

#2717

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
QUALITY BOARD

* * * * *

IN RE: PROPOSED RULEMAKING BLUFF RECESSION AND SETBACK

PUBLIC HEARING

* * * * *

HEARING: Tuesday, September 23, 2008
10:02 a.m.

LOCATION: Tom Ridge Environmental Center
Suite 1
Room 108

301 Peninsula Drive
Erie, Pennsylvania

COPY

WITNESSES: Patricia Lupo, Steve Beckman, Russ Warner,
Jessica Eagles, Kimberly Green,
Susan Sprague

Reporter: Shannon C. Fortsch

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INDEPENDENT REGULATORY
REVIEW COMMISSION

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EXHIBITS NOT ATTACHED

P R O C E E D I N G S

1
2 -----
3 MS. LUPO:

4 I'd like to welcome you to the
5 Environmental Quality Board, EQB public hearing on the
6 Proposed Bluff Recession and Setback Ruling. My name
7 is Pat Lupo, I'm probably the one who knows most of
8 you folks in this room. I'm glad to welcome you to
9 the Ridge Center. I am a member of the Environmental
10 Quality Board. I represent the Citizens Advisory
11 Council. The purpose of this rulemaking is to
12 formally accept testimony on Proposed Bluff Recession
13 and Setback Rulemaking. So I officially call this
14 meeting to order at 10:02 a.m.

15 The Bluff Recession and Setback Proposed
16 Rulemaking was initiated in response to a petition
17 submitted to the EQB in 2001 by Millcreek Township,
18 Erie County. In this petition to the EQB, Millcreek
19 Township requested the Department of Environmental
20 Protection clarify the extent and location of Bluff
21 Recession hazard areas within the Township. Currently
22 eight areas along the Lake Erie Coastline are
23 designated as Bluff Recession Hazard Areas including;
24 Springfield Township, Girard Township, Lake City
25 Borough, Millcreek Township, Fairview Township,

1 Lawrence Park Township, Harborcreek Township and North
2 East Township.

3 Since the last study completed regarding
4 Bluff Recession Hazard Areas occurred in 1975, the
5 Department agreed to conduct an updated study of the
6 entire Lake Erie Coastline. Following studies
7 conducted by the Department as well as Wetland and
8 Coastal Resources, Inc., it was determined that the
9 City of Erie's 1.5 miles of eastern shoreline receded
10 at an average rate of .24 or 2400ths feet per year.
11 This area is outside of the Presque Island Peninsula
12 and is therefore unprotected from open lake wave
13 energies and undercutting. If not regulated with
14 appropriate zoning setbacks and improvement
15 limitations, the area of shoreline will be subject to
16 recession and property damage to existing structures.

17 Through this proposed Rulemaking the
18 Department is recommending that the City of Erie be
19 designated as a Bluff Recession Hazard Area with a
20 minimum Bluff Setback of 25 feet. The existing
21 setbacks for the other eight municipalities designated
22 as a Bluff Recession Hazard Area are not amended
23 through this rulemaking.

24 This proposed rulemaking also included
25 other amendments to update regulatory provisions

1 including, changes to clarify that municipalities may
2 adopt more restrictive bluff setback distances and
3 that the Uniform Construction Code or local zoning
4 regulations may also apply. The proposed rulemaking
5 also included a new requirement in Section 85.37
6 subsection (7)(1)and(2), which requires that every
7 deed or plat within a bluff recession hazard area
8 include an appropriate bluff recession hazard area
9 notice.

10 In the Preamble of the rulemaking, the
11 Department is also requesting public comments on the
12 possible future inclusion of a section in the
13 regulations that would require property owners to
14 adhere to certain vegetation and management practices
15 to ensure bluffs developing on their properties and
16 adjoining the properties. In development of this
17 rulemaking, the Department consulted the Coastal
18 Zoning Advisory Committee as well as Water Resources
19 Advisory Committee. The Department also discussed the
20 regulatory proposal with officials of the City of Erie
21 who are supportive of the proposed Rulemaking.

22 In order to give everyone an equal
23 opportunity to comment on this proposal, I would like
24 to establish the following ground rules. I will first
25 call upon witnesses who are preregistered to testify

1 at this hearing. After hearing from these witnesses I
2 will provide any other interested parties with the
3 opportunity to testify as time allows. The testimony
4 is limited to ten minutes for each witness.

