

In The Matter Of:
City of Portsmouth
Wetlands Board - Public Hearing

January 3, 2024

ZAHN
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CITY OF PORTSMOUTH

WETLANDS BOARD

TRANSCRIPT OF PUBLIC HEARING

WEDNESDAY, JANUARY 3, 2024, 3:30 P.M.

SIXTH-FLOOR CONFERENCE ROOM, CITY HALL

BOARD MEMBERS PRESENT:

- Jennifer Monument, Chairperson
- Richard Calvert, Vice Chair
- Douglas Union
- Ellen Comstock
- Cecilia Boyd
- Marcos Davila-Banrey

STAFF PRESENT:

- Valerie Malzone, Senior Planner
- Jeffrey S. Miller, Asst. City Attorney
- Julie Chop, Principal Planner

ALSO PRESENT:

- Tiffany Birge, VMRC

Reported by: Kimberly A. Watrous, RPR

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I N D E X

ITEM		PAGE
JPA 2023-2539	3106 WEST NORFOLK ROAD	3

1 (Call to order at 3:35 p.m.)

2 CHAIR MONUMENT: Call to order the
3 Wetlands Board meeting for Wednesday, January 3,
4 2024. Do we want to start with a roll call?
(Roll Call)

5 CHAIR MONUMENT: I will confirm we do have
6 a quorum today.
7 So the next item is the approval of the
8 minutes from the October 4, 2023, meeting. Did
9 anyone have any questions or comments on the
10 minutes?
11 With no questions or comments, may I
12 please have a motion to approve.
13 MS. COMSTOCK: So moved.
14 MR. CALVERT: Second.
15 CHAIR MONUMENT: All in favor, raise your
16 hand.
17 (Response)
18 CHAIR MONUMENT: The minutes are approved.
19 Thank you.
20 Staff, I believe we have one public
21 hearing item today.

22 JPA 2023-2539:
23 MS. MALZONE: Yes. The public hearing
24 item for today is Joint Permit Application
25 2023-2539. W.F. Magann Corporation proposes to
perform dredging at 3106 West Norfolk Road. The
property is owned by W.F. Magann Corporation and is
further described as Tax Map 700, Parcel 1.3. The
subject project is located along the Western Branch
of the Elizabeth River.
Staff is recommending deferral of this
application to allow the applicant to include plans
for the construction of a 150-foot wave screen on
this application. They had previously in 2022
gotten approved for dredging, a bulkhead, and the
150-foot wave screen. It expires May 2024. And
they thought that they were going to get it
completed before then, but it turns out they no
longer think that. So just to be safe, they're
going to reapply, add the wave screen to this
application just so they're covered for two more
years.
CHAIR MONUMENT: And that's why staff is
recommending that we defer this today, is because
they want to add the wave screen?
MS. MALZONE: Yes.

1 CHAIR MONUMENT: In case they don't
complete it in time?

2 MS. MALZONE: Yes.

3 CHAIR MONUMENT: Am I understanding that
correctly?

4 MS. MALZONE: Yes. So you have to -- we
will need a vote and a second for deferral and a
5 vote on the deferral. And you will need to defer it
to a specific meeting.

6 So the applicant did already submit her
application. So she's good to go for the
February 6th meeting. Let me get the date right.
7 And then you can defer it to that specific meeting.
February 7th.

8 CHAIR MONUMENT: February 7th is the first
Wednesday of the month.

9 So we would need a motion to defer this
application pending addition of the wave screen.
10 Does anyone so move?

11 Or does anyone have any questions before
we take a motion?

12 MR. CALVERT: I have one question. If
they bring back everything in front of us, does that
mean it gets reviewed as if it was never approved?
13 So we're starting over?

14 MS. MALZONE: With the Wetlands Board, we
discussed in the Planning Department there's no way
in the code for you to renew or extend a permit. So
15 it's a new permit. The only thing that's being
taken from the old approval is they already paid the
16 wetland mitigation credits for the whole project.
So in there, she's going to have a description of
17 the unused portion of the credits and a breakdown of
how many credits this would have needed and how many
18 credits have already been purchased. But other than
that, you'll be reviewing it as a new application,
19 and it will be issued as a new permit.

