

Beach Regulatory Advisory Committee Meeting
DNREC/Shoreline and Waterway Services Facility
June 10, 2015

Begin at 905am

Committee Members Present

Michael Powell (MP)
Jennifer Luoma (JL)
Tony Pratt (TP)
Dirk Durstein (DD)
Evelyn Maurmeyer (EM)
Bill Lucks (BL)
Joe Healy (JH)
Connie Holland (CH)
Jim Bailey (JB)
Dorothy Morris (DM)
Sharon Lynn (SL)
Patty McDaniel (PM)

Committee Members Not Present

Greg Hastings
Chuck Coltman
Bryan Elliott
Brian Boutin
John Schulties
Susan Love
Patrick Cooper

Others Present

Frank Piorko (FP)
David Warga (DW)
Kim McKenna (KM)

Welcome and Overview of Past Activities – Powell

Two workshops were held in May: one in Milford and one in Bethany Beach. Attendance was limited and comments were received during and after the workshops. Today's agenda will cover comments and discussion with the RAC on where we are headed.

Review of Comments from Workshops – Luoma

Discussion of questions regarding:

Sec 2.11.1 what is long term?

EM – language probably should remain as is

MP – putting a number on it may not meet the intention of the regulation

DD – comfortable with the existing terminology and will rely on scientists to determine the “long-term” change; there is a process for redrawing the building line

Building Line – natural or artificial dunes change the location of the line?

JL – in areas with the boardwalks (Rehoboth and Bethany) the BL is at the boardwalk

TP – reason for setting the BL at the boardwalk in Rehoboth and Bethany is that there would be no significant dune protection if it was landward of that regardless if the dune was natural or artificial, regulation language is superfluous

MP – it is better not to include the “artificial” and “natural” wording

JL – can the term natural be removed from the regulations?

DD - it would have to be solved in the statute

MP - all agree that the BL is on west side of boardwalk, not critical to change language as long as it doesn't hold back the regulations (ex VIA dune on west side of boardwalk in Rehoboth Beach)

TP – from a management perspective, that dune does not do much as far as protection but the law says all dunes are protected

DNREC required to directly notify all affected by the regulations?

JL – need to target some of the owners who may not be aware, asked for suggestions

MP – the owners who were not previously included are those in the 3rd lot landward from the dune, may need to issue a general permit to local communities to cover this

DD – what is required of DNREC is public notice in newspaper, information that is requested from a potential applicant, good to reach out to potential new

PM – do you have a mailing list of owners? DNREC could identify them and send them a notice

MP – does not want to send info to the wrong folks (ex. 4th row homes)

JB – the municipalities and homeowners' associations should be able to help

BL – Sussex Co can help identify the homeowners within that 3rd row homes area, needs conversation on how realtors disclose the info on the regulation changes

JL – newly regulated will need a letter that they will need approvals, former regulated areas will receive notice that the regulations have changed

MP – in some areas it will be difficult to figure out whether they are subjected to the regulations

BL – how does someone know to get a permit?

MP – the communities know and send them to DNREC

PM – DNREC could send a letter to everyone east of Rt 1 to make a good-faith effort to reach homeowners

CH – doesn't always work, sometimes renters throw out mail, best to combine outreach (municipalities, counties, homeowners associations)

FP – we should reach out to more folks rather than miss half of the people that may be regulated,

DNREC will notify legislators so that they can talk to their constituents

EM – requested that contractors also be contacted

TP – DNREC will make a best faith effort to get the information out to all

DW – usually have problems with the smaller contractors, not the larger ones

MP – DNREC will send info to homeowners east of Rt 1 and will also make the maps available

JB – Bay communities can assist with communicating information

CH – agree to contact the legislators and tell them about the process of how the changes were made

JH – communities play a significant role here, realtors and legislators and all should be notified

Comment that Division name was changed and Stewardship needs to be defined.

No comment from RAC because the term is not included in the regulations

Prohibited Activities, Sec 3.7 defining “maintained” and is it the same for public and private beaches?

MP – any private beaches maintained?

JL – yes because the state has easements

EM – any examples where people trample their own private dunes?

