

**NORTHAMPTON COUNTY  
WETLANDS BOARD**  
Minutes  
August 17, 2011

This was the regular meeting of the Northampton County Wetlands Board held on Wednesday, August 17, 2011 in the auditorium 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 and Dot Field. Absent from the meeting 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 10:38 a.m., established a quorum, and swore in all those wishing to speak at today's meeting.

It is noted for the record that the Board members present had conducted field visits prior to the meeting this day with Ms. Hickman.

The scheduled public hearing was called to order.

- A. VMRC 2011-0928:** The Bay Ridge Homeowners Association and John Coker have filed to extend the wooden pedestrian walkway to cross and protect a newly formed primary dune area to allow access to the beach. The new extension will be constructed as the existing and have at least 24 inches clearance over the dune. The property, located on the Chesapeake Bay, is described as being a portion of Tax Map 104A, double circle 3, parcel 14A1 where a pedestrian easement exists.

Ms. Kellam reviewed the staff report which is included in its entirety as part of the official record.

***Staff Report VMRC # 11-0928:***

**VIMS Recommendations**

*As of the writing of this memorandum no VIMS report has been received.*

**Adjacent Property Owners**

*As of the writing of this staff report, no adjacent property owners have commented on the proposed project.*

**Staff Recommendation**

*Because the purpose of this project is to obtain access to the beach and not to construct a shoreline erosion control structure(s), the decision tree doesn't apply and can't be utilized on this project. Staff recommends approval of the application with the condition that if the Board determines through its site visit that unnecessary impacts to the dune and beach are proposed, those impacts are removed from the project. This project will require zoning clearance before a building permit can be issued which requires for every 400-square feet of encroachment into the buffer, dune and beach, one mitigation unit must be planted. This zoning clearance is separate and apart from the wetlands permitting process.*

Mr. John Coker, owner of the pedestrian easement and Chair of the homeowners association, was present to answer questions.

The Chair called for public comments. There being none the hearing was closed.

Mr. Lusk stated that he had no objections to the project that would protect the dune and also allow proper access to the beach area for local residents.

**Action**

Motion was made by Mr. Gates to approve the application as submitted. Second was made by Mr. Lusk and carried unanimously.

The second public hearing was called to order.

**B. VMRC 2011-0995:** Craig Rosen has applied for an after-the-fact permit for an open-pile walkway and platform to access the beach through the dunes. The walkway is 4 feet wide with the first section from the house being approximately 155 feet long. The platform is 16 feet by 16 feet and the secondary walkway is 21 feet long leading to steps accessing beach path. The property is located at 1988 Sand Hill Drive and is described as being Tax Map 104D, double circle 1, parcel 6 in the Sugar Hill Subdivision. The property contains 2.57 acres of land with frontage on the Chesapeake Bay.

Ms. Kellam reviewed the staff report which is included in its entirety as part of the official record.

***Staff Report VMRC # 11-0995:***

**VIMS Recommendations**

*As of the writing of this memorandum no VIMS report has been received.*

### **Adjacent Property Owners**

*As of the writing of this staff report, no adjacent property owners have commented on the proposed project.*

### **Staff Recommendation**

*Because the purpose of this project is to obtain access to the beach and not to construct a shoreline erosion control structure(s), the decision tree doesn't apply and can't be utilized on this project. Staff recommends approval of the application with the condition that if the Board determines through its site visit that unnecessary impacts to the dune and beach are proposed, those impacts are removed from the project. This project will require zoning clearance before a building permit can be issued which requires for every 400-square feet of encroachment into the buffer, dune and beach, one mitigation unit must be planted. This zoning clearance is separate and apart from the wetlands permitting process.*

Ms. Kellam reported that in the future all coastal primary dune applications will come before the Board since it is literally impossible to install any type of walkway without altering a dune.

Mr. Ben Mears, agent for the applicant, confirmed that he had installed the walkway believing that it was an exempt structure and was available to answer any questions.

Mr. Lusk noted that the structure as built appeared to be adequate. Ms. Field expressed her opinion that removing the structure would possibly result in more impact to the dune than simply approving the structure.

