

Virginia: At a meeting of the Accomack County Wetlands Board, held in the chambers of the Board of Supervisors on the 25th day of March, 2010, A.D.

Members present:

Mr. George T. Parker, Vice-Chairman
Mr. Earl B. Frederick

Alternate Members Present:

Mr. Mikel Patti

Members Absent:

Mrs. Lee L. Merrill, Chairman (ABSENT)
Mr. C. Lee Davis (ABSENT)
Mr. George H. Ward, Jr., Vice-Chairman

Staff present:

Mr. David Fluhart, Secretary
Mrs. Marie E. Fox, Recording Secretary

Others present:

Mr. Hank Badger, VMRC

The meeting was called to order by Vice-Chairman, Mr. George T. Parker, and opened to a public hearing at 10 AM. All applications are approved for a one year period from the date of this hearing, unless specifically noted. All applicants, speakers and representatives are sworn in before the Board on the following wetlands applications:

This Board is aware of and complies as closely as possible to the objectives of the Virginia Marine Resource Commission's Wetlands Policy of No Net Loss.

Mr. Parker commented that there were only three (3) board members present, and that it would take an affirmative vote from all three to approve an application. Mr. Parker further advised the applicants will have the opportunity to postpone their application if requested.

1). **MINUTES**

Mr. Frederick made a motion to approve the minutes of the Thursday, February 25, 2010 meeting as presented. Mr. Patti seconded the motion. Ayes: Mr. Parker, Mr. Frederick, Mr. Patti.

2). **CONTINUED FROM February 25, 2010**

1). An application from Tom Myers, et al, VMRC #10-0103, for the installation of a rip rap structure as protection for the upland toe of an eroding embankment, thereby impacting wetlands along Chincoteague Bay, 4691 Main Street, Chincoteague, Virginia. TM #30A7-2-22, 30A7-22B, 30A7-2-1

Ms. Ellen Grimes, of Coastal Resource Management, appeared before the Board to represent this application. Ms. Grimes advised she understood comments were heard by interested parties at the last meeting and has had the opportunity to read the draft minutes. She advised the project scope proposed has not changed, and the property owner still wishes to save a tree along the shoreline by working around the tree.

Ms. Grimes advised she is aware of contention regarding the boundary line dispute between neighbors. A discussion ensued regarding the location of the high water mark and the low water mark shown on existing plats submitted and in regard to the property.

At this time, Mr. Richard Veseley, appeared before the board and presented a synopsis of his position as the adjacent property owner and discussed the application as submitted indicating the riprap being constructed around the tree. Mr. Veseley further contended that it would be inappropriate to act on an application until the property line has been designated.

A discussion ensued regarding the designation of the high water mark and the low water mark and how they are determined. At this time, Mr. Hank Badger, of VMRC, appeared before the board to clarify the position of VMRC in the designation of the high and low water marks in regard to property lines.

Ms. Grimes advised she would like the board to approve the application as proposed and that the civil matters should be handled in a court.

Mr. Vesely readdressed the board in response to Ms. Grimes comments. He advised in the case of a court decision, that decision should be made prior to construction. He further stated that with knowledge that there is a possibility of placement of the riprap on the adjacent property, the board should reject or include that if the riprap is placed on his property that the applicant agree to remove it.

Mr. Parker advised he had concerns regarding the board including the removal of the riprap in an approved permit. Mr. Fluhart advised he approached the County Attorney, Mr. Mark Taylor regarding his input on this issue. Mr. Taylor advised Mr. Fluhart that the boundary line dispute should be privately settled between two parties and should not be considered as a condition in approval or denial for the removal of any structure. This issue should be solely between the two parties.

A discussion ensued regarding thoughts the board have regarding this issue.

Mr. Fluhart read the VIMS Report into the record, which stated, ***“From a marine environmental viewpoint, the preferred shoreline stabilization measure at this site would be to grade any unstable upland bank areas landward from the toe, where necessary, to a sustainable slope and densely plant the bank with native wetland and***

deep-rooted riparian vegetation to abate minor erosion. The vegetation would serve to stabilize the bank and increase the capacity to trap and treat overland runoff.”

“Temporary natural fiber logs could potentially be placed at the base of the bank to help protect against erosive forces until the planted vegetation has a chance to get established. The fiber logs will eventually decay.”

“The riparian area (yard) at this site is primarily lawn. Establishing a native deep-rooted woody and herbaceous plantings in the upland riparian zone (yard) and reducing the amount of yard being mowed are also recommended in order to provide water quality and erosion control benefits to the bank.”

“If the marsh fringe is determined to be eroding, consideration could be given to placing a properly designed marsh toe structure channelward of the marsh.”

“RECOMMENDATION SUMMARY: Grade unstable areas of bank to a maintainable slope and stabilize with vegetation; Place natural fiber logs at the undercut of the bank; Plant vegetation in the riparian area; Place a rock toe structure channelward of the marsh fringe (if the marsh is eroding).

