

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
February 13, 2008**

**A. ROLL CALL**

Henry Lindsey  
John Hughes  
William Apperson  
Larry Waltrip

**ABSENT**

David Gussman

**OTHERS PRESENT**

County Staff

**The James City County Wetlands Board meeting was opened concurrently with this Board meeting.**

**B. MINUTES**

The January 9, 2008 Board Meeting minutes were approved as presented.

Mr. Apperson made a motion to change the order of the Agenda to hear the Board Considerations first and the joint Wetlands and Chesapeake Bay Exception case for Spencer's Grant last.

All Board members approved this motion.

**D. BOARD CONSIDERATIONS**

**1. CBE-07-003 – James City County – Ironbound Road Regional BMP- Extension Request**

Mike Woolson, Sr. Watershed Planner requested the extension.

Mr. Lindsey asked why the project had not been started.

Mr. Woolson stated the design for the storm water basin had not proceeded as quickly as anticipated.

Mr. Lindsey made a motion to adopt the resolution granting the permit extension to February 13, 2009 for case CBE-07-003, Tax Map #3910100131.

The motion was approved by a 4-0 vote.

**2. CBE-06-078 – Williamsburg Environmental Group – Whitehall – Extension Request**

Mike Woolson requested the extension on behalf of Williamsburg Environmental Group. He stated the five impacts to the RPA had not been completed.

Mr. Lindsey asked if the Board had approved the project before the design was complete.

Mr. Woolson stated the size and location of the RPA impacts had not changed.

Mr. Hughes made a motion to adopt the resolution granting the permit extension to February 13, 2009 for case CBE-06-078, Tax Map (12-2) Parcels #'s (1-14A, 14B, 18, 19, 22, and 24)

The motion was approved by a 4-0 vote

## C. PUBLIC HEARINGS

### 1. CBE-07-080 – Chris and Julie Rouzie – 144 Holdsworth Rd continued from 12/12/07 and 1/9/08

Pat Menichino presented the following information to the Board:

On December 12, 2007, the applicant requested a Chesapeake Bay Exception to allow for a brick paver patio and a driveway modification/expansion. Staff's report to the Board indicated that the application for the driveway expansion lacked essential information. Following discussion, the Board voted to approve the patio and at the request of the applicant, the Board deferred the remainder of the case until February 13, 2008.

Since the December meeting, Staff has spoken with the applicant several times and has specifically advised the applicant concerning the information needed, that was previously omitted.

To date Staff has not received the information necessary to evaluate and advise the Board on this exception request.

Staff recommends the Board deny the exception request.

Mr. Lindsey referred to a copy of a Chesapeake Bay Restoration Agreement and surety that had been submitted to the Environmental Division the previous day and asked if it met all of the County's requirements.

Mr. Menichino stated the Restoration Agreement had not been reviewed or approved by the County Attorney. In addition, the Mitigation Planting Plan supplied with this Restoration Agreement had not been reviewed by staff.

Mr. Lindsey asked if the Board could consider this Restoration Agreement in rendering their decision.

Jennifer Lytle, Assistant County Attorney, stated that staff could not advise the Board because the submitted documents had not been reviewed.

**A.** Chris Rouzie, owner, requested an extension of the public hearing to April 9<sup>th</sup> to allow staff time to review the submitted Restoration Agreement and Mitigation Planting Plan.

Mr. Hughes made a motion at the request of the applicant, to continue the public hearing.

The motion to continue the public hearing for case CBE-07-80 to April 9, 2008 was approved by a 4-0 vote.

### 2. CBE-07-125 – McKinney & Company/Heritage Resorts – The Colonies at Williamsburg

Mike Woolson presented the following case:

### **Project Description**

Mr. Kirk Bowers, on behalf of Williamsburg Plantation, applied for an exception to Section 23-7 (a) (3) of the Chesapeake Bay Preservation Ordinance (Ordinance) for impacts associated with the building of a sanitary sewer connection. The plan of development proposes 365 timeshare units on 130.4 acres. The project is situated within the sub-watersheds 206 and 207 of the Powhatan Creek. It is bordered on the north and east by residential developments, to the south by Route 199, and to the west by Olde Towne Road.

