

## **ACCOMACK COUNTY WETLANDS MINUTES OF JULY 21, 2022**

At a meeting of the Accomack County Wetlands Board held on the 21<sup>ST</sup> day of JULY 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. T. Lee Byrd (Voted Chairman)  
Mr. Gene Wayne Taylor  
Mr. Timothy Getek  
Mr. George H. Badger

#### **Others Present:**

Ms. Chontese Ridley, Environmental Programs Permit Specialist  
Mrs. Beth Nunnally, Environmental Planner II  
Mr. Benjamin Nettleton, Virginia Marine Resources Commission (VMRC)  
Mr. Paul Seltzer, Deputy Director of Building, Planning & Economic Development  
Ms. Kathy Carmody, Chief Human Resources Officer

#### **DETERMINATION OF A QUORUM**

There being a quorum, Ms. Chontese Ridley, Environmental Programs, called the meeting to order at 10:00 a.m.

### **2. ELECTION WETLANDS BOARD CHAIR**

The Wetlands Board will elect a Chairman for the remainder of 2022.

Ms. Ridley opened the floor for nominations for Chairman of the Wetlands Board:

Mr. Taylor moved, seconded by Mr. Badger, to nominate Mr. T. Lee Byrd. No other nominations were made. Ms. Ridley closed the floor for nominations.

Ms. Ridley called for a vote and the Wetlands Board voted unanimously to elect Mr. T. Lee Byrd as Chairman of the Wetlands Board for the remainder of 2022.

### **3. ADOPTION OF AGENDA**

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

### **4. MINUTES**

#### **A. June 23, 2022**

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

**Mr. George Badger abstained due to not being in attendance at the June meeting.**

**NEW BUSINESS**

**A. Tory Pomeroy VMRC# 2022- 0933**

Replacement of the existing, failing wooden bulkhead with a new 105 square feet vinyl bulkhead 2 feet channelward of the existing.

Ms. Beth Nunnally, (Environmental Programs), stood before the Wetlands Board and was sworn in by Chairman Byrd.

Ms. Nunnally gave a synopsis of the project adding that the bulkhead would be backfilled with 41 cubic yards of clean fill. She added there would be 34 square feet of non-vegetated wetlands, located behind the bulkhead, would be affected. Ms. Nunnally said the in lieu was calculated at \$612.00.

Ms. Ellen Grimes, (Coastal Resource Management, LLC), appeared before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Byrd.

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

Mr. Byrd asked if there was anyone who wanted to comment on application 2022-0933.

No one made a request to communicate.

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

Ms. Grimes said most of this project was not in the Wetlands Board's jurisdiction, because the tides rose and fell on the bulkhead. The part that was in the Board's jurisdiction were the sink holes behind the bulkhead and one of the return walls.

Ms. Grimes said she submitted a revised page to the application, (page 17), with updated numbers for impacts.

Mr. Byrd asked to confirm the number of impacts and it was discovered there was a misprint in the application. Ms. Grimes said it should have said 220 square feet of subaqueous and not 22 square feet. Ms. Grimes said she would revise it.

Mr. Taylor asked Ms. Grimes who owned the manmade canal. Ms. Grimes did not know.

Mr. Badger said unless it was deeded to the association or the property owners, the original developer would still own the canals.

A discussion ensued on the ownership with Mr. Taylor pointing out that the Board cannot permit work on someone else's property. Mr. Badger said that the Wetlands Permit also states that so it should be covered.

Mr. Byrd asked Mr. Nettleton if he had anything he wanted to add.

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

Mr. Nettleton said he wanted to comment on pockets in bulkheads. He told the board members to make sure they were being consistent on the handling of them. Mr. Nettleton added there was a section in the code on whether non-vegetated wetlands were contiguous to mean low water or not. He said they had previous discussion on Captain's Cove when there are 1 or 2 boards missing verses a whole section of bulkhead failing. Is it wetlands or just an uplands erosion spot that does or does not need compensation?

Mr. Nettleton said VMRC did not have a strong opinion on this project. They are technically wetlands, but it is questionable.

Mr. Byrd asked Ms. Grimes if her client was willing to pay the \$612.00 in mitigation for impacts. Ms. Grimes said if there was no consistency, right this minute, in the County's interpretation with VMRC's consult with pockets/holes in a bulkhead like this one no, they would not want to pay.

