

Middlesex County Wetlands Board Minutes

August 13, 2002

Call to Order

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

Minutes

The Board considered the minutes of the July 9, 2002 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. Edwin C. Holloway, Jr. - Application #2002-1162.

Chairman Smither read the applicant's proposal to construct 37' of bulkhead channelward of an existing failing bulkhead and construct a 38' groin next to an existing failing groin, and construct a new 16' groin. This project is located on the Rappahannock River, at Tax Map #39A-3-13. Staff then read the VIMS report for the project.

Mr. Edwin C. Holloway, Jr., applicant, 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 #2002-1162 was approved as submitted. This approval is valid for a term of 18 months.

B. Porpoise Cove Marina c/o Andrea Holt - Application #2002-1354.

Chairman Smither asked if the majority of people were in attendance as a result of interest in the Porpoise Cove Marina project. Upon being assured that was the situation, Chairman Smither determined that this case should be heard as the final public hearing of the meeting.

C. Samuel A. Hardesty – Application # 2002-1200.

Chairman Smither read the applicant's proposal to construct 55' of bulkhead channelward of an existing failing bulkhead. This project is located on the Piankatank River, at Tax Map # 37A-8-8A. Staff then read the VIMS report for the project.

Karla Havens, agent, was in attendance to represent the project.

Chairman Smither opened the public hearing.

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

On a motion by Mr. Brooks, seconded by Mr. Taylor, and carried by unanimous vote, Application #2002-1200 was approved as submitted. This approval is valid for a term of 18 months.

D. Marie Felton – Application #2002-1135.

Chairman Smither read the applicant's proposal to repair or replace six existing groins to a low-profile design. This proposed project is located on the Rappahannock River, at Tax Map #40-1-5A. Staff then read the VIMS report for the project.

Alor Grantham-Traywick, agent, was in attendance to represent the project.

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 unanimous vote, Application #2002-1135 was approved as submitted. This approval is valid for a term of 18 months.

E. Jackson Creek Partners c/o John Perrin – Application #2002-1155.

Chairman Smither read the applicant's proposal to construct 292' of bulkhead channelward of an existing failing bulkhead and enlarge an existing boat ramp. This proposed project is located on Jackson Creek, at Tax Map #40-51-A. Staff then read the VIMS report for the project.

Alor Grantham-Traywick, agent, was in attendance to represent the project.

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 #2002-1155 was approved as submitted. This approval is valid for a term of 18 months.

B. Porpoise Cove Marina c/o Andrea Holt – Application #2002-1354.

Chairman Smither read the applicant's proposal to redevelop an existing marina facility to include: replace 160' of bulkhead, removal of existing boathouses and piers, dredge 600 cu/yards, construct 18 covered slips, and construct 10 uncovered slips (total existing slips 65, total proposed slips 56). This proposed project is located on Fishing Bay, at Tax Map #45-1B-15 & 16. Staff then read the VIMS report and noted that the Board had received a letter of concern from an adjoining property owner.

Andrea and Leroy Holt, applicants, were in attendance to represent the project. Mrs. Holt explained the project and noted that it would be completed in 3 phases, and would comply with VIMS' suggestions to realign the proposed jetty landward to the toe of the eroded bank.

Chairman Smither opened the public hearing.

Mr. Michael H. Valentine, stated that he was elected spokesman for a group of adjoining property owners and presented a letter from adjoining property owners requesting that the application be denied, with no further construction permitted, as well as having the condemned structures and pilings removed and channel seawalls repaired before additional consideration by the Board for further development of the property.

Chairman Smither retained the documents, and noted that the Board would review their concerns.

Mrs. Julia Kelly, adjoining property owner across the cove, explained how her major concerns were related to the erosion that her property had suffered due to lack of repairs to the western bulkhead. She explained that the sand buffer, owned by the marina, previously located behind the western bulkhead has mostly disappeared from erosion, and additionally there was loss of a sand beach fronting the Piankatank River in front of Mrs. Kelly's property, as well as the Phelps' property. Mrs. Kelly presented a 1992 aerial photograph of the vicinity for reference. Mrs. Kelly noted that there was a 300 ft. buffer area that the marina property was supposed to maintain, and she further requested that a "No Wake" zone be installed in the cove.

