

Middlesex County Wetlands Board Minutes

June 10, 2003

Call to Order

The June 10, 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. M. Dale Taylor
Mr. Woodson Armstead
Mr. Archie Brooks

Absent: Mr. B. Ulman Miller – Vice Chairman

Staff present: Carissa Lee, Planner
Cathy Shiflett, Planning Secretary

Also present was Mr. Robert Neikirk from the Virginia Marine Resources Commission (VMRC).

I. Minutes

The Board considered the minutes of the May 13, 2003 meeting. On a motion by Mr. Taylor, and a second by Mr. Armstead, the minutes were approved unanimously.

II. Public Hearing

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

A. Welford L. Harris - Application #2003-0729.

Chairman Smither read the applicant's proposal requesting to install 307' of riprap revetment. This project is located on the Piankatank River, Tax Map #41-133A. Staff then read the VIMS report for the project.

Mrs. Karla Havens, agent, was in attendance to represent the project. Mrs. Havens stated her agreement with the VIMS report.

Chairman Smither opened the public hearing.

Mr. Bill Wills, resident of Mill Creek Harbour, was in attendance representing the President of the Homeowners Association. Mr. Wills expressed concern that the riprap would impact sand collection cells installed by the Association, and would have an adverse effect on resident Tiger beetles. With these concerns, Mr. Will stated opposition to the project on behalf of the Mill Creek Harbour Homeowners Association.

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

Chairman Smither expressed that while he was in favor of allowing a property owner to protect his property, it was important to also maintain the navigational channel.

Mrs. Havens stated that she did not think there was erosion occurring on the river side of the property. Mrs. Havens recommended extending the height of the two existing groins.

Chairman Smither concurred and noted his opinion that riprap revetment on this project would become covered with sand over time.

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by unanimous vote, Application #2003-0729 was continued until the July meeting to allow Mrs. Havens to discuss with her client amending the groin height and to submit revised drawings prior to the July Wetlands Board site visits.

B. Barry M. Burton - Application #2003-0703.

Chairman Smither read the applicant's proposal requesting to install 33' of riprap revetment. The property for which application is being made is located on Sturgeon Creek, at Tax Map # 40-19-35. 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 comments from the public, the hearing was closed.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, Application #2003-0703 approved as submitted. This approval is valid for a term of 18 months.

C. Herbert Hamilton – Application # 2003-0550.

Chairman Smither read the applicant's proposal requesting to construct 98' of timber bulkhead, two 12' return walls, and place riprap in front of new bulkhead. The property for which application is being made is located on Montgomery Cove, at Tax Map #41-66-1. Staff then read the VIMS report for the project recommending approval as submitted with revised drawings of June 4, 2003 withdrawing the two (2) 12' return walls from the proposed project.

Mr. Herbert Hamilton, applicant, was in attendance and expressed agreement with staff recommendations.

Chairman Smither opened the public hearing.

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

On a motion by Mr. Brooks, seconded by Mr. Taylor, and carried by unanimous vote, Application #2003-0550 was approved as submitted with revised drawings of June 4, 2003. This approval is valid for a term of 18 months.

D. Hunton Creek Improvement Association – Application #2003-0743.

Chairman Smither read the applicant's proposal requesting to construct 83' of vinyl bulkhead in front of existing bulkhead. The property for which application is being made is located on Hunting Creek, at Tax Map #40-9-5. Staff then read the VIMS report for the project.

Mr. Roger McKinley, agent, was in attendance and offered to answer any questions the Board may have.

Chairman Smither opened the public hearing.

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

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by unanimous vote, Application #2003-0743 was approved as submitted. This approval is valid for a term of 18 months.

E. Mel Newcomb, Bush Park Campground – Application #2003-0538.

Chairman Smither read the applicant's proposal requesting to construct a 14'x50' concrete boat ramp. The property for which application is being made is located on Bush Park Creek, at Tax Map #39-17. Staff then read the VIMS report for the project.

Mr. Mel Newcomb, Bush Park Campground Manager, was in attendance and stated his agreement with staff recommendations.

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 #2003-0538 was approved as submitted with the condition that the wetlands grass be transplanted to adjacent areas to the ramp. This approval is valid for a term of 18 months.