20 CHAIR MONUMENT: Any other questions?

21 MR. CALVERT: I'll motion that we defer
the case for W.F. Magann to the February 7, 2024,
hearing.

22 MR. UNION: I'll second the motion.

23 CHAIR MONUMENT: All in favor?
(Response)

24 CHAIR MONUMENT: Motion is approved
unanimously to be deferred to the February 7, 2024,
meeting.

25 I believe that concludes the public
business for the Wetlands Board meeting.

1 New business. Approval of the Wetlands
Board meeting schedule.

2 MS. MALZONE: That was provided to you in
your agenda packets. It's the page that looks like
3 this. And we'll need to officially adopt that
schedule for 2024.

4 MR. CALVERT: Do you need a motion to
approve it?

5 MS. MALZONE: Yeah.

6 MR. CALVERT: I make a motion that we
approve the schedule for 2024 as submitted by staff.

7 MR. UNION: I second the motion.

8 CHAIR MONUMENT: All in favor of adopting
the calendar staff has set forth, raise your hand.
(Response)

9 CHAIR MONUMENT: Motion to approve the
2024 meeting schedule for the Wetlands Board City of
Portsmouth is approved.

10 MS. MALZONE: I want to specify that it's
approved by a vote of six to zero for the record.

11 Next item, we have our annual election of
officers. I added the bylaws for you guys to
12 review. Every January meeting, we elect a chair and
a vice chair. Those positions are for one year. So
13 then next January we will do it again.

14 So we are in need of nominations. We will
do chair first. So we will do this by if anyone
wants to say a name, throw it out there, and then
15 we'll vote on each one.

16 CHAIR MONUMENT: Rich, are you still
adverse to being chair?

17 MR. CALVERT: Yes, please.

18 CHAIR MONUMENT: Ellen, since you have --
Douglas, have you been chair?

19 MR. UNION: I did the last one.

20 CHAIR MONUMENT: Ellen, would you like a
turn at the wheel?

21 MS. COMSTOCK: I don't know that I have
the expertise to be chair, unless somebody who has a
lot of expertise stays vice chair, because I don't
22 know that I have the questions.

23 MR. CALVERT: Yeah. I'll help you.
Certainly.

24 CHAIR MONUMENT: Does the vice chair
position have to rotate? I'm rotating off the board
in May it looks like. I think my time expires
May 1st.

25 MS. MALZONE: I believe you can be
re-elected. And if your time expires, the vice

1 chair would become the chair.
2 Is it a good idea to vote somebody in
3 whose time will expire in one year?
4 CHAIR MONUMENT: No. Rich's time won't
5 expire. My question is, can the vice chair continue
6 for a second term as vice chair?
7 MS. MALZONE: Yeah. People can serve,
8 yeah, more than one time.
9 MS. COMSTOCK: With that caveat, I would
10 accept that.
11 CHAIR MONUMENT: Wonderful.
12 MS. MALZONE: Are there any other
13 nominations? Some of the new folks, would you like
14 to chime in?
15 MR. CALVERT: I motion that we elect Ellen
16 as the chairman for 2024.
17 CHAIR MONUMENT: I second the motion.
18 All those in favor?
19 (Response)
20 CHAIR MONUMENT: All opposed?
21 (No response)
22 CHAIR MONUMENT: Vote is six to zero that
23 Ellen Comstock is the new chair of the Wetlands
24 Board beginning in May, correct?
25 MS. MALZONE: No. Immediately. Next
meeting. I will send you the script and send you
the updated members and make sure it's all
up-to-date for you.
CHAIR MONUMENT: Congratulations.
MS. COMSTOCK: Now we need to elect a vice
chair.
MS. MALZONE: Even though we've already
discussed it, if you wouldn't mind officially
nominating.
MS. COMSTOCK: The floor is open for
nominations for vice chair of the Wetlands Board of
the City of Portsmouth.
MR. UNION: I nominate Richard Calvert.
CHAIR MONUMENT: I second.
MS. COMSTOCK: We have a nomination and
second. Any other nominations?
All in favor of Rich Calvert being vice
chair, please raise your hand.
(Response)
MS. COMSTOCK: It's six to zero that Rich
Calvert is now vice chair of the Portsmouth Wetlands
Board.
CHAIR MONUMENT: Congratulations. Thank
you so much for your expertise because I could not

1 have gotten through this year without you. I
2 appreciate it very much.

