

Middlesex County Wetlands Board Minutes

January 14, 2003

Call to Order

The January 14, 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

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

Minutes

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

Election of Officers

Mr. Higgins advised the Board that officers were to be elected at the meeting. Mr. Higgins opened the floor for nominations for Chairman.

On a motion by Mr. Miller, seconded by Mr. Taylor and carried by unanimous vote, Mr. Smither was reelected Chairman.

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

Old Business

A. Wetlands Bonds

Mr. Higgins related that at their January 7, 2003 meeting, the Middlesex County Board of Supervisors requested that he relay to the Wetlands Board their request for better communication between the Boards and staff, as well as their request that the Wetlands Board rescind the bond approved at the December 14, 2002 Wetlands Board meeting.

Chairman Smither allowed time for discussion among the Board members related to the bond issue.

Mr. Taylor stated his belief that the Wetlands Board had the right to initiate the requirement that applicant's be required to place a cash bond on approved wetlands projects, and he believed that the bonds would be beneficial. Mr. Taylor noted that he did not wish to see a monetary hardship placed on people, and related that in the event that an applicant were to propose each of the potential activities on a project (bulkhead,

riprap revetment, groins, jetties, etc.) the combined bond fees would be excessive, in his opinion. Mr. Taylor stated that he would rather have one bond of lesser amount imposed to cover all work on a project and would support a motion to send a revised proposal to the Board of Supervisors.

Mr. Taylor further noted that since the bond was to be returned to the applicant upon successful completion of a project, he felt the bond requirements was fair to the citizens and provided protection to the wetlands from violations to the parameters of a permit. Mr. Taylor reiterated his support for rescinding the recently approved bond requirements, and to send a revised bond proposal to the Board of Supervisors for review.

Mr. Armstead expressed concern that the Board of Supervisors did not discuss their concerns with the Wetlands Board prior to the Supervisors' public meeting. He commented in favor of rescinding the bond, and start over, with an invitation extended to the Supervisors to attend a Wetland Board meeting for discussion.

Mr. Miller asked if the Board of Supervisors would likely consider an alternative bond proposal.

Mr. Higgins responded that the Board of Supervisors was not likely to give favorable consideration to a bond requirement.

Chairman Smither noted that the primary reason bonds had been adopted were to aid in enforcement when permit parameters were violated.

Mr. Taylor made a motion to rescind the bonds, and send a proposal to the Board of Supervisors to adopt bonds of two hundred fifty (\$250) dollars for projects with a construction cost less than twenty thousand (\$20,000) dollars, a bond of five hundred (\$500) dollars for projects with a construction cost between twenty thousand (\$20,000) dollars and fifty thousand (\$50,000) dollars, and one thousand (\$1,000) dollars for projects with a construction cost exceeding one hundred thousand (\$100,000) dollars.

Mr. Higgins noted that Mr. Taylor's motion should be revised as two separate motions.

Chairman Smither commented that it was his understanding that the Board of Supervisors had requested that the Wetland Board rescind the bond requirements with no alternative bond proposal to be considered.

On a revised motion by Mr. Taylor, seconded by Mr. Miller, and carried by unanimous vote, the Wetlands Board voted to rescind the Wetlands County Permit Bonds adopted December 14, 2002.

Mr. Higgins stated that he would convey the Board's action to the Board of Supervisors

Chairman Smither noted that he would allow the Board members time for further discussion later in the meeting.

Public Hearing

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

A. James Thompson, Urbanna Bridge Marina - Application #2002-2309.

Chairman Smither read the applicant's proposal to place 173' of vinyl bulkhead 2' channelward of existing timber bulkhead. This project is located on Urbanna Creek, at Tax Map #20A-1-87. Staff then read the VIMS report for the project.

Mr. Henry Thorndike, 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. Taylor, seconded by Mr. Miller, and carried by unanimous vote, Application #2002-2309 was approved as submitted. This approval is valid for a term of 18 months.

B. James Morrison - Application #2002-2181.

Chairman Smither read the applicant's proposal requesting to install 24' of riprap along existing groin on one side, install 75' of riprap along existing bulkhead, install 40' of marsh toe riprap channelward of vegetation. This project is located on the Piankatank River, at Tax Map #44A-1B-1. 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. Miller, and carried by unanimous vote, Application #2002-2181 was approved as submitted. This approval is valid for a term of 18 months.

C. Wray Henderson - Application #2002-2238.

Chairman Smither read the applicant's proposal to install 40' groin to promote beach build up. This project is located on the Rappahannock River, at Tax Map #41-14-A-2. Staff then read the VIMS report for the project.

Mr. Way Henderson, applicant, 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. Miller, seconded by Mr. Armstead, and carried by unanimous vote, Application #2002-2238 was approved as submitted. This approval is valid for a term of 18 months.

Old Business

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

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

Mr. Jeff Watkins, contractor, and Mr. Stephen Foxx, applicant, were in attendance to represent the project.

Chairman Smither re-opened the public hearing.

