropriate wetland vegetation coverage; determine the percentage of exotic or invasive plant species coverage; determine the final score; and if the score is 0.70 or greater, the wetland is considered high functioning. He talked about landscape support index (LSI) looking at a 100m buffer surrounding the wetland; there are different FLUCFCS, land uses, associated with mapping;

and one uses the flex codes to evaluate if the buffer is supporting the wetland system; in this task one does a GIS analysis of the buffer, one comes out with different acreage's for each land use within the buffer and that percentage is multiplied by a coefficient that is in the scientific literature that evaluates different land uses and their capacity to help or hinder the function of a wetland. He explained the water environment is assessed by looking at water quality treatment, and that would be looking at different things in terms of, does water just run right off development straight into wetland; does it run through a water treatment facility, in terms of dry detention, wet detention, different aspects; and the reviewer is going to score these and that will be a score between zero and five. He went on to explain the water treatment part one is the water quality treatment and the assessor is going to estimate the percentage surrounding the wetland of the different water quality treatments; and there is another aspect, which is the hydrology is evaluated by hydrologic indicators in the wetland that being adventitious rooting on the different plants, lichen lines, staining, and upland vegetation encroachment. He stated the water quality criteria breaks down into four different things; severely altered with strong evidence of succession to transitional or open water plant community, inadequate to maintain a viable wetland system; adequate to maintain a viable wetland system; adequate to maintain a viable wetland system, external features may affect wetland hydrology; and maintaining a viable, high functioning wetland system.

Vickie Larson stated the vegetative community score was a component of the wetland that was used with two considerations; one, the appropriateness for the wetland vegetation that is in the wetland itself; this is important because one is evaluating obligate or facultative wetland; and often times wetlands have a variety of vegetation that could grow anywhere and are not specific to the wetland; that was a very important component of the scoring system. She added, he or she is plugging in values that are based on direct percentages of vegetation that occurs in the wetland; these evaluations, like the hydrological scores, are to be done in the field; and this is not a tool that can be done adequately from a desk top, one has to place their boots on the ground to be able to determine the actual species of vegetation that are occurring in the wetland. She continued to say when one goes into the wetland they are going to estimate what percentage of vegetation is considered exotic or invasive species; enter the percentage in the spreadsheet; the spreadsheet will calculate the score as the average of the appropriateness score and exotic score; and the table will average the vegetative scores, unless the exotic value exceeds the wetland value at which point the score will be zero. She stated this really has to do with, if that wetland is even in a situation to recover if it were to be managed; and one wants the best of the best when talking about high functioning systems. She talked about the observation of percentage of appropriateness of wetland vegetation; and observation of percentage of exotic's or invasive vegetation, such as a Brazilian pepper bush. She explained the overall wetland assessment score is calculation by summing all three sections scores and dividing by 30; highest functioning wetlands will have a score near 1.0; and if the wetland score is greater than 0.70, the Board will have the opportunity as County Commissioners to evaluate the system for approval as a high functioning wetland.

Mr. Harnden presented an example of a wetland in poor condition; stated the score depicts that the wetland has impacted surrounding, degraded water quality, and vegetative community composed of 20 percent exotic plants, therefore the landscape score is a 5.16; the water environment of 4.96; the vegetative community, because of the Brazilian pepper, is 6.5; and when they are added together and divided by 30, the .554 which would indicate it is not a high functioning wetland system and could be impacted without Board approval. He presented high functioning wetland; stated he did use the method to go through a lot of different methods throughout the County; the task was to give a list of representative wetlands that were high functioning; and he evaluated nearly 40 wetlands throughout the County to determine what the cutoff would be, and if it made sense with our best professional judgment. He stated he and Ms. Larson spent three years mapping vegetative communities throughout the St. Johns Water Management District lands, nearly three hundred thousand acres; therefore they have a good