5 Organizations are requested to designate one witness
6 to present testimony on its behalf. Each witness is
7 asked to submit prewritten copies of his or her
8 testimony to aid in transcribing the hearing. You can
9 hand me those prior to your presentation.

10 Please state your name and address and
11 affiliation for the record prior to presenting your
12 testimony. We also appreciate your help with spelling
13 names and terms that likely might not be generally
14 familiar, so that the transcript can be as accurate as
15 possible. Because the purpose of the hearing is to
16 receive comments on the proposal, EQB or QB Staff will
17 be questioning witnesses. However the witnesses
18 cannot question the EQB or QB Staff. And in addition
19 to, or in place of, oral testimony presented at
20 today's hearing, you may also submit written copies on
21 this proposal, and all that information is up here on
22 the board. All comments must be received by the EQB
23 on or before October 22nd, and then all comments
24 received at this hearing as well as written copies
25 received by October 22nd, 2008, will be considered by

1 the EQB and will be included in the common response
2 documents, which will be prepared by the Department as
3 reviewed by the EQB prior to the Board taking its
4 final actions of this regulation.

5 Also, anyone who is interested in a copy
6 of this transcript, you may contact the reporter this
7 morning to arrange purchase of a copy. I would now
8 like to call the first witness. He is Steve Beckman.

9 MR. BECKMAN:

10 Thank you for the opportunity to address
11 the Board on this rulemaking this morning. My name is
12 Steve Beckman, I'm an attorney with the law firm of
13 MacDonald, Illig, Jones and Britton here in Erie. I
14 am speaking this morning on behalf of Steve and Nancy
15 Gorman who own real estate in Millcreek Township
16 directly across Peninsula Drive from where we are
17 sitting here this morning. The property includes in
18 part the area where Waldameer Park is located. And
19 the Gormans are very concerned about existing
20 regulations and the failure of proposed rulemaking to
21 address some of the problems in those regulations.

22 Specifically, the first major problem
23 with the existing regulations is the failure of the
24 EQB to designate specific areas with bluff recession
25 hazards. The Bluff Recession Act states that

1 following receipt of the Department's report and after
2 public notice and public hearing, the Environmental
3 Quality Board shall, by regulations, identify and
4 designate those areas and municipalities subject to
5 the bluff recession hazards. Now, when the EQB
6 approved these regulations implementing the Act in
7 1980, it never specifically identified bluff recession
8 hazard areas. The regulations simply listed all of
9 the municipalities in Erie County, excluding the City
10 of Erie, and set bluff setback distances in these
11 municipalities. This left the municipalities and the
12 citizens to fend for themselves in trying to determine
13 what areas were covered by the Act and its
14 regulations. By default, with the encouragement of
15 certain DEP staff, the position came that all areas of
16 the Lake Erie shoreline were soon to be covered by the
17 requirements, regardless of whether a true bluff
18 recession hazard existed in the locale or not. The
19 ambiguous nature of the existing regulations has
20 already resulted in lengthy litigation involving
21 Waldameer Park and a neighboring landowner. It has
22 consumed considerable time and resources of the
23 Department, Millcreek Township, the Gormans and
24 others.

25 Now, in an effort to address the problems

1 created by the EQB's failures to specifically
2 designate bluff hazard recession areas, Millcreek
3 Township petitioned the EQB in 2001 seeking
4 clarification of whether the Act applied to the area
5 around Waldameer Park. And in response to that
6 petition, the EQB instructed DEP to conduct a study of
7 the entire Lake Erie shoreline. Now, the purpose of
8 that study was clearly to define the areas along the
9 shoreline of Erie County where bluff recession posed a
10 real hazard consistent with the definition of a bluff
11 recession hazard area, which is an area or a zone
12 where the rate of progressive bluff recession creates
13 a substantial threat to the safety or stability of
14 nearby or future structures, or utility facilities.

15 Now, the requested study was completed by
16 the DEP in 2004 and includes tentatively designated
17 bluff recession hazard areas; all the municipalities,
18 including Millcreek Township. However, the EQB has
19 again failed in the current proposed rulemaking to
20 designate specific bluff recession hazard areas that
21 are required by the Act. Instead, the only revision
22 of the regulations in the proposed rulemaking based on
23 the new data is the addition of the City of Erie as a
24 listed municipality. And regarding the City of Erie,
25 while the comment was, it's only the mile and a half

1 of the City shoreline outside of the Peninsula, that's
2 not in those regulations. The regulation does not
3 designate any particular area in the City of Erie.

