

## Middlesex County Wetlands Board Minutes

February 11, 2003

### **Call to Order**

The February 11, 2003 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: Matthew Higgins, Planning Director  
Carissa Lee, 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 January 14, 2003 meeting. On a motion by Mr. Taylor, and a second by Mr. Miller, the minutes were approved unanimously.

### **Election of Vice-Chairman**

Chairman Smither advised the Board that at the January meeting Mr. Brooks had been elected Vice Chairman in absence. He stated that Mr. Brooks had rejected the position for personal reasons and opened the floor for nominations for the position of Vice Chairman.

On a motion by Mr. Taylor, seconded by Mr. Woodson, and carried by unanimous vote, Mr. Miller was elected Vice Chairman.

### **Public Hearing**

Chairman Smither opened the public hearing, and the Middlesex County Wetlands Board took action on the following applications:

A. Thomas Snead, Jr. - Application #2003-0061.

Chairman Smither read the applicant's proposal to install 148' of granite revetment, reface 160' of existing revetment, and reface an existing stone groin. This project is located on Mill Creek, at Tax Map # 41-64-1. Staff then read the VIMS report for the project.

Mrs. Karla Havens, agent, was 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. Miller, seconded by Mr. Brooks, and carried by unanimous vote, Application #2003-0061 was approved as submitted. This approval is valid for a term of 18 months.

B. Julie Bode - Application #2003-0063.

Chairman Smither read the applicant's proposal requesting to install 214' of granite revetment and 40' timber groin extension. This project is located on Mill Creek, at Tax Map #41-64-2. Staff then read the VIMS report for the project.

Mrs. 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. Woodson, seconded by Mr. Miller, and carried by unanimous vote, Application #2003-0063 was approved as submitted. This approval is valid for a term of 18 months.

C. John Newcomb - Application #2002-2330.

Chairman Smither read the applicant's proposal requesting to install 236' of riprap revetment for erosion control. This project is located on Robinson Creek, at Tax Map # 19-16-38. Staff then read the VIMS report for the project. Staff recommended that the project be continued until the March meeting due to inadequate benchmarks on the property during the Board's site visit.

Ms. Alor Grantham Traywick, agent, was in attendance to represent the project. Ms. Traywick did not object to a continuation of the hearing.

Chairman Smither agreed with staff recommendations and that the parameters had been unclear. It was agreed that the project would be continued until the March meeting.

D. Harvey Lloyd – Application # 2002-1413

Chairman Smither read the applicant's request to construct five groins ranging from 50' to 35' and fill the groin cell. This project is located on the Rappahannock River, at Tax Map #2-34A. Staff then stated that the applicant had requested a postponement until the March, 2003 meeting.

Chairman Smither granted the request.

E. Helen Kellar – Application # 2002-2039.

Chairman Smither read the applicant's request to install one 48' vinyl groin. This project is located on the Rappahannock River, at Tax Map # 8-95D. Staff then read the VIMS report for the project.

Frank K. Evans, agent/contractor, was present 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 # 2002-2039 was approved as submitted. This approval is valid for a term of 18 months.

F. John C. Dozier, Regatta Point Yacht Club – Application # 2002-2375.

Chairman Smither read the applicant's proposal requesting to redevelop an existing marina facility to include: 4,000 cubic yards of maintenance dredging, 15,760 cubic yards of new dredging, replace 95' of existing bulkhead, enclose 60'x90' boat house, new pier 74x6', floating pier with wave screen 360' x10', seventeen 18'x50' slips, fourteen 17'x50' slips, eight 18x50' slips, 182'x10' pier, 215'x10' pier, 80'x8' access pier, 244'x8' pier, twelve 20'x60' slips, 8' access pier, underground fuel lines (one diesel and one gas), one service pier, 150' upland revetment, and 195' of marsh sill. This project is located on Broad

Creek, at Tax Map # 41-59-1. Staff read the VIMS report for the project. Staff noted that revised drawings were submitted for the Board's review.

Mr. Don Caskie, agent, and Mr. John Dozier, owner, were present to represent the project.

