CITY OF BELLEAIR BEACH
FLORIDA

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June 3. 2013

Dear Fellow Beach Communities,

RE: Changes to FAC Rule 62B-36

Enclosed is a letter from Mayor Rob Baldwin, of the City of Belleair Beach, to the Florida Department of Environmental Protection, the Joint Administrative Procedures Committee, State of Florida Senators, House of Representatives, and Governor Rick Scott opposing the change. The City of Belleair Beach seeks your support to advise the Florida Department of Environmental Protection to revert to the original proposed rule change in 62B-36.002, Definitions 14 (a) "*Primary beach access*" is a site with at least 50 ~~100~~ public parking spaces and public restrooms.

Your assistance and support would be greatly appreciated.

Responses to FDEP must be received no later than: June 14, 2013

The email address for comments is: Kamie.Carney@dep.state.fl.us

Best regards,

Nancy G. Gonzalez

Nancy G. Gonzalez
City Manager

444 Causeway Boulevard • Belleair Beach, Florida 33786-3326 • Phone (727) 595-4646 Fax (727) 593-1409

To members of the JAP

Re: FAC Rule 62B-36

Ladies and Gentlemen:

We write this letter to you to express the City of Belleair Beach's ("CITY") objections and concerns regarding the latest draft of Rule 62B-36 as posted on the Florida Department of Environmental Protection's ("FDEP") website on May 30, 2013, along with the Notice of Change published in the Florida Administrative Register on May 30, 2013 (Vol. 39, Number 105), as located on the Department's web site.

To fully understand and appreciate the CITY's position, some background is necessary:

The City of Belleair Beach

The CITY is a small municipality located in Pinellas County ("COUNTY"). Its population is just under 1,600. The CITY's beach waterfront is .85 miles long, or 4488 feet. The Fiscal Year 2012-2013 budget of the CITY was $2,123,038.

Over the years, the CITY has suffered significant erosion to its beach. Dr. Ping Wang, Assistant Professor of Geology at USF has described Belleair Beach as "an erosion hotspot."

The CITY's Experience with Rule 62B-36

In 2008, the CITY was contacted by the COUNTY's Coastal Coordinator of the COUNTY"S Department of Environmental Management, regarding funding for renourishment, and in particular the requirement for public access and public parking. Numerous meetings were held between the COUNTY and the CITY, and within The CITY itself discussing ways the CITY could meet the parking requirements and qualify for renourishment. Finally, in June of 2009, The CITY sent a letter to the COUNTY in which The CITY offered to remove 7 "parking by permit only" signs at Morgan Park, making these spots open for public parking. On June 30, the COUNTY, through its then-Coastal Coordinator sent The CITY a letter in which it stated that the COUNTY and the Florida Department of Environmental Protection agreed that the The CITY's action in opening up these additional parking spots was sufficient to qualify for state cost-sharing of the renourishment project.

In good faith, relying on the representations made by the COUNTY, The CITY re-signed the parking spots. At this time, The CITY believed the matter was settled.

Needless to say, we were shocked when we got a letter from the COUNTY's new Coastal Coordinator saying that The CITY did not qualify for renourishment due to lack of parking. It is important to note

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that Rule 62B-36 had not changed since the earlier letter. The only explanation the COUNTY could give the The CITY was that the June 30 letter was a "mistake."

Over the next several months, more discussions ensued between the COUNTY and The CITY regarding parking requirements. The COUNTY produced numerous maps and diagrams providing figures regarding just how many additional parking spaces were required. The number of required spaces varied from 8, 10, "at least 20", and even as high as 29!

The Current Rule Change Cycle

In late 2012, FDEP proposed changes to Rule 62B-36. Significant among these was a change in the definition of a "primary beach access." The new rule reduced the number of required parking spaces from 100 to 50, and continued the requirement that a primary beach access have restroom facility.

This change was critical to The CITY. At the north end of The CITY we have a marina, with 20 slips and 70 parking spaces. If only 50 spaces were required to qualify as "primary", The CITY would be able to construct a restroom facility at the marina and extend the beach eligibility from that access.

On December 18, 2012, a hearing/webinar was held on the proposed changes. Following the webinar, our city manager communicated with FDEP personnel regarding a possible reversion to the 100 parking space requirement. Our city manager was told that her comments would not be forwarded to the Secretary as requested. She was also told that FDEP staff seriously considered comments regarding the number of parking spaces, but did not revise the draft. The CITY was told that FDEP staff felt that improving existing public access by providing restroom facilities should be rewarded, even if there is not adequate space to provide 100 parking spaces. It was FDEP staff's opinion that "by not revising the draft the Secretary should understand staff's commitment to this ideal."

The next draft of the Rule as it appeared on FDEP's website still contained the 50 parking space requirement.

A second hearing/webinar was held on April 18, 2013. At this point the Rule still required 50 parking spaces to qualify as primary access. During the webinar, there was one comment opposing the reduction from 100 to 50 spaces. This comment came from the same organization which had made a similar comment during the December webinar, and which FDEP staff said that had considered but rejected. Following webinar, 3 written comments were submitted by this organization.

The CITY took no action, relying on previous comments from FDEP staff that this organization's comments had been considered and rejected.

Again, The CITY was surprised when in May it learned that the rule had been changed back to requiring 100 spaces to qualify as a primary access! A conference call was held on May 17 between officials of The CITY, FDEP, and Bill Smith of The Florida Beaches and Shore Protection Association. Also on the call was Mr. West Gregory, counsel to FDEP. Mr. Gregory stated that there would be an additional opportunity for public comment after the Notice of Change was published in the Florida Administrative Register. A subsequent email from Gregory, however, stated that this was a misstatement, and that

there would be no official comment period despite the major substantive changes made to the rule. The email directed the parties to the statute governing rulemaking, FS 120.54, for the parties' review.

The CITY's Concerns and Questions

As noted above, the Notice of Change was posted by FDEP on May, 30, changing the parking requirement from 50 to 100. Given that this was a major change, in direct opposition to staff recommendations and prior representations to the city, it is appropriate that a new hearing be held on the change.

In addition, upon review of FS 120.54, as suggested by Mr. Gregory, the CITY would draw your Committee's and FDEP's attention to section 120.54(3)(b) entitled "Special matters to be considered in rule adoption." Subsection 2(a) requires that "prior to adoption, amendment, or repeal of a rule" an agency "shall consider the impact of the rule on .... small cities." The statute provides that an agency "shall" consider certain methods for reducing impact on small cities. It specifically list alternative methods which must be considered in this regard, including less stringent standards or total exemption from the requirements of the rule. Furthermore, 120.54(3)b(III) requires that if an agency does not adopt any of these alternatives, it shall file "a detailed written statement with the Committee explaining the reasons for failure to adopt such alternatives. "

The CITY questions whether FDEP has considered such alternatives to reduce the impact of the rule on a small city such as Belleair Beach. If in fact it has considered them but has opted not to adopt any of them, the CITY hereby requests a copy of the detailed written statement with the reasons for its decision.

Conclusion

As shown above, the CITY has done everything within its power to provide access to its beaches. We have relied on statements provided by officials of the COUNTY and FDEP. We respectfully request this Committee's assistance by reinstating the rule as published in December and March regarding primary public beach access, or, alternatively, per FS 120.54(3)(b) provide less stringent standards or exemptions for small cities such as Belleair Beach.

We thank you for your attention to this important matter.

Sincerely,

Rob Baldwin, Mayor