

To: Process Sub-committee  
From: Dr. Scott Emery  
Date: 02/22/08  
Re: My thoughts on Process Committee Items

Thanks to Chuck C. for putting some initial ideas down on paper for us to consider.

IMPORTANT CAVEAT: THE FOLLOWING REPRESENT MY THOUGHTS AT THIS TIME WITHIN THE FACT FINDING AND DELIBERATION PROCESS. MY CURRENT THOUGHTS MAY BE BASED UPON INCOMPLETE OR INVALID INFORMATION, OR MAY BE BASED ON MY OWN MISTAKEN UNDERSTANDINGS. AS SUCH, THE FOLLOWING CURRENT IDEAS AND POSITIONS MAY CHANGE AS I OBTAIN MORE INFORMATION AND WE CONTINUE OUR FACT FINDING EFFORTS.

My thoughts on Chuck's Draft Item 1.1 (POSITION – w/ WMD – Delineations)  
I support the idea of reciprocity and trust, to minimize duplication of effort.  
I will send some suggested "word smithing" comments next week.

My thoughts on Chuck's Draft Item 1.2 (POSITION – w/ WMD – MOU)  
I support the idea of joint training between EPC and SWFWMD.  
I will send some suggested "word smithing" comments next week.

My thoughts on Chuck's Draft Item 1.3 (POSITION – In Applicant's Handbook – Procedures and Processing)  
I support the idea of a State wetland line, and support continued efforts by EPC/SWFWMD to work out a single line approach with the Federal Government. I support the idea that the Handbook should explain the 2 procedures, and that the Handbook should be updated as either of the 2 procedures changes.  
I will send some suggested "word smithing" comments next week.

My thoughts on Chuck's Draft Item 1.4 (POSITION – in BOR – Process and Timing)  
I support the idea of incorporating State time frames WHERE THIS MAKES SENSE within the various local government processes, and to incorporate PGMD (or other local municipalities') time frames WHERE THIS MAKES SENSE. Timeliness of reviews is of great importance to the applicant. HOWEVER, at this time I am still researching various scenarios to make certain that EPC's statutorily-required work can be accomplished under all scenarios within the time frames of the State and/or other local departments. I am withholding an opinion on this item until I can glean more information.

My thoughts on Chuck's Draft Item 1.5 (POSITION – w/ PD(G)MD/Municipalities – Set-backs, Rezoning, Construction Plans, Process and Timing, Land Alterations/Excavation)  
I continue to research multiple scenarios where wetland issues can become intertwined with the above-listed processes. At this time, I see value to the applicant in hearing USEFUL, RELEVANT comments from EPC EARLY in any process. I also see that the realities of the process require that EPC have detailed information that can only be supplied late in the process. I am currently pondering how EPC's involvement can be less of a delaying problem for the Applicant yet retain an early process component.

Part, but not all, of my difficulty with understanding EPC's involvement in development-related activities is a function of the overall complexity of growth-related activities. Not being able to ask questions of the EPC staff outside of the TAG meetings as to what they currently do and why makes a complete understanding more difficult to achieve.

Comprehensive Plan: I currently see EPC as having a legitimate commenting role to play in the examination of proposed comprehensive plan changes, as these changes relate to wetlands within Hillsborough County.

Recommendation: EPC should continue to comment on proposed changes to the Comprehensive Plan, as those changes are expected to impact wetlands (and water quality), so long as those comments are RELEVANT AND TIMELY.

Setbacks: I see EPC advising all the local governments regarding required set-backs as they relate to wetlands and water quality as a time saver for the local governments.....EPC should have the expertise to provide accurate information quickly.

Zoning and Development Approval: This is a multi-channel set of processes and procedures, within which EPC provides comments. Much of the expressed dissatisfaction from those seeking to develop property within Hillsborough County relates to EPC's role(s) within this overall larger set of required activities. Within this set of processes and procedures, delays can result in significant added costs to the Applicant. Consequently, delays should be minimized and the reasons for delays in the process need to be significant and defensible.

If wetlands were inviolate (could not be touched or otherwise impacted), EPC's involvement could be quite straightforward.....that is, EPC could spend its efforts in delineating the wetlands that are not to be impacted, and provide this information to the appropriate agency(ies).

However, wetlands are allowed to be impacted under a variety of conditions. The concept for the development applicant is that wetland impacts are to be avoided if possible, and minimized if total avoidance is not possible. Impacted wetlands must be mitigated for. This avoidance, minimization, mitigation process is useful in that it provides flexibility to the Applicant, but at the same time can be time-consuming and frustrating due to the fact that there are few absolute "yes" and "no" answers.

The Subcommittee is wrestling with the question of how to potentially reduce the number of different points where EPC approval and input is needed to still assure that wetlands in the County are protected. A portion of the Subcommittee appears to be of the opinion that EPC's involvement should be toward the end of the development process. The rationale for this line of thought appears to be that EPC requires detailed engineering information, detailed stormwater information, detailed road and drainage information, detailed wetland line and condition information, detailed hydrologic information in order to comply with their duty of ensuring the protection of the wetlands, and that all this information is not usually available until late in the process. I know that, to take one example, EPC (understandably) requires complete, detailed construction plans in order to understand exactly where surface water is being re-

directed, at what elevations and locations relative to wetlands, and that such plans simply cannot be completed until late in the whole development process. Consequently, for this aspect of EPC's statutory responsibilities at least, EPC needs to wait until late in the process.