4 Regardless of the commentary to the new
5 proposed regulations or the drafters' intent to adopt
6 the Department's November 2004 Tentative Designation
7 Report, the language of the new proposed regulations
8 do not state anywhere, for example, that the
9 Department's Tentative Designation Report is adopted
10 by the EQB as the Board's final identification and
11 designation of the regulated areas. In fact, the
12 commentary to the new proposed regulations failed to
13 mention the Department's report by name or state that
14 it constitutes the tentative designation that EQB
15 intends to adopt by the new regulations.

16 It's our position that the EQB must
17 properly designate specific bluff hazard recession
18 areas consistent with obligations under the Act. As
19 stated by the Environmental Hearing Board, in the
20 above referenced litigation, is the EQB and not the
21 DEP, and not the municipalities, that is the entity
22 selected by the legislature to designate the bluff
23 recession hazard areas. This proposed rulemaking is
24 the proper vehicle for the EQB to meet its statutory
25 requirement to designate these areas. The EQB's

1 continuing failure to do so in a clear and specific
2 way will likely lead to additional ongoing problems
3 and the waste of resources for the DEP,
4 municipalities, and the citizens like the Gormans.

5 Now it's our position again, the DEP's
6 report contains maps and data discussing bluff
7 recession in specific areas of the Lake Erie
8 shoreline, but is a good starting point for the EQB to
9 consider when it designates the bluff recession hazard
10 areas. A copy of the map for Millcreek Township and
11 the relevant data for the Gormans' property from the
12 report is attached to these comments. If you review
13 these documents, the DEP has tentatively designated
14 the eastern portion of the Gorman/Waldameer properties
15 outside of the bluff recession hazard areas. We
16 believe that is proper, but we don't believe the DEP
17 has gone far enough to designate the portions of this
18 property. For that bare minimum, the EQB should
19 accept DEP's tentative determination that a bluff
20 recession hazard area does not exist on eastern
21 portion of the Gormans' property.

22 The mechanism for the EQB to make the
23 required destination into the regulations could be
24 incorporation of proposed specific determinations made
25 in the DEP report, or a specific description by the

1 EQB in the finally determined bluff recession hazard
2 areas, including in a specific geographic reference.
3 The EQB should be clear so that the parties impacted
4 by the Act and the municipality obligated by the state
5 to enforce it, can readily determine whether a
6 property is included in the area where the Act
7 applies. My partner, Russ Warner, on behalf of
8 Waldameer, is going to discuss our position that the
9 data supports moving an area designated bluff
10 recession hazard area further west in greater detail
11 during his comments. So I think it's very important
12 the EQB go back and get it right this time, so the
13 municipality and the citizens know exactly what areas
14 are designated and what areas are not designated.
15 They claim they have done so, but if you read these
16 regulations and you read the changes it is clear
17 they've not done so.

18 I also want to talk about the setbacks.
19 The setbacks listed in the proposed regulations are
20 arbitrary and should be revised to reflect the actual
21 scientific data. The proposed rulemaking reduces the
22 minimum setback of 25 feet but maintains the minimum
23 setback of 50 feet in all areas except for the City of
24 Erie. The setbacks in all of the municipalities
25 including the City of Erie, are completely arbitrary,

1 and ignore the method for determining minimum bluff
2 setback distances set forth in the existing
3 regulations.

4 The method set forth in the regulations
5 determine the minimum setback of relying on actual
6 data, regarding the rate of bluff recession, and
7 multiplying it by the appropriate life span of the
8 structure. Even this method of determining the
9 minimum setback will be overprotected in many areas
10 that could use the average rate of recession for the
11 entire Township at the rate of bluff recession in the
12 equation. The easiest way to understand this issue is
13 to look at an example. In the case of Millcreek
14 Township, the average rate of bluff recession over the
15 entire Township is approximately a half a foot per
16 year, meaning that some areas of the Township have
17 recession rates in excess of that amount, while other
18 areas have rates below that amount. For commercial
19 structures, the regulation assumes a life span of 75
20 years. Therefore, in Millcreek Township, the minimum
21 setback for a commercial structure using the method of
22 calculations set out on regulations would be 37 and a
23 half feet. However, the regulations arbitrarily
24 designate the minimum setback for commercial
25 structures in Millcreek Township as 75 feet. And

1 because the method relies on an average recession rate
2 for the Township and not site-specific recession data,
3 which is incorporated in DEP's 2004 report, is
4 unscientific in generating minimum setbacks for
5 specific properties. If a more site-specific approach
6 were taken in the areas owned, for instance, by the
7 Gormans, the minimum setback would be generally zero
8 and significantly less than the arbitrary minimum set
9 by the regulations.

