

ACCOMACK COUNTY WETLANDS MINUTES OF SEPTEMBER 22, 2022

At a meeting of the Accomack County Wetlands Board held on the 22ND day of SEPTEMBER 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. T. Lee Byrd, Chairman

Mr. Gene Wayne Taylor

Mr. Timothy Getek

Mr. George H. Badger

Mr. David Montgomery, Alternate

Others Present:

Ms. Chontese Ridley, Environmental Programs Permit Specialist

Mrs. Beth Nunnally, Environmental Planner II

Mr. Randy Owen, Virginia Marine Resources Commission (VMRC)

DETERMINATION OF A QUORUM

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

2. ADOPTION OF AGENDA

Mr. Badger said he would like to move Old Business from “4” to “5A”.

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

3. MINUTES

A. August 25, 2022

On a motion made by Mr. Getek and seconded by Mr. Badger, the Wetlands Board voted to approve the June 2022 minutes.

4. NEW BUSINESS

A. Ashley Norman- VMRC# 2022- 1726

Replacement of the failing wooden bulkhead with an approximately 40 feet section of new vinyl bulkhead in the existing footprint. The remaining 60 feet will be new vinyl bulkhead placed 12 inches of the base/face of the embankment.

Ms. Beth Nunnally, (Environmental Programs), stood before the Wetlands Board and was sworn in by Chairman Byrd.

Ms. Nunnally gave a synopsis of the project adding that 50 square feet of non-vegetated wetlands would be impacted totaling \$900.00 in mitigation fees.

Ms. Ellen Grimes, (CRM, LLC), stood before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Byrd.

Ms. Grimes said this was a hard project to do. In order to go to the pier to the bulkhead, to make a straight alignment, the non-vegetated wetlands fee would have been around \$20,000.00.

Ms. Grimes said she spoke to the contractor and he said he would be able to do the work from the water, pull out the bulkhead and put most of it back in place with one section being 12 inches from the base of the existing bank. She added that it would not tie in to the adjoining bulkhead, but they were planning a 5-10 feet return wall coming into the upland.

Ms. Grimes said a living shoreline did not make sense in that area. There was a lot of overhanging vegetation and a northwest exposure.

CHAIRMAN BYRD OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Byrd asked if there was anyone who wanted to comment on application 2022-1726.

No one made a request to communicate.

CHAIRMAN BYRD CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Getek asked who was responsible for the ditch and who owned it. Mr. Byrd said that he could not answer that question, but it was either put in for development or by the growers.

Mr. Badger said he thought the ownership would still go to the middle of where the ditch was even though it was dredged out. He added that each individual property was probably deeded to wherever the ditch was at the time.

Mr. Byrd agreed and said the applicant would be covered either way for this project.

Mr. Getek pointed out the slope and that there could possibly be some slumping. He asked Ms. Grimes would going 2 feet channelward be an option. Ms. Grimes said it could be done if there was no fee for impacting the non-vegetated wetlands.

On a motion made by Mr. Badger and seconded by Mr. Montgomery, the Wetlands Board voted to issue a permit (valid for (1) year, for Ashley Norman- VMRC# 2022- 1726, for the replacement of the failing wooden bulkhead with an approximately 40 feet section of new vinyl bulkhead in the existing footprint. The remaining 60 feet will be new vinyl bulkhead placed 12 inches of the base/face of them embankment with the following conditions:

1. Pay \$900.00 in mitigation for 50 square feet of impacts to non-vegetated wetlands
The property is located in Onancock, VA 23417, tax map#(s) 92B-A-15.

B. Harold & Carroll Cherrix, Sr.- VMRC# 2022- 1734

Demolishing and replacement of an existing gear storage building and support pilings

Ms. Nunnally gave a synopsis of the project adding the existing structure had its own foundation, not shared by the pier, and it would be elevated to a greater or equal height of 4 feet above the existing grade.

The application stated that the existing structure was currently constructed over 20 square feet of non-vegetated wetlands and 10 square feet of vegetated wetlands.

Mr. Charles Ward, Starboard Environmental, stood before the Wetlands Board on behalf of the applicant and was sworn in by Chairman Byrd.

Mr. Ward said the building was not currently 4 feet above the marsh. He said the building could be demolished without touching the existing pier and other things that were there.

