

## Middlesex County Wetlands Board Minutes

March 9, 2004

### **Call to Order**

The March 9, 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 were Mr. Robert Neikirk from the Virginia Marine Resources Commission (VMRC) and David O'Brien from Virginia Institute of Marine Science (VIMS).

### **Minutes**

The Board considered the minutes of the February 10, 2004 and February 24, 2004 meeting. On a motion by Mr. Taylor, and a second by Mr. Miller, 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. W. Chester Evans - Application #2004-0003.

Chairman Smither read the applicant's proposal requesting to install 285' of riprap revetment. This project is located on Meacham Creek, at Tax Map #29A-4-10B. Staff then read the VIMS report for the project.

Alor Grantham Traywick, 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. Brooks, and carried by unanimous vote, Application #2004-0003 was approved with staff recommendations that the revetment be placed as landward as possible. This approval is valid for a term of 18 months.

B. Matthew Blackwood - Application #2004-0042.

Chairman Smither read the applicant's proposal requesting to install 110' of riprap revetment. This project is located on the Piankatank River at Tax Map #39-73. 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 #2004-0042 was approved as submitted. This approval is valid for a term of 18 months.

C. Gretchen Haley - Application #2003-2569.

Chairman Smither read the applicant's proposal to install 145' of quarry stone revetment channelward of the existing bulkhead. This project is located on the Piankatank River, Tax Map #43-16-5. Staff then read the VIMS report for the project.

Jay Foster, R & W Marine Contractor, 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 #2003-2569 was approved with staff recommendations reducing the base width to 9 ft. and constructing the revetment on a 1.5:1 slope (width:height). This approval is valid for a term of 18 months.

D. Rhett Riddle - Application #2004-0043.

Chairman Smither read the applicant's proposal requesting to install a 48' low profile groin and refurbish an existing 43' marsh toe revetment. The property for which application is being made is located on the Chesapeake Bay, at Tax Map #46-2-3. Staff then read the VIMS report for the project.

Alor Grantham Traywick, agent, was in attendance to represent the project. Ms. Traywick requested that the base of the marsh toe revetment be 6 ft. wide rather than 4 ft. as recommended by staff. Ms. Traywick stated her opinion that a 6 ft. base would offer more stability.

Chairman Smither opened the public hearing.

Ms. Barbara Richardson, Stove Point property owner, stated opposition to the proposed project on behalf of a Stove Point property owner, Mr. D. Ross Hamilton. Ms. Richardson expressed concern that a 48' groin would contribute to beach erosion for properties along the Stove Point shoreline. Ms. Richardson noted that preferably, property owners would have worked together to resolve erosion problems along the shoreline after Hurricane Isabel rather than individual efforts.

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

Mr. O'Brien stated that the reduced base height reflected a desire to reduce impacts to the sand flat, whereas as higher structure posed a greater risk. Additionally, Mr. O'Brien stated that a base width of 6 ft., as proposed by Ms. Traywick, was an acceptable compromise.

Chairman Smither commented that the area already has numerous groins of differing lengths, installed by property owners at different times. While he would like to see all of them look the same, Chairman Smither stated that the Board would have to deal with each project as submitted. While he was respectful of objections, Chairman Smither stressed that property owners would be allowed to protect their properties.

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by unanimous vote, Application #2004-0043 was approved with staff recommendations conditioned upon maintaining a low profile design by reducing the base width of the marsh toe revetment to a maximum of 6 ft. and a height not to exceed mean high water, reducing the groin length to 30', and filling the cells with sand >.23 mm with <10% passing a 100 sieve (clean coarse sand). Revised drawings shall be submitted. This approval is valid for a term of 18 months.

E. Russell Garrison, George Mowbray, and Francis Sprinkle – property owners of White Point Cove Application #2004-0182.

Chairman Smither read the applicant's proposal to use dredged sand from Regatta Point Yacht Club (#2002-2375) for beach replenishment. This project is located on the Rappahannock River, Tax Map #41-53-58-63, 65. Staff then read the VIMS report for the project.

