

## Middlesex County Wetlands Board Minutes

July 12, 2005

### **Call to Order**

The July 12, 2005 meeting of the Middlesex County Wetlands Board was called to order by Chairman Miller Smither at 9:00 a.m. in the Circuit Courtroom of the Middlesex County Courthouse, Saluda, Virginia.

Present: Mr. J. Miller Smither – Chairman  
Mr. Woodson Armstead  
Mr. Archie Brooks  
Mr. M. Dale Taylor  
Mrs. Mary Ann Willis

Absent: Mr. B. Ulman Miller – Vice Chairman

Staff present: Amy Easterbrook, Planner  
Matthew Higgins, Planning Director  
Cathy Shiflett, Planning Department Secretary  
Christina Greene – Planner

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

### **Minutes**

The Board considered the minutes of the June 14, 2005 meeting. On a motion by Mr. Taylor, and a second by Mr. Armstead, 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. Linwood Kenneth Vass – Wetlands Application #2005-1032.

Chairman Smither read the applicant's proposal requesting to install 60' of riprap revetment. The property for which the application is being made is located on the Rappahannock River, Tax Map #30G-1-14.

Joey Scott, 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 #2005-1032 was approved as submitted. This approval is valid for a term of 18 months.

B. William Farrar – Wetlands Application #2005-1302.

Chairman Smither read the applicant's proposal requesting to install 75' of vinyl bulkhead with two 5' return walls. The property for which the application is being made is located on Urbanna Creek, Tax Map #19E-3-5.

Carissa Lee, agent, was in attendance to represent the project. Ms. Lee explained the applicant's desire for a bulkhead as a protection against erosion on the property's shoreline. Ms. Lee stated that the applicant might request a variance to construct a dwelling within the Resource Protection Area. She noted the proposed bulkhead would be placed behind wetlands vegetation, and the bank would be graded, sloped and re-planted with vegetation.

Chairman Smither opened the public hearing.

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

Mr. Taylor questioned whether the applicant had considered stone revetment.

Ms. Lee stated the applicant would like to tie-in the bulkhead to wooden walkways.

Mrs. Willis expressed concern when property owners create problems by destroying the natural filter vegetation and then requesting a bulkhead. Mrs. Willis stated opposition to the proposed bulkhead.

Ms. Lee commented that the land was cleared before she became the agent for the applicant. Ms. Lee noted she had observed waves pounding the shoreline due to weekend recreational activities.

On a motion by Mrs. Willis, seconded by Mr. Armstead, and carried by a 4-1 vote, with Mr. Taylor opposed, Application #2005-1302 was approved following the VIMS recommendation to adopt a natural vegetated shoreline by grading the bank to a stable slope and replanting with native vegetation.

#### OLD BUSINESS

A. Fernand Baruch, Jr. - Wetlands Application #2005-1046 (continued).

Chairman Smither read the applicant's proposal requesting to install 500' of riprap revetment with bank grading, 4 parallel breakwaters totaling 465' in length, and 3,500 cubic yards of beach nourishment. The property for which the application is being made is located on Meachim Creek, Tax Map #30-1-1. Staff then read the VIMS report for the project.

Mr. Jeff Watkins, agent, and Mr. Fernand Baruch, property owner, were in attendance to represent the project. Mr. Watkins explained that the project had been revised and he was in agreement with VIMS recommendations.

Chairman Smither re-opened the public hearing.

Ms. Monica Blair, Locust Grove Road, questioned who would be responsible if sand and sediment closed the channel due to the proposed project.

Mr. Watkins explained that VIMS advised that the channel was currently filling in, and perhaps the breakwaters would slow the fill process.

Mr. Neikirk commented that those involved were acting on the best advice available, and ultimate responsibility could be a legal question.

Chairman Smither agreed that decisions would have to be made based on the best available advice.

Mr. Perry Mason, Meachim Creek, expressed concern that sand might fill the channel.

Mr. Peter Bleeker, commercial waterman, also expressed concern that the channel would fill in, and note that he could not currently navigate out of the creek at low tide.

Mr. Dick Cook, Meachim Creek, asked what could be done to have the creek dredged periodically.

Mr. Neikirk commented that the County could request the Army Corps of Engineers to look at the project, or the citizens could get together and have the dredging done privately.

Mr. Roland Pierce suggested that the proposed breakwaters be placed closer to the bank.

Chairman Smither explained that Scott Hardaway, VIMS representative, recommended that the breakwaters had to be a certain distance from shore to be effective. He noted that piers in the area extended out further than the proposed breakwaters.

Mr. William McCauley, Meachim Creek, suggested that eelgrass would best hold the ground from erosion.

Mr. Watkins contended that a structure was necessary to hold the shoreline and added that plantings would be added later.

Mr. Smither agreed that the shoreline must be hardened in order to protect the property.

Mr. Jack Morris, Meachim Creek, suggested raising the riprap revetment height, and eliminate the breakwaters completely.

Mr. Watkins stated that in Mr. Hardaway's opinion, the channel would close anyway unless it was dredged.

Mr. Jack Fackler, Meachim Creek, expressed concern for navigating the channel and stated opposition to the proposed breakwaters.

Mr. Marty Folkes, Meachim Creek, spoke in support of the proposed project.

