

City of New Smyrna Beach Coastal Construction Setback Line Review

City Council Meeting

January 23, 2018



Scope of Work

- **Comparison of the City's Coastal Construction Setback Line (CCSL) to that of the Florida Department of Environmental Protection's Coastal Construction Control Line (CCCL)**
- **Focusing on the section along N. Atlantic Avenue between the Crawford Road Intersection to Sapphire Road Intersection.**

Project Location



Documents Reviewed

- **Aerial of Crawford Rd. to Sapphire Rd. with DEP CCSL (1991), DNR CCCL (1973), and NSB CCSL (Appendix A)**
- **The City of New Smyrna Beach's ordinances on development in the coastal area- Article 703.00 (Appendix B)**
- **FDEP 2012 Rules and Procedures for Coastal Construction and Excavation- 62B-33 (Appendix C)**
- **The City of New Smyrna Beach's general definitions – Article 201.00 (Appendix D)**
- **Methodology on Coastal Construction Control Line Establishment (Appendix E)**
- **Florida Statutes 161.053 (Appendix F)**

Suggested Changes to City's Ordinance

- Under subsection B(3), we recommend prohibiting hardscape features that would drain east-ward onto the dune system or beach. Hardscape features draining into the road (Atlantic Avenue) is likely not to have an adverse impact on the environment. However, drainage should be reviewed by the city to preclude impacts to other areas from the additional discharge.
- The title of subsection H, should refer to the City's "Coastal Construction Setback Line," and not "Coastal Construction Control Line" in order to keep consistency and provide clarity.
- We recommend adding definitions to Article 104.00- General Definitions in order to provide clarity in Article 703.00- Development in the coastal area, such as "walkover," "dune," "excavation," "substantial adverse effect" and "tidal armoring."

However, the City should clarify to any applicant for development that the FDEP should be consulted as there may be certain requirements that could be mandated by the agency based on specific site locations.

Comparisons: City & FDEP Regulations

Regulations Seaward of the City's CCSL	FDEP Regulation
<p>Prohibited Structures with New Development: any portion of a principal building whether habitable or non-habitable (including but not limited to porches, balconies, roof overhangs, and other projections from the building), any accessory structure (except walkovers and seawalls), any hardscape features (including but not limited to pavers, planters and playground equipment) (703.02B(1-3))</p>	<p>These structures are not strictly prohibited in 62B-33. However, all proposed construction must not create a significant adverse impact to marine life, native vegetation, or dune system. (62B-33.005 (2))</p>
<p>In no case shall fence height be allowed to exceed four feet in height. (max. height is three feet if more than 25% of the fence is opaque) (703.02D)</p>	<p>There are no guidelines in 62B-33 on fence heights.</p>

Comparisons: City & FDEP Regulations

Regulations Seaward of the City's CCSL	FDEP Regulation
<p>Proposed construction must be located behind any existing seawall or tidal armoring (this excludes proposed construction of dune walkovers, new sea walls, other tidal armoring and similar structures by function must be constructed in front of existing seawalls and tidal armoring)</p> <p>(703.02D(1.d))</p>	<p>There are no guidelines in 62B-33 on proposed construction having to be behind a seawall.</p>
<p>Regulations of walkovers: The walkover shall be posted with signs containing information including the laws concerning the prohibition of disturbing sea turtle nests, dates indicating sea turtle nesting season and prohibition against disturbing state protected vegetation and dunes. If constructed across vegetated dunes or vegetated beach berms, then walkover shall be pile-supported and elevated above vegetation and dune system Walkovers shall be designed to protect the Volusia County conservation zone, natural areas, and beach habitat from construction impacts and long-term pedestrian impacts Walkovers must be approved by FDEP</p> <p>(703.02D(1.e)(1.g-1.i))</p>	<p>There are no guidelines in 62B-33 on walkovers. However, all proposed construction must not create a significant adverse impact to marine life, native vegetation, or dune system</p> <p>(62B-33.005 (2))</p>

