

Minutes
Essex County Wetlands Board
109 Cross St., Tappahannock, VA,
Meeting of April 27, 2023
6:00 PM

A meeting of the Essex County Wetlands Board was held on April 27, 2023, in the School Board Meeting Room at 109 Cross St., Tappahannock, Virginia, with the following present:

Present:

Jeff Howeth – Chairman

Barry Bates

Bunky Davis

Kevin Goff

Nate Parker IV

Absent:

Also present:

Jay Woodward, Virginia Marine Resources Commission

Kelly McKnight, Planning and Zoning Office Manager

April Rounds, Interim County Administrator

Maxwell Hlavin, County Attorney

Ernest Sadler, Essex County Building Official

Rob Hodges, Zoning Administrator

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 announced two public hearings and one show cause on the agenda. He would like to add Shellfield beach restoration onto the old business.

APPROVAL OF MINUTES

Chairman Howeth asked for a motion to approve the January 26, 2023, meeting minutes as presented. The motion was made and seconded. AYES: 5 NAYES: 0 ABSENT: 0

PUBLIC COMMENTS

Chairman Howeth opened the public comments session and as no one came forward closed the public comments session.

PUBLIC HEARINGS

VMRC #23-0477 – Kenneth and Lisa Mountcastle

Craig Paledensky with Bayshore design. 8518 Cople Highway Hague, VA 22469. They are proposing 3 low-profile timber groins along the Rappahannock River spaced 95 feet apart. The applicants have put in a revetment a couple of years ago about 130-140 feet in length and some of the beach area in front of it is starting to retreat because of the revetment that was installed. Even though it is above mean-high water. They are proposing putting the groins in to catch a little bit of the sand, give them more protection, and more beaches build up that they have lost in front of that revetment. The first groin starting upriver side is going to be 55 feet off of the property line and be situated on the left-hand side or the west side of the pier. The next groin will be 95 feet down roughly a 2 to 1 spacing and the third will be another 95 feet down. On site there are a number of fallen trees in the river that are working really well like groins. As a matter of fact, where groin number three is sited, they may elect not to put that in because the large tree that has fallen is functioning perfectly like a groin and been there for a long time. In the event that that tree ever moves or gets dislodged they would definitely like to put in that third groin. The groins are low-profile design. The lengths are 52-56 feet in total length. The length from mean high water is between 42-46 feet. Both adjoining property owners have been notified and I have submitted the forms to VMRC earlier this week. Neither adjacent property owner objects to this project.

Chairman Howeth asked if they are going to leave the tree did, he want the three-year permit for the additional groin.

Mr. Paledensky did want that third groin in the permit so he would like the three-year permit.

Mr. Woodward stated it would also need to have a permit from VMRC from the state for the portions channel the low water, but we normally wait for the locality.

Chairman Howeth stated we do note that these are low profile groins in accordance with the regional permit.

Mr. Goff asked if the motion had to include that this was a three-year permit? Chairman Howeth stated they should take that on at the end or otherwise it is only going to be a one year.

Mr. Goff made a motion to approve a three-year permit. Mr. Bates seconded.

AYES: 5 NAYES: 0 ABSENT: 0

VMRC #23-0667 – Micah Dianda

Chairman Howeth called up Roberto Cazares to speak to #23-0667. He was not there.

Chairman Howeth stated he had a couple of questions regarding this application. He asked if anyone noticed that the pier was shifting left and right on the proposed seawall extension? If it moves to the left, he will have less than 3 feet to step off of an area that is between low water and high water to get onto the pier. He is not sure he can do that. With that being said and not being 100% sure. There are other questions for Mr. Sadler in regards to the structure. Mr. Sadler stated that he would look at it until the permit comes to him.

Chairman Howeth stated we should table it and have our secretary send a letter back to both the applicant and the person who may or may not be the agent and state that we require somebodies' presence at the meeting.

Mr. Parker made the motion to table it. Mr. Davis seconded the motion.

AYES: 5 NAYES: 0 ABSENT: 0

TM #38C-1-M Flournoy – Show Cause hearing

Chairman Howeth stated that they had a complaint and will start with Mr. Ernie Sadler, Building Official.

Mr. Sadler stated that around March 13th they received a complaint about a possible fill at TM 38C-1-M on Fort Lowry Rd. On the 15th we contacted the owner, Mr. Flournoy and he agreed to meet us out there. So, Rob Hodges, Zoning Administrator, and I went out and met with the homeowner. We took a look at it and does seem to look like some possible fill. At that point we gave the Chairman a call on it and he has taken it from there. He has a copy of the letter with the notice of violation that we sent out.

**Robert Hodges
Planning & Zoning Administrator
Plats Officer/Subdivision Agent**

202 South Church Lane
P.O. Box 549
Tappahannock, Virginia 22560
(804) 443-4329
www.essex-virginia.org



Established 1692

**Essex County
Virginia**

Board of Supervisors

Rob Akers, Chairman
Greater Tappahannock Election District

Ronnie Gill, Vice-Chairman
South Election District

Sidney N. Johnson
North Election District

John C. Magruder
Central Election District

Edwin E. "Bud" Smith Jr.
At Large Election District

March 16, 2023

Mr. Charles S. Flournoy
6186 Fire Lane
Mechanicsville, VA 23116-4852

Subject: Complaint of Filling and Shoreline Work

Mr. Flournoy,

Essex County Administration received a complaint, and on March 16 2023 you were notified and you granted access to visit your property and it appears that sometime between August 2004 and April 2007 that filling, and shoreline work occurred on parcels 38C-1_M and 38C_1_N which would create a violation without proper permitting.

Enclosure 1.1 to 1.6 depicts Google Earth pictures from March 1994 to May 2021. The right point on the red reference line depicts the approximate edge of the filling and shoreline work at the northeast edge of lot M and lot N.

Enclosure 2 depicts the plat referenced in the deed recorded at the Essex County Courthouse for parcel 38C_1_M. The plat depicts a shoreline edge similar to the 1994 and 2003 images at enclosure 1.

You need to provide copies of the permits from Essex County for the filling and shoreline work that occurred on the two parcels within 30 days of receipt of this letter. We appreciate you being present at the time of inspection and your cooperation in this matter.

Contact Robert Hodges or Ernie Sadler, Planning and Zoning Administrator or Ernie Sadler, Building Official if you have questions regarding this request.

Robert Hodges
Planning and Zoning Administrator

Ernest J. Sadler
Building Official

Enclosure 1.1 to 1.6 – Google Earth images of parcel M
Enclosure 2 – Parcel M plat recorded at Essex County Courthouse

Fort Lowry Lane 3/1994

Enclosure 1.1

Legend



Fort Lowry Lane 9/2003

Exposure 1.2

Legend



Romantic Tappahannock

Google Earth

Image USDA/FPAC/GEO

200 ft

Fort Lowry Lane 4/2007

Enclosure 1.3

Legend



Fort Lowry Lane 9/2011

Enclosure 1, 4

Legend



Fort Lowry Lane 11/2015

Becker 1.S

Legend



Fort Lowry Lane 5/2021

Enclosure 1,6

Legend



996 with NationsBank, N.A.,
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Real Estate Officer.
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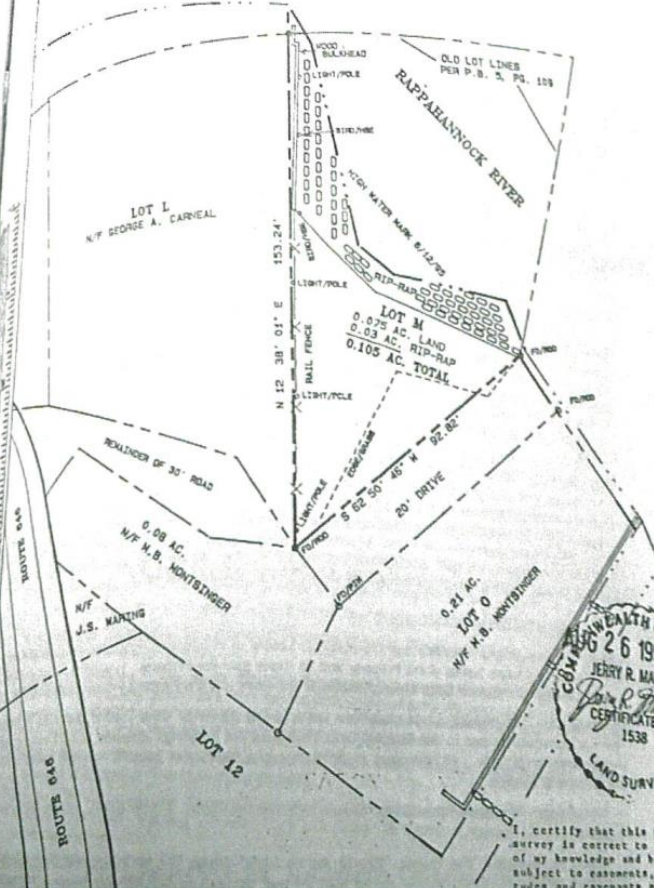
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98
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LOT LOCATION SURVEY

LOT M FORT LOWERY BEACH
RAPPAHANNOCK MAGISTERIAL DISTRICT
ESSEX COUNTY, VIRGINIA

Enclosure 2

RAPPAHANNOCK RIVER



COMMONWEALTH OF VIRGINIA
JERRY R. MARION
26 1996
CERTIFICATE NO. 1538
LAND SURVEYOR

I, certify that this plat and
survey is correct to the best
of my knowledge and belief
subject to easements, servit-
tudes and covenants of record.

