

**NORTHAMPTON COUNTY
WETLANDS BOARD**
Minutes
June 19, 2013

This was the regular meeting of the Northampton County Wetlands Board held on Wednesday, June 19, 2013, 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, Mark Gates, John Chubb, Jr., Will Brown and Dot Field. Absent from the meeting was Nancy Wells Drury.

Also attending were Hank Badger with the Va. Marine Resources Commission (VMRC) and Kay Downing, Board Secretary. Nyoka Hall, County Zoning Permit Technician, was also present due to the absence of Melissa Kellam, Agent to the Board Chair and County Zoning Administrator.

The meeting was called to order at 11:27 a.m., and a quorum established. All those wishing to speak at today's meeting were sworn in by the Chair.

It is noted for the record that those Board members present and Ms. Hall had conducted field visits to each property scheduled for public hearing this day except for the Brudno parcel described in public hearing A.

Public Hearings

The first hearing was a tabled matter continued from the May meeting in order to afford the applicants the opportunity to attend the hearing, to re-advertise the application, and to present additional information.

- A. Continuance of tabled Item VMRC 2013-0290:** Linda Leatherbury and Spencer Brudno have applied to replace and extend a damaged retaining wall with the new construction to be placed landward of the existing structure and to install two new groins. The location is described as Tax Map 47, double circle A, lots 62, 63 and 64 at Hungars Beach located on the Chesapeake Bay.

Ms. Hall read the project summary as written by Ms. Kellam.

Re: Project Summary – VMRC #2013-0290 Brudno

On ~~May~~ April 26, 2013, I conducted a site visit to verify that the project area had been staked and conducted a site assessment for staff to complete the appropriate decision trees. I could

only see the two points staked at each end. Even though the bank was high and some erosion has taken place, the bank still seemed somewhat stabilized by existing vegetation. The project's shoreline is divided into two sections "Defended Shoreline Decision Tree Existing Bulkhead" located to the north and "Undefended Shoreline" located to the south. Both decision trees are attached and the analysis for both pathways highlighted in green. For the northern section, defended by a failing bulkhead, the decision tree recommends the following: (1) remove failing bulkhead, (2) construct offshore breakwaters and (3) beach nourishment. For the southern section the decision tree recommends the following: (1) manage forest to prevent tree falls, (2) construct sills or breakwaters where necessary and (3) beach nourishment.

The proposed project alignment impacts a considerable area of beach, but if re-aligned closer to the bank will cause damage to the forested buffer area. If any remnant dunes are still present to the south, they will also be greatly impacted by the return wall and rip rap proposed. It is clear through both decision trees that the proposed bulkhead and groins may not be the best possible design solution for this site. The applicant and Board may want to discuss and consider alternative options presented in the decision trees.

Mr. Chris Wilson, agent for the applicants, stated that the project has been revised from a 250-foot long retaining wall that would traverse all 3 lots to a reduced 175-foot bulkhead to address the northern most erosion problem only. Mr. Wilson explained that an off-shore breakwater is too expensive to install and they do not wish to scrape the bank destroying more trees in the process. A sill would be ideal, but it was their opinion that it would still be too cost prohibitive. He noted that following various options of the Decision Tree this revised project was formulated for the Board's consideration.

Ms. Linda Leatherbury stated that the modified project would allow them to address the major erosion issues occurring on the north end where there is a very unstable bank. After obtaining information from various sources it was decided to modify the project by: (1) deleting the groins; (2) reducing the length of the wall; (3) installing armor stone at each end of the bulkhead; and (4) installing a toe riprap if required by the Board. The goal is to stop the erosion and preserve the remaining trees. She also noted that Mr. Badger had visited the property and expressed his opinion that he saw no issues with the project as revised. She asked the Board to make recommendations for her family to consider.

Mr. Spencer Brudno added that they intend to plant American Beach Grass to help stabilize the area and to grade the bank on a 2 to 1 slope. He provided photographs of the property and revised drawings to the Board which were reviewed.

Answering questions from the Board, Mr. Wilson noted that if a toe revetment is required it would be a total of 8 feet tall including the buried portion; however, the rip rap stone at each end of the bulkhead would not be that tall.

The Chair called for public comments. None were received and the hearing was closed.

Mr. Chubb stated that the Decision Tree allows a revetment as a modification. However, it was his opinion that a toe of stone would be needed to keep the beach in front of the bulkhead by dissipating wave action.

Ms. Field expressed her opinion that the bulkhead alone would not keep the beach intact and that toe protection is needed or the wave action will “eat away” at the bottom creating scour. Simply having a bulkhead at the embankment for 175 feet would not be effective enough and that grading would be needed. Ms. Leatherbury added that #2 armor stone would be placed on both ends of the bulkhead and that a toe rip rap could be installed in front of the bulkhead if warranted.

Mr. Lusk stated that he would prefer to see a revetment at the toe. Otherwise, he had no problem with the project as revised.

Action:

Motion was made by Mr. Lusk to approve a modified project as revised and presented today and to allow a toe revetment along the face of the 175 foot bulkhead.

