

PUBLIC WORKSHOP  
REGULATORY BEACH REGS  
REHOBOTH BEACH  
NOVEMBER 1, 2014  
10-12 NOON

Press Release Read by DNREC

**Comment/Question:** If a house built 1920 on the beach and right on the building line and if stormed knocked it down we could rebuild on the same footprint.

**DNREC:** According to the 2006 Act changes it depends if your beach is a federally or state maintained beach conforming to engineering standards of coastal protection....

**Comment:** Lewes Beach.

**DNREC:** I believe the Act changed in 2006 contained language that said that if a house is destroyed by an act of God or any other accidental events and is located in a community with federal or state dune and beach maintenance conforming to coastal engineering standards of storm protection then the house could be rebuilt in the same footprint. Our challenge is that we have no regulations that have defined all of those terms which are in that act. The definition of Act of God needs to be clearly more be defined. You have hit on one of the things that need clarification because the Act leaves a lot of undefined terms.

**Comment/Question:** Federal (NFIP) and State building requirements need to be defined so that they are similar.

**DNREC:** The primary purpose of these (Beach Preservation) Regulations is to preserve and protect the dunes and beaches of the State. The further the regulations get into construction details the more they quite possibility could be straying from the primary purpose which is to protect beaches and dunes. Which is not to say that building safe houses isn't something these regulations support, it is just not their primary purpose.

**Comments:** Doing it actually as you want is an invested that people make to do it that way and in doing so if you cannot reach back and get protection on the money that you have just invested because the feds they are so mixed up that they need the authority of the State agency to sort to intermingle to come up with a benefit so people are happy to put those extra bucks to make it higher or wider. But then you cannot get insurance.

**DNREC:** I don't disagree with anything that you are saying. These (Beach Preservation Regulations) will always have a hard time being the regulations that are going to address the

difficulties with the National flood insurance program. There are federal and local floodplain regulations that are the primary means for making sure structures are affordable and insurable for flood insurance. And that is not a key purpose of these regulations. I really appreciate your comments. It is a difficult program and it is going through some real issues.

**DNREC:** We administer FEMA Floodplain program at the State level. Mike and his team are very familiar with FEMA regulations.

**DNREC:** We are working with all of the county and municipal governments on ordinance changes that may be a more effective way to make sure the flood insurance issue is addressed.

**Comment/Question:** Will this presentation be available on the website?

**DNREC:** Yes this presentation will be posted.

**Comment/Question:** Define the beaches that are protected by federal or state management.

**DNREC:** It was put into the Act in 2006. Since we have not made any changes to the Regulations in quite some time our regulations don't reflect those changes in the Beach Preservation Act. These Regulations do not define the beaches that meet that Act definition.

**Comment -** Someone asked if this beach subject to that definition and the answer was we don't know. So how do you exercise your jurisdiction now if you don't know what beaches are subject to that definition?

**DNREC:** If a structure were destroyed by an Act of God in one of our beaches we would be required to try to interpret the Act changes from 2006. We will have a more difficult time doing that until or when we put adequate definitions into the Regulations. You're absolutely right, if a structure in Lewes Beach were to be struck by lightning and destroyed seaward of the building line the fact that we don't have those Act changes defined and put into regulations will make it more challenging for staff to review a permit application to rebuild that house.

**Comment:** So a property owner can say you don't have jurisdiction over my property because the statute doesn't adequately identify which properties within....

**DNREC:** The question is what would happen about a proposed activity that is described by the Act but not clearly defined by the regulations.

**Comment (Ralph Durstein, Attorney General's Office):** – I don't think it is a question of having jurisdiction but a question of figuring out how to properly exercise that jurisdiction.

**Comment:** But if someone asked does this beach part of that definition...the maintenance part.

**DNREC:** In a beach that is maintained by state and federal agencies to coastal engineering standards of storm protection. That is the wording in the Act that we would be required to consider if a house were destroyed.

**Comment:** So in your office you have list of which beaches within that definition?

**DNREC:** We don't have that list; we don't have the term coastal engineering standards of storm protection defined.

**DNREC:** We have not had it come up yet, we have not had a structure destroyed by an Act of God yet to have to make that since 2006 and it would have to be a structure seaward of the building line.

**(Ralph Durstein, Attorney General's Office):** The purpose of regulations in that instance would be to flesh out the bones of what the General Assembly has said and give that some meaning. The general purpose of any regulation is to afford the regulated folks some predictability as to how this is going to be administrated, what this means, where it applies, that kind of thing. So if it happens we would do the best we could base on what the Act said but it would be an ADHOC determination. The better approach is to have a regulation that flushes out actually how this is going to work. So that if and when that happens it would be a lot of homes at once like a storm.

**Comment/Questions:** Attendee posed three questions/comments: 1) The practice of eradicating Japanese Black Pines is worsening storm damage along the coast, 2) The implementation of the building Line is not always fair and in his case led to a loss of 20 feet of buildable space which might represent a million dollars in property value, and 3) Beach Replenishment is leading to steeper and more dangerous swimming conditions.

**DNREC:** Japanese Black Pines, there is a balance between the goals of the parks to remove what is non-native species from those areas. I appreciate your comments that there is probably a balance to be struck between the regulations that we currently have that restrict the removal of vegetation on state owned and maintain beach and issues of non-native species. So I appreciate your comments. About the building line, I think the comment was there is an inequity between the way the building line was established prior to 1996. It was purely based on topography formula for the entire reach of shoreline from Pickering Beach to Fenwick Island. Which had the effect in some areas of boardwalk commercial districts the building line was actually quite a ways west of the boardwalk by the topography formula that was applied uniformly to both residential and commercial areas. In 1996 the State legislature changed the definition of the building line to become the western side of the boardwalk in the commercial areas of Rehoboth and Bethany that don't have a dune, I believe is the language they use. They reestablished the building line to the west side of the boardwalk in the commercial districts Rehoboth and Bethany where there is no dune. You are right we now have one way of establishing the building line in all the non-commercial areas of the shoreline and a different way of defining it by State law since 1996 in those commercial districts.