Mr. Badger expressed his opinion that when a dune walkway continues past the dune area it is best to install a "corduroy road" (little wooden slats latched together) that eventually works itself into sand and then stabilizes. Such devices help to prevent further erosion of the dune area and provide adequate access. The Chair asked Mr. Badger to provide more information on this type of device.

Mr. Gates suggested that an official justification be stated for the official record if the Board intends to approve this after-the-fact application without the issuance of penalties.

### **Action:**

Motion was made by Mr. Lusk that the application be approved as presented. Second was made by Ms. Drury and the motion carried unanimously.

### **Old Business**

**A. Continuance of 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.

Motion was made by Mr. Drury to take VMRC 2011-0375 off the table to allow further discussion. Second was made by Mr. Gates and the motion carried unanimously.

Mr. John Burdiss, attorney for the applicant, informed the Board that there was a typographical error on the survey since there is actually one wooden bulkhead and one concrete bulkhead instead of two wooden bulkheads as depicted. He added that additional information is being provided by their engineer, Mr. Chip Conrad, who was present to answer any questions.

Mr. Conrad stated that he had walked the property and the project site before writing his letter dated July 19<sup>th</sup>. He reported that the majority of the riprap is considered Class II and there is some Class I also. He would recommend adding some Class III which can withstand a Class I Hurricane event with winds up to 120 miles per hour.

Mr. Lusk asked if all protruding rebar has been removed from the stone. Mr. Conrad stated that only exposed rebar has been removed. Mr. Lusk acknowledged that this shoreline is very vulnerable and stone will move thereby exposing more rebar that is not visible now.

Mr. Lusk also noted that lighter weight stone is part of the project which does not meet size specifications and could pose safety issues in the future during storm events. Mr. Conrad stated that smaller stone is often used to chink smaller gaps between larger stones. It was his professional opinion that Class III stone should be added to the project especially at the 6.5 mile fetch.

When the Chair asked if a new joint permit application would be required in order to add Class III stone to the project, Ms. Kellam replied that this revised application would be sufficient.

Mr. Conrad noted that the basic project footprint will not change.

By consensus the Board agreed that new revised drawings of the project be submitted that delineates the finished project including the placement of the Class III stone that will be added.

Ms. Hickman noted that the Army Corps of Engineers had informed her that anything beyond the existing concrete would have to be removed. Mr. Conrad stated that the Class III stone would be placed on top of the project. Ms. Hickman also noted that the latest project drawing does not depict the existing concrete poles on the property. Mr. Conrad acknowledged her observation as being correct.

Mr. Burdiss stated that the applicant wishes to finish this project as designed.

There being no other public comments the hearing was closed.

Mr. Lusk reiterated that the applicant must submit new drawings before the Board can take appropriate action on this matter.

Mr. Badger stated that there is definitely some confusion concerning the updated drawing as submitted by the applicant. Ms. Kellam stated that the applicant did not submit all new information to VMRC until yesterday.

Mr. Lusk stressed that a new drawing must show the finished footprint of the project as proposed.

Mr. Conrad noted that the current drawing will not change except to show an additional layer of riprap placed on top of the existing structure.

Ms. Drury also stressed that a new drawing depicting the project as intended to be completed must be submitted. Ms. Kellam added that any additional impacts or widening of the footprint caused by the installation of a Class III riprap layer should be shown on the drawing as well. The Chair agreed.

Mr. Lusk noted that the entire project and process has not been handled in an exemplary manner from the beginning and that the Board must make sure that the project is completed accurately without any "gray areas" remaining. Ms. Drury concurred and stressed that the placement of all Class III stone must be shown on a revised drawing before the Board acts.

Action:

Motion was made by Mr. Lusk to require the applicants to submit a new drawing to detail the finished revision and to accurately depict the entire project for the Board's consideration at their next regular meeting. Second was made by Mr. Gates and carried unanimously.

**New Business**

The Board then considered new business and allowed Mr. Granville Hogg to speak concerning a possible wetlands violation. Mr. Hogg noted that he had recently cleared vegetation on lots 18, 19, 20 and 21 and a portion of the common area in the Kings Creek Landing Subdivision. He noted that he had removed invasive plants and debris from the area previously maintained by a landscape company. It was his understanding that the county is prepared to serve him notice that he has disturbed 60,000 square feet of land without getting proper permits. It was his opinion that he had disturbed less than 2,500 square feet of land area and had removed tin cans and health hazards like poison ivy which should not require a permit from the county. He asked that the Board resolve this matter today.