Date: 12, 1995 Scale: 1" = 30'
June 12, 1996
March 22, 1996
Dillard & Marion P.C.
CERTIFIED LAND SURVEYORS
1275 BYCAMPTON DRIVE
P.O. BOX 4222 RAPPAHANNOCK, VIRGINIA 22400
(804) 443-3080
Drawn By: SAM Job No: EROA
Checked By: J.A.M. F.B.I. IN Folder
Sect. No: 35C-D-N Disk No: 217

THIS PLAT was presented in the Office of the Clerk of the Circuit Court of Essex County,
Virginia on the 6th day of September, 1996 and with the certificates and plat annexed, admitted
to record at 10:46 o'clock a. m. Recordation taxes paid: State \$2.40, County \$1.80 and Sec.
\$1.00 \$52.00.

Teste: Hugh M. Wickman Clerk

Chairman Howeth stated that since we do not do these kinds of hearings very often he is going to take a moment to advise his board as to the procedure. He stated they would follow the show cause hearing procedure that is in the bylaws.

Chairman Howeth stated he also sent a show cause letter to the property owner, Mr. Flournoy.

202 South Church Lane
P.O. Box 549
Tappahannock, Virginia 22560
(804) 443-4329
www.essex-virginia.org

ESSEX COUNTY WETLANDS BOARD

March 16, 2023

Mr. Charles F. Flournoy
6186 Fire Lane
Mechanicsville, Virginia 23116

Re: Potential Wetlands Violation –996 Fort Lowry Lane (TM 38C-1-L) and 0 Fort Lowry Lane (TM 38C-1-M) , Dunnsville, Virginia, Rappahannock River

Dear Mr. Flournoy :

This letter is in reference to the excavation, filling or other activities that appear to have occurred on your properties, 996 Fort Lowry Lane (TM 38C-1-L), and 0 Fort Lowry Lane (TM 38C-1-M) , Dunnsville, Virginia, Rappahannock River . As discussed with you during our telephone call on February 18, 2023, these activities appear to have impacted wetlands and subaqueous areas without a permit from the Essex County Wetlands Board.

Our preliminary investigation indicates that these activities may have impacted approximately 6000 square feet of vegetated wetlands and subaqueous bottom as defined in Essex County Code Of Ordinances Chapter 34, Article II, Section 34-21, and this use and alteration may be in violation of the Essex County Code of Ordinances Chapter 34, Article II, Section 34-22. In addition, please be advised that the Essex County Wetlands Board has the authority to order restoration in accordance with Essex County Code of Ordinances Chapter 34, Article II, Sections 34-37 and 34-39 and 34-40.

The Essex County Wetlands Board shall consider this matter during their next scheduled meeting on **April 27, 2023, at 6:00 PM at the Essex School Board Meeting Room located at 109 Cross Street, Tappahannock, Virginia.** You are hereby directed to appear before the Board at that time.

Please be advised that any information submitted prior to or during the meeting, e.g., photographs, physical surveys, or relevant correspondence, should be presented to the Essex County Wetlands Board Chairman, Jeffrey L. Howeth for inclusion in the record and distribution to Board members. Copies must be provided if you wish to retain any original material.

For additional information on this matter, please contact the Chairman of the Essex County Wetlands Board, Mr. Jeffrey L. Howeth at 804-241-4160 and/or email him at kmcnight@essex-virginia.org

Sincerely,



Jeffrey L. Howeth PE, LS, CFM, DCA
Chairman, Essex County Wetlands Board

cc: U.S. Army Corps of Engineers, Norfolk District
Virginia Marine Resources Commission, Mr. Jay Woodward
TM 38C-1-L and TM 38-1-M, Parcel File Essex County Building Official

Mr. Steve Flournoy, 6186 Fire Lane Mechanicsville, Virginia 23116. He stated this is the first time he has ever been accused of anything so not exactly sure how to go about it. He said that

he should be careful what he says to not implicate himself worse since he is not sure what could happen here. He is not sure if he is facing a speeding ticket or a murder charge or how it goes. He wanted to make some things clear that the work in question happened a long time ago, within a year or two after Isabel. The nature of how the complaint came to be was not from anyone who was concerned about things improperly done it was a neighbor that he has a problem with that became contentious immediately after he told her his plan to build a new house and that house would be near her house and bigger than her house. She has become very malicious over it and caused many problems. The complaint is here not because of any damage to the river or anything like that. By all accounts, and Mr. Wayne Savage is here as an engineer to attest that it is clear that there was very serious Erosion where millions of tons of dirt eroded into the Rappahannock. Through things that he has done while he has owned the property the erosion has stopped and been stable for like 17 years. Anything that is done, he is very particular, there are no materials that anyone would object to. He did have permits that he wanted to point out. You can tell me if you have any permits, but he believes that he was told there were no records but one permit and that was for a pump house.

Chairman Howeth stated that he did not find any permits in the search of the database. We have a county database. The official database is with VMRC, and he believes that is accurate to 1972 thereabouts.

Mr. Woodward stated that VMRC claimed jurisdiction from the General Assembly to 1962. 1972 was the start of the Wetlands act. Subsequent of 1962 any work over the submerged lands of the commonwealth would come through VMRC. Prior to that those individuals would have to go straight to the General Assembly.

Chairman Howeth stated they have always relied on the VMRC database to be the legal Commonwealth of Virginia database. We looked on the Database and did a search on Fort Lowry Point and did not find any permits on it.

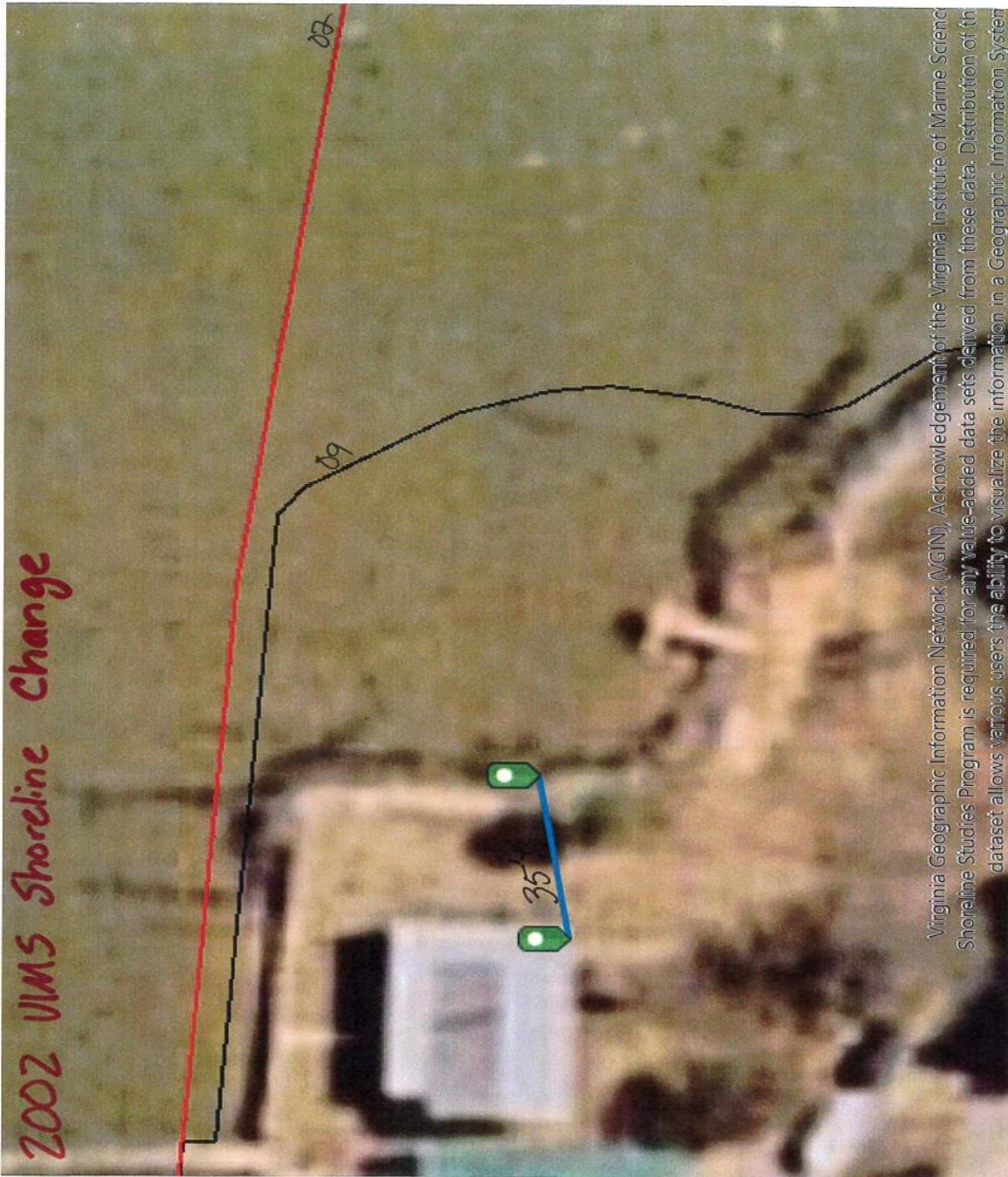
Mr. Flournoy stated that the permits he has are Essex building permits. Two of them for bulkhead repairs and one for Jetty's and with those paid money to Bayshore Engineering back from the time between 2004-2006. He paid money to design and help with the permitting for the work he was to do. He is guessing that the problem now is they only had permits from the County which he does have. It is just by happenstance when the complaint was brought to him thought maybe he didn't get permits. He within the past two days found the permits that had to do with shoreline work related to the work that he thinks the complaint is about. There are a lot of moving parts, but he will keep it to the things that matter. He is happy to provide the permits that he has. He wanted to paint a picture of what it was like. They bought the property right after Isabel and when they bought it the area was devastated, a lot of houses were gone, and a lot of houses were half-gone. It looked like a lot of what you see on the news out west with the tornados. It was torn up with lots of erosion. At the same time, we bought everyone was setting out to make repairs and do things and he believes the mentality was that permits were not the top concern. There was a lot of filling in being done. He likes to be legal and not

be in the position he is in. He did get permits and has those to show but it may have been that the state permits were not obtained and that is why you are not finding them. At the time the Building Inspector was Jeff Hodges, and he made many visits to his place, and he thinks he was pretty aware of everything he did of the nature of repairing the damage that had happened. There may have been some things that you couldn't tell the difference between what the hurricane had done and what erosion was there before the hurricane. It was such that when you build out these bulkheads you go a little bit past where the curve starts, and he thinks that's where the shape of the scalloped area that eroded out became filled in was a part of the bulkhead work. This is an area that has had massive erosion, if he had a way to show it, he has early pictures and surveys that show it came to a point that is now gone and is still gone. There is an entire lot that there is only about 10% of it left. He wants the board to know he wants to be proper and legal with everything. The way he got to know Wayne is that he contacted him because there is erosion on the current seawall and he contacted him long before this complaint out, months and months ago and planned to work with him on the design and permitting on the work he would like to do now. He says that to demonstrate he never wants to do anything without a permit.