### **Brief History**

McKinney & Company has been contracted as the engineer for this current plan of development. The Master Plan and Special Use Permit for this development were approved by the Board of Supervisors on November 8, 2005. The current plan of development was initially submitted on May 15, 2007 and has undergone several rounds of County review and subsequent revisions. The plan, as currently configured, has minimized the RPA impacts to the greatest extent possible, as the existing sanitary sewer is within the RPA.

### **Water Quality Impact Assessment**

Section 23-11 of the Chesapeake Bay Ordinance states that a Water Quality Impact Assessment (WQIA) shall be required for any proposed land disturbance in the RPA resulting from development or redevelopment activities. The attached WQIA presents the sanitary sewer impact to the RPA buffer that is under consideration by the CBB. It also outlines an impact to the RPA for storm sewer, which is an administrative waiver. To mitigate for both proposed impacts, the following will be implemented into the associated plan of development:

- Use of a coastal plains seed mix within the disturbed area of the sanitary sewer easement outside of all wetland areas; and
- Placement of orange safety fence around the limits of disturbance within the RPA; and
- Stabilization of head cuts south of Unit 26, as shown on Sheet C-302 within the Exception Request letter.

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 other property owners similarly situated in the vicinity;
3. The exception request will be in harmony with the purpose and intent of this chapter, and is not of substantial detriment to water quality;
4. 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
5. Reasonable and appropriate conditions are imposed which will prevent the exception request from causing degradation of water quality.

### **Recommendations**

Staff believes that the sanitary sewer impact has met the criteria as forth in 23-14 (c). The applicant has stated in the WQIA, under *Mitigating Factors #3*, that the reduction of drainage area to the head cuts will be sufficient to stop the migration of the head cuts. While staff agrees with the theory of this statement, in a situation where the project receives rainfall amounts in excess of the standard design storm events, these headcuts would receive greater volumes of water than under current, undeveloped conditions. Therefore, staff is asking that these two headcuts actually be stabilized,

rather than be allowed to find equilibrium on their own over time.

Staff therefore recommends to the Chesapeake Bay Board that they approve this exception request for the sanitary sewer connection for the project known as The Colonies at Williamsburg. Furthermore, all recommendations listed in the staff report are to be incorporated into the plan of development (SP-031-07) for the project, which must receive final approval by the Environmental Division.

This exception does not confer any property rights, nor does it confer any type of plan approval. Any offsite easements and/or additional permits that may be required for this development must be obtained and evidence of such presented to the Environmental Division prior to issuance of a land disturbing permit and/or final plan approval. This exception request approval shall become null and void if construction of the sanitary sewer impact has not begun by February 13, 2009. Any changes to the plan of development that would cause any 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 asked if Staff disagreed with how the developer proposed to stabilize the headcuts.

Mr. Woolson stated staff's recommendations were because of concern with stabilization during major storms.

Mr. Apperson opened the public hearing.

**A.** Kirk Bowers, McKinney and Company, stated they were willing and able to follow staff's recommendations for stabilizing the headcuts.

Mr. Lindsey asked what method they would use for stabilization.

**A.** Kirk Bowers stated the preference would be to use vegetative filtering rather than a hardscape.

Mr. Apperson closed the public hearing as no one else wished to speak.

Mr. Hughes made a motion to adopt the resolution granting the exception for case CBE-07-125 on Tax Parcels 3240100026 and 3240100026A.

The motion was approved by a 4-0 vote.

**3. CBE-07-107 – Vanasse Hangen Brustlin, Inc/Busch Properties – Spencer's Grant continued from 11/14/07 and 1/9/08**

Pat Menichino presented the following information for consideration by both Boards:

On November 14, 2007, the Chesapeake Bay and Wetlands Boards were presented with an exception request and Wetlands case by Staff. The exception (CBE 07-107) requested Board approval for 42,000 sqft of RPA buffer grading impacts, and the installation of 1300 linear feet of armor stone revetment, located within the backshore beach area, along the James River. The Wetlands case (W-25-07) requested approval for the expansion to offensive armor stone breakwaters, and 4,000 cubic yards of sand fill for beach nourishment.

Following public hearing discussions, the applicant requested continuances to provide additional time to respond to specific issues and concerns of Board members. A motion for a continuance of these

cases until February 13, 2008 was voted on and approved by both Boards.

On December 11, 2007, a special meeting of the Boards was held to review additional information regarding CBE 07-107 & W-25-07. Staff then met with the applicant's consultants, and community representatives, and contacted other agencies to discuss the issues of specific concern to the Boards.

