

Beach Regulatory Advisory Committee Meeting
DNREC, Shoreline and Waterway Services Facility
Sep 10, 2014

Meeting began at 9:07am

Introduction (Powell)

Topics covered today: proposed changes to the regulations that are consistent with the changes to the Beach Preservation Act (Act) and identify issues that have come up through regulating the program

Committee was asked to provide the Pros and Cons of the proposed changes

Timeline for reaching out to the public- upcoming workshops

Binder Assembly (Luoma)

August Meeting Summary (Powell)

Recap regarding building line and structures, identified issues and the need to reach out to the public.

Presentation & Discussions Regarding Identified Issues (Luoma)

(see handout that was provided via email last week; flip chart notes on pros and cons)

Definitions

“Act of God” – added in 2006 as amendment to the Act

Discussion on whether to add the definition to the regulations and how the term is used in the regulations, clarification of use in the regulations and how it relates to accidental losses where the government provides beach nourishment . Discussion on how term is defined in other areas (eg., insurance law). DNREC could provide a broader or narrower definition and it may be useful to have the definition in the regulations to help others in the regulatory process. Comment-important to be consistent w/the insurance definition Powell- one of the most fundamental questions asked of DNREC, requests clarity for term.

Action- Dirk/DNREC to draft definition and submit for committee review.

“Base Flood Elevation” – added to the regulations

Discussion regarding stairs and non-essential construction. Comment-Regulations should clarify free board and base flood elevation

Action- DNREC to draft definition that either uses or makes reference to the definition used by the NFIP and submit for committee review.

“Beach” – inland bay shorelines dropped from act

“Beach Preservation” – term changed in act

“Buildable Lot” – needs to be added to regulations to clarify “regulated area” definition

Discussion on the need to know what lots would be located in the regulated area Q- what type of input do you want from the committee, pros/cons? DNREC – need both, but now we are just agreeing whether we need to include or make changes to the definition. Later, DNREC will draft the new definition and seek consensus from group that this definition should be included in the regulations.

DNREC requested the committee's help in crafting the new regulations. Q- are there large tracts of land that would be subject to the new regulations? DNREC - no large tracts now but cannot preclude that someone could buy out large already developed sections of the coast and tear down and redevelop the area.

Action – DNREC to draft definition and submit for committee review

“Building Line” – changed due to the amendments to the Act

“Coastal Engineering Standards of Storm Protection” – needs to be added due to amendments to the Act in 2006

Discussion that the term is not defined in the act and needs a definition for the regulations

Action - DNREC to draft definition and submit for committee review

“Construction” – changed due to amendments to the act 1984

Action - DNREC to draft definition and submit for committee review

“Emergency” – changed due to amendments to the Act

“Erosion” – changed due to amendments to the Act 1984

“Person” – changed due to amendments to the Act 1984

“Private beach” – changed due to the amendments to the act 1984

“Public beach” changed due to the amendments to the act 1984

“Regulated area” – changed due to the amendments to the act 2006

Discussion that the term is not defined and needs definition for the regulations

Action - DNREC to draft definition and submit for committee review

“Smallest Subset of Lots” – not in the Act nor the current regulations, relates to the state's 4-step process as it is incorporated into the regulations

Discussion regarding 4-step process which looks at the adjacent structures, needs definition on what are adjacent structures.

Action – DNREC to draft definition and submit for committee review

“Substantial Damage” changed due to the amendments to the Act 2006

Discussion regarding “act of god” Comment-do not include a dollar amount into the definition (percentage of damage vs original structure); Q-is this subject to how it can be renovated? Do it yourself and keeping it in the same location vs building landward on the same lot? DNREC-premise of the environmental law and regulations were to keep construction off the dunes and have the ability to move buildings as the dunes migrate landward. State has a mandate by law to move structures back (landward of building line). We also have the responsibility to look at the financial impact too.

Action – DNREC to draft definition and submit for committee review

“Substantial Improvement”

Action- DNREC to draft definition and submit for committee review

“Temporary Structure”

Action – DNREC to draft definition and submit for committee review

Other Items That Will Need to be Updated in the Regulations

Part 2

Section 2.6 “Maintenance, Repairs and Emergency Action”- proposed, not in current regulations

Discussion about clarification on the type of work that would be included here Comment-disincentive for moving house landward. DNREC-in practice, different ways for lifting vs moving structures, once you do this you vacate the lot so the landward movement is the most likely result. Septic system may be an issue too and that is where the 4-step process comes into play (where the adjacent structures are with respect to the new building); Comment-requires a flow chart for the public hearing

Action - DNREC to draft section and provide flow chart of different scenarios (lifting house vs moving house with respect to local building line) for public workshops.

Continued discussion on Section 2.6 regarding the ability of an owner to repair, modify, etc

Comment-need to define “Existing Structure” as well as “repair” “modernize” “footprint” “improving”

Action – DNREC to draft section and submit for committee review

Sec 2.7 Restoration or Reconstruction after Destruction-not completely defined in existing regulations, not in the Act

Discussion regarding the uses “act of god” and “complete destruction” which were defined in the regulations and now moving toward using the new term “substantial damage.” The state legislature provided the former definition. This section requires clarification of what was proposed before and how “substantial damage” and “substantial improvement” are different. The terms must be compatible with “act of god” and areas within engineered projects to meet the coastal engineering standards definition.

