

**NORTHAMPTON COUNTY  
WETLANDS BOARD**

Minutes

January 21, 2015

This was the regular meeting of the Northampton County Wetlands Board held on Wednesday, January 21, 2015, in the Board Chambers located at 16404 Courthouse Road in Eastville, Virginia for the purpose of conducting regular business.

Those members present were Chair, Marshall Cox, John Chubb, Jr and William Brown, II., Nancy Wells Drury and David Boyd, Bowdoin Lusk

Absent – Dot Field

Also attending were Hank Badger with the Virginia Marine Resources Commission (VMRC); Melissa Kellam, Zoning Administrator and Agent to the Board Chair; Kelley Lewis, Development Inspector and Nyoka Hall, Secretary

The meeting was called to order at 10:30 a.m., and a quorum established.

**Public Hearings**

All those wishing to speak at today's meeting were sworn in by the Chair.

Ms. Kellam read the public notice and decision tree details into the record.

**VMRC 13-1861:** Charles Wanko, Jr. seeks to stabilize an eroded bank caused by Hurricane Sandy. The hardening will consist of class I & II rip rap (broken concrete) 6 feet long by 6 feet wide and 6 feet in height. The bank will be graded to a slope of approximately ½:1 and a toe dug landward of the existing marsh. The property is described as Tax Map 38A1, double circle 1, parcel 47A, located at 3279 Mallard Lane, in Vaucluse Shores Subdivision, near Machipongo.

The "Decision Tree for undefended shorelines", will be used to provide recommendations for this project. Erosion has taken place and the bank is undercut. Upland forested areas are present adjacent to the shoreline area with bank heights under 30 feet. The decision tree pathway makes the following best management practices (bmp's) recommendations: (1) manage forest to prevent tree falls and (2) marsh sill with fiber log.

The CCRMP Map Viewer, shows bank heights of 5 to 10 feet and type I – saltmarsh cordgrass (low marsh) adjacent to the project location. The bmp's recommended are: (1) Enhance riparian / marsh buffer and (2) widen marsh.

The proposed project is not consistent with the above recommendations. Other recommended shoreline bmp's may also be implemented in conjunction with the applicant's proposal such as (1) manage forest to prevent tree falls, (2) marsh sill with fiber log, (3) enhance riparian / marsh buffer and (4) widen marsh. If other bmp's are implemented, revised drawings depicting their location and impacts must be provided and any increase in impacts must be advertised for public hearing.

A water quality impact assessment reviewed by staff through the zoning clearance process is required before commencement of any site work. If the site work involves 2,500 square feet or more, a land disturbance permit will be required.

The hearing was then opened to the public for comment.

The agent Mr. Chris Wilson was present and added that the applicant Mr. Charles Wanko, was also present. Mr. Wilson briefly described his project request as presented in the submitted application noting a discrepancy in the notice adding that the proposed project will be 60' long x 6' wide x 6' high.

With no other comments the hearing was then closed to the public.

The board discussed the project then Chairman Cox called for a motion. Mr. Chubb motioned that the application be approved with the following revisions: removal of dead and falling trees, grading the bank as necessary, and 20 feet of class I rock be installed in the vicinity of the dock, with revised drawings being submitted. The motion was seconded by Ms. Drury, and carried (6-0).

Ms. Kellam read the public notice and decision tree details into the record.

**VMRC 14-0179:** Gary & Ruth Cole wish to construct a living shoreline along a portion of the property to stabilize a severely eroding bank. This project will result in restoration of approximately 787 square feet of CBPA buffer slope and adjacent upland woods. A 110 foot long x 7 foot wide toe of class 1 rip rap, 43.2 cubic yards total, shall be installed along the eroded shoreline, landward of the existing limits of MHW. The property is described as Tax Map 19, double circle 7, parcel 8, located in the Shooting Point Subdivision, near Machipongo.

The "Decision Tree for undefended shorelines", will be used to provide recommendations for this project. Erosion has taken place and the bank is undercut. Upland forested areas are present adjacent to the shoreline area with bank heights under 30 feet. The decision tree pathway makes the following best management practices (bmp's) recommendations: (1) manage forest to prevent tree falls and (2) marsh sill with fiber log.

The CCRMP Map Viewer, shows type 1 – saltmarsh cordgrass (low marsh) adjacent to the project location. The bmp's recommended are: (1) Enhance riparian / marsh buffer and (2) widen marsh.

The proposed project is consistent with one of recommendations. Other recommended shoreline bmp's may also be implemented in conjunction with the applicant's proposal such as (1) marsh sill with fiber log, (2) enhance riparian / marsh buffer and (3) widen marsh. If other bmp's are implemented, revised drawings depicting their location and impacts must be provided and any increase in impacts must be advertised for public hearing.

A water quality impact assessment reviewed by staff through the zoning clearance process is required before commencement of any site work. If the site work involves 2,500 square feet or more, a land disturbance permit will be required.