Staff met with representatives of the Department of Conservation and Recreation (DCR), Division of Chesapeake Bay Local Assistance (CBLA) to review this case, and discuss options and receive guidance. DCR submitted separate comments to the Chesapeake Bay Board (~~copy attached~~) and recommended that staff contact the Department of Historic Resources and Preservation for information on the exposed Yorktown Formation. Staff contacted Joanna Wilson with the Department of Historic Resources and Preservation who indicated that her department would not regulate the area of exposed Yorktown Formation located along the Spencer's Grant shoreline.

copy of letter from DCR-CBLA is in case file CBE-07-107

It should be noted that throughout this process the applicant has displayed willingness to work with staff and other groups in a cooperative manner to develop a revised proposal that would minimize impacts.

Staff believes that the revised application significantly reduces the proposed RPA buffer impacts, increases the area of undisturbed RPA buffer, provides RPA mitigation, and addresses the water quality issues, with the following proposals:

1. Eliminate 3,000 sqft of impacts caused by the proposed armor stone revetment installation, within the backshore RPA area.
2. Eliminate 13,000 sqft of proposed slope grading impacts within the RPA buffer.
3. Increase by 30%, the amount of RPA buffer area to remain undisturbed and protected.
4. Provide for offsite RPA buffer planting that is not required, but is proposed by the applicant to additionally enhance an existing buffer located at the adjacent River's Bluff project; and
5. Address stormwater runoff and water quality by redirecting surface flows away from steep riverbank slopes and to an approved Best Management Practice (BMP).

The revised application, requested Board approval for 29,000 sqft of RPA buffer impacts and 1300 linear feet of armor stone revetment (19,000 sqft) in the backshore area. These impacts are necessary to grade and stabilize areas of the steep RPA slopes that are currently unstable, and to install an armor stone revetment at the toe, to prevent potential undercutting caused by storm surge.

**Staff recommended the Wetlands Board approve W-25-07 for the following reasons.**

The proposed shoreline stabilization phase of this project (breakwaters and beach nourishment) is an appropriate method of shoreline stabilization and is consistent with other shoreline projects approved by the Wetlands Board.

A net increase of 450 sqft to the Intertidal Beach Community will result from the beach nourishment.

Mitigation planting with wetlands type grasses and other upland type plantings are proposed.

**Staff also recommended approval of CBE-07-107 as revised for the following reasons.**

The proposed backshore armor stone revetment is designed to protect a steep, unstable wooded slope from damage caused by wave attack, and storm surge generated by future storm events along the James River.

The applicant and their consultants have worked with staff to eliminate, minimize, and mitigate for

proposed RPA impacts on this project. Although slope-grading activity is still proposed, it has been significantly reduced to the minimum necessary, and includes only those unstable areas of the slope most at risk of failure.

The proposed grading of slopes within the RPA buffer is an approved method of stabilization and is consistent with other shoreline projects similarly situated, that have been reviewed and approved by the Chesapeake Bay Board.

The proposed project will not be a substantial detriment to water quality. At the recommendation of staff, the applicant has reduced overall impacts to the RPA buffer and provided for RPA mitigation plantings.

In addition, the proposed plan will permanently divert all stormwater runoff away from the steep slopes along the shoreline and convey the runoff to an approved Best Management Practice (BMP) pond, where the stormwater can be effectively treated and released

If the Board votes to approve this Chesapeake Bay Exception and Wetlands Permit, Staff recommends the following plan revisions and conditions are included:

1. The RPA Buffer Mitigation Planting Plan shall be revised to include the following plantings:
  - Zone III A - lower bank - (37) Trees, (74) Understory Trees, (111) Shrubs (total 222)
  - Zone III – upper bank - (60) Trees, (120) understory Trees, (180) Shrubs (total 360)The River's Bluff offsite mitigation plantings, beach plantings, and all other plantings shall remain in the same quantities as previously proposed.
2. The applicant must obtain all other permits necessary and required by other agencies, including a James City County Land Disturbance Permit prior to the required preconstruction meeting.
3. A preconstruction meeting shall be held onsite prior to land disturbance.
4. Surety for the implementation of the RPA Mitigation Planting Plan shall be provided in a form satisfactory to the County Attorney, pursuant to sections 23-10(3)(d) and 23-17(c) of the James City County Code prior to the preconstruction meeting. The surety shall be held for one full year following the initial installation and inspection of the plant material. All plant material must be alive and thriving as determined by the Environmental Division at the time of the one-year anniversary inspection. If during this inspection, plant material is determined to be dead, diseased or missing the surety will be held until all planting material, required by the plan is installed and thriving.
5. All canopy and understory trees shall be a minimum of 6'-7' in height or 1" caliper. All shrubs shall be 3-5 gallon container size.
6. The entire re-graded slope shall be first stabilized using 4-6" of new topsoil, and conservation seed mix of native grasses, and covered with EC-2 type blanket matting.
7. The applicant shall arrange for weekly project inspections to be performed by a qualified independent professional. The weekly inspection reports generated shall be submitted to the Division, to insure that the project is being constructed in accordance with the approved plan, project specifications, and requirements, along with the permit conditions of the Chesapeake Bay Board and Wetlands Board. The applicant must provide the name of the person or firm, who will perform said inspections, prior to the preconstruction meeting.

