

ACCOMACK COUNTY WETLANDS MINUTES OF MAY 27, 2021

At a meeting of the Accomack County Wetlands Board held on the 27TH day of MAY 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

Mr. Benjamin Nettleton, Virginia Marine Resources Commission (VMRC)

Mrs. Beth Nunnally, Environmental Planner II

DETERMINATION OF A QUORUM

There being a quorum, Chairman Frederick called the meeting to order at 10:00 a.m.

1. ADOPTION OF AGENDA

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

2. MINUTES

A. April 22, 2021

Page 2, Second Paragraph – “An” should be “And”

On a motion made by Mr. Getek and seconded by Mr. Ward, the Wetlands Board voted to approve the minutes April 22, 2021 meeting.

3. NEW BUSINESS

Samuel L. Young– VMRC# 2021-0019

Blackbeard Road

Construction of a 60 feet bulkhead 2 feet in front of the existing bulkhead

Mr. Chris Guvernator appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mr. Guvernator said it was first this project was deemed “no permit needed”, but after the review by VMRC and discussions it was determined that a permit was needed. There are tidal wetlands behind the bulkhead because it is nonfunctioning at the moment.

Mr. Raymond Britton, Jr. appeared before the Wetlands Board on behalf of the agent, (Luke Britton), and the applicant and was sworn in by Chairman Frederick.

Mr. Britton said the bulkhead was being replaced because there was significant erosion behind it. Mr. Britton asked if VMRC allows a person to go two feet channelward, why it is not allowed to go two feet backwards and pay the encroachment fees.

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

Mr. Nettleton said there were two different jurisdictions. The two feet behind is governed by a different chapter of the Virginia code that is stricter. After July 1, 2020, when the Living Shoreline mandate took place, that required a more strict review of any wetlands impacts vegetated or non-vegetated. Mr. Nettleton added that the area in question was in the Wetlands Board jurisdiction, and that it was up to them to decide.

A discussion ensued.

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

Mr. Byrd asked Mr. Britton if his client was willing to pay the mitigation fee for vegetated wetlands. Mr. Britton said if that was going to be one of the requirements to keep the bulkhead in the same footprint he believed they would.

Mr. Getek asked what would be the amount of vegetated wetlands impacted if the bulkhead was moved two feet backwards. Mr. Frederick asked him to define that and he said two feet landward. Mr. Britton chimed in to say that they did not want to do that. The applicant wanted to keep the bulkhead in the same footprint. Mr. Taylor said less subaqueous would need to be filled keeping it in the same footprint.

A discussion ensued on whether the application/drawings were correct due to the application stating the new proposed bulkhead to be two feet channelward of the existing bulkhead. Mr. Britton said it was two feet in front.

Mr. Taylor said the bulkhead also needed to go back in place and not two feet in front due to the amount of fill that would be needed. Mr. Frederick also said it should go two feet back.

Mr. Taylor asked Mr. Nettleton if the applicant had the right to put the bulkhead back in place/same footprint by right.

Mr. Getek asked again how many square feet would be impacted. Ms. Beth Nunnally said it would have to be calculated. Mr. Guvernator said it was probably 15-20 square feet of impacts as submitted or if it was put back in the same place. Mr. Frederick said the application listed "0."

A discussion ensued.

Mr. Frederick said he thinks the way commission would look at this/the safest way for the property owner to install a bulkhead would be to install it out of the Wetlands Board's jurisdiction. Mr. Frederick then asked Mr. Nettleton if he could define failure of a bulkhead. Mr. Nettleton replied, "Full tidal exchange going in and out, there is consistent daily tide interchange, more than one or two boards missing, and more than a few holes.

A discussion ensued.

Mr. Nettleton said since this was Ms. Lay's, (Allison Lay, VMRC), project he would rather have her speak on it.

Allison Lay, (VMRC), was sworn in by Chairman Frederick. Mr. Nettleton told Allison the board wanted to know what VMRC's assessment of the bulkhead. Would she consider the entire bulkhead to be failed or 2/3 of it to be in a state where maintenance would still be allowed. Ms. Lay said she would consider the entire bulkhead to be failed. Even though one side was worse than the other, there are still holes throughout the length of the bulkhead allowing the come and go of the tide. Ms. Lay added that wetlands were now established along the entire length of the bulkhead.

Ms. Lay said any work done of this bulkhead would require a permit and any fill behind the bulkhead will be impacting wetlands.

A discussion ensued.

Mr. Britton said he believed that if a surveyor came out to measure ½ times behind the bulkhead that it would not be in the Wetlands Board's jurisdiction.

Mr. Guvernator suggested that Mr. Britton table this application for one month to have the engineering work done on tidal range in the Wetlands Board's jurisdiction, or consider a different alignment and revise their permit application for the board to consider. Mr. Guvernator also gave the board the option to vote on what was presented.

