AT A REGULAR MEETING OF THE MATHEWS COUNTY WETLANDS BOARD, HELD IN THE HISTORIC COURTHOUSE ON WEDNESDAY, JUNE 4, 2014 AT 7 PM.

CALL TO ORDER

ROLL CALL

Board Members Present: Chairman Kurkowski  
Mrs. Walden  
Mrs. Goodwin  
Mr. Brown  
Mr. Broderson  

Board Members Absent: None

Staff Present: Thomas Jenkins, Planner/Wetlands & Marine Projects Coordinator  
John Shaw, Director of Planning & Zoning  
Mike Johnson, Habitat Management, Virginia Marine Resources Commission

APPROVAL OF MINUTES

A. Wetlands Board Meeting Minutes - April 2, 2014  
April 2, 2014 Wetlands Meeting Minutes Attachment

MOTION: On motion of Mr. Broderson, seconded by Mr. Brown, the Mathews County Board of Supervisors voted 4-0-0 as follows, Chairman Kurkowski, Mrs. Walden, Mr. Brown, Mr. Broderson – aye, with Mrs. Goodwin abstaining to approve the April 2, 2014 Meeting Minutes

GENERAL PUBLIC COMMENTS

PUBLIC HEARINGS

a. Roane Point LLC, VMRC #14-0530, Map #1 (A) 22, 1414 Roane Point Drive - Request for a permit to construct two 40 foot by 12 foot armor stone headland breakwaters along the Piankatank River shoreline.

Mr. Jenkins read the CBPA report, which stated “The information concerning the proposed single access truck and/or material delivery route through the RPA was not provided by the WQIA. This route must be determined prior to any delivery of materials to the site. Any existing indigenous vegetation along the shoreline should be preserved to the maximum extent
practicable. Any removal of healthy vegetation within the RPA is subjected to mitigation/replacement and will require a Memorandum of Agreement. This must be verified by a Planning and Zoning staff member prior to the commencement of the project."

No one stood to speak regarding the application.

Mr. Broderson: I move to deny because this structure is in excess of anything that would be warranted in this location. They’ve got 18 inches of tide; at low tide, the whole thing will be exposed. What in the world are they doing with 4 feet, which means the base will be 14 feet? If they brought it down to 24 inches, which would take it from low tide to high tide, then you’re whole base would only be 4 feet and not 14. I move to deny.

Mr. Brown: My comment would be that why did they pick those two areas and not the rest of the shoreline. That’s what I was kind of confused on. Why those two little areas?

Mr. Broderson: There’s a lot of shoreline there. My feeling is Mr. Callis’s experience is such that this is the structure he’s used to making, and it’s not the right structure for this property or for this situation at all.

Mr. Kurkowskii: I think it’s a bit of overkill, it’s just a massive stonework. Impact is far greater than should be necessary to protect this particular bit of shoreline.

Mrs. Walden: At the most it would be 4 feet across at the base, if it was 2 feet up. I mean 8 total.

Mr. Broderson: Half of what it is currently.

MOTION: On Motion of Mr. Broderson, seconded by Mrs. Goodwin, the Board unanimously voted to deny the applicant’s request for a permit with the rationale that this structure being proposed is grossly in excess of what’s required for this property.

b. Anthony Heerbrandt, VMRC #14-531, Map II A6 (15) A, 468 Henrys Road - Request for a permit to construct a 122 LF revetment and 46 LF marsh toe along the Barn Creek shoreline.

Mr. Jenkins read the CBPA report, which stated “There are no issues with the proposed single access truck and/or material delivery route through the RPA to the construction site location. Any existing indigenous vegetation along the shoreline should be preserved to the maximum extent practicable. Any removal of healthy vegetation within the RPA is subjected to mitigation/replacement and will require a Memorandum of Agreement. This must be verified by a Planning and Zoning staff member prior to the commencement of the project.”

