

ACCOMACK COUNTY WETLANDS MINUTES OF JUNE 23, 2023

At a meeting of the Accomack County Wetlands Board held on the 23RD day of JUNE 2023 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

Others Present:

Mrs. Beth Nunnally, Environmental Planner II

Ms. Ginger Harmon, Administrative Assistant for Environmental Programs

Ms. Shawnta McCain, Administrative Assistant II for Building, Planning & Economic Development

Ms. Claire Gorman, Virginia Marine Resources Commission (VMRC)

Mr. Leander Pambid, Deputy County Administrator for Building, Planning & Economic Development

DETERMINATION OF A QUORUM

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

2. ADOPTION OF AGENDA

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

3. NEW BUSINESS

A. **Chip Bundick- VMRC# 2023- 0657**

Proposed construction of a 147 linear feet replacement bulkhead located on Chincoteague Island, VA 23336, tax map#(s) 45-A-5.

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

Ms. Nunnally said this was a series of bulkheads that total 147 linear feet.

Ms. Nunnally said the wetland impacts were 265 square feet of vegetated wetlands and 30 square feet of non-vegetated wetlands.

Ms. Nunnally then showed a photo of the site and explained the placement of each bulkhead, pointed out where the impacts were located.

Mr. Getek asked, to confirm, that the bulkhead was going to be two feet channelward on the right, and two feet landward on the left side?

Ms. Nunnally said on left side it was actually eight feet channelward.

Mr. Taylor mentioned the impacts not being in the application, but were now on the drawing. Mr. Taylor said he was not sure of the number, but he knew there were wetlands there.

Ms. Nunnally said they received a revision.

Mr. Badger asked Ms. Nunnally if she could go back to the drawing. Mr. Badger said it was kind of confusing due to it being out of proportion. Adding that eight feet looked like almost two feet.

Ms. Nunnally explained the drawing.

Mr. Badger, asked to confirm, it was five feet from the bulkhead that was existing to the right? Ms. Nunnally confirmed that was correct.

Mr. Getek asked, to confirm, that the bulkhead inside the three feet was going to be removed as well? Ms. Nunnally confirmed that was correct.

Mr. Badger asked, to confirm, that the 50 foot bulkhead on the right hand side plus the 5 feet going towards the channel would not be in the Board's jurisdiction. Ms. Nunnally confirmed that was correct.

Mr. Badger said what they, (the Board), was dealing with was fill behind the bulkhead. Ms. Nunnally confirmed that was correct.

Mr. Badger said the rest of the bulkhead was landward of the Board's jurisdiction, and Ms. Nunnally confirmed that was correct as well.

Mr. Raymond Britton, Jr., (BIC, Inc.), stood before the Wetlands Board, on behalf of the applicant, and was sworn in by Chairman Byrd.

Mr. Byrd asked Mr. Britton if he had anything he would like to say or add, and Mr. Britton said no.

Mr. Britton said that Ms. Nunnally had explained it all.

Mr. Byrd then asked if anyone had questions for Mr. Britton.

Mr. Badger asked Mr. Britton if a Living Shoreline was ever considered, and Mr. Britton said yes, but he over wash was so bad dirt was being pulled out through the rocks and into the water.

Mr. Badger asked if the adjacent property over to the right was another property before you get to the marina property.

Mr. Britton said no, there was 400 feet before getting to the marina property.

Mr. Badger asked whether or not that property had a permit. Mr. Britton said it had a permit to repair the corner, and it would be done at the same time as this project.

Mr. Badger asked if that was a bulkhead. That was correct and was previously approved.

Mr. Badger stated, to clarify on the previously approved bulkhead, there was a permit to redo the bulkhead to the property they are talking about and the backfill on that side.

Mr. Badger said at this point there were no buildings to protect, and Mr. Britton said there used to be.

Mr. Badger asked, since there were no buildings, why couldn't the project just be pulled back since nothing was being protected.

Mr. Britton said it was the applicant's preference, but they were willing to give up where they had to.

Mr. Badger asked if the other property was permitted before he joined the Board, had he gotten an extension for it yet, did it need one, or if it had already expired.

Ms. Nunnally said she would look it up.

Mr. Badger asked Mr. Britton about a stone revetment, and Mr. Britton said no for the same reason a Living Shoreline would not work.

