

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
December 9, 2009**

**A. ROLL CALL**

**ABSENT**

William Apperson  
David Gussman  
Terence Elkins  
John Hughes  
Larry Waltrip

**OTHERS PRESENT**

County Staff (Staff)

**The responsibility of this Board is to carry out locally the Commonwealth policy to protect against and minimize pollution and deposition of sediment in wetlands, streams, and lakes in James City County, which are tributaries of the Chesapeake Bay.**

**B. MINUTES**

The November 18, 2009 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBE-10-032 – Kerr Environmental/GS Stonehouse Green Land Sub LLC – 9235 Fieldstone Pkwy**

Mike Woolson, Sr. Watershed Planner presented the following case:

**Existing Site Data & Information**

Applicant: Ms. Kristen Shacochis-Brown, Kerr Environmental Services Corp.

Land Owner(s): GS Stonehouse Green Land Sub, LLC

Location: 9235 Fieldstone Parkway, Toano, Virginia 23168  
Pin: 0440100029: GS Stonehouse owner  
9340 Fieldstone Parkway, Toano, Virginia 23168  
Pin: 0440200002: 2J Investments LLC, owner  
9315 Fieldstone Parkway, Toano, Virginia 23168  
Pin: 0440100033: 2J Investments, LLC owner  
9683 Mill Pond Run, Toano, Virginia 23168  
Pin: 0530100017: The Association at Stonehouse, Inc owner  
(Homeowners Association)

Parcel Size/Zoning: 41 +/- acres, PUD Residential and PUD Commercial

Percent of Parcels in RPA: 34% (14 +/- acres)

Watershed: Ware Creek

**Proposed Impacts**

Chesapeake Bay Board action (Board approval)

Sanitary Sewer RPA Encroachments:

Permanent encroachment:	24,004 square feet (0.55 ac.)
Temporary encroachment:	16,266 square feet (0.37 ac.)
Total:	40,270 square feet (0.92 ac.)

Chesapeake Bay Preservation Ordinance Administrator action (Administrative approval)  
BMP RPA Encroachments: 10,463 square feet (0.24 ac.)

### **Brief Summary and Description of Activities**

The submitted Water Quality Impact Assessment contains information pertaining to both administrative and Board action. The impacts associated with the BMPs, specifically sections 3.1.2, 3.1.3, and 3.1.4, require administrative approval due to the fact that they are either water dependant features, routine maintenance of BMPs, and/or alterations or improvements to an existing BMP structure that does not degrade the quality of surface water discharge. The impacts associated with the sanitary sewer require Board approval, as they are not built by a public service authority. The remainder of this staff report will discuss the proposed sanitary sewer impacts.

The Stonehouse development received a US Army Corps of Engineers permit to construct a sanitary sewer pump station and associated sewer lines (2,300 linear feet) in 1997. The pump station and approximately 1,030 lf of sewer lines have been constructed to date and the original permit has expired. Furthermore, the Stonehouse development has undergone several changes in ownership during this time as well. Several options have been pursued in the design of this land bay and the current layout is the one chosen by the owner to present to the various agencies for their respective permits. The subdivision plan for land bay 3 is currently under review at the County under plan number S-048-08.

### **Staff Evaluation**

Staff has evaluated the application and exception request for all work as described above. The proposal is a gravity sewer line that will provide service to this land bay, serve as a future connection for an adjacent, undeveloped parcel, and will connect to an existing gravity sewer offsite and pump station. Staff finds that the application has met the conditions in the Chesapeake Bay Preservation Ordinance, Sections 23-11 and 23-14, and that the application should be heard by the Board.

### **Water Quality Impact Assessment (WQIA)**

In accordance with Bay Act requirements and the Ordinance all land disturbance, development, or redevelopment within the RPA requires a water quality impact assessment (WQIA). Water quality impact assessments shall identify impacts of proposed development on water quality and land in RPAs and recommended measures for mitigation of these impacts. Localities must review a WQIA prior to action on the exception request. James City County has established guidelines for submission of minor/major WQIAs.

A WQIA was provided on October 1, 2009 and revised on November 30, 2009. Based on staff review, the WQIA proposes to mitigate for RPA impacts by:

- Replanting the temporary construction easement (16,266 sqft), and
- Preserve 14,810 sqft of non-RPA area, adjacent to the RPA within Land Bay 3, and
- Replant 5,480 sqft of non-RPA area, adjacent to RPA and a BMP within Tract 12, and
- Payment of \$4,634.70 into the Chesapeake Bay Mitigation Fund as mitigation for the remaining 4,414 sqft of RPA impact.

