

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

This was the regular meeting of the Northampton County Wetlands Board held on Wednesday, April 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, Vice-Chair Bowdoin Lusk, Nancy Wells Drury, Dot Field, John Chubb, Mark Gates and William Brown.

Also attending were Hank Badger with the Virginia Marine Resources Commission (VMRC); Robert Cole with the U.S. Army Corp of Engineers (USACOE); 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 9:34 a.m., and a quorum established. Mr. William Brown was introduced and welcomed as the latest appointee to the Board.

Due to the late arrival of Ellen Grimes, agent for Brass, Inc., the Board agreed to proceed to Old Business first.

**Old Business**

The first item of discussion was the written request from Karla Hehl related to a payment plan of a \$4,500 civil charge issued by the Board. Ms. Kellam read aloud the draft agreement to the Board for its consideration which is attached as part of the official record. This agreement, if approved by the Board, would need to be notarized and signed by both Ms. Hehl and the Board Chair.

Discussion followed concerning the wording of the draft agreement. A point of clarification was noted concerning the violation language and what might occur if the entire project is not completed by the deadline date.

Ms. Kellam stated that she would consult with the County Attorney again on this point and submit any additional comments or revisions to the Board for further review.

A formal motion was made by Mr. Chubb to grant Ms. Hehl until November 16, 2012 to pay the civil charge of \$4,500 as part of a formal agreement between Ms. Hehl and the Board. Second was made by Mr. Gates and the motion carried unanimously 7 to 0.

Motion was made by Mr. Lusk that staff relay the Board's concerns to the County Attorney and forward any new information or revised agreement language to the Board by email. Each Board member is to then respond directly back to Ms. Kellam after reviewing new comments or revisions. Second was made by Ms. Drury and the motion carried unanimously 7 to 0.

Mr. Robert Cole with the USACOE arrived and was sworn in. The Board then continued its consideration of VMRC 2011-1853 as filed by Brass, Inc.

**Public Hearing:**

**Continuation of VMRC 2011-1853: Brass, Inc.,** has applied for an after-the-fact permit to place approximately 92 linear feet of concrete rubble along an eroding shoreline. Approximately 50% of the material has been placed and the bank graded to accommodate the placement. The property is located at 9461 Red Bank Court on Red Bank Creek and is described as Tax Map 32, double circle A, parcel 15.

Ms. Kellam presented additional information received from the USACOE by email which was read into the record as follows.

*Classification: UNCLASSIFIED*

*Caveats: NONE*

*Mellisa,*

*I will be attending the Wetlands Board Meeting tomorrow regarding the Brass, Inc. JPA. Can you bring the original pictures Katrina took I believe they were from 12/1/2011 or a few days before.*

*My concerns are:*

- (1) The proposal calls for filling the slope past mean high water to create the necessary slope for the living shoreline,*
- (2) The pictures Katrina sent me show no visible signs of erosion in the intertidal zone,*
- (3) The application does not include specific design for the living shoreline (IE: grain size requirements for the shoreline fill, source of material, erosion rate of the shoreline, sources of erosion, that the current proposal is consistent with the characteristics of adjacent and nearby wetlands and tidal flats, etc).*
- (4) The purpose of the project is bank stabilization, how does the current proposal reflect the minimum encroachment necessary to stabilize the bank.*
- (5) The concrete slab under the pier is not acceptable,*
- (6) The current proposal shows a decrease in calculated impact area, but includes an additional 8-9 feet of encroachment.*

*The proposal appears to be converting tidal flats to vegetated wetlands. This conversion requires mitigation for the conversion.*

*I am also interested in understanding the Wetlands Board's position, protocol, and procedures for Living Shoreline projects.*

*Robert Cole  
Eastern Virginia Regulatory Section  
PO Box 125  
Greenbackville, VA 23356  
(757) 903- 1562*

*Classification: UNCLASSIFIED  
Caveats: NONE*

The Board also received additional photos of the Brass shoreline taken by Ms. Hickman on April 12, 2012.

Mr. Cole stated that the RP-19 permit issued by the USACOE is for the original project and not the proposed project as presented today. The encroachment area was originally listed at 3 to 4 feet and has now been extended up to or beyond 5 feet. The newly revised drawings show that the new slope passes the mean high water. He noted that the Corp has no specific set standards for living shoreline projects and added that installing a vegetated marsh on top of a flat bed with live species would be considered a conversion of area. Since there is no real erosion occurring at this shoreline the stone could be pulled out and the area repaired; and that the dwelling on the property is not being impacted. He suggested that the shoreline west of the pier not be disturbed and there is no need for concrete to be under the pier. If fill is used, it must be compatible.

