

Middlesex County Wetlands Board Minutes

October 8, 2002

**Call to Order**

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

Staff present: Matthew Higgins, Planning Director  
Cathy Shiflett, Planning Secretary

Also present was Mr. Robert Neikirk from the Virginia Marine Resources Commission (VMRC) and Mr. David O'Brien from Virginia Institute of Marine Science (VIMS).

**Minutes**

The Board considered the minutes of the September 10, 2002 meeting. On a motion by Mr. Miller and a second by Mr. Brooks, the minutes were approved unanimously.

**Public Hearing**

Chairman Smither opened the public hearing, and stated that the agent for Mr. Foxx had requested that Application #2002-1528 be heard as the last public hearing item, rather than first to allow the property owner to be present. On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by unanimous vote, Application #2002-1528 was approved to be the last item on the Public Hearing portion of the meeting. The Middlesex County Wetlands Board took action on the following applications:

B. Matt Ritter - Application #2002-1651.

Chairman Smither read the applicant's proposal to place 85' of riprap revetment. This project is located on Meachim Creek, at Tax Map # 30A-8-A. Staff then read the VIMS report for the project.

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

On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by unanimous vote, the Board voted to accept the application for consideration.

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 #2002-1651 was approved as submitted. This approval is valid for a term of 18 months.

C. John Orndorff - Application #2002-1694.

Chairman Smither read the applicant's proposal to remove existing bulkhead, place 172' of riprap revetment, and refurbish the existing boat ramp and extend by 25'x10'. This project is located on Meachim Creek, at Tax Map #29A-5-2. Staff then read the VIMS report for the project.

Alor Grantham Traywick, agent, was in attendance to represent the project. She explained the project and offered to answer any questions related to 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. Miller, and carried by unanimous vote, Application #2002-1694 was approved as submitted. This approval is valid for a term of 18 months.

D. John Bell - Application # 2002-1720.

Chairman Smither read the applicant's proposal to permit the after-the-fact placement of 75' of riprap revetment channelward of an existing bulkhead. This project is located on the Rappahannock River, at Tax Map # 19C-2-A-10. 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.

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

Chairman Smither explained that the Board had ordered that an after-the-fact application be submitted for the placement of the riprap revetment to allow the proper permitting by the appropriate agencies, with a fee of \$550. Chairman Smither asked Mr. Neikirk to comment regarding civil penalties.

Mr. Neikirk commented that an after-the-fact fee provided some penalty, and that the Board was to review whether or not the application would have been approved if applied for previously. He further commented that the Board could look at assessing a civil charge to provide future dis-incentive to contractors and/or property owners proceeding with projects before obtaining necessary permits. Mr. Neikirk noted that VMRC would hear the case at a later date and would likely recommend a civil charge.

Mr. Taylor made a motion to assess an additional penalty of \$400 for the unpermitted placement of riprap revetment in front of the existing bulkhead. There was no second to the motion.

Mr. Brooks made a motion to accept the application as submitted. There was no second to the motion.

Mr. Armstead stated that he could not support either motion, based upon his opinion that an amount greater than \$400 should be assessed.

Chairman advised that Mr. Brooks could remove the motion. Mr. Brooks withdrew the motion.

Mr. Taylor explained his reasoning that the Board would likely have approved the project if application had been made prior to commencing work, thus, he felt an additional civil charge of \$400 was sufficient.

Mr. Armstead noted that the Board had visited the site twice, and that the contractor knew better than to proceed with the project prior to receiving the appropriate permits.

Mr. Armstead made a motion for approval of the application with an additional a civil charge of \$1,000, with a second by Mr. Taylor to allow for discussion.

Chairman Smither explained that the Board was opposed to any semblance of rubber stamp approval of after-the applications, with a strong desire to send a message that projects must be properly permitted rather than begun for the sake of convenience. He noted that Mr. Armstead suggested a charge of \$1,000, while Mr. Taylor favored \$400. Chairman Smither asked that there be some agreement so the Board could move ahead and suggested a compromise of \$500.

Mr. Armstead amended the motion to approve after-the-fact Application #2002-1720, and to impose a civil charge of \$500, rather than \$400, with a second by Mr. Taylor, and carried by unanimous vote.

