

ACCOMACK COUNTY WETLANDS MINUTES OF DECEMBER 16, 2021

At a meeting of the Accomack County Wetlands Board held on the 16TH day of DECEMBER 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. Gene Wayne Taylor
Mr. T. Lee Byrd
Mr. Timothy Getek

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

Mr. Guvernator said a motion should be made to strike the VMRC presentation from the agenda. Mr. Frederick said they would be striking the VMRC Hearing listed under "Other Business." He said Mr. Owen, (VMRC), was not there.

Mr. Frederick asked about the Woodby project next.

Mr. Chris Guvernator, (Environmental Programs), appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mr. Guvernator stated that the Woodby application was still on the agenda, and that they, (his staff), was going to explain the No Permit Needed status. He added that it should come off the agenda, but he would like a chance to explain it.

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

2. MINUTES

A. November 18, 2021

Mr. Frederick suggested deferring the adoption of the minutes until the next meeting to make sure all the correction were made.

On a motion made by Mr. Getek and seconded by Mr. Byrd, the Wetlands Board voted to defer the approval of the November minutes until the next meeting in January 2022.

Mr. Frederick asked Mr. Guvernator if he would like to make any comments about minutes in general.

Mr. Guvernator said Mr. Getek made some comments on adding things/information after the meeting had been held to include in the minutes. With that being said, Mr. Guvernator said he wanted to run through what the definition of minutes were:

- To provide a brief accurate and clear record of what happened at the meeting
- A written description of the events of a particular meeting
- It is not verbatim
- Highlight key issues that are discussed
 - Motions that are proposed or voted on
 - Directives or actions that are to be undertaken

3. NEW BUSINESS

A. Restoration Hearing for McNure Property

Mr. Guvernator said this was at the Board's pleasure. (No representative present) He added that the hearing could continue without the applicant present. They were notified verbally and by mail of the date and time of the meeting.

Mr. Frederick said he took photos on December 9th, 2021, and asked Mr. Guvernator if he had them available for the rest of the board to see. He did.

Mr. Guvernator then gave a quick summary of the McNure property. He stated the new property owners submitted a JPA to the board that was overturned by VMRC.

Mr. Guvernator said 24-25 boards were installed on the property, and a sworn complaint was issued. A hearing notice letter and requested that the applicant provide a restoration plan. Plan was not received and there was no written or verbal response from the applicant or applicant's agent.

Mr. Byrd asked if a deadline was given. Mr. Guvernator said no, but that he expected it to given at the meeting.

Mr. Frederick said he had photos showing that the illegal boards were in place on May 17, 2021, but was not sure exactly when they went in.

Mr. Taylor said if the photos from the previous owners were available. Mr. Guvernator showed the previous owners application that was also overturned by VMRC.

A discussion ensued.

Mr. Guvernator said all the boards have been blown out due to a storm event.

Mr. Byrd asked, since the applicant did not bother to show or make contact, what would be the next move? Do they let it go forever or do they set a timeline. Mr. Guvernator said these were some of the options:

- Board may order restoration to the pre-violation conditions
- Board may send it to court for conviction of a Class I Misdemeanor
- Board may send to court for a civil penalty not to exceed \$25,000.00 a day
- 1 time civil charge from the Board to the property owner of no more than \$10,000.00
- Board can take no action

Ben chimed in to say the Board could do any or none of those things. He added that if the Board were to issue the civil charge up to \$10,000.00, it had to be consented to by the agent or applicant. That would also be in lieu of further enforcement in the Circuit Court.

Mr. Nettleton said in this case it was more like voluntary consent due to Mother Nature doing the work and not the applicant. Pre-violation condition had been returned, but there were still boards scattered around the site.

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

Mr. Getek asked if there was a flow chart for these hearings. Mr. Nettleton said it was not as simple as a flow chart, but there was a legal document to be followed.

To clarify, the board can tell the applicant/agent what they have to do, but they have to agree to it? Mr. Nettleton said that was correct and that also went for the restoration plan. If an agreement is not met then court would be the next step.

A discussion ensued.

Mr. Taylor asked in one year from now, (December 16, 2022), what would the neighbor's property look like and how much erosion would have occurred? Mr. Byrd added to that by asking what the board's obligation to the neighbors was.

Mr. Nettleton said in state code, with no project being proposed, there is no obligation. If a project was being proposed, the board would be obligated to consider the impacts of that project.

Mr. Frederick asked if the neighbors could sue. Mr. Nettleton said yes. They could sue the property owner for negligence.

Mr. Byrd asked the other board members what they would like to do. The applicant/agent did not show. He asked if they should contact them to see if they would show or if the board should rule.

A discussion ensued.

Mr. Frederick said he did know if it was necessary for Mr. Britton to be there for the Restoration Hearing. He said it was board to discuss what they want to do to return things to normal, and Mr. Britton would be an interested party.

Mr. Taylor said he would like to see all of the boards, as it is right now, to be cleaned up. They could end up in the bay and be hazard to navigation.

