

ACCOMACK COUNTY WETLANDS MINUTES OF JULY 18, 2019

At a meeting of the Accomack County Wetlands Board held on the 18TH day of JULY 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 stated that the Colpitts requested a continuance of one month. Mr. Getek asked if the board needed to vote on this and the board decided vote.

On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board granted a one-month continuance, (August), for Norman & Susan Colpitts - VMRC# 2019-0963, and to adopt the agenda with the modification.

3. MINUTES

A. June 27, 2019

On a motion made by Mr. Byrd and seconded by Mr. Getek, the Wetlands Board voted to approve the minutes of the June 27, 2019 meeting.

4. NEW BUSINESS

A. Harvey & Carol Evans-Muller, III & Andrew & Colleen Best – VMRC# 2019-1017 37482 & 37488 Bayside Drive

To construct an after the fact bulkhead. The property is located in the Captain's Cove subdivision of Greenbackville, VA 23356, Tax Map# 5A1-1-987 & 5A1-1-988.

Mr. Andrew Best, (property owner/applicant), appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Frederick asked Mr. Best to fill him in on the after-the-fact permit. Mr. Best stated the after-the-fact permit was to determine or propose what could be modified to restore the original intent of the original permitted structure. Mr. Best said they hired an engineer with G. E. Young Engineering to help evaluate the project. G. E. Young's recommendation was to put poles, (jet filters). "3" would go one way and "1" one way to allow water to flow in and out at the same level the original structure would have. That would leave the raised the bulkhead intact for storm protection. He added that there would also be some grading of the ground to reestablish the elevation behind the bulkhead. He said they would be grading to the elevation of 2.3 feet, which was the height of the low

profile bulkhead structure, on a normal slope to the back line of the houses. In addition, Mr. Best said they were proposing additional planting, (beach grass or marsh grass).

Mr. Best said the original permit had approximately 800 square feet of plating and they upped it to 1,000 square feet.

Mr. Frederick asked Mr. Guvernator if he could give the history on this project back from the board voted to approve the original permit.

Mr. Chris Guvernator, Environmental Programs Director, appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Guvernator showed some slides from the previous, (original), application while giving some background. He said he department received an application in October of 2017 for a wave breaks to be added on top of an existing bulkhead, and to plant an area. The wave break would break the wave energy would still allow the existing plants to have access to the water.

Mr. Guvernator then showed some photos from a storm or an extreme high tide event that showed the alignment of the original bulkhead that was there, and how it tied into the adjacent property. He added that the original permit was approved with modifications recorded in the minutes/motion. The permit was provided to the contractor, Fisher Marine, and the permit expired before any work was done.

Mr. Frederick said how the current vinyl bulkhead on the property came about was missing and he asked how it came about. Mr. Best said they went under contract with Fisher Marine in July of 2017 to raise the bulkhead. Mr. Fisher then put them, (the applicants), in contact with Ms. Ellen Grimes as an agent to help with the permit process. With Ms. Grimes the project changed from raising the bulkhead to installing wave break structures, which was approved by the board. Mr. Best said Fisher Marine never came to do the work and in September of 2018 he received a call about a tropical storm that had come through. The storm blew out the entire bulkhead and opened up a 15-foot hole. The fill on the left hand side was eroding and washing out. Mr. Best said Fisher Marine no longer wanted to do the job and would not come out to look at the damage. From there he and his wife called multiple marine contractors and Luke Britton was the first to call them back. Mr. Britton informed them at this was an emergency situation and that if the bulkhead was replaced in the existing foot print, even though it was not what they were permitted for, that they could construct it. Mr. Best also said he was told by Mr. Britton that what was permitted would not have held up, and to construct it as a 2 feet higher bulkhead. He also told them they could make modifications to let water flow through it.

Mr. Best stated Mr. Britton said he had been in contact with Ellen Grimes and that their permit was good until 2020. Mr. Best said they did not know they were not in compliance. Mr. Best said they Muller's bulkhead was not as bad as theirs, but that it sustained a significant amount of damage.

