

**NORTHAMPTON COUNTY
WETLANDS BOARD**
Minutes
October 20, 2010

This was the regular meeting of the Northampton County Wetlands Board held on Wednesday, October 20, 2010, in the former Northampton Middle School located at 7247 Young Street in Machipongo, Va., for the purpose of conducting regular business.

Those members present were Chair Marshall Cox, Vice-Chair Bowdoin Lusk, Mark Gates, Dot Field, Nancy Wells Drury, and Robert Meyers. The member absent was John Chubb.

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

The Chair called the meeting to order at 9:30 a.m. and established a quorum.

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

It is noted for the record that Ms. Hickman, Zoning Inspector, had left the county office at 9:00 a.m. today with those Board members present in order to conduct scheduled field visits.

Public hearings: None

Old Business

The Board then continued their discussion about the Cherrydale violation with Mr. Badger who stated that he was unaware of the situation until notified by the Board Secretary. He then distributed information to the Board entitled, "Enforcement Procedures and Considerations Relative to Chapter 811 Acts of Assembly." He spoke briefly about the violation process, court proceedings and assessment of civil charges.

The Board felt there was a need to determine if the indentations could be repaired or not. Ms. Field questioned whether or not the indentations made by the excavator were actually true "salt pans" which are formed naturally.

Mr. Badger suggested that the Board contact the Virginia Institute of Marine Science (VIMS) to request a joint field inspection with county staff for the benefit of a thorough review and report. Mr. Badger stated that he, too, would attend the field inspection and suggested that he and Ms. Kellam coordinate a date with VIMS if possible. The Board so agreed by consensus with the Chairman specifying that Ms. Kellam also attend this field visit.

Also under old business the Board discussed the “as built” drawings submitted for the Susan Emerson project since the project was constructed differently than originally permitted.

It is noted for the record that those Board members present and Ms. Hickman had visited the Emerson project earlier in the day.

Both Mr. Meyers and Mr. Lusk observed that the rock revetment was too steep in their opinion and that loose stones along the face were going to be problematic. Mr. Lusk also was concerned that an insufficient number of large stones had been installed and that high wave action would easily penetrate through the loose areas that should have been properly fitted or chinked. He suggested that such penetration could lead to under-wash throughout the construction and eventual failure of the structure.

Ms. Grimes stated her opinion that it would be difficult to remove or pick apart particular stones in order to create new placement spaces.

Mr. Lusk reiterated that the slope of the project and stone size observed by the Board are problematic in his opinion.

Mr. Meyers noted that the placement of the project was better than originally permitted as it has resulted in less encroachment.

Ms. Grimes then suggested and drew a diagram whereby the contractor could dig out and insert larger Class III stone at the toe and proceed landward and upward along the existing slope without moving any existing stone already placed. The Chair also suggested that better fitting or chinking be done along the top to stabilize the rock. Ms. Grimes noted that the placement of additional Class III stone would still be placed within the original permitted footprint with no encroachment beyond.

After further discussion the Board decided by consensus that staff should do a pre-construction field visit prior to the new Class III stone being placed at the toe area. After the staff visit, new drawings should be submitted and once the project adjustments were completed the Board would do a post-construction field visit.

Ms. Hickman suggested that more plantings be installed in the area that was originally disturbed. Ms. Field suggested that Seaside Golden Rod, Coastal Panicum Grass or American Beach Grass would all be appropriate species for the area.

Ms. Grimes asked the Board for guidance concerning construction access to reach the beach. Mr. Meyers suggested that a stone ramp be built for temporary construction purposes if required.

Mr. Gates inquired about the disposal of any excavated sand. Ms. Grimes was of the opinion that any sand moved would remain on site and be placed in the revetment system.

Ms. Field inquired about construction restrictions due to the possible presence of the tiger beetle. Ms. Kellam confirmed that according to the official file no restrictions were issued by the Army Corp of Engineers for this project.

Ms. Grimes stated that at least 50 percent of the stone used in the revetment were Class III which was placed in the toe and smaller stones were placed up the face of the revetment.

Mr. Lusk questioned why more gentle slopes are an issue with such projects in general as they tend to be more subtle and stepped versus hard ones that are very steep. Ms. Grimes stated that it depends on the bank design and cost can be a factor as well. Ms. Grimes also informed the Board that the contractor had constructed the revetment without a copy of the approved permit.

In other discussion concerning eroding shorelines and banks, Mr. Meyers noted that homeowners in the Smith Beach area were moving three houses again due to bank erosion. Ms. Kellam stated that the property owner was told that this area just south of Smith Beach is the most erodible shoreline in the county. Therefore, the homeowners have decided not to install an off-shore breakwater system.

The Board then discussed and revised the existing Wetlands Board By-Laws. Written comments and suggestions from Mr. Chubb were distributed and considered during discussion.

The following revisions were made to the draft By-Laws with staff instructed to incorporate proper changes in accordance with any Board of Supervisors policies or State code legislation pertaining to such By-Laws. Typographical and grammatical errors were also corrected throughout the document.

