

**WETLANDS BOARD  
MINUTES**

**November 14, 2001 - 7:00PM**

**A. ROLL CALL**

**ABSENT**

Henry Lindsey  
John Hughes  
David Gussman  
Philip Duffy

Larry Waltrip

**OTHERS PRESENT**

Darryl E. Cook, Secretary to the Board  
Greg Dohman, Assistant County Attorney  
Ben Stagg, VMRC  
Environmental Staff

**B. MINUTES**

The minutes of the October 10, 2001 meeting were approved as presented.

**C. OLD BUSINESS – None**

**D. NEW BUSINESS**

Mr. Duffy requested case W-20-01 be moved up on the Agenda due to the simplicity of the case and the property owner, who was present, had indicated they needed to leave as early as possible.

It was the consensus of the Board to move Agenda item #2, case W-20-01, to be heard first.

2. W-20-01: Liza Fleeson - 4116 South Riverside Drive

Mr. Woolson presented the case stating that Mr. Wilber Jordan, Waterfront Piers and Bulkheads, on behalf of the owner, Ms. Liza Fleeson, had applied for a wetlands permit to install approximately 100 linear feet of vinyl bulkhead to protect real property and install a boat lift. The property is further identified as parcel (9-15) found on the James City County Real Estate Tax Map (19-1). The project site in question is located on a man-made canal immediately adjacent to the Chickahominy River.

Environmental Division staff visited the site on October 19, 2001, along with the representative from VMRC and VIMS to discuss the project scope and potential impacts. Proposed wetlands impacts for this project are determined to be 300 sq. ft. to the Type XV, Sand/Mud Flat Community. Total wetlands fill for this project is also determined to be 300 sq. ft. to the Type XV, Sand/Mud Flat Community. Due to the nature of the installation of the bulkhead, the existing pine trees will not be impacted. The bulkhead will be placed in front of (water side) the existing trees and the area between the new bulkhead and old shoreline will be backfilled.

It is the staff's recommendation that the Board approve this application, with the following conditions:

1. The limits of construction shall be flagged in the field prior to the preconstruction meeting.
2. All vegetation to be removed shall be clearly flagged or marked with spray paint prior to the preconstruction meeting.
3. The landward areas of the Resource Protection Area (RPA) buffer that are between the existing wooden fence and the new bulkhead will require restoration with native vegetation consisting of shrubs and ground cover. An RPA planting plan with surety shall be submitted and approved by the Environmental Division prior to the preconstruction meeting.

4. A preconstruction meeting will be held on-site prior to construction.
5. Filter fabric shall be used behind the proposed bulkhead. Inspection of the filter fabric must occur prior to commencement of backfilling operations.
6. The permit shall expire November 14, 2002.
7. 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 expiration date.

Mr. Lindsey questioned why the application indicated 190 sq. ft. of impacted wetlands and staff report stated there would be 300 sq. ft. of impacted wetlands.

Mr. Woolson responded the 300 sq. ft. came from the VIMS report. He stated he felt VIMS had more experience than the contractor in determining impacts.

Mr. Gussman noted that one of the adjacent property owners checked all boxes on their notification form; no comment, do not object, and do object to the project.

Mr. Lindsey opened the public hearing.

A. Ms. Liza Fleeson, owner, stated she had a written statement from Rachel Booker, the adjacent property owner who checked all boxes on her notification form. She gave the Board Ms. Booker's written statement, which stated she did not object to the project.

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

Mr. Duffy stated that during his site visit he noted other properties in the area used the same type of bank protection.

Mr. Gussman noted that a vinyl bulkhead was to be installed and inquired if staff knew how a vinyl bulkhead compared to the traditional creosol bulkhead.

Mr. Woolson stated staff did not know about the durability of vinyl bulkheads. In response to a question from Mr. Lindsey, he informed the Board the surety required would be based on the approved landscape plan and would be held for one growing season after plantings.

Mr. Duffy made a motion to approve case W-20-01 with staff's recommendations.

The motion was approved with a 4-0 vote.

1. W-22-01: Charles Hotchkiss - 164 The Maine

Mr. Woolson presented the case stating that Mr. Daniel Winall, Water's Edge Construction, on behalf of the owner, Mr. Charles Hotchkiss, had applied for a wetlands permit to install approximately 120 linear feet of riprap revetment to stop erosion and protect real property. The property is further identified as parcel (2-55) found on the James City County Real Estate Tax Map (45-4). The project site in question is located on the main stem of the James River.