10 The EQB should revise the existing
11 regulations, setting the minimum setback in the
12 municipalities to create a more refined and area-
13 specific method of calculation. And I'm going to
14 supplement these comments with some additional written
15 comments on it, but really rather unscientific to
16 essentially determine a setback into any given
17 municipality, by averaging the recession rate over the
18 entire five and half miles of the given municipality.
19 And if the recession rate is somehow dictated by
20 municipal boundaries, the area on scientific approach,
21 we would suggest that there's a method available,
22 already in the regulations, that could be adopted by
23 the EQB, that would be much more scientifically based
24 and specific to given properties as opposed to this
25 broad based approach that has been previously adopted.

1 I just want to provide one short comment
2 on the Proper Vegetation Management Request.
3 Rulemaking asked to seek comment on a possible future
4 inclusion of a regulation on proper vegetation
5 management. What that rulemaking would look like,
6 it's not spelled out anywhere in the regulation.
7 However, in the absence of any specifics, the Gormans
8 simply want to go on record that they would be opposed
9 to any effort of the DEP to dictate how they manage
10 the vegetation and trees on their property. Thank
11 you.

12 MS. LUPU:

13 Okay. Thank you, Steve.

14 MR. BECKMAN:

15 Any questions from the Board today?

16 MS. LUPU:

17 Thank you. And our next witness is Russ
18 Warner. Should we continue or do you want to ---?

19 MR. WARNER:

20 I want to thank you for giving me the
21 opportunity to speak to the Board today and provide
22 some comments. My name is Russell Warner and I'm an
23 attorney for the law firm, MacDonald, Illig, Jones and
24 Britton, in Erie, Pennsylvania. I'm speaking this
25 morning on behalf of Paul Nelson and Waldameer Park,

1 Inc. Waldameer Park is the amusement park located
2 directly across Peninsula Drive as most people in this
3 room, I think, are aware of. Mr. Nelson is the owner
4 of Waldameer Park, Inc., and is also the owner of some
5 of the adjacent lands that Mr. Gorman would have had
6 about a year, and occupy Waldameer Park's facilities.

7
8 My partner, Steve Beckman, has just
9 commented on many of the issues regarding the Bluff
10 Recession and Setback Act that are concerns of my
11 clients as well as his client. I'm not going to
12 repeat that effort, although I want to make it clear
13 that Mr. Nelson and Waldameer Park, Inc., fully
14 support the comments that were made on behalf of the
15 Gormans. My comments here are about the specifics of
16 the Bluff Recession Hazard Area Designation in the
17 portion of Millcreek Township that involves Waldameer
18 Park and its facilities.

19 First and overall, Waldameer Park
20 requests that the EQB designate all of the Waldameer
21 property as outside of the Bluff Recession Hazard
22 Area. As Steve Beckman mentioned, the 2004 DEP
23 Tentative Designation Report excluded the eastern
24 portion of the Waldameer facilities and property from
25 its tentative designation of bluff recession hazard

1 area. But under the Act, it's EQB's role to make the
2 final decision as to what areas will officially and
3 finally designate as bluff recession hazard areas. We
4 ask the Board to designate all, not just the eastern
5 half. And as you can see in Mr. Beckman's materials,
6 in the materials handed out, they're a cross-section
7 of what areas are designated on page nine, Exhibit
8 Three from Mr. Beckman, but page nine of the report.

9 By way of an induction, I want to provide
10 to you the several pictures of Waldameer Park so you
11 can understand both its location and why it provides
12 or poses a unique issue when trying to address the
13 requirements of the Act. As you can see, Waldameer
14 Park is located at the neck of the Presque Peninsula
15 where the shore widens, where it widens up to come to
16 the beginning of the Peninsula itself. The amusement
17 park facilities, as Waldameer, are located on a flat
18 area setting well back from the shoreline of the
19 Peninsula. There's a slope in front of Waldameer and
20 our position is not a bluff and it is not a cliff as
21 defined by the Act. It is a slope. In front of that
22 slope there is a distance of approximately 500 feet of
23 land, all the way along that shoreline, before you
24 actually hit the water.