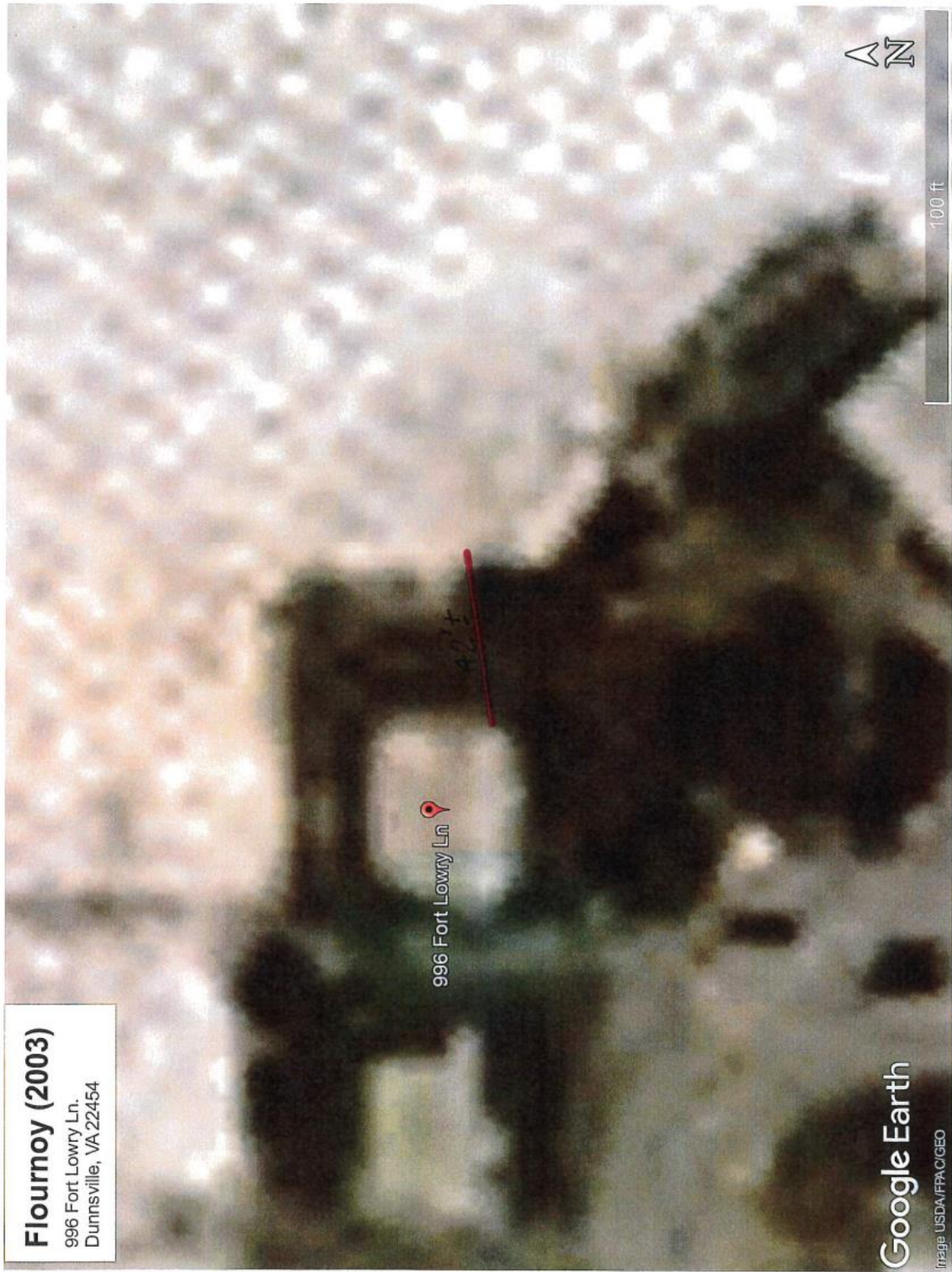
Mr. Wayne Savage with BayDesign Group, he is a professional engineer with the State of Virginia. He put together some documents that could be helpful. He stated he is going to start at the beginning of time that he could get to. He could not print out the 37 overlay that is on the VIMS website. Some of this is VIMS, some is Google Earth and as we get to it, he will show them.



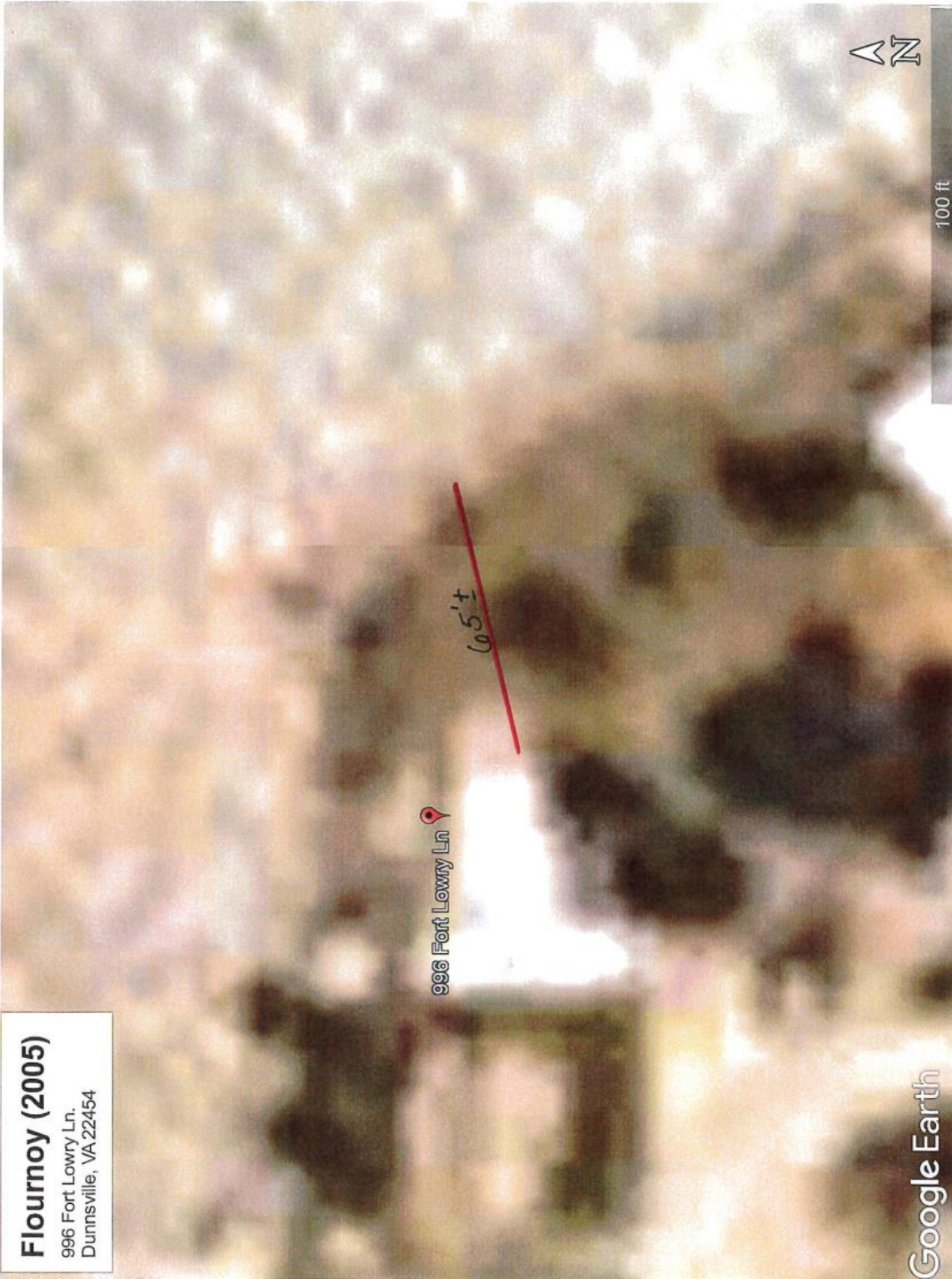
This is the '94 google earth image it is not a great picture, black and white and tough to see. From what he can tell the house is roughly 35' from the edge of the water. He did try to go to mean high water it gets better as we go along.



This image is from 2002 and is on the VIMS shoreline change webpage. You will notice on the other VIMS images as well, there is a red line at the top of the page that extends out on the point. That is the 37 shoreline as documented by VIMS. So as Mr. Flournoy was discussing the shore used to go significantly out in that location. He is not sure what wiped it out and when, obviously it has been a while but that is the 37. The black line is the 09 shoreline, and you will see that as we continue on with anything that is on the VIMS webpage. That is basically the current and since 2009 it hasn't really changed. So, looking at 2002 nothing has changed much from what he can tell it was about 35' in 2002.



