

Middlesex County Wetlands Board Minutes

February 8, 2000

Call to Order

The February 8, 2000 meeting of the Middlesex County Wetlands Board was called to order by Chair Sherman T. Holmes at 9:00 A.M. in the Boardroom of the Woodward Building, Saluda, Virginia.

Present: Chairman Sherman T. Holmes
Mr. Elliot Reed
Mr. B. Ulman Miller
Mr. Woodson Armstead
Mr. M. Dale Taylor

Staff present: Thomas Jordan, Planner

Also present was Mr. Chip Neikirk from the Virginia Marine Resources Commission (VMRC).

Minutes

The Board considered the minutes of the January 11, 2000 meeting. On a motion by Mr. Miller and a second by Mr. Taylor, the minutes were approved unanimously.

Show Cause Hearing

A. Jerry Ferguson

Chairman Holmes read the allegation against Mr. Ferguson, for placing fill material (oyster shell) at Tax Map #2-23 (Butylo) on the Rappahannock River. Staff then read a letter from VIMS stating their position on the placement of the fill material.

Mr. Holmes requested Mr. Ferguson, address the Wetlands Board on why he did not inquire whether he needed permits or not from Middlesex County before proceeding with his project. Mr. Jerry Ferguson approached the Board and stated that he was not aware he needed a permit to repair an existing road. He presented to the Board a court case from 1960 with a survey showing the road. He then presented numerous pictures to the Board showing the road and area in question. Mr. Ferguson maintained he merely placed the new shell on top of the existing shell and was within his Oyster Lease boundary lines to maintain the existing road.

Mr. Holmes questioned Mr. Ferguson on the last time he dumped shells. Mr. Ferguson stated one load was dumped in September-October in the area near the end of SR 600.

Mr. Taylor asked Mr. Ferguson on the length of time the oyster house and road have been in existence. Mr. Ferguson stated Willie Abrams bought a pier and oyster house from the Evans Brothers in 1939. Mr. Ferguson stated that the pier and oyster house stayed unchanged until 1952 when Mr. Ferguson's grandfather bought them. He then added that Hurricane Hazel destroyed the pier in 1954. A permit was obtained in 1955 to create a causeway 30' to the existing island and oyster house in width from the Army Corps of Engineers and stamped with approval from Virginia Commission of Fisheries, which later became the Virginia Marine Resource Commission.

Mr. Taylor stated he did not see anything that concerned him, he just saw new shells placed on top of existing shells. He also added that the Board should not become involved in property lines and surveys. Mr. Miller stated that he agreed with Mr. Taylor's comments.

Mr. Reed stated according to the VIMS letter some vegetation was destroyed.

Mr. Holmes opened the public hearing.

Bill Kurz, landowner in Cedar Pointe subdivision, stated he was in the area in late June and saw no vegetation at the site in question, only road and shell.

Joe Bozeman, of Butylo, stated that the 1955 permit from the ACE only concerns navigation not vegetated and non-vegetated wetlands. He added that he felt any dumping of shells, concrete, or other materials into state waters or onto private property should be under review. Mr. Bozeman, stated Mr. Ferguson's tax bill goes beyond the low tide level not to the high water mark and states zero acreage and zero land. He also maintained that Mr. Ferguson had dumped the oyster shell in a vegetated area. Mr. Bozeman stated he has letters from other property owners on the river and pictures to submit to the Board.

The Board studied and compared pictures submitted by both Mr. Ferguson and Mr. Bozeman.

Mr. Robert Neikirk, VMRC Representative, reminded the Board that all pictures and exhibits submitted must be kept for 30 days. He also clarified the Board's jurisdiction, stating that the jurisdiction lays between Mean High Water (MHW) and Mean Low Water (MLW) and it may also extend landward one and a half times the Mean Tide Range if vegetation is present.

With there being no further comment from the public, the hearing was closed.

Mr. Reed made a motion to hold Mr. Ferguson in violation of the Middlesex County Wetlands Zoning Ordinance and required to remove all shell beyond the metal stob.

Staff requested clarification of the motion by Mr. Reed. Mr. Reed modified it to require the removal of the shell within the Wetlands Board's jurisdiction (MLW landward to one and a half the Mean Tide Range) which will be marked by staff and a VIMS Representative within the 30 day appeal period.

Mr. Miller seconded the vote, and it carried by a 3-2 vote with Mr. Reed, Mr. Miller, and Mr. Holmes voting in the affirmative and Mr. Taylor and Mr. Armstead voting in opposition. Mr. Ferguson was held in violation of the Middlesex County Wetlands Zoning Ordinance and required to remove all shell within the Wetlands Board's jurisdiction (MLW landward to one and a half the Mean Tide Range) which will be marked by staff and a VIMS Representative within the 30 day appeal period.

