

Middlesex County Wetlands Board Minutes

July 10, 2001

Call to Order

The July 10, 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. Chairman Smither welcomed newly appointed Board member, Mr. Archie Brooks, to the meeting.

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 June 12, 2001 meeting. On a motion by Mr. Taylor, and a second by Mr. Armstead, the minutes were approved unanimously subject to being corrected to reflect that Chairman Smither had apologized to Mr. Stallings for his time since the Wetlands Board could not arrive at a decision instead of, Chairman Smither expressed appreciation to Mr. Stallings for his time and cooperation.

Public Hearing

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

A. Clifton D. Spencer, Jr. – Application #2001-0955.

Chairman Smither read the applicant's proposal to place 45' of riprap revetment and 120' of marsh toe stabilization. This project is located on Jackson Creek, at Tax Map #41-127. Staff then read the VIMS report for the project.

Carol Collier, 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. Taylor commented that he was familiar with the project area and that the marsh had changed very little over time. He then stated his agreement with staff's recommendation of riprap revetment being reduced to 2' height and 4' base. Ms. Collier requested that the Board consider approving 3' height for the riprap revetment in order to offer protection from storm tides. Ms. Collier then expressed her agreement with staff's recommendation regarding a reduction in height of the marsh toe revetment.

Chairman Smither asked Mr. O'Brien to come forward. Mr. Taylor asked Mr. O'Brien to explain his recommendations. Mr. O'Brien commented that decreasing the height and width of the riprap revetment could reduce impacts to the intertidal area. He stated that there was no significant erosion along the applicant's shoreline. Mr. O'Brien further stated that if the applicant's intent was to protect the shoreline, the structure should be located behind marsh vegetation. Mr. Taylor restated his opinion that there had been very little erosion to the marsh over previous years. Chairman Smither suggested that the marsh be observed over a period of time for signs of erosion, as he did not see any sign of active erosion and did not want to disturb a healthy marsh. Mr. Taylor commented that the applicant concentrate on the erosion in the area adjacent to the pier under this proposal and leave the marsh area undisturbed.

On a motion by Mr. Armstead, seconded by Mr. Taylor, and carried by unanimous vote, Application #2001-0955 was approved conditioned upon the proposed Section A - 45' riprap revetment be reduced to a width of 4' and height of 2', with the proposed Section B - 120' of marsh toe protection to be omitted. This approval is valid for a term of 18 months.

B. Bayberries, LLC c/o Richard Clary - Application #2001-0778.

Chairman Smither read the applicant's proposal to place 152' of riprap revetment in front of an existing bulkhead. This proposed project is located on the Piankatank River, at Tax Map #46-7-63. 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.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, Application #2001-0778 was approved with the condition that a Resource Protection Area (RPA) Development Permit be submitted and approved. This approval is valid for a term of 18 months.

C. Tony Walton - Application #2001-1017.

Chairman Smither read the applicant's proposal to modify a previously authorized permit to allow the placement of 400' of riprap revetment. This proposed project is located on Urbanna Creek, at Tax Map #19-20-5. 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. Ms. Traywick stated that instead of the previously approved bulkhead project, the applicant desired to install riprap revetment.

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

Mr. Taylor asked if fallen trees, stumps, and debris along the shoreline would be removed. Ms. Traywick responded that they would be removed prior to the riprap installation.

On a motion by Mr. Armstead, seconded by Mr. Taylor, and carried by a unanimous vote, Application #2001-1017 was approved as submitted. This approval is valid for a term of 18 months.

D. Charlie Bass, Jr. - #2001-1656.

Chairman Smither read the applicant's proposal to place 65' of marsh toe stabilization and 20' of riprap revetment. This proposed project is located on Urbanna Creek, at Tax Map #20A-2-39, 40, 41, 42, 43. Staff then read the VIMS report for the project.