Mr. Caskie explained the project and offered to answer any questions the Board may have. Mr. Caskie further noted that he was aware that there were letters of protest against the project, but he felt that most of the areas of concern had been addressed and that the wetlands would be protected.

Mr. Dozier commented that he was sorry there was opposition to the project, and noted that it was not his intention to upset the neighbors. Mr. Dozier explained that the project would provide tax revenues for the County, and that he intended to operate a clean, low impact, well maintained and managed marina project.

Chairman Smither opened the public hearing. He requested that speakers direct their comments to him, and limit their comments to less than five minutes.

Mr. Ramon Hite, resident of White Point Cove subdivision, expressed environmental concerns related to the use of heavy equipment, placement of spoil, and the proposed fuel station, noting that oil currently can be seen floating in the creek.

Mr. B.C. Brown, Broad Creek property owner, stated his concern that the proposed project would increase silt levels at the upper end of Broad Creek.

Mr. John Moorefield, Broad Creek property owner, additionally stated concern about the increase of silt levels in the creek.

Ms. Jane Chandler, Broad Creek property owner, noted that the creek doesn't have good tidal flushing, and that additional slips would increase boat traffic, as well as lead to additional debris, fuel, oil, etc., in the creek. Ms. Chandler further stated that she did not believe the drawings accurately depicted the channel width. Ms. Chandler urged the Board to carefully review the proposal, as it impacts the entire creek.

Mr. Herman Maddox, resident of White Point Cove subdivision, noted that boat wake has caused erosion of his beach property, and additional boats would create additional wake and erosion problems.

Mr. Hite asked what was proposed in the revised drawings.

Ms. Lee explained that the revised drawing depicted marsh sill detail, as requested by VIMS, and that the marsh sill had been moved closer to the bank. Ms. Lee passed the drawings around for review.

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

Mr. Caskie noted that VMRC and the Chesapeake Bay Protection Act (CBPA) process would address most of the issues presented. He noted that much of the silt in the creek comes from upland erosion, and that Regatta Point property is mostly sand, which settles quickly.

Mr. Dozier commented that he had paid for three "No Wake" signs himself and was agreeable to installing additional signs. He further noted that he does not charge a fee for pump outs, which would encourage boaters to utilize the service.

Mr. Armstead commented that Regatta Point is the most modern marina around the creek, and very neat as well. He restated the board's jurisdiction and related that in his experience over the past fifty years, the creek has continuously had silt problems.

Mr. Taylor expressed concern regarding the use of heavy equipment across the wetlands, and the possible need for re-vegetation.

Mr. Dozier stated that the wetlands area would not be harmed, and that the new bulkhead would be floated into place. If for some reason there were to be damage to the wetlands area, Mr. Dozier stated that he would restore the vegetation.

Mr. Taylor re-stated the Board's jurisdiction in the case.

On a motion by Mr. Taylor, seconded by Mr. Brooks, and carried by unanimous vote, application #2002-2375 was approved in accordance with revised drawings. This approval is valid for a term of 18 months.

Chairman Smither stated his appreciation for the public interest and comments, and noted that the Board's jurisdiction in the case was limited. He explained that additional areas of concern would be addressed by other agencies, and stated that anyone wishing to appeal the decision had ten days to appeal to VMRC.

### **Old Business**

A. Continued – Deborah Miller, Miller Marine, Inc. – Application #2002-1856.

Chairman Smither stated that he and Mr. Ulman Miller were stepping off the Board for this public hearing, as they are related to the applicant. Chairman Smither appointed Mr. Taylor to chair the hearing.

Mr. Taylor read the applicant's proposal requesting construction of two (2) steel beam launchways for water access. This proposed project is located on Broad Creek, at Tax Map # 41-116. Staff read the VIMS report and stated that this was a reinstatement of a previous permit.

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

Mr. Don Caskie, agent, and Mrs. Deborah Miller, applicant, were present to represent the project. Mr. Caskie explained that the project had been heard previously and the permit had expired before the work was completed.

