



**NEW KENT COUNTY
WETLANDS/BEACHES & CHESAPEAKE BAY BOARD MEETING
THURSDAY, DECEMBER 3, 2020 AT 6:00 PM
COUNTY ADMINISTRATION BUILDING BOARD ROOM
MINUTES**

A MEETING OF THE NEW KENT COUNTY CHESAPEAKE BAY PRESERVATION BOARD WAS HELD ON THE 3RD DAY OF DECEMBER IN THE YEAR TWO THOUSAND TWENTY IN THE BOARDROOM OF THE COUNTY ADMINISTRATION BUILDING IN NEW KENT, VIRGINIA, AT 6:00 P.M. IN ACCORDANCE WITH ORDINANCE O-02-20, PARTICIPANTS HAD THE OPTION TO CONFERENCE CALL IN TO THE MEETING.

IN RE: ROLL CALL

Attendance:

Mr. Lyle Gleason	Present
Ms. Jean Street	Absent
Mr. Julian T. Ward	Present
Ms. Sarah Richardson	Absent (<i>at time of Roll Call</i>) (<i>CALL IN</i>)
Mrs. Connie Bennett	Present
Mr. John Bragg	Present

Also present:

Ms. Hannah Lucas, Environmental Planner
Mrs. Gail Carey, Administrative Assistant, Environmental Department
Mr. Randy Owen, VMRC
Mr. Daniel R. Winall, Agent, Water's Edge Construction

The meeting was called to order at 6:00 PM and a quorum was established.

IN RE: DECLARATION OF POLICY FROM THE LAWS OF VIRGINIA

Chairman Bragg read the Declaration of Policy from the laws of Virginia relating to the Marine Resources of Virginia and the New Kent County Code relating to Chesapeake Bay regulations.

IN RE: APPROVAL OF MINUTES

A motion was made by Mr. Gleason and seconded by Mr. Ward to approve the September 3, 2020 minutes as submitted. The Board members were polled and the motion was passed.

IN RE: NEW BUSINESS VMRC 2020-1261

Application **VMRC 2020-1193**: Ms. Lucas presented the staff report on application VMRC 2020-1193, submitted by Charles K. Cabaniss, to install 125' long replacement bulkhead 2' channel ward of existing bulkhead. This project involves installing tongue and groove sheet pile bulkhead 2' channel ward of existing timber bulkhead. Impacts (approximately 240 ft²) are contained to tidal wetlands above Mean Low Water (MLW) which falls under the jurisdiction of the Local Wetlands Board.

Mr. Bragg interjected and pointed out at one time this operation was highly recommended by the state – both VIMS and VMRC. That is, they were recommending shoreline stabilizations, living shorelines, be put into place as opposed to regular abutments or the type of protection that the Wetlands Board had been looking at for the past several years. Now they are making it mandatory for the Boards, with the input of the contractors, to demonstrate that the living shoreline will not work, impractical or feasible before the Wetlands Boards would accept an application as opposed to today. This review was something that the Wetlands Board will be facing from now on because it was passed by the Senate Bill 776. Mr. Bragg also pointed out while referencing the Staff Report, that VIMS or VMRC had

been tasked with the job of coming up with some guidelines for a Wetlands Board, such as New Kent County Wetlands Board, to sit down and check list out what is needed and needs to be done to demonstrate that a waiver was justified.

Ms. Lucas continued with the Staff Report and explained the recent Senate Bill 776. During the 2020 Legislative Session, the General Assembly passed Senate Bill 776 (SB776) which amended portions of the Code of Virginia relating to wetlands protection and living shorelines. The provisions of the bill became effective July 1, 2020, and the bill directs that "the Commission shall permit only living shoreline approaches to shoreline management unless the best available science shows that such approaches are not suitable." If a living shoreline approach is not suitable, the applicant shall incorporate, to the maximum extent possible, elements of living shorelines approach into permitted projects. The application must include a "statement indicating whether use of a living shoreline as defined in §28.2-104.1 for a shoreline management practice is not suitable, including reasons for the determination." (See attached Memo in Appendix A for more details)

