

Presentation by Maggy Hurchalla --

AMENDMENT CPA 17-10 June 1, 2017 transmission packet

The entire package including staff analysis, changes to the comp plan, and emails from public can be accessed at: <https://www.martin.fl.us/sites/default/files/12416-106.pdf>

## **MARTIN COUNTY HAD THE STRICTEST LOCAL RULES ABOUT SEPTIC SYSTEMS IN THE STATE FROM 1982 ON. HOW ARE THOSE RULES BEING CHANGED?**

*Below is an annotated commentary on the specific language changes being made in regard to the use of septic systems.*

Black print is the language from the Comp Plan with Amendments.

*Comments are in red are included:*

*Yellow highlighted language with ~~strike through~~ is being deleted.*

*Blue highlighting with underlining is being added*

p3 of 14 10.2.B (Comp Plan – Septic CPA Language)

Restrictions on the use of on-site sewage treatment and disposal systems coupled with policies which limit the intensity of use and limit negative impacts remain an alternative to provide reasonable use of property in rural areas outside the Primary Urban Service District. ~~Approvals for new development will be limited to low density residential as permitted by the underlying future land use designation and small scale service establishments necessary to support rural and agricultural uses.~~ On-site sewage treatment and disposal systems that are

*CHANGE ALLOWS DEVELOPMENT ON SEPTIC SYSTEMS OUTSIDE THE PRIMARY URBAN SERVICE DISTRICT FOR **LARGE SCALE ESTABLISHMENTS**. Staff insists this is necessary to make the Plan consistent. The change was originally suggested by Morris Crady and Bob Raynes in an email dated 5/4/17. They specifically asked that any limiting of rural uses to "low density" be removed. Staff argues that this deletion is meaningless since:*

- 1. It is contained in the introduction to the chapter rather than the policy section.*
- 2. The zoning and the land use will control density and intensity. The problem with this argument is that septic limitations were purposely imposed to limit intensity. Removing them suggests there is no limit on the density and intensity other than zoning. While staff points to limits on intensity in the zoning for bed and breakfasts that was done because of the language being stricken and because of the septic limitation. Other Agricultural Land Uses and zoning do not have limits on intensity.*

(Septic CPA language continues)

directly related to and supportive of agriculture, including agri-tourism,

*Agri-tourism needs a definition. During the Board meeting there was a discussion of including the definition included in state law. That was not done.*

(Septic CPA language continues)

~~and~~ or would not jeopardize the integrity of the agricultural purpose of the district are allowed.

*This is a perfect example of how much difference a single word makes. Previously the "short hand version" of what the Plan said was " Only low density residential and small scale uses necessary to support rural and agricultural uses are allowed. Septic systems that are directly related to agriculture **and** won't jeopardize the agricultural purpose of the district are allowed.*

*The amendment changes those to allow large scale uses and allow septic for uses related to agriculture and ANY use unrelated to agriculture – as long as the Board decides it won't jeopardize the character of the District.*

***This dramatically changes the purpose of the Ag Land Use to allow uses entirely unrelated to agriculture.***

(Septic CPA language continues)

All systems shall be consistent with the policies in Section 10.4.

~~1. Residential use of on-site sewage treatment and disposal systems. The Martin County Health Department permits use of on-site sewage treatment and disposal systems where soil and drainage conditions are suitable. On-site sewage treatment and disposal systems are permitted for residential use in accordance with the policies in Section 10.4. 2. Nonresidential use of on-site sewage treatment and disposal systems. On-site sewage treatment and disposal systems can serve nonresidential uses on existing lots when a regional sewage system is not available. All systems shall be consistent with the policies in Section 10.4. No on-site sewage treatment and disposal systems~~

(P4 OF 14) Policy 10.2A.7. 6

Nonresidential use of On-site Sewage Treatment and Disposal Systems. Onsite sewage treatment and disposal systems can serve nonresidential uses when a regional sewage system is not available. In addition, the use must be ~~deemed~~ determined by the Florida Department of Health Department not to constitute a high expected failure rate.

