

**COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX**

**MINUTES OF THE WETLANDS BOARD**

**DATE: Thursday, October 12, 2023**

**TIME: 7:00 PM – 9:00 PM**

Gerry Hyland Government Center,  
Room 217  
8350 Richmond Hwy, Alexandria, VA 22309

**Wetlands Board Member Attendance**

<b>Name</b>	<b>Present (P)/ Absent (A)</b>	<b>Name</b>	<b>Present (P)/ Absent (A)</b>
Bryan Campbell	A	Kim Larkin	P
John Collins	P	Steve Shappell	P
R. Dean Costello	P	Clyde Wilber	P
Bert Cramer	P		

**In Attendance**

Katie Hermann	Dept of Planning and Development, Fairfax County
Marc Gori	Office of County Attorney, Fairfax County
Mike Johnson	Virginia Marine Resources Commission
Khadijah Payne	Virginia Marine Resources Commission

The meeting was called to order at approximately 7:00 PM.

**1. Call to order and roll call**

Clyde Wilber, Chair, called the meeting to order, and informally the roll was called. A quorum was present.

**2. Restoration Order for 10625 Greene Drive, Lorton, VA**

County staff provided an explanation of the status of the violation at this property, which is a result of an unpermitted construction of a partially built 160 ft long bulkhead replacement, with new pilings and whalers, a covered boat slip with pilings and metal hip roof, and catwalks. The new bulkhead is currently located on Tax Map 113-4 ((1)) Parcel 31. Historical Joint Permit Applications (JPAs) submissions and previous Wetlands Board (“the Board”) actions were summarized. The following staff considerations were then summarized from the county status memo,

*“Due to the long period of non-compliance and willful resistance to resolve the violation, the Board should consider a restoration order that is necessary to recover lost resources or to prevent further damage to resources. The restoration order may include:*

- *Removal of structures installed after the year 2015 from MLW to 1.5 times MHW.*
- *Grading of the areas north and south of the boathouse walkway to obtain minimum vegetated tidal wetlands areas with elevations between MLW and MHW of 533 square feet and an additional vegetated tidal wetlands area from MHW to 1.5 x MHW of 714 square feet. Neither of these areas may be covered. These areas are to be planted with appropriate emergent tidal wetland vegetation of species.*
- *Maintain and preserve the tidal wetland area from MLW to 1.5 times MHW except as provided by 28.2-1302.3.1-12 of the Virginia Code. Use of and activities in this tidal wetland area must not impair the natural functions of the vegetation or alter the natural contour of the wetlands.”*

Staff also provided the items below as potential conditions that could be included in a restoration order:

*“In addition, the following additional conditions may be included in the restoration order:*

1. *Engage a Wetlands Plant Professional to monitor the design, installation, and progress of the restored wetlands in accordance with Appendix F of VMRC Enforcement Procedures, September 1991.*
2. *Provide a progress report from a certified wetlands professional to the wetlands board every six months prior to the completion of the restoration.*
3. *Provide a final wetlands report certifying successful restoration one year after completion of the restoration. If such a certification cannot be made, further restoration shall be implemented.*
4. *Within 120 days of the issuance of the restoration order by the Board, or the approval of a wetland permit by the Board the following may occur:*
  - a. *Provide the Board with a signed contract to the wetlands plant professional.*
  - b. *Provide a Bond or letter of credit in the amount of \$5,000 Payable to Fairfax County.*
  - c. *Pay a Civil Charge of \$9,000 to Fairfax County due no later than April 1, 2025*
5. *Provide proof the restoration meets the permitting requirements of all county, state and federal laws and regulations, including, but not limited to, the County’s Chesapeake Bay Preservation Ordinance (CBPO), the Erosion and Sedimentation Control Ordinance and the Floodplain Regulations of the Fairfax County Zoning Ordinance;*
6. *A pre-construction conference with the property owner, the contractor, the wetlands professional, and a member of Fairfax County staff will be held on site within seven days prior to the commencement of the work and will include a discussion of the terms and conditions of the permit. Notice will be provided to staff for the days when construction is planned to facilitate inspection.*
7. *Include before and after photos documenting all aspects of the project in the project completion certification required below.*
8. *At the completion of construction, the property owner shall provide documentation from the agent that the project has been completed in accordance with the restoration order.*
9. *The restoration including all required documentation and approvals must be completed no later than April 1, 2025*
10. *This restoration order only applies to the property.”*

First, the Board considered a civil charge to the contractor. This was considered through a motion for a \$10,000 civil charge that would be issued to the contractor. Member Larkin proposed and read her proposed motion, which was stated as “*I move a motion to approve the recommendations in the staff report with respect to the contractor and issue a civil charge of \$10,000.*”

Member Collins had a question about if the impact should be moved from “significant” to “moderate,” based on the impacts on the site and he asked to modify Member Larkin’s motion to make this change. The modification of Member Larkin’s motion was not seconded, so this motion failed.

Then Craig Blakely, the attorney representing the property owners (Sand) of address 10625 Greene Drive, asked the question if he may provide a statement and objected to lack of due process during this meeting. Member Wilber stated that time would be provided at the end of the hearing to hear statements.

**Action:** Member Wilber went back and asked if there were any comments to Member Larkin’s original motion (above) and asked for the Board’s vote, which passed. Board members: Wilber, Larkin, Shappell and Costello voted to approve. Board member Collins voted in opposition and board member Cramer voted to abstain.

