

Middlesex County Wetlands Board Minutes

June 12, 2001

Call to Order

The June 12, 2001 meeting of the Middlesex County Wetlands Board was called to order by Vice-Chairman Miller Smither at 9:00 A.M. in the Boardroom of the Woodward Building, Saluda, Virginia.

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

Absent: Mr. B. Ulman Miller

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).

Nomination and Election of Chairman

Vice Chairman Smither stated that in accordance with the Wetlands Board's bylaws, the vacancy in the Chairman position created by the resignation of Chairman Elliott Reed must be filled.

On a motion by Mr. Armstead, seconded by Mr. Taylor, and carried by unanimous vote, Mr. J. Miller Smither was elected Chairman of the Wetlands Board.

Nomination and Election of Vice Chairman

Chairman Smither stated his election as Chairman created a vacancy in the position of Vice Chairman.

On a motion by Mr. Armstead, seconded by Mr. Taylor, and carried by unanimous vote, Mr. Ulman Miller was elected Vice Chairman of the Wetlands Board.

Minutes

The Board considered the minutes of the May 8, 2001 meeting. On a motion by Mr. Taylor, and a second by Mr. Armstead, the minutes were approved unanimously.

Public Hearing

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

A. Dominion Virginia Power – Application #2001-0089.

Chairman Smither read the applicant's proposal to construct a 115kV transmission line (45 feet west and parallel to the existing line) to upgrade and replace the existing transmission line. This proposed project is located on the Piankatank River, at Tax Map #36-9, 13. Staff then read the VIMS report for the project. Mr. Jordan added that he had received one additional letter of comment from a property owner as well as revised project drawings submitted by Dominion Virginia Power, in the time since the Public Hearing was continued at the April Wetlands Board meeting.

Liz Harper, representative for Dominion Virginia Power, was in attendance to represent the application for the project. Ms. Harper explained that in response to concerns expressed by residents, Adjoining Property Owners, and the Wetlands Board, Virginia Power had submitted revised drawings detailing the removal of the existing poles and foundations, and the installation of new poles and foundations. She added the new poles would be approximately the same height as the existing poles with a different arm design and stronger to support the additional line. She added larger foundations will be necessary for the stronger poles creating an anticipated additional 190 sq. ft. wetlands impact. Ms. Harper then explained some of the criteria Virginia Power had considered in attempting to balance impacts to the community and the environment. She noted that moving the poles to the upland, and the higher ground elevation was not recommended because from the increased height higher poles, the larger foundation required, and creating greater visual impact. Ms. Harper expressed her belief that the revisions, as submitted, proposing to move the lines 45 ft. upstream, using the existing right of way, would be most acceptable to all parties.

Chairman Smither inquired about provisions for the future and the anticipated need for additional lines. Ms. Harper responded that there were no plans for additional lines; the existing lines would be adequate until 2010; the new line would be sufficient well beyond that date, with the second line used mainly for redundancy.

Chairman Smither re-opened the public hearing.

Mr. James Ward, attorney, stated that he represented Mr. Randolph Segar, property owner of the site that contains the transmission line easement. Mr. Ward expressed appreciation to Ms. Harper and Virginia Power for their endeavors to develop a good solution. Mr. Ward stated his belief in an opportunity for the Board to protect the wetlands by requiring Virginia Power to relocate the northern pole structure to the highlands.

Ms. Harper commented that taller structures require larger foundations; the northern pole structure, if located on the highland, would be 191 feet above ground level. However, she added the poles at that height still would not require red or strobe lights.

Mrs. Mary Ann Willis, representative for Pipe-N-Tree subdivision, expressed gratitude to the Board, staff, Ms. Harper, and all parties involved for their efforts. Mrs. Willis expressed approval of the amendment. Additionally, Mrs. Willis expressed support of moving the northern pole structure onto highland based upon no lights being required; as well as future benefits to the wetlands.

Mr. Terry Brubaker, representing Pipe-N-Tree subdivision, stated that a survey had been taken resulting in the majority of support being given to the elimination of the existing line, in favor of seeking a new route across land. Mr. Brubaker inquired as to whether or not a study had been performed regarding a new route.

Mrs. Vicky Johnson noted that the power lines visible from the State Route 3 bridge crossing from Mathews to Gloucester appeared spindly and hazardous. She inquired about the possibility of adding to those lines, thereby avoiding wetland impacts. Mrs. Johnson cautioned the Board that money could be recovered, but environmental impacts last forever.

Ms. Harper noted the unfeasibility of using the Route 3 lines as those lines were distribution lines with an easement of 30 ft., and that a transmission corridor required a 125 ft. easement corridor.

Ms. Harper explained that Mr. Brubaker's request had been reviewed, regarding a new transmission line route from West Point to the Gloucester Courthouse substation, keeping the line entirely in Gloucester. She noted that this approach would have required 4.9 miles versus 3.6 miles as proposed. Additionally, Ms. Harper explained that the West Point route would require clearing approximately 67 acres of land, a new switching station with an additional 5 acres of land to be cleared, the purchasing of additional easements, an additional \$1,000,000 in costs, and additional impacts created by the opening of a new corridor.