Mr. Byrd said that he was surprised that research was not done prior to taking someone's word. Mr. Best admitted that was their fault and that they should have done their homework on it. Mr. Frederick added that a lot of the blame goes on Mr. Britton, because he should know the rules on emergency repairs. That there was a process and that it goes through Environmental Programs. Mr. Taylor sked if Mr. Britton had anything to do with the fill that was put in. Mr. Best said a recommendation was given to them to backfill it to make it structurally sound. Mr. Taylor then asked who gave the recommendation, and Mr. Best John Miller did the backfill work. Mr. Byrd and Mr. Taylor said that Mr. Miller did not know anything about wetlands laws. Mr. Taylor said that was not the correct person to get advice from on this issue.

Mr. Taylor asked how many loads of fill Mr. Miller bought to the site and Mr. Best said there was approximately 200 cubic yards of fill put in. Mr. Best said most of that was to replenish what had been blown out above and beyond what was originally permitted. Mr. Taylor asked if they would be willing to dig it out to where it was due to them not being permitted to put the fill there. Mr. Taylor said it needed to go back to the original dark soil. Mr. Byrd said Mr. Britton knows the process and that no work should be done without getting a permit first. He also mentioned to Mr. Best that if he had called Mr. Guvernator, that Mr. Guvernator would have gotten them on the right path.

Mr. Getek asked if all the vegetative wetlands were washed out with the blow out of the bulkhead or if some still remained. He wanted to know if sand went on top of vegetative wetlands. Mr. Best said his property had non-vegetative wetlands, and said that the Muller's could speak on their side.

Mrs. Carol Evans-Muller, (property owner/applicant), appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mrs. Muller said she photos before the fill was put in. She gave them to the board to view. They showed there was no vegetation to the right of the pier, but to the right of the pier, where they currently have grass; there was a patch closer to the water. She said the bushes were destroyed by the water coming in from the bulkhead being damaged. Mr. Getek said he found it hard to believe that anyone would cover up vegetative wetlands. Mr. Taylor repeated what Mr. Britton's proposal and that Mr. Britton had nothing to do with the fill, but that they, (the board), needed to make a determination on the fill.

Mr. Best said the calculations for the fill were not correct. He said it was determined by Ellen Grimes and Ms. Muller said it was not enough. Mr. Byrd reiterated that the board's mission is "No Net Loss", and gave him an explanation of what that meant. Mr. Best stated they did not want to take away wetlands, but to add. The original permit was to add approximately 820-850 square feet of vegetative wetlands. They are now proposing to increase that number to 1,000 square feet. Mr. Guvernator chimed in stated the applicants were not creating new wetlands. They are converting non-vegetative wetlands into vegetative wetlands.

Mr. Taylor asked how many how fill was approved in the original permit. While Mr. Best was looking for the information Mr. Getek asked when this issue was recognized. Mr. Muller said she believed it was February 2019.

Mr. George Badger, VMRC, appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Badger confirmed that the issue was found during a compliance inspection by VMRC in February 2019.

Mr. Best said the board approved 40 cubic yards of fill to be put in. There was a discrepancy and Mr. Guvernator said he would leave out to research it. A discussion ensued amongst the board members while waiting for Mr. Guvernator to return. Mr. Guvernator said the numbers that were shown by Mr. Best were correct. Mr. Guvernator said the area that was calculated at 8 cubic yards was changed to 16 cubic yards, and the 8 cubic yards of fill above mean high water was changed to 24 cubic yards. Mr. Frederick said that he had found the same numbers in his notes. There was 16 cubic yards in the tidal zone, and 24 cubic yards outside of the board's jurisdiction. Mr. Badger said there was no fill in what was submitted to VMRC only pilings were approved. Mr. Best said they did not see the drawings until after the permit was submitted, and that no engineer was consulted on those drawings. Mr. Guvernator said that did not matter because the board could not permit anything over mean high water.

