

**WETLANDS BOARD  
MINUTES**

**SEPTEMBER 14, 2000 - 7:00PM**

**A. ROLL CALL ABSENT**

Henry Lindsey  
John Hughes  
David Gussman

Philip Duffy  
Larry Waltrip

**OTHERS PRESENT**

Tony Watkinson, VMRC  
Darryl E. Cook, Secretary to the Board  
Leo Rogers, Deputy County Attorney  
Environmental Staff

**B. MINUTES**

Approval of the August 9, 2000 minutes were approved as presented.

**C. OLD BUSINESS**

**1. W-16-00: Governor's Land Foundation, Lot 1A, Two Rivers Point**

Mr. Mike Woolson presented the case stating that Mr. Charles Roadley of Williamsburg Environmental Group, on behalf of the owner, Governor's Land Foundation, had applied for a wetlands permit to install 50 linear feet of quarry stone groin and beach nourishment for shoreline stabilization at Two Rivers Point, in Governor's Land. The property is further identified as parcel (1-1A) found on the James City County Real Estate Tax Map (43-1).

The property in question is located adjacent to lots 7 and 8 within the Two Rivers Point section of Governor's Land along the Chickahominy River. Environmental Division staff visited the site along with representatives from the Wetlands Board, VMRC and VIMS on June 15, 2000 and July 21, 2000. It is estimated that approximately 1445 square feet of Type XIV; Sand Flat Community will be permanently impacted by the beach nourishment portion of this application request and that approximately 65 square feet of Type XIV; Sand Flat Community will be permanently impacted by the breakwater portion of this application request.

On July 21, 2000, an on-site meeting was held to discuss this proposal and possible alternatives. The following people were in attendance: Mr. Michael Woolson of JCC's Environmental Division, Mr. Henry Lindsey and Mr. Philip Duffy, JCC Wetlands Board members, Mr. Charles Roadley of

Williamsburg Environmental Group, and Mr. James Bennett of Dominion Lands. Mr. Roadley responded with a memo to Mr. Michael Woolson stating reasons why this proposal is acceptable and why the alternatives discussed on site the week previous were not acceptable.

The intertidal area is vegetated with Olney threesquare and bald cypress. The shoreline has experienced normal erosive action and has developed an escarpment along the high tide/upland interface over time that is 18 inches maximum in height.. According to Shoreline Management in Chesapeake Bay by C. S. Hardaway, Jr., and R. J. Byrne, published by the Virginia Institute of Marine Science in 1999, shorelines that have exposed and eroding upland banks most likely had a marsh fringe in the past. The base of this shoreline is eroding with the upper bank face being relatively stable as evidenced by abundant woody vegetation. Accordingly, the bank does not require grading and only the base needs to be protected. This is the scenario that is present at the project site. Using and enhancing vegetation on both the upland and shoreline is highly recommended according to Shoreline Management in Chesapeake Bay. The shoreline also has several cypress headlands along this stretch of the Chickahominy River. These headlands act to keep the shoreline stabilized in dynamic equilibrium.

Mr. Roadley's memo states that the limited sunlight, wave climate and exposure will not allow sufficient long-term protection for this shoreline. The upland area adjacent to the wetland area has been cleared of the shrub layer and a portion of the canopy layer. The mature canopy coverage now has approximately a 50% areal coverage. These two factors and the photographic evidence show that the area in question does receive adequate sunlight to support planting in the back shore area.

It is the staff's recommendation that this application be denied for the following reasons:

1. The stated erosion problem the proposed structure will take care of is minor in scope and is in dynamic equilibrium with the cypress headlands.
2. The stated erosion problem does not effect any real property or structures. The nearest structure is over 150 feet away.
3. The parcel in question has had the shrub layer and a portion of the canopy layer removed. As a result, more sunlight reaches the herbaceous layer. This herbaceous layer is exhibiting increased vegetated growth. This strongly suggests that there is adequate sunlight for a vegetated back shore and headland.
4. The application states that there are no vegetated wetland areas to be impacted. The photographic evidence shows that the intertidal area is in fact vegetated.
5. The placement of the stone groin will severely impact the existing cypress headland through the destruction of the root system.

6. Groins don't work well in areas where sand supply is limited. This proposal will require additional constant maintenance over time to maintain the sand supply. See article titled Working Breakwaters, by C. S. Hardaway, Jr and J. R. Gunn, Civil Engineering, October 1991.

