

Middlesex County Wetlands Board Minutes

October 9, 2001

Call to Order

The October 9, 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 requested that a moment of silence be observed in honor of the victims of the terrorist attack on the World Trade Center which had occurred during the September 11, 2001 Board meeting.

Present: Mr. J. Miller Smither – Chairman
Mr. B. Ulman Miller – Vice Chairman
Mr. M. Dale Taylor
Mr. Woodson Armstead
Mr. Archie Brooks

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 September 11, 2001 meeting. On a motion by Mr. Miller, and a second by Mr. Taylor, 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. Jeffrey Harrington - Application #2001-0377.

Chairman Smither read the applicant's proposal to dredge a channel (1800 cu.yrds.) and place beach nourishment along 300' of shoreline in an existing groin field. This proposed project is located on Sturgeon Creek, at Tax Map #40-104-20 & 21. Staff then read the VIMS report for the project.

Chairman Smither opened the public hearing.

Jeffrey Harrington, applicant, was in attendance to represent the proposed project. Mr. Harrington noted the he was the sole applicant, rather than the Heritage Point Homeowners Association as listed on the application. Mr. Harrington stated that only two private individuals would receive dredged sand. He explained that Mr. Don Caskie, Bay Design Group, had performed a feasibility study suggesting that the western side of the creek be dredged, and that Mr. Neikirk of VMRC, and Mr. Jennings of the Army Corps of Engineers were in agreement, as well.

Chairman Smither stated that possible impacts to the vegetated wetlands adjacent to the Heritage Point Homeowners Association boat ramp was causing him some concern related to the exact placement of the spoil material. He asked if Mr. Harrington had been given any estimates of how long the proposed channel to be dredged would last or remain. Mr. Harrington commented that no one could offer any guarantees since a single storm event could affect or even close the channel, but he understands the channel will require maintenance. Originally, Mr. Harrington stated he had planned to place the dredged sand on the site of a previous sand spit in the area, which had been washed out by mother nature. He further stated that

Mr. Neikirk and Mr. Jennings alternatively suggested the point adjacent to the boat ramp as the site for spoils. They stated the western side of the creek had less material to be dredged and the spoils would be of benefit to the homeowners on the Rappahannock River west of the creek. Additionally, Mr. Harrington commented that some of the property owners further up the creek desired that a "No Wake" sign be placed in the creek in anticipation of increased traffic.

Mr. Winston Wright, property owner near the creek entrance, commented that he had sent a letter of protest, but since that time, most of his concerns regarding the project had been satisfied. He noted his agreement with the need for dredging the channel and asked if establishing a no wake zone could be a condition for approval. Chairman Smither explained that requiring a "No Wake" sign as a condition of approval was not in the Wetlands Board's authority, but rather the Board of Supervisors.

Mr. Sam Turner, Heritage Point property owner, spoke in support of Mr. Wright's comments. Mr. Turner noted that property owners at the creek entrance had not maintained the groins and urged the Board to consider the adequacy of groins to contain the sand.

Mr. Charles Kendall, property owner on the creek, expressed concerns related to increased boat traffic and trash, and responsibility for maintenance and effectiveness of the project.

Mr. Bob Buckner, property owner on the creek, asked about existing zoning in the area, and the possibility of future commercial activity. Chairman Smither explained that commercial development, litter, and increased traffic were issues related to growth, but zoning issues were not the Board's authority. He added that only immediate and foreseeable impacts to wetlands are within the Board's jurisdiction. Staff noted the creek was predominately zoned residential and any rezoning or site plans for commercial development would be subject to a Public Hearing by the Planning Commission and the Board of Supervisors.

Mr. Taylor noted that aerial photographs from 1996 seemed to indicate sand moving eastward. Mr. Neikirk further concurred that in reviewing his series of photos, and looking at the groins in the area, sand generally moved east in the area.

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

Mr. Taylor related that having grown up in the Deltaville area, he was very familiar with the area, and noted that the channel's course had changed over the years. Mr. Taylor stressed that he would support the spoil being placed on the Rappahannock River properties west of the creek opening, no further than the existing vegetation.