The contractor, Daniel Winall of Water's Edge Construction, provided an email (see Appendix B) outlining the reasons why a living shoreline is not suitable for the area. Mr. Winall has completed work in New Kent County previously and has completed projects along the Chickahominy River in the past. Staff reviewed the reasons a living shoreline is not suitable, as presented by Mr. Winall, and their findings:

1. The sill material required to encapsulate the beach fill required for a living shoreline would need to be placed channel ward of the proposed bulkhead to allow for the needed 10:1 slope to prevent sand migration: **Staff agrees with this assessment. In order to achieve a 10:1 slope, the sill material would have to be placed channel ward of the currently proposed replacement bulkhead. This would increase the overall impact of the project by impacting both tidal wetlands AND a decent amount of subaqueous bottom.**
2. The depth of water at required sill location is -3.0' dropping off to -6.0' quickly which means the sill would need to be 8-10' tall and cover a footprint of 20'+ of subaqueous bottom (all under the existing pier and boathouse): **Staff cannot verify the depth of the water at the sill location; however, the argument presented does not seem unreasonable given the property's location. Installing a living shoreline would increase the impacts to subaqueous bottom. The sill material and sand backfill would have to be placed under the existing pier and boathouse.**
3. Submerged Aquatic Vegetation (SAV) is present in this location and would need to be mitigated if installing beach sand and stone fill: **VMRC confirmed the presence of SAV in the area (see Report in Appendix C). SAV is highly regarded as a measure of overall Bay health and is typically protected.**
4. Project location is in a high boat traffic area with boats that can produce a 3' wave which is higher than any natural wave that will occur onsite, potentially increasing erosion within the beach fill: **While staff was onsite, it was noted that many boats passed by the property at higher rates of speed. The area is not a "No Wake Zone" so the potential for larger, fast moving waves generated by boats is present.**

5. A living shoreline alternative will, if effective, need to encroach on adjoining properties which have no desire to participate in this process: **Staff cannot totally agree/disagree with this assertion as staff are not design professionals. The need to encroach on adjacent properties is possible depending on design and where returns are located.**
6. The upland area above the proposed project is fairly steep and will create runoff issues in the beach fill portion of the living shoreline: **Staff confirmed the slope of the upland area, which is primarily lawn, during a site visit. It is hard to say whether runoff would cause erosion once the living shoreline and plants are established; however, the potential is there. The current wooden bulkhead is weak, and if that were to fail, the upland slope could encroach into the living shoreline area.**

The Virginia Marine Resources Commission and the Virginia Institute of Marine Science have not presented the updated guidelines that were specified as part of SB776. As such, staff has visited the site, reviewed Mr. Winall's reasoning, and has applied their professional knowledge to generate a recommendation for the Wetlands Board.

Staff recommends approval of this project, as presented, based on the findings presented above. To summarize, the installation of a living shoreline with sill/beach fill would encroach further into the Chickahominy River and would impact subaqueous bottom. The presence of SAV further complicates the decision due to the fact that, historically, SAV has been protected and highly regarded, as it pertains to Chesapeake Bay health. Additionally, with the presence of the existing bulkhead, there is minimal chance for the marsh/living shoreline vegetation to retreat landward.

Mr. Bragg inquired if there were any questions for the Staff at this time.

Ms. Richardson stated that she assumed the reason for the application was due to the failing bulkhead. However, she did not see that anywhere and questioned if that was the reason for the replacement bulkhead.

Mr. Winall confirmed that the existing bulkhead was failing and about 25 to 30 years old.

Ms. Richardson summarized and stated she understood that it was a failing bulkhead and not a good area for a living shoreline.

Mr. Ward stated he noted Beth Trivett's name on the paperwork included in the application packet.

Mrs. Bennett confirmed that Ms. Trivett was the HOA representative.

Mr. Winall informed the Board the HOA approval was obtained prior to the application submittal.

Mr. Gleason inquired about the design, including the large amount of sand, and if there would be any value of adding stone to the sand which was proposed to use as fill.

Mr. Winall replied that the bulkhead would be tight, not water tight, but with the filter cloth behind the bulkhead it would be a standard operating procedure. He added that sand was very permeable and would not leak unless installed incorrectly.

