

# ACCOMACK COUNTY WETLANDS MINUTES OF JULY 22, 2021

At a meeting of the Accomack County Wetlands Board held on the 22<sup>ND</sup> day of JULY 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

### 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. Ward, the Wetlands Board voted to approve the agenda as modified.**

## 2. MINUTES

### A. May 27, 2021

**On a motion made by Mr. Ward and seconded by Mr. Byrd, the Wetlands Board voted to approve the minutes June 24, 2021 meeting.**

## 3. NEW BUSINESS

### A. **Endless Summer, LLC VMRC# 2021-1181** **Chincoteague Island, VA** New vinyl bulkhead

Charles (Chuck) Ward appeared before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Frederick.

Mr. Ward said this was an application to remove an immense amount of concrete rubble from behind a detreating wooden bulkhead. He added that the rubble had been there for quite some time. The owner wished to remove the rubble and to replace the existing bulkhead with a new vinyl bulkhead.

Mr. Ward said the proposal was to move the bulkhead approximately 4 feet to the south. He said this would center the bulkhead on the property. The applicant would also revegetate the area.

With moving the bulkhead to the south there would be 228 square feet of onsite mitigation. Mr. Ward said the property owner is concerned with minimizing impacts to their neighbors. The return wall would connect at the property line to the existing retainment bulkhead structure that is on the property to the north and would continue out.

Mr. Ward said they were also proposing a 2 feet extension channelward of the existing bulkhead to be able to build it in place and to remove the rubble behind it to prevent any erosion. The applicant wanted to remove the rubble for safety and aesthetic purposes, and to also minimize impacts to adjacent property owners.

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

Mr. Guvernator said he wanted to point out that during field visits there was a wetlands violation to the south, and possibly on their property. It appeared to be some type of impacts to the wetlands with both large concrete rubble stepping stones as well as some land applied weed killer. Mr. Guvernator added that he did not want the board to make a motion without talking about it first.

Mr. Ben Nettleton, (VMRC), was sworn in by Chairman Frederick.

Mr. Frederick asked Mr. Nettleton if the 228 square feet of onsite mitigation qualify for mitigation. Mr. Frederick said it was not new upland being converted to mitigation and wanted to know what VMRC's opinion on it. Mr. Nettleton said they would need more information on if there was actual new planting occurring in an area that was not currently vegetated. He said if that was not the case there would need to be compensation for a loss. Mr. Frederick said when the bulkhead is pulled out there would be no grass, but there would be marsh sediment. He added that it was not upland unless the bulkhead was counted as upland. Mr. Guvernator and Mr. Byrd both chimed in to say they had never been allowed to take non vegetated tidal wetlands, improve them and it count as mitigation. Mr. Taylor said it had to be high land.

Mr. Chuck Ward said that his client was willing to put the new bulkhead back into the existing footprint. Mr. Frederick said pulling it south would be a good thing, planting was a good thing, but it would not count against the 124 square feet of impacts to the south. The applicant would still be liable to pay into the mitigation fund or take uplands of your property and convert them to marsh land.

Mr. C. Ward said that would be something to speak to the property about.

Mr. Byrd asked Mr. C. Ward if he understood what had been explained to him. Mr. C. Ward said he understood and it was not a deal breaker.

Mr. C. Ward asked Mr. Frederick if he could answer an earlier question from Mr. Guvernator during the public comment. Mr. Frederick said yes. Mr. C. Ward said the stepping stones had been in place for a long time and was done by the adjoining property owner to the south to gain access to the water to get to their kayak. He also said replanting where the herbicide was sprayed was not an issue. Mr. C. Ward said the neighboring property owner had been notified and told that was not acceptable.

Mr. Byrd asked Mr. C. Ward if that was before his involvement with the project. Mr. C. Ward said he had no idea it had been done until Mr. Guvernator forwarded him an email from Mr. Nettleton about it.

Mr. Guvernator said the stepping stones were put in sometime after 2017 and that they had not been there forever. It was suggested that moving the stones be part of the permit.

Mr. Frederick if the removal of the stepping stones was part of the concrete removal plan. Mr. C. Ward said they could be removed. Mr. Byrd mentioned having a planting plan when the time came. Mr. C. Ward said yes he would be willing to do that.

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

**Mr. David Borne**, (3380 & 3389 Main Street, (North side)), was sworn in by Chairman Frederick.

Mr. Borne said he first wanted to indicate that the property area they were talking about in general was manufactured land. He said the land there had been filled there multiple times with various sand and fill through the years. Mr. Borne said his concern was that this was a baby set approach to a large building in the area. He said sewage had already been put there, which he said was terrifying. He felt the placing was inappropriate.

Mr. Borne said the area had become its own ecosystem with a lot of wildlife. He said the fact that this project seemed to be a baby step approach build up to a large condo was terrifying. He added he was also concerned about riparian rights.

**Ms. Theresa Bulger**, (owns property to the North), was sworn in by Chairman Frederick.

Ms. Bulger said she has lived on Chincoteague Island for forty years and has owned her property for eight years. She also added that she was a heavy duty gardener. She told the board members that she had a photo that she wanted to show them if it was permitted. Mr. Frederick responded yes. Ms. Bulger proceeded to show the board members the photo and explained it. Mr. Guvernator said he would get Ms. Bulger to email him the photos for the record.

Ms. Bulger said there was no way anything could be done without tremendously impacting her property. She said she was disappointed, because Jason told them he would bring plans and he had not. She also felt the bulk should be placed where the actual land is.