Mr. Jenkins added that he and Mr. Johnson performed an on-site assessment of vegetated wetlands within the staked area, and found there to be close to 90 sq. feet of spartina grass that could be subject to disturbance. This was contrary to the 50 sq. feet found in the application.
Mr. Jay Foster of R&W Marine Construction, agent for the applicant, stood to address the Board.

Mr. Foster: Sorry for being late. Basically, this application, there's a section of shoreline along Mr. Heerbrandt's property, that wasn't protected earlier. The nature of the fetch coming in is pretty severe at times, and he's in danger of losing his road coming in to his house. We have review this several times; Mike with VMRC has come down, delineated where the wetlands are. We pulled back the project, but unfortunately, to go around some of the trees that are there, I'm estimating about 50 sq. feet of wetlands impacts that are just unavoidable. In order to do this project, Mr. Heerbrandt has said that we would pay into the wetlands bank for these fees. We don't have anywhere else to mitigate.

Mr. Broderson: Have you considered any other form of erosion control for this location. We really have two sites here, and the site that you're describing, is to the north of the pier where the road comes in, and the other site is to the south of the pier, the marsh toe. Let's look at these separately so we can get through this thing. Have you considered anything other than 122 feet of revetment?

Mr. Foster: We have discussed with Mr. Heerbrandt, the option of near shore breakwaters. The expense is so much that it's not doable for him. He's tried to plant wetlands grasses in the area where it's eroding, and they've all just washed out. So we're trying to put this revetment up and in front of the wetlands grasses to toe in and protect the trees and driveway. I don't have any other comments, unless you have any other questions.

Mr. Heerbrandt, property owner and applicant, stood to address the Board.

Mr. Heerbrandt: I started planting aquatic grasses about 20-25 years ago along this shoreline area that abuts against my driveway that comes in. And I have been doing it on and off through the years. I've gotten to the point where I have a vertical area that can't be planted anymore that extends down past my pines. And then, there's areas there that are getting flat & flat, and roots are being exposed on my largest pines, and it's going to topple over and take a bunch of land with it. So I have done the aquatic plugs from different areas, so I'd like to say that I'm at the point where I'd like to just stop the erosion.

Mr. Broderson: We've heard that you had a discussion with the contractor about alternative forms of erosion control, and it was a financial hardship to do anything other than revetment that Jay has proposed here. You've got $10,000 to do this revetment. What was the estimated cost to do a near shore sill?

Mr. Heerbrandt: I don't remember that.

Mr. Broderson: Ok so maybe it's not something that was discussed with you?
Mr. Heerbrandt: I think it was, but I don’t know. I’m not a marine engineer.

Mr. Broderson: The number didn’t capture your attention I gather.

Mr. Heerbrandt: No. 122 feet sounds like a lot, and I’m in the process right now of shortening that. But I do need rock, and I don’t like rock. I put this off for 10-15 years when I should’ve done it before, but I need it to protect my driveway, which will fall over when my pines fall over. I need to protect my pines, and that’s about it. And one small area on the other side of the pier.

Mr. Kurkowski: Well I don’t think you can consider the financial cost. This board doesn’t have the authority to take finances into consideration. However the risk to the driveway is the issue at hand. And the trees.

Mrs. Walden: How close is the driveway to what we’re talking about?

Mr. Heerbrandt: 3 feet. 4 feet maybe.

Mr. Broderson: Just to be a thorn in everybody’s side, do you have another option for your driveway?

Mr. Heerbrandt: Like put in a different driveway?

Mr. Broderson: Well, for example, when you come in now, you come in right down the waterfront, and if you were to go around where your garage is and go back out to the other side of those bushes, would that solve your driveway problems?

Mr. Heerbrandt: I don’t care to do that though.

Mr. Broderson: I understand that, but maybe we don’t care too much to eliminate that shoreline. We’ve got to figure out a system that will get everything you need done, done, with the minimum adverse environmental impact. Now we’re talking about somewhere between 50 & 90 sq. feet of vegetated wetlands that are going to be lost to the environment, and we’ve got to think about alternatives. Mr. Foster said he discussed with you a near shore sill, which would be environmentally more sensitive, and you don’t remember that conversation, which tells me maybe we need to go back to the drawing board and find out what would be involved in doing something other than revetment. See what your options are. See if we can’t do something a little more environmentally sensitive to accomplish your goals. I’m fully in concert with your need to protect your shoreline and your driveway, but I would like to see it done in a more sensitive fashion. I’m not sure we’ve considered all the possibilities here.

