

## Middlesex County Wetlands Board Minutes

June 14, 2005

### **Call to Order**

The June 14, 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: Matthew Higgins, Planning Director  
Cathy Shiflett, Planning Department Secretary

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

### **Minutes**

The Board considered the minutes of the May 10, 2005 meeting. On a motion by Mr. Taylor, 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. Fernand Baruch, Jr. - Wetlands Application #2005-1046.

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, was in attendance to represent the project. Mr. Watkins explained that the property suffered damage during Hurricane Isabel and timing is an issue in attempting to save the swimming pool on the property. He noted that while Mr. Scott Hardaway, VIMS, had offered recommendations on the best measures to protect the property, the application goes through the Wetlands program process and there can be differing opinions on the effectiveness of a project. Mr. Watkins stated he had met with some adjoining property owners and discussed their navigation concerns. Mr. Watkins offered to revise drawings showing changes to the piling locations, and the addition of reflectors and solar lighting. Mr. Watkins apologized for not staking the project prior to the Board's site visit.

Chairman Smither opened the public hearing.

Mr. Marshall Folkes, Long Point Lane, stated he had met with Mr. Watkins on site to discuss questions and concerns and was satisfied with the proposal as revised.

Mr. Jack Fackler, Pine Cove, stated that while the property urgently needs attention, he opposed the breakwaters due to navigation concerns and proposed an on shore bulkhead as an alternate solution. Mr. Fackler added that riprap revetment in front of an on shore bulkhead would reduce the amount of property loss.

Mr. Steve Darman, adjoining property owner, expressed concern that the proposed project would hinder navigation and asked for a continuance in order to make a more informed decision.

Mr. Paul Pearce stated he had lived on Meachim Creek for thirty (30) years and stated the applicant's property had always had an erosion problem. Mr. Pearce expressed concern that breakwaters in the creek would cause navigational problems.

Mr. David Bleeker, commercial waterman, expressed opposition to the breakwaters as he felt the main channel would fill in with sand.

Mr. Peter Bleeker, commercial waterman, stated the narrow channel is already difficult to navigate, and he also opposed the breakwaters.

Mr. Gary LaClair, Locust Grove Road, expressed opposition to the breakwaters due to navigational and safety problems. He also cautioned that permitting breakwaters would set a precedent for additional properties in the area.

Mrs. Lee Weber, Plain View Road, stated she lives on the opposite side of the proposed project. Mrs. Weber suggested that the Board continue the proposal in order to allow more consideration of the best options for the property.

Mr. Bill Cunningham, Topping, expressed opposition to the project, as the Creek was already closing in.

Mr. Dick Cook, Plain View Road, stated that while he did not want to keep the applicant from saving the property, he felt further study was needed to determine the impact of the breakwaters on sand migration.

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

Mrs. Mary Ann Willis stated there since there were so many considerations and further information required from VIMS, she recommended continuation of the proposal. Mrs. Willis further stated that the project should be properly staked prior to the Board's next site visit.

Mr. Brooks and Mr. Armstead expressed agreement with Mrs. Willis' recommendation.

On a motion by Mr. Taylor, seconded by Brooks, and carried by unanimous vote, Application #2005-1046 was continued until the July meeting.

Chairman Smither commented that while the Board wanted to work with the applicant to protect his property, he concurred with the Board's decision. He noted the VIMS report was deficient, and there may be other viable options.

### **New Business**

- A. Notice to Comply – Steve Sanders, Sworn Complaint issued 5/3/05 for the unauthorized construction of a vinyl bulkhead.

Chairman Smither introduced the Notice To Comply – Steve Sanders, for unauthorized construction of a 295' vinyl bulkhead. Staff then read the staff recommendation that the Wetlands Board find the unauthorized vinyl bulkhead a violation and request that Mr. Sanders bring the photos that were supplied to the Army Corps of Engineers to the next meeting, July 12, 2005. Mr. Higgins further explained that there was some confusion immediately following Hurricane Isabel and that there were three (3) damage reports for the Sanders' property. However, he noted the policy allowed repair of what was on a property prior to the storm, and new structures

were to make application for a new permit. Mr. Higgins additionally stated that the Board could give consideration to the confusing circumstances and work with the applicant to reach an agreement.

