

ACCOMACK COUNTY WETLANDS MINUTES OF MAY 23, 2019

At a meeting of the Accomack County Wetlands Board held on the 23rd day of May 2019 in the Accomack County Administration Building Board Chambers, Room #104, in Accomac, Virginia.

1. CALL TO ORDER

MEMBERS PRESENT AND ABSENT

Wetland Board Members Present

Mr. Earl Frederick, Chairman

Mr. T. Lee Byrd

Mr. Timothy Getek

Mr. Gene Wayne Taylor

Others Present:

Mr. G. Christian Guvernator IV, PE, Director Environmental Programs

Ms. Chontese Ridley, Environmental Programs Permit Specialist

Mr. Hank Badger, Virginia Marine Resources Commission (VMRC)

DETERMINATION OF A QUORUM

There being a quorum, Chairman Frederick called the meeting to order at 10:00 a.m.

2. ADOPTION OF AGENDA

Mr. Frederick said there was one item that needed to be added to the agenda under "OTHER BUISNESS." It was about an issue in Captain's Cove on Seaview Street.

On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to unanimously adopt the agenda with the modification.

3. MINUTES

A. April 25, 2019

On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to approve the minutes of the April 25, 2019 meeting.

4. NEW BUSINESS

A. Mickey & Darlene Hayward – VMRC# 2019 – 0520

10373 Scarboroughs Neck Road

To remove stone in 12-16 feet sections, to grade, and install proper filter cloth on an existing failing rip-rap wall that lacks proper filter cloth and grading. The property is located in Belle Haven, VA 23306, Tax Map #117-A-57 & 58.

Mr. Nathan Iseman, Iseman Marine, appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Iseman said there was about 135 feet of rip-rap that did not have any cloth underneath it, and that there was a lot of soil washing out underneath the rock. Mr. Frederick asked Mr. Iseman about there being no impacts to vegetative wetlands and Mr. Iseman sated there probably was before. However, Mr. Iseman said the he would be working the same footprint. Mr. Frederick then asked if the project called for re-grading, because there was a steep area when he went out. Mr. Iseman replied yes. Mr. Frederick followed up asking Mr. Iseman if he thought he would be able to avoid the small areas of grass that are visible is some of the photographs when pulling out the rocks. Mr. Byrd

mentioned there was some on the creek side of the steps. Mr. Iseman said realistically there will be some impacts. He wanted to keep everything behind the grass.

Mr. Frederick said that, from the application, he seen that a trench was going to be put in but did not know if one was there already. Mr. Byrd said unless it was filled in 2013 that there was not one on the property. Mr. Byrd also added that one would have to be put in for Mr. Iseman to do his work. Mr. Byrd then asked Mr. Iseman if he would be able to do that without any wetlands being interrupted. Mr. Iseman said he planned to follow the toe of the stone and not go out any further into the grass. Mr. Byrd asked Mr. Iseman about his plan for grading and said the only way he seen that he, (Mr. Iseman), would not disturb any wetlands would be by taking some of the applicants yard. Mr. Iseman agreed.

Mr. Byrd asked if they should be talking about any disturbance of vegetative wetlands for the project. Mr. Iseman said he was not sure of a number to put on the application. Mr. Byrd asked if a number was needed to approve the project at the current meeting. Mr. Frederick said yes and asked Mr. Badger to chime in.

Mr. George Badger, VMRC, was sworn in by Chairman Frederick. Mr. Badger said he came up with 35 square feet of vegetative wetlands impacts. A shore discussion ensued with Mr. Badger explaining how he came up with that number.

Mr. Getek asked if the slope was going to be gradual and Mr. Iseman said yes from the landward side.

Mr. Byrd asked Mr. Iseman if client would be willing to accept 35 square feet of impacts to vegetative wetlands, (\$420.00). Mr. Iseman said yes. Mr. Frederick then asked what the grade for the slope. Mr. Iseman said 2:1. Mr. Getek asked if more rock was going to be brought in or if they were going to use what was already there. Mr. Iseman said he anticipated on using what was already there. Mr. Taylor said that grading back would change the applicant's bank dramatically. Mr. Taylor wanted to know if the applicants were okay with it and Mr. Iseman said yes.

