

In The Matter Of:

*State of Delaware Department of Natural Resources
Division of Watershed Stewardship*

*In Re: Beach Protection 7 DE Admin. Code 5102
November 7, 2015*

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DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
OF THE STATE OF DELAWARE
DIVISION OF WATERSHED STEWARDSHIP
SHORELINE AND WATERWAY MANAGEMENT SECTION

..

RE: Proposed Regulations Governing)
Beach Protection and the Use of)
Beaches (7 DE Admin. Code 5102))

..

Lewes Fire Department, Station 2
32198 Janice Road
Lewes, Delaware 19958

Saturday, November 7, 2015
10:00 a.m.

..

BEFORE: Lisa Vest, Hearing Officer

APPEARANCES: Ralph Durstein, DAG
Attorney for DNREC

ALSO PRESENT: Jennifer Luomo, Tony Pratt, Mike Powell
DNREC

-- Transcript of Proceedings --

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1 MS. VEST: If everyone could take
2 their seats, we are going to go ahead and begin the
3 proceedings. The acoustics seem to be pretty good,
4 so we're going to go with this. If at anytime
5 somebody has difficulty hearing us, just please let
6 me know.

7 There is going to be a microphone
8 that's on for those wishing to speak, but I think we
9 will be okay from the podium.

10 I want to thank everybody that came
11 out this morning. We are going to go ahead and
12 start the hearing at this time. We are here this
13 morning to receive public comment on DNREC's
14 Proposed Amendments to the Regulations Governing
15 Beach Protection and the Use of Beaches. These regs
16 are found at 7 Delaware Admin Code 5102.

17 For those of you that have not seen
18 me at these type of proceedings before, my name is
19 Lisa Vest, and the Secretary has designated me to
20 serve as hearing officer for these proceedings.

21 If you have not already done so, I
22 would ask that you please sign up at the sign-in
23 sheets at the back of the room. If you do wish to
24 offer formal comment for the record, the way that



1 that will happen is at the conclusion of the
2 Department's proceedings, we will go down the list
3 of those indicating a desire to offer comment.

4 There are four people that
5 preregistered with the Department to speak, so we
6 will go to them first. And then at that point we
7 will just go right down the list of people on the
8 sign-in sheet. So, again, if you haven't signed in,
9 please take an opportunity to do so.

10 We are here for a limited time this
11 morning. In an effort to accommodate everyone who
12 has indicated a desire to speak, I would ask that
13 comments be limited solely to the subject of the
14 hearing, which, again, are the Proposed Amendments
15 to the Regulations Governing Beach Protection.

16 Also, at the back table along with
17 the sign-in sheet, there is a copy of the proposed
18 regulations. They are there for your use, for your
19 review. I would encourage you to pick one of those
20 hand-ups out -- or handouts up -- oh, it's early --
21 if you have not already done so.

22 Also, when it comes time to yield the
23 floor to those wishing to offer comment, we are
24 going to ask that the comments be kept as concise as



1 possible and, once again, contained to the subject
2 matter at hand.

3 We are looking at approximately three
4 to five minutes for each speaker, again so that
5 everybody can have an opportunity to speak and it be
6 fair as far as how much time everyone has.

7 If, by any chance, you have come with
8 written comments already prepared, you can feel free
9 to give those to me. I will enter them as an
10 exhibit into the formal hearing record that's being
11 made as a result of these proceedings, and then you
12 can just take your time and give a brief summary of
13 what your written comments say.

14 Whether listening or speaking, I
15 would ask that everyone here be respectful and
16 considerate of all opinions regarding these proposed
17 regs, even though some, of course, may be different
18 from your own.

19 I would also ask at this time that
20 all cell phones be either muted or turned off for
21 the balance of time that we are here.

22 With regard to protocol, again, after
23 I conclude these introductory remarks, I will be
24 turning the hearing over to Department staff to my



1 left. They will be making a formal presentation
2 just to explain how we got here this morning and to
3 help everyone to understand the basis for these
4 proposed regs and steps that have been taken by
5 DNREC over the past few years that got us to this
6 place this morning.

7 Again, once that presentation has
8 concluded, we will then go to comment, if anyone
9 wishes to do so.

10 It's also important to note no
11 decision is going to be made this morning with
12 regard to these proposed amendments to the
13 regulation. The purpose of this platform and this
14 venue this morning is to simply receive comment from
15 the public. If, by any chance, you have come with
16 questions as to how these regs may specifically
17 affect you, I would encourage you to hold off on
18 specific questions.

19 The members of DNREC that are here,
20 they all have business cards. They are here to
21 serve. They are here to assist you. And we
22 certainly want to help you understand these things.
23 But, again, the purpose of these proceedings is to
24 receive comment for the record.



1 Once these proceedings have concluded
2 today, the record is going to remain open for an
3 additional 15 days pursuant to Delaware law so that
4 everybody has an ample opportunity to offer written
5 comment for the record. Comment can be received by
6 the Department up through November 22. Okay?
7 That's 15 days.

8 And it's also important for you guys
9 to understand that whether comment comes in today
10 verbally, whether it comes in as a written comment,
11 or whether it comes in at the last minute on
12 November 22nd, it all bears the same weight, it will
13 all be considered equally, and it will all be
14 reviewed by the Secretary prior to his making a
15 decision in this matter.

16 We are just here to kind of act as a
17 gathering service and an informational service, and
18 we are also here to make sure that the Department
19 properly vets this to the public.

20 That being said, I'm going to turn
21 the floor over to Department staff so they can begin
22 their presentation.

23 MR. POWELL: Good morning. Is this
24 microphone working? Okay. My name is Michael



1 Powell, and I'm a Program Manager for the Division
2 of Watershed Stewardship in DNREC. And I'm going to
3 be making a relatively short presentation on some
4 background of the proposed regulatory changes and
5 also turning it over to Jennifer Luomo for some more
6 detail on the proposed regulations.

7 But before we start on that, I wanted
8 to introduce the DNREC staff who are here to help.
9 Tony Pratt is the Program Administrator. Jennifer
10 Luomo is an Environmental Scientist. Frank Piorko
11 is the Division Director. And David Larga is in the
12 back helping with sign-in. And I would encourage
13 you that if you didn't sign in, to please make sure
14 that, before you leave today, that you do sign in.
15 And also Ralph Durstein is here to help us from the
16 Attorney General's Office.

17 So, with that said, I am going to
18 walk through some slides that I hope will give a
19 little bit of background on the history of the act
20 and regulatory program and kind of take us up to
21 where we are today.

22 I am going to step away from the
23 microphone to change the slides, but if anyone has
24 difficulty hearing me -- I will try to speak loudly,



1 but please let me know if I'm not audible in the
2 back.

3 So, as Lisa said, the purpose of this
4 morning's hearing is to discuss proposed regulations
5 for the Regulations Governing Beach Protection and
6 the Use of Beaches. And, as I mentioned, I am going
7 to go through a bit of history about the Beach
8 Preservation Act, which is the enabling legislation
9 for these regulations, and the regulations,
10 themselves.

11 It's important to have some context
12 that the March of '62 storm, the Ash Wednesday
13 Northeaster was a watershed event for the Delmarva
14 Peninsula and for Delaware, widespread structural
15 damage, widespread damage to dunes, and a great deal
16 of construction activity occurring in the aftermath
17 of that storm which destroyed a lot of buildings
18 that were located on the oceanfront.

19 So that was a milestone event that
20 led several years later to a need for regulations
21 that would ensure that construction activities on
22 the dunes and beaches in Delaware were done so in a
23 way to minimize impacts.

24 1972, the Beach Preservation Act was



1 passed, and the General Assembly recognized that
2 Delaware's beaches were rapidly deteriorating due to
3 a combination of natural processes and continual
4 encroachment.

5 And a quote from the Act is that
6 "Development and habitation of beaches must be done
7 with due consideration given to the natural forces
8 impacting upon them and the dynamic nature of these
9 beaches."

10 With that said, the charge of the
11 Department through this Act was to enhance,
12 preserve, and protect the public and private beaches
13 of the state, and to mitigate beach erosion, and to
14 minimize storm damage.