Ms. Field questioned the height of the toe as discussed. Mr. Wilson stated that the toe would be installed 3 to 4 feet below the surface and be 5 to 6 feet above ground. He added that the rock will be sloped and brought up to and under the bottom whaler for toe stabilization. The toe would not be on the bulkhead face and filter cloth would be utilized as well. The goal would be to dissipate storm surge before hitting the bulkhead. He explained that storm surge will scour exposing the rock underneath; however, sand will eventually fill back over the rock especially when a groin is involved.

Mr. Lusk amended his motion recommending that the project be approved as revised and presented today allowing revetments to be installed only on the ends of the bulkhead and that no groins be included. Second was made by Mr. Chubb and the motion carried 5 to 1 with Ms. Field opposed.

The second hearing was called to order.

- B. VMRC 2012-1730:** John & Kathy Durmick have applied for an after-the-fact permit to replace a compacted stormwater overflow pipe and associated rip rap and to restore the berm. The property, located in the Shooting Point Subdivision, is described as Tax Map 19, double circle 7, parcel 4.

Mr. Wayne McCoy, agent for the applicants, stated that he and Barrett Cree, contractor, were present to answer questions. Mr. McCoy explained the background and history of the berm outfall project. He noted that the original project was installed around the 1950s and that the original rip rap had been covered with silt and sand and erosion had occurred. A new pipe and rip rap were installed to stabilize the area. Katrina Hickman, Code Inspector, was aware of the

proposed project; however, when a complaint was filed it was discovered that 5 to 7 percent of encroachment into the wetlands had occurred. Therefore, a stop work order was issued. Mr. McCoy noted that the applicant has received an approved USACOE permit.

Mr. Chubb noted that the embankment appears to be twice as high as the blocks and that storm surge could possibly breach and go behind the project. Mr. McCoy stated that rocks could be placed behind the project to dissipate breaching action.

By consensus, the Board agreed to table this matter until such time that the applicant submits revised, drawn-to-scale project drawings that are to include benchmarks.

The third hearing was called to order.

- C. VMRC 2013-0377:** Cecil King has applied to install 100 lineal feet of timber bulkhead with a 10-foot return wall and associated backfill and access steps to the beach from the top of the bulkhead. The property, located at 16244 Smith Beach Road, is described as Tax Map 56, double circle A, 16244 and 56, double circle A, 99A.

Ms. Hall read Ms. Kellam's summary into the record as related to the Decision Tree.

In May, I conducted a site visit to verify that the project area had been staked and conducted a site assessment for staff to complete the appropriate decision trees. Because the site visit was in May, I will need to verify with the agent that the stakes are still in place before the site visit by the Board. The project's shoreline contains two existing structures and two decision tree will be used, "Existing Bulkhead" and "Existing Groin". Both decision trees are attached and the analysis for both pathways highlighted in green. The existing groin decision tree recommends the following: remove groin and go to existing bulkhead decision tree. The existing bulkhead decision tree recommends the following: bulkhead and toe revetment.

The proposed project alignment impacts a considerable area of beach. It is clear through both decision trees that the proposed bulkhead may be a possible design solution for this site. The applicant and Board may want to discuss and consider alternative re-alignment to reduce impacts to the beach

Mr. Wilson, agent, for the applicants, stated that the declining situation at the north end of the property needs to be addressed which is worse than the southern end. He noted that rip rap could be placed at both ends of the return wall and that the existing groins are working. The bulkhead can be dropped ten feet from the deadmen but some excavation would be required. Once the bulkhead and backfill are installed, vine type vegetation would eventually cover the bulkhead.

The Chair called for public comments and none were received. The hearing was closed.

Ms. Field stated her opinion that the existing drain pipe should be addressed and had concerns about the tiger beetle and scour. Mr. Wilson noted that all bulkheads scour during storm action. However, it was his opinion that once the groins are well established they will work well with the bulkhead.

The Chair stated his opinion that if and when the drain pipe is altered a county agent should be present for inspection.

Mr. Chubb noted that the south end of the bulkhead should have a termination point and the groin should be replaced. He noted that there were no benchmarks on the drawing and that it appears that only the south end would have a return wall.

Action:

Motion was made by Mr. Chubb that the project be approved as presented with the requirement that the drain pipe be blocked off and that the groin be replaced.

Mr. Badger stated his opinion that replacement of the groin would require a separate application.

Mr. Chubb amended his motion to approve the application as presented with the requirement that the drain pipe be blocked off. Second was made by Mr. Lusk and the motion carried 5 to 1 with Ms. Field opposed.

The fourth hearing was called to order.

- D. VMRC 2013-0514:** Bayford Oyster Company has applied to install a 21 by 30 foot platform to hold aquaculture tanks and equipment. The tanks and equipment will be used seasonally as seed is grown and the exact configuration will be determined by the size of tanks available. Water will be pumped from the dock for various untreated uses in aquaculture and commercial fishing related activities. The water pumped will be piped back into deep water after it is used. Poles from the existing commercial operation will be used and one additional 8 inch diameter pole will be required. The property is described as Tax Map 19, double circle A, parcel 26 located at 5513 Bayford Road with frontage on Nassawadox Creek.