Mr. Byrd said they, (holes/pockets), had been there so long it turned into a non-vegetated disturbance.

Mr. Taylor said if there was a storm situation that was fixed right away he would be for not charging. Being that this was long term and just getting worse that they needed to charge, and Mr. Badger chimed in to say that was consistent to what they board had done in the past.

**On a motion made by Mr. Getek and seconded by Mr. Badger, the Wetlands Board voted to issue a permit (valid for (1) year, for Tory Pomeroy VMRC# 2022- 0933, for the proposed replacement of the existing, failing wooden bulkhead with a new 105 square feet vinyl bulkhead 2 feet channelward of the existing with the following conditions:**

*1 .Pay \$612.00 into the mitigation fund for 34 square feet of impacts to non-vegetated wetlands.*

*2. Decision was made based on there being long term erosion and not erosion caused by a storm event.*

**The property is located in Onancock, VA 23417, tax map#(s) 75D-3-3-8.**

#### **B. Wayne Wingard - VMRC# 2022- 1163**

Proposed installation of a new 86 feet vinyl bulkhead

Ms. Nunnally gave a synopsis of the project adding that the bulkhead would be backfilled with 92 cubic yards of dredge material and clean fill dirt.

Ms. Nunnally said she calculated 32 square feet of non-vegetated wetlands and 800 square feet of subaqueous bottom that would be affected. The application states there were 0 non-vegetated wetlands. She said she did not measure the embankment, but later learned that the face escarpment is also included. That would increase the 32 square feet of non-vegetated wetlands affected.

Mr. Charles (Chuck) Ward, Starboard Environmental, appeared before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Byrd.

Mr. Ward said this property had never been bulkheaded and suffered from constant erosion. He said the adjacent bulkheads were 8-12 feet out farther than the applicant's lot due to erosion. Mr. Ward added that the new owner wished to align the bulkheads and backfill the current canal bottom that they own.

Mr. Ward said he would like further clarification on Ms. Nunnally's claim that the face of the bank was part of the wetlands.

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

Mr. Byrd asked if there was anyone who wanted to comment on application 2022-1163.

No one made a request to communicate.

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

Mr. Byrd said they had a couple of questions for Mr. Nettleton.

Mr. Byrd said his first question was verification on the face of the bank.

Mr. Nettleton said he had never had that question come up before on a site, and it was not typically counted as wetlands. He agreed with the comments Mr. Chuck Ward made about the wetlands being the mudflat area exposed and not counting vertical slopes. Mr. Nettleton said counting vertical slopes would not be justifiable as part of the wetlands.

Mr. Badger said the rise and fall on the escarpment or the bank is jurisdictional. Mr. Nettleton agreed adding there would be an impact, but there would be no net loss.

Mr. Getek asked Mr. Chuck Ward about pushing the bulkhead back 8-10 feet. Mr. Getek said they do not get to reclaim the land.

Mr. Chuck Ward said that Mr. Wingard was not present and he could not answer that question.

A short discussion ensued.

Mr. Badger stated, to clarify, that the board was not permitting the bulkhead. They were only permitting the fill in the intertidal area. Mr. Nettleton confirmed that was correct.

**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 Wayne Wingard - VMRC# 2022- 1163, for the installation of a new 86 feet vinyl bulkhead with the following conditions:**

- 1. Pay \$576.00 into the mitigation fund for 32 square feet of impacts to non-vegetated wetlands*
- 2. Revise page 17 to state there will be 3,440 square feet of back fill used*

**The property is located in Captains Cove, VA 23356, tax map#(s) 5A1-1-911.**

**C. George Richardson, III- VMRC# 2022- 1165**

Proposed replacement of the failing 130 square feet wooden bulkhead with a new vinyl bulkhead 2 feet channelward

Ms. Nunnally gave a synopsis of the project adding that the bulkhead would be backfilled with 25 cubic yards of clean fill, and that there were 16 square feet of impacts to non-vegetated wetlands.

Ms. Nunnally said the application stated 0 non-vegetated wetlands and that it would need to be revised.