15 So with that background, the
16 interim regulations that came out of the Beach
17 Preservation Act were adopted in 1973. The first
18 set of final regulations was enacted in May of 1974.

19 The regulations were revised in 1981
20 in a very important way, which is for the first time
21 to adopt a map building line. Prior to 1981, field
22 assessments were done in order to determine where
23 the back side of the dune and construction limits
24 were to be located on a lot-by-lot basis, on a



1 project-by-project basis.

2 Given the need for predictability and
3 for information about where regulation would be --
4 or where construction would be regulated, the map
5 building line went into effect in 1981, and it was
6 based on aerial photography and topography collected
7 in 1979.

8 The current regulations went into
9 effect on December 27th of 1983 and have not been
10 amended since then. The Act has been amended since
11 1983. So that's a critical reason why we are here.
12 The regulations have not been changed, but the
13 legislation has been amended several times since
14 1983.

15 In 1984 the Act was amended to
16 redefine the term "beach." Definitions were added.
17 The building line concept of regulating, and defined
18 the power to enhance, preserve, and protect, and
19 also made changes to the penalty provisions.

20 An important amendment to the Beach
21 Preservation Act was made in 1996. The state
22 legislature amended the act to establish that in the
23 commercialized areas of Rehoboth and Bethany Beach,
24 where there at the time was no natural dune system,



1 the building line was set on the west side of the
2 boardwalk. And that was a change.

3 Prior to that, in most cases the
4 building line had actually been west of the
5 boardwalk, so there was kind of a no-build area
6 between the west side of the boardwalk and the
7 building line. The 1996 Act moved the building line
8 to the west side of the boardwalk.

9 Also in 1996 there was an amendment
10 to the Beach Preservation Act that required the
11 Department to take additional steps to ensure that
12 construction seaward of the building line had as
13 little impact on dunes and beaches as possible.

14 And what it told us -- what it
15 instructed us to do is to require that any
16 construction, in whole or in part, seaward of the
17 building line, which could be reduced in size
18 reasonably or otherwise altered to diminish
19 encroachment over the building line, the Department
20 shall require such reduction or alteration as a
21 condition of granting the permit or letter of
22 approval.

23 Because that's a fairly general
24 statement requiring us to require reasonable



1 alterations, a policy was created to uniformly
2 administer that law. And the policy was created to
3 be used as guidelines for reasonably reducing the
4 size or altering to lessen encroachment seaward of
5 building line. That policy is called the four-step
6 process, which we will go into in a little bit more
7 detail.

8 In 2006, an amendment to the Beach
9 Preservation Act was clarified. The amendment
10 clarified that Rehoboth and Indian River and
11 Assawoman Bays are removed as part of the law, so
12 there are no regulatory provisions of the Beach
13 Preservation Act that pertains to the shoreline of
14 those bays.

15 The building line had been described
16 in a previous vertical datum called the National
17 Geodetical Vertical Datum of 1929. By 2006, that
18 was no longer a widely used vertical datum, so they
19 modified the law to require a vertical datum
20 commonly used by land surveyors, as those datums are
21 updated from time to time.

22 Also in 2006, the Act was amended to
23 allow for rebuilding within the previous structure's
24 footprint where state or federal agencies are



1 constructing and maintaining dunes and beaches to a
2 standard -- to an engineering standard of storm
3 protection. Regulated area and substantial damage
4 were defined. And the Act also clarified that
5 repairs as a trigger to DNREC oversight was removed,
6 and that was clarified to ensure that it was more
7 clear that minor repairs are not a -- are no longer,
8 if they ever were, a reason to require movement of a
9 structure or changes in footprint.

10 There was effort to revise the
11 regulations about ten years ago. In 2003, a Start
12 Action Notice was issued by the Department.
13 Workshops were held in Dover and in Rehoboth in 2003
14 and 2005. A hearing was held beginning on
15 December 14, 2005, and continued on January 13th of
16 2006. And DNREC withdrew those proposed regulations
17 on October 12, 2006.

18 And I will turn it over to Jennifer
19 to talk in more detail about the current proposed
20 regulations.

21 MS. LUOMO: Okay. So after the
22 previous set of draft regulations were withdrawn, we
23 started from scratch. We went back to the drawing
24 board. We regrouped on where we wanted to go with



1 these regulations.

2 And so we did submit a Start Action
3 Notice in April of 2014, which was approved by the
4 Secretary at the time, Collin O'Mara. We formed a
5 Regulatory Advisory Committee.

6 We basically wanted this to bring in
7 different stakeholders and different folks that
8 would be affected by our regulations to get their
9 input in how we proceeded with these regulations.
10 We formed this early on in May of 2014, and we met
11 almost every month for about the past year.

12 And these are the meetings that we
13 had. And, basically, we used this Regulatory
14 Advisory Committee to find out how these regulations
15 would affect the different stages. We also held a
16 workshop for the town officials. And we also made a
17 presentation to the Delaware Association of
18 Realtors.

19 We held six public workshops prior to
20 this. We had the first set about a year ago.
21 During that workshop, that was before we really
22 attempted to make any changes to the regulations.
23 We basically wanted to get the input of the public,
24 give them an idea of where we were coming from as



1 far as what the current regulations were and where
2 we were going and what all the actions were that we
3 needed to incorporate into our regulations. And we
4 got some feedback and we had, I think, a good
5 dialogue going with the public as far as finding out
6 that what their concerns were and questions and
7 trying to get the answers to those questions.

8 In the spring we held another set of
9 workshops. And at this point we did have a draft
10 set of regulations, and we issued those to the
11 public for comment and questions and had another
12 dialogue with that.

13 And then in September of this year,
14 we had another set of workshops. And, basically, we
15 are working pretty much with the set of regulations
16 that are proposed today at those workshops. And we
17 took that.

18 We did have a -- well, we do have a
19 proposed set of regulations that we had published by
20 the State Registrar of Regulations, Register of
21 Regulations, on October 1st of 2015. That is the
22 version that we have a copy of in the back of the
23 room. You can pick one of those up. And now we are
24 having the hearing.



1 So after the hearing -- well,
2 actually, as part of the hearing today, we are going
3 to accept comments related to those regulations.
4 There will be a comment period. Lisa mentioned this
5 earlier.

6 By law, the comment period may be a
7 minimum of 15 days, so November 22nd would be the
8 end of that 15-day period. All comments are -- they
9 have the same weight. So if you submit a written
10 comment on November 22nd or if you speak here today,
11 those comments will have the same weight when it
12 comes to the Secretary hearing those comments,
13 reviewing those comments, and making his decisions.

14 Lisa will then write a hearing
15 report, and then she will make recommendations to
16 the Secretary of DNREC and will draft an order. The
17 Secretary will either accept the order as is or the
18 regulations as is, will adopt the regulations with
19 changes, or will reject them.

20 And if the regulations are adopted,
21 then they will go into effect ten days after they
22 are published by the State Register of Regulations.

23 After today, comments will be
24 received by the hearing officer. This is her



1 contact information. I am going to leave this up
2 for the remainder of the hearing. That way, you can
3 jot down what you need to. You may not right now
4 have a comment, but you might decide that you have
5 one before you leave here today. So please feel
6 free to jot that information down.

7 And that's all I have at this point.
8 Would you like me to move on to the exhibits?

9 MS. VEST: Yes.

10 MS. LUOMO: Okay. I have the
11 exhibits that DNREC is going to put into the hearing
12 record. I am going to go ahead and read what those
13 are.

14 Exhibit 1 are the Proposed
15 Regulations Governing Beach Protection and the Use
16 of Beaches that were published by the Delaware
17 Register of Regulations on October 1, 2015.

18 Exhibit 2 is our start action notice.

19 Exhibit 3 is the Register Notice and
20 the notice of receipt by the Delaware Register --
21 Registrar.

22 Exhibit 4 is the notice of public
23 hearing. We have the notice as it was submitted to
24 the newspapers. We have it in the News Journal. We



1 have it in the Delaware State News. We have a copy
2 of the public meeting calendar posting that we
3 posted. And we also have the DNREC press release.
4 We put out a press release so that the media can
5 pick up our announcement of the hearing if they
6 wanted to.