F. Mel Newcomb, Bush Park Campground – Application # 2003-1014.

Chairman Smither read the applicant's proposal requesting to dredge a navigable channel at the creek entrance. Dredge will be approximately 360' and 4feet below mean low water. The property for which application is being made is located on Bush Park Creek, at Tax Map #39-17. Staff then read the VIMS report for the project.

Mr. Mel Newcomb, Bush Park Campground Manager, was in attendance, as well as Mr. Mike Johnson, agent, to represent the proposed project.

Chairman Smither opened the public hearing.

Mr. Lee Stevens, attorney representing the Widhelm family, explained that the Widhelm's had granted a temporary license for the spoils to be placed on their property. Mr. Stevens further stated that the license was temporary in nature and applied to this application, and future projects would require additional permission from the Widhelm's.

Mr. Johnson stated that the project was planned in two stages. Mrs. Lee pointed out that Phase 2 of the proposed project would have to be submitted as a new application.

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

On a motion by Mr. Taylor, seconded by Mr. Brooks, and carried by unanimous vote, Application # 2003-1014 was approved as submitted. This approval is valid for a term of 18 months.

G. E.G. Fleet, Piankatank Golf Club – Application #2003-0690.

Chairman Smither read the applicant's proposal requesting to install 910' of riprap revetment. The property for which application is being made is located on the Piankatank River at Tax Map #37-43. Staff then read the VIMS report for the project.

Ms. 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 #2003-0690 was approved as submitted. This approval is valid for a term of 18 months.

H. Calvin Barnard – Application #2003-0626.

Chairman Smither read the applicant's proposal requesting to install 250' of vinyl bulkhead channelward of existing timber bulkhead and install 56' of new vinyl bulkhead. The property for which application is being made is located on the Piankatank River, at Tax Map #35-3-A. Staff then read the VIMS report for the project.

Ms. 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. Brooks, and carried by unanimous vote, Application #2003-0626 was approved as submitted. This approval is valid for a term of 18 months.

I. Frank Hardy – Application #2003-0611.

Chairman Smither read the applicant's proposal requesting to install 75' of riprap revetment at existing failing bulkhead. The property for which application is being made is located on Jackson Creek, at Tax Map #40-289A. Staff then read the VIMS report for the project.

Ms. 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. Brooks, seconded by Mr. Taylor, and carried by unanimous vote, Application #2003-0611 was approved as submitted. This approval is valid for a term of 18 months.

J. Walden Brothers Marina – Application # 2003-1315.

Chairman Smither read the applicant's proposal requesting to construct 75' of bulkhead. The property for which application is being made is located on Broad Creek, at Tax Map #41-111, 112, 113. Staff stated that Carol Collier, agent, had submitted a letter dated June 5, 2003 requesting that the project be continued until the July meeting of the Wetlands Board. Ms. Lee recommended that the agent be asked to submit corrected drawings and arrange for a site visit to review the project.

Mr. Taylor asked Mr. Neikirk if, in his opinion, new drawings should be submitted. Mr. Neikirk stated that there are discrepancies between the drawings and the site.

On a motion by Mr. Brooks, seconded by Mr. Armstead, and carried by unanimous vote, Application #2003-1315 was granted a 30-day extension until the July 2003 meeting, with revised drawings to be submitted.

K. Alvah W. Houchins – Application #2003-0576.

Chairman Smither read the applicant's proposal requesting to install 70' of riprap revetment against existing bulkhead. The property for which application is being made is located on the Rappahannock River, at Tax Map #19C-2-A-7. Staff then read the VIMS report for the project.

Mr. Jay Foster, R & W Marine Construction, Inc., 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 #2003-0576 was approved as submitted. This approval is valid for a term of 18 months.

L. Bentley Walton – Application # 2003-0577.

Chairman Smither read the applicant's proposal requesting to install 70' of riprap revetment against existing bulkhead. The property for which application is being made is located on the Rappahannock River, at Tax Map #19C-2-A-8. Staff then read the VIMS report for the project.

Mr. Jay Foster, R & W Marine Construction, Inc., 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 #2003-0577 was approved as submitted. This approval is valid for a term of 18 months.

M. Bryan Miller, Miller Marine, Inc. – Application # 2003-0404.

Chairman Smither introduced the applicant's proposal requesting after-the-fact permit to install 194' of riprap revetment. The property for which application is being made is located on Broad Creek, at Tax Map #41-116. Staff then read the VIMS report for the project.