Mr. Badger then pointed out the jurisdiction line to sort out some of the confusion. Mr. Guvernator said the board approved, based on the drawings, 16 cubic yards between mean high and mean low to bring that area up to support the plants. This was changed on the revision; however, it was put in the wrong spot. There were more discrepancies on the original drawings and what Ms. Grimes told the applicants. Mr. Frederick said looking at photos of the original bulkhead, what Ms. Grimes said was correct. The area directly behind the bulkhead was scoured and out and below mean high water, which would be between low and high. Mr. Byrd asked if the 16 cubic yards were given, how much was really put there. Mr. Best said the 16 cubic yards allowed an area of 150 square feet to be raised 6 inches. Mr. Byrd then asked how high that area was now, and Mr. Best said it would have to be measured. Ms. Muller said 24 inches. Mr. Best asked if they could raise that area up 6 inches across the grade and Mr. Taylor said no. Mr. Best then asked Mr. Guvernator if he could pull up the images from the original permit. A discussion ensued on grade, slope and if anything actually changed.

Ms. Colleen Best, (property owner/applicant), appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Badger pointed out that there was a lot of discussion on a permit did not

exist, and that before them was an application for an “after the fact” permit that was not based on what was permitted and not built. Mr. Byrd agreed and asked the other board members if they agreed. They did and Mr. Taylor suggested talking about what they would be able to approve. Mr. Frederick, in agreeance, stated they should talk about what was before them.

Mr. Taylor asked about the fill again and Mr. & Mrs. Best said 200 cubic yards was put over the whole area. Mr. Taylor suggested taking out everything until the original soil was reached. Mrs. Best asked if it would be better to put up the map/pictures from the current permit application instead of the one from 2017. Everyone agreed and the map was changed. Mr. Guvernator asked the applicants what they were asking for. Mr. Best said they were asking for a grade elevation of (+/-) 2.3 feet, which is the elevation of what the old low profile bulkhead was, to take the fill back to where the water was allowed to come in, and to gain/plant 1,000 square feet of wetlands. Mr. Fredrick asked if the slope of the grade was specified in the current permit and Mr. Best said yes. Mrs. Best added that they already had a contract in place with G. E. Young to place grading stakes as soon as they gained approval from the Wetlands Board. This would ensure that the grading was done properly.

A short discussion ensued on the slope/grade elevation. It was concluded with the help of Mr. Guvernator, that it should be no steeper than 3:1. Mr. Guvernator said anything greater would cause them to lose sediment before it established. Mr. Taylor asked the applicants if they had a jurisdictional determination done or if the US Army Corps of Engineers had been out. Mr. Best said that he was not sure.

Mr. Best said he wanted to come to a conclusion that would make everyone happy. He wanted to know if it mattered how they get to the needed elevation. Mr. Taylor asked Mr. Badger if he thought plants would grow in the bojac soil. Mr. Frederick said when he was on site it looked like sand to him and not bojac soil. Mr. Guvernator said if the establishment of vegetation was a concern that there is a monitoring process of three years, but that he could push it out to five. Mr. Best said that if it does not work that they would do whatever the board suggested. Mr. Guvernator said it could be added to the motion that the standard mitigation guidelines should be followed. The applicants would have to agree to do this in good faith or have a performance bond put in place for the amount of the plantings.

***** 5 MINUTE INTERMISSION *****

***** MEETING RECONVEINED *****

Mr. Fredrick said that Mr. Getek had a question about some stone on the property, and that a letter of concern and suggestion was received from the applicant’s neighbor, Mr. Stoudt. Mr. Guvernator said the letter was put in the VMRC file. Mr. Stoudt requested a revision to a detail on the drawings. His concern was sand migration during storms and it choking out his native marsh. Mr. Getek asked about the rocks on the site and what would be done with them.

