

ACCOMACK COUNTY WETLANDS MINUTES OF APRIL 22, 2021

At a meeting of the Accomack County Wetlands Board held on the 22ND day of APRIL 2021 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 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. Chontese Ridley, Environmental Programs Permit Specialist

Mr. Benjamin Nettleton, Virginia Marine Resources Commission (VMRC)

Mrs. Beth Nunnally, Environmental Planner II

DETERMINATION OF A QUORUM

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

1. ADOPTION OF AGENDA

On a motion made by Mr. Getek and seconded by Mr. Byrd, the Wetlands Board voted to approve the agenda as modified.

2. MINUTES

A. January 28, 2021

Page 5 – Ms. Hein’s name was spelled incorrectly.

On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to approve the minutes January 28, 2021 meeting.

3. NEW BUSINESS

Maggy's Eastern Shore Properties LLC– VMRC# 2021-0359 & VMRC#2021-0360

Mire Pond Subdivision

Replacement of the failing 50 feet wooden bulkhead with a new vinyl bulkhead

Mr. Charles Ward appeared before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Frederick. Mr. Ward said both properties were purchased less than a year ago by the current owner Mr. Nelson Cancel, (managing partner for Maggy’s Eastern Shore Properties, LLC). Mr. Ward said it was his argument that this was demolition by neglect. The former owners allowed an existing bulkhead to rot away.

The area between the accessory structure and the bulkhead, (6 to 8 feet), has seen a lot of erosion. He added that the bulkheads on both lots had deteriorated. Mr. Ward also said there was tidal influence behind the line of the existing bulkhead. High tide does come in behind the bulkhead where boards are no longer there.

It is proposed to replace the old bulkhead with a new wooden bulkhead of the same elevation and in the same footprint. The property was purchased without an existing survey so they are not going to question the board with a 2 foot extension. They are assuming that the property line is at the end of the bulkhead. Mr. Cancel has agreed to have a survey done, (by a licensed surveyor), before the new bulkhead is installed to confirm. The bulkhead will be placed on the owner's property and will not extend beyond the owner's property.

Mr. Taylor said for the motion they would approve a bulkhead that is on their property. Mr. Ward said if it shows that the property line is inside the existing bulkhead line, the new bulkhead will be placed inside.

Mr. Byrd asked Mr. Guvernator if the bulkhead was beyond repair. Mr. Guvernator said yes, it is nonfunctioning.

Mr. Ward said he gave a synopsis of both because there was not anything that would apply to one bulkhead and not the other. They are adjacent, they are under the same basic use, and undeveloped. He also added that there were existing bulkheads on both sides of the property, (north & south), and the goal is to create one continuous bulkhead across the two.

Mr. Frederick asked would there be enough room on VMRC#2021-0360 to do the work. Mr. Ward said the contractor would start on the southerly lot and work his way to the northerly so that he can work behind what he has already completed.

Mr. Getek asked what the staff's recommendations on this were. Mr. Guvernator said he had nothing additional to add.

Mr. Chris Guvernator, Environmental Programs, was sworn in by Chairman Frederick. Mr. Guvernator stated that if the applicant is going to transfer the property in the future, and the work is not done by the applicant, it will have to come back before the board. The applications are approved for the individual and not the property.

Mr. Getek said the property and the housing were very close to the bank, and to provide protection to the property he did not think a Living Shoreline would be an affective remedy for this situation. Then asked the other board members for their thoughts. He asked if they thought the bulkhead was the way they should go.

Mr. Guvernator said the applicant's agent covered that in the application. Mr. Byrd asked if it was the board's responsibility to over whether or not it is a good spot for a Living Shoreline when there could not be one. Mr. Frederick chimed in by asking when it was mandated for the

board to have to absolutely discuss that, and when the applicant absolutely had to include it in their application. Mr. Guvernator said to ask Mr. Ben Nettleton, but as of July of last year the applicant had to consider it as the first option. He added that he did not know if the board had been mandated to discuss it.

Mr. Ben Nettleton, (VMRC), was sworn in by Chairman Frederick. Mr. Nettleton said after the new legislation came in last July, it is the applicant's responsibility to explain why a Living Shoreline would not be justified.

A question was raised about the possibility of adding a floating dock. Mr. Ward said he was not aware of any plans for one and that it was not part of the current application(s). When asking the applicant if he knew of any plans being done and if he had gotten that far with the contractor. Mr. Cancel, the applicant said yes, and that it was included in the price for the rest of the work.

Mr. Guvernator said the dock was not in the application and that a separate Joint Permit Application would need to be submitted.

A discussion ensued.