However, if the Board recommends approval of this application, staff recommends that the following considerations be taken:

1. Prior to any land disturbing activities, a pre-construction meeting will be held on-site with the contractor.
2. All riprap used shall be a minimum of Class II stone.
3. All vegetation requiring removal for this project shall be approved by the Environmental Division prior to any disturbance.
4. A \$10,000 surety shall be required for the protection and survival of the existing bald cypress on the headland. The surety will be held for 2 growing seasons after construction is completed to ensure that the bald cypress will survive the built conditions. If the bald cypress dies within this two growing season cycle, the surety will be used to replant bald cypress on the headland.
5. The permit shall expire September 13, 2001.
6. If an extension of this permit is needed, a written request shall be submitted to the Environmental Division no later than two weeks prior to the permit expiration date.

The Board had Mr. Woolson verify the location of the project using maps and to recap staff's reasons for requesting the denial of the application. Mr. Gussman asked him to define dynamic equilibrium.

Mr. Lindsey asked if there was anyone in the audience who wished to speak on this case as the public hearing was being continued from the last meeting.

- A. Mr. Charles Roadley, Williamsburg Environmental Group and agent for the applicant, Dominion Lands (Governor's Land Associates) spoke in favor of the proposal. He pointed out that Jim Gunn was available in the audience to answer questions, the designer and contractor of the proposal.

Mr. Roadley responded to staff's arguments. He informed the Board that this was an attached breakwater not a groin which would be installed. He indicated that evidence of erosion could be seen in the pictures and land was being lost due to erosion. He stated that in his experience a tree canopy such as the one here limits the amount of sunlight reaching the shoreline which prevents vegetation from colonizing. And, he stated that the design of this project was to ensure that it be maintenance free and not to fail over time. Mr. Roadley went on to say that various projects like this one had been

approved by the Board throughout Governor's Land property and all were functioning properly with varying stages of vegetation. As he felt the project was small in nature and the Board had a history of approving such projects, he was disappointed that there was controversy from the Board and a request for denial from County staff. He asked the Board to consider his arguments and approve this case.

In response to questions from Mr. Gussman, Mr. Jim Gunn indicated on the pictures where the erosion was taking place and explained how his proposal would stop it.

Mr. Hughes asked Mr. Roadley who he represented in this matter.

Mr. Roadley stated he represented Dominion Lands and owners of Lot 7 and Lot 8, Mr. Lime and Mr. Carter, who were providing funds to accomplish this project.

Mr. Lindsey inquired as to how these property owners could be providing funds if they did not own the property. He stated he was concerned who would assume the responsibility to repair and maintain it should the project fail.

- B. Ms. Carol Vitarelli, President of Governor's Land Foundation who owns the subject parcel, informed the Board that she had signed the joint wetlands permit application in the sign of "friendliness." The Developer had presented the application at the Foundation's May Board meeting, at which time the Board did not see a problem with signing the application. She stated she did not find out until after she signed it that two property owners, Mr. Carter and Mr. Lime, were providing funds for the project. Ms. Vitarelli informed the Board that the Foundation's concerns regarding this project are its upkeep and repair or replacement. She stated the Foundation did not have the budget to provide for that, and she felt it would be difficult to get insurance to cover such a project. She stated that the Foundation was presently in discussion with the two individual property owners to obtain assurances that they will accept full responsibility for liability regarding the repair and the replacement, if ever needed. If the two owners do not provide that assurance, then the Foundation will not accept the project.
- C. Mr. Lime, owner of lot 7, 1260 Two Rivers Road, addressed the Board, and said that if the Board were going to deny the project then he would have no further interest in pursuing the project, and if erosion continued to occur, he still would have no interest in fixing it. He stated that two years ago he bought his lot and at that time Dominion Land had an erosion program in place. The original design was to use biologists, however it was decided that would not have worked so Mr. Gunn designed this new proposal, which is more costly than the original plan. It was agreed Dominion Lands would fund their part of the original cost and he and Mr. Carter would fund the remaining costs. Mr. Lime said he felt it would be ridiculous to pay for something he didn't own, however that would be a separate discussion with the Foundation.

The Board asked the Deputy County Attorney to provide them with the legal aspects of this case.

Mr. Leo Rogers stated the maintenance issue was a private matter which the owner would need to resolve. He further stated that as the application had not been withdrawn the Board was required to consider it. He stated the easiest resolution would be for the case to be deferred until the maintenance issue had been worked out between the interested parties and then those parties would request the Board to hear the case and make a determination.

Mr. Hughes stated the Board was concerned who would be responsible for the maintenance of this project as, depending on the circumstances, the Board could ask that the project be repaired. Mr. Hughes inquired if any structures could be constructed at this site.

Ms. Vitarelli responded that as the Foundation owned the property, only the Foundation could approve proposed improvements.

Ms. Vitarelli and Mr. Lime requested the Board defer action on the case until such time as they work out their private issues and then request the case be brought back for the Board's consideration. Ms. Vitarelli requested staff send her a copy of the Board's meeting schedule.

As no one else wished to speak, Mr. Lindsey closed the continued public hearing.

