

Public hearings for all rules started at 5:00 pm Thursday, November 29th as the City Hotel & Bistro in Greenville, NC.

15A NCAC 7H .0305 – General Identification and Description of Landforms

Charles Baldwin (Rountree, Losee & Baldwin, LLP representing Village of Bald Head Island) and **Stephen Coggins** (Rountree, Losee & Baldwin, LLP representing Village of Bald Head Island) stated that the Village is a unique municipality located on a peninsula at the mouth of the largest navigable river in our state. It has a history of channelization and treatment that dates back to 1829 and there has been extraordinary activity in the past five years. Mr. Coggins stated they have concerns about the dramatic expansion of the inlet hazard way. He stated that the new expansion would go in an extra 4,500 feet. He stated that there is a proposal in the static line rule that needs clarification on whether a hurricane-dredging project would qualify the activities at the Village of Baldhead. He said where there has been repeated, substantial beach nourishment activity, and when establishing a static vegetation line one may look also at the general trends, which have been brought at the consequence of these actions. There are very few geological places along the N.C. coast that have had that kind of activity other than the Village. With the setback changes the CRC is doing dramatic changes to the vegetation line definition. The CRC is mandating that licensed permitting officials of the Village make visual observations to determine plant composition and density. But in doing this, the CRC is asking if the vegetation is planted and if there is natural vegetation. The LPO would have to determine if the plants have stems and rhizomes (which are underneath the ground) and if none of the visual observation works, the LPO would be allow to look at photography that was taken from miles high and use interpolation as opposed to extrapolation. The proposed draft regulation is devoid of any description of the two things to which the LPO should look at for the interpolation of the line. The static vegetation line is of critical importance to the Village of Baldhead for structures within particular zones. (Written comments have been submitted.)

Meyressa Schoonmaker, Oak Island property owner, stated that she was speaking out for the public. She stated that if these exemptions are passed the way they are presently in line lots in Oak Island will become buildable that have not been buildable in several years. Also, in Oak Island there have been comments that 80% of the beachfront is not buildable presently. If these guidelines are allowed for Oak Island every lot will become buildable. A public sewage system has been started in Oak Island and it will coordinate at about the same time as these exemptions. She stated there are other ways for Oak Island to deal with hurricanes and lots to be brought up to standard. Specifically, there are problems with provision (f), which states that an LPO shall determine the stable and natural vegetation – the basis on how this is determined is difficult situation and open to misconception. She disagrees that either the Division or an LPO can do this. This is a serious issue that requires a high level of expertise and should not be left to a LPO. In local areas, there are persons who are not as qualified and there is local pressure on permit officers and on the Town itself. In provision (g) it states that a static vegetation line shall be established in coordination with the Division of Coastal Management, which conflicts with the previous statement of LPO or the Division of Coastal Management. She stated that she is not in favor of the exemptions and is specifically opposed to these issues. (Written comments have been submitted.)

Grier Fleischauer, resident of Topsail Beach, addressed stable and natural vegetation. The current proposed rule does not effectively control or take into account what is being experienced in Topsail Beach, which is being seen as an abusive, unnatural and unstable manipulation of the vegetation line. Currently the rules allow for the local permit officer to define what is stable and natural. Our LPO's primary criterion was that any planted stems must have seasoned one hurricane season. While this may seem reasonable at first glance, the regulation can be left to wide interpretation from LPO to LPO. The current criteria are not working and the proposed criteria will probably not work either. There is a developer in our Town who is aggressively planting, fertilizing, and watering the dunes. He placed a 10-foot section of sand fencing on the frontal dune, planted and established his vegetation crop then placed another section of 10-foot fencing in front of the first and planted this area too. This is mostly flat sand, seaward of the toe of the existing frontal dune. (Christy Goebel, Attorney General's Office, interrupted at this time and stated that due to current litigation of this matter this must be spoken about generally about the rule change and not the specific issue). Mr. Fleishhauer continued by saying that the irrigation of sand dunes does not create stable and natural vegetation. He proposed that a little modification and clarification to how the vegetation line is established is needed. Under paragraph (f) language needs to be added which states, "the vegetation shall not be considered natural or stable in the event that the Division of Coastal Management or the LPO finds that the vegetation is being raised as a crop through unnatural and unsustainable irrigation and fertilization. Also, in areas where there is no stable or natural vegetation present, or in areas where it is evident that an artificial promontory has been created through sand farming in establishing a vegetation crop, this line shall be established by interpolation between the adjacent areas. This clause has been weakened by currently saying, "may be established." (Written comments have been submitted.)

Dara Royal, Council Member for the Town of Oak Island, presented comments on behalf of the Town. She addressed the definition of the vegetation line. The rules change as set forth in .0305 (f) and (g) staff has informed the Town that the change in definition will not lead to a change with respect to the way the vegetation line is determined in the field, which currently relies on the LPO field guide. The Town would like greater certainty of this as interpretations can change over time. (Written comments have been submitted.)

Debbie Smith, Mayor of Ocean Isle Beach, spoke on behalf of the Town of Ocean Isle. In regards to rule .0305, the Town does support the 1998 vegetation line being the alternate line. She stated that they appreciate all of the work that has been done by the CRC. (Written comments have been submitted.)

Hiram Williams, realtor/builder/property owner at Topsail Island, stated that he has a lot of concern about the vegetation line. The way the sand moves, if you can get any vegetation in front of your house you should be able to take advantage of it. If you don't you will lose a tremendous amount of value on these ocean front properties. They are expensive and the Towns rely heavily on the tax base that comes with the homes and ground. If we lose the right to use the ground then we lose the homes in cases of fire or hurricanes. He stated, "We need to be very careful about this, including the static vegetation line." He feels that the definition (of the term "professional") needs to be written better.

Tom Burns, resident of Oak Island, stated that he is in favor of this proposal. He further stated that “static line” is a bad term and should be called a “dynamic line.” He is in favor of having the ability to move this line. When an issue like renourishment is considered, the line should be able to be moved. He stated that he appreciates all of the effort. He has witnessed renourishment and is in favor of it. He requested that the CRC find the static line exception appropriate.

Jim Stephenson, North Carolina Coastal Federation, stated that he was not presenting a position on this rule. But he was seeking additional information on the impact of the rule. Specifically, he stated that he was curious about the exception for Oak Island and Ocean Isle Beach in terms of the impacted number of lots that would be determined buildable and the lots that would no longer be non-conforming. This is a vital piece of information that is relevant to the decision.

Chairman Hackney advised all in attendance that comments would be accepted until December 31, 2007.