

ACCOMACK COUNTY WETLANDS MINUTES OF JULY 30, 2020

At a regular monthly meeting of the Accomack County Wetlands Board, held on the 30th day of July, 2020 in the Accomack County Board Chambers, Room 104, Accomac, Virginia, at 10:00 a.m.

1. CALL TO ORDER

MEMBERS PRESENT AND ABSENT

Wetland Board Members Present:

Mr. Earl Frederick, Chairman
Mr. George Ward, Vice Chairman
Mr. Timothy Getek
Mr. Gene Wayne Taylor
Mr. T. Lee Byrd

Others Present:

Mr. G. Christian Guvernator IV, PE, Director Environmental Programs
Ms. Allison Lay, Virginia Marine Resources Commission (VMRC) Representative

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. Taylor and seconded by Mr. Ward, the Wetlands Board voted to approve the agenda.

3. MINUTES

3.01 DRAFT February 2020 minutes

On a motion made by Mr. Byrd and seconded by Mr. Getek, the Wetlands Board voted to approve the February minutes, as corrected.

3.02 DRAFT June 2020 minutes

On a motion made by Mr. Getek and seconded by Mr. Ward, the Wetlands Board voted to approve the June minutes.

4. OLD BUSINESS

4.01 Island Motor Inn, Inc. – VMRC# 2020-0635

4391 Main Street, Chincoteague

To replace approx. 631 linear feet of existing bulkhead to prevent erosion and fill in boat basin.

Ms. Grimes presented the project. She pointed out the area of the project that differs from what was presented, and indicated that she is preparing revised drawings. Mr. Guvernator confirmed the section that has a gap in the existing bulkhead. Ms. Grimes confirmed their intent to request to close in this segment with bulkhead.

Mr. Frederick asked the audience if there was anyone present who wished to speak concerning the application. No one came forward.

Mr. Getek asked about what was underneath the marginal wharf. Ms. Grimes isn't sure.

Mr. Getek mentioned that he had identified some oysters in the boat basin, and if there were plans to protect or relocate them. Mr. Taylor indicated that the property owners would be agreeable to relocation.

Mr. Frederick asked Mr. Guvernator to confirm the area where the wharf hangs out over the water. Mr. Guvernator described the area as starting about 50-feet north of the south end of the main bulkhead and ending near the gazebo. Ms. Grimes confirmed this.

Mr. Frederick pointed out that there is a pipe coming out of the wall near the southern end of the project, and Ms. Grimes indicated that they would be extended out through the new wall.

Mr. Taylor discussed the area of missing bulkhead in front of the main building, and that normally the approach would be just 2 feet in front of the existing bulkhead. Ms. Grimes made reference to projects in Captains Cove, but Mr. Taylor explained the differences that did not correlate with this project. Mr. Getek confirmed the applicant's plan to close the area with bulkhead, and Ms. Grimes confirmed that, explaining that the simplest approach would be to extend bulkhead from end of current bulkhead on one side up to the end of current bulkhead on the other side.

Mr. Taylor also brought up the upper corner of the project where the proposed bulkhead crosses in front of the boat basin, which is new alignment, not replacement, which would typically just stay 2 feet in front of the existing bulkhead. Mr. Taylor also expressed concern that by them permitting the proposed alignment they would be OKing the loss of state bottom. He referred to VMRC for confirmation that these sections were in the State's jurisdiction. Ms. Lay said that the boat basin is in the Board's jurisdiction. When VMRC looks at applications like this, they try to keep replacement bulkheads in the 2-foot range in front of the existing bulkhead. Ms. Lay said that there are some circumstances where they will consider going further to appropriately match up to adjacent bulkheads. Ms. Lay said that she doesn't comment on matters within the Board's jurisdiction, and VMRC will issue their permit after we issue ours.

Additional discussion ensued.

On a motion made by Mr. Taylor and seconded by Mr. Getek, the Wetlands Board voted to issue a permit (valid for (1) year) for Island Motor Inn, Inc. – VMRC#2020-0635 to replace approximately 631 linear feet of existing bulkhead to prevent erosion and fill in a boat basin, with the following corrections:

- 1. Provide revised drawings that depict accurate alignment of existing bulkhead and proposed location of approximately 50 feet of new bulkhead*
- 2. Prior to construction, confirm that VMRC will allow area behind new bulkhead section to be filled inside of the proposed alignment*
- 3. Transplant oysters within the boat basin to an appropriate location*

5. NEW BUSINESS

5.01 Grand Bay – VMRC#2020-0808

Seaview Street, Greenbackville

Replacement of 155 linear feet of bulkhead.