Mr. Heerbrandt: I thought we had. That’s what I’m paying this agent for. To come up with ideas which are environmentally sound and also protect against erosion, because if you do nothing, it’s just going to wash the whole thing away.
Mr. Broderson: I don’t propose nothing is the answer. I know there are people in the world who might, but I don’t. Something should be done here. It’s a question of what has to be done, and what will accomplish it with the most environmentally sensitive results, and that’s where we’re trying to get. I’d like to think you’ve considered other things, but I’m getting the impression that you probably haven’t had other options offered to you, so maybe that needs to be considered.

Mr. Kurkowski: What Mr. Broderson is suggesting is that you ask the Board to defer action on this for one month’s time, while you have a chance to consult further with Mr. Foster, and come back next month and continue your discussion with the Board. Would you be willing to do that?

Mr. Heerbrandt: To table it for a month?

Mr. Kurkowski: Yes, to table it for a month. To give you and Mr. Foster a chance to confer further and then come back and say this is what we want to do.

Mr. Heerbrandt: Sure, that’s fine.

MOTION: On Motion of Mr. Broderson, seconded by Mr. Brown, the Board unanimously voted to table the applicant’s request for a permit.

Mr. Foster stood and asked specifically for the Board’s reason in tabling the request.

Mr. Kurkowski: So you can have further discussion to explore other options to satisfy the requirements of Senate Bill 964, where the preferred method is a living shoreline. That’s why Mr. Broderson is asking such detailed questions, because we’re required to discuss a living shoreline, and to find a reason from the agent or applicant why it won’t work.

Mr. Foster: What is the criteria for that rationale that it won’t work? He has tried...

Mr. Kurkowski: There is a statement that is issued by VIMS which is a generic report, versus the old VIMS report which was specific to the locale, where they actually put in a disclaimer which says ‘this the preferred methodology to protect the shoreline, however it may not be applicable for these reasons.’ Pick one. Come back next month and say the preferred method will not work for this reason. They usually give 4-6.

Mr. Foster: I understand that, I’ve seen those.

Mr. Kurkowski: You’ve seen them? Well pick one. If you and Mr. Heerbrandt determine that revetment is the best way to go, we will need a basis for a rationale, which would be one of the conditions within the disclaimer that applies in this situation.

Mr. Foster: If we come to the conclusion that a nearshore sill would be best, would this board be more friendly considering that. He’s got to do something.
Mr. Kurkowski: We totally agree. A nearshore sill is a living shoreline that VIMS is pushing at this time. The revetment is a distant second choice. The preferred approach is not the required approach; however, due to Senate Bill 964, wetland boards all over the Commonwealth must ask the question of an applicant or agent, why are we not going with the preferred approach, and we’re going to need one of those reasons. If in your discussion between you and Mr. Heerbrandt, you determine that revetment is the way to go, we need a reason why the preferred method, in this case the near-shore sill, won’t work. Then I believe the Board would approve the application for revetment if you could show why the preferred method won’t work.

Mr. Broderson: You also may want to check your calculations on the vegetated wetlands. Mike and Thomas got a significantly different number. While you’re out there you may want to re-measure.

Mr. Foster: I don’t think it’s more than 50 sq. feet. We were talking about around the trees.

Mr. Jenkins: Jay, what we specifically looked at was where you were tying into the revetment near the dock. If the contour comes closer to the house, you can cut way back on that number.

Mr. Foster: We were going from the top.

Mr. Jenkins: We didn’t see a stake there.

