

ACCOMACK COUNTY WETLANDS MINUTES OF OCTOBER 29, 2020

At a meeting of the Accomack County Wetlands Board held on the 29TH day of October 2020 in the Accomack County Administration Building Board Chambers, Room #104, in Accomac, Virginia.

1. CALL TO ORDER

1.01 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

Ms. Allison Lay, Virginia Marine Resources Commission (VMRC)

1.02 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. Fredrick said Ms. Grimes would like a moment to introduce to the Board.

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

3. MINUTES

3.01 Draft October 2020 Minutes

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

4. OLD BUSINESS

5. NEW BUSINESS

4.01 Deborah Lalor – VMRC# 2020-1183

16439 Preston Lane

Proposed 85-foot long rip rap revetment with 2-foot marsh toe, filling in 10x10 area, and repairs to the existing rip rap revetment due to slippage/settling

Mr. Chris Guvernator, (Environmental Programs), appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Guvernator said that Ms. Lalor could not attend the board meeting. The information in her initial application was revised, three weeks to a month ago, to amend the scope of work based on some field conditions and some discussions she had with people and contractors. The resulting project is an 85 foot riprap revetment, and some minor repairs to existing riprap revetments to repair some settling or slippage of the riprap rocks in the adjacent area.

Mr. Frederick asked Mr. Guvernator if he would representing Ms. Lalor. Mr. Guvernator responded no. He added that staff had visited the site on a couple occasions and had information based on site visits.

Mr. Guvernator pointed out that the area of concern was the area near the entrance of the applicant's boat basin. Mr. Byrd said he taped the area at 90 feet. Mr. Frederick said he asked if Mr. Guvernator would be interpreting because from the drawings it was not perfectly clear to him exactly where the project began and ended.

Mr. Frederick said there was a letter from Ms. Lalor and Mr. Guvernator said it had been submitted to VMRC and was a part of the application. Mr. Byrd added that every member received a copy of the letter.

Mr. Frederick asked if it was a sill that the applicant wanted to build along "LINE D" on the drawing. Mr. Byrd chimed in and said it was riprap. Mr. Guvernator said the original application that came in July was for some type of riprap/living shoreline combination. After a request for additional information, (by County staff), meeting on site, and talking to other people they, (applicant), changed their approach to the problem with riprap at the toe of the slope of the existing bulkhead. Mr. Ward asked if it would be in the grass. Mr. Guvernator said it would impact some of the grass.

Mr. Getek asked if this would still be in the board's jurisdiction and Mr. Guvernator said yes. Mr. Guvernator said Ms. Lalor was concerned about the eroding bank and that she had already lost one tree.

Mr. Frederick asked if the "0" impacts to vegetative wetlands been modified. Mr. Guvernator said the number had been modified, but that he did not think that Ms. Laylor returned that sheet. Mr. Byrd said he counted 90.

Mr. Frederick also asked why a living shoreline not considered. Mr. Guvernator said they could read the letter that was submitted by Ms. Lalor. A letter was submitted stating why a living shoreline would not work.

A discussion ensued on the applicants concerns about doing a living shoreline and wave action in the area. It was concluded that to save her property a living shoreline probably would not suffice.

Mr. Frederick said if they went with 1 ½ feet wide by 90 feet long, there would be 135 square feet of impacts to vegetative wetlands, (\$1620.00).

There was more discussion on the measurements and again on why a living shoreline might not be the best option. It was concluded that the applicant needed to be present to move forward with the project.

On a motion made by Mr. Byrd and seconded by Mr. Ward, the Wetlands Board voted to give a one month continuance for Sue & Deborah Lalor – VMRC# 2020-1183 to construct a 85-foot long rip rap revetment with a 2-foot marsh toe, filling in a 10x10 area, and to repair the existing rip rap revetment due to slippage/settling. The property is located in Onancock, VA 23417, Tax Map# 84-11-B.

4.02 Scott Harvard – VMRC# 2020-1703

24364 Swan Lane

Installation of 220 linear feet of rip rap revetment

Mr. Guvernator provided a summary of the project and called specific attention to the house and the pool immediately adjacent to the project area.

Ms. Grimes discussed the project in more detail and explained the existing bank protection. She pointed out that the higher tides and higher waves are lapping at the bottom of the bank and creating a scarp, and the cinder blocks are coming away from each other and sloughing. She also explained the challenges of access to this area and the concept of a temporary rock roadway.

She also discussed the "scraping off" of the existing wetland vegetation and relocating it around the corner. Mr. Taylor asked how that would be done, and Ms. Grimes described how the excavator operator could scoop

them up in a thin layer. Mr. Frederick interrupted and opened the public hearing portion of the meeting. There was no one present who wished to speak. The public hearing was then closed.

