

ACCOMACK COUNTY WETLANDS MINUTES OF JANUARY 28, 2021

At a meeting of the Accomack County Wetlands Board held on the 28TH day of JANUARY 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. Timothy Getek

Mr. Gene Wayne Taylor

Mr. T. Lee Byrd

Others Present:

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

Ms. Chontese Ridley, Environmental Programs Permit Specialist

Ms. Allison Lay, Virginia Marine Resources Commission (VMRC)

Mr. Benjamin Nettleton, 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.

1. ELECTION OF 2021 WETLAND BOARD OFFICERS

The Wetlands Board will elect the Chairman and Vice-Chairman for 2021

Mr. Chris Guvernator, Environmental Programs, was sworn in by Chairman Frederick.

Mr. Guvernator opened the floor for nominations for Chairman of the Wetlands Board:

Mr. Taylor moved, seconded by Mr. Byrd, to nominate Mr. Frederick as Chairman for 2021. No other nominations were made. Mr. Guvernator closed the floor for nominations.

Mr. Guvernator called for a vote and the Wetlands Board voted unanimously to elect Mr. Frederick as Chairman of the Wetlands Board for 2021.

Mr. Frederick opened the floor for nominations for Vice-Chairman of the Wetlands Board:

Mr. Byrd moved, seconded by Mr. Taylor, to nominate Mr. Ward as Vice-Chairman for 2021. No other nominations were made. Mr. Frederick closed the floor for nominations.

Mr. Frederick called for a vote and the Wetlands Board voted unanimously to elect Mr. Ward as Vice-Chairman of the Wetlands Board for 2021.

2. ADOPTION OF AGENDA

Mr. Frederick said there were a few changes that they would like to make. He asked if anyone would have any grief if they moved 5.03 under "New Business" to the first position, 5.01.

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

3. MINUTES

A. December 17, 2020

On a motion made by Mr. Getek and seconded by Mr. Byrd, the Wetlands Board voted to approve the minutes December 17, 2020 meeting.

4. OLD BUSINESS

A. Extension Request – VMRC# 2019-1639 (Pechacek)

Mr. Frederick asked Mr. Chris Guvernator, Environmental Programs, if he would like to introduce this project. Mr. Guvernator said the applications were requesting a two year extension. This was bought up at the previous month's board meeting, however, it was asked that staff go out to see if there any been any major changes and return with a report. Mr. Guvernator said there were photos and a sketch of what the site looked like in the board packet.

No work had been done in the riprap apron area, but a portion of work had been completed in the sill and escarpment protection area. He said the sill were complete and seemed to have been placed correctly. No fill or planting had been placed and the escarpment had not been graded back. There were still signs of erosion and the tree that was indicated up against the adjacent property owner's bulkhead still remained in place.

Mr. Frederick asked Mr. Pechacek, (applicant), if he had an agent or if he would be pleading his own case. Mr. Pehacek said he would be representing himself. Mr. Frederick then asked him to give a rundown of what was going on.

Mr. Pechacek was sworn in by Chairman Frederick.

Mr. Pechacek said after the work began there was a delay due to environmental conditions. He said they were not residing in Virginia at the time, living in New York, and were not able to put their eyes on what was going on. Upon coming to Virginia there were issues with the quality of the work that was being done leading to the end of their relationship with the original contractor. Mr. Pechacek said once he noticed the permit was going to expire he submitted an extension request.

Mr. Frederick asked Mr. Guvernator what were his thoughts. Mr. Guvernator recommended the standard "1 year" extension. Mr. Byrd also suggested this saying that Mr. Pechacek could come back if he needed more time. Mr. Getek also agreed with this.

On a motion made by Mr. Byrd and seconded by Mr. Getek, the Wetlands Board voted to give a one year extension with no changes for Joseph & Kristen Pechacek – VMRC# 2019-1639 to install two 47 feet by 8 feet by 3-3½ feet of quarry stone sills and a 14 feet by 6 feet by 2½ feet back sill. A marsh toe rip rap apron with a total width of 4 feet (plus or minus), and height of 2-2½ feet will be installed. The property is located in Harborton, VA 23389, Tax Map #90-A-14C.

5. NEW BUSINESS

A. **Kevin Cox – VMRC# 2020-2115**

4446 Shady Lane

The replacement of the 86 feet existing timber bulkhead with a vinyl sheet pile bulkhead, and a 20 feet extension of the existing bulkhead

Mr. Chris Guvernator gave a summary of the project. A revision was submitted to revise the site plan to show the existing eroded bank area.

