

1 **ACCOMACK COUNTY WETLANDS MINUTES OF SEPTEMBER 28, 2023**

2 At a meeting of the Accomack County Wetlands Board held on the 28th day of SEPTEMBER 2023 in the Accomack
3 County Administration Building Board Chambers, Room #104, in Accomac, Virginia.

4 **1. CALL TO ORDER**

5 **MEMBERS PRESENT AND ABSENT**

6 Wetland Board Members Present

7 Mr. T. Lee Byrd, Chairman

8 Mr. George Ward, Vice Chairman

9 Mr. Gene Wayne Taylor

10 Mr. Timothy Getek

11 Mr. David Montgomery, Alternate

12
13 **Others Present:**

14 Ms. Chontese Ridley, Planner I

15 Ms. Beth Nunnally, Environmental Planner II

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

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

19
20 **DETERMINATION OF A QUORUM**

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

22
23 **2. ADOPTION OF AGENDA**

24 Mr. Getek made the note that the two JPAs under “New Business” would be presented as one.

25
26 **On a motion made by Mr. Taylor and seconded by Mr. Ward, the Wetlands Board voted to**
27 **approve the agenda.**

28 **3. MINUTES**

29 **A. August 24, 2023**

30
31 Mr. Getek said that there were a couple typos and that he gave that information to Ms. Ridley for
32 correction.

33
34 **On a motion made by Mr. Getek and seconded by Mr. Montgomery, the Wetlands Board**
35 **voted to approve the August 24, 2023 minutes with modifications.**

36
37 **4. NEW BUSINESS**

38 **1. Michael Pulaski- VMRC# 2023- 1659 & 1660**

39 Proposed construction of a 90 square feet long offshore breakwater, installation of 80 square feet of new
40 rip-rap berm and 110 square feet of offshore breakwater located in the Captain's Cove subdivision of
41 Greenbackville, VA 23356, tax map#(s) 5A3-1-1458 & 1459.

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

45
46 Ms. Nunnally gave a summary of both projects stating that they were located in Captain's Cove,
47 and that she would be starting with the adjacent property, (the vacant lot).

48
49 Ms. Nunnally said a riprap breakwater that was 12 feet wide and 90 feet long and a berm in the
50 uplands was proposed. There was no mitigation, but there was 450 square feet of fill in subaqueous.

51
52 Ms. Nunnally said they the proposed berm would tie into the adjacent property on the other side,
53 and as it crossed the property line, it would connect to the breakwater. Ms. Nunnally was not sure
54 how it would terminate.

55
56 Mr. Montgomery asked if the berm was in the board's jurisdiction and Ms. Nunnally said no.

57
58 Mr. Taylor asked Ms. Nunnally where the low water mark would be. Ms. Nunnally said it was up
59 against the marsh edge. The marsh had eroded over the years so it drops off abruptly about 3 feet.

60
61 Ms. Nunnally then began to give a synopsis on the main property were the applicants vacation
62 home was located. The installation of a riprap berm around the foundation of the house was
63 proposed. A riprap breakwater that would connect to the adjacent property was also proposed.

64
65 Ms. Nunnally said there was 900 square feet of vegetated impacts along the side of the house so
66 they could have some uplands there. The applicant wanted to fill in the vegetated wetlands and put
67 a shed there.

68
69 Ms. Nunnally then gave a general description of the whole project. The proposed riprap berm was
70 to protect the home that was currently on pilings. Mean high water undercuts the home and extends
71 under more than half of the home from her observation. Again, there was 900 square of wetlands
72 to be filled on the northern side of the house, and mitigation would be done on site along the
73 southern property line.

74
75 Ms. Nunnally said the planting plan included 900 square feet of spartina patens and would take
76 place next planning season and monitored for three years.

77
78 Mr. Taylor asked if the 60x16 was in VMRC's jurisdiction. Ms. Nunnally said that was correct.
79 The mitigation was in subaqueous, but the actual impact was in the board's jurisdiction.

80
81 Ms. Nunnally said VIMS and Mr. Vanlandingham had both went to the site and looked it over, but
82 she had not yet received the report from their observations.

83
84 Mr. Charles Ward, (Starboard Environmental), appeared before the Wetlands Board on behalf of
85 the applicant and was sworn in by Chairman Byrd.

86
87 Mr. C. Ward said this was a big project and that he had asked for guidance on it. Mr. C. Ward
88 thanked the board, county staff, VMRC, VIMS and all who had been involved.

89
90 Mr. C. Ward said they were trying to roll the clock back fifteen years before the off shore
91 breakwater was removed. That breakwater protected the properties from the 7-8 mile fetch runs
92 the way to the Chincoteague inlet and under the bridge.