Mr. Guvernator said he reached out to VIMS months ago for their option on what might be a good restoration plan based on the conditions, but he believed they got their signals crossed. VIMS cannot provided a solution, but they can comment on a mitigation plan if submitted.

A discussion ensued.

Mr. Frederick asked Mr. Guvernator when he sends out the letter summarizing what the board decided, what force it has behind it. Is it still just a suggestion or do they have force to make them clean up without court.

Mr. Guvernator said he believed it was a mandated restoration that's backed up by taking it to General District Court to enforce it.

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

Ms. Nunnally said since the boards were part of the violation they can require that the boards be mitigated/cleaned up.

A discussion ensued.

On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted on following for the Restoration of the McNure Property:

- **All boards and construction debris be removed from the tidal zone and disposed of properly, so storm tide or any other tide does not impact the sea from the debris.**
- **Done prior to January 20, 2022 and prior to the next Wetlands Board meeting.**
- **Staff will inspect site to make sure debris have been disposed properly**
- **Description letter of noncompliance/fines/penalties will be enclosed**

B. Michael Woodby VMRC# 2021-2159

Chincoteague Island, VA

Proposed restoration of navigational access to a 20 feet by 70 feet man-made boat basin.

Mr. Guvernator gave a quick summary of the project. He said staff's original determination was that a permit was needed. After going back to the project after low tide and seeing no visible mudflat or exposed wetland areas, the decision was reversed. A no permit needed letter was issued.

C. Blue Camp Inlet View LLC VMRC# 2021-2371

Chincoteague Island, VA

Proposed installation of an 175 foot long by 10 foot wide community campground multiuser pier to a 24 foot wide by 100 long "T" Platform

Mr. Guvernator went over the project description. He said because this was a non-residential pier, it is not exempt from Wetlands Board review.

CHAIRMAN FREDERICK OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Frederick asked if there was anyone who wanted to comment on application 2021-2371.

No one made a request to communicate.

CHAIRMAN FREDERICK CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Getek asked Mr. Guvernator if Mr. McCabe contacted him on why he was not there or request for deferment. Mr. Guvernator said Mr. McCabe had not responded to him.

Mr. Frederick asked Mr. Guvernator, from the design plans that he had seen, if they are complying with the elevation of a pier over wetlands. Mr. Guvernator said he had not checked it. After looking through the application it appeared they were in compliance.

Ms. Nunnally said there was no vegetation on site.

Mr. Nettleton said the Corps requires 4 feet above vegetated wetlands.

Mr. Guvernator asked about board continuing/postponing their decision and Mr. Nettleton said he did not think it was necessary. Mr. Taylor agreed.

Mr. Frederick and Mr. Byrd wanted to continue due to having more questions and needing answers.

A discussion ensued.

On a motion made by Mr. Taylor and seconded by Mr. Byrd, the Wetlands Board voted on a one month continuance for Blue Camp Inlet View LLC VMRC# 2021-2371, proposed installation of a 175 foot long by 10 foot wide community campground multiuser pier to a 24 foot wide by 100 long "T" platform. The property is located on Chincoteague Island, VA 23336, tax map#(s) 45-A-2.

6. OTHER BUSINESS

A. Emergency Permit Status

Mr. Frederick said there were three emergency permits at the last meeting. The board denied one of them, and two of them were overturned.

Mr. Guvernator said that was the first time they had gone through the process. The VMRC representative was very adamant about the fact that it was not used very often.

Two of them were turned over primarily for the concern that the environmental impacts associated with the damage there exceeded the average of 1 square foot per running foot of shoreline.

The determination factors has a sentence that reads:

- *In general, this will require that a dwelling or some other structure be located within 50 feet of the mean high water shoreline*

Mr. Nettleton said the linear square foot is the only one that is an actual condition of the permit in addition to no vegetation. If the permit does not meet that it is not qualified as an emergency permit. That is why they were directed to apply for a standard permit.

B. Seaview Street Design Plans Overview

Mr. Guvernator wanted to give the board a preview of Seaview Street construction plans. No joint permit application had been submitted yet, however, one is required for the project.

They have submitted to the county for a land disturbing permit and it is in the review process.

He then went over the plans with the board members.

There were two things Mr. Guvernator said to note:

1. Both DEQ and the Corps have confirmed permits will be required through their departments, unless the project qualifies for a general permit as opposed to an individual permit
2. There are surveyor stakes that show the centerline of Seaview Street and it is an older design

Mr. Guvernator said he requested that the engineers stakeout the limits of both the retaining walls and the pavement.

A discussion ensued.

C. 2022 Meeting Dates

The dates for the 2021 meeting schedule were decided.

1. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, January 27, 2022 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac, VA.

2. ADJOURNMENT

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

The meeting was adjourned at 11:19 a.m.

Earl Frederick, Chairman

Chontese Ridley, Environmental Permit Specialist