B. Harry Terry

Chairman Holmes read the allegation against Mr. Terry, for placing a rip rap revetment and fill material (sand and oyster shell) at Tax Map #19-16-51 (Cedar Point Subdivision) on Robinson Creek. Staff then read a letter from VIMS stating their position on the placement of the rip rap revetment and fill material.

Mr. Holmes requested Mr. Terry, address the Wetlands Board on why he did not inquire whether he needed permits from Middlesex County before proceeding with his project. Mr. Eric Johnson, representing Mr. Terry, approached the Board and read a letter addressed to the Board from Mr. Terry. The letter discussed his previous applications made to permit the location of a single-family dwelling and gazebo within the Resource Protection Area (RPA) under the Chesapeake Bay Preservation Act. The letter stated that Mr. Terry was just trying to prevent erosion from runoff. It also mentioned that in addition to the filter cloth and rock he placed they also planned to plant vegetation in the area filled with the shells and dirt. Finally, he requested the Board take into consideration that he did not attempt to intentionally circumvent any Middlesex County Ordinance.

Mr. Holmes opened the public hearing.

Bill Kurz, landowner in Cedar Pointe subdivision, discussed the history of the subdivision and its restrictive covenants. He discussed the Chesapeake Bay Act and the slope characteristics of the project site and the subdivision in general. He stated that it was his opinion that the property owner was trying to reclaim land

for setback purposes. He stated that he questioned the intent of the property owner and submitted pictures of the project site to the Board for their review.

Mr. Johnson contended that the property owner simply was trying to landscape his yard.

Lloyd Taylor, landowner in Cedar Pointe subdivision, stated he lives next door to Mr. Terry and during the summer high-tide does come up to where the project took place on the property.

Mr. Neikirk, VMRC representative, reminded the Board that at the Show Cause Hearing stage, the Board can elect to find that no violation has taken place or if a violation has taken place, whether to require an after-the-fact permit, civil charges, or restoration.

With there being no further comment from the public, the hearing was closed.

On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by unanimous vote, a determination on Mr. Harry Terry's Show Cause Hearing was continued until next month, in order for the Wetlands Board to consult with an attorney.

Public Hearing

Chairman Holmes opened the public hearing, and the Middlesex County Wetlands Board took action on the following applications:

A. F. P. Sturm – Application #1999-2262

Chairman Holmes read the proposal of Mr. Sturm, to grade the existing eroding bank and place 287' of rip rap revetment. This project is located on the Piankatank River, at Tax Map #43-1-2. Staff then read the VIMS report for the project.

Mr. and Mrs. Sturm and Jeff Watkins, of Riverworks Inc. were present to represent the project. Mr. Watkins summarized the Shoreline Erosion Advisory Service (SEAS) Report. He submitted pictures to the Board for their review and offered to answer any question the Board may have.

Mr. Holmes opened the public hearing.

Mrs. Johnson, homeowner next to Mr. Peter Sturm, read a prepared statement supporting the Sturm's erosion control project. She stated that she and her husband request the Board approve the proposed project and offered to answer any questions the Board may have.

With there being no further comment from the public, the hearing was closed.

On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by unanimous vote, Application #1999-2262 was approved as submitted for a term of 18 months.

B. Tom Roberts – Application #1999-2330

Chairman Holmes read the proposal of Mr. Roberts, to install three low-profile groins and place rip rap over an existing groin. This project is located on the Chesapeake Bay, at Tax Map #46-7-71. Staff then read the VIMS report for the project.

Jay Foster, of R&W Construction was present as the agent for Mr. Roberts. He submitted a letter from the applicant, which discussed the VIMS Report, to the Wetlands Board for their review. Mr. Foster then discussed the numerous groins on Stove Point and the movement of sand along the shoreline and into the Piankatank. Mr. Foster offered to answer any questions that the Board may have.

Mr. Taylor stated he commended Mr. Roberts for holding the point and that the existing rip rap revetment was doing a good job.

Mr. Holmes opened the public hearing.

Mr. Neikirk stated that the shoreline is already hardened and simply maintaining or adding to the existing revetment is going to control any possible erosion problems. He went on to state that additional protection could be gained by creating a beach in front of the existing revetment. He suggested if the Board sees it necessary to permit the groins, they could modify the length to make them shorter.

With there being no further comment from the public, the hearing was closed.