3 MR. CALVERT: Thank you. That's very kind
4 of you to say.

5 MS. MALZONE: If no one else has any new
6 business, I wanted to bring up if you would want to
7 think about whether or not you would prefer to do
8 group site visits. I know we briefly talked about
9 this last year. If more than two members of the
10 Wetlands Board are on a site visit, it's considered
11 a public hearing, and it would need to be
12 advertised. We can send out one advertisement
13 saying a specific time and date of each month that
14 you would do a site visit. The issue we ran into
15 with that is low-tide changes. So it's hard to
16 pinpoint a time. So just something to think about
17 for next meeting. Or if you would want to put
18 together a site visit to the Magann Corporation for
19 this new permit, we could do it in groups of two and
20 work with them if anybody wants to see the site.
21 Just something for everyone to think about.

22 MR. UNION: I think site visits are
23 beneficial for everyone on the board. Definitely
24 are for me. Gives you better insight of what you're
25 looking at instead of the plans and prints. A lot
of us volunteers have never seen a blueprint before
and don't know all the mean low water and high low
water. And having Rich there also at site visits to
help explain really helps. Everybody should have
the opportunity to go if we have site visits.

MS. MALZONE: Are you advocating for the
whole group to go together at a time even though it
might not be low tide, or for --

MR. UNION: Let everybody know when
you're going to do a site visit and give enough time
to respond whether or not they want to go or not.

MR. CALVERT: I think we should do that in
a case-by-case study. If it's a very complicated
job, we need to go look at it. But if it's simple
and straightforward, I don't know that that's
necessary.

MS. MALZONE: So I will add to any time
that I send out that a permit is required just sort
of an inquiry if you would want to do a site visit.
Then if enough of you say yes, we can advertise it.

CHAIR MONUMENT: I think that's a great
way to approach it. I would like the newer members
of the board to have a chance to see a site visit
and see the questions we ask when we get there. A

1 lot of things reveal themselves.

2 MR. UNION: Even if a -- not to make it
3 mandatory that you go to a large project --

4 CHAIR MONUMENT: Correct.

5 MR. UNION: -- to look at it, but to any
6 of them. Even the smaller ones we went to look at,
7 somebody had put a pier on a little creek behind
8 their house that wasn't supposed to be there. There
9 was a lot of discussion about that, and it was a
10 learning experience.

11 MS. COMSTOCK: I have never gone on a site
12 visit. I came in previous to COVID, which we didn't
13 do it. I think it would be very beneficial.

14 MS. MALZONE: Okay. Let me look into it
15 if it's too late to advertise for the Magann
16 Corporation. If not, we can do twos and try to work
17 with them to see if we can work that out.

18 MS. COMSTOCK: You can get tide charts
19 that will give you projections.

20 MS. MALZONE: The advertisement is going
21 to say one time, though, for the whole year.

22 MS. COMSTOCK: Can you change that to say
23 pursuant upon low tide?

24 MS. MALZONE: I'm not sure. I'll have to
25 look into that.

CHAIR MONUMENT: That was a large sigh for
the court reporter.

MS. MALZONE: I'll get in contact with you
about a Magann Corporation site visit if we can work
it out. That is all that I had.

MR. CALVERT: If you have a violation, and
it requires the chair to go look at it, I don't mind
going with you because it's only two of us. That
wouldn't require an advertisement. Maybe I can help
make a decision on what's going on with that if it's
a violation. And then the other meetings, I'll just
show up with the group if we want to do that.

MS. MALZONE: That will work. That's all
I had.

MS. COMSTOCK: What's the legality when
you send out that information to everybody to
sending questions to the various board members by
email? Is that allowed under --

MS. MALZONE: The question --

MS. COMSTOCK: For instance, okay, what is
a wave screen?

MS. MALZONE: Like, if you would want to
ask that?

MS. COMSTOCK: Uh-huh. And I would want

1 to ask that of Rich or of the board. Or have you
2 all -- have you been to a site visit that has had
3 wave screens before? Is that a legal thing, or does
4 it need to be in this public hearing to ask that
5 question?

6 MR. MILLER: I can address that. I'm Jeff
7 Miller, the Deputy City Attorney.

8 The rule under FOIA in Virginia is that
9 you can't have email communications that are
10 substantially contemporaneous such that it's like
11 your meeting together. You can have email
12 communications back and forth, and somebody answers
13 a few hours later. We like to try and discourage
14 coming at all close to resolving anything
15 substantive during a time like that. But a question
16 like that I think is okay as long as you --

17 MS. COMSTOCK: So if it says, for
18 instance, have you -- can you describe what a wave
19 screen is, is not substantive in terms of the case?

