

**NORTHAMPTON COUNTY
WETLANDS BOARD**
Minutes
May 16, 2012

This was the regular meeting of the Northampton County Wetlands Board held on Wednesday, May 16, 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 and Mark Gates. Absent from the meeting was William Brown.

Also attending were Hank Badger with the Virginia Marine Resources Commission (VMRC); 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 11:00 a.m., and a quorum established.

It is noted for the record that Ms. Hickman and those Board members present conducted field trips prior to the meeting to those properties as described in the agenda under public hearings.

All those present wishing to speak during today's meeting were then sworn in by the Chair.

The first hearing was called to order.

Public hearings

A. VMRC 2012-0464: Don & Dawn Mann have filed for an after-the-fact rip rap revetment permit located at 4031 Bluff Lane. The property is located in the Latimers Bluff Subdivision and described as being Tax Map 117A, double circle 4, Block E, parcel 3 on the Chesapeake Bay.

Ms. Kellam stated that no opposition to the proposed project has been received to date.

Ms. Ellen Grimes, agent for the applicants, stated that the contractor has created the need for an after-the-fact permit. She noted that she had visited the project site and had located the existing buried toe which does not appear to be disturbed by the recent violation activity. She added that the original project was installed in 2001 supposedly outside of the Board's jurisdiction. The contractor installed filter cloth and new stone over existing stone. It was her opinion that the original project did not have an adequate toe or adequate sized rock and depressions have formed which need to be filled with larger stones. She added that the new stone is "OK", but should have been somewhat larger. When questioned, she confirmed that

the proposal does not include expansion to the existing toe. She also clarified that depressions in the rock layer have formed in spite of having 2 layers of stone.

Ms. Field asked how the new stone would be installed if approved. Ms. Grimes suggested that a long-arm excavator be used from the top of the bank or access could be cut through the buffer by grading back and then re-vegetated.

Ms. Hickman confirmed that the applicant will be required to replant any area disturbed.

During discussion Ms. Kellam and Ms. Grimes agreed that this project will probably have constant maintenance problems due to an inadequate toe and questionable stone size.

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

Action:

Motion was made by Mr. Chubb to approve the project as presented in the as-built drawings dated March 26, 2012 and with the condition that any work done to the depression areas in need of additional stone shall be approached from the top of the bank only and not from the beach area. Second was made by Mr. Lusk and the motion carried unanimously 6 to 0.

When Mr. Gates voiced concern about vegetation requirements, Ms. Hickman noted the applicants must file a Water Quality Impact Assessment that will cover vegetation requirements for the area.

The second hearing was called to order.

B. VMRC 08-0103: Cherrydale Holdings, VA LLC has applied to renew an expired permit for a change in use of a private pier to a community pier and to extend the existing 10 foot by 30 foot "T" by construction of a 10 foot by 700 foot open pile structure on lots 13, 14 and 15 to provide mooring facility for community lot owners. The property is described as Tax Map 59, double circle A, parcels 13, 14 and 15 and is located on the east side of Blue Crab Lane.

Mr. Ben Mears and Mr. William Parr, agents for the applicant, were present to answer questions.

Ms. Kellam read the Board's previous action taken on this matter as follows, "After much discussion motion was made by Mr. Lusk to approve the application as submitted with the following conditions: (1) that a legal document shall be recorded with the court and shall run with the land relinquishing all individual property owners' riparian rights within the subdivision; and (2) that the Board's official Wetlands Permit shall be issued simultaneously with the recordation of the legal document as referenced in condition (1); and (3) that the permit shall

be valid for a period of three (3) years and shall expire on May 21, 2011. Second was made by Mr. Meyers and the motion carried unanimously.”

Ms. Kellam stated that no wetlands permit was in the original 2008 file. Therefore, it appears that that staff was never informed as to whether or not the deed restrictions had been recorded which would be part of the official file as well. Ms. Kellam explained that since a recorded copy was never provided to the county, the wetlands permit for this project was never issued. However, Mr. Parr produced a recorded copy of the restrictive covenants for the Board’s information which was then read by Ms. Kellam as part of the official minutes (copy attached).

It was noted by Mr. Badger that VMRC had issued its permit in 2008 which will expire November 25, 2014.

Discussion was then held on the legality of renewing a permit that was never officially issued and whether or not the permit renewal can be issued in the new property owner’s name. Ms. Kellam and Ms. Hickman agreed that there should be no problem with changing the name on the permit since the property has been legally transferred to a new owner.

Mr. Badger explained that VMRC transfers its permits into a new property owner’s name as a standard operating procedure.

There being no other public comments the hearing was closed and Board discussion continued.

Ms. Drury stated her support of the project as revised since it did not appear that any great harm would be caused to the environment.

Mr. Lusk stated his support; however, he did suggest that the pier be shortened somewhat to alleviate any possible detrimental impacts to the very northern and southern areas where the pier is proposed to be extended. He noted that this proposed project is a much better alternative than allowing many individual property owners to construct private, open pile piers along the entire shoreline. He added that the restrictive covenants should be kept and enforced with the approval of this project.

The Chair asked what formula was used to determine the length of the pier ends. Mr. Badger explained that for every property that gives up riparian rights VMRC allows 2 boat slips which is fairly generous.

Mr. Mears added that each slip was given 30 feet of space to allow boat owners adequate room to dock and to ensure secure moorings during storm events.

Mr. Lusk, Mr. Mears and Mr. Parr then viewed the project location drawings so that Mr. Lusk could pinpoint the area of most concern to him. Mr. Mears suggested that the north end could be tucked back a little and Mr. Parr suggested that the length could be adjusted there by adding to the southern end. Mr. Parr stated that revised drawings depicting the adjustments would be submitted to the Board and VMRC.

