

Policies and Procedures Subcommittee Meeting Notes

April 6, 2009

9am-11am

DeIDOT Smyrna –Clayton Room

In attendance: Chuck Adams (DAS), Eric Laramore (NCCDLU), Jeff Bross (CWAC), Frank Piorko (DNREC), Elaine Webb (DNREC), Jamie Rutherford (DNREC), Randy Greer (DNREC), Jared Adkins (KCD), Mary Ellen Gray (Kent County Planning), Steve Wright (DNREC), and Derrick Caruthers (McCrone)

Following introductions by subcommittee chair Jeff Bross, Randy Greer gave a short presentation on the background for the revisions to the regulations. Elaine Webb explained how comments received were catalogued by subcommittee and theme.

Item discussed:

Appeal Process

- We need a legal opinion if an appeal process would apply to any section of the Regulations and/or technical document, or if it would just apply to the hardship variance in Section 1.5.1. Legal language needed from DNREC counsel; believe that “variance” would apply to the regulations only, and the process for dealing with deviations from technical requirements would be separate.
- The Conservation Districts would want an appeal process to be a function of DNREC for consistency in decision making throughout the state; however, if NCC adopts the State Regulations in full, can appeals be handled through the County process? Could someone appeal to DNREC after a local process if they chose to do so?

Fee-in-Lieu

- An entity needs to be established to manage the money paid into a fee-in-lieu program.
- Fees collected as part of a fee-in-lieu need to be used within the same watershed boundary.
- DeIDOT’s banking policy could be used as a model for calculating fee-in-lieu
- Suggested to leave the fee-in-lieu as an open door in the regulations for implementation by the local agency.
- 1.6.4.1 of the proposed regulations will be expanded to state that a fee-in-lieu program “shall be subject to review and approved by the Department after public review”.

Plan Approval Procedures

- There is concern about putting too much procedure in the regulations, specifically for agencies that already have a defined process such as New Castle County. Staff commits to stripping down Section 3 to include much of the process in the technical document rather than in the regulations (i.e. 3.1.4 should not be in the regulations).

- Up-front reviews help local planning agency staff in making land use decisions, and helps to stop the target from moving for consultants. Up-front consultant costs for the pre-application meetings could be hard on “Mom & Pop” developers. The reviewing agency needs to bring the valuable information to the pre-app meeting.

Non-performing CCRs

- PE is liable to enforcement action by DAPE if the CCR is not performing and DAPE has stated that they are willing to review those cases. However, suspension of a non-performing CCR does not keep that PE from signing someone else’s CCR report. A PE needs to be referred to DAPE whenever a CCR is suspended.

Guidance / Technical Documents

- Because of legal requirements, the accompanying document that up until now staff has referred to as “guidance documents” will be called “technical documents”. Technical documents will be developed concurrently with the regulations and taking through the public process with the regulations.
- Technical documents will cover the following categories:
 - Technical requirements
 - Plan Approval Process
 - Inspection and Compliance
 - Maintenance
 - Policies and Procedures (to include fees, variances, appeals process, delegation, etc)

Path Forward

Prior to the next subcommittee meeting, staff will accomplish the following:

- All comments received will be addressed with a response according to the following:
 - Comment addressed by changes to the regulations
 - Comment addressed in the accompanying technical document
 - General response of why comment needs no response
- Revised draft regulations will be developed
- Outline of the accompanying technical document will be developed