January 16, 2014

handle on what a high functioning wetland looks like and what wetlands that do not function well; and with all that experience, they have come up with a cutoff and feel like the method works well. He presented an example off Wickham Road; stated the first thing one would have to do to access the land is get the boundary of the wetland, which is a GIS application, then establish the 100 meter buffer, and then take it one step further and use coverage's. He stated St. John's has a land use coverage of their entire Water Management District; everything that is mapped there has a different flux code, which is a land use coding system; he went on to explain the coding system; an example is the wetland in the middle, the 100 meter buffer, and then all the different land use codes that make up the 100 meter buffer; and since land use codes are not necessarily updated, one might have to go on the wetland and amend the land use code to make it more appropriate. He added, it would be the landscape assessment (LSI); that would be the first score going into the assessment, then the water environment, which is the water quality treatment; the wetland has 50 percent of it would score natural; and 50 percent of it has a small vegetative strip between a car wash and the wetland. He stated for the wetland off of Wickham Road, one would have a landscape code of 4.86, the water environment score of 6.65, a vegetative community score of an 8, and the overall assessment score would be 0.650, which is less than the 0.7; therefore it would indicate it is not a high functioning wetland system; and it could move forward with proposed impact with the Board review.

Ms. Larson stated as part of the process they were tasked with providing examples of what they would consider high functioning wetlands, which is important for creating a base line for decisions that can be made; and she put together a portfolio of documentation representing 19 different wetlands systems throughout the County.

Commissioner Infantini stated she thought high functioning had to do with how much percolation there was within the property; high functioning wetlands would be one that provided a great deal of percolation so when the water hits the surface, it percolates down into the aquifer; and she asked if percolation has nothing to do with any of this, because clearly she has a misunderstanding about high functioning wetlands.

Ms. Larson stated specifically regarding wetlands and wetland function to recharge of the aquifer; wetlands do provide water for the aquifer, but when using the word 'percolation', most of the direct input to the aquifer actually occurs in asterix soil type, and not a hydric soil condition; slowly overtime the wetlands lose there water, but a lot of times the soil has clay underlining or it is impounded and that is why it is a wetland, because the water stays more on the surface and does not recharge the ground water directly; and that was not a significant factor in the consideration of the evaluating of the function of a wetland. She noted, they were addressing it more from the landscape level.

Commissioner Infantini asked if one was concerned about water that was just stagnate on the ground, as opposed to water that is filtering through; stated she thought one of the Board's big concerns was worrying water that was percolating; inquired if it is not re-charging the aquifer, how is it if someone develops on a wetland, and how is it going to impact the community; and stated as much as if he or she is distributing some high functioning wetland she would not want somebody distributing something that was going to be re-charging the aquifer, because ultimately it is going to get into the drinking water.

Mr. Brown stated when one looks at wetlands and the water quality component of it, staff looks at its ability to filter water, which is a surface water function as opposed to a ground water function primarily; the water that flows through it, the nutrients that come in from the runoff will be taken up by the plants, so the nutrients are held in the wetland and the water that leaves it is actually clean; and it is not a percolation issue but it is a water cleansing issue. He added, wetlands by design actually hold water and because they hold water, it actually treats the water; when using the word stagnate, in that process is actually is performing some incredibly valuable

January 16, 2014

water quality functions, but it is not percolating through; and wetlands predominantly focus on a surface water function and the cleansing of the surface water as it goes through the wetland system and discharges cleaner. He stated one of the key factors of why this consulting team was put together was because of their extraordinary and recent knowledge set of over 300,000 acres of land assessment in the St. Johns River area.

Ms. Larson stated the examples the Board has been provided were extracted from 40 different wetland systems that they ran through a evaluation process; and they are on public property. Mr. Brown stated they have taken reference samples of what is considered a high functioning wetland, whether it is a bay swamp, a mangrove swamp, wetland hardwood, cypress, or pine flat woods; the reason for the reference examples was so that when a consultant is going out and saying 'what is high functioning', staff can give them an example of what really is a extraordinary wetland system; and it is important to note that these are representations of extraordinary wetland systems that Brevard County has.

Mr. Harnden talked about landscape level systems; the wetland system is either five acres or greater in size, or located within the landscape level polygon and is defined by the Army Corps of Engineers (ACOE) as hydrologically connected to the St. Johns River or the Indian River watersheds then the system is determined to be a landscape level system; he stated they spent a lot of time trying to develop landscape level polygon; and one would have to look at a flood plains of both the Indian River Lagoon and the St. Johns River. He added, anything that is within the flood plain level has a potential to landscape level, because at high water all the systems are basically connected; he stated they did an extensive GIS procedure, and utilized the flood plains maps.

