

Notes on meeting of February 18, 2012, at the house of Joe Sties in Bavon, Virginia.

Present:

Peyton Carr – Chesapeake Shores HOA
Tylan Dean – US Fish & Wildlife Service
Joe Dzikiewicz – Chesapeake Shores HOA
Bill Powell – Bavon Beach HOA
Joe Sties

Background:

Tylan Dean and Mike Drummond of the Fish & Wildlife Service reached out to Joe Sties to try to resolve the issues that have been delaying getting permits for the Offshore Shoreline Protection Project, or the breakwater project. They met and came up with an approach that could lead to moving the process along. This meeting is the next step in the process.

Goal:

The goal of this meeting is to develop an understanding of how to resolve issues of ownership of the common beach areas in a way that will allow the breakwater project to move forward. It is expected that the resolution will involve having the Chesapeake Shores HOA take ownership of the common beach area. The CS-HOA can then become an applicant for the breakwater permits.

Peyton Carr on the Chesapeake Shores HOA position:

The CS-HOA board is in favor of taking ownership of the assets of the defunct Chesapeake Shores Corporation, including the common beach area. The HOA is the proper receiver of those assets. The board believes the transfer should not in any way violate the rights of the property owners as laid out in the current plats and declaration of subdivision. The board is further in favor of the breakwater project as it is currently being planned, to include the Bavon Beach areas and the southernmost homes in Chesapeake Shores. The board is ready to do what it can to make this happen.

That said, Peyton noted that he did not have authority to make a commitment for the board at this time, but would have to get board agreement before taking any action.

Bill Powell on the Bavon Beach efforts:

The Bavon Beach efforts to save the beach started in 1996. It came as a surprise when they found out that the Nature Conservancy owned the waterfront strip of beach in front of their properties. Initially, the Nature Conservancy was opposed to any breakwaters, but they came around when it became clear that the beach was in real danger. The Bavon Beach owners got permits to build revetments. This got the process moving, especially when the Fish and Wildlife folks got involved. The southernmost houses from Chesapeake Shores became interested in participating.

Bill gave much praise to Tylan Dean and Mike Drummond from the Fish and Wildlife Service: they have been instrumental in moving things this far.

The Mathews County attorney doesn't want to move forward on permits for the breakwater project until the beach ownership issue is resolved.

Joe Sties on his position:

Joe stated that he unequivocally does not oppose the Phase 1 breakwaters. He has never opposed in any way building those breakwaters, to include the southernmost homes of Chesapeake Shores. His concern has been about the attempts of the +4 houses to gain ownership of the beach, not the purpose of those attempts. He supports having the Chesapeake Shores HOA gain ownership of the common beach areas as long as the rights of the property owners to the beach are preserved, and further he supports having the HOA support the breakwater efforts.

Tylan Dean on the position of the Fish & Wildlife Service:

Fish & Wildlife want to preserve species habitats. They will work with anyone for that. They support groups and projects that promote shoreline conservation and the habitat of the Tiger Beetle. They have committed to the breakwater project, including giving funds to Mathews County for the project. They hope that this project will become a model for cooperation for other communities working on similar projects. They have found that various agencies, including Fish & Wildlife, are not always helpful in resolving conflicts amongst interested parties, and they are

hoping this will be a model for how to change that. They recognize the rights and interests of all players, and realize that they do best when they work WITH all parties and not just FOR those parties. They have other projects on the bay where this experience will be applicable, including one involving 3000 property owners involving a mile of beach on Cape Charles.

Fish & Wildlife will not set written guidelines on what must be done with the beach, but they will provide recommendations on how best to manage it. They would like to see limitations to intensive use of the beach, including limiting structures and vehicle access.

