

STAFFORD COUNTY
WETLANDS BOARD MINUTES
November 18, 2013

The regular monthly meeting of the Stafford County Wetlands Board of November 18, 2013, was called to order at 7:00 p.m. by Wetlands Board Chairman, Jim Riutta, in the ABC Conference Room of the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Jim Riutta, Mary Rust, Ben Rudasill and Andy Pineau

MEMBERS ABSENT: Sam Hess

STAFF PRESENT: Amber Forestier and John Harbin

Call to Order

Chairman Riutta called the meeting to order at 7:00 p.m.

Roll Call

Determination of a Quorum

Mr. Riutta called roll and determined four members were in attendance, which was a quorum.

Public Presentations

Mr. Riutta asked if there were any public presentations. Seeing no one coming forward to speak he moved on to public hearings as there are no minutes to approve.

Approval of Meeting Minutes

None

PUBLIC HEARINGS

1. Wetlands Permit WB13-11 – A wetlands permit for Michael and Camille Degen, applicants, to construct a 201 foot long timber bulkhead on Assessor's Parcel 49-38D, Potomac Creek.

Mr. Riutta read the permit application information and asked staff to present the report.

Mrs. Forestier stated they were present to consider the application of Michael and Camille Degen to construct a bulkhead approximately 201 feet in length on Assessor's Parcel 49-38D, Potomac Creek. The bulkhead requires a wetlands permit as it is not a permitted use pursuant to Section 27-18 of the Stafford County Wetlands Ordinance entitled "Permitted Uses". The purpose of this project is to provide improved shoreline erosion control protection. She stated staff visited the site on June 17, 2013 to review the proposed project. The property is located along Wood Landing Road in a protected cove along Potomac Creek. A 10 foot portion of a 20 foot wide access easement to Potomac Creek runs along the property line. The proposed bulkhead does not encroach within the easement. The topography on the parcel slopes down from the house site to a low area that was created with fill in the 1960s. There is a small amount of rock and broken concrete scattered along the shoreline. There is no

evidence of erosion on the shoreline itself and there are vegetated tidal wetlands all along the shoreline. Due to this vegetation, the Wetlands Board's jurisdiction is 1.5 times the tidal range and the proposed bulkhead's location falls within our jurisdiction. The proposed timber bulkhead would extend approximately 201 feet along the shoreline, just above Mean High Water. The wall is proposed to be approximately three and a half feet tall. Prior to construction the proposed bulkhead would require the approval of a building permit. The proposed fill area of approximately 4,300 square feet will require the approval of a grading plan through the Department of Planning and Zoning. Impacts to the Chesapeake Bay Critical Resource Protection Area would be reviewed with the building and grading permits, so we don't have to deal with those here. Correspondence from the Army Corps of Engineers' states that the bulkhead project does not require a Corps permit as there is no discharge of fill materials. VMRC staff has stated that as the project has no impacts below Mean Low Water, there is no permit will be necessary from the Commission. The proposed location of the bulkhead avoids any impacts to tidal wetlands and is mainly intended to protect the upland area which is so low that it is prone to erosion during times of flooding. The existing rubble along the shoreline is to be removed and no riprap is proposed with the application. Staff has been contacted by some neighbors, who are here this evening, about the possible impacts of leaving just the easement open when it floods. As these concerns are based on the height of the wall and the fill proposed behind it, staff has proposed a few ways it could be addressed. First of all, the language in permit condition number 2 could be modified to require approval of the grading plan prior to the construction of the bulkhead, so that an engineering review can be done to make sure the change in grade does not create additional flooding issues on the neighboring properties. The second suggestion is that a section of rip rap might be added on the easement itself to slow the flow of water when it floods. The rip rap would be easier to remove if a boat ramp is ever desired in this location. She stated there also might be an issue on the property to the east if there is additional flooding on that property, it is not protected it would have the chance to erode that shoreline. She stated staff would recommend approval in general of a bulkhead on the property as there is some erosion of the actual, when there is flooding tides. But with the new issues we do need to have some concern on the neighboring properties. There also might be an issue with the easement itself. She stated all plats that have been recorded show the easement going straight through the property. However, Mr. Weimer has a drawing here that was submitted with his site plan for his house in 2004 that shows the road access itself curved off. She stated she has not found any deeds that state that, but there may be some additional information that we don't know about.