~~e. For commercial establishments where food is processed, handled, prepared or served:~~

**CPA CHANGES REMOVE THE PROHIBITION ON USING SEPTIC SYSTEMS FOR FOOD**

**PREPARATION.** *In 2014 the staff provided data and analysis on the high failure rate of such systems. The Martin County Health Department testified that, in spite of the requirement for grease traps and annual inspection, this was a continuing problem. Staff did not include this information in the review of this amendment and did not make it available to commissioners or public. No new "best available information" on high failure rates was provided. The County Attorney advised that support data could be provided later. Staff suggested that if the state allowed it, that was adequate justification.*

*New food preparation uses and those uses where there is a need for **repairs or a change in use or ownership** must obtain an annual operating permit from the state and be annually inspected. Only 31 annual operating permits have been issued. That includes kennels, laundries, and animal shelters as well as food preparation uses.*

*In spite of the requirement for annual inspections, failures at places where food is prepared continue to have the most problems. Undercounting seating capacity and special events cause hydraulic overload which is the primary cause for failures found at the annual inspection.*

(Septic CPA language continues)

c. No onsite sewage treatment and disposal systems in excess of 2,000 gpd flows shall be located within the PUSD.

**THIS RETAINS THE CAP OF 2000 GPD FOR USE WITHIN THE PRIMARY USD. *This is an important improvement over the original amendment.***

(Septic CPA language continues)

Policy 10.2A.8. The following standards shall apply to all on-site sewage treatment and disposal system installations:

1. No onsite sewage treatment and disposal system shall exceed a total site buildout flow of 2,000 gpd, except as described below and in Policy 4.13A.8(5). ~~For single family residences in agriculturally designated areas, the~~

**THIS ALLOWS LARGER SYSTEMS.**

(Septic CPA language continues)

~~flow from the single family residence shall not be counted against the total 2,000 gpd limit. Total site buildout shall be as determined by the Florida Department of Health.~~

*The state determines the flows for the individual uses on a single site. The County enforces a local requirement that at total site buildout the total flow of all uses will not exceed 2000gpd (unless it is outside the urban boundary and meets the requirements for a waiver allowing up to 5000 gpd.*

*This could be stated more clearly if the last sentence was changed to: "Flows for individual uses on the total site shall be as determined by the Florida Department of Health"*

*This avoids a possible confusion that interprets the paragraph to say that Martin County limits total site build out to 2000 (or 5000) gpd but if the state allows more, that will overrule the local requirement.*

(Septic CPA language continues) (p5 of 14)

7. The installation of an on-site sewage treatment and disposal system shall not be permissible when the use is determined by the ~~Martin County~~ Florida Department of Health Department to constitute a high expected failure level.

9. For on-site sewage treatment and disposal systems outside the Primary Urban Service District, the BCC may waive the 2,000 gpd limitation set forth in Policy 10.2A.8.1, above, to the extent necessary for nonresidential or agricultural uses permitted by the future land use designation and zoning district, but in no

**ON MAY 23RD THE DISCUSSION OF THIS ISSUE WAS TO LIMIT WAIVERS TO AG USES THAT COULD NOT ACHIEVE ECONOMIC USE OF THEIR PROPERTY UNDER THE 2000 GPD FLOW CAP. THIS wording WOULD ALLOW ANY DEVELOPMENT IN AG LAND USE, including "non-residential" uses unrelated to agriculture, TO QUALIFY FOR AN EXEMPTION.**

*Prior to this amendment uses in the rural area were limited to low density and small scale uses. Staff has deleted the limitation to "small scale uses."*

*Prior to this amendment, the low density, small scale limitation was supported by the 2000gpd flow limit. Septic was allowed only for agriculturally related uses.*

*The staff appears to be removing the "small scale", the "agricultural related use", and the "2000 gpd limit" outside the Primary urban service district.*

**AS DRAFTED ANY USE ALLOWED BY THE AG LAND USE CAN DEVELOP – if it gets a waiver - TO THE MAXIMUM INTENSITY POSSIBLE WITH A 5000 GPD FLOW .**

