

ACCOMACK COUNTY WETLANDS MINUTES OF JUNE 24, 2021

At a meeting of the Accomack County Wetlands Board held on the 24TH day of JUNE 2021 in the Accomack County Administration Building Board Chambers, Room #104, in Accomack, Virginia.

1. CALL TO ORDER

MEMBERS PRESENT AND ABSENT

Wetland Board Members Present

Mr. Earl Frederick, Chairman

Mr. George Ward, Vice Chairman

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. Taylor and seconded by Mr. Byrd, the Wetlands Board voted to approve the agenda as modified.

2. MINUTES

A. May 27, 2021

On a motion made by Mr. Ward and seconded by Mr. Taylor, the Wetlands Board voted to approve the minutes May 27, 2021 meeting.

3. OLD BUSINESS

A. JPA 2019-1639 (Pechacek) Permit Extension Request

Mr. Chris Guvernator appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mr. Pechacek came before the board in December 2019 to ask for an extension on the work he was doing. He had started work on the left hand side and hadn't done any work on the right hand side. Mr. Guvernator said the board asked staff to go look at the site, and Mr. Frederick asked were there any changes from when it was first permitted.

Mr. Guvernator said yes. In January Mr. Pechacek had not done any work but he did a lot of work in the spring. Mr. Guvernator then showed photos so the board members could see what had been done.

A discussion ensued.

Mr. Guvernator suggested the permit be extended for a year, however, due to the fault of staff, he asked that they would be extended from the date of the meeting and not the originally permitted date.

On a motion made by Mr. Ward and seconded by Mr. Byrd, the Wetlands Board voted to extend the permit one year from today's date, (June 24, 2021), for Joseph Pechacek VMRC# 2019-1639.

B. JPA Samuel L. Young– VMRC# 2021-0019

Blackbeard Road

Construction of a 60 feet bulkhead 2 feet in front of the existing bulkhead

Mr. Luke Britton, (Luke Britton Marine Construction), appeared before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Frederick.

Mr. Britton said he submitted the JPA in October 2020 and it was approved. He said he did not have to go before the board and bought the “No Permit Needed” letter with him. Mr. Britton stated that he was upset that he received a rescinding letter saying that he needed to change some things and redo the drawings. He said he was already approved so he could have built the bulkhead.

Mr. Byrd asked Mr. Britton what was the reasoning for it not being done. Mr. Britton said he was backed up on work and did not have time to get to it.

A discussion ensued.

Mr. Taylor asked when a person receives a “No Permit Needed” letter was it good for a year. Mr. Guvernator said a date is not put on a “No Permit Needed” letter. Mr. Guvernator explained that in this situation the actual field conditions did warrant a permit, and were not accurate on the drawing as shown. After review by VMRC, in the field, the drawings did not match what was in the field.

Mr. Guvernator said a “No Permit Needed” letter had only been rescinded twice in the 4 ½ - 5 years.

Mr. Britton said he totally disagreed. Mr. Guvernator asked Mr. Britton where the low and high tide was on his drawing. Mr. Britton said he could draw it on there, but it would be at the bulkhead two feet in front. Mr. Guvernator said it was not. Mr. Britton did not agree and Mr. Guvernator said he would give him the name of his boss after the meeting if he would like to talk with him.

Mr. Byrd asked if not having mean high and mean low on one or two of his drawings was what the difference was. Mr. Guvernator said VMRC pointed out that the tide is actually behind the bulkhead. Mr. Byrd asked what if that was on the drawings. Mr. Guvernator said if that was on the drawings he would have bought it before the board, because the board's jurisdiction is behind the bulkhead.

Mr. Frederick said a “No Permit Necessary” letter was given out with incomplete drawings. He said it should have not been approved as it was or considered “NPN.” Mr. Guvernator said the

County has provisions to work with the contractor if a building permit had been issued, but a building permit had not been issued for this.

Mr. Byrd asked to confirm that there was going to be 138 square feet of impacts to vegetated wetlands, and Mr. Britton said he did not know.

Mr. Frederick asked Mr. Britton if he maintained that the water behind the nonfunctioning bulkhead came in since October. Mr. Britton said there was no way that he could tell him and that he had no idea. Mr. Frederick asked if it was blown out the way it is now in October. Mr. Britton said yes it was failing, but it was not as bad as it is now.