The hearing was opened to the public for comments.

The Agent, Jason Barney and the applicant Mr. Cole were present and introduced themselves. Mr. Barney presented the application noting the bank is severely eroded and existing shoreline soils are sandy and highly erodible along with trees being lost due to this activity. He stated the goal of the proposed project was to minimize wetland impacts while also allowing for the protection of the bank.

Mr. Boyd questioned the reasoning for using the toe versus a sill. Mr. Barney stated that fiber logs were considered but due to the fetch along the shoreline the log would not be a good long term form of protection, while rock would be more substantial and provide more protection. Mr. Chubb asked why not use rock as a sill. Mr. Barney noted that also was considered, but would cause more fill in wetlands area and also would not provide adequate protection. Mr. Chubb also questioned the project and it being a true living shoreline. The proposed design severs the connection between the land and water. A living shoreline is a sill set off shore by a few feet to get living material growing behind it. The rip rap is only seven feet wide and can be easily topped and washed out. Mr. Barney added that the reasoning behind calling the project a living shoreline is the design will provide some areas for living things to inhabit along with promoting oyster growth in addition to vegetation being used above the rock to stabilize the shoreline. All things were considered but it was thought that the proposed project would have less impact on the wetlands as well as being more cost effective to the applicant.

With no other comments the hearing was then closed to the public.

The Board discussed the project agreeing that the project could not be approved as submitted. Chairman Cox called for a motion. Mr. Chubb motioned that the application be revised with a strongly graded bank, manage the trees and install

a rock sill instead of rip rap with associated plantings with an additional recommendation from Mr. Boyd that Spartina be planted. Mr. Lusk seconded the motion. The motion failed (4-2). Ms. Drury suggested that since the Board could not reach a consensus, the application be denied as presented. The Agent, Mr. Barney asked to speak to the Board. The hearing was then reopened to the public. Mr. Barney stated he would like to reach an agreement with the Board today, and would be willing to come back with a reformulated plan. The project has been designed to minimize impacts to the wetlands and if a rock sill was added the impacts to the wetlands would be increased and therefore be counterproductive. The project has been modified based on staff input along with consulting other engineering professionals. Mr. Lusk stated that the Board attempts to avoid hardening of the shoreline as wherever and whenever possible. It may solve a problem, but it is not the preferred method. Reviewing the decision tree and the computer generated plan, the solution proposed was not mentioned. The Board's current issue with the project is the hardening.

Mr. Gary Cole, the applicant stated he is concerned that a project that has been designed by engineers will possibly be denied by the Board, who are not engineers. Mr. Cole stated he is seeking to protect his bank with minimal wetlands impact and the ability to build a pier that will be protected. He then added that he has left this work to Jason Barney as he is knowledgeable in field.

The hearing was then closed to the public.

The Board had a brief discussion. Chairman Cox then called for a motion. Mr. Lusk motioned to table the application until the time revised drawings or a new submittal is received. Ms. Drury seconded the motion and it carried (6-0).

Ms. Kellam read the public notice and decision tree details into the record.

**VMRC 14-1344:** The Robert C. Gustafson Revocable Trust C/O Robert & AirLia Gustafson wish to stabilize the eroded bank for the entire length of their property for 300 feet with Quarry stone or broken concrete (no exposed rebar). Fill dirt will be brought in to make the proper grade of 2:1 for Installation of class II rip rap (granite) armor stone and A 6'x6' toe. 1 set of 4' wide steps for beach access will also be installed at top of bank. The property is described as Tax Map 28, double circle 5, parcel 5A, located at 3293 Sunset Run, in the Sunset Shores Subdivision, near Machipongo.

The "Decision Tree for undefended Shorelines", will be used to provide recommendations for this project. Erosion has taken place and the bank is undercut. Some upland forested areas are present adjacent to the beach area with bank heights under 30 feet. The decision tree pathway makes the following best management practices (bmp's) recommendations: (1) manage forest to prevent tree falls, (2) beach nourishment and (3) construct sill or breakwater where necessary.

The CCRMP Map Viewer, shows riprap revetment structures located to the north and south of the undefended project location. The bmp's recommended are: (1) Enhance riparian / marsh buffer, (2) grade bank, (3) enhance riparian / marsh buffer or beach nourishment and (4) maintain beach or offshore breakwater with beach nourishment.

Although the proposed project is not consistent with the above recommendations, the existence of riprap revetment structures located to the north and south must be considered. Other recommended shoreline bmp's may also be implemented in conjunction with the applicant's proposal such as (1) manage forest to prevent tree falls, (2) beach nourishment (3) Enhance riparian / marsh buffer and (4) grade bank. If other bmp's are implemented, revised drawings depicting their location and impacts must be provided and any increase in impacts must be advertised for public hearing. If beach nourishment is added to the scope of the project, the characteristics of the source sand for the beach nourishment, proposed elevations of the sand fill, potential for time of year restrictions and planting specifications must be evaluated.