Mr. Brown stated one of the directives of the Board was to create a map so the community could get an idea of where the landscape level systems may exist; it is absolutely not a regulatory tool, it can not be a regulatory tool; one can not regulate wetlands based on modeling or ariel observation or mapping; and he or she actually has to get out there what the wetland is doing, and whether or not a wetland exists and how it is functioning. He reiterated, if the land is greater than five acres, it will automatically go before the Board to ask the question does impacts to the wetlands result in a public interest; and regardless of the size of the wetland, if one is hydrologically connected to one of the major estuaries such as the Indian River Lagoon; and wetlands hydrologically connected to the Indian River Lagoon provide a valuable function to everyone as a community. He stated one of the greater challenges is defining hydrologically connected, and the best place to go is the Army Corps of Engineers; whenever one is dealing with wetlands, it is going to go through this process, one is going to have to ask 'is this hydrologically connected', because it will determine whether or not the ACOE is going to regulate he or she; and anyone who has a wetland on their property is going to have to make that determination. He added, the ACOE has a manual that outlines the determining factors of whether a wetland is actually hydrologically connected to St. Johns River or the Indian River. He stated if one has five acres or more, they will spend some time before the Board; if one is in the polygon and the core of engineers has determined that one is hydrologically connected, they will spend time before the Board; if high functioning based on the assessment, they will spend time before the Board; and the time in front of the Board is to allow for a community conversation as of whether or not it meets the public interest.

Mel Scott, Assistant County Manager, stated everyone spent a lot of time talking about what would require public interest determination; for the first time in Brevard County's history having a comprehensive plan, staff would then now have an opportunity for those low functioning wetland systems that are along the commercial corridor have been identified to move right to mitigation; and that was the impetus of the Board to start this conversation years ago to undo this outright prohibition it had here to for of impacting wetlands. He added, this is about giving the

January 16, 2014

opportunity for commercial properties strategically located along the public investment to move straight to mitigation, something they have not had up until this moment.

Mr. Brown stated a couple of things this process does not do, and the State of Florida retains the preempted right on these two areas; this process does not determine if he or she has a wetland; that is not staff's job; the State will determine whether or not one has a wetland; it also does not determine how much the mitigation costs is going to be for the impacts; and those are two important factors. He went on to say staff did not want to get into the business of telling he or she they have a wetland or how much it was going to cost one to impact the wetland; that is strictly in the privy of the State; staff wanted to make sure all the responsibilities that are the State responsibilities are soundly left there; and what is by Comp Plan the County's responsibilities is determining the community value benefit or impact to the community associated with wetlands. He added, it provides a value assessment of the wetlands as it relates to the community; the threshold that was established at .70 is really the breaking point that was chosen to say these are high functioning, not to say the wetlands below are not valuable, but staff made the breaking point of high functioning versus medium functioning and then at the bottom of the scale is low functioning; and if one had a very low functioning wetland that was dunité of normal wetland vegetation, it was 100 percent Brazilian pepper, even though it would qualify as a very low functioning wetland system, he or she could still not impact that under the current comprehensive policy, because it was treated the same level of value as Bucks Lake. He went on to say his understanding from the Board was it wanted to bring some good science into it so one can evaluate the functionality of the wetlands and make determinations from a planning perspective as to what the impacts mean to the community.

Commissioner Infantini stated she thought staff did not want to duplicate the efforts of the State; she thought the State had rules regarding wetland impacts. Mr. Brown responded they do. Commissioner Infantini asked why not just mirror the State's rules and then the County can abandon this portion or adopt the State's regulations, thereby forgoing having the County regulated as well as the State, it would get rid of the one layer of bureaucracy. Mr. Brown stated staff had very long discussions about this over the last several years, and at the end of the day, after some very lengthy conversations with the State, the County has an obligation to evaluate wetland impacts as it relates to the planning component of the community; and this is planning, this is not the regulatory framework that the State deals with. Commissioner Infantini stated it was her understanding that by adopting the State's rules, that is fulfilling the County's obligations, that it did not have to have stricter rules just adopt the State's rules. Mr. Scott stated that point had been made, but the Board's direction was to come back product, not to come back to with something that sought to get the County out of the game altogether and have a comprehensive plan that deferred to the St. Johns Water Management District or the ACOE criteria; and that is not the direction provided to staff. Commissioner Infantini stated she knows everyone is working hard to become business friendly and that is why she is jumping on this a little bit, because the County has been giving out tax abatements and things to attract business; and one way the County can attract business is by reducing the additional layer of regulation the County places on business that perhaps in not placed on a business starting up in another county.

