

Baycliff Civic League Meeting of March 16, 2016

Guest Speaker: Robert B. (Ben) Stagg, Chief Engineer, Western Area, Engineering/Survey Department, VMRC (Habitat, does permits)

Topic: Oyster Leasing Grounds.

- Governed by regulations and all leases are sold or managed thru VMRC.
- Regulations pend revision due to recent conflicts between lease holders whose leases are sold by VMRC and property owners.
- The leases, which are good for ten years with additional extensions for lease transfers, can limit a waterfront property owner's use of "their" waterfront, because oyster pots can extend up to 12 inches into the water column, from the bottom, without any form of visible notice.
- Before leases are sold, they are published in the Beacon.
- There is an oyster lease in our canal, Mill Dam Creek.
- The oyster lease does not affect our dredged channel inside Mill Dam Creek.

SPECIFICS: From the extensive briefing, Ben explained:

Area closed to shellfish is not closed to crabbing.

Late 1800s, Baylor Survey, identified public oyster grounds and private oyster grounds. No private leases on public oyster grounds.

122,660 acres leased state wide, 5522 leases held by 2566 lessees.

Lease types:

- a. Riparian, must own a minimum of 205 feet along the mean low water line (code says if own the land, have the frontage to own the lease);
- b. Lease must be issued in the exact same name as the adjacent highland property
- c. Fee - \$25.
- d. Cannot exceed .5 acre in size.
- e. Cannot extend more than 210 feet offshore or to the middle of a water body.
- f. \$675 is cost of area survey, regardless of size, from VMRC.
- g. \$13.50 to record plat of survey.
- h. No annual rent. Good as long as property is owned. When property owner dies or sells new owner has 18 months to transfer the lease.

Regular ground lease requirements.

- a. Must be a Virginia Resident or 60% VA owned corporate entity
- b. Lease is for sole purpose of propagating shellfish
- c. New leases cannot exceed 250 acres in size
- d. Lease is valid for 10 year period and is renewable provided some attempt to propagate shellfish occurs during each ten year term.
- e. To validate attempt the lease holder fills out a form for VMRC and states what they have done. If have done nothing, they lose the lease. But, if a specific disease is claimed, the lease is renewable. If historically produced, VMRC must renew it by law. 98% get renewed.
- f. Cages greater than 12" in height, must go thru joint permit application. Includes floats.

- g. Oyster grounds are advertised four times. Floats only once.
- h. Rent is \$1.50 per acre per year. Lose lease if you don't pay it.
- i. Application publicized weekly in Beacon for four weeks, and put in public locations, posted, also posted in Courthouse. Paid for by applicant. Code doesn't require notification. Some legislation introduced, but not passed.
- j. VMRC website lists areas that are open and closed.

Diagram of Lynnhaven.

- a. Mill Dam Creek is has an oyster lease.
- b. Public ground is minimal. Small area to left of Baycliff/Mill Dam Creek mouth.
- c. Leases have existed in the Lynnhaven since 1800s. In 1920s, agency took over recordation from courthouses. Many in Lynnhaven have has leases for generations.

Lynnhaven Leases

- a. 69 Riparian leases in Lynnhaven River comprising 33 acres.
- b. 192 regular leases, 2397 acres in Lynnhaven River system and 55 individual lease holders.
- c. 21 pending riparian applications and 21 pending regular application and 14 are currently protested.
- d. Commission agreed in January 2016 no assignment of new leases (regular or riparian) for nine months on Lynnhaven due protest and legislation. Workgroup has been asked by Commissioner, including some local residents. Property owners and industry people. Chaired by Dr. Neal, Assoc. Commissioner. Will meet sometime in April. 12 people plus VMRC staff, including Ben Stagg. Will be open to public. First meeting will be held in the Brock Environmental Center. Held on a weekday. Purpose is to study issue of user conflict. Aquaculture methods are key.
- e. Public ground still use scattered spat. Private, uses floats. Especially in residential areas.
- f. Issues are:
  - a. Cages in shallow water (easier to work gear, but increases conflict with boaters and swimmers). Lease = right to cage it.
  - b. How a ground is marked, mostly PVC pipe – VMRC does have marking regulations.
  - c. Materials used to make cages and number of cages on a lease. Cages cannot be more than 12 inches off the bottom.
  - d. Concern regarding hazard of navigation. Interpreted, cannot be a “hazard” to navigation. They investigate the complaints. May make lease holders move their pots.
  - e. Can mark either whole boundary or just area caged. Needs a placard. “Caution” or “Aquaculture Structures”. Can't say no trespassing.

