

**Virginia: At a meeting of the Accomack County Wetlands Board, held in the chambers of the Board of Supervisors on the 27th day of January, 2011, A.D.**

**Members present:**

Mr. George T. Parker, Chairman  
Mrs. Lee L. Merrill, Vice-Chairman  
Mr. C. Lee Davis  
Mr. Earl B. Frederick  
Mr. George H. Ward, Jr.

Mr. David Fluhart, Secretary  
Mrs. Marie E. Fox, Recording Secretary

**Alternate Members:**

Mr. Mikel Patti **ABSENT**  
Mr. Gene Wayne Taylor **ABSENT**

**Others present:**

Mr. Randall Owen, VMRC

**The meeting was called to order at 10 AM by Chairman Lee L. Merrill for Election of Officers.**

**1). ELECTION OF OFFICERS**

Ms. Lee L. Merrill, Chairman opened the meeting at 10:00 AM and turned it over to Mr. Fluhart for election of new officers.

Mr. Fluhart opened the meeting as Chairman Protemp and opened nominations for Chairman. Ms. Merrill nominated Mr. Parker as Chairman, Mr. Davis seconded the motion. There were no other nominations.

Mr. Fluhart called for a vote of Mr. Parker as Chairman. Ayes: Mr. Davis, Mr. Frederick, Mr. Ward, Ms. Merrill.

**At this time, Mr. Fluhart turned the meeting over to Mr. Parker, Chairman**

Mr. Parker called for nominations for Vice-Chair. Mr. Frederick nominated Ms. Lee Merrill for Vice-Chairman. Mr. Davis seconded the motion.

There were no other nominations.

Mr. Parker called for a vote on the motion. Ayes: Mr. Parker, Mr. Davis, Mr. Frederick, Mr. Ward.

**At this time, Mr. Parker opened the meeting to a public hearing. All applications are approved for a one year period from the date of this hearing, unless specifically noted. All applicants, speakers and representatives are sworn in before the Board on the following wetlands applications:**

**This Board is aware of and complies as closely as possible to the objectives of the Virginia Marine Resource Commission's Wetlands Policy of No Net Loss.**

2). **MINUTES –October 28, 2010**

Mr. Frederick made a motion to approve the minutes of the Thursday, October 28, 2010 meeting as presented with the corrections. Mr. Davis seconded the motion. Ayes: Mr. Parker, Mr. Davis, Mr. Frederick, Ms. Merrill, Mr. Ward.

3). **CONTINUED FROM December 16, 2010**

**1). An application from Harmony Investments, VMRC #10-1863, to install approximately 700-foot of bulkhead (various lengths totaling 700-foot) at the existing Chincoteague Landmark property, thereby impacting wetlands, Main Street, Chincoteague, Virginia. (TM#30A5-A-95 et al)**

Mr. Glenn Hampton, Attorney from the law firm of Bowman, Green, Hampton & Kelly, appeared before the board to represent Harmony Investments, proposed developer of the Landmark Plaza property. At this time, Mr. Hampton introduced Mr. Brian Owen Environmental Engineer from MSA, who has completed a lot of the engineering work for this proposal. Mr.

Hampton advised that Mr. Owen will describe the project in detail and advised there is an existing approved wetlands permit for this property and Mr. Owen will describe how this new proposal will compare to the existing permit.

At this time Mr. Brian Owen appeared before the board to explain, in detail, the proposal to install new bulkheading and remove the existing restaurant on the property as well as the steel hull in front of the property. He advised there was a previously approved wetlands permit, VMRC #05-2660 that will expire on February 23, 2011.

Mr. Fluhart read the VIMS Report into the record, which stated, ***“EXISTING SITE CONDITIONS AND PROPOSED ACTIONS: The re-development of a commercial parcel on Chincoteague Channel is proposed to construct a new hotel and restaurant. The proposed activities include 530 ft of replacement and new bulkheads, 3,225 sq ft of fill in a man-made canal, and 11,700 sq ft of new commercial structures channelward from MHW. The commercial structures include a new building on pilings in the same footprint as the existing restaurant, plus a fixed deck and floating piers. The removal of a derelict boat hull is also proposed.”***

***“We estimate that 2,335 sq ft of non-vegetated tidal wetlands between MHW and MLW would be permanently filled as a result of these activities. The estimated subaqueous fill area channelward from MLW is 150 sq ft for the bulkhead replacements and 1,800 sq ft at the man-made canal. The building on pilings would impact another 5,400 sq ft of non-vegetated wetlands and 1,800 sq ft of subaqueous lands.”***

