

## ACCOMACK COUNTY WETLANDS MINUTES OF JUNE 27, 2019

At a meeting of the Accomack County Wetlands Board held on the 27<sup>TH</sup> day of JUNE 2019 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. T. Lee Byrd

Mr. Timothy Getek

Mr. Gene Wayne Taylor

#### Others Present:

Mr. G. Christian Guvernator IV, PE, Director Environmental Programs

Ms. Chontese Ridley, Environmental Programs Permit Specialist

Mr. Hank Badger, Virginia Marine Resources Commission (VMRC)

#### 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 asked if there were any additions that needed to be made to the minutes and Mr. Getek said he would like to mention the discussion of the Muller/Best JPA to verify that they made their deadline, and any other topics that would be appropriate to discuss. Mr. Frederick said he did not think anyone would have any problems with adding that to the end of the meeting under "OTHER BUSINESS".

**On a motion made by Mr. Ward and seconded by Mr. Getek, the Wetlands Board voted to unanimously adopt the agenda with the modification.**

### 3. MINUTES

#### A. May 23, 2019

Mr. Getek found the following typos in the minutes from the May 23<sup>rd</sup> 2019 meeting:

- *Under "B" - Streetview should be "Seaview Street"*
- *Second line - The point is known as "Cockle Point"*
- *There was an "and" that should be ".....an email..."*
- *Next paragraph - There was a missing left parenthesis near end of the paragraph (hanging parenthesis after high-water mark)*

**On a motion made by Mr. Byrd and seconded by Mr. Ward, the Wetlands Board voted to approve the minutes of the May 23, 2019 meeting.**

### 4. NEW BUSINESS

#### A. Norman & Susan Colpitts - VMRC# 2019-0963

Royal Woods Lane

To install approximately 164 linear feet of oyster castle sill with a 10 foot gap in the middle of the two long sections of sill, and approximately 83 cubic yards of fill. The property is located in Craddockville, VA 23420, Tax Map# 117-11-4.

Mr. Chris Guvernator, Environmental Programs, appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Guvernator stated that this JPA came through the regular VMRC process. His office evaluated it determined it fell the board's jurisdiction, and needed to come before the board for a permit. After some discussion, hearing from the applicants agent, and receiving revised drawings the application met all qualifications for a Group 2 Waiver. This would be handled under the VMRC general permit process. Mr. Guvernator said he and Mr. Frederick sent a letter to VMRC stating that, however, the project had already been advertised to come in front of the board. Due to this Mr. Guvernator said it needed to be opened for public comment. VMRC through their process also contracts the adjacent property owners, (APO). Once the county has determined a project qualifies as a Group 2, it passes it to VMRC to follow their permit process. He also added that if there were APO protests that this application would have to come before the board to be evaluated for a permit.

Mr. Frederick asked Mr. Guvernator could relate what the group two requirements were. Mr. Guvernator said he could not speak to them all because he did not bring them with him. He did state that there was a 15 point checklist that the project has to follow. Mr. Guvernator also showed the board field site photos pointing out the proposed placement of the sill.

Mr. Frederick asked if there was anyone in the audience that wanted to comment on the Colpitts' application. Mr. Matthew Walter Frisch, (APO), was sworn in by Chairman Frederick. Mr. Frisch said he was concerned about the 83 cubic yards of fill. Mr. Frederick then asked Mr. Frisch what was his concern about the fill. Mr. Byrd also asked if he was the property behind the Colpitts. Mr. Frisch said he lived to the right of the Colpitts. Mr. Colpitts said there was aquatic vegetation there currently and erosion. Mr. Byrd chimed in to say there is erosion without the fill, and asked Mr. Frisch if his concern was that the fill would enhance this. He responded yes. Mr. Byrd then asked Mr. Frisch was what his current situation with getting in and out at dead low water. Mr. Frisch said he could not get in and out at dead low. Mr. Byrd said that the fill would not affect him because he could not get out at low water anyway. Mr. Byrd asked Mr. Frisch, to confirm, that his only concern was the erosion. Mr. Frisch said he was worried that years down the line he wouldn't be able to pass through the area due to the fill possibly causing the passage way to silt in.