Mr. Byrd asked Mr. Britton if the letter he received had an end date on it. Mr. Guvernator said NPN letters is issued until field conditions change. Mr. Byrd asked if they had changed. Mr. Guvernator said he could not tell if they changed or if they were not represented correctly in the original drawings.

Mr. Benjamin Nettleton, (VMRC), appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mr. Frederick asked Mr. Nettleton when did VMRC look at the site. Mr. Nettleton said Ms. Allison Lay handled this project, and believed she went out with the County in February. He added that the county is quicker at reviewing applications than VMRC. Allison notice the wetlands during a standard site visit and contacted the county.

Mr. Guvernator offered the board two options:

1. Hear the permit today and rule on it.
2. Table it and continue it for another month

Mr. Britton said that he did not want to table it and wanted to resolve it now. He also added that he was willing to make changes and adjust to the board's standards.

Mr. Byrd asked what percentage of the bulkhead was still functioning. Mr. Nettleton said two thirds. It was suggested that Mr. Britton pull the bulkhead back and add a dog leg.

CHAIRMAN FREDERICK OPEN THE FLOOR TO PUBLIC COMMENT

Mr. Gerald Zinc, (property owner on the left side), appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mr. Zinc gave some background on when the issues with this bulkhead started and how he tried to get in contact with Mr. Young, (the owner), back in 2019. Mr. Zinc said that he was in favor of a point to point bulkhead and not a dog leg. He said if point to point was not done there would be over wash. Mr. Zinc suggested that the Young bulkhead should be tied into the two neighboring bulkheads going two feet out in front.

Mr. Britton said this would be the only bulkhead not out 2 feet in front and doing it the way the board suggested would create an eddy. Wave energies would wash it out.

To help explain what Mr. Zinc was explaining Mr. Guvernator said the corner of his overhang was within in a few feet of the suggested dog leg location, (where the eddy would be created). It

would be up against Mr. Zinc's house. Mr. Guvernator added that it was an extenuating circumstance that the board might want to consider.

Mr. Chris McCabe appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mr. McCabe wanted to give clarification to the board. In Captain's Cove when there is a complaint on whether or not there is an eroding shoreline or failing shoreline structure, the Cove will ask him to come look at it and give interpretation on whether or not it needs to be repaired.

Mr. McCabe said he looked at this bulkhead in 2019 and it has eroded significantly more. There are more boards washed out now. The area was generally function as a wetland, but could not say if it was tidally influenced during heavy tide events or over wash. He added that if the new proposed bulkhead was doglegged, within half of a year, the marsh there would not exist anymore.

Mr. Byrd said they determined that a dogleg was not a good idea.

Mrs. Beth Nunnally appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mr. Byrd asked about the vegetated impacts and Ms. Beth Nunnally said there were 138 square feet. Mr. Frederick asked if that was vegetated or underwater and she responded underwater. Ms. Nunnally said she was not sure if it was wetlands vegetation, it was hard to say.

Mr. Frederick said there was no grass out in front so the board's jurisdiction was mean high water, not 1½ times. Mr. Nettleton said he believed that if there was vegetation present at all on the shoreline it goes to 1½ times the mean high water. If it is a completely barren area like the driveway, oyster reef or mad flat where there are no wetlands in the area, it ends at mean high water. Mr. Nettleton said it was possible that very little of the vegetation there is in the board's jurisdiction.

Mr. Taylor asked Mr. Nettleton what were his thoughts. Mr. Nettleton said from Allison Lay's, (VMRC), site visit she calculated 25 square feet of vegetated wetlands lost in her notes.

Mr. Guvernator added that he thought it was important to note that there's a structure within a few feet of this area, (the neighboring adjacent property owner).

Mr. Byrd said, (confirming what needed to be done), to put the bulkhead back, protect the adjacent property owner's house, put it straight like everyone else, and with 25 square feet of impacts did Mr. Britton agree and he did.

