

## ACCOMACK COUNTY WETLANDS MINUTES OF FEBRUARY 24, 2022

At a meeting of the Accomack County Wetlands Board held on the 24<sup>TH</sup> day of FEBRUARY 2022 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  
Mr. Randy Owen, 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.

### 2. ADOPTION OF AGENDA

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

### 3. MINUTES

#### **A. January 27, 2022**

**On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to approve the January 2022 minutes.**

### 4. OLD BUSINESS

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

Installation of an open-girder boat rail parallel to an existing T-Head pier

Mr. Frederick said was a project update by Mr. Guvernator.

Mr. Chris Guvernator, (Environmental Programs), appeared before the Wetlands Board was sworn in by Chairman Frederick.

Mr. Guvernator said this project was bought before the board several months ago, and they voted to continue it.

Mr. Guvernator said he wanted to give an update on what was going on and were the project stood. He then told the board they might want to consider a motion to continue the project until the applicant finished revising the project. He is trying to modify it so that he does not have to come before the Wetlands Board.

June 2021 was when he initially applied, and January 2022 is when Mr. Guvernator's office received the revision.

Mr. Guvernator walked the board through the aerial photos of the site. Since the rail crossed over tidal wetlands, he thought that it would require the board to review it.

Mr. Guvernator said the applicant was trying to get out of the board's jurisdiction with the presented alignment, (submitted January 2022), however there was mudflat at low tide. That being said, Mr. Guvernator and his staff still believed that this project needed to come in front of the board. He added that there had been some discussion between the applicant and his staff on if that was the case.

Mr. Byrd said he did not see a way around this situation for the applicant. Mr. Guvernator chimed in to say that VMRC and the CORPS were looking into it as well from an alignment stand point.

Mr. Byrd said he would like to hear what Mr. Nettleton had to say.

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

Mr. Nettleton said he had received the application too, and the only thing he said he seen was that there was a code exemption for boat shelters, boat lifts, open pile structures, etc. Mr. Nettleton said its piles driven into wetlands and that he told Mr. Chuck Ward, (applicant's agent), that staff had the authority to bring it before the board.

Mr. Nettleton added that VMRC would be requiring a permit and not considering it exempt. He said he knew the applicant was trying to avoid fees by doing it this way, but that he would probably get more fees doing it this way.

Mr. Byrd asked Mr. Nettleton, due to exemptions, if there was a chance the board would not have to deal with it. Mr. Nettleton said there was an exemption code that was subject to interpretation. He asked Mr. Randy Owen if he could pull it up. He also added that he was not going to say whether the project met it or not. Mr. Nettleton read:

***Article 2. Wetlands Zoning Ordinance and Wetlands Boards***  
***§ 28.2-1302. Adoption of wetlands zoning ordinance; terms of ordinance***

***§ 3. The following uses of and activities in wetlands are authorized if otherwise permitted by law:***

- 1. The construction and maintenance of noncommercial catwalks, piers, boathouses, boat shelters, fences, duck blinds, wildlife management shelters, footbridges, observation decks and shelters and other similar structures, provided that such structures are so constructed on pilings as to permit the reasonably unobstructed flow of the tide and preserve the natural contour of the wetlands;***

Mr. Frederick said he did not necessarily hear the word boat ramp. Mr. Nettleton agreed.

Mr. Guvernator said he was going to ask the board if they would consider making another motion to continue this project until the termination date. Mr. Guvernator said applicant would be given 1 year from June to resolve this. If not, the application would be terminated.

Mr. Taylor asked if there was a survey with the application. He wanted to make sure the structure was on the applicant's property. Mr. Guvernator said there was not one included, but that he could ask that a survey be provided before coming back before the board.

Mr. Frederick asked if the entire inlet area is on the Flower's property, does the CORPS still have authority over what he does with his gut.

Mr. Randy Owen, Virginia Marine Resources Commission (VMRC), appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mr. Owen said the COPRS had jurisdiction over all surface waters in the United States. He said he seen them, on properties like that one, be more favorable in their support when there is no other riparian properties at the end of the cove. Meaning there is no house that uses that cove.

Mr. Owen asked if the cove ebbed bare or not.

Mr. Frederick did not know and asked Ms. Nunnally if the cove ebbed out bare down to mud. She replied almost.

Mrs. Beth Nunnally, (Environmental Programs), appeared before the Wetlands Board and was sworn in by Chairman Frederick.

Mrs. Nunnally said yes it did.

Mr. Owen said that did not keep the CORPS from regulating it, and that it was not exempt from this board.

Mr. Getek said he was concerned about the rail, as it goes out, at high tide 8-10 feet of it is submerged. He was curious to whether warning buoys would be put out or if there were any requirements.

Mr. Guvernator said it was out of the board's jurisdiction.

