

Middlesex County Wetlands Board Minutes

March 13, 2001

**Call to Order**

The March 13, 2001 meeting of the Middlesex County Wetlands Board was called to order by Chairman Elliott Reed at 9:00 A.M. in the Boardroom of the Woodward Building, Saluda, Virginia.

Present: Mr. Elliott Reed - Chairman  
Mr. John Smither - Vice Chairman  
Mr. M. Dale Taylor  
Mr. B. Ulman Miller  
Mr. Woodson Armstead

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

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

**Minutes**

The Board considered the minutes of the February 13, 2001 meeting. On a motion by Mr. Miller and a second by Mr. Smither, the minutes were approved unanimously.

**Public Hearing**

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

A. Harry V. Madsen - Application #2001-0029.

Chairman Reed read the applicant's proposal to construct a kneewall to reinforce an existing bulkhead and construct a structure along the existing 134' groin to reinforce the groin. This project is located on the Rappahannock River, at Tax Map #28-13, 28D-1-A. Staff then read the VIMS report for the project.

Neither the applicant nor an agent was in attendance to represent the project.

Chairman Reed 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. Miller, and carried by unanimous vote, Application #2001-0029 was approved with the condition that the deteriorated sections of the existing groins on the property be removed or repaired. This approval is valid for a term of 18 months.

B. Schuyler Bristow, Jr. – Application #2001-0141B.

Chairman Reed read the applicant's proposal to extend a previously permitted project with an additional 150' of rip rap revetment. This project is located on the Piankatank River, at Tax Map #39-27-1. Staff then read the VIMS report for the project.

Mr. Jim Gunn, agent, was in attendance to represent the applicant's project. He explained the proposal and offered to answer any questions the Board may have.

Chairman Reed 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. Taylor, and carried by unanimous vote, Application #2001-0141B was approved as submitted for a term of 18 months.

C. David Kellar – Application #2000-2255.

Chairman Reed read the applicant's proposal to construct a 48' low-profile groin. This project is located on the Rappahannock River, at Tax Map #8-95F. Staff then read the VIMS report for the project.

Mr. Frank Kellar Evans, was in attendance to represent the applicant's project. He explained the proposal and offered to answer any questions the Board may have.

Chairman Reed 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. Smither, and carried by a unanimous vote, Application #2000-2255 was approved. This approval is valid for a term of 18 months.

D. Dominion Virginia Power, et al - Application #2001-0054.

Chairman Reed read the applicant's proposal to permit the after-the-fact placement of 240' of electrical transmission line housed within a 4" PVC conduit, a pedestal, and meter bases at the Regatta Point Yacht Club. This project is located on Broad Creek, at Tax Map #41-59-1, 6. Staff then read the VIMS report for the project.

Mr. Bruce Arnette, Dominion Virginia Power project manager, was in attendance to represent the project. Mr. Arnette stated that in 1999 Virginia Power went in to provide power to the landowner. Virginia Power provided a conduit to the applicant, and that the applicant had an electrician bury it and Virginia Power installed the wire in the conduit. Virginia Power set meters, on the piers, but had been unaware of the wetland status of the project. He then offered to answer any questions the Board may have.

Mr. Taylor commented that the electricity and cables were installed without the knowledge of the Wetlands Board and inquired if the project was in the Board's jurisdiction. Mr. Jordan responded affirmatively. Mr. Miller stated that a violation had occurred.

Chairman Reed opened the public hearing.

Mr. Roger Hopper, attorney, representing a Broad Creek property owner, came forward to state his client's concerns regarding the danger of exposed conduit. He noted that Virginia Power had applied for an after-the-fact permit, but the application did not identify if it was planned to cover the exposed conduit.

Mr. Hopper stated that the meter bases were connected to a pier and questioned if it was Virginia Power's policy to put meter bases on piers. He also stated that regulations indicate that piers and marinas would be served on land, but that the conduit had been run on a pier, across wetlands.

Mr. Arnette stated that at the original time, the pier was over top of the land. There is a meter pedestal on the pier, and the secondary cable is usually buried 24" deep. Virginia Power has an agreement that the landowner will cover it up.