Mr. Frederick wanted it to be noted that a letter was received from Ms. Emily Hein, Assistant Director for Advisory Services at VIMS, (Virginia Institute of Marine Science). Mr. Frederick read from the second paragraph of the letter:

“In lieu of replacing the bulkhead, we recommend it be removed and instead the shoreline could be stabilized by extending the existing revetment and transitioning it to a sill. There are a variety of alignment options (with differing fill, grading, and planting requirements) that could function to stabilize the shoreline while avoiding impacts to, and expanding the vegetated tidal wetland to the east of the existing structure. While water access is not a stated purpose of the proposed project in the application materials, it was evident on site that it is a likely use of the existing structure. If recreational water access is desired, a small pier could be constructed over a portion of revetment or farther into the creek.”

Mr. Brian Magee, Magee & Associates, was sworn in by Chairman Frederick. Mr. Magee went over the project description and said if there were any questions he would address them. He said he believe all concerning issues had been resolved with the adjoining property owner and their agent, Ellen Grimes.

In response to the VIMS solution, Mr. Magee said that was something that his applicant just did not want to do. He said the applicant had a structure that they would like to keep in place and preserve the peninsula he has.

Mr. Getek asked what the condition of the bulkhead on site. Mr. Magee said it was in poor condition due to old age. He added at low tide there are some holes that allow material to flow through. Mr. Getek then spoke on some hybrid Living Shoreline options like retaining the bulkhead with the 20 feet extension being some type of riprap or revetment. Mr. Magee said in that area there is no wave action. It was just a tidal area. Mr. Magee also said he did not know what the applicant would say about that or what the difference would be.

Mr. Getek said he was also concerned how doing any work on the eastern shore that might in some way eroded the marsh on the opposite shore. He was also concerned about the northern adjacent property owner’s access to their dock. Mr. Getek handed this off to Mr. Frederick and any other board member who wanted to speak on it. No other board members had comments.

Mr. Frederick asked Mr. Magee what he meant by replacing “in kind” and if it meant the new bulkhead would be going into the same place. Mr. Magee said it would be replaced in the same footprint.

Mr. Frederick said it looked like there were some marsh grasses growing, however, he did not see any vegetated wetland impacts listed. Mr. Magee said the alignment was behind the wetland grasses unless something changed. Mr. Guvernator chimed in to say that 15 square feet of impacts to non-vegetated wetlands had been listed with the new 20 feet extension. Mr. Guvernator said it needed to be explained. After looking at the photos Mr. Magee agreed that there would some impacts to the vegetated wetlands.

Mr. Frederick asked Mr. Taylor how much of an impact did he think was there. Mr. Taylor said 20-25 square feet of impacts. Mr. Frederick if staff had anything to say and Mr. Guvernator said they did not measure and neither did Mr. Magee.

Mr. Frederick asked Ms. Allison Lay, VMRC, if she had any comments. She said she had no further comments.

Ms. Allison Lay, VMRC, was sworn in by Chairman Frederick.

Ms. Ellen Grimes, Coastal Resource Management, was sworn in by Chairman Frederick to represent the adjacent property owners, (southeast side, Patty & Warren Dean). Ms. Grimes said the Deans were concern about travel of equipment to and from the building site across their property. She said herself and Mr. Magee had spoken on several occasions about that, and they both think they have ironed it out. Ms. Grimes said the Deans were also concerned about the point and the fact that they have been watching the point in its fragile nature for a long time, and they wanted to make sure that heavy equipment would not be impacting it. The Deans portion of the point, which has riprap, butts up against Mr. Cox’s property and that was a concern of theirs too. Mr. and Mrs. Dean do not want any equipment or products stockpiled on their property. Ms. Grimes said that she and Mr. Magee have come to that agreement, she trusted it would be transferred to the contractor, and that all would be well.

A discussion ensued.

On a motion made by Mr. Taylor and seconded by Mr. Ward, the Wetlands Board voted to issue a permit (valid for (1) year) Kevin Cox – VMRC# 2020-2115 the replacement of the 86 feet existing timber bulkhead with a vinyl sheet pile bulkhead, and a 20 feet extension of the existing bulkhead with the following conditions:

- 1. Change page 17 to show 0 to 25 square feet of impacts to vegetated wetlands*
- 2. Pay into the mitigation fund \$12 per square foot (\$300.00)*

The property is located in on Chincoteague Island, VA 23336, Tax Map# 31-7-4.