PUBLIC COMMENT PERIOD CLOSED

On a motion made by Mr. Taylor and seconded by Mr. Byrd, the Wetlands Board voted issue a permit (valid for (1) year) for Samuel L. Young– VMRC# 2021-0019, construction of a 60 feet bulkhead 2 feet in front of the existing bulkhead with the following condition:

- 1. Install 2 feet in front of the existing bulkhead***
- 2. Pay for 25 square feet of vegetated wetland impacts due to creating stabilization for the neighbor's property. (Neighboring property would***

be in jeopardy without it).

The property is located in Captain's Cove, VA 23356, tax map#(s) 5A3-1-1294.

C. Elaine & Moses McNure – VMRC# 2021-0895

Seaview Street

Replacement of the existing failing bulkhead with a new bulkhead in the same footprint

Mr. Raymond Britton, Jr., (BIC, INC.), appeared before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Frederick.

Mr. Frederick said at the last meeting a survey was requested. Mr. Britton said he had a survey done, but what Mr. Guvernator wanted to know was how it was determined. Mr. Britton said he did not have much luck getting information out of the engineer. He was told that they use mean low water on every site that they go on to get the tide ranges in different areas and calculate from that. Mr. Britton said the engineer did not want to give him the site that he uses due to not wanting people doing their own surveys.

Mr. Taylor said it was public knowledge, because the government was doing it, and had no problem with people using those numbers.

A discussion ensued.

Mr. Guvernator said that staff were not experts in establishing low and high tide. The only reason why it was bought up a concern for the engineer's information was due to a lot of water being behind the bulkhead during high tide events. There is still some water during low tide events as well.

Mr. Ward said if the surveyor was a licensed engineer, by some kind of law, he should be held responsible if he did it wrong, but until he is proved wrong they had to go by what he said. Mr. Britton agreed. Mr. Byrd said it was the engineer's responsibility and if it was wrong it would not be on the board. Mr. Nettleton also agreed.

Mr. Byrd asked Mr. Britton if he knew what percentage of the bulkhead was still good. Mr. Britton said 60, and added that there was not vegetation behind it.

Mr. Byrd asked what would they be facing if they approved the project on the bases of also protecting the neighbor's property. Mr. Frederick asked Mr. Britton if he was saying that he wanted to build two feet behind the existing bulkhead, and he said no. He said he would rather pay the encroachment fees.

Mr. Taylor said the board could not charge, but they could listen to people who wanted to offer mitigation due to there being no vegetated wetlands. He asked Mr. Nettleton would it make a difference to VMRC if wetlands would be created. (Money paid into the mitigation fund that would fund a project creating vegetated wetlands) Mr. Nettleton said he could not guarantee what the Commission would decide, but achieving a no net loss is best.

Mr. Britton said he was giving up the two feet in the front and would pay into the fund for the back.

Mr. Guvernator said staff recommended that the mitigation be associated with non-vegetated wetlands and not a proffer. He said it needed to be tied to some type of impact to the project.

Mr. Ward said that no wetlands were being destroyed and accepting the \$720.00 (mitigation) would be more of a bribe. Mr. Guvernator said that is why it needed to be tied to something. Mr. Guvernator said he was going off of site visits saying there was vegetation. He said there was water behind the bulkhead before the unauthorized improvements/ boards were driven in. The previous application that was approved was overturned by VMRC due to the taking of wetlands, (vegetated or non-vegetated).

Mr. Frederick asked if it would be above the board to access a fine. Mr. Guvernator whatever happened there at the meeting, the unauthorized work would still have to be addressed.

Mr. Taylor told Mr. Guvernator he could talk to the County Attorney about proffers and Mr. Guvernator said he would.

Mr. Ward asked to confirm that it was being said there were vegetation on the far side prior to the failure.

Mr. Britton said no, and Mr. Guvernator said there was non-vegetated wetlands.

Mr. Frederick asked if the board were to take action would it still be open to look into the illegal placement of the boards. Mr. Guvernator said yes.

On a motion made by Mr. Taylor and seconded by Mr. Byrd, the Wetlands Board voted to issue a permit (valid for (1) year) Elaine & Moses McNure – VMRC# 2021-0895 for the replacement of the existing failing bulkhead with a new bulkhead in the same footprint with the following conditions:

- 1. Bulkhead to be replaced in its existing state with the understanding that if something is not done, the neighbor's property is going to be severely affected.*

The property is located in Captain's Cove, VA 23356, tax map#(s) 5A1-1-765.