### **Staff Recommendation**

Staff has fully reviewed the application and exception request, including the WQIA, and has determined impacts associated with the proposal to be minimal for the proposed development and that the proposed mitigation measures are acceptable. Staff recommends the Chesapeake Bay Board approve this Chesapeake Bay Exception with the following conditions:

1. The applicant must obtain all other necessary federal, state, and local permits as required for the project.
2. Replant the temporary construction easement (16,266 sf).
3. Preserve 14,810 sqft of non-RPA in Land Bay 3. This area shall be placed within a conservation easement and dedicated to the Williamsburg Land Conservancy and James City County.
4. Replant 5,480 sqft of non-RPA adjacent to BMP 3A in Tract 12 of Stonehouse.
5. Payment of \$4,634.70 into the Chesapeake Bay Mitigation Fund.
6. Signed letters of permission shall be submitted to the Environmental Division for all offsite property owners affected by this proposal prior to work commencing. This includes 2J Investments and Stonehouse HOA.

7. All improvements on the Stonehouse HOA property that are damaged by the installation of the sanitary sewer line shall be replaced, including landscape materials, fencing, and sidewalk/trail.
8. This exception request approval shall become null and void if construction has not begun by December 9, 2010.
9. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

#### **Consideration by the Chesapeake Bay Board**

The exception granting body is permitted to require reasonable and appropriate conditions in granting the exception request in accordance with Section 23-14 of the County's Chesapeake Bay Preservation ordinance. The Chesapeake Bay Board is to fully consider Chesapeake Bay Exception CBE-10-032 as outlined and presented above and review the request for exception and the water quality impact assessment. The Board may grant the exception with such conditions and safeguards as deemed necessary to further the purpose and intent of the County's Chapter 23 Chesapeake Bay Preservation Ordinance. Resolutions for granting approval or granting denial of Chesapeake Bay Exception CBE-10-032 are included for the Board's use and decision.

Mr. Hughes asked what would prevent the proposed planting of 5,480 sqft of non-RPA from being disturbed at a later date.

Mr. Woolson stated this would be placed in a conservation easement that was being negotiated with the plan for the Tract 12 development. If the Board desired, they could make it a condition of this exception.

Mr. Elkins asked if the sewer line would be buried and also asked about the repair of BMP 3.

Mr. Woolson stated the entire line would be buried including the portion under the creek and the BMP portion of the WQIA was separate and could be approved administratively.

Mr. Gussman asked how the conservation easements would be monitored.

Mr. Hughes asked if a violation of the conservation easement restrictions would come before the Chesapeake Bay Board.

Mr. Woolson stated he was responsible for the recordation of conservation easements in the County however; there was not an official program for regular monitoring these easements. Unlike a violation in the RPA, a violation in a conservation easement would be handled through the County Attorney's Office if staff could not reach a satisfactory resolution with the property owner.

Mr. Apperson opened the public hearing.

Mr. Gussman asked the applicant if he was willing to add the replanted 5,480 sqft to the conservation easement and asked who would hold the conservation easement.

**A.** Bob Kerr, President, Kerr Environmental, owner, replied that the Williamsburg Land Conservancy was not interested in holding easements on small areas so they would be dedicated to James City County.

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

Mr. Gussman made a motion to adopt the resolution granting the exception on Chesapeake Bay Board case number CBE-10-032 on tax parcels 0440100029, 0440200002, 0440100033 and 0530100017 amended to place the replanted 5,480 sqft of non-RPA, adjacent to BMP 3A in Tract 12 of Stonehouse, to a conservation easement and both conservation easements to be dedicated to James City County only.

The motion was approved by a 5-0 vote.

## **2. CBE-10-045 – Williamsburg Environmental Group/Christine Payne – 2689 Jockey’s Neck Trail**

Pat Menichino, Compliance Specialist presented the following case:

### **Existing Site Data & Information**

Applicant: Loel and Christine Payne  
Land Owner: Loel and Christine Payne  
Location: 2689 Jockeys Neck Trail, Vineyards at Jockeys Neck  
Parcel Id: 4840200021  
Lot Size: 1.03 acres  
RPA Area on Lot: .46 acres or 44 % of the lot.  
Watershed: College Creek.  
Proposed Activity: Installation of a 16 ft X 40 ft swimming pool w/ 3 ft perimeter walkway

### **Proposed Impacts**

Impervious Area: 1,012 sqft  
RPA Encroachment: Landward 50 foot RPA Buffer

### **Brief Description and Summary**

Ms. Toni Small of Williamsburg Environmental Group on behalf of Loel and Christine Payne, of 2689 Jockeys Neck Trail, Williamsburg, Va. has applied for an exception to the Chesapeake Bay Preservation Ordinance (Ordinance) for an encroachment into the RPA buffer, for the construction of a 16 ft. X 40 ft. inground swimming pool with a 3 ft. wide perimeter walkway within the landward 50 foot RPA buffer. The pool and walkway will create 1,012 sqft of impervious area within the RPA Buffer.