Mr. Frederick stated the agent for the Colpitts was in attendance, but asked Mr. Guvernator how far should proceed without the owners being present to comment. Mr. Guvernator said the owners, through their agent, were under the impression they were moving on with the Group 2 General Permit. The board has heard the protest that it should be recoded, but it is in the hands of VMRC. He added that he thought VMRC needed to go through the APO process, let his office now if Mr. Frisch formally complains to them as well, and then the application would come before the board. Mr. Guvernator felt the owner needed to be notified and present.

Mr. Frederick asked Mr. Badger, (VMRC), if he wanted to speak. Mr. George Badger, (VMRC), was sworn in by Chairman Frederick. Mr. Badger said he thought Mr. Frisch's concern was the fill going behind the castles would leak out and that would cause more a problem than he already has. He then stated if Mr. Frisch protested, which he did, this application should be continued until next month, (June), so that the applicant/agent can address these issues. Mr. Badger said he hoped to have some information back from VIMS by that time. He also said that this would knock the application out of the Group 2 to a regular/standard application. Mr. Frederick asked if a one month continuance would be realistic for VMRC to review. Mr. Badger said yes, and that it had to come before the Wetlands Board first as all standard applications do. Mr. Frederick then confirmed with the agent, (Ellen Grimes, CRM, LLC), that the one month continuance was fine. Ms. Grimes confirmed.

Mr. Ward asked how deep the 83 yards of fill would be at the sill. After a short discussion it was seen on the drawings as 12 inches. Mr. Ward also asked if the channel was soft/muddy or hard/semi-hard/sand. After a short discussion Mr. Frisch determined that it is sand once you get to a certain point.

Mr. Frisch said he had spoken to someone at VIMS and had not heard back from them yet. Mr. Frisch added that if he had to make a decision now, he did not want this work to be done.

**On a motion made by Mr. Byrd and seconded by Mr. Getek, the Wetlands Board voted on a one month continuance for Norman & Susan Colpitts - VMRC# 2019-0963 to install approximately 164 linear feet of oyster castle sill with a 10 foot gap in the middle of the two long sections of sill, and approximately 83 cubic yards of fill. The property is located in Craddockville, VA 23420, Tax Map# 117-11-4.**

**B. Kevin Conlin – VMRC# 2019 – 0872  
3186 Main Street**

The removal of concrete rubble that had been placed on property and to install a 60 foot vinyl bulkhead with (1) 12 foot return wall and (1) 15 foot return wall. Also proposed is 75 linear feet of rip-rap toe scour protection. The property is located on Chincoteague Island, VA 23336, Tax Map# 30A2-A-43.

Ms. Ellen Grimes, (CRM, LLC), appeared before the Wetlands Board and was sworn in by Chairman Frederick on behalf of the applicant. Ms. Grimes started with saying the property had a lot of concrete rubble on it that goes up and down the shoreline. There is a bulkhead to the south and rubble to the north. The applicant would like to drag some of the rubble footprint back and install vinyl behind it. Ms. Grimes said the applicant might want to add a toe scour in front of the bulkhead. The project footprint would be more landward of what exist there now.

Mr. Frederick said when he was at the site he seen a line that had been spray painted across the rubble, and noticed it was not at the current physical end of the rubble. Ms. Grimes said that was the line of the bulkhead. Mr. Frederick said he asked because someone working there, not Mr. Conlin, had advised him that he could move the bulkhead out farther then what Ms. Grimes had proposed. Ms. Grimes suggested not listening to anyone else and that she did not know who the man was. Mr. Taylor wanted to know how the existing and new bulkhead would be tied together. Ms. Grimes said that would be a contractor question that she would not feel comfortable answering. Mr. Taylor said there would be a gap and wanted to know how it would be filled. Ms. Grimes said it could possibly be covered by rock or sheathing. She said an actual connection between wood and vinyl would not be likely, but that there would not be a gap there. Mr. Ward said to confirm that the tide would not come through it. Ms. Grimes confirmed and said they could add rocks against it, and Mr. Frederick said the tide could flow out from behind it.