25 That 500 foot wide area between the

1 shoreline and the slope is a longstanding and well-
2 developed area there. There's numerous homes and
3 mature trees and vegetation there. It's impossible
4 for even the largest wave in Lake Erie to cross that
5 500 feet of land and then cause, quote, open lake wave
6 energy damage to the Waldameer slope. You just can't
7 get a Tsunami wave big enough, in Erie, to go 500 feet
8 across there and hit the toe of the slope. Just as
9 the City of Erie properties inside Presque Bay are
10 protected, from that lake wave energy by the
11 Peninsula, was discussed in a commentary to the
12 proposed new regulations. All of Waldameer's slope is
13 likewise protected, because of the expansive neck area
14 of the Peninsula, and because there is 500 feet of
15 well-developed area in front of the Waldameer toe of
16 the slope.

17 In the past, the EQB, for whatever
18 reason, has failed to designate specific bluff
19 recession hazard areas as opposed to simply
20 designating just municipalities. Therefore there's
21 ambiguity about what, if any, portions of the
22 Waldameer property, or really any property in any
23 municipality, is covered by the Act. In the absence
24 of a proper designation, in the past certain DEP staff
25 had previously taken the position that all of

1 Millcreek Township, in fact, the entire lake shoreline
2 from Ohio to New York, is an automatically part of
3 bluff recession hazard area and has to have setbacks.

4 The tentative designation of a bluff
5 recession set of hazard areas that are contained in
6 the November 2004 DEP Report, excludes again, the
7 eastern portion but not the western portion of the
8 Waldameer property. Well, we agree the eastern
9 portions be excluded. Our position, it is based upon
10 the proper application of the existing regulations, a
11 review of all area-specific current and historical
12 information, a review of the property and all the past
13 and present data. The EQB should not designate any of
14 the Waldameer property as bluff recession hazard area.

15 Why is that? One of the reasons is, the
16 slope of Waldameer is not a bluff as the word bluff is
17 defined in regulations for the Act. A bluff is
18 defined as any high bank or bold headland with a broad
19 precipitous cliff face, overlooking the lake. As you
20 can see from the pictures, there's no precipitous
21 cliff face at Waldameer. Instead, there's a stable
22 slope with mature upright trees that can be readily
23 traversed by an average person, including Mr. Paul
24 Nelson, a young man in his 70s.

25 In addition, the Waldameer slope is not

1 overlooking a lake within the meaning of the Act and
2 Regulations. Unlike the normal Lake Erie bluff, which
3 has a steep cliff and a base where you can literally
4 look over down to the water directly below you off a
5 cliff, at the toe of a bluff or cliff, you look right
6 over the lake. At Waldameer, you overlook 500 feet of
7 trailer park homes in the neck of the Peninsula,
8 rather than the lake itself.

9 Secondly, there are no bluff recession
10 activities at the Waldameer slope, it's not a bluff
11 recession area. Even if the EQB would determine there
12 is a bluff there, in order to determine whether
13 there's bluff recession, you need to look at the
14 definitions in the Act and Regulations. Bluff
15 recessions is a defined term that talks about the loss
16 of material along the bluff face caused by the direct
17 or indirect action by one, or of a combination of,
18 groundwater seepage, water currents, wind generated
19 water waves, or high water levels. It's clear that
20 because of the wide 200 feet area between the toe of
21 the Waldameer slope and the shoreline, which has
22 clearly existed for many, many years, the slope at
23 Waldameer is not subject to water currents and water
24 wave energy. It's not subject for the wind generated
25 water waves or the high water levels. While there may

1 be limited groundwater seepage from the Waldameer
2 slope, that's no more significant or any different
3 than any other slope, or many of the slopes located in
4 Erie County that are far, far away from the lake.
5 Though that seepage is not causing a significant loss
6 of material or again, anything different than what you
7 would see at slopes that are throughout the County
8 that are not on the shoreline.

9 Third, and perhaps most importantly,
10 there's no substantial threat to the stability or the
11 safety within the meaning of the Act and Regulations
12 at the Waldameer slope. Even if the EQB disagrees
13 with the issue of whether or not this is a bluff, or
14 whether or not there's any bluff recession going on,
15 there's no substantial threat here, and we ask the
16 Board to use its common sense to look at that.