Mr. Taylor was concerned that the scooping approach might not be successful, and Ms. Said that she thought it would work.

Mr. Frederick asked for clarification as to what the PVC pipes out in the water were referencing, and Ms. Grimes described them as benchmarks, placed out far enough to avoid being impacted by the rock road and the excavator.

Mr. Getek asked if placing the rip rap by land or placing the rip rap from a barge was evaluated. Ms. Grimes pointed out that water is very shallow out in front of the project area.

Mr. Byrd provided an extensive history of the entrance to Leatherberry Creek and the erosion and filling in that has taken place.

Ms. Grimes pointed out that the relocation of the vegetation was in no way being considered as mitigation, and Mr. Taylor indicated that he then had no problem with the approach to move them with an excavator. Ms. Grimes indicated that of the total impact to vegetated wetlands, they would ask for credit for ½ of them that were relocated and ½ of them would be paid for through the mitigation fee. Mr. Taylor indicated that they would consider paying for all, and also trying to get all to live. Ms. Grimes clarified that they are not offering the relocation of the vegetation as mitigation, more of an attempt to restore the point.

Mr. Frederick said that he hadn't heard the living shoreline option addressed, especially considering how shallow it is in front of the project area. It seems like a good idea here, and maybe add a narrow toe at the base of the bank. Preserving the existing marsh and maybe even growing more of it. Ms. Grimes indicated that she had discussed this with the applicant, and the applicant selected the revetment because he believes that it will be the most effective and most efficient option.

Ms. Grimes and Mr. Frederick each remarked that a living shoreline would be positioned right about where the PVC benchmark stakes are.

Mr. Frederick asked Mr. Byrd, since he is very familiar with the conditions, what his feelings are. Mr. Byrd said that he thought it would have little effect on the channel. It will look the same way it does in 10 years as it does now. As they lose Walkers Point and Captain Pruitt's Point, they will get more and more wash. Also, this is where the work boats draw it back and push up wake. He thinks it will take 2 to 3 years trying to get it to grow, and one storm or one year's worth of workboats, and it will be back to the way it is right now.

Mr. Getek brought up the predicament of making a decision on the here and now, as opposed to the conditions in the future, and that they must make their decisions on the here and now. He asked about when you put the roadway in, are you going to go below mean low water. Will the road be within the Board's jurisdiction? Ms. Grimes indicated that part of the road will be in the Board's jurisdiction and part will be in VMRC's jurisdiction. But as the contractor is backing out, they will be pulling up the road and placing it into the revetment.

Mr. Getek then asked VMRC if they were OK with temporary structures within their jurisdiction. Ms. Lay said that, while it may be OK, it would still require a permit.

Additional discussion ensued about the options for construction of the road.

Ms. Grimes mentioned that, if the Board has any concerns, to tell her what they are and issue a continuance. She will then go back to the contractor and the owner and discuss them.

Mr. Guvernator pointed out that, technically, the proposed roadway is outside of the Board's jurisdiction, except for maybe at the end.

Mr. Frederick commented that his concerns are not with the roadway, but with the living shoreline verses what was presented.

Mr. Getek brought up the point that the applicant has been approached with the living shoreline option, but was adamant that they didn't want that option. Would it be any benefit to go back to the applicant again? Ms. Grimes indicated that she had approached them 3 times with the option. And using the VMRC "decision tool" results in selecting the living shoreline option. And in her professional opinion, this is the perfect location for one. But then you have to weigh the applicants' needs and wants against the agency's requirements and charges.

Mr. Getek said that, what they learned from last time [decision overturned], is that when it comes to the property owner's wants, that is not even a secondary or tertiary, but the lowest of lowest of priorities. The key for the Board now-a-days is a living shoreline situation.

Mr. Governator pointed out that this application came in after July 1, and so living shoreline needs to be the first alternative that has to be discussed, and there doesn't appear to be technical information in the application that discusses why living shoreline is not appropriate in this case. Mr. Frederick asked what staff's recommendation would be. Mr. Governator said that staff would recommend to either continue it, or ask the applicant to provide that information, or to deny the permit as is.

Mr. Taylor asked Mr. Byrd that he thinks a living shoreline will only last 3 years. Mr. Byrd said yes, and gave a typical example (Scarborough), and also brought up Custis and Buckle. Mr. Byrd says that he understands that the Board is under the gun with living shorelines, and how do you say to put it back the way that it was.