Mr. Hopper stated that his client doesn't like exposed conduit, digging up cable, disturbing wetlands, and after-the-fact coming in trying to cover up something that wasn't put in right to begin with, and that is the objection.

Mr. Jack Dozier, property owner, offered to explain what had occurred since the original permit was approved. He had desired to have the meters installed as far out on the pier as possible because they were running separate service to each of the slips. Virginia Power had indicated that this could be done. Mr. Dozier stated he assumed that the wires were to go out along the pier. Virginia Power stated prior to the

pier being constructed that it needs to run the wires underground, through conduit. Mr. Dozier stated that the shoreline has receded 15-20 ft. since the original application and that the land contour had changed. The conduit was to be laid down behind the riprap and it would have been covered up during the fill in process. Mr. Dozier stated that workers had placed the conduit to be covered up under the sand, but in the meantime, further erosion had occurred, but that no violation had been intended.

Chairman Reed commented that after making application for riprap, the applicant should have been aware that any projects involving wetlands must have the required permits.

Mr. Arnette, in response to a query by Mr. Taylor, stated that Virginia Power's policy is to serve the marinas on land; at the time the meter bases were overland and it was felt that would be okay.

Mr. Neikirk commented that the meter bases were currently run over tidal wetlands.

Chairman Reed stated that the Wetlands Board can impose a civil penalty if there was a severe violation and inquired as to the availability of the County Attorney. Mr. Jordan responded that the County Attorney was not available at the time, but the Board could continue the hearing on the application, and have any legal concerns addressed by the County Attorney.

On a motion by Mr. Smither, seconded by Mr. Miller, and carried by a unanimous vote, Application #2001-0054, was continued until the next regularly scheduled meeting on April 10, 2001.

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

Chairman Reed read the applicant's proposal to construct an 115kV transmission line (45 feet east and parallel to the existing line) to upgrade the existing transmission line. This project is located on the Piankatank River, at Tax Map #36-9, 13. Staff then read the VIMS report for the project.

Ms. Liz Harper, representative for Dominion Virginia Power, was in attendance to represent the project. Ms. Harper explained the project and the decision process Virginia Power had used in determining how the proposed second circuit should cross the Piankatank River.

Ms. Harper explained why there would be more impact if temporary lines were built and then taken out at a later time. Virginia Power had engaged Williamsburg Environmental, Inc. to petition the Corps of Engineers for an exception to their minimum clearance requirement (45' vs. the required 63') and was informed that the Corps makes no exceptions and would not break their own rules.

Ms. Harper added that Williamsburg Environmental had conducted a boating survey and counted boats and piers approximately 6.5 miles upstream and downstream from the existing transmission crossing. Their survey found the potential that large sailboats could come up river and neither Virginia Power nor the Corps could accept the safety liability. Virginia Power decided that paralleling was the best option left, requiring two foundations to be placed in Middlesex County wetlands. Mats would be used for access during construction with an estimated construction time of 4-6 weeks to build the foundations, and 6 weeks to set the structures, although wind and weather could cause delays.

Ms. Harper further stated that Virginia Power realizes the opposition will be great, and that every effort had been made to use the existing poles, with no success. She added that if the community wished to pursue the issue with the Corps, the gathered information could be made available.

Mr. Chuck Roadley, Jr., representing Williamsburg Environmental, Inc., introduced himself and offered to answer any questions the Board may have. Mr. Roadley had assisted Virginia Power in making assessments regarding the project.

Ms. Harper further added that Virginia Power had advertised an Open House in August, 2000, had sent letters, and had left leaflets at homes in the Pipe-N-Tree subdivision. She added that only six people had attended the Open House.

Chairman Reed opened the public hearing.

Mr. James Ward, attorney, introduced himself and stated that he represented Mr. Randolph Segar, property owner of the site that contains the transmission line easement. Mr. Ward questioned the amount of property to be used by the right-of-way, and asked if Virginia Power had discussed with Mr. Segar the locating of the poles on the east or west side of the existing lines.

