

**COMMONWEALTH OF VIRGINIA  
COUNTY OF FAIRFAX**

**MINUTES OF THE WETLANDS BOARD**

**DATE: Thursday, July 8, 2021**

**TIME: 7:00 PM – 8:19 PM**

**LOCATION: Electronic Meeting via WebEx**

**Wetlands Board Member Attendance**

<b>Name</b>	<b>Present (P)/ Absent (A)</b>	<b>Name</b>	<b>Present (P)/ Absent (A)</b>
Anita Van Breda	P	R. Dean Costello	P
Bert Cramer	P	Deana M. Crumbling	P
Leslie E. Jacobs	A	Douglas M. Kleine	P*
Kimberly Vanness Larkin	P	Clyde Wilber	P

*\*Part-time Attendee*

**County Staff in Attendance**

Katie Hermann      Dept of Planning and Development  
Ellen Huber          Dept of Planning and Development  
Randy Owens        Virginia Marine Resources Commission (VMRC)

**Community Members in Attendance**

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

**1. Covid-19 Pandemic Special Motions**

Given that each member of the Wetlands Board was participating in the meeting from a separate location and in order to verify that a quorum of members was participating. Each member was able to confirm that their voice was clear, audible, and at an appropriate volume for all of the other members. Clyde Wilber performed a roll call of members and asked each Wetlands Board member participating in the meeting to state their name. Anita Van Breda moved that each member's voice was adequately heard by each other member of the Wetlands Board. The motion approved unanimously.

After having established that each member's voice could be heard by every other member, he next established the nature of the emergency that compelled these emergency procedures, the fact that the board was meeting electronically, the type of electronic communication that was being used, and how public access to this meeting was arranged. Clyde Wilber moved that the Emergency Declaration caused by the COVID-19 pandemic makes it unsafe for the Wetlands Board to physically assemble and unsafe for the public to physically attend any such meeting, and that as such, the Freedom of Information Act's (FOIAs) usual procedures, which require the physical assembly of the Wetlands Board and the physical presence of the public, cannot be implemented safely or practically. He further moved that the Wetlands Board may conduct this

meeting electronically through a dedicated audio-conferencing line, and that the public could access the meeting by calling 1-844-621-3956 and entering the code: 129 236 6207. The motion was seconded by Anita Van Breda and approved unanimously.

Clyde Wilbur further moved that each member of the public has three minutes to speak at the end of the meeting. The motion was approved unanimously.

## **2. Leslie Jacobs Resignation**

Leslie Jacobs offered his resignation from the Wetlands Board in mid-June. He was appointed by Supervisor Storck and his office has been alerted of this change.

## **3. Adopt Fairfax County Policy for Participation in Meetings by Electronic Communication**

Katherine introduced the new policy to the board regarding the Fairfax County Policy for Participation in Meetings by Electronic Communications, that allow Boards, Authorities, and Commission's (BAC's) conduct their business either fully or partially by electronic communication.

The Virginia General Assembly has made several important changes to the Virginia Freedom of Information Act (VFOIA) during its 2021 session. Those changes relate mainly to electronic meetings, permissible during a declared emergency like the COVID-19 pandemic, and remote participation, which allows some members of a public body to participate via an electronic communication means, as long as a physical quorum of the public body is assembled.

Because the nature of the pandemic rendered it unsafe to meet in person—either for the public or the members of the County's various boards, authorities, and commissions (BACs)—both the Board of Supervisors and the General Assembly had to quickly implement new legislation and tools that would allow BACs to conduct their business either fully, or partially, by electronic communication. The Board of Supervisors enacted a Continuity in Government ordinance and the General Assembly enacted amendments to budget bills that fully authorized public bodies to meet electronically. Electronic meetings are authorized, and continue to be authorized, only if a state of emergency exists. Remote participation is authorized as long as the BAC has a policy in place that details when a member is permitted to attend remotely.

The General Assembly amended Virginia Code § 2.2-3708.2(A)(1) by authorizing public bodies to allow a member who is unable to attend a meeting due to a family member's illness to participate in the meeting remotely through electronic communication means. A member may participate in two meetings remotely or 25 percent of the meetings held that calendar year, whichever is greater.