***THE PREFERRED APPROACH FROM AN INTEGRATED MARINE ENVIRONMENTAL VIEWPOINT: Filling in wetlands and subaqueous areas for the singular purpose of creating waterfront upland property is generally undesirable, as previously advised by VIMS for the re-***

*development of this parcel (VMRC #05-2660). Removing historic development from environmentally sensitive areas is preferable to continuing or expanding land uses that do not have to be located in wetlands or over the water, such as hotels and restaurants.”*

*“Locating new buildings only in the available upland area is the preferred approach for the re-development of this parcel. Even though the habitats under the building on pilings and in the man-made canal are degraded in quality, the proposed footprint in wetlands (7,450 sq ft) and the permanent loss of 4,135 sq ft of wetland and subaqueous land should be avoided. This could include seeking variances for setbacks and other zoning requirements in order to maximize the upland development area to the greatest extent possible.”*

*“If the project is permitted, then additional details are still needed for the proposed bulkhead lengths, locations and engineering specifications. All construction waste and demolition debris should be carefully removed from the water and disposed at an approved location.”*

***RECOMMENDATIONS SUMMARY: Reduce development footprint in wetlands and subaqueous land; Provide bulkhead engineering details; Properly remove and dispose of demolition debris”***

A discussion ensued regarding the impacts to wetlands as stated in the VIMS Report and the possibility that those numbers could be inaccurate.

At this time, Mr. Harry Deitch, appeared before the board and described in detail the location of this proposal in regard to his property and presented a poster with pictures to better explain the location of the proposal and the existing structures.

Mr. Deitch read his letter into the record, which stated, ***“Dear Members of the Wetlands Board: I am writing as an adjacent property owner to the Landmark Plaza. My wife Mary and I own the two separate lots immediately to the north of the Plaza, and have owned the***

*house and property at 4269 Main street, formerly 501 Main Street (before 911 addresses were instituted) since September 1980. I moved back to Chincoteague in 1980, where my family had lived since 1952.”*

*“Our children were 4-and-a-half and 2-and-a-half years old in 1980. They grew up on this property and have a strong sense of positive stewardship of environmental aspects of an Island, and they learned environmental responsibility by living a life in which the Chincoteague Channel was literally in their back yard.”*

*“I am writing to oppose permit 10-1863 because Mary and I believe that the scope of the project is so over-the-top and excessive for the property footprint, that it can only be seriously detrimental to the water environment and the aquatic, sea life, birds, and myriad of beneficial aquatic resources supported by the Chincoteague Channel and its surrounding tidal areas.”*

*“Construction of a “water-dependent development that includes a 3-story hotel with an indoor pool, 150 seat restaurant and an 8,000 square foot retail area” plus a 170-space parking lot is egregiously excessive for the property footprint and its ability to support the requisite sewage, water, and overboard discharge requirements of such an operation. It is also ridiculously insensitive to the physical and cultural environment which attracts people to visit and live on Chincoteague Island.”*

*“My main points are these: 1). We are in favor of reasonable and responsible development on Chincoteague if it is appropriately sized, planned, and executed with the environmental and cultural sensibilities fully considered. Chincoteague Island attracts families and visitors who choose to no longer seek out Ocean City and Virginia Beach atmospheres. It is critical that permit proposals keep this in the forefront.”*

*“2). We are extremely in favor of removal of the old boat “Seahawk”, and the creosote pilings and pier next to it, as promised in 2005 by the current owner of Chincoteague Plaza, LLC (Mr. Todd Burbage is a principal of the corporation), as permitted in 05-2660. This boat is now a water-way perimeter hazard and eyesore on the approach to the Island, and its removal should be a prerequisite to granting any future permits to this property.”*

*“3). We are seriously opposed to expanding the existing property footprint by the construction of the 30 foot by 100 foot pile-supported deck, with a floor elevation of 10 feet, in order “to increase floor space for the restaurant.” (The applicants assertion that this area was previously dredged boat basin is incorrect, and absurd. The entire area was originally marshy wetlands which everyone expanded with oyster and clam shells from the days of yesteryear when the entire channel was populated with oyster and clam shucking houses and seafood gathering endeavors before the days of tourism. Historical maps and pictures can verify this).”*

*“4). We are equally opposed to permitting pilings under the existing “Crab House Restaurant” on the Southwest side of the Plaza. (This area was previously approved for dredging under permit 05-2660, which restored subaqueous bottom). Note: Applicant’s narrative incorrectly identifies the “Shucking House Restaurant” as being built on pilings. The “Crab House Restaurant” on the opposite side of the property is the one built on pilings.”*

*“5). There are no compelling reasons to grant any wetlands permits for this property other than to install bulkheading around the existing footprint, as pointed out in the VIMS Report posted January 21, 2011. Trying to add upland by filling, and to expand property footprints on waterfront by unnecessarily building piling supported structures is harmful to the*

*environment, and quite honestly, “greedy and selfish” by its nature. Please limit permit approval to allow only bulkhead on the existing property footprint.”*

Mr. Deitch continued by explaining some history of the property of the Landmark Plaza, with some photographs he prepared to give the board a better idea of the development of the property over the years and identified the properties of the adjacent property owners.

