

**NORTHAMPTON COUNTY
WETLANDS BOARD**
Minutes
January 18, 2012

This was the regular meeting of the Northampton County Wetlands Board held on Wednesday, January 18, 2012 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, Nancy Wells Drury, Mark Gates, Dot Field and John Chubb. The member absent was Vice-Chair Bowdoin Lusk.

Also attending were Hank Badger with the Virginia Marine Resources Commission (VMRC), Melissa Kellam, Zoning Administrator/Agent to the Board; Katrina Hickman, Zoning Inspector/Enforcement Agent; and Kay Downing, Secretary to the Board.

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

Public hearing:

It is noted for the record that a field visit had been conducted to this property by those members present along with Ms. Hickman earlier in the day.

VMRC 2011-1783: Jack & Eileen Alexander have applied to rebuild an existing concrete revetment project and install a new vinyl return wall in order to abate shoreline erosion. The property, located at 4274 Battle Point Road, has frontage on the Chesapeake Bay and is described as being County Tax Map 6A-1-2.

Ms. Ellen Grimes, agent for the applicants, presented background information. She noted that fill material was placed over existing rubble and then another filter cloth was installed with more fill placed on top. It was then decided that the weight on the filter cloth was not sufficient. Now the plan is to place fill on the top of the rubble and after sloping add cloth and stone onto the sloped area. She stated that it was her opinion that all rubble should not be removed but only the top visible layer. A 30-foot vinyl return wall would be needed but there is no room to dig a trench so that the wall needed would meet the new riprap wall. It was her understanding that the neighbors to the north do not want to do anything to their own property at this time even though the Alexander's had tried to communicate with them about joining this project.

The Chair asked Ms. Kellam if the existing structure on the property was ever permitted. She stated that no permit can be found for the existing project but may have been installed to some extent decades ago.

At this time the Chair called for public comments.

Ms. Sabrina Matthews, daughter of Marianne Turner who is owner of the property to the north, stated that she was aware that the Alexander's had tried to contact her mother by telephone. However, both property owners had failed to connect directly with one another. She then asked if she could review the application for a few minutes.

At this time Ms. Drury recused herself from this matter.

While Ms. Matthews was reviewing the application the Board discussed the weight and size of proposed stone to be used. Ms. Grimes noted that the sizes depicted in the application are identified using classifications of the Maryland Department of Transportation. She explained that the R6, R7 and R8 sizes are very large with 8 being the size of a compact car, size 7 being Class III, and a size 6 being the same as Class II stone.

At this time the Board suspended discussion in order to provide Ms. Matthews more time to review the application and proceeded to Old Business matters.

Old business

The Board reviewed the Civil Charge Matrix and it was noted by Mr. Badger that the Board has the authority to change charges except for the maximum of amount of \$10,000 as set by the General Assembly. He also noted that the matrix currently used by VMRC is now under review. Ms. Drury noted that the City of Norfolk has adopted a newer version. Mr. Badger stated that the Board can adopt this matrix but does not have to adhere to it in each and every case. Ms. Kellam noted that for after-the-fact permits the Board has adopted a penalty of doubling the filing fee of \$300.

At this time Ms. Matthews returned to the meeting after reviewing the Alexander application and the Board continued this public hearing.

Ms. Matthews questioned the location of the project and was reassured by Ms. Grimes that the project would not trespass into neighboring property but be contained on the Alexander property. Ms. Grimes explained that a vinyl retaining wall would be approximately knee high to thigh high from ground level. However, Ms. Matthews stated that as adjoining property owners to the north they did not want to view a vinyl wall from their beach.

Ms. Field explained that the retaining wall will actually act as a groin trapping sand onto Ms. Turner's beach and will eventually be covered and, therefore, no longer visible.

Ms. Matthews explained that their existing vegetation helps to prevent erosion on their neighboring property.

At this time, Mrs. Alexander stated that she had tried to communicate with Mrs. Turner about filing a joint permit application for their two properties. However, this never happened.

Ms. Matthews stated that as property owners to the north they would rather view a concrete or wooden structure and not vinyl. She added that there were no objections to the project itself but viewing a vinyl fence-like structure along their adjoining property line was unacceptable.