Angela Pace, representing the agent, Lucille Morelli, was in attendance to represent the project. Ms. Pace stated that she had no problem with revising the applicant to have the marsh toe structure follow the existing contour of the marsh, placing the stone directly against the eroded scarp, and not allowing the final elevation to exceed mean high water as the VIMS report recommended. She then 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. Neikirk commented that upon review of the drawings and having visited the site, he felt the size of the stones should be increased from 10-25 lbs., as proposed, to using 25 lb. stones for the core, with 50-75 lb. Class 1A stones placed on top. Mr. Taylor stated his agreement with Mr. Neikirk's recommendation. Ms. Pace stated she also agreed with the recommendation.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by a unanimous vote, Application #2001-1656 was approved conditioned upon the use of Class 1A stone and the submission of new drawings to reflect that the marsh toe structure would follow the existing contour of the marsh. This approval is valid for a term of 18 months.

E. David Axselle - Application #2001-0846.

Chairman Smither read the applicant's proposal to construct 96' of bulkhead in front of an existing failing bulkhead. This proposed project is located on the Rappahannock River, at Tax Map #9A-5-2-F. Staff then read the VIMS report for the project.

Ms. Diane Woodland, representing the agent, Evans Construction, 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.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by a unanimous vote, Application #2001-0846 was approved. This approval is valid for a term of 18 months.

F. Raymond Ruth – Application #2001-0908.

Chairman Smither read the applicant's proposal to construct 100' of bulkhead in front of existing failing bulkhead and refurbish and extend existing groin to 48' in length. This project is located on the Rappahannock River at Tax Map #8B-1-1B.

Ms. Diane Woodland, representing the agent, Evans Construction, 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.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, Application #2001-0908 was approved. This approval is valid for a term of 18 months.

Old Business

A. Show Cause Hearing - Preston Stallings – Placement of a riprap revetment and splash apron, bulkhead, and fill material at Tax Map #41-65 on Jackson Creek.

Chairman Smither re-introduced the Show Cause Hearing regarding placement of a riprap revetment and splash apron, bulkhead, and fill material at Tax Map #41-65 on Jackson Creek. Staff then explained that

following last month's meeting, the case had been discussed with the Middlesex County attorney, Mr. Mike Soberick. Mr. Soberick advised that since the matter was brought before the Wetlands Board for review, a decision must be reached in the matter.

Alor Grantham Traywick, agent, was in attendance to represent Mr. Stallings. She commented that after the previous meeting, she had assumed that an after-the-fact permit would need to be submitted to satisfy the requirements of the affected regulatory agencies.

Chairman Smither re-opened the public hearing.

Mr. Taylor requested that Chairman Smither read the minutes from the previous meeting. Chairman Smither read the minutes of the June 12, 2001 meeting regarding the Show Cause Hearing of Mr. Preston Stallings. Chairman Smither explained that there had been some confusion in the matter, but that Mr. Stallings had indicated his willingness to apply for after-the-fact permits. He further commented that the Board needed to come to a resolution in order to move ahead.

Mr. Taylor explained that he had initially received phone calls requesting that he look into activities that had taken place on the site. Mr. Taylor questioned Ms. Traywick about the flags that had been placed by staff and determination of the Board's jurisdiction. Ms. Traywick stated that where the pipe discharges storm runoff, the splash apron was in the Board's jurisdiction. Mr. Taylor related how at the previous meeting he had not been aware that staff had been to the site and placed flags. He stated that on several occasions he had questioned if anyone had knowledge about the project and received negative responses. Under those conditions, Mr. Taylor said, he had originally asked that the case be dismissed.

Mr. Jordan stated that although Ms. Traywick had asked him to visit the site and place flags, he did not recall any mention of a bulkhead, riprap revetment, or drainage pipe being installed. Mr. Jordan explained that he receives many requests to visit sites, flag wetland areas and to identify the 100' buffer for determinations related to the Chesapeake Bay Preservation Act. Mr. Jordan restated that he had been asked to flag the Wetland Board's jurisdiction, which he had done with the assistance of Anne Newsom, former VIMS representative to the County, but no permits were issued authorizing construction of the existing structures.