Mrs. Mary Deitch appeared before the board to express her position regarding this proposal in regard to the impacts of the new bridge to Chincoteague has made to wetlands. She stated her concerns regarding the detrimental impacts of this redevelopment.

Ms. Claire Lott also appeared before the board and advised she opposed the location of the new Chincoteague bridge and advised this new development is excessive for the small area and would negatively impact the environment.

Mr. Fluhart advised there were letters submitted from Raman Bhula and from Mr. Deitch, and email from Randolph Payne, which Mr. Fluhart read into the record which stated, *“To whom it may concern: As property and business owners at 4296 Main Street, Chincoteague Island, Virginia, we wish to go on record as opposing any exceptions or variances the Harmony Investments Co. might seek prior to purchasing or developing the Landmark Plaza which is about ½ block from our property. We strongly believe a reasonable profit can be made by the company without changing or making exceptions to the established rules and regulations regarding such a development. Please read our statement at your 10 am hearing scheduled for January 27, 2011, Sincerely, Randolph and Nancy Payne.”* Mr. Fluhart continued by advising he also received a letter from Donna Mason, Waterside Inn and a letter from Bruno and Francine Maestri. Mr. Fluhart advised these letters have been made a part of the official record. Mr. Parker advised these letters were primarily in opposition to this proposal.

At this time, Mr. Hampton appeared before the board in regard to the letters presented and advised they will work with them to address their concerns.

Mr. Randall Owen, of Virginia Marine Resources Commission advised he was not in a position to give an exact footprint of the bottom ownership at this time.

Mr. Parker explained the board's responsibility to the audience in regard to the use of the property. He advised the purview of the board is to consider the impacts to the wetlands in regard to the proposal, and not the construction of a hotel, restaurant, etc.

A discussion ensued regarding the proposed 30' X 100' deck. Mr. Hampton advised that the deck is important to the overall development. However, after much consideration regarding the 30' X 100' deck, an agreement to change the proposed 30' X 100" deck to a 10' X 110' floating dock was considered.

At this time, Mr. Davis made a motion to approve this application with the removal of the 30' X 100' proposed deck and replaced with a 10' X 110' floating dock and removal of the existing pier at the Seahawk location. Mr. Frederick seconded the motion. Ayes: Mr. Parker, Ms. Merrill, Mr. Ward, Mr. Davis, Mr. Frederick.

**RECESS- FIVE MINUTE RECESS CALLED AT 11:15 AM**

**RECONVENE AT 11:20 AM**

**2). An application from Harmony Investments, VMRC #10-1864, to install approximately 400-foot of bulkhead (various lengths totaling 400-foot) at the existing Chincoteague Inn Restaurant property, thereby impacting wetlands, Main Street and Marlin Street, Chincoteague, Virginia. (TM# 30A5-A-371, et al)**



Mr. Glenn Hampton, Attorney from the law firm of Bowman, Green, Hampton & Kelly, appeared before the board to representing Harmony Investments, proposed developer of this Chincoteague Inn property.

Mr. Hampton described the location and appearance of this property and then asked Mr. Brian Owen, of MSA to describe the proposal.

Mr. Brian Owen, Environmental Scientist of MSA, advised there was a previous wetlands permit approved to fill the boat basin on the north side of the property, VMRC #07-1279 and he stated they are requesting to continue with that project and then replacing the bulkhead across the face of the existing restaurant and then the small basin in the middle of the site and propose to straighten that shoreline across part of that basin, with a bulkhead in front and tie into the replacement bulkhead to the south of that and then backfill.

Mr. Parker requested Mr. Fluhart to read the VIMS Report into the record.