At the request of Mr. Daniel Winall, a pre-application meeting was held on site with Environmental Division staff on September 13, 2001, to discuss the proposed project. Several options were discussed on site. These options are: 1) to place the riprap at the existing toe of slope and regrade the entire slope back to a 2:1 condition, resulting in the loss of all RPA vegetation, the majority of the backyard and the septic field; 2) to place the riprap at the edge of the existing failed bulkhead and fill in the existing eroded bank (over twenty linear feet), resulting in significant wetland and subaqueous impacts, but with minimal RPA impacts and no loss of rear yard and septic system; and 3) to fill in behind the eroded bulkhead a distance of six to ten linear feet to allow for a construction access and place the riprap revetment at this new toe of bank, again resulting in minimal RPA impacts and no loss of rear yard or septic system. Mr. Winall has proposed option number 3 in his application to the Board.

Environmental Division staff visited the site on October 19, 2001, along with the representative from VMRC and VIMS to discuss the project scope and potential impacts. Proposed wetlands impacts for this project are determined to be 1440 sq. ft. to the Type XV, Sand/Mud Flat Community. Total wetlands fill for this project is determined to be 720 sq. ft. to the Type XV, Sand/Mud Flat Community.

It is the staff's recommendation that the Board approve this application, with the following conditions:

1. The limits of construction shall be flagged in the field prior to the preconstruction meeting.
2. All vegetation to be removed shall be clearly flagged or marked with spray paint prior to the preconstruction meeting.
3. A turbidity curtain will be required to control sedimentation from the project.
4. The construction access will require stabilization/restoration with native grasses.
5. A preconstruction meeting will be held on-site prior to construction.
6. Filter fabric shall be used under the proposed riprap. Inspection of the filter fabric must occur prior to commencement of backfilling operations.
7. All proposed core stone shall be Class I and all proposed armor stone shall be Class II.
8. The permit shall expire November 14, 2002.
9. 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 expiration date.

Mr. Duffy inquired if washout existed behind the newer bulkhead.

Mr. Woolson explained that erosion existed behind the newer bulkhead as the failing bulkhead had permitted water to go in behind it. He stated that once the riprap was installed the wash would be eliminated from going behind the bulkhead and the natural erosion from the bank would fill in behind it.

Mr. Duffy asked several questions. He inquired why the depth of fill was not listed, why only half of the bank was being repaired, and why did the work need to be expedited. He also asked if the contractor was legally licensed and qualified to design this type of project.

Mr. Woolson stated that when wetlands are impacted it did not matter how deep the fill was. He said the contractor or owner would need to answer about the scope of the project. He further stated that staff had verified that Mr. Winall was a legally licensed contractor in the State of Virginia who was qualified for marine construction. He also held a current business license in James City County.

Mr. Lindsey and Mr. Hughes informed the Board that several years ago an appeal to their decision on a wetlands case was overturned by VMRC based on the fact that the Board had told the applicant they wanted him to do something different than what was proposed on his application.

Mr. Lindsey instructed the Board to base their decision on the application as submitted before them.

Mr. Duffy stated that he felt other alternatives needed to be considered. He suggested using a steam shovel to place the riprap. He said this way the work remained on the applicant's property, rather than using the adjacent property to access the site. He referred to another case in which a steam shovel was used. He then stated that the surrounding banks in the area looked nice with heavy vegetation and well kept, whereas this property was an eye sore. He stated he wanted the entire bank done, rather than just half of the bank.

Mr. Lindsey informed Mr. Duffy that the law states the Board must base their decision on the application as submitted.

Mr. Duffy responded to Mr. Lindsey that he felt that was Mr. Lindsey's interpretation, but it was not the law.

Mr. Hughes stated he had spoken to the applicant and she told him she wanted to keep all vegetation as possible. He referred to the same case as Mr. Duffy and stated that if a steam shovel were used, the entire RPA would be damaged. He stated that he did not feel that was a good alternative.

Mr. Lindsey pointed out that if the backyard was disturbed, then the septic system would be compromised and the owner would be forced to connect to the county public system. This connection would be very expensive.

Mr. Duffy stated he was thinking that he would talk to Senator Tommy Norment and ask for a program to be established that would provide lower income owners living on Virginia Rivers with money to assist them in protecting river banks.

Mr. Duffy stated he felt this was not a properly engineered plan. He stated he had concerns about the project being piece-mealed and that amateur engineering would not get the job done right.

Mr. Hughes stated that Mr. Winall had done several other projects with the same bank characteristics as this one. He stated those projects were all professionally done.

Mr. Lindsey opened the public hearing.