B. Terry Windsor - VMRC# 2020-2052

14271 Barn Woods Road

To install approximately 460 linear feet of Class II stone rip rap revetment

Mr. Frederick began by reading paragraph three of a letter submitted by Ms. Hein, (VMRC):

“The upland bank and trees growing thereupon are being undercut, with numerous fallen trees found on the beach, indicating erosion along the project shoreline. A significant number of mature trees in the riparian buffer would require removal if a non-structural approach were considered, and although upland infrastructure is not at immediate risk from erosion, that is uncertain in the future due to the recent acceleration of erosion along this shoreline section. If the proposed revetment is constructed, it is likely that waves reflecting off it will cause further erosion and narrowing of the beach, particularly as sea level rises. Therefore, we recommend consideration of stabilizing the shoreline with either a large sill or small breakwater system with associated beach nourishment and plantings. Such structures should be located relatively close to shore so as not to impact the nearby SAV.”

Ellen Grimes, Coastal Resource Management, appeared before the Wetlands Board on behalf of the applicant. Ms. Grimes also said Mr. Windsor was present.

David Windsor, who was speaking of Terry M. Windsor (applicant), was sworn in by Chairman Frederick.

Ms. Grimes then gave a summary of the project. She also added that there had been a significant amount of erosion and tree loss.

Mr. Frederick asked Mr. Guvernator if there were any comments received from the public. There were not submitted in the allotted time, but Ms. Grimes said she received a call from an adjacent property owner before the meeting. She did not understand the literature that was sent out to her about the project, but Ms. Grimes said she explained it to her.

Mr. Frederick asked Ms. Grimes if she had any comments on the letter from Ms. Hine, the off shore sill or anything else. Ms. Grimes said this project exceeded all the protocols for a Living Shoreline. She thought that her comments were another option and that they should be considered, but that it was up to the applicant. Ms. Grimes noted that going off shore would increase the applicants cost.

Mr. Windsor said he thought Ms. Hein was more worried about the SAV, but that he did not believe that the project would impact it. He was not in agreeance with the off shore sills or the riprap. Mr. Windsor said he would like to put the riprap, as proposed in the plan, on the bank. He added that they were willing to do excessive planting along the bank. He added that Ms. Grimes was on point and would go with whatever Ms. Grimes recommended.

Mr. Byrd gave some history on the property and also his thoughts. He agreed with the applicant on what should be put in.

A discussion ensued.

On a motion made by Mr. Byrd and seconded by Mr. Ward, the Wetlands Board voted to issue a permit (valid for (1) year) Terry Windsor - VMRC# 2020-2052 to install approximately 460 linear feet of Class II stone rip rap. The property is located in Onancock, VA 23417, Tax Map# 91-A-73A.

C. Chincoteague Island Outfitters - VMRC# 2020-2106

Piney Island Road

Construction of a 90 feet bulkhead, 50 feet by 6 feet floating pier with a 16 by 20 feet ramp, and a 96 square feet bump-out to a corner of the existing pier

Mr. Chris Guvernator gave a summary of the project. Revision one of this application fixed the tax map number. Revision number two provided a Living Shoreline review summary, and revision three added an existing unpermitted launch and a new launch for kayaking.

Ellen Grimes appeared before the Wetlands Board on behalf of the applicant.

Ms. Grimes said half of the facility was existing. She gave a more in depth summary of the proposed work, and went into why a Living Shoreline was not an option.

A question arose about whether the board should be concerned about the floating pier being that it was commercial and not residential. Mr. Guvernator asked the VMRC representatives for guidance. Ms. Lay said a permit would still be required, but only for what was in the board's jurisdiction.

Mr. Frederick then asked if the bump out goes over some tidal marsh. Ms. Grimes said it would go over non-tidal mud flat, but not over the grass.

Mr. Frederick asked if there were any public comments for this application. Mr. Guvernator said there were no written or verbal comments received by the advertised deadline for this application.

A discussion ensued.

Mr. Guvernator asked if the bulkhead could be constructed without encroaching on someone else's property. Ms. Grimes said instead of yes infinitively that she would let Mrs. Riley speak on it.

Mrs. Tammy Riley was sworn in by Chairman Frederick.

Mrs. Riley said she had spoken with Fisher's Marine Construction and was ensured they would be able to get the bulkhead in without having to encroach on the other property owner.

