

STAFFORD COUNTY WETLANDS BOARD MINUTES
September 18, 2017

The monthly meeting of the Stafford County Wetlands Board of September 18, 2017, was called to order at 6:00 p.m. by Joseph Fiorello, Environmental Planner with the Department of Planning and Zoning, in the Board of Supervisors Chambers in the George L. Gordon, Jr., Government Center.

MEMBERS PRESENT: Don Adams, Andy Pineau, Frank Rubio, Ben Rudasill, Mary Rust

MEMBERS ABSENT: Jim Riutta

STAFF PRESENT: Joseph Fiorello, Jeff Harvey, Rishi Baral, Mohan Karki, Denise Knighting

GUEST: None

A. Call to Order

Mr. Fiorello called the meeting of the Wetlands Board to order and ask Ms. Knighting to call roll.

B. Roll Call

C. Determination of a Quorum

Ms. Knighting called roll and stated there was a quorum with five members present.

Mr. Fiorello introduced the new member, Mr. Rubio, and asked if he would like to say anything.

1. Introduce Frank Rubio

Mr. Rubio stated he lived in the Widewater area (inaudible, microphone not on).

2. Introduce Dan Adams

Mr. Fiorello introduced the new member, Mr. Adams, and asked if he would like to say anything.

Mr. Adams stated he was pleased to be here and was a 17 year resident of Stafford. He stated he retired in 2001 from an aviation career and was an avid boater.

Mr. Pineau introduced himself for the new members benefit, and stated he lived on Marlboro Point. He stated he has owned land in Stafford for 32 years (inaudible, microphone not on) and was semi-retired, still doing consulting and book writing.

Mrs. Rust stated she has been a resident since 1990 and a member of the Board since 2010, (inaudible, microphone not on). She stated she lives in Widewater.

Mr. Rudasill stated he had been a resident since 1978 and a member of the Board for 6 years (inaudible, microphone not on). He stated he also lives on Marlboro Point.

Mrs. Rust (inaudible, microphone not on).

Mr. Fiorello stated Mohan Karki was the newest staff member, but he was at the last meeting.

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D. Public Presentations

None

ELECTION OF OFFICERS

1. Election of Wetlands Board Chairman

Mr. Fiorello stated the next item on the agenda is Election of Officers and he would take nominations from the floor and they will be discussed in the order in which they are presents. He asked if there were any nominations for Chairman.

Mrs. Rust nominated Mr. Pineau.

Mr. Rudasill seconded.

Mr. Fiorello asked if the candidate would accept the nomination.

Mr. Pineau stated yes.

Mr. Fiorello asked if there were any other nominations. Hearing none he called for the vote.

The motion passed 5 - 0 (Mr. Riutta was absent).

Mr. Fiorello passed the meeting over to Mr. Pineau.

2. Election of Wetlands Vice-Chairman

Mr. Pineau stated he would take nominations for Vice Chairman.

Mr. Rudasill nominated Mrs. Rust.

Mr. Adams seconded.

Mr. Pineau asked if there were any other nominations. Hearing none he called for the vote.

The motion passed 5 - 0 (Mr. Riutta was absent).

APPROVAL OF MEETING MINUTES

November 7, 2016

Mr. Pineau asked if there were any comments on the November 7, 2016 minutes. Hearing none he asked for a motion for approval.

Mr. Rudasill made a motion to approve the November 7, 2016 minutes.

Mrs. Rust seconded.

The motion passed 5 - 0 (Mr. Riutta was absent).

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Mr. Pineau stated since there were no public hearings they would move on to old business to discuss the by-laws.

PUBLIC HEARINGS

None

OLD BUSINESS

3. By-Laws

Mr. Fiorello stated on August 17, 2015 Ms. Forestier brought the by-laws before the Board stating the by-laws were last approved in 1989 and currently did not refer to the correct code sections. The Board of Supervisors has since directed all Boards, Commissions, and Committees to limit the term for Chair and Vice-Chair to two consecutive years. This change has been added under Article 2, Section 2 of the By-laws. Staff also made additional changes to Article 2, Section 1 which added an organizational meeting for the election of officers will be held in January. Article 4, Section 1 now includes the meeting start time as well and changes to the order of business in Section 4. Article 5, Section 5 now includes the required affirmative votes for a motion to pass and Article 6, Section 1 includes "and/or unauthorized fill concerning violations.