Mr. Ward said the request was to demolish, remove pilings, reinstall pilings, and reconstruct a building back in the exact footprint as existing.

CHAIRMAN BYRD OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Byrd asked if there was anyone who wanted to comment on application 2022-1734.

No one made a request to communicate.

CHAIRMAN BYRD CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Taylor asked Mr. Ward how much higher he planned to go. Mr. Ward said that he did not get a good measurement, but probably about 12 – 18 inches higher to get it to 4 feet above the existing marsh.

Mr. Taylor asked to confirm that there would be 30 square feet of impacts, and Mr. Ward said they did not plan on impacting anything.

Ms. Nunnally said she only had one concern. She said 4 feet was usually used for a narrow dock and that this was wider causing it to shade the marsh underneath, but, due to it being existing, she did not know if they had any authority over it.

Mr. Getek chimed in to say that if there was existing vegetated wetlands and the new building was going to be higher, that it would be beneficial. The vegetation would get more sunlight and it would be a plus.

Mr. Taylor agreed with Mr. Getek.

Mr. Badger asked who owned the property. Mr. Ward said Carroll Cherrix. Mr. Badger asked Mr. Ward if he had a deed for the land underneath because it was not shown, and Mr. Ward said absolutely.

Mr. Taylor said it was VMRC.

Mr. Ward then realized with Mr. Badger had asked and changed his response to the question concerning the deed. Mr. Ward said part of it was over top of state waters.

Mr. Taylor said the state of Virginia owned the property behind it and Mr. Badger asked if he meant VDOT.

Mr. Badger stated that VDOT had a 40 feet wide off center of the existing road which puts a portion of the structure in the right of way. In the 2003 permit that was issued by VMRC, for the boathouse, it showed there was some communication between VMRC and VDOT. It stated that VDOT would give them, (the applicant), permission to do what they wanted to do, but they wanted it in writing. Mr. Badger said he did not know if they ever did or not.

Mr. Badger said his biggest concern was if they were to issue a permit would they be issuing a permit to rebuild the structure on the Cherrix's property, (if they own the property), or partly on VDOT's.

Mr. Badger said he would like to hear from VMRC.

Mr. Randy Owen, (VMRC), stood before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Owen said he wanted to call everyone's attention to question #2 in the JPA, the property owner was not identified. He noted that Mr. Badger testified that the County's tax map did not show any owner for the land.

Mr. Owen said he did not take any position on the structure, but that they would be looking at 90% percent of it. He said 10% of the project was in the Wetlands Board's jurisdiction and the rest was over state owned submerged land.

Mr. Owen stated the matter before the board was not over state owned submerged land. It was over an intertidal strip of wetlands. He asked the Board if they had permission to grant authority for encroachment over wetlands without out knowledge of who the owner was. Mr. Owen said after the meeting was over he was going to the real estate office to find out who owns it, because he had to deal with this well beyond today.

Mr. Owen said he did not know if the correct applicant was before the board.

A discussion ensued on who could possible own the land that resulted in the board agreeing to take a short recess to allow Mr. Ward to go to the appropriate county office to figure out ownership.

On a motion made by Mr. Badger and seconded by Mr. Getek, the Wetlands Board voted to take a 10 minute recess.

MEETING RECONVENED AT 10:48AM

Mr. Taylor said that he would like to make a motion to continue this application so that the Cherrix's could add Mr. Edward Tull to the application. Before a second could be made there were still some questions that needed to be answered.

Mr. Byrd asked Mr. Ward if a one month continuance would be sufficient, and Mr. Ward said yes, but that he would like to reserve the right to call staff to request more time if needed.

Mr. Badger asked Mr. Ward if he could have a cross section drawing showing the height from the existing pier to the height of the structure when he turned.

Mr. Ward said he could submit a not to exceed height of the walls. He said he did not have construction plans yet, because the owners are still working with the contractor on how to construct the structure.

Mr. Brent Hurdle, (Accomack County Assessor's Office), stood before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Hurdle said there was a question about a building only property and he did not know if he had the answer to it. He said he was thinking that the state owned the property, but he was not sure. He added that the plats of the causeway should resolve the issue.

Mr. Taylor said there were no definitive plats.

Mr. Badger told Mr. Ward that he needed to contact VDOT and Mr. Taylor explained to him where there office was located.