Mr. Foster: I had Richard pull the stake at the bottom, I’ve been dealing with a torn meniscus, and I haven’t been able to get out there. I called Richard and told him to pull the stake at the bottom where the rock was, and set it at the top. On top of the existing revetment, that’s where it would start. Not down below. I didn’t clarify that, I’m sorry.

c. Gwynn’s Island RV Resort, VMRC #14-0666, Map - Request for a permit to construct one 50’ stone groin and one 100’ stone groin, and to fill 800 cubic yards of beach nourishment with like quality sand between the two groins along the Chesapeake Bay shoreline.

Mr. Jenkins read the CBPA report, which stated: There are no issues with the proposed single access truck and/or material delivery route through the RPA to the construction site location. Any existing indigenous vegetation along the shoreline should be preserved to the maximum extent practicable. Any removal of healthy vegetation within the RPA is subjected to mitigation/replacement and will require a Memorandum of Agreement. This must be verified by a Planning and Zoning staff member prior to the commencement of the project.

Mrs. Betty Pugh of SBH Construction Co., agent for the applicant, stood to address the Board.

Mrs. Pugh: What the applicant is trying to accomplish is to gain water access. With nearly every section of the property protected with revetment, we thought if that we could use a groin system, it would not only allow the property owner to access water, but also help stop some of the additional flow of sand from accreting into the existing tidal pond. That’s what we are hoping. All of the grasses that grow there will clearly come back with no problem. If we see any issues with that, it’s going to be re-sprigged, because the whole point is that the owners want to
create a natural area, so in order to accomplish this we’d like to have the existing grasses continue to flourish. May I answer any of your questions?

Mr. Broderson: I presume that you’re removing a whole lot of stone?

Mrs. Pugh: Yes, and I should have told you that. We had originally requested in our many applications for this property, a revetment that goes all the way around to the end and acts as a sill that comes around down into the tidal pond. With that said, the existing revetment currently comes from the building, and comes across. We would like to stop that just past the building, and any revetment stones past where the 50’ groin is going is going to be used for the groin. There will be no revetment between the groins; all of that stone is coming up. I believe that Steve has in mind to put the sand in a berm between the groins. So it will continue to collect and the grasses will grow there.

Mr. Broderson: Did we approve the revetment all the way around?

Mrs. Pugh: Yes, that is an existing permit.

Mr. Broderson: So essentially you are giving up probably quite a bit more stone covered bottom, so we’ll have a net gain of goodness.

Mrs. Pugh: Absolutely, there will be a great deal more vegetation there in the area where the revetment would’ve been. I don’t think there’s anybody from Mathews that doesn’t know that sand flows in there at an enormous rate. That will help protect the grasses and they’ll come back.

Mr. Broderson: When I was down there day before yesterday, there seemed to be a lot of red stakes on Mrs. Stone’s property. Are you doing anything over there? Do you have any idea what all those flags meant? Are they left over from years ago?

Mrs. Pugh: No.

Mr. Jenkins: They’re property boundaries from a survey.

MOTION: On Motion of Mr. Broderson, seconded by Mr. Brown, the Board unanimously to approve the applicant’s request for a permit, with the rationale that not placing all the stone that was previously permitted, removing some of the stone that has been placed, and replacing it with the groins as proposed will give mother nature a net gain in goodness and beach and grasses and therefore this project will not have an adverse environmental impact.

NEW BUSINESS

Replacement of Bulkheads- Question of Jurisdiction

Memo to the Board re: Jurisdiction of Bulkheads
Mr. Jenkins raised the question to the Board of whether or not replacing a bulkhead within the same footprint constitutes a board hearing for a permit, or whether that falls under basic maintenance. Members of the planning & zoning staff wanted the Board's official position on the matter.

Mr. Broderson: You're talking about taking an old bulkhead out and putting a new one in the exact same place?

Mr. Jenkins: Yes.

Mr. Broderson: What’s your decision?

Mr. Jenkins: From VMRC, the opinion is that it’s not any new encroachment over wetlands.

Mr. Broderson: It’s just a maintenance issue.

Mr. Jenkins: That’s the way I see it. Mike and I were discussing it today; the last grain of sand that touches the bulkhead is wetlands, but not the bulkhead.