A water quality impact assessment reviewed by staff through the zoning clearance process is required before commencement of any site work. If the site work involves 2,500 square feet or more, a land disturbance permit will be required.

The agent, Mr. Chris Wilson and the applicant Mr. Robert Gustafson were present. Mr. Gustafson stated that he should have been standing before the Board five years ago. The property was purchased fourteen years ago and there was some erosion and tree loss then. In the last year, the erosion seems to have sped up and 20 feet or more of beach has been lost. He would like to protect as many trees as possible on the property. Mr. Wilson stated the project is very straight forward. A bulkhead will not work for this project, there needs to be bank hardening and rock. An off-shore breakwater would work well, but would not be very cost effective to the applicant at a cost of \$200,000 per and needing four to five. The proposed project will install broken concrete underneath blue stone granite on top with class II. The contour of the existing bank will have to be filled in to make a gentle curve and join in to a failed rip rap revetment on the north to protect the corner. It will be tapered to the height of the existing and then graded to a higher height. There will be five to six tons of rock per foot for the project. All stockpiling will be kept outside of the buffer, steps to access the beach will be installed and trees removed that have fallen onto the beach.

The hearing was then closed to the public.

The Board had brief discussion then Chairman Cox called for a motion. Ms. Drury motioned that the application be approved as presented. The motion was seconded by Mr. Boyd and carried (6-0).

### **Old Business**

The Board reviewed the revised drawings and narrative submitted for VMRC 14-0848 Jeff Rudden. Ms. Kellam informed the Board that after the Board's approval the application was revised. The original impacts were 0 to tidal wetlands, 0 to vegetated tidal wetlands and 250 square feet to the dune beach area. The project was pulled back as requested by the Army Corps. The impacts were reduced in the dune beach area to 6 square feet and the impacts to the non-vegetated wetlands were 0 to 6 square feet. The agent for the applicant Katrina Hickman was present and available to answer any questions regarding the project.

Ms. Hickman noted that a letter was received from the Army Corps stating you can't have a bulkhead and armour stone, you have to choose one or the other. So the stone was removed; it was originally placed there to reduce the storm surge. In keeping with the request the applicant decided to go with the bulkhead. Mr. Chubb asked why the request was made to remove the stone, as it serves as a protective barrier. Ms. Hickman reiterated the request made in the letter adding an explanation was not noted. Mr. Badger spoke up, saying Mr. Cole was no longer with the Corps. Ms. Drury asked if a new application would need to be submitted to replace the stone. It was stated that yes, a new permit would be required.

The Board had brief discussion and Chairman called for a motion. Mr. Chubb motioned to approve the project as amended. The motion was seconded by Mr. Lusk and carried (6 -0).

**Statements from the public** – none

### **New Business**

Election of Officers – Ms. Drury motioned that Marshall Cox continue as Chairman and Bowdoin Lusk continue as Vice Chairman. The motion was seconded by Mr. Chubb and carried (6-0).

Review of Bylaws – There were no changes the Board wanted to make at this time

**Statements from the public:** none

### **Agent to the Board Chair Report**

Ms. Kellam informed the Board that Mr. Robert Cole, agent for the Army Corps of Engineers has gone. Presently there is an agent of the day until they find a replacement. Also, one application has been received to heard at the February hearing.

### **Enforcement Agent Report:**

Kelley Lewis updated the Board on the Waller project. The project was viewable outside of the property. The project is within the Wetlands Board jurisdiction. At the time of placement the rip rap was not in the water per Katrina Hickman and was approved by County. She has consulted with the County Attorney regarding the matter and it now falls to the pleasure of the Board. Katrina Hickman the former Development Inspector at the time was present and **spoke to the** matter. She noted that when the stone was set it was not in the Wetlands Board jurisdiction. It may have happened after the fact. Trees were removed to pull the bank back to accommodate the project. Ms. Kellam reiterated that County staff approved the project outside of the wetlands board jurisdiction and there is no other information. Chairman Cox asked if there was any damage or impacts from the project. Ms. Kellam stated a determination could not be made. Drawings are not sufficient and there aren't any inspection reports. If the matter was to proceed to court there would not be sufficient information to present an adequate case on the behalf of the County. The property owner would need to be made aware of the situation that if repairs are needed, the project would need to be properly permitted.

After discussion Chairman Cox called for a motion. Mr. Lusk motioned that staff draft a letter to the current property owner informing them the project is in the Wetlands Board jurisdiction and if needing repairs or improvement would need to come before the Northampton County Wetlands Board for approval. The motion was seconded by Mr. Chubb and carried (6-0).

#### **Consideration of minutes**

The minutes of October 15, 2014 Meeting were approved with a motion from Mr. Chubb and a second from Mr. Lusk. The motion carried unanimously 6 to 0.

#### **Adjournment**

The meeting was adjourned.

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Chair

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Secretary