Mr. Pitt presented the project and distributed copies of a revised drawing.

Mr. Getek stated that he is member of the Captain’s Cove HOA assembly, but does not hold any position of authority or responsibility in Captain’s Cove Golf and Yacht Club, INC.

Mr. Frederick opened the public hearing and asked the audience if there was anyone present who wished to speak concerning the application.

Mr. John Ward of Greenbackville asked the Board if the Seaview Street project had been approved by the County. Mr. Getek summarized his understanding of the status of the project and asked staff to answer the question. Mr. Guvernator stated that the recently resubmitted plans were not approved and no land disturbing permit had been issued for the proposed street project.

Mr. John Ward also pointed out the original lot boundaries on the aerial view exhibit, and asked the Board if the lots are ½ gone now. Mr. Frederick mentioned that there is always some doubt as to the accuracy of the County property lines in the mapping. Mr. Getek clarified the lot lines in relation to the existing return wall on one side of the project area. Mr. John Ward said he thought it looks like there is ½ of the lot that has washed away, and asked when does it become an unbuildable lot. Mr. Frederick indicated that the Board did not have an answer, and asked staff for some insight. Mr. Guvernator stated that the County can’t confirm that a lot is “buildable” or “non-buildable without a site plan provided for review.

Mr. John Ward asked the Board if the outer lot area that was now water would be owned by the state. Mr. Getek asked VMRC to comment on the question, and also asked VMRC to clarify the jurisdiction of the property. Ms. Lay said that the VMRC jurisdiction is from the mean low water channelward, current conditions from the date that the application is submitted. She described the jurisdictional boundaries for the Wetlands Board. So, she said, the alignment of the proposed bulkhead project is not within the Board’s jurisdiction, but the fill behind the bulkhead is. Further discussion ensued. Mr. Frederick stated that he thought Mr. Getek’s question was,

“who owns the bottom” and Ms. Lay commented that the State owns the bottom channelward of mean low water. Mr. George Ward asked if the state also owns the bulkhead. Ms. Lay pointed out that piers are built out over the water, but the state doesn’t own those piers. So, in this case, the state wouldn’t own the bulkhead.

Mr. Getek stated that one of the questions they were being asked is to approve fill on property owned by the State and asked if that is something they can approve. Ms. Lay stated that this is something VMRC would have to look at after the Board rules on the permit.

Mr. Pitt said that he talked to Mr. Badger at VMRC about filling in behind the old bulkhead, and mentioned the “life and limb” principal they used to use. Mr. Pitt stated that it would do detrimental damage not to allow that bulkhead to be put in. He provided copies of photos from the project site. Mr. Pitt also made reference to an old drawing by Ed Young that showed mean low water, and can show actually how much damage the water action has made. He also indicated that the referenced properties are getting hit on two fronts, with some of the damage coming from the road overwash through the site.

Mr. Frederick closed the public hearing.

Mr. Frederick requested Mr. Guvernator to read the VIMS report into the record, which he did. Mr. Getek then elaborated on the situation in the field, and asked for a survey of where the 1.5 tidal range is since that is what is in the Board’s jurisdiction. If the Board votes to put in the bulkhead, it will basically segregate out the tidal marsh wetlands and essentially could decay and die.

Mr. Frederick pointed out that the Board’s responsibility is to make decisions on applications based on current existing conditions. He also said, if you as a property owner see a problem, that is the time to submit an application.

Mr. Pitt asked if the Board is taking jurisdiction over the bulkhead. The Board said no. Mr. Byrd pointed out that they couldn’t yet determine where their jurisdiction is. Mr. Pitt agreed with the comments. Mr. Pitt also said, while looking at this, did the Board look at the earlier VMRC site visit photos. County staff said that the photos weren’t part of the JPA. Mr. Pitt pointed out that the photos were part of Mr. Badger’s report after the application was submitted, and part of his approval.

Mr. Taylor pointed out that VIMS says that mean low water is landward of the bulkhead. However, if VMRC says they can backfill that land, then it belongs to VMRC because they own the bottom. Then that new land belongs to them (applicant).

Mr. Getek asked to verify that Mr. Badger only mentioned the bulkhead, not any fill behind the bulkhead. Mr. Pitt indicated that the fill was part of the application.

Additional discussion ensued.

Mr. Pitt again asked whose jurisdiction is the project in. Mr. Getek responded by asking Ms. Lay if the standing in the Badger report was still the official standing of VMRC. Ms. Lay confirmed this, and said she doesn’t want to speak to the original VMRC decision.

