

**COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX**

MINUTES OF THE WETLANDS BOARD

DATE: Thursday, March 25, 2021

TIME: 7:00 PM – 8:41 PM

LOCATION: Electronic Meeting via WebEx

EQAC Member Attendance

Name	Present (P)/ Absent (A)	Name	Present (P)/ Absent (A)
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 Larking	A	Clyde Wilber	P

**Part-time Attendee*

County Staff in Attendance

Katie Hermann Dept of Planning and Development
Ellen Huber Dept of Planning and Development
Leanna O'Donnell Dept of Planning and Development
Pam Pelto Office of County Attorney (OCA)
Mark Eversole 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 and the location from which they were participating. 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.

2. Tribute to Erin Haley

The Wetlands Board members paid tribute to Erin Haley, who passed away in February and was a dedicated staff coordinator to the Wetlands Board.

3. Welcome new Board member, Bert Cramer

Clyde Wilber introduced new Board member Bert Cramer to the Wetlands Board. Bert is a Department of Defense program manager and is located in Alexandria.

4. Election of Chair and Vice Chair

Clyde Wilber opened nominations for Chair. Deena Crumbling nominated Clyde Wilber as Chair. With no other nominations, Clyde Wilber closed nominations and Anita Van Breda moved for Clyde Wilber to be elected as Chair of the Wetlands Board. R. Dean Costello seconded. The vote was approved unanimously.

Clyde Wilber opened nominations for Vice Chair. Clyde Wilber nominated Anita Van Breda as Vice Chair. With no other nominations, Clyde Wilber closed nominations and moved for Anita Van Breda to be elected as Vice Chair of the Wetlands Board. R. Dean Costello seconded. R. Dean Costello asked if it was an issue if Anita's term ended in 2020, to which Clyde answered that her term is extended until she is replaced. The vote was approved unanimously.

5. Welcome new Staff Liaison, Katie Hermann

Clyde Wilber introduced new staff liaison Katie Hermann to the Wetlands Board. Katie Hermann has been with the Department of Planning and Development for just over a year and is excited to be here. Leanna O'Donnell, Planning Division Director, introduced herself and thanked everyone for the kind words about Erin and welcoming Katie to the board.

6. SB 776 and VMRC Draft Guidance Briefing

Katie Hermann reviewed updates to Senate Bill 776 and the resulting 2020 legislation summarized in a memo from Tony Watkinson, Chief of Habitat Management Division that was sent on March 8th. The bill and legislation directs that *“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.”*

As the legislation related to Fairfax County, the county will be reviewing the County Wetlands Zoning Ordinance to align with changes to the Commonwealth's code and the County Comprehensive Plan through a Plan Amendment to incorporate the Living Shorelines mandate. The County is planning to discuss the topics with the Planning Commission and the Board of Supervisors later in the calendar year. The County received direction from the Habitat Management Division that until the County updates zoning ordinance to align with the State's Code, the County need to be using the Virginia Code. All current and future permits applications will be asked to document the consideration of living shoreline approaches.

This legislation has resulted in VMRC updating their Wetlands Guidelines, and these draft guidelines are available to the public with a public review/comment phase that ends on April 16th and can be found here: https://www.mrc.virginia.gov/Notices/2021/PN_Draft-Wetlands-Guidelines_03-01-2021.shtm

Mark Eversole provided context to the changes stating that in 2011, the General Assembly stressed living shorelines as the preferred alternative. In 2015, VMRC developed a general permit for living shorelines, for sites with less than 0.5 mile of fetch. In 2017, VMRC developed a general permit for larger sites, with a fetch of up to 1.5 miles. The General Assembly is encouraging the development of more Living Shorelines through these changes.