Mr. Taylor commented that Mr. Stallings had purchased land with a boathouse, shed, and land had been filled in with dirt. Mr. Taylor asked Mr. Stallings if he knew a permit was needed? Mr. Stallings explained that the situation was due to a lack of knowledge, not intentional wrong doing. Mr. Stallings noted that he had a building permit and thought it covered all of the work that had been done. Mr. Taylor asked Mr. Stallings if his agent, Ms. Traywick, having been in business for quite some time, had advised him of the need for permits. Ms. Traywick responded that she knew there were non-tidal wetlands above the Wetlands Board's jurisdiction, where Mr. Jordan had placed flags, and that the U.S. Army Corps of Engineers representative had been on the site and had placed additional flags. Ms. Traywick expressed her belief that the retaining wall should have been covered under the building permit. She further commented that she felt the issue was in limbo, and was willing to apply for after-the-fact permits to move the issue forward.

Chairman Smither expressed appreciation to Ms. Traywick for her willingness to apply for after-the-fact permits. Chairman Smither stated that the Board would have to address the issue and it was unfortunate that there had apparently been some miscommunication. He noted his appreciation to the applicant, who in good faith had offered to address the problem. Chairman Smither suggested that the Board take action, and accept the applicant's willingness to make application for an after-the-fact permit for the splash apron.

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

On a motion by Mr. Woodson, seconded by Mr. Brooks, and carried by a 3-1 vote, with Mr. Taylor in opposition, the Board found the property owner in violation of the Wetlands Ordinance for placing the riprap splash apron in the Wetlands Board's jurisdiction without proper approval and required the submission of an after-the-fact Joint Permit Application for the placement of the riprap revetment and

splash apron, bulkhead, and fill material to allow the proper permitting of the activities by the appropriate agencies. Chairman Smither additionally requested that a violation letter be sent to the contractor, who had performed the work, Brian Miller.

New Business

A. Extension Request – J.H. Hall – Application #1999-1436.

Chairman Smither read the applicants extension request of Application #1999-1436, to place 113’ of riprap revetment in front of an existing failing bulkhead. This project is located on Urbanna Creek, at Tax Map #20B-11-A. The application was originally approved with no conditions. Staff then read the applicant’s letter requesting an 18 month extension.

On a motion by Mr.Armstead, seconded by Mr. Taylor, and carried by a unanimous vote, Application #1999-1436 Extension Request was approved for a term of 18 months.

B. VIMS – Tidal Wetlands Education Program.

Mr. Jordan invited the Board members to attend the Tidal Wetlands Education Program, taking place on – July 18, 2001 from 8:30 a.m. to 3:30 p.m and stated that the County would pay their attendance fees. Chairman Smither and Mr. Taylor stated their intentions to attend; Messr’s. Armstead and Brooks stated they would advise of their intents at a later time.

C. Meeting Stipends

Chairman Smithers read a memo dated July 9, 2001, from the Board of Supervisors wherein the Board of Supervisors had taken action to require that compensation to the Wetlands Board members be based on meeting attendance and paid through the County’s accounts payable system, rather than being an automatic monthly payment through payroll.

Mr. Jordan noted this action brought the Wetlands Board in line with other County boards and commissions and that by being paid through the County’s accounts payable system, taxes would not be withheld; Board members would be responsible to pay their taxes individually at the end of the year. Mr. Jordan asked the Board to decide among themselves whether they would like receive their stipends monthly, following the Board of Supervisors meeting, or receive their stipends twice a year, in January for meetings attended July through December and and in July for meetings attended January through June. Following general disscussion, the Wetlands Board members agreed by consensus to continue to receive their stipends monthly.

D. New Member Appointment

Mr. Jordan formally introduced and welcomed Mr. Archie Brooks, newly appointed Board member, representative for the Jamaica district. Chairman Smithers and the other Board members also expressed their sincere welcome to Mr. Brooks.

Adjournment

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

Respectfully submitted.

Wetlands Board Chair

Date