Mr. Charles (Chuck) Ward, Starboard Environmental, appeared before the Wetlands Board on behalf of the applicant and had already been sworn in by Chairman Byrd.

Mr. Chuck Ward said he would like to go back to the discussion about a bulkhead that has failed, not due to storm damage, and been that way for years.

#### **CHAIRMAN BYRD OPENED THE FLOOR TO PUBLIC COMMENT**

Mr. Byrd asked if there was anyone who wanted to comment on application 2022-1165.

**Ms. Ellen Grimes**, (CRM, LLC), made a request to communicate.

Ms. Grimes said she submitted a replacement bulkhead application for the adjoining property owner of the Richardson's and that the two bulkheads would tie into each other.

Ms. Grimes added that Mr. Barney and his brother own the canal. She added that she and her applicant had to get permission from the two to do any work.

#### **CHAIRMAN BYRD CLOSED THE FLOOR TO PUBLIC COMMENT**

Mr. Getek said in this particular case, he noticed that some of the boards were knocked out at the bottom, and in his view a charge for non-vegetated wetlands would be appropriate.

Ms. Nunnally said the square footage that she was talking about was actually in a different area.

Mr. Chuck Ward said his client was going to have a surveyor come out and mark the property lines before any work started. He added if the project were to cross any other property lines a written agreement between the owners would be drafted.

Mr. Getek asked at the end, where it was proposed to go 2 feet channelward, who owned that property.

Mrs. Ilene Richardson, property owner, appeared before the Wetlands Board and was sworn in by Chairman Byrd.

Mrs. Richardson wanted to point out to the board where her property started/ended in the area where it was said to be impacts to vegetated wetlands. She stated that her property line started at the blue piling.

Ms. Nunnally asked Mrs. Richardson about the bushes in front of the bulkhead and Mrs. Richardson said that was not her property. It belonged to her neighbor.

A discussion ensued on changing the alignment of the proposed bulkhead.

Mr. Chuck Ward said would try their best to keep the alignment of the first 8 feet of the bulkhead as close to the original footprint as possible.

Mr. Taylor chimed in to say if they did infringe on the adjacent property and an agreement was made, the adjacent property owner would also have to be part of the permit.

Mr. Chuck Ward pointed out that they were to replace the first 8 feet of the bulkhead in the existing footprint there would be no impacts to wetlands.

Mr. Byrd said in his opinion, there would be no impacts.

Mr. Byrd went over the alignment saying the first 8-10 feet of the bulkhead would go in the same footprint and then go out 2 feet channelward.

Ms. Nunnally said revised drawings would need to be submitted.

Mr. Badger said the portion of the bulkhead extended out 2 feet channelward would not be in their jurisdiction. Their jurisdiction was from the low water mark where the bulkhead was being replaced in the existing footprint.

Mr. Nettleton said the portion going 2 feet channelward would be in the CORPS's jurisdiction.

Mr. Badger pointed out that with the revised drawings, the bulkhead going back into the same footprint, and not impacts to wetlands no permit would be needed from the Wetlands Board.

Mr. Byrd agreed.

Mr. Badger said it should be continued until the revised drawings are submitted showing no impacts.

**On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to continue until the next meeting, for George Richardson, III- VMRC# 2022- 1165, for the proposed replacement of the failing 130 square feet wooden bulkhead with a new vinyl bulkhead 2 feet channelward:**

- 1. Revised drawings must be submitted showing no impacts to non-vegetated wetlands*

**The property is located in Onancock, VA 23417, tax map#(s) 83B-1-23.**

Ms. Kathy Carmody, Chief Human Resources Officer, appeared before the Wetlands Board and was sworn in by Chairman Byrd.

Ms. Carmody said she was at the meeting as someone knowledgeable about parliamentary to assist Ms. Ridley.

Ms. Carmody said when they have a motion as a continuance, that is the action, and no further language needed to be added. The continuance was made contingent upon receiving revised drawings by the next meeting.

## **6. NEXT MEETING**

The next Wetlands Board meeting is scheduled for Thursday, August 25, 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. Taylor and seconded by Mr. Badger, the Wetlands Board voted to adjourn the meeting.

The meeting was adjourned at 11:33 a.m.

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T. Lee Byrd, Chairman

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Chontese Ridley, Environmental Permit Specialist