Mr. Weimer stated that he was going to go back to SDI, the Engineering Firm, because he recalled seeing that diagram.

Ms. Forestier interrupted Mr. Weimer and told him he would have a chance to speak once staff was finished with the presentation. She continued by pointing out that the existing rubble would be removed which would allow the tidal vegetation to spread out more. She stated there were three alternatives as usual, which were adopting the adopting the proposed Resolution WB13-11 which would approve the request with conditions, adopting the proposed Resolution WB13-12 which would deny the request, or taking no action at that time and defer the application or the decision itself to the next meeting if more information was required.

Mr. Riutta opened the floor for discussion.

Craig Palubinski, Bayshore Design, stated he was the agent representing the Degen's request. He explained they were proposing a 201 foot timber bulk head. He continued by briefly walking everybody through the shoreline detail drawing. He explained that the bulk head would start at

designated point number 1 which was on the east side of the access easement and went around the perimeter of the applicant's shoreline. He pointed out that the elevation in that area was very low and ranged from one and a half feet Mean Low Water to three and a half feet Mean High Water. He stated the bulk head was not going to be three and a half feet tall, but the elevation would be three and a half feet above Mean Low Water, with the actual wall height would be less than two feet. He stated that some concrete along the shoreline would also be removed which would allow for more vegetation.

Mr. Riutta asked if any member of the public would like to comment.

Charles Weimer stated he lived just west of the property and had several concerns. He stated the easement of the road that comes down between the two houses actually goes onto Mr. Degen's lot. He stated he would go back to the Engineering Firm to have them go back through their records, but he found one record that showed the direction of the easement going towards the middle part of where Mr. Degen wanted to put his sea wall. He stated he was also concerned with the sea wall having to leave a 20 foot section for egress/ingress because of the amount of water the Degen's get on their lot in a storm. He asked if that water would be pushed towards his property. He stated Dr. John Emory, the elderly neighbor to the east, gave him permission to voice concerned about the amount of water being pushed towards that property.

Mrs. Forestier stated the grading plan would have an engineer review.

Mr. Weimer stated yes, to see what they had to say about the direction the water may or may not be pushed.

Mrs. Forestier pointed out on the map for Mr. Riutta which property was Mr. Weimer's.

Susan Weimer stated there was an existing sea wall and if Mr. Degen put up a sea wall as well there would be one main opening. She stated that the low portions of the land floods on an average three or four times a year. She stated her concerned was that the water would find its way over to their property.

Mr. Pineau asked what the height of their sea wall.

Mr. Weimer stated he did not have an exact number but referred to the height of a table.

Mrs. Weimer stated approximately 3 and a half feet.

Mr. Rudasill verified that Mr. Weimer has two concerns, one being the location of the easement.

Mr. Weimer stated currently the Japazaw community allowed them to use their boat ramp, but that could change. But there were 7 properties in that private section, where they were located, that allowed egress/ingress at that particular location. He stated that he has been going down to the boat ramp since 1974 and it has always been pointed out to him exactly where it was located, because he put his small boat in there. He stated that he had shown Mr. Degen that the easement went that way. He had been searching for paperwork indicating the direction of the easement and today they found an indication that would give you suspicion that it turns and was sure SDI would have the plat that actually showed the location. He stated that was his one concern and the concern for the other neighbors there. And the second concern was the push of water.

Mr. Rudasill asked if he was correct in assuming that the elevations would be raised between you and the other neighbors.

Ms. Forestier stated yes, about a foot to about foot and a half, it slopes upward a little bit.

Ms. Rust asked why it was absolutely necessary for this to happen and why it couldn't be settled differently.

Mr. Palubinski explained Mr. Degen wanted to stop the flooding of his land.

Ms. Rust stated that the bulkhead would not stop the flooding.

Mr. Palubinski stated it would minimize the flooding.

Ms. Rust stated if it floods, the water would get behind the bulkhead. She asked if there was any other way to fix the problem other than the bulkhead, something more natural.

Mr. Pineau suggested a living shore line.