7. Development of Wetlands Board Comments for VMRC Draft Guidance

Clyde Wilber presented eight areas of his comments sent to VMRC:

1. Establish role of guidance. The introduction to the guidance document must clarify the role and limitations of guidance.
2. Clarify agency responsible for determining Living Shoreline Suitability. Clarify the role of the Wetlands Board as the decision maker on living shorelines and the role of VMRC as process reviewer and confirmation with meeting regulations with respect to responsibility for making Living Shoreline Decisions. If this is not the case, and VMRC interprets the law as leaving the decision in VMRC's hands, VMRC should make living shoreline decisions prior to Wetlands Board Public Hearings so the Wetlands Board knows if a living shoreline is suitable.
3. Provide a Process Flow Sheet. Wetland's property owners will have a difficult time understanding the law, regulation, and guidance without a document of how the process will work. A detailed decision tree is needed and requested.
4. Living Shoreline Application guidance. Guidance on all living shoreline information to be included in the application is needed to ensure applications are complete. This application guidance should include a detailed checklist of all information both the Wetlands Board and VMRC will require. In particular, the guidance should include what information is needed to address suitability and where a living shoreline is not suitable, what minimum living shoreline aspects are required. A list of conditions that would exclude a living shoreline (such as maximum fetch distance) is at a minimum, required. If VMCR expects Wetlands Boards to include consideration of cost in suitability, the application needs to include the level of cost detail needed. The regulation also indicates where a living shoreline is not suitable, the Commission shall require the applicant to incorporate, to the maximum extent possible, elements

- of a living shoreline approaches. The guidance must provide wetlands boards and permittees with how to incorporate such elements.
5. Application of Existing Regulations. Current VMRC regulations limit living shorelines to fetch distances of less than 1.5 miles. The board asks to confirm no living shorelines will be considered suitable at larger fetch distances, and to include any additional criterion that can be used to screen suitability.
 6. Marine Construction Industry Involvement. Most permittees rely on the marine construction industry to make wetlands permits. It is imperative that VMRC actively seek and obtain comment from the marine industry to confirm the guidance is adequate to provide complete and appropriate applications. This should include addressing when a living shoreline is suitable and, when not suitable, what minimum living shoreline aspects would be required by VMRC.
 7. Community Based Living Shorelines. Anita Van Breda commented that it is difficult to implement Living Shorelines on a single property by single property bases and is asking for guidance on how to address this issue.
 8. Suitability and Cost. Wetlands Boards are required to consider public and private, cost and environmental impact in their decision making. The development of SB776 included a debate as to whether Living Shorelines should be required based on the criterion of “feasible”, or if the criterion should be “suitable”. Clyde noted his understanding is that “suitable” was chosen in the law to allow for the consideration of cost. VMRC may choose to provide guidance on how to consider cost in the decision-making process. However, if VMRC chooses to not provide guidance on suitability and cost, he asked that VMRC defer to the Wetlands Boards in making the decision on living shorelines suitability. Clyde Wilber believes it is appropriate for VMRC to review any Board decision for process and for meeting specific individual regulatory criterion adopted by VMRC. However, if no specific numerical criteria or evaluation processes are established by regulation and guided by the VMRC Wetlands Guidance, he asks that VMRC leave the Living Shoreline decisions to the Wetlands Board.

Clyde Wilber noted that the above were his personal comments and not intended to represent the Wetlands Board or Fairfax County. He encouraged Wetlands Board members to study the proposed guidance and provide their own comments directly to VMRC.

Anita Van Breda expressed her excitement on emphasis on facilitating living shorelines, but also expressed more guidance is needed for Wetlands Boards to make decisions. It is her perception that there can be limitation on scale and scope in the benefits living shorelines can provide and emphasized that living shorelines at a larger scale needs more support and advocacy for efficiency and facilitation.

R. Dean Costello and Clyde Wilber discussed how limited engagement has been with the construction industry, but noted that from speaking with the VMRC, they do seem to be aware and anticipate changes. R. Dean Costello asked if the board is aware of any outreach efforts done to individual companies or trade organizations. Mark Eversole provided comment that VMRC is hearing more from localities and homeowners more frequently and extended their public comment period by two weeks. Mark Eversole also agreed with Clyde Wilber’s comments that

the Wetlands Boards are capable of making decisions. However, if board approved a project that does not have Living Shoreline components, there must be a discussion for determining alternatives. VMRC is not looking to take over staff or make decisions for the board.

1. Wetlands Board Comments on Proposed Comprehensive Plan

Katie Hermann discussed an opportunity to revisit changes to the Fairfax County Comprehensive Policy Plan Objective 3, Policy C and Appendix 1 “Guidelines for Tidal Shoreline Erosion Control Measures”, via a Plan Amendment to the Policy Plan, that would reference the wealth of resource information and guidance that have been provided by the CCRMP, including guidance of shoreline condition and recommended shoreline erosion control best management practices.

