

Middlesex County Wetlands Board Minutes

September 10, 2002

Call to Order

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

Absent: 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) and Mr. David O'Brien from Virginia Institute of Marine Science (VIMS).

Minutes

The Board considered the minutes of the August 13, 2002 meeting. On a motion by Mr. Taylor, and a second by Mr. Miller, 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. 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 project is located on LaGrange Creek, at Tax Map #19-19-1. This project is located on LaGrange Creek, at Tax Map #19-19-1. Staff then read the VIMS report for the project.

Neither the applicant nor an 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.

Mr. Taylor expressed concern that the groin closest to the proposed pier might cause fill in at the salt pond on an adjacent lot, also owned by the applicant. Mr. Neikirk had visited the site, and commented that it was difficult to determine how the sand was moving in the area.

Mr. Miller noted that the VIMS report recommended constructing a walkway a minimum of 4' above grade over existing marsh to access the proposed pier. Mr. Jordan stated that revised drawings proposing a walkway as recommended had been submitted.

Chairman Smither noted his disappointment that neither the applicant nor agent were present, as he had additional questions regarding the proposed project.

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

B. Jack K. Morrison - Application #2002-1557.

Chairman Smither read the applicant's proposal to place 72' of riprap revetment. This project is located on Meachim Creek, at Tax Map #29A-5-7. Staff then read the VIMS report for the project.

Karla Havens, 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. Miller, seconded by Mr. Armstead, and carried by unanimous vote, Application #2002-1557 was approved as submitted. This approval is valid for a term of 18 months.

C. J. Warren Milby - Application # 2002-1482.

Chairman Smither read the applicant's proposal to construct 95' x 5' of bulkhead channelward of an existing failing bulkhead. This project is located on Urbanna Creek, at Tax Map # 20B-1-13. Staff then read the VIMS report for the project.

Jay Foster, R & W Marine Construction, Inc., 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. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, Application #2002-1482 was approved as submitted conditioned upon staff recommendation that filter cloth must be installed between the existing and proposed bulkheads. This approval is valid for a term of 18 months.

D. Harold Diggs, Jr. – Application #2002-1418.

Chairman Smither read the applicant's proposal to place 225' of riprap revetment. This proposed project is located on Meachim Creek, at Tax Map #29-2. Staff then read the VIMS report for the project.

Alor Grantham-Traywick, agent, was in attendance to represent the project. She 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. Armstead, seconded by Mr. Miller, and carried by unanimous vote, Application #2002-1418 was approved as submitted. This approval is valid for a term of 18 months.

E. TriCounty Farms Ltd., et al c/o Glenn Bunch - Application #2002-1455.

Chairman Smither read the applicant's proposal to remove 10 existing groins and construct 26 groins varying between 30' – 48' in length (measured from MHW), two 60' jetties, a 20' x 50' boat-ramp, and place 110' of riprap revetment. This project is located on the Rappahannock River, at Tax Map # 27-170, 171, 172, 173, 174. 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. Ms. Traywick commented that in accordance with VIMS' recommendations, she would revise the jetties associated with the boat ramp to a low-profile design to minimize potential adverse effect to downdrift properties. In reference to the recommendation that the proposed groins be artificially filled with sand on the updrift side to minimize downdraft effects, Ms. Traywick noted the large area involved,

and stated that there was no way to access a large portion of the project site due to the pond on the east end of the property.

Chairman Smither opened the public hearing.

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

Mr. Taylor expressed no concerns with the proposed project. Chairman Smither concurred with Ms. Traywick in that the berms presently contained adequate sand.

On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by unanimous vote, Application #2002-1455 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.

F. Wayne Lauterbach - Application #2002-1472.

Chairman Smither read the applicant's proposal to replace an existing groin with a 48' low-profile groin. This project is located on the Rappahannock River, at Tax Map #8A-1-16, 17. Staff then read the VIMS report.

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 #2002-1472 was approved as submitted. This approval is valid for a term of 18 months.