7 Exhibit 5 is the website for the
8 Beach Regulatory Advisory Committee. This website
9 includes links to the agendas for each of our
10 Regulatory Advisory Committee meetings and the
11 public workshops we had. It also has all the
12 presentations that were made at those meetings and
13 the public workshops. It has the meeting minutes
14 from those Regulatory Advisory Committee meetings,
15 and it has the notes from our public workshops.

16 Exhibit 6 are the amendments that
17 were made to the Beach Preservation Act since 1983.
18 Included in that are Chapter 361, which was formerly
19 House Bill Number 607; Chapter 380, formerly Senate
20 Bill Number 373; Chapter 398, formerly Senate Bill
21 Number 425; Chapter 435, formerly Senate Bill Number
22 377; and Chapter 236, formerly Senate bill number
23 178. And Mike briefly went over what those
24 amendments were in his part of the presentation.



1 Exhibit 7 is our four-step process
2 pamphlet. The four-step process was a policy since
3 1996 that we have been using for construction of
4 structures seaward of the building line. It is now
5 proposed to be part of the regulations. So this is
6 a diagram that shows how that four-step process
7 works.

8 Exhibit 8 are comments received prior
9 to the hearing. So if a formal comment was
10 submitted prior to today, that is my Exhibit 8.

11 And that is everything that we intend
12 to produce for the record at this time.

13 MS. VEST: All right. Thank you,
14 Jennifer. Let the record reflect that the exhibits
15 now identified by DNREC are hereby entered into the
16 hearing record. At this time does the Department
17 have any additional comments it wishes to make?

18 MR. POWELL: No.

19 MS. VEST: If someone could get me
20 the sign-in sheets, we are going to turn now to the
21 point in the hearing where we will open the floor to
22 comment.

23 For those of you that came in a
24 little bit late after I had my opening remarks, we



1 want to, of course, be fair and courteous to
2 everybody here and to listen to everybody's comments
3 when they are offered for the record.

4 When I recognize you and read your
5 name off, if you would approach the podium and start
6 by saying your full name so the court reporter can
7 make sure that we get it down in the record.

8 We are, because of the limited amount
9 of time this morning, going to try to keep everybody
10 to a three to five-minute time period. Again, like
11 I said before, maybe you came just to find out what
12 the presentation was, and you don't have any
13 comments. That's fine. Maybe, after hearing some
14 of the other comments that get offered, you do have
15 comments. That's fine. The record is open for an
16 additional 15 days, so please feel free. You are
17 not missing the opportunity to comment if you choose
18 not to do so this morning.

19 The record is going to remain open
20 through November 22nd, so it's completely up to you
21 whether you comment today or later submit those
22 comments to me.

23 I also have my business card, if you
24 are not wanting to write that down. So if you want



1 to approach me following the hearing, I can make
2 sure you have my contact information that way.

3 I am going to start with the people
4 that contacted us previously indicating the desire
5 to speak. So the first person in line will be Jim
6 Bailey.

7 MR. BAILEY: Good morning. My name
8 is Jim Bailey. And this morning I am representing
9 the Alliance of Bay Communities. The Alliance of
10 Bay Communities is composed of delegates from the
11 Delaware Bay shore communities from Little Creek and
12 the north continuing to Pickering Beach, Kitts
13 Hummock, Bowers Beach, South Bowers Beach, Slaughter
14 Beach, Prime Hook Beach, and Broadkill Beach, with
15 representation from the agricultural, ecological,
16 and maritime communities. Our purpose is to protect
17 and promote the bay shore and the surrounding
18 environments.

19 We have reviewed the Proposed
20 Regulations Governing Beach Protection and the Use
21 of Beaches, and the delegates to the Alliance have
22 voted to endorse the regulations as written.

23 We believe that these regulations are
24 in the best interests of preserving and protecting



1 our shorelines and dune system. The October 2015
2 nor'easter amply demonstrated the importance of a
3 viable beach and dune system and the protection it
4 provides. We, therefore, encourage the adoption and
5 implementation of these regulations.

6 MS. VEST: Thank you, Mr. Bailey.

7 Next, Michael Walls.

8 MR. WALLS: Good morning. My name is
9 Michael Walls. And I want to thank DNREC and
10 members of the Regulatory Advisory Committee for all
11 the work that obviously went into these regulations.
12 And I thank you for the opportunity to speak here.

13 I own a bay-front property in
14 Broadkill Beach which I purchased in 1985 after
15 visiting it continuously from 1976, which, if you do
16 the math, will tell you I have been visiting
17 Broadkill Beach for over 40 years, and I have owned
18 a property there for 30.

19 When I bought the home, it was and
20 has continued to be my intention to make it a
21 year-round home for retirement and making it
22 suitable as a full-time residence.

23 The current home is a grade on a lot
24 that is completely seaward of the building line. In



1 order to make the home suitable, the floodplain
2 insurance will require its elevation on a new
3 foundation, which will also allow for necessary
4 storage and parking below. Expansion for adequate
5 space will necessitate the addition of another
6 living level above the new one.

7 My reading of Section 3.5 and the
8 definitions in the proposed regulations seems to
9 say, clearly, that all that is permissible.

10 However, it seems also uncertain, based on reading
11 of other comments. And that's what my concern is.

12 I believe it would be fair to all
13 concerned if there was an incontrovertible language
14 stating that, "Any existing building seaward of the
15 building line may be elevated and improved without
16 limitation within its existing footprint so long as
17 all such elevations and improvements are consistent
18 with all the federal, state, and county
19 regulations."

20 This is particularly true for
21 structures purchased by their current owner prior to
22 the creation of the four-step process and those
23 behind constructed and maintained dunes, such as the
24 dune recently created by the channel dredging



1 project.

2 I suggest that such language would be
3 fairer in that, A, it doesn't keep shifting the
4 standards for people who purchased property under a
5 different set of regulations, and it doesn't devalue
6 bay-front properties by allowing construction and/or
7 improvement on lots behind the building line that
8 soar to height limits and footprints far in excess
9 of those existing seaward the building line.

10 And it removes any unfairness in the
11 establishment of any arbitrary standard for limiting
12 the cost of any improvements to some percentage of
13 the value of the existing structure.

14 Such costs escalate with inflation
15 and materials, labor, and profits, while older
16 structures decline in value due to age and the
17 increasing relative value of homes not seaward of
18 the building line created as a consequence of the
19 proposed regulations that I just mentioned in number
20 two.

21 And it would allow for increased
22 protection of the beach and the dunes by permitting
23 elevation of buildings within their existing
24 footprints above the grade level without penalizing



1 homeowners by reducing the size of their homes.

2 The seemingly administrative action
3 of changing regulations can and will have impact on
4 longstanding plans for the lives of individuals and
5 families who purchased prior to the changes in the
6 regulations and could not have anticipated their
7 negative impact with any amount of due diligence.

8 I'm asking that these proposed
9 regulations do not allow for the destruction of
10 people's lifetimes of planning.

11 And I thank you for your attention.

12 And I will give you the written comments.

13 MS. VEST: Thank you, Mr. Walls.

14 A. You are welcome. Thank you.

15 MS. VEST: Just a little
16 housekeeping. I want the record to reflect that
17 Mr. Bailey offered his written comments. I have
18 marked them as Bailey Exhibit Number 1. I will do
19 the same for Mr. Walls' written comments. They will
20 be indicated as Walls Exhibit 1. And thank you,
21 gentlemen, again.

22 Next up, Janice Klotz.

23 MS. KLOTZ: Good morning.

24 MS. VEST: Good morning.



1 MS. KLOTZ: I am Janice Klotz, and I
2 have been a visitor and a resident in Broadkill
3 Beach for more than 25 years. My husband introduced
4 my to Broadkill Beach when we first met, asking me,
5 "Could you be happy here?"