At this time Ms. Grimes explained that vinyl is standard for such structure and clarified that this part of the project would actually be a return wall and not a retaining wall. She added that she has warned the neighbors to the north about future erosion issues.

Ms. Grimes asked the Board for time to discuss this return wall matter with Ms. Matthews. Additional time was granted and the two parties left the room at this time.

The Board then returned to discussion of the matrix language.

Mr. Gates note that with future violation cases the Board should not appear arbitrary.

Mr. Chubb stated that the old matrix is very out of date and recommended that the Board use the updated current VMRC matrix for now and then consider updating when VMRC does so.

Ms. Kellam suggested that the Board could always use the current VMRC matrix if policy is worded appropriately when adopted.

Motion was made by Ms. Drury that the Board always use the VMRC matrix as adopted at the time when considering violation matters and that each case be considered on an individual basis. Second was made by Ms. Field and carried unanimously 5 to 0.

Also, under Old Business Ms. Downing asked the Board if they would like to discuss the living shoreline questionnaire that had been previously submitted to the Board by VMRC. Ms. Badger explained that the new draft is being formulated and public hearings on this matter will be conducted in the future, but there is still time for the Board to make a recommendation on this matter and encouraged them to do so.

The Chair suggested that this matter be placed on the next regular meeting agenda and to conclude discussion at that time.

The Board then discussed Item A under New Business concerning unauthorized activity in the wetland on property owned by Brass, Inc., located at 9461 Red Bank Court, Tax Map 32-A-15. Ms. Kellam then read the summary as written by staff into the record as follows.

Based on the information above, staff recommends that both the degree of deviation/non-compliance and the environmental impacts be set at minor. Using the matrix, assessment of civil charges should be set at five hundred dollars. At a minimum, restoration should be ordered in the form of the submission, consideration and implementation of an after-the-fact joint permit application by the Board. During the Board's consideration of the application, the most appropriate method and/or structure should be permitted to stabilize the eroding shoreline. At this time further mitigation may be suggested if appropriate. Other County permits and mitigation are required for the upland portion of this violation outside the Board's jurisdiction.

Katrina Hickman, Enforcement Officer, was then sworn in by the Chair. She stated that the contractor had informed her that the landowner had a permit. However, that is not the case.

Mr. James Murray, agent for Brass, Inc., stated that there are 2 tenant houses on the property that were purchased approximately 10 years ago and certain improvements such as installing a spigot in order to wash fish. That area has since eroded. When purchased the shoreline held bricks, concrete, trash, and various other debris such as old trailer parts. While trying to stabilize or repair the shoreline the contractor had made a bigger project than what was originally anticipated. He added that the contractor was vague about needing a permit and that he will apply for one immediately in order to get this matter resolved.

Ms. Kellam explained that Mr. Murray had already paid a \$600.00 fee for an after-the-fact permit that he intends to file and has been very cooperative with staff. When asked, she stated that the Board needs to affirm that a violation has occurred, what restoration efforts are needed if any, and to impose civil charges if it is determined that state waters have been endangered.

Ms. Drury asked if the Board can waive civil charges and the Chair replied yes.

Since Mr. Murray had responded immediately to the violation notice and has been extremely cooperative with staff, Mr. Chubb moved to waive any civil violation charges at this time pending the detailed review and outcome of the after-the-fact permit application. Second was made by Ms. Drury and carried unanimously 5 to 0.

Mr. Murray stated that he would not be able to attend the regular meeting of the Board scheduled on February 15, but that his designated agent would be present.

The Board then returned to discussion on VMRC 2011-1783 filed by Jack & Eileen Alexander. Ms. Grimes reported that an agreement had been reached with the northern property owner providing that the north face of the vinyl return wall have a wood veneer for aesthetics.

At this time Ms. Matthews thanked both staff and the Board for allowing her additional time to reach a compromise concerning this matter.

There being no other comments the public hearing was closed.

Mr. Gates questioned the term "representative drawing" in the application and wanted assurance that project drawings were not schematic in nature. Ms. Grimes clarified that since the drawings were not actual survey drawings she had used that terminology to differentiate even though the drawings are site specific. She then agreed to submit a revised drawing showing benchmarks.

