

Middlesex County Wetlands Board Minutes

August 14, 2001

Call to Order

The August 14, 2001 meeting of the Middlesex County Wetlands Board was called to order by Chairman Miller Smither at 9:00 A.M. in the Boardroom of the Woodward Building, Saluda, Virginia.

Present: Mr. J. Miller Smither - Chairman
Mr. M. Dale Taylor
Mr. Woodson Armstead
Mr. Archie Brooks

Absent: Mr. B. Ulman Miller – Vice Chairman

Staff present: Thomas Jordan, Planner
Cathy Shiflett, Planning Secretary

Also present were Mr. Robert Neikirk from the Virginia Marine Resources Commission (VMRC) and David O'Brien from the Virginia Institute of Marine Science (VIMS).

Minutes

The Board considered the minutes of the July 10, 2001 meeting. On a motion by Mr. Taylor, and a second by Mr. Armstead, the minutes were approved unanimously.

Show Cause Hearing

A. Norborne Reams, Jr. – Placement of a permitted bulkhead channelward of the authorized benchmarked location (Application #2001-0670). This project is located on Locklies Creek, at Tax Map #30E-2-1, 2, 3. Staff then read the VIMS report and commented that David O'Brien had submitted a letter estimating unnecessary wetland impacts and offering further evaluation regarding the project.

Chairman Smither opened the public hearing.

Mr. Norborne Reams was present and offered to answer any questions the Board may have. Mr. Reams stated that he had called and advised the County when work was beginning. He further stated that the bulkhead had been constructed at the base of the bank. Mr. Reams submitted photographs showing the large pine tree. Mr. Reams contended that the other trees were too close to the bank to save, and that the drawing submitted with the application showed the bulkhead to be located further channelward than the benchmarks indicated.

Chairman Smither stated that one of the pine tree benchmarks was supposed to have been 8 ft. from the bulkhead, but was found to be 13 ft. from the bulkhead upon inspection. Chairman Smither noted that another pine tree was supposed to have been 3 feet from the bulkhead, and the third benchmark pine tree that was removed would have been the same distance or further back. Chairman Smither commented that flags were an important part of the measurement process and may have been moved.

Mr. Taylor asked Ms. Alor Grantham Traywick, agent for Mr. Reams, if she had flagged the property and if she had returned to the site after construction commenced. Ms. Traywick responded that she had flagged the property, but did not visit the site afterwards. Mr. Taylor asked Ms. Traywick if, in her opinion, it would have been impossible to go around the trees. In response to Mr. Taylor's question, Ms. Traywick responded that in her opinion it would have been possible and it had been her understanding Mr. Reams had wanted to save the pines, which was the reason she had noted them as benchmarks. She explained that the bulkhead was to be installed first, bank was then to be pulled back, the contractor was to place silt

fence, remove trees and brush, place temporary seeding/grass, and another contractor was to construct the bulkhead.

Chairman Smither requested copies of the photographs submitted by Mr. Reams.

Mr. Taylor recommended that the case be postponed until the Board had the opportunity to speak with the County Attorney, Mr. Mike Soberick, regarding the case.

Mr. Jordan suggested that the Board hear any further comments from the public before continuing the show cause hearing. Chairman Smither agreed.

Mr. Jimmy Ward, attorney, representing the bulkhead contractor, Mr. Larry Shores, stated that Mr. Shores, had a valid stake in the proceedings since he would not be paid until the situation had been rectified. Mr. Ward explained the County Building Inspectors made an inspection and authorized Mr. Shores to backfill behind the bulkhead. Mr. Ward contended that the County building inspectors should have informed Mr. Shores if there were problems.

Chairman Smither commented that it was his understanding that the Building Officials were responsible to inspect the construction of the bulkhead, not the alignment as related to the wetlands. Mr. Jordan agreed, stating that the Building officials were to inspect the actual construction of the bulkhead and tiebacks – not the alignment. Chairman Smither commented that Mr. Soberick would need to be consulted.

Mr. Shores commented he had not taken measurements himself, rather he relied on Ms. Traywick's flag placements. Mr. Shores also commented that the flags could have been moved.

Mr. Armstead responded that the Wetlands Board photographs taken from the vantage of an adjoining property, clearly show the toe of the bank, with the bulkhead extending 5-6 feet channelward.

