

## Middlesex County Wetlands Board Minutes

April 13, 2004

### **Call to Order**

The April 13, 2004 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  
Amy Easterbrook, 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 March 9, 2004 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 the Middlesex County Wetlands Board took action on the following applications:

A. Lance Shores - Application #2004-0344.

Chairman Smither read the applicant's proposal requesting to install 185' of riprap revetment. This project is located on Robinson Creek, at Tax Map #19-16-48. 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. Miller, seconded by Mr. Taylor, and carried by unanimous vote, Application #2004-0344 was approved with staff recommendations that the existing marsh not be impacted/damaged throughout the development of the property. This approval is valid for a term of 18 months.

B. Fredrik Forsberg - Application #2004-0379.

Chairman Smither read the applicant's proposal requesting to install 314' of riprap revetment and 115' of timber bulkhead with backfill. This project is located on the Piankatank River at Tax Map #43-3-B2A.. 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. Miller, seconded by Mr. Armstead, and carried by unanimous vote, Application #2004-0379 was approved as submitted. This approval is valid for a term of 18 months.

C. Larry Shores, Jr. - Application #2004-0380.

Chairman Smither read the applicant's proposal to install 40' of riprap revetment and 115' of timber bulkhead with backfill. This project is located on Urbanna Creek, Tax Map #19-C-5-30. Staff then read the VIMS report for the project.

Alor Grantham Traywick, agent, was in attendance to represent the project. Ms. Traywick commented that the fill behind the bulkhead doesn't affect wetlands, and requested that the project be approved as submitted.

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 #2004-0380 was approved as submitted. This approval is valid for a term of 18 months.

D. George R. Smith - Application #2004-0406.

Chairman Smither read the applicant's proposal requesting to install a 45' of new bulkhead with a 30' return wall and backfill. The property for which application is being made is located on the Robinson Creek, at Tax Map #19-C-5-30. Staff then read the VIMS report for the project.

Mr. Smith was not in attendance at the hearing.

On a motion by Mr. Miller, seconded by Mr. Brooks, and carried by unanimous vote, Application #2004-0406 was continued until the May meeting.

E. Charles Bass - Application #2004-0462.

Chairman Smither read the applicant's proposal to requesting to install 80' of new bulkhead along the edge of the pond and a 30' x 10' rock access across the outfall of the pond. This project is located on the Rappahannock River, Tax Map #20-A-2-39. Staff then read the VIMS report for the project.

Alor Grantham Traywick, applicant, was in attendance to represent the project. Mr. Charles Bass, applicant, was in attendance as well.

Chairman Smither opened the public hearing.

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

Ms. Traywick explained that Mr. Bass was willing to install an open pile structure rather than a road, and would provide revised drawings depicting the height and width.

Mr. Bass commented that the structure would more likely be 3' high due to the topography of the property.

Mr. Neikirk explained that VMRC was assessing jurisdiction, and noted that 4' height is an Army Corps of Engineers recommendation, to allow light beneath the structure. He noted that it could be lower, but higher would be better, although terrain may be taken into consideration.

Ms. Traywick stated that the applicant would accept staff recommendations to install an open pile structure for beach access, pending revised drawings showing the new structure 8' wide and 4' high over the stream crossing over tidal wetlands.

On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by unanimous vote, Application #2004-0462 was approved with staff recommendations and the submission of revised drawings. This approval is valid for a term of 18 months.

### **Old Business**

A. Mabel Pitha, violation of permit VMRC #1999-1142.

Chairman Smither read the violation citing installation of unauthorized low-profile groin in close proximity to the property boundary. Staff then read recommendation that the applicant submit an after-the-fact permit and \$550 fee for the unauthorized groin.

Mr. Robert Pitha, son of Mrs. Pitha, was in attendance and explained that his mother was in poor health and could not attend the hearing. Mr. Pitha explained that several years ago, a storm washed out sand along the shoreline. Mr. Pitha stated that while the contractor, Mr. Jesse, was on site to install a permitted groin, he suggested installing another groin for shoreline protection. Mr. Pitha further stated the work was done in good faith on the advice of the contractor; having been told the existing permit would cover the additional work.

Chairman Smither stated that the property owner is ultimately responsible for work performed on a property.

Mr. Taylor stated the options of paying after-the-fact permit fees or removal of the groin.

Staff recommended leaving the groin in place, and having Mr. Pitha submit an after-the-fact permit and fees.

On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by unanimous vote, the Board voted in accordance with staff recommendations to approve the submission of after-the-fact permit with revised drawings and \$550 fee for the unauthorized groin.

B. Tri-County Farms, c/o Glenn Bunch, violation of permit VMRC #2002-1445.

Chairman Smither read the violation regarding unauthorized dredging. Staff then read recommendation to assess a civil charge of \$500 with the condition that the breached area be restored to pre-disturbed contours with clean sand.

Mr. Glenn Bunch and Mr. James Ward, attorney, were in attendance. Mr. Ward stated that staff recommendation was acceptable to Mr. Bunch.

Chairman Smither stated that this was the concluding issue in a series of three violations.

Mrs. Easterbrook commented that Mr. Bunch had submitted a Resource Protection Area application of his own accord to close the berm, and restore to pre-disturbed contours with clean sand.

On a motion by Mr. Taylor, seconded by Mr. Miller and carried by unanimous vote, the Board voted to accept staff's recommendation to assess a \$500 civil penalty for unauthorized dredging.

### **New Business**

A. Request for Extension – Permit #2002-1354 Porpoise Cove Marina.

Chairman Smither introduced the request for a 2-year extension for marina renovation. Mrs. Easterbrook presented staff recommendation to grant an extension for an additional 18-month period, making a new expiration date of 10/13/05.

