

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
MARCH 8, 2006 - 7:00 PM**

A. ROLL CALL

Henry Lindsey
David Gussman
John Hughes
Larry Waltrip

ABSENT

William Apperson

OTHERS PRESENT

County Staff

B. MINUTES – The February 8, 2006 minutes were approved as presented.

C. PUBLIC HEARINGS

1. CBE06-002 - Gregory and Lynne Proios – 2685 Jockey's Neck Trail

Mr. Pat Menichino presented the case as follows:

Project Description:

Gregory and Lynne Proios, 2685 Jockeys Neck Trail had applied for an exception to the Chesapeake Bay Preservation Ordinance for Resource Protection Area (RPA) impacts associated with the construction of a 590 sq.ft. (sq.ft.), sand set, brick paver patio adjacent to their existing residence on the above referenced lot in The Vineyards. The residence is located adjacent to Ajacan Lake.

Background:

The residence was constructed in 2002 after adoption of the Chesapeake Bay Preservation Ordinance but there was no RPA present on the property when the structure was built. However, 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 field evaluation was conducted for Ajacan Lake and it was determined that the lake is a water body with perennial flow requiring that a 100 foot RPA buffer be established around the lake. This 100 ft. RPA buffer encompasses virtually all the rear yard on the property.

According to provisions of the Ordinance; when application of the buffer would result in the loss of a buildable area on a lot or parcel recorded between August 6, 1990, and January 1, 2004, encroachments into the buffer may be allowed through an administrative process in accordance with the following criteria:

1. Encroachments into the buffer shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.
2. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel; and
3. The encroachment may not extend into the seaward 50 feet of the buffer area.
4. The lot or parcel was created as a result of a legal process in conformity with the county's subdivision regulations.

The issue for the Chesapeake Bay Board's consideration is the placement of a 590 sq.ft. brick paver patio and sidewalk in the RPA. The *Resource Protection Area: Buffer Area Encroachments* guidance document adopted by the state Division of Chesapeake Bay Local Assistance on September 16, 2002, states on page 5 that "items not considered part of a principal structure include pools, gazebos, patios, free-standing decks, garages, or storage sheds, etc." Therefore, the patio could not be approved administratively and the applicants have chosen to request an exception from the Board.

Water Quality Impact Assessment:

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 a WQIA for this project. The mitigation plan contained within the WQIA offsets the proposed impervious cover impacts to the RPA buffer for the patio (590 sq.ft).

The WQIA proposes to mitigate for the impacts to the RPA by planting 1 native tree, 2 native understory trees, and 35 native shrubs in the RPA. This vegetation will be located to the rear and northwest of the residence adjacent to the proposed patio to help filter nonpoint source pollution. This mitigation plan exceeds the typical mitigation requirements by planting one tree or three shrubs for each 100 sq.ft. of impervious cover established.

The Proios have 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 does not recommend approval of the exception as it involves the creation of an impervious, accessory structure or use in the RPA. Both the Ordinance and Staff considers the brick paver as an impervious surface. Staff has not allowed the creation of accessory structures in the RPA in the past. However, the Board did approve construction of similar brick paver patios in Ford's Colony, at 153 John Pott Drive, on May 11, 2005 and at The Vineyards Clubhouse, July 13, 2005.

If the Board approves the exception, the proposed mitigation plan is in accordance with the standard mitigation requirements and would be acceptable for the proposed use. If approved, it should be conditioned on the following:

1. Full implementation of the landscape plan submitted with the WQIA
2. Implementation would be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3)d. and 23-17(c) where installation of the plant material is required prior to the certificate of occupancy or through a surety satisfactory to the county attorney.
3. The patio should be constructed using a non-interlocking paver (a floating paver system). Information on the specific paver to be used needs to be submitted to the Environmental Division prior to beginning work.
4. This exception request approval shall become null and void if construction has not begun by March 8, 2007.

Mr. Hughes asked about the location of the irrigation system pump line.

Mr. Menichino stated that a Board decision was not required for the irrigation system.

Mr. Hughes opened the public hearing.

Mr. and Mrs. Proios, the applicants, approached the Board to answer questions.

Mr. Lindsey asked if the patio could be moved entirely out of the 50 ft buffer.

Mr. Proios stated that they would be willing to reshape the patio.

