

Minutes  
Essex County Wetlands Board  
109 Cross St., Tappahannock, VA,  
Meeting of August 24, 2023  
6:00 PM

A meeting of the Essex County Wetlands Board was held on August 24, 2023, in the School Board Meeting Room at 109 Cross St., Tappahannock, Virginia, with the following present:

Present:

Jeff Howeth – Chairman  
Nate Parker IV  
Kevin Goff  
Robbie Howeth

Absent:

Barry Bates  
Bunky Davis

Also present:

Kelly McKnight, Planning and Zoning Office Manager  
Jay Woodward, VMRC

**CALL TO ORDER**

Chairman Howeth called the meeting of the Essex County Wetlands Board to order.

**ROLL CALL**

Ms. McKnight called the roll. A quorum was met.

**AGENDA**

Chairman Howeth stated that they only have one public hearing.

**APPROVAL OF MINUTES**

Chairman Howeth asked if there was a recommendation for approval of the minutes from the July 27, 2023 meeting.

Mr. Goff made a motion to approve the minutes. Mr. Howeth seconded the motion. AYES: 4  
NAYES: 0 ABSENT: 2

## **PUBLIC COMMENTS**

None

## **PUBLIC HEARINGS**

### **VMRC # 23-1509 - Sherry Bryant**

Mrs. Bryant, 754 Coleman's Island Rd, they bought the house about 5 years ago and it has the old style culvert protector in the front for the seawall. There are places in it that are cracking and deteriorated and they want to go in and fix that.

Chairman Howeth stated that she has a well curb and seawall like a lot of the neighbors have. Eventually time gets them all. He turned it over to VMRC to see if they had any concerns.

Mr. Jay Woodward stated that he has not been to the site yet. It does not require a permit from VMRC because it is not below low tide.

Chairman Howeth stated he is going to go through the drawings because there were a couple of things that didn't quite jive. He stated that what they are requesting, which is allowable to request, is a structure 2' in front of an existing structure. There are considered wetlands between the existing structure and where you want to be. Typically their boards policy is you to have zero between the two. They try to get everything as far back and close to the concrete wall as possible. That gives you the minimum amount of wetlands that they would need to try to compensate for. The practical reasoning of what they are doing, you are putting vinyl seawall in front of, that is almost the farthest part back, you can almost put the vinyl. He is going to assume, it talks about concrete back fill, he can't imagine them putting any kind of concrete in this. You need to use sand to get it dropped down in those grooves and have it stay there. You might need to encourage it with a little water behind it as you are putting it in to get it to go. One of the things that they try to get them to do is come back as close as they can and then try to get them, if this has any kind of vegetation on it at all, Jay will make that final determination tonight, they will have them mitigate that. If there is no vegetation you are going to be pretty safe. Basically you are taking sand that is behind you and sand that is in front of you and looking down on both sides it looks the same.

Mrs. Bryant stated there is nothing.

Mr. Woodward stated if she had pictures on her phone since they had not been there. Generally speaking, the wetlands board staff or himself, from the VMRC has been to the site. In this particular case no one has been there.

Chairman Howeth stated he lives just past them in Riverdale and he goes by there a few times. He kind of knows and there is not much vegetation except some on the way in by the road and then down by the lots with Bud Smith and those guys have way down on the far end. Everything has been hardened down there because it is a North East faced shoreline. If you had

vegetation is all gone by now. He thinks what you are going to find is that it is non vegetated to what's there.

Mr. Woodward stated a long that line if you go to the section drawing this would indicate that the mean high water varies and the new wall will be behind the intersection at the bottom and the high water line. I.E. at mean high water. Your jurisdiction and the States definition of non vegetated wetlands extends only mean low tide to mean high tide. Anything beyond that vegetative or non vegetative. Bottom line is if you can keep it at or above the high tide line he thinks the sheets right in front of the concrete, with the batter piles on the outside. The batter piles aren't considered fill not like a wall with fill behind it. It looks like that is how it is constructed. He likes Roberto and worked with him a lot. He is surprised he is not here. As long as they know how this project is going to be done we can get to an agreement on it. Without him here, concrete behind here there would need to be revisions in the plan.

