

**NORTHAMPTON COUNTY
WETLANDS BOARD**
Minutes
September 21, 2011

This was the regular meeting of the Northampton County Wetlands Board held on Wednesday, September 21, 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 and John Chubb. Absent from the meeting was Dot Field.

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

The Chair called the meeting to order at 10:04 a.m., established a quorum, and swore in those wishing to speak at today's meeting.

Public hearings: none

Old business

The Board then continued review and discussion of VMRC 2011-0375 as filed by Karla Hehl for 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.

Ms. Kellam explained that revised drawings had been submitted by Collins Engineers just the day before and several discrepancies have been noted. She also noted that not all checklist items were shown on the revised drawings. The drawings should have accurately shown the historical project, the intermediate project and the proposed finished project.

Mrs. Downing was asked to read the motion from the August meeting related to this matter which was as follows, "*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.*"

The Board and staff then reviewed both revised drawings and the following discrepancies and/or corrections needed are noted as follows.

Plan View:

- 1) Mean high water must be shown
- 2) Drawing must be tied down horizontally by using a bench mark or permanent structure and show measured horizontal distance to the existing and proposed structures at critical points
- 3) Correct "wood" bulkhead to "concrete" bulkhead
- 4) Label water body
- 5) Show existing geo tubes
- 6) A scale must be provided
- 7) Instead of stations being used that are not tied to a bench mark, horizontal lengths should be shown and tied to a bench mark; everything must be tied down spatially as well
- 8) Provide a historical timeline and clearly denote what was permitted and what was not permitted resulting in a clear depiction of the property and projects, past and present.

Cross-Section:

- 1) A scale must be provided
- 2) Label water body
- 3) More detailed information should be provided on how this project or application has exceeded permitted structures; all variations should be shown, and any new encroachment into wetlands and bottom area
- 4) Mean high and mean low water must be shown
- 5) Height of structure must be provided

During the review discussion Ms. Hehl stressed that the project needs to be completed due to continuing storm damage. She also noted that in 2006 the concrete block bulkhead that was installed has remained stable.

Mr. Lusk noted that there may be a penalty phase to this project and it is important that accurate and historical information be provided to the Board to determine if this project has exceeded previous approvals.

Staff stated that both revised drawings must be submitted by the applicant to both VMRC and the U. S. Army Corps of Engineers (USACOE).

The Chair suggested that consideration be given to allow a called meeting specifically to address revised drawings if staff deems them complete earlier than the next regular Board meeting in November. Ms. Kellam was instructed to relay to Ms. Hehl's engineer the required corrections as discussed.

Ms. Hehl apologized for the engineer's delay in submitting the drawings to the Board.

Discussion was held on a possible violation at Kings Creek Landing Subdivision where the Board had conducted a field visit just prior to this meeting.

All those wishing to speak concerning this matter were sworn in by the Chair.

Mr. Granville Hogg was present to address the Board.

Ms. Hickman gave a brief history of the case noting that only a very small portion of the violation is within the Wetlands Board's jurisdiction. In similar cases county regulations require that the disturbed area be re-vegetated and mitigation is usually required. She also noted that the common area or "trail" belonging to the Property Owners Association (POA) has been disturbed and that no official confirmation from that entity has been received to date authorizing clearing. Ms. Hickman explained that official notification of the violation situation had been hand-delivered to Ms. Chris Schwab of the POA on August 18th.

Mr. Hogg stated his opinion that the area he cleared along the POA "trail" was a simple matter of maintenance and provided a copy of contracts that had been issued to the original landscapers who no longer maintained the area. He stated that dead trees could be removed from the wetlands; however, the manner in which such debris was removed is in question. It was his expressed opinion that he had not harmed the environment by doing so. He asked that the Board dismiss this matter and forward such a determination to the county.

However, Ms. Kellam noted that the Board's jurisdiction covered only a minimal area of the violation involving disturbed wetlands and does not include the Resource Protection Area (RPA) buffer or "trail". Therefore, the Board has no authority beyond that minimal area of disturbed wetlands.

When asked by the Chair, Mr. Hogg acknowledged that he had not been given official permission from all property owners to clear or maintain their RPA buffer area, but noted that he was a member of the POA as well.

When asked by the Chair, Mr. Hogg stated that the RPA buffer area along the "trail" had been kept well maintained and free of debris in the past by a paid landscaper.