CHAIRMAN FREDERICK OPEN THE FLOOR TO PUBLIC COMMENT PUBLIC COMMENT CLOSED

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 Maggy's Eastern Shore Properties LLC– VMRC# 2021-0359 for replacement of the failing 50 feet wooden bulkhead with a new vinyl bulkhead, and a 20 feet extension of the existing bulkhead with the following conditions:

- 1. Verification of the project being within the owners boundary lines*
- 2. New bulkhead will be within the boundary lines of the owner's property*

The property is located in on Chincoteague Island, VA 23336, Tax Map# 30A2-8-25.

On a motion made by Mr. Taylor and seconded by Mr. Getek, the Wetlands Board voted to issue a permit (valid for (1) year) to Maggy's Eastern Shore Properties LLC– VMRC# 2021-0360 the proposed replacement of the failing 50 feet wooden bulkhead with a new vinyl bulkhead with the following conditions:

- 1. Verification of the project being within the owner's boundary lines*
- 2. New bulkhead will be within the boundary lines of the owner's property*

The property is located in on Chincoteague Island, VA 23336, Tax Map# 30A2-8-26.

B. Gary Bryan - VMRC# 2021-0403

Mr. Chris Guvernator explained that staff originally determined a portion of the project was in the Wetlands Board jurisdiction, but upon further review with VMRC, visiting the property and receiving additional information from the property owner's agent, staff has reversed that decision.

Due to that this project has been removed from this meeting's agenda.

C. Willowsbranch LLC - VMRC# 2021-0404

4557 Shelley Cove Lane

To re-dress, augment and add fill

Mr. Chris Governator gave a quick synopsis of the project restating the project description adding that coir logs would be used to address the milder erosion.

Ellen Grimes, Coastal Resource Management, appeared before the Wetlands Board on behalf of the applicant.

Ms. Grimes said there had been a lot of erosion on the point in the last 20 years and it was just now being addressed. The owner would like to install 46 linear feet of rip rap quarrystone rock in the area that is the most erosive. The rest the erosion will be addressed with coir logs and a little bit of fill. Ms. Grimes also said some planting, probably patens, would be done.

**CHAIRMAN FREDERICK OPEN THE FLOOR TO PUBLIC COMMENT
PUBLIC COMMENT CLOSED**

Ms. Grimes asked if any letters came in from the adjoining property owners and Mr. Governator said none that he was aware of. Mr. Frederick then asked the board members if they had any comments.

Mr. Taylor asked how my of the property had been lost and Ms. Grimes said 30 – 40 feet of land. He also asked what the life would be on the coir logs. Ms. Grimes said about 5 years for what was being installed for this project. She would be using dense one.

A discussion ensued.

Mr. Getek asked if there would be monitoring with the planting. Ms. Grimes said if she needed one should would supply a monitoring plan, but it would only be 20 square feet. Mr. Getek then pointed out that Ms. Grimes called the work to be done a hybrid Living Shoreline and asked Mr. Ben Nettleton would he like to speak further on it.

Mr. Nettleton gave some examples of other types of hybrid Living Shorelines and said with the new guidelines coming more of these would probably been seen. They are used to break the wave energies where traditional Living Shorelines are just sand fill and plantings. Mr. Frederick asked if the Hybrid Living Shorelines had been written up or described anywhere by VMRC, and Mr. Nettleton said no, just internal discussion for now

Ms. Grimes added that a true Living Shoreline has no structural attributes.

Mr. Ben Nettleton then read from the bill enacted July 2020 to give a more defined definition of a true Living Shoreline.

A 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) Willowsbranch LLC - VMRC# 2021-0404 to re-dress, augment and add fill with the following conditions:

1. *Mitigation to be paid for 10 square feet of impacts to vegetated wetlands*
2. *Voluntary planting be monitored to two planting seasons*

The property is located on Chincoteague Island, VA 23336, Tax Map# 31-8-21.

4. OTHER BUSINESS

A. JPA 2021-0019 Young NPN Rescinded

Mr. Guvernator said the application was reviewed by staff and it was determined that no permit would be needed because all of the work would be done seaward of the existing bulkhead, however, upon a site visit done by VMRC several portions of the bulkhead are in such bad shape that it was considered nonfunctioning.

Tide is getting behind the bulkhead therefore it would be in the jurisdiction of the wetlands board. The no permit needed letter has been rescinded and a letter has been sent out stating that this application needs to come before the board. Mr. Guvernator added that they had spoken verbally to the applicant's contractor/agent to make sure that he understood and no response has been received, but the contractor/agent has verbally request to be on the agenda for the next meeting.

A discussion ensued.

B. JPA 2021-0181 Klausner (Commercial Bulkhead Replacement & Extension) NPN

Mr. Guvernator said because it was a commercial project he wanted to bring it to the board's attention. He added that he met on site with the applicant's agent. A revision was made to the application and the bulkhead replacement is not in the board's jurisdiction. The bulkhead extension, which in actuality, is a landward retaining wall, near the building, will be demolished and replaced is outside of the board jurisdiction.