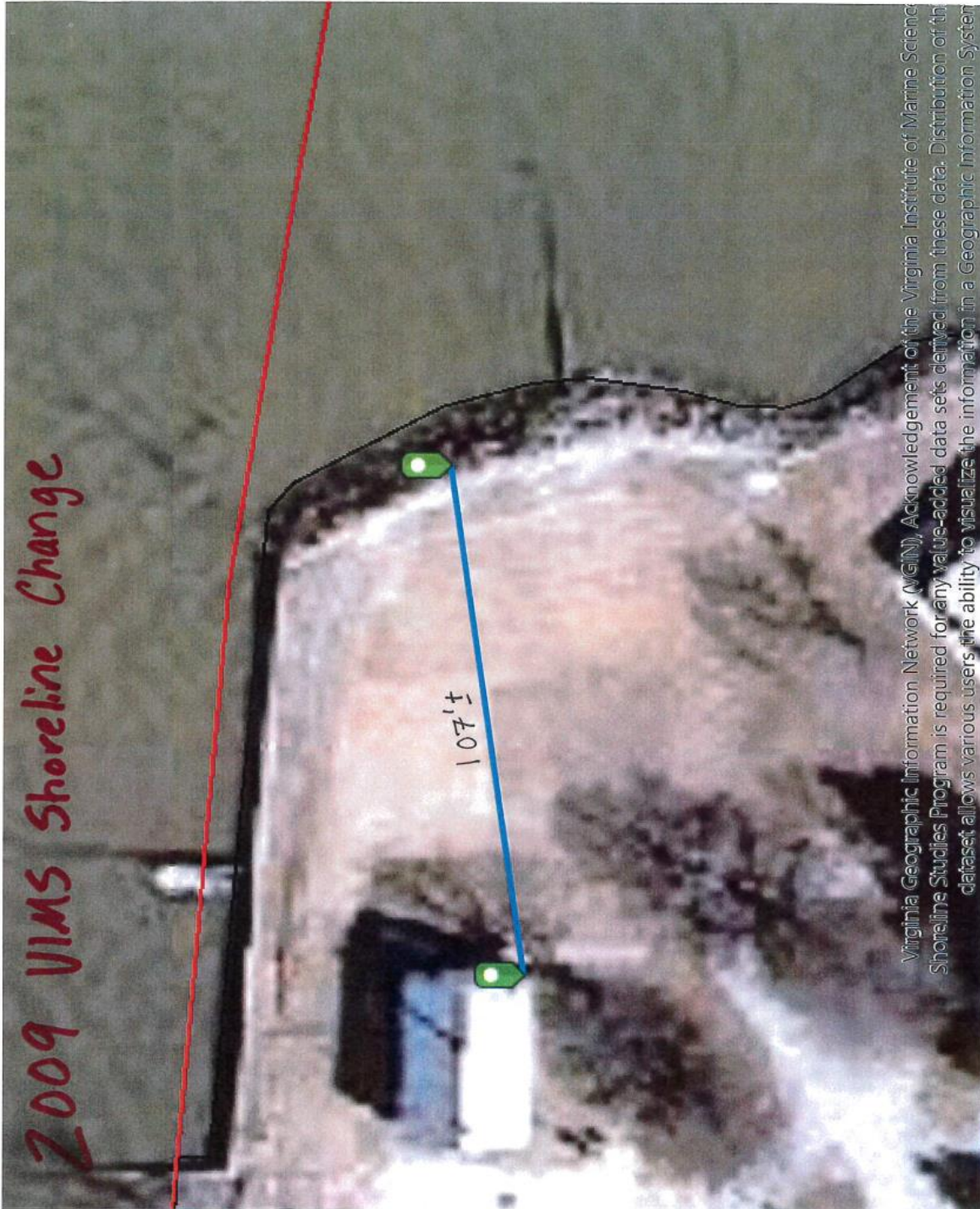
This is a Google Earth Image of 2003. This one is a little tough to read, it is very pixelated. But it is generally clear where the water, where the house is. It appears to be about 42' so we gained 7' in a year. It appears to be all natural, he can see grass and some trees. He doesn't see any fill. Again, a little tough to tell, hard to tell how it happened or when it happened.



The 2005 Google Earth image is not the greatest but now we are at 65'. So, in a matter of two years, we have gained 23' of shoreline. Again, it looks to be grass, it looks to be natural. It is hard to tell but it appears to be that the shoreline was accreting for us there.



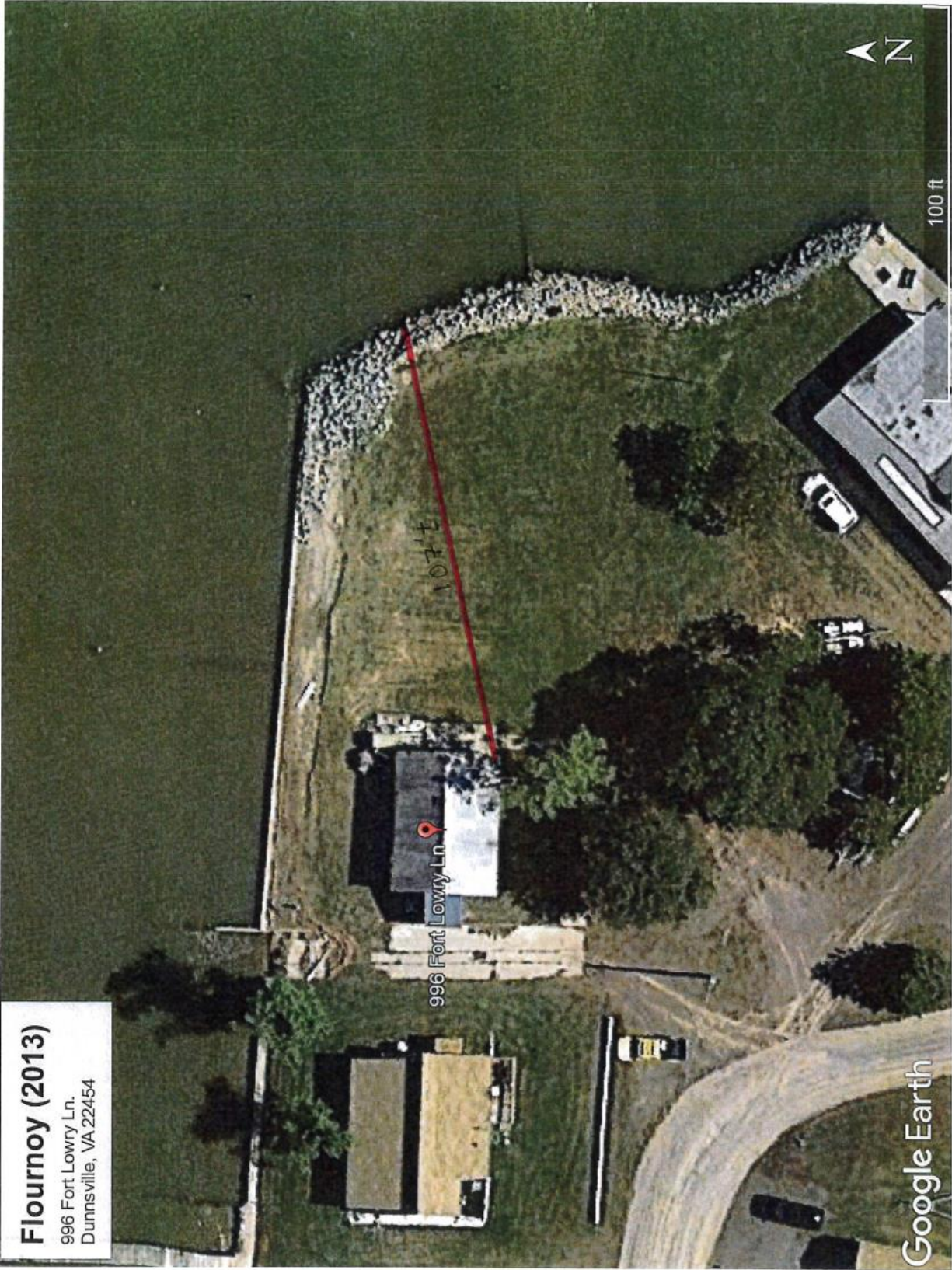
The '06/'07 VIMS Shoreline change you can see the 37 and 09. And at this point the shoreline is at 86' so we are again 21' out from the 2005 image. You do see where the land appears to be a little denuded. From his perspective, he can't prove anything, hard to tell whether that is fill being brought in or sand being brought off of that point and being pushed in by wave action.

