

MINUTES
JAMES CITY COUNTY CHESAPEAKE BAY BOARD
REGULAR MEETING
County Government Center, Building F
101 Mounts Bay Road, Williamsburg, Virginia 23185
August 12, 2020
5:00 PM

A. CALL TO ORDER

The Chesapeake Bay Board meeting for August 12, 2020, was called to order.

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. ROLL CALL

Board Members Present:

David Gussman, Chair
William Apperson, Vice Chair
Charles Roadley
Larry Waltrip
Michael O'Brien

Board Members Absent:

Halle Dunn

Other Staff Present:

Toni Small, Director, Stormwater and Resource Protection
Liz Parman, Assistant County Attorney
Michael Woolson, Senior Watershed Planner, Stormwater and Resource Protection
Janice Petty, Stormwater Assistant, Stormwater and Resource Protection

C. MINUTES

1. Minutes from June 10, 2020, Regular Meeting

A motion to Approve the minutes was made by Mr. Gussman. The minutes were approved on a voice vote.

D. PUBLIC HEARINGS

1. Case No. CBPA 20-0053 : 146 Red Oak Landing Road

Mr. Michael Woolson, Senior Watershed Planner, presented the exception request submitted by Mr. Don Newsom, Delightful Gardens Landscape Company (Delightful Gardens), on behalf of Mr. C. Thomas Turbeville, Jr., for encroachments into the Resource Protection Area (RPA) buffer for the construction of a retaining wall located at 146 Red Oak Landing, within the Powhatan Creek watershed. The property is further identified as James City County Tax Map Parcel No. 4730100033. The presentation described the current and proposed site conditions. If the Board approved the request, staff asked that the attached conditions be incorporated into the approval.

The Board deliberated on the pros and cons of this application.

Mr. Gussman inquired if erosion was occurring on-site.

Mr. Woolson replied in one corner, upslope side of the shed, but deferred to the applicant for answer.

Mr. Gussman opened the Public Hearing.

A. Mr. Don Newsom, Delightful Gardens, outlined the project to the Board.

Mr. Roadley inquired about the amount of sediment loss experienced on-site.

A. Mr. Newsom replied that there was some sediment loss because of the steep drop-off in that area.

Mr. Gussman closed the Public Hearing, as no one else wished to speak.

Mr. Apperson made a motion to Adopt the resolution for Chesapeake Bay Board Case No. CBPA 20-0053 at 146 Red Oak Landing.

A motion to Approve with Conditions was made by Mr. Apperson, the motion result was:

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1

AYES: Gussman, Apperson, Roadley, O'Brien, Waltrip

NAYS: None

ABSENT: Dunn

E. BOARD CONSIDERATIONS

1. CBPA 19-0087 : 7612 Uncles Neck

Mr. Michael Woolson presented the extension request requested by Ms. Theresa Whelan for encroachments into the RPA buffer for the grading of the bank for access to the beach and pier on the property located at 7612 Uncles Neck within the Yarmouth Creek watershed.

Mr. Roadley made a motion to grant the resolution for extension of Chesapeake Bay Board Case No. CBPA 19-0087 for 7612 Uncles Neck, extended to August 12, 2021.

A motion to Approve the resolution for extension was made by Mr. Roadley, the motion result was:

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1

AYES: Gussman, Apperson, Roadley, O'Brien, Waltrip

NAYS: None

ABSENT: Dunn

2. Appeal - 4720 Yeardeley Loop

Mr. Michael Woolson presented the appeals. The first appeal was from Mr. Richard Cassell, 4720 Yeardeley Loop, appealing an administrative decision to remove all improvements on the easement property behind his house, replanting the disturbed area, and a one-time payment of a civil charge.

Staff was alerted in April 2020, that there was some unauthorized tree clearing and removal in the Natural Open Space Easement which is homeowners' association (HOA) property, behind

4720 Yeardley Loop. Staff went out and investigated, took some pictures, and sent a Notice of Violation to the HOA. Mr. Cassell was also sent a Notice of Violation.

The Deed for Natural Open Space was recorded October 30, 2008, and was put in place for Stormwater purposes. Condition No. 4 of the easement states that the easement property shall remain in its natural condition with respect to natural leaf litter, understory, and tree canopy vegetation.

Mr. Woolson showed pictures of the violation.

Mr. Roadley inquired if the Open Space Easement was to offset any pollutant load that would be otherwise treated by best management practices (BMPs).

Mr. Woolson replied that in this instance it was used to offset conventional BMPs for that portion of the property.

Mr. Roadley noted that there are two appellants. He inquired if recommendations were for each or total.

