

## ACCOMACK COUNTY WETLANDS MINUTES OF MARCH 24, 2022

At a meeting of the Accomack County Wetlands Board held on the 24<sup>TH</sup> day of MARCH 2022 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. Gene Wayne Taylor

Mr. T. Lee Byrd

Mr. Timothy Getek

Mr. David Montgomery, Alternate

#### 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

Mr. Paul Seltzer, Deputy Director Department of Building, Planning, and Economic Development

#### 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. Frederick suggested moving “Other Business” in front “New Business” on the agenda due to Mr. Benjamin (Ben) Nettleton being stuck in traffic. This would give him the maximum amount of time to get there.

Mr. Getek asked, as courtesy, would the audience be okay with the change.

Mr. Frederick asked the agents who were present if they would be okay with that change and they all replied yes.

**On a motion made by Mr. Taylor and seconded by Mr. Getek, the Wetlands Board voted to approve the amended to the agenda.**

**Mr. Taylor took back his motion.**

**The meeting went forward with the original agenda.**

### 3. MINUTES

#### A. February 24, 2022

Mr. Getek pointed out that on page 3, 4<sup>th</sup> paragraph, “*COPRS*” should have been “*CORPS*.”

**On a motion made by Mr. Byrd and seconded by Mr. Getek, the Wetlands Board voted to approve the February 2022 minutes.**

**4. OLD BUSINESS**

**A. Derek Flowers VMRC# 2021-1319**

Installation of an open-girder boat rail adjacent to an existing L-Head pier

Mr. Frederick asked Mr. Guvernator for a quick summary of the project.

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

Mr. Charles Ward appeared before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Frederick.

Mr. Frederick to Mr. C. Ward he knew a major change had been made and that it was talked about at the last meeting. Mr. Frederick then asked Mr. C. Ward to tell them what was going on.

Mr. C. Ward there had been three renditions. Originally, the girder was proposed to go on the north side of the L-Head pier. Then there was a discussion about putting it on the channel side of the L-Head pier, but that would encroach more than 25% across the channel.

Mr. C. Ward added that after more discussions with the property owner, it was devised that if it was put into that orientation it wouldn't encroach further into the channel with the rail and it would eliminate vegetative wetlands impacts. He also said the tide ebbed out 5-10 feet channel ward of the existing bulkhead. The upland terminus of the rail would be at the existing bulkhead.

Mr. C. Ward said the winch and the mount for the wench would be on the uplands and on the channel end the rail would be submerged.

Mr. C. Ward said the property owner's main reason for doing it this way is because it is something that he can install himself, and the expense would be about 25% of what a 4 post boat lift would cost.

Mr. C. Ward said of the three options they had come up with, this was the least impactful. It would also create a situation where the underwater portion of the rail is generally protected from obstruction by the L-Head pier already being there. Marking the end of that underwater obstruction to prevent anyone from not seeing it.

Mr. C. Ward said the owner came up with some options. He then passed out images of those options for the Board members to view.

Mr. C. Ward said he nor the owner were proposing any specific markings, because the proposal is to go to the Coast Guard station on Chincoteague and ask for their guidance on underwater markings. He also said they would be asking the VMRC Marine Police what were the correct markings.

Mr. Frederick said one of the things discussed at the last meeting was the ownership of the manmade gut. Mr. C. Ward said he submitted a copy of the plat.

**CHAIRMAN FREDERICK OPENED THE FLOOR TO PUBLIC COMMENT**

Mr. Frederick asked if there was anyone who wanted to comment on application 2021-1319.

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

Ms. Nunnally said in the application, on the second to last page, there was a proposed timber walkway proposed. She added that it was not mentioned anywhere else in the application.

Ms. Nunnally asked if it would not include the walkway and the walkway require another permit.

Mr. Taylor asked Mr. C. Ward if the owner wanted the walkway.

Mr. C. Ward said yes. The only way the owner would have walking access once the boat is on rail is to put a 48 inch walkway that would go from the existing to the boat.

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

Mr. Frederick said his one concern with the additional walkway was if would it comply and meet height above water/height above substrate requirements.

Mr. C. Ward said it would match or exceed the height of the existing one.

Mr. Frederick asked when adding it onto the existing, does the existing become wider?

Mr. C. Ward replied that it would not be any wider. The walkway would come off of the existing pier or it could come off the bulkhead and just stop.

Mr. Byrd asked if it would be 4 feet wide and Mr. C. Ward said probably.

A discussion ensued.

Mr. Frederick asked Ms. Nunnally to confirm if the whether or not the walkway was part of the application.

Ms. Nunnally said it was not mentioned anywhere else in the application.