Mr. Pineau asked if there were any questions concerning the amendments to the by-laws.

Mrs. Rust asked if this was for all three Boards... that were being approved at this time.

Mr. Fiorello stated only the Wetlands Board.

Mr. Pineau asked if the by-laws were spelled out in the most detail for the Wetlands Board and then the Sand Dunes and the Chesapeake Bay sort of coincide with the by-laws set forth in the Wetlands Board. He stated he thought the Wetlands by-laws went into the most detail of any of the three. He asked if that was correct.

Mr. Harvey stated there was a memorandum discussing the by-laws in your packet which basically stated all three sets of by-laws are very similar. The difference is the title of the organization, the start time of the meeting and there is also a question for the Chesapeake Bay Board as to how they would want to consider the vote. State law stipulates for Wetlands Board and for the Beaches and Dunes Board, since you are a seven member body, you must have four affirmative votes in order to approve an application. Whereas the Chesapeake Bay Board, you could choose to go on a simple majority vote, if that is the desire to be included in the by-laws.

Mr. Pineau asked if there was any more discussion or questions.

Mrs. Rust asked if the Chesapeake Bay Board had to be a simple majority or could it be amended.

Mr. Harvey stated it could be kept the same; it was at the discretion of the Board.

Mr. Pineau stated he had a question regarding Article 4, Section 1 which stated the regular meeting shall be held on the fourth Monday of each month. He stated he thought the regular meetings were on the third Monday and asked if it had changed.

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Ms. Knighting stated it was a mistake.

Mr. Pineau stated he knew January and February meetings had a conflict with Federal Holidays. He stated Section 2 of Article 4 was correct; four members of the Board shall constitute a quorum. He asked if the amended by-laws required a vote by the Board for approval.

Mr. Harvey stated yes, the Board would have to vote on them in order to accept them as the new by-laws, with the amendment changing to the third Monday of the month.

Mr. Pineau stated he was fine with the third Monday of the month. He stated he had one other question in regard to Article 5, Section 3, which stated a quorum was needed for passage of a motion. He asked if it was necessary to state a quorum, because if there was not a quorum, the Board would not go through the consideration. If they were going to vote on something, a quorum would need to be there to begin with.

Mr. Harvey stated the only difference would be if a member had to recuse themselves or had to leave the meeting, so you no longer had a quorum.

Mr. Pineau agreed. He stated he had a general question concerning enforcement procedures. He asked if the general report of alleged violations administrative process was considered part of the by-laws or was it something to be dealt with separately.

Mr. Harvey stated that was a separate matter and not part of the by-laws. It was an operational document for the Board's information.

Mr. Pineau asked if there were any other questions regarding the by-laws.

Mr. Adams asked if the enforcement document put a burden on the Board to do field work.

Mr. Harvey stated normally the Board delegates its enforcement efforts to staff, but the Code does speak to the Chairman being involved in that process, knowing about the violation and agreeing that there is a violation.

Mr. Pineau asked if there was a motion to accept the amended by-laws.

Mrs. Rust made a motion to approve the by-laws.

Mr. Pineau asked if there was a second.

Mr. Rubio seconded.

The motion passed 5 - 0 (Mr. Riutta was absent).

NEW BUSINESS

4. Site Visit Discussion for Applications

Mr. Pineau moved on to new business, with the first item being site visit discussion for applications. He stated staff provided a memorandum. He read the memo which stated "The Wetlands Board requested an agenda item in order to discuss the desire for and timeliness of site visits. Currently, a pre-application conference and/or site visit is not required by Chapter 27, Wetlands Zoning Ordinance of the County

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Code. If the Board desires to make a site visit a requirement prior to filing an application, that would require an amendment to County Code Sec 27-19, Application for Permit. Amending this code section would require public hearings with the Wetlands Board and Board of Supervisors. Sec. 27-21 requires that a public hearing shall be held by the Board within 60 days of a complete application being filed by the County. Sec 27-22 specifies that the Board has to make a determination on an application within 30 days after the public hearing. This provides a limited window of time in order to conduct a site visit after the public hearing. Staff notes that under Freedom of Information Act (FOIA) laws, any site visit that involves an appointed committee or three or more members of the Board will require issuance of a public meeting notice at least 5 days in advance of the scheduled site visit. There is no notice requirement if one or two members visit a site at any given time. Any site visit to a property should be coordinated with the property owner's permission. It is recommended that if members want to visit a property, they notify staff. If requested and available, staff will be glad to accompany Board members on site visits."