Mr. George Ward asked again whose jurisdiction is it. Mr. Taylor read the information that's says mean low water is landward of the bulkhead, and therefore the bulkhead is not in the Board's jurisdiction.

Additional discussion ensued.

Mr. Getek asked about breaking up the project in to separate lots and handle the continuous land mass in the middle lot, which is in the Board's jurisdiction. Mr. Byrd asked, since the JPA is for the whole thing, how can you do that. Mr. Getek said the point of the matter is, how do they approach the small area within the Board's jurisdiction. Mr. Guvernator said that he didn't know, because the VMRC ruling effectively creates a loss in the Wetlands Board jurisdiction.

Mr. Pitt stated that the application calls out 155 feet of bulkhead, but it is really only 150 feet.

Ms. Lay stated, regardless of the VMRC ruling, the Wetlands Board still needs to make a decision on the areas within the Board's jurisdiction. And they have to work together. So, if one agency denies the project, that would affect the other's decision. If the Board were to deny the impacts in the Wetlands Board's jurisdiction, then it could not happen.

Mr. Getek stated that they want to see clear demarcation of where mean low water, mean high water and 1 ½ times high tide is. That information will help the Board understand what the impacts will be for this project. Similar to what they recently did on another project in this area. Mr. Frederick added that the eroded headland is in the Board's jurisdiction, in addition to the ends of the project.

Additional discussion ensued.

Mr. Frederick stated that the Board cannot rule on portions of the project that are outside the jurisdiction of the Board, on a piece of property that is below mean low water. And that is, in essence, what the applicant is asking for the Board to do.

Additional discussion ensued.

The applicant, Mr. Davis, expressed how stressful this permitting process has been. He feels like the County staff is working against him. This was approved by VMRC in May. He didn't hear from the County until July. That is not fair to them. And then to try and bring back VMRC again. He says that they have ruled on it. He asked why they are even getting this. He doesn't appreciate the County waiting two months, and he has gotten quotes and was going to go ahead with construction because he thought they were good. And after 2 and ½ months of growing season is showing more grasses on site that just got discovered. He doesn't feel that he has been dealt fairly with this. Mr. Frederick mentioned that the amount of erosion that has occurred didn't happen in the last two months.

Mr. Byrd asked if he understands the comments made by Mr. Davis is that, "why are we here today, if it was already taken care of 2 ½ months ago?" and Mr. Davis stated that it is part of it, yes, with VMRC. Both Mr. Byrd and Mr. Getek stated that they appreciate the comments from Mr. Davis.

Additional discussion ensued.

On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to continue the application until the August 2020 meeting and to direct the applicant to provide a contour survey of the actual low tide, high tide and 1.5 tide locations for Grand Bay. – VMRC#2020-0808

5.02 Peter & Dyane Draper – VMRC# 2020-0835

Pine Drive, Chincoteague, VA

Construction of 100 linear feet of new bulkhead

Ms. Grimes presented the project. She made note that the small boat basin is not on the applicant's property. She also noted that the original alignment has been adjusted to pull back in and avoid a lot of the originally impacted wetlands.

Mr. Ward asked about the side near the return wall, and what is planned for the end of the bulkhead. Ms. Grimes indicated that a return wall was necessary, now that they know the applicant doesn't own the boat basin.

Mr. Frederick opened the public hearing and asked the audience if there was anyone present who wished to speak concerning the application. No one came forward.

Mr. Frederick closed the public hearing.

Mr. Taylor discussed the ownership of the adjacent property towards the canal. Ms. Grimes indicated that the whole project is within the property boundary of the applicant.

Mr. Getek suggested that the bulkhead alignment could be revised to bend back into the property and avoid more loss of wetlands.

Additional discussion ensued.

On a motion made by Mr. Taylor and seconded by Mr. Getek, the Wetlands Board voted to issue a permit (valid for (1) year) for Peter & Dyane Draper – VMRC# 2020-0835 to construct 100 linear feet of new bulkhead, with the following corrections:

- 1. Adjust bulkhead alignment to avoid all vegetated wetland loss (provide revised drawings)*

Recess: On a motion made by Mr. Getek and seconded by Mr. Byrd, the Wetlands Board voted to take a five (5) minute recess.

5.03 Albert F. Dassler – VMRC# 2020-0877

23395 Franconia Drive, Onancock

To construct 125 linear feet of rip rap (after the fact)

Mr. Frederick opened the public hearing and asked the audience if there was anyone present who wished to speak concerning the application.

