

ACCOMACK COUNTY WETLANDS MINUTES OF APRIL 25, 2019

At a meeting of the Accomack County Wetlands Board held on the 28th day of March 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. George H. Ward, Jr., Vice 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

On a motion made by Mr. Getek and seconded by Mr. Ward, the Wetlands Board voted to unanimously adopt the agenda as amended.

3. MINUTES

A. April 25, 2019

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

4. OTHER BUSINESS

A. Harvey & Carol Muller III & Andrew & Colleen Best Violation

Request for Extension

Mr. Chris Guvernator appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Frederick. Mr. Guvernator said his office received a request to extend the 30 day window related to the Muller and Best violation. The applicants have proposed a revised design of what was there and are trying to preserve much of what was put into the ground without a permit. They are asking that an extension be granted through May 15, 2019. This would be an extra 25-30 days to get their application completed and submitted. Mr. Guvernator said the applicants were waiting on information from their engineer, and that he believed this was at no fault of the applicants. Mr. Guvernator also said that he would recommend approving the extension, but from an administrative stand point, he was not sure if the county staff had the authority to do so.

Mr. Getek asked Mr. Guvernator if this was an extension of the pervious permit or if it was new. Mr. Guvernator responded that this was an extension of a due date of a completed application to avoid having to go into violation mode, but that it would be a new permit/permit number starting from scratch.

Mr. Frederick asked if there was anyone from the Muller/Best party in the audience that wanted to comment. Ellen Grimes, Coastal Resource Management, appeared before the Wetlands Board on behalf of the applicants and was sworn in by Chairman Frederick. Ms. Grimes stated she had spoken with the surveyor

that morning, and that the data he collected was still with the engineer. She told the surveyor to have that information to her by the 10th of May so that she could get it to VMRC, (Virginia Marine Resource Commission), by the 15th for the JPA, (Joint Permit Application), submittal. Ms. Grimes explained that once the engineer and Mr. Young, (George E. Young, III, Engineers & Surveyors), comes up with their figures the best method to do the work would be determined.

- Method 1: To put some type of holes in the bulkhead so that water can freely come in and out.
- Method “2”, removing the return wall that was placed at the same elevation of the bulkhead and pushing it down or cutting it down to a lower elevation to allow the tidal cycle to come in through that one point source.

Mr. Frederick said he could see that the applicants were trying to comply with the Notice of Violation. Ms. Grimes said they were also complying with the intent of the original permit issued by the Wetlands Board. Mr. Frederick then asked Ms. Grimes if she thought that May 15th would be realistic, and she responded that it depended on the surveyor and engineer. She also added that the applicants were in the audience if the Board had any questions for them.

Mr. Frederick called on Mr. George Badger to come before the board. Mr. George Badger, (VMRC), was sworn in by Chairman Frederick. Mr. Frederick asked Mr. Badger what he thought about the delay to May 15th, and Mr. Badger said it was at the Wetlands Board’s discretion.

Mr. Ward asked to confirm that there was no issue in moving this matter further in the future. Ms. Grimes said she thought Mr. Governator would have the answer to that question. Mr. Ward said his reason for asking was due to 15 days not being a very long time. Ms. Grimes agreed saying the engineer has had the information/data for three weeks already. She also added that she could amend the May 15th request and make it June 15th. Mr. Ward stated that if the clients could not make the May 15th deadline then they would be in the same situation again, and asked if it could be moved to June 15th without giving official notice to the new date to the surveyor/engineer to ensure everything was completed in time.

Mr. Byrd did not agree that giving the applicants another month to get their plans/application in just for the sake of the engineer not coming through was the board’s decision. He believed that what the applicants asked for, (May 15th), was fair and enough time for them to say they need more time. Mr. Byrd said the thought the board should do what they were asked to do and not consider extending. He felt it inappropriate to extend any further.

Mr. Getek asked the date of the May meeting and Mr. Frederick said May 23rd. Ms. Grimes then asked Ms. Ridley, (Evn. Programs Permit Specialist), to confirm that if she turned in her materials on the 15th it would be too late for the May meeting. Ms. Ridley confirmed that was correct. Mr. Governator second and added even though the applicants would not make the May meeting, his office would stop enforcement and would not prosecute. Mr. Badger said as long as the applicants and agent agree there should not be any issues.

On a motion made by Mr. Getek and seconded by Mr. Ward, the Wetlands Board voted to extend the request for extension for the Harvey & Carol Muller III & Andrew & Colleen Best violation until June 15th, 2019. Both properties are located on Chincoteague Island, VA 23336.