Mr. Palubinski stated the shore line itself was vegetated and that this was just a flooding control project.

Ms. Rust asked if the topography was enough that the water was coming from the land also.

Mr. Palubinski stated that it was mainly from tidal flow. He stated the property to the east was more elevated so the water would not be pushed over to that parcel.

Ms. Rust asked if the adjacent property was natural.

Mr. Palubinski stated it was a bank.

Ms. Rust stated it was a gradual bank and asked what would happen to the land on the adjacent property to the east during high water issues.

Mr. Weimer stated it brings debris and sea weed on the Degen property. He stated they were not against the Degen's having a sea wall, but they were questioning the location of the egress/ingress and he believes water would be pushed on to his property, depending on the location.

Mr. Riutta asked if they were proposing to tie into...

Mr. Palubinski stated they were tying in with the same elevation fill that is currently there. There would not be a trough or a hole where water would be pushed further up. He stated if you were to look where the back of the bulkhead terminates, it stops at the natural elevation plus three and a half feet. He stated that same elevation carries over to their bulkhead.

Mrs. Rust asked if that was fill.

Mrs. Weimer stated yes and it was done in the 1960's. She stated her main concern was what was proposed what would happen when water comes up, would it still go over his wall and do as it normally did or would it now be pushed on to our sidewalk and pier.

Mr. Riutta asked if the sea wall would end on the point 2.

Mr. Palubinski clarified the location and the elevation of the bulkhead for the Board.

Mr. Riutta asked if there were seawalls in the proposed locations would it create a natural point for possible future erosion.

Mr. Palubinski stated no, because the elevation was the same.

Mrs. Rust stated in her opinion it would be a lot of fill and a lot of protection in front of the property. In any storm situation you would have debris. She stated when you have a bulkhead situation you will have water coming up and going over the bulkhead and it will erode out behind it. She stated if the neighbors were concerned about the water she would recommend a softer sill situation instead of a bulkhead situation.

Mr. Palubinski asked how you would raise the elevation behind it.

Ms. Rust stated that she believed that if they used a sill, it would be done with riprap, rock, etc. it would be more natural and would not be as hard as a bulkhead and then they would actually have vegetation growing behind it which could also act as a barrier.

Mr. Palubinski said that would not stop the flooding.

Ms. Rust stated it would actually absorb a lot. She stated she was also concerned regarding the concrete walk.

Mrs. Forestier stated that was in the RPA so it would be approved with the grading plan in the building permit.

Mr. Palubinski asked if he could address the issue of the easement. He showed the deed description he was working off of for the subdivision of the two lots and a survey plat done in 1977, which was the same information Mrs. Forestier had found on record.

Mr. Rudasill asked about the road where boats were launched at one time

Mr. Weimer stated it was a dirt road between the two properties, ten feet from each property line. He stated he asphalted it because he was tired of the runoff. He stated to his knowledge the road curved like a 1 o'clock turn and went over to the middle part of Mr. Degen's property. He stated that back in the 1970s he had put a boat in many times at that particular location. He also stated it was not really a boat ramp and there was no vegetation or debris that would stop anybody from launching there and it was boat ramp being used for the 7 properties he mentioned earlier.

Mr. Rudasill asked if it was a recorded easement.

Ms. Forestier stated yes. It gives people access to the water and they were allowed to park on the ramp.

Mr. Weimer stated the dispute was, as they talk about the 20 foot easement. Mr. Degen claims that the easement goes straight down to the water. He stated it is his belief that the easement comes down almost to the end and then makes a 1 o'clock turn and goes over to the middle part of Mr. Degen's property. And he stated he thought that was the approximate location where Mr. Degen wanted to build a pier.

Ms. Rust stated if it has always been used as a public or community launching area. She asked if the easement was publicly recorded.

Mr. Weimer replied that it was stated there was a 20 foot easement.

Mr. Palubinski stated that was the deed description he provided in his survey it is referred to as a 20 foot easement.

Mrs. Rust asked if it was publically recorded.

Mrs. Weimer stated yes.

Mr. Weimer stated the dispute was the location of the 20 foot easement, does it go straight or does it turn. He stated the engineering diagram shows it does make the turn, which takes it into the middle of Mr. Degen's waterfront and that is the only water access the property owners have in the private community.