Ms. Bulger said they have a nest camera system and have watched Mr. Lambertson drop in fill to the tune of 40-50 loads of sand. She said she would love to see her neighbor enjoy his property and have things the way he wants them, but not at the expense of everyone else.

Ms. Bulger said her property was now having flooding issues. In a good storm her yard would be flooded. She went on to explain some other issues and requested that the board not permit the project.

**Kevin O'Connor**, (3404 South Main Street), was sworn in by Chairman Frederick. Mr.

O'Connor said he was concerned about the

view and that he will look up and see a duplex or worse. He said the septic is set up and that you can tell they want to build more than just a bulkhead. He added that there are septic issues in the area, and that every time it rains his neighbor's septic overflows.

Mr. Frederick asked if there would be other hearings before a building could be put on the property by building and zoning. Mr. Taylor said the lot could be built on it just the way it is. He has a separate tax map number, square footage, and the septic. Mr. Taylor added that no matter what the board approved or not approved, the applicant could still build a structure just the way it is. By right the applicant could put a duplex on the property if he wanted to.

### **PUBLIC COMMENT PERIOD CLOSED**

Mr. Frederick said his concern would be if they do not protect the property, as it is somehow, that property owners on both sides will be affected eventually. He said the two return walls were acting like groins and trapping sediment inside them to the north and the south. Mr. Frederick also added that one of the new mandates for the application process is to address why a living shoreline is not being used in this situation. Mr. C. Ward said it was in the application on page 8. He added between storms and the ripping tidal action a living shoreline was not considered.

Mr. Byrd wanted to get everyone to agree that they were just talking about the bulkhead. He wanted to make sure that everyone understood that is what they were there for, and that the ability to put the bulkhead back has nothing to do with the applicant inability to build.

Mr. Ward said he did not understand how that one piece of land could cause the flooding towards Main Street. Mr. Byrd and Mr. Frederick also felt the same. Mr. Frederick said if there was Main Street flooding it would get all of the properties.

Mr. Guvernator said the proposed grade after removing the rubble looked like it was slopping towards the water. Mr. C. Ward said the plan would be to maintain a level grade from the edge of Main Street down to the bulkhead.

A short discussion ensued.

Mr. Frederick asked Mr. Guvernator about a possible fine that might need to be accessed for the stone being placed along the south edge. He also asked if it needed to be resolved before any permit approval. Mr. Guvernator said that it was up to the board, but he recommended to resolve it. Mr. C. Ward said he was notified by Mr. Guvernator about his issue sometime during the previous week, but the property owner had not received anything formal to be able to address the issue.

Mr. Frederick suggested a one month continuance to allow the property owner time to address the issue.

A discussion ensued.

**On a motion made by Mr. Taylor and seconded by Mr. Byrd, the Wetlands Board voted table the permit for two months for Endless Summer, LLC VMRC# 2021-1181, construction of a new vinyl bulkhead with the following conditions:**

***1. Work with staff to resolve any potential violations***

**The property is located on Chincoteague Island, VA 23336, tax map#(s) 30A3-A-82.**

#### **4. OTHER BUSINESS**

**On a motion was made by Mr. Ward and seconded by Mr. Taylor to let a guest come up and speak before continuing with the agenda order.**

#### **A. Adare Tyler**

Adare Tyler was sworn in by Chairman Frederick and appeared before the Wetlands Board.

Mr. Tyler said he had nothing to ask or to do of this committee, but that he had some comments. He said he owns a property on the point of Onancock Creek and Cedar Creek Mr. Tyler said Mr. Fred Dassler lived across from him and in the past few years they have had some problems, but they were working through them. Mr. Tyler gave some more back history and mentioned that he would be submitting an application in a year to protect his point.

Mr. Tyler said he did not care if Mr. Dassler puts a bulkhead in or not, but that he wanted the Board to hold people's feet to the fire for engineering. He added that when he goes to put in his bulkhead he hopes that it is engineered correctly and that the board approves it.

Mr. Tyler said that none of this was against Mr. Dassler, but a request to the Board to hold people's feet to the fire, including his, when putting in a bulkhead. He said everyone should have the right to put in a bulkhead, but they should all be engineered to a standard.

Mr. Tyler closed by stating that he disagreed on the length of time it took to get the Dassler project engineered correctly, the process, and the things that had to go on to get it engineered correctly. If rocks are put down and they are not done correctly he wants them taken up and put back in correctly, but did not want anyone to get fined for it.

**B. Elaine & Moses McNure VMRC Review**

The McNure permit, which was issued at the June meeting, will be heard at the August 31<sup>st</sup> VMRC hearing.

**C. VMRC Presentation – Mr. Benjamin Nettleton, Virginia Marine Resources Commission (VMRC)**

Mr. Nettleton went over the Tidal Wetlands Guidelines updates that were approved May 2021.

(See attached presentation)

**D. CCRM Shoreline Management Webinars**

Mr. Frederick said on August 11<sup>th</sup> there will be a webinar on Tidal Marsh Ecology that will be 2 hours long. He added that it would be something that you sit and observe to and did not know if there would be a point of contact for questions. Mr. Frederick then went over the webinar topics.

The August 25<sup>th</sup> webinar was going to be on Integrated Shoreline Management. He also went over the topics for that webinar as well.

Mr. Frederick said he signed up for the August 25<sup>th</sup> webinar and asked if there was any way that the staff could host a group. Mr. Governor said yes.

**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. Byrd and seconded by Mr. Ward, the Wetlands Board voted to adjourn the meeting.

The meeting was adjourned at 11:47 p.m.

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Earl Frederick, Chairman

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Chontese Ridley, Environmental Permit Specialist