Mr. Woolson replied that his recommendations are separate.

Mr. Roadley noted that the total fine in this case could be \$10,000.

A. Mrs. Monika Cassell and Mr. Richard Cassell, 4720 Yeardley Loop, addressed the Board with their concerns asking for an appeal. They are not the owners of the easement property. The Cassell's fence is within three feet of the property line, and where they have grass planted is technically their property. They do not know who cut the trees down.

Mr. Gussman reminded everyone that this is a legal proceeding and it is being recorded.

Mr. Gussman asked if the Cassells cut down any of the trees in the easement. He also inquired if the Cassells had hired anyone to cut down the trees.

A. Mrs. Monika Cassell replied no to both inquires.

Mr. Gussman inquired if the Cassells know who cut down any of the trees. Discussion ensued about children walking the trails, fruit trees planted, and neighbors getting firewood.

B. William Sleeth, III, Esquire, Gordon Rees Scully Mansukhani, LLP, legal counsel to The Pointe Homes Association residential homeowners association for the neighborhood. The HOA notified the County that trees had been cut down.

C. Ms. Margo Zechman, Treasurer of the HOA Board at The Pointe at Jamestown, 4731 Yeardley Loop. The HOA did not contact the neighbors on either side of 4720 Yeardley Loop. She noted trees do come down during storms.

Mr. Roadley inquired concerning the responsible party for a violation on a property.

Mr. Woolson replied that the County always starts with the property owner.

A. Mrs. Monika Cassell and Mr. Richard Cassell responded to remarks. The Cassells provided current pictures to the Board, showing that the picnic table is no longer there. Mrs. Cassell did reach out to Mr. Hamilton, the HOA President and to Ms. Tabitha Clark of Chesapeake Bay Management Inc., (CBM) asking when the last neighborhood inspection had been conducted. Prior to this she understood that there were to be quarterly inspections by

CBM. Ms. Clark informed Mrs. Cassell that the last inspection had been in February 2020.

B. Mr. William Sleeth, III, asked if Ms. Jennifer Smith, the community manager would speak.

D. Ms. Jennifer Smith, work address, 603 Pilot House Drive, Suite 300, Newport News, VA 23606, responded to questions from the Board.

Mr. Roadley inquired if the land was eroding or showing anything detrimental that would contribute to degraded water quality.

Mr. Woolson replied that the loss of canopy cover has prompted herbaceous growth across the course of the summer.

E. Ms. Liz Parham, Assistant County Attorney, described options that the Board could take, including holding either, neither, or both parties responsible. The Board could also modify or add additional conditions and surety.

Mr. O'Brien inquired if the civil penalty would be considered a surety.

E. Liz Parham, replied yes, the penalty can be waived and required as surety instead of a fine, noting whatever conditions were felt appropriate were attached.

Discussion ensued among the Board members.

Mr. Gussman made a motion to grant the Appeal of a Notice of Violation for 4720 Yeardeley Loop.

A motion to Grant the Appeal was made by Mr. Gussman, the motion result was:

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1

AYES: Gussman, Apperson, Roadley, O'Brien, Waltrip

NAYS: None

ABSENT: Dunn

3. Appeal - Natural Open Space, Phase 2B, The Pointe at Jamestown

Mr. Michael Woolson presented the appeal of Mr. William Sleeth, III, on behalf of The Pointe Homes Association, of an administrative decision to remove all improvements in the easement property behind 4720 Yeardeley Loop, replanting the disturbed area, and a one-time payment of a civil charge.

Mr. Apperson made a motion to deny the Appeal of Notice of Violation for Natural Open Space, Phase 2B, The Pointe at Jamestown.

A motion to Deny the Appeal was made by Mr. Apperson, the motion result was:

AYES: 5 NAYS: 0 ABSTAIN: 0 ABSENT: 1

AYES: Gussman, Apperson, Roadley, O'Brien, Waltrip

NAYS: None

ABSENT: Dunn

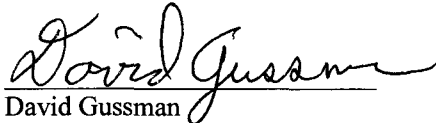
F. MATTERS OF SPECIAL PRIVILEGE

None

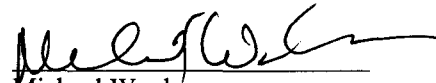
G. ADJOURNMENT

A motion to Adjourn was made by Mr. Apperson and approved on a voice vote.

The meeting adjourned at 6:59 p.m.



David Gussman
Chair, Chesapeake Bay Board



Michael Woolson
Secretary to the Board.