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

Mr. Gussman made a motion to grant the exception with Staff recommendations and reshaping the patio to not encroach into the 50 ft buffer.

The motion to grant the exception was approved by a 4-0 vote.

At this point in the meeting, due to the anticipated length of the Marywood case, the Board decided to address the Board Considerations and then returned to the Public Hearings.

D. BOARD CONSIDERATIONS.

1. CBV05-011 - Jesse M. Huff – 2929 Leatherleaf Drive

Mr. Pat Menichino presented the case as follows:

This case was deferred on Feb 8, 2006. This is the original Staff report.

On December 16, 2005, Mr. Jesse M. Huff, 2929 Leather Leaf Drive, was issued a Chesapeake Bay Ordinance Notice of Violation (NOV) by Division Staff. The NOV was issued because Mr. Huff had initiated development and construction of a retaining wall including the placement of fill, within an area of his property identified as a Resource Protection Area (RPA) buffer. The NOV directed Mr. Huff to remove the fill and retaining wall from within the RPA buffer and to stabilize the disturbed areas. Mr. Huff filed an appeal to the Board so that he can leave the retaining wall and fill in place.

The James City County Chesapeake Bay Preservation Ordinance, Sec. 23-7, prohibits development within an RPA without prior approval from the Manager. The Environmental Division has no record of Mr. Huff contacting Staff or the Manager, in an effort to obtain prior approval for the proposed development. In addition the proposed development activity (a retaining wall and related fill) constitutes an accessory structure and the Manager may not grant an exception for this activity through an administrative process.

The lot was recorded in 1997 after adoption of the Chesapeake Bay Preservation Ordinance but there was no RPA present on the lot at recordation or when the residence was built in 1998. However, 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 field evaluation was conducted for the stream and wetlands as part of the building permit process for 2939 Leatherleaf Drive, which is a property located slightly upstream of Mr. Huff. It was determined that the stream is a water body with perennial flow requiring that a 100 foot RPA buffer be established adjacent to the stream and wetlands

The residence located on the subject property was approved for construction in 1998. Mr. Huff purchased the property in 2003. A review of the 1998 building permit application information clearly shows the proposed location of the residence along with the limits of clearing and grading. Staff has no evidence that would indicate that a retaining wall existed on the subject property, at the same location of the wall presently under construction, prior to January 1, 2004.

Staff has met with Mr. Huff several times, discussed the violation, Ordinance requirements, possible remedies, and provided Mr. Huff with opportunities to provide Staff with additional information in support of his request for an exception. Staff has determined that the retaining wall and filling operation presently under construction is located within the channel ward 50' RPA buffer component. Staff believes that the location of the wall and fill constitute an additional encroachment into the RPA buffer. Staff also believes that directing Mr. Huff to remove the retaining wall, all fill, and to require the restoration of the buffer, is the appropriate regulatory response and is consistent with Ordinance.

It is Staff's recommendation, that the Board evaluates the appeal, and then looks to the following section of the Chesapeake Bay Ordinance for guidance in this matter:

Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance. The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity;
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

If the Board votes in favor of the appeal then a mitigation plan in accordance with the standard mitigation requirements should be required. If approved, it should be conditioned on the following:

1. The Owner obtaining all necessary building permits and approvals from other regulatory agencies prior to the continuance of work.
2. Submission of a WQIA, along with an acceptable mitigation plan for the proposed RPA encroachment impacts prior to the continuance of work.
3. If approved the mitigation plan would be guaranteed through the provisions of the Ordinance contained in Sections 23-10(3)d. and 23-17(c) where installation of the plant material is required prior to the certificate of occupancy or through a surety satisfactory to the county attorney.
4. The Owner shall agree to meet all of the requirements set forth by the Board and the Division.

Mr. Lindsey and Mr. Hughes asked if Staff had received any information about a pre-existing retaining wall and if any additional work had been done that was not reflected in the provided photos.

Mr. Menichino stated that no additional information had been received and that work had stopped on the project.

Mr. Hughes asked if the timbers were an approved method for constructing a retaining wall.

Mr. Menichino stated that the construction method was not in question only its location in the RPA buffer.

Mr. Gussman asked if a building permit was required for this retaining wall.

Mr. Menichino stated that it was.