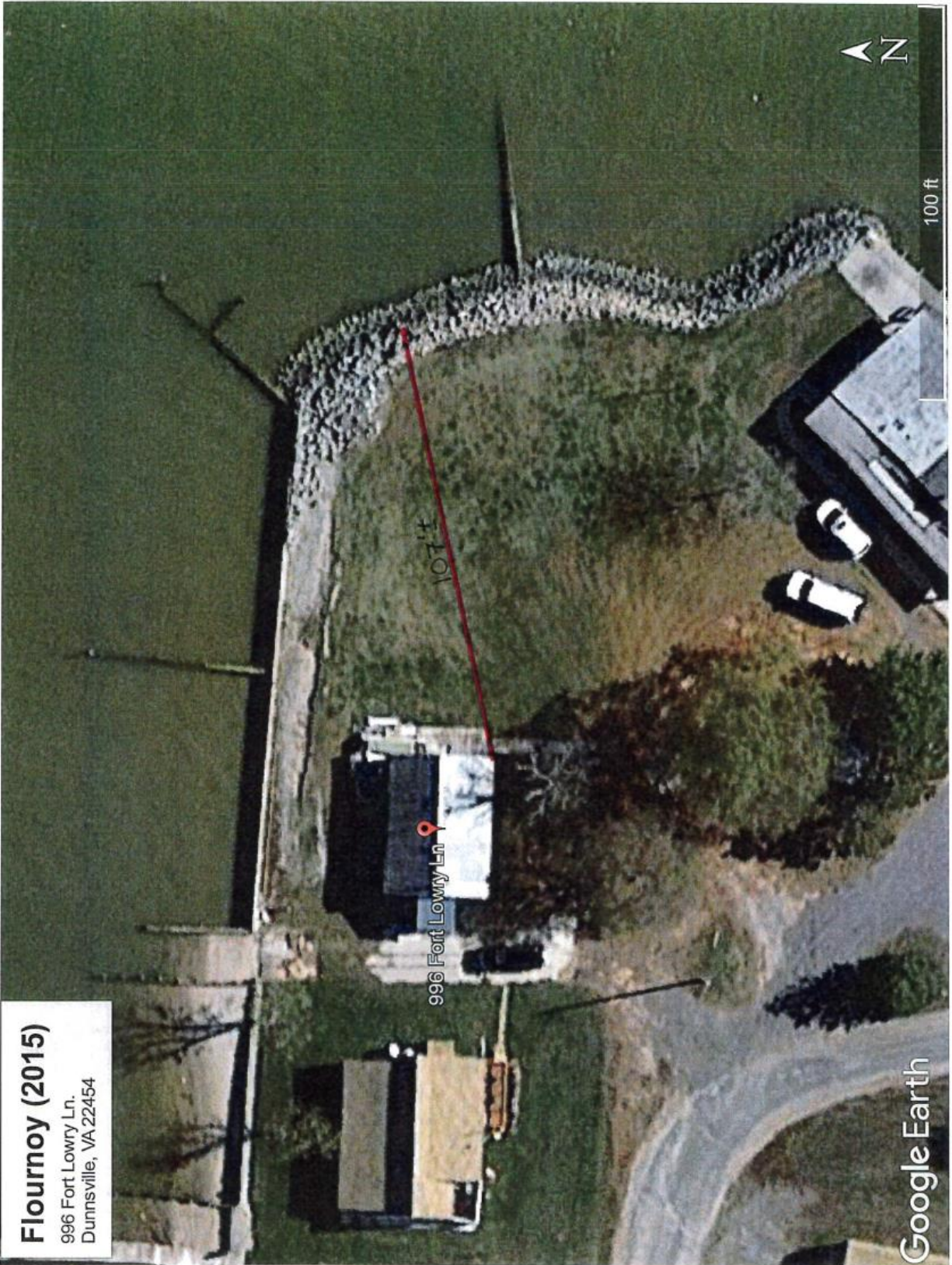


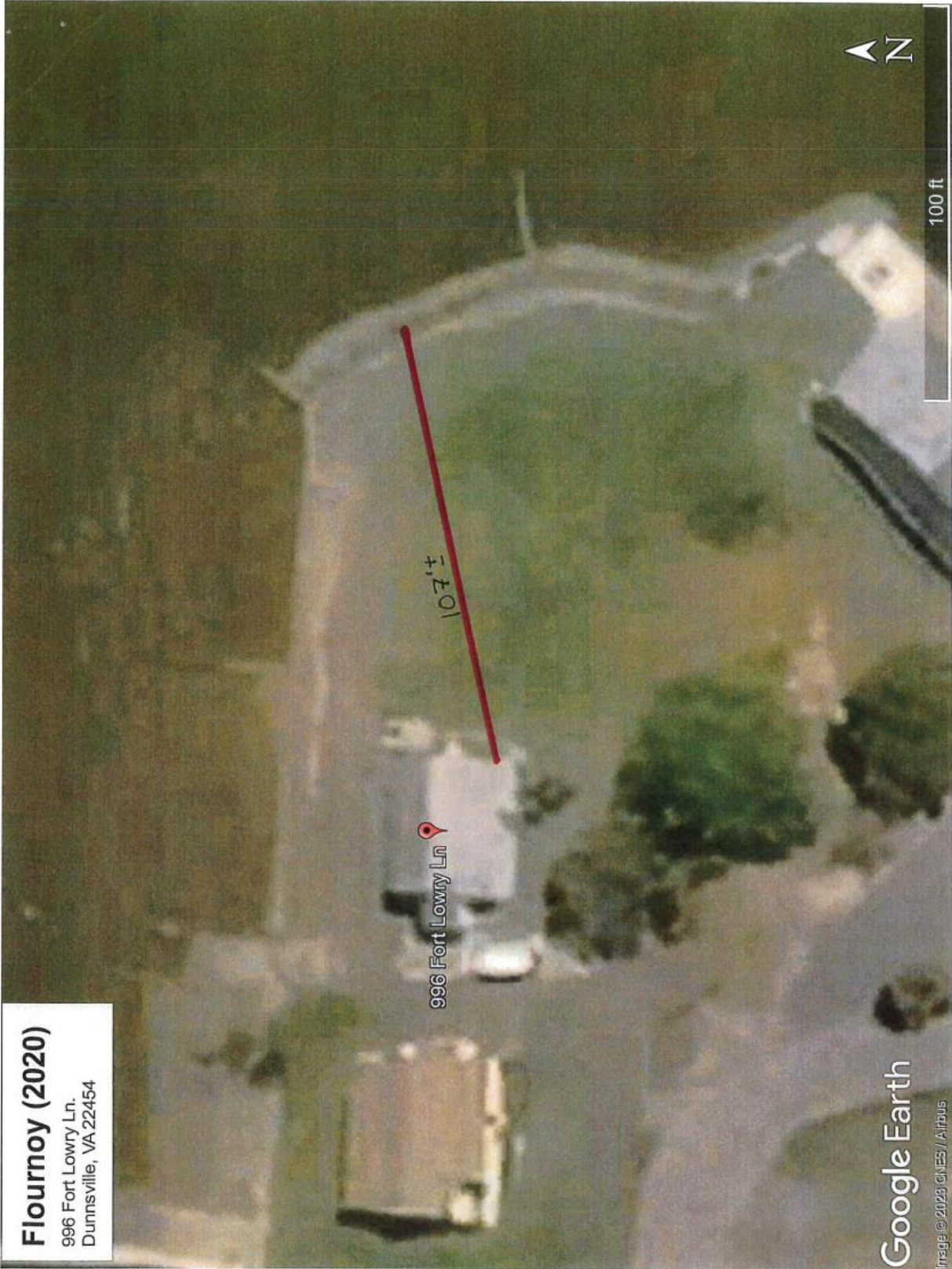
The 2009 VIMS shoreline change image we are 107' you can see the presence; it appears of some stone. You see the black line is meshing really well with that stone and we are at 107' and that is to about mean high. Hard to tell where the dirt came from, how much was put in if any by fill. Obviously, the rock, as we know, did not come from the water. We don't have rock here; it comes from the west. Somebody put rock there, he doesn't know who but is not attesting to that. Just presenting the facts here.



The rest of these are going to start looking really similar. The shoreline is not changing. From 2009 on the shoreline doesn't change.









This is the most recent picture, and it is still at 107'.

What this tells him is that somewhere back in the 2007 timeframe if there was fill done and rock placed it was then. As we know that was 16 years ago. He has seen these cases as he does a lot of shoreline work. When these complaints come in on cases like this where unpermitted fill was done, it is generally in a case where it happened, and it is almost an immediate complaint. The work is going on, the complaint happens, and it is addressed then and then an after the fact permit is issued or they are required to remove it. Here we are 16 years later, a complaint has come in, it appears that the complaint has nothing to do with the shoreline, it is for other reasons. From his perspective in looking at this it's hard to tell what he would have recommended when any of this fill was done. Back in that timeframe riprap revetment shoreline would have absolutely been permitted by VMRC in what location is the unknown because he doesn't know what the shoreline looked like at that point and how much fill was done. A riprap shoreline in this location would have been a great thing to put it. Obviously, these days we would have gone with something more environmentally sensitive such as a breakwater design, an offshore breakwater with some beach nourishment and some wetland planting but we are not talking about this timeline we are talking about 16 years ago. At this point he is at a point to say that the riprap has done a good job. He can see that for the past 15-16 years it has held its place, nothing's happened to it, it hasn't gone anywhere, the shoreline has stayed the same. Was the stone unpermitted, absolutely. Was the fill unpermitted, He doesn't know. That will be very difficult to prove if we can even prove it. He thinks the shoreline is doing good for where it is right now, it's not near what it used to be. It's there, everyone has been living by it. Happy to answer any questions.

Chairman Howeth asked if Mr. Flournoy is willing to provide those permits that he has. He suspects now that we are looking for building permits, we are not going to have paper from 15 years ago, but we will have it on the computer database. Is that correct Mr. Sadler? Mr. Sadler stated that would have been on the AS400 and that is no longer operational.

Chairman Howeth stated that before he turns anything over, he needs to know that it would be for them to keep. If there is only one copy, then he suggests just getting them to the board. If the board sees them tonight, they have to keep them. We are fair and we have to keep them, but we can get you a copy of them. We will turn them over to our building official or the Wetlands Board Secretary.

Mr. Flournoy presented two permits, one from 2004 for a Jetty repair and the other was from 2006 and was a bulkhead repair.

