

Middlesex County Wetlands Board Minutes

September 11, 2001

Call to Order

The September 11, 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. 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 August 14, 2001 meeting. On a motion by Mr. Taylor, and a second by Mr. Brooks, 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. K. L. Green - Application #2001-1234.

Chairman Smither read the applicant's proposal to place 55' of riprap revetment. This proposed project is located on Whiting Creek, at Tax Map #29D-1-21. Staff then read the VIMS report for the project.

No one was in attendance to represent the proposed project.

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. Brooks, and carried by unanimous vote, Application #2001-1234 was approved as submitted. This approval is valid for a term of 18 months.

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

Chairman Smither read the applicant's proposal to permit the after-the-fact placement of 240' of 4" PVC conduit (abandoned), relocate the electrical line under dock, place beach nourishment previously approved (application #96-0467), and place additional riprap on top of and adjacent to existing riprap. This proposed project is located on Broad Creek, at Tax Map #31-59-1, 6. Staff then read the original VIMS report for the project.

No one was in attendance to represent the proposed project.

Chairman Smither opened the public hearing.

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

Chairman Smither commented that everything seemed to be in order. He stated that if the existing utility conduit is allowed to remain in place the ends should be capped off with concrete, and the capping should be inspected by staff prior to backfilling.

On a motion by Mr. Miller, seconded by Mr. Taylor, and carried by unanimous vote, Application #2001-1268 was approved with the conditions that the utility conduit is capped off with concrete, the removal of the electrical pedestal (next to the meter bases) located within the Wetland Board's jurisdiction and the authorization of beach nourishment to the height of the adjacent vegetated wetlands (vegetated wetlands directly landward and adjoining to the existing riprap revetment). This approval is valid for a term of 18 months.

C. Raymond Murphy, Jr. - Application #2001-1434.

Chairman Smither read the applicant's proposal to place 140' of riprap revetment. This proposed project is located on Urbanna Creek, at Tax Map #27-14-4. Staff then read the VIMS report for the project. Mr. Jordan further stated that Ms. Carol Collier, agent for the applicant, had notified him by telephone that she would be unable to attend the hearing.

No one was in attendance to represent the proposed project.

Chairman Smither opened the public hearing.

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

Chairman Smither noted that during the Board's site visit to the property, he was concerned regarding the placement of flags within the existing wetland vegetation. He stated that he believed impacts could be reduced by placing the proposed riprap landward of the wetland vegetation located southwest of the existing pier. Mr. Jordan suggested that accordingly, the Board should require revised drawings to be submitted.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by a unanimous vote, Application #2001-1434 was approved conditioned upon placement of proposed riprap landward of the wetland vegetation, located to the southwest of the existing pier, then alignment of the riprap along the edge of bank, submission of revised drawings with benchmark trees or control stakes identified, and that an approved Resource Protection Area (RPA) Development and Land Disturbing Permit be obtained. This approval is valid for a term of 18 months.

D. Ernest Haywood – Application #2001-1225.

Chairman Smither read the applicant's proposal to rebuild a 58' groin and a 104' jetty with two 16' spurs, construct a 58' low-profile groin to replace two existing groins to be removed (Lot 21) and rebuild two 58' groins (Lot 17). This proposed project is located on the Rappahannock River, at Tax Map #40-104-17, 21. 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 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. Woodson, seconded by Mr. Brooks, and carried by a unanimous vote, Application #2001-1225 was approved. This approval is valid for a term of 18 months.

E. Preston Stallings – Application #2001-1271.

Chairman Smither read the applicant's proposal to permit the after-the-fact placement of a 10'x20' riprap splash apron for outfall protection of a drainage pipe. This proposed project is located on Jackson Creek, at Tax Map #41-65. Staff then read the VIMS report for the project.

Chairman Smither opened the public hearing.

Ms. Alor Grantham Traywick, agent, and Mr. Preston Stallings, applicant, were in attendance to represent the project.

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 unanimous vote, Application #2001-1271 was approved as presented. This approval is valid for a term of 18 months.