Ms. Hickman informed the board that only a marginal portion of parcel A is within the Board's jurisdiction and that the Department of Environmental Quality (DEQ) and the United States Army Corp of Engineers (USACOE) have been informed about this matter as well. She stated that debris and dead trees had been dragged through the marsh by Mr. Hogg and that vegetation and dead trees along the shoreline had been cleared. Such matters do not come before the Board and there is no permit that the Board can issue to address this matter. She added that Mr. Hogg has been informed that he must replant the disturbed area through mitigation.

Ms. Kellam added that staff is working with DEQ and the USACOE to address this matter. She informed the Board that staff has already met with Mr. Hogg concerning this matter and another meeting is scheduled to address square footage issues involved.

Ms. Hickman stated that clearing is defined as cutting any root mat regardless of vegetation type. She explained that 2,500 square feet of clearing requires a county zoning clearance and then erosion and sediment control measures are enforced. She added that the zoning ordinance is very specific about intrusion into the resource protection area buffer. She also noted that the USACOE is informed whenever wetlands are involved. She stated that in this case, it appears that a land disturbance permit, zoning clearance and permit from the USACOE will be needed.

Mr. Lusk asked how restrictive is the county ordinance about removing debris and dead trees from wetlands and uplands. Ms. Kellam and Ms. Hickman both agreed that the ordinance regulations are very restrictive about removing vegetation.

Mr. Hogg stated that he did use backhoe equipment to remove a dead tree limb and did drag some out with a chain from the wetlands area. However, he objected that the county has estimated that 60,000 square feet of land area is involved and asked that the Wetlands Board do its own evaluation.

Ms. Hickman noted that photographs reveal tire tracks in the wetlands where the violation had occurred.

The Chair suggested that since some of the area in question is within the Board's jurisdiction that a field visit be conducted for only that specific area during next month's meeting.

Ms. Hickman also informed the Board that written confirmation must be obtained from the three other property owners whose land was also impacted by Mr. Hogg.

Mr. Hogg stated that if the county enforces mitigation requirements for 60,000 square feet of ground disturbance the cost will be enormous.

The Board then considered an extension request from Ms. Susan Emerson regarding VMRC 10-0347. The Board was informed that due to health reasons Ms. Emerson was not present today. Ms. Kellam explained that the modified project has not been installed due to these health issues and the consequences of unexpected expenses. However, Ms. Emerson is now ready to proceed but has asked for an extension before the permit expires.

Action:

Motion was made by Ms. Drury that the Board grant a six-month extension to Ms. Emerson. Second was made by Ms. Field and carried unanimously. Ms. Drury clarified that the six month extension would start from today's date.

## **Zoning Administrator's Report**

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

**Statements from the Public:** none.

## **Consideration of Minutes**

The minutes of April 20, 2011 were unanimously approved as submitted upon motion by Mr. Gates and second by Mr. Lusk.

Before adjourning the Board approved a Resolution of Appreciation written on behalf of Robert H. Meyers. Motion to accept the resolution as revised by Mr. Gates was made by Mr. Lusk and seconded by Ms. Drury. The motion carried unanimously. Staff was asked to send the resolution to Mr. Meyers and to make the resolution part of the official minutes as follows.

### *Northampton County Wetlands Board Resolution of Appreciation*

*Whereas, Robert H. Meyers served his community as a member of the Northampton County Wetlands Board from February of 2006 until March of 2011, and*

*Whereas, Mr. Meyers served honorably with consistency in attendance and diligence to duty as Board member and brought considerable technical expertise to the decision making process of the Board and*

*Whereas, Mr. Meyers, throughout his many years of service, advocated for his community in the management and protection of coastal wetlands and in the public hearing process.*

*Therefore, the members of the Northampton County Wetlands Board unanimously adopt this resolution to express sincere appreciation to Robert H. Meyers for his leadership and service to this Board and his community.*

*Adopted by the Northampton County Wetlands Board  
August 17, 2011*

**Adjournment**

There being no other business the meeting was adjourned at 11:47.

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Chair

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Secretary