Mr. Frederick asked if new material was going to be put in for the toe scour or if the concrete rubble would be used. Ms. Grimes said the applicant could use what is there, but he did not seem like the type of person that would want to look at that. She believed the applicant would want some higher end class 1 or 2 rocks. Mr. Frederick said that some of the concrete did not follow the rip-rap guidelines. Ms. Grimes confirmed asking Mr. Frederick to add “follow rip-rap guidelines” to the motion.

**On a motion made by Mr. Taylor and seconded by Mr. Byrd, the Wetlands Board voted to issue a permit (valid for (1) year) to Kevin Conlin – VMRC# 2019 – 0872 for the removal of concrete rubble that had been placed on property and to install a 60 foot vinyl bulkhead with (1) 12 foot return wall and (1) 15 foot return wall. Also proposed is 75 linear feet of rip-rap toe scour protection. The property is located on Chincoteague Island, VA 23336, Tax Map# 30A2-A-43 with the follow amendments:**

- 1. Follow the county’s rip-rap guidelines*

**C. Franklin Heinicke – VMRC# 2019 – 0881  
4106 Channel Lane**

The installation of two 10"x20' pilings in the intertidal zone. The property is located on Chincoteague Island, VA 23336, Tax Map# 30A4-34-12

Ms. Ellen Grimes, (CRM, LLC), appeared before the Wetlands Board and was sworn in by Chairman Frederick on behalf of the applicant. Ms. Grimes said the location was in a town home development at was built sometime in the 90's and a lot of people have added on deck extensions. She said she was not sure if the other property owners had the proper permits, but that it was common practice with those town homes. Ms. Grimes showed two pilings that needed to come go in the intertidal zone. Currently to access the back you have to crawl underneath the town homes. She said the pilings were displacing approximately 2 square feet of vegetative wetlands, and that her client would pay the \$24.00 in mitigation fees. The installation will be done from the water. Ms. Grimes then showed the board where the pilings would be placed and how the deck would be extended out.

Mr. Frederick said he thought that one flag for the piling was at the corner of the extension. There were no photos to show the location of the flags so it could not be confirmed. Ms. Grimes said the deck would be 8 feet x12 feet and 4 feet of the 8 feet would be sticking out over the wetland area. Mr. Guvernator said, to confirm, that some of it would be going over the first floor deck. Ms. Grimes said that was correct. Mr. Ward questioned the location of the extension and it was confirmed that it would be on the bottom level. Mr. Getek asked if it would be built even with the neighbor's deck. Ms. Grimes said yes, that is what she was sent a photo of by the applicant on what he wanted done. Mr. Byrd asked about height restrictions and neighbors who do not have one, and would the others want to build one as well. Mr. Taylor gave the dimensions 4 feet tall by 5 feet wide. Mr. Byrd about the railing, but Ms. Grimes said that was a building code concern. Mr. Taylor said Mr. Byrd was asking about shading. Ms. Grimes said the deck would be 12 feet above the sub straight and is had southern exposure.

Mr. Frederick said there might be some effect on the grass from shading. Mr. Badger said he paced off how far underneath the existing deck the vegetation was until it stopped which was about 5 feet before it turned to non-vegetative. Mr. Badger added that it would be about 50 square feet of vegetative wetlands impacted. He was concerned about whether or not there was a homeowners association and it they had approved the applicant's addition. Ms. Grimes believed even if there was an association, and the Wetland's Board approved the addition, that the association could still deny it. Mr. Badger was also concerned is the effect of this. Meaning if it is approved more will come wanting to do the same. Mr. Frederick said some already had the extension, and Mr. Badger said he did not see any others there. Mr. Badger asked if it was a necessity to impact wetlands. Mr. Getek said that he had the same question wondering if it was necessary to be built. Mr. Byrd agreed with both Mr. Badger and Mr. Getek.

Mr. Taylor said the observation decks are allowed. Mr. Badger said he spoke with Tony Watkins, (head of the habitat division), and they felt this was an extension of a house. He added this was not a pier, but something separate. Mr. Ward asked how much room the applicant currently had for chairs. Ms. Grimes did not know. Mr. Badger said it was the width (x) 10 or 15 feet. From the structure out Mr. Badger said it could be 10-12 feet, but he did not measure it, (from the house wall out). Mr. Frederick said the permit was for a 12 foot width so it would be a little larger than that, (14 feet by 10 feet). Ms. Grimes asked about cutting it back some, but it would still leave it as an extension of the house. Mr. Badger said he did not think the deck was 12 feet above the sub straight because he could touch the top with his hand.

