

NOTES

Afternoon Session 3:

Building at the Beach: Navigating the Maze of Federal, state and Local Regulations

Dave Cherry, MDEP reviewed current regulatory updates to DEP's Sand Dunes Rules under the NRPA (Natural Resources Protection Act). Rules differ for front dunes, back dunes and non-dunes (between the front and back dunes). No permit is needed for routine maintenance of buildings anywhere; permit by rule (PBR) is required for repair or replacement of buildings and for dune restoration. Beach nourishment is permissible; no seawalls in dunes are allowed. But only one reconstruction of buildings in the front dune is allowed and must be lifted on pilings at least one foot above the 1% chance flood (100-year flood) called the BFE (Base Flood Elevation). A variance for height of the roof is allowed in some jurisdictions of up to 5 feet due to the raising of the building on pilings – but a building may nevertheless need to be raised more than 5 feet above the dune.

Bill Wash, PE reviewed the typical permitting process for building in dunes. Multiple permits may be required - federal, state and local:

- Planning and design work with building owner preparing for permits – 2-3 months
- DEP Sand Dune Permit – 3-4 months
- DEP Permit by Rule – 1 month
- Town Shoreland and Zoning Rules – 3-4 months
- Town Building Permit – 1-2 weeks.

Werner Gilliam, Kennebunkport Development Director reviewed the issues typically encountered in applying local regulations to development proposals in sand dunes and the shoreland. Discussion ensued on how to account for the height of the BFE (1% chance flood) in and behind dunes and where to place the lowest habitable floor for dune buildings and floodplain buildings. One foot is minimum; some towns have gone for 3 feet. The DEP has recently changed its 30% expansion rule (using a combined 30% limit for footprint and volume together) to simply allowable footprint expansion based upon distance from high water plus maximum height of the enlarged portion. No expansion is allowed within 25 feet of highwater; some expansion is allowed between 25 and 75 feet of high water; more expansion between 75 and 250 feet.

Q/A: Walsh and Gilliam used an actual re-development of a beach house in the dunes of Kennebunkport as an example. It started with negotiation with the house owner on balancing enlargement with height of the first habitable floor and the roof ridgeline and maximum allowable impervious surface. Through negotiations with DEP and the Town several adjustments needed to be made before the project was able to meet the multiple permit regulations.

There were questions on possible new DEP rules. None known at present but DEP can make new rules anytime but has no requirement for the time for dune building owners to make them. This may be a case of existing buildings being grandfathered (non-conformingly legal) until a significant re-development occurs. Re-developments of over 50% of the value to the existing building or new enlargement must meet all regulations, existing and new.