Mr. Broderson: Now putting a new bulkhead in front of an old bulkhead is a totally different matter.

Mr. Jenkins: Certainly. One thing that John and I discussed is what happens when 1.5 times high tide is above the bulkhead? Would that change the opinion of the board.

Mr. Broderson: That almost sounds like you’d have to bring in someone who knows wetlands vegetation and decide from a vegetation standpoint whether or not it really constitutes wetlands or uplands. But if it gets wet, it’s ours.

Mrs. Walden: So we are going to go with the philosophy that if it goes in the same footprint, we will not have it brought before the board for a hearing. How does the applicant get that information? At what point is that determination made, and by whom? Does the person need to submit an application and pay money to be told that you didn’t need to do it?

Mr. Jenkins: You may remember Michael Fisher, back in February or March, applied for one up on East Shore Drive. He wanted to go up and channelward with it. Y’all denied it, and it came back to us in the same footprint, and I signed a no-permit-necessary based on Mike’s advice, and Sue questioned that, and that’s why we’re here.

Mr. Broderson: That works for me.

Mr. Brown: But in the past, hasn’t every application come before us?

Mr. Broderson: Yes, if it’s an application, but what he’s saying is that he doesn’t have to put in an application.
Mr. Kurkowski: Is it the VMRC that assigns jurisdiction when they receive the application. Who makes that determination? I remember reading letters in the past saying, ‘we have received this application, you may need to get permits from the Corps, from the LWB, or from the VMRC.’

Mr. Johnson: I review an application; if I determine it does not need a permit, I send out a letter saying no permit is necessary from MRC.

Mr. Kurkowski: When you get the application with a question of a bulkhead like this, just make the determination that the wetland board doesn’t have to hear it if it goes in the same footprint.

Mr. Broderson: Did that one you’re talking about even go through VMRC or did the guy just come to you and say this is what we want to do?

Mr. Jenkins: A JPA came to me, and I returned a NPN letter to them, just as I would for a pier.

Mrs. Walden: I seem to remember that we discussed that he could raise it up if he chose to.

Mr. Shaw: Specifically directed to Mr. Brown’s point, there’s been plenty of circumstances where folks have come here and put the bulkhead back in the same footprint, and it was heard by this body. I can think of a number of examples in the 5 years I’ve been here. So I guess the question is, if this is a blanket policy; thereby establish that in all circumstances, because you have a bulkhead and you’re putting it back in the same footprint, it wouldn’t rise to the level to be heard by this body. Do we want to establish that it would not rise to that level in all circumstances?

Mr. Kurkowski: That’s why I asked Mr. Johnson to make the determination for us.

Mr. Shaw: But in some instances, Mr. Johnson is making determinations based on whether or not it’s a matter of VMRC’s jurisdiction, not LWB. In some circumstances, obviously it’s going to be landward of mean low water, and it’s an action covered by the Virginia Wetlands Act.

Mr. In that case, when Mr. Jenkins receives an application, he should probably discuss it with me. We will make a determination at that point whether it needs to be heard by the Board.

Mr. Jenkins: One scenario that John and I discussed is that if they have a whole bunch of spartina grass at the base of the bulkhead, it may be more sensitive than just replacing a bulkhead along a tidal mudflat.

Mr. Shaw: It’s a situation where you could lose vegetated wetlands because of that action.

Mr. Kurkowski: When you receive an application for replacement of a bulkhead in the same footprint, we’ll discuss it and make a determination.

Mr. Shaw: That’s what we’re seeking, such that we don’t have a circumstance that it’s a done deal, replace automatically. Thank you.
Mrs. Walden: What I was trying to get at earlier, is at what point does money change hands for the applicant? Does it come with the application? If we're going to approve these things based on zero impact, are we going to charge these people to get that answer?

Mr. Jenkins: You mean the $150 application fee? I wouldn't think there’d be any money.

Mrs. Walden: So no money comes with an application?