Commissioner Anderson stated that was his concurrence but he found out even with all the amended stuff at Tallahassee level, there were two or three Comp Plan issues that were identified out of hundreds submitted, and one of them was Brevard County; and the State basically said Brevard County has to do this in the Comp Plan. Commissioner Infantini stated they did not tell Brevard County it had to adopt a stricter plan. Commissioner Anderson stated Brevard County tried to adopt a less restricted plan and then went to mediation, and some groups pushed back and this is what it came out to be. Commissioner Infantini stated she does not Brevard County can adopt their plan. Commissioner Anderson stated Brevard County can adopt their plan but the State is still going to say Brevard County has to do something; and at

January 16, 2014

least this plan is not subjective. Commissioner Infantini stated she is happy they have added some science to it, and she thinks the BKI, Inc. has done an excellent job quantifying so that there is no arbitrary random allocations as to one whether one has a wetland or not.

Mr. Kern stated when he or she starts to address wetland issues there are always individuals, on both sides of the issue that are very sensitive to what is going on; under Mr. Brown's direction with the staff they tried to address the planning component it is only, as the State and the ACOE has the other responsibility; this methodology reduces the impact that the County had on lesser quality wetlands, and in that case because of the surrounding landscape, and the water quality, water treatment, all that, there is a large component of wetlands that are made available to be develop that were forbidden to be developed under the regulations Brevard County had. He added, what this tries to do is stick a balance between on what wetlands were worth, on a planning basis are worth to Brevard County, and what wetlands to do meet that criteria; one has to look at this methodology to be able define ones that are critical, and ones that are not so critical; and the ones that are not so critical are available to be developed where they were not under Brevard County's regulations before. He went on to say under Mr. Browns direction and with what Mr. Harnden and Ms. Larson did with their GIS information, it does provide a balance to protect the larger, more important to the community wetlands, and lets the rest of the wetlands go to be permitted by the State and the Federal Government under their regulations, and essentially relaxes Brevard County's regulations on the wetlands. Commissioner Infantini commented this is a huge improvement and she thinks they done a great job.

Commissioner Fisher stated the Board was trying to make development a litter easier; they knew some wetlands deserved to be built on, but at the same time it did not want to go back to just relying on the St. Johns Water Management. He asked how BKI, Inc. came to .70 versus .80. Mr. Kern stated essentially the reviewed research, they split it into thirds, and the top thirds of the wetlands, which is .66 and above, in staff's assessment there are high quality and then the two-thirds below do not meet that criteria; and Mr. Harnden and Ms. Larson can explain to the Board why they reached a .70 instead of a .66. Ms. Larson stated they spent a lot of time looking at wetland systems and putting numbers in for all ranges, because it is really a balance between the water environment and vegetative environment; the landscape environment, because any one major negative thing can bring the quality of the function of the wetland down; it could have great vegetation score, and it could have a great landscape score, and if someone completely eliminated all of the water environment for that significant altered the water to the wetland, that score is going to go very low; and it is a combination of the value and the and the significance of all three the components evaluated over a broad range of wetlands that occur in Brevard County. She added, they were not evaluating wetlands anywhere else but right in Brevard County, so it is exclusive of the scoring system they came up with to the conditions and the environment that exist locally. Commissioner Fisher asked if that is taking the little bit above average and let the engineers, the developers design it and figure it out, but they will still have to go through St. Johns Water Management and ACOE to satisfy them. Ms. Larson commented in regards to being a business friendly community, there was a lot of consideration that BKI, Inc. had as a team for the sensitivity of creating more regulation and different hoops that developers may have to jump thought; essentially they created one additional step in evaluating the wetland would not be required in a standard regulatory process, and that is the landscape scale index; and that is the simple procedure of putting a 100 meter buffer around the wetland system and coming up with the impacts to that wetland. She added, everything else they have asked a cooperation or industry to provide is something that is required for there wetland application to the State. Commissioner Fisher asked if the Board gave it to the St. Johns Water Management then it would not have any of this; with Ms. Larson responding yes. Mr. Brown stated that is a challenge to answer that question with yes or no because if staff went to eliminate it all and attend to go strictly to State processing, the years that staff would spend discussing that would put the development community at a severe