Chairman Howeth stated he thinks that they are going to be just a few revisions but what he remembers of this is doesn't low tide sit right on that wall? Isn't it right at the base of it? Low tide there is a little beach and high tide there is the water mark. So they are actually in that intertidal zone which we do regulate.

Mr. Woodward stated that in order to be a beach it has to extend above high tide and natural vegetation. From a jurisdiction standpoint the place to put the wall is out of their jurisdiction.

Mr. Goff stated if there is sand above the mean high water mark that is jurisdictional under beach and dune act. That is beach until you get to a structure or reach the limit of sand mobilization.

Mr. Woodward sated yes, but if that wall is at high tide and there is no beach and dune behind it.

Mr. Goff stated so one way or another where they want to put this thing is either intertidal or on the beach above the mean high water marking. It has got to be one or the other and either way they have jurisdiction.

Mr. Woodward stated if it is in fact a beach. There is not enough information tonight for you to approve or deny it. But if the impacts get to zero in the definitions of beaches and dunes there has to be interplay. He stated geologists have said in order to have a beach and act like a beach it has to have enough material behind the beach, not just a couple of inches of sand.

Mr. Goff stated he thought the definition as far as regulation is that it is from mean, it is any sand that is mobilized by fluids from mean high water until you reach the limit of mobilizable sediment or some humanmade structure. So even if it is 6 inches of sand, it is still beach.

Mr. Woodward stated you are right, designed like that there is no beach above the current wall and the current wall is at high water. The area in front of it is strictly non vegetative wetlands, not beach.

Mr. Goff stated regardless, they can go take measurements and find out. Mean high water is a nebulous thing anyways. He is sure there is no vegetation there. They still want to be able to say if we want it build smack dab in front of the existing structure and he thinks the have jurisdiction to say that.

Mr. Woodward asked if vinyl sheets are 2" wide and is that the widest?

Chairman Howeth stated it may be 3" or 4" but it is corrugated so it is only ½ of whatever length it is.

Mr. Goff stated in past decisions where there is a failing seawall they have been agreeable to either removing the failing seawall and building in the same footprint, but they have also said it has to be right in front of it.

Chairman Howeth stated at the minimum.

Mr. Goff stated yes but not up to 2' and that is what they want to be able to say here. That is why jurisdiction matters.

Mr. Woodward stated from a construction standpoint, unless those well curves have a flange at the bottom. If not those sheets are going to go straight in front of the concrete.

Chairman Howeth stated they are well curves and should go right by them.

Mr. Woodward stated they used to call them sea planters because if enough sand gets in them you can have sea grass growing.

Mrs. Bryant stated the only picture she has, and she has only seen it one time but the water is way out.

Mr. Goff asked if the really needed to see the photo?

Chairman Howeth stated if she didn't have a good one it is ok. They all know where this place is, there is nothing there. He think that are in the intertidal zone so we are going to go ahead and take action on it to what is there. It is no vegetation, and again if he is wrong Mr. Woodward will let him know. They could act if they desire to do so, set the criteria of what they want the drawings to be revised to and if the drawing can't be revised being exactly to what they think the water regime is then they aren't going to approve it anyway.

Mr. Woodward stated that other wetlands boards, instead of dragging it out to next month, but subject to review. You will need to have another look at this to make sure it meets the criteria and he thinks Roberto can.

Chairman Howeth stated he thinks this has happened before with the same agent and other agents to. If they think the fixes are simplistic enough then everybody understands what they are asking then they can move on with it. If we don't or are not comfortable we just say we are going to table it for 30 days until we iron this out. He is just one voice up there with three other

members. This is why we have this point for discussion. He noticed something a couple of pages back where it talked about vinyl sheets, timber pilings every 8' on page 18. He said topsoil back fill, they would rather see sand from upland source and then he wrote concrete to fill each connection. He had no idea what they meant.