Mr. Gussman stated that Mr. Gunn had answered his concerns. He stated he felt the proposal was greater in scope than what was needed to fix the problem, however he would support the project. He then said the issue of who is liable and responsible for the replacement and maintenance of the project is a private issue to be worked out between the owner and applicants.

Mr. Hughes stated that he would prefer the installation of a riprap revetment wall as the wetlands net loss would be less. He further stated that he was not comfortable with the owner not supporting the application and felt the owner and applicants needed to work out their issues.

Mr. Hughes made a motion to defer case W-16-00 per the applicants request until such time as the applicant requests the Board to consider the case at a future meeting.

The motion was approved by a 3-0 vote.

## **D. PUBLIC HEARINGS**

### **1. W-28-00: Financial Enterprises II, 8451 Hicks Island Road**

Mr. Mike Woolson presented the case stating that Mr. Jeff Watkins, Riverworks, Inc., on behalf of the owner, had applied for a wetlands permit to install 500 linear feet of riprap revetment in front of an existing bulkhead, of which 320 linear feet is within the James City County Wetlands Board jurisdiction. The property is further identified as parcel (9-1) found on the James City County Real Estate Tax Map (1-24).

Environmental Division staff visited the site on August 18, 2000. It is estimated that approximately 960 square feet of Type XV; Sand/Mud Flat Community will be impacted by this application request

resulting in a permanent wetlands loss of 480 square feet.. Significant adverse impacts to adjacent properties are not anticipated by this proposal.

It is the staff's recommendation that this application be approved with the following conditions:

1. Prior to any land disturbing activities, a preconstruction meeting will be held on-site with the contractor.
2. All riprap used shall be a minimum of Class II stone.
3. All vegetation requiring removal for this project shall be approved by the Environmental Division prior to any disturbance.
4. All filter fabric used should be inspected prior to placement of riprap.
5. The permit shall expire September 13, 2001.
6. If an extension of this permit is needed, a written request shall be submitted to the Environmental Division no later than two weeks prior to the permit expiration date.

Mr. Lindsey opened the public hearing.

- A. Mr. Jeff Watkins, Riverworks Inc. and contractor, informed the Board that Mr. Jim Thacker, the owner, was in the audience and they were both available to answer questions.

Mr. Lindsey asked Mr. Watkins what he thought caused the erosion as he did not think the creek was wide enough to cause it.

Mr. Watkins responded that he thought it was caused by boat traffic and the curve in the creek. He stated that the stormwater runoff was actually going towards the house and not causing upland erosion. Mr. Watkins requested the Board approve the permit.

- B. Mr. Jim Thacker, the owner, agreed with Mr. Watkins as to what was causing the erosion. He stated the creek was approximately 150-175 feet wide and 12-15 feet deep by the curve.

As no one else wished to speak on this case, Mr. Lindsey closed the public hearing.

Mr. Hughes and Mr. Lindsey said that there was obvious erosion that needed to be addressed.

Mr. Gussman stated that he had concerns with the size of the structures going out into the water. He asked Tony Watkinson if those concerns were addressed by the Virginia Marine Resources Commission.

Mr. Watkinson responded that cases such as this are under the jurisdiction of the Virginia Marine Resources Commission. He stated the comment period for this particular project had expired,

however, a permit would be required from VMRC. He said the Army Corps of Engineers would also review the application.

Mr. Hughes made a motion to approve case W-28-00 with staff's recommendations.

The motion was approved by a 3-0 vote.

**2. W-30-00: The U.S. Government/National Park Service, Jamestown Island**

Mr. Darryl Cook presented the case stating that The Colonial National Historical Park had applied for a wetlands permit for bridge repair and replacement work located on Jamestown Island. The property is further identified as parcel (1-1) found on James City County Real Estate Tax Map No. (55-3).

This permit application proposes the repair of deteriorated wood pilings and deck replacement for four bridges located on Jamestown Island. The repair of the wood piles will require the construction of temporary sand bag cofferdams. A wetlands permit was issued for the project on July 14, 1999, with an expiration date of July 14, 2000.

A request was received on August 4, 2000, from the Federal Highway Administration to reinstate the permit. The repairs to the bridges are part of a larger project being conducted by the Parks Service to repair roads and drainage facilities throughout the Colonial Park. While work has begun on the uplands portions of the project, the wetlands work has not yet begun. It is anticipated that work on Jamestown Island will be completed within the next 12 months.

It is estimated that approximately 2618 square feet of Type XII, Brackish Water Mixed Community will be temporarily impacted by this proposal. There are no permanent wetlands losses associated with the proposed permit.