Ms. Gerry Nichols, a waterfront property owner on the cove, had questions regarding the 65 slips, lighting, and sewage disposal. She presented a deed which granted a 300 foot strip of land on the western side of the channel as a buffer that was to be used for bathing, boating and fishing, with the unloading of boats prohibited. Additionally, she noted that the deed indicated that the marina owners were responsible for retaining walls and channel depths.

Mrs. Holt stated that she had walked through the site with the VIMS representative and felt the VIMS reference was to the marina's eastern side jetty. Mrs. Holt suggested that VIMS be contacted and asked to clarify the issue either on the property site, or during the next meeting.

Ms. Nichols questioned how lighting and sewer disposal would affect adjoining property owners. Mrs. Holt responded that lighting issues had not been addressed, but would likely be similar to existing halogen lights. Regarding sewer disposal systems, she commented that a state-of-the art system would be installed, and that State funds had been approved for a pump out waste station.

Mrs. Phelps, adjoining property owner to Mrs. Kelly, expressed concerns related to the number of slips, lighting, the increased boat traffic and erosion and further noted that in the past ten years her property had lost 20' of river front property due to the collapsed jetties. She also stated that the channel had been dredged several years ago.

Mr. Curt Hornstra, property owner across the cove from the marina, expressed concerns related to additional parking, boat traffic, and safety in the shallow and narrow cove.

Mr. Mason Clark, waterfront property owner along the cove, expressed concerns regarding parking. He additionally asked if the tree line on the bank would be disturbed. Mrs. Holt responded that the tree line would not be disturbed, as a barge would be utilized for construction from the water side, with the buffer of trees to remain.

Mrs. Virginia Sigismondi noted that the channel splits at an island in the cove, and expressed concern that it would end up becoming one channel going to the marina.

Mrs. Kelly commented that she had attempted to grow marsh grasses and expressed that wave action was a major concern. Mrs. Holt expressed her concern for sustaining the ecological environment and had discussed planting grasses along the shoreline for additional protection.

Chairman Smither commented that since letters submitted by Mr. Valentine represented 13 people, and the Board had no advance notice that this amount of public concern existed, he asked if the Board wished to continue the action, giving the Board time to examine the concerns and application in greater detail. He further noted that some of the issues raised were beyond the Wetlands Board's jurisdiction, such as a "No Wake" sign, and health and zoning matters.

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

Mr. Taylor stated that there were numerous questions and felt that the Board needed time to review the issues that had been presented.

Mr. Brooks asked when the applicants estimated that the existing structures would be removed. Mrs. Holt noted that they were awaiting permission from VMRC and the Wetlands Board before proceeding.

Mr. Neikirk explained that the project had been proposed by and approved for a previous owner/applicant in 1992/93 for what was being proposed currently he noted the county Wetlands Board permit had been extended to the maximum three years and had also expired. He further commented that VMRC doesn't extend permits beyond ten years; therefore, a new application was required because the project had not been completed as previously approved. Mr. Neikirk further noted that VMRC would require permits for activities within their jurisdiction and anyone expressing objections to the project in writing would be notified of the VMRC hearing. He noted that while the Wetlands Board's primary responsibility was to protect wetlands, they might also consider the impacts that boat slips may have on wetlands.

Chairman Smither commented that there were additional issues to consider, raised during the public comment period, as well as review of the documents that were presented at the meeting.

On a motion by Mr. Taylor, seconded by Mr. Brooks, and carried by unanimous vote, Application # 2002-1354 was continued until the September meeting, allowing the Board time to review the application and public comments.

Old Business

A. Show Cause Hearing - John and Lynn Bell.

Chairman Smither re-introduced the Show Cause Hearing - John and Lynn Bell regarding the placement of a riprap revetment at Tax Map #19C-2-A-10 on the Rappahannock River. Mr. Jordan read the staff report recommending that the Bell's be allowed to submit an After-the-Fact permit application.

Alor Grantham-Traywick, agent, was in attendance to represent Mr. Bell. Ms. Traywick expressed her opinion that the Wetlands Board would have permitted the riprap revetment if a proper application had been submitted. She further commented that Mr. Bell had used poor judgment in allowing the contractor to perform the work on his property as a convenience while performing work at an adjoining property owner's property.