It was decided to table until the next meeting.

On a motion made by Mr. Getek and seconded by Mr. Byrd, the Wetlands Board voted to table the permit for one month for Samuel L. Young– VMRC# 2021-0019, construction of a 60 feet bulkhead 2 feet in front of the existing bulkhead. The property is located in Captain's Cove, VA 23356, tax map#(s) 5A3-1-1294.

B. Larry Birchfield – VMRC# 2021-0547

Castaway Drive

Construction of a new bulkhead to prevent further erosion

Mr. Chris Guvernator said this project was for the construction of 129 linear feet of new

bulkhead with impacts to approximately 45 square feet to vegetative wetlands, and 390 of non-vegetated wetlands.

Mr. Raymond Britton, Jr., (BIC, INC.) appeared before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Frederick.

Mr. Britton said the applicant would pay the mitigation fee for the impacts. The property had been sold and the applicant cannot close until the bulkhead has been approved.

Mr. Getek asked what the staff's recommendations were on this project and the amount of impacts. Mr. Guvernator said the 45 square feet of vegetated wetlands seemed reasonable.

A discussion ensued.

Mr. Taylor asked Mr. Frederick if they allowed in line opposed to going back how much would the impacts be. Mr. Frederick said according to the drawings vegetated impacts were 45 square feet. Mr. Taylor asked if they were to go in two feet landward what would be the vegetated number be. Mr. Frederick said the same and Mr. Taylor explained that was the point he had been trying to make.

Mr. Taylor said the applicant could pull the bulkhead back in, but they would not be saving any wetlands by doing it. Mr. Frederick said the ideal situation would be to take the bulkhead out of the Wetlands Board's jurisdiction.

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

A discussion ensued.

Mr. Frederick said the board could vote on what had been presented and Mr. Britton could roll the dice with VMRC again. Mr. Britton said that VMRC did not have jurisdiction and could not reject it. Mr. Nettleton chimed in and said the VMRC reviews all the Board's decisions and that the Commission could overturn it. Mr. Britton questioned it and Mr. Nettleton explained that VMRC has jurisdiction over the wetlands if the Wetlands Board did not follow the law.

Mr. Guvernator explained that the Wetlands Board has been charged by the state of Virginia, (the Commonwealth of Virginia), to adhere to the tidal wetlands laws and regulations of the state. VMRC oversees the board's guidelines, rules and regulations, policies and procedures, decisions.

A discussion ensued.

Mr. Nettleton stated that he had been instructed not to give any advice that would influence the board's decision. However, they could get site specific advice from VIMS.

Mr. Byrd asked Mr. Britton if the board were to agree to the 45 square feet of impacts to vegetated wetlands (x) \$12.00 a square foot and give him a permit, and it is overturned by VMRC would he accept it. Mr. Britton said he would roll the dice.

On a motion made by Mr. Ward and seconded by Mr. Taylor, the Wetlands Board voted issue a permit (valid for (1) year) for Larry Birchfield – VMRC# 2021-0547, construction of a new bulkhead to prevent further erosion with the following condition:

1. Pay for 45 square feet of impacts to vegetated wetlands

The property is located in Captain's Cove, VA 23356, tax map#(s) 5A1-1-796.

C. Lance Stitcher – VMRC# 2021-0673

Starboard Street

Replacement of the failing 60 feet wooden bulkhead with a new vinyl bulkhead 2 feet channelward of the existing with (2) 2 feet return walls

Mr. Chris Guvernator gave a quick synopsis of the project restating the project description adding that there were some impacts to wetlands and that the boatlift was not in the board's jurisdiction.

Charles Ward, appeared before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Frederick. Mr. C. Ward said there was a tieback failure where one of them rusted through. A triangular portion of the bulkhead pushed out 2-3 feet.

Mr. C. Ward said the request was to replace this bulkhead and that there was some tidal influence behind the bulkhead.

Mr. Frederick said there were no impacts to vegetated wetlands listed in the application and Mr. C. Ward said there was none. Mr. Guvernator and Mrs. Nunnally also said they seen none.

CHAIRMAN FREDERICK OPEN THE FLOOR TO PUBLIC COMMENT

Mr. Raymond Britton said he did not think the small area Mr. C. Ward mentioned would affect his alignment and that what was being asked was reasonable.

Mr. Ward asked if the entire bulkhead was being replaced of just the failed portion. Mr. C. Ward said the entire bulkhead was being replaced up to two feet channelward.

Mr. Getek asked Mr. Nettleton if VMRC had any concerns about this bulkhead. Mr. Nettleton said VMRC did not bring this application before the board. Mr. Guvernator said it was staff who bought this application before the board.

