

Ohio Coastal Resources Advisory Council
Rules, Laws, Consistency, Enforcement and Implementation Sub-Committee
September 29, 2007, 10:00 a.m.
Westlake, Ohio
Notes

In attendance: Jim O’Conner, Tom Jordan, Dave Spotts, Eric Dodrill, Cathryn Loucas, John Watkins, Liz Everhard

I. Welcome/Introduction

a. Dave Spotts - Subcommittee Chair

- Upcoming meetings will be announced to the public and rescheduled to a location that can accommodate a larger group.
- Chair would like to use today’s meeting to establish the issues that the sub committee will examine, and the process that will be used.
- Jim O’Connor was appointed to the committee and will serve with Dave Spotts and Eric Dodrill in that capacity. Dave Meismer, the other subcommittee member, is serving on another subcommittee and has asked to not participate in this one due to time commitments.
- Dave asked the meeting participants to outline their thoughts on what was to be accomplished.

b. John Watkins – Chief, ODNR Office of Coastal Management

- On July 13 Governor Strickland announced new policy directives for the coastal management regulatory program. ODNR has drafted rule changes to reflect the governor’s policy announcement, and is providing them today to the subcommittee.
- At the August 9 Coastal Resources Advisory Council meeting Jim O’Connor made a motion for the following:

BE IT RESOLVED THAT:

The Coastal Resources Advisory Council recommends that ODNR and the Office of Coastal Management immediately and appropriately notify all residents that have Lake Erie submerged lands leases with the State. The notification should state that, to the extent covered by private deeds, the State will immediately waive the requirement in the lease for the payment of fees pursuant to the Governor’s July 13, 2007, announcement. The Coastal Resources Advisory Council further recommends that that ODNR and the Office of Coastal Management convert all

leases of privately deeded property to permits within six (6) months.

- The motion was referred to this committee for consideration. ODNR has included language in the proposed rule changes being presented today to address the general concept presented in Jim's motion and is looking for feedback from the subcommittee.
- In addition to the new policy, Jim's motion and the number of other issues raised over the years, the department is proposing changes to the Ohio Administrative Code that would reflect the new policy and create a single permit for fill and/or structures within the limits described in a deed.
- At the request of the Director further meetings on the draft rules will be announced to the public through ODNR's web site.

II. Comments from committee members and guests

Jim O'Connor, CRAC Sub-committee Member

Believes his motion brought before the council in August and the new directives of Governor Strickland is a start in the process to bring back the "reasonable regulation" that was in place before the Ohio Coastal Management Program. Jim described his continuing disappointment over the coastal management program, his dismay over the involvement of coastal managers with his property, and his belief that regulatory oversight of the coast should be as reasonable and as easy and the way it was handled by the USACE.

Eric Dodrill, CRAC Sub-committee Member

Eric noted that it would be helpful to have someone with knowledge and experience in surveying lakefront property participating in the meetings. Eric mentioned the benefits of having a professional surveyor at the coastal management office over the last few years.

Tom Jordan, Public/OLG member

Provided written comments on the proposed rule changes (See attached). He had received a copy of an earlier draft of the rules, and had prepared his thoughts on the rules for consideration. He felt that the proposed rules were one sided against the property owners, and he suggested that when reviewing the proposed changes the committee review the rules as a group and line by line. Tom also briefly described his belief that a littoral right is a property right that supersedes the public's rights, that a littoral right is attached to a deeded parcel, and areas covered by littoral rights structures in Lake Erie are owned by the upland owner. He indicated that such areas should not be required to be leased. Tom also indicated that the public only had rights to the water in Lake Erie, and that the land beneath the water within the Connecticut Western Land Reserve was never transferred to the State of Ohio. Tom would

like to provide an overview of the issue at some point. Tom also viewed that the regulatory oversight being exercised by ODNR through either permits or leases was a regulatory taking, and that property owners would need to be compensated for such takings.

David Spotts, CRAC Sub-committee Member and Chair

Dave talked briefly about the governor's policy, and indicated he would like to start with addressing the surveying issue brought up by Jim Barchok, former CRAC member. Dave asked the subcommittee to consider whether the State ought to continue to be involved in protecting the rights of other shoreline property owners when considering projects.

John Watkins, ODNR-Office of Coastal Management Chief

John provided an overview of the new governor's policy and how it relates to situations on Lake Erie. He would like to provide an overview of concepts behind proposed rule changes if time allows, if not he can do so at the start of the next meeting. In response to comments from Jim O'Conner and Dave Spotts, John noted that the current ORC and OAC require ODNR to consider whether a proposed project prejudices the littoral rights of any owner of land fronting on Lake Erie without permission of that owner. John also noted that he believes that consideration of littoral rights is not something that the USACE routinely addresses when reviewing projects.