Mr. Gleason mentioned his concern was if either the filter cloth or bulkhead should fail, all the sand may wash out.

Mr. Bragg said that normally the sand would be encapsulated.

Mr. Ward inquired if the installed sheathing would be locked in tight.

Mr. Winall confirmed that the tongue and groove would be tight.

Mrs. Bennett inquired about the Living Shoreline parameters with Mr. Owen.

Mr. Owen clarified that the Living Shorelines may be built in both wetlands and subaqueous. The idea behind Living Shoreline is to raise the grade, either the area in front of the wall to a marsh elevation or lower the bank elevation to a marsh elevation. The whole idea is to get to a marsh elevation – elevation was key. Whether offshore, inshore or up in the bank, Living Shorelines are site specific.

Mrs. Bennett said she was trying to understand if the bulkhead was to be removed completely, could a Living Shoreline be established behind where the bulkhead was currently located - the area did not appear too sloped according to the photographs.

Mr. Owen informed the Board he would speak to Mrs. Bennett's question provided the Board understood he took no position in the project. Mr. Owen continued and stated that the bank was very steep. As far as the vertical height behind the wall, it was significantly 3' or 4' above the grade of the river. Mr. Owen added he knew that because he had fallen off of it. It would be necessary to remove 4' of material or bring the inshore up to grade down. Mr. Owen added the high bank that continued going upward and called the Board's attention to the Staff Report – there was little or no chance of landward creep of the shoreline because it was an upland and there would need to be significant grading behind the wall.

Mr. Winall added that the other issue was that the house was built prior to the Chesapeake Bay Preservation Act and was located about 30' from the water.

Mr. Owen added that the photograph appeared to show a flat lot when in fact, it was not flat at all.

Mr. Bragg inquired if there were any other questions or if Mr. Winall had anything further to add.

Mr. Winall informed the Board that he did Living Shorelines all of the time and had completed about a dozen on the Chickahominy River. Mr. Winall stated that he evaluates each site and Living Shorelines do work quite well in some locations. However, it would be difficult to make it work in this situation for the reasons previously stated. Mr. Winall thought a Living Shoreline would be a continuous maintenance issue mainly because of the boat traffic in the summertime. The new wakeboard boats produce very tall wakes and the boating activity appeared to be continuous on the weekends, even during the week. As a result, it would be a pretty big challenge to make a Living Shoreline work for this project. Mr. Winall added that this particular reach of The Colonies was pretty tough, not a high elevation, and it would be a challenge to keep the bank stable.

Mr. Bragg asked Mr. Winall the depth of the water at the project site.

Mr. Winall confirmed that the water depth dropped off very quickly and did not leave much room to place a Living Shoreline.

Mrs. Bennett inquired if the return wall, near the boathouse, would be in the same location as the existing wall.

Mr. Winall replied that each end the bulkhead would be removed and a return wall was to be installed.

Ms. Richardson asked if there was a certain amount of flooding that went over the lawn above the bulkhead.

Mr. Winall confirmed that the proposed new wall would be taller/higher than the existing wall.

Ms. Richardson commented since there would still be floods, would it not be useful to have vegetation planted, to act as a buffer, above the bulkhead into the lawn to mitigate the flooding – to take the power out of the flood.

Mr. Bragg replied there would be turf atop the top soil layer that will go over the gravel and asked if Ms. Richardson's question was if there would be any herbaceous materials above the wall.

Ms. Richardson confirmed her question was would there be any herbaceous materials.

Mr. Bragg replied no, there would not be any herbaceous materials above the wall.

Ms. Richardson questioned if the presence of herbaceous materials would help.

Mrs. Bennett asked Ms. Richardson if she meant other than grass.

Ms. Richardson confirmed a vegetative buffer that would help to reduce the impact of flooding, so that it might not fail again.

Mrs. Bennett mentioned that she did not think the applicant would want anything with roots.

Mr. Winall stated the reason for the wall failing was due to it rotting and not from structural issues.

Mr. Bragg stated that he thought what Ms. Richardson was looking at was more from an environmental perspective.

Ms. Richardson replied was it not the environmental perspective which the Board was reviewing.

Mr. Bragg replied yes - however they are going in two separate directions. The environmental perspective obviously was for additional soil retention as well as runoff and stormwater control.

