

**NORTHAMPTON COUNTY  
WETLANDS BOARD**  
Minutes  
April 20, 2011

This was the regular meeting of the Northampton County Wetlands Board held on Wednesday, April 20, 2011 in conference room #2 at 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,, Nancy Wells Drury, Dot Field and John Chubb. It is noted for the record that Robert Meyers has resigned from the Board.

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 9:37 a.m., established a quorum, and swore in all those wishing to speak at today's meeting.

The scheduled public hearing was called to order.

**A. VMRC 2011-0375:** Karla Hehl has filed an after-the-fact permit for the removal of a failed bulkhead and construction of stone block and rip rap revetment approximately 500 feet long with 2 seventy-foot long returns to prevent flanking. The property is known as "Holly Bluff Island", zoned C Conservation, and described as Tax Map 123, double circle A, parcel 2.

It is noted for the record that a field visit to the Hehl property was conducted by the Board and Ms. Hickman on Wednesday, April 13, 2011.

Ms. Kellam read the recommendations summary of the VIMS report and her staff report as follow.

***VIMS RECOMMENDATIONS SUMMARY:***

- \* Revise plan view, cross-section, and impact estimates to accurately depict project as-built*
- \* Clarify MHW, MLW, and local wave climate in relation to project dimensions*
- \* Provide adequate benchmarks from house to channelward limit of all structures*
- \* Remove loose metal pieces and protruding re-bar if possible*
- \* Confirm source of backfill material*
- \* Provide planting plan for backfill area*
- \* Provide temporary sediment controls as needed until vegetation cover is restored*

(Staff Report)

*As of the writing of this memorandum no adjacent property owners have commented on the proposed project. For your information the VIMS report has been attached. Below you will find the staff recommendation based on a site visit conducted on April 13, 2011 by Katrina Hickman, Zoning Inspector.*

*If the after-the-fact structure is permitted and will remain as-built the following items must be addressed.*

- 1. Accurate drawings must be submitted depicting the project area before and after this structure was put in place. These drawings must provide benchmarks and all other information which is required for submission of a Joint Permit Application.*
- 2. An engineer should certify that this structure as-built is structurally sound for the environment in which it is located. If the engineer can't certify the structure's soundness without alterations, a plan showing these alterations must be provided, approved and implemented.*
- 3. All metal should be removed from the concrete rubble.*
- 4. The project must be monitored for two years.*
- 5. If any additional alterations are required, this work must be bonded.*

*If the structure can't be certified at all by an engineer to be structurally sound, it should be removed and a new plan submitted, approved and implemented.*

*The upland portions of this project are located outside of the NHCOWetlands Board's jurisdiction and will be addressed separately. All encroachments into the buffer area must be mitigated in compliance with the NHCOWetlands Zoning Ordinance and Erosion & Sediment Control Ordinance and coordinated with wetlands portion of this project.*

Ms. Kellam stated that the applicant did not certify the structural soundness of the "as built" project in the drawing submitted. She added that the Zoning Inspector has notified Ms. Hehl about other violations and issues concerning the project area. She stressed that remediation of all violation issues would need to be coordinated with this application.

Mr. John Burdiss, attorney for Ms. Hehl, stated that his client was willing to accept conditions imposed by the Board as deemed necessary to get this application approved.

At this time the Chair stated that he had met personally with Mr. Val Valentine yesterday who provided Mr. Cox with a written history of the island as follows. There once was 1,100 feet of bulkhead that has been destroyed by storms; November of 2010 trees along the shoreline area were destroyed; and the Army Corp of Engineers (ACOE) was allowed to pump spoil materials onto the island and shoreline areas. The Chair clarified that he had not discussed any other business or issues related to this matter with Mr. Valentine during their meeting.

Ms. Hehl noted that the property has been in the family for decades and is used frequently as their vacation home. She explained that the island has become an unofficial bird sanctuary for doves, song birds, and eagles. They have tried to plant grasses to maintain the island and there is no electricity except that provided by generator. Their goal is to simply maintain and protect

the existing structures and island area. She added that due to its location it is difficult to do any type of maintenance project.

Mr. Ben Mears, agent for Ms. Hehl, gave a brief background history of the property as he understood it. He stated that in 1983 a bulkhead was constructed after the sloping beach started to erode from reflective wave action and battering debris. A series of attempts was made to install projects in front of the bulkhead. In 2006, a project comprised of 20-foot wide interlocking concrete mats was installed in order to establish dune grasses. However, the next big storm took out the grasses and the cloth was pulled up over the bulkhead. The beach then continued to erode but the concrete mat stayed. Then geo-tube bags were installed which did not last due to sun and weather deterioration. There was also a sand source problem with that project. In February of 2008 an application was made to fill the void area with riprap but it was never constructed because of the expense. After that more storms continued to destroy the bulkhead with whole sections being removed and the area in front of the existing home was literally scooped out due to erosion. After those last major storms an emergency proclamation letter was issued on November 11, 2009, by the Governor although the language was somewhat vague about authorizing the replacement of bulkheads.

