

**WETLANDS BOARD
MINUTES**

AUGUST 8, 2001 - 7:00PM

A. ROLL CALL

ABSENT

Henry Lindsey
John Hughes
Larry Waltrip
Philip Duffy

David Gussman

OTHERS PRESENT

Darryl E. Cook, Secretary to the Board
Leo Rogers, Deputy County Attorney
Greg Dohman, Assistant County Attorney
Ben Stagg, VMRC
Environmental Staff

B. MINUTES

The minutes of the July 11, 2001 meeting were approved as presented.

C. OLD BUSINESS – None

D. NEW BUSINESS

1. W-17-98: Greater First Colony Area Civic Association – First Colony Beach

Mr. Darryl Cook presented the case stating that The Greater First Colony Area Civic Association (GFCACA) was issued on February 10, 1999, a wetlands permit for beach nourishment, sand replenishment and groin placement located at the First Colony beach, 94 Shellbank Drive in the First Colony subdivision. The property is further identified as parcel (4-1) found on James City County Real Estate Tax Map No. (45-3). The First Colony beach is located on the James River.

At the July 11, 2001, Wetlands Board meeting, a discussion was held regarding the status of the work and the permit for the beach area. A staff presentation of the facts is contained in a memo to the Board dated July 11, 2001. The GFCACA has represented to the Board that some beach nourishment and sand replenishment work, 150 cubic yards, has occurred on the beach but the groin and breakwater work has not yet been accomplished. Mr. Richard Jones, Treasurer for the GFCACA, stated that they did not have the finances to complete the remainder of the permitted work and since the permit expired on February 10, 2001, they are requesting that the project be closed out and their performance surety be released.

Based on advice from the Deputy County Attorney, Mr. Leo Rogers, the Wetlands Board will need to amend the permit to remove the work associated with the groins and breakwaters before closing the project and releasing the surety. Therefore, it is staff's recommendation that permit W-17-98 be amended to include only the following conditions:

1. A preconstruction meeting will be held onsite prior to commencing the project.
2. A turbidity curtain shall be in place along the entirety of the project prior to any construction.
3. Only 100% sand is to be placed on the beach and around the cypress trees.
4. When placing the sand on the beach, the final grade of the sand is to stay below the existing timber walls.
5. Caution will be taken when placing the sand around the cypress trees, so the cypress knees are not damaged.
7. No mature trees shall be cut unless previously approved by the Environmental Division.
8. This permit will expire on February 10, 2001.

Further, the description of the permitted work on the permit form will no longer include reference to the groin placement work.

Mr. Lindsey opened the public hearing.

A. Mr. John T. Farrar, 113 Falling Creek Circle and President for the Greater First Colony Area Civic Association, told the Board that a few years ago the Association members had agreed that they needed to protect their community beach from further erosion. The original thought was to add breakwaters, beach plantings and add sand. Several members in the environmental field and different contractors were involved with the design and solution of the endeavor. As there became a sharp disagreement between all parties involved as to what should be done, it was decided not to do any work other than adding sand to the beach. Mr. Farrar stated the Association was paying a fee to keep the surety active and requested the Board release that surety.

Mr. Duffy inquired how much silt was in the marina and wanted to know when the Association planned on getting the permit to dredge it.

Mr. Farrar responded that the level of silt was such that some boats were unable to enter or leave the marina except on high tide. He also stated the Association was researching the possibility of reconfiguring the marina, prior to dredging it. He stated that a contractor had not been selected as they have had a difficult time in finding contractors that perform this type of work.

Mr. Duffy requested staff assist the Association in finding a contractor.

Mr. Hughes asked Mr. Stagg if kepone could be an issue for the Army Corps or VMRC from dredging the marina. He also wanted to verify that it would not be an issue with this Board, unless the silt was placed on the shore.

Mr. Stagg responded that it would not be an issue for the Army Corps or VMRC as all the silt was within the marina. He did confirm that the local Board would need to address it if the silt were placed on the shore.

As no one else wished to speak on the case, Mr. Lindsey closed the public hearing.

Mr. Lindsey asked Mr. Rogers to explain the legal procedure to follow on this request.

Mr. Rogers explained that in order to release the surety the original permit would need to be changed to delete that portion of the permit, which required the surety. Once the permit was changed, then the need for surety would be eliminated and the surety could be released.

Mr. Hughes made a motion to approve the modification to case W-17-98 with staff's recommendations.

The motion was approved by a 4-0 vote.