17 A bluff recession hazard area, defined in
18 the Act and Regs, is an area or zone where the rate of
19 progressive bluff recession creates a substantial
20 threat to the safety or stability of a nearby piece of
21 structure or utility facilities. The DEP has
22 completed several studies of the slope at the
23 Waldameer property over many, many years. None of
24 those studies, including those associated with the
25 effort to recently build a new Waldameer

1 rollercoaster, and the 2004 report that you have
2 before you, none of them support findings that there's
3 a rate of progressive bluff recession that creates a
4 substantial safety or stability threat at Waldameer.
5 These findings are supported by the presence of
6 existing Waldameer buildings such as Rainbow Gardens,
7 which is located on the flat area near the top of the
8 slope, that have remained in their current position
9 for many, many years, aerial photographs. The
10 photographs document that things have been there for
11 50 or 100 years without change. The presence of
12 mature trees on the slope and also then, below the
13 slope, in this 500 feet of area that are clearly 50 or
14 100 years old and showed no sign of movement, and the
15 lack of any physical evidence of bluff recession under
16 the Act.

17 In the final analysis, it is the Board's
18 role to make the ultimate decision, whether the
19 Waldameer slope really presents the kind of
20 substantial threat that requires any of the Waldameer
21 areas be included in your final designated bluff
22 recession area. DEP has clearly acknowledged its
23 intended designation that a portion of it is not bluff
24 recession area. In addition, EQB should have
25 conducted its own review, its own analysis, and use

1 its own best judgment to look at the data and
2 everything else, plus further comments that we will
3 submit on behalf of Waldameer before the end of the
4 comment period. And we would respectfully request the
5 EQB then make a final determination and make it clear
6 in the regulations that they exclude the entire
7 Waldameer area from a bluff recession hazard area.

8 Just briefly, if I can just talk about
9 the exhibits you have --- the exhibits you have before
10 you. The first one is an aerial that shows the entire
11 Peninsula where the neck starts to widen.

12 (Exhibit One marked for identification.)

13 MR. WARNER:

14 The first two are aerial photos that show
15 that. You can see the Tom Ridge Center on the right
16 side, and a vast expanse. Take, for example, Exhibit
17 Two. The vast expanse, the large circular area here,
18 this is Rainbow Gardens, this black oblong, if you
19 will, oval, and you see in front of it to the water.
20 You've got at least 500 feet for all sorts of things.

21 (Exhibit Two marked for identification.)

22 MR. WARNER:

23 The third photo, Exhibit Three, shows the
24 top, it shows across the lake. It shows it in the
25 summer time, all of the vegetation in front of

1 Waldameer Park. Again, you can see the oval that is
2 Rainbow Gardens and look at the 500 feet in front of
3 it, mature trees and all of the homes.

4 (Exhibit Three marked for
5 identification.)

6 MR. WARNER:

7 Number Four, again, shows it much closer.
8 Again, Rainbow Gardens at the top of what I call the
9 slope, which has been there for many, many years and
10 then several different streets or alleys of the
11 trailer park below it after the slope.

12 (Exhibit Four marked for identification.)

13 MR. WARNER:

14 In Exhibit Five, you see again, a picture
15 of the beach, then the entire trailer park, and then
16 the slope and then Waldameer.

17 (Exhibit Five marked for identification.)

18 MR. WARNER:

19 Exhibit Six is in the winter time. It
20 shows you again, the great distance, no tsunami is
21 going to be able to clear this area.

22 (Exhibit Six marked for identification.)

23 MR. WARNER:

24 Number Seven is a side view that shows
25 you that, this again, a gradual slope, not a steep

1 precipice. This is coming from the east to the west
2 showing the trailer park, showing a slope that is not,
3 again, a steep cliff as suggested in Regs.

4 (Exhibit Seven marked for
5 identification.)

6 MR. WARNER:

7 Exhibit Eight, you can see there's a ---
8 in Exhibit Eight you see a picture of a man in the
9 left-hand corner. Mr. Nelson said that was his best
10 side but I don't know what he meant by that. This
11 shows the toe of the slope. This is not a cliff, this
12 is not something you can fall down on. This is again,
13 a very general hill. It's 500 feet away from the
14 water. If you come forward, you see the last two
15 pictures, once you go beyond the slope --- this is
16 north in the grassy area, this is in the 500 feet.
17 You see these two pictures, one is looking back to the
18 slope, one is looking towards the water.

19 (Exhibit Eight marked for
20 identification.)

21 MR. WARNER:

22 Now again, we respectfully request of the
23 Board, to use your judgment and common sense, review
24 all of the data, and make a decision that would suit
25 all the properties in the area. Thank you. If you

1 have them, I'll answer your questions.

