

## Middlesex County Wetlands Board Minutes

February 13, 2007

### **Call to Order**

The February 13, 2007 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. Tom Hawksworth – Vice Chairman  
Mr. M. Dale Taylor  
Mr. Woodson Armstead  
Mr. Archie Brooks

Staff present: Amy Easterbrook, Planner  
Cathy Shiflett, Planning Department Secretary

### **Minutes**

The Board considered the minutes of the January 9, 2007 meeting. On a motion by Mr. Hawksworth, 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. William and Elizabeth Benton - Application #2006-2307.

Chairman Smither read the applicant's proposal requesting to construct 450' of riprap revetment with bank grading. This project is located on Meacham's Creek, at Tax Map # 30A-12-3. Staff then read the VIMS report for the project.

Mrs. Carissa Agnese, agent, was in attendance to represent the project. She explained that although her clients had considered breakwaters, they had determined that riprap revetment was preferred and a breakwater system was not an option.

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 #2006-2307 was approved with staff recommendations that: 1) sediment must be retained on-site. If straw bales backed by silt fence prove inadequate during storm events, a turbidity screen will be required, and 2) the disposal site for the large amount of fill must be identified. This approval is valid for a term of 18 months.

B. William Barnes - Wetlands Application #2007-0119.

Chairman Smither read the applicant's proposal requesting to construct 210' riprap revetment along an eroding shoreline. The property for which the application is being made is located on Wilton Creek, Tax Map #43-1-2E. Staff then read the VIMS report for the project.

Mr. Joey Scott, agent, was in attendance to represent the project. He explained that the riprap would be moved from the top of the bank to the toe by an excavator arm, or filter cloth slide.

Chairman Smither opened the public hearing.

On a motion by Mr. Hawksworth, seconded by Mr. Taylor, and carried by unanimous vote, Application #2007-0119 was approved with staff recommendations: 1) the revetment must stay behind the wetland vegetation, and 2) clarification of how and where the riprap will be moved from the top of the bank to the toe. An RPA Modification Permit will be required. This approval is valid for a term of 18 months.

C. William Hundt, - Wetlands Application #2007-0025.

Chairman Smither read the applicant's proposal requesting to construct a 150' riprap revetment for shoreline erosion control. The property for which the application is being made is located on Wilton Creek, Tax Map #43-15-1. Staff then read the VIMS report for the project.

Mrs. Christine Breddy, agent, was in attendance to represent the project. Mrs. Breddy commented that although she agreed with the suggested marsh toe revetment, the client did not want to proceed with a marsh toe revetment at this time.

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 #2007-0025 was approved as submitted. An RPA Modification Permit will be required. This approval is valid for a term of 18 months.

### **Old Business**

A. Notice to Comply – Barnett Keith

Chairman Smither introduced Notice to Comply – Barnett Keith for the unauthorized clearance of vegetation and possible fill.

Mrs. Easterbrook presented staff recommendation of a civil penalty of \$3,000 and restoration of the tidal marsh following the VIMS recommendations. The property owner will also be responsible for the complete eradication of Phragmites if it invades the site.

Mr. Barnett Keith and Mr. Roger Hopper, attorney representing Mr. Keith, were in attendance.

Mr. Hopper asked which specific code sections were violated. Mr. Hopper asked if staff had been on Mr. Keith's property prior to the complaint.

Mrs. Easterbrook offered to provide the code sections from the Wetlands Ordinance. Mrs. Easterbrook further stated she had visited adjoining properties, but had not specifically looked at Mr. Keith's bank until complaints were received.

Mr. Keith stated that after Tropical Storm Ernesto uprooted and downed numerous trees on the property he hired a crew of four men to clean up the debris by hand. Mr. Keith stated that much of the debris was material that had been cut by the previous property owner, and had been dead for 5-10 years. Mr. Keith stated his intent was to properly maintain the property, and contended he was unaware that he had violated any regulations. Mr. Keith provided photographs showing the storm debris and current condition of the property.

Mrs. Easterbrook pointed out that the only area under the Wetlands Board's jurisdiction was the marsh area, as the bank is in the Resource Protection Area. She further noted that all work was conducted without obtaining permits.

Chairman Smither also noted that the problem was that Mr. Keith had done work in the marsh without the proper permits. He questioned whether the Homeowners Association provided Mr. Keith a copy of rules and regulations when he purchased the property.

Mr. Keith responded that he did receive documents from the Homeowners Association, but did not understand the regulations as applied to the work he had done on the property following the storm Ernesto. Mr. Keith stated he had no reason to believe he could not remove wood and debris from the area.