B. Judd Brooks Properties, LLC - VMRC# 2017-2021 Application Status Update

The applicant’s agents have been contacting board members stating that their project is on track. Mr. Governator informed the board that as of April 24th, 2019, no new application had been submitted to his office. There has not been a resubmittal of the original application since January 16th, 2018, and that revision did not address all of the concerns that would deem the application complete. The application is still deemed incomplete and is not ready for review, and would request site visit to coincide with regularly scheduled meeting as soon as it is deemed complete.

C. Makemie Monument Shoreline Erosion

Request to Authorize Funds

Mr. Governator said he would be talking to the board about a partnership with the Francis Makemie Society for their shoreline stabilization project. This project will help protect the shoreline from erosion and to add new tidal wetlands. What has been proposed, (if all the pieces come together), is to contribute some of the wetland's in-lieu of fund money to allow this project to be designed, built, and maintained.

Mr. Governator said at least \$12.00 per every square foot of newly created wetlands could be used from the fund. He also said he spoke to VMRC about a ruling on whether or not the County's Wetlands Board motion can be honored towards any project, because \$12.00 a square foot will not build tidal wetlands. His understanding of the intent of the fund it that it can go towards total project cost and not just \$12.00 a sq. ft. Mr. Taylor said he did not believe anyone would allow them to put money towards the hardening of the shoreline. Mr. Byrd wanted to confirm that the board could spend the money on and what they would be able to do. Mr. Governator said all of this was predicated on a memorandum of understanding between the county and the society on an approval Joint Permit Application, (that the Wetlands Board would review from technical perspective), and easements for the county to maintain the property in the long run.

Mr. Taylor said he thinks the money should be spent on the "10:1" area and the planning. Mr. Governator said that the plan was to only spend \$12.00 per sq. ft. in the zone that is not reestablishing vegetation on a mud flap. Mr. Frederick asked if they were restricted to only using \$12.00 per sq.ft. Mr. Governator said from his understanding the mitigation funds could be used for cost associated with preparing/constructing tidal wetlands where there were none. He added that Accomack County does not have any information on how much is cost to construct tidal wetlands. The \$12.00 was decided on in 2008; however, it was lower than the going rates in other communities.

Mr. Getek said back in 2008 \$12 was great, but things have gotten more expensive and the cost has gone up. Mr. Frederick said from his understanding \$12.00 was taken in for the destruction of wetlands, but if a good project came along the board could write a check for the cost of the project. Mr. Byrd asked, for the motion, why couldn't they write a check for "X" amount of dollars to give to the society to use on anything allowable by law. Mr. Governator said there was nothing wrong with that he believed they have VMRC's backing, provided that they do an evaluation of how much it actually cost to put the tidal wetlands in.

The board members then asked Mr. Governator how much was in the mitigation fund. He said it was around \$33,000.00. He said that would pay for the design and contribute money to the construction of the tidal wetlands area. The society would be spending about \$90,000.00. Mr. Taylor said the best place to use the mitigation funds would be towards the construction only and not contribute anything to the design. The other members of the board agreed with Mr. Taylor. The members felt like that could possibly lose their \$30,000 if the money was put towards the design and preparation. Mr. Governator went over why he thought putting money in towards the design and preparation was need, but the board members disagreed.

Mr. Ward asked if the board could give the society the \$30,000.00 on the contingency that all the other monies were acquired. Meaning the board would not spend anything unless there was enough money in the reserve to create the project. All members agreed. Mr. Byrd was asked to give his thoughts on this issue.

On a motion made by Mr. Byrd and seconded by Mr. Getek, on approbation of the funds to complete the project the Accomack County Wetlands Board appropriates up to \$30,000.00 for the creation tidal wetlands portion of the project.

D. Declining a Permit

Mr. Frederick asked what the preferred method to declining permits was. If someone wants to do something and a quorum doesn't care for it. Mr. Governator said a motion could be made to vote against it. Mr. Frederick said Roberts' rules states one was for someone to make a motion and no one second it.

A discussion ensued with more examples.

E. Revise Process for Postponing Applications

NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, May 23, 2019 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac.

5. ADJOURNMENT

On a motion made by Mr. Ward and seconded by Mr. Getek, the Wetlands Board voted to adjourn the meeting. The meeting was adjourned at 12:26 p.m.

Earl Frederick, Chairman

Chontese Ridley, Environmental Permit Specialist