Action:

Motion was made by Mr. Gates to approve VMRC 2011-1783 per revised drawings showing benchmarks and that the north face of the vinyl return wall is to be covered with a wood veneer. Second was made by Mr. Chubb and the motion carried 4 to 0 with 1 abstention by Ms. Drury.

The Board then discussed another unauthorized activity in the wetland on property located at 4130 Bluff Lane and identified as Tax Map 117A-4-E-3 owned by Don & Dawn Mann. Staff had determined that displacement of approximately 2,500 square feet of non-vegetated tidal wetlands and beach without a permit had occurred.

Ms. Kellam read the staff summary for the record as follows.

Based on the information above, staff recommends that both the degree of deviation/non-compliance and the environmental impacts be set at minor. Using the matrix, assessment of civil charges should be set at five hundred dollars. This amount can be considered for each of the two separate violations. At a minimum, restoration should be ordered in the form of the submission, consideration and implementation of an after-the-fact joint permit application by the Board. During the Board's consideration of the application, the most appropriate method and/or structure should be permitted to stabilize the eroding shoreline. At this time further mitigation may be suggested if appropriate. Other NHCO permits and mitigation are required for the upland portion of this violation outside the Board's jurisdiction.

Mr. Ben Burton, the contractor hired by the property owners, was sworn in and stated that Ms. Hickman had visited the site where he showed her what needed to be repaired. He noted that a previous application had located the project outside of the wetlands area. It was not his intent to disturb the existing toe area and found out later that this area was in the wetlands. Work was stopped when notified by county staff after they attempted to stabilize work that had already put rock on the beach and the upland above. He explained that they did not want to alter the slope but to simply replace old filter cloth and then replace the rock once the cloth was installed. He was under the impression that the only approval needed from the county was the Zoning Clearance application in order to repair the former project.

When asked, Ms. Kellam stated that the original joint permit (JPA) application was filed around 2001 that was withdrawn. The previous owners that filed the JPA then submitted a land disturbance permit by pushing the project upland outside of the wetland. The new repair work that Mr. Burton was doing was accomplished prior to the issuance of an approved county Zoning Clearance. She added that the work described on the Zoning Clearance did not show any rock on the beach; therefore, the work that has recently been done exceeds what was submitted. The structure is now considered a legally nonconforming structure.

Mr. Burton stated that Ms. Hickman had told him that a Zoning Clearance would be issued in approximately 4 days. However, due to illness she was out of the office right after that and the clearance was not issued. He proceeded to work from the bottom area to the more upland area which is what made the difference. He admitted that he did start without the required Zoning Clearance, but did not believe that he was making any changes that would result in a violation. It was his opinion that working from the bottom area to the top is what made the difference as they had placed the removed stone on the beach area while trying to reinstall the cloth. Their intent was to place the rock on the beach, install the filter cloth and put the rock back on the filter cloth.

At this time Ms. Hickman showed the area of work on the upland as depicted in the property owner's Zoning Clearance application. The Zoning Clearance specifically states that no materials are to be stored on the beach and no path is to be cut into the dune. She noted that if a stray rock did happen to fall onto the beach it could, of course, be removed. All work was to be done above the beach at the top of the bank. She added that she did not know that the contractor would be working at the bottom of the slope. Ms. Hickman stated that even if the

Zoning Clearance had been issued the work that has occurred would still be a violation since it was not listed in the Zoning Clearance.

Mr. Burton stated that Ms. Hickman had assisted him when he filled out the Zoning Clearance application. He then gave the Chair a photo for the Board to review. He noted that rocks were moved with an excavator.

Ms. Field voiced her concern about disturbing the dune where the access path was cut. When asked, Mr. Burton noted that he was unaware that a permit to cut a path was required and they did not want to barge the rock to the property from the bay.

Mr. Chubb asked if the project was completed before the violation notice was issued. Mr. Burton replied no, but that he was told that he could stabilize the work he had done and to remove the rock from the beach. He stated that he had put the rock in place and worked back up to the upland and then planted shrubs. He believed that the only issue now is to have a joint permit application approved by the Board.