Mr. Foster: It used to be standard procedure that if you had an existing structure, like a groin, bulkhead, anything, that was previously permitted, that you could rebuild it. The Corps has a standard permit, I think it's #3, that says you're allowed to rebuild and maintain structures that have been previously permitted. And, you're talking about replacing bulkheads, and things that have been previously permitted, but it's been this Board's policy that we have to apply for a new permit to replace it. I don't think it's fair to the public to have to pay for something twice.

Mrs. Walden: That's the point I'm trying to make Jay.

Mr. Broderson: If you get a check with the application and it's determined that this board doesn't need to hear it, give them the check back.

Mr. Jenkins: That's what I did with the one that came in last week.

Mr. Broderson: We will make sure that somebody who doesn't have to come before this board, doesn't end up giving us money, as much as we'd like to have it.

Mr. Shaw: It's a policy in our department if it comes here and ultimately doesn't rise to the level of something to be heard, if they paid us for it, we'll reimburse them or give them the check back.

Mr. Foster: This Board has made people pay for an application for previously approved projects. We've had to go through the whole permit process again, and they've had to pay the fees. So don't tell me that you don't do that, because you do do that. I can give you ten cases.

Mr. Kurkowski: Jay, we're changing it.

Mr. Foster: I think it's a great policy to do that.

Mrs. Ashe: I don't want to beat a dead horse, but let me add a couple of things. When I used to have another hat on, for 20 years, my responsibility was to work with you guys, and make sure that what you did was within the law. That's what I felt like my major responsibility was. There were policies set by this board as a result of conversations with attorneys and VMRC. During that time, to my knowledge, we did not have any applications come before the board for replacement of an existing structure, because there was no additional impact to wetlands. That's the key, that's why you give rationale on your votes, for what impact it will have to wetlands. And if there is no impact to wetlands, then there's no need for you guys to hear it. That's my opinion, that's what I used to do. In the last 5 years, that's changed. Jay is right, you have had things come before you, and that was mostly a staff decision to send those two you.
And of course when you get it, you say that you need to act on this. But I think that’s where the change happened.

Mr. Kurkowski: Well we’ve changed it now.

Mrs. Walden: At what point does someone make that decision?

Mrs. Ashe: They really don’t need to put in a JPA, if it’s something that’s not going to be approved. You’re having the citizens pay, if they hire an agent to submit that application, and then that decision is made. If it’s an existing structure, than it has no impact to wetlands, because it’s already existing in that footprint. But if they change the footprint one inch, then yes. If they go forward the recommended 2 feet, then yes. But basically that’s what the policy was a long time ago.

OLD BUSINESS

a. William Terry, VMRC #12-1503, Map 16A (1) 40, 459 Hicks Road - Request for a permit extension. Original permit authorized the construction of a 319’ marsh sill along the Lanes Creek shoreline. The property owner is installing the sill himself, and 76’ remains to be done. Permit expires June 5, 2014.

William Terry, VMRC #12-1503 - Request for Permit Extension

Mr. Jenkins read Mr. Terry’s request for a permit extension.

MOTION: On Motion of Mrs. Walden, seconded by Mr. Brown, the Board unanimously voted to approve the applicant’s request.

VIOLATION REPORT(S)/UPDATES(S)

a. Ron Sopko

Mrs. Walden read Julie Bradshaw’s (VIMS) violation report.

Julie Bradshaw’s Violation Report

b. Mark & Tricia Stall

Mr. Jenkins visited the Stall’s property to observe the progress of the grass growth on May 20. 2 photographs were included in the board packet, showing the grass growth on May 20, and on June 4, 2013. Being that the area experienced a harsh winter, he suggested that a follow-up visit be made later in June or July, when the growing season is further along.

May 20, 2014
June 4, 2013
GENERAL PUBLIC COMMENT

ADMINISTRATIVE MATTERS

a. VIMS Living Shoreline Workshop - Staff Summary

The summary was postponed because Mr. Jenkins was waiting on additional materials from Karen Duhring at VIMS.

ADJOURNMENT

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Ken Kurkowski, Chairman
Mathews County Wetlands Board

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Thomas Jenkins, Wetlands & Marine Projects Coordinator