Mr. Guvernator read a statement received from Adair Tyler, who had to leave the meeting before the hearing started. Mr. Tyler is not opposed to the project. But he said that the stones placed in the grass need to come out. And he said that the rest of it needs to be put in right, on top of fabric, so no more erosion occurs into the creek.

Mr. Frederick closed the public hearing.

Mr. Frederick asked Mr. Guvernator if this is an “after-the-fact” permit. Mr. Guvernator confirmed this, saying that there is a certain amount of stone already in place.

Mr. Byrd said that he talked with Mr. Dassler who asked for a one month continuance due to health reasons.

Mr. Byrd stated that he believes the old material needs to be taken out, or handled properly with filter cloth installed. He also suggested that the Board considers moving forward on the permit.

Mr. Guvernator summarized the July 15th letter received from Mr. Dassler, and handed out a copy of our response to the questions and concerns.

Mr. Getek asked what the options are. Mr. Guvernator and Mr. Frederick both discussed the options before the Board, including action on the permit in absence of the applicant and action to continue the permit, as requested by the applicant. The Board could approve, approve and modify, deny, continue, and ultimately prosecution. Ms. Lay clarified that, if the permit was denied, then a restoration order would have to be issued at the same time.

Mr. Ward asked if the work he already did would have been approved. Mr. Frederick and Mr. Byrd commented that it probably wouldn't have been approved as how he did it. Mr. Ward commented that if it gets denied, then they have to go to enforcement (to take it out). And if it gets approved, he will have to correct the problems. Mr. Ward also stated that, if the Board postpones it until the next meeting, letting the applicant know that he has to modify the application, would that be a better way?

Mr. Guvernator stated that staff has been trying to get the applicant to complete the application and come to a meeting since November or December, 2019, and that a one-month continuance is as long as staff would recommend.

Mr. Ward suggested that staff sends a letter stating that the applicant needs to revise a couple of things. Mr. Getek added that it should specifically suggest the need to add filter cloth and call out the proper size of the rocks.

Ms. Lay stated that the Board could send a letter that asked the applicant for additional information and for him to consider certain suggestions, sent by staff.

Mr. Taylor stated that, without filter fabric in place, vegetation is growing up between the rocks, which could be measured to estimate the cost of mitigation.

Mr. Ward asked why he applied for this. Mr. Guvernator said that VMRC received a complaint about the work and investigated. They determined that it was out of their jurisdiction and in the jurisdiction of the Wetlands Board, and handed it off to the Board.

Additional discussion ensued.

On a motion made by Mr. Byrd, and seconded by Mr. Ward, the Wetlands Board voted to continue the application until the August 2020 meeting for Albert F. Dassler – VMRC# 2020-0877

5.04 Erica Raymond – VMRC# 2020-0921

3432 Main Street, Chincoteague

To remove rubble and install 74 linear feet of new bulkhead

Ms. Grimes presented the project. She mentioned that the project will eventually connect to a previously approved project, JPA 2016-1622. Therefore one of the two return walls may not be necessary.

Mr. Frederick opened the public hearing and asked the audience if there was anyone present who wished to speak concerning the application. No one came forward.

Mr. Frederick closed the public hearing.

Mr. Getek asked about the 15 feet return wall ending close to the road. Ms. Grimes said that the wall will end up being only 9 or 10 feet long, only long enough as needed.

Mr. Frederick asked about the blue line on the drawing, which Ms. Grimes said was mean high water. Mr. Frederick then asked if the applicant would consider moving the bulkhead back to the mean high water line, which would create a little more marsh.

Mr. Frederick asked Mr. Taylor if it would be of any concern for the Town. Mr. Taylor said that road protection is a big deal for the Town. Ms. Grimes indicated that the 2016-1622 project had expired and could also be pulled back one foot when it gets resubmitted again soon.

On a motion made by Mr. Taylor and seconded by Mr. Ward, the Wetlands Board voted to issue a permit (valid for (1) year) for Erica Raymond – VMRC# 2020-0921 to construct 74 linear feet of new bulkhead, with the following corrections:

- 1. Modify alignment to be one (1) foot landward of location originally proposed (provide revised drawings)*

6. OTHER BUSINESS

There was no other business

7. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, August 27, 2020 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, Accomac, Virginia.

8. ADJOURNMENT

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

The meeting was adjourned at 12:15 p.m.

Earl Frederick, Chairman

Chris Guvernator, Director