At this time, Mr. Fluhart read the VIMS Report into the record, which stated, ***“EXISTING SITE CONDITIONS AND PROPOSED ACTIONS: The re-development of a commercial parcel on Chincoteague Channel is proposed to construct a new hotel. The proposed activities include 635 ft of bulkhead, 16, 014 sq ft of fill in a man-made basin and a dredged basin, and 360 ft of new floating piers. The creation and restoration of vegetated tidal wetlands is also proposed.”***

***“If the depicted wetlands delineation is accurate, then we estimate that 5,802 sq ft of tidal wetlands would be permanently filled as a result of these activities. This includes 4,956 sq ft of nonvegetated wetlands between MHW and MLW in the north basin, plus 741 sq ft of nonvegetated wetlands and 105 sq ft of vegetated wetlands at the south shoreline. The***

*estimated subaqueous fill area is 11,080 sq. ft. The floating piers will cover 3,600 sq ft of subaqueous land.”*

***“THE PREFERRED APPROACH FROM AN INTEGRATED MARINE ENVIRONMENTAL VIEWPOINT: Filling in wetlands and subaqueous areas for the singular purpose of creating waterfront upland property is generally undesirable, as previously advised by VIMS for the redevelopment of this parcel (VMRC #07-1279). Locating new buildings only in the available upland area is the preferred approach for the redevelopment of this parcel. Even though the proposed fill areas are man-made or dredged basins and the wetland areas may be dredged in habitat quality, the permanent loss of 0.37 acres of wetland and subaqueous land should be avoided. This could include seeking variances for various setbacks and other zoning requirements in order to maximize the upland development area to the greatest extent possible.”***

*“Although wetland compensation is proposed, there should be a clear demonstration of avoidance and minimization before compensation is considered. The conversion of existing tidal wetlands to another type of wetland does not provide a net gain of wetland area.”*

*“If the project is permitted with vegetated tidal wetland impacts, then additional details are needed to confirm the local tide range and what tidal benchmarks were used to determine the landward extent of jurisdiction wetlands. Additional details are also needed for the proposed bulkhead length, the location and engineering specifications. All construction waste and demolition debris should be carefully removed and disposed at an approved location.”*

***RECOMMENDATIONS SUMMARY: Reduce development footprint in wetlands and subaqueous land; clarify local tide range, elevations and jurisdictional wetland areas; provide bulkhead engineering details; properly remove and dispose and demolition debris.”***

A discussion ensued regarding the impacts to the vegetated wetlands. Mr. Owen described the amount of impacts in regard to the drawings submitted and described delineated wetlands line. He further described the condition of the southern corner of the property and the deteriorated bulkhead and the erosion as a result of the failed bulkhead. Mr. Owen further detailed his estimates regarding the impacts to the wetlands.

At this time, Mr. Raymond Britton, appeared before the board and explained the permitting for the previous wetlands application on this property. He further advised the area behind the bulkhead was previously proposed as the mitigation area.

Mr. Bernard Rubin, adjacent property owner appeared before the board representing the shareholders of the property adjacent and to the north of the Harmony Investment proposal. He advised he was in favor of the project and the proposal should be an asset to the community.

At this time, Mr. Parker read a portion of a letter submitted by Mr. James White, which stated, ***“I do have a concern about the tidal gut at the southern end of the project. . . . It would be a shame to create more “dead” water for the sake of 2 additional feet of bulkhead.”*** Mr. Parker explained other than those statements, Mr. White’s letter appeared to be supportive of the project.

Mr. Parker further advised there is a mitigation area proposed, however no mitigation plan has been received as of yet. Mr. Owen advised, the mitigation plan will be engineered after the proposal goes through the Town for approval, however he described the mitigation plan and monitoring schedule that will be submitted.

Mr. Owen further described this proposal has been scaled back considerably in order to avoid wetlands impacts.

Mr. Fluhart advised that previous permit VMRC #07-1279 is still valid until August 23, 2011. Questions regarding approval of this application, will the previous application be nullified? Mr. Brian Owen advised they would certainly write a letter to withdraw the previous wetlands permit after receiving all of the approvals for this application and after the purchase of the property has been finalized. He further clarified the length of the bulkhead to be 635' in length.

At this time, Ms. Merrill made a motion to approve this application as presented for 635' of bulkhead with a mitigation plan to be submitted prior to issuance of the wetlands permit and the impacts to be verified from the submitted plan and compensation to the Accomack County Mitigation Fund for the impacts to wetlands. Mr. Davis seconded the motion. Ayes: Mr. Parker, Ms. Merrill, Mr. Davis, Mr. Frederick, Mr. Ward.

4). **NEW BUSINESS**

**1). An application from Ocean Land Trust, Ltd., VMRC #10-1570, to convert an existing 5' X 512' Private Pier to a Community Pier and to add a 5' X 205' L-Head, creating docking for up to 10 small boats and a 5' X 25' Kayak Dock extension, on Crippen Way, Ocean View Subdivison, near Parksley, Virginia. TM #80-5-17**

Mr. Ben Benson appeared before the board to represent this application as President of Ocean Land Trust. Mr. Benson stated the development has 15 waterfront lots and they are being sold with the provision that there will be only one community dock and each owner gives up their rights to own a private dock on their property.