8. The applicant must receive approval from the County Engineer for any proposed activity within conservation easements located on the property. The applicant must also resolve any property line and conservation easement conflicts or issues with the County Engineer.
9. The exception shall not conflict with the provisions of the approved plan for development or Kingsmill-Spencer's Grant, County Plan SP-53-05.
10. All additional conditions stipulated within the previous staff report for W-25-07 shall be incorporated into these conditions.

Mr. Hughes asked if the representatives from DCR had considered the revised application before they issued their comments.

Mr. Menichino stated they did.

Mr. Lindsey asked if the applicant was still proposing to redirect the upland stormwater runoff away from the RPA buffer and into a BMP. He also asked if there was expert testimony regarding the ultimate effects of diverting this runoff.

Mr. Menichino stated the diversion of stormwater was one of the methods proposed to offset the impacts to the RPA buffer. The Wetlands Permit and Chesapeake Bay Exception request were for a shoreline restoration project to protect the shoreline from storm surge like that, which occurred with Hurricane Isabelle. He stated that according to the Shoreline element of James City County's 2003 Comprehensive Plan, it has been determined this area along the James River has an erosion rate of 1 to 1 1/2 feet per year. It is listed as a high wave energy shoreline and the appropriate structure for this area is a 9.5 ft high revetment as was used in other shoreline projects along the York and James Rivers. He stated the Wetlands Board should determine if the proposed revetment is appropriate for the shoreline stabilization and the Chesapeake Bay Board should determine if the grading of the RPA buffer is necessary.

Mr. Lindsey stated all shorelines were different and he was concerned with the destruction of this particular shoreline that could not be replaced.

Mr. Waltrip was concerned for the safety of the public around the cliffs, as they exist now and asked if the applicant had met the requirements to satisfy the County regarding the effects on water quality.

Mr. Menichino made the following comments: Because of the proposed diversion of upland runoff, he believed the only impact to this portion of the buffer would be from rainfall. The applicant was proposing to mitigate for the impact by replanting the buffer on this project as well as an area on a down stream project. Therefore, he believed there would not be an adverse effect on water quality. The project was consistent with other plans reviewed and approved by the Wetlands and Chesapeake Bay Boards and although the comments from DCR indicate the proposed project is not consistent with the Chesapeake Bay Preservation Act and Regulations, Sec.23-7(c)(1)d of the James City County, Chesapeake Bay Preservation Ordinance (Ordinance) states: "*For shoreline erosion-control projects, trees and woody vegetation may be removed, necessary control techniques employed and appropriate vegetation established to protect or stabilize the shoreline and restore the function of the buffer in accordance with the best available technical advice and applicable permit conditions or requirements.*"

**A.** Neville Reynolds, Vanasse Hangen Brustlin, Inc (VHB) introduced Jim Gunn with Coastal Design & Construction (CD&C), Camille Kattan, Geotechnical Engineer with GET Solutions, Chris Frye, Geologist with VHB, and Tim O'Conner and Kevin Kolda with Busch Properties. Mr. Reynolds gave a presentation of the project and commented that VHB and CD&C had been working with staff, citizens,

and regulatory agencies to find a balanced solution for all the concerns with this project. He stated the 42,000 sqft of encroachment into the buffer from the previous proposal had been reduced to 29,000 sqft, had been modified to preserve the established and functioning portion of the buffer, and although the encroachment has been reduced, the mitigation planting would remain unchanged and will therefore exceed the requirements. He emphasized the advantage of the proposed buffer re-grading is it will eventually create a more fully vegetated, stable slope and the proposed plan is consistent with the Ordinance.