Mr. Harrington stated that permission had been granted to place spoil on the Haywood and McCauley properties, west of the creek opening. Mr. Harrington further commented, to an earlier comment, that a commercial marina was not the intended purpose of the proposed dredging project.

Mr. Neikirk commented that Mr. Haywood made application and had been approved to repair the groins on his property. Mr. Neikirk had suggested a continuous height groin, somewhat like a jetty, be installed in order to stop sand from shifting.

Chairman Smither suggested the possibility that action be continued on the proposed project to further examine potential impacts and possibly wait until the Haywood project was completed properly, giving the Board the opportunity to assure the beach nourishment would perform as anticipated.

On a motion by Mr. Miller, seconded by Mr. Brooks, and carried by unanimous vote, Application #2001-0377 was continued until the November 13, 2001 meeting.

B. Gwendolyn Baucom - Application #2001-1352.

Chairman Smither read the applicant's proposal to construct 84' of bulkhead in front of an existing failing bulkhead. This proposed project is located on the Rappahannock River, Tax Map #2A-1-8. Staff then read the VIMS report for the project.

Chairman Smither opened the public hearing.

Mrs. Baucom, applicant, was in attendance to represent the proposed project. She explained the proposal and offered to answer any questions the Board may have.

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 #2001-1352 was approved. This approval is valid for a term of 18 months.

C. Lewis Carter, et al - Application #2001-1364.

Chairman Smither read the applicant's proposal to construct 84' of bulkhead and extend two return walls, 24' of mid-tide bulkhead, install 16' jetty with two 16' spurs, and dredge a channel (173 cu. yds.). This project is located on Sturgeon Creek at Tax Map #40-24-10, 11A & 40-18-1). Staff then read the VIMS report for the project.

Chairman Smither opened the public hearing.

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

Mr. Taylor expressed that he initially was concerned about the jetty height, and his opinion that stone may have been a better choice.

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

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by a unanimous vote, Application #2001-1364 was approved with the condition that a Land Disturbing Permit be submitted and approved. This approval is valid for a term of 18 months.

D. John Duncan - Application #2001-1448.

Chairman Smither read the applicant's proposal to construct 197' of bulkhead. This proposed project is located on Robinson Creek, at Tax Map #19-16-45. Staff then read the VIMS report for the project.

Chairman Smither opened the public hearing.

Ms. Alor Grantham Traywick, agent, was in attendance to represent the project. She explained the proposal and stated that the applicant preferred to install a bulkhead, as requested, rather than riprap revetment as suggested by staff. Ms. Traywick offered to answer any questions the Board may have.

Mr. Taylor did not see a problem with a bulkhead if it were constructed landward of the marsh adjacent of the existing pier. Chairman Smither expressed agreement, if the bulkhead was realigned.

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

On a motion by Mr. Brooks, seconded by Mr. Armstead, and carried by a unanimous vote, Application #2001-1448 was approved conditioned upon the bulkhead being realigned landward in the area adjacent to the existing pier. This approval is valid for a term of 18 months.

E. David Cryer - Application #2001-1449.

Chairman Smither read the applicant's proposal to construct a 72' bulkhead extension and install two 68' low-profile groins with 15' spurs. This proposed project is located on Rappahannock River, at Tax Map #19-19-3. Staff then read the VIMS report for the project and noted that one letter of support and one letter of protest had been received.

Chairman Smither opened the public hearing.

Ms. Alor Grantham Traywick, agent, was in attendance to represent the project. Ms. Traywick commented that Mr. Cryer had agreed to reduce the length of the groin to 32', not to exceed the length of adjacent property owner (APO) Cunningham's groin.

Upon reviewing photographs of the project site, Mr. Taylor expressed his opinion that the groin next to the dock could be sufficient.

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 #2001-1449 was approved as amended in the revised drawing dated Oct. 4, 2001 and the deletion of the proposed groin to the southeast of the existing pier. This approval is valid for a term of 18 months.

F. S. Daniel Carlton – Application #2001-1451.

Chairman Smither read the applicant's proposal to place 237' of riprap revetment. This proposed project is located on the Piankatank River, at Tax Map #43A-6-8. Staff then read the VIMS report for the project.