Joe Sties on process and limitations:

Joe Sties presented documents outlining a proposed process for moving forward and a set of rules that he would like to see added to the deed to the beach areas. The process is as follows (revised slightly by Joe Sties from the original presented at the meeting, revision dated February 21, 2012). The following points are taken verbatim from Joe's document:

1. Joint Meeting with CSHOA Board Representatives, Bavon Beach Representative, U S Fish and Wildlife Agency personnel and Joe Sties
2. Discussion of various interests and objectives and agreement to work cooperatively to achieve mutual objectives
3. Produce statement of agreed objectives and methods
4. CSHOA Board member attendees present joint committee statement of agreed objectives to full board membership for consideration
5. Follow up meeting for original meeting participants to resolve ownership issues, preferred methods for implementation and to produce a joint document for release to the Chesapeake Shores owner community relating cooperative results and plans
6. CSHOA board secures legal representation, if not already arranged
7. CSHOA board contacts "Plus 4" group to solicit cooperation in the board's attempt to secure beach and road ownership – "Plus 4" group would be requested to postpone their pending legal action until the CSHOA board secures ownership rights. Board would promise necessary permit application approval to facilitate construction permit application approvals in return for "Plus 4" cooperation
8. CSHOA performs any necessary preliminary activities, including any required beach survey and new Plat applications, to move forward with court action.

9. CSHOA attorney files necessary Petition with Mathews County Circuit Court requesting ownership transfer to the Association, with appropriate deed conditions . Filing could include one of three alternatives:
 - Amend original CSHOA suit to gain access of roads to include all assets of Chesapeake Shores, Inc.
 - File a new suit to gain ownership of all Chesapeake Shores assets
 - J. Sties will work with association attorney in drafting deed and petition wording, if requested to avoid further opposition and expedite the process
10. J. Sties will file for Defendant status in all cases to protect agreements regarding CSHOA and individual property owner rights
11. Court date for hearing will be set and attended by necessary participants. J. Sties will not object to Plaintiffs motion and deed wording if presented as agreed
12. Assuming positive court outcome, attorney for Association will file necessary documents such as new plat and deed with Mathews Circuit Court Clerk's office as needed
13. Peyton Carr will sign an amended application for breakwater permit as President of the CSHOA
14. J. Sties will withdraw his objection to the permit application and support such application if needed or requested
15. Permits will be approved and construction scheduling can begin

The following are the provisions that Joe would like to see in the deed, revised slightly by him on February 21, 2012, from the provisions read by him at the meeting. These points are taken verbatim from Joe's document:

- The deed of conveyance will state that the original Plat easement wording included in the original plats, such as "Reserved for Property Owners in Subdivision" will be maintained in perpetuity and shall run with the land.
- The deed shall contain wording that provides for access to and use of the beach, for any legal purpose, for all property owners, their families and heirs, assigns and guests without restriction.
- The deed shall state that "No motorized vehicles of any type shall be allowed on the beach at any time". Also, that no structures of any type shall be constructed or built within the boundaries of the association-owned beach, nor shall any extension of any structure, including walkways and decks, be extended into any part of the beach area owned by the association.
- "Fee simple" ownership shall not be requested or any ownership type that provides for total and complete control of the beach area by the association.

- All restrictive provisions of the deed shall run with the land and shall be amended only with the written permission of each house / cottage owner in the subdivision.
- The association shall be prohibited from selling, conveying, transferring, giving, disposing of or assigning any portion of the beach area to any entity at any time now or in the future.
- Upon dissolution of the Association or any successor, ownership of the beach shall be automatically returned to the original owner, Chesapeake Shores, Inc. on or before the effective date of dissolution.
- Failure of the CSHOA to promptly enforce and abide by all provisions of this deed shall be grounds for the revocation of this deed and the return of the beach to the original owner. CSHOA shall be responsible for the legal expenses incurred by any property owner bringing suit against the association for violations of the terms of this deed if such legal action is upheld by any court in Mathews County.

There was some discussion of these provisions. Sties agreed that the following is a fair summary: he would like to see property owners maintain all of their current rights to access to the beach, but to keep motor vehicles or permanent structures off of the common beach property.

Next Steps:

All were in agreement that we wanted to find the cheapest and fastest route for moving forward. Joe Sties does not want any receiver to be asked to generate a recommendation, but would rather like to see the court direct the receiver to grant ownership to the Chesapeake Shores HOA on the terms listed above. Sties indicated that he would file as a defendant in any suit involving the ownership, but that this was strictly to make sure he had a seat at the table at any hearings. He would not object to a transfer of ownership on the terms listed above.

Joe Dzikiewicz agreed to draft minutes of this meeting to be reviewed by all participants. The reviewed minutes will be published on the Chesapeake Shores HOA website and will be presented to the CS-HOA board for further action.

The CS-HOA board is seeking legal representation to deal with these issues.