Mrs. Bryant stated she had a question to what they were talking about earlier when it said 2' in front of. They have the culverts where every one of those meet there was another one in front of that. Those are completely deteriorated there are just pieces of concrete there. She thinks that is where the space is coming from.

Chairman Howeth stated the drawing only shows a single line.

Mrs. Bryant doesn't want to show the picture with the water way out because it looks like she has a beach but she doesn't. But she does think that is the problem.

Chairman Howeth stated that now she is telling them something he does not have in his minds eyes picture. If it truly is staggered they probably need to haul it and look at it to see it. They don't want them to bury anything that is going to cause them problems in the future.

Mrs. Bryant stated nor do they want it. If it is a matter of digging them out.

Chairman Howeth stated you have a good chance to fix it.

Mr. Parker stated he thinks the question of why did it have to be 2'? What she is telling them is explain why Roberto said he wanted the 2' because that was going to be a lot easier.

Chairman Howeth stated he had 2' then had one in the middle that was in front of it. So he had 2 big circles and another big circle here. But he can tell them they don't want to put concrete. Unless you are going to do it the right way. He has seen it done before where they put the form right in front of that seawall and pour concrete probably no more than 4 or 5 inches thick. They concrete it up and over the top and lock it in that way and it is beautiful and durable but you have to really want to do that. You have to have the form work that defines the concrete because you can't have any trace of that wet concrete going into the river.

Mrs. Bryant stated they have had very little communication about all of it. She certainly doesn't know what the restrictions are, that is why she is paying him all this money to do it. This is costing a ton of money so they want to make sure it is done right.

Chairman Howeth stated they do their best not to let them make mistakes. None of them can tell you what is going to happen tomorrow on the river.

Mrs. Bryant stated that is why she is asking. She doesn't want to waist money to go fill that up.

Chairman Howeth stated they are going to try and figure it out. He asked them if they were ok tabling it 30 days until they can iron these details out.

Mrs. Bryant stated yes, her only request was not to do it during the summer.

Chairman Howeth stated he is thinking at this point since it has raised 2 more questions to what is there. They are ok to table it for next month which lets us iron out all these things. Someone can meet you out there and say this is the story of the beach and not the beach. This is the story of the 2' and work with you to say this is what we have seen in the past. This is what we have permitted in the past. He can give addresses so they can see how it worked out and don't do this because it was a horrible mess. That does happen on occasion. You can do the prettiest on that has every been done in the world but if they can't put it to the ground it is a waste of time. If you are ok with that he thinks this is a very solvable issue to what is there and would really like to see it because he wasn't thinking. Maybe he isn't thinking in the right spot and if he is not he apologizes but he had the single curbs pictured in his mind. Because that is a lot of what is down his way at Riverdale. He doesn't remember too many of the double curbs.

Mr. Bryant stated where the larger ones were they had the smaller ones in between. Most of the smaller ones are gone and aren't even there.

Chairman Howeth stated that may be the right answer, as to, while you have a machine there is to simply take them out. The thing he would be curious about is if you take a rod and poked down in front of them to see if anyone poured a mushroom style base to that bottom one to see if we do have to push it out. The Vinyl isn't going through it at least we would know what we are dealing with.

Mrs. Bryant asked if they would have done that to the front row and the second row.

Chairman Howeth stated probably only on the primary one.

Mr. Woodward asked if they were going straight back after and if he could follow.

Mrs. Bryant stated yes.

Mr. Woodward stated unfortunately only 2 of the board members can follow or it becomes a public meeting.

Chairman Howeth stated he thinks they are ok at this point. The few other things they will know it when they see it. They will give them from now until this would come back through. What they can do and would probably expedite the process since they probably advertised it. They don't have to make a decision but they can open the public hearing on this.

Hearing no one Chairman Howeth closed the public hearing. He stated they don't have to do that next month. The modifications are going to be minor enough.

Mr. Woodward stated he has worked with Roberto in the past and he does good work. You just have to clarify. He has learned some of what they allow and some they don't.

Chairman Howeth stated they can get him something with those.

