

## ACCOMACK COUNTY WETLANDS MINUTES OF AUGUST 26, 2021

At a meeting of the Accomack County Wetlands Board held on the 26<sup>TH</sup> day of AUGUST 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. Gene Wayne Taylor  
Mr. T. Lee Byrd  
Mr. Timothy Getek

#### 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

Mr. Frederick said he wanted to make one addition to the agenda. There was someone present who wanted to speak and Mr. Frederick said they felt it was best for them to speak after the approval the previous month's minutes.

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

### 2. MINUTES

#### A. July 22, 2021

- Page 3, Comment made by Mr. Bourne – *Babysat should be babystep*
- Page 5, Elaine & Moses McNure Review – *Permit will be heard at the August 31<sup>st</sup> meeting should have been August 25<sup>th</sup> meeting*

**On a motion made by Mr. Taylor and seconded by Mr. Byrd, the Wetlands Board voted to approve the minutes with the corrections.**

#### GUEST SPEAKER

**Barbara Zinck** (Adjacent Property Owner to Samuel Young)

Mrs. Zinck said she wanted to talk to the board about her neighbor's current bulkhead. She said had numerous boards missing, boards with holes, and a full tidal exchange. The land

behind the bulkhead had eroded 8-10 feet, and the section closest to her property has disappeared and eroded more than 16 feet. She stated this has impacted her property and potentially her home. Mrs. Zinck added that Mr. Young knew about this problem, at least, since January 11, 2019 when her husband sent a letter to Mr. Young about the failing bulkhead along with pictures of it. She and her husband offered to buy the land so they could repair the bulkhead and there was no response. Mrs. Zinck said her husband also sent notifications to Justin Wilder, (Captain's Cove Management), with no response.

There was a contract signed in the summer 2020 with Luke Britton. Mr. Britton told her husband that he would start repair in October of 2020. No notification was ever sent to them about the work being done from Mr. Britton or the Accomack County Wetlands board according to Mrs. Zinck. Mrs. Zinck said she did receive a copy of a letter that was sent out from Chris Guvernator this week. She said the address on the letter was incorrect and more than seven years old.

Mrs. Zinck said that her husband inadvertently found out about the June 2021 Wetlands Board meeting. He found out last minute so her husband had to attend the meeting without her. His opinion was requested at the meeting, but due to finding out last minute she said her husband did not have time to do any research, have the full understanding of a "dog leg" bulkhead, understand the advantages or disadvantages of moving the bulkhead back, or to consult with her.

As of the date of this current meeting no work had yet to be done, the materials that were staged on the site were gone, and the erosion was getting worse. Mrs. Zinck said this was a major concern for them and a safety hazard.

A discussion ensued.

Mr. Chris Guvernator, Environmental Programs, was sworn in by Chairman Frederick. Mr. Guvernator said the permit issued and explained the 10 day hold.

Mr. Byrd asked if there was anything the board could do. Mr. Guvernator said there was nothing that the Wetlands Board or Accomack County can do to control the methods of a contractor.

Mr. Frederick said he would like to direct staff to contact Mr. Britton to see whether or not he had received the permit to expedite it. Mr. Guvernator said he would give it a try. He added that he would make sure Mr. Britton had the necessary paperwork and make sure that he had applied for a building permit.

A discussion ensued.

Mr. Benjamin Nettleton, VMRC, appeared before the Wetlands Board and was sworn in by Chairman Frederick. Mr. Nettleton said the last time he talked to the CORPS they were still issuing permits from 2020. He also added that construction could not be started until all permits had been received, and said that Mr. Britton could be waiting on that.

**3. NEW BUSINESS**

**A. Derek Flowers VMRC# 2021-1319**

**Chincoteague Island, VA**

Installation of an open-girder boat rail

Mr. Frederick asked if anyone was present to represent Mr. Flowers and no one came forward.

Mr. Frederick then asked Mr. Guvernator if he would like to make comments from the staff point of view.

Mr. Guvernator said that he advised that this application to come before the board and be considered. At the time the application was also advertised for today's meeting, but since then a request was made by the applicant's agent to continue for one month. They want to consider alternatives to the design they submitted to ensure that it is out of the Wetlands Board's jurisdiction. However, public comment needed to be open because it was advertised. Mr. Guvernator said the board should consider making a motion after the public comment portion was closed.

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

Mr. Frederick asked if there was anyone who wanted to comment on application 2021-1319 seeing that it was advertised in the newspaper.

No one made a request to communicate.

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

**On a motion made by Mr. Taylor and seconded by Mr. Byrd, the Wetlands Board voted to continue the permit for one month for Derek Flowers VMRC# 2021-1319, for the proposed installation of an open-girder boat rail. The property is located on Chincoteague Island, VA 23336, tax map#(s) 30A4-A-120.**

**B. Brian Terry VMRC# 2021-1428**

**Belle Haven, VA**

Re-construct a dilapidated commercial aquaculture pier

Mr. Frederick asked if anyone was present to represent Mr. Terry and no one came forward. Mr. Frederick then asked Mr. Guvernator if he would like to make comments from the staff point of view.

Mr. Guvernator said at the time of indicating that this project needed to come before the board for consideration it was advertised for a public hearing at this meeting. However, between that time and now, he received word from the applicant's agent that they would not be able to attend today. They are requesting a one month continuance.

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

Mr. Frederick asked if there was anyone who wanted to comment on application 2021-1428 seeing that it was advertised in the newspaper.

No one made a request to communicate.