On a motion made by Mr. Taylor and seconded by Mr. Getek, the Wetlands Board voted to issue a permit (valid for (1) year) Chincoteague Island Outfitters - VMRC# 2020-2106 for the construction of a 90 feet bulkhead, 50 feet by 6 feet floating pier with a 16 by 20 feet ramp, and a 96 square feet bump-out to a corner of the existing pier with the following conditions:

- 1. Pay for 70 square feet of vegetated wetlands impacts at \$12.00 a square foot*
- 2. After the bulkhead has been put in remove the remaining "crap rap" brick/rock to allow more vegetation to grow.*

The property is located on Chincoteague Island, VA 23336, Tax Map# 30A6-33-1.

D. Avis Sanders – VMRC# 2020-2156

4477 Main Street

Re-work and installation of approximately 90 linear feet of concrete rubble along the shore line

Mr. Chris Guvernator gave a summary of the project.

Ellen Grimes appeared before the Wetlands Board on behalf of the applicant. Ms. Grimes said the

concrete rubble would be used as the core and veneered with rock. It done behind the wetland fringe. Her vision for the project was to straighten up the alignment by pulling some of crap rap/rip rap back and to rebuild it properly with filter cloth.

Ms. Grimes said she did consider Living Shoreline, but there was only about 10 or 12 feet that was substantially flat where a structure could be placed. After that it dropped to depths of 10 and 15 feet at low water. Putting all that weight on that 10 feet mud fringe did not seem like a good idea, because it could easily get scoured and create more problems.

A discussion ensued on the amount of vegetated wetlands to be impacted.

Mr. Frederick asked if there were any public comments for this application. Mr. Governator said there were no written or verbal comments received by the advertised deadline for this application.

On a motion made by Mr. Taylor and seconded by Mr. Getek, the Wetlands Board voted to issue a permit (valid for (1) year) Avis Sanders – VMRC# 2020-2156 to re-work and installation of approximately 90 linear feet of concrete rubble along the shore line with the following conditions:

1. Pay mitigation for 10 square feet of impacts to vegetated wetlands

This property is located on Chincoteague Island, VA 23336, tax map#(s) 30A7-A-42.

6. OTHER BUSINESS

A. Raymond & Fisher Rubble Removal Reminder Letter (VMRC#2020-0921 & 1759)

Mr. Governator said a letter was sent to both applicants reminding them that the remaining rubble that was in front of the bulkhead that was approved was supposed to be taken out of the marsh area. It was a condition of the permit that the board approved.

A phone call was received from a representative of the contractor to let him know they were considering submitting a revision to the permit to leave some of it in place, but as of the date of this meeting he had received nothing in writing. It is his intention to review the project once the second part of it has been completed to make sure all of the rubble has come out.

Mr. Frederick asked what they next steps would be if they do not respond. Mr. Governator said if they do respond a request a revision to the application he will bring it back to the board, but if they do not respond he will check for it when the project is complete and ask the applicants to remove it.

B. Young Site Concerns (VMRC# 2019-1980)

Mr. Governator said this JPA was never acted on. The applicant never returned to the board. He said the site was on the west side of Main Street, (Chincoteague Island, VA), and gave a quick summary. He also mentioned that the JPA had been uploaded to BoardDocs.

Mr. Governator said there was activity on the site. The photos of the activity on site appear to show filling in the Wetland Board's jurisdiction. Based on the new enforcement code, the board needed to take a look at it and decide if they want to formally respond.

A discussion ensued.

Mr. Governator said they would start with an investigation to decide whether or not they needed to hire a consultant to help on his side or go to the property owner and get them to justify they work they have done in the board's tidal zone.

He added that it is typically the property owner's responsibility to inform them that they are:

1. *They are working with a permit and show them*
2. *Provide information that they think shows they do not need a permit to do the work*
3. *Prove they are out of the board's jurisdiction*
(According to the County's Code)

Mr. Frederick said the board would vote on whether staff should conduct a fact finding investigation on the Young property VMRC# 2019-1980.

Mr. Taylor said the applicant should be contacted first. Mr. Governator agreed and said a letter would be sent out to the applicant first.

Mr. Frederick said Mr. Governator would try to make contact with the owner again. If he is not successful by the next time the board meets, then there would be a vote on what steps could be taken.

The board voted to proceed with this plan.

C. Lieberum Revision

Mr. Governator wanted the board members to know the JPA they approved earlier, they submitted a revision to the project which does not increase any work in the board's jurisdiction.

D. Makemie Monument project update JPA 2019-2013

Mr. Governator gave a quick update. The earth work and sill work have been completed. In the spring wetland plantings will go in and informational signage will go up.

7. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, April 22, 2021 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac, VA.

8. ADJOURNMENT

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

The meeting was adjourned at 1:08 p.m.

Earl Frederick, Chairman

Chontese Ridley, Environmental Permit Specialist