Mr. Palubinski asked if he could view the document.

Mr. Rudasill asked if it mattered where the twenty foot easement was located.

Mr. Weimer stated he would use common sense and his fear of water being pushed up. If the easement is located where he thinks it should be and a bulkhead it built on each side, we feel the water will be pushed on them. If they build the bulkhead the way the diagram shows, the opening would be straight and we are concerned it will push the water that has been going on the lower portion of the Degen property up on to us. We don't know and this is why we asked for engineering.

Mr. Riutta asked if anyone was using the easement now, was it used regularly by the community.

Mrs. Weimer stated she launches her kayak off of it.

Mr. Weimer stated a jet ski went in this year.

Mr. Riutta asked if any of the other people within the community use it.

Mr. Weimer stated they had access to a launching ramp, they were not part of that HOA, but they are allowed to use it.

Mrs. Weimer stated there were 7 lots that have access, and Mr. Degen owns two of the properties.

Ms. Rust stated there was a lot to be said about having happy neighbors.

Mr. Weimer stated they know him well and have said to him what he was doing was not fair to the other property owners.

Mr. Rudasill asked Mr. Weimer if he had a sea wall.

Mr. Weimer stated there was a wall because it was a hillside.

Mr. Rudasill asked what the water does now.

Mr. Weimer stated he gets none. Mr. Degen gets about 15 feet about a half a dozen times a year. It really does not wash anything away. He stated Mr. Degen was looking at the aesthetics of it. He was first class and that was the way he likes to go. He stated they do not get any water now and their point is they do not want to get any water.

Mrs. Weimer stated if they had the plat her husband was referring to they would be able to say Mr. Degen would not be allowed to put a wall in because he would be stopping a boat to be launched from there, which was a recorded right the neighbors have.

Mr. Riutta stated there would be no capacity for boat launching if it were to come straight down.

Mr. Rudasill stated he was trying to be as sympatric as he could, because nobody wants water on them. He asked why there would be more water with the sea wall.

Mr. Weimer stated he did not know and that was the question they were asking.

A brief discussion ensued between the Board and Mr. and Mrs. Weimer concerning the sea wall and the possible locations of the easement.

Mr. Pineau asked if Mr. Degen had offered any alternatives if the easement were not to be used by the property owners to launch, what alternative is offered.

Mr. Degen stated they were going by the recorded easement, not by what Mr. Weimer presented. He stated they were not obstructing the use what so ever.

Ms. Forestier stated they actually moved it out of the easement.

Mr. Weimer stated the area Mr. Degen offered was all wetlands.

Mrs. Rust stated it was gentle and a bulkhead was not necessary.

The Board asked for more clarification concerning the property, the easement, the location of the bulkhead and vegetation.

Mrs. Forestier stated it did not matter if there was vegetation or not because the in-lieu fee structure was such that it would be vegetated or non-vegetated. If it was between Mean High and Mean Low it was wetlands.

Mr. Rudasill stated the recorded easement did not show the location.

Mrs. Forestier stated they have not found anything that says the easement was anything but straight down.

Mrs. Rust stated it looks to her as if the bulkhead was strictly an esthetic thing. It looks like it was being put in to keep the property neater looking or mobile up to a certain point and she did not see it as necessary.

Mr. Riutta asked if staff believed that there was an erosion problem.

Ms. Forestier stated it was above Mean High Water, it was not affecting anyone.

Mr. Palubinski stated they understood they would have to go through other processes like Chesapeake Bay Act, Grading Plan, but that this was just the first step in the process.

Mrs. Forestier stated the entire property would have to be replanted for RPA, so there would be trees and shrubs.

Mr. Pineau stated he did not have an issue with the esthetics of it. His concern would be more that of the neighbors in terms of what the impact would be when it did flood.

Mr. Riutta stated then it would be moot as to the easement going straight or curves.

Mr. Weimer stated they would not fear any flooding if the easement was over at the 1 o'clock turn, but if the bulk head was moved over, assuming that the easement went straight down, they certainly would fear the flooding.

Mr. Rudasill stated you would destroy the property by putting an easement right in the middle of it. He stated he did not believe the sea wall would push water anywhere as long as the grade behind it was the same. He suggested putting a ramp on the end.