Ms. Kellam stated that existing structures can be repaired without going through the permitting process. However, Mr. Badger added submerged lands only would qualify according to the interpretation of VMRC.

Ms. Hickman noted that an emergency joint permit application was filed for the placement of concrete block with fill behind it while the bulkhead was being repaired.

Mr. Mears noted that the repair project was vague and logistically the property owner was facing challenges to preserve and maintain the island while working with the tides. Aesthetically quarry stone may have been a better option and confirmed that there is some rebar or metal within the concrete that was placed on site. However, it was his opinion that removal of all the stone would cause too much additional damage.

Mr. Lusk asked if the concrete has the same gravity as quarry stone. Mr. Mears replies yes, based on his research. He added that the cheaper recycled concrete came from the demolition project at the former G. L. Webster Company canning plant. He then apologized for his first drawings and noted the mistake where stone now covers only one-half of the mat.

Mr. Lusk stated his understanding that the emergency repair application was for stone to be placed yards behind the old bulkhead not just feet behind it. He then asked if anyone involved in the project had access to the emergency repair application project plan when the stone was being installed. Mr. Mears stated that he could not answer that question.

Mr. Burdiss then stated that the Board is now considering the after-the-fact permit instead of prior permits.

Mr. Lusk related that the Board approved an application in good faith that was not followed by the applicant.

Mr. Mears stated that the installer perhaps tried to place the stone material to make it stay. Mr. Lusk replied that the installer should have placed the stone where the application stipulated.

Ms. Hickman stated that she had seen two different kinds of block and that Ms. Hehl's agent at the time was aware that there was a joint permit application permit.

Ms. Kellam noted that the property needs protection and the main goal is to discern whether or not this project is structurally sound. Once that is determined, the Board can proceed.

Mr. Mears read a brief letter from Mr. Ed Sconfienza, P.E., of Raleigh, North Carolina stating that it was his professional opinion that the bulkhead installed according to the Bulkhead Section detail he prepared is structurally sound and will provide protection against wave and tidal action. He added in his written comments that the additional riprap material that was installed will enhance the stability and protection of the bulkhead.

Ms. Kellam then read a letter dated April 13, 2011, from Robert Cole of the ACOE that is attached as part of the official record. His letter identifies issues and unauthorized activity at the project site.

Ms. Hickman noted that there are buffer issues as well on the property and dredge fill will not support vegetation; therefore, the area may need to be topped off with sand in order to sustain dune grasses.

Mr. Val Valentine asked to speak and was then sworn in by the Chair. He displayed a framed photograph of the property for the Board's review noting that the fill material came from the island. He stated that a number of large trees were destroyed in a November 2010 storm. He noted various other points as follows: the Army Corp of Engineers has a 50 year dredge spoil project plan with the applicant to use the property; an 1,100 foot bulkhead was constructed over 30 years ago; in the past 7 or 8 wetlands permits have been issued for this island; and a re-vegetation effort has been on-going for years using lime and time-released fertilizer. Mr. Valentine stated that metal would be removed from the concrete.

Ms. Hickman stated that protecting the island is a concern and the now exposed filter cloth issue needs to be resolved in her opinion.

Mr. Valentine noted that there is a cease and desist order on the project right now and no further work can be done at this time.

Mr. Burdiss stated his opinion that two major issues need to be resolved concerning this after-the-fact application which are: (1) identify where the project was built, certify its soundness and remove all metal as best possible; and (2) resolve the vegetated buffer issues.

There being no other remarks the public comment portion of the hearing was closed.

Mr. Gates commented that the Board should follow the staff report as a basis for any action and noted that the last 3 items of the VIMS recommendations are outside the Board's jurisdiction. He also stated that a qualified engineer familiar with shoreline and erosion control issues should be the only type used to certify that the project is structurally sound. However, Ms. Kellam noted that a PE seal is sufficient since there is no regulation allowing the Board to require a certain engineer to provide this certification.

Ms. Field added that the applicant should submit a set of as-built drawings as well.

Mr. Chubb agreed that the first three items of the staff report are needed plus the information requested by the ACOE.

Mr. Burdiss reiterated his previous two points since only then can it be determined what remedies are needed in order for the landowner to proceed.

Mr. Lusk noted that the property needs protection due to the extreme environmental conditions. However, this after-the-fact project does not resemble what was originally approved by the Board in 2008. He added that a major violation has occurred that must be remedied.

At this time, Ms. Hehl admitted that it was her fault that this project was constructed and that is why she applied for this after-the-fact permit.

### Action

Motion was made by Ms. Drury to table this matter until the Board receives accurate as-built drawings and certification from a qualified shoreline engineer that the as-built structure is deemed structurally sound. Second was made by Ms. Field. The motion carried unanimously.

By consensus, the Board agreed to allow the applicant 90 days to submit the information as stated in the motion.