Mr. Waltrip asked if any type of permits had been obtained by Mr. Huff.

Mr. Menichino stated that Mr. Huff had only obtained approval from the Stonehouse Home Owners Association (SHOA), for a stone retaining wall in a different location than the wall currently under construction.

Mr. Waltrip asked if the impact to the buffer would be greater removing the wall instead of completing it.

Mr. Menichino stated that currently there was approximately 1100 sq.ft. of impact on the 50 ft RPA buffer and completion of the proposed wall would increase the impact.

Mr. Hughes asked if there were any erosion and sediment controls in place.

Mr. Menichino stated that silt fence had been installed.

Mr. Jesse Huff, the appellant, approached the Board and presented copies of his plan for the retaining wall.

Mr. Lindsey asked Mr. Huff why he was providing this information at the last minute and why he had not applied for a permit.

Mr. Huff stated that he received a registered letter asking him to provide information and this was the plan he was using to build the wall. He stated that after purchasing the home, he noticed the erosion of the driveway and the retaining wall behind the driveway. He talked to the SHOA and thought that he only needed their approval to replace the wall and was not aware of the RPA on his property or the need for additional permits.

Mr. Hughes asked Mr. Huff if the SHOA application contained information about obtaining permits from the County.

Mr. Huff said he could not recall.

Mr. Hughes asked what happened to the proposed stone wall.

Mr. Huff stated that he felt the stone would not effectively stop the erosion and he received verbal approval from the SHOA to use the cross ties instead.

Mr. Gussman asked who did the design and labor.

Mr. Huff said that he designed the retaining wall based on the plan he downloaded from the internet and other walls in the neighborhood. He said he was doing the work himself with the help of friends, on weekends and evenings.

Mr. Lindsey said he believed the Ordinance stated that the Board was not to give one applicant an advantage over another.

Mr. Menichino repeated the conditions for denying an appeal from the Appeals section of the Ordinance.

Mr. Hughes stated, and the Assistant County Attorney agreed, that all three of these conditions must be found.

Mr. Hughes asked what the next step would be, if the Board denied the appeal.

Mr. Menichino stated that the administrative order would stand and Mr. Huff would be required to remove the fill and retaining wall from within the RPA buffer and to stabilize the disturbed areas.

The Assistant County Attorney added that Mr. Huff could appeal the decision to the Circuit Court of James City County.

Mr. Huff stated that his entire house was in the RPA and he needed to do something because of the erosion and the damage to his foundation.

All of the Board members agreed that Mr. Huff needed to do something to protect his property, but that he also needed to follow the proper procedures and obtain the proper permits.

Mr. Waltrip told Mr. Huff that he had to take responsibility for this violation and could not put the burden on the Board to correct this situation.

Mr. Gussman stated that the wall and fill should be removed because of its encroachment into the 50 foot RPA buffer. He further stated that an engineer or landscaper should have been consulted to find a better solution.

Mr. Lindsey made a motion that the Board deny this appeal and uphold the Staff decision to have the fill and wall removed. He added that Mr. Huff should then follow the proper procedures by consulting with the County and applying for the necessary permits and waivers.

Mr. Huff stated that he thought an exception could be made because he was replacing an existing structure.

Mr. Hughes stated that the Board had no way of knowing if the structure was pre-existing because Mr. Huff had not applied for a permit, which would have given the County an opportunity to review the proposed wall and site. He stated that the Staff decision was an equitable one.

The motion to deny the appeal was approved by a 4-0 vote.

C. PUBLIC HEARINGS - CONTINUED

2. CBE05-068/WQIA-010-04 - AES Consulting Engineers/Centex Homes – Marywood Subdivision

Mr. William Cain presented the case as follows:

Project Description:

Mr. V. Marc Bennett, P.E. of AES Consulting Engineers, Inc. has applied on behalf of Centex Homes, for an exception to the Chesapeake Bay Preservation Ordinance for impacts associated with the Marywood project. The project is generally located to the north of Kingswood and Druid Hills subdivisions, to the south of Hickory Sign Post Road, and to the west of the Riverside Medical Center and La Fontaine Condominiums.

For the purposes of constructing the necessary stormwater management facilities, sanitary sewer gravity main, and road infrastructure, Centex Homes is proposing 4.40 acres of total encroachment into the Resource Protection Area (RPA).