Other members of the Subcommittee seem to be of the opinion that the Applicant can often benefit from hearing from EPC very early in the development process, especially if it appears that wetlands may be a major issue in whether the proposed development can be successful. This portion of the Subcommittee seems to see that the Applicant can save substantial time, effort, and money if he/she has a clear picture of the real limitations to the proposed development that result from the presence of wetlands on site.

I am currently of the opinion that to have an Applicant go 90% of the way through the process, spending many thousands of dollars, only to be denied at the end of the process on the basis of wetlands impacts, likely will leave the Applicant extremely frustrated, and will be more likely to lead to conflicts (which can be very lengthy delays).

The decision of whether or not a wetland impact can be avoided goes relates to the concept of "Reasonable Use". I am currently examining the technical and legal aspects of this "term of art". I hope to have comments on Chuck's suggested language on "Reasonable Use" at the next meeting.

Currently, there is an optional pre-application meeting that can be requested by the Applicant with EPC, at which the Applicant can obtain preliminary thoughts from EPC as to what types of development might be allowed and what would likely not be allowed on a given piece of property. From past questions and comments, it appears to me that these have been only partly valuable to both sides, because the Applicant often has no detailed concept to provide EPC, and EPC has not yet examined the site critically and hence can only speak in generalities. The Applicant has little assurance that these preliminary comments from EPC will hold throughout the process.

I am currently pondering some possible modification(s) to the current process:

Q: What information does EPC require in order to be able to provide the Applicant with MEANINGFUL comments very early on in the process? More specifically, what could EPC do if the Applicant simply sent EPC an aerial map that showed the boundaries of the property, BEFORE they began the process with PGMD?

My thoughts: EPC could take this information, examine its own set of detailed aerial maps of the site and the soil survey maps, and any other pieces of information it has regarding the wetlands on site. EPC could use these maps to develop preliminary estimates of where the wetland lines would likely fall, plus or minus 10-20 feet in most cases. EPC could also examine where this property is in relation to other wetlands, any specially designated types of habitats (for example Critical Upland Habitat). EPC could examine the spatial arrangement of the wetlands on site.

WHAT IF as a condition for the start of a re-zoning process (for example), there must first have been a session between the proposed Applicant and the EPC (and possibly a

qualified member of PGMD/local municipality). A minimum of 3 weeks prior to this meeting, the Applicant would provide to EPC and PGMD a map that shows the property boundaries of the land that will be going through the re-zoning or land alteration process. I do not think the request for such a map would be time-consuming or expensive for the Applicant.

At this meeting, EPC would use the information it has compiled to provide the applicant with a preliminary report that describes: (1) what uses would likely be easily permissible with respect to wetland issues; (2) what uses would potentially be permissible with innovative design and construction; (3) what uses would most likely be difficult to permit. EPC would base these good faith estimates on factors such as: (1) percentage of site that is wetlands; (2) location of the wetlands with respect to property configuration; (3) type/classification of the wetlands; (4) soils; (5) slope; (6) adjacent land uses; (7) special/unusual characteristics of on-site wetlands (if known); (8) location of any special designation lands or water bodies or wetlands adjacent to the site.

These could be in the form of rebuttable presumptions. The potential Applicant would have the option to challenge these presumptions by developing his/her own technical arguments. If the Applicant chooses to go with one of the easily permissible options, EPC's involvement through much of the development process could be minimal (although EPC should be willing to continue to advise the applicant through the design process) until final plans are available, at which time EPC would undertake a detailed examination, note deficiencies that need to be rectified, etc.

Perhaps, early on, if the Applicant requests/prefers, EPC could make reasonable attempt to ground truth areas where the preliminary wetland estimate might be unclear from the aeriels. If the site is less than \_\_\_\_ acres, EPC could make a reasonable effort to undertake a jurisdictional wetland survey prior to the meeting, upon such a request by the Applicant.

Construction Plans: As mentioned in an earlier paragraph, it seems clear to me that EPC needs detailed information to ensure they have complied with their statutory obligations.

AGAIN, I WANT TO STRESS THAT THESE THOUGHTS MAYBE BASED UPON MY STILL INCOMPLETE UNDERSTANDING OF AT LEAST SOME OF THE PROCESSES. I CONTINUE TO BELIEVE THAT IT SHOULD BE POSSIBLE TO SUBSTANTIALLY LESSEN THE DELAYS AND FRUSTRATIONS OF THE APPLICANT WHILE ALLOWING FOR EPC TO HAVE USEFUL INPUT EARLY IN THE ABOVE PROCESSES.

I AM HOPEFUL THAT MY FELLOW TAG MEMBERS WILL CORRECT ANY AND ALL INCORRECT STATEMENTS I MAY HAVE MADE IN THE PREVIOUS PARAGRAPHS.