Mr. Owen said that VMRC would also be contacting VDOT. He added that he had the file from 2003 when Mr. Cherrix applied to work on the structure and the pier. The letter was dated April 3, 2003, address to Mr. Carroll Cherrix and signed by the assistant resident engineer, (Mr. Wright).

Mr. Owen read the first paragraph into the record:

I have recently reviewed the above referenced property and have the following information. VDOT owns a total of 80' right of way across the Chincoteague Causeway. This is 40' each side of the centerline. At the above site it appears that the small storage building is about 12' on this right of way, of course the walkway has always occupied some of this right of way. In looking through our records there has never been a permit issued to Mr. Steelman or anyone else as far as we can determine. We have no problem with the existing facility or your proposed addition and most likely we can issue a new land use permit covering the walkway and the portion of the existing storage building located on VDOT right of way. As shown, the actual boathouse lies beyond VDOT right of way and is governed by others. I will start the permit process the first of the week and it will only take a short period to issue the permit.

Mr. Owen said back then, (from reading the letter), VDOT did not think that the structure before them today was under their ownership.

Mr. Badger said there was another boat house. The boat house before the board was not the one the letter was referencing.

On a motion made by Mr. Taylor and seconded by Mr. Badger, the Wetlands Board voted to issue a continuance for (1) month, for Harold & Carroll Cherrix, Sr.- VMRC# 2022-1734, to demolishing and replacement of an existing gear storage building and support pilings. The property is located on Chincoteague Island, VA 23336, tax map#(s) 30-A-3D.

C. John Rapaport - VMRC# 2022- 1838

Replacement of the failing 62 feet wooden bulkhead with a new vinyl bulkhead 2 feet channelward of the existing bulkhead.

Ms. Nunnally said she was mistaken in thinking that this project was in the board's jurisdiction.

CHAIRMAN BYRD OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Byrd asked if there was anyone who wanted to comment on application 2022-1838.

No one made a request to communicate.

CHAIRMAN BYRD CLOSED THE FLOOR TO PUBLIC COMMENT

A discussion ensued on why Ms. Nunnally thought the project was in the board's jurisdiction concluding that the project was now no permit needed.

D. Donald L. Frost - VMRC# 2022- 2051

Construction of a 5 feet wide by 391 linear feet pier with a 10 feet by 30 feet floating dock and a 16 feet by 20 feet pier deck entrance.

Ms. Nunnally gave a synopsis of the project adding that the 6x6 box was being constructed to house the water meter so that it would not freeze.

Mr. Donald L. Frost, (applicant), stood before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Frost said he went to the Town of Chincoteague and asked how he could get water to his pier and how he could have a water meter on the other side of Eastside Road. He was told no and that he had to have it on the wetlands side of the road.

Mr. Frost said he was also told that the target for them to run the boring machine under the road was a problem unless they put the boring machine on the wetlands side of the road.

Mr. Frost said he initially met with someone from Chincoteague and Ben Nettleton and they advised him that no amount of fill could be put in to allow the boring machine on the low land side of the road. Chincoteague recommended that he build an apron that the machine could get onto.

Mr. Frost said they also advised him in order to have the water meter there, that it would have to be put into some kind of an upland box so that it would not freeze.

Mr. Frost said they made the foot print as small as possible taking the Town's 2 feet setback into consideration, the size of the meter and the fill put around it. A lid was also recommended for the box that would match the deck.

CHAIRMAN BYRD OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Byrd asked if there was anyone who wanted to comment on application 2022-2051.

Ms. Grimes wanted to know if it had been suggested to Mr. Frost to work the drilling machine on mats. Then the mats could be taken away.

Mr. Montgomery asked what size the boring machine was, and Mr. Frost said the Town of Chincoteague told him it was a pretty good size.

CHAIRMAN BYRD CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Getek asked Mr. Frost if the extra decking would be needed if mats were used. He wanted to know if it had to be 6 feet by 6 feet or if it could be smaller.

Mr. Frost said the box was 18 inches in diameter and for this climate zone 20-24 inches of soil was needed in order to keep the pipes from freezing.

Ms. Grimes chimed in to say it was similar to an above ground septic system with the dirt on top and Mr. Frost agreed. The dirt insulates the box.