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

Mr. Nettleton said it would still fit and did not think that it would interfere with the Board's decision. There would just be an after the fact revision of the description and details. Mr. Nettleton said VMRC would handle that part of the application.

A discussion ensued.

Mr. C. Ward asked if this, (boat rail), was a use VMRC and the Board in agreement needs a permit in the future.

Mr. Nettleton read the code section pertaining to this matter into the record:

***Article 2. Wetlands Zoning Ordinance and Wetlands Boards***

***§ 28.2-1302. Adoption of wetlands zoning ordinance; terms of ordinance***

***§ 3. The following uses of and activities in wetlands are authorized if otherwise permitted by law:***

- 1. The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duck blinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures, provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;***

Mr. Nettleton said at the last board meeting his supervisor, Mr. Randy Owen, said this project did not meet those qualifications. Mr. Nettleton said it was at the Board's discretion and that he did not want to influence their opinion.

**On a motion made by Mr. Ward and seconded by Mr. Montgomery, the Wetlands Board voted to issue a permit (valid for (1) year, for Derek Flowers VMRC# 2021-1319, proposed installation of an open-girder boat rail adjacent to an existing L-Head pier with the following conditions:**

- 1. Add new drawing of rap with details and measurements***

**The property is located on Chincoteague Island, VA 23336, tax map#(s) 30A4-A-120.**

**5. NEW BUSINESS**

**A. Matt Wilhelm VMRC# 2022-0215**

Replacement of the failing 80 feet wooden bulkhead with a new vinyl bulkhead

Ms. Nunnally gave a quick summary of the project.

Mr. C. Ward appeared before the Wetlands Board on behalf of the applicant.

Mr. C. Ward said this was a linear bulkhead with no bends. There was a broken tieback leading to a "V" sticking out into the canal.

Mr. C. Ward said the new owner of the property is interested in having it straightened out and in line with the existing bulkhead to the west. There would also be a 2 feet return wall on the western end of the property.

**CHAIRMAN FREDERICK OPENED THE FLOOR TO PUBLIC COMMENT**

Mr. Frederick asked if there was anyone who wanted to comment on application 2022-0215.

No one made a request to communicate.

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

Mr. Getek said he had some concerns. He asked Mr. C. Ward if he was going to make sure the bulkheads line up. That answer was yes.

Mr. Getek made the point that a Living Shoreline, being on a manmade canal in a development, would not be applicable.

Mr. Getek was also concerned about the dredge material. He asked Mr. C. Ward if he was going to use the dredge material to backfill. Mr. Getek typically clean backfill is used.

Mr. Getek said it had been brought to his attention that the CORPS typically gives permits to dredge the center of the canal, but there are some questions to whether the property owners have the necessary right to dredge near the bulkhead.

Mr. Nettleton said it was not in his jurisdiction and the CORPS did. He said he was not certain what requirements the CORPS would have, but the applicant/agent should make sure they have approval first.

Mr. Raymond Britton appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mr. Britton said years ago before many of the lots were bulkheaded, when dredging was done it was done mainly in the center. If you dredge close to the shoreline it causes more erosion.

Mr. Britton said he was hired about 14 years ago by Captain's Cove to dig in front of the bulkheads to give boat access to them under Captain's Cove's general permit.

Mr. Britton that as a rule of thumb, he had been dredging around the bulkhead forever. Then using it for backfill and for the top. Mr. Britton said it saves the Cove from having to go back and dredge in front of the backfill.

A discussion ensued.

Mr. Frederick asked it that part of the canal was in the Board's jurisdiction. Mr. Getek said no.

Mr. Nettleton said that part of the canal was not in the Board's jurisdiction, but the Board has jurisdiction over the fill that is used.

A discussion ensued.

**On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to issue a permit (valid for (1) year, for Matt Wilhelm VMRC# 2022-0215, proposed replacement of the failing 80 feet wooden bulkhead with a new vinyl bulkhead with the following conditions:**

***1. Clearly define the source of materials on Page 18***

**The property is located in Greenbackville, VA 23356, tax map#(s) 5A1-1-794.**

**B. Stonewall Capital VMRC# 2022-2483**

Repair of the existing bulkhead

Ms. Nunnally gave a brief summary of the project adding that this was previously submitted as an emergency application.

Ms. Nunnally also said there was 650 square feet of impacts to non-vegetated wetlands.

Mr. Frederick asked her to repeat the number. He then said the application pointed out 150 square feet.

Mr. Britton said it should have been 150 square feet.

**CHAIRMAN FREDERICK OPENED THE FLOOR TO PUBLIC COMMENT**

Mr. Frederick asked if there was anyone who wanted to comment on application 2022-2483.

No one made a request to communicate.

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

Mr. Byrd, for clarification, asked if everyone agreed that that 650 square feet was a misprint and that it is 150 square feet.