G. Ann Richardson - Application #2002-1473.

Chairman Smither read the applicant's proposal to place 120' of riprap revetment. This project is located on Meachim Creek, at Tax Map #29-135. Staff then read the VIMS report.

Alor Grantham-Traywick, agent, was in attendance to represent the project. She noted that one letter of protest had been received objecting to the proposed boathouse, but noted that this issue would be addressed by VMRC.

Chairman Smither opened the public hearing.

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

On a motion by Mr. Miller, seconded by Mr. Armstead, and carried by unanimous vote, Application #2002-1473 was approved as submitted. This approval is valid for a term of 18 months.

H. Wesley Mallory - Application #2002-1485.

Chairman Smither read the applicant's proposal to place 121' of riprap revetment. This proposed project is located on Sturgeon Creek, at Tax Map #40-118-4. Staff then read the VIMS report.

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. Taylor, seconded by Mr. Miller, and carried by unanimous vote, Application #2002-1485 was approved as submitted. This approval is valid for a term of 18 months.

Old Business

A. Continued – 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 #45-4-B-15 & 16. Mr. Jordan read the modified staff report recommending approval conditioned upon 1) the proposed replacement jetty is realigned landward on an angle from the existing jetty to the proposed end (as drawn on the photo dated 9-3-02 by staff), 2) the proposed replacement bulkhead ends at the existing platform and terminates with a return wall (as drawn on the photo dated 9-3-02 by staff), 3) identification of an approved spoil site, and 4) submission of revised drawings. Mr. Jordan stated that additional letters of objection had been received since the August meeting.

Mr. & Mrs. Holt were in attendance to represent the proposed project.

Chairman Smither requested that in fairness to everyone, comments be directed to the Chairman rather than to the applicants or other speakers as a means of keeping order. He further requested that initial speakers be those who had not spoken concerning the proposed project at the previous meeting

Chairman Smither re-opened the public hearing.

Mr. Wesley Dolezal, property owner of parcels on the western side of the cove, contended that before proceeding with further development, the proposed request should be denied until the deteriorated conditions of the old pilings and buildings have been remedied, as imposed by previous court decree. Mr. Dolezal stated that water quality and pollution levels should be studied. He commented that the application was misleading as related to the number of slips allowed.

Mr. Holt asserted that the permit, if approved, would allow the applicants to improve deteriorated conditions and resolve the issues as presented in the current application.

Mr. Armstead commented that the permit would have to be approved in order for the jetties and bulkhead to be repaired.

Mr. Taylor agreed that the project as proposed would allow for the removal of pilings, and the dilapidated existing boathouse, dredging the channel, as well as repairing the bulkhead. Mr. Taylor indicated that the Board's function was to listen to comments, and deal with wetlands issues, while VMRC was to deal with additional issues.

Ms. Gerry Nichols expressed further concerns related to water quality in the small cove, and the adjacent wetlands buffer zone. Ms. Nichols noted discrepancies in the number of slips previously permitted, and currently requested. Additionally, Ms. Nichols stated her belief that the 1962 property deed stated that there was to be no vehicle parking and/or buildings on the buffer zone.

Mr. Dolezal asked the Board to consider that the typical layman doesn't fully understand the various Boards' jurisdictions and laws, but he intended to follow the case as it proceeds.

Chairman Smither noted the dilemma, and stated that the Board could only deal with issues in the application within their jurisdiction at this time, rather than past legal issues related to the property, which would be best remedied by a court of law.

Mrs. Kerri Valentine asked if the applicants could be required to re-submit an application requesting a permit solely for the bulkhead and jetties. She further commented that she keeps a boat at the marina, and would like to see the improvements made.

Chairman Smither explained that the permit involved three jurisdictions, and that often items on a given permit don't affect the Board, in which case, those items move on to the next level. Additionally, he noted that re-submission would be inappropriate, as the Board was commissioned to rule strictly on items in their jurisdiction. Further, he commented that staff reviews applications, sites, dimensions, etc., and that the Board's function was not to question the integrity of applicants.