Chairman Smither asked Mr. David O'Brien to come forward. Chairman Smither asked Mr. O'Brien to clarify for the record how his conclusions had been determined. Mr. O'Brien explained that after receiving an inquiry about the project, Mr. Jordan had asked him to evaluate a possible unauthorized encroachment into wetlands. Together they had taken tape measurements after construction and had recorded the distances.

Mr. Jordan stated that one top pine had been removed; measurements from the remaining benchmark trees indicated an unauthorized channelward encroachment into wetlands of 6 feet, compared to the approved site plan.

Mr. Ward questioned Mr. O'Brien regarding the drawing's scale. Mr. O'Brien responded that although he had not scaled the drawing, the cross section had shown the bulkhead to be located at the toe of the slope. Mr. O'Brien stated that based on permit drawings, previous visits to the site, and photographs taken in the field before and after construction, there was approximately 6 ft. of unauthorized wetland encroachment.

Mr. Joseph Jones introduced himself as the contractor who had performed the landscaping work on the project. He stated that he had removed thirty loads of debris, and had taken the pine tree down after discussions with Mr. Reams regarding excessive root exposure. Mr. Jones expressed regret for removing the benchmark tree, and noted that although he had no further interests regarding the project, Mr. Jones expressed his opinion that there was no way accurate measurements could have been taken prior to the land being cleared by one person.

Mr. Armstead asked if Mr. Jones had been informed that the tree that had been removed was a benchmark; Mr. Jones responded that he had not been informed.

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

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, the hearing was continued until the next regularly scheduled meeting of the Wetlands Board.

Public Hearing

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

A. Francis Watson - Application #2001-0996.

Chairman Smither read the applicant's proposal to place 144' of riprap revetment. This proposed project is located on Wilton Creek, at Tax Map #43C-1-69. Staff then read the VIMS report for the project.

Alor Grantham Traywick, agent, was in attendance to represent the project. She explained the proposal and offered to answer any questions the Board may have.

Chairman Smither opened the public hearing.

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

Mr. Jordan asked Ms. Traywick who had signed an adjoining property owner (APO) letter of consent for the Coves of Wilton Creek. Ms. Traywick responded that she did not know; the letter was just sent to the CWWD Development Co., LLC, in Newport News

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, Application #2001-0996 was approved. This approval is valid for a term of 18 months.

B. Earl Soles - Application #2001-0970.

Chairman Smither read the applicant's proposal to construct a 136' breakwater and 168' combination marsh sill and marsh toe stabilization. This proposed project is located on the Piankatank River, at Tax Map #43-8-3. Staff then read the VIMS report for the project.

Chairman Smither opened the public hearing.

Mr. J. A. Foster, R&W Construction agent, was in attendance to represent the project. He explained the proposal and offered to answer any questions the Board may have. Mr. Foster expressed agreement with staff and the VIMS report recommendations.

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

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by unanimous vote, Application #2001-0970 was approved with the condition that the breakwater must be constructed not to exceed 1' above MHW and the submission of revised drawings. This approval is valid for a term of 18 months.

C. John Craine - Application #2001-1233.

Chairman Smither read the applicant's proposal to construct 200' of bulkhead. This proposed project is located on Urbanna Creek, at Tax Map #20B-1-4. Staff then read the VIMS report for the project.

Chairman Smither opened the public hearing.

Ms. Angela Pace, representing the agent, Lucille Morelli, was in attendance to represent the project. Ms. Pace commented that the VIMS recommendations would be acceptable to the applicant. She then offered to answer any questions the Board may have.

Mr. Taylor stated that he had viewed the project site from across Urbanna Creek and did not observe any washing. His commented that he didn't see any problem and recommended that the bulkhead be constructed into the bank rather than turning out as the drawing depicted.

Mr. Jordan commented that Mr. O'Brien had concerns related to the bulkhead possibly interfering with the fresh water marsh on the applicant's property.

Mr. O'Brien explained his concern with protecting where the marsh begins, as the submitted plan showed the bulkhead extending all the way to APO Crowder's property line, which he did not deem necessary.

Chairman Smither agreed that the bulkhead should remain as close to the bank as possible and not extend to the adjoining property.