Ms. Hall noted that the Decision Tree did not pertain to such a project as this.

Mr. H. M. Arnold, owner, was sworn in and stated he was available to answer any questions since the application was self-explanatory and the project involved his aquaculture business.

Mr. Brown asked if the project was within the Board's jurisdiction which was confirmed by Mr. Badger.

Action:

Since there was no reason to deny the project, Mr. Lusk moved to approve the application as presented. The motion was seconded by Mr. Gates and carried unanimously 6 to 0.

The last hearing was called to order.

- E. VMRC 2013-0522:** Thomas Burt has applied to install two (2) 30 foot by 220 foot headland breakwaters with backfill to form a stable platform. The property is described as Tax Map 7, double circle 4, parcel A in The Peacefuls Subdivision located on the Chesapeake Bay.

Ms. Hall read staff comments into the record as related to the Decision Tree.

The "Decision Tree for Undeveloped Shorelines" will be used to provide recommendations for this project. Erosion has taken place and the bank is undercut. Some undercut areas have been over washed and covered with sand. The decision tree is attached and the analysis shows the pathway highlighted in blue. The decision tree pathway makes the following recommendations: (1) manage tree forest to prevent tree fall, (2) beach nourishment and (3) construct sill or breakwater where necessary.

*The proposed project is consistent with the decision tree recommendations. Although the breakwaters are located outside of the Wetlands Board's jurisdiction, the project must be reviewed in its entirety with the Wetlands Board's focus on the beach nourishment and the *Spartina patens* planting areas that are located within their jurisdiction. Items that should be considered are the characteristics of the source sand for the beach nourishment, proposed elevations of the sand fill, potential for time of year restrictions and planting specifications. The beach nourishment and planting areas are also within the Army Corps of Engineers' jurisdiction and they will also be considering the items noted above through their review and permitting process.*

Mr. Jim Gunn, agent, explained the project.

Mr. Chubb asked how long the project would take.

The Chair called for public comments.

Mr. Thomas Waller, Jr., an adjacent property owner, expressed his concern about sand filling the mouth of the small creek to the south. He explained that in order to prevent upland flooding the flow of this creek must be kept open using hand labor. He wanted assurance that the applicants would offer assistance in keeping the creek open. He also noted that approximately 100 feet of beach has disappeared in this area and added that he and his family are not opposed to the proposed project.

The Chair informed Mr. Waller that the Board has no authority to request that the applicants provide such assurance.

There being no other comments, the hearing was closed.

Mr. Lusk noted that he had no issues with the project as proposed.

Action:

Motion was made by Ms. Field to approve the project as presented for a period of one year from today's date to complete. Second was made by Mr. Brown and the motion carried unanimously.

Old business

General comments were made about the Final Permit Fidelity Report & VIMS Workshop attended by Mr. Chubb and Ms. Drury. Mr. Chubb stated that county research contradicted the data provided in the VIMS report in that the Board had actually agreed or mostly agreed with Decision Tree/VIMS recommendations 68% of the time instead of 25% as reported by VIMS. He noted that many of the localities represented at the workshop had disputed the VIMS data in the Fidelity Report.

New business

Ms. Ellen Grimes, agent for Joseph and Evelyn Witek, requested a reopening of the public hearing on VMRC 2013-0555 that was concluded on May 15, 2013 when the Board voted to deny the application. She reviewed the background of the application and noted that an appeal has been filed to VMRC to be heard in July.

Mrs. Downing read a legal opinion offered by Beverly Leatherbury, county's legal counsel, that the applicant can note an appeal, but cannot reopen a hearing once a final decision has been made.

Hearing the recommendation of legal counsel, the Board did not entertain a motion or act to reopen the hearing as requested. It was noted that such action would also set a precedent for future applicants to request the same consideration.

Ms. Grimes then described a revised project to replace the original as presented in VMRC 2013-0555.

The Board noted that if a new application is filed it would be scheduled in July if all legal requirements can be met.

Statements from the public

Ms. Grimes expressed her opinion that the Board should not be designing projects as had been suggested at today's meeting. She was concerned that no Board member had actually stated for the record that the Board does not design projects.

Agent to the Board Chair Report: none.

Enforcement Agent Report: none.

Consideration of minutes

The minutes of the May 15, 2013 meeting were unanimously approved as submitted upon motion by Mr. Lusk and second by Ms. Field.

Prior to adjourning the Board unanimously adopted a Resolution of Appreciation as follows in honor of Mr. Gates and the exemplary example he set while serving on the Board.

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

***Whereas,** Mark Gates served his community as a member of the Northampton County Wetlands Board from October 19, 2009 through June 30, 2013 and*

***Whereas,** Mr. Gates 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. Gates, 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 Mark Gates for his leadership and service to this Board and his community.*

*Adopted by the Northampton County Wetlands Board
June 19, 2013*

Adjournment

There being no other business the meeting was adjourned at 12:57 p.m. upon proper motion by Mr. Lusk.

Chair

Secretary