Mr. Goff stated let's make that list now so they can communicate with them.

Chairman Howeth asked if they wanted to state them explicitly or wait?

Mr. Goff asked are the concerns they are reviewing are what is the fill going to be like and is there a good reason we can't have 0' in front of the existing.

Chairman Howeth stated and taking the concrete out unless he is going to show them a completely different design.

Mr. Goff stated that is what he meant by fill.

Chairman Howeth stated they should let the fill just be beach sand or course sand. Those are the biggest things. They are checking for a couple of things when Jay goes down there. They are checking for jurisdiction to make sure they are legally telling you the right thing. If he is in, if VMRC is in, he is in. But if he is out, he's out. He won't exercise jurisdiction. If he tells them they don't have jurisdiction, they think they do by this drawing, but if the drawing is not accurate then we need to figure that one out to.

Mr. Woodward stated they need to determine if what they are dealing with is a non vegetative wetlands under purview or a beach under your authority but there are differences and we will do the best we can.

Chairman Howeth asked him if he was going down there to try to verify. There is a little table of numbers, that's why it is important to them, it talks about subaqueous bottom, vegetative wetlands, non vegetative wetlands, beach and dune. They need to make sure, since they go on a state database, that they have accurate measurements to those.

Mr. Woodward stated that one area of confusion is this 5' measurement it front. It says 2' channel but says 5' on the drawings.

Chairman Howeth state that it includes the well curve.

Mr. Goff made a motion to table the application until next month. Mr. Parker seconded the motion. AYES: 4 NAYES: 0 ABSENT: 2

Mr. Parker thanked them for coming in and understanding what they are there to do. They will make it work for everybody. It may take more days but everyone will be happy.

Mr. Bryant asked if they just come back in next month.

Mr. Goff stated that Mr. Woodward will provide them some feedback and you will want to cycle it through Mr. Cazares.

Chairman Howeth stated that they are welcome to come visit anytime. If everything can get done and they all look at the documents with everyone agreeable to them, the public hearing has been opened and closed already so it may not be necessary for you to come back if all the paperwork is correct. They can let them know what is there. If they do come back there will not be anymore questions for them.

## **NEW BUSINESS**

Chairman Howeth stated he wanted to introduce Brian Barnes as the new Zoning Administrator. He came out of Lancaster County. He was secretary for the Wetlands Board in Lancaster County

Mr. Brian Barnes stated he was the staff person for 14 years. Ernie has stated he wants to take the lead on this with Kelly but he is certainly there for them in the field. He loves doing it and the wetlands board stuff. He spent many a day out in the field with boots on or even barefoot. If they ever need someone to go out to the site if it is controversial.

Chairman Howeth stated any expertise is always welcome and there is certainly nothing wrong with having depth of knowledge of the topic.

Mr. Woodward stated that Brian had a Green Shore Solution project way before the term living shoreline.

Mr. Barnes stated he had a lot of living shoreline, lots of plant and marsh grass. If you need him grab him and he will see what goes on. One thing listening to what just happened, he might get up with Kelly, he used to have a checklist in his old office that would capture the minimum standards that the code is asking for. A couple of those things they could have headed off in the office by sending it back. It might still happen again but we could try to help some some time.

Mr. Woodward stated if Kelly will send him something if there is a question.

Mr. Barnes stated not labeling mean high or mean low is good criteria for Kelly to send it back.

Mr. Woodward stated that when people send money it is hard to tell them they are 100% there.

Chairman Howeth stated it is a learning curve process to what is there. There are a lot of nuisances. Kelly will look at them and say she needs him to look at them. He looked at one and missed it to. We do what we have to do and move on.

## **OLD BUSINESS**

Chairman Howeth stated he met with Senator Stewart at Mr. Flournoy's. He is changing consultants since it is not official yet he won't say the name but it is a consultant they have seen before.

Mr. Goff asked consultant for what?

Chairman Howeth stated they are going to redraw.

Mr. Goff asked if they are going to apply again?