Mr. Russell Garrison, applicant, was in attendance to represent the project. Mr. George Mowbray, applicant, was in attendance as well.

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

Mr. Brooks asked what condition the sand was that would be dredged.

Mr. Garrison explained that the sand was likely a mixture of fine and coarse texture.

Mr. Taylor asked if the Army Corps of Engineers (ACOE) had approved the project.

Mr. Neikirk stated that the ACOE had been involved, and was satisfied with the project, although no letter has been issued at this time. Mr. Neikirk stated that the dredge should produce good, sandy material in keeping with a previous dredge from the same area.

On a motion by Mr. Miller, seconded by Mr. Armstead, and carried by unanimous vote, Application #2004-0182 was approved as submitted. This approval is valid for a term of 18 months.

F. Quentin Corbett – Application # 2004-0196.

Chairman Smither read the applicant's proposal requesting to construct 150' of new bulkhead with backfill in front of a damaged bulkhead and replace a damaged 48' jetty. The property for which application is being made is located on the Rappahannock River, Tax Map #28B-4-2. Staff then read the VIMS report for the project.

Mr. Quentin Corbett, 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. Brooks, seconded by Mr. Armstead, and carried by unanimous vote, Application #2004-0196 was approved as submitted. This approval is valid for a term of 18 months.

G. Herbert Delbridge, Jr. – Application #2004-0320.

Chairman Smither read the applicant's proposal requesting to install 225' of riprap revetment. This project is located on Meacham Creek, at Tax Map # 29A-5-14, 15, 16. Staff then read the VIMS report for the project.

Mr. Herbert Delbridge, Jr., 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 #2004-0320 was approved with staff recommendation that the structure be aligned landward of vegetated wetlands to the maximum extent possible. This approval is valid for a term of 18 months.

### **Old Business**

A. Judith Sheldon - Application # 2003-2538 – continued.

Chairman Smither read the applicant's proposal requesting to install two low profile groins 48' from MHW. This project is located on the Chesapeake Bay at Tax Map #46-2-5. Staff then read the VIMS report for the project.

Staff noted that during a site visit with Dr. Scott Hardaway, coastal geologist, it was pointed out that the marsh toe revetment on the adjoining property to the north acted like a groin for the Sheldon property making the upper groin redundant. Staff suggested that the lower groin be placed close to the property to the south.

Alor Grantham Traywick, agent, was in attendance to represent the project. Ms. Traywick stated agreement with efforts to create a uniform shoreline and offered to provide revised drawings.

Chairman Smither opened the public hearing.

Ms. Diane Perry, property owner northward of the Sheldon's, questioned whether this project, if approved, would necessitate the installation of groins on properties to the north.

Mr. O'Brien related that Dr. Hardaway did not think this would be of concern, and that in his best professional judgment, once the groin cells fill (which will be done by the applicants), sand will bypass the groin. He noted, however, that many factors affect shoreline erosion over time.

Chairman Smither closed the public hearing.

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by unanimous vote, Application #2003-2538 was approved with staff recommendations of installing only one groin, reducing the groin length to 30', and filling the cells with sand >.23 mm with <10% passing a 100 sieve (clean coarse sand). This approval is valid for a term of 18 months.

B. George Brauburger – Application #2003-2594 – continued.

Chairman Smither read the applicant's proposal requesting to install two low profile rock groins, 48' from MHW. This project is located on the Chesapeake Bay, at Tax Map 46-2-1. 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.

Mr. George Brauburger, applicant, stated the purpose of the project was to protect property and try to build up sand.

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

On a motion by Mr. Armstead, seconded by Mr. Miller and carried by unanimous vote, Application #2003-2594 was approved with staff recommendations reducing the groin length to 30', and filling the cells with sand >.23 mm with <10% passing a 100 sieve (clean coarse sand).