Chairman Smither stated that he was stepping off the Board for this public hearing, as he is distantly related to the applicant. Chairman Smither appointed Mr. Taylor to chair the hearing.

Mr. Taylor opened the public hearing.

Mr. Don Caskie, agent, Bay Design Group, and Mrs. Deborah Miller, applicant, were in attendance to represent the project.

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

Mr. Caskie explained the mitigation measures planned for the project area, and noted that there had been no loss of habitat, but converted from one habitat to another, with no permanent loss incurred.

Mrs. Miller commented that if the Board granted approval, landscaping would be implemented immediately at the project site.

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by unanimous vote, after-the-fact Application #2003-0404 was approved as submitted.

Chairman Smither returned to the Board.

III. Old Business

A. Ron Hall, Chesapeake Leisure, LLC – Application #2003-0278.

Chairman Smither read the applicant's proposal requesting to perform marina maintenance and improvements to include maintenance dredge 9200 cu yards in man made cove, 740 feet of vinyl bulkhead channelward of existing bulkhead, 295 feet of new bulkhead at excavated bank, 150'x10' pier along bulkhead, 120 feet and 110 feet of mid-tide bulkhead, 10'x10' apron at existing storm water drain pipe, 130' of riprap/fill, 120' and 110' of open pile pier, 295' of wood walkway, and 25 additional slips. The property for which application is being made is located on cove of Fishing Bay, at Tax Map #41-121-C, 41-385, 41-381. Staff then read the VIMS report for the project and noted that a vegetation plan had been submitted.

Ms. 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.

Ms. Traywick explained that the tapes of the previous hearing indicated that she had misunderstood the intentions of the Board. She apologized and stated that she was supposed to have submitted elevations for the proposed mid-tide bulkheads. Ms Traywick explained that a marine surveyor was to be on site in the

next few days, and could perform the elevations. She requested that the application be continued until the July 2003 hearing to allow time for the survey. Ms. Traywick further explained that she did not have the authority to hire a surveyor previously, during the time Mr. Hall was out of the State.

Chairman Smither asked whether it would be acceptable to approve the project without the mid-tide bulkheads.

Ms. Traywick responded that it would not, as there would still be concern about the necessity to continue dredging in small areas. She further contended that the mid-tide bulkheads would allow more ebb and flow and were used in other commercial facilities as a means of preserving wetlands, as well as benefiting a commercial facility. Ms. Traywick noted that she had drawings prepared, but the mid-tide height needed to be professionally determined and could be submitted later as a condition of the permit if desired by the Board. She presented samples of weep holes proposed for the bulkheads.

There was discussion related to the problems that would ensue if conditions were placed on approval, such as who would determine if the mid-tide bulkheads were performing as expected and desired, enforcement, timeframe, etc.

Ms. Lee advised that the Board's options were to approve as submitted, approve with staff recommendations, deny, or approve as per Ms. Traywick's request for approval with a mid-tide height to be provided upon completion of a tidal survey.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried on a 3-1 vote, with Chairman Smither in opposition, Application # 2003-0278 was approved as submitted with staff recommendations for the following conditions: No mid-tide bulkheads, no riprap revetment and backfill landward of the wetlands, a vegetation plan for the entire bank including both areas around the wetlands be submitted and approved before construction can begin, a 4x' buffer must be used during dredging to adequately protect the wetlands, and a Land Disturbing Permit must be obtained for the dredge spoils. This approval is valid for a term of 18 months.

Ms. Traywick requested a copy of the minutes when available, and indicated that she would appeal the Board's decision to VMRC.

B. Herbert Quinn - Application #2003-0503.

Chairman Smither read the applicant's proposal requesting to install 150' of bulkhead and backfill behind, and remove mud from existing boathouse and immediate entrance with upland disposal of spoils. This project is located on LaGrange Creek, at Tax Map # 14-11. Staff recommended denial since Mr. Quinn was not present and had not requested a continuance in writing.

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 #2003-0503 was denied.