A detailed RPA Mitigation Planting Plan (Plan) has been provided along with the exception request for your review. The plan proposes to mitigate for the RPA impacts by planting (3) native canopy trees, (9) native understory trees and (16) native shrubs, in mulch planting beds to help filter runoff. The amount of plantings proposed exceeds the standard mitigation planting requirements of the County for impervious impacts. In addition the applicant has offered additional mitigation by installing a 40 ft long infiltration trench adjacent to the west side of the pool to help intercept and treat runoff from the impervious areas.

### **Background**

The lot was recorded after the adoption of the Ordinance, and no RPA existed on the lot at that time. In 2004 the Ordinance requirements related to the determination of perennial flow were changed requiring that perennial water bodies be identified based on a field evaluation. A perennial feature at the rear of the lot was identified requiring that a 100 foot RPA buffer be established on the lot.

In this case, the exception request is for swimming pool and perimeter walkway, within the landward 50 foot buffer. This request does not qualify for an administrative waiver because it is for an accessory structure. Therefore in accordance with section 23-14 of the Ordinance, an exception must be processed by the Chesapeake Bay Board after a public hearing.

### **Water Quality Impact Assessment (WQIA)**

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.

The applicant has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. The applicant has submitted a WQIA for this project and proposes to mitigate for the impacts to the RPA by planting. The plan proposes to mitigate for the RPA impacts by planting (3) native canopy trees, (9) native understory trees and (16) native shrubs, in mulch planting beds on

the lot to help filter nonpoint source pollution. In addition the applicant has offered additional mitigation by installing a 40 ft long infiltration trench adjacent to the west side of the pool to help intercept and treat runoff from the impervious areas.

### **Staff Recommendations**

The issue before the Board is the addition of the 1,012 sqft of impervious area within the RPA buffer. The Board is to determine whether or not this is consistent with the spirit and intent of the Ordinance and make a finding based upon the criteria outlined in Section 23-14(c) of the Ordinance.

Staff evaluated the potential adverse impacts of this proposal and determined them to be moderate. Those impacts may be offset by the proposed mitigation plan.

If the Board votes to approve the exception request, then staff recommends that the following conditions be incorporated into the approval:

1. The applicant must obtain all other permits required from agencies that may have regulatory authority over the proposed activities, including a James City County building permit if required.
2. An acceptable detailed plan for the proposed infiltration trench must be submitted to the County for review and approval.
3. The size of the trees planted shall be a minimum of 1-1/2 inch caliper (six to eight feet tall) and the shrubs shall be 3 gallon size. All vegetation shall be native species approved by the Environmental Division.
4. Full implementation of the RPA Mitigation Plan submitted with the WQIA and any additional Board mitigation requirements shall be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3) d. and 23-17(c), a form of surety satisfactory to the County Attorney.
5. This exception request approval shall become null and void if construction has not begun by December 9, 2010, or all improvements including the required mitigation plantings and infiltration trench are not completed by that expiration date.
6. Written requests for an extension to an exception shall be submitted to the Environmental Division no later than 2 weeks prior to the expiration date.

Mr. Elkins stated the aerial photograph showed other swimming pools in the RPA and asked if any swimming pools had previously been approved by the Chesapeake Bay Board.

Mr. Menichino stated the pools in the photograph, which included the community pool, were installed before the 2004 change in the Ordinance. The only exception request for a swimming pool previously considered by this Board was on case CBE-07-015 for a residence and a pool. In that case, the Board approved the residence but denied the pool.

Mr. Waltrip asked if a pool could be considered a BMP rather than impervious cover since a pool held water.

Mr. Menichino stated that although there would not be run off until it overflowed, for regulatory purposes swimming pools were considered impervious and there was also a proposed walkway around the pool adding to the impervious area.

Mr. Elkins asked about the adverse effects of chlorinated water on wetlands vegetation.