20 MR. MILLER: I think that's true. I would
21 be careful about asking too many questions because
22 we want to preserve the public aspect of things.
23 But in certain narrow situations, a very simple
24 specific question like that I think would be okay.

25 CHAIR MONUMENT: Since we are in the
meeting and haven't adjourned yet, would staff be
able to provide the board with information about
wave screens and perhaps an example of one that's
been approved by the City in the past?

MS. MALZONE: I could look that up for
prior to next meeting, but I did not go back through
and look at any.

MS. COMSTOCK: That was an example. I
know what a wave screen is. I was trying to put
something out there to --

CHAIR MONUMENT: Right. Does everyone
know what a wave screen is? I don't.

MS. COMSTOCK: So that would be an
appropriate --

CHAIR MONUMENT: So three of us don't know
what a wave screen is.

MS. MALZONE: Okay. I will research. And
that's the kind of stuff I could add to the staff
report.

You might have noticed, too, the staff
report looks a little different. We are working to
make Wetlands Board staff reports and agendas look
like the rest of our boards and commissions. So,
hopefully, it will be more detailed, and I can add

1 in things like that.

2 MR. UNION: While still in the meeting,
3 it's okay for us to ask what a wave screen is if any
4 of the other members know?

5 MR. MILLER: You're talking about right
6 now? Sure.

7 MR. UNION: Rich Calvert is an engineer.
8 Tell us what a wave screen is.

9 MR. CALVERT: A wave screen is exactly
10 what it sounds like. It's a screen for the wave
11 action. So it's usually a freestanding item to help
12 take the wave energy and dissipate it before it goes
13 upland. So it doesn't have fill behind it in this
14 example.

15 Most of the time, wave screens are in
16 marinas because they protect the boats from heavy
17 wave action. This example is basically a concrete
18 wall to keep the heavy wave energy from damaging.
19 There's existing wetlands behind that that I think
20 they're trying to save.

21 MR. UNION: So it could be multiple
22 things, a wall, riprap out in the jetty?

23 MR. CALVERT: Right.

24 MS. COMSTOCK: For instance, out on the
25 Western Norfolk Bridge where the boats go through,
there are screens. Is that considered a wave --

MR. CALVERT: Those are actually guards so
that they don't run into the bridge and take it
down.

But it could be a number of things.
Basically, it's just terminology. So it could be
considered a bulkhead, as well, because it's
freestanding.

MS. COMSTOCK: That's the --

MR. CALVERT: Right. Normally bulkheads,
as you all know, are fill behind them. In this
case, they didn't do that to protect the wetlands.

We visited the site actually when that
permit came up two years ago. We did go out there
and look at this. I remember this project.

MR. UNION: We went with Stacy.

MR. CALVERT: They had a little bit of
wetlands here and there. Now they're coming back.
They didn't finish part of the project, and they're
coming back and going to dredge in front of it.

MR. UNION: We approved it.

MR. CALVERT: Yes. We approved the prior
one. I guess you would call this Phase 2. So now
they can access it with their equipment.

1 MS. MALZONE: Okay. Does anyone have
anything else?
2 Then I believe --
3 MS. COMSTOCK: Can I entertain a motion to
adjourn?
4 CHAIR MONUMENT: So moved.
MR. UNION: Second.
5 MS. COMSTOCK: Moved and seconded. We are
adjourned. I guess we have to vote on it, huh?
(Response)
6 MS. COMSTOCK: Motion to adjourn is
approved. Let's adjourn.
7
(Meeting adjourned at 3:55 p.m.)
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1 COMMONWEALTH OF VIRGINIA AT LARGE, to-wit:

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3 I, Kimberly A. Watrous, Registered Professional
4 Reporter, a Notary Public for the Commonwealth of
5 Virginia at Large, of qualification in the Circuit
6 Court of the City of Norfolk, Virginia, do hereby
7 certify that this proceeding was recorded in
8 Stenotype by me and reduced to computer printout
9 under my direction; and that the foregoing
10 constitutes a true, accurate, and complete
11 transcript of such proceedings.

12 I further certify that I am not related to nor
13 otherwise associated with any counsel or party to
14 this proceeding nor otherwise interested in the
15 event thereof.

16 Given under my hand and notarial registration
17 number on January 8, 2024, at Norfolk, Virginia.

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21

Kimberly A. Watrous, RPR
Notary/eNotary Reg. No. 195088
My commission Expires 09-30-26

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