No one appeared to speak in opposition to this request.

Mr. Fluhart read a portion of the VIMS Report into the record which stated, ***“RECOMMENDATIONS SUMMARY: Ensure riparian rights are waived for individual piers;***

*properly elevate pier to reduce shading of wetlands; minimize incidental construction impacts; provide adequate garbage receptacles.”*

Mr. Frederick requested clarification on the proposed location of the pier extension. Mr. Benson advised the floating dock would be removed and the L-Head would be installed and moved back approximately 4 feet.

At this time, Mr. Davis made a motion to approve this application as presented. Mr. Frederick seconded the motion. Ayes: Mr. Parker, Ms. Merrill, Mr. Davis, Mr. Frederick, Mr. Ward.

**2). An application from Mr. Stephen Gallup, VMRC #10-1892, for the installation of approximately 67’ of bulkhead with one 5’ return wall, thereby impacting wetlands at 7134 Silver Sails, Fowling Gut, Chincoteague, Virginia. TM #30A3-22-3A**

Mr. Raymond Britton, Jr., of BIC, Inc., appeared before the board to represent this application. Mr. Fluhart advised this area is primarily fresh water with tidal influence as designated by Ms. Karen Duhring of VIMS during a recent site inspection. After review, Mr. Fluhart advised there will be impacts of 10 square feet to vegetated wetlands that will have to be mitigated.

Mr. Fluhart read a portion of the VIMS Report, which stated, “***RECOMMENDATIONS SUMMARY: Stop frequent mowing close to water; Use vegetation buffers to reduce minor erosion; Construct revetment instead of bulkhead if structure is necessary.***”

After a brief discussion, Mr. Davis made a motion to approve this application with compensation for mitigation of the impacts of 10 square feet of vegetated wetlands at a rate of \$12.00 per square foot, as there is no area on-site or within the same watershed available to

mitigate. Ms. Merrill seconded the motion. Ayes: Mr. Parker, Ms. Merrill, Mr. Davis, Mr. Frederick, Mr. Ward.

**3). An application from Mr. Charles Williams, VMRC #10-1972, to install a 52' low-profile bulkhead thereby impacting wetlands at Captain's Cove, 37488 Bayside Drive, near Greenbackville, Virginia. TM# 5A1-1-987**

**4). An application from Mr. Harvey Muller, VMRC #10-1971, to install a 52' low-profile bulkhead thereby impacting wetlands at Captain's Cove, 37482 Bayside Drive, near Greenbackville, Virginia. TM# 5A1-1-988**

Mr. Raymond Britton, Jr., of BIC, Inc., appeared before the board to represent the applications of Charles Williams, VMRC #10-1972 and Harvey Muller, VMRC #10-1971 as they are adjacent properties. Mr. Britton explained they each will be 52' low profile bulkheads and will connect with each other.

At this time, Mr. Fluhart read the VIMS Reports, which both had the same exact comments, which stated, *“Construct revetment instead of bulkhead; Consider backfill and planting to expand marsh area.”*

After a brief discussion regarding the existing beach and the height of the proposed bulkhead, Ms. Merrill made a motion to approve both wetlands applications, Mr. Charles Williams, VMRC #10-1972 and Mr. Harvey Muller, VMRC #10-1971, as presented. Mr. Davis seconded the motion. Ayes: Mr. Parker, Ms. Merrill, Mr. Davis, Mr. Frederick, Mr. Ward.

**5). PERMIT EXTENSIONS**

**An extension request from Fred Obrecht, VMRC #06-1725. This permit will expire on January 25, 2011.**

Mr. Fluhart explained to the board that this was an on-going project, and this would be the fourth extension request for this permit. Due to the state of the economy, the lots have not been selling as the developer had anticipated.

Mr. Parker advised the VMRC permit will expire on April 24, 2012.

After a brief discussion, Mr. Frederick made a motion to reactive this permit and approve the extension from the date of expiration for one year. Mr. Davis seconded the motion. Ayes: Mr. Parker, Ms. Merrill, Mr. Davis, Mr. Frederick, Mr. Ward.

### **EXTENSION FEES**

Mr. Fluhart advised the Wetlands Board members that extension fees will be reviewed at the time the budgets are discussed.

### **ADJOURNMENT**

Mr. Davis adjourned the meeting at 12:24 PM. Mr. Frederick seconded the motion. Ayes: Mr. Parker, Ms. Merrill, Mr. Davis, Mr. Frederick, Mr. Ward.

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Mr. George T. Parker, Chairman