2. Staff Items

Katie Hermann noted the following:

- The mitigation fund for Wetland’s fee totals \$64,000.
- Reminder that an email was sent earlier this year in completing statements of economic interests and will be looking back to see if everyone has submitted that form.
- Board members will be contacted to review the Board-directed requirement for BAC members to view a training video and sign an acknowledgement regarding the One Fairfax policy.

3. Review of Future/Potential Permit Application

Potential Applicants

- Hallowing Point HOA -5949 River Drive, Lorton (Potomac River)
 - o Clyde Wilber noted that this application proposes to put extension of jetty landward and stay off of the Wetlands Board jurisdiction and follow the idea of putting measures above interjurisdictional wetlands, but to do that they will likely lose trees.
- George Kelly – 6061 River Drive, Lorton (Potomac River)
 - o Mark Eversole spoke with the agent, Jim Beck, who would love to come to the site visit and show what he is doing and commented that the rip rap might be in wetland board jurisdiction.
- Allen Jones – 8358 Orange Ct. Alexandria (Little Hunting Creek)
 - o Deana Crumbling asked what a field survey entails. Katie Hermann noted that the field survey verifies the mean high and low water lines, topography of the site, and where all the structures are.
 - o Mark Eversole noted that the applicant submitted two site plans, including one from a surveyor they hired, and the two plans show mean high and low water lines in different locations.
- Matthew Diamond – 8800 Thomas J Stockton Parkway, Alexandria (Little Hunting Creek)
 - o Mark Eversole noted that during a site visit, he observed at mean low water there was still water against the bulkhead indicating there are no tidal wetlands in front of the bulkhead.

- Clyde Wilber noted that looking at aerial, the next three properties look like living shoreline possibilities, but the existing sea wall keeps it out of the jurisdiction.
- Belmont Park Estates Marina Pier (Occoquan River/Belmont Bay)
 - Clyde Wilber noted that this is a long fetch, so a full living shoreline is not appropriate, however, new regulation calls for elements of living shoreline. Clyde noted that it will be interesting to see if guidance can assist us with sites like this where some elements will be appropriate. He and Katie Hermann both stated the applicant seemed open to doing that in the future as well.
- 5901 Mt. Vernon Blvd (Potomac River)
 - Anita Van Breda asked a general question as to who goes on these site visits given that official board member site visits are limited to 2 people at a time, and their purpose. Clyde Wilber answered he usually goes on site visits to do preliminary analysis prior to permit site visits for board members, but could not attend this one, thus Kim was asked to attend in his place. He noted that he will try to work out a system to give other members the opportunity to participate on informal site visits.
 - Mark Eversole and Clyde Wilber noted that the board can and does notify the applicant to set a certain hours of visitation, to give several wetlands board members to see the site over a day's period, usually during the time around when the application goes to hearing.

Potential Violations

- 4001 Belle Rive Terrace, Alexandria (Potomac River)
 - Mark Eversole and Katie Hermann noted they might conduct another site visit to determine wetland loss.
 - Clyde Wilber noted that both the contractor and applicant stated they sent an application to the County around the time of Covid shutdowns but did not receive a response. If there is a taking of wetlands there is a fee.
- 11371 River Road, Lorton (Potomac River)
 - Mark Eversole noted that they did submit an application, however during the Covid shutdown period all communication and possible site visits stopped. In both potential violations, the work is being built to what the applicant's applied for but did not get a permit.
 - Clyde Wilber noted that if there is a taking of wetlands there is a fee.

Board members discussed the proceedings of a violation with incomplete work. In the case that a potential violations work is still on-going, applicants do have to submit a permit and that County staff will reach out to applicants to finalize permit applications. If work is completed, the County will often ask applicants to submit permits retroactively, specifically for applications like Water Quality Impact Assessments (WQIA) and RPAs.

4. Set date for next Wetlands Board meeting

The next meeting was not set; however, Katie is to send a poll to the board to set the next meeting date.

5. Public comment period

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

6. Adjournment

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

The meeting adjourned at 8:41 pm