6 I knew I had fallen in love, not just
7 with him, but with this place, the beauty of the
8 land, bay, the captivating wildlife. For 25 years,
9 we have nested, improved, and dreamed of our home's
10 potential. Now, after years of planning and saving,
11 we stand on the verge of realizing our dream.

12 Our home is on a lot seaward of the
13 building line. Its bay-front location was and is
14 its main attraction to us. That was the site's main
15 value when it was purchased. Now, as we try to
16 capitalize on that value, to make our dreams come
17 true, we feel it may be threatened by the
18 regulations.

19 I find it grossly unfair to impose
20 any limitations on the improvements and additions to
21 the existing properties so long as they remain
22 within their existing footprints. Such limitations
23 on properties seaward of the building line give
24 unfair value to properties behind the building line



1 by not imposing the same limits on them. At the
2 same time, they hurt the comparative value of
3 bay-front property.

4 People who bought homes in good faith
5 before the four-step process should not be limited
6 by it. If a home has not suffered storm damage in
7 decades, it seems to me that its footprint has
8 proven itself to be no threat to beach, dune, or
9 insurance company.

10 The language of the footprint section
11 of the proposed regulation seems to respect this,
12 but so many other parts of the regulations seem to
13 allow limits.

14 I would like it clear that any
15 existing building seaward of the building line may
16 be improved, expanded, and repaired so long as any
17 and all such work is within its existing footprint
18 and, of course, in compliance with all federal,
19 state, and county building codes.

20 That would make me feel much more
21 certain of our future in this place that we have
22 come to love. I thank you.

23 And I also have another comment here.
24 But, in the essence of time, I will just submit that



1 to you.

2 MS. VEST: That's fine.

3 MS. KLOTZ: And I hope I can squeeze
4 through here. Don't put that on the record, please.

5 (Laughter)

6 MS. VEST: Thank you, Ms. Klotz.

7 MS. KLOTZ: Thank you.

8 MS. VEST: Ms. Klotz's comments will
9 be indicated as Klotz Number 1. And, again, thank
10 you. Exhibit 1, rather.

11 I apologize in advance if I mess up
12 some of your names. I'm notorious for that. George
13 Naegele.

14 MR. NAEGELE: Naegele. (Correcting
15 pronunciation.)

16 MS. VEST: Naegele. I was going to
17 say that.

18 MR. NAEGELE: Everybody has a problem
19 with it. Good morning. My name is George F.
20 Naegele. I am Vice President of the Broadkill Beach
21 Association.

22 After careful review, the Board of
23 Directors of Broadkill Beach Preservation
24 Association has voted to endorse the proposed



1 regulations governing beach protection and the use
2 of beaches as presently written.

3 The intent of these regulations is to
4 protect our beaches and dune system. The eight
5 high-tide nor-easters in October 2015 unequivocally
6 demonstrate the value of a healthy beach and dune
7 system. Therefore, we encourage the expedition --
8 expeditious adoption and implementation of these
9 regulations. Thank you.

10 MS. VEST: Thank you, Mr. Naegele.
11 And, again, his written comments submitted for the
12 record are hereby marked as Naegele Exhibit 1.

13 At this point I am turning now to
14 those that indicated a desire on the sign-up sheets
15 to speak.

16 Again, no particular order, just the
17 order in which they are on the sheets. Ronald
18 Honsicker.

19 MR. HONSICKER: Good morning. My
20 name is Ronald Honsicker. I'm past mayor of the
21 town of Bowers Beach and a delegate to the Alliance
22 of Bay Communities. We discussed this in the
23 Alliance, and Mr. Bailey gave a good presentation as
24 to the endorsement that the members gave. I just



1 wanted to add to it my personal endorsement to the
2 adoption of these regulations. Thank you.

3 MS. VEST: Thank you, sir. Ron
4 Goodwin?

5 MR. GOODWIN: Good morning. My name
6 is Ron Goodwin. I own a property at Prime Hook
7 Beach, Delaware.

8 A couple of questions that I have
9 concerning these proposed regulations. And I would
10 like to second what Mr. Walls had said about the
11 inconsistency and the unknown affect on the property
12 values that these regulations have.

13 One thing I guess that concerns me is
14 I don't believe the regulations are in compliance
15 with the law as stated, the Beach Preservation Act,
16 because there should be no question that property
17 owners that are located seaward of the building line
18 have a right to build within that same footprint.

19 The law states -- and I quote -- the
20 Beach Preservation Act, Section 605, permits
21 required under D, it states, "Notwithstanding any
22 provision of this section or regulations," meaning
23 in spite of, "any provisions of this section or
24 regulations adopted by the Department, no property



1 owner shall be prevented within the regulated area
2 from repairing, modifying, modernizing, updating or
3 improving their existing structure or by performing
4 such actions be required to relocate or reduce in
5 size so long as these repairs, modifications, or
6 improvements are within the existing structure's
7 footprint."

8 That's not exactly what the proposed
9 regulations state with the four-step process.

10 That's not in compliance with the law. And I think
11 that needs to be changed. Whether it's DNREC's
12 policy or not, the regulations and policies have to
13 be in compliance with the existing law, period.

14 Second, I would like to ask: One of
15 the requirements when they adopt or propose rules
16 and regulations by state agencies, they need to be
17 reviewed by the Attorney General to determine the
18 effect on private property rights. Has that been
19 done, Mr. Dirkson, Durstein?

20 MR. DURSTEIN: Yes.

21 MR. GOODWIN: Okay. Can you provide
22 us with a copy of that written statement?

23 MR. DURSTEIN: I will.

24 MR. GOODWIN: And can you put that on



1 the web?

2 MR. DURSTEIN: I believe we can.

3 MS. LUOMO: We can probably do that.

4 MR. GOODWIN: Okay. I think that's
5 important, because that has to be reviewed. Okay?
6 Because if it's a taking of private property, you
7 are required by federal and state law just
8 compensation to the property owners.

9 Do you believe this is a taking,
10 Mr. Durstein?

11 MR. DURSTEIN: Well, again, the
12 format here is not supposed to be a Q and A, but I
13 have analyzed the regulations. I mean, the short
14 answer is no, I don't believe that they would
15 violate the constitutional protections or would
16 constitute a taking.

17 But my written evaluation will be a
18 little more involved than that, because it's a
19 sensitive issue, and there is a lot of law behind it
20 that requires some analysis.

21 MR. GOODWIN: Okay. I'm surprised
22 that wasn't put on the web by now.

23 Second of all, before I forget, can
24 you have these slides put on -- are they on the web



1 now?

2 MS. LUOMO: They are not at this
3 time, but they will be.

4 MR. GOODWIN: Okay. Why weren't they
5 put on prior to this meeting so we could all review
6 them and be prepared for an informative give and
7 take meeting?

8 MS. LUOMO: Just in case I changed it
9 between now and then.

10 MR. GOODWIN: Okay. Speaking of
11 that, this public notice in the Register of
12 Regulations for the State of Delaware, what --
13 Ms. Luomo, what date was that prepared on?

14 MS. LUOMO: The notice?

15 MR. GOODWIN: Yes.

16 MS. LUOMO: Um, it will be in my
17 exhibits.

18 MR. GOODWIN: Right. It was prepared
19 on 9/11/2005.

20 MS. LUOMO: No.

21 MR. GOODWIN: That's what the first
22 page says right here, prepared by Jennifer Luomo
23 9/11/2015.

24 MS. LUOMO: 2015. Yes, 2015.



1 MR. GOODWIN: Fifteen. I'm sorry.
2 Is that when you prepared it?

3 MS. LUOMO: This is when I submitted
4 it to the State Registrar.

5 MR. GOODWIN: Okay. And that was
6 prior to the public workshops?

7 MS. LUOMO: Yes.

8 MR. GOODWIN: So, in other words, the
9 input from the public workshops meant nothing,
10 because this was already prepared and submitted --

11 MS. LUOMO: Yes.

12 MR. GOODWIN: -- prior to the public
13 workshop; is that correct?

14 MS. LUOMO: We had the ability to
15 make changes between the workshops and now if we
16 felt -- if the need was there.