C. JPA 2021-0253 Oceanview Eleven (Commercial Pier Extension) NPN

Mr. Guvernator said this project was technically a commercial pier. It is nonresidential because it being share by more than one residential property. This is a pier extension to get out into deeper water. Mr. Guvernator said this was not in the board's jurisdiction but wanted to inform the board of what was going on.

A very short discussion ensued

D. JPA 2021-0553 Schooner Bay Public Boat ramp replacement NPN

Mr. Guvernator said this was another nonresidential project outside of the board's jurisdiction. While some of the work is in the board's jurisdiction, it was being considered as maintenance, (replacement of the concrete boat ramp in the same place).

Mr. Nettleton added this project was exempt because it was owned by the County. Mr. Guvernator said the Public Works department has an internal policy to apply for everything with the Wetlands Board for full disclosure.

A discussion ensued.

E. Starboard Street Violation Update

Mr. Guvernator said they were alerted of filling taking place on this residential lot. It is a lot that has shown to be filled over time, but he was not sure where it started from. It was still showing to be flat with sandy fill in 2002.

Mr. Guvernator said there was an addition to the bulkhead to make it higher, some post driven, some boards put in and some brand new fill put on the site. It was a couple months old before he heard about it.

The board is hearing this because it this is a potential violation in the wetlands board jurisdiction. Mr. Guvernator then explained what his office has done. A stop work order has been issued and a code case has been opened. This is being prosecuted as an E&S violation. Mr. Guvernator added that contact had been made with owner.

Beth Nunnally, Environmental Programs, appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Ms. Nunnally said a letter was sent to the owner asking that all the sediment be pulled back out of the wetland grasses and away from the bulkhead at least 15 feet, install E&S control (silt fence) around the dirt, and pull the boards off. The owner is also required to pull the sediment down below the original bulkhead. Ms. Nunnally said the owner tried to create a makeshift bulkhead and dirt is coming in between the boards.

Mr. Getek asked if the bulkhead was approved. Ms. Nunnally said the original bulkhead was approved. In certain conditions it looks as if the water is overtopping it and the owner tried to build it up.

The property owner is in the process of make those changes and is still in contact with staff. Once this is done the owner can proceed with the JPA permitting process. State and Federal agencies have also been notified.

F. JPA 2020-0877 Dassler E&S Violation

Mr. Guvernator informed the board that a complaint had been received from one of the neighbors.

Mr. Dassler came in for an “After-the-fact” permit for a rip rap that he put in unauthorized. That was originally initiated by VMRC and they turned it over to the County due to it being in the county’s jurisdiction and not theirs.

A load of sand was placed over existing wetlands. Mr. Guvernator said he was not sure how it got placed there. The relationship with Mr. Dassler has dissolved and Mr. Guvernator said he was now working with the County Attorney on how to approach Mr. Dassler again.

A code case has been opened on this and this is also an E&S violation. Mr. Guvernator suggested that no wetlands board members should go visit the site until it has been determined with the county attorney if a deputy from the Sherriff’s Department is needed. Mr. Guvernator pointed out that this was also a violation of the permit that was approved by the Wetlands Board.

A discussion ensued

Mr. Guvernator asked permission from the board to investigate this as a violation of the wetlands board permit that was approved. Mr. Frederick asked if a vote needed to be taken. Mr. Taylor said Mr. Dassler had three months before his permit expires to do the work.

On a motion made by Mr. Byrd, and seconded by Mr. Ward, the Wetlands Board agreed to allow the one year permit to run out and then approach this a violation to the permit approved by the Wetlands Board.

G. Standards for Permitting Backfill Behind Bulkheads

Mr. Frederick explained that this discussion was not going to be about any particular project/property even though photos of other properties would be shown for example. These would only be general statements.

Mr. Getek asked to what extent do they allow the applicant to backfill and gain more land that was lost to erosion. He added this is for canal situations. Wanting to connect to bulkheads on either side to make a straight line. If there are vegetated wetlands should the applicant be asked to pull it back?

Mr. Ward said every application is different, but he does not agree with someone trying to gain 5 feet, 6 feet or so on of property.

Mr. Getek said he was not looking for a conclusion, but wanted to bring this up and that this could possibly be an addition to the decision tree.

A discussion ensued.

Mr. Nettleton said hopefully there will be more clear guidance on this coming soon, but the discussion the board was having on alternative designs and anything that can minimize impacts to wetlands was appropriate.

5. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, May 27, 2021 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac, VA.

6. 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 11:58 a.m.

Earl Frederick, Chairman

Chontese Ridley, Environmental Permit Specialist