Mr. Menichino stated even low levels of chlorine could adversely affect the vegetation. He added that a swimming pool would not be considered passive recreation in the RPA.

Mr. Gussman stated he was concerned with the loss of filtration because an area of the buffer was being replaced with an impervious surface for recreational use.

Mr. Apperson opened the public hearing.

**A.** Toni Small, Williamsburg Environmental Group, stated the lot was platted prior to establishment of the RPA, the entire back yard was in the RPA, and because the HOA only allowed pools in rear yards there was no other area on the lot for a pool. She also pointed out that the pool was proposed in a turf area, the proposed mitigation exceeded the requirements of the County, no trees would be removed for the

installation, and only one tree was marked for removal because it was diseased. She then stated the owners would agree to use pervious pavers for the walkway around the pool. She described the pool as standard sized and salt-chlorinated with no potential for accidental chlorine spills and a chlorine concentration similar to tap water. She informed the Board that the owners desired the pool because their children participate in competitive swimming and the community pool has limited hours, limited parking, and does not allow diving.

Mr. Gussman asked if the current owners purchased the property before or after the 2004 Ordinance change.

Mr. Menichino stated it was before the Ordinance change.

Mr. Hughes asked for a description of the infiltration trench.

**A.** Ms Small stated the trench would have to be designed and submitted to the County for approval. She described it as a BMP that would collect and filter runoff.

**B.** Christine Payne, property owner, concurred with Ms. Small's comments, reiterated her family's need for the pool, and stated they were good stewards of the environment.

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

Mr. Gussman stated he recalled previous discussions the Board held regarding swimming pools in the RPA and the concern with setting precedence for allowing recreational use of the RPA. He stated his position was still the same and he believed allowing a pool in the RPA was against the spirit and intent of the Chesapeake Preservation Act.

Mr. Elkins stated the guidance document with respect to passive use of the RPA specifically prohibited swimming pools so he did not feel the Board had a lot of latitude for permitting them.

Mr. Hughes stated he agreed with Mr. Gussman and Mr. Elkins that granting this exception might set a dangerous precedence.

**A.** Toni Small asked and was given permission to speak. She stated her interpretation of the Ordinance was that it allowed for accessory uses of the RPA on an exception basis. She asked the Board to consider that other localities had approved swimming pools in the RPA on an exception basis. Her research showed Virginia Beach had permitted 14 and the city of Chesapeake had permitted 3 pools, in the past year.

Mr. Gussman asked if any other localities had approved pools and if any requests for pools had been denied.

**A.** Ms. Small stated she only researched the two localities and stated they may have also denied some applications but not just because they were pools.

Mr. Hughes asked Staff if the previous request for a pool denied by the Board was similar to this case.

Mr. Menichino stated that in both cases, the properties were platted prior to the 2004 Ordinance change.

Mr. Waltrip stated because the location was on high ground at the edge of the landward 50 foot buffer, because no trees would be removed for installation, and because the proposed mitigation exceeded the requirements of the County, he would approve this exception request.

Mr. Apperson stated he agreed with Mr. Waltrip and he recalled the previous exception for a pool, denied by this Board, was not at the same elevation and did not propose the same amount of mitigation. He rejected the idea of setting precedence and stated no two projects were alike and each application needed to be considered independently. Therefore he also would approve this exception request.

Mr. Hughes also agreed with Mr. Waltrip and stated the proposed infiltration trench was exceptional mitigation and the owner had also agreed to use pervious pavers around the pool.

Mr. Hughes made a motion to adopt the resolution granting the exception for Chesapeake Bay Board case number CBE-10-045 on tax parcel #4840200021 with the additional condition that the walk way around the pool be constructed with pervious pavers.

The motion was approved by a 3-2 vote: Aye – 3 (Apperson, Hughes, Waltrip)  
Nay – 2, (Gussman, Elkins)

**D. BOARD CONSIDERATIONS**

1. Change next Board meeting date from Wednesday 1/13/10 to Thursday 1/14/10.

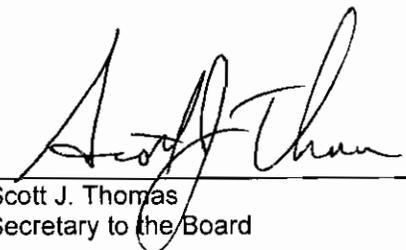
All Board members were agreeable to this change.

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

**F. ADJOURNMENT**

The meeting adjourned at 8:01 PM.

  
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William Apperson  
Chairman

  
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Scott J. Thomas  
Secretary to the Board