Mr. Frederick said the drawing has 150 square feet, but was hand written as 650 square feet on page 17.

Mr. Getek stated this was not a place to do a Living Shoreline due to the fetch.

Mr. Britton said this bulkhead was still intact prior to October 29, 2021.

Ms. Nunnally asked, since the site was dynamic, if she could go back to the site and do a new calculation of non-vegetated wetlands since there was a discrepancy.

Mr. Taylor and Mr. Byrd said this needed to be done now. Mr. Getek added it was critical to get it done now.

A discussion ensued on how much property had been lost since the emergency permit was applied for and denied.

Mr. Getek asked Mr. Nettleton if he could state, for the record, why this was not granted an emergency use permit in terms of repair.

Mr. Nettleton stated that VMRC has a number of technical requirements that have to be met for an emergency permit. One of them is that there is no vegetative wetlands, and (2) the total square footage of impacts cannot exceed the running length of the bulkhead.

Mr. Nettleton said in this case the 150 square feet of impacts was greater than the running feet of the bulkhead so it did not qualify for an emergency permit.

**On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to issue a permit (valid for (1) year, for Stonewall Capital VMRC# 2022-2483, proposed repair of the existing bulkhead with the following conditions:**

*1. Clarify the amount of non-vegetated wetlands on Page 17*

**The property is located in Greenbackville, VA 23356, tax map#(s) 5A1-1-755.**

**OTHER BUSINESS**

**A. McKinney Living Shoreline VMRC# 2020-1988 ATF Permit Extension Request**

Ms. Nunnally said they wanted to request an extension and that the work had not been done yet.

Mr. Frederick asked if that would be the first extension of if they were given two years. Mr. Byrd said he believed it was two years.

Mr. Frederick asked if staff had been out and if there were any changes from the original that the Board needed to be aware of.

Ms. Nunnally said the bank had been undercut and that the whole tree mat was slumped down.

Mr. Frederick asked Ms. Nunnally if what the Board approved was still a viable solution or if it needed other remedies applied other than the Living Shoreline.

Ms. Nunnally said she thought the Living Shoreline would be the best solution.

Ms. Nunnally then read the email sent by the applicant into the record.

A discussion ensued.

Mr. Getek asked if there were any vegetated wetlands, and Ms. Nunnally said no.

**On a motion made by Mr. Byrd and seconded by Mr. Montgomery, the Wetlands Board voted to issue an extension for 1 year, for Ryan McKinney VMRC# 2021-1988, proposed installation of an 132 linear feet Living Shoreline. The property is located in Belle Haven, VA 23306, tax map#(s) 118A-6-28.**

#### **B. Wetland Compensation Fee Update**

Ms. Nunnally, as requested from Mr. Guvernator, read the following information to the Wetlands Board:

*“The County Administrator determined that the proposed rate change will require a public hearing. At the 03-16-2022 Board of Supervisor's meeting, they voted to hold a public hearing on the proposed ordinance change at the April 20, 2022 BOS meeting. After the public hearing, they may entertain a motion to act on the changes.”*

Mr. Frederick stated that he and Mr. Byrd would be attending the April 20, 2022 Board of Supervisors meeting.

#### **C. Maggy's Eastern Shore Properties LLC VMRC# 2021-0359 (1 of 2)**

Applicant sent an email to formally request an extension due to price increases, (materials), and scheduling with their contractor.

**On a motion made by Mr. Taylor and seconded by Mr. Getek, the Wetlands Board voted to issue an extension for 1 year, for Maggy's Eastern Shore Properties LLC VMRC# 2021-0359 (1 of 2), proposed replacement of the failing 50 feet wooden bulkhead with a new vinyl bulkhead. The property is located on Chincoteague, VA 23336, tax map#(s) 30A2-8-25.**

#### **D. Maggy's Eastern Shore Properties LLC VMRC# 2021-0360 (2 of 2)**

Applicant sent an email to formally request an extension due to price increases, (materials), and scheduling with their contractor.

**On a motion made by Mr. Taylor and seconded by Mr. Getek, the Wetlands Board voted to issue an extension for 1 year, for Maggy's Eastern Shore Properties LLC VMRC# 2021-0360 (2 of 2), proposed replacement of the failing 50 feet wooden bulkhead with a new vinyl bulkhead. The property is located on Chincoteague, VA 23336, tax map#(s) 30A2-8-26.**

**6. NEXT MEETING**

The next Wetlands Board meeting is scheduled for Thursday, April 28, 2022 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. Montgomery, the Wetlands Board voted to adjourn the meeting.

The meeting was adjourned at 11:35 a.m.

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Earl Frederick, Chairman

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Chontese Ridley, Environmental Permit Specialist