93 Mr. C. Ward said they were trying to recreate what was there. Mr. Pulaski did not own the property
94 when the breakwater was removed, but was sure he would have fought and prevented it from
95 happening if he had.

96
97 Mr. C. Ward said when waves hits Mr. Pulaski's home it was not hitting a bulkhead. The waves
98 were hitting the pilings of his house.

99
100 Mr. C. Ward said Mr. Pulaski was not only trying to correct that problem, but to recreate the natural
101 wetlands that existed there that had been lost at over 5 feet per year. The two properties had lost
102 over 50 square feet of vegetated marsh.

103
104 Mr. C. Ward said they were there regarding the filling of wetlands within the board's jurisdiction.
105 Before the breakwater was removed, no wetlands were there. It was uplands vegetation between
106 the houses, because there was no saltwater impact. The marsh was further out and absorbed it, but
107 over the last fifteen years, as the marsh was cut back, saltwater intrusion led to the growth of
108 saltwater tolerant species.

109
110 Mr. C. Ward said Mr. Pulaski was proposing to fill the area next to the house because there is no
111 space around his home. They were hoping to generate enough space for the applicant to have an
112 outdoor shed and to make use of the property north of his home.

113
114 Mr. C. Ward said the maximum width of the berm would be 12 feet.

115
116 Mr. Byrd asked Mr. C. Ward to explain the termination of the breakwater to the pier.

117
118 Mr. Ward said the breakwater as it existed ended at about where the pier was now. The plan was
119 if the breakwater ended there, they have eliminated the wave action. The breakwater would stop
120 as close to under or at the pier as they could get it.

121
122 Mr. Glen Pulaski, (applicant), appeared before the Wetlands Board and was sworn in by Chairman
123 Byrd.

124
125 Mr. Pulaski said he and his wife purchased the property 2 ½ years ago and it was not intended to
126 be a vacation home. They were supposed to be retiring there, but they cannot.

127
128 Mr. Pulaski said his vacant lot was steady losing land and was encroaching up to where they park
129 their cars. They have electrical structures/boxes and the water was coming up and on to them.

130
131 Mr. Pulaski said he was not there to build house, but to protect his house and to restore what had
132 been taken away in the last ten years.

133
134 **CHAIRMAN BYRD OPENED THE FLOOR TO PUBLIC COMMENT**

135 Mr. Byrd asked if there was anyone who wished to comment on application 2023- 1659 & 1660.

136
137 No one wished to comment.

138 **CHAIRMAN BYRD CLOSED THE FLOOR TO PUBLIC COMMENT**

139
140 Mr. Getek said Mr. C. Ward mentioned there were 2-3 feet waves hitting the house, but it was
141 more like 5-6 feet waves during a major storm.

143 Mr. Getek said there was a breakwater there. Gabions were put out there to help with the fetch
144 and the energy of the waves. For some reason they, (Captain's Cove), removed them. At the
145 time, Mr. Getek said he was told that the County said to remove them.

146
147 Mr. Getek said he called the County and the County said they could remove them, but did not
148 have to. There was a misinterpretation of what was said.

149
150 Mr. Getek said he had some questions for Ms. Gorman.

151
152 Ms. Claire Gorman, (VMRC), appeared before the Wetlands Board and was sworn in by
153 Chairman Byrd.

154
155 Mr. Getek said the concept of subaqueous grasses seem great, but that was VMRC's jurisdiction.

156
157 Mr. Getek said he did not know if they, (Wetlands Board), were permitted to allow something
158 like that to happen. That would be out of their jurisdiction.

159
160 Ms. Gorman said anything below mean low water, even if it did involve the conversion of
161 subaqueous bottom to vegetated wetlands, would be VMRC's jurisdiction.

162
163 Mr. Getek asked if that was doable.

164
165 Ms. Gorman said if executed correctly they do permit that type of conversion.

166
167 Ms. Gorman said the board would essentially be giving approval for the riprap revetment around
168 the house, but VMRC would do their own separate review for the proposed conversion.

169
170 Ms. Gorman added that VMRC's approval would be contingent on the board's approval of the
171 other portions of the project.

172
173 Mr. Taylor asked, to confirm, they would be taking wetlands that were subaqueous, (that were
174 not highlands), to use for mitigation.

175
176 Ms. Gorman said this was a complicated project because the fill, (the proposed loss), was in the
177 Wetlands Board's jurisdiction, but the proposed mitigation was in VMRC's jurisdiction.

178
179 Ms. Gorman said it was the board's discretion whether or not it was appropriate to have
180 vegetated wetlands filled with mitigation outside of their jurisdiction.

181
182 Ms. Gorman said if that portion of the project did not get approved by VMRC, not saying that
183 would happen, then the board would be left with at a net loss for wetlands.

184
185 Mr. Taylor said they had never used VMRC's property for mitigation. Mr. Getek that they would
186 be operating out of their jurisdiction.