History:

Centex Homes submitted the proposed plan of development for the Marywood development to the Planning Division in September 2004. The James City County Planning Commission approved the master plan for the development at their December 5, 2005 meeting, after the plan preparer and applicant addressed all concerns pertaining to perennial stream locations, stormwater management requirements, erosion and sediment control objectives, and planning issues which stemmed from previous DRC meetings where the plan was originally deferred.

Environmental Division conditions for approval of the master plan consisted primarily of lessening of impacts to environmentally sensitive areas. Plan modifications provided to address this requirement consisted of steeper cut and fill slopes, the relocation of the southernmost stormwater management basin, and a net decrease in the number of proposed lots.

A site-specific perennial stream evaluation revealed that multiple perennial streams existed on the parcel, all of which outfall to Lake Powell and ultimately to the James River through the Mill Creek tributary. As this plan of development was submitted after January 1, 2004, the project is not grandfathered from the revised Chesapeake Bay Preservation Ordinance and as a result, a Resource Protection Area (RPA) buffer of 100 ft has been imposed on both sides of the streams and contiguous wetlands. Due to site restrictions resulting from the RPA requirements, 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 perennial stream. The location for construction of this basin as proposed will permanently inundate approximately 550+/- linear feet of the associated perennial stream and effectively relocate the RPA feature to the outfall of the proposed BMP.

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. AES Consulting Engineers has submitted the assessment for the associated project. The issues before the Chesapeake Bay Board are the resulting impacts (clearing and grading) associated with an RPA utility crossing, and installation of a Best Management Practice dam embankment and discharge pipe in a perennial stream segment.

Water Quality Impact Assessment:

The impacts to the RPA buffer and RPA features, resulting from the current plan of development, requiring either an administrative or board action are 4.40 acres. These impacts are associated with the construction of two road crossings (Impact #1A and B), an embankment for a stormwater management facility (Impact #2), the outfall of a stormwater conveyance system (Impact #3), and a utility bridge (Impact #4) and have been broken down in the associated assessment accordingly. Encroachments associated with "Impact #1A and B" and "Impact #3," as stated in the assessment, require only an administrative action where those associated with "Impact #2" and "Impact #4" will require a Board action. With this being the case, the total impacts to components of the RPA requiring approval by the board at this time is 3.22 acres. To mitigate for these impacts, the following will be implemented into the associated plan of development:

Erosion control type 3-blanket matting will be applied to all cut and fill slopes throughout the site;

- Stilling basins to reduce turbulence at stormwater outfalls and downstream erosion will be provided at all BMP outfalls and the outfalls of stormwater conveyance systems not immediately discharging to a stormwater management basin;
- RPA restoration performed in accordance with the 2003 Chesapeake Bay Local Assistance Department Riparian Buffer Manual guidelines for all disturbed areas upland, and in proximity to, the RPA exclusive of BMP embankments and/or stormwater or utility easements;
- Treatment of approximately 39.16 acres of stormwater runoff, the majority of which is currently uncontrolled discharge from the neighboring Kingswood development;
- Additional plantings to increase BMP efficiency will be provided with BMP #1 including plantings performed in accordance with the 2003 Chesapeake Bay Local Assistance Department Riparian Buffer Manual guidelines for areas between the 100-Year water surface elevation of the pond and the adjoining property lines and roadway rights-of-way;
- Conservation seed mix will be used on the slopes of all BMP embankments.
- A perpetual 15' principal building set back from the limits of the RPA will be applied to all lots.

A complete description of the mitigation measures is presented on pages 15 to 18 of the Water Quality Impact Assessment for the Marywood Subdivision.

AES acting on behalf of Centex Homes, 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 does find 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) of the James City County Code. Staff therefore recommends that the Chesapeake Bay Board approve the WQIA as it pertains to the Marywood project only. Furthermore, all other recommendations listed therein are to be incorporated into the site plans for the project, which must then receive final approval by the Environmental Division. This exception request approval shall become null and void if construction has not begun by May 8, 2007. 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 any study had been done or information provided about how the increased runoff from this project, would impact Lake Powell, the James River and the Chesapeake Bay. He felt the Board should be concerned with this impact as well as the indicated Impacts #2 and #4.