A. Ms. M. Julie Hotchkiss, owner, addressed the Board. She stated that she wanted to protect the bank with as little bank disturbance as possible. She wanted to keep as much vegetation as possible as well as a very large old oak tree. She said they were thinking about selling the property so they only wanted to do the work that was being proposed in the application. She also said that Mr. Winall had talked to them and convinced them to use the access road from the adjacent property. A house is under construction on the adjacent property and Mr. Winall was told he could use their construction drive to access the project site. This would keep her rear yard from being damaged. However, once the house was completed, the access would not be available. Ms. Hotchkiss stated she had mixed feelings about proceeding with the project.

Mr. Duffy asked Ms. Hotchkiss what the contract price was for this work.

Ms. Hotchkiss responded \$22,500.

Mr. Duffy stated the application stated it would be under \$16,000 and wanted to know why the application did not reflect the correct amount of the contract. Mr. Duffy addressed Ms. Hotchkiss and told her he opposed the application and wanted her to understand that.

B. Mr. Daniel Winall, Water's Edge Construction, addressed the Board. He informed the Board that he was legally licensed in the state of Virginia to perform marine construction. (Mr. Woolson provided the Board with a copy of Mr. Winall's contractors license.) Mr. Winall stated that he could use large equipment similar to what was used for the Jacob's job, however it would destroy the backyard and cost about \$100,000. He stated this project as proposed will protect the bank, cypress trees and do little damage to the RPA. He explained how he would place the fill and protect the bank.

Mr. Hughes inquired why there was a discrepancy on the contract price.

Mr. Winall responded that he did not remember the amount he put on the application. He stated he had several conversations with the owners relating to how much work they wanted to have done. As they were possibly selling the property they decided to do what was on the proposed application. He told the Board that if the owners did not want to proceed with the project that was acceptable to him, he does not force anyone to do work they don't want to do.

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

Mr. Lindsey asked for legal advice.

Mr. Woolson stated the price of the contract was irrelevant to James City County as they have one set fee for all projects.

Mr. Dohman told the Board that further information could be requested if the Board could not determine by the application what the scope of the project was. The Board could either defer or deny the case based on lack of information. In his opinion this application was clear on the scope of the project and the Board would need to base their decision on what was presented on the application. Whatever goes on between the homeowner and the contractor cannot affect the Board's decision.

Mr. Stagg responded that VMRC does base their fee on the contract price listed on the application. However, another contractor could be hired at a different price after the permit is issued. VMRC cannot get involved with what goes on between a contractor and a homeowner.

Mr. Hughes made a motion to approve case W-22-01 with staff's recommendations.

Mr. Gussman stated this was not the optimum solution, however the property owner was not obligated to proceed with the project. The Board was required to base their decision on the application as presented.

Mr. Duffy stated he was opposed to the project because he felt the entire bank of the property should be done, and not just a portion of it. He also stated he felt the correction as proposed could and would cause more damage than correct the existing damage. He further stated that he felt the contractor was taking advantage of the property owners, psychologically, as he was telling them that the project had to be done right now because he had access from the adjacent property.

The motion was approved by a 3-1 vote: AYES: Mr. Lindsey, Mr. Hughes, Mr. Gussman (3). NAYS: Mr. Duffy (1).

3. W-3-01: Steve Thacker - 5048 River Drive

Mr. Michael Woolson presented the case stating that Mr. Wilber Jordan, Waterfront Piers and Bulkheads, on behalf of the owner, Mr. Steve Thacker, had applied for an after-the-fact wetlands permit to remove an existing bulkhead, replace it with 137 feet of riprap revetment to protect the shoreline and to build a 16 foot by 45 foot double boat lift. The property is further identified as parcel (7-5) found on the James City County Real Estate Tax Map (9-3). The project site in question is located on Diascund Creek, a tributary to the Chickahominy River.

Mr. Jordan submitted the appropriate application form to VMRC on March 1, 2001. It was determined on March 12, 2001, by Environmental Division staff that a wetlands permit was not needed because the low tide on Diascund Creek did not expose the bottom of the existing bulkhead. On March 15, 2001, the Environmental Division notified VMRC that the project did not involve wetlands and that the applicant would be advised of this fact. On August 29, 2001, during a random inspection of the project site, Environmental Division staff determined that a wetland violation had occurred because the submitted plan was not being followed. Mr. Thacker was issued a Notice of Violation on October 2, 2001, to cease all work related to the project. Mr. Jordan submitted a revised permit application on October 18, 2001, for all unauthorized work that had been done to date and to complete the project.

Environmental Division staff revisited the site on October 19, 2001, along with representatives from VMRC and VIMS to discuss the new project scope and potential impacts. Discussion centered on the extent of the wetland impact. Ms. Pam Mason from VIMS stated that it was her professional opinion there were no wetlands impacts associated with the addition of the riprap revetment and removal of the existing bulkhead. She also stated that the current situation constituted a major violation of the permit process and that there were significant areas of RPA impacts. The Board is concurrently considering an appropriate remedy to the wetlands violation involved with this after-the-fact permit application.