January 16, 2014

disadvantage, because they would not be able to move until the State said yes or no; and they would be locked into the existing rules they have now. Commissioner Fisher pointed out that St. Johns Water Management was less strict, Brevard County was stricter before; and now it Brevard County is in the middle. Mr. Brown stated correct, and St. Johns Water Management does not say yes or no one can impact, they tell he or she how much it is going cost to impact.

Mr. Kerr stated there are three separate processes; there is Federal process, which is governed under Section 404; State process, which is governed under Chapter 373; and what Brevard County was essentially told was based on its old regulation, they had to do a planning process; and it is something Brevard County under the Federal process and State process had to do. He continued to say what they were trying to do was not be as restrictive, which he believed was the direction from the Board was not be as restrictive on the lower quality wetlands, and identify those areas that the Board has an opportunity to decide; this methodology is able to identify a wetland as it changes through out the years, because wetlands to not all stay the same, that is a good thing about this methodology; and one goes through the methodology now, and five years down the road it could change, which is a good thing. He added, what it does not do is tells the development community what they can development what they can not; it only says these are the wetlands above .70 that the County Commission get to make a public interest determination on; the methodology does not choose which wetlands, the State and Federal process choose the wetlands that can be developed and choose the wetlands that can be developed, and choose how much mitigation; and this process does not do that, it just allows the Board of focus on the wetlands that are higher quality.

Commissioner Nelson stated if BKI, Inc. Was going to be doing all this analysis; he would feel comfortable with the .70, but the reality is there will be other firms doing the analysis, and he starts worrying about the math of the development of a project; and his concern is that BKI says 50 percent of the wetland is covered with exotic's, while he would like to believe that it is objective it to some extent is it subjective, because one is making an estimate. He added, he would like to see them air a little on the side of the environment by changing the number a little bit less, because all it does is bring that question to the Commission; if it were .65 instead of .70, it gives the public an opportunity to speak on the issue and allow the Board of County Commissioners to look at it; having dealt with consultants of all types, they are not all the same; and he hates so see the numbers start to get manipulated.

Mr. Kerr stated BKI, Inc. Tried to develop a methodology with staff's input that was essentially eliminated a lot of the controversy that it has in the State in the Federal process; the difficulty is that wetlands and not like buildings and roads, they change; and it is very difficult to put a number on the quality of a wetland, it based on professional judgment. He went to say the methodology that BKI, Inc. Developed it takes a lot of the professional judgment out, it limits it and sets it up in specific perimeters. He noted, it is very difficult to manipulate the numbers.

Commissioner Nelson stated even by Mr. Kerr's own admission it was .66 but he rounds it up to .70; the .70 is arbitrary to the extent that is just he identified year earlier based on years of experience, but it could have been some other number. Mr. Kerr stated the .66 he talked about earlier was just a review that was done of the literature, and it talks specifically about impact assessments; and Mr. Larson mentioned they reviewed over 40 wetlands in the County, 300,000 acres of marsh for the St. Johns Water Management District; and based on their field experience, .70 is the number based on the wetlands that exist in Brevard County. Commissioner Nelson stated the difference is for .05, that five hundredths, they would have to come to the Board of County Commissioners, that is the only difference in changing the number; and so what they are saying basically, the public and the County Commission have the opportunity to look at that one segment of it; that is the only thing that changes; and it does not change anything about the quality or the assessment that is done, it is just what the County Commission get a chance to look at and what the public has the opportunity to come.

January 16, 2014

Commissioner Anderson stated high function to him is A; so he would be more willing to go to a .80, because he wants to protect the high functioning; and he would like to see maybe even a .75.