Mr. Getek asked how far the infrastructure was away from the Chincoteague Channel.

Mr. Britton said the applicant was going to put a house on the property, and it would be about 50-60 feet back.

Mr. Getek how far was the bulkhead from the channel, because he was concerned about navigation.

Mr. Britton said a couple hundred feet.

Ms. Claire Gorman, (VMRC), stood before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Byrd asked Ms. Gorman if she concurred with the numbers for vegetated and non-vegetated wetlands, and Ms. Gorman said yes.

Mr. Byrd asked Ms. Gorman if there was anything she would like to add and Ms. Gorman said no.

CHAIRMAN BYRD OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Byrd asked if there was anyone who wanted to comment on application 2023- 0657.

Ellen Grimes, (Coastal Resource Management), stood before the Wetlands Board and was sworn in by Chairman Byrd.

Ms. Grimes said she had a question about methodology.

Ms. Grimes said Mr. Britton was taking the bulkhead out, but to move it back and expose wetlands.

Ms. Grimes said that was a rough area, and asked what was going to happen to those wetlands?

Ms. Grimes said she was wondering if a toe scourer of larger rock that would not move around was considered to protect the exposed wetlands.

CHAIRMAN BYRD CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Getek asked, as a follow up to the question Ms. Grimes asked, if there was something they could suggest to keep those wetlands from disappearing.

Mr. Taylor asked Mr. Britton how long it would take him to complete the bulkhead, and Mr. Britton said about one and a half weeks.

Mr. Badger said the new proposed bulkhead was not in the Board's jurisdiction. If any scourer protection needed or required VMRC would have to talk to the applicant about that.

Mr. Byrd asked Ms. Gorman if she would like to respond to that.

Ms. Gorman said that Mr. Badger was correct. Anything channelward of mean low water would be VMRC's jurisdiction.

Mr. Badger said it was down to if the Board thought the proposal was appropriate for the site, and if the loss of 295 square feet of wetlands was appropriate in this case.

Mr. Bader said since the bulkhead was in VMRC's jurisdiction, if they, (the Board), decided this was an appropriate project with the fill, VMRC could kill it on their own without reviewing their decision. VMRC could just deny the bulkhead.

Mr. Byrd said he believed that was correct and asked Ms. Gorman to confirm.

Ms. Gorman confirmed that was correct.

Mr. Taylor said they were charging for wetlands that was created by a failing bulkhead, it was not natural.

Mr. Badger said since the adjacent property was already permitted for a bulkhead and backfill this was just a continuation of it, and he consider this an appropriate application.

Mr. Bader asked, to confirm, that there was nowhere on site to mitigate the loss.

Mr. Britton confirmed that was correct.

Mr. Getek said anything else they could suggest was not in their jurisdiction.

Mr. Byrd asked Mr. Britton if his client was okay with the 295 square feet, and Mr. Britton said yes.

Ms. Nunnally asked that page 17, number 3, to reflect the correct wetlands impacts.

On a motion made by Mr. Taylor and seconded by Mr. Badger, the Wetlands Board voted to issue a permit (valid for (1) year, for Chip Bundick- VMRC# 2023- 0657, for the construction of a 147 linear feet replacement bulkhead with the following conditions:

1. Pay a total of \$5,310.00 into the mitigation fund for 30 square feet of impacts to non-vegetated wetlands and 265 square feet of impacts to vegetated wetlands.

The property is located on Chincoteague Island, VA 23336, tax map#(s) 45-A-5.

B. Benton & Tina Davenport- VMRC# 2023- 0694

Proposed replacement of two short, failing bulkheads around a culvert pipe with two 25 feet bulkheads. Also, the installation of two 20 feet long bulkheads under a farm road and a new 24 inch culvert pipe located in Hallwood, VA 23359, tax map#(s) 39-A-108.

Ms. Nunnally gave a summary of the project adding that the wetlands impacts were 25 square feet of vegetated and 20 square feet of non-vegetated wetlands.

Ms. Nunnally said there would be 180 square feet of mitigation on site next to the first driveway.

Mr. Byrd said he agreed with the site location for the mitigation, and asked Ms. Nunnally if she agreed that it was an appropriate site. Ms. Nunnally said yes.