C. Sworn Complaint - Tri-County Farms c/o Glenn Bunch – Violation of permit VMRC #2002-1445.

Chairman Smither introduced the Sworn Complaint citing violation of VMRC #2002-1445. Staff reported the violations of the permit 1) Two high profile groins, #15 and #16, 2) Dredged boat ramp with concrete foundation, 3) Two steel I-beams attached to groins #15 and #1 for use as wheel tracts for the travel lift, and 4) Travel lift. Staff, at the request of the Board, was recommending a civil penalty, based on the Wetlands Board by-laws, of fifteen hundred dollars (\$1500.00). The penalty was based on minimal environmental impacts and major deviation from the authorized activities of the permit.

Mr. James Ward, attorney for the applicant, stated that his client was willing to accept the penalty and make payment, as well as bring the groins into compliance with conditions of the permit, and submit an after-the-fact permit for the travel lift.

Chairman Smither expressed appreciation to Mr. Bunch and Mr. Ward for their cooperation.

On a motion by Mr. Taylor, seconded by Mr. Miller, and carried by unanimous vote, the Wetlands Board assessed a civil penalty of fifteen hundred dollars (\$1500.00) for violation of VMRC #2002-1445.

Chairman Smither announced the second phase of the violation for the Board's consideration: 1) Activities undertaken in wetlands without a permit or notification of the Board, and 2) Dredged channel to drain a wetland.

Mr. Glenn Bunch was sworn in for testimony.

Mr. Ward stated that Mr. Bunch desired to plead guilty with an explanation.

Mr. Bunch explained that the pond was still intact and that the ditch contains water at all times. He commented that Mr. Henry Smith, excavator operator, had been on the shoreline to remove Hurricane Isabel debris.

Mr. Brooks asked if Mr. Bunch had opened the channel at any time previously. Mr. Bunch responded that he had not; Mr. Smith was in the area to clear debris.

Mr. Henry Smith was sworn in to provide testimony.

Mr. Brooks asked if the stream had been blocked before at the edge of the River, where the Board had observed excavator teeth marks during a previous site visit.

Mr. Smith responded that there had been trees and debris on the shoreline, with channels along the shoreline as well. Mr. Smith stated that he had rolled back and forth along the shoreline with the excavator, which may have flattened the shoreline. Upon completion, Mr. Smith stated that he may have reached out with the excavator, but did not believe he had made the channel any deeper.

Mr. Brooks noted that although the Board had difficulty determining what was actually caused by the Hurricane, the area looked like an intentional effort was made to make the ditch drain better.

Mr. Smith concurred that while the ditch was probably wider, draining the ditch was not his intent.

Mr. Taylor stated that he observed excavator teeth marks in the ditch, with stones piled up at the end along the edges.

Chairman Smither commented that the excavation teeth marks were visible during a site visit January 6, 2004 and a photograph taken that day did not display evidence of excavator movement parallel to the River.

Mr. Smith contended that the marks remain at the ditch opening, although grass had grown up along the shoreline.

Mr. Ward acknowledged that Mr. Bunch had not obtained a permit for the work done in the ditch.

On a motion by Mr. Brooks, seconded by Mr. Armstead, and carried by unanimous vote, the Board voted that there was a violation and a civil penalty would be assessed. Staff was asked to review the situation and recommend a fair penalty.

Mr. Ward expressed agreement with the proceeding and commended the Board for its' fairness.

**New Business**

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

Mrs. Easterbrook stated that Ms. Pitha could not attend the hearing, and requested a continuation until the April 13, 2004 meeting.

B. Administrative

Mrs. Easterbrook presented minor changes to be adopted by the Board to make the Wetlands Bylaws in accordance with the VIMS Guidance in Investigation of Wetlands Violations. The changes are related to the issuance of a Sworn Complaint for violations, and issuance of a summons for the appearance of alleged violators.

On a motion by Mr. Taylor, seconded by Mr. Miller and carried by unanimous vote, changes to the Wetlands Bylaws were adopted.

**Adjournment**

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

Respectfully submitted,

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Wetlands Board Chair

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Date