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by unanimous vote, Application #2002-1856 was approved as submitted. This approval is valid for a term of 18 months.

### **VI. Restoration Hearing**

A. Miller Marine – Failure to comply with the terms of Wetlands Board Permit #2000-2020.

Chairman Smither and Mr. Ulman Miller remained off the Board for this hearing, as they are related to the applicant.

Mr. Taylor introduced the Restoration Hearing for Permit # 2000-2020 – to install 220' of riprap revetment at toe of bank, landward of vegetation for erosion control.

Mr. Don Caskie, agent, and Mrs. Deborah Miller, applicant, were in attendance to represent the project. Mr. Caskie stated that although he was not the original agent on the project, he was attempting to resolve the issues in question. Mr. Caskie presented a VIMS photograph portraying the site at low tide, and noted that the photo did not depict vegetation in the vicinity. Mr. Caskie stated that his research showed that the permit language and originally submitted drawings were in conflict. Mr. Caskie further stated that issues within the Resource Protection Area (RPA) had been discussed and resolved with staff.

Mr. Caskie stated that in his opinion, the main issue was that the riprap revetment was not placed as shown on the permit. He noted that Mr. Miller's staff had placed the material, rather than a professional company. Regarding proposed restoration, Mr. Caskie proposed: submitting a Chesapeake Bay Preservation Act Application (CBPA) to include landscaping the area, the possibility of having the stone picked up, moved and/or hauled away, which would resolve the permit issue, or, as an alternative, the applicant could apply

for an after-the-fact permit for the material as located in the Board's jurisdiction. Mr. Caskie stated that an after-the-fact permit would cause fewer disturbances to the Creek.

Mr. Neikirk was asked to join the discussion. Mr. Neikirk noted that Mr. Caskie had explained the options well, and further noted that an after-the-fact application would require another public hearing. He further commented that there would be impacts with the stone's removal.

Mr. Taylor commented that the photograph depicted low water, and contended that the area in question was in the Board's jurisdiction at mean high water. Mr. Taylor questioned whether or not he, as acting chairman, could make a motion.

Mr. Higgins advised that procedurally, another member must make any motion for action.

Mr. Taylor stated that in his view, the stone was placed on wetlands. In his opinion, the stones should be removed, the toe should be moved back, and a two hundred fifty dollar (\$250) penalty should be imposed as well.

Mr. Brooks commented that the Board had visited the site several times, and felt the work was not done in accordance with the permit. Mr. Brooks agreed that a two hundred fifty dollar (\$250) penalty was reasonable.

Mr. Armstead noted that he was in favor of a penalty, but he favored leaving the stone in place, as moving the stone may cause additional harm to the environment.

Mr. Caskie contended that the permit drawings depict that it was expected that stone would be placed in the vegetation, and that the permit contained conflicting information.

Mr. Brooks commented that the delineation between mean high and low water was unclear, but he maintained that the stone should have been placed seaward of vegetation. However, he agreed that to move the stone could cause further damage to the environment.

Mr. Higgins noted that procedurally, if the stone were allowed to remain as placed, the applicant would have to submit an after-the-fact application and repeat the hearing process.

On a motion by Mr. Brooks, seconded by Mr. Armstead, and carried by unanimous vote, the Board voted to require an after-the-fact permit with the associated after-the-fact fees.

## **VII. New Business**

### **A. Administrative.**

Mr. Smither returned to the Board. Mr. Miller remained off the Board.

Ms. Lee announced that the Virginia Wetlands Management Symposium sponsored by VIMS was scheduled for Thursday, March 20, 2003 at the VIMS campus, Gloucester Point. She requested that those interested in attending advise staff as soon as possible.

Ms. Lee announced that staff was presenting an educational workshop February 19, 2003 at the Cooks Corner Office Complex to explain changes to the Chesapeake Bay Act that would take effect on March 1, 2003, and how these changes would impact properties in Middlesex County. She encouraged attendance and asked that anyone interested in attending, contact staff to make a reservation.

## **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