2 MS. LUPO:

3 Thank you. Are there any questions?

4 Okay. Thank you Russ.

5 MR. WARNER:

6 Thank you.

7 MS. LUPO:

8 Next witness, we have Julia Eagles, you
9 have testimony for Ray Schreckengost, from Erie-
10 Western Pennsylvania Port Authority.

11 MS. EAGLES:

12 I am glad to be here. I am Julia Eagles
13 from the Erie-Western Pennsylvania Port Authority, 208
14 East Bayfront Parkway, Erie, Pennsylvania. This
15 testimony I am presenting for Ray Schreckengost from
16 Erie Port Authority. Erie-Western Pennsylvania Port
17 Authority commends the Department of Environmental
18 Protection for protecting its natural environment, and
19 one of the Commonwealth's most precious resources, the
20 Lake Erie shoreline.

21 We believe the majority of the changes to
22 the Act are well thought out and reasonable. The
23 inclusion on the City of Erie shoreline brings
24 continuity to the Department's approach of protecting
25 the Lakefront Bluffs.

1 The Erie-Western Pennsylvania Port
2 Authority wishes to make sure, through this testimony,
3 that the bluffs within the confines of Presque Bay is
4 specifically exempt from this ordinance, both under
5 Section 85.11 and the inclusion of a section on
6 vegetation management. The needs and nature of
7 development in the confines of Presque Bay vary
8 drastically from the needs of the open lake.

9 Development along the bluff of Port
10 Authority property is a key to further development of
11 the Bayfront. Connecting the neighborhoods to the
12 water's edge is now problematic because of the
13 Bayfront Parkway. Our long-range plans include a
14 linear park on the bluff, overhead walkways, and
15 several edge-of-the-bluff viewing areas. The Erie-
16 Western Pennsylvania Port Authority wishes to make
17 sure that the expansion of the Act does not restrict
18 the continued development along the Bayfront and has
19 been considered the most important issue for continued
20 economic stability in Western Pennsylvania. The
21 Commonwealth of Pennsylvania has invested over \$100
22 million in moving our Bayfront forward. We certainly
23 don't wish to impede this momentum. Thank you. Any
24 questions?

25 MS. LUPO:

1 Thank you, Julia.

2 MS. EAGLES:

3 Thank you.

4 MS. LUPO:

5 Now we have Kim Green giving testimony
6 for our Mayor, Joseph Sinnot.

7 MS. GREEN:

8 Good morning. I'm Kim Green, the
9 Director of the Department of Economic Development,
10 the City of Erie. The Mayor has asked me to send
11 apologies that he cannot be here this morning, due to
12 the incident last night, where he can't be here and he
13 is working today with the law enforcement. So he
14 asked me to present his testimony today.

15 Welcome to Erie and I'd like to thank the
16 Department of Environmental Protection, the
17 Environmental Quality Board, for the opportunity to
18 speak today at this public hearing regarding the
19 proposed amendments to the Bluff Recession and Setback
20 Requirements as they relate to the City of Erie.

21 The City of Erie is fortunate to be
22 located on the southern edge of Presque Bay and
23 sheltered by the protective land features of the
24 Peninsula. This allows our bluff area adjacent to the
25 bayfront to exist without impact from Lake Erie's

1 rough waters. However, as the City's shoreline
2 expands to the east, we lack the same protection to
3 approximately 1.5 miles to shoreline. It is of utmost
4 important that DEP and City government work to protect
5 this small, yet vital area along the lake that is
6 subject to the effects of bluff recession.

7 If you take a look at the annual rate of
8 bluff recession at the control points located within
9 the City of Erie, and multiply that by 100 years or
10 the maximum life of a new structure, the proposed 25
11 foot setback would provide nearly twice the amount of
12 protection required at the current rate of erosion.

13 With the exception of three manufacturing
14 or commercially zoned properties, the parcels affected
15 by this proposal are zoned Low Density Residential.
16 These properties are already required to maintain a
17 30-foot rear setback as dictated by the City's Zoning
18 Ordinance. Therefore, any homeowner whose rear
19 property line is a bluff would see no changes to their
20 current setback requirements as a result of inclusion
21 into legislation. However, for properties whose rear
22 line extends out over the bluff or into the lake, this
23 new proposal will provide for an almost uniformed rear
24 setback among all bluff property owners. With that
25 being said, we have no objections to the 25 foot

1 setback requirement that are willing to designate the
2 mile and a half of our eastern shoreline as a bluff
3 recession hazard area.