Chairman Howeth stated yes. Senator Stewart has asked in his letter to him as the Chairman to try to go down the avenue of voluntary compliance. Which is quite an interesting avenue.

Mr. Goff asked what does that mean?

Chairman Howeth stated voluntary compliance means he basically offers us something that is exact to what happened or could be a variation in shape or whatever. We have to have this much subaqueous, this much wetland based on those aerial photos of what we think happened but it is going to be another application.

Mr. Goff stated not a retroactive application like the other one was to have the thing done to get approval to do the thing that was already done.

Chairman Howeth stated you have two choices there. You try to put it back to what is known as voluntary compliance and all this pressure of compliance comes off. He basically just says he realizes something was not done right there and he is just going to fix it. That is different from the turns in for an after the fact permit for what has been done and wants approval. They start in the same starting block but it is how you travel down that avenue. If you don't offer anything they are just want it to be approved.

Mr. Goff stated in effect he is going to submit an application to un do the thing that was done to disturb.

Chairman Howeth stated he is going to submit an application to say 'he thinks he disturbed "x" subaqueous, disturbed "y" wetlands'. If you think about it this one is well known in the circle he travels in. If you think about the choices they have without going down this avenue which were explained, very eloquently, if we cant come to any terms than we tell them it will be mandatory compliance.

Mr. Goff stated so voluntary compliance is him applying to do the thing he will be told to do if he doesn't do it.

Chairman Howeth stated the only difference he sees is right now he has a little bit of a free hand to make it make a little bit of sense. Where as what was there originally didn't make as much sense. He will have a little bit of latitude for shape with the same area verses we are done, this is mandatory and you have to put it back exactly how you found it. The exact goes to VIMS where they say the wetlands was here, the bottom was here, and the numbers get thrown at you.

Mr. Woodward stated they will have to remove some of that material. This is an awkward violation when you think of the fill, the area, sq ft is fill where a little was yours and a lot was ours. Can we shave a little off of ours to get a little beach area but it is a more sustainable shoreline. A lot of the discussion was how much fill do you need to build the house you want to build. You don't have enough land to build a house because of zoning. They are not going to let you fill their land you will need to purchase other land. You can't deny the man the right to use his property. He will have to remove some of the material. If it were him consulting he would say leave the big rock rip rap perimeter, start digging behind it. Take the plug out then it is a breakwater not a revetment. How much? As afar as they are concerned it should go back to all

of it. The fact that they bought the property after the erosion. He didn't own it back then. He bought it after it had eroded. What did he buy? He bought a lot that was underwater. According to the County, 70% submerged, how do you buy that? You bought nothing. He doesn't buy the 'He just wants to get back to what he had.' He never had it. It hasn't been in existence since Hurricane Isabel.

Mr. Goff stated it is going to be a due process. He is going to voluntarily comply but not comply in the way.

Mr. Woodward stated he is currently voluntarily complying by submitting the new application. He bought himself some time. Soon we will get to a point of we aren't going to keep doing this. But Senator Stewart is involved and he is not only a Senator but a representative as a lawyer for Flournoy.

Chairman Howeth stated that when he brought in the Senator, he doesn't know if they kept up with the Howle in the Wall situation, the restaurant in Mathews. There was a big argument on whether they could or couldn't do things, when he brought in the Delegate down there, the Delegate invoked a power he didn't know existed and that is if he is a Delegate he gets to extend all time frames. Because he is a Delegate he can say he was busy doing Delegate stuff so he needs more time. Rather than having that discussion, Richard Stewart is a great friend of his, he said since all the players are changing except for Flournoy everyone else is gone that we met before. He told him he could give him a couple of months but clearly told him if they aren't seeing any progress you can fully expect us to end this thing one way or another we can't keep doing this.

Mr. Goff stated no we can't it's the third cycle of rethinking.

Chairman Howeth stated we hear about it every month but that is where we are now.

### **ADJOURN**

Having no further business, Mr. Goff made a motion to adjourn. Mr. Parker seconded the motion. AYES: 4 NAYES: 0 ABSENT: 2