**Old Business:** none.

### **New Business**

The Chair suggested that the Board adopt a Resolution of Appreciation on behalf of Robert Meyers who recently tendered his resignation. The Board agreed by consensus.

Discussion was then held on violation processes, civil charges and penalties. Ms. Hickman noted that the county ordinance allows for civil charges and court action. Ms. Kellam added that if a civil charge is imposed the landowner or person in violation must agree to the charges being imposed. She added that the maximum amount that can be charged is \$25,000/day/violation. Mr. Badger noted that the maximum penalty allowed by the state is \$10,000 per violation.

Ms. Hickman gave a verbal Zoning Inspector's report noting that Mr. George Dilley had requested an extension on the Emerson violation. She also reported that there are a few pending violations along Kings Creek and Plantation Creek where clearing has taken place in the buffer area that may be outside the Board's jurisdiction. She added that the ACOE is aware of all violations as well.

Ms. Kellam reported that no new applications have been received to date.

**Statements from the Public:** none.

#### **Consideration of Minutes**

The minutes of February 16, 2011, were unanimously approved as submitted upon motion by Mr. Gates and second by Ms. Drury.

#### **Adjournment**

There being no other business the meeting was adjourned at 10:55 a.m.

---

Chair

---

Secretary



DEPARTMENT OF THE ARMY  
NORFOLK DISTRICT, CORPS OF ENGINEERS  
FORT NORFOLK, 843 FRONT STREET  
NORFOLK, VIRGINIA 23510-1386

Rec'd. 4/20/11

REPLY TO  
ATTENTION OF:

April 13, 2011

Enforcement & Compliance Section  
NAO-2007-02917 & 11-0375 (Magotay Bay)

Ben Mears  
P.O. Box 128  
Eastville, VA 23347

Dear Mr. Mears:

This is in response to your request for an after-the-fact, assigned Corps processing numbers NAO-2007-02917 & 11-0375. You have applied for after-the fact authorization to construct 500 linear feet of rip-rap revetment (having a 430-foot section and a 130-foot section). It will have two 70-foot return walls. It will extend 16 feet channelward of the existing bulkhead, have a 3:1 slope and be placed on filter cloth. It will impact approximately 8000 square feet of intertidal substrate. The project was previously authorized by the Corps of Engineers, however the work was accomplished after the authorization had expired, and did not conform to the terms and conditions of the previous approval. The rip-rap revetment will be constructed at your property, located along the northern shoreline of Holly Bluff Island, east of Kiptopeake, Northampton County, Virginia.

The project has been completed; however the JPA does not reference the following preconstruction conditions: (1) location of Mean High Water (MHW), (2) location of the existing bulkhead, and (3) source and amount of borrow placed behind the revetment. Please provide an as built survey of the revetment showing the precise location of the new structure, location of MHW, and precise location of the bulkhead that was removed. The survey must include recoverable bench marks and be certified by a professional engineer (PE). Also, please provide the source and quantity of borrow placed behind the revetment; include invoices for offsite borrow sources, and site maps and local approvals for any borrow material from on-site sources.

During a site visit on April 30, 2011, it was observed that the concrete revetment had an excessive amount of protruding rebar and other metallic materials. This material is not acceptable material for use in revetments and should be removed immediately. Field observations also indicate that the channelward encroachment of the concrete rip-rap extends, in some places, to the outer edge of the interlocking concrete blocks. This rip-rap should be placed in accordance with the JPA or the JPA needs to be modified to reflect the actual placement of rip-rap.

The JPA submitted for the project states channelward encroachment is 8 feet channelward of MHW, but the drawing indicate the encroachment to be 16 feet from the back of the stone interlocking blocks that are several feet channelward of MHW. Please correct the JPA and/or the drawings to make them consistent.

The channelward encroachment, and area filled appears to exceed the minimum required to stabilize the bank and prevent additional erosion. Please be advised that the scope of this project is significant and will require a Standard Permit if the impacts are not reduced to the minimum required to stabilize the shoreline. If you choose to pursue this project as currently constructed you will need to submit the Standard JPA. The Standard JPA may be found on the Norfolk District's webpage at the following link:

<http://www.nao.usace.army.mil/technical%20services/Regulatory%20branch/Web2008StdJPA.pdf>

Please be advised that the unauthorized revetment is in direct violation of Section 10 of the Rivers and Harbor act (33 U.S.C 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344), which requires a Department of the Army permit prior to discharging dredged material, filling, or other construction work in the waters of the United States, including wetlands.

Please contact Robert Cole at 757-787-7567 or [Robert.h.cole@usace.army.mil](mailto:Robert.h.cole@usace.army.mil) if you have any questions or need further assistance regarding this matter.

Sincerely,

COLE.ROBERT.  
H.1266139710

Robert H. Cole  
Acting Chief, Enforcement & Compliance Section

Cc: Virginia Marine Resources Commission  
Virginia Department of Environmental Quality  
U.S. Environmental Protection Agency  
Northampton County Planning and Zoning