Ms. Field explained that the revised plan does not depict what the Board previously recommended.

Mr. Chubb suggested that some sort of fill be utilized to cover the brick so that habitat can be established.

Mr. Cole presented the Board with an additional photo of the project area and noted that while the Board has no formal policy it does support living shorelines even though such projects are relatively new in Virginia. He stressed that the R-19 Permit from the Corp is valid only for the original project once it is approved by the Wetlands Board and VMRC. It was his opinion that this revised project would result in loss of habitat for 4 to 5 years and it is possible that the area may never recover without appropriate fill.

Mr. Lusk assured Mr. Cole that the Board had no intention of allowing the applicant to touch the flat.

When asked, Mr. Cole suggested that the embedded brick be left in place because removal may create craters along the right side of the property.

Ms. Field stated that basically the Board is looking to prevent further damage to the area while working around the issue of the near-by clam hatchery activities.

Ms. Kellam stated that Mr. Cole will address the Board on how the Corp handles wetlands violation in conjunction with local and state agencies.

Ms. Ellen Grimes, agent for the applicant, was sworn in and confirmed that the project design had “morphed” somewhat after the Board’s last discussion on the matter. She explained that Mr. Murray did not want to use coir logs but wished to use the concrete to create wetlands and to do the same on the other side of the pier as well. She added that she had not spoken to Mr. Murray recently but had just visited the property. It was her observation that there is a fringe marsh between the land and Red Bank Creek where slow erosion had taken place and cracked brick had been dumped for years by other various landowners.

Ms. Grimes then asked the Board specifically if the project would have been approved if presented as a virgin application. However, Ms. Field stated that such a question is not germane to this matter since a violation triggered the application in the first place. Mr. Lusk answered the question by stating no, he would not have approved such a project especially the concrete, but may have approved some plantings only.

Ms. Grimes then stated her opinion that the project is basically a living shoreline creating habitat.

Ms. Drury suggested that everything should be removed as depicted in Section B of the revised drawing and to simply have planted vegetation on the upland on the right side of the pier.

However, Ms. Grimes noted that the applicant would like to plant on the left hand side of the pier as well. Ms. Field stated that the area left of the pier should be left alone as there is no erosion. Ms. Grimes added that the left side is on an apex of a curve which is subject to erosion by the wave action of regular boat traffic.

Mr. Chubb observed that if a living shoreline is created it would convert mud flat which is in conflict with USACOE’s regulations. Part of the flat has already been converted and the Board can direct that it be restored or the Corp may require mitigation.

Ms. Kellam stated that the Corp likes to work with the general locality unless a noncompliance issue is involved.

Ms. Kellam suggested that the Board has two options: (1) remove the violation as it exists today; or (2) recognize the violation and then try to resolve the situation from that point on.

Discussion continued on how to best limit encroachment into the tidal area.

Ms. Kellam noted that the original project drawing was not followed by the contractor.

When asked by Mr. Badger, Mr. Lusk explained that the Board did not think it a good idea to remove all the concrete rubble since much of it is buried underneath the mud flat and upland slope. Mr. Badger stated his opinion that all concrete on top of the filter cloth should be removed and that a functioning intertidal area will be lost unless rubble is removed.

Ms. Grimes stated her opinion that the majority of the rubble could be removed if working during low tide stages.

Mr. Lusk suggested that the stones in the water on the right side of the pier should be left alone. On the left side, the tarp should be pulled out along with stone and rubble then smoothed off with no fill added. The area should then be graded and vegetated down to the high water mark. Ms. Field added that the limited vegetation in the area originally may come back on its own.

Mr. Lusk added that if this project had been originally submitted as a joint permit application he would have recommended that nothing be done and the area left alone.

The Chair added that the left side of the dock be left alone to let nature take its course.

Ms. Drury suggested that a specific measurement of what is to be removed within Section B be clearly defined.

When asked, Mr. Lusk noted that there were no surface water runoff issues at the property.

By consensus the Board agreed to conduct another field visit to the property in May.

Action:

Motion was made by Ms. Drury to table this matter again until after the field visit is conducted in May. Second was made by Mr. Gates and the motion carried unanimously 7 to 0.

Mr. Badger asked if after-the-fact civil charges would be in order. By consensus, the Board affirmed that civil charges may be warranted in this case.

The Board then returned to discussion of Old Business items.