2. W-12-01: George M. Fowler – 206 The Maine

Ms. Davis presented the case stating that Mr. George M. Fowler had applied for a wetlands permit to install and repair backfill behind an existing bulkhead and for installation of a pier and jetty in reference to completion of prior permit number W-22-96 on his property located at 206 The Maine. The property is further identified as parcel (2-76) found on the James City County Real Estate Tax Map (45-4).

The property in question is along the James River. Environmental Division staff visited the site along with representatives from VMRC, VIMS and Mr. Henry Lindsey of the James City County Wetlands Board on July 20, 2001. The installation of backfill will result in a loss of wetlands behind the existing bulkhead estimated at 460 square feet comprised of Sand/Mud Mixed Flat Community (Type XV).

It is the staff's recommendation to approve this application with the following conditions:

1. A preconstruction meeting will be held onsite prior to the commencement of work.
2. Any land disturbing activity landward of the proposed backfill is within the Resource Protection Area (RPA) and will require an additional review and approval from the Environmental Division. An RPA restoration plan with surety will also be required, submitted and approved by the Environmental Division prior to the preconstruction meeting.

3. A Turbidity Curtain shall be installed prior to the commencement of work. The Environmental Division may waive the requirement for a turbidity curtain based on the sequence of construction and the filling operations proposed by the contractor.
4. All vegetation requiring removal for this project shall be approved by the Environmental Division prior to any disturbance.
5. All filter fabric used shall be inspected by the Environmental Division prior to placement of backfill.
6. The bulkhead must be fully complete and inspected prior to construction beginning on any other work included in this wetlands permit or the permitting or construction of any other improvements either in the wetlands area or which would necessitate a crossing of the wetlands area.
7. The permit shall expire August 8, 2002.
8. If an extension of this permit is needed, a written request shall be submitted to the Environmental Division no later than two weeks prior to the permit expiration date.

Mr. Duffy inquired how staff came up with 460 sq. ft. of lost wetlands.

Ms. Davis stated that the figure was taken from the VIMS report.

Mr. Duffy stated he felt the figure was wrong. He stated that looking at the site pictures and the dimensions on the plat of the property he felt the estimate should be much higher. He also stated that he was distressed that there was no law governing what to do about bulkheads being replaced by new bulkheads. He questioned why the old bulkhead had not been removed. He further stated that in this particular case there was a great deal of trash between the two bulkheads and wanted to know what was going to be done with it.

Mr. Lindsey and Mr. Hughes explained that in this case the space between the two bulkheads would be backfilled. They explained the history of the original permit issued in 1996/1997. The new bulkhead was installed and the old bulkhead was to have been lowered, however the project was not completed and was never backfilled. They stated that now the backfilling needs to be completed and that they felt that more wetlands would be impacted if the old bulkhead were to be removed.

Mr. Duffy stated that he wanted to know what the law required about the removal of old bulkheads. He stated the Board has to be consistent in telling all applicants the same thing. He referred to a past case in which the Board requested the applicant to remove the bulkhead. He stated that the Board changes the rules every time they have a meeting.

Mr. Waltrip stated that there was no law requiring the removal of bulkheads. He stated that laws should not be made out of common sense things to do. He stated that backfilling between the two was the common sense approach to take.

Mr. Lindsey stated the Board considers staff's recommendations when deciding on whether to remove the old bulkhead or not. The Board bases their decision on the impact to wetlands. The Board has followed this policy in the past and he felt it would continue to do so. He noted that whenever a homeowner places a new bulkhead in front of an existing one, the homeowner gains more real estate and wetlands are lost.

Mr. Duffy protested what Mr. Lindsey was saying based on the fact that he did not think that was the question. He said the question is "What does the law say and do we, or not, apply it equitably."

Mr. Lindsey responded there is no law on this.

Mr. Duffy informed Mr. Lindsey that he did not know that. Mr. Duffy stated that he felt a "kitchen science" approach was being used. He stated the Board did not know the law on removing bulkheads and requested that someone in the legal field research it and find out what the regulations require. He further stated that he felt the area between the two bulkheads was a trash heap and was an environmental disaster that should have been corrected a long time ago.

Mr. Stagg addressed the Board. He informed the Board that there is no law requiring the removal of bulkheads, it is a judgment call. He stated that the Board did have the option to require the applicant to remove the old bulkhead. He stated that VMRC's standard policy is that if the bulkhead can be removed easily with little wetlands impacted then they prefer it be removed. The new bulkhead can be constructed 2 feet from the old bulkhead, which leaves just enough room for construction. In this particular case VMRC and this Board granted an after-the-fact permit. As the new bulkhead was already constructed there was no reason to have the old bulkhead removed, only backfilled.