Mr. Cain stated that the Board should direct this question to the applicant. He did say that while the volume of runoff into the lake would increase, the flow rate would decrease.

Mr. Hughes asked how the Kingswood subdivision stormwater runoff was now being handled.

Mr. Cain stated that it was currently channeling through the proposed Marywood site into an unnamed tributary and then into Lake Powell. He further stated that with the proposed plan, the runoff would be handled by the largest proposed BMP #1 and that the channels and tributary should eventually re-vegetate.

Mr. Marc Bennett, AES Consulting Engineers and agent for Centex Homes, addressed the Board confirming Mr. Cain's comments that the engineering study determined that the flow rates would not exceed current rates. He stated that the water quality would be provided by natural vegetation, retaining of buffers and the BMP complex and that the proposed Stormwater Management Plan achieved the full 10 BMP points required by the County, for water quality.

Mr. Waltrip asked if the proposed BMPs would hold the runoff during a heavy rain.

Mr. Bennett stated that the main BMP #1 was positioned to contain the runoff for both the Marywood and the Kingswood subdivisions, and to prevent back flooding onto adjacent properties in a 100-year storm event.

Mr. Lindsey stated his concern for the fragile state of the Lake Powell Dam and felt the Board should also be concerned about how the increased volume of runoff would affect this structure. In addition, he did not want to approve anything that might adversely affect the privately owned Lake Powell and asked if the increased volume of runoff would increase the sedimentation at the upper end of the lake.

Mr. Bob Kerr, with Kerr Environmental and environmental consultant for the Marywood project, stated that an increase of sedimentation was possible but that typically stormwater leaving the BMP had less sediment, particularly in this case where the Kingswood subdivision runoff was currently uncontrolled. He further stated that Minimum Standard 19 in the Erosion and Sediment Control Regulations was set up to minimize erosion and thus sedimentation.

Mr. Cain stated that based on his review of the plan, the amount of pollutants, nutrients and sediment flow into Lake Powell would be decreased.

Mr. Gussman asked why the largest BMP #1 had to be located in the RPA buffer. He wanted to know if some of the proposed lots could be eliminated in order to move the BMP farther upstream or if multiple, smaller BMPs could be used to completely avoid the RPA.

Mr. Cain stated that if this was done they would not be able to capture the runoff from the Kingswood subdivision.

Mr. Kerr and Mr. Bennett stated that the BMP could not be moved upstream because they did not own the land and if pushed farther upstream, it could back flood the adjoining properties. They had evaluated the alternative use of multiple, smaller BMPs with the Army Corp of Engineers (ACOE), the Department of Environmental Quality (DEQ) and James City County Staff and it was determined that the submitted proposal was the best plan for capturing the off site drainage. In addition, they could not achieve the county's required 10 BMP points without impacting the RPA.

The Board had no more questions for the applicant.

Mr. Hughes opened the public hearing.

A. Tony Opperman, 108 Spring Rd, spoke in opposition to the case because of the location of the BMP in the RPA. He asked that the Board deny the exception or defer the decision until the applicant obtained permits from the ACOE and the DEQ.

Mr. Gussman asked if the 401 certification had been issued by the ACOE and if the public comment period had started.

Mr. Kerr stated that the ACOE (federal) public comment period was over but that the DEQ (state) public comment period would not start until they received a draft permit.

Mr. Darryl Cook addressed the Board and stated that regardless of the Boards decision, the County could not issue a Land Disturbing Permit until the state and federal permits were obtained.

B. Gail Penn, 107 Braddock Rd, spoke in opposition to the case because of the encroachment into the RPA.

C. Shereen Hughes, 103 Holly Rd, spoke in opposition to the case. She advised the Board that she was on the Planning Commission but had recused herself from voting on this case because of her involvement as a private citizen and her environmental concerns about this project. She stated that two weeks ago the DEQ informed her that the permit application was incomplete. She felt the Board should not consider the RPA exception until the DEQ permit was complete. She also stated her concern about the degradation of wetlands from the runoff in the northern portion of the proposed property where it would discharge into the perennial stream that is a tributary to Mill Creek. She added that if the Board decided to approve this exception, it should be with the condition that they monitor this perennial stream before, during and after construction.