**Old Business Continued**

The Board agreed to review the draft Shoreline General Permit as presented by VMRC on an individual basis then submit their individual comments to Ms. Kellam who will then compile those comments and present to the Board.

## **New Business**

Ms. Kellam noted that the Board will meet again in May to continue the Brass, Inc., application and to consider at least one new application.

**Statements from the Public:** none.

## **Agent to the Board Chair Report – Melissa Kellam**

Ms. Kellam informed the Board that all civil charges will be deposited in the county's general fund unless the Board requests that the Board of Supervisors set up a separate fund to receive such monies.

For information purposes only, the Board was provided a copy of the letter dated January 9, 2012 as referenced by Mr. Granville Hogg in the Kings Creek Landing Property Owners Association (KCL POA) violation case. Ms. Kellam explained that this KCL POA letter refers to only upland violations outside of the Board's jurisdiction. It appears that Mr. Hogg had confused the subject of the letter to include the wetlands violation matter as well.

## **Enforcement Agent Report – Katrina Hickman**

Referring to the January 9, 2012 letter as well, Ms. Hickman noted that the KCL POA agreed that it did not actually participate in said violation nor did they infer that a violation had not actually occurred.

Ms. Hickman noted that she is currently investigating what may be a fringe violation with the USACOE.

## **Consideration of Minutes**

The minutes of the March 21, 2012 minutes were approved with the following correction: (1) page 2, fifth paragraph from the bottom, in first line the word "oxide" should be corrected to "oxi" and to delete the words, "rock installed or" in the fourth line.

Prior to adjourning, Mr. Cole explained the Corp's violation process. Usually the Corp does not get involved with local wetlands violation cases since state and local regulations are usually more stringent than those of the Corp. However, if fill is involved the Corp will investigate. The Environmental Protection Agency (EPA) will become involved whenever the Corp cannot approve a situation. However, whenever a local Board invokes a penalty the EPA will usually not get involved especially if it is a small type after-the-fact permit. Mr. Cole noted that he cannot visit a property without the landowner's permission due to trespassing laws. In all situations, the Corp will try to work with local departments to resolve issues. He noted that in the case of the KCL POA situation the Corp would probably not get involved as it generally enforces the Clean Water Act and any case that is channelward of mean high tide except bridges. When asked, he noted that the EPA has investigated many cases on Chincoteague and

that the Corp is meeting monthly with EPA agents to determine new cases and especially to address repeat offenders.

**Adjournment**

There being no other business the meeting was adjourned at 11:22 a.m. upon proper motion by Mr. Chubb and second by Mr. Lusk.

---

Chair

---

Secretary

WHEREAS, the Northampton County Wetlands Board did on November 16, 2011, find that Carla Hehl was in wetlands violation of the Northampton County Wetlands Ordinance with respect to Northampton County tax map number 123-A-2 in that an existing bulkhead was removed and a new revetment was constructed without the required Northampton County Wetlands permit and

WHEREAS, Carla Hehl agrees she was in violation of the Northampton County Wetlands Ordinance as set forth above, and

WHEREAS, the Northampton County Wetlands Board and Carla Hehl did agree on November 16, 2011, that the wetlands violation be resolved by payment of a civil charge of \$4,500.00, and

WHEREAS, Carla Hehl has asked for additional time to pay such civil charges of \$4,500.00, and

WHEREAS, the Northampton County Wetlands Board is agreeable to the delay in payment as requested.

Now, therefore, the parties hereto, in consideration of the premises, agree that Carla Hehl will pay \$4,500.00 to the Northampton County Treasurer no later than November 16, 2012 and upon such payment the Northampton County Wetlands Board will proceed no further in connection with the wetlands violation which is the subject of this agreement. The Northampton County Wetlands Board and Northampton County shall proceed to seek any remedy, whether civil or criminal, authorized by law in connection with new wetlands violations and any unresolved ongoing violations of ordinances other than the Northampton County Wetlands Ordinance.

Should payment not be made in full in a timely manner, the parties agree that the Northampton County Wetlands Board may proceed to seek any remedy, whether civil or criminal, authorized by law in connection with the wetlands violation above.

\_\_\_\_\_  
Northampton County Wetlands Board Chair Date

State of \_\_\_\_\_

County/City of \_\_\_\_\_

The foregoing statement of consent was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Carla Hehl Date

State of \_\_\_\_\_

County/City of \_\_\_\_\_

*The foregoing statement of consent was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2012.*

\_\_\_\_\_  
*Notary Public*

*My Commission Expires:* \_\_\_\_\_