Second, the Board considered the restoration order. This was considered through a motion proposed by Member Larkin. Her motion was as follows, “*I move a motion to approve the recommendations in the staff report and issue a restoration order in accordance with all aspects of the staff report to the property Owner.*” (These items can be found in the staff memo and are captured on page 2 of these meeting minutes). Member Cramer provided a second.

The members discussed the idea to discuss the items line-by-line, and there was agreement to do this. John Collins had a question about the extent of the wetlands, specifically the “vegetated wetlands.” Board members also discussed the following items: the plat/property boundary, mean high level, 1.5 x mean tide range, location of native wetlands plants (based on staff and previous applications), the Virginia Code definition, consideration of waiving the civil charge, VMRC’s *Enforcement Procedures and Considerations Relative to Chapter 811 Acts of Assembly Tidal Wetlands Mitigation and Compensation Policy*, tiers of impact included in the VMRC Guidelines, and the project completion date of April 1, 2025, and that the Wetlands Board is still open to accepting an application from the applicant.

Member Collins made a motion to change the impact assessment from “significant” to “moderate,” however that motion was not seconded and failed.

Board members discussed the following edits the recommendations in the staff memo through the various motion:

- **Added new item:** Create a new requirement of the restoration order that “*Within 120 days of this restoration hearing, that a meeting be called with the applicant, their wetland specialist, their engineer, their contractor, staff and other individuals they choose to resolve issues going forward.*” This change was

proposed as a motion by Member Wilber and seconded by Member Shappell. Member Collins asked for explanation of the purpose of the additional condition. Member Wilber explained that it would allow parties to discuss and resolve outstanding items. Member Wilber requested a final vote, however Marc Gori requested that the Board members pause before a vote and allow the applicant to make any statements regarding if the restoration order should entered and proceed.

Formal Testimonies were given by:

- Craig Blakely (attorney representing the Sands): Mr. Blakely provided a statement, which is summarized as a discussion including: lack of due process, concerns with the staff memo, the location of the Board's jurisdiction, i.e. "jurisdiction creep," oppose the financial penalties for the contractor and the property owner, and a recent VMRC suggestion to use the 3<sup>rd</sup> application design instead of restoration hearing.
- Jim Beck (Engineer for project): explained that the 3<sup>rd</sup> proposed design is intended to provide enough backfill (393 sq ft) to save the tree and provide a safe yard, compensation area would be 484 sq ft on the left side of the boat house, and he provided a discussion of disturbed area.
- Justin Sand (Property Owner): provided statement with historical context to the property and their ownership, have provided several application submissions, concerned about the status of the existing tree, erosion near the adjacent property owner's bulkhead, previous testimonies from other neighbors, and impacts to the Sand family.

Member Wilber asked staff to provide a response to the statements that were made. Katie Hermann explained that for 2 years multiple requests for the applicant to provide the full Wetlands Board jurisdiction on designs. She noted that this information was recently provided by the applicant in early July 2023. She acknowledged there may be a difference of opinion on the location of native wetlands plants, between the observed plants from April 2023 and what's been provided by the engineer. No other information has been provided by the applicant regarding the location of wetlands plants, but that Ms. Hermann used feedback from VIMS to identify[?] the location of vegetated wetlands as it relates to the Board's jurisdiction.

Member Collins explained that he puts a high-level on a P.E. sealed documentation provided by the property owner. He also has concerns that relying on information provided by VIMS when discussing the Board's legal jurisdiction.

Member Larkin asked if the September 2023 (3<sup>rd</sup> JPA submittal) included a wetlands delineation, and staff responded "no." The Sand's engineer said that this 3<sup>rd</sup> JPA did not include this information. Member Larkin asked if the Board knows where the disturbance. Staff responded by noting that in an October 5, 2023, letter regarding the 3<sup>rd</sup> submission, Ms. Hermann did not reference any "disturbed." Instead in the letter, she was trying to clarify the location of the Board's jurisdiction and related mitigation. Mr. Beck said that his project design includes a notation of 393 sq. ft. of "disturbed" areas.

Mr. Blakeley suggested that Board had 2 alternatives based on his assertion that the 3<sup>rd</sup> application is "complete":

1. Defer action on the restoration order and take action on the 3<sup>rd</sup> application, and
2. Take the engineering from that application and substitute it for the restoration order, instead of using staff's recommendation.

Marc Gori further mentioned that the Board could defer action on the restoration order until the same day as a future public hearing for the 3<sup>rd</sup> application.

**Action:** Member Collins proposed a motion to change the following items from the staff memo (These items can be found in the staff memo and are captured on page 2 of these meeting minutes):

- Change item #1: Revise to require removal of the catwalks and bulkhead, not the boat house, which can remain.
- Change item #4c: Revise the impact to “moderate”

Member Wilber seconded the motion, which opened this motion up for discussion. Member Wilber is ok with leaving the boathouse as-is but wants the catwalks and bulkhead to be removed. The final motion passed unanimously.

Member Wilber then asked for a final vote on the restoration, with all conditions as discussed. The final motion passed unanimously.

**3. Meeting minutes approval** – Member Costello made a motion, with Member Larkin providing a second to approve the May and June meeting minutes. The final motion passed, unanimously.

Statements from members of the public were provided by: Mark Miller, Christopher Morgan, Glenda Booth, Besty Martin, Larry Zaragoza, Justin Sand, Brad Martin and Maria Carrasco.

#### **4. Adjournment**

Member Wilber motioned to close the meeting.

The meeting adjourned at 9:01pm.