A discussion ensued.

PUBLIC COMMENT CLOSED

Mr. Frederick ask Mr. C. Ward if he was confident that it was the broken tie back that caused the failure and not hydrostatic pressure. Mr. C. Ward said he was without a doubt. Mr. C. Ward added the tieback had some erosion and just broke.

On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to issue a permit (valid for (1) year) Lance Stitcher – VMRC# 2021-0673 for the replacement of the failing 60 feet wooden bulkhead with a new vinyl bulkhead 2 feet channelward of the existing with (2) 2 feet return walls. The property is located in Captains Cove, VA 23356, Tax Map# 5A3-1-1414.

D. Elaine & Moses McNure – VMRC# 2021-0895

Seaview Street

Replacement of the existing failing bulkhead with a new bulkhead in the same footprint

Mr. Guvernator said the project was the same as the Hetzel project previously seen. He then went over the project description adding that there were impacts to wetlands.

Mr. Raymond Britton, Jr., (BIC, INC.), appeared before the Wetlands Board on behalf of the applicant. Mr. Britton said this project had previously approved by the board and then denied by VMRC. He said there were originally three or four boards missing that have since been replaced and repaired so that the bulkhead does not leak anymore. Mr. Britton said when he went out to the site a couple months ago the elevation behind the bulkhead had changed.

A survey was done and the ½ times the tide range was directly behind the bulkhead. Mr. Britton said they reapplied because he does not think project is still in the board's jurisdiction.

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

Mr. Guvernator said when he went out to visit the site there was water behind the bulkhead. Even though they have information from Mr. Young saying the whole project was outside of the board's jurisdiction, he wanted them to hear it. Staff made a decision to bring it forward.

A discussion ensued.

Mr. Getek asked Mr. Guvernator is there were any vegetated wetlands behind the bulkhead that they should be concerned about. Mr. Guvernator said there was when he first looked at the site, however, there did not seem to be any there now, but he was not sure. Mr. Britton said there were some phragmites growing on the shoreline.

Mr. Guvernator said there were two concerns with the application. The first one being that the engineer's information doesn't provide the datum used or the 19 year meter history tide cycle that is required by the state. After several visits to the site water is still getting in behind the bulkhead.

The second problem is apparent work has been done on the bulkhead without a permit. Mr. Britton said no more than five boards were replaced and that he did not need a permit for that. Mr. Frederick said he counted "24" new boards, but that could be an undercount. Mr. Guvernator said he believed it had been redone above and beyond in the area that had failed.

Mr. Britton said if the work had not been done the street would have been in the bay. Mr. Frederick said requesting an emergency repair was relatively simple procedure, but he was not sure if this would qualify.

Mr. Frederick asked Mr. Guvernator what was his recommendation for the board. Being that the datum was missing he wanted to know if they should continue on this for one month. Mr. Guvernator said the surveyor stamped and sealed his drawings, (professional surveyor licensed in

Virginia), however, the information given does not align with the site conditions. He the board could proceed and consider the application based on the information given, with conflicting evidence from the field, as well as a potential violation for doing work without a permit in the jurisdiction of VMRC and the County or consider continuing this one month and requesting that information formally.

Mr. Guvernator recommended waiting for the information.

Mr. Frederick asked if the portion about the repair be separate from any vote they might take on approval or denial. Mr. Guvernator said it probably should be if the board wanted to assign it to staff to investigate as a violation.

Mr. Taylor asked how hard it would be to get a repair permit for the site. Mr. Guvernator said it would be hard due to the long documented issues with the site. There is nothing emergency about it in staff's opinion. If there is potential loss of property, roadway surface, or some other structure of value then staff would consider it.

A discussion ensued.

Mr. Getek asked about tabling for one month until they get all the information they needed. Mr. Britton asked Mr. Getek what kind of other information he needed. Mr. Getek said the datum that was used.

On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to table the permit for one month to get more information and the datum for Elaine & Moses McNure – VMRC# 2021-0895, for the replacement of the existing failing bulkhead with a new bulkhead in the same footprint. The property is located in Captain's Cove, VA 23356, tax map#(s) 5A1-1-765.

ON A MOTION MADE BY MR. WARD AND SECONED BY MR. GETEK THE BOARD VOTED TO TAKE A 5 MINUTE BREAK

MEETING RESUMED AT 12:15 PM

E. Frank Cassidy – VMRC# 2021-0902

37365 Keel Ct.

Proposed placement of a new bulkhead 2 feet in front of existing failing bulkhead

Mr. Guvernator went over the project description and add that there appears to be to be impacts to wetlands. The reason this was brought to the board is because if you look underneath the boards of the walkway you can see a little bit of water behind it. There is no vegetation and it is minor.