A discussion ensued.

Mr. Ward said, to him, going back to the original alignment would be better.

Mr. Getek asked to confirm that the applicant changed the alignment to get out of the board's jurisdiction, but that they might still be in the board's jurisdiction. That was correct. With that being the case Mr. Getek said the agreed with Mr. Ward's idea of the original alignment being better.

A discussion ensued.

**On a motion made by Mr. Ward and seconded by Mr. Taylor, the Wetlands Board voted on an extension until June 21, 2022, for Derek Flowers VMRC# 2021-1319, proposed installation of an open-girder boat rail parallel to an existing T-Head pier with the following conditions:**

- 1. Produce survey prior to meeting*
- 2. Direct staff to inform applicant/agent that it is not likely coming out of the Wetland Board's jurisdiction*
- 3. Consider end of rail marker*

**The property is located on Chincoteague Island, VA 23336, tax map#(s) 30A4-A-120.**

## **5. OTHER BUSINESS**

### **A. Non-Vegetated Wetlands: Compensation Fees Information**

Mr. Governator said VMRC reached out to his staff a couple weeks ago to discuss the possibility of work towards some compensation for non-vegetated wetlands.

Mr. Governator said the initial discussion was on some of our most recent projects when in fact the alignments and permitting related to bulkhead repair/replacement in certain areas of the county always seem to involve non-vegetated wetlands lost.

Mr. Governator said there was a precedent in all of the regulation and guidance towards non-vegetated wetlands being important, and non-vegetated and vegetated wetlands being managed, discussed, and mitigated holistically and not as two separate types.

Mr. Governator then went through his presentation on the topic. All board members and attendees were given a copy to follow. (See Attached)

Mr. Governator said the County Attorney added some State Regulations & Guidelines for their information and that they could come back to it with any questions.

Mr. Governator said he did some research on who was charging what in the tidewater region, and there was 37 municipality research done by VIMIS, (2019). He added that a third of the municipalities in the report were charging for non-vegetated wetlands. The Board members and attendees were given a copy of the report.

Mr. Governator asked Mr. Owen if VMRC charges and Mr. Owen said yes, market price.

Mr. Getek said he was not sure what market price meant.

Mr. Owen explained that there were only two tidal banks in Virginia, and that one was being reviewed in Northampton, but that the price goes up and down as more banks come into the service area where another bank might be existing. The price fluctuates.

A discussion ensued on the possible bank in Northampton County.

Mr. Governator went on to talk about the permit summary from last year, but did state that the numbers were still being verified.

A discussion ensued.

# 2021 Accomack County Permit Summary

TOTAL NUMBER OF JPAs SUBMITTED IN 2021	122
NUMBER OF JPAs REQUIRING PERMITS	31
NUMBER OF PERMITS DENIED, ON HOLD OR INCOMPLETE	11
NUMBER OF PERMITS ISSUED BY THE WETLANDS BOARD	20
VEGETATED WETLANDS IMPACTED BY PERMIT ISSUANCE	712 SQ FT
NONVEGETATED WETLANDS IMPACTED BY PERMIT ISSUANCE	4,825 SQ FT

DATA BEING VERIFIED

ACCOMACK COUNTY WETLANDS BOARD



Mr. Getek asked if whatever they agreed on, would the board of supervisors have to review it. Mr. Guvernator said how he understood it was, (according to the County Attorney and County Administrator), the Wetlands Board can adopt a position on this and request that a fee be instituted.

Mr. Guvernator said it would go to the Board of Supervisors and they have to hold a public hearing to change an ordinance. The ordinance will be amended to add non-vegetated wetlands to the original creation of the wetlands mitigation bank fund.

A discussion ensued.

Mr. Taylor asked the number, (what to charge), due to not wanting to go before the Board of Supervisors then have to come back. Mr. Owen said that VMRC would not question any number that the Wetlands Board came up with.

Mr. Guvernator said he had to go back to the County Attorney, but what Jan, (County Attorney), put in the guide is the approach to the number. The approach says: local wetland bank, whatever that cost is, is the cost that should be considered since it is a real cost. If you do not have that, it would be an estimated cost on what it would take to create them.

A discussion ensued about the number they should go with and \$18.00 is what was realistic.

**On a motion made by Mr. Taylor and seconded by Mr. Getek, the Wetlands Board voted to have staff send the following to the Accomack County Board of Supervisors for their consideration to amend the ordinance:**

- 1. Increase the vegetated wetlands compensation from \$12.00 to \$18.00*
- 2. Increase the non-vegetated wetlands compensation from \$0.00 to \$18.00*

## 6. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, March 24, 2022 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac, VA.

## 7. 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 11:21 a.m.

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Earl Frederick, Chairman

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Chontese Ridley, Environmental Permit Specialist