17 MR. GOODWIN: So you would have had
18 to resubmit this to the Register?

19 MS. LUOMO: We would have had to make
20 that clarification during the hearing. But we did
21 not change anything from this set of regulations to
22 what we are proposing today.

23 MR. GOODWIN: And why is that?

24 MS. LUOMO: Because there were no



1 changes necessary.

2 MR. GOODWIN: In your estimation?

3 MS. LUOMO: In our review with the
4 Regulatory Advisory Committee.

5 MR. GOODWIN: Okay. I think that
6 needs to be reviewed. These regulations are not in
7 compliance with the law.

8 And I guess, then, I guess my
9 question is that these regulations, this four-step
10 process, that's been a policy, not a regulation for
11 the last nine years; is that correct?

12 MS. LUOMO: 19 years.

13 MR. GOODWIN: Nineteen years?

14 MS. LUOMO: Nineteen years.

15 MR. GOODWIN: So why wasn't it
16 adopted as a regulation in the past 19 years? Why
17 all of a sudden now?

18 MS. LUOMO: Well, the first attempt
19 to incorporate it into the regulations was in 2006,
20 so that was almost ten -- well, nine years ago.

21 MR. GOODWIN: And what happened then?

22 MS. LUOMO: We withdrew our
23 regulations.

24 MR. GOODWIN: Speaking of that,



1 Hearing Officer, I would like you to include the
2 minutes and the information from those two meetings,
3 the 2004, December 2004, and the January 2005 in the
4 minutes of this meeting, because it seems like it's
5 a continuation.

6 MS. VEST: Well, your comment with
7 that request is certainly noted for the record. But
8 in the Department's presentation, they noted that
9 that particular promulgation was withdrawn. This
10 whole thing was started fresh, I believe with a
11 brand new SAN in April of 2014. So they started
12 from scratch.

13 There is no need to bring the
14 previous promulgation into this. This is a brand
15 new rulemaking procedure. So your comment is noted
16 for the record.

17 MR. GOODWIN: Okay. The second thing
18 is can you require them to put those notes on their
19 website so that everybody can see the previous --
20 you know, we learn from the history, and we would
21 like to see that. Because I have never found them
22 on the web. Are they on the web?

23 MS. VEST: Well, I believe that the
24 Department already said that they were going to be



1 putting up the minutes and whatnot that they
2 referenced in their presentation.

3 But, again, you know, part of the
4 workshops and part of the steps that were taken to
5 get here today was a rehash of how we got here. So
6 I'm sure that any valid history that would be
7 valuable would be contained within those exhibits.

8 If you are looking for something once
9 they go up, and they do not appear to be on the web,
10 by all means, contact me, and I'll see what we can
11 do.

12 MR. GOODWIN: Well, they're already
13 telling me --

14 MS. VEST: But, for now, your comment
15 is noted.

16 MR. GOODWIN: Thank you. They are
17 already telling me that those minutes from those
18 meetings in December '04 and January '05 are not on
19 the web. They have never been placed on the web?

20 MS. LUOMO: I don't believe they are
21 on the web now. I can't say that they were never
22 placed on the web. They may have been back then.

23 MR. GOODWIN: Can you place those on
24 the web?



1 MS. LUOMO: Is that something we need
2 to do?

3 MS. VEST: Your request is noted. We
4 will take it under advisement.

5 MR. GOODWIN: Okay. Well, let's see
6 here. And one of the things that concerns me about
7 the timing of this is it seems like this hearing --
8 and I mentioned that at the public workshop -- it
9 was never put in the notes at the Milton meeting.
10 It seems to me that this is being pushed through
11 right now before the end of the year. Is that
12 correct?

13 MS. VEST: We are here now as part of
14 the steps to this promulgation. It's a process that
15 the Department uses with its regulatory development,
16 and it happens to be November.

17 MR. GOODWIN: Yes. But this -- the
18 regulations, the Beach Preservation Act, was changed
19 in 2006; is that correct?

20 MS. LUOMO: 2006. The last
21 amendments to the Beach Preservation Act were made
22 in 2006.

23 MR. GOODWIN: Right. So here we are
24 nine years later. And I would request that we have



1 an additional meeting after this, because there is a
2 lot of open-ended issues that need to be reviewed.
3 And I think one of the reasons why this is being
4 pushed through now, rather than waiting, because
5 after January 1st of this next year, DNREC will be
6 required under law to justify their change in
7 regulations.

8 And I believe that, you know, we have
9 gone nine years waiting for this, and I don't
10 believe that several months, waiting several months
11 for people to be understanding what these
12 regulations actually mean and the affect on their
13 property values.

14 I believe it's prudent for DNREC and
15 the State of Delaware to wait and do the evaluation
16 that's necessary -- that would be necessary starting
17 the first of the year. And I would ask any
18 politicians in the room here -- is there any
19 politicians, representatives? Sir, I'm sorry, your
20 name, please?

21 MS. VEST: Sir, if you would just
22 keep your comments -- we have got to move on.

23 MR. GOODWIN: I need to know. I
24 would think, out of courtesy, you would have



1 introduced the politicians in the beginning of the
2 meeting so that all the property owners would know
3 who they are and who their representatives are here.

4 MS. VEST: They certainly have an
5 opportunity to offer comment if they wish to, and
6 they are certainly here to meet with you at the
7 conclusion. But right now we are under a serious
8 time frame. So your comments are being noted for
9 the record. We appreciate the comments. But at
10 this point they are noted for the record.

11 MR. GOODWIN: Okay. Well, then, I
12 would ask the gentleman who is a politician that he
13 doesn't allow DNREC to push these through without
14 doing an evaluation of the taking, the evaluation of
15 what it's taking from the property owners, and that
16 it is in compliance with the existing Beach
17 Preservation Act.

18 This four-step process of trying to
19 move people's homes back is not in compliance with
20 the one I read in the beginning. You know, there is
21 a question mark in my mind. And my property is
22 partly forward of the beach line. There is a
23 question in my mind whether or not I could put
24 another story or make improvements on mine, reading



1 these proposed regulations. But the law is clear in
2 my mind that we are allowed to do that. So I think
3 there is a discrepancy that needs to be reviewed by
4 the committee that's in charge of DNREC for the
5 State of Delaware.

6 And that's all I have at this time.

7 MS. VEST: Thank you, Mr. Goodwin.

8 Moving on down, Dennis Reardon. Mr. Reardon, you
9 had indicated perhaps.

10 MR. REARDON: I will put it in
11 writing. Thank you.

12 MS. VEST: Okay. Very good. Next,
13 Steve Plotkin.

14 MR. PLOTKIN: I will also submit in
15 writing.

16 MS. VEST: Okay. Thank you. Bob
17 Valihura.

18 MR. VALIHURA: Good morning. My name
19 is Bob Valihura. I'm here on behalf of the 2,200
20 residential units at Sea Colony. I would like to
21 recognize Senator Gerald Hocker, who is here today.
22 Senator Hocker has indicated he will speak at some
23 point this morning.

24 I have with me Phil Drew and Tom



1 Olson. Phil Drew is a member of the board of
2 directors of Sea Colony Recreational Association,
3 and Tom Olson is the property manager at Sea Colony.

4 Sea Colony is a seaside residential
5 resort complex just south of Bethany Beach. Sea
6 Colony is a unique part of Delaware, similar in its
7 position along the Delaware coast as the communities
8 of Rehoboth Beach and Bethany Beach.

9 Sea Colony is home to more than 2,000
10 residents, housing well over 5,000 families,
11 friends, and guests and renters at any one time
12 during the peak summer season.

13 Sea Colony is an integrated community
14 with the pools, the promenades, the parking
15 amenities, and buildings are all part and parcel of
16 the entire development.

17 Sea Colony is an economic engine for
18 southern Delaware, spinning off millions of dollars
19 of revenue for businesses in and around Bethany
20 Beach during the height of the summer season.