Ms. Richardson stated the vegetative buffers were good at doing what Mr. Bragg just mentioned – both runoff and stormwater control.

Mrs. Bennett added that the present application was not a Chesapeake Bay Preservation Act application, but in fact a Wetlands shoreline application. As a result, the Board cannot apply the Chesapeake Bay rules to the application, per se.

Ms. Richardson commented that it was a strange distinction.

Mrs. Bennett stated they were really two (2) different entities although they were one (1) Board, and reiterated it was actually two (2) different regulations the Board was dealing with.

Mr. Bragg added it was difficult to separate the issues between the Chesapeake Bay Preservation Act and the Wetlands. The Chesapeake Bay Act addressed the area landward of where the Wetlands piece stops. In this case, the area above the 100' buffer or the area above the wall had been in place for 30 years.

Mr. Bragg stated the project area predated the Chesapeake Bay Preservation Act - to which Mr. Winall confirmed. As a result, it would need to be retrofitted and added he did not know if the Board had the jurisdiction to do so. If it were a new wall, under new construction...

Mrs. Bennett added if it were land disturbance, then the Board would be able to do so. However, the application did not involve any land disturbance.

Mr. Winall confirmed the project was less than 2,500 ft².

Mr. Bragg stated since the wall area predates the Chesapeake Bay Act, there was no land disturbance involved because a buffer, the new wall, would be constructed two foot waterward of the existing wall to make it a bit higher in order to accommodate additional surge from the river.

Mr. Bragg confirmed there will be nothing landward of the bulkhead being constructed.

Ms. Richardson commented although it would be useful, the Board had no jurisdiction - to which Mr. Bragg agreed.

Mrs. Bennett confirmed that the application was a Wetlands Board issue and not a Chesapeake Bay Preservation Act issue.

Mr. Bragg added the CBPA and Wetlands do often overlap, but without land disturbance the only thing for the Board to do was to encourage and the applicant could or could not follow the Board's recommendation. He added that it was not something the Board could make a condition of the permit.

Mr. Bragg inquired if there were any further questions of Mr. Winall or Staff.

The Public Hearing was opened at 6:30PM. As there were no persons present to speak, the Public Hearing was closed at 6:31PM.

Mr. Bragg inquired if there were any questions from the Board.

Mr. Bragg again reminded the Board that this would be one of the few times in the future they would be working without any guidelines from VMRC or VIMS. He added it may be more interesting with those guidelines, too.

Mr. Owen requested to speak to Mr. Bragg's comment and added it was included in the May 12, 2020 memo to the Wetland's Board. The guidelines were in existence and had not been updated. Since Senate Bill 776 requires them to update them, they are currently updating them and are about to solicit public comment. The goal is to take them to the Commission for adoption in spring of the year. So, the Board still has the same guidelines they have had for 42 years or so on the books today. The guidelines have not yet been updated to reflect Senate Bill 776.

Mr. Owen confirmed to Mr. Bragg that one of the specificities of the Senate Bill 776 was Living Shorelines and some of the things to look at with Living Shorelines.

Mrs. Bennett added that the Senate Bill 776 included the county had to adopt a new ordinance.

Mr. Owen replied since the law changed, the model ordinance which allowed the county to adopt a wetlands act physically changed. Mr. Owen stated as a result, the ordinance on the books today was outdated because it was not current with the laws today. Mr. Owen suggested, as convenient as possible, the county would need to bring this in front of the Board of Supervisors for adoption.

Mr. Bragg again inquired if there were any further questions or comments. There being no further comments, Mr. Bragg then called for a motion.

Mrs. Bennett made a motion, which was seconded by Mr. Ward, to approve application 2020-1193 as submitted.

The members were polled.

Mr. Gleason	Aye
Mr. Ward	Aye
Ms. Richardson	Aye
Mrs. Bennett	Aye
Mr. Bragg	Aye

The motion was passed 5:0:0 and the application VMRC 2020-1193 was approved.

IN RE: ADJOURNMENT

A motion to adjourn the meeting was made at 6:30 PM and all were in favor.

Respectfully submitted,

Gail Carey, Recording Secretary