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

Mr. Fernand Baruch commented that while he did not want to disturb the neighborhood, something must be done to protect the property from further erosion damage. Mr. Baruch explained that he was convinced this was the best solution in the long run.

Mr. Armstead expressed his opinion that the Creek would fill in naturally and something would have to be done to open the channel.

Mr. Brooks commented that the project, as proposed, might be the best solution to protect the property.

Mrs. Willis noted that the Board had spent time in research, and had read the VIMS reports. She commented that the property needed protection, and noted that apparently the Creek would fill in anyway over time.

Mr. Taylor commented that perhaps two (2) breakwaters would be acceptable to the neighbors, and move the back 60' rather than 75'.

Mr. Watkins explained that the proposed project was designed as a complete system, with expert advice, and changes may not provide the results desired.

Mr. Taylor made a motion to deny Application #2005-1046, seconded by Mrs. Willis. On a 2-3 vote, with Messers. Armstead, Brooks, and Smither opposed, the motion was defeated.

On a motion by Mr. Armstead, seconded by Mr. Brooks, and carried by a 3-2 vote, with Mrs. Willis and Mr. Taylor opposed, Application #2005-1046 was approved with VIMS recommendations to use a turbidity curtain. In addition, reflective markers should be installed on the ends of each breakwater for navigational safety and the tombolos appropriately vegetated. This approval is valid for a term of 18 months.

**B.** Notice To Comply – Steve Sanders

Chairman Smither introduced Notice To Comply – Steve Sanders, for the unauthorized construction of a 295' vinyl bulkhead. Staff then read the staff recommendation that the Wetlands Board dismiss the case in consideration that pictures received by staff on 7/11/05 appear to show that the bulkhead was originally constructed above MHC outside of the Wetlands Board Jurisdiction.

On a motion by Mrs. Willis, seconded by Mr. Armstead, and carried by unanimous vote, Notice to Comply – Steve Sanders was dismissed.

C. Notice To Comply – Joseph Bozeman

Chairman Smither introduced Notice To Comply – Joseph Bozeman, for the unauthorized fill of vegetated wetlands. Staff then read the report indicating that the fill resulted in the conversion of a low marsh to a higher elevation sand flat, resulting in moderate impacts to the marine environment. The report further recommended that the fill be excavated to the original wetland elevation. Staff then recommended that the Wetlands Board find the unauthorized fill a violation. Based on the VIMS finding of Moderate Impacts and a Relative Degree of Moderate Deviation/Non-compliance the recommended civil charge from the VMRC matrix is \$3,000.

Mr. Joseph Bozeman was present. Chairman Smither reminded Mr. Bozeman he was still under oath.

Mr. Bozeman commented that it was possible that the covered vegetation was growing above the tidal zone prior to Hurricane Isabel.

Mr. Taylor stated that the aerial photographs, VIMS, and Army Corps of Engineers (ACOE) reports indicated the presence of wetlands in the area prior to the Hurricane.

Mrs. Easterbrook commented that VIMS and ACOE experts were of the opinion that wetland vegetation was in the covered area.

Chairman Smither stated that the wetlands had been determined and impacts were calculated, indicating that Mr. Bozeman had covered the area with approximately 15 inches of fill material.

On a motion by Mr. Taylor, seconded by Mr. Brooks, and carried by unanimous vote, the Wetlands Board found the unauthorized fill a violation.

Mrs. Easterbrook commented that the Civil Charge Determination for moderate environmental impacts allowed for a civil charge up to the amount of \$3,000. Mrs. Easterbrook explained that VIMS and ACOE recommended excavating to the original wetland elevation would allow the wetland vegetation to return.

Chairman Smither noted that the minimum charge was \$250.

Mr. Taylor recommended a charge of \$500 in consideration of the amount of work involved to restore the site.

On a motion by Mr. Taylor, seconded by Mr. Brooks, and carried by unanimous vote, the Wetlands Board found the unauthorized fill a violation with a charge of \$500, and the fill to be excavated to the original wetland elevation.

Mr. Bozeman stated he would begin the project the following day, and agreed to the civil charge. Mr. Bozeman stated that the activities were a result of Hurricane damage.

**New Business**

A. Notice to Comply – Carroll Gilbert - Unauthorized construction of a vinyl bulkhead.

Chairman Smither introduced the Notice To Comply – Carroll Gilbert, for unauthorized construction of a timber bulkhead. Staff then read the staff recommendation that the Wetlands Board find the unauthorized vinyl bulkhead a violation and request that Mr. Gilbert attend the next meeting, August 9, 2005.

Mr. Gilbert was in attendance and explained that he had purchased the property four years ago, and the bulkhead had been constructed twenty-five years ago. Mr. Gilbert related that the bulkhead was decaying and he thought it was legal to make repairs.

Chairman Smither asked if Mr. Gilbert was aware that repairs required a permit. Mr. Gilbert responded that he did not know repairs required a permit.

On a motion by Mr. Taylor, seconded by Mrs. Willis, and carried by unanimous vote the Wetlands Board found the unauthorized timber bulkhead a violation and requested that Mr. Gilbert attend the August 9, 2005 meeting.

**Adjournment**

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

Respectfully submitted,

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Wetlands Board Chair

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Date