4. NEW BUSINESS

A. Old Dominion Electric– VMRC# 2021-0993

Wallops Island, VA

Transmission line replacement

Mr. Chris Guvernator said the project was impacting 18 new pole support foundations within the wetland board's jurisdiction.

Mr. Frederick asked if this was a follow up from a previous ODEC project where they were doing test drills and the answer was yes.

Corey Gray, (Santec), appeared before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Frederick.

Mr. Gray said this project was at the Wallops Island Flight Facility off of Chincoteague Road. He said it was a replacement project. There are nine structures in the marsh each consisting of two poles equaling 18 structure foundations. Mr. Gray said the currents are deteriorating and need to be replaced. The conductor wire overhead will also be replaced.

Mr. Gray said they would be replaced with steel poles fairly close to where the existing poles are located.

He also mention that Wallops knew about the project, approved and signed off on it. Mr. Gray added that they would probably be using some type of matt system being that the ground is so wet there. They also have a tidal wetlands monitoring plan so once the matts are out they will go back to take a look at it and make sure there was not any disturbance to the vegetated wetlands.

Mr. Gray said in total impacts to tidal wetlands was 240 square feet of impacts to vegetated tidal wetlands, and the total of temporary impacts, (due to the matting system), was 65,427 square feet. Mr. Gray said they would be paying mitigation. Mr. Guvernator asked if they would be offsetting the mitigation with credits for the Nature Conservancy, and Mr. Gray said that was one option. Mr. Byrd said that the credits would have to be determined and verified.

Mr. Taylor asked Mr. Gray who owned the property and Mr. Gray said NASA. Mr. Taylor said that NASA had to be part of the permit and Mr. Gray said they signed off on it. It was suggested to put NASA's name on the application as an applicant the next time.

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

On a motion made by Mr. Taylor and seconded by Mr. Byrd, the Wetlands Board voted to issue a permit (valid for (1) year) for Old Dominion Electric– VMRC# 2021-0993, for the proposed transmission line replacement with the following conditions:

- 1. Pay \$720.00 into the mitigation fund with credits (if confirmed) or with a check*
- 2. 1 year monitoring period for mate damage to wetlands*

The property is located on Wallops Island, VA 23440, tax map#(s) 28-A-75.

B. Chesapeake Bay Foundation – VMRC# 2021-1080

Tangier Island, VA

Extension of the existing revetment 46 feet from the west and 42 feet from the east with a 20 foot gap in the middle

Mr. Chris Guvernator said he had not received any response at all from the applicant, however, the project was self-explanatory. He said he believed they had a 90 feet gap left from when they originally started the project. It's on the approach channel when you are coming into Tangier on the left hand side past the gut. The gap was left for small boat launching.

Mr. Guvernator said they are starting to get more washout there from the boat traffic and they want to close it up, and only leave a small 20 feet section.

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

On a motion made by Mr. Byrd and seconded by Mr. Ward, the Wetlands Board voted issue a permit (valid for (1) year) for Chesapeake Bay Foundation – VMRC# 2021-1080 for the extension of the existing revetment 46 feet from the west and 42 feet from the east with a 20 foot gap in the middle. The property is located on Tangier Island, VA 23356, tax map#(s) 62-A-1.

C. Captains Cove Golf & Yacht Club, Inc. – VMRC# 2021-1104

Starboard Street

Construction of a wall (bulkhead) and to raise the elevation of the existing roadway

Chris McCabe, (Coastal Compliance Solutions, LLC), appeared before the Wetlands Board on behalf of the applicant. Mr. McCabe said this project was for a bulkhead/retaining wall along the north western side of Starboard Street. Over time sea level rise, with the road not being built at the height, has caused flooding in significant and moderate storm events.

Mr. McCabe said once the wall is completed the road will be raised. He also added that multiple letters had been received in support for the project. Mr. Guvernator said his office had received four letters and or emails in support.