Mr. Armstead asked the identity of the agent for the existing pier on the Bell's property. Mr. Jordan stated that Lucille Morelli had been the agent and Bayside had been the contractor, listed in the application.

Ms. Traywick asked the determination had been made that the Bell's project was in the Wetlands Board's jurisdiction. Mr. Taylor expressed his opinion that wetlands were involved. Ms. Traywick stated that Mr. Bell was willing to do whatever the Board required.

Mr. Armstead noted that he had a problem with contractors and agents failing to assure that permits are obtained.

Ms. Traywick noted that Mr. Bell might not have spoken to Mrs. Morelli. She further commented that the contractor's only access to Mr. Bell's property was by way of Mr. Loving's property.

Chairman Smither stated that it was unfortunate that Mr. Bell was not informed and that the agent and/or contractor had misled him. Chairman Smither commented that if Mr. Bell applied for an after-the-fact permit that would be the end of the matter. He further contended that the larger issue was the problem of contractors proceeding without obtaining the proper permits.

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by a 4-1 vote, with Mr. Taylor opposed, the Board voted to allow Mr. Bell to submit an after-the-fact permit.

- B. Tidal Wetlands Permitting Video: “Partners in Protecting Our Wetlands” – York County Wetlands Board.

Mr. Jordan stated that he had received three copies of the wetlands video, with the intention of giving one to each of the County’s libraries, and one to remain in the office that would be available to the Wetlands Board, public, and other interested parties.

New Business

- A. Extension Request – W.M. Woodson – Application # 2001-0288.

Chairman Smither introduced the request to extend the project, which was originally approved on April 10, 2001 permitting the installation of a 48’ low-profile groin and replacing 60’ of bulkhead. The project is located on Sturgeon Creek, at Tax Map #40-13-406. Approval was conditioned upon the proposed groin being 24’ in length and of continuous height (same height as adjoining bulkhead).

Mr. Jordan stated that he had no additional information or comments.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, Application #2001-0288 was granted an extension. This extension is valid for a term of 18 months.

- B. Pending Enforcement Actions

1. Court Case – Norborne Reams, Jr.

Chairman Smither read a letter from the County Attorney announcing that the Reams case was found in violation, and it was deemed an unintentional violation resulting from a lack of evidence to the otherwise, therefore, a \$3,000.00 penalty was assessed.

2. Contractors in Violation

Chairman Smither stated that the Board should address the problem of contractors performing work without obtaining the proper permits. He noted that the Board had discussed several options during their past site visits.

Mr. Taylor expressed his belief that Mr. Bell’s project had been done as a convenience, with no permits, and he had hoped to assess a fine of at least \$1500.00. Mr. Taylor stated that the penalties should be stricter.

Mr. Armstead explained that he felt the contractor and/or agent was responsible, knowing that permits were required and should be fined.

Mr. Neikirk explained that requiring an after-the-fact permit application would not preclude the Board from pursuing additional options, such as civil charges. He further noted that at the State level, there would likely be a civil charge as well as an after-the-fact permit required for the Bell application. Mr. Neikirk further noted that the State level had more leverage to penalize contractors.

Chairman Smither commented that in the Reams case, the judge had explained that a civil fee could have been charged per day, although the County Attorney said the Board of Supervisors had not approved this concept. Chairman Smither further suggested that the Board contact other counties to determine how they deal with violations.

Mr. Neikirk commented that when civil charges had first been approved, the after-the-fact fee was low, and VMRC had requested that the Board of Supervisors raise the fee.

Mr. Taylor suggested that representatives from VIMS and VMRC be asked to provide further assistance and training to the Board at a special meeting. At such a meeting, Mr. Taylor hoped that the Board could review issues in anticipation of becoming more knowledgeable of available options. He further suggested that one member of the Board of Supervisors be invited to attend the meeting also.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, the Board voted to schedule to schedule a joint training session with VIMS and VMRC.

Chairman Smither asked Mr. Jordan to coordinate the meeting with VIMS and VMRC, sometime in early October 2002, and prepare a letter to the Board of Supervisors as well. He noted that violation issues are a continuing problem and the Wetlands Board should have a plan of action to address the violation issues.

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