Ms. Karen Stone requested that the Board consider the issue carefully, keeping in mind the abundance of wildlife in the proposed area.

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

Mr. Taylor asked if Mr. O'Brien, VIMS representative, had studied the revisions. Mr. O'Brien responded that in his opinion, impacts were minimal and that he had no objections.

Mr. Taylor questioned Mr. Robert Neikirk, VMRC representative, if the VMRC was reviewing the application. Mr. Neikirk, commented that the VMRC would be involved, as the VMRC acts as an appeal board, and also issues any required permits after the local Wetlands Board conducts a Public Hearing and issues a decision.

Mr. Taylor expressed his belief that the Board's main concern was impact to the wetlands, whether the impacts occur from the project itself, the construction process, or debris remaining after the project completion. Mr. Taylor additionally stated that if the northern structure were located on highland, there would be less wetland impacts and that one structure would be out of the Board's jurisdiction.

Chairman Smither expressed appreciation to local citizens for their input and concern, and to Virginia Power for their willingness to cooperate in order to meet a common good in a situation with no easy answers. Chairman Smither expressed concerns regarding lights being required if the northern pole structure were located on highland, due to the higher elevation. Ms. Harper replied that the structure would be 30 ft. higher than the existing poles, but at approximately 190 ft., it would not require lighting by the FAA.

Mr. Taylor questioned whether or not the southern pole could be moved from the wetlands further into the Piankatank River. Chairman Smither additionally expressed interest in the possibility of moving the southern pole out into open water. Ms. Harper, after consulting with additional Virginia Power representatives present at the hearing, stated that she could not make any immediate commitments or advise of likely effects concerning the possible relocation of the southern pole structure into the Piankatank River. She added that moving the northern pole would be feasible, but she did not know the effects of moving the southern pole. Ms. Harper indicated that Virginia Power needed to order the steel as early as possible, and that Virginia Power desired to move along

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, amended Application #2001-0089 was approved with the conditioned upon the northernmost tower to be located upland and removal of all construction debris and refuse from the marsh at the completion of construction. This approval is valid for a term of 18 months.

B. David J. McKittrick - Application #2001-0841.

Chairman Smither read the applicant's proposal to place 165' of riprap revetment. This proposed project is located on Wilton Creek, at Tax Map #44-2-9. Staff then read the VIMS report for the project.

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

Chairman Smithers 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. Taylor, and carried by unanimous vote, Application #2001-0841 was approved. This approval is valid for a term of 18 months.

C. Norborne Reams, Jr. - Application #2001-0670.

Chairman Smither read the applicant's proposal to construct 178' of vinyl bulkhead and two 8' return walls. This proposed project is located on Locklies Creek, at Tax Map #30E-2-1, 2, 3. 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 the applicant had applied for a Land Disturbing Permit to grade and pull the bank back. She also stated that modification of riprap revetment, as suggested in the staff report, was not an option she believed the applicant would consider.

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 #2001-0670 was approved. This approval is valid for a term of 18 months.

D. James Dudley Application #2001-0710.

Chairman Smither read the applicant's proposal to install a 48' low-profile groin. This proposed project is located on the Chesapeake Bay, at Tax Map #31-49-1B. 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. Armstead, seconded by Mr. Taylor, and carried by a unanimous vote, Application #2001-0710 was approved. This approval is valid for a term of 18 months.

E. James Crum - Application #2001-0711.

Chairman Smither read the applicant's proposal to place 118' of riprap revetment. This proposed project is located on Sturgeon Creek, at Tax Map #40-30-70, 71. 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 submitted a revised drawing with additional notes. Ms. Traywick indicated that she would also forward a copy of the revised drawing to VMRC. Mr. Taylor questioned if the revisions would affect the VIMS recommendation. Upon review, Mr. O'Brien commented that based upon the proposed revision, he did not foresee a problem.

On a motion by Mr. Armstead, seconded by Mr. Taylor, and carried by a unanimous vote, Application #2001-0711 was approved with the conditions as shown in revised drawings submitted on June 12, 2001. This approval is valid for a term of 18 months.

Old Business

A. Continued – William Perkins – Application #2001-0520

Chairman Smither read the applicant's proposal to place 190' of marsh toe riprap revetment, dredge channel (150 cu./yrds.), and beach nourishment (92 cu./yrds.). This project is located on Montgomery Cove, at Tax Map #41-66-4. Staff then read the VIMS report for this project and informed the Board that staff's and VIMS previous concerns had been addressed and application had been revised to only dredge a channel (approximately 150 cu./yrds.) with all dredged materials removed from the site as presented in the revisions dated May 2001.

Chairman Smither opened the public hearing.