Mr. Frederick ask if reading one of the letters would suffice just to have one read into the record. Mr. McCabe said he would like all four letters to be read into the record. Mr. McCabe read the letters into the record.

Mr. McCabe said he would be turning in a revised, Stormwater management / erosion & sediment control plan to the Environmental Programs to raise the elevation of the road with more aggregate. They to get the elevation up to a level above the fifty year storm event.

Mr. Frederick, asked to confirm, that the purpose of the bulkhead was not to keep the water out, but to support the road. Mr. McCabe said it would be doing both. Mr. Frederick said the area would be protected from the Swan Gut side, but what about the other side. Mr. McCabe said if you look at the elevations the more contributing side is Swan Gut. Mr. Guvernator chimed in to say that once the road was raised the flooding would stop.

Mr. McCabe said the main purpose of this project was to provide safe vehicular access into that section.

CHAIRMAN FREDERICK OPEN THE FLOOR TO PUBLIC COMMENT

Colby Phillips, (Senior General Manager Captain's Cove), appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Ms. Phillips said she just wanted to elaborate on the support for this project. From looking at the plans, she said this looked like it would be a great solution to the problem.

Mr. Michael Nugent, (Starboard Street resident), appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mr. Nugent asked if he could reference one of the photos and was told he could. He said the proposed wall would be 15 feet from his property ends. Mr. Nugent said he did not own the land from the edge of the street back to his property line. He asked if it could be adjusted/amended so that it crosses over his right of way.

Mr. Byrd asked Mr. Nugent to confirm that what he wanted was a return wall at the right of way like at the other end and the answer was yes.

Mr. McCabe pointed out that would be 16 square feet of tidal wetlands impacts. Mr. Nugent

said he only wanted it to go 6 feet in and that there was no grass there.

Mr. McCabe said it was hard for him to commit as a consultant doing anything more on behalf of the Cove, but he could unequivocally commit to considering to redesign this as a permit modification that would be at the same time as Mr. Nugent's application to work in conjunction with him to amend it. They would figure out how the connection would be made between both applications.

Ms. Phillips said she did not see that as being an issue. Mr. Nugent agreed too.

A discussion ensued.

PUBLIC COMMENT CLOSED

Mr. Frederick ask Mr. C. Ward if he was confident that it was the broken tie back that caused the failure and not hydrostatic pressure. Mr. C. Ward said he was without a doubt. Mr. C. Ward added the tieback had some erosion and just broke.

On a motion made by Mr. Taylor and seconded by Mr. Ward, the Wetlands Board voted to issue a permit (valid for (1) year) Captains Cove Golf & Yacht Club, Inc. – VMRC# 2021-1104 for the proposed construction of a wall (bulkhead) and to raise the elevation of the existing roadway. Noting that there will be coordination with Mr. Nugent at time of application for his property on the Northern end. The property is located in Captains Cove, VA 23356, Tax Map# 5A3-1-F.

On a motion made by Mr. Ward and seconded by Mr. Taylor, the Wetlands Board voted to take a 5 minute recess.

MEETING RESUMED AT 12:00PM

5. OTHER BUSINESS

A. Starboard Street Violation Update

Mrs. Beth Nunnally gave a summary of what had been going on at this property.

It was asked if this was a wetlands violation and Mr. Guvernator said this was an erosion and sediment control violation.

Mr. Guvernator added that the site was in good shape now and back in compliance.

B. 51 North Street Potential Violation

A called was received one month ago about a possible violation. The County is not responsible for the Town of Onancock's RPA, but the possible violation is in tidal wetlands.

Mr. Guvernator asked the board for the authority to investigate and added that the area was increasing in size.

On a motion made by Mr. Byrd and seconded by Mr. Ward, the Wetlands Board voted to give Mr. Chris Guvernator authority to investigate further.

C. Notice of VMRC Presentation at the July Meeting

Mr. Ben Nettleton will giving a presentation at the July board meeting on the newly approved tidal wetlands guidelines. They were adopted by the Commission on May 25, 2021.

6. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, July 22, 2021 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac, VA.

7. ADJOURNMENT

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

The meeting was adjourned at 12:10 p.m.

Earl Frederick, Chairman

Chontese Ridley, Environmental Permit Specialist