ESSEX COUNTY BUILDING & ZONING
 BUILDING INSPECTION DEPARTMENT
 MECHANICS LIEN AGENT:

BUILDING PERMIT

JOB WEATHER CARD

DATE October 7, 2004 PERMIT NO. 04-422
 APPLICANT C.S. Flourney, Inc. ADDRESS 5721 Chamberlayne Rd., Richmond, Va 23227
 (NO.) (STREET) (CONTR'S LICENSE)
 PERMIT TO pier & jettie repair () STORY (PROPOSED USE) NUMBER OF DWELLING UNITS

AT (LOCATION) Fort Lowery Lane Central ZONING DISTRICT R-2
 (NO.) (STREET)
 BETWEEN (CROSS STREET) AND (CROSS STREET)

SUBDIVISION Fort Lowery LOT L BLOCK LOT SIZE
Tax Map # 38C-1-1
 BUILDING IS TO BE FT. WIDE BY FT. LONG BY FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION
 TO TYPE USE GROUP BASEMENT WALLS OR FOUNDATION

REMARKS: **THIS BUILDING PERMIT DOES NOT EXEMPT YOU FROM OTHER APPLICABLE, STATE & LOCAL PERMITS (EXAMPLE, ARMY CORPS OF ENGINEERS, WRC, WETLANDS, ETC.)**

AREA OR VOLUME pier repair, jetty repair ESTIMATED COST \$ PERMIT FEE \$ 20.00
 (CUBIC/SQUARE FEET)

OWNER C.S. Flourney Inc. BUILDING DEPT BY Jeffrey L. Hodges
 ADDRESS 5721 Chamberlayne Rd., Richmond, VA 23227

THIS PERMIT CONVEYS NO RIGHT TO OCCUPY ANY STREET, ALLEY OR SIDEWALK OR ANY PART THEREOF, EITHER TEMPORARILY OR PERMANENTLY. ENCROACHMENTS ON PUBLIC PROPERTY, NOT SPECIFICALLY PERMITTED UNDER THE BUILDING CODE, MUST BE APPROVED BY THE JURISDICTION. STREET OR ALLEY GRADES AS WELL AS DEPTH AND LOCATION OF PUBLIC SEWERS MAY BE OBTAINED FROM THE DEPARTMENT OF PUBLIC WORKS. THE ISSUANCE OF THIS PERMIT DOES NOT RELEASE THE APPLICANT FROM THE CONDITIONS OF ANY APPLICABLE SUBDIVISION RESTRICTIONS.

- MINIMUM OF THREE CALLED INSPECTIONS REQUIRED FOR ALL CONSTRUCTION WORK:
1. FOUNDATIONS OR FOOTINGS.
 2. PRIOR TO COVERING STRUCTURAL MEMBERS (READY FOR LATH OR FINISH COVERING).
 3. FINAL INSPECTION BEFORE OCCUPANCY.

APPROVED PLANS MUST BE RETAINED ON JOB AND THIS CARD KEPT POSTED UNTIL FINAL INSPECTION HAS BEEN MADE. WHERE A CERTIFICATE OF OCCUPANCY IS REQUIRED, SUCH BUILDING SHALL NOT BE OCCUPIED UNTIL FINAL INSPECTION HAS BEEN MADE.

WHERE APPLICABLE SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATIONS.

POST THIS CARD SO IT IS VISIBLE FROM STREET

BUILDING INSPECTION APPROVALS	PLUMBING INSPECTION APPROVALS	ELECTRICAL INSPECTION APPROVALS
1	1	1
2	2	2
3	HEATING INSPECTING APPROVALS	REFRIGERATION INSPECTION APPROVALS
	1	1
OTHER	2	2

WORK SHALL NOT PROCEED UNTIL THE INSPECTOR HAS APPROVED THE VARIOUS STAGES OF CONSTRUCTION.

PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE.

INSPECTIONS INDICATED ON THIS CARD CAN BE ARRANGED FOR BY TELEPHONE OR WRITTEN NOTIFICATION.

ESSEX COUNTY-TAYLORVILLE
BUILDING INSPECTION DEPARTMENT

BUILDING PERMIT

530.00

JOB WEATHER CARD

PERMITS LEAD AGENT:

DATE 4/11/2006 PERMIT NO. CL 307
 APPLICANT Charles Flournoy ADDRESS 5721 Chamberlayne Bl., Richmond, Va 23227
(NO.) (STREET) (CONTR'S LICENSE)

PERMIT TO Boat ramp, bulkhead repairs NUMBER OF DWELLING UNITS _____
(TYPE OF IMPROVEMENT) NO. (PROPOSED USE)

AT (LOCATION) 996 Fort Lowery Lane Central ZONING DISTRICT R-2
(NO.) (STREET)

BETWEEN _____ AND _____
(CROSS STREET) (CROSS STREET)

SUBDIVISION Fort Lowery LOT 1 BLOCK _____ LOT SIZE _____
 Tax Map # 38C-1-L

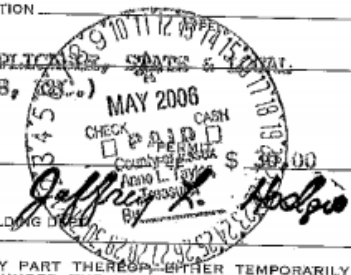
BUILDING IS TO BE _____ FT. WIDE BY _____ FT. LONG BY _____ FT. IN HEIGHT AND SHALL CONFORM IN CONSTRUCTION

TO TYPE _____ USE GROUP _____ BASEMENT WALLS OR FOUNDATION _____

REMARKS: ~~THIS BUILDING PERMIT DOES NOT EXEMPT YOU FROM OTHER APPLICABLE STATE & LOCAL PERMITS (EXAMPLE, ARMY CORPS OF ENGINEERS, VMEC, REISLANDS, (8...))~~

AREA OR VOLUME repairing boat ramp, bulkhead ESTIMATED COST \$ 5000
(CUBIC/SQUARE FEET)

OWNER Charles Flournoy BUILDING DEPT BY Jeffrey X. Abdou
 ADDRESS 5721 Chamberlayne Bl., Richmond, VA 23227



THIS PERMIT CONVEYS NO RIGHT TO OCCUPY ANY STREET, ALLEY OR SIDEWALK OR ANY PART THEREOF EITHER TEMPORARILY OR PERMANENTLY OR ENCROACHMENTS ON PUBLIC PROPERTY, NOT SPECIFICALLY PERMITTED UNDER THE BUILDING CODE, MUST BE APPROVED BY THE JURISDICTION STREET OR ALLEY GRADES AS WELL AS DEPTH AND LOCATION OF PUBLIC SEWERS MAY BE OBTAINED FROM THE LOCAL AGENCIES. PUBLIC WORKS, THE ISSUANCE OF THIS PERMIT DOES NOT RELEASE THE APPLICANT FROM THE CONDITIONS OF ANY OTHER APPLICABLE PERMITS OR RESTRICTIONS.

MINIMUM OF THREE CALLED INSPECTIONS REQUIRED FOR ALL CONSTRUCTION WORK:
 1. FOUNDATIONS OR FOOTINGS.
 2. PRIOR TO COVERING STRUCTURAL MEMBERS (READY FOR LATH OR FINISH COVERING).
 3. FINAL INSPECTION BEFORE OCCUPANCY.

APPROVED PLANS MUST BE RETAINED ON JOB AND THIS CARD KEPT POSTED UNTIL FINAL INSPECTION HAS BEEN MADE. WHERE A CERTIFICATE OF OCCUPANCY IS REQUIRED, SUCH BUILDING SHALL NOT BE OCCUPIED UNTIL FINAL INSPECTION HAS BEEN MADE.

WHERE APPLICABLE SEPARATE PERMITS ARE REQUIRED FOR ELECTRICAL, PLUMBING AND MECHANICAL INSTALLATIONS.

POST THIS CARD SO IT IS VISIBLE FROM STREET

BUILDING INSPECTION APPROVALS	PLUMBING INSPECTION APPROVALS	ELECTRICAL INSPECTION APPROVALS
1	1	1
2	2	2
3	HEATING INSPECTING APPROVALS 1	REFRIGERATION INSPECTION APPROVALS 1
OTHER	2	2

WORK SHALL NOT PROCEED UNTIL THE INSPECTOR HAS APPROVED THE VARIOUS STAGES OF CONSTRUCTION.

PERMIT WILL BECOME NULL AND VOID IF CONSTRUCTION WORK IS NOT STARTED WITHIN SIX MONTHS OF DATE THE PERMIT IS ISSUED AS NOTED ABOVE.

INSPECTIONS INDICATED ON THIS CARD CAN BE ARRANGED FOR BY TELEPHONE OR WRITTEN NOTIFICATION.

Chairman Howeth asked if the material was sand, gravel dirt? The composition of the material because some materials are acceptable in shoreline work and some materials are not. We just want to make sure we didn't add anything that wasn't there or leave off anything out that was. If you could tell us what that composition was.

Mr. Flournoy stated that it was sand, gravel, some concrete, and some topsoil on top. Sod at some point was put down as well.

Chairman Howeth opened it up for Public Comment.

Mrs. Donna Walls, 994 Fort Lowry Lane. She is the one that lodged the complaint. She states she is not a contentious homeowner. She and her husband purchased the property in 2020. They just moved in full time about a year ago. The first weekend we met Mr. Flournoy and his wife we were asked to sell him property, we declined. Very rarely have they seen them up until the fall of 2022. Mr. Flournoy sent them an email dated August 30, 2022, and requested that we sell them the same piece of property that he asked them to sell him when we first met him. On the 31st he sent them a plat and he had outlined the property he wanted them to sell. And that piece of property she sent him an email back explaining that their well and well line, things of that nature were in that piece of property and that they were not going to sell him property. Shortly thereafter, she does have records for all of this, Mr. Flournoy has taken and produced records at the Commissioner of Revenue's office stating that he would like to buy some sections of property if there were no owner found. However, that was our property that he was trying to buy in the county. She has records and emails where Mr. Flournoy completely, and this was the very first email that he sent us on August 30th, where he outlines how he knows we own the property and even outlines how the previous owner owned the property. Since we would not sell him the property there have been numerous attempts, in our opinion, Mr. Flournoy to try to gain the property. He has made comments to her of different ways he could gain the property. He told her he went to the County, and he did this. I would not have known that he did this if he had not gone to the county. When she went to the Commissioner of Revenues office, this is records, it is easily identifiable, she sat down and spoke with Tommy Blackwell as well as Kristen Foster on two separate occasions and they both told me 'Yes, the story you are asking us about did in fact happen. It didn't happen the way Mr. Flournoy told you it happened, but it did in fact happen.' He came in, he laid claim on our property, he wrote a \$5,000 check for our property to start paying taxes on our property that he knew we owned and claimed no one owned it. This went to his address, it was supposed to go to his address, this \$5,000 tax bill for 15 years and after that he would be able to lay claim to his ownership of our property. There are a number of other stories that are similar to this. Mr. Flournoy will not stop harassing us. There has been one thing after another, I am not the aggressor here. There would be absolutely no reason for her to be the aggressor. She has emails from him, Lot N that he is claiming is not listed, that he referenced is the 10%. She and her husband were going to look at talking with Mr. Flournoy to give him additional access across our property from the road. They were trying to get a survey taken and Mr. Flournoy came out and sent documents to