Mr. Raymond Britton, Jr., (BIC, INC.), appeared before the Wetlands Board on behalf of the applicant. Mr. Britton said he agreed with Mr. Guvernator that there was some water behind the bulkhead.

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

Mr. Frederick said he thought it was strange that the bulkhead was on a slope instead of being horizontal and thought there would have been more erosion. Mr. Britton said when it was built supports were put in, but the bottom is so bad in Captain's Cove that a lot of the bulkheads settle.

Mr. Guvernator said the bulkhead had not failed and was functioning.

Mr. Frederick asked if it was being replaced with vinyl and Mr. Britton said yes, and confirmed there would be 35 feet of backfill put in.

Mr. Getek asked Mr. Britton if he was going to make everything even and he said yes.

A short 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) Frank Cassidy – VMRC# 2021-0902 for the proposed placement of a new bulkhead 2 feet in front of existing failing bulkhead. The property is located in Captains Cove, VA 23356, Tax Map# 5A1-1-1207.

4. OTHER BUSINESS

A. Starboard Street Violation Update

Mrs. Beth Nunnally said a letter was written to the property owners asking them to put in erosion control in and to come up with a plan on what they are going to do. Since then Mrs. Nunnally said she's received a permit application for the adjacent property to put a bulkhead in, and they are waiting to tie into that.

Mr. Guvernator said work was stopped there due to all the dirt being pushed up against the low profile bulkhead and he thought there were erosion concerns. He added that Beth & Mr. Britton worked with the home owner, and that a lot of the sediment had been pulled back. There is minimum chance for erosion off of the site now.

In June there will be a JPA to put in a bulkhead and raise the road that the homeowner is waiting to tie into.

Mr. Guvernator said there was no longer a potential violation in the wetlands board's jurisdiction, he was satisfied with the E&S measures in place, and that he believed permitting was coming in forward for landward retaining wall and not a bulkhead.

B. JPA 2020-0877 (Dassler) Update

Mrs. Beth Nunnally said she went in the VMRC's air plane and flew over site. She then showed the photos that Mr. Nettleton captured. Mrs. Nunnally said as far she could tell it looked good, but there was a little extra rock.

Mr. Governator said he would be looking into whether or not the rock was in the board's jurisdiction, but was not terrible concerned about it. He added that there did not seem to be any erosion into Cedar Creek from the property.

Mr. Governator mentioned sending a letter to the adjacent property owner, who had been complaining, and provide the photographs.

Mr. Getek asked if the giant sand pile was gone and Mr. Governator responded yes. There was a requirement by the adjacent property owner to request the Dassler's to put in silt fence at the water's edge. Silt fence has to be trenched in 6-9 feet deep, backfilled, and compacted. Typically on waterfront properties that would be more risk for erosion then the project itself. Mr. Governator said he tried to explain that to the adjacent property owner to no avail, but he thought the photographs would help.

Mr. Governator said if they could get on site to prove that filter cloth was put in they would be good.

C. JPA 2021-0658 Britton (Community Pier) Notification Only

Mr. Governator said this was a residential pier, but it looks like a shared residential pier. It was called a community pier in the application. This was not in the board's jurisdiction, but Mr. Governator wanted them to be aware of it.

He said this was a nonresidential pier due to it being shared by more than one property owner. No permit was needed.

D. JPA 2021-0892 Inlet View (Commercial Piers ATF)

Mr. Governator gave some background on the project. It was one the board had seen some months ago presented by Chris McCabe.

This was just a permit that came in for the piers that are on site after the fact. Mr. Governator added that this also was not in the board's jurisdiction.

E. JPA 2021-0734 (Judd Brooks Properties) June 4th Site Visit

Mrs. Beth Nunnally said she sent out a signup sheet to go see the Frogstool proposal. Mrs. Nunnally then gave a summary of what the tour, (along the alignment of the proposed dike would be), where to meet and how many could go at a time.

Mr. Taylor said that mechanical vehicles are not supposed to across the marsh, and if they do they cannot leave marks. The Argo scheduled to use did not fit that description. Mrs. Nunnally said she did not know that. Mr. Governator said that he would research it.

A discussion ensued.

F. 2021 VMRC Approved Tidal Wetlands Guidelines

These were adopted by the Commission of the 25th of May and were handed out to the board members. Mr. Governator said his office just received them and that they still said "Draft."

He asked the board members to review them and added that he was going to request Mr. Nettleton to present next month or in July if possible.

5. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, June 24, 2021 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac, VA.

6. ADJOURNMENT

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

The meeting was adjourned at 12:43 p.m.

Earl Frederick, Chairman

Chontese Ridley, Environmental Permit Specialist