Mr. Taylor asked what type of height would be needed for the 16x20 not to have any shading and Ms. Nunnally said she was not sure.

Mr. Badger said, from his understanding, the board's jurisdiction was the water meter box and the proposed 16x20 feet open pile structure. Mr. Owen confirmed that was correct.

Mr. Badger asked if water was appropriate and necessary for the pier, and if it was, then the structure should be built. He also asked if the 16 feet by 20 feet access for the boring machine was necessary or could it be temporary.

Mr. Taylor said the height for the 16x20 would be very high and would not work.

Mr. Frost said for hygiene water was a necessity and they wanted to have a fish washing area. In regard to the deck, Mr. Frost said it was not a concept that he came up with. He was guided by various government agencies that he was allowed to have an apron.

A discussion ensued on whether or not the 16 feet by 20 feet dock was necessary. It was concluded by Mr. Taylor that the Town would deal with getting permission from the neighbor for a few minutes to dig under. This would take away the need for the 16 feet by 20 feet dock.

On a motion made by Mr. Taylor and seconded by Mr. Montgomery, the Wetlands Board voted to issue a permit (valid for (1) year, for Donald L. Frost - VMRC# 2022- 2051, for the construction of a 5 feet wide by 391 linear feet pier with a 10 feet by 30 feet floating dock with the following conditions:

- 1. Remove the 16 feet by 20 feet dock from the application*
- 2. Revise drawings*
- 3. Submit a 3 year monitoring program*
- 4. Pay \$648.00 into the mitigation fund for 36 square feet of impacts to vegetated wetlands*

The property is located on Chincoteague Island, VA 23336, tax map#(s) 30A4-A-129A5.

5. OLD BUSINESS

A. ODEC Wallops Monitoring Restoration – VMRC# 2021-0993

Ms. Nunnally stated this project, last year, was for Old Dominion to do maintenance along Wallops.

Included in the approval of this application was to come back in 1 year and mitigate if the vegetation did not come back.

Ms. Nunnally said Corey Gray, (Stantec), sent pictures in July and that he said it had bounced back at least 50%. She did not visit the site.

Ms. Nunnally said it was the board's decision if they wanted the rest to be planted to give Mr. Gray more time.

Mr. Byrd said if he was not mistaken the applicant was on a 3 year monitoring program and this was just year one of three. That was correct.

Mr. Byrd did not see the reasoning in making them plant now. Mr. Taylor agreed.

On a motion made by Mr. Taylor and seconded by Mr. Montgomery, (Mr. Badger abstained), the Wetlands Board voted wait for 2 more years to expire before making a decision on replanting, for ODEC Wallops Monitoring Restoration – VMRC# 2021-0993.

6. OTHER BUSINESS

A. Filling in behind the Bulkhead

Discussion on how to deal with these occurrences

Ms. Nunnally said she's been noticing lately, when going out to review JPAs, there was a lot of new soil behind bulkheads. She said did not see that as often before.

She showed the board three photos of sites with fresh soil, and she would like the Board's guidance.

Mr. Byrd asked, to confirm, if it was an area with no vegetated could they, by right, not fill.

Ms. Nunnally said they could for maintenance, but she could not tell because she did not see what it looked like before.

Mr. Owen said his personal opinion was that they would be in violation of their wetlands permit, because they are in jurisdictional wetlands. If the boards are not there they are filling in wetlands that were now contiguous.

Mr. Owen told the board that they had a problem and the filling was not allowed. He added that Mr. Ben Nettleton and or VIMS could come out to any site if there were questions that needed to be asked. They would confirm if there was a violation and then bring the violator before the board.

Ms. Grimes asked if notice would be given before someone came out to confirm a violation and Mr. Owen said yes.

Mr. Owen said if a violation was found the designated enforcement office there would do a sworn complaint, mandated by the code, and a notice to comply signed by the Chairman of the Board requiring removal of the fill would be sent.

Mr. Owen said they could also speak with the violator first to see if the issue could be handled without coming before the board.

7. NEXT MEETING

The next Wetlands Board meeting is scheduled for Thursday, October 20, 2022 at 10:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac, VA.

8. ADJOURNMENT

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

The meeting was adjourned at 11:01 a.m.

T. Lee Byrd, Chairman