our surveyor that was basically laying claim to our property, our surveyor continued. She knows this is getting kind of farfetched but just trying to tell them there is a tremendous amount of things that is not being shared here. We are not the aggressor. Mr. Flournoy is trying to gain our land in any way possible, he is harassing us, he did a quit claim deed on lot N, I don't remember all the specifics but it's lot N, 38. It is part of the packet. He did that in the fall, and he did that to obtain what he feels would be a right of way over an old right of way that is now our property. We have a deed of ownership of that property where the previous owner purchased the property. Our drain field is in that property. The previous owner had that drain field upgraded as part of our purchase price because the old paper pipe that was in the same location and area for over 50 years from what we were told was crushed. I'm not really familiar but that's what I was told that it was crushed and that's why the drain field wasn't working properly but it was already in already in that location. Since then, Mr. Flournoy, I have a number of emails from him laced with threats, I have emails from him telling us he doesn't want to obtain our property, he truly just wants to make a trade. I have emails from him saying he only bought that property to gain 'bargaining power,' his words, over us. So that he could and all along all he wanted to do was convey that property to us for trade for our other property. So, the picture is definitely not being painted properly here. There're many more things but I'm not used to public speaking. I am a social butterfly if I am one on one and even in a small group, but this is a little unnerving because we are literally getting ready to enter month nine with this situation and the harassments. Not engaged in an email, I have not replied in an email to Mr. Flournoy since I think early September or mid-September. I would have to look at my emails to tell you the exact last date, but I have continued to receive emails from him. So, there is so much more to tell you, but I do not know what is pertinent to the situation. If you have questions, please I am hoping I don't leave something out. I did leave something out, Lot N was considered 95% submerged I believe, it is in the packet I submitted. That was completely submerged in 2014 by the County. I don't see how if once land becomes 100% submerged it then becomes the property of the Commonwealth of Virginia. I don't understand how a resident is able to go lay claim what now is the Commonwealth of Virginias property. Which is what Mr. Flournoy has done. And again, that is Lot N that is what he has claimed, what he is trying to hold over our head, bully us, coerce us, anything else you want to call that to try to make us trade him our own property. And when we refuse to engage and reply back to the emails I just in turn get yet another email. Just this week the Virginia Department Environmental Division showed up at the house on Tuesday and they wanted to inspect our drain fields that Mr. Flournoy had lodged a complaint that our drain field was not properly installed. They did leave the house and they did say that we were compliant. That drain field was installed by an engineer, we did not have anything to do with it, however we do live at the residence now, so we were found in compliance. We just basically have to sit back and wait for what Mr. Flournoy does next because quite honestly, it's becoming very unnerving, it's very scary. I received an email from him on the 27th, I might have to pull my phone up, I believe it was the 27th or what is today the 27th so it was the 25th excuse me. And I believe that email came into my house at 6:07. On this particular email just about everything he put in this email is

a non-truth. He also stated in the email that Sheriff Holmes told him to go cut the ties, which is rope that I placed around our property lines and private property signs because of Mr. Flournoy's harassment. He, in this email, it is in written form, where he says he spoke with Sheriff Holmes. Sheriff Holmes says cut the ties and no one in his office will do anything about this and I could call him to verify. I made a trip down to the Sheriff's office. Sheriff Holmes officer came out and spoke to me and took this email back to Sheriff Holmes and come back in there several minutes later said that he assured me that Mr. Holmes wanted him to assure me that he did not, absolutely did not tell Mr. Flournoy to cut those ties and ropes on our property nor would he ever tell someone to commit a crime. And that if Mr. Flournoy does cut even a string on our property or remove anything that we have placed up he will in fact be breaking the law. That Gentleman, you are more than welcome to check out because I did go to the police department. So, I feel like Lot M, the reason I found out this was filled in was because of Mr. Flournoy's continued harassment. I don't care if he builds a home, I didn't care if he builds a home. That's not the problem here, the problem is he wanted our property and we didn't want to give it to him. And the second that he asked me standing in my yard if he had to go before the Zoning Appeals department would I be against him and I said I don't know I didn't know what he wanted to build. He said, 'you hesitated I don't like that,' That's exactly what he told me. Lot M was discovered to be filled in literally because of his continued harassment. My lawyer said we need to start doing a search on all his property. So, therefore, through the search we were able to locate plats and these plats showed that the property was concaved grossly. I'm going through all of this research trying to figure out how I can get this man to leave me alone and all of a sudden, this lightbulb goes off. I have picture on the wall in our house that the man we bought our house from left and I went in and looked at this picture, and it's part of this packet. It's the part that shows where the whole point used to be there years ago. It's the packet that I submitted. That's one of the pictures it has it so far jetted out and it shows Lot N in its entirety with beach all around it. The second picture that was in the frame on my wall showed where it had been completely washed away. It's in the packet, you can see it, I have labeled it. I spent countless hours on it because of what's been going on. I didn't even pay attention to this picture and the lightbulb went off and I had it. And that made me go further and start asking questions in the community. I have realized that community members haven't come in here to speak, and the reason they are not coming in to speak is because they are worried about the retaliatory actions that I am going through now. That's what they are worried about. This is also the reason other people don't come in because they are worried about retaliatory actions of people like him. He calls me mean, he left my house the other day when the county members were out visiting with him, he went to my neighbors, he lodged a lot of untruths said we didn't pay for our survey, not true. Said a lot of other things that were untrue. I will save those for my Civil case. After he left there, he came to my house, didn't come to my house, didn't cross the property line but came walking up and down the line. That is his right it is his property side I am not disputing that whatsoever. But you tell me how comfortable it would be for you for someone to come so far as Mr. Savage pointed out in one of the photos, I believe seeing it was like an additional 107' so he had to come all the way across that to come

over on the edge of our property line and he is posturing in my opinion. I don't know if that's what it's called but that's my opinion. That's the way that I took it. I took him as trying to intimidate me. He goes up, he gets up on the rock, I have this on video, I have security cameras completely around the entire home. I'm going to stop talking, thank you.

Chairman Howeth asked if there were any questions.

Mr. Goff asked about seeing the pictures. In particular one thing he is interested in knowing if there is any evidence of vegetative wetlands.

Chairman Howeth stated that Mrs. Walls filled a complaint. We have that complaint it is at the County. I didn't release any of the information, I didn't release it all because I wanted to give Mr. Flournoy and his folks a chance to tell us, so we had real data to work with. As you now know we don't have VMRC permits, we do now have some building permits that we can look at and try to digest. We will post all of this information to the public record which means we will all get it as board members, but they can all get it too. To everything that exists on this case to this point. I have looked at that information and I am struggling a little bit; you are a little better at it than I am Kevin at trying to spot wetlands from aerial photographs. As that is what you used to do for VIMS.

Mr. Goff said he didn't used to do that.

Chairman Howeth stated Mr. Goff had a little different background to what's there. He will make all of that because I thought it would be fair to everybody involved to just simply do the show-cause hearing tonight and get all of this information out to what's here. And then we try to decipher what we are looking at, what we are not looking at and try to start formulating some opinions. With that being said we are still in the public portion of this show-cause hearing. Is there anyone else who wants to speak?

Mr. Steve Walls, Donna's husband, is a resident at 994 Fort Lowry Lane. There are a couple of things that haven't been said that I think are highly relevant. The parcel that Steve Flournoy wants to buy is roughly, if you took the middle of this room, this side. He needs that land to build the house that he wants to build on the lot to meet setbacks and what other requirements. That's why the issue has come up. Now, initially I was like well why don't we sell it to him? And the problem is, is our land, our house has about 15'-20' perimeter around it. The front is all water, the side is some concrete and some water, the back is from like me to you and then it's his property. We have a driveway and then we have this piece of land that he wants to buy. If I want to put a shed up or park a car that's the only land, we have to use. We are not averse to him building a home, we'd love for you to build a home, well before. But he just won't let this go and he keeps harassing my wife. The reason my wife is the point person is I was selling my business as I was trying to retire right when this came up. So, I said Donna why don't you talk to him and try to work through it. And it just kept spiraling and spiraling and I am a CPA and got into tax season, so I have just stayed out of it. But I come home every night to it. He just will not let it go. This Lot N that is underwater he is alleging that it is landlocked therefore he

has a right of way across our septic drain to access his landlocked property. What he doesn't tell you, well first of all the land is underwater so I don't know why you need to access it to start with. But his lot and his other lot he can access that property. He doesn't have to go through our property, he can access it from his own property. It's just absolutely ridiculous. Now he is trying to say our septic field is on his land and we have 30 days to remove it. Let me read this email to you that he sent.