Ms. Grimes explained her observations regarding the placement of the rock as mentioned in the VIMS Report. Ms. Grimes further asked that if the proceedings come down to a possible denial, she would like to present another option and respectfully requested a recess to discuss this option with the adjacent property owner, Mr. Vesely.

A discussion ensued regarding the voting of board members present and the necessity of three affirmative votes to carry the motion.

RECESS (10:32 AM): At this time Mr. Parker called a five minute recess to allow Ms. Grimes to speak with Mr. Vesely to discuss other options.

RECONVENE (10:38 AM): Mr. Parker reconvened the meeting.

At this time, Ms. Grimes explained the option was to begin at the base of the escarpment and grade the bank back to an acceptable slope to accommodate the Class A1 Riprap instead of installing a wedge in front of the escarpment and described this option on a drawing before the board. Ms. Grimes did state the tree there is still the center of the issue which needs to be resolved.

After a lengthy discussion, the last option presented by Ms. Grimes to Mr. Vesely, during the recess, as a resolution, was not successful, therefore Ms. Grimes opted to have the application continued until the next meeting.

Mr. Frederick made a motion to continue this request until the next meeting. Mr. Patti seconded the motion. Ayes: Mr. Parker, Mr. Frederick, Mr. Patti.

3). NEW BUSINESS

1). An application from Vernon N. Brinkley, VMRC #10-0206, to repair a section of an existing bulkhead and install riprap in front of the bulkhead, thereby impacting wetlands at 24079 Little Mimosa Drive, along Finney Creek, near Cashville, Virginia. TM#83C-1-A1

Mr. Vernon Brinkley appeared before the board to represent this application and explained the existing bulkhead was installed in the mid 1990's, but in early December approximately 75' had been damaged by a storm. Since then the bulkhead section has been replaced in the same footprint and now Mr. Brinkley wishes to install riprap at the base of the existing structure. Mr. Brinkley further stated that the bulkhead faces miles of open water along Finney's Creek.

At this time, Mr. Fluhart read a portion of the VIMS Report into the record, which stated, “***RECOMMENDATION(S) SUMMARY: Remove the damaged bulkhead; Construct revetment with toe landward of bulkhead alignment; Plant a variety of riparian plantings in the buffer; Stop the routine mowing to the bulkhead edge.***”

No one from the public commented regarding this application.

A discussion ensued regarding the amount of damage that occurred during the storm. Mr. Frederick advised he visited the site and saw the damage to the bulkhead as it is bellied out towards the channel.

Mr. Brinkley advised he is requesting to place the riprap in the repaired section of the bulkhead up to the marsh grass to help deflect the wave action to save his land. The old bulkhead will be left in place and the riprap will hopefully extend the life of the bulkhead.

After a brief discussion regarding the placement of the proposed riprap, Mr. Frederick made a motion to approve this application as presented. Mr. Patti seconded the motion. Ayes: Mr. Parker, Mr. Frederick, Mr. Patti.

4). EXTENSION REQUEST

1). An extension request from Steve VanKesteren, VMRC #07-0516. This permit expires on April 19, 2010.

Mr. VanKesteren appeared before the board to represent this request for an extension. The permit currently expires on April 19, 2010.

Mr. VanKesteren advised he was approached by Ducks Unlimited to construct this project and they have surveyed it and agreed it was a viable proposal, however they

have failed to follow through to complete the project. Mr. VanKesteren advised the board he will be completing this project himself.

Mr. Fluhart advised he had visited the property and the site conditions have not changed. He did state there is a bit of erosion taking place around the pipe and the relocation should be a good project. Mr. Fluhart explained this is the third extension requested.

After a brief discussion, Mr. Patti made a motion to approve the extension request for a period of one year. Mr. Frederick seconded the motion. Ayes: Mr. Parker, Mr. Frederick, Mr. Patti.

5). **Board Discussion – Extension Requests**
Requested by Mr. George T. Parker.

A discussion ensued regarding the reason for changing the original expiration for permits from two years to one year. Mr. Fluhart advised the change was due to more housekeeping to assist staff with keeping track of projects not being completed and the dynamics of shorelines changing.

Mr. Fluhart advised permits from other agencies could be approved for 3 years or longer. He further stated the board may consider charging a fee for future extensions. If they applicant has not received approvals from the other agencies, our board could consider waiving the fee for the extension.

After further discussion, Ms. Ellen Grimes appeared before the Board to present her views regarding additional fees for extensions.

The board members in attendance agreed to place this discussion on the agenda for the next meeting for further review.

6). **VIMS Site Visit – Chincoteague**

Mr. Fluhart advised he will meet with Karen Duhring regarding the area of delineation on Fowling Gut, Chincoteague and will forward the results of the visit at the next meeting.

ADJOURNMENT

Mr. Patti made a motion to adjourn this meeting at 11:22 AM. Mr. Frederick seconded the motion. Ayes: Mr. Parker, Mr. Frederick, Mr. Patti.

Mr. George T. Parker, Vice-Chairman