Mr. Rudasill stated it would be nice to go on some of the site visits, but this is saying more than 2 require public notice.

Mr. Harvey stated correct and staff would coordinate with the Public Information Officer in the County Administrator's Office, who would then put out a press release.

Mrs. Rust confirmed that was a minimum five day notice time line.

Mr. Harvey agreed. He explained as the memo indicated, if the Board wanted to formalize the process, where the members would have an opportunity to do a site visit, the best opportunity would be to require a preliminary application conference onsite. Staff and the Wetlands Board members could meet, see the site and see what was being proposed in advance of an application being filed. That way you would not under a time clock. Staff had a concern with the 60 day time limit for Board action and the requirement that the Board would act within 30 days of holding a public hearing. The window of time for you to have site visit and discussion with the applicant is very narrow.

Mr. Pineau stated the question was brought up because he and Mrs. Rust attended a focus group in Gloucester was attended by other wetlands boards members and the attendance and involvement of wetlands board members in other counties was significant. In Lancaster County every Wetlands Board member is required to be a part of the visit to any consideration that is taking place for permitting. He stated he would like to be involved and perhaps other Board members would like to be involved in site visits. He stated he felt that if one or two were involved, it does not require any formal notice.

Mrs. Rust stated if the members in Lancaster did not go on the site visit, they sat in the audience, they were not allowed to vote. She stated they were very detailed and extremely involved. She stated currently this Board was looking at maps and pictures of proposed wetland violations, infringements or proposals and not seeing the whole picture.

Mr. Pineau stated there were members who have time to attend site visits and once the Board knows of the time and place, at least one or two may be available to accompany staff to the site.

Mr. Harvey stated staff would recommend changing the code to have an on-site pre-application conference. That would allow staff to schedule the timing and meet the notice requirements.

Mr. Rudasill made a motion to approve Mr. Harvey's suggestion.

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Mr. Pineau stated he would second.

The motion passed 5 - 0 (Mr. Riutta was absent).

Mr. Harvey asked if the Board would like staff to bring a draft amendment to the next meeting to review and make a recommendation to the Board of Supervisors to begin the public hearing process or would you rather staff report it up to the Board of Supervisors and start the process immediately.

Mr. Pineau asked if there was a preferred way. He stated he would be happy to have staff bring it back before this Board and asked if it needed to go before the Board of Supervisors.

Mr. Harvey stated yes and explained the ordinance amendment process. He stated the amendment would require a public hearing with the Wetlands Board and the Board of Supervisors. He explained the Board of Supervisors prefers to look at proposed amendments in one of their Committees before they pass a resolution to authorize hearings. He stated staff would meet with the Community and Economic Development Committee of the Board and present a draft amendment. He asked if the Wetlands Board would like to review the draft and make comments or have staff prepare the amendment and present it to the Boards Committee.

Mr. Pineau stated the Wetlands Board would like to review it before it goes to the Board Committee.

Mr. Harvey stated staff would bring a draft amendment to the next meeting.

Mrs. Rust clarified that would have the Wetlands Board members attending the staff meeting with the client at the property.

Mr. Harvey stated correct. Staff would schedule a pre-application conference on site with the Wetlands Board and staff.

Mr. Rudasill stated since some of the Board members still work, it may be difficult to meet.

Mr. Pineau stated he agreed, but since several of the members were retired they would be available to attend the initial meetings. He then moved on the item 5.