Ms. Harper stated that Virginia Power had made the decision to build the new aerial transmission line 45 feet east and parallel to the centerline of the existing transmission line to keep impacts to a lesser degree.

Mr. Ward asked about the soundings made identifying a depth of 5.7 feet in the Piankatank River under the power line, depths in the My Lady's Swamp cove ranged to 1.8 ft, and were these based on sailboat usage. Also, Mr. Ward questioned the amount of clearance based on the State Route 3 bridge over the Piankatank River.

Mr. Roadley responded that the clearance was based on Federal regulations.

Mr. Ward referred to a letter from Virginia Power to Mr. Thomas Jordan, which indicated that part of Virginia Power's decision was based on the possible use of the water by sailboats. He asked if Virginia Power had addressed to the U.S. Army Corps of Engineers the determination of navigable water on the My Lady's Swamp side.

Mr. Roadley stated that Virginia Power had sought clarification from the Corps with the goal of receiving an exception to their minimum clearance requirement for the project as a whole and had pursued the issue with negative results.

Mr. Ward asked if Virginia Power had pursued the possibility of different heights being constructed on Mr. Segar's property. Also, regarding the use of mats, had barge and crane use been explored?

Ms. Harper stated that a barge will be used in the river channel, but the cove is too shallow for barge usage. Virginia Power proposes to access the structures in the wetlands using mats. In response to Mr. Ward's contention that mats and metal debris had not been removed from previous line construction on the property, Ms. Harper disagreed, stating that cord roads were allowed to remain in the 1970's, but no longer; mats are removed at the conclusion of construction. She further stated that no study had been done regarding the impacts of mat usage in wetlands and vegetation areas during construction.

Mr. Ward commented that Ms. Harper had been straightforward. He further stated that Mr. Jim Harris, a marine contractor who is familiar with such projects, could possibly attend the next regularly scheduled meeting. He noted several reasons for the Board to consider continuation of the hearing, i.e., eagles had been sighted in the area, archeological impacts have not been done, the possibility of the need to perform contamination and drainage studies, and the possibility of oil/diesel spillage from equipment. Mr. Ward stated that his client, Mr. Segar, was in opposition and requested a continuation of the hearing to determine if any variances in the height over non-navigable My Lady's Swamp waters could be requested and to meet with Mr. Harris and the engineers.

Mr. Ricky Johnson, president of the Pipe-N-Tree homeowners association, and Mr. Terry Brubaker, representing 45 property owners, came forward to address the Board.

Mr. Johnson contended that the residents felt uninformed, that he had not seen any flyers, and requested a continuance of the application. Mr. Johnson had received fifteen letters of opposition. He further commented that people live in the area to get away from this type of project, and he felt that the existing poles offered room for expansion. Mr. Brubaker complimented Virginia Power and Ms. Harper for pursuing the issue with the Corps. He added that according to the Corps, a 1" depth of water is potentially navigable water, and if not for the State Route 3 bridge, the U.S. Route 17 bridge would be the standard reference used for overhead line clearance. Mr. Brubaker stated that his property is directly across from the existing poles, and that the new poles will be placed on dry land. He added that this may be considered a

small project, but it appears huge to the property owners and will have an enormous impact. Mr. Brubaker stated his strong protest, and asked the Board to explore every alternative avenue before making a decision.

Mrs. Karen Stone, an adjoining property owner, stated she had recently purchased a home in the area without knowledge of the proposed project. She expressed her belief that the project will endanger the natural beauty of the wetland area and requested a continuation.

Chairman Reed inquired if a representative of the Corps was present; there was not.

Mrs. Vicky Johnson, homeowner in Pipe-N-Tree subdivision, asserted that she had previously been denied approval for several small projects, and noted that homes must be built 100 feet from the water. She objected to the pilings, and contended that homeowners' property values would decrease if the project were approved as presented.

Mr. Taylor stated that the homeowners purchased their homes with the presence of the power lines, and that he would not base his opinion on the appearance of the power lines. Mr. Taylor expressed concern that possibly in the future, people living in the area might want to dredge a channel from their property to access the water, and recommended continuance.