In reference to the past case where the applicant was requested to remove the bulkhead, Mr. Stagg stated the bulkhead was badly deteriorated and cypress knees were involved. He pointed out, in response to Mr. Duffy's question of where the 460 sq. ft. of impacted wetlands came from, that the sq. ft. is based on the dimensions as shown on the drawing for the new bulkhead and not the dimensions of the plat, which depicts the entire length of bulkhead on Mr. Fowler's property.

Mr. Lindsey opened the public hearing.

A. Mr. George M. Fowler, 206 The Maine and applicant, informed the Board that the original permitted work was not completed as the contractor defaulted on the job and went out of business. He stated that he would hire another contractor to complete the work. He stated that he intended to remove the debris from between the two bulkheads and then backfill behind the new one, to include covering the old one.

Mr. Duffy noted that there were concrete chunks on the site and stated they were not authorized material. He wanted to know what was going to be done with them.

Mr. Fowler responded the concrete was there when he bought the property in the 1980's. He stated that he thought it was placed there when the house was built, which was in the 1960's.

Mr. Cook informed the Board that concrete could be used if it does not contain exposed reinforcing steel as it is an inert material.

Mr. Lindsey stated that during his site visit he noted the filter cloth had sagged. He inquired how the cloth was going to be fixed, as it would need to be inspected.

Mr. Fowler responded that he would replace the filter cloth.

As no one else wished to speak on the case, Mr. Lindsey closed the public hearing.

Mr. Duffy stated that conditions #5 and #6 would prevent the entire package from being approved. Condition #6 refers to crossing of wetlands area, which would stop the construction of the pier. He said the pier begins in wetlands territory and crosses through it and is in the Board's territory.

Mr. Hughes stated that piers are outside of the Board's jurisdiction and do not require a wetlands permit.

Mr. Lindsey stated that on his site visit, Mr. Stagg measured the watermark and it was determined that at low tide the water was on the bulkhead and did not reach the shore. It was decided that the head of the pier was outside of the Board's jurisdiction.

Mr. Stagg confirmed that he felt the pier was outside of the Board's jurisdiction and advised them not to place the condition on the permit. He stated VMRC will issue the permit for the jetty, and the pier could be built anyway.

Mr. Cook stated the intent of the condition was to ensure the completion of the bulkhead prior to the construction of the pier. The pier could be built without a wetlands permit, however a building permit would need to be issued.

Mr. Rogers stated that with condition #6 in the permit all wetlands work would need to be completed before construction of the pier. Without the condition in the permit, then a building permit could be obtained prior to the wetlands work being done.

Mr. Hughes made a motion to approve case W-12-01 with staff's recommendations.

The motion was approved by a 3-1 vote: AYES: Mr. Lindsey, Mr. Hughes, Mr. Waltrip (3). NAYS: None (0). ABSTAINED: Mr. Duffy (1).

E. MATTERS OF SPECIAL PRIVILEGE

Mr. Cook informed the Board that the Chesapeake Local Assistant Board was in the process of amending regulations relating to the Chesapeake Bay Act. He said they were in the final

review and hoped to be completed by the end of August. One of the proposed changes is that exception requests from the Chesapeake Bay Act for lots recorded after the new regulations go into effect, will need to go to the Board for their consideration, instead of being handled administratively through him. Mr. Cook stated that as soon as he had more information he would update them.

Mr. Hughes inquired if Mr. Cook had investigated the outfall in the tidal creek in the Landfall subdivision.

Mr. Cook stated that one outfall was installed that did require a wetlands permit; the other outfalls were outside of the tidal area. He stated the applicant had already picked up a permit application and will be filing for an after-the-fact wetlands permit. Mr. Cook stated he would contact the applicant to let them know the Board needed access to the site to assist them in making their decision.

The Board held a short discussion relating to the Resource Protection Area (RPA). They discussed the removal of trees and the lack of information given to new residents who purchase property with an RPA buffer. They noted a brochure explaining what an RPA is and what is permitted was mailed to James City County residents believed to have an RPA buffer on their property, with the intent of educating residents on RPA issues.

F. ADJOURNMENT

Mr. Hughes made a motion to adjourn.

The motion was approved by a 4-0 vote.

The meeting was adjourned at 8:00 PM.



Henry Lindsey
Chairman



Darryl E. Cook
Secretary