Mr. Armstead commented that in the photos the marsh grasses appeared to have been trampled.

Mrs. Easterbrook commented that the brush fill raised the marsh elevation making it easier for phragmites to take hold and spread through the marsh.

Mr. Brooks commented that when the Board visited the site, trees and brush appeared recently cut.

Mr. Hawksworth asked if Mr. Keith had asked County staff what he could do on the property.

Mr. Keith stated he had spoken to staff as well as neighbors and he did not believe the regulations were fully defined.

Chairman Smither stated that it appeared that the property was cleared before and after the storm, and grass was cut down in the marsh. Chairman Smither stated that it was unlikely that County staff would have told Mr. Keith he could work in the marsh without permits.

Chairman Smither opened the public hearing.

Mr. Randolph Segar, adjoining property owner, commented that the suggestion that the damage was caused by a previous owner, storms, or a beaver was insulting to the Board.

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

Chairman Smither commented that although it was obvious previous owners had cut some brush, the issue at hand was the current situation wherein everything was cut down without authorization. He stated that the Board had already found Mr. Keith in violation for unauthorized work in the wetlands and asked for Mr. Keith's cooperation in resolving the issue.

Mr. Hopper asked for clarification of the VIMS recommendations for restoration of the area.

Mrs. Easterbrook explained that staff recommended clearing debris from wetland for legal disposal.

Chairman Smither stated that VIMS found moderate impacts in this case and recommended a civil penalty of \$3,000 and restoration of the tidal marsh, as well as complete eradication of Phragmites if it invades the site.

On a motion by Mr. Armstead, seconded by Mr. Hawksworth, the Wetlands Board voted to impose a \$3,000 civil penalty in accordance with staff recommendations. The property owner will also be responsible for the complete eradication of Phragmites if it invades the site.

### **Old Business**

#### **A. VIMS Funding**

Chairman Smither recommended to carry over contacting Delegate Harvey Morgan for comment prior to sending the letter supporting VIMS funding in order to obtain additional information.

### **New Business**

A. Holly Point Nature Park – Requesting Funds for Teaching Marsh

Mrs. Easterbrook presented staff report recommending that the Wetlands Board spend \$2,000 for the establishment of the teaching marsh. She stated that VIMS and staff were working with Mr. Bob Kates to develop a planting scheme and showed photographs of the Holly Point Nature Park shoreline.

Mr. Bob Kates was in attendance to represent Holly Point Nature Park.

Mr. Taylor asked if the Park would have to obtain permits for the proposed project.

Mr. Neikirk stated permits would be required for sandfill for the plantings. He noted that the Board had the discretion to use civil charge funds for wetlands environmental conservation projects.

Mr. Taylor suggested that the Wetlands Board visit the site yearly to confirm the project was in compliance and following guidelines as set forth by the Board.

Mrs. Easterbrook commented that in order to plant the proposed marsh vegetation, sandfill would be necessary and permits would be required.

Mr. Kates presented a list of items the Park was considering for the teaching marsh project and expressed that any assistance would be appreciated.

The Board discussed the amount of funds in the civil penalty account and the amount they may wish to provide the Holly Point Nature Park teaching marsh project.

On a motion by Mr. Hawksworth, seconded by Mr. Armstead, and carried by unanimous vote, the Wetlands Board voted to spend \$2,000 for the establishment of the Holly Point Nature Park teaching marsh project, and may give further consideration to the project in the future. This donation is contingent on the Park obtaining proper permits.

B. Civil Charge Account

Chairman Smither stated that there appeared to be a discrepancy in the total amount of funds in the civil charge account. He suggested that a search through the previous meeting minutes be undertaken to determine the exact amount that had been assessed.

On a motion by Mr. Hawksworth, seconded by Mr. Brooks, and carried by unanimous vote, the Wetlands Board voted to pursue determining the correct balance in the civil charge account.

C. Legal Assistance – County Attorney

Chairman Smither stated that the County Attorney serves the Board of Supervisors and if the Wetlands Board requires legal assistance, a request must be presented to the Board of Supervisors through Mr. Higgins, the Planning Director.

On a motion by Mr. Brooks, seconded by Mr. Hawksworth, and carried by unanimous vote, the Board voted to ask Mr. Higgins to make a request to the Board of Supervisors for legal help in the Krumbein case and the Keith case if necessary.

**Adjournment**

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

Respectfully submitted,

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Wetlands Board Chair

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Date