Chris Guvernator, Environmental Programs, was sworn in by Chairman Frederick. Mr. Guvernator pointed out the county's record showed someone else as the owner of the other property. If that was in fact true a joint application would need to be filled or Mr. Iseman's client would only be able to build on the portion that belonged to him. A small discussion ensued led by Mr. Byrd saying he believed that there was only one owner. Mr. Taylor added that this problem could be prevented by asking applicant to use the properties survey.

On a motion made by Mr. Byrd and seconded by Mr. Getek, the Wetlands Board voted to issue a permit (valid for (1) year) to Mickey & Darlene Hayward – VMRC# 2019 – 0520 to remove stone in 12-16 feet sections, to grade, and install proper filter cloth on an existing failing rip-rap wall that lacks proper filter cloth and grading. The property is located in Belle Haven, VA 23306, Tax Map #117-A-57 & 58 with the follow amendments:

1. *Accept 35 square feet into mitigation at \$12 a square foot equaling \$420.00*
2. *Install the proper filter cloth*
3. *Provide proof of ownership*
4. *Slope is done based on the drawings*

5. OTHER BUSINESS

A. Revise Process for Postponing Applications

Mr. Chris Guvernator wanted said this would be an extension of the discussion that was had at the last board meeting on this topic. He also said that he had spoken with Hank and came up with a proposed concept to carry through to put in a change for the County Code. There are two possible scenarios for an application that had already been formally submitted:

1. *If the applicant/agent call/contacts Chontese, (Env. Programs Permit Specialist), before she has contacted the newspaper to advertise the project.*

Mr. Guvernator said if his office gets a written request from the owner or owner's agent to postpone prior to advertising, it will be put in their file and the application will be deemed incomplete until a new date is set. Mr. Frederick suggested that Mr. Guvernator specify written, email, or whatever submittal method would be accepted. He added that this would keep the department out of the 60 day and the applicant is aware that their application is incomplete.

2. *If the applicant/agent calls/contacts after the ads have been placed.*

Mr. Guvernator said the hearing would be held as advertised, have public comments, and then continue the hearing by vote. The applicant also has to be aware that they have waived their 30 day Board determination rights. Mr. Guvernator noted that after the board as heard an application, the board then has 30 days to approve/deny.

Mr. Frederick asked what would happen if the applicant or agent is not able to make the hearing. Mr. Guvernator said it would be open to public comment and then closed. Mr. Frederick also asked if they would discuss issues they have with the application or if they should wait until the applicant or representative was present. Mr. Badger chimed in and said they could discuss the application as if they were there. Mr. Badger also said if the applicant/agent did not show up, or request a continuance, the board could approve or deny it at the hearing. The applicant/agent will also have to include how long of an extension they need.

In the request letter the applicant would have to waive there 30 day determination rights and the adjacent property owner would be notified of the continuance by mail. Mr. Getek asked if a letter would be incorporated stating what needs to be done if they have to postpone. Mr. Guvernator said that was a great idea. Mr. Taylor said applicants should also have to agree to waive their 30 day deamination rights if they ask for time, (a continuance), at the hearing. Mr. Guvernator agreed saying they would also have to sign something. It was also suggested that Mr. Frederick sate that there is a 10 day holding period of the permit after the hearing. Mr. Getek said to let the applicant know that in this time they could make changes/modifications. This would keep them informed on what was going on. Mr. Frederick asked Mr. Guvernator to prepare him a written statement with the way he would like it to be stated. Mr. Badger said the statement could be added to the statement given to the applicant once their application has been approved.

B. Seaview Street (Captain's Cove)

Mr. Getek said there was an area in Captain's Cove that was isolated and remote near Chincoteague Bay, (Cockle Point) that had been considered a non buildable area. He added that recently there has been some activity there with lots being sold and building permits have been issued. Mr. Getek said he received an email showing that someone had dropped boulders there. Hank Badger and Chris Guvernator were notified of the issue. When Mr. Badger went out he discovered that some of the boulders were placed in the Wetland Board's jurisdictional land. Mr. Getek said there was a meeting held on this topic that he and Mr. Guvernator attended. He also said Mr. Guvernator had to do some research to come up with a plan due to the possibility of work being done out of permit.

