

Middlesex County Wetlands Board Minutes

February 24, 2004

**Call to Order**

The February 24, 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

Absent: 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).

**Sworn Complaint – Tri-County Farms c/o Glenn Bunch**

Chairman Smither introduced Sworn Complaint citing unauthorized dredging of wetlands and detention pond, and violation of VMRC permit # 2003-1445.

Mr. Higgins explained the events up to this point, and recommended that the Board deal with violation of permit issues first and the non-permitted items separately. Mr. Higgins presented photographs depicting the sites in date sequence. He noted that staff found four (4) permit violations: 1) Two high profile groins, #15 and #16 beside travel lift, 2) Dredged boat ramp, 3) Two steel I-beams attached to groins #16 and #16 for use as wheel tracts for travel lift, and 4) Travel lift. Mr. Higgins stated that revised drawings submitted September 11, 2002 depicted #15 and #16 as low profile jetties at the boat ramp

Chairman Smither asked Mr. Bunch and his attorney, Mr. James Ward, to come forward. He specified that discussion would be limited to permit violations at this time.

Mr. Ward advised that for potential appeal purposes, wetlands dredging should not be addressed at this meeting. He stated that the Board could issue a Sworn Complaint giving 30-days notice with a date, time and purpose of hearing pursuant to a complaint. Mr. Ward stated that he had received additional information related to dredging of wetlands the previous week without 30-days notice. He advised that discussion be limited to actions noted in the Sworn Complaint .

Mr. Higgins commented that additional information was included to give the Board as much information as possible to assist in understanding the context of events and activities related to the property.

Chairman Smither asked Mr. Bunch to come forward. Mr. Bunch was sworn in to provide testimony.

Mr. Bunch provided sets of 21 photographs of the sites to each Board member. He noted the intent of building the ramp and twenty-eight (28) groins was to protect the shoreline, as the channel had shifted closer to the shoreline over time. Mr. Bunch explained that he wanted to raise boats out of the water and put them in a building in order to work on them. Since the jetties extended 50' into the water, someone suggested that he place steel on the pilings and Mr. Bunch did not see any harm in doing so. He contended that staff had been on site several times during the summer with no comment in regards to the placement of the steel. Mr. Bunch stated that the travel lift had been removed. Mr. Bunch stated that while the drawings depicted the groins sloping at a point half-way from the shore to the end of jetties #15 and #16, the violation was unintentional.

Chairman Smither stated that when applications are approved, the Board assumes that construction will be as per the permit; otherwise, guidelines and parameters would be for naught. In this case, Chairman Smither stated that the travel lift was not permitted, and the jetties were constructed in excess of what was permitted.

Chairman Smither stated that the next issue for discussion would be the alleged unauthorized dredging of wetlands and freshwater pond.

Mr. Ward stated that he had not received a copy of a photograph taken by staff dated 12/19/03 showing the alleged unauthorized dredging of wetlands in the original packet of information provided to him. Mr. Ward maintained that he should have been given thirty (30) days notice of this issue.

Mr. Higgins noted that the Notice of Violation stated "unauthorized dredging of wetlands..." . Mr. Higgins stated that he could send a second Notice to Comply on this portion of the violation.

Chairman Smither announced that discussion would be limited to the unauthorized dredging of freshwater pond.

Mr. Higgins presented photographs of the site. He presented engineer drawings which depicted the breach. Mr. Higgins commented that Department of Environmental Quality (DEQ) performed a water quality analysis which indicated mostly normal levels, although there are two high levels of nutrient enrichment. He added that DEQ hoped the Board would request that the berm be restored to the original condition.

Mr. Bunch stated that the rocks were still in the River that washed from the shoreline where the breach occurred. Mr. Bunch explained that the permitted groins were to protect the pond. He stated he wanted to make it deeper for use as a fishing pond.

Mr. Ward asked if Mr. Bunch had cut through the shoreline allowing the pond to drain into the river. Mr. Bunch responded that he had not. Mr. Bunch stated that the rocks fell off the bank and the bank washed out. He further contended that the stones remain in the water.

Chairman Smither asked what caused the breach. Mr. Bunch replied that an excessive rainy season, in addition to erosion undercutting the underside of the bank and shoreline caused the breach. He stated that Mr. Randy Redmon lives on the property and could provide further information.