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

**On a motion made by Mr. Byrd and seconded by Mr. Getek, the Wetlands Board voted to continue the permit for one month for Brian Terry VMRC# 2021-1428, for the proposed**

**re-construction of a dilapidated commercial aquaculture pier. The property is located in Belle Haven, VA 23306, tax map#(s) 118-10-D.**

**4. OTHER BUSINESS**

**A. Endless Summer LLC VMRC# 2021-1181 (Restoration Complete)**

Mr. Guvernator said this tidal wetlands violation was talked about inadvertently during inspection of the Endless Summer application. It was noticed that a section of adjacent to, (maybe not on their property), had been impacted. There were chunks of concrete sidewalk and the plants had been killed somehow.

Mr. Guvernator said the board asked him to research this violation. The property owner removed all the debris and restored the area by planting grasses. He said they were back in compliance.

Mr. Byrd asked how this would be monitored since the planting was done after the fact. Mr. Guvernator said staff had never followed up with one when they restored on their own, but said they would have required a two or three year monitoring plan.

A discussion ensued.

It was decided for Mr. Guvernator to go back out to the site to inspect the plantings to make sure they were salt water tolerable plantings.

Mrs. Beth Nunnally appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mrs. Nunnally suggested that find out the source and the species of the plantings.

A discussion ensued.

**B. Town of Chincoteague VMRC# 2021-1448 (Floating Pier)**

Mrs. Nunnally gave a short summary of what was being done. Mr. Guvernator said this was a commercial project so it did not have to come before the board. Mrs. Nunnally said she was informing the board so they would know it was taking place.

A discussion ensued.

**C. Oyster Bay Community Association VMRC# 2021-1523 (Pier Replacement)**

Mrs. Nunnally said she was informing the board so they would know this project was taking place. It was commercial and did not have to come before the board.

A discussion ensued.

**D. McNure VMRC# 2021-0895 (Commission Action)**

Mr. Guvernator said the Commission reviewed the McNure permit. The unanimously agreed to uphold the following staff recommendations:

- Overturn the permit that the Wetlands Board issued
- Required the board to hold a hearing for mitigation of the boards that were placed without a permit

Mr. Frederick pointed out to the other board members that they did not discuss the possibility of a Living Shoreline on the property. He added that VMRC was serious about that being discussed for each project. Mr. Byrd suggested they start with that going forward.

Mr. Frederick asked Mr. Guvernator if there was a place in the application for an applicant to discuss a Living Shoreline and Mr. Guvernator replied yes.

A discussion ensued.

Mr. Nettleton explained that the way the state laws were written, a Living Shoreline had to be considered first. Going through the decision tree could be used for justification.

Mr. Nettleton went on to talk about VMRC's decision on the McNure JPA. He said the restoration part had to do with the violation. Boards were placed without a permit and the Commission wanted the Board to address it. The standard procedure would be for Mr. Guvernator to submit a sworn complaint. The Board would seek voluntary restoration or have Mr. Britton come in and have a restoration hearing. Mr. Nettleton for the hearing a 30 days' notice would have to be given and a state code. A discussion would be had on what they expected to see done to restore the site, (removal of the boards or compensation).

Mr. Nettleton said what VMRC would like to see is an application come in from Mr. Britton for either a bulkhead further back or rip rap revetment. Something that would be more suitable for the site that does not impact the wetlands in the same way.

A discussion ensued.

In conclusion Mr. Nettleton said if the board were to have a restoration hearing, there is no limit in the law on how they set the timeline and how the applicant/agent has to comply with it. He said he would make his recommendation and give the applicant/agent enough time to get in a new JPA.

A discussion ensued.

Mr. Frederick asked what the next step was in the process and if the board have to formally request a restoration hearing. Mr. Guvernator said he believed the board was supposed to direct him to complete the investigation of the violation. Then he would bring back a sworn complaint, and at that time the he would move towards advertising for a restoration hearing.

Mr. Nettleton chimed in to say that the hearing did not have to be advertised. Just notify the applicant and agent, with at least 30 days' notice that they need to appear at the restoration hearing.

**On a motion made by Mr. Getek and seconded by Mr. Ward, the Wetlands Board voted to direct Mr. Guvernator to proceed with necessary actions to resolve violations**

**E. Stonewall Capital VMRC# 2021-0220 (Possible Violation)**

Mr. Guvernator said he was bringing this to the board to get direction from them.

Mr. Getek asked if this was something that had come before the board or something that did not need to be heard. Mr. Guvernator said a JPA submitted to VMRC and routed to the

county for review. It is specifically a permit that was associated with a private pier and a T-Head.

Mr. Ward asked where it was and Mr. Guvernator replied it was in Captain's Cove on Seaview Street. Mr. Guvernator said the application was reviewed and everything described a private pier and T-Head so a no permit needed letter was issued. (Piers are exempt from the board's jurisdiction)

Mr. Guvernator explained that his office received information pertaining to development being done on the parcel that might not have been associated with any permits issued by the county. No building permit was issued for the pier, and there looks to be work done in the wetlands board's jurisdiction that was not associated with the application.

Mr. Guvernator showed the board members photos of the parcel from 2019 compared to what it looks like now. A new vinyl bulkhead had been installed.

A discussion ensued.

Mr. Guvernator said he wanted to bring this to the board's attention for them to consider it and that could not tell if it was in their jurisdiction or not. He said his question was if the new retaining wall and the fill associated with the project in the Wetlands Board's jurisdiction.

**5. NEXT MEETING**

The next Wetlands Board meeting is scheduled for Thursday, August 26, 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. Ward and seconded by Mr. Byrd, the Wetlands Board voted to adjourn the meeting.

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

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Earl Frederick, Chairman

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Chontese Ridley, Environmental Permit Specialist