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

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by a unanimous vote, Application #2001-1233 was approved with the condition that the bulkhead must terminate with a return wall into the upland and the submission of revised drawings. This approval is valid for a term of 18 months.

D. Regatta Point Yacht Club c/o John C. Dozier - #2001-1268.

Chairman Smither read the applicant's proposal to permit the after-the-fact placement of 240' of 4" PVC conduit (abandoned), relocating the electrical transmission line underneath the existing dock, and the continued placement of beach nourishment previously approved under application #96-0467. This proposed project is located on Broad Creek, at Tax Map #41-59-1, 6. Staff then stated that Mr. Dozier had submitted a letter that morning requesting modifications to his application. Staff recommended that the proposal be continued to allow time for staff to review and re-advertisement.

Mr. Dozier explained that a permit issued in 1996 was not completed before the deadline, and that he essentially proposed to complete the project in accordance with the 1996 permit. Mr. Dozier commented that all of the work he has done or is proposing was attempting to protect the marsh.

Chairman Smither asked Mr. Dozier to confirm that upon the Board's recent visit, he had agreed to cut the ends of the conduit and plug with concrete, and that the pedestal and transformer would be removed from the wetlands. Mr. Dozier agreed and stated that Virginia Power was due to return to the site soon.

On a motion by Mr. Taylor, seconded by Mr. Brooks, and carried by a unanimous vote, Application #2001-1268 was continued until the September 11, 2001 meeting to allow the newly proposed modifications to be properly advertised.

New Business

A. Request for Reconsideration – Archie Goodwin – Application #2001-0533

Chairman Smither introduced for reconsideration a request by Archie Goodwin for the reconsideration of his approval which modified his original request to construct 116' of bulkhead (including two 8' return walls) by replacing the proposed bulkhead with a riprap revetment aligned along the toe of the bank and landward of the existing marsh vegetation with the submission of revised drawings showing the existing and approved riprap and the vegetated sand spit. This project is located on Meachim Creek, at Tax Map #30A-1-29. Staff then read the VIMS report.

Ms. Carol Collier, agent, was in attendance to represent the project. Ms. Collier stated that she and the applicant were in agreement with staff recommendations, even though he might have to terrace later. Ms. Collier further stated that the applicant knows a wooden bulkhead won't last as long as stone, but he is willing to maintain it. Ms. Collier commented that there was no problem with placing riprap in front of the bulkhead as toe protection.

Chairman Smither asked if the bulkhead would be deleted around the sand spit. Mr. Jordan stated that staff recommended beginning the bulkhead 55' eastward of the pier, and that Mr. O'Brien had agreed with staff recommendations to increase bulkhead toe protection to 2' height and a 3' base.

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

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by a unanimous vote, the Wetlands Board re-approved the construction of 116' of bulkhead (including two 8' return walls) with the condition that bulkhead toe protection must be increased to a 2' height and a 3' base and placed from the pier eastward 55 feet, deletion of the proposed marsh toe revetment, and the submission of revised drawings. This approval is valid for a term of 18 months.

New Business

A. VMRC Re-inspection Policy

Mr. Taylor asked Mr. Neikirk if it was usual to have the Wetlands Board return to sites upon completion of projects and make re-inspection.

Mr. Neikirk responded that VMRC recommended inspection before, after, and during construction, and that projects found to be in violation of permits could be penalized if necessary. Mr. Neikirk noted policies vary between counties based on staff levels. He added that some counties have staff return to completed projects, others have staff appoint various Wetlands Board members to return for re-inspections.

Mr. Taylor noted that possibly the Board could return and look at completed projects when making their monthly site visit to new projects.

Chairman Smither commented that a problem arises when people assume the building officials represent the county, and that county representatives represent the Wetlands Board. Chairman Smithers expressed willingness to go and make re-inspections himself to assure that projects are completed as permitted.

Mr. Neikirk explained that he had worked on a study related to permit compliance, which recommended that bonds be posted on projects, to be released upon successful completion. Although the bonds would not completely pay for restoration, if necessary, but would provide an initiative for applicants to report completion of a project for a final inspection to receive their bond back.

Mr. Jordan commented that he would inquire as to the possibility of setting up a bond account, and would advise the Board at the next site visit.

Adjournment

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

Respectfully submitted.

Wetlands Board Chair

Date