Commissioner Infantini stated she would like to put a dollar value to this; she went to move her driveway, and when she went to County staff about moving the driveway she was told she had to have a wetland study; the cost to move it was roughly \$10,000; and she priced around wetland studies, and it was anywhere from \$26,000 to \$34,000; she stated Brevard County is going to add to the project cost to do this extra layer; and like Mr. Brown, said Brevard County is not in the business of telling the public if they have wetlands. She added, everybody who wants to develop is going to have to have a wetlands study; she is not saying that everybody's cost is going to run the cost of her project, because it was so small; and that was \$26,000 or \$34,000 that she could have had to spend on the new driveway, but originally staff was telling her she had to have a wetlands study. She noted fortunately she not have to have a wetland study because she did not have wetlands. She stated if Brevard County is trying to be business friendly, and she knows the State, like herself, everyone cares tremendously about the environment; and she does not want anyone to pave over high functioning wetlands, especially one that have percolation that is going to get into the aquifer, which is her drinking water. She went on to say at the same time now the Board is adding this layer of bureaucracy where it could just stop using the St. Johns Water Management, the ACOE, there is enough bureaucracy right there to go by for the whole County; and if Brevard County is trying to attract businesses the Counties that have adopted the State of Florida's regulation structure, they are going to be more business friendly then Brevard County is.

Commissioner Anderson stated Brevard County is not permitted to do that. Commissioner Infantini responded yes, Brevard County is, and please show her in writing. Commissioner Anderson explained Brevard County had that strict Comp Plan, which was horrible, because if was an automatic no; the State said Brevard County has to develop something, and if it tries to go to a less criteria it would end up on court with Sierra Club, and they win; and that is the current rule right now. Commissioner Infantini asked staff to show her something in writing where Brevard County is not allowed to adopt the State regulations as a part of the Comp Plan. Commissioner Anderson pointed out what happens if one does that, it has to go through four more years of Comp Plan changes with the whole Comp Plan; and he is not stalling the developers, the Board need to adopt something.

Mr. Brown stated the reality is one will never get that answer in black and white until he or she applies for it, and to wait for the lawsuits to vet themselves out. Commission Infantini asked what lawsuits; is Mr. Brown telling her that there is no other County that has adopted the State's plan. Mr. Brown stated he did not say that, and does not want anyone to feel he is saying that; he just knows that two years ago staff went through this process; staff had to come back after significant negotiations with the State and come up with something more, so what staff actually provided them, which was different then what if has now, was not sufficient; and so staff came back with something stronger to allow Brevard County to be approved by the State. He continued to say one can evaluate the hypothetical, or it can move on the Boards previous action and direction, which was to bring to the Board the definitions of high functioning landscape level and methodology to evaluate those; he does not know the situation where staff could actually get a definitive answer as to whether Brevard County could immediately, through this next process, unchallenged, drop all of the wetland comp plan criteria, adopt by reference the State standards and be ready to move the development community forward in September, which is what this plan provides. He stated based on the valid history that Brevard County this that it will spend years and years in discussion, and that is what he knows to be the historical. Commissioner Infantini commented the financial aspect is really going to shut down some businesses to move forward; it is a step, but at the same time there is such a huge cost on doing the analysis, she does not know how some of the developers, homeowners can afford.

January 16, 2014

Mr. Brown reminded Commissioner Infantini that they are talking about Commercial and Industrial properties, and if a wetland exist staff is not added any additional requirement for staff to go out to determine whether a wetland exist.

Commissioner Fisher asked of the 40 properties they looked at; if they scored them a .65 or a .80 how many would have come before the Board versus not coming before the Board. Ms. Larson stated the reality of it is the Board's perception of the .7, .6, .8, are very accurate and it is arbitrary; BKI, Inc. Picked a balanced number that was based on their experience, and professional judgment about wetland functions; that is our job; if it went to down to a .65, it would simply mean potentially the Board would have a bit more public interest, evaluations of wetland impacts; and if it went up then the opposite would occur and the Board may have less people having fits about approving wetland development that maybe boarder line on what the Board would consider a high functioning wetland system. She continued to say it comes down to the Board making a decision about which direction it feels like is most appropriate to air. Mr. Brown stated the important thing is the grade of it, whether it is a .66, that does not change whether or not he or she can impact, it changes the process; inquired at what point does the community get a public view of the conservations, because below that number, whatever it is, .66 .7, .75, below that number it is an administrative process; and stated they will still have to go through evaluation, the question is whether or not the community sees it and the Board looks at it from a public interest determination. He added, if the number is dropped to .66 or .65, that changes how many the Board sees it, and he does not have an exact answer, because the 40 that were evaluated, it probably one or two more would be added; most of the wetlands were very stark differences; usually one sees a really high functioning wetland or a moderate wetland, or a highly degraded wetland; and they all did not cluster around 7, that was a pretty clear breaking point from a professional perspective.