Mr. Byrd said he was interested in what Mr. Taylor had to say on this. Mr. Taylor said if it was a stand-alone deck that observation decks are allowed, but VMRC has said that is an extension of the house. Ms. Grimes asked if the stairway system was taken out and they did an extension on the pier would it work. This would make it an access way. Mr. Taylor said it was already it the maximum allowable shading. A discussion ensued on exactly the applicant wanted to build, and if the proposed extension

lined up with the neighbors deck. During this discussion Ms. Grimes also gave some possible extension variations.

Mr. Getek asked if a gazebo could be built there. Ms. Grimes said that would a roof would be needed and did not think that would applicable with the CBPA. Mr. Guvernator said he did not think that would work. Mr. Taylor asked if the applicant would be allowed to build an observation deck off of the dock. Mr. Badger said as long as the total appendages are less than 400 square feet. Mr. Badger said the pier would not qualify for the statutory exemption and would be a joint use pier. It would need a permit from VMRC. Ms. Grimes then proposed connecting the requested enlargement of the deck to the pier, and checking to see if the pier is of community use. If not, the deck and the pier would need to go in an application to VMRC as joint use. This would make the enlargement of the deck permissible asked Ms. Grimes. Mr. Badger said only if it was part of the pier and not raised.

A discussion ensued on what other changes could be made to make this work. Time passed with no agreement, compromise or solution and Mr. Frederick intervened. He asked Ms. Grimes if it would be appropriate him to ask if she would like a continuance on this to think things over, or if she wanted the board to vote on it now with what they had heard so far. Ms. Grimes said she would like a continuance until July. Mr. Frederick said July was a short month and the next meeting would be on the third Thursday instead of the forth. Ms. Grimes then asked for a continuance until August.

**On a motion made by Mr. Taylor and seconded by Mr. Ward, the Wetlands Board voted on a continuance until the July meeting for Franklin Heinicke – VMRC# 2019 – 0881 for the installation of two 10'x20' pilings in the intertidal zone. The property is located on Chincoteague Island, VA 23336, Tax Map# 30A4-34-12.**

**D. Fish & Wildlife Service, U.S. – VMRC# 2019 – 0932**  
**8231 Beach Road**

The replacement of two aging water control structures and the clean out of 2,940 linear feet of ditch. The property is located in the Chincoteague National Wildlife Refuge on Chincoteague Island, VA 23336, Tax Map# 30A4-34-12.

Mr. Chris Guvernator, Environmental Programs, appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Guvernator explained that the U.S. Fish & Wildlife Service wanted to do more maintenance on their impoundment control structures. These are the higher numbered ones more north of the facility. He added that his office initially thought the project had impact in the Board's jurisdiction and needed a permit; however, the engineering drawings did not accurately depict what they were doing. After doing a site inspection it was discovered there the impact was much smaller leading his office in the direction of no permit being needed. Mr. Guvernator wanted to discuss this with the board in case the wrong decision was made.

The new permit application is to dredge a channel upstream from the water control structures the Board had previously permitted, and to do work on water control structures eight and nine. The Engineering drawings showed, for water control structure number nine, the tide would rise and fall on the existing outfall. This is why it was thought that a permit would be needed.

Mr. Guvernator then showed drawings of the proposed work/work area and pointed out they were not accurately done. He said it looked to be new construction in a new area not along the same alignment as the existing pipe. The work was described to be maintenance, but Mr. Guvernator said it looked like new work to him. The new pipe and structure, according to the engineer, up near the road actually going to go in the same alignment as the old one. They are going to pull the wing wall, flap gate and pipe out. Then a new pipe will go in with the flap gate sticking out, and it would no longer be in the water. Mr. Getek asked if it would be at the same depth and Mr. Guvernator said yes. Mr. Taylor asked if the internal flag remained open, (to determine jurisdiction), and Mr. Guvernator said it normally

remained closed until the head waters build up in the freshwater pond and pushes it open. Mr. Taylor said everything up to the flap gap was tidal and in the Board's jurisdiction.