E. Jerry Whidby - Application #2002-1505.

Chairman Smither read the applicant's proposal to place 100' of riprap revetment adjacent to an existing revetment. This proposed project is located on Robinson Creek, at Tax Map #19-16-53. Staff then read the VIMS report for the project.

Lucille Morelli was in attendance to represent the project. She noted that she had submitted drawing revisions to the project in accordance with VIMS' recommendations and offered to 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. Taylor, seconded by Mr. Brooks, and carried by unanimous vote, Application #2002-1505 was approved as submitted conditioned upon staff recommendations that the revetment shall be constructed on a 1.5:1 slope to reduce the base width to 4.5 feet. This approval is valid for a term of 18 months.

F. Dublfun, LLC, c/o James Perdue, Sr. - Application #2002-1652.

Chairman Smither read the applicant's proposal to install two 100' jetties with an adjoining 30'x6' walkway. This project is located on the Rappahannock River, at Tax Map # 2-35. Staff then read the VIMS report for the project.

Lucille Morelli, agent, was in attendance to represent the project and answer any questions the Board may have. Mrs. Morelli stated that she had provided revised drawings to reflect changes as recommended by VIMS.

Mr. James Perdue, Sr., was in attendance, and explained that the proposed project would provide easier water access for senior citizens and handicapped visitors to the campground.

Chairman Smither opened the public hearing.

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

Chairman Smither asked if the submitted revisions were agreeable to Mr. Higgins. Mr. Higgins noted that while the revisions were considerably different from the original submission, he had no objections.

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by unanimous vote, Application #2002-1652 was approved as submitted conditioned upon the proposed jetties must be modified to a low-profile design. This approval is valid for a term of 18 months.

A. Stephen D. Foxx - Application #2002-1528.

Chairman Smither read the applicant's proposal to place three 60' breakwaters and 750 cu. Yrds. of beach nourishment. This project is located on Sturgeon Creek, at Tax Map # 40-14A. Staff then read the VIMS report.

Jeff Watkins, agent/contractor, was in attendance to represent the project. He explained the project and presented a wetland planting and monitoring plan, (as requested by the Army Corp of Engineers) as well as before and after photographs of a similar project, and noted that he would provide samples of sand coming out of the bank.

Chairman Smither opened the public hearing.

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

Mr. Foxx, applicant, explained that he had purchased the property four years previously, and was concerned about the proximity of the 100 yr. old house to the bank. Mr. Foxx expressed his desire to protect the bank with fringe marsh planting at the bottom of the bank. He commented that northeast storms in the winter and jet ski/boat traffic in the summer caused erosion. Mr. Foxx conceded that while riprap revetment would be less expensive, he felt that the use of breakwaters would provide more protection to save the sandy beach.

Chairman Smither asked Mr. O'Brien to comment on the effects of breakwaters in front of the cord grass marsh.

Mr. O'Brien agreed that breakwaters would help buffer the shoreline while noting that the project in the photograph was smaller than what was being proposed for the Foxx property. Mr. O'Brien expressed that the use of breakwaters was an excessive approach along the relatively low wave energy shoreline with riprap revetment being suggested for consideration.

Mr. Watkins suggested that Dr. Scott Hardaway of VIMS, author of "Shoreline Management" review the proposed project.

Mr. Taylor commented that he was familiar with the area, having grown up in the Sturgeon Creek area, and did not see any major erosion problems there. Mr. Taylor stated that he would prefer to see riprap placed against the bank. Mr. Taylor expressed his opinion that the objective was to gain land. Mr. Taylor further stated that his belief that breakwaters were more appropriate in the rivers and bay areas, rather than the more protected creek.

Mr. Watkins commented that there was a 6 ft. strip of fringe marsh that was losing width and elevation to the toe of the bank at the rate of approximately 1 ft. per year.

Again, Mr. Taylor stated that he had never seen such an erosion problem in the area, and reiterated his belief that the purpose was to gain land.

Mr. O'Brien stated that in fairness to the property owner, the project as proposed would likely work, but less intrusive measures could be initiated. He commended the objective of expanding the marsh, but in looking at an aerial photograph taken in 1990, noted that there had not been much erosion since that time.