Chairman Reed commented that there seemed to be a general consensus between the Board and the property owners that possible other avenues should be explored.

Mr. Smither inquired regarding the effects on service if the line were not run. He cited the Code of Virginia Section 28.2.10.B which stated the criteria for granting wetlands permits. One of the criteria being that the anticipated public and private benefit of the proposed activity exceeds its anticipated public and private detriment.

Mr. Ward asked Ms. Harper the cause of a recent outage to the Gloucester area. Ms. Harper responded that equipment in the substation in Middlesex County, integral to the transmission system, had failed causing the unacceptable loss of power to 18,500 customers.

Ms. Virginia Bishop, homeowner, asked if the new line would have been affected in the recent outage. It was her understanding that Virginia Power typically has three means to backup service trails. She noted that the proposed route would be the least expensive, but an over land route would have less impact on the environment.

Ms. Harper responded that service by land would add unnecessary costs, by having to create another corridor, and impact additional property owners, when there is an existing corridor available.

Mr. Taylor stated that his duty was to protect the wetlands and preserve them as much as possible.

Ms. Charlotte Horton, property owner, suggested that since the proposed project affects electrical service to Gloucester and Mathews Counties, possibly thought should be given to placing a new substation in those locations.

Ms. Harper commented that Virginia Power has two electrical systems, transmission and distribution, and a bulk power feed is needed to Gloucester.

Chairman Reed expressed his belief that the Board did not have all the information needed to make an informed decision.

On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by a unanimous vote, Application #2001-0089 was continued until the next regularly scheduled meeting on April 10, 2001.

Mr. Ward invited the Board to meet with Mr. Segar to visit the property and have input from Mr. Harris. He added that it was Mr. Harris' opinion that a less intrusive option should be explored in Mr. Segar's

behalf. Chairman Reed asked that this be coordinated through Mr. Jordan, hopefully, during the Board's regularly scheduled site visit, April 3, 2001. Ms. Harper requested that the Virginia Power project manager be invited to attend also. Mr. Ward suggested that additionally the Board request that Mr. Brubaker attend.

**Old Business**

A. Continuation – Alfred Scott – Application #2001-0007

Chairman Reed read the applicant's proposal to place 139' of riprap revetment, reinforce an existing 48' groin with riprap, and reconstruct a 48' failed groin with riprap to protect a farm pond dam (to be repaired) from further erosion. This project is located on the Rappahannock River, at Tax Map #27-10-2.

Mr. Jordan advised the board that Ms. Traywick, agent for the applicant, was unable to be in attendance and had asked for a continuance to allow for readvertisement due to revisions in the project which increase environmental impacts which had been received.

On a motion by Mr. Taylor, seconded by Mr. Miller, Application #2001-0007 was continued until the next regularly scheduled meeting on April 10, 2001.

**New Business**

A. Extension Request – Porpoise Cove Marina c/o Andrea Holt – Application #1992-0885

Chairman Reed read the applicant's extension request which was originally approved on September 8, 1992, and reauthorized on February 9, 1999 to redevelop the existing marina facility to include: removal of existing boathouses and piers, construct 18 covered slips and 8 finger piers on "B" pier and construct 10 uncovered slips and 4 finger piers on "A" pier. This project is located on Fishing Bay, at Tax Map 45-4-B-15 & 16.

On a motion by Mr. Miller, seconded by Mr. Armstead, and carried by a unanimous vote, Extension Request - Application #1992-0885 was approved for a term of 18 months.

B. Request to Waive Public Hearing

Mr. Jordan informed the Wetlands Board that Alor Grantham-Traywick, agent, had requested that the Board waive the permit requirement for a bulkhead replacement to a lack of wetland impacts.

The Wetlands Board discussed the merits of waiving of the Public Hearing and associated fee. The general consensus of the Board was that since the project fell within the Wetlands Board's jurisdiction, it should require a Public Hearing, even in the absence of wetland impacts.

On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by a unanimous vote, it was determined that Ms. Traywick must follow the regular permitting procedure.

**Adjournment**

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

Respectfully submitted.

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Wetlands Board Chair

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Date