- Revise the title to read, “BY-LAWS NORTHAMPTON COUNTY WETLANDS/PRIMARY SAND DUNE BOARD, COUNTY OF NORTHAMPTON, VIRGINIA”
- Amend ARTICLE 1. OBJECTIVES at the end of the third paragraph include a revised date once amendments are approved. “These by-laws adopted by the Northampton County Wetlands Board are to be effective October 21, 1998, as revised on _____.”
- Language related to appointments, membership, absences, vacancies, term limits, etc., shall be changed to conform to adopted polices of the Board of Supervisors.
- The generic term “Planning and Zoning Representative” should be inserted where appropriate to reflect county staff.
- Revise ARTICLE 2. DEFINITIONS, by correcting #10 as, “*VIMS: The Virginia Institute of Marine Science*”; and revise #12 to read, “*WETLANDS BOARD*”

JURISDICTION: As defined in the Northampton County Wetlands Ordinance and the Coastal Primary Sand Dune Ordinance, includes “vegetated wetlands”, “non-vegetated wetlands”, “coastal primary sand dune”, “beaches”, and that designated area between mean low water and mean high water.”

- ARTICLE 5. DUTIES OF OFFICERS AND STAFF shall be reformatted to accurately reflect staff duties as approved by the Director of Planning & Zoning.
- ARTICLE 6. MEETINGS #5: Include the following language, *“A statement shall be included in the minutes of the open meeting which shall make specific reference to the applicable exemption or exemptions from public meeting requirements provided in §2.1-344.”*
- Revise language in ARTICLE 9. PUBLIC HEARING PROCESS #1 as follows, *“A nonrefundable processing fee as set by the Board of Supervisors to cover the cost of processing the application shall be submitted to the Department of Planning & Zoning. The applicant is responsible for the cost of the required legal notices published in The Eastern Shore News.”*
- ARTICLE 10. FIELD VISITS FOR APPLICATIONS/PROJECTS PENDING PUBLIC HEARING shall be amended as follows, *“The Board and Planning & Zoning Representative will conduct field visits prior to any public hearings on the scheduled date of the hearings. Board members who cannot visit the property on this day will visit the property, when possible, before the public hearing after first attempting to notify the property owner as a courtesy.”*

During discussion of Article 10, the Board agreed that the Chair would be charged with addressing any “abuses” of individual field visits made by any Board member as authorized in *Article 5 Duties of Officers and Staff, 1. D. Carry out other duties as assigned by the Board.*

Also, Mr. Badger informed Board and staff members that when a joint permit application is filed the applicant agrees to allow field visits by appropriate personnel as part of the agreement and process.

- ARTICLE 14. ISSUANCE OF PERMITS shall be revised to reflect the county and State process of issuing an approved permit.
- ARTICLE 17. MANDATORY INSPECTIONS OF APPROVED PROJECTS
 1. Mandatory inspections of approved projects will be conducted after the following notification *and shall be written into any permit approved by the Board:*
 - A. The Northampton County Wetlands Office must be notified 48 hours (two working days) prior to beginning a permitted project.

- B. If a permitted project involves backfill behind structures, notice must be given to the Wetlands Office 24 hours prior to placing the fill.
 - C. The Wetlands Office must be notified within 48 hours (two working days) after the completion of a permitted project.
2. Notification for these inspections must be made to the Wetlands Office by the permittee, the contractor, or the agent. The permittee is responsible for insuring that the office is notified so that these inspections can be conducted.

Since Mr. Chubb had inquired about including the required duration period for records as referenced in Article 19. 1., Ms. Kellam informed the Board that all files of an environmental nature shall be kept in perpetuity according to the Code of Virginia.

- ARTICLE 21. SURETY: add the word, “bond” in the last sentence to read, “*Surety may be in the form of a bond, cash, escrow or a letter of credit.*”

New Business

Ms. Kellam stated that no new applications have been filed to date.

Ms. Hickman informed the Board that two separate contractors may be involved in the Holly Bluff/Raccoon Island violation where an estimated 1,200 tons of broken concrete have been taken by barge and dumped along the shoreline in front of the existing bulkhead. She had talked with Ms. Heil, the property owner, who stated that Mr. Val Valentine was managing the project. Ms. Hickman noted that further investigation is warranted at this time. Ms. Kellam added that the original permit for the Holly Bluff Island project has expired.

Mr. Badger suggested that the law enforcement branch of VMRC be contacted to investigate as well. He added that even though property owners are responsible, civil charges or penalties can be issued against contractors or agents in cases like this.

Ms. Hickman also reported that an investigation is being conducted with the Army Corp of Engineers on a violation in the Willis Wharf area that has been determined to be outside the Board’s jurisdiction.

Statements from the Public

Referring to Article 17 of the Board By-Laws, Ms. Grimes suggested that when an approved permit is issued the county could include its own compliance card that must be completed and returned to the county once a project is finished.

Referring back to the Emerson project, Ms. Grimes noted that Mr. Dilley, the contractor, had so many smaller stones left over that he may have simply dumped them along the face as extras.

Consideration of Minutes:

The minutes of the September 15, 2010 were considered and approved by unanimous vote upon motion by Mr. Lusk and second by Mr. Meyers.

At this time Mr. Gates questioned if comments written about the in-take pipe under staff recommendations concerning the Walker Brothers project in Willis Wharf were correctly reflected in the minutes. Ms. Downing noted that the staff report is copied as originally written to the Board and pasted into the minutes. Also, Mr. Badger clarified that there is no such thing as a portable in-take pipe and that the applicant will need a permit from VMRC if any new in-takes are installed.

Adjournment

There being no other business the meeting was adjourned at 12:06 p.m. upon proper motion by Mr. Lusk.

Chairman

Secretary