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

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

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, revised Application 2001-0520 was approved with the conditions as shown in the revised drawings dated May 2001.

New Business

A. Show Cause Hearing – Preston Stallings

Chairman Smither 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 read the VIMS report.

Chairman Smither opened the public hearing.

Mr. Preston Stallings was present and offered to answer any questions the Board may have. Mr. Stallings explained that during the residence building process, he was under the impression that he had permits as required, given that the site plan showed the work which had been performed. He further commented that any wrongdoing was due to a lack of knowledge, not a matter of trying to hide anything. Mr. Stallings indicated his willingness to make an after-the-fact application to rectify the situation.

Alor Grantham Traywick, agent, was in attendance, to help clarify past events. She explained that Mr. Stallings had wanted a retaining wall constructed in order to construct his residence. She commented that staff had visited the site and flagged the Board's jurisdiction to build the retaining wall, not a bulkhead. She further explained that Mr. Adrian Jennings, U.S. Army Corps of Engineers, had photos of the site, and that Mr. Jennings had flagged additional areas. Ms. Traywick noted that an architect designed the residence and site plan.

Mr. Taylor inquired as to whether or not Ms. Traywick had asked if Mr. Stallings had all the required permits for the work he conducted.

Ms. Traywick responded that she had not, since the retaining wall was out of the Wetlands Board's jurisdiction and behind the flags placed by staff.

Mr. Taylor explained that he had been asked to look at the project. Mr. Wright, the previous owner, had built boats in a block building on the property that was demolished. Mr. Taylor was not aware that Staff had been to the property, and further, felt that Ms. Traywick would have been aware of permits required.

Mr. Jordan stated his desire to conduct a joint site visit with Mr. Jennings, since Mr. Jennings had been on site previously.

Mr. Taylor inquired of Mr. O'Brien his opinion of the Board's jurisdiction in the case. Mr. O'Brien stated that he had been there several times and he believed the entire structure and pocket marsh would be in the Board's jurisdiction. After taking soils profiles behind the bulkhead, his opinion was that fill had been placed in wetlands. Mr. O'Brien noted that the Board may, at their discretion, require a marine survey. Mr. Taylor inquired of Mr. Neikirk his opinion of the Board's jurisdiction in the case. Mr. Neikirk commented that he had aerial photographs available and that he had looked at the sight after the Board had become involved; in his opinion there were likely wetlands violations and noted that the hearing was taking place as a fact finding effort.

Mr. Ed Ruark spoke on Mr. Stallings' behalf saying that Mr. Stallings' intentions had been to comply with all regulations. Mr. Stallings stated his willingness to correct the situation.

Mr. Taylor stated his commitment to protect wetlands in Middlesex County, and his belief that the Board should have known about the issues beforehand. Mr. Taylor noted that when he had visited the site, there had been no information available to him, but that apparently some County officials had been there previously.

Chairman Smither asked if all the site work had been done at the same time as the construction of the house; Mr. Stallings responded affirmatively, and that he had no idea of any wrongdoing. Chairman Smither questioned who was the contractor that completed the work. Mr. Stallings stated Barry Miller was the contractor for the project.

Mr. Armstead commented that requiring removal of the work would cause more damage at the present stage of events, and that possibly Mr. Stallings should be apply for after-the-fact permits and proceed forward.

Mr. Taylor expressed his belief that other agencies and personnel had possible involvement, with the Board being unaware of the proceedings; and that since the property owner had indicated no knowledge of wrong doing, Mr. Taylor felt that no additional fees should be imposed.

Mr. Jordan pointed out that had there was a list of all approved work on the Zoning & Building permit and a Building Permit sign, which should have been posted on the site and adhered to those performing work on the site. Mr. Jordan further explained that applicants sometimes include their future construction plans for projects on the site plans or the site plans they submit, which had been neither included nor obtained by the property owner. Mr. Jordan stated if the Wetlands Board wishes to decide today on the hearing they should at a minimum require an after-the-fact RPA Development Permit and Building & Zoning permits for the riprap splash apron.

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

Mr. Taylor noted that the matter should be dismissed due to the apparent confusion. Mr. Taylor made a motion that the issue be dropped, and that no further action be taken by the Board. There was no second to the motion.

Mr. Armstead suggested that Mr. Stallings should apply for after-the-fact permits, and further commented that in the future, contractors performing work should confirm that proper permits have been obtained, prior to construction.

Mr. Jordan advised the Board that action on the Show Cause Hearing could be continued.

Mr. Armstead made a motion that the hearing be continued until the next regularly scheduled Wetlands Board meeting. There was no second to the motion.

Chairman Smither stated his opinion that since there had been two failed motions offered and no consensus could be reached, there was no apparent need to continue the hearing. Chairman Smither apologized to Mr. Stallings for his time since the Wetlands Board could not arrive at a decision.

Adjournment

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

Respectfully submitted.

Wetlands Board Chair

Date