

Middlesex County Wetlands Board Minutes

May 11, 2004

Call to Order

The May 11, 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. M. Dale Taylor
Mr. Woodson Armstead

Absent: Mr. B. Ulman Miller – Vice Chairman
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 April 13, 2004 meeting. On a motion by Mr. Armstead, and a second by Mr. Taylor, 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. Charlie Clemons - Application #2002-0838.

Chairman Smither read the applicant's proposal requesting to install a 48' low-profile groin next to the replacement pier. This project is located on the Rappahannock River, at Tax Map #9-55B. Staff then read the VIMS report for the project.

Mr. Charlie Clemons, 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. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, Application #2004-0838 was approved as submitted. This approval is valid for a term of 18 months.

B. Cynthia Krumbein - Application #2004-0578.

Chairman Smither stated that there was an outstanding violation on the property located on Jackson Creek, at Tax Map #41-64. Staff stated that there was no VIMS report for the project due to the outstanding violation.

On a motion by Mr. Armstead, seconded by Mr. Taylor, and carried by unanimous vote, Application #2004-0578 was continued until the June 2004 public hearing.

C. J. L. Kent and Garland Mosby - Application #2004-0664.

Chairman Smither read the applicant's proposal requesting to install 192' of vinyl bulkhead in front of an existing bulkhead with an additional 32' of new vinyl bulkhead. This project is located on Urbanna Creek, Tax Map #19-195, 195A. 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 applicants would prefer to locate the new bulkhead in front of the existing bulkhead, rather than cutting off the existing pilings and placing the new bulkhead behind as suggested by VIMS. She explained that the owners were trying to make the best of a difficult situation, in that the old existing pilings could not be pulled out without breaking.

Chairman Smither opened the public hearing.

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

Mr. Taylor recommended that the new bulkhead be placed in front of the existing pilings, as close as possible.

Ms. Traywick stated that perhaps additional bends in the bulkhead would allow the bulkhead to be constructed closer to the bank.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, Application #2004-0664 was approved conditioned upon placing the new bulkhead as close as possible in front of the old bulkhead. This approval is valid for a term of 18 months.

D. John and Lynn Cochran - Application #2004-0724.

Chairman Smither read the applicant's proposal requesting to install 40' of riprap revetment. The property for which application is being made is located on Big Lake, Tax Map #41-41-66, 68. Staff then read the VIMS report for the project.

Alor Grantham Traywick, agent, was in attendance to represent the project. Ms. Traywick expressed agreement with the VIMS report and offered to provide revised drawings accordingly.

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 #2004-0724 was approved with staff recommendations to reduce the size of the proposed riprap revetment to 3' wide on a 1.5:1 slope and limiting the length to 30' along the eroded scarp and the submission of revised drawings.

Old Business

A. Sworn Complaint – Charles and Cynthia Krumbein, violation of Chapter 13 of the Code of Virginia.

Chairman Smither read the violation citing unauthorized creation of breakwaters. Staff then presented a recommendation based on the Civil Charge Determination in the Wetlands Board By-Laws and the environmental analysis by VIMS. Given Moderate Environmental Impact and Major Degree of Deviation, staff recommended a \$4,500 Civil Charge, as well as After-the-Fact fees of \$400, for a total civil charge and penalty fees equal to \$4,900. Staff additionally recommended the removal of the current marsh sill following VIMS recommendations, as the structure was not set on filter cloth and the size of the stone is too small to be effective.

Mrs. Cynthia Krumbein was present and expressed frustration due to lack of precise information and direction. Mrs. Krumbein stated her desire to protect the property from further erosion damage.

Chairman Smither stated that the Board must clear the violation before proceeding to approve the new application. He advised Mrs. Krumbein that the violation and new application were separate issues, with the

first step being to agree to a fair penalty. Upon payment, Chairman Smither advised that the Board could move forward with the new application.

Mr. Armstead stated that he realized Mrs. Krumbein was attempting to protect the property from further damage after Hurricane Isabel, and asked if she realized a permit was necessary.

Mrs. Krumbein responded that Mr. Mike Vanlandingham, representative of SEAS (Shoreline Erosion Assistance Service) met her on site in November and suggested that the rock be moved from the banks to fill in gaps (between the gabion baskets), and that permits would not be required. Mrs. Krumbein stated that she had taken notes, and instructed her contractor to perform the work as suggested by SEAS.