Chairman Bolin Lewis asked for feedback from the Board as to what number it wants.

Mr. Kerr stated the point needs to be made from a developer standpoint; one has to assess the wetlands for St. Johns Water Management District; from the Federal standpoint under a different law he or she has to assess the wetlands under their regulations, so there is going to be a base cost for all development this work; and what everyone is discussing is where ever the Board decides to go, the methodology does not add up significantly to the work that has to be done, because he or she has to go out there already and figure out whether it is a vital wetland or not. He added, he does not want anybody to go away from the meeting thinking they are going to add a lot of cost, one is not going to add a lot of cost; the methodology is straight forward; BKI, Inc. Worked very hard to make so that the professional judgment and arguments that it has had in the past that it does have with the State and Federal government are a little eliminated as much as possible; and it is not preventing development in these areas, it is allowing the Board to look at the wetlands that are at the higher end, which are going to be more expensive to develop anyway on both the State and Federal level.

Commissioner Fisher stated he thinks that is one of the problems when it comes to development, because if it is really a highly effective wetland it is going to be expensive to develop. He added, he does not think it is fair to develop properties that maybe wetlands without proof; and he gets concerned with government tells someone what they have on their property; and noted he did not like the map in the package, because it looks like the entire map affects the Lagoon and the aquifer. Ms. Larson stated she needs to specify the map does not identify wetlands; it identifies as a polygon the potential of landscape level watershed systems based on elevation; and these places are likely, if they are not wetlands before, to become wetlands as part of a flood plain system, which allows them to be connected and then they influence the Indian River Lagoon system and the St. Johns River Water Management. Mr. Brown stated the big question is whether or not a map should or should not occur; they were very intentional that the did not identify wetlands or the provide any tool that would potentially

January 16, 2014

compromise someone's private property rights. He went on to say the direction from the State of Florida, Department of Economic Opportunity, required Brevard County to do a study to identify high functioning wetlands and landscape level systems; the method through which staff did that is by definition; no doubt about it, the State loves to have maps in the comp plan; and the question is whether or not staff has to have a map or is definition sufficient in this regard. Mr. Scott recommended that staff does everything to make the disclaimer very clear, as staff has tried to on the first draft; this is not a regulatory tool, it does not determine whether or not one has a wetland; and he would go to have the map.

Commissioner Anderson asked if one's property is not identified in the polygon, then he or she would not have to go through the process. Mr. Brown stated they would not have to go through landscape level process if the property is outside the polygon. Commissioner Anderson commented virtually every County commercial property has to go through the landscape level process; and there are very few that are not on the map. Mr. Brown stated most of the property are flood plains; and the ACOE may still look at the property outside the map.

Bruce Moia stated he really appreciates when he goes to a place that has a nice wetland system; he is glad the wetlands are defined now and one knows what they need to preserve now; and questioned what does one now have not to preserve. He added, it is nice to have the study; when the process first started his first motion was to just do what all the other counties and cities do, to just give it all the St. Johns Water Management and the ACOE; and unfortunately it seems like the Board's predecessor's put the burden on this Commission and the citizens; and now that it has gone down this road, one can not go down that road anymore. He stated he thought the Board and staff were there, however it is still going to be a burden; it is going to cost more to do environmental study because it is another task that the environmental consultant has to do; he owns an environmental company; and it is just more cost to the developer that they would not have to do in any other city or county. He stated the Study is pretty sophisticated; maybe once everyone is used to it, it will get a little cheaper, but initially it is going to be a burden. Mr. Kerr asked how much was it going to cost him. Mr. Moia responded he has no idea; he reviewed it, but has not sat with his staff and asked what is it going to cost if they have one of these; and he is not sure if it is something they would have to do regardless of the map, because he thinks the way this is going to work, and to correct him if he is wrong; if he or she is in the polygon, the County is going to require one to do a study. He stated there was a statement that Mr. Brown made that he does not think is entirely true; Brevard County is in the wetland mitigation process and he does not think this differentiates the other policy about requiring two to one mitigation; whether it has a wetland that rates at .1 or .9, he still has, to meet the same mitigation ratio for the County that he would not have to meet for the St. Johns Water Management or the ACOE; and there is no balance there, and he thinks it needs to be addressed. He explained if St. Johns Water Management say one has a very poor quality wetland, like a .05, but it is still wetland and it will impact who knows how many acres, if they say two acres of mitigation because it is so poor, one would have to do four acres for the County. Mr. Brown stated that is not correct. He went on to say this plan is very specific; he thinks BKL, Inc. Has done a great job; and he does believe this will be a burden on staff, because now they will have to go out and verify numbers;