Mrs. Forestier stated it was so shallow out there. It was a good spot for kayaks but a boat ramp would not work because it was too shallow.

Mr. Riutta asked if there was any further discussion needed or if anybody required greater clarifications on the easement.

Mr. Pineau stated whether there was any potential change to the easement that might come about as a result of this. I am inclined to defer the matter to get more clarification on whether there would be a significant change on the easement.

A brief discussion between the Board, the applicant and Mr. and Mrs. Weimer took place concerning the easement and the provided drawing.

Mr. Rudasill made a motion to table the action at this time and defer the application.

Mr. Pineau seconded the motion.

The motion to defer passed 4 to 0 (Mr. Hess was absent).

OLD BUSINESS

None

NEW BUSINESS

2. Wetlands Permit WB13-05 (12-05R) – Submittal of modified plan drawings by the applicant for the construction of a bulkhead with a riprap toe approximately 128 feet in length on Assessor's Parcel 49-37E, Potomac Creek.

Mr. Riutta read the permit application information and asked staff to present the report.

Mrs. Forestier explained that the applicant provided additional information at the October 21, 2013 meeting the applicants provided additional information to the Board in regards to the permit and the notice to comply issued in July. During the discussion staff suggested the original drawings approved with the permit be modified to reflect the changes made by the building permit. She stated the Wetlands Board voted to rescind the Notice to Comply and to accept a submittal of the modification to the permit. The permit is for the construction of a bulkhead with rip rap toe of approximately 128 feet in length and approximately 3 to 3 and a half feet tall. So basically these are just the drawings that were approved with the building permit as presented during the last meeting. This just makes it official, that they are part of our permit package for Mr. Scott's application.

Mr. Riutta asked staff if they were satisfied with the changes.

Mrs. Forestier stated she wrote in the background that there was a section of rip rap that was supposed to be three feet in width and another section that was supposed to be two and a half feet in width. She stated most of the rip rap that was out there was between two and two and a half feet in front of the wall. So it was less than was permitted originally.

Mr. Riutta stated the fact that vegetation was growing there was not a lot of disturbance.

Mrs. Forestier stated the original permit was the wall was going to be built and they were removing the existing blocks and debris in the water.

Mr. Riutta asked Mrs. Forestier if she was okay with the rip rap.

Mrs. Forestier stated it was less than the permit allowed, so yes.

Mrs. Rust asked if the final inspection was done.

Mrs. Forestier stated the final inspection for the building permit was completed. She stated staff needs to go out and do a final inspection once these drawings are accepted.

Mr. Pineau made a motion to accept the modified drawings.

Mr. Rudasill seconded the motion.

The motion to accept the modified drawings passed 4 to 0 (Mr. Hess was absent).

Mr. Riutta stated the Board would continue on with recently submitted applications and asked staff to review.

3. Review of recently submitted applications

VMRC# 13-1481	Liard (By-right pier)
VMRC# 13-1512	Brooke Village (non-tidal)
VMRC# 13-1581	Degen (Bulkhead and pier)

Mrs. Forestier stated there were very few this time of year. VMRC 13-1481 was by Liard for a by-right pier. VMRC 13-1512 is for Brooke Village which was a non-tidal impact for a road crossing and VRMC 13-1581 which was the bulkhead and the pier, which was permitted through the State.

CHAIRMAN'S REPORT

Mr. Riutta stated he had nothing to report for the Chairman's report and the next item on the agenda was the staff report.

STAFF REPORT

Ms. Forestier stated the only think she had was the meetings in January and February. Since they both fell on holidays, she suggested moving the meeting dates. Usually the meetings are moved up a week, so they would be the second week instead of the third week. She asked if everyone would be okay with that change to please let her know and they could make it official at the December meeting. She stated there was also the Boards and Commissions dinner.

ADJOURNMENT

Mr. Riutta asked if there was a motion to adjourn.

Mr. Rudasill made a motion to adjourn.

Mrs. Rust seconded the motion.

The motion to adjourn passed 4 to 0 (Mr. Hess was absent).

With no further items to discuss, the meeting was adjourned at 8:01 p.m.