Mr. Harvey Muller, (property owner/applicant), appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Muller said he had spoken to Mr. Stoudt and had no problem with the proposed revisions. Mr. Getek said the rocks would have to be moved and that grass had been grown in between them. He added that they would have to be removed carefully so that the vegetative wetlands were not disturbed. Mr. Getek asked if everyone agreed that the rocks would have to be removed. Mr. Byrd agreed and said that they could not stay, and wondered how much vegetation would be disturbed. Mr. Getek estimated 2 square feet. Mrs. After some discussion the board agreed on 4 square feet being the amount of disturbance from the rock removal, which would have a mitigation fee of \$48.00. Mr. Frederick asked if there were any issues with the filter cloth or if there was none under the stone. Mr. Getek said there was none there and Mr. Guvernator said none had been proposed. Mr. Getek then asked the applicants if 4 square feet of disturbance seemed like a fair amount. Mr. Best said that seemed like a large area. Mrs. Muller said currently, there was hardly any grass around the rocks, and the grass started at the end of the rocks. Mr. Getek said the grass was shooting up between the rocks. Mr. Getek, along with Mr. Byrd, asked if the applicants were okay with the 4 square feet and with paying the 4 square feet in mitigation fees. They agreed.

Mr. Getek said the rocks with be initially removed, install the correct/proper geotextiles, and replace the rocks as they were. Mr. Best asked for a recommendation on how high it had to be established to. Mr. Getek said it needed to be higher than what the new grade was going to be to prevent any soil erosion. Mr. Getek said to put it back at the same height. Mr. Frederick said they needed follow the general profile of what exist in terms of width and height.

Mr. Guvernator added that in lieu of a performance bond the board could also provide the option of a maintenance agreement. The maintenance agreement would be recorded and stay with the property. Meaning if either one of the applicants decided to sell their property within the five year monitoring period, the maintenance agreement would run with the land.

Mr. Frederick asked Mr. Taylor if his concerns had been addressed. Mr. Taylor said he still did not want to go with the 40 cubic yards of fill, and Mr. Getek said he still has some concerns with the rocks. He explained his concerns and Mr. Best said those rocks would be removed. Mr. Getek also asked about the jet flow filters and the gravel bed being put in, and Mr. Best said yes, that was what the engineer suggested. Mr. Byrd said G.E. Young would do a good job of that. Mr. Byrd added that it would be put in the motion that it would be monitored and if the job isn't done correctly it will need to be fix, replaced, or done away with. If that becomes the case, the applicants will have to come up with something new that would work.

A discussion then ensued on the 40 cubic yards. Mr. Best said the fill was spread out across the lots so there was no way for him to tell how much was put where. Mr. Guvernator said they were going to excavate down to 2.3. He added it could be put in the motion 2.3 from the top of the landward bulkhead and removed everything until they get to the grade. It cannot be steeper than 3:1. Coring was mentioned, however, the applicants did not think that would solve the problem. More suggestions were made and the discussion continued. Mr. Frederick said there were a lot of unknowns that they were not going to figure out by just having a discussion. He said there were two known points: (1) the height of the low profile bulkhead and (2) the height of the new bulkhead. Mr. Frederick said they should just dig down until they match the two heights, replant, and remove the rest.

Mr. Byrd said it could not be discussed away and that they needed to have Mr. Young core the area in the board's jurisdiction. They would come up with a number and it would be pure math. Mr. Guvernator said from a monitoring stand point it might be easier, instead of excavating down, to put in some type of benchmark at 2.3 and marking the points so that staff could tell what is there. Mr. Best then asked a series of questions on how to go about doing this and repeated with they were trying to achieve again. Board members and Mr. Guvernator reaterated the options that they had already given him, but in a different manner. Mr. Getek said getting the marsh creation, to him, was more important than trying to figure out a number.