Kimberly Larkin moves to discuss the topic, Dean seconds to discuss.

Bert asked to what depth of specify is required in order to meet remotely. Katherine explained that all that needs be stated is that a medical condition is preventing a member from meeting in

person and does not have to include details. Clyde explained that specificity is only required for a personal matter – for example, if your car broke down.

Anita asked if the policy has any specific discussion for remote participation for meetings versus hearings, Katherine did not have an answer at the moment but does plan to ask and send an answer to the Board in a few days. Anita followed up with a question asking if there is a policy either in place or being considered to allow community members to participate remotely and Katherine explained that the policy under consideration is just for board members and Fairfax County is considering having virtual attendance.

Doug asked when public matters are disclosed to the public and Katherine answered that this information would be disclosed on the call and recorded in the meeting minutes.

With no other discussion, Clyde made a motion to adopt the policy and the motion passed unanimously.

#### **4. Update on Proposed Comprehensive Plan and Zoning Ordinance Revisions for Living Shorelines**

Katherine anticipates edits to the Comprehensive Plan Environmental Policy Plan, Objective 3 and in the Appendix 1: Guidelines for Tidal Shoreline Erosion Control Measures. Related to Objective 3, staff is considering language that references VIMS guidance and the County’s support of “the application of living shoreline approaches as preferred approaches for stabilizing eroding tidal shorelines.” Staff finds that the Plan should reference the wealth of resource information and guidance that has been provided by VIMS’ Comprehensive Coastal Resource Management Portal, CCRMP or the latest considerations for living shoreline approaches during the permitting review process.

Related to Appendix 1: Guidelines for Tidal Shoreline Erosion Control Measures, several updates are needed to weave the living shoreline concept into the appendix, and then the Tidal Definitions via the Erosion Rates. Outdated applications or elements of erosion rates will be removed as recommended by VIMS and more applications and reference documents provided by VIMS will be referenced. Further, staff finds that, consistent with the 2020 state requirement, text should be added to the Policy Plan that explicitly supports the application of living shoreline approaches as preferred alternative to stabilizing eroding shorelines.

For, the Comprehensive Plan amendment, a living shoreline definition is needed in the Glossary, there is currently no definition for this term in our Comp plan. This definition was developed for the Virginia State Code and the last sentence includes a reference to “coastal resilience”.

The County’s Zoning Ordinance for Wetlands is in Chapter 116. Staff only proposes changes to the County Ordinance that are also in the state ordinance, including:

- *“The Commission shall permit only living shoreline approaches to shoreline management unless the best available science shows that such approaches are not suitable. If the best available science shows that a living shoreline approach is not suitable, the Commission*

*shall require the applicant to incorporate, to the maximum extent possible, elements of living shoreline approaches into permitted projects.”*

- The Commission shall preserve and prevent the despoliation and destruction of wetlands while accommodating necessary economic development in a manner consistent with wetlands preservation *and any standards set by the Commonwealth in addition to those identified in § [28.2-1308](#) to ensure protection of shorelines and sensitive coastal habitats from sea level rise and coastal hazards, including guidelines and minimum standards promulgated by the Commission pursuant to subsection C.*

Katherine will also be giving a presentation to the Fairfax County Environmental Quality Advisory Council (EQAC) on July 14<sup>th</sup>, 2021 and to the Planning Commission’s Environmental Committee on July 29<sup>th</sup>, 2021 ahead of the formal Public Hearing on September 29<sup>th</sup>.

Kimberly expressed caution that with wanting Living Shorelines even though there are many areas in the County that do not meet the definition of Living Shorelines. Clyde expressed that the Chapter 116 regulation changes are required by state law, but if there were concerns about the Comprehensive Plan language, please let Katherine know. Kim requested a copy of the policy for her review. Katherine pointed out that the County has a Living Shorelines policy that might need to be looked at to see if it agrees with the Zoning Ordinance and Comprehensive Plan language.

## **5. Discussion of VMRC Wetlands Guidance**

Clyde introduced a list he created for his own identification of requirements outlined in the VMRC Wetlands guidance. He asks that the document is not to be cited but recommends that the Board members become familiar with it as these requirements will apply for future permit actions.