Ms. Ellen Grimes stood before the Wetlands Board on behalf of the applicant and had already been sworn in.

Ms. Grimes said the project had been changed and that she sent the things to them today.

Ms. Grimes said the driveway to the south, with the concrete pipe, was not in VDOT's right of way. The second one, the northern one, was in VDOT's right of way.

Ms. Grimes said VDOT came out and came up with a plan that was not a bulkhead around the pipe, but they feared there would be leakage.

Ms. Grimes said VDOT wanted a certain construction methodology, and she asked Ms. Nunnally if there was any way she could put up on the screen what she sent her this morning.

Ms. Nunnally said no.

Ms. Grimes asked Ms. Nunnally if there was a way to connect what she had to her computer, and that answer was also no.

Ms. Nunnally asked Ms. Grimes were there were fewer wetlands impacts. Ms. Grimes said the construction was all different and she was going to double the wetlands impacts.

Ms. Grimes said she only had the new information on her computer and could pass it around. She added that they now had VDOT approval.

Ms. Grimes said the pipes were coming out, filter cloth put down, aggregate would be put down on top, the pipes would be put on top of the aggregate, more aggregate, and then earth would be put on top of it.

Ms. Grimes said VDOT did not want to see the bulkhead, because of how the sheathing would be driven.

Ms. Grimes said both driveways were going to be constructed the same way, even both crossings, even though the southern one was just a driveway.

Ms. Grimes said because of this, they might need to be constructed a little differently so she was going to double the wetlands impacts.

Ms. Grimes said there was a debris area slightly north of the southern driveway, and that they were going to clean it out.

Ms. Grimes said that the debris had raised the elevation so that no marsh grass can grow there, but that once it was returned to grade it would be planted.

Mr. Badger asked if there was a mitigation plan and Ms. Grimes said no.

Ms. Nunnally said the application needed to be continued. Mr. Badger and Mr. Byrd agreed.

Mr. Byrd said they had not had time to review the changes.

Mr. Getek asked if VDOT, being a state agency, needed a permit from the Wetlands Board or VMRC.

Ms. Grimes said she could not answer that and that it was a VDOT question.

Ms. Grimes said the Davenport's were present. The northern crossing was for farm equipment and that was why it was being done so widely.

Ms. Grimes said it was farming season and this delay means that the farmer was still going to have problems getting in and out.

Ms. Grimes asked if there was a way to speed this up.

Mr. Getek said, if he remembered correctly, state agencies did not need to acquire a permit with the local Wetlands Board or VMRC.

Ms. Grimes said this was not a VDOT project. This was a personal project going across a VDOT easement. VDOT wanted the culvert and all its accoutrements to be within their spec, because it was in their easement.

Mr. Byrd said this was a tough one being they did not have a new plan to look at. It would be hard for them to approve it.

Ms. Nunnally said if there were any parts that were not in the board's jurisdiction they could start on that.

Mrs. Tina Davenport, (applicant), stood before the Wetlands Board on her on behalf and was sworn in by Chairman Byrd.

Ms. Davenport said their issue with the northern entrance was that it was eroded about 10 feet in the year that they've had the property. Their farmer, Mr. Broadwater, cannot make the turn off of Wessells Farm to get the combine in to do any work.

Ms. Davenport said he already missed the first one and he was trying to make the fall.

Ms. Davenport said he could not get in the southern entrance due to the forestry.

Mr. Byrd said he agreed with Ms. Davenport and understood her.

Mr. Byrd also said something could be used in the meantime to get the equipment in and out and that it had been done before.

Mr. Benton Davenport, (applicant), stood before the Wetlands Board on her on behalf and was sworn in by Chairman Byrd.

Mr. Davenport said that Mr. Broadwater was tired of putting stuff down on the side trying to get his equipment in.

Mr. Davenport said the last time he spoke with Mr. Broadwater said he was afraid of losing his equipment, and that he hoped they could get this done to make soybean season.

Mr. Byrd asked Mr. Davenport to confirm what Mr. Broadwater said to him, and Mr. Davenport said those might not have been his exact words. He spoke with him over the phone and that was the way he took his comments.

Mr. Byrd asked Mr. Davenport how long he had owned the property and Mr. Davenport said a little over 1 ½ years.