Mrs. Easterbrook explained that typically a SEAS analysis has 2 phases, with a written report provided following a site visit. She noted that at least one other person had reported being confused by SEAS. Mrs. Easterbrook further commented that the County's Hurricane Isabel Repair Permit stressed that projects could be repaired to the exact footprint and condition prior to the Hurricane.

In response to Mr. Taylor's inquiry, Mr. Neikirk explained that the structure was a VMRC violation and if left in place, with a civil penalty assessed by the Wetlands Board, VMRC would assess an additional penalty. Mr. Neikirk advised that the Board must decide whether or not to allow the stone to remain, and noted that staff had recommended removal of the current marsh sill. Mr. Neikirk further commented that the structure was not acceptable, as the stones were too small.

Chairman Smither commented that if the stones were removed, consideration would be given to reducing the penalty. Upon payment of the penalty, Chairman Smither explained that the violation would be clear. He further expressed agreement with staff recommendation for removal of the stones.

Mrs. Krumbein asked if all of the stone should be removed.

Mr. Neikirk explained that a marsh sill could extend a maximum of 1 ft. above mean high water, with the current stones too small for a marsh toe sill.

Chairman Smither noted that the problem began when stone was taken from the shoreline and put into the water. He stated that there was no way to make the structure acceptable in that adding larger stones would make the structure too high.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, the Wetlands Board voted to reduce the civil charge to \$1500 conditioned upon removal of the existing stones and restoration of the site in accordance with Staff recommendation.

Chairman Smither advised Mrs. Krumbein that if she agreed to the assessment, the violation would be closed. Additionally, he stated that if the stones were removed, there would be no VMRC civil charges. Chairman Smither explained that the new application submitted by Mrs. Krumbein would address protecting the property. He further explained that if Mrs. Krumbein did not agree with the assessment, then the Board would initiate legal proceedings, as well as VMRC.

Mrs. Krumbein requested additional time for consideration before making a decision.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and carried by unanimous vote, the Board voted to allow Mrs. Krumbein up to one month (30 days) to make a decision.

B. George R. Smith – Application #2004-0406 (continued).

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

Mr. George Smith, applicant, was in attendance to represent the project. Mr. Smith expressed agreement with Staff recommendation to push the bulkhead as landward as possible.

Chairman England 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 #2004-0406 was approved with Staff recommendation that the bulkhead be pushed as landward as possible, and the submission of a revised drawing. This approval is valid for a term of 18 months.

New Business

- A. Time frame for permits – discuss the current 18-month permit vs. matching the VMRC permit at 3 years.

Chairman Smither introduced staff's recommendation to extend the 18-month approval term to 3 years thereby matching VMRC approval. He further noted that for the next few years 18-months might not be sufficient given the current conditions and shortage of contractors.

Mr. Higgins explained that Staff's primary concern was commercial projects. He stated that allowing a 3-year approval would match VMRC approval and be helpful to commercial, as well as dredging projects.

Chairman Smither agreed that the proposal would be helpful.

Mr. Neikirk commented that the current 18-month permit, with an additional 18-month extension seemed adequate for residential projects. Ms. Traywick agreed, and further commented that there was too much chance for change in conditions during a 3-year period on private use projects.

On a motion by Mr. Taylor, seconded by Mr. Armstead, and approved by unanimous vote, the Board voted to allow dredging and commercial permit approvals run 3-years, concurrently with VMRC approvals (when VMRC approval is required) and be issued when VMRC approval is granted continue 18-month approval period for private use projects.

- B. Report on Wetlands Funds.

Mrs. Easterbrook reported a current account balance of \$5,250.00 in the Wetlands Fines Fund. She explained that the Code of Virginia Section 28.2-1320 Penalties - Allows the Board to assess a civil penalty to be paid into the treasury of the county for the purpose of abating environmental damage to or restoring wetlands.

Chairman Smither proposed that the fund be placed into an interest bearing account, perhaps upon reaching a balance of \$10,000. Mr. Higgins agreed to look into the possibility of such an account.

Adjournment

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

Respectfully submitted,

Wetlands Board Chair

Date