5. In Lieu Fees - Discuss how to possibly spend fees to create a wetland in the county

Mr. Pineau read from the staff report, In-lieu fees are fees paid by applicants to compensate for unavoidable impacts to wetlands taken as part of a wetlands permit application. Fees are typically paid for applications involving piers, boat ramps, and shoreline protection measures. To date, the County has acquired \$101,899.22 in in-lieu fees paid. The Wetlands Board has asked about the process to use those fees to purchase wetlands. County Code Sec 27-35, entitled Tidal wetlands fund provides some guidance in this regard. This provision states "... The in-lieu fees shall be used for tidal wetland creation or restoration projects in the locality or for the purchase of credits in an approved compensatory tidal mitigation bank." The fees can be used only for those two activities. The process for use of those funds would generally be as follows; Wetlands Board identifies a wetlands project or mitigation bank that it feels is appropriate for the expenditure of those funds; Wetlands Board makes a recommendation to the Board of Supervisors; Staff advises the County Administrator of the Wetlands Board recommendation; County Administrator coordinates with the appropriate Board of Supervisors Committee Chairman regarding the appropriate committee meeting date; Staff prepares a report and shares the Wetlands Board

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recommendation to the Committee; If the Committee agrees with the recommendation, they will refer it to the Board of Supervisors for further action; Staff prepares a report and draft resolution budgeting and appropriating the funds for the desired project or purchase of credits; Finance Department processes the appropriation and payment of the funds. If desired by the Board, Staff will gather and provide information pertaining to potential wetland projects or payments to mitigation banks.

Mr. Harvey stated he and Mr. Fiorello had done some background research and have not found a Tidal Wetlands Bank in the Commonwealth as of this date. He stated staff may need to coordinate a bit more with the partner agencies to see if they are aware of other activities that would qualify under that State Code designation. He state it could be applied to a local restoration project.

Mrs. Rust asked if it had to be a tidal wetlands restoration or project.

Mr. Harvey stated yes, because these fees deal with tidal wetlands impacts. He stated the Chesapeake Bay items are non-tidal and can be used for a non-tidal wetlands bank.

Mr. Fiorello stated the Chesapeake Bay fees deal with only the restoration of the RPA and the buffer that may or may not include wetlands. He stated it was the enhancement, restoration, mitigation of the RPA buffer. He stated it may be used to enhance the stream as well, if the banks need to be stabilized, but that gets into wetlands credits.

Mrs. Rusted asked if the RPA had to be a public concern, such as a park or school.

Mr. Fiorello stated he thought it would have to be public property.

Mr. Harvey agreed and stated the County would have to have an easement agreement with the private land owner or some other beyond public lands in order to make something work. He stated the easement with the private land owner would have to be one dedicated for public purposes, so in essence it becomes a public issue.

Mr. Pineau asked if the Board would like to go forward given the amount of money acquired. He asked if that was a sufficient amount to go forward and identify where tidal wetlands could be created.

Mrs. Rust stated it was her understand it was not just the creation it could be the protection of tidal wetlands also. She gave an example of damage occurring to Aqua Po from wave action and asked if that could possibly be part of the restoration.

Mr. Fiorello stated in his opinion, if it was natural erosion it might be able to be addressed through restoration, which may fall under the mitigation enhancement. He stated there probably would not be many opportunities for creation, what is there is there. He stated removal of a bulkhead and returned to a grade and re-establish wetlands could fall under mitigation, enhancement or restoration, depending on the circumstance.

Mr. Pineau stated between the two options, the Wetlands creation or restoration is the only viable one at this point and not the credits for the mitigation bank, since that is not available at this point.

Mr. Harvey agreed stating staff has not found a tidal wetlands bank that we could apply funds towards.

Mr. Rudasill asked if the land had to be in Stafford County.

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Mr. Harvey stated yes.

Mr. Rudasill asked if the land had to be owned by Stafford County.

Mr. Harvey stated no, it did not have to be owned by Stafford County but if it was private property we may have to acquire an easement in order to do the work and to ensure it is being properly maintained.

Mr. Pineau asked if it was cross jurisdictional or must it stay within Stafford.

Mr. Harvey stated his recollection in reading the code was it had to be specific to our jurisdiction or be part of a Wetlands Bank, but he could verify that.

Mr. Pineau asked if staff could find potential property within Stafford that may be available for creation or restoration projects. He asked if there were such projects could staff follow up with cost associated and if we had sufficient funds.

Mrs. Rust stated the State Park created near her was doing a living shoreline. She asked if that would be applicable in any way, because it is in Stafford County and was a state project.