Mr. Neikirk explained the guidelines the Board follows and noted that the Board must take a narrow, focused approach to areas in their jurisdiction. He commented that the Army Corps of Engineers and the Health Department share involvement, and that VMRC would review additional facets of an application.

Mrs. Julia Kelly related her opinion that neighboring property owners were at a disadvantage and consistently ignored. She expressed that the marina had not fulfilled previously required legal responsibilities for maintenance and upkeep of the facility and buffer zone. Mrs. Kelly further noted that she and her family used the cove for recreational purposes and expressed concerns related to water quality in the cove. Ms. Kelly suggested that a decision be delayed, as a representative of the State Wastewater Management Department had been contacted to visit the site and review long-term water quality concerns. She commented that although the marina was responsible for approximately one-third ownership of the cove, a majority of property owners around the cove had not been protected from erosion damage and loss of water quality. Ms. Kelly explained that she had riprap revetment installed on her property to save her property shoreline and prevent further erosion caused by jetty deterioration, which had been the marina owner's responsibility to maintain.

Mr. Neikirk commented that repair to the western bulkhead was not included in the current application, and the Board was not responsible to enforce shoreline protection in a property dispute.

Mrs. Holt commented that she had tried to contact Mrs. Kelly three times to discuss a remedy, but had not been successful in her attempts. She added that she had talked to a contractor about removing a portion of the jetty on the western side of the channel.

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

As requested by Mr. Taylor, Mr. Jordan read the project description included in the current application. Mr. Taylor re-iterated that while he appreciated the concerns as presented by neighboring property owners, the Board had to act upon items in their jurisdiction.

Chairman Smither agreed, and noted that he was sympathetic to the situation, but he noted that the existing marina had a right to repair what was there previously.

On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by unanimous vote, Application # 2002-1354 was approved as submitted with staff revisions of (1) the proposed replacement jetty is realigned landward on an angle from the existing jetty to the proposed end (as drawn on the photo dated 9-3-02 by staff), (2) the proposed replacement bulkhead ends at the existing platform and terminates with a return wall (as drawn on the photo dated 9-3-02 by staff), (3) identification of an approved spoil site, and (4) submission of revised drawings. This approval is valid for a term of 18 months.

B. Discussion – Joint Meeting with VIMS and VMRC

Mr. Jordan asked the Board to consider a date and time to set up a joint meeting with Mr. Neikirk representing VMRC, and Mr. O'Brien, representing VIMS. Mr. Neikirk suggested scheduling two sessions, possibly after the Board's regular scheduled meetings.

Chairman Smither indicated that some helpful topics to include would be jurisdiction information, violations and after-the-fact penalties, as well as discussion of what should be done with fines imposed and collected by the Board. Mr. Taylor suggested that during the next site visits, there could be discussions and review of the Board's role and what to look for on-site, as a means of refreshing the Board on its' intended

goals. Mr. O'Brien agreed and commented that during the site visits, he could explain the thought processes involved in making project recommendations from his perspective.

Mr. Taylor recommended that the first session be held Tuesday, October 1, 2002 during the Board's site visits, and a second session be scheduled Tuesday, October 8, 2002 after the public hearings. This was agreed upon by consensus of those involved. Chairman Smither suggested that Mr. Soberick, County Attorney, as well as a representative of the Board of Supervisors be invited to attend the October 8, 2002 session.

New Business

A. Pending Enforcement Actions

Mr. Jordan related that Mr. Robert Humphries, of Meachim's Creek, had applied for permits, but had begun work on a proposed bulkhead replacement before receiving appropriate approvals.

Mr. Neikirk explained that he had spoken with Mr. Humphries' wife and found that Mr. Humphries had installed the bulkhead himself and seemed legitimately confused about the permitting process. Mr. Neikirk noted that Mr. Humphries had spoken with Mr. Jordan prior to submitting the application. Upon visiting the site, Mr. Neikirk found that most of the project was out of the Board's jurisdiction, and he commented that Mr. Humphries would have to appear before the VMRC.

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