**BECAUSE OF THE ADDITION OF "NON-RESIDENTIAL" ABOVE, THE WORDING SUGGESTS THAT NON AGRICULTURAL LAND USE ON SEPTIC CAN BE ALLOWED OUTSIDE THE URBAN BOUNDARY.**

(Septic CPA language continues)

event shall the waiver allow total site buildout flows to exceed 5000 gpd.

a. In order to obtain a waiver of Policy 10.2A.8.1, a person must submit an application in a form prescribed by the County Administrator. The application must contain a concise statement by the applicant detailing the circumstances that justify a waiver of the 2,000 gpd flow limitation. The application must also contain written concurrence from the Florida Department of Health that the use to be served requires a system greater than 2,000 gpd total site buildout flow, but the system does not exceed 5,000 gpd total site buildout flow.

*The state Health Department cannot certify that the person cannot make economic use of their property without a higher intensity use and larger septic flows. All they can do is certify that the more intense use they want will require the higher flows.*

(Septic CPA language continues)

b. The waiver shall not be granted unless the Board determines that: (P6 OF 14)

1. The proposed systems meet all criteria required by the Florida Department of Health.

2. The system has been located to protect wetlands, wellfields, water bodies, drainage facilities or other surface waters, to the maximum extent practicable. For on-site sewage treatment and disposal systems adjacent to wetlands, wellfields, water bodies, drainage facilities and other surface waters, a minimum setback of 200 feet has been provided.

*The discussion at the Board meeting was a setback of 300 ft. Staff changed this to 200ft.*

(Septic CPA language continues)

c. In granting the waiver, the Board may prescribe any appropriate maintenance conditions.

*The County cannot require the state Dept. Of Health to enforce inspections and permits that are not required by the state. This would require county enforcement and county staffing. It would have to comply with state law that defines how such local inspection programs must function.*

(Septic CPA language continues)

d. In granting the waiver, the Board's decision shall be based upon the particular circumstances of the application and shall not constitute a precedent for other waiver applications.

*This is a questionable statement legally. The County attorney pointed out in the meeting that such waivers cannot be done on a case by case basis. The "particular circumstances" that would allow or prohibit a waiver must be set out in the waiver provision.*

## **SUMMARY**

### ***Waivers are allowed:***

- ***only outside the Primary Urban Service District.***
- ***for large scale uses related to Agriculture.***
- ***for uses that are not related to agriculture if the Board decides that it won't cause harm.***
- ***for non-residential uses outside the Primary Urban Service District***

### ***Requirements for a waiver:***

- ***make an application***
- ***say why you want the waiver***
- ***show that it meets state law***
- ***setback 200 ft from wetlands, wellfields, surface waters and drainage facilities***
- ***be located to protect wetlands, wellfields, surface waters and drainage facilities to the maximum extent practicable.***

### **WHAT WAS LEFT OUT?**

***The only clear objective requirements are the 200 ft setback and location outside the urban boundary.***

***The following were discussed during the making of the motion but were not addressed in the final draft created by staff. The draft was sent to the state without review by the commission or the public.***

1. ***Commissioner Jenkins insistence that there be a 300 ft setback.***
2. ***A minimum lot size – the justification for allowing the systems in the rural area was the large acreage involved.***
3. ***Prohibiting waivers in environmentally sensitive area. The comp plan calls for extra protection increases in intensity of use the watershed of the Loxahatchee River.***
4. ***Prohibition in areas unsuitable for septic systems. The staff analysis of the area around Martingale Commons on I-95 and 714 and 7Js Industrial Park north of 714 and 2 miles west of the Turnpike concludes that the following factors make the area unsuitable for septic: soil type and being within one mile of the C23 canal. This supports a requirement that areas with the same soil type and within one mile of C23, C44 or the estuary should not be allowed waivers for larger systems.***
5. ***Demonstrating that the property owner cannot make economic use of his property without being allowed to use a larger system. Staff offered to create wording based on the state law that guarantees that certain agricultural uses will not be limited by local ordinances. The final draft simply says that the applicant has to say why he wants a waiver.***