Ms. Alor Grantham Traywick, agent, was in attendance to represent the project and 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. Brooks, and carried by unanimous vote, Application #2001-1451 was approved. This approval is valid for a term of 18 months.

G. R.W. McGeorge – Application # 2001-1497.

Chairman Smither read the applicant's proposal to dredge channel to re-open tidal flow to pond using the sand spoil for beach nourishment and repair existing groins. This proposed project is located on the Rappahannock River, at Tax Map #38-16-2. Staff then read the VIMS report for the project.

Chairman Smither opened the public hearing.

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

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 #2001-1497 was approved. This approval is valid for a term of 18 months.

H. Jackson Creek Condo. Association c/o Nick Naglieri – Application #2001-1532.

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Chairman Smither read the applicant's proposal to place 108' of riprap revetment. This proposed project is located on Jackson Creek, at Tax Map #41-75. Staff then read the VIMS report for the project.

Chairman Smither opened the public hearing.

Jay Foster, agent/contractor, was in attendance to represent the project. He explained the proposal and offered to answer any questions the Board may have.

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 a unanimous vote, Application #2001-1532 was approved. This approval is valid for a term of 18 months.

New Business

A. Request by Norborne Reams, Jr. & Larry Shores, Sr.

Chairman Smither introduced the request that the Wetlands Board re-examine their restoration order, from the September 11, 2001 meeting, regarding the 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. Chairman Smither asked if the Board desired to amend, rescind, modify, change or amend the restoration order of September 11, 2001. Mr. Taylor, as well as Mr. Miller, noted that they did not.

Mr. James Ward, attorney representing Mr. Larry Shores, contractor for the project, requested time to address the Board to express disagreement with the Board's decision. He noted that his client would have appealed to VMRC, but was advised that a restoration order couldn't be appealed. Mr. Ward asked that the Board re-hear the case and reinstate the fine as staff recommended.

Chairman Smither asked if Mr. Ward represented Mr. Reams. Mr. Ward responded that he represented Mr. Shores. Chairman Smither stated that the Board did not have any problem with Mr. Shores or Ms. Traywick. He expressed regret that the Board's action reflected on Mr. Shores. He added that the Board had already conducted a public hearing and continued action to further examine the permit violation. Chairman Smither went on to explain that the Board had looked at the project from its inception, had approved the project as requested, and then later found that the project had been constructed differently. He added that approximately 1,000 s.f. had been added as real estate. Chairman Smither stated that the Board had decided on the required action, and the minimum \$3,000 fine suggested by staff was a recommendation.

Mr. Ward presented a photograph and asked that the Board please note that regardless of the distance Ms. Traywick had depicted in submitted sketches, he felt the bulkhead was placed at the toe of the bank.

Mr. Reams, applicant, requested and was granted time to address the Board. Mr. Reams stated that in response to the Board being upset that he had not been present at the last meeting, there were problems at his home under construction requiring his attention. Mr. Reams stated that the photograph had been located recently, and contended that the bulkhead was constructed at the toe of the bank. Mr. Reams noted that he had hired a professional to make application for the project. Additionally, he commented that Mr. David O'Brien, VIMS marine scientist, had recommended that the bulkhead not be removed, and that staff had recommended a fine of \$3,000.

While not obligated to explain, Chairman Smither commented that he would attempt to address the comments made by Mr. Reams. He explained that the Board had been concerned that Mr. Reams was not present for the September hearing, given that he was the applicant and property owner. Regarding the

advice of experts, Chairman Smither stated that the Board could have imposed a penalty of \$10,000.00, ordered restoration and/or mitigation - possibly imposing all three of the options available. The Chairman noted that the Board chose to order restoration, and did not impose a penalty. He added that the Board had dealt with the project since its inception, and he was sorry that the parameters of the permit had been exceeded, but the Board deemed it important to send a message to future applicants. Unless there was a motion for reversal, Chairman Smither stated that the Board's decision was final and the applicant could appeal in court.

With no further comment, Chairman Smither stated he considered the matter closed.

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.

Wetlands Board Chair

Date