Chairman Smither commented that through his profession over the past thirty years, he had entered the creek by boat six times yearly and had not observed a decrease of blackrush grass, which helps buffer a portion of the shoreline. Chairman Smither stated that while the Board wants to allow property owners to protect their property from erosion, the Board is also charged to protect the wetlands. In this case, he noted, the key word was "intrusion", with riprap being less intrusive than breakwaters, as proposed.

Mr. Foxx noted that grass would be disrupted by riprap revetment. Further, he commented that the channel was on the opposite side of the creek, so the proposed breakwaters would not obstruct traffic in the channel.

Mr. Watkins commented that overall, he felt the natural way to protect the shoreline was by promoting a healthy marsh. He stated that the breakwaters would help create a marsh with 40' gaps allowing access to the shoreline.

Mr. O'Brien stated that judging from the aerial photograph taken 10-12 years previously, the shoreline had not significantly changed and he expressed disagreement with the estimate of 1 ft./ year shoreline loss.

Chairman Smither noted the importance of protecting landowners' properties, while limiting the intrusiveness to wetlands. He further commented that the issues are not always black and white, but decisions must be made based on the best information available.

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by unanimous vote, Application #2002-1528 was continued until the next regularly scheduled meeting in November to allow time for additional review of the proposed project.

### **Old Business**

#### A. Continued – E. Charles Silver, II - Application # 2002-1527

Chairman Smither read the applicant's proposal to construct four 48' low-profile groins (with one including a 20' spur) with the southern two groins having riprap placed at their heads (landward ends), relocate a 15' spur on an existing groin to MLW, and place three 30' sections of marsh toe scour. This proposed project is located on LaGrange Creek, at Tax Map #19-19-1. Mr. Higgins stated that no additional information had been submitted.

The applicant was not in attendance to represent the project and address concerns expressed by the Board.

Chairman Smither expressed concern that the applicant and/or agent had missed two meetings. He asked if the Board was obligated to act at this time. Mr. Neikirk advised that the application could be held over again.

Mr. Higgins related that the staff secretary had spoken with the applicant to stress the importance of attending the hearing and had been advised Mr. or Mrs. Silver intended to attend if possible.

Chairman Smither noted that the absence was disturbing and requested that a letter be sent strongly urging the applicant to attend the next meeting or the Board may be forced to deny the application.

Mr. Higgins noted that such a letter would be sent to the applicant.

On a motion by Mr. Miller, seconded by Mr. Brooks, and carried by unanimous vote, Application # 2002-1527 was continued until the next regularly scheduled meeting in November.

#### B. Discussion – Rescheduling the Joint Meeting/Site Visits with VIMS and VMRC

Chairman Smither asked for discussion related to rescheduling the proposed meeting until such time as a replacement was made to fill Mr. Jordan's staff position working with the Wetlands Board. He noted that some of the topics that needed to be discussed were related to the assessment of civil charges and the Board's jurisdictional area, as well as additional topics.

Mr. Miller and Mr. Brooks indicated that the discussion could be continued until the next regularly scheduled meeting in November.

Mr. Taylor stated that he felt the meeting should occur before the November hearing so that the Board could be better informed, especially regarding the cases that were being continued, as well as violations and pending enforcement actions.

There was general discussion related to the possibility of the Board having the opportunity to fly with the VMRC pilot to view the shoreline and properties from the air. Mr. Neikirk noted that the pilot could take two persons per flight. Mr. Neikirk further commented that while VIMS had a more extensive historical collection photographs available for reference, VMRC would have photo quads available in the near future, in a digital format. Mr. Higgins agreed that this would allow for identification of property lines as well.

By general consensus, there was agreement that the Board would meet with the VIMS and VMRC representatives at 9:00 a.m. at the regularly scheduled November site visit prior to making field visits.

**New Business**

A. Pending Enforcement Actions

Mr. Higgins stated there were two violations in the initial stages of identification.

B. Letter from Mr. Thomas Jordan

Chairman Smither read a letter from Mr. Jordan to the Board expressing appreciation to the Board for the opportunity to work with them over the past four years, and also for their patience, support, and professionalism.

Mr. Higgins related that the position had been advertised, and he anticipated the vacancy would be filled in a timely manner.

**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