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

Mr. Watkins requested that staff read the revised VIMS report and stated that revised drawings had been submitted depicting a re-designed system, closer to shore, with reduced width and height of the structures. Mr. Watkins proposed to monitor the proposed plantings quarterly for three years and to issue a yearly notification letter.

Mr. Foxx explained his major concern was to protect the bank from erosion and felt that the plan as revised was the best available option. Mr. Foxx noted that Mr. Hardaway and Mr. O'Brien of VIMS, Mr. Watkins, and himself had met on site to discuss the project.

Mr. O'Brien commented that the revised breakwater structures, scaled down in height, and closer to shore, could be considered marsh sill structures, and Mr. Hardaway recommended the revised plan as a means to accomplish the applicant's goals.

Mr. Taylor related that he had visited the area the day before, and had viewed the shoreline from all sides, imagining how the area would appear if everyone in the area were allowed to place similar structures in the Creek. Mr. Taylor explained that as a child, he had spent a great amount of time in the area, and felt that erosion had been minimal. He also commented that dock pilings from an old dock were visible as well. Mr. Taylor suggested that riprap revetment at the toe of the bank would be sufficient.

Mr. Foxx commented that the original proposal had been drastically changed, and was an attempt to improve wetlands, as well as protect the bank.

Chairman Smither commented that he, too, was very familiar with the property and the area, and agreed with Mr. Taylor, that erosion had been minimal. He agreed that modest protection at the base of the bank would prevent further erosion. Chairman Smither explained that the Board desires to allow applicants to protect their property with the least intrusive measures and the Board also seeks balance in each application under their review.

Mr. Watkins expressed that the proposed beach nourishment and planting would create greater than 6,000 sq. ft. of vegetated wetland, and additionally help to protect the bank.

On a motion by Mr. Armstead, seconded by Mr. Miller, and carried by unanimous vote, Application #2002-1528 was approved unanimously in accordance with revised drawings dated 11-10-02, and conditioned upon the implementation of a testing and monitoring program to assure there is no channel encroachment and no harm to wetlands. This approval is valid for a term of 18 months.

Chairman Smither expressed concerns about the monitoring process for past and future projects. Mr. Higgins commented that staff would monitor the permits, and that it would be helpful to have dates, what to look for, and suggested remedies included as part of the motion.

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

Chairman Smither stated that the application would necessarily be moved to the February 11, 2003 meeting, due to Mr. Brooks' absence and the fact that Mr. Smither and Mr. Miller removed themselves from the discussion and vote, since they are related to the applicant.

VI. Restoration Hearing

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

Chairman Miller related that the Restoration Hearing would be moved to the February 11, 2003 for the reasons previously stated.

VII. New Business

A. Wetlands Application #2000-0018 submitted by Piankatank River GolfClub. Request an extension to their permit that presently expires on March 14, 2003. The permit is to place 886' of riprap revetment.

Chairman Smither introduced the request for extension. Staff reported that the applicant had been granted one extension, and this was the second extension request and could not be granted beyond a three-year period. Ms. Lee stated that the applicant would have to re-apply and that she would notify the applicant.

B. Administrative.

Use of Social Services Van

Ms. Lee stated that she had received a memo from the County Administrator reminding the Board that the Social Services van should be returned in good condition, with fuel, and cleaned, if necessary, after use by the Board.

Wetlands Bonds

Chairman Smither stated that the Board would discuss alternatives to deal with the issue of assuring permit compliance without requiring bonds. He noted that bonds, as suggested by VIMS and VMRC representatives, had met with the displeasure of the Board of Supervisors.

Mr. Higgins related that the Board would have to explore non-financial methods to enforce compliance, such as additional staff monitoring, leading to restoration hearings, and further legal proceedings.

Chairman Smither noted that since the Board had assessed and received a total of \$3750 in civil penalties to date, he assumed that the Board of Supervisors did not object to legal proceedings being pursued. He further stated that the Board would closely monitor projects to assure that permanent benchmarks are utilized and that permit parameters are clearly understood. He further stated that the penalty amounts, violations, and civil penalties would be noted in the monthly meeting minutes.

Chairman Smither expressed regret for the misunderstanding regarding the bonds. He stated that the Wetlands Board has done a good job protecting the wetlands, as well as the citizens.

Mr. Taylor stated that the Wetlands Board has guidelines to abide by, and felt that the Board had the right to assess bonds on wetlands projects. Mr. Taylor asked why the Board of Supervisors had questioned their decision.

Mr. Higgins stated that the Wetlands Board had the authority to assess bonds, but that the Supervisors were asking the Wetlands Board not to assess bonds.

Chairman Smither requested that Mr. Higgins relay to the Board of Supervisors that they will continue to assess civil penalties as needed, and make the Supervisors aware of the amount currently in the wetlands violations fee account of \$3750, as well as relay that the Wetlands Board did not intend to be adversarial.

Mr. Higgins assured Chairman Smither that he would do so.

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