It is the staff's recommendation that the Board approve this application, with the following conditions:

1. The permit issuance shall not be contingent upon reaching settlement of the wetlands violation issue. The project should be allowed to continue to completion to achieve soil and slope stabilization
2. The landward areas of the Resource Protection Area (RPA) buffer that have been impacted will require restoration with native vegetation consisting of trees, shrubs and ground cover. An RPA restoration plan with surety shall be submitted and approved by the Environmental Division prior to the preconstruction meeting.
3. A preconstruction meeting will be held on-site prior to further construction.
4. All core stone shall be Class I and all armor stone riprap used shall be Class 2. The riprap shall be underlain with filter fabric.
5. The filter fabric shall be inspected prior to any additional backfill.
6. The permit shall expire November 14, 2002.

7. 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 expiration date.

As the Board reviewed pictures taken of the site a short discussion was held relating to the revised drawings.

It was noted that at this point in the meeting the Board was considering the after-the-fact permit and not the wetlands violation.

Mr. Lindsey opened the public hearing.

A. Mr. Wilber Jordan and Mr. Donald Hicks, Waterfront Piers and Bulkheads, together addressed the Board. In response to a question from the Board they stated they had been in business for 15 years. They explained to the Board how they were going to complete the project. They stated because of the depth of the water at that location the old bulkhead needed to be removed and replaced with riprap.

B. Mr. Steve Thacker, owner, addressed the Board. He explained that he had worked with VMRC and had their approval for this project. He said he wanted to protect his bank and requested the Board approve his permit with staff's recommendations.

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

Mr. Gussman stated that he felt the proposal was good and that the work needed to be started without delay.

Mr. Hughes made a motion to approve the after-the fact permit, case W-03-01 with staff's recommendations.

The motion was approved with a 4-0 vote.

The Board took a short recess at 8:20 and returned back to open session at 8:25.

Mr. Woolson explained that there were various violations in this matter. Mr. Thacker had signed a Civil Charge Agreement in which he was willing to pay \$4,000 as a civil penalty fee. This fee was acceptable to staff, as well as to Mr. Thacker. The Board could accept or deny the Agreement, but they could not modify it. If it was not acceptable, then the matter could go to civil court.

Mr. Dohman then explained the civil penalty process and what the maximum allowable fines were for the various violations.

In response to a question by other Board members, Mr. Gussman, who works for the Department of Environmental Quality, stated that he felt the \$4,000 was an appropriate civil charge.

Mr. Duffy made a motion to approve the Wetlands Violation and Civil Charge Agreement in the amount of \$4,000.

The motion was approved with a 4-0 vote.

#### **E. MATTERS OF SPECIAL PRIVILEGE**

Mr. Woolson informed the Board that two violations had been discovered and no records could be found indicating the work was permitted. The first case was a violation where a homeowner bought the property after the violation was done. The second case the current owner did the violation. Both cases involve residential property. Mr. Woolson asked the Board to give him guidance on how they wanted to pursue these violations.

Mr. Dohman told the Board that he felt it would be very difficult for buyers to know if there was an environmental violation on the property. Land records would not show that type of information. In court you must prove that they knew of the violation and that would be very difficult to prove.

After a short discussion the Board requested staff provide details of each case and present them at the next Board meeting. They would consider each case separately.

Mr. Hughes inquired if the outfall permit had been received for the Landfall subdivision.

Mr. Woolson said it had not been received and he would check on its status.

The Board stated they had concerns that lots could be sold in Landfall prior to this matter being resolved.

**ELECTION OF OFFICERS FOR YEAR 2002**

Mr. Hughes moved that Henry Lindsey be re-appointed as Chairman.

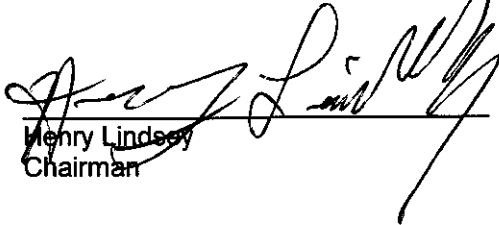
Mr. Lindsey moved that Mr. Hughes be re-appointed as Vice-Chairman.


The motions were approved with a 4-0 vote.

The present officers will serve in their same positions for the Year 2002.

**F. ADJOURNMENT**

The meeting was adjourned at 9:00 PM.

  
Henry Lindsey  
Chairman

  
Darryl E. Cook  
Secretary