**Comment:** It is important to note that it was not DNREC choice.

**Comment/Question:** Question about "Pumping" Sand (beach nourishment) and the timing of a particular project.

**DNREC:** We can talk off line.

**Comment/Question:** Has there ever been a condition where you told someone they could not build back?

**DNREC:** Our regulations to the best my knowledge do not have the ability to prevent someone from constructing a house. Because even (the owner of) a lot that is 100% seaward of the building line is allowed to construct something through that 4 step process. They would propose building their house and then be required to go back all the way to the set back line on the landward side, whatever their local zoning would permit. They are required to fully utilize their side yard setbacks, using the average square footage of the adjacent houses and use the penetration seaward of the building line from those average of the nearby houses. And that is to the best of my knowledge every oceanfront or Bayfront lot no matter how far seaward of our building line they might be. There might be other limitations, like the lot is under water, or the lot is in an area where other regulations would make it impossible to build a septic system or road access. There are some underwater lots in Delaware. Even in those cases, it wouldn't be our beach preservation regulations that would prevent something from being constructed there.

**Comment/Question:** Questions about whether pumping sand at Fowler Beach, Broadkill Beach, Slaughter Beach, Prime Hook, and other places where the dunes need to be fixed. Will pumping sand in these areas and widening the beach result in remapping the Building line?

**DNREC:** These are not issues that the regulations would address. Whether the beach preservation setback line would be effected by that project the answer is probably no it would not. Because of the definition in the Regulations says that the building line may be re-established when in the opinion of the Secretary storms are other natural phenomenon cause a substantial permanent change in the seaward contour used to establish the building line. Our assessment of the law is that a beach fill project would not result in the building line moving.

**Comment:** Was there a section about beach replenishment?

**DNREC:** In the definition of the building line it says that a house destroyed by an Act of God or other accidental event that beach nourishment would be considered in allowing them to rebuild

**DNREC:** Not where the line would get redrawn, but what reconstruction would be allowed and where. If you are seaward of building line beach nourishment and level storm protection is one of the considerations if the house were to be destroyed by an Act of God.

**Comment/Question:** Are the unsafe beach conditions as regards to beach nourishment not going to be addressed at these sessions?

**DNREC:** These regulations and this Act do not get into those details of shore protection projects.

**Comment:** Then when will the public have an opportunity in the future to have input in beach replenishment as it relates to safety as a group?

**DNREC:** I think the public always has that opportunity, but I cannot answer that question specifically.

**(Ralph Durstein, Attorney General's Office):** That was a good question. I am going to take a look into. At what point in that beach building process is there or should there be an opportunity for public comment. (Beach nourishment and safety to have a public forum regarding concerns.)

**Comment/Question:** Recreational opportunities are mentioned in the Beach Preservation Act but have been destroyed by the projects that result in unsafe conditions.

**DNREC:** Thanks for your comment.

**Comment/Question:** Keep focus on the fact that we can't take for granted that the money will always be there. At some time we may be asked to cough up a lot of money from a personal level. Give us the people we need to contact and the action we need to take as property owners and investors in the area and residence in the area to keep the flag up that we do need help and it is really important to us. My point may not be for this forum but the money that it takes to make a project possible. To not take for granted that we will always have money to work all these issues out.

**DNREC:** One of things to bear in mind about these regulations that we are here to get your input on that they very much assume that over the long run there can be continued erosion and that keeping construction off the dunes is an important aspect of maintaining our dunes that we cannot always assume that there will be a project coming that will hold the dune in place or move it further seaward. That keeping construction activity from the dune is a critical part of dune preservation in conjunction with all the projects that are achieving those same purposes.

**Comment/Question:** Need to define natural disaster and accidental acts?

**DNREC:** We are not sure that the General Assembly meant for them to be the same thing. That is where we feel the need to go through the process where we take the language of the act that describes "Acts of God and other accidental events" and go through a process where we propose definitions of those kinds of terms and how they would be handled in the reconstruction process and go through a full public process of proposing regulations that may define those terms. There is a lack of clarity.

**Comment/Question:** Please address what sorts of Temporary Structures you meant?

**DNREC:** Beach rental storage temporary structure were damaged in a storm about 5 years ago that resulted in metal beach umbrellas and beach chairs as far north as Herring Point in the surf zone. The issue that Jennifer raised is that as of now our regulations don't give us a clear

distinction between somebody building seaward of the building line in a permanent structure and someone building seaward of the building line on some kind of temporary structures. It is probably not unrealistic to preclude temporary structures from being put on the beach. The point is our regulations need to treat those kinds of activities in a way that don't result as damage to our beaches.

**Comment:** I thought you were referring to a shed on their private property?

**DNREC:** I don't think we have contemplated someone putting a temporary shed on their private property and being required to remove it seasonally or after a storm. That is not something that has come up. But we have had in many incidences had activities proposed to put something temporary up on the beach or in front of the dune which would be at risk of causing damage.

**Comment/Question:** Are we going to continue to be able build up our dunes, and protect our dunes?

**DNREC:** Absolutely, the purpose of these Regulations and what we want you to help us with are making sure that these Regulations are effective as they can in preserving dunes. When dunes are preserved the streets behind the dunes are protected during storms. That is the input we want, what changes do you think we need to consider that will make these regulations more effective in preserving dunes and allowing them to be healthy and hopefully grow.

**Comment/Question:** What is needed is to create incentives for people to protect their dunes.

**DNREC:** Thank you.