Mr. Byrd asked Mr. Getek, with this project being in his backyard, how did he think they should go about fixing it. Mr. Getek stated he would take soil down to 2.3 hopping the soil would be nutrient rich enough to do the plantings to be planted and prosper. It would be monitored for 3-5 years, they would check to see how the jet flow is going, and see how all of this would work out. Mr. Getek believed that going down 2.3 feet matching the neighbor, would work. Mr. Byrd felt like the board would be subjecting themselves to having to approve more after the fact permits if something was not put in the motion for this application stating it was a one-time thing due to their bulkhead blowing out. He asked Mr. Guvernator was there any language the county attorney could write up stating this.

Mr. Fredrick asked if the hearing should be continued since Mr. Ward was not present, and Mr. Byrd asked what would be talked about if so. Mr. Frederick said the whole meeting would have to be rehashed. Another discussion ensued on the original 40 square feet of fill. Mr. Taylor pointed out what could have been done to keep the applicants from getting to this point. What they could have done to the bulkhead, i.e. putting holes in it. He said they had a permit that could have helped them that was approved, but they went over the approved fill. Mr. Best said that a portion of that area was not in the board's jurisdiction. Mrs. Best wanted to know how they could prove that the new work would be done

correctly and Mr. Taylor said the engineer would handle it. Mr. Byrd said they would take Mr. Young's, the engineers, word.

Mr. Getek suggested permitting it with the 2.3 feet and having Mr. Young core it. If it is in a certain tolerance, 2.1-2.5, the sand could be pushed over and moved out of the area, (due to it being dumped in the board's jurisdiction illegally), and then proceed. Mr. Frederick asked what would they do with the number they get after the coring. Mr. Taylor asked if the application was approved as permitted, excluding the jet filters, how soon would they start digging out the dirt. Mr. Best said they could do it as soon as they had the engineer come on site to stake the elevation and get a contractor to do the grading and removal. Mr. Byrd asked if Mr. Young had given them a time frame and Mrs. Best said Mr. Young was going to come out before the meeting, but did not want to have to redo it.

Mr. Guvernator stood up to talk about the information given to him from the county attorney on the language of the motion. She said the board could add language to the motion to set this ruling aside from others at their discretion. Mr. Guvernator said if they wanted to add that the applicants have 90 or 120 days to excavate everything that should not be there down to the 2.3, and then to the 1,000 square feet do a soil boring to determine approximately how much remains that was illegal fill, but that has been turned into legal fill because of this new permit. Mr. Guvernator stated the applicants formally amend the permit through the VMRC process with a one-page letter from the engineer saying approximately 19 cubic yards between native soil and ultimate 2.3.

On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to issue a permit (valid for (1) year) for Harvey & Carol Evans-Muller, III & Andrew & Colleen Best – VMRC# 2019-1017 to construct an after the fact bulkhead with the following modifications:

1. *Mitigation Fee - Pay \$48.00 into the mitigation fund for 4 square feet of impacts to vegetative wetlands*
2. *One Time Ruling - After-the-fact permit done due to an emergency bulkhead blowout*
3. *Marsh Creation Area - Plant vegetation in this area and follow the standard vegetative guidelines with a monitoring period of 3 years*
4. *Illegal Sand Fill Area - Will be graded flat from channel ward with an elevation of 2.3 feet. Within 90 days concurrent boring will be done to make a final determination that all illegal fill has been removed out of the Wetlands Board's jurisdiction.*
5. *Maintenance Agreement - To be conveyed with land*
6. *Southern Rocks - Removed for purpose of marsh creation and to be replaced with appropriate geo-textiles prevent any erosion within the Wetlands Board's jurisdiction*
7. *Jet flow Systems - Will be put in and the monitoring will run concurrently with the maintenance agreement make sure they are running properly*
8. *Rip-Rap Rocks - Rocks left in the marsh creation area will be removed*

The property is located in the Captain's Cove subdivision of Greenbackville, VA 23356, Tax Map# 5A1-1-987 & 5A1-1-988.

5. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, August 22, 2019 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac.

6. 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 12:41 p.m.

Earl Frederick, Chairman

Chontese Ridley, Environmental Permit Specialist