It is the staff's recommendation to approve this application with the following conditions:

1. The Environmental Division shall be notified prior to commencing the work.
2. After construction, all disturbed areas are to return to their pre-construction elevations and shall be stabilized with native vegetation.
3. This permit will expire on September 13, 2001.
4. If an extension of this permit is needed, a written request shall be submitted to the Environmental Division no later than two weeks prior to the permit expiration date.

Mr. Gussman made a motion to approve case W-30-00 with staff's recommendations.

The motion was approved by a 3-0 vote.

**E. BOARD CONSIDERATIONS - None**

**F. MATTERS OF SPECIAL PRIVILEGE**

The Board agreed that as Mr. Duffy and Mr. Waltrip were not present, they would discuss the proposed changes to the James City County Wetlands Mitigation-Compensation Policy at their next Board meeting.

Mr. Gussman commended staff in their thoroughness in their presentation on the Governor's Land case. He said there was good technical feedback as well as lots of detail.

The other Board members agreed with Mr. Gussman

Mr. Hughes asked if staff had received the permit application for the work to be done at Jamestown Island.

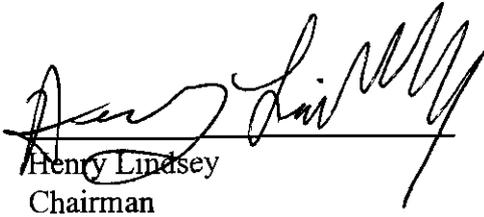
Mr. Cook responded that it had not been received.

**G. ADJOURNMENT**

Mr. Gussman made a motion to adjourn.

The motion was approved by a 3-0 vote.

The meeting was adjourned at 8:45 PM.

  
Henry Lindsey  
Chairman

  
Darryl E. Cook  
Secretary

**JCC WETLANDS BOARD  
PUBLIC HEARING  
SEPTEMBER 13, 2000  
CASE: W-16-00**

**I AM CAROL VITARELLI, PRESIDENT, GOVERNOR'S LAND FOUNDATION, A/K/A THE HOMEOWNER'S ASSOCIATION REPRESENTING 734 PROPERTY OWNERS. TONIGHT I WILL EXPLAIN TO THE BOARD THE UNIQUE SITUATION IN GOVERNOR'S LAND REGARDING SHORELINE PROPERTY.**

**THE DEVELOPERS DEEDED SOME RIVERFRONT PROPERTY TO INDIVIDUALS WHO HAVE RIPARIAN RIGHTS AND ALSO GIFTED "OPEN SPACE" TO THE FOUNDATION IN AREAS BETWEEN REAR LOT LINES AND THE SHORELINES. BY MY ROUGH COUNT THERE ARE APPROXIMATELY 20 SUCH LOTS IN GOVERNOR'S LAND WHERE THE INDIVIDUAL PROPERTY DOES NOT GO TO THE RIVERBANK.**

**SUCH IS THE CASE FOR THE PROPERTY YOU ARE CONSIDERING THIS EVENING WITH REGARD TO THE INSTALLATION OF A GROIN AND ADJACENT NOURISHED BEACH.**

**THE FOUNDATION'S CONCERNS REGARDING THIS PROJECT ARE ITS UPKEEP AND REPAIR OR REPLACEMENT SHOULD THAT EVER BE NECESSARY. OUR BUDGET DOES NOT CONTAIN ANY CAPITAL RESERVE FOR SUCH EVENTUALITIES, NOR DO WE CARRY ANY INSURANCE; IN FACT, I BELIEVE IT WOULD BE DIFFICULT TO GET INSURANCE FOR THEM.**

**EXISTING GROINS/BREAKWATERS WERE INSTALLED BY THE DEVELOPER WHEN IT OWNED SAID LAND, THEREFORE, THE FOUNDATION HAD NO SAY IN THE MATTER AND WE HAVE TO ACCEPT THEM INTO OUR PLAN. HOWEVER, THE PARCEL IN DISCUSSION TONIGHT NOW BELONGS TO THE FOUNDATION SO WE HAVE SOME SAY AS TO ITS USES. THE APPLICANTS ARE THE DEVELOPER AS WELL AS TO TWO PRIVATE PROPERTY OWNERS SHARING THE EXPENSE. THAT IS WHY WE NEED ASSURANCE AS TO THE UPKEEP OF THE PROJECT. WE ARE TALKING WITH THE INDIVIDUAL PROPERTY OWNERS TO OBTAIN THIS ASSURANCE THAT**

**THEY WILL ACCEPT FULL RESPONSIBILITY FOR LIABILITY  
REGARDING REPAIR AND REPLACEMENT IF AND WHEN  
THAT WOULD OCCUR.**

**WITHOUT THESE ASSURANCES THE FOUNDATION IS  
NOT PREPARED TO ACCEPT THE PROJECT.**

**THANK YOU FOR THIS OPPORTUNITY TO PRESENT THIS  
INFORMATION.**