Comparisons: City & FDEP Regulations

Regulations Seaward of the City's CCSL	FDEP Regulation
<p>Replacement of any removed vegetation within 60 days of completed construction is required. It must be vegetation from a list of acceptable plants approved by Volusia County (refer to Table 1 in Appendix A) and must be water continuously for a minimum of 45 days. (703.02D(1.f))</p>	<p>The removal or destruction of vegetation cannot either destabilize a frontal, primary, or significant dune or cause a significant adverse impact to the beach and dune system due to increased erosion by the wind or water. (62B-33.005 (4a)) In considering project impact to native salt-tolerant vegetation, the Department shall evaluate the type and extent of native salt-tolerant vegetation, the degree and extent of disturbance by invasive nuisance species and mechanical and other activities, the protective value to adjacent structures and natural plant communities, the protective value to the beach and dune system, and the impacts to marine turtle nesting and hatchlings. The Department shall restrict activities that lower the protective value of natural and intact beach and dune, coastal strand, and maritime hammock plant communities. Activities that result in the removal of protective root systems or reduce the vegetation's sand trapping and stabilization properties of salt tolerant vegetation are considered to lower its protective value. Construction shall be located, where practical, in previously disturbed areas or areas with non-native vegetation in lieu of area is native plant communities. (62B-33.005 (11))</p>

Comparisons: City & FDEP Regulations

Regulations Seaward of the City's CCSL	FDEP Regulation
<p>Construction of Seawalls: The proposed seawall shall fill in an existing gap of less than 200 feet between existing seawalls. The proposed seawall shall not exceed,</p> <ul style="list-style-type: none">a. The highest point of the existing grade within 25 feet of the proposed seawall location.b. The average height of the two nearest seawalls. <p>(703.02E)</p>	<p>Construction of armoring shall be authorized if a gap exists that does not exceed 250 feet. (62B-33.0051 (1)(a)3.)</p> <p>The installment shall not exceed the highest level of protection provided by the adjoining walls. (62B-33.0051 (1)(a)3.d.)</p> <p>There is no guideline regarding a limitation on the height of the wall equaling the highest point of grade within a certain distance.</p>
<p>Prior to commencing any construction activity near a dune system, a dune restoration plan, prepared by a qualified professional, must be approved by the City and must be executed after construction should any damage to the natural dune environment occur.</p> <p>(703.02G(3-4))</p>	<p>A dune restoration plan is not outlined in 62B-33. However, all proposed construction must not create a significant adverse impact to marine life, native vegetation, or dune system. (62B-33.005 (2))</p>

Comparisons: City & FDEP Regulations

Regulations Seaward of the City's CCCL	FDEP Regulation
<p>No excavation of the dunes, removal of dune vegetation or any disruption of the natural environment shall be allowed except as indicated herein. (703.02G(1))</p>	<p>Sandy material excavated seaward of the CCCL or setback line shall be maintained on site seaward of the CCCL or setback line and placed in the immediate area of construction. (62B-33.005 (6)) The construction will not result in the net excavation of the in situ sandy soils seaward of CCCL or setback. (62B-33.005 (4)(d)) The construction will not result in removal or disturbance of in situ sandy soils of the beach and dune system to such a degree that a significant adverse impact to the beach and dune system would result from either reducing the existing ability of the system to resist erosion during a storm or lowering existing levels of storm protection to upland properties and structures. (62B-33.005 (4)(b)) The removal or destruction of native vegetation is not allowed if it will either destabilize a frontal, primary, or significant dune or cause a significant adverse impact to the beach and dune system. (62B-33.005 (4)(a))</p>
<p>Rebuilding after a Hurricane:</p> <ul style="list-style-type: none"> •If structure sustains total damages less than 50 percent of the primary or accessory structure's replacement cost at the time of damage, it may be rebuilt to its original condition •If structure sustains total damage more than 50 percent of primary structures replacement cost, it may be rebuilt to the same square footage and density it had immediately prior to the event (but must comply with all regulations) (703.02I(1-2)) 	<p>There are no guidelines in 62B-33 on rebuild following a hurricane. Any construction must follow all regulations in 62B-33. The repairs may be completed under the Emergency Final Order.</p>

Recommended Action

- The City use the CCCL determined by the DEP in 1991 instead of the NSB CCSL that is offset 50-feet west of the DNR CCCL (1973), to enforce the City's coastal regulations, specifically in this location.