Ms. Alor Grantham Traywick, agent, was in attendance. Ms. Traywick stated that the 2-year extension was requested since contractors are so busy since the hurricane in September.

Mr. Higgins noted that the Board's bylaws state permits are granted for 18-months with one 18-month extension permitted.

On a motion by Mr. Miller, seconded by Mr. Taylor, and carried by unanimous vote, Permit # 2002-1354 was granted an 18-month extension.

B. Request for Extension – Wetlands Permit #2002-1445 – Glenn Bunch.

Chairman Smither introduced the request for an 18-month extension for groin construction. Ms. Easterbrook presented the staff report recommending approval based on compliance with the Wetlands Board and VMRC regarding previous violations, the high profile groins must comply with the conditions of the permit (low profile with the travel lift tracts removed if necessary to achieve a low-profile height). Grant the extension for an additional 18-month period conditioned upon the open violation being resolved.

Mr. Glenn Bunch was in attendance to answer any questions the Board may have. Mr. Bunch stated that 12-14 groins needed to be re-built following the Hurricane and he would like to continue working on the groins. He explained that low-profile jetties were not compatible with the travel lift tracts.

Chairman Smither commented that the travel lift tracts were not included in the original permit. He stated that the site should be maintained as originally permitted to clear any violations.

Mr. Neikirk stated that he and Mrs. Easterbrook had reviewed the activities and found the Board's order in conflict with Mr. Bunch's desires. Additionally, Mr. Neikirk explained that an After-the-Fact permit may be submitted for a steel I-beam, but there was no way to keep the I-beam level and comply with the Board's condition that jetties be low-profile design. He further stated that the Board had reviewed the permit assuming the intent was for a boat-ramp.

Mr. Bunch asked if removing the steel, and cutting the board to the permitted height, and applying for a new permit would be acceptable.

Chairman Smither advised that he could apply with the appropriate agencies

On a motion by Mr. Taylor, seconded by Mr. Brooks, and carried by unanimous vote, the Board granted an 18-month extension with Staff recommendation for approval based on compliance with the Wetlands Board and VMRC regarding previous violations, the high profile groins must comply with the conditions of the permit (low profile with the travel lift tracts removed if necessary to achieve a low-profile height), conditioned upon the open violation being resolved.

C. Sworn Complaint – Charles and Cynthia Krumbein, violation of Chapter 13 of the Code of Virginia, unauthorized creation of breakwaters.

Chairman Smither introduced the sworn complaint. Mrs. Easterbrook presented staff recommendation for removal of the breakwater by placing the riprap back to a position on shore. If a violation is found, staff recommended that the Board continue the Sworn Complaint until the May 11 Wetlands Board meeting to allow time for an environmental analysis by VIMS.

Mrs. Cynthia Krumbein was in attendance and was sworn in for testimony.

Mrs. Krumbein stated that Hurricane Isabel caused major damage to her property and she was unable to obtain the services of a local contractor nor get assistance to fill out a Joint Permit Application (JPA). Based on a recommendation from a SEAS (Shoreline Erosion Assistance Service) representative, she proceeded with hiring a contractor from Richmond to do the work, although Mrs. Krumbein stated she probably misunderstood the proper process and was unfamiliar with writing the report. Mrs. Krumbein stated the intent was to connect the rocks, which would stabilize the marsh. Upon receipt of the "Stop Work Order", Mrs. Krumbein met with Mrs. Easterbrook and Mr. Neikirk and submitted a JPA. She further stated her desire for a marsh toe revetment to

protect the point of land, and presented an aerial photograph of the property. Mrs. Krumbein additionally stated that a large amount of sand surrounds the point.

Mrs. Easterbrook was sworn in for testimony.

Mrs. Easterbrook stated that during her initial visit, an excavator was on site. She stated that a JPA had been submitted for a concrete retaining wall and the marsh toe revetment.

Chairman Smither asked if Mrs. Krumbein had reported the storm damage to the County. Mrs. Krumbein replied that she reported the damage twice, and confirmed she was advised that she could repair the property to the condition before the Hurricane.

Chairman Smither noted that staff photographs showed the stones connecting and making a larger area into the water.

Mrs. Easterbrook commented that the contractor on site stated he would fill the area with sand.

Mr. Taylor stated that there was clearly a violation, and recommended that the stones be replaced in the original location as prior to the Hurricane.

Chairman Smither following past violation procedures, VIMS would be requested to perform an environmental analysis.

Mrs. Krumbein requested that the stones be allowed to remain in place while awaiting the VIMS analysis, as a means of protecting the property in the meantime.

Mr. Neikirk concurred that leaving the stone in place may be wise for the time being, since VIMS has not made an assessment.

Mr. Higgins commented that he had not visited the site, but the Board may want to ask Mr. Mike VanLandingham, SEAS, to comment since Mr. VanLandingham had visited the property.

Chairman Smither stated the Board's desire to be fair, and asked Mr. VanLandingham if leaving the stones in place during the VIMS analysis period would be appropriate.

Mr. VanLandingham recommended leaving the stones in place during the interim.

Chairman Smither stated that the stones may remain in place during the analysis period.

On a motion by Mr. Taylor, seconded by Mr. Brooks and carried by unanimous vote, the Wetlands Board concluded there was a violation on the property and in accordance with staff recommendation, the Sworn Complaint will be continued until the May 11 Wetlands Board meeting to allow time for an environmental analysis by VIMS.

### **Adjournment**

With no further business to discuss Mr. Taylor moved to adjourn the meeting, seconded by Mr. Miller, meeting was adjourned unanimously.

Respectfully submitted,

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Wetlands Board Chair

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Date