F. Bay Marine c/o Barry Miller – Application #2001-1302.

Chairman Smither read the applicant's proposal to place a sewage treatment discharge pipe underneath an existing pier and construct a 280'x5' commercial pier with 50 boat-slips. This proposed project is located on Broad Creek, at Tax Map #41-114. Staff then read the VIMS report for the project.

Alor Grantham Traywick, agent, was in attendance to represent the project and answer any questions the Board may have. She explained that Mr. Miller did not currently have a marina management plan, but understood that the document was necessary.

Ms. Traywick explained that the applicant had submitted the appropriate applications related to the proposed treatment facility and the review process was under way.

Chairman Smither opened the public hearing.

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

On a motion by Mr. Miller, seconded by Mr. Armstead, and carried by unanimous vote, Application #2001-1302 was approved with the condition that a marina management plan be submitted and approved. This approval is valid for a term of 18 months.

Old Business

A. Continued – Norborne Reams, Jr. – Application #2001-0670

Chairman Smither introduced the continued case regarding 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. Mr. Jordan stated that there were no additional staff or VIMS recommendations.

Chairman Smither stated that the Board had looked at the project site again and had taken additional measurements from the benchmark pine trees. He explained that the bulkhead was supposed to be 3' from the one of the benchmark trees, but was found to be 10' from the tree. He added he other benchmark was found to be 13' from the bulkhead, but was approved at an 8' distance. He stated both were clearly in violation of the parameters of the permit. Additionally, Chairman Smither noted that Mr. Reams, the property owner, was not in attendance at the hearing.

Mr. Taylor commented that originally there were three benchmarks to go by, with two pine trees remaining, the other had been removed, and agreed with Chairman Smither's remarks about the distance of the remaining benchmark trees.

Chairman Smither expressed disappointment that Mr. Reams was not in attendance at the hearing.

Ms. Traywick stated that she would attempt to answer any questions the board may have. Chairman Smither reopened the Public Hearing.

Chairman Smither stated that the board did not have a problem with Ms. Traywick or Mr. Shores; any problem was with Mr. Reams, the applicant, as the permit was issued in his name as property owner. Chairman Smither commented that the board was stymied in their objective to resolve the matter because a benchmark tree had been removed at the project site. Noting that two of the benchmark pine tree remained, Chairman Smither asked Mr. Shores if he had taken measurements from the tree to the bulkhead. Mr. Shores responded that he had not, assuming that the flags were in the proper location.

Mr. Taylor asked if Mr. Shores had anything further to add. Mr. Shores noted that there might have been a problem with an adjoining property owner (APO) regarding an oyster bed Mr. Shores had been told not to disturb. Mr. Shores noted that the APO had requested \$1500 for damages to the oyster bed, and there had been friction over a pier, indicating that someone else may have moved the flags.

Chairman Smither noted that during the board's first site visit, the flags were close to the bank, grass was out in the water, and the bulkhead was to be installed shoreward of the marsh grass. Chairman Smither expressed that he was deeply disturbed by the situation, as the board had total involvement with the case from the beginning. He related that Mr. Reams made application; it was approved exactly as requested, with no conditions.

Mr. Armstead made a motion that a fine of three thousand (\$3,000) dollars be issued, the bulkhead must be removed (returning to the permit as approved) and to permit the re-installation of the bulkhead in its proper position.

Mr. Miller noted his agreement that the flags were aligned close to the bank during the board's first site visit, although he had not been to the site since that time.

Mr. Brooks expressed his agreement with Mr. Armstead's statement.

Mr. Neikirk advised that the correct language was a "civil charge" rather than a "fine", and the amount would have to be agreed upon by the applicant in lieu of seeking civil penalties.

Mr. Taylor estimated that the applicant's total costs for the initial installation, removal, re-installation of the bulkhead and civil charge would likely be thirty thousand (\$30,000) dollars. He expressed that this was the first time the board had issued such a heavy fine and he felt it might be too severe.