Ms. Hickman stated that Mr. Burton was not told to complete project but to get the stone off the beach and to seed the area to stabilize.

Ms. Drury asked if the property owners had responded to the county's violation notice. Ms. Hickman explained that the Mann's were out of the country when the notice was sent. Ms. Kellam stated that an after-the-fact application is required since the structure is now within the Board's jurisdiction.

Mr. Badger expressed his opinion that there is no jurisdictional primary dune area involved in this case; however, the work on the beach definitely needs Board approval.

Ms. Field and Ms. Drury agreed that a violation had taken place within the Board's jurisdiction. The rest of the Board concurred. Therefore, Mr. Chubb summarized in a motion that the Board acknowledges that a violation has been determined; however, if a penalty is warranted it will be decided later after a field visit is conducted and an after-the-fact joint permit application is processed. The application is to provide detailed as-built drawings. Second was made by Mr. Gates and the motion carried unanimously 5 to 0.

The Board then considered VMRC 2010-1739 as filed by Richard Anderson. Staff noted that this permit is a year old and no new information has been presented to date.

Ms. Grimes, agent of record for Mr. Anderson, asked the Board to allow withdrawal of this application due to the applicant's current family situation. It is her understanding that Mr. Anderson will file a completely new permit sometime in the future that will incorporate VIMS recommendations.

Motion was made by Ms. Field that the Board allow withdrawal of VMRC 2010-1739 as filed by Richard Anderson at this time. Second was made by Ms. Drury and carried unanimously. The motion carried unanimously 5 to 0.

Statements from the Public

Ms. Grimes expressed her opinion that only qualified contractors familiar with shoreline conditions should be installing shoreline projects.

Mr. Granville Hogg, a resident of Butlers Bluff Subdivision, was sworn in and expressed his opinion that the draft minutes of the November 16, 2011 Wetlands Board meeting should be corrected on page 5. It was his belief that the Kings Creek Property Owners Association (KC POA) did not admit a violation had occurred.

Ms. Hickman stated that 2 different POA agents have agreed that a violation did occur based on the photos taken at the violation sight. However, no official correspondence has been received from the POA to that effect. Ms. Hickman had communicated with the Secretary and Treasurer of this POA about the violation.

Mr. Hogg stated that the issue of the violation will be rebutted in the future and that there is a lot to doubt in the assessment of county staff. He wanted his views stated in the official minutes of this meeting today and that a letter to the Board will be coming from the KCL POA. He also questioned the draft minutes as written on pages 6 and 7 concerning this violation matter as well. It was his opinion that there is no evidence to support what is written in the first sentence of paragraph 7.

Mr. David Boyd was sworn in and expressed his opinion also that errors were reported in the November minutes on page 5 in paragraphs 4 and 5.

Several Board members stated that the November minutes are to reflect what actually occurred and was said regardless of Mr. Hogg's own personal perspective of the matter or issue being discussed at the time.

The Board then postponed taking action on the minutes upon motion by Ms. Drury and second by Ms. Field. The motion carried unanimously 5 to 0. The Board instructed staff to review certain audio portions of the meeting as described by Mr. Hogg and Mr. Boyd. These minutes will be placed on the next regular meeting agenda for consideration at that time.

Noting that the KCL POA had been officially notified of the November meeting in writing, Ms. Kellam asked Mr. Boyd why no one had attended the meeting. He replied that he did not know.

Report from the Agent to the Board Chair

Ms. Kellam reported that based on today's meeting the Board will meet in February if the two violation cases reviewed today file after-the-fact joint permit applications before the deadline.

Report from the Enforcement Agent

Ms. Hickman had nothing new to report.

Consideration of minutes:

The minutes of the November 16, 2011 meeting were not considered at this time due to earlier comments made during the public statement portion of the meeting by Mr. Hogg and Mr. Boyd. By consensus, staff was asked to review certain audio portions of the meeting related to agenda Item 4., Old Business, Item B., Granville Hogg: Kings Creek Landing violation matter.

Adjournment

There being no other business the meeting was adjourned at 11:45 p.m.

Chair

Secretary