On a motion by Mr. Miller, seconded by Mr. Armstead, and carried by unanimous vote, Application #1999-2330 was approved as submitted for a term of 18 months.

C. Helen Williams – Application #1999-2287

Chairman Holmes read the proposal of Mrs. Williams, to place 143' of rip rap revetment. This project is located on Meachim Creek, at Tax Map #30A-1-23. Staff read the VIMS report for the project.

Alor Grantham-Traywick was present as the agent for Mrs. Williams. She explained the project would follow along the bank and stay behind the existing vegetation. Mrs. Traywick offered to answer any questions that the Board may have.

Mr. Holmes opened the public hearing.

With there being no comment from the public, the hearing was closed.

On a motion by Mr. Armstead, seconded by Mr. Reed, and carried by unanimous vote, Application #1999-2287 was approved as submitted for a term of 18 months.

D. Frank Hardy – Application #1999-2291

Chairman Holmes read the proposal of Mr. Hardy, to place 96' of rip rap revetment. This project is located on Jackson Creek, at Tax Map #40-398A. Staff then read the VIMS report for the project.

Alor Grantham-Traywick was present as the agent for Mr. Hardy. She stated that Jeff Brown, of Earth's Resources, the contractor for the project sends his apologies for mistakenly commencing with the project without the proper authorization. She stated that she brought revised drawings and a check to pay the difference for an after-the-fact permit. Mrs. Traywick stated she and the applicant had incorrectly assumed the marsh spit was Mr. Hardy's property. She stated that Mr. Thimsen who had the rip rap placed on his property did not mind the project on his property, but would not assume any liability from its placement.

Mr. Taylor questioned Mrs. Traywick on how she knew to bring a check and a revised drawing for an after-the-fact permit. Mrs. Traywick stated that she just assumed that the Board would require an after-the-fact permit from conversations with staff. She acknowledged that she asked staff what to bring to the Wetlands Board hearing to be prepared. She said that she also knew the VIMS Report stated minimal impacts and no changes would have been recommended even if the project were seen prior to the construction. She apologize to the Wetlands Board if her assumption was wrong, but she stated that she just wanted to be prepared for the hearing depending on whatever the Board decided.

Mr. Taylor stated that he felt it was a waste of his time if everything has been done prior to the meeting. Mr. Holmes stated he understood Mr. Taylor's concerns, but he had requested staff contact Mrs. Traywick and discuss the violation.

Mr. Holmes opened the public hearing.

Mr. Neikirk, VMRC representative, addressed the Board and stated that staff's conversation to Mrs. Traywick they discussed that the application had changed from a regular application to after-the-fact application. He went on to discuss how the additional fee for an after-the-fact permit is only an application fee. He stated the Board must still decide whether to require an after-the-fact application, civil charges, or restoration. Mr. Neikirk stated that he would recommend the Board at least consider civil charges against the contractor in addition to the after-the-fact application fee.

With there being no further comment from the public, the hearing was closed.

On a motion by Mr. Reed, seconded by Mr. Armstead, and carried by unanimous vote, Application #1999-2291 was continued until next month, in order for the Wetlands Board to consult with an attorney.

E. James Newell – Application #1999-2288

Chairman Holmes read the proposal of Mr. Newell, to place 240' of rip rap revetment. This project is located on the Piankatank River, at Tax Map #44-3-24. Staff then read the VIMS report for the project.

Alor Grantham-Traywick was present as the agent for Mr. Newell. She offered to answer any questions the Board may have.

Mr. Holmes opened the public hearing.

With there being no comment from the public, the hearing was closed.

On a motion by Mr. Reed, seconded by Mr. Miller, and carried by unanimous vote, Application #1999-2288 was approved as submitted for a term of 18 months.

F. Bernard Phelps – Application #1999-1989

Chairman Holmes read the proposal of Mr. Phelps, to place 102' of rip rap revetment. This project is located on a man-made canal, at Tax Map #45-11D. Staff then read the VIMS report for the project.

Alor Grantham-Traywick was present as the agent for Mr. Newell. She offered to answer any questions the Board may have.

Mr. Holmes opened the public hearing.

With there being no comment from the public, the hearing was closed.

On a motion by Mr. Miller, seconded by Mr. Armstead, and carried by unanimous vote, Application #1999-2167 was approved as submitted for a term of 18 months.

Adjournment

With no further business to discuss. Mr. Miller moved to adjourn the meeting, seconded by Mr. Armstead, the meeting was adjourned unanimously.

Respectfully submitted.

Wetlands Board Chair

Date