Mr. Byrd said that Mr. Broadwater had been tending to the land for 10 – 15 years. He knew they had been facing that a long time and that it was a pain in the neck, but that was part of what they, (the Board), had to do to fulfill their jobs.

CHAIRMAN BYRD OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Byrd asked if there was anyone who wanted to comment on application 2023- 0694.

Mr. Johnathan Mudd, Mudd's Marine Construction, appeared before the Wetlands Board and was sworn in by Chairman Byrd.

Mr. Mudd said to fix it until they could get logging mats to help get their equipment in/out until they could get their permit for the driveway construction.

CHAIRMAN BYRD CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Taylor wanted to ask Ms. Gorman about tidal ditches in the VDOT. When crossing over did VMRC have anything to do with it?

Ms. Gorman said it was out of their jurisdiction because the ditches were manmade.

Mr. Taylor said it was VDOT's land so they had total say or VDOT would have to become part of the permit, because they cannot grant a permit on someone else's property.

Mr. Taylor said he was thinking like Mr. Getek, that if they, (the applicant), had a VDOT permit they had all they needed.

Ms. Gorman reiterated Ms. Grimes's earlier statement that VDOT was not the applicant. The applicant had an easement with VDOT so it was not a VDOT application.

Ms. Gorman said a permit was still required from the Wetlands Board.

Mr. Taylor still had questions on the topic and Ms. Gorman said regardless they would need to see the application.

Ms. Gorman said since it was not in front of any of them, and she did not feel comfortable speaking on it without seeing the revisions.

Mr. Badger asked if the revisions were there and Ms. Nunnally said no.

Ms. Nunnally said she did not have time to look at them and Ms. Gorman said VMRC had not received them.

Mr. Badger said they did not know what the new mitigation site looked like either and that the application was incomplete.

Ms. Grimes asked the Board members exactly what they needed, or she could handle it after the meeting with Ms. Nunnally.

Ms. Nunnally said they could handle it after the meeting.

Mr. Badger also requested a mitigation plan.

No motion was made to continue, but it was stated that the applicant needed to come to the next month's meeting with revisions and a mitigation plan.

C. Anthony J. or Christina M. Campitelli- VMRC# 2023- 0855

Proposed installation of a 70 linear feet navy style bulkhead located in Greenbackville, VA 23356, tax map#(s) 5A3-1-1435.

Ms. Nunnally gave a synopsis of the project adding that there were 206 square feet of impacts to vegetated wetlands and 75 square feet of impacts to non-vegetated wetlands.

Mr. Mudd said the numbers were 180 square feet of vegetated and 80 square feet of non-vegetated impacts.

Ms. Nunnally said she would look into why the numbers were not right.

Ms. Nunnally said there was a difference of 21 square feet between what she had and what Mr. Mudd had.

Ms. Nunnally said she would go back out and measure again.

Mr. Mudd said they would pay for the extra square footage to move the project forward.

Mr. Getek said the property line was not all the way to the bulkhead to the north so a return wall was being put in. Mr. Getek said he was curious about that.

Mr. Getek pointed out the area he was concerned about and Mr. Mudd said that was not the applicant's property.

Mr. Mudd said that he reached out to the adjacent property owners

Mr. Badger asked if there were revised drawings that they had not seen.

Ms. Nunnally said yes.

Mr. Mudd said yes, it was in the pamphlets the handed out.

Mr. Johnathan Mudd, (Mudd's Marine Construction), stood before the Wetlands Board on behalf of the applicant and had already been sworn in.

Mr. Mudd said they tried pulling it back to stay out of the board's jurisdiction and it did not work out that way. Mr. Mudd said they put it back where they originally had it.

Mr. Byrd asked Mr. Mudd, for the record, to go through his task of contacting neighbors.

Mr. Mudd said they received a response for the approval and also sent a letter asking if they would like them to continue to through their property, but heard nothing back on that.

Mr. Badger said the rational on the location on both ends would be a continuation of the bulkhead on the right hand side?

Mr. Mudd confirmed that was correct.

Mr. Mudd said when they, (the neighbor), closes theirs in, or they will be fined each month, everything will be in line. Otherwise it would be a reverse return.

CHAIRMAN BYRD OPENED THE FLOOR TO PUBLIC COMMENT

Mr. Byrd asked if there was anyone who wanted to comment on application 2023- 0855.