Commissioner Infantini inquired if staff has the right or obligation to go verify the number, because he or she came back with a different number; stated instead of placing the burden on the developer and the engineering staff, to just place the burden on Brevard County staff, because if staff has the right to go out and challenge what someone comes back with, why not go out and do it themselves in the first place, or eliminate the ability to challenge. She added, if this is going to be a requirement, it should be a requirement placed on the County, because that would stop staff from burdening the perspective taxpayer; and instead of giving tax abatements, it could say free environmental study done by Brevard County. Mr. Moia stated with that in mind

he thinks it might be in best interest to set the number higher than .7, because it gives staff more flexibility.

Mr. Brown stated Mr. Moia was referring to the County's Policy of no net loss; that is a fundamental tenant of the wetland policy; and because of that, the previous Board's made the termination to have a mitigation criteria when the State does not require it to meet the no net loss. He explained the no net loss means is it when one impacts a wetland he or she has to recreate the same function; it is actually a Federal law, and the State does have a low threshold that says one does not need to mitigate for this; Brevard County's Comprehensive Plan does not allow for that, so staff does a simple two to one requirement, and it has been doing this for a number of years, it is in policy and required to close the gap; and it is not in addition to, and it is very clear that is the State requires mitigation, Brevard County is completely out of the game, it is not added to it or double up.

Mr. Moia stated if St. Johns Water Management says one impacts something that is isolated under a half acre, he or she does not need mitigation, the County will say it does, so if one impacts .15 acres of wetlands and it is isolated maybe it is completely invaded by Brazilian pepper trees, one will have to buy an acre of property somewhere that will probably cost about \$40,000 to \$60,000 depending on where one is. Mr. Brown responded by saying or \$2,355.00 for a most recent one for a half acre impact.

Commissioner Nelson stated BKI, Inc. has done a great job, and Mr. Brown and staff; he is uncomfortable because the public interest needs to be served to; and he would even go with .66, a number that give the public the right to be able to come in and give their thoughts, as well as the developer. He proposed the motion instead of the .7 to make it a .66.

The Board accepted the Wetlands Study completed by BKI, Inc. Consulting Ecologist to include the high functioning wetlands assessment method with a score of .066 or greater is to be considered high functioning; and accepted the high function assessment matrix, the landscape level polygon map, reference wetland document, and the wetlands assessment toolbox.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Chuck Nelson, Commissioner District 2
SECONDER:	Robin Fisher, Vice Chairman/Commissioner District 1
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

ITEM II.B., LEGISLATIVE INTENT AND PERMISSION TO ADVERTISE

The Board granted legislative intent and permission to advertise, as part of the 2014-1 Comprehensive Plan Cycle, the Comprehensive Plan Policies amendments to Brevard County Comprehensive Plan Glossary, and Conservation Element, Objective 5, Wetlands; and authorized Ernie Brown, Natural Resources Management Director, to revise Fee Schedule to reflect actual cost of implementation.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Robin Fisher, Vice Chairman/Commissioner District 1
SECONDER:	Andy Anderson, Commissioner District 5
AYES:	Fisher, Nelson, Infantini, Bolin Lewis, Anderson

January 16, 2014

Upon consensus of the Board, the meeting adjourned at 10:55 a.m.

ATTEST:

MARY BOLIN LEWIS, CHAIRMAN
BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

SCOTT ELLIS, CLERK