Mr. Harvey stated yes, that could be a project that could readily be available, we again would have to have discussions with the Department of Conservation and Recreation about what they are currently doing and if it would qualify under our code and if this would fit into their project and we could provide funding. He stated staff could bring a list of possible ideas to the next meeting. He stated it may be premature to have a cost estimate, but if the Board wants staff to pursue one or more as options, staff can do some more work with the Public Works Department and get more overall rough estimates.

Mrs. Rust stated that would be valuable because it would be visible. Many people don't know about a living shoreline and that may be a teaching tool also.

Mr. Pineau stated staff will gather information pertaining to possible projects involving creation or restoration. He asked if there were any other recommendations or suggestions in regard to in-lieu fees. Hearing none, he asked for a recommendation for approving staff gathering information.

Mrs. Rust agreed to that motion.

Mr. Rudasill seconded.

The motion passed 5 - 0 (Mr. Riutta was absent).

6. Request Karen Durhring, Virginia Institute of Marine Science, to make a presentation concerning current and future living shoreline policy

Mr. Pineau stated Karen Durhring with Virginia Institute of Marine Science made an offer to provide this Board with a presentation. He passed out a handout, which was the introductory sheet for Stafford County CCRPM, which was a customized onsite web site that can identify usage in Stafford County and the work that they have done. He stated Ms. Durhring would be happy to review the tools available in the portal and what could be done in terms of a JPA review, investigating non-permitted activities, comprehensive plan updates and general shoreline information including living shoreline perspective. He stated he would be happy to check her availability and bring the information back to the Board.

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7. Report from Ms. Rust and Mr. Pineau regarding Wetlands Focus Group held May 24, 2017

Mr. Pineau stated he and Mrs. Rust attended a Wetlands Focus Group on May 24, 2017 and handed out information regarding the Contractor's Toolbox, which was a big notebook passed around at the focus group regarding how Lancaster County deals with living shorelines and how they approach anyone seeking a permit. He explained the idea behind the contractor's toolbox is that anyone doing work in the county would have this toolbox to refer to. He explained on the website you can click on evaluation and decision trees to get more detailed information. But he felt the idea was to put in people's hands something that was encouraging the idea of living shorelines and promoting that with the contractors, because they are the ones that were deal with the people seeking permits. He stated it was a proactive approach.

Mrs. Rust stated it was an amazing document. She stated the decision tree was proposed in 2010 and was to help the individual in how to approach their shoreline protection and find possibilities of what they could do and what they need to do for their property.

Mr. Pineau stated part of the approach for the focus group was to say how do we want the legislature... the State to be looking at living shorelines and do we simply want to present it as an option among many or be more forceful in saying this is the preferred way in which you go forward with anything you want done on the shoreline.

Mrs. Rust stated several counties have adopted... it is either a living shoreline or why not. Which is a different way of approaching your shoreline and it makes a statement of how interested and how committed the county is to that purpose.

Mr. Rudasill asked if Mr. Pineau could get some dates and come back to the Board with information.

Mr. Pineau stated he would do that. He stated moving on he had nothing for the Chairman's Report and asked if staff had anything.

8. Discussion of any other issues that Board members may have

CHAIRMAN'S REPORT

None

STAFF REPORT

Mr. Fiorello stated there were no applications for the October meeting and asked if the Board would like to cancel the October meeting.

Mr. Harvey stated that does speak to the discussion earlier regarding site visits as part of a pre-application meeting and also potential projects for in-lieu fees. He asked if that was something you would rather talk about in October or move it to November.

Mr. Pineau asked if there were any likely applications for the November meeting.

Mr. Fiorello stated there was a potential.

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Mrs. Rust asked if staff could get the information back for an October meeting.

Mr. Harvey stated yes. Staff could draft a proposed code change and provide a list of potential projects to discuss. He stated the projects may just be ideas at this point in time and may require further drilling down through discussions with this Board.

Mr. Pineau stated he would be fine with meeting next month if it works for all Board members.

Mrs. Rust stated it was her opinion that Ms. Durhring did not want to meet during a regular Board meeting.

Mr. Pineau stated the Board will plan for an October follow-up meeting.

ADJOURNMENT

Mr. Rudasill made a motion to adjourn.

Mr. Adams seconded.

The motion passed 5-0 (Mr. Riutta was absent).

With no further business to discuss, the meeting adjourned at 7:03 p.m.