Mr. Redmon was sworn in by Chairman Smither. Mr. Redmon testified that he had observed the breach in early summer. He explained that there was no filter cloth beneath the stones, and that high tides and northeast winds had steadily eroded the section of shoreline. Additionally, he noted that there was significant rainfall during the past season which contributed to the breach. Mr. Redmon stated that he could verify that the area was washed out rather than dug out.

Chairman Smither asked how long it took for the breach to break through the shoreline.

Mr. Bunch stated that it likely occurred overnight and was reported to him by an employee, Henry Smith, who first noticed the breach. Mr. Bunch stated that he directed Mr. Smith to leave it alone, as he had no permits to repair the breach.

Mr. Henry Smith was sworn in for testimony.

Mr. Smith expressed his opinion that the breach was caused by heavy rainfall and wave action. In answer to Mr. Taylor's question, Mr. Smith stated that he uses an excavator frequently on the property. He stated that after the hurricane, there were openings in the old dam where he had placed dirt and sand on the back side. He noted that he had pasted dirt on the berm to replace washed areas.

Mr. Taylor stated that there excavator teeth marks were observed during the Board's site visit, and asked if Mr. Smith had moved stones along the shoreline.

Mr. Smith responded that he had replaced stones after the hurricane to repair storm damage. He stated that the breach had likely occurred in early spring at a time when the pond had at least 3 ft. of water in it.

In response to Mr. Ward's question, Mr. Smith stated that he did not cut the hole in the shoreline which appeared in a photograph taken by Mr. Gary Osborn dated July 23, 2003.

Chairman Smither noted that Photo #16, taken in the winter, after the hurricane, depicted the left side of the opening, and Photo #20 depicted the right side of the opening in relation to the photograph taken by Mr. Osborn. He noted that after the hurricane there was a significant elevation difference.

Chairman Smither stated that the Board must decide if the pond drained naturally or was manmade.

Mr. Ward stated that Ms. Alor Grantham Traywick, agent for the original permit, was in attendance and may offer further information.

Ms. Traywick was sworn in by Chairman Smither. He asked Ms. Traywick if she noticed the breach on site when working on the original permit.

Ms. Traywick stated that she noticed the erosion problem when she began the original drawing dated June of 2002. Ms. Traywick stated that she had notified the Army Corps of Engineers that a breach was likely to occur naturally. Ms. Traywick stated she was told that if nature opened up the breach nothing could be done. She commented that she observed water flowing through the berm.

Mr. Ward noted his disappointment that Mr. Osborn was not in attendance. Mr. Ward noted that Mr. Osborn stated he did not observe any equipment in the area of the breach when he took the photograph in June, 2003. Mr. Ward re-stated that Mr. Smith and Mr. Bunch denied creating the breach, Mr. Redmon cited the cause as poor construction, northeast wave action, rain, and increased pressure on the berm from high water in the pond and that Ms. Traywick had observed the initial breaches.

Chairman Smither stated that staff had gathered official rainfall amounts for the past year and found that the month of June showed 1.2" above normal rainfall. He also explained that he was very familiar with the area and found it odd that there was a breach where there had not been before. Additionally, he noted that the Board was asked to look into the matter through a citizen's complaint and must determine if there was a violation or not.

Mr. Miller and Mr. Taylor commented that there didn't seem to be a violation. Chairman Smither agreed and further noted that with the passage of time, a violation would be hard to prove.

On a motion by Mr. Miller, seconded by Mr. Armstead, and carried by unanimous vote, the Board found No Violation on the Sworn Complaint of a dredged channel to drain a retention pond.

Chairman Smither stated that the next issue was to determine if the applicant had exceeded the parameters of VMRC Permit #2002-1445.

On a motion by Mr. Taylor, seconded by Mr. Miller and carried by unanimous vote, the Board voted to find the applicant in violation of VMRC Permit #2002-1445.

Chairman Smither stated that the Board may defer to staff for penalty recommendations for the permit violations.

On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by unanimous vote, the Board voted to have staff present penalty recommendations to the Board.

Mr. Ward expressed appreciation to the Board for their determination bases on facts as presented. He commended the Board for accountability, in an open and fair manner.

**Adjournment**

With no further business to discuss Chairman Smither adjourned the meeting.

Respectfully submitted,

\_\_\_\_\_  
Wetlands Board Chair

\_\_\_\_\_  
Date