

Beach Regulatory Advisory Committee
Meeting Notes
June 11, 2014 9a-11:45a
DNREC, Shoreline and Waterway Management Section Services Facility

Introductions

Clarification – Committee is not responsible for making changes to Beach Preservation Act. Directive for committee is to review regulations, make recommendations for changes to the regulations and, if the Committee determines it necessary, make recommendations for changes to the Act.

J. Luoma - Presentation on the DNREC Regulation Development Process (see ppt presentation handout)
Goal is to develop revised regulations, then follow-up with workshops and hearings.
The presentation included an overview of the regulation development process and the current regulations governing beach protection and the use of beaches. The discussion also included administrative principles, prohibitive activities, activities requiring permits/approvals, procedures for processing permits, appeals, cease and desist, procedures for adoption

Discussion regarding Administrative Principles:

Section 2.5 Construction setbacks and prior approvals for subdivisions in dunes and dune reconstruction

Q. Construction setback and deed restrictions? **A.** The rules fall under a restrictive covenant.

Q. Clarify how prior approvals were given **A.** There is the permit process that allows the reconstruction of the primary dune.

Q. Is this section still necessary **A.** Yes, we do not have vacant lots affected by this but there are plenty of existing homes that are seaward of newer homes.

Q. 50% vs 100% reconstruction seaward of the newer construction standards? **A.** Will need to clean up former construction setback language.

Q. Emergency provisions for rebuilding following major storms? **A.** The Division set up expedited permitting procedures following the 1992 and 1998 northeast storms, though we should think about addressing it in the regulations (question geared toward commercial reconstruction).

Q. Emergency construction in floodplains and new recommendations for BFE? **A.** FEMA has issued advisory floodplain maps following catastrophic storms, but these are not mandatory for reconstruction. DNREC would have little input on the FEMA advisory maps.

Q. Does FEMA readjust the maps when the dune replenishes itself? **A.** A lot of policy considerations are given to engineered dunes. FEMA generally tries to avoid changing their floodplain maps based on new engineered dunes, especially when there is not long term evidence of stability.

Q. Language change for Section 2.14 Re-establishment of building lines by Secretary (may) be re-established, not (must) be re-established.

C. Section 2.14 cannot be grandfathered to an old building line.

Q. Non-buildable lots following storms – is that a taking? **A.** DNREC does not prohibit construction seaward of the building line, so “takings” is not an issue ex. Bethany Beach (conditions are added to permits)

Q. Non-conforming lots and takings? **A.** Comparing environmental regs and zoning regs, this is not a non-conforming use, protecting community from harm by an ocean storm; these regulations are for beach and dune protection. Courts recognize in extreme cases that condemnation can occur; however these state regulations have not come close to the extreme cases and serve to protect the public. If the

committee determines that the regulations have extreme economic impact to homeowners than those changes should be included.

Q. Broadkill Beach is an example of non-takings? **A.** A structure was permitted under current regulations even though in the winter, the structure is in the water.

C. Would like the disclosure information to be available to all homeowners. **A.** Sea Grant public information pamphlets to help get the information out.

C. Position on disclosure – is on the property owner, sea level is not an exact science. Careful in providing disclosure and do not want to disrupt the economic engine.

Q. Need to clarify that building line does not prohibit construction. **A.** The wetland/subaqueous line does that, not these regulations.

Discussion regarding Prohibited Activities:

Q. What was the thinking behind cantilevered decks? **A.** To limit encroaching seaward, enclosures. Under former regulations, it was difficult to police follow-up construction above the deck elevation.

Q. When was fee last changed? **A.** 1972 standard, never been changed. First found in 1983 Regulations.

C. Take permit fee amount out of the regulations. Outreach can help this discussion. **A.** Though this may be a red flag to public. The program fees do not pay for processing the permits.

Q. Moving public notices from News Journal? What is formal publication? **A.** It is in the current regulation.

C. Need to change wording in regulations to address written notice verses digital notice.

Q. Section 4.8 Appears to make it ok for removing sand. Request clarification in regulations. **A.** No one has been allowed to do this. Regulations governing construction activities require that sand be placed on the beach.

Discussion regarding Procedures for Processing Permit Applications, Appeals, Cease and Desist, Adoption of Changes to Regulations

Q. What is timeline for processing permits? **A.** Letter of Approval typically 1-2 weeks, Permit typically 30-60 days, can vary with public process

Q. Will there have to be an Act change for Section 8.2 fines? **A.** Yes

C. Clarify Sections 8.2. & 8.3 to tie closer with violations.

Q. Why do appeals go to Superior Court and not Environmental Appeals Board? Likes the EAB procedure. **A.** in Act

Q. How do these regulations work with local land/building codes? **A.** Should schedule this discussion for an upcoming meeting and include rules regarding floor elevations and setbacks.

