

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
JANUARY 17, 2007 - 7:00 PM**

**A. ROLL CALL**  
Henry Lindsey  
David Gussman  
Larry Waltrip

**ABSENT**  
William Apperson  
John Hughes

**OTHERS PRESENT**  
County Staff

**B. MINUTES** – The December 13, 2006 minutes were approved as presented.

**C. PRESENTATIONS**

Mr. Cook stated because not all Board members were present, the scheduled presentation by JCSA was moved to the February 14, 2007 meeting

**D. PUBLIC HEARINGS**

**1. CBE-06-083 – David Tuftee - 4047 S Riverside Drive**

Mr. Pat Menichino presented the following case:

**Project Description:** Mr. David Tuftee, owner, applied for an exception to allow 374 sqft of sand set brick paver walkways already constructed to remain within the seaward 50-foot Resource Protection Area (RPA) buffer. These walkways were not authorized by the Division or by the Board. The walkways serve the single-family principal structure on the above referenced lot in Chickahominy Haven

On January 9, 2007, Mr. Tuftee executed a civil charge agreement with the County and agreed to pay a \$1,500.00 civil charge for the unauthorized installation of these walkways. Mr. Tuftee has not agreed to the required mitigation planting of (4) trees within the buffer to offset the water quality impacts of these walkways.

**History:** The lot was recorded prior to the adoption of the Chesapeake Bay Preservation Ordinance and no RPA was indicated on the lot at the time of recordation. On August 6, 1990, the Ordinance went into effect establishing 100-foot RPA buffers around all water bodies with perennial flow. Under the provisions of the Ordinance in effect at that time, perennial water bodies were identified as a solid blue-line stream on the USGS 7-1/2 minute topographic quadrangle maps (scale 1:24000). The Chickahominy River was identified as a perennial stream on the quad map and an RPA buffer was placed on the lot. The lot is 14,570 sq ft or 0.33 acres in size. The 100-foot RPA buffer encompasses about 55% of the lot.

During an onsite inspection in November 2007, staff determined the walkways had been installed without authorization. Mr. Tuftee appeared before this Board on June 8, 2005 to appeal a Notice of Violation issued by staff for the unauthorized installation of a sunroom and deck within the 50-foot RPA buffer on the same property. Mr. Tuftee's appeal was granted by this Board. To resolve the violation he paid a \$1,500.00 civil charge and was required to provide mitigation of native plantings to offset the water quality impacts.

The issue for the Chesapeake Bay Board's consideration is the unauthorized installation of 374 sqft of sand set brick paver walkways. The Board must determine whether to grant the applicants exception request and allow the walkways to remain in place. Staff does not have the authority to grant an administrative approval for encroachments into the RPA buffer for accessory structures.

**Water Quality Impact Assessment:** Under Section 23-14 of the amended Ordinance, a water quality impact assessment (WQIA) must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPAs. Mr. Tuftee has submitted a WQIA for this project. The mitigation plan contained within the WQIA proposes to offset the impervious cover impacts to the RPA buffer for the walkways by

requesting Board consideration of some form of credit for a concrete boat ramp that was removed from the buffer several years ago.

**Recommendations:** If following Board action the exception request is granted, staff recommends the following conditions be applied to this exception:

1. Full implementation of the required mitigation planting of (4) trees prior to February 13, 2007, along with the required staff inspection.
2. The payment of a \$1,500.00 civil charge by Mr. Tuftee, to be confirmed by the Board of Supervisors at their February 27, 2007 meeting.

Mr. Lindsey opened the public hearing.

**A.** Mr. Tuftee asked the Board to dismiss the civil charge and required mitigation plantings. He stated he did not know he needed permission to install the paver walkways because they were replacing concrete walkways previously removed from the property. He also asked the Board to consider the removal of a boat ramp as mitigation because it was approximately the same square footage as the walkways. In addition, he stated the sand set pavers were less impervious than the concrete walkways they were replacing.

Mr. Waltrip asked if the County was aware of the concrete walkways.

Mr. Menichino referred to a June 8, 2005 photograph of the property that did not show any walkways. He also stated the site plans previously submitted for the residence did not indicate any walkways.

Mr. Lindsey stated his concern that this was the third time Mr. Tuftee had been before this Board or the Wetlands Board to request 'after the fact' permits or exceptions therefore, he was inclined to double the amount of the civil penalty.

Ms. Jennifer Lyttle, Assistant County Attorney, stated only the Board of Supervisors had the authority to dismiss or alter a civil penalty.

Mr. Lindsey closed the public hearing.

Mr. Gussman and Mr. Waltrip both stated an exception request for the walkways prior to construction would have been approved with the required mitigation to offset the water quality impacts.

Mr. Lindsey asked Mr. Tuftee if he would contact the County before making any changes on his property.

Mr. Tuftee stated that he would.

Mr. Gussman made a motion to grant the exception for case CBE-06-083 with staff recommendations.

The motion was approved by a 3-0 vote.

