



SHORELINES – November 2008

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Sweeping Rules Changes for Oceanfront Development

At their September 2008 meeting and after years of discussion, the governor-appointed rule making body for coastal management, the Coastal Resources Commission (CRC), passed some of the more sweeping changes in its history pertaining to oceanfront development. The official rules are listed in the State's Administrative Code, Title 15A, Chapter 7, Subchapter H .0305 (changed in April 2008) and .0306, and Subchapter J .1200 (see <http://dcm2.enr.state.nc.us/Rules/current.htm>).

As Otto Von Bismarck was reputed as saying, there are two things one shouldn't watch being made – sausage and law. There are many cooks in the kitchen with competing recipes and lots of ingredients, and at the end of the day, the kitchen will be a mess and the end product may be difficult to discern. Coastal law is no different, but the two main philosophical elements of the rules are related to two concepts; (1) graduated setbacks, and (2) the static line exception.

Graduated Setbacks

The erosion setback line essentially demarcates the most seaward extent where a structure can be built, and is constrained by measuring set distances landward of the first line of stable vegetation. The vegetation line in addition to local government based side, front, and rear setbacks is the building envelope for oceanfront properties and associated infrastructure, such as septic systems. If a structure cannot "fit" in the building envelope, then the property is considered as unbuildable or if the property currently holds a structure, then the lot is considered as non-conforming (existing structure cannot be replaced or expanded because new development would not meet the erosion rate setback). A non-conforming structure cannot be repaired or reconstructed if the structure on the lot is destroyed by more than 50% by fire or storm.

Before – There were essentially two thresholds for setbacks. Structures less than 5,000 square feet were constrained by a setback 30 times the annual erosion rate (e.g. an erosion rate of 3 ft/yr would equate to a 90 feet setback = 30 x 3 ft/yr). The minimum erosion rate established by the CRC is 2 ft/yr, or a 60 feet setback. For structures exceeding 5,000 square feet, provisions included a setback from the first line of stable vegetation at 60 times the annual erosion rate or in areas where erosion is greater than 3.5 feet per year, the setback line was established at a distance of 30 times the annual erosion rate plus 105 feet. These additional setback requirements were emplaced because of unique physical, financial, and legal problems associated with relocating these large structures.

Now – Rather than two setback divisions, there are now eight, and quite simply, "the larger the structure – the larger the setback". The accompanying table, modified from the N.C. Division of Coastal Management, illustrates this concept quite nicely.



The erosion rate for most of Bogue Banks is 2 ft/yr and therefore in the past, the setback would have been 120 or 60 feet depending if the structure was over 5,000 feet or less, respectively. Now, if the structure is over 5,000 square feet, the setback could be as high as 180 feet if the structure was indeed over 100,000 square feet.

| Total Square Footage | Setback Factor | Setback Distance Based on Erosion Rate | | | | |
|--------------------------|----------------|--|-----------|-----------|-----------|-----------|
| | | 2 ft/year | 3 ft/year | 4 ft/year | 5 ft/year | 6 ft/year |
| less than 5,000 sq ft | 30 | 60' | 90' | 120' | 150' | 180' |
| 5,000 - 9,999 sq ft | 60 | 120' | 180' | 240' | 300' | 360' |
| 10,000 - 19,999 sq ft | 65 | 130' | 195' | 260' | 325' | 390' |
| 20,000 - 39,999 sq ft | 70 | 140' | 210' | 280' | 350' | 420' |
| 40,000 - 59,999 sq ft | 75 | 150' | 225' | 300' | 375' | 450' |
| 60,000 - 79,999 sq ft | 80 | 160' | 240' | 320' | 400' | 480' |
| 80,000 - 99,000 sq ft | 85 | 170' | 255' | 340' | 425' | 510' |
| 100,000 sq ft or greater | 90 | 180' | 270' | 360' | 450' | 540' |

Implications – For Bogue Banks, very few “large” oceanfront structures (over 5,000 square feet) eclipse the 10,000 square feet mark, so the setback factor is essentially the same – 60 times the annual erosion rate. However, for structures that will be built in excess of 10,000 square feet, there will be a larger setback factor. The setback factor also affects the spacing of site infrastructure as well, such as septic systems and parking areas for larger development projects, and this is probably the greatest impact of the graduated setback portion of the rule.

Static Line Exception

The static vegetation line is created for communities participating in large scale nourishment projects, now defined as a project utilizing over 300,000 cubic yards of sand. The static line is determined as the naturally occurring vegetation line that existed just prior to the nourishment project, and is used for future setback determinations, i.e., the pre-project vegetation line becomes *static*, or fixed. Thus, regardless if the vegetation line moves seaward, the setback remains anchored by the static line.

Before – The static line was established in perpetuity, meaning any unbuildable and non-conforming lots along Bogue Banks prior to beach nourishment would remain in this status forever regardless of the actual position of the vegetation line as it exists months, years, or decades after a beach nourishment project has been constructed; or if communities continually nourish the beach to keep the natural vegetation line as far away from structures as possible.

Now – Communities can petition the CRC for a static line exception after 5 years have elapsed since the nourishment project was constructed. The petitioner must develop a 30-



year nourishment plan that; (1) identifies the appropriate sand resources for the life of the plan, and (2) identifies realistic monetary resources for the plan. If the static line exception is granted, the oceanfront properties along the community can utilize the vegetation line as it currently exists – not the static line established just before the nourishment project. For homes or land that are “non-conforming”, any new development or redevelopment is limited to 2,500 square feet.

The CRC was very careful in differentiating the building setback policy for a one-time nourishment project compared to a long-term nourishment plan. A one-time project may indeed help the vegetation line advance seaward, but the project will eventually erode back; hence it was ill-advised to allow homeowners to take temporary advantage of the vegetation line moving seaward. However, if a community is committed to a long-term nourishment plan, then the vegetation line that has advanced seaward will likely remain in this position with the continual infusion of sand. Therefore the relaxation of the static line is more palatable.

Implications – Almost all of Bogue Banks has a static line, with the exception of western Emerald Isle that at the time (2005), did not receive enough sand to trigger the static line designation. There are roughly 150 non-conforming homes/land parcels in eastern Emerald Isle alone which could benefit from the static line exception ruling. Structures will still need to meet the setback from the naturally occurring vegetation line even if the static line is relaxed. Regardless, this will impact a large number of oceanfront homes along Emerald Isle and Bogue Banks if the communities move forward with petitioning the CRC.