Mr. Getek said that he noticed a 6-foot wall across the creek from this property. Mr. Byrd was aware of that, and also discussed the point that you had to navigate around it, with plenty of water. Ms. Grimes mentioned that they also discussed a low profile bulkhead up against the bank, but that option wasn't considered further. Mr. Byrd liked that option. Mr. Getek asked additional questions about a proposed bulkhead height for that option, and the possibility to bring it up and out of their jurisdiction. More discussion ensued.

Mr. Frederick mentioned that the sill concept is better suited for the future, since you can always add to the sill for sea level rise in the future if it becomes over-washed. It is hard to raise up a bulkhead. Ms. Grimes reiterated that what is before the Board is a revetment. Mr. Frederick presented the options to the Board of either voting on it, or issuing a continuance. Further discussion ensued.

On a motion made by Mr. Byrd and seconded by Mr. Getek, the Wetlands Board voted to give a one month continuance for Scott Harvard – VMRC# 2020-1703 for the installation of 220 linear feet of rip rap revetment. The property is located in Onancock, VA 23417, Tax Map# 92-7-2.

Mr. Frederick asked the audience if there was anyone present who wished to speak concerning the Lalor. No one came forward and the public comment period was closed.

4.03 Inlet View Holdings, LLC – VMRC# 2020-1628

Main Street

Proposed relocation, removal and reconfiguration of the existing shoreline revetment

Mr. Governator stated the application proposed to reestablish the existing shoreline around the Inlet View campground area, on Chincoteague, facing multiple waterfront directions, cleaning up debris, putting in new riprap revetments in different locations, removal of existing riprap, and removal of mooring piles. There has been some earthwork done and they have been doing a great job cleaning things up added Mr. Governator.

Mr. Chris McCabe, (Coastal Compliance Solutions), appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. McCabe said they were in the process of creating a luxury RV campground that would consist of 200 camp sites, a pool, check in clubhouse, maintenance area, and bath houses.

Draft plans have been submitted to VDH for review under their campground permit. They also currently have a limited land disturbance permit from Mr. Governor's team, (Environmental Programs), for the initial demolition of the entire site. This is for demolition of old trailers, cars, and kitchen sinks. Over 40 existing abandoned nonconforming septic systems had been removed as well.

Mr. McCabe said they were requesting to reestablish the existing shoreline stabilization for the project. They proposed to perform maintenance to the existing concrete and scattered riprap on the site by removing some out of VMRC's jurisdiction, and making a more linear shoreline stabilization project. Class II and Class III stone will be used to top the existing old cement pieces that are there.

Requesting 3,868 of linear shoreline stabilization. Mr. McCabe said their original request was to move 1 ½ feet landward of the wetlands board's jurisdiction and install retaining walls. Now with more time to complete the project Mr. McCabe said they were going to now place riprap in the areas where the old bulkheads were. He said they were also asking for Stormwater management outfalls for the Stormwater facilities that will be installed, and that he hoped to have the full Stormwater management plans submitted to Mr. Governor's team sometime in the near future. Being constructed in the 1960's the site had no Stormwater management, (Dirt roads and sediment going into the bay). Mr. McCabe and his team will be installing state of the art Stormwater management including infiltration practices and Stormwater bioretention. State of the art nutrient removal sewage disposal will also be installed.

Mr. McCabe went on to explain why he decided to go with traditional riprap and not a living shoreline. He said he was an advocate for living shorelines, but that this application was the absolute worst place, (in his opinion), to do a living shoreline. A letter was submitted by the engineering firm McCrone detailing why.

Mr. Frederick asked the audience if there was anyone present who wished to speak. No one came forward and the public comment period was closed.

Mr. Taylor asked Mr. McCabe how much vegetative wetlands he had growing up through what they called "craprap." Mr. McCabe looked to see if it was quantified anywhere in the application, but told Mr. Taylor they were not going to impact vegetative wetlands. Mr. McCabe said there was 200 square feet. Mr. Frederick said he thought he seen a small section. Mr. McCabe said the existing vegetation growing through the existing rock.

A discussion ensued on the amount of vegetation being impacted.

Mr. Frederick asked Mr. McCabe about the length of the riprap and where exactly it would be located. After going through several photos and maps it was concluded that there was nothing in the application showing this. Mr. Frederick requested a drawing showing the individual locations.

Mr. Getek asked about the width of the riprap and Mr. McCabe said the width would vary, but did add they were going up to a 5.5 for height. That would be for the finished elevation at the top. Mr. Frederick asked about location of the riprap again and it was concluded that the riprap would be going around the whole project.

Mr. Governor asked if there would be a net increase or decrease to losing non-vegetated area. Mr. McCabe said yes, the non-vegetated wetland area was 8,080 square feet. Mr. Governor asked to confirm that the vegetated was 0. Mr. Taylor said he was going with 200 square feet.