## **6. Potential Violation – 10625 Greene Drive**

On June 15<sup>th</sup>, 2021, Katherine, VMRC, and the County’s Land Development Services (LDS) received a complaint about on-going work being done at 10625 Greene Drive. VMRC and the County determined that no permits were submitted for any of the on-going work. A County Code Compliance Inspector visited the property on June 16<sup>th</sup> and collected images of a flooding event in early 2021 from the property owner. The inspector heard from the property owner that they believed this project warranted emergency action because of a failed bulkhead.

Due to the property owner being away on vacation, VMRS, VIMS, Katherine, and Board members Clyde and Deana were not able to gain access to the property owner on the 17<sup>th</sup> but did observe the site across Massey Creek from the neighborhood marina. Katherine issues a sworn complaint on June 21<sup>st</sup> and Clyde issued a stop work order on the same day, for impacts to tidal wetlands without a permit. That correspondence was sent to the property owner and the contractor (Shoreline Services & Design LLC in Westmoreland County) on June 21<sup>st</sup> and posted to the front door of the property owner’s residence. The County Code Compliance Inspector for

the LDS also posted a notice of violation for work being done without a permit in the Resource Protection Area (RPA).

A follow up visit occurred on July 6<sup>th</sup> with VMRC and Clyde present. After this Board's meeting, the Board Chair will finalize a Notice to Comply letter which will be sent to the agent and property owner and will ask the property owner to appear before the Wetlands Board at a future "Show Cause" meeting in early August, where the Board will hear from the property owner and will make a decision on if the completed work will need to be removed or have the property owner submit all necessary permit applications. Photos of the vegetation were sent to Emily at VIMS to consult if the species present exhibited a vegetated or non-vegetated wetland.

Clyde noted that there are regulations that allow for emergency constructions that allow the Wetlands Board Chair to issue an emergency permit, that was not done in this case. He also noted that the photos presented during the meeting show a bulkhead missing in 2020, and if the date is correct then it appears from the inspections that the wetlands are under Fairfax County jurisdictions. It remains for the homeowner to make a case whether an emergency was required or was not jurisdictional land in place and is looking for an application to do that. The adjacent property shows an emergent living shoreline that appears to have extended to the violator's property. Clyde stated that the board will have to issue a Notice to Comply, and that it is extremely important to have a quorum during the date of the hearing, August 10<sup>th</sup>. The purpose of the hearing will be to determine what action will be taken, including, but not limited to:

- The Wetlands Board may order that the affected site be restored to pre-development conditions if the board finds that restoration is necessary to recover lost resources or to prevent further damage to resources, or,
- Require the violators to submit a completed joint permit application to the Wetlands Board and in accordance with specific guidelines for such submissions, or,
- Determine that there is no violation.

If the Wetlands Board determines there is a violation, the board would send a 30 days' notice of a restoration hearing. Once they appear in front of the board, the board can request a Notice to Comply or direct them to remove the work that has been done on the property and restore the site. Clyde noted that the violators would have to comply with the new VMRC guidelines.

Anita asked if a date was provided when the flooding occurred and Kimberly asked if the boat house fell in, why did he dig out the boat area? Clyde said that they do not have that information and hope that the applicant will come forward with that information before making any decisions.

Anita asked if there is confirmation that work did stop after the stop-work order was issued. Clyde answered saying that his impression is that work did stop. They met with the owner's agent at the site, and they were aware that they must stop work.

Kimberly asked what does a restoration entail if the violators have a bulkhead? Clyde responded that the Board does not know if the applicant previously permitted a bulkhead and the responsibility would lie on the applicant to establish it.

Anita asked what criteria would the Board use to judge the validity of a restoration plan? Clyde stated that the Board would have to apply the new VMRC guidance.

#### **7. Set date for next Wetlands Board Meeting**

A date for the next Wetlands Board Meeting was not set during this meeting.

#### **8. Public Comment Period**

There were no comments from the board, staff, or public.

#### **9. Adjournment**

Clyde Wilber motioned to close the meeting, and Anita Van Breda seconded the motion. The vote was approved unanimously.

The meeting adjourned at 8:19 pm