C. Randy Revercomb - Application #2003-0545.

Chairman Smither read the applicant's proposal requesting to install 1,500' of riprap revetment. This project is located on the Rappahannock River, at Tax Map # 9-65. Staff announced that Mr. Revercomb had submitted a second written request for a thirty (30) day extension in order to revise the drawing to include a breakwater. Staff recommended approval of the extension request.

On a motion by Mr. Taylor, seconded by Mr. Brooks, and carried by unanimous vote, Application #2003-0545 was granted a final thirty (30) day extension until the July 2003 meeting as requested.

D. Show Cause Hearing – Francis Huger – Application #1999-1317.

Chairman Smither introduced the Show Cause Hearing of Francis Huger regarding the completed wetlands permit without signing and notarizing wetlands permit. Mrs. Huger resides in New Jersey and was not present for the hearing. Staff reminded the Board of the letter dated April 28, 2003 from Mrs. Huger explaining the circumstances and her offer to pay civil charges up to two hundred fifty dollars (\$250). Staff related that she had spoken with Mrs. Huger after the May 2003 hearing and was advised that Ms. Morelli is no longer engaged as her agent and is not to represent her in the matter. Mrs. Huger had again offered to pay civil charges up to the amount of two hundred fifty dollars (\$250).

Mr. Taylor made a motion to dismiss the case since the Board failed to assess a civil charge in the Miller Marine Application #2003-0404 case.

Chairman Smither stated his opinion that the Board should accept Mrs. Huger's offer in order to be consistent with previous violations. Mr. Armstead agreed and stated that it was an oversight that the previous case was not assessed civil charges. Chairman Smither reminded the Board that the policy was in place to assess a minimum civil charge of two hundred fifty dollars (\$250). He stated that this should be maintained as much as possible.

Mr. Taylor withdrew the motion.

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by unanimous vote, the Board voted to accept Mrs. Huger's letter and allow thirty (30) days for payment of the two hundred fifty dollar (\$250) civil charge.

B. Show Cause Hearing – Raymond Murphy – Application # 2001-1434

Chairman Smither introduced the Show Cause Hearing of Raymond Murphy regarding a completed wetlands permit without signing and notarizing wetlands permit. Staff read a letter from Mr. Murphy explaining the situation, which was similar to the Huger case, although Mr. Murphy requested that the Board waive the civil charge of two hundred fifty dollars (\$250) and allow him to complete the paperwork for final approval.

Chairman Smither commented that this case should be handled the same as the Huger case.

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by unanimous vote, the Board voted to notify Mr. Murphy of the Board's decision to assess a civil charge of two hundred fifty dollars (\$250) for the violation.

Staff reminded the Board that she was not authorized to recommend civil charges and that the staff report would indicate which cases were "After-the-Fact" for the Board's consideration.

IV. New Business

A. Attendance Policy

Staff stated that the Board does not have an attendance policy and may want consider initiating one since the other County Boards do have attendance policies in place.

Chairman Smither explained that with five (5) Board members, when two (2) are removed due to potential conflict of interest issues, the remaining three (3) members are required to vote unanimous for any approval. Chairman Smither further advised the Board that he would not be in attendance for the September 2003 site visit and public hearing meeting. The Board discussed the difficulties encountered when only three (3) Board members are present.

Ms. Lee asked that the Board members advise her as soon as possible in the event they are unable to be in attendance at a meeting. Chairman Smither requested notification as well. The Board members concurred upon the importance of attending the site visits and public hearings and agreed to notify Ms. Lee as soon as possible when unable to attend.

C. Extension of Permit Hearing Data Policy.

Ms. Lee stated that there had been numerous requests for extensions recently and asked the Board to consider imposing a time limit. Chairman Smither and Mr. Armstead proposed thirty (30) days for extensions, although they were willing to consider the circumstances on a case-by-case basis. Mr. Taylor commented that some extenuating circumstances may require additional time, and recommended a sixty (60) day time limit.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, the Wetlands Board adopted a policy allowing approval of up to two (2) requests for extension of thirty (30) days, after which, the Board would take action on such applications.

D. Review of New Permit Issue Procedure.

Ms. Lee explained the new process whereby she sends a cover letter and three (3) copies of pending permits to the applicants. Upon signing, notarizing, and returning the permits to Ms. Lee, the approved permits and yellow placard are sent directly to the applicants. This process has been successful in making the system more efficient.

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.

Wetlands Board Chair

Date