## **2. CBE-06-084 – Environmental Specialties Group/Villa Development LLC – Villas at Five Forks**

Mr. Darryl Cook presented the following case:

**Project Description:** Ms. Julie Steele, Environmental Specialties Group, applied on behalf of Villa Development, LLC, for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for Resource Protection Area (RPA) impacts associated with the Villas at Five Forks development plan. The project is located at 248 Ingram Road, near the intersection of Ironbound Road and John Tyler Highway, otherwise known as the Five Forks area, and consists of approximately 31 acres of residential development.

This project proposes to encroach into the RPA by approximately 0.34 acres for the construction of two sanitary sewer connections, one water line connections and a BMP outfall. Site restrictions require that the proposed gravity sanitary sewer system and the proposed water line system tie into the respective existing systems adjacent to the site by a connection through the RPA.

**History:** A site-specific perennial stream evaluation for the site was approved on October 7, 2004. The RPA, as depicted on the site plans is correct. Under Section 23-11 of the revised Ordinance, it states that a water quality impact assessment (WQIA) shall be required for any proposed land disturbance within RPAs resulting from development or redevelopment activities. Environmental Specialties Group has submitted the WQIA for this project. The proposed project's RPA impacts involve both categories of Ordinance exceptions; administrative and Board exceptions. The issue to be considered by the Chesapeake Bay Board is the 0.13 acre impact (clearing and land disturbance) associated with the installation of two sanitary sewer connections and a water line connection within the limits of the RPA

**Water Quality Impact Assessment:** The total impacts to the RPA buffer and RPA features resulting from the current plan of development are 0.34 acres. The impacts for the Board's action are associated with the construction and installation of the two sanitary sewer connections, which are required in order to obtain gravity flow to the existing sewer system for this project. There is a further impact for the Board's action, and that is for the construction and installation of a water line connection to the existing water system for this project. Though the installation of these systems will not produce any impervious area within the RPA, the utility easements will require regular maintenance and the existing woody vegetation will not be permitted to re-establish. To mitigate for these project impacts, the following will be incorporated into the associated plan of development:

- Conservation seed mix will be planted in the utility easements that must have on-going maintenance performed.
- Expansion of the RPA buffer by 0.36 acres through the use of conservation easements as mitigation at a 1:1 ratio for the buffer impacts.

Environmental Specialties Group, acting on behalf of Villa Development, LLC, has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The WQIA includes a map of the site showing the areas of RPA impacts. There are several references in the WQIA to the project's "plan set" that contains more detailed information. This "plan set" is the approved site plan for the project and is available at the Environmental Division office for Board members interested in seeing more site details. The Board is to determine whether or not the proposed development is consistent with the spirit and intent of the Ordinance and make a finding based upon the following criteria, as outlined in Section 23-14(c):

1. The exception request is the minimum necessary to afford relief;
2. Granting the exception will not confer upon the applicant any special privileges denied by this chapter to The exception request will be in harmony with the purpose and intent of this chapter, and is not of substantial detriment to water quality;
3. The exception request is not based on conditions or circumstances that are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming that are related to adjacent parcels; and
4. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing degradation of water quality.

**Recommendations:** Staff finds that the WQIA and the project are consistent with the spirit and intent of the Ordinance and the criteria as outlined in section 23-14(c) of the James City County Code. Staff therefore recommends that the Chesapeake Bay Board approve the WQIA as it pertains to the Villas at Five Forks project only. Furthermore, all recommendations listed therein are to be incorporated into the site plans for the associated project, which must then receive final approval by the Environmental Division. This exception request approval shall become null and void if construction has not begun by January 17, 2008. Any changes to the plan of development that would cause a deviation from the items listed in the WQIA, either in the form of increased impacts to components of the RPA or omission of mitigation requirements from the submitted plan of development must be reviewed and approved by the Board.

Mr. Lindsey opened the public hearing.

**A.** Mr. Aaron Small, AES Consulting Engineers, on behalf of the owner, approached the Board and requested a deferral because the postponed presentation by JCSA was pertinent to this case. He also provided the Board members with an additional map of the proposed development (~~copy-attached~~) and pointed out the areas that would be impacted.

Mr. Gussman made a motion the deferral be granted and the public hearing for case CBE-06-084 be continued to February 14, 2007.

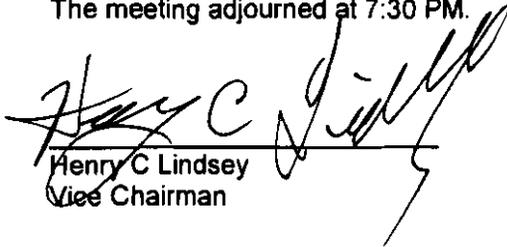
The motion was approved by a 3-0 vote.

**E. BOARD CONSIDERATIONS - none**

**F. MATTERS OF SPECIAL PRIVILEGE - none**

**G. ADJOURNMENT**

The meeting adjourned at 7:30 PM.

  
Henry C Lindsey  
Vice Chairman

  
Darryl Cook  
Secretary