21 Sea Colony is, in sum, a summer
22 wonderland of beaches, pools, elevated walkways,
23 homes, families, residents and renters, every bit as
24 important to Delaware as Rehoboth Beach and Bethany



1 Beach.

2 We want to thank DNREC, its
3 secretary, David Small, its staff, including Michael
4 Powell and Jennifer Luomo, for going out to the
5 communities, explaining these new regulations, and
6 listening to the residents' concerns about the
7 regulations as they seek to protect Delaware's
8 coastline.

9 We are here for the exact same
10 reasons that DNREC is here, to ensure the continued
11 viability of Delaware's coastline and to serve as
12 good stewards of Delaware's treasures, the coastal
13 dune, and its beaches. Indeed, it is the beach and
14 dunes that draws the residents and guests to Sea
15 Colony.

16 In that regard, Sea Colony and DNREC
17 have long partnered to protect the coastline and the
18 dunes over the past 40 years. They have cooperated
19 with each other in multiple beach enhancement
20 projects, projects which have preserved and
21 protected the coastline to the north and to the
22 south of Sea Colony. The symbiotic relationship has
23 been good for DNREC, has been good for Sea Colony,
24 and has been good for the beaches and dunes in



1 Delaware.

2 We commend DNREC for putting into
3 place these regulation mechanisms that will
4 facilitate beach preservation and use, especially as
5 they intend to treat temporary structures, and
6 understand that many of the regulations being
7 promulgated are putting into regulation that which
8 has already been in policy at DNREC.

9 Sea Colony generally supports the
10 thrust and objective of these new regulations. Sea
11 Colony has but one concern which putting hard and
12 fast regulations into place does not recognize: The
13 unique situation facing Sea Colony with respect to
14 its location, its creation, and its integrated
15 structure.

16 Looking at the definition of
17 "substantial damages," these new regulations may not
18 recognize the unique nature of Sea Colony and,
19 unfortunately, may end up treating Sea Colony
20 differently from Rehoboth Beach and Bethany Beach,
21 the two similarly-situated communities along the
22 coastline.

23 The law and regulations as drafted
24 will allow owners in Rehoboth Beach and Bethany



1 Beach the right to rebuild from the boardwalk,
2 unfettered by the fear that they cannot recreate
3 that which thousands of residents and guests look
4 forward to seeing, using, and enjoying.

5 A hotel in Rehoboth Beach whose pool
6 is integrated into that hotel that abuts the
7 boardwalk will be able to restore that pool.
8 Rehoboth Beach and Bethany Beach will be able to
9 restore their promenades, their boardwalks, allowing
10 thousands to take in the natural beauty along the
11 seashore.

12 And public amenities in Bethany
13 Beach, such as restrooms and parking, will be able
14 to be rebuilt exactly as they are today, allowing
15 thousands to continue using them.

16 Yet, now, with these regulations,
17 which may not be flexible enough to ensure that Sea
18 Colony is rebuilt in the manner that it stands
19 today, these exact same types of amenities which are
20 in both Rehoboth and Bethany Beach may be in
21 jeopardy. The promenade may not be able to be
22 restored to where it is today. The pools that sit
23 in the front of Sea Colony may not be able to be
24 rebuilt. The parking that sits there today may not



1 be allowed to be rebuilt.

2 There is no guarantee that they --
3 they may be rebuilt. There is no guarantee they can
4 be rebuilt where they are today, and there is no
5 guarantee that the expectation of thousands of
6 residents, residents, their guests, renters, built
7 up over 40 years of Sea Colony's existence, will
8 last another 40 years following a catastrophic act
9 of God.

10 Sea Colony urges DNREC to consider
11 the unique nature of the seaside resort complex and
12 keep open -- and keep an open mind in seeking a
13 solution to the situation facing Sea Colony in a
14 catastrophic situation where substantial damage has
15 been wrought against Sea Colony by an act of God.

16 Sea Colony will be submitting
17 solutions to the regulation which will give DNREC
18 the flexibility to work with Sea Colony in such a
19 situation. And we respectfully ask that DNREC work
20 with us to ensure that Sea Colony will remain as
21 Delaware's preeminent resort complex, whether or not
22 a disaster strikes. Thank you very much.

23 And I will submit a written copy of
24 these remarks, as well as my follow-up comments



1 relating to the suggestions, at a later date. Thank
2 you.

3 MS. VEST: Very good, sir. Thank
4 you. Robert Kennedy?

5 MR. KENNEDY: Good morning. My name
6 is Robert Kennedy. I live at 123 Henlopen Shore
7 Circle at Bay Shores in Lewes.

8 I am really here to seek some
9 clarification more than make a statement. It's sort
10 of -- in reading these proposed regulations, I know
11 that several definitions have changed. And it's
12 unclear as to what being included within the new
13 definition of a regulated area means in terms of
14 repairs to existing properties that are three houses
15 away from the shoreline.

16 Before, they could have been
17 included, but they were also not included if there
18 was an intervening stream. Such is the case in my
19 development.

20 So I'm three houses away from the
21 shoreline. And it's unclear to me, if I have
22 repairs to be made to my house, would that require
23 me having to come before DNREC to seek approval? I
24 have tried to read these proposed regulations. It's



1 not clear to me. They seem to be very specific
2 regarding what has to be done for construction or
3 repairs to buildings that are beyond the building
4 line. But it's not as clear to me what happens in
5 my case, such as this past summer when we had to do
6 some repairs and re-siding of our house, only to
7 find that one of the studs had water damage due to a
8 leak that had to be replaced. Is that considered
9 construction? Is that considered repair? Would I
10 have had to stop work, seek a permit, were these
11 regulations in place, before continuing on with
12 making those repairs?

13 So that's really a concern that I
14 have. I don't know what now "being included within
15 the regulated area" would mean in this situation.

16 So that was my prime concern. Maybe
17 that could be answered afterwards as to what this
18 regulation proposes for this situation. That was my
19 primary concern. If anything else comes up, maybe
20 with other comments today, I would like the
21 opportunity to submit further comment to you.

22 MS. VEST: Absolutely. Absolutely.

23 MR. KENNEDY: Thank you very much.

24 MS. VEST: Thank you, Mr. Kennedy.



1 Janice Erich, Erich?

2 MS. ERICH: Here. I'm going to
3 withdraw my request to speak.

4 MS. VEST: Okay. That's fine, ma'am.

5 At this point I believe I have
6 recognized everybody that either marked yes or said
7 that perhaps maybe they would like to speak.

8 Again, recognizing the limited time
9 that we have, at this point is there anybody that is
10 here that would wish to offer a brief comment for
11 the record? Sir, I recognize you. If you want to
12 go up to the podium and state your name for the
13 court reporter.

14 MR. MORGAN: Good morning. My name
15 is Robert Morgan. I live at 415 East Cape Shores
16 Drive, Cape Shores in Lewes.

17 I actually don't have any comments,
18 but I have some questions that arise from reading
19 the regs. And I hope that they are not answered
20 elsewhere and that I haven't missed them.

21 The website on which the Power Points
22 will be displayed, how would I find that without
23 poking around?

24 MS. LUOMO: I can give you a copy of



1 the exhibit list, and it has the website on there.

2 MR. MORGAN: That would be great.

3 And will the exhibits, themselves, be on the
4 website?

5 MS. LUOMO: Um, I hadn't thought
6 about that, but I can do that.

7 MR. MORGAN: That would be great, the
8 Power Points on the website.

9 MS. LUOMO: Okay.

10 MR. MORGAN: And the permits that are
11 referred to as being required in various places,
12 especially in section four, have they been drafted?
13 Are they available to look at? The application
14 forms?

15 MS. LUOMO: The application forms,
16 yes. There is no plan to change what we have
17 already used.

18 MR. MORGAN: So all the permits that
19 are required, the application forms have already
20 been finalized?

21 MS. LUOMO: Yes, except for possibly
22 temporary structures, because at this point there is
23 no differentiation in the current regulation, so we
24 may come up with a new application for --



1 specifically for temporary structures.

2 MR. MORGAN: And have the application
3 forms for the others, other than temporary
4 structures, are they on the web? Are they available
5 to see?

6 MS. LUOMO: They are on the website,
7 yes.

8 MR. MORGAN: Great. And in the
9 definition of "coastal engineering standards,"
10 there's a reference to elevation contours above
11 NAVD. How does one find what they are?