Oyster gardening.

Backyard gardening of oysters of less than 160 square feet in area requires a no-cost permit (General Permit #3).

In the Lynnhaven River, and Mill Dam Creek, if it rains over a certain amount in 12 hours period, closed to shellfish harvesting for a limited period of time. On health department list-can get email of when it is closed. Dey Cove and Mill Dam Creek are closed to direct commercial marketing but are leased. Lease is good for 10 years

Grow at your piers in floats or cages. Two page application. Grow up to 160 square feet, non-commercial. Can be tethered to pier or bulkhead. Can get oyster permit in condemned area. Closed to direct market (I.E. CANNOT SELL WHAT YOU GROW FOR PERSONAL USE). Commercial oyster farmers can re-harvest from polluted area to clean area. Last year, agency decided not a good idea to lease areas that are in condemned area. So, have either recalled them or returned cost of publication to them.

Notification program for stacked cages has same regulations apply to clams, most common on Eastern Shore, where they use nets to keep out stingrays but the nets can foul propellers.

Attorney general says issue a lease, it's a contract. Can't break it. Legislative fix for that. Can build a pier into a lease. Some leases predate the developments. Property holders can also ask for a formal hearing.

Various options for extending a lease. Such as a holder can transfer a lease 9 years into it, and the 10 year timeframe starts over again. Further, leases that have expired can still be extended.

No formal procedure legally, when a boat hits an oyster pot.

A representative of Pleasure House Oysters, a local commercial dredging company that has been operating in the Lynnhaven for years, offered to answer questions regarding commercial efforts. Either go to [www.pleasurehouseoysters.com](http://www.pleasurehouseoysters.com) or contact Beverly at 363-9602.

BAYCLIFF MEETING COMMENCED ABOUT 7:45 P.M. (Acting Secretary was absent for the first ten minutes or so, still with the oyster dredging interests).

Status:

Channel design scheduled for completion this month. We are on track for STARTING THIS FALL! WE ARE AT THE GO/NO GO STAGE and need the money now. Pledges are due shortly and there is some concern that members will withdraw pledges. At present, the project is short somewhere between \$25-45K, which is to fund contingencies, over-dredge, channel markers, and unexpected hazards or ramp repair.

Pledges: \$154K.

Baycliff: \$ 20K.

Subtotal \$174K.

Estimated shortfall: \$25-40K.

Withdrawn pledges to date, no reason:

Several solicitations for additional funding were made at the meeting, and there were no practical ideas for funding sources to offset the shortfall, other than the sale of easements to three residents of Harbor Lane, only. Harbor Lane is distinguished by being directly on the dredged creek and not endangering any adjacent marshland or the small islands that dot Mill Dam Creek channel farther to the south.

The issue became the value of property rights if easements are approved for sale by Baycliff and what is being sold and to whom. Extensive discussion followed. In general, people do not favor selling private access to Mill Dam Creek. If approved by Baycliff, what is being sold is the right to dredge a channel through to Baycliff's property to extend access to our dredged channel that is 25 feet wide.

Based on recent efforts to solicit funding from Baycliff residents who had not yet pledged, there seems to be no other source of significant funds besides selling the easement. There is no source for loaning funds.

Baycliff has already approved \$20,000 from the general fund, there is an additional \$24K in Baycliff general funds reserved for community improvements but the Civic League would have to agree to the variance.

The result of the tally of written votes, absentee and present, were as follows:  
Yes to selling easements: 76. No to selling easements: 16.

Sanitary Sewer Replacement:  
Delayed until summer.

Mike and Cindy Perry, new Baycliff residents, attended the meeting and were welcomed. Mike expressed the desire to be on the architectural committee (he is an architect). It was explained that the committee no longer exists, that Baycliff Civic League is a league which is totally voluntary, and not a mandatory membership association (which is today's common legislative model). Enforcement of covenants, that still exist and run with the land, is the burden of individual property owners affected by any changes. Baycliff enjoys a very high rate of participation in its Civic League, and the generally friendly tenor of Baycliff Residents is unusual.

Respectfully,  
Susan Moritz, Acting Secretary.