TP – yes, nothing in regulations that prohibit people to pull a boat across the dunes, this changes once the state has an easement

PM – instead of a definition, can you include an exhibit that shows the location of the private and easement areas?

MP – described history behind public comment, owner signed easement and wants more sand (dune and beach maintenance)

DD – there is no open-ended promise or obligation by the state to maintain the beach, though some may have that expectation

TP – this comment is separate from the regulations, but keeps coming up in the workshops

DD – the agency cannot commit legally to maintaining the beach (product of the political process)

Definition of Coastal Engineer Standards of Storm Protection ex. Prime Hook Beach

MP – BL changes at Rosemary St, delete southernmost end”

Rebuilding:

MP – rebuilding is limited to certain situations

Cantilevered deck Sec 3.1.1.2.1 and 4 –step process

MP – site specific situation (ex. rebuilding after a tear down in North Shores)

JL – would have to be landward of BL

TP – condominium ownership include whole facility or individual?

BL – depends on how it is set up for that structure

MP – regulations are not changing for this scenario

4-step process for existing house? Can they use existing square footage rather than the average?

MP- law that led to that policy (Subsection 6805(d)). Requires reduction in size.

Homes constructed prior to the BL and if a homeowner wants to elevate it to comply with flood code, would it have to go through 4-step process and set back?

MP – 4-step process is policy for reasonable modifications

TP – this is a disincentive if someone wants to become more flood proof compliant

DD – Sec 6805 of code, counterpoint to 4-step process

MP – one work around, first phase was to raise structure, then tear down former home

JL – definition of substantial improvement in regulations, monetary calculation

PM – with the new flood maps a lot of folks to raise their homes and costing homeowners a lot more money to make modifications

MP – homeowners are getting misinformation

PM – some folks will have the financial incentive to bring their homes into flood compliance, does not want them to be in a catch-22 with these regulations

TP – to do this, at one point the lot becomes vacant and should be considered new construction, DNREC has to make a subjective decision regarding flood compliance and dune protection

DD – not easy determination when someone wants to voluntary do this

CH – past program where homeowners elevated because of chronic threat of beach erosion

MP – voluntary program at Big Stone Beach

DD – cost of driving new piles

CH – wants incentive to do the right thing, without the added cost and has beneficial aspects

TP – to go forward, need consensus opinion from this from the RAC

ACTION: DNREC will draft language to address this and handout for the RAC to review

What is the minimum number of smallest subset of lots?

JL – Now, maximum number is 7, but for areas with no street ends may have advantages if less lots are used

MP – this is currently defined through policy, not regulation

CH – include major and minor subdivisions into the policy to address this?

MP – now that this is becoming a regulation, we will have to define the boundaries

DM - now will need to have a minimum number

JL – will need to reword the numbers for subset of lots

PM – this must be clarified

DW – also related to location of the BL

What is the minimum number of properties that can be used for the average distance seaward of the BL?

JL – in some communities the BL is not straight and follows the dune contour

PM – propose regulation to use the seven nearest

Can someone cantilever a deck seaward of the BL?

JL – ability is still there, but may be limited on how far over the dune

The definition for Substantial Damage conflicts with FEMA ordinance

JL – will review definition, could change the definition but it would have to be changed in the statute

MP – the definition is in the law, and both are comparing apples and oranges, definitions are inconsistent

DD – complicated, but not sure it is worth the effort to reconcile the state definition but may be beneficial to homeowners in the long run

JH – isn't this captured in the 4-step process?

MP – yes, but is tricky when a house has to be elevated, flow-chart process, communities substantial damage definition includes flood and other damages

Next Steps – Powell

DNREC homework assignments (ex. smallest subset of lots)

Discussion to schedule hearings for fall 2015; one evening and one weekend at the same or similar venues

Staff will discuss with DNREC Secretary

FP – draft regulation and then workshop? Or go directly to the hearing?

DD – suggest a workshop, then will have an idea of the concerns and then we can refine the regulations to publish them

Decision for an early fall workshop, hearings before late October

Public comments:

None

Adjourn 1115a