12 MR. POWELL: Sure. First of all,
13 that's a good question. It would be established by
14 a land surveyor. That is the same vertical datum
15 that's used in, for example, the city of Lewes's
16 code to require floor elevations above a certain
17 level in accordance with the FEMA maps.

18 So it would be typically, for
19 example, 9-foot NAVD is referred to as a vertical
20 elevation in the coastal engineering standards. And
21 there would be a land surveyor could locate, just as
22 they would for setting the floor of a new house.

23 MR. MORGAN: So Lewes's own building
24 official might have those?



1 MR. POWELL: That, I'm not sure.

2 MR. MORGAN: Okay, where else can I

3 --

4 MR. POWELL: For example, if you had
5 if you had a house in Cape Shores that had been
6 built through a city of Lewes building permit, they
7 might have records of your floor elevation or your
8 ground elevation in that vertical datum.

9 MR. MORGAN: Is that the same as a
10 certain number of feet above mean high or high water
11 that's referred to sometimes?

12 MR. POWELL: Sometimes people refer
13 to NAVD 88 as feet above mean sea level. But
14 that's, I don't believe, a technically correct way
15 to say it.

16 MR. MORGAN: Thank you. Also, the
17 regulated area refers to "mean high water." How do
18 we know what mean high water is?

19 MR. POWELL: The regulated area is
20 the first three buildable lots from mean high water.

21 MR. MORGAN: Right.

22 MR. POWELL: So mean high water would
23 typically be, on the course of a monthly basis, the
24 tide level. You know, it can be established in the



1 field, but I'm not sure that that establishing it in
2 the field would change the number. The third lot
3 probably would be fairly easy to figure out back
4 from mean high water. Regardless of how it was
5 established in the field, I would expect that the
6 third buildable lot would be the same three lots
7 pretty much regardless of how mean high water were
8 established.

9 MR. MORGAN: I was actually referring
10 to the definition of "regulated area," which doesn't
11 refer to the number of lots.

12 MR. POWELL: Okay.

13 MR. MORGAN: So is there any way to
14 figure out what "mean high water" is so you can
15 determine the regulated area?

16 MS. LUOMO: There is. Our Wetlands
17 Section determines this all the time.

18 MR. MORGAN: Is it available to the
19 public?

20 MS. LUOMO: I wouldn't say it's on a
21 map or anything like that. It's similar to like
22 finding the 9-foot elevation contour NAVD. A
23 surveyor could find that.

24 But that's -- that would probably be



1 how we would determine when an approval was required
2 from our offices, establishing what mean high water
3 line is at the time and looking three lots, three
4 buildable lots back.

5 MR. MORGAN: How often is it
6 determined?

7 MR. PRATT: In the case of this, I
8 don't have the real technical answer, but I'll tell
9 you what I know exists from the Subaqueous Lands
10 Section, is they enter a property and determine
11 where the highest wrap line is, in other words the
12 line of deposition of material placed by either a
13 storm or the monthly high tide.

14 And that's generally an indicator on
15 a lot. In all cases -- and I think what Mike was
16 referring to -- in all cases in Delaware, the wrap
17 line or the mean high water line on a monthly cycle
18 is on that first subdivided lot in a subdivision or
19 in a community.

20 So that would make the third lot back
21 in an already subdivided land or a community the
22 limit of the regulated area. Because in every case
23 in Delaware right now we don't have a mean high
24 water line that's landward of the first lot that's



1 within a subdivision.

2 MR. MORGAN: All right. I'm not sure
3 I followed all that, but thank you. (Laughter)

4 MR. PRATT: And then the other side
5 of it is we have a survey party. What we do is, to
6 help us write technical standards, we can go in as
7 surveyors and determine a tidal range within a body
8 of water. If it's a back bay, it's a little bit
9 more difficult, because it's open ocean.

10 We know what the range -- the
11 predicted range is for the milli tide charts as to
12 how much high tide is above mean sea level or NAVD.
13 We know exactly what that is by NOAA standards. And
14 we can establish a vertical point and then establish
15 horizontally on the beach where that point
16 intersects, so we know exactly where that is, so we
17 can survey it in.

18 MR. MORGAN: Is that kind of
19 information available anywhere on the web?

20 MR. PRATT: Not easily. You can
21 discern it, but it's not right out there like as a
22 --

23 MR. MORGAN: Right. In the
24 definition in Section 3.7.1, various activities are



1 prohibited. And the new one is transportation of a
2 storage of any type of boat across the dune. That
3 would presumably include kayaks, because it's any
4 type of boat. So the people leaving kayaks on the
5 beach will not be allowed under this regulation?

6 MS. LUOMO: Leaving a kayak on the
7 beach is fine. The purpose of this section of the
8 regulation is to protect the dune and the dune
9 vegetation.

10 If you are carrying a kayak across a
11 designated dune crossing, that is not a violation.
12 If you are keeping a kayak on the beach and it's not
13 interfering with the dune, that would not be a
14 violation.

15 MR. MORGAN: Thank you. Then the new
16 definition, the new section in 3.8, temporary
17 structures, I assume this includes kayak racks?

18 MS. LUOMO: Yes.

19 MR. MORGAN: How would you get a
20 permit or approval from DNREC for the location of --
21 because in our community we have about four kayak
22 racks. How will we get approval for those?

23 MS. LUOMO: You would submit an
24 application to us showing where you are going to be



1 placing these kayak racks and then explaining the
2 time frame in which they are going to be in place.

3 MR. MORGAN: Can that be a multiyear
4 permit application?

5 MS. LUOMO: Yes. At this point what
6 we would use is our typical letter of approval
7 application, but we will probably develop an
8 application strictly for temporary structures.

9 MR. MORGAN: Thank you. In 4.3.1 it
10 says nobody shall build, for instance, a bulkhead.
11 What if it was already -- and this is not new. What
12 if that was done without a permit a few years ago?

13 MS. LUOMO: Constructing a bulkhead
14 without a permit?

15 MR. MORGAN: Not me, by the way.

16 (Laughter)

17 MS. LUOMO: That would be considered
18 a violation.

19 MR. MORGAN: But what would DNREC do
20 about it now?

21 MS. LUOMO: We would work on that on
22 a case-by-case basis.

23 MR. MORGAN: All right. In the new
24 Section 4.5.3.1, there is a regulation of dune



1 crossovers from communities.

2 MS. LUOMO: Uh-huh.

3 MR. MORGAN: And it specifies how
4 wide they can be and so forth. Are current
5 crossovers going to be grandfathered?

6 MS. LUOMO: Yes. If it's already
7 existing, then we would not require a modification
8 to an existing structure. This would be for
9 anything new or anything that is being rebuilt,
10 reconstructed.

11 MR. MORGAN: Thank you. And one
12 minor point. In the 4.5.3.1, the fourth line says,
13 "Single family dwellings within a subdivision on non
14 oceanfront or bay-front lots." I assume that means
15 non ocean front or "non" bay-front lots to be --

16 MS. LUOMO: Yes.

17 MR. MORGAN: It wasn't entirely clear
18 to me, but I thought that's what it meant.

19 That's all the questions I have, I
20 think. Thank you very much.

21 MS. VEST: Thank you, Mr. Morgan.
22 Anyone else? Yes, sir.

23 SENATOR HOCKER: Gerald Hocker, State
24 Senator, 20th Senatorial District. I really didn't



1 plan on saying anything at this meeting today, but I
2 do want to thank you all for coming out on a
3 Saturday morning and giving up your time. I
4 appreciate this. This is an important meeting.

5 The main reason why I'm here is
6 really property rights for the individuals that
7 already have structures on their property.

8 I have lived in this area all my life
9 in the beach area. I was here during the '62 storm.
10 We haven't seen anything like the '62 storm. But I
11 can tell you that with the leadership of Tony Pratt
12 and the existing dunes that we have today, the
13 beaches are in much better shape today than they
14 were prior to the '62 storm.