Donna and Steve (This was Tuesday) This is where things stand with me. You have blocked my legal access to my property with string and threats of prosecution. (Not sure that's true because we don't respond to him.) You did this after I provided you with proof that the right of ways are valid. I now have Hirschler Fleischer Law preparing a case to sue you for damages and cost. I have spoken to Sheriff Holmes, and he said to cut the string and his office would not get involved. Please call him to verify. (Well, we did. Sheriff Holmes denied saying that.) Now is that time to state your reasons for believing that my driveway rights of way aren't valid. (They aren't valid because it's underwater, you don't know that property.) If you have any papers or legal findings that give arguments, please provide them. If you do not produce anything I will proceed to drive over all areas where I am legally entitled including your septic area. I hereby give you 30 days' notice to move the improperly placed septic system. I can't imagine how such an incredible mistake was made. The old survey and the application for your system shows this row. Also, your recent survey from Youngblood shows this. (Well, here is a question. How does Steve Flournoy get a copy of our survey from Youngblood when it is not a public document? He's got somebody inside Youngblood that he knows helping him.) It also appears that your septic system was improperly installed without the minimum setbacks and appears it is actually partially on my property. I have engaged GO environmental services to evaluate your system. (That's the guy that was suggesting that the land that has grown, grew naturally, that it wasn't filled in, that the sand accumulated over time. That's that guy.) I will add the cost to the lawsuit. They will be on the right of way on your property so now is the time to state any legal reasons to deny access. I understand you stopped your surveyor from researching the records and stopped them from showing the old road with a recorded perpetual easement. (That's not true we have a survey) In a futile effort to convince you of this offer: I will pay the cost for your surveyor to do the title research, to complete the survey and determine the validity of the 30' perpetual easement if you agree to pay the cost if and when it is shown to be valid. (We have already paid for the survey I don't understand this.) Let this email serve as notice that I will be removing the posts with the rope that blocks the 30' easement and gives access to the 20' right of way. This email will be printed and will likely be used as evidence in the coming lawsuit. So, again, now is the time to state your reason for your actions.

This is the person we are dealing with. It's been nine months of this. This has to stop. I don't know how to make it stop but it has to stop.

Chairman Howeth asked if there was anyone else who would like to speak?

Mr. Flournoy asked if he would be able to respond to that.

Mr. Bates stated he was invited to be on the wetlands board not a land dispute board and I want to get to the bottom of the wetlands.

Chairman Howeth stated that since we are at a show-cause hearing and have not even gotten to the hearing yet. Mr. Flournoy, with all due respect I am going to deny that request right at this point because we have let both parties speak. So, is there anyone else in the public that would like to speak for or against?

Hearing none Chairman Howeth closed that portion of the show-cause hearing. At this point gentlemen it comes back to us. We can table it for 30 days, we can set a date for a restoration hearing, we can advise all parties in the public that we will, if you wish to submit after the fact permits you could do that. We could go to the executive session, which not sure we have enough data to that, but it is an option. Any feelings of the matter at this point? Honestly, I think we are still in the fact-finding mode of what we are doing but I think we are getting close to the end point. I will let you gentleman decide how you would like to proceed from here.

Mr. Parker feels that there is a lot more research that needs to be done. He would say probably table it.

Mr. Goff asked what the options are for gathering and looking at the evidence, looking at everything together not in a public session, maybe even a site visit?

Chairman Howeth stated he has been to the site, met both parties on the disputed property line. My suggestion is let's put the entire packet together, you have heard a lot of information tonight, a lot of it does not have anything to do with this wetlands board. We have to get down to what happened in any potential tidal zone. We may want to under the table of 30 days we may want to ask VIMS to send someone out to help us figure out what would have been the intertidal zone. They may have more expertise, more tools than we have to determine what our jurisdiction is. And once we set our jurisdiction if there is that ambiguous bottom left that was filled that goes straight down to VMRC in Newport News. That's where we end up. We have to clear our jurisdiction first then we send it on to wherever it needs to go.

Mr. Goff said to be clear there is no VMRC permit for the riprap that was installed somewhere.

Mr. Woodward could not find any records of permits under the name of Flournoy or that area, whether it be riprap, or whether it be groins, jetties. And if in fact they got a building permit from the county to do shoreline work I'm not sure how the county would have been able to issue that permit without first having a wetlands permit or a VMRC permit. I just want to make clear that the general rule of law, the general rule of thumb, is property erodes to the benefit of the Commonwealth. I.E., you have a 40' beach that erodes over time, you lose land. The Commonwealth gains the title to that land. Eroding is natural. If you have a point and you are fortunate to have a beach that grows and grows as mother nature or a tree that falls and holds it but if you bring in rock and build riprap revetment, or bulkhead, or build groins to retain fill

or to trap naturally moving sediments unless you have a permit for that structure, that created land while it is land the underlying sea ownership is still with the Commonwealth of Virginia. VMRC will wait to render a permit decision when a permit is applied for. If it needs wetlands permit, we let the locality generate their approval first and we follow along. We are not going to approve a project that was denied at the local level. We could not find any records of it. If Mr. Flournoy or his predecessors in title can come forward with something that would show that that area was created naturally and then he put rock to hold it and then it created naturally again, and he put more rock to hold it. But the minute you put down rock to hold it you are in violation.

Mr. Goff asked where the property line is in relation to the potential violation area?

Chairman Howeth stated that there is an old plat with Fort Lowry, and I believe that this is Lot L.

Mr. Sadler stated that Lot L, M, and N.

Chairman Howeth stated that Lot M is the majority lot so what you have is most of the area is contained on lot M. We do have maps that show the lot lines as to what is there. But all of that is in the package that I believe all of you need to get together and review. The heart of the matter for tonight is did we have permits, did we not have permits and if we do or don't, we can react to what those permits are. I have seen how things were done in 2004 and 2006 because I was sitting on the board then. With that being said we have closed the public hearing we have brought it back for a motion to table for 30 days. Can I get a motion?

Mr. Bates made the motion. Mr. Parker seconded the motion.

Chairman Howeth stated that there has been a motion and a second to table this for 30 days with the understanding that all of the information included in the file is all going to be disseminated to the board members and at the same time made available to the public.

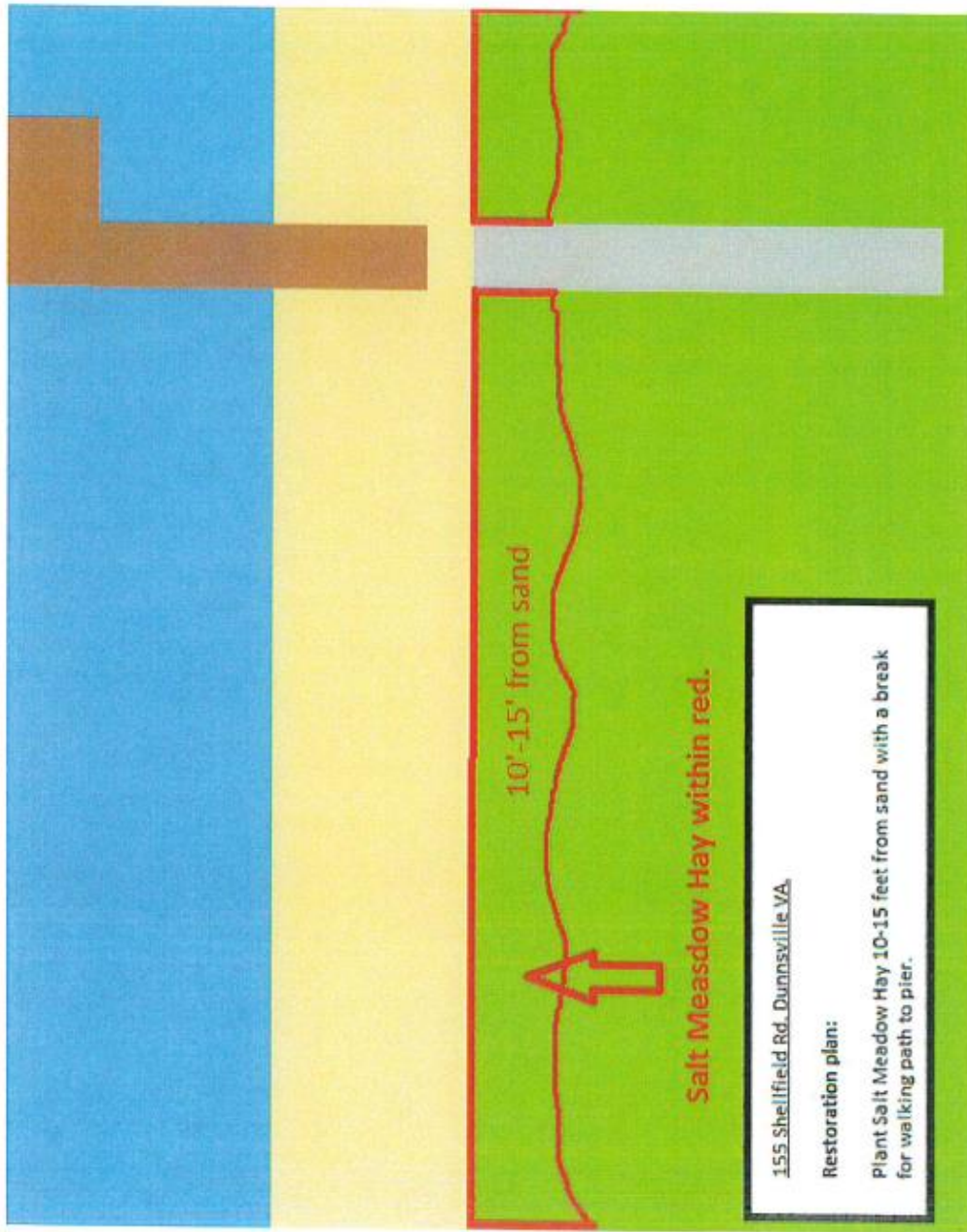
AYES: 5 NAYES: 0 ABSENT: 0

NEW BUSINESS

None

OLD BUSINESS

Chairman Howeth stated that 155 Shellfield, Burak. They have submitted a restoration plan. I have sent it to Jay, and he said he was ok with it. Does anyone have any feelings either way?



Mr. Bates made the motion to approve the restoration plan as presented. Mr. Parker seconded the motion.

AYES: 5 NAYES: 0 ABSENT: 0

ADJOURN

Having no further business, Chairman Howeth entertained a motion to adjourn. AYES: 5 NAYES: 0 ABSENT: 0