187
188 Mr. Getek asked if they needed to have further investigation, if the numbers they were dealing
189 with were correct, and if Ms. Gorman was comfortable with the numbers.

191 Ms. Gorman said they did go on site and take measurements, but to be perfectly honest, she had
192 not had time to review the most recent revisions. Ms. Gorman added that the numbers she seen
193 were consistent with what they had seen on site.

194
195 Ms. Gorman said as far as the wetlands mitigation policy went the preferred approach was
196 avoidance, minimization and then compensation.

197
198 Mr. Getek asked Ms. Gorman if she would prefer to have more time to investigate this more
199 thoroughly.

200
201 Ms. Gorman said she would be doing her own review, but they did get comments from SEAS,
202 (Shoreline Erosion Advisory Service through DCR), and VIMS that had not been incorporated
203 into the file yet.

204
205 Ms. Gorman said that if this was one of her wetlands projects, and VMRC was the default board,
206 she would wait until she had those comments.

207
208 Mr. Montgomery mentioned the letter of support that was submitted by a neighbor and asked
209 where they were located on the map.

210
211 Mr. C. Ward said they were located to the north of the property.

212
213 Mr. C. Ward said he wanted to clarify somethings. When talking about subaqueous, it was
214 subaqueous bottom and not subaqueous vegetation. There was no grass there due to the wave
215 action ripping it out.

216
217 Mr. C. Ward said they will filling subaqueous bottom, there was no SAV there and it was not
218 identified as an SAV area.

219
220 Mr. C. Ward said if they were able to recreate the marsh it would become the board's jurisdiction
221 again.

222
223 Mr. Taylor asked Ms. Gorman, to confirm, that VMRC allows the use of their property for
224 mitigation of wetlands.

225
226 Ms. Gorman said that was on a case-by-case basis and referred back to the preferred approaches
227 for wetlands mitigation. If there were no other alternatives, and the Board and VMRC agrees that
228 is an appropriate use of wetlands and mitigation location, then yes, they have done that.

229
230 Ms. Nunnally suggested a one-month continuance.

231
232 Mr. C. Ward added that even if the board decided not to allow the filling of the wetlands Mr.
233 Pulaski was still going to ask VMRC for permission to plant marsh grasses.

234
235 **On a motion made by Mr. Getek and seconded by Mr. Taylor, the Wetlands Board voted**
236 **on a continuance until the October 26, 2023 meeting for Michael Pulaski- VMRC# 2023-**
237 **1659 & 1660, for the proposed construction of a 90 square feet long offshore breakwater,**
238 **installation of 80 square feet of new rip-rap berm and 110 square feet of offshore**
239 **breakwater on the following basis:**

240 *1. Receiving documents from SEAS and VIMS have been received and*
241 *reviewed.*

242 **The properties are located in the Captain's Cove subdivision of Greenbackville, VA 23356,**
243 **tax map#(s) 5A3-1-1458 & 1459.**

244
245 **6. OTHER BUSINESS**

246 **A. New Calendar**

247 Discussion on the implementation of a new calendar

248
249 Ms. Ridley, (Planner I), appeared before the Wetlands Board and was sworn in by Chairman
250 Byrd.

251
252 Ms. Ridley informed the board that they were going to doing something new. There are many
253 times where people are not paying for the review or their advertisement.

254
255 Ms. Ridley said currently, whether an invoice had been paid or not, staff was still allowing them
256 to come before the board.

257
258 Ms. Ridley said in some cases, (not all), if an applicant is denied by VMRC or they decide not to
259 the project the applicant does not pay the County at all. The application has been reviewed,
260 advertised, and the board has heard it, but the County is held liable for those fees.

261
262 Ms. Ridley stated that Northampton County and many counties across the bay do not allow
263 anyone to be heard before their board until the advertisement and the application fees have been
264 paid.

265
266 Ms. Ridley said the meeting dates would not change, but there was the addition of “Application
267 & Fee Due Date.”

268
269 Ms. Ridley said the 2024 calendar would be given to the board at the October meeting. It would
270 then be sent out to contractors, agents, and added to the County’s website.

271
272 **7. NEXT MEETING**

273 The next Wetlands Board meeting is scheduled for Thursday, September 28, 2023 at 10:00 a.m. in the
274 Accomack County Board Chambers, Room 104, in Accomac, VA.

275
276 **8. ADJOURNMENT**

277 **On a motion made by Mr. Ward and seconded by Mr. Taylor, the Wetlands Board voted to**
278 **adjourn the meeting.**

279
280 The meeting was adjourned at 11:00 a.m.

281
282
283
284 _____
285 T. Lee Byrd, Chairman

286
287 _____
288 Chontese Ridley, Environmental Permit Specialist