4 By accepting inclusion into this
5 legislation, the City of Erie understands the need to
6 make revisions, not only to our Zoning Ordinance for
7 the inclusion of the setback, but also to the
8 Subdivision and Land Development Ordinance for the
9 requirement to have this information shown on plats
10 and in deeds. We appreciate your ability to assist us
11 with costs associated with this ordinance revision.
12 And I would, however, respectfully request that the
13 sunset clause of this legislation be clarified, so
14 that we may have a level of comfort that revisions
15 will not have to be made again in the near future, so
16 that we may implement any recommendations that may
17 come out of current long range planning efforts.

18 I would also like to express my concern
19 with the possible inclusion of vegetation management
20 requirements of the coastal property homes. As an
21 environmental scientist, the Mayor understands and
22 appreciates the need for such a requirement. However,
23 the legislation should outline whose responsibility it
24 will be to create, administer and educate the property
25 owners of such a requirement. While we may have the

1 staff capacity to administer the setback requirements
2 of this legislation, enforcement of vegetation
3 management plans and property owner education is
4 beyond the capability of our existing staff.

5 Overall, I'm pleased with the conditions
6 set forth in the proposed legislation for the City of
7 Erie, and trust that we will be able to continue to
8 work in cooperation with the Department of
9 Environmental Protection on issues affecting our
10 beautiful lake and the rights of our citizens.

11 MS. LUPO:

12 Thank you. Are there any questions?
13 Those are all the folks that had registered to
14 testify. Is there anyone else in the room that would
15 like to testify?

16 MS. SPRAGUE:

17 I'm the Zoning Officer from North East
18 Township, and I realize I didn't sign up to testify
19 because I realized it was mostly an Erie issue,
20 but ---.

21 COURT REPORTER:

22 I'm sorry to interrupt you, but can you
23 state your name for the record?

24 MS. SPRAGUE:

25 Yes, Susan Sprague, S-P-R-A-G-U-E. The

1 Zoning Officer of North East Township. And we do have
2 quite a bit of lakeshore property and it's sort of a
3 different situation in Erie. But North East Township
4 is in favor of amending this Section 85.1.2. for Bluff
5 Recession Hazard Areas Setback Requirements, because
6 that will take it from the state's requirement of 50
7 feet to 25 feet, which will give us the opportunity in
8 the future to appeal that we would like to lower our
9 setback rate from 50 to 25. And let me just explain a
10 little bit why we want to do that.

11 The North East shoreline properties are
12 the most varied in Erie County where the bluff is low,
13 only 20 feet high. Many cottages were built in the
14 1930's. The higher elevations of up to 140 feet are
15 mostly farm land and are not very developed, as there
16 is no access to the beach. According to the DEP map
17 information for Lake Erie Control Point Recession
18 dates, the average of North East is 1548 per year.
19 Where the cottage area is located, it is mostly .5 or
20 under. The Township feels we need to give relief to
21 the cottage area where bluffs are under 25 feet of
22 elevation, as positions to existing cottages must now
23 be a setback of 50 feet. Many of the existing homes
24 are only 20 feet back and it would be impossible for
25 both sides with a 50 foot setback. Many of the homes

1 have also installed bluff protection, what I mean is,
2 concrete one ton blocks. With the lake being prime
3 property, many homeowners would like to improve their
4 houses with a logical use of the property, with the
5 method of determining the bluff setback distances as a
6 formula of a rate .5 times 50 years equals 25 feet.

7 We would feel it would be an appropriate
8 distance for a cottage area. We would allow the
9 setback to be equal to the vertical height between 25
10 to 50 feet with a maximum of 50 feet setback for any
11 block over 50 foot high. And some of our extreme
12 recession areas, our building code official would make
13 that determination by using the chart recession rate
14 that's been established by these charts and that's
15 2006, 2007. Thank you.

16 MS. LUPO:

17 Okay. Thank you very much. Is there
18 anyone else that would like to provide testimony?
19 Okay. Then on behalf of the Environmental Quality
20 Board, I hereby am adjourning this meeting at 10:42.
21 Thank you so much.

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23 * * * * *

24 HEARING CONCLUDED AT 10:42 A.M.

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C E R T I F I C A T E

I hereby certify that the
foregoing proceeding 9/23 Tate
was reported by me, that I have read this
transcript on 9/29/08, and I attest
that this transcript is a true and
accurate record of the proceeding.

Frank C. Insel

Court Reporter