Discussion regarding Questions Since Last Meeting:

C. 1983 - current regulations were established

C. NJ statewide building code. **A.** Delaware does not have this, only local codes.

Q. How comfortable are we (RAC) with existing building standards and floodplain elevation data? **A.** In NJ, some of the homes damaged in Sandy were constructed using older maps. FEMA is now in process of remapping all of coastal areas in Delaware. Workshops have been held to show maps to local communities. Maps will be in effect in March 2015. May under-represent flood risk for some areas but the state does not have an alternative model to dispute the new FEMA maps.

Q. Will the lines be changed? **A.** Beach nourishment and infusing new sand into the system has stabilized the ocean coast. Have **temporarily** staved off sea level rise and is the reason that FEMA does not alter its lines/construction standards.

C. Strong opposition to moving the DNREC building line seaward (even though there is beach nourishment).

- C.** Wants language in regulations that addresses not moving the building line seaward.
- C.** These regulations do not refer to materials used. Need to understand differences between these regulations and other construction standards. **A.** The Act focuses on protecting the beaches and dunes and the committee will need to refer to the law for guidance. Though, the Department has inherited “policing” of construction activities in the building area and this pulls the regulations closer to construction standards (the Division is left to balance FEMA oversight and local ordinances with state regulations). Authority to deal with this is in code referring to reducing property damages (by the ocean).
- C.** Group needs to consider additional regulations in the revisions.
- C.** North Atlantic Coastal Comprehensive Study may provide information on the building codes and what was learned from projects. Consider economic benefits of healthy beaches and dunes. **A.** The nexus is the need to combine both nourished beaches and the regulatory process for construction standards all while protecting local economics.
- C.** TNC (The Nature Conservancy?) and USACE are assessing the performances of beach nourishment projects and building assessment performance from H. Sandy. First observations were that the failures were erosion related, homes that were elevated did better. May need scientific review of new regulations to see how they compare to other storm observations.
- Q.** Sea level rise and when decisions are made to stand and defend or retreat, should we include this discussion in the revisions? Bring economics into the discussion. May need to address some of the aspects of sea level rise in the new regulations. **A.** We are building into the program that beaches won’t suffer if there is an adequate amount of sand in the system that will naturally move landward and upward in rising seas. Beach nourishment is part of that program and an economic driver on the ocean coast. May not be so on the Bay coast. In the regulatory arena, we will need to balance this (ex. Big Stone Beach-beach is wide as it moves landward, though houses are threatened).
- C.** Surprised that regulations as currently written do not address retreat from the ocean or bay. People are more in-tune with sea level rise now than before. **A.** The regulations do include this via the four-step process. Will include presentations at future meetings with examples of rebuilding (where a house has been destroyed). 2004 regulatory changes included new topographic information that could be used to revise the building line.
- C.** Issues covered in first meeting – sections of interest and revisions. What is charge of committee? Who is guiding changes to regulations? Committee? Or Division? Does the Committee need to discuss retreat? Including this into the rules may be very difficult in the state of Delaware. **A.** Element of retreat already in regulations via the Building Line. Homes that become seaward of it may be moved landward of it in the existing permitting process.
- C.** Does not support retreat and takings because this will be highly visible and controversial. Supports making sure that the Building Line and building standards are strong. **A.** Will need to imbed some of the sea level rise and climate change executive orders into the process.
- C.** This process screams statewide building code. Cost of FEMA floodplain insurance is rising and we need to keep open discussion with the community.
- C.** Request an overview of what the Bay Beach Economic Study found with reference to retreat and existing regulations. **A.** The study does not refer to any regulations. The study reviewed existing buildings with respect to erosion and beach nourishment.
- Q.** What is charge of committee? Present sections of interest? Ex. Four-step process.
- Q.** If the law fixing the location of the mapped line did not exist, where would it be now? **A.** Will provide maps at next meeting.

Path Forward:

Next meeting on July 9, 2014, University of Delaware Canon Lab. Meeting room to be determined.

No Homework Assignments were presented to the Committee.
Adjourn 11:45am

RAC members in attendance:

Jim Bailey – Alliance of Bay Communities
Bill Lucks – Delaware Association of Realtors
Chuck Coltman - Resident
Joe Healy – Town of Bethany Beach
John Schulties – Kent County
Greg Hastings – Hastings & Associates, LLC
Wendy Carey – UD Delaware Sea Grant
Sharon Lynn – City of Rehoboth
Dirk Durstein – Department of Justice
Jennifer Luoma - DNREC
Tony Pratt - DNREC
Constance C. Holland – Office of State Planning
Dorothy L. Morris – Office of State Planning
Susan Love – DNREC Coastal Programs
Michael Powell - DNREC

RAC Members not in attendance:

Patty McDaniel – Boardwalk Builders
Bryan Elliott – Integrity Builders
Patrick Cooper – DNREC, Parks and Recreation
Brian Boutin – The Nature Conservancy

Others in attendance:

Kim McKenna - DNREC