Discussion ensued concerning how to approve the application given the special circumstances surrounding the original permit.

Ms. Drury made a motion to recommend approval of the project as submitted with the stipulation that the original conditions still stand and are part of this approval.

Mr. Badger suggested that the original permit be reactivated.

At this time, Mrs. Downing left the meeting in order to confirm whether or not the original county wetlands permit was ever issued.

During the absence of Mrs. Downing the Board stopped its discussion and considered other agenda items.

Old business

Ms. Kellam informed the Board the Written Statement of Consent Agreement between the Board and Karla Hehl had been mailed to her this week for consummation. Ms. Hehl is to return a notarized copy to the county for our records.

Ms. Kellam reported that she has received from several Board members written comments on the draft Shoreline General Permit as presented by VMRC. Staff will be forwarding those comments on to VMRC for information purposes.

New business

Statements from the public: none.

Agent to the Board Chair Report

Ms. Kellam reported that a new application has been filed for a replacement bulkhead; therefore, there will be a meeting in June.

Ms. Kellam then gave a status report on the Granville Hogg appeal matter noting that a request to dismiss will be filed with the court.

Enforcement Agent Report

Ms. Hickman reported that one violation has been discovered involving clearing of wetlands which is an on-going investigation at this time.

Consideration of Minutes

Motion was made by Mr. Gates to approve the April 18, 2012 minutes as submitted. Second was made by Mr. Lusk and the motion carried 6 to 0.

The Board continued discussion of the Cherrydale matter once Mrs. Downing returned and confirmed that the 2008 permit was written and placed in the official file, but never actually issued by the county.

Mr. Badger stated his opinion that the Board could re-open this matter, reaffirm its original decision, activate the permit and revise to include an extension of time and applicant name change.

The Chair suggested that legal counsel be advised of the situation first and continue this matter next month.

Due to the unusual circumstances surrounding the original 2008 permit, Ms. Drury agreed and rescinded her motion.

Action:

Motion was made by Mr. Lusk that legal counsel be sought concerning the unusual circumstances of this matter and that discussion continue next month. Second was made by Ms. Field and the motion carried unanimously 6 to 0.

The third hearing was called to order.

C. 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. Grimes stated that she had visited this property earlier in the day while Ms. Hickman and present Board members were also there. It was her opinion that some erosion is occurring along the right side and there is no toe protection. She also suggested that the existing water box be protected if possible.

The Chair suggested that the large rocks and plastic be removed to allow some leveling of the area.

Discussion followed with various other suggestions. Mr. Chubb expressed his opinion that the failing cherry tree be removed from the shoreline area due to its exposed roots.

Discussion followed with most Board members being of the opinion that the proposed project would never have been approved if submitted prior to the violation. Others thought that less harm would be done to the environment by leaving the settled stone alone.

Ms. Kellam expressed her opinion that after-the-fact permits make it difficult for staff to handle violations. She suggested that if this project would not have been approved without a violation involved, then the applicant should be made to remove it and restore the property back to its original condition.

The Chair asked Ms. Kellam to read the USACOE's recommendations.

- (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.*

Ms. Grimes then suggested the following:

1. Remove all stone on the right side of the pier while working at low tide cycles & restore;
2. Put up silt fence in front of existing toe;
3. No work is to be done during crab shedding and clam growing season to prevent detrimental impacts to both businesses
4. "Fluff" the bank area with a backhoe;
5. One month later remove the silt fence and let natural remediation occur;
6. Stack rock to protect tree area if necessary

Ms. Kellam noted that the decision tree had concluded that there should be vegetated management of the marsh and/or repair of the area. She added that there is no formal staff recommendation on this permit application.

Ms. Field agreed and suggested that the Board should adhere to the decision tree findings and that the applicant be made to take everything out, vegetate where appropriate and allow no toe.

Mr. Lusk suggested that any motion contain language stipulating coordination of work is to be done to alleviate any impacts during crab shedding and clam aquaculture activity.

The Chair stated his opinion that after-the-fact permits resulting because of violations are becoming a problem. However, he was still concern about environmental damage that may be caused by removing all of the concrete from the property.

Mr. Chubb stressed that the applicant must have clear direction on the Board's decision. Ms. Kellam added that this matter has been an on-going violation that created an after-the-fact application. The applicant still has to do a restoration plan and the Board can schedule a hearing on that after notification is sent to the property owner.

When fines were discussed Mr. Badger noted that the applicant has to agree to the fine amount or the matter goes to court as a civil charge. Ms. Kellam added that in this case the process was not followed and no civil charged can be issued.

Ms. Field asked for clarification concerning the original condition of the area. Ms. Kellam stated that there was only mud flat and no existing vegetation.

Mr. Chubb suggested that there be restoration of mud flat to its original condition; removal of all large rocks; allow a limited number of rocks to be placed along the bank to create a small toe in order to separate the mud flat from the upland; and restoration of any plantings.

Discussion followed on how much restoration should be done and how much rock or concrete should be removed.

Action:

Motion was made by Ms. Field to deny the permit, require removal of all concrete and filter cloth; and to that the property be restored back to its original condition prior to the violation. Second was made by Ms. Drury and the motion carried 5 to 0 with the Chair opposed.

Adjournment

There being no other business the meeting was adjourned at 12:34 p.m. upon proper motion by Mr. Lusk and second by Mr. Gates.

Chair

Secretary