Cathryn Loucas, ODNR, Deputy Director

Cathy is participating on behalf of Director, she is there to reinforce Director's commitment to the review process and relay information to the Director. Cathy noted that lawsuit filed by the lakefront property owners continues, and that ODNR is there to focus on changes from governor's policy and Jim O'Conner's motion. Issues regarding littoral rights and ownership that are before the court are not something that ODNR can comment on or address in these rules.

- III. Outline proceedings – The subcommittee discussed the comments from the participants, and concurred that the group is to consider the following:
 - 1.) Examine Jim O'Connor's motion and proposed rule changes in response to the motion.
 - 2.) Address the questions raised by Jim Barchok (former CRAC council member) about surveying and the validity of deeds.
 - 3.) Review the draft rule changes being proposed in response to the governor's policy change.

- IV. Other items for discussion and consideration.

- Connecticut Western Land Reserve Territory Issue
- Difference between ODNR processes before Governor announced policy and the draft rule changes.
- Littoral drift
- Impacts to ODNR and Local communities from reduced lease revenue

V. Due to time constraints, Dave Spotts requested that the issues raised by Jim Barchok be discussed first.

- From Jim Barchok -What about deeds that are totally submerged, and what standards will be used to determine their validity?

John Watkins indicated that the governor's policy presumes that all deeds are valid unless otherwise decided by a court of law. As such, ODNR would not be reviewing deeds to determine validity, but will presume that all deeds are valid when entertaining applications for permits or leases. Conflicts between two or more property deeds will need to be resolved between the holders of the deeds. ODNR will not proceed with issuing authorizations when presented with conflicting deeds or claims. Deeds that are totally or partially submerged will be viewed as valid unless otherwise noted by a court of law. Issues about situations where submerged deeded areas exist lakeward of lakefront property were discussed. ODNR believes under the governor's policy that these deeds are to be presumed valid. Issues between lakefront property owners and those holding deeds lakeward of such properties will need to be resolved by the parties before ODNR will issue authorizations.

- From Jim Barchok - What will the survey standards be for ensuring that projects stay within deeded areas?

John Watkins - ODNR has proposed language in the draft rules that may or may not address this issue.

VI. ODNR Processes before and after July 13, 2007.

Dave Spotts asked that ODNR describe what had changed since the governor's announcement of July 13th. John Watkins responded by indicating that with new applications, ODNR had been notifying potential leaseholders of the governor's policy change, and that they could revise their applications to exclude areas contained within their deeded area. ODNR has also been working on rule changes to reflect the governor's new policy and Jim O'Conner's motion, as well as reviewing other concerns expressed by the property owners to see what changes could be made in the rules.

VII. Wrap up

Next meeting October 9, 2007. Liz and John will look to try and find a public location around the Cleveland area for the meetings on October 9th and 19th. The meeting will be noted on the ODNR web site when a location is determined. Liz will notify the parties of the proposed locations.

The draft rules and comments will be made available publicly through the ODNR web site.

Tom Jordan September 28, 2007

1501-6-31 TO 150
OHIO DEPARTMENT OF NATURAL RESOURCES

1-6-40

- 1501-6-31
- 1501-6-32
- 1501-6-33
- 1501-6-34
- 1501-6-35
- 1501-6-36
- 1501-6-37
- 1501-6-38
- 1501-6-39
- 1501-6-40

- DEFINITIONS
- PERMIT REQUIREMENTS FOR A COASTAL STRUCTURE
- PERMIT APPLICATION PROCEDURE
- FILING FEE
- REVIEW OF PERMIT APPLICATIONS
- THE COASTAL STRUCTURE PERMIT
- PERMIT COMPLIANCE
- APPEAL PROCESS
- PENALTIES
- SEVERABILITY

This is a personal opinion by Thomas O. Jordan Sr.

{Rules are applied only to the applicant.

The Director has the right to approve or disapprove any application.

All fees must be paid by the applicant.

Fees are not refundable if the application is rejected by the Director.

Never fear, you have a right to a hearing set up by ODNR.

Applicant must pay their legal fees and their fair share of the State's Legal fees.

Littoral rights are a valuable part of the property owner's title.

The property owner's littoral rights are being taken away by regulation. This is a violation of State and Federal law.}