Chairman Smither explained that the board's job was not easy, given that a clear violation had occurred, with many viewpoints that could be argued infinitely. He stated that if the violation were ignored, more would occur in the future. Chairman Smither expressed again that he was very disappointed that Mr. Reams was not present. He further expressed that the board's problem was with neither the agent nor the contractor, but with the applicant. Chairman Smither explained that if the board imposed a civil charge and restoration, the applicant might choose not to comply, which would make the issue a legal matter between Mr. Reams and the Middlesex County.

Mr. Armstead withdrew his previous motion.

Mr. Taylor recommended a civil charge of twelve thousand (\$12,000) dollars.

Mr. Jordan read Section 28.2-1320 of the Wetlands Board bylaws, indicating that a one-time payment was not to exceed ten thousand (\$10,000) dollars. Mr. Taylor revised his recommendation to a civil charge of ten thousand (\$10,000) dollars.

Chairman Smither noted that Staff had recommended a civil charge of three thousand (\$3,000) dollars, which could be in addition to remedial action. He stated that if only a civil charge were imposed, if the

violation were not corrected, in essence, the applicant would be purchasing the violation. Chairman Smither expressed his disagreement with only a civil penalty being imposed.

Mr. Jimmy Ward, attorney representing Mr. Shores, requested and was granted permission to speak to the board. Mr. Ward explained that although he understood the board's desire to uphold their responsibility to protect wetlands, Mr. Shores would be penalized, as well as Mr. Reams. He noted that Mr. Shores had not been fully compensated for the bulkhead installation. Mr. Ward repeated that Ms. Traywick had placed flags, Mr. Reams said he did not move the flags, and that Mr. Shores went by the flags in place when he began work on the project. Additionally, Mr. Ward expressed his opinion that the penalty was very high.

Chairman Smither expressed agreement with Mr. Ward's comments, but stated that Mr. Reams and Mr. Shores would have to settle the matter between themselves. Chairman Smither added that he did not question the integrity of Ms. Traywick nor Mr. Shores, and was not attempting to penalize them.

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

Mr. Miller stated the applicant could remove the bulkhead and replace it as permitted originally without a civil penalty being imposed.

Mr. Brooks expressed his opinion that the bulkhead should be removed and re-installed, keeping in line with the original flag lines as placed by Ms. Traywick.

Mr. Neikirk stated that he would encourage removal of the bulkhead, restoration of the wetlands, and stabilizing the bank, in which case, a bulkhead might not be needed.

Mr. Taylor withdrew his recommendation for a civil charge of ten thousand (\$10,000) dollars.

On a motion by Mr. Miller, seconded by Mr. Taylor, and carried by unanimous raised hand vote, the board voted to require the applicant to remove the bulkhead and fill, and restore the shoreline, within the Wetlands Board's jurisdiction, to its pre-existing conditions.

New Business

A. Extension Request – Piankatank River Golf Club, c/o John Fleet, Jr.– Application #2001-0018.

Chairman Smither read extension request for Application #2001-0018, to place 886' of riprap revetment. Originally approved as submitted on March 14, 2001. This project is located on the Piankatank River, at Tax Map #37-43. Staff then read the VIMS report for the project.

On a motion by Mr. Miller, seconded by Mr. Brooks, and carried by unanimous vote, Application #2000-0018 extension request was approved. This extension is valid for a term of 18 months.

B. Extension Request – Regent Point Marina, Inc., c/o Scott D. Kauffman – Application #2000-0265.

Chairman Smither read extension request for application #2000-0265, to construct a larger (14'x49') concrete boat-ramp over an existing boat-ramp. Originally approved as submitted April 11, 2000. This proposed project is located on Locklies Creek, at Tax Map #30-7-8A.

On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by unanimous vote, Application #2000-0265 extension request was approved. This extension is valid for a term of 18 months.

C. Benchmarks

Chairman Smither requested that Staff prepare a recommendation to include stronger wording regarding benchmarks required on project sites requiring benchmarks to remain at a project site. Mr. Jordan stated he would review current requirements and prepare recommendations.

Adjournment

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

Respectfully submitted.

Wetlands Board Chair

Date