Mr. Governor said his staff would appreciate if they included in the motion construction scale drawings for them to administer the project.

Mr. McCabe said there seemed to be a difference in between wetland vegetation versus a tidal wetland area. He said they would proffer to identify those areas if there is some concern, and mitigate for it.

Mr. Frederick asked Mr. McCabe if he could reiterate one more time the answer to Mr. Guvernator's question. How many square feet would he be putting stone on that is not already covered with rubble. Mr. McCabe said zero. He said it would not be a net loss be the area they would be removing, between mean high and mean low, is 1,178 square feet. The difference between mean high and the wetlands board's jurisdiction that's being returned was 2,077 square feet.

Mr. Frederick asked if these numbers should be included in the application. Mr. Guvernator said the motion should include revising the numbers in the application.

Mr. Frederick asked Ms. Allison Lay, (VMRC), if the sprigs of grass growing up between the rubble be considered vegetated. Ms. Lay said yes. He then asked if the board's jurisdiction move to 1 ½ times. Ms. Lay said if you have a length of shoreline with a few sprigs of grass that whole length would be considered vegetated.

A discussion ensued.

Mr. McCabe said they would proffer 1,000 square feet of vegetative wetlands mitigation.

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 Inlet View Holdings, LLC – VMRC# 2020-1628 for the relocation, removal and reconfiguration of the existing shoreline revetment, with the following corrections:

- 1. Revised numbers for the vegetated wetlands, with 1,000 square feet of mitigation*
- 2. Submission of construction scale drawings*

6. OTHER BUSINESS

6.01 Permit Extension Request for JPA 2019-1713 (Robert Mance)

Mr. Guvernator appeared before the Wetlands Board stating that Mr. Mance submitted a formal request to extend a permit for a bulkhead replacement that was about to expire. An eight month extension was requested, but not needed because the application was deemed "no permit needed." Mr. Guvernator said he wanted the board to know that a formal request was sent in.

6.02 VMRC Commission action at 09-29-2020 meeting

Mr. Guvernator showed one of the two letters that were sent from VMRC on the applications of Grand Bay Properties and William Hetzel, (both were located in Captain's Cove). Both applications were reviewed by VMRC and both of them were reversed and the applications were reversed. Mr. Byrd asked who spoke and who did not. Mr. Guvernator said Ms. Lay gave the facts from the County's Wetlands Board meeting, but there was not a lot of discussion on the commission level. The applicant and agent spoke for Grand Bay Properties and just the applicant's agent spoke for the other one. Both permits were denied at the commission level and no additional action needed from the board.

A discussion ensued on what parts of an application they need to take into consideration when making a decision. Ms. Lay said they should consider the project as a whole, but when it comes down to making a decision on it, is it on what is in your, (Wetlands Board), jurisdiction. The board cannot write a permit for anything outside of its jurisdiction.

A discussion ensued.

6.03 2020-0877 Dassler: proposed project revision

Mr. Guvernator said he received a letter from Mr. Dassler explaining to him that he was moving along with his project, and that he was having a hard time figuring out how he was going to key in the fabric on the landward side of the project before he puts his riprap over the fabric.

Mr. Dassler proposed to fill and burry several 55 gallon barrels full of sand to stabilize the filter fabric on the landward side. They would be totally covered and you would not be able to see them from the surface.

Mr. Guvernator said his department believed that this type of change would require a submittal in the form of a revised JPA and board action on the change. A letter was sent out to Mr. Dassler stating this. Mr. Guvernator said he wanted to bring it to the board's attention in case they did not agree.

A discussion ensued.

6.04 New permit tracking report

Mr. Guvernator said after talking to VMRC to get some feedback on what happened with the two permits that were reviewed by the commission and what could be done better a suggestion was given to reinstate our status report. When a permit comes in it is logged in, reviewed by staff, a site visit to determine whether it is in the board's jurisdiction or not, and whether or not it is complete.

Mr. Guvernator said he was considering sending this report every two weeks so the board can see where we stand with different permits and their statuses.

A discussion ensued.

6.05 CBPA Climate Adaptation public input notice

Mr. Getek said he received an email from Susan Mastyl that they want to have input from the citizens in regards to how to figure out what needs to be done with all the criteria that's now being accepted by the local governments granting, denying or modifying request. He thought this might be something good to listen in and comment on.

A discussion ensued.

7. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, November 19, 2020 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac, VA.

8. 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 12:40 p.m.

Earl Frederick, Chairman

Chontese Ridley, Environmental Permit Specialist