Mr. Hickman noted that 3 property owners had already contacted the county and relayed their concerns about the clearing of the RPA on their properties. She also stated that the USACOE was contacted and has determined that a violation is involved within the wetlands. However, at this time the agent for the Corps is waiting to see how the county handles this violation case before taking additional action. It was her opinion that mitigation was in order but noted that some of the disturbed wetlands had recovered naturally thereby reducing the area of mitigation at this time.

When asked by the Board, Ms. Hickman explained that approximately 400 square feet of disturbed area equates to 1 unit of mitigation or part thereof. She estimated that in this case 2

units of mitigation would be required but since some natural mitigation had occurred only 1 unit would be required for the wetlands area only.

A lengthy discussion ensued concerning maintenance of wetlands areas involving the removal of dead trees and vegetation. It was noted by staff that the manner in which debris is removed can prevent destruction of wetlands and that a county Zoning Clearance Application is required for work within wetlands and RPA buffer areas.

Mr. Lusk noted that technically a violation had occurred, but natural mitigation is taking place at the disturbed area.

Ms. Drury expressed her opinion that violations like this one cannot simply be dismissed as this would set a precedent encouraging future violations and would make staff's ability to enforce regulations impossible. Mr. Gates concurred noting that without a penalty being issued such violations would go unrestricted.

Mr. Chubb noted that at least 1 unit of mitigation is still needed in the disturbed wetlands area which may prevent the USACOE from being involved. Ms. Hickman explained that 1 unit would equate to approximately 12 wax myrtles planted along the bank. This would mitigate the area damaged when Mr. Hogg used a vehicle to access and drag dead trees out of the wetlands. She stressed again that the non-tidal area or RPA buffer is beyond the Board's jurisdiction.

Mr. Hogg stated that this area was maintained for over 20 years and simply picking up debris within tidal wetlands can most likely create some type of minor damage.

Ms. Kellam explained that even if the violation area was maintained for 20 years it has been documented that it has not been maintained for a period of 2 years or more. Therefore, the legal non-conforming use regulations would no longer apply. She reiterated that the area viewed by the Board is but a very small portion of a larger violation area.

When Mr. Lusk asked if 1 unit of mitigation would be applicable, Ms. Hickman stated that yes, it would; however, permission from the POA is still required for restoration work to be done.

Action:

Motion was made by Mr. Lusk that only that violation area within the Wetland's Board jurisdiction be restored with 1 unit of mitigation. Second was made by Mr. Gates and carried unanimously.

Ms. Hickman noted that permission from the POA must be obtained in order to mitigate and restore.

Ms. Kellam then stated that Mr. Hogg can appeal the decision of the Wetlands Board to the Circuit Court. She explained that zoning ordinance appeals are handled by the Board of Zoning

Appeals; Erosion & Sediment Control Ordinance appeals are processed by the Board of Supervisors; and appeals of the Wetlands Ordinance are heard by the Circuit Court.

Mr. Hogg expressed his opinion once again that he did not need a permit to remove debris and to cut or maintain vegetation within the buffer area.

Ms. Kellam noted that to her knowledge there is no permit available that allows such activity within the wetlands. However, a county Zoning Clearance Application could be obtained to do work in the RPA buffer area. She stressed that disturbance of wetlands is not allowed period.

Ms. Hickman noted that there is a safe way to remove freshly fallen trees out of the wetlands. Ms. Kellam added that there can be no change in the grade level when accessing and removing such debris. Ms. Hickman added that the USACOE has criteria that must be met as well.

Statements from the public: none.

Consideration of minutes

The minutes of the August 17, 2011 meeting were approved as submitted upon motion by Mr. Gates and second by Ms. Drury. The motion carried 4 to 0 with 1 abstention from Mr. Chubb as he was absent from that specific meeting.

At this time a five-minute break was called by the Chair.

New business

Hank Badger then explained a power point presentation entitled, "Development of a General Permit and Integrated Guidance Pursuant to SB 964." A question and answer session followed between the Board, staff, Mr. Badger and Ms. Duhring. Each Board member present received written information to review.

Mr. Badger summarized the presentation noting that its purpose is to fast-track living shorelines whenever possible. He requested that the Board review the information and make their comments known at a later time.

By consensus the Board agreed to discuss their comments and submit any recommendations back to Mr. Badger and Ms. Duhring at the next regular meeting in October.

It is noted for the record that Mr. Chubb left the meeting at 11:28 a.m.

Under other New Business, Ms. Kellam stated that one new application would be scheduled for public hearing in October.

There was no additional information reported to the Board by Ms. Hickman, Zoning Inspector.

Adjournment

There being no other business the meeting was adjourned at 11:31 a.m. upon motion by Mr. Lusk.

Chair

Secretary