**B.** Camille Kattan spoke in favor of the project stating his opinion on the instability of the existing slope and the potential safety hazards in the area.

**A.** Mr. Reynolds acknowledged the proposal would not preserve the strata graphic exposures along the top of the bank. However, there are exposures of the lower Yorktown formation elsewhere on Kingsmill property and Kingsmill has agreed to allow access to the property for these formations to be viewed and mapped by Dr. Johnson and his students.

**C.** Dr. Gerald H. Johnson, 4513 Wimbledon Way, spoke against the project and supplied the Board with his written comments regarding the history and stability of the bluffs and his concerns with the proposed project (~~copy enclosed~~). He stated no study had been done to establish the benefit or detriment of shoreline modifications in this area of the James River. In addition, more time was needed to inquire about restrictions or covenants placed on developments along the bluffs and was therefore requesting that the Boards defer action or deny the permit and exception requests.

*copy of Dr Johnson's comment are in case file CB607-107*

Mr. Apperson asked Dr. Johnson about the suitability of the Grove area for the study of fossil formations

Mr. Hughes stated that safety issues and preservation of fossil formations could not be taken into consideration by either of the Boards. He asked Dr. Johnson if he thought the areas of washout should be stabilized and if he had any opposition to the proposed breakwaters.

**C.** Dr. Johnson stated the exposures in the Grove area only represented the lower part of the sequence. With regard to the washout, he stated this area should be stabilized but in his opinion these areas could be re-graded and sloped with relatively little disturbance to the buffer and he felt the breakwaters would reduce the wave attack on the shoreline.

**D.** Sara Kadec, 3504 Hunters Ridge, and a member of the James City County Citizens Coalition (J4C's), spoke against the project and asked the Board members to defer their decision until additional study could be done on the effects of shoreline stabilization in this area of the James River.

**E.** Kensett Teller, 1646 Jamestown Road, spoke against the project because of the historical significance of the area and asked the members to defer their decision for further consideration of Dr. Johnson's comments.

**F.** Alfred McKenney, 516 Fairfax Way in Kingsmill, spoke against the project because of the possible covenants on development pertaining to this property and asked the Board members to defer their decision until this could be researched.

**A.** Mr. Reynolds stated they understood there to be no restrictive covenants associated with this property and he believed the disagreements with the stability of the embankments were driven by the final use of the property.

Mr. Apperson and Mr. Hughes closed the public hearings as no one else wished to speak.

Mr. Waltrip stated he believed the stabilization was needed and the project was well designed.

Mr. Hughes stated he respected the opinions of both Jim Gunn and Dr. Johnson and he was concerned with the erosion and believed it should be stabilized. However, he also felt the report from DCR was especially significant and since DCR deemed the proposed land disturbance in the RPA and placement of the riprap revetment not consistent with the Chesapeake Bay Preservation Act, he was reluctant to approve the exception request.

Mr. Lindsey stated he was impressed with all of the work put into this project but, this was a large project with significant impacts and because of the differing opinions, he was not sure either Board had enough information to make a good decision. Therefore, he was inclined to deny the permit and exception at this time.

Mr. Apperson stated he believed in property rights, was concerned with public safety, understood there was erosion at this site, and felt the project was well engineered. However, he also believed in the preservation of natural resources and respected the comments from Dr. Johnson. He stated that he wanted to hear a compromise satisfactory to all those concerned.

G. Vernon Geddy, representing the applicant, requested another 30-day continuance to address the concerns of the Boards.

Mr. Hughes made a motion to reopen the public hearings and grant a continuance to March 12, 2008.

The motion to continue the public hearings for Chesapeake Bay Board case CBE-07-107 and Wetlands Board Case W-25-07 to March 12, 2008 was approved by a 4-0 vote.

Mr. Apperson and Mr. Hughes reopened the public hearings.

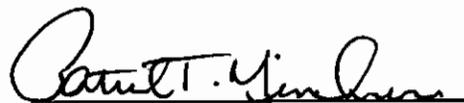
#### **E. MATTERS OF SPECIAL PRIVILEGE - none**

#### **F. ADJOURNMENT**

The meeting adjourned at 9:00 PM.



Bill Apperson  
Chairman



Patrick T. Menichino  
Compliance Specialist