Q- where along the coast does “act of god” and “engineered beach” apply? These regulations affect only 10% of the coastal area (areas not protected by an “engineered beach”). DNREC - Depends on the location of the building line. Q-Will it move seaward as the result of an “engineered beach”? Comment-need to graphically show where these areas are. All of these terms affect new construction, “act of god”, and voluntary tear down projects. Comment-consider the impacts of a major storm and the majority of cases on how to approach these changes to the regulations. Ideal situation would be to have modern, well-constructed houses with robust dunes.

Action- DNREC to clarify section, draft graphics, and submit for committee review

Sec 2.8 Siting Requirements for Construction and Reconstruction of Structures

Action – DNREC to replace terms and submit for committee review

Building Line Format

Action – DNREC to update to reflect commonly accepted (NAVD) datum and submit for committee review

Building Line Reestablished

No proposal to redo the line prior to updating the regulations. If it were to be redone, the cost would be about \$25K. DNREC could show what the line would look like if it were redone, and will be submitted through the committee and the public for discussion prior to making any changes to regulations.

Action – DNREC to add to regulations

Part 3. Prohibited Activities

3.1 Construction Seaward of the building line – DNREC initiative and put in as conditions of the permit Discussion regarding language for other structures, decks, 4-step process and the “adjacent” neighbor approach. Comment-the county requires the same (using the average) standard that is used for front-yard setback but may give up some of the setback distance if stairs are included. 4-step process developed by DNREC using information provided in the Act and began in 1996. Comment- if this is already in practice, then this needs to be included in the regulations. Comment – this issue is related to the definition of “smallest subset of lots” and the 4-step process impacts to the communities (hurts older ones and benefits new) and hurts the value of the properties. (Commenter objects to concept, but sees no alternative to the 4-step process); north Bethany centric; suggests define “community” in regulations. Comment – regarding alternatives: follow law, build landward of building line, or, this is a compromise to at least give home owners an option to stay seaward of the building line, or, could look at the encroachment onto the line. Comment-using walkways in the average of “smallest subset of lots.” 4-step process shouldn’t apply to subdivisions after 1983
Action – Committee to provide suggestions to DNREC for adding to regulations

Seasonal Structures-

Discussion- DNREC forced to consider them as regular structures. Only applies to commercial properties.
Action- DNREC to draft section and submit for committee review

3.2 Modification or Expansion of Structures Seaward of the Building Line

Discussion regarding decks or any part of the structure seaward of the building line. No issues with this in the past regulations revision process. Comment - implication of this regulation is that if one owns an empty lot, should build on it before one sells it; how many empty lots are out there; kicks this out of the 4-step process. Examples: Indian Beach and Sea Colony Villas- the entire lots are seaward of the building line and have never been built upon (the number of lots could increase if the Building Line is moved landward) Q- County role? Issue involves sewer, water, and other county services. Comment- add the term “vacant” or “never been built upon” to the definition or regulation section Q- regarding “vacant” and “never been built” definitions
Action – Committee to provide recommendations for language to DNREC; DNREC to provide the number of “never been built on” lots to committee

3.3 Other Activities

Discussion regarding Prohibited Activities may not be a controversial regulation. The goal is to keep the boats out of the dunes. Q-are there penalties involved? Yes, but not enforced. Comment - need some regulation from keeping the state as the enforcer. DNREC – This is not an expansion of the state’s role, just to protect dunes and dune grasses –limit dune damages. Comment - regulation has to have teeth and be included. Comment- list prohibited activities in the regulations
Action- DNREC to submit clarification of regulation to committee for review.

4.8 Construction Activities Landward of the Building Line

8.2 Penalties

Additional comments from Committee members

Concern-location of the Building Line is the biggest issue

Action- DNREC to use existing line

Timing and Location of Public Workshops

Last two weeks of October

Rehoboth Convention Center and Slaughter Beach Fire Hall

Discussion – Concern that the regulations are not ready for public review. The public workshops are to submit the proposed regulations and get feedback regarding those changes. These are not public hearings so no specific rules to follow. Comment - need only 3-5 issues for public opinion, provide information tables and allow focus groups to discuss and provide feedback; wants committee to have time to review and make suggestions on the questions that will go out to the public. Q- is there a real need to have the public workshops for October? Homes are closed by the end of October. The workshops need to be on a Saturday for better attendance. Q-who is the audience? A. People who own and live on the coast, elected officials, homeowners associations, etc. Comment - need to post on the DNREC page on the timing and location of the public workshops; on-line meeting and comment forms can be posted as well. Comment - need to define what you want to accomplish for the public workshop and should be submitted to the committee first. Comment - list out the items that the law requires and list out the items that would be more controversial and the new items that affect (areas regulated, areas not, and maybe remap the building line). Kick-off workshops are to inform the public about “what we are going to do” with the regulations. Comment – The workshops should be issue driven and kept simple. Workshops will address ocean and bay issues together.

Action – DNREC to submit the 4-5 top issues to the committee prior to the next meeting and include in the next meeting agenda; DNREC to post public workshop information on-line (one meeting during the week, and one on the weekend) and submit to the communities.

Adjourn 12:09 pm

Committee Members in Attendance

Evelyn Maurmeyer

Jim Bailey

Brian Boutin

Bill Lucks

Greg Hastings

Joe Healy

Chuck Coltman

Patty McDaniel

Sharon Lynn

Susan Love

Mike Powell

Jennifer Luoma

Tony Pratt

Dirk Durstein

Committee Members Not in Attendance

Bryan Elliott, Integrity Builders

John Schulties, Kent County
Connie Holland, State Planning Coordinators Office
Patrick Cooper, Div. of Parks and Recreation

Others in Attendance

Kim McKenna
David Warga