

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD**  
**MINUTES**  
**August 11, 2004 - 7:00 PM**

- A. ROLL CALL** **ABSENT**  
Henry Lindsey David Gussman  
William Apperson  
Philip Duffy  
Larry Waltrip

**OTHERS PRESENT**  
Environmental Staff

- B. MINUTES** – The July 14, 2004 minutes were approved as presented.
- C. PUBLIC HEARINGS**

1. WQIA-008-04: Michelle Point

William Cain presented the case as follows:

**Summary Facts**

Applicant	Mr. Charles Newbaker, L.S. of C. E. Newbaker Inc.
Land Owner	Michelle Point, LLC
Location	9001 Barhamsville Road
Tax Map	(12-1)(1-3)
Staff Contact	William Cain, Phone: 253-6702

**Project Description**

Mr. Charles Newbaker, L.S. of C. E. Newbaker Inc. had applied on behalf of Michelle Point, LLC, for an exception to the Chesapeake Bay Preservation ordinance for impacts associated with the Michelle Point project. The project is generally located on the western side of Route 30 across from Stonehouse Industrial Park, just north of the Burnham Woods subdivision.

For the purposes of constructing a required stormwater management facility and sanitary sewer gravity main and pumping station, Michelle Point is proposing 2.56 acres of total encroachment into the resource protection area (RPA).

**History**

Michelle Point, LLC submitted a master plan to the Planning Division in May 2004. DRC approved the master plan for the development at the July 7<sup>th</sup> meeting, after the plan preparer and applicant addressed all concerns pertaining to perennial stream locations, stormwater management requirements, and erosion and sediment control objectives which stemmed from the May 21<sup>st</sup> DRC meeting where the plan was originally deferred. One of the conditions for approval of the master plan was that the site would accept and treat stormwater in two stormwater management ponds located onsite.

A site specific perennial stream evaluation revealed that two perennial streams existed on the parcel, and because the plan for this project was not submitted prior January 1, 2004, the project is not grandfathered from the revised Chesapeake Bay Preservation Ordinance. Because of this, a Resource Protection Area (RPA) buffer of 100 feet has been imposed on either side of the streams and contiguous wetlands. Because of these site restrictions, one of the stormwater management facilities, which will handle the majority of stormwater runoff for the site, has been proposed for installation in the headwaters of the eastern most perennial stream. The construction of this basin will permanently inundate approximately 350 linear feet the associated perennial stream and effectively relocate the RPA feature to the BMP outfall.

Under Section 23-11 of the new Ordinance, it states that a water quality impact assessment shall be required for any proposed land disturbance resulting from development or redevelopment within RPAs. Michelle Point, LLC has

submitted this assessment for their project. The issue before the Chesapeake Bay Board is the impacts (clearing and grading) associated with the construction of sanitary sewer items and a stormwater management facility.

### **Water Quality Impact Assessment**

The total impacts to the RPA for this project are approximately 2.56 acres and encompass the construction of a sanitary sewer pumping station and gravity main, and a stormwater management facility. Impacts associated with the installation of the sanitary sewer pumping station (0.02 acre) will be an administrative review and are not covered under the Board exception approval. Impacts associated with the installation of the sanitary sewer gravity main will cover approximately 0.10 acres, while impacts associated with the construction of a stormwater management facility will cover 2.44 acres. Therefore, the total RPA impact before the Board for approval is 2.54 acres. To mitigate for environmental impacts, the project will use the following: erosion control type 3 blanket matting to stabilize all slopes facing the RPA and those associated with the construction of the stormwater management facilities; stilling basins, to reduce outfall velocities from the stormwater management facilities, will be constructed at the outfalls of both BMPs; RPA restoration, in accordance with the 2003 Chesapeake Bay Local Assistance Department guidelines, will be conducted in all permissible areas around the BMP embankment located on the eastern portion of the site; additional treatment of 10.6 acres of currently uncontrolled offsite stormwater will be incorporated into the design of the onsite stormwater management facilities; additional plantings to increase BMP efficiencies will be installed on the eastern most BMP; and a conservation seed mix will be used on the downstream sides of all BMP embankments.

C. E. Newbaker Inc. has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. 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 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). Staff recommends that the Chesapeake Bay Board approve the WQIA as it pertains to this project only. Furthermore, all other recommendations listed therein are to be incorporated into the site plans for the project, which must then be approved by the Environmental Division. This exception request approval shall become null and void if construction has not begun by August 11, 2005.

Mr. Lindsey opened the public hearing.

A. Mr. Charles Newbaker, C. E. Newbaker Inc. and applicant, assured the Board that the project was designed for minimal impacts to the RPA as possible. He further stated that he had a number of meetings with County staff who assisted them and he did appreciate all their efforts.

B. Mr. Jay Epstein, owner/developer for Michelle Point LLC, responded to a question from Mr. Duffy relating to proffers. He stated that school proffers were not offered, however he was proffering some affordable housing.

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

Mr. Apperson made a motion to approve case WQIA-008-04 with staff's recommendations.