D. Charles Raisner, 118 Spring Rd, spoke in opposition to the case because of the impact on Lake Powell.

E. Ray Bearfield, 103 Druid Dr, spoke in opposition to the case because of the encroachment into the RPA. He stated that it seemed as if the County was trying to remedy the runoff they had previously allowed in the existing subdivisions.

F. Elizabeth Bush, owner of 5009 John Tyler Hwy, spoke in opposition to the case because of the possible erosion on her property.

G. Bryan Watts, 109 Braddock Rd, spoke in opposition to the case. He felt that the proposed BMPs would not handle the additional runoff. He also believed state and federal permits should be in place before the RPA exception is considered.

H. Michael Parlante, 115 Spring Rd, spoke in opposition to the case because of the encroachment into the RPA.

I. Jane Lord, 3 Brandon Circle, spoke in opposition to the case because of the impact on Lake Powell and the Lake Powell Dam.

Mr. Bennett and Mr. Kerr responded to these comments stating that the application to the DEQ was incomplete because of some minor questions that had nothing to do with placement of the BMP. They further stated that permits from the state and federal agencies were not required prior to receiving the approval from the Chesapeake Bay Board for encroachment into the RPA.

Mr. Gussman agreed that the Board did not have to wait for the decision of the DEQ or ACOE. These agencies had different requirements that had nothing to do with the RPA. He stated that the decision of the Board should be based on allowing 4.4 acres of impact with the construction of a BMP in the RPA. He also stated that if the BMP could not economically be moved to the uplands then perhaps the applicant should not be building in this area. He wanted to consider the benefit of capturing the off site stormwater but was not convinced that this was the only solution.

Mr. Bennett clarified that BMP #1 was 1.8 acres of impact. The 4.4 acres of impact to the RPA was cumulative for the entire project. He added that the Marywood subdivision was 115.3 acres of 100 lots and had a total natural, undisturbed area of 51.9 acres that could be conveyed to a conservation easement.

Mr. Hughes asked if anyone else wished to speak.

J. Roark Mulligan, 105 N Sulgrave Ct, spoke in opposition to the case because of the impact on Lake Powell.

K. Ed Fogler, 105 Anthony Wayne Rd, addressed the Board and Staff and asked who would be responsible for the additional sediment and the resulting impacts to Lake Powell.

Mr. Cain stated that the contractor was responsible during development but because the future sediment in Lake Powell could be from a number of other sources, once this development was stabilized the applicant would no longer be responsible.

L. Mary Lavin, 108 Anthony Wayne Rd, spoke in opposition to the case. She cited problems with the BMPs for Riverside Medical Center and La Fontaine Condominiums and was concerned with who would be responsible for this site after Centex was gone.

M. Anne Mooring, 107 W Kingswood Rd, spoke in opposition to the case because of the location of the BMP in the RPA.

N. Donald Topping, 2245 Lake Powell Rd, representing his father-in-law, Mr. Lee Reed, who is partial owner of Lake Powell, spoke in opposition to the case because of the impact the increased volume of runoff will have on Lake Powell and the Lake Powell Dam.

Mr. Bennett requested that the Board's decision be deferred so he could provide additional information regarding the impact to Lake Powell.

The Board requested legal guidance from Mr. Adam Kinsman, Assistant County Attorney, and asked if the Board was obligated to grant the deferral.

Mr. Kinsman stated that they were not.

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

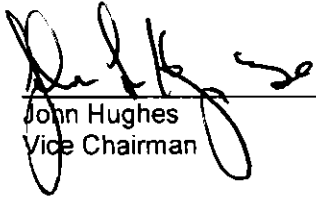
Mr. Gussman stated that there was no reason to defer because the impact on Lake Powell was not under consideration by the Board. He stated that the Board decision should be based on allowing the construction of a BMP in the RPA. He then made a motion to deny the exception based on the location of BMP #1 in the RPA.

The motion to deny the exception was approved by a 3-1-0 vote.
AYE: Gussman, Lindsey, Hughes (3). NAY: Waltrip (1). Abstain: (0)

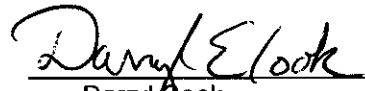
E. MATTERS OF SPECIAL PRIVILEGE – None

G. ADJOURNMENT

The meeting adjourned at 9:20 PM.



John Hughes
Vice Chairman



Darryl Cook
Secretary