Mr. and Mrs. Sanders were in attendance. Chairman Smither swore in Mr. Sanders for testimony.

Chairman Smither asked if Mr. Sanders was aware he needed a permit and if he had received a copy of the initial report signed by Chairman Smither.

Mr. Sanders said he did not.

Mr. Brooks asked who had performed the construction. Mr. Sanders responded that he had done the work himself.

Mr. Taylor questioned whether Mr. Sanders knew he was in violation.

Mr. Sanders stated he had received notification from the Army Corp of Engineers (ACOE), but the only communication from the County was the Sworn Complaint requesting attendance at the hearing.

Chairman Smither stated he had met with Mr. Sanders in October 2003 and questioned whether Mr. Sanders had a copy of the report that noted that a Joint Permit Application would be required for the bulkhead.

Mr. Sanders stated that he did not have a copy of Chairman Smither's report, nor had the County mailed him copies of any reports.

Chairman Smither explained that the hurricane policy had been to allow replacement of previously existing structures, while new structures were required to follow the normal Joint Permit Application procedures. Chairman Smither stated there seemed to be some confusion related to the ACOE letters.

Mr. Higgins stated that apparently the ACOE was not requiring further action.

Mr. Neikirk stated he had not been to the site, but if the Board considered the property in violation and an acceptable alignment, the Board could grant an After-the-Fact permit in consideration of the extraordinary circumstances due to Hurricane Isabel.

Mr. Higgins commented that while technically a violation, the fault in this case was with the applicant, as well as the County, which was understandable considering the many problems following the storm.

Mrs. Willis asked if Mr. Sanders were a licensed contractor. Mr. Sanders stated he was not.

Mrs. Willis commented that there was tremendous confusion for everyone following the storm. She further reasoned that if Mr. Sanders was confused regarding the permit process, he should have inquired and asked for approval in writing.

Mr. Sanders stated he was under the impression that he could begin work immediately after speaking with Chairman Smither on site.

On a motion by Mr. Taylor, seconded by Mrs. Willis, and carried by unanimous vote, Notice to Comply – Steve Sanders was continued until the July meeting to allow additional time to review the situation.

B. Notice to Comply – Joseph Bozeman, Sworn Complaint issued 4/26/05 for the unauthorized fill of wetlands.

Chairman Smither introduced Notice to Comply – Joseph Bozeman, for fill of wetlands. Staff then read the staff recommendation that the Wetlands Board find the unauthorized fill a violation and request that Mr. Bozeman attend the next meeting, July 12, 2005.

Mr. Higgins explained that staff received a complaint regarding the property. Mr. Higgins related that in conversations with Mr. Bozeman, he had explained since that the banks were damaged, and debris was left after the Hurricane, a roadway was made during the cleanup process. Mr. Higgins stated that Mr. Bozeman had since ceased driving over the road.

Mr. Bozeman was present and Chairman Smither swore him in for testimony. Mr. Bozeman contended that the activity on his property was minor landscaping and not in the Board's jurisdiction. Mr. Bozeman stated that sand, as well as debris, was deposited on the property from Hurricane Isabel. He additionally stated that the road running along the beach existed prior to the storm.

Mr. Higgins noted that the road was not visible in the County's aerial photos of 2002..

Mr. Bozeman stated that he drove along the shoreline prior to the storm. He stated that after the storm he drove in front of the trees, but has since stopped.

Mr. Taylor asked Mr. Neikirk if he felt this was a violation and in the Board's jurisdiction.

Mr. Neikirk stated that it was hard to tell, and recommended that the Board contact VIMS as their scientific adviser. Mr. Neikirk stated that Mr. Bozeman could have a survey done if he did not agree with the VIMS analysis.

Mr. Taylor agreed and expressed concern about the jurisdictional issues.

On a motion by Mr. Taylor, seconded by Mr. Brooks, and carried by unanimous vote, Notice to Comply – Joseph Bozeman was continued until the July meeting in order for VIMS to provide a jurisdictional update.

**Adjournment**

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

Respectfully submitted,

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Wetlands Board Chair

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Date