The motion was approved by a 4-0 vote.

**D. BOARD CONSIDERATIONS –**

1. WQIA-006-04: Jamestown Archaearium Building

Darryl Cook presented the case as follows:

**Summary Facts**

Applicant Mr. Timothy Hogan, P.E. of VHB, Inc.

Land Owner Association for the Preservation of Virginia Antiquities

Location 1365 Colonial Parkway

Tax Map (54-2)(1-1)

Staff Contact Darryl Cook, Phone: 253-6673

**Project Description**

Mr. Timothy Hogan of VHB, Inc has applied, on behalf of the Association for the Preservation of Virginia Antiquities, for an exception to the Chesapeake Bay Preservation ordinance for Resource Protection Area (RPA) impacts associated with the Jamestown Archaearium project. The project is generally located on the westernmost point of Jamestown Island and west of the recently approved Collections Building.

The Jamestown Archaearium is proposed to encroach into the Resource Protection Area (RPA) by approximately 3350 square feet (0.08 acres) for a portion of the stormwater management facility, buffer restoration activities, and walkways associated with the project.

**History**

The National Park Service (NPS) and the Association for the Preservation of Virginia Antiquities (APVA) have initiated “The Jamestown Project” to jointly research, protect and present to the public the resources at Jamestown Island. The APVA is proposing to construct the Archaearium, an archeological exhibit facility, as part of this initiative. Immediately east and adjacent to the proposed Archaearium is another facility, the Collections Building that is attached to the Yeardeley House, which is another component of the “Project.” The Collections Building also had RPA impacts that were approved administratively last year.

As Jamestown Island is situated in the James River (a perennial waterbody), the perimeter of the island is protected by a 100’ RPA Buffer. In addition, there are perennial waterbodies (tidal wetlands) internal to the island, which require buffers. The Archaearium project is adjacent to both the river and tidal wetland areas with impacts to the RPA buffers for the some of the project improvements.

Under Section 23-11 of the new Ordinance, a water quality impact assessment must be submitted for any proposed land disturbing activity resulting from development or redevelopment within RPAs. The Association for the Preservation of Virginia Antiquities has submitted an assessment for this project. The issue before the Chesapeake Bay Board is the 1900 square foot RPA impact (clearing and grading) associated with the construction of a portion of the stormwater management facility. The impacts to the RPA for the gravel walkway (1450 square feet) will be handled administratively.

**Water Quality Impact Assessment**

The total impacts to the RPA for this project are approximately 0.08 acres and encompass the construction of a gravel walkway and stormwater management facility. The proposed stormwater management facility will be in the form of a bioretention area, a relatively new technology, designed to mimic the adjacent marshland helping to filter stormwater and decrease the stormwater pollution potential resulting from such development. Furthermore, they propose to enhance the existing RPA buffer in a 10,000 square foot area by removing debris that has collected in these areas over time, and by planting native vegetation to restore impacted areas and increase its filtering capability.

VHB, Inc. has submitted the required information as outlined in the *James City County Water Quality Impact Assessment Guidelines*. 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) of the Chesapeake Bay Ordinance:

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 a 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). Staff recommends that the Chesapeake Bay Board approve the WQIA as it pertains to this project only. Furthermore, all recommendations listed therein are to be incorporated into the site plans for the project, which then must be approved by the Environmental Division. This exception request approval shall become null and void if construction has not begun by July 14, 2005.

Mr. Lindsey asked if anyone from the audience wanted to speak on the issue.

A. Mr. Tim Hogan, VHB, Inc., asked the Board to approve the plan before them as the worst case scenario relating to maximum RPA impacts. He then went on to say that there was a good possibility that the building would be moved outside of the RPA and there would be no impacts. However, by the Board approving the project as presented the project would not be held up due to fewer impacts.

B. Ms. Jane Jacobs, Carlton Abbott and Partners, responded to a question from Mr. Duffy regarding owner representation. She stated a representative from the National Park Service was not present because the Association for the Preservation of Virginia Antiquities owned the property. She stated they were partners, but had separate holdings. She also informed the Board that Dr. Kelso had deemed the new location "clean" to build upon, meaning an archaeological study had been completed and the site was approved for construction.

Mr. Cook stated that a new plan would be submitted to staff reflecting the correct building site.

No one else wished to speak on the issue.

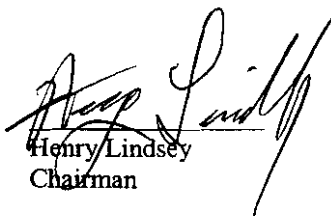
Mr. Waltrip made a motion to approve case WQIA-006-04 with staff's recommendations.

The motion was approved by a 4-0 vote.

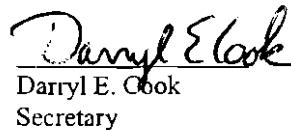
**E. MATTERS OF SPECIAL PRIVILEGE - None**

**F. ADJOURNMENT**

The meeting was adjourned at 7:51 PM.



Henry Lindsey  
Chairman



Darryl E. Cook  
Secretary