CHAIRMAN BYRD CLOSED THE FLOOR TO PUBLIC COMMENT

Mr. Getek said he wanted to get clarification on the vegetated and non-vegetated numbers and to see if everyone was in concurrence with them.

Ms. Nunnally said she would go verify.

Mr. Byrd said the permit would be based on verification of the measurements and that it needed to be in the motion.

Mr. Badger said one of the things that had gotten them in trouble before with VMRC was not understanding exactly what the square footage was when they permitted.

Ms. Nunnally said the application in question had drawings that were incorrect, but this current application's drawings were correct.

A short discussion ensued.

Mr. Getek asked Ms. Gorman if she had been to the site, if she had anything to say on the square footage debate, and if she was comfortable with the discussion.

Ms. Gorman said she had been to the site. Ms. Gorman did not know what the discrepancy was with the square footage, and did not feel comfortable speaking on it.

Mr. Getek asked if the numbers presented seemed in the ballpark and Ms. Gorman said yes.

Mr. Badger said Captains Cove had always been a place where in the canals they used bulkheads instead of rip rap or living shorelines, because it did not make sense there. In the past twenty years,

or better, the alignment was trying to have the least impact to the canal and wetlands as possible, but still aligning the bulkheads with adjacent properties.

Mr. Badger said with that in mind, this seemed to be appropriate.

Mr. Getek said having this linear was appropriate for this particular area due to navigational purposes.

On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted to issue a permit (valid for (1) year, for Anthony J. or Christina M. Campitelli- VMRC# 2023-0855, for the proposed installation of a 70 linear feet navy style bulkhead with the following conditions:

- 1. Pay a total of \$4,680.00 into the mitigation fund for 180 square feet of impacts to vegetated wetlands and 80 square feet of impacts to non-vegetated wetlands.*
- 2. Number will be based on verification by staff*

The property is located Greenbackville, VA 23356, tax map#(s) 5A3-1-1435.

4. OTHER BUSINESS

A. In Lieu Wavier Checklist

Ms. Nunnally said they wanted a way to consistently look at dredge projects when they were in an area that had been dredge in history to see how they could reduce the cost of their wetlands mitigation.

Ms. Nunnally said she developed a checklist for them to determine whether it would be the right choice to either reduce or waive the mitigation fee in historically dredged areas.

Ms. Nunnally asked the board members to take a look at it and let her know if it seemed logical to them.

Mr. Byrd said it was a guide that they were all going to look over. Mr. Byrd said it might not apply in every case, but it would give them a place to start.

Mr. Byrd asked the other board members to look at it and come back with any ideas, changes, additions, subtractions, etc.

Ms. Nunnally said the checklist was designed so that if there was a natural area it would not work with the checklist. There would be no reduction using this checklist.

Ms. Nunnally said it only applied to and reduced

Mr. Badger had a question about the very last asterisk, reduced by 20% for numbers 1 & 2 and 10% for each condition that applied to 3-8.

Ms. Nunnally said if all boxes were checked there would be a total way of defeat.

Ms. Nunnally said she thought the two most important qualities were the manmade basin or canal and the historically dredged.

Ms. Nunnally said if all eight boxes were checked there would be a 100% reduction in cost, but if they did not like it she would change it.

Mr. Byrd said it would be for review.

Ms. Nunnally asked the board members to email her their thoughts, and she would try to have a revision for the next meeting.

Mr. Getek asked if there were other County's Wetlands Board's using something similar, and Ms. Nunnally said she had not found anything.

Mr. Getek asked once they decided what they were going to do if it would be given to the County Attorney to review to make sure what they were doing was appropriate.

Ms. Nunnally said she thinks they have the authority to reduce it however they want to.

Mr. Taylor, asked to confirm, that this was only for properties that had already been disturbed.

Ms. Nunnally confirmed that was correct.

6. **NEXT MEETING**

The next Wetlands Board meeting is scheduled for Thursday, July 27, 2023 at 11:00 a.m. in the Accomack County Board Chambers, Room 104, in Accomac, VA.

7. **ADJOURNMENT**

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

The meeting was adjourned at 11:21 a.m.

T. Lee Byrd, Chairman

Chontese Ridley, Environmental Permit Specialist