

Middlesex County Wetlands Board Minutes

July 9, 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 June 11, 2002 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. Donald Walker - Application #2002-1113.

Chairman Smither read the applicant's proposal to construct 50' of bulkhead channelward of an existing failing bulkhead. This project is located on the Piankatank River, at Tax Map #37A-8-9A. 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. Armstead, seconded by Mr. Brooks, and carried by unanimous vote, Application #2002-1113 was approved as submitted. This approval is valid for a term of 18 months.

B. Donald N. Tschan, M.D. - Application #2002-0929.

Chairman Smither read the applicant's proposal to place 110' of riprap revetment. This project is located on Mill Creek at Tax Map #41-130. Staff then read the VIMS report for the project.

Jay Foster, R&W Marine, contractor/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 #2002-0929 was approved as submitted. This approval is valid for a term of 18 months.

## **Old Business**

A. Continued – Gary LaClaire – Application #2002-0756.

Chairman Smither read the applicant's proposal to place 200' of riprap revetment. This proposed project is located on Meachim Creek, at Tax Map # 29A-4-10. Staff then read the VIMS report for the project with an additional recommendation of a 6' base and the submission of revised drawings.

Carol Collier, agent, was in attendance to represent the proposed project and answer any questions the Board may have.

Chairman Smither re-opened the public hearing.

Ms. Collier commented that there was more erosion occurring on the northern end of the property than on the southern side, and that the structure was proposed to have a 6' base and re-aligned landward of all wetland vegetation.

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

Chairman Smither commented that the Board had met Ms. Collier on site and found the flags had been indeed realigned. Mr. Taylor agreed that the stakes were in order.

On a motion by Mr. Taylor, seconded by Mr. Brooks, and carried by unanimous vote, Application # 2002-0756 was approved as amended and re-submitted by the agent, to include revised benchmarks and revised drawings. This approval is valid for a term of 18 months.

B. Continued – Jessie Boggs – Application #2002-0723.

Chairman Smither read the applicant's proposal to place 80' of riprap revetment in front of a failing bulkhead. This project is located on the Rappahannock River, at Tax Map #9A-3-7. Staff then read the VIMS report for the project.

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

Chairman Smither re-opened the public hearing.

Ms. Traywick stated that the project and drawings had been revised and submitted according to suggestions in the VIMS report. She noted that the bulkhead was to be removed, and riprap revetment would be placed in the same alignment as adjoining property owners. Ms. Traywick commented that the revisions were agreeable with the applicant and the contractor, and offered to any concerns the Board may have.

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

On a motion by Mr. Brooks, seconded by Mr. Taylor, and carried by unanimous vote, Application #2002-0723 was approved with the submission of revised drawings and revisions according to staff recommendations.

## **New Business**

A. Show Cause Hearing – John and Lynn Bell.

Chairman Smither introduced the Show Cause Hearing of 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 submit an After-the-Fact permit application.

Ms. Alor Grantham Traywick, agent, was in attendance to assist in resolving the issue.

Mr. John Bell, property owner, was in attendance to answer any questions the Board may have. Mr. Bell admitted guilt and explained that when he purchased the property in June 2002, he realized there were a series of holes in the seawall that needed repair.

Ms. Traywick commented that having visited the site to assess the situation, and after viewing the adjoining properties, she was uncertain if the project was indeed in the Board's jurisdiction, but rather, the Virginia Marine Resource Commission's (VMRC). She further stated that as the project was already constructed, there was no proof either way. She also contended that contractors should know that permits are required, and that Mr. Bell was aware he had made a mistake. Ms. Traywick agreed with staff recommendation that Mr. Bell submit an After-the-Fact permit application.

Mr. Jordan asked which contractor installed the riprap revetment. Mr. Taylor stated his belief that Bayside Construction had done the work. Mr. Jordan asked if this was correct. Mr. Bell responded affirmatively.

Mr. Taylor contended that it could not be said the property was not in the Board's jurisdiction. Ms. Traywick asserted her belief that if the adjoining property had not required a permit, and the shoreline was similar, she did not believe the Bell property required a Wetlands permit, but rather a VMRC permit.

Mr. Neikirk explained that if mean high water (MHW) and also mean low water (MLW) touch a bulkhead, the local Wetlands Board did not have jurisdiction, however, with the project already complete, it was difficult to make a determination now. He commented that VMRC would require an After-the-Fact permit, and suggested that the Board accept an After-the-Fact application and have VIMS review the matter.

Chairman Smither noted that while the Board was sensitive to Ms. Traywick's points, and wished to be fair to Mr. Bell, he felt the Board would like additional time to study the matter and pursue the jurisdiction issue further.

Mr. Taylor agreed and noted concerns related to where the Board's jurisdiction lies.

On a motion by Mr. Brooks, seconded by Mr. Taylor, and carried by unanimous vote, Show Cause Hearing – John and Lynn Bell was continued until further information and study by the Board.

Chairman Smither stated his desire to determine the Board's jurisdiction once and for all.

To expedite the process, Ms. Traywick asked if Mr. Bell could continue to submit an After-the-Fact permit application. Chairman Smither responded that he would prefer to wait until the jurisdiction matter had been resolved.

## B. Pending Enforcement Actions

### 1. Court Case – Norborne Reams, Jr.

Chairman Smither announced that the case was scheduled to be heard in Court on July 29, 2002 and he looked forward to a resolution in the matter.

### 2. Complaint - Jack Morrison

Chairman Smither related the violation situation wherein a property owner had homemade riprap revetments and groins placed on his property installed with cinder blocks, steel beams, and construction debris. Mr. Jordan stated that there were no additional comments. Mr. Jordan stated that violation letters had been sent, and after communication with Mr. Morrison, he believed Mr. Morrison would remove the debris.

Chairman Smither noted that the Board would visit the site in August during their regularly scheduled site visits.

- C. VIMS – Tidal Wetlands Workshop – Wednesday, July 17<sup>th</sup>, from 8:30 a.m. to 3:30 p.m.

Chairman Smither commented that he and Mr. Jordan intended to attend the VIMS Workshop.

**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.

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Wetlands Board Chair

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Date