15 When those dunes were first constructed --
16 I forget the year -- I had complaint after
17 complaint, you know, why so high, why can't you see
18 the beach from on the boardwalk. After the first
19 storm, they all realized why they were so high.

20 And those dunes have saved property owners
21 not thousands of dollars, millions of dollars to
22 today's date. We need to do all we can to keep that
23 dune structure and our beaches built and protected.

24 But a few years back, Senator Bunting and



1 myself, as the House sponsor at that time, sponsored
2 legislation to allow existing structures to be built
3 on the same footprint and maintained on that same
4 footprint. And we need to make sure that that is
5 part of this regulation that continues.

6 But maybe we need to look farther at that
7 piece of legislation and make sure that parking lots
8 and roads and outside structures are part of that
9 same footprint and able to be built back. And I
10 think that's what Sea Colony was, you know, looking
11 for, pools and front yards and all that. But it's
12 all existing structures able to be built back under
13 the existing footprint.

14 It was just this past year that I worked
15 with the governor's office, the governor's attorney,
16 and had Senate Bill 113 and 120 passed. And that is
17 really to put some controls on regulators and
18 regulations.

19 And I am asking you to not adopt this
20 legislation until after January 1st when those new
21 regulations can be put in place. And that's SB 113
22 and 120. And that allows the public to know who the
23 regulation is intended to regulate, the cost benefit
24 analysis that is to be done, and the cost. If the



1 cost exceeds the benefit, working with those that
2 are involved to try to get that cost down and come
3 up with other methods.

4 I am requesting that this regulation not
5 be put in place until you can follow the new law
6 that has been signed by the governor and will come
7 into effect on January 1st. Thanks.

8 (Applause)

9 MS. VEST: Thank you, Senator Hocker.
10 Anyone else wishing to offer comment? Okay. I do
11 want to thank everybody again. Oh, I'm sorry.

12 MR. GOODWIN: Do you want me to walk
13 up there and speak?

14 MS. VEST: Is it a brief comment?

15 MR. GOODWIN: Yeah, it's a brief
16 comment.

17 MS. VEST: You can just stand right
18 there.

19 MR. GOODWIN: Okay. One of the
20 things is that I want to know from DNREC is what
21 kind of engineering studies they did to establish
22 the ten-foot and the nine-foot elevations and the
23 setbacks from those points on the beaches, on the
24 ocean beaches and the Delaware beaches. What



1 engineering studies did you use to establish those
2 points and elevations?

3 MR. POWELL: It's before my time.

4 MR. PRATT: I can address that. This
5 is a line established as a result of a public
6 hearing in circa 1978, '79, and in which case the
7 public requested to have maps be placed on -- excuse
8 me -- lines being placed on a map rather than being
9 a field interpretation done at the time by staff.
10 This pre-dated me.

11 Vandemark and Lynch, an engineering
12 firm, conducted an aerial survey, a
13 three-dimensional stereographic survey of the entire
14 coast for there, and so that they established
15 elevations to stereographic photography, which at
16 that time was state of the art, and created the
17 10-foot contour on the oceanfront and the 7-foot
18 contour on the Delaware Bay shore.

19 And Department staff then, every
20 500 feet, put a point that was either 100-foot or 75
21 landward of those two elevation contours. That's
22 how it was done by Vandemark and Lynch, an
23 engineering firm in the business at the time.

24 MR. GOODWIN: But what made DNREC



1 choose the 10 and the 7-foot elevations?

2 MR. PRATT: It predated me. I don't
3 know.

4 MR. GOODWIN: What engineering basis?

5 MR. PRATT: It's roughly -- the
6 10-foot contour, I don't know for certain, because,
7 again, it predated me and DNREC, and that's a long
8 time ago.

9 But there was 10-foot contours more
10 or less the break and slip between the toe of the
11 dune on the oceanfront and the berm, itself. The
12 berm elevation is usually running about plus eight.
13 And so that was typically found to be about the edge
14 of vegetation line.

15 So it would be the seaward toe of the
16 dune and then 100 feet landward -- it would be the
17 landward toe of the dune. And that was conforming
18 to what was called the Caldwell Section at the time.
19 It was a guy named Bill Caldwell had designed a dune
20 elevation which was a 100-foot base and a plus 16
21 top, and that was an engineering standard that was
22 very typical at that time.

23 MR. GOODWIN: So there hasn't been
24 any studies or engineering since '78?



1 MR. PRATT: That's correct. Well,
2 there's lots and lots of engineering. We have not
3 changed the map lines since the 1980s when that went
4 into effect.

5 MR. GOODWIN: And from what I
6 understand in listening to the last gentleman, that
7 this building line is not set; it's a variable
8 building line that's on those maps?

9 MS. LUOMO: No.

10 MR. POWELL: It's a set line.

11 MS. LUOMO: It's a set line on that.

12 MR. GOODWIN: It's a set line? Well,
13 it doesn't sound like it is from what you were
14 saying.

15 MR. PRATT: It is. The map line on
16 that is set. It's established. It's on our
17 website. It's been on our website for decades.

18 MR. POWELL: I think to clarify, the
19 concept of a mean high water line is maybe what we
20 were talking about that could be established.

21 MR. PRATT: For the regulatory.

22 MS. LUOMO: Right, which the mean
23 high water line has nothing to do with the map
24 building line. It's for the regulated area.



1 MR. GOODWIN: But in that comment in
2 September's meeting that we had, one of Mike's
3 comments was that that line will be established by
4 local surveyors. It's in your notes.

5 MS. LUOMO: On a case-by-case basis.
6 If you're applying for a permit from us or a letter
7 of approval, we request that you submit a survey
8 that shows that line on it. And that's how that --
9 the surveyor would take our mapped line that has
10 coordinates or points in the state, Delaware State
11 Planning Coordinate System. They can use those
12 coordinates to locate that line on a specific
13 property.

14 MR. GOODWIN: The other thing that
15 concerns me is that four-step process, it's sort of
16 variable as to how many houses that, you know, you
17 have to -- it's up to seven houses, you know,
18 depending on which side and where the streets are
19 and all that.

20 MS. LUOMO: Uh-huh.

21 MR. GOODWIN: What happens if the
22 property owners next to you or the other property
23 owners will not allow surveyors to go on their
24 property?



1 MS. LUOMO: There are ways to
2 determine what the square footage is without
3 actually encroaching on the properties.

4 MR. GOODWIN: And how is that? How
5 do you do that?

6 MS. LUOMO: Usually, the local
7 municipality keeps a record of what the square
8 footage of the houses are.

9 MR. GOODWIN: From what? The
10 building permits?

11 MS. LUOMO: Uh-huh.

12 MR. GOODWIN: And you think they have
13 those building permits from the fifties?

14 MS. LUOMO: I have not specifically
15 looked for a 1960.

16 MR. GOODWIN: Would you check that
17 and let us know? Could you check us and let us
18 know?

19 MR. PRATT: Our building line maps
20 also have those houses captured. All those houses
21 were captured in the photography, and we can
22 actually measure those and determine square footage
23 of those.

24 MR. GOODWIN: But is that actually,



1 the photographic, is that actually considered a
2 survey?

3 MR. PRATT: Yes.

4 MR. GOODWIN: A legal survey?

5 MR. PRATT: Yes.

6 MR. GOODWIN: I beg to differ. I
7 believe it is not a legal survey. It's a photo.
8 Thank you.

9 MS. VEST: Thank you, Mr. Goodwin.
10 Anyone else? Okay.

11 Well, I want to thank everybody for
12 their courtesy and politeness with regard to
13 allowing everyone to speak. I think a lot of good
14 information came out.

15 Like we previously advised at the
16 beginning of this proceeding, the record will remain
17 open for a full 15 days following today.

18 So I would encourage anyone, if they
19 have additional questions, make sure to get our
20 business cards before you leave so you know where to
21 send your comment.

22 I want to thank everybody for coming
23 out on a Saturday morning. Comments received -- can
24 be received, rather, through November 22. Thank



1 you. This meeting is adjourned.

2 (Concluded at 11:20 a.m.)

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CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 20th day of November 2015.



Lorena J. Hartnett
Registered Professional Reporter

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