Mr. Guvernator said when they are finished with the work; their impacts to the wetlands would be less. Mr. Ward asked if a request was made for new drawings showing the new work going in the same place as the existing , would that be satisfactory. Mr. Guvernator said they would satisfy him. Mr. Byrd asked how much disturbance it would be to take the old one out as opposed to putting it in parallel to it like the drawing currently shows. Mr. Guvernator said he was not sure and Mr. Byrd said it should be considered. Mr. Byrd also asked Mr. Ward what he thought, and Mr. Guvernator chimed in to say he believed new drawings needed to be submitted.

Mr. Guvernator asked Mr. George Badger if the right decision and if a permit was need for the project. He also asked if the Board's jurisdiction extend upstream of the pipe if water can get though the flag gate upstream. Mr. Badger said if it was going back into the same footprint, and it is less impact, this project could be considered as maintenance or repair. As far as jurisdiction, Mr. Badger said if this was a failed structure, and tidal water is in & behind it, it is in the Board's jurisdiction. Mr. Taylor said he believed the project should be permitted. Mr. Byrd asked if revised drawings could be put in the motion, and Mr. Taylor said he thought the current drawings could possibly be edited. It was agreed that the applicant/engineer should modify drawings to show that new pipe will be in existing footprint.

**On a motion made by Mr. Taylor and seconded by Mr. Getek, the Wetlands Board voted to issue a permit (valid for (1) year) to Fish & Wildlife Service, U.S. – VMRC# 2019 – 0932 for the replacement of two aging water control structures and the clean out of 2,940 linear feet of ditch. The property is located in the Chincoteague National Wildlife Refuge on Chincoteague Island, VA 23336, Tax Map# 30A4-34-12, with the following condition:**

1. *Add verbiage stating the new pipe and water control structure will be going in the existing footprint*
2. *No net loss to wetlands*

## **5. OTHER BUSINESS**

### **A. Muller/Best Update**

Mr. Getek wanted to give an update on the status the Muller/Best project and new application submittal. They had a deadline of June 15, 2019 to submit a new JPA which they met. Mr. Getek said he did not want to go into too much detail, but did show some photos of the site that he had taken. He showed where he thought the major issue was on the southern side of the Muller lot. He talked about the current location of the rocks on the property saying they would have to be moved. Mr. Getek added that the rocks would not be able to be put back, because they would be in vegetative wetlands.

Mr. Frederick asked when where the rocks put in, and if it was the same time that the illegal bulkhead. Mr. Getek said he was not sure. Mr. Getek said the neighbor, Mr. Stoudt, wanted to keep the rocks in to prevent erosion down the line. Mr. Getek said with the rules in regards to rocks in vegetative wetlands, the rocks cannot be replaced.

Mr. Getek went over the rests of the photos he had taken pointing out issues. A discussion ensued on the work that was done illegally, and some possible changes that should be made.

Mr. Guvernator also had some updates on this project. He confirmed that the new application did meet its deadline and that it was deemed complete. Mr. Guvernator said since then his office has been getting daily calls from Mr. Best wanting to revise their submittal. He was also told that the owners did not feel like their agent submitted what they agreed on. The applicants have terminated the agent and the agent has stopped for the applicants. Mr. Guvernator said 1-2 revisions had been sent in by the owners marking up what the agent submitted. Mr. Getek said that the advocate for redesigning this project was Colleen Best, one of the property owners. Adding that they might need more help to get this through.

Mr. Guvernator said he would be sending a letter to the applicants stating that his office would no longer be giving the options and alternatives. He believed his office was being put in a bad situation and that the back and forth was being too much. Mr. Frederick said if an agreement is not met then, as Mr. Taylor previously said, they will have to revert to the original design. Mr. Taylor added that the 8 cubic yards of fill was off the table. Mr. Badger said it looked like a beach now, which would be in VMRC's jurisdiction, but being that it was vegetative wetlands that were illegally filled it remained in the Board's jurisdiction.

**6. NEXT MEETING**

The next Wetlands Board meeting is scheduled for Thursday, July 18, 2019 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac

**7. 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 11:25 a.m.

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Earl Frederick, Chairman

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Chontese Ridley, Environmental Permit Specialist