Mr. Guvernator showed the board the area and where the boulders had been placed. In May of 2015 an application came in for the installation of three staggered stone vented sills with some filling behind it towards the high water mark, and planting of certain plants. The application was approved by the Wetlands Board with two conditions:

1. Revise the drawings
2. Patens were not part of the project

The permit expired May 2016 and a three year monitoring period was supposed to start after that to make sure the plants planted behind the sill were flourishing.

Mr. Guvernator showed the board the 2017 aerial of the area so they could see what was there. He then showed the board what the site currently looked like, and that he could find no evidence that the site was monitored. Mr. Badger also shared his site visit photos with the board to show the different in site from Monday, (May 20th), to today's meeting, (May 23rd).

Mr. Guvernator said the representative from Captains' Cove said the project called for filter cloth under the rip-rap that was never installed. With the first couple of storms it started to topple and the plants were blown out. Mr. Guvernator said they were trying to fix it and that would require taking some, or all, of the stone out to put the filter cloth back down. Mr. Guvernator has asked the applicant to get their consultant to write him a letter telling him what they are doing so that he could determine whether it was maintenance, a total reconstruction, or work being done without a permit.

Mr. Badger said that their, (VMRC), permit included the stone and a little bit behind it that was channel-ward of mean low. He added that he wanted to know if they were enlarging the footprint that is already there, because they do not have a permit to do that.

Mr. Taylor asked Mr. Getek if the project was ever fully completed, adding that you cannot repair something unless it was already done. Mr. Getek said he did not believe that he was a member of the Wetlands Board at said time, but he did remember the area being used as beach area. Mr. Taylor said he would have no problem if it really was a repair. Mr. Guvernator stated again that a letter needs to be submitted from the applicant/agent specifying what is being done. He also said that the aerial in 2017 looked the project was complete, but the plantings did not take. Mr. Getek agreed with Mr. Guvernator saying that he should contact Chris McCabe to get more information on what they are planning to do.

Mr. Frederick asked Mr. Guvernator if he issued a stop work order and Mr. Guvernator responded no. Mr. Guvernator then asked if he should order one. Mr. Byrd said that something needed to be done so that they could find out what was going on. Mr. Frederick then asked Mr. Guvernator if he needed a vote from the Wetlands Board to issue a cease. Mr. Guvernator did not think that he did and Mr. Frederick said the work should be ceased.

Mr. Guvernator said he would stop work; tell them to furnish information on what they are doing, and to stop construction. All equipment, materials, debris put in the Wetlands Board's jurisdiction has to be removed. He also added that a stop work order should not be taken lightly and that he would go out and measure before issuing it. If the rock is outside of the original footprint work, the stop work order would be issued.

On a motion made by Mr. Getek and seconded by Mr. Byrd, the Wetlands Board voted to issue a stop work order in reference to the project at Seaview Street, located in the Captain's Cove subdivision in Greenbackville, VA 23356, that requires removal of all equipment, material, and debris. To also give authorization to Mr. Chris Guvernator to determine if the work is either maintenance from a prior permit or new work that requires a new permit.

C. Judd Brook Properties

Mr. Byrd wanted to get some clarification on the status of this project. From his understanding not had been done. He asked Mr. Guvernator if the project was abandoned for the moment. Mr. Guvernator said the project was deemed incomplete about three months after it was received last winter, (December 2018). He added there were several items missing from the application that would allow his office to bring it before the board.

Mr. Byrd asked if there was any word, and Mr. Guvernator said there was one resubmittal that included GPS coordinates for the location of the berm. That was one of the fourteen items asked for, but all of the items need to be submitted for the application to be deemed complete. Mr. Byrd

said that he had knowledge that some of the investors still think that the project is going through. Mr. Guvernator said Bill Nichol had been calling board members and alternates telling them the application had been updated, approved, and that they could all come out and look at the site. All the board members and Mr. Guvernator felt like there are a lot of loose ends and that was a project to keep their eyes on.

6. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, June 27, 2019 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac

7. ADJOURNMENT

On a motion made by Mr. Byrd and seconded by Mr. Getek, the Wetlands Board voted to adjourn the meeting.

The meeting was adjourned at 11:25 a.m.

Earl Frederick, Chairman

Chontese Ridley, Environmental Permit Specialist