

**WETLANDS BOARD
MINUTES**

JUNE 14, 2000 - 7:00PM

A. ROLL CALL ABSENT

Henry Lindsey
John Hughes
David Gussman
Larry Waltrip
Philip Duffy

OTHERS PRESENT

Darryl E. Cook, Secretary to the Board
Environmental Staff

B. MINUTES

Approval of the May 10, 2000 minutes were approved as presented.

C. OLD BUSINESS - NONE

1. W-07-00: Robert Beck: 6425 Conservancy

Mr. Darryl Cook presented the case stating that Water's Edge Construction, on behalf of the owner Mr. Robert Beck, had applied for a wetlands permit to install 220 linear feet of riprap revetment at 6425 The Conservancy. The property is further identified as parcel (3-7) and found on James City County Real Estate Tax Map (49-3).

This is a reconsideration of the case as action was deferred from the May 10, 2000, Wetlands Board meeting to address three issues; the mitigation/compensation requirement, a clarification of the property's ownership, and additional documentation to justify the need for the erosion control project.

As presented in the VIMS Shoreline Permit Application Report dated 05/03/2000, the project impacts 1560 square feet and causes the loss of 780 square feet of tidal wetlands. The state *Wetlands Mitigation-Compensation Policy*, which was adopted by the James City County Wetlands Board with certain procedures and interpretations specific to the County, generally refers to compensation for wetland losses. However, in some instances such as in the definition of

“compensation” in Section 1, the eighth paragraph of Section 2, the first sentence of Section 3, and Section 4.1, compensation for wetlands disturbed or impacted by a permitted activity is also mentioned. If the Board interprets the policy to require compensation for wetland losses only, then this application would not need compensation as the loss is less than 1000 square feet. If the Board interprets the policy to require compensation for a project’s impacts, then compensation would be required for 560 square feet, the excess over 1000 square feet. In accordance with item 2 of the County Wetlands Mitigation Policy, the Board can require a 2:1 areal replacement in which case the compensation would need to total 1120 square feet.

No onsite compensation site exists and there are no tidal mitigation banks available in the county or the College Creek watershed. Therefore, in accordance with item 6 of the County’s Policy, monetary compensation can be considered. Based on information from the Army Corps of Engineers, the appropriate amount of monetary compensation for tidal wetlands under the Virginia Wetlands Restoration Trust Fund program is \$275,000 per acre or \$6 per square foot. Based on this figure, the monetary compensation for the project under consideration would be \$3360 for a 1:1 replacement and \$6720 at a 2:1 replacement. The City of Norfolk accepted monetary compensation for one of their cases and they used an amount of \$2.50 per square foot. This would equate to \$1400 or \$2800 for this project depending on the replacement ratio chosen. If the Board requires monetary compensation, then a condition would added to the permit that states “Evidence must be provided prior to the issuance of this permit that monetary compensation in the amount of (amount determined by the Board) has been paid to the Virginia Wetlands Restoration Trust Fund.”

Concerning the ownership issue, documentation was provided that verified the ownership of the property in the name of Hope D. Beck. The application was revised to reflect Mrs. Beck as the property owner and a letter was provided that gives authorization to Robert Beck to act on her behalf for the purposes of making application for this wetlands permit.

An additional field visit was made by Mr. Lewis and Mr. Menichino at low tide for the purpose of assessing the severity of the erosion problem. Pictures were taken to show the extent of the erosion present. Staff observed undercutting along the shoreline caused by wave action and this undercutting is causing an adverse impact on the existing vegetation.

As stated in the previous memo dated May 10, 2000, it is the staff’s recommendation that this application be approved with the following conditions:

1. Prior to any work activities, a preconstruction meeting will be held on-site.
2. The revetment installation location shown on the drawings submitted may require adjustments in order to minimize the impacts to the Wetlands. The proposed location of the revetment will be reviewed, verified and adjusted by the contractor at the direction of Environmental Division staff during the preconstruction meeting.

3. The Environmental Division shall inspect filter fabric installation, prior to placement of the Riprap.
4. The Environmental Division requires the Riprap to be Class1 for use in the revetment.
5. Any upslope disturbed areas shall be stabilized with grass.
6. The permit shall expire June 14, 2001.
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 the permit expiration date.

Mr. Duffy stated that he felt the County Wetlands Mitigation Policy was very clear and stated the Board needed to abide to the Policy as written. He further stated that he felt it was inappropriate that staff was not enforcing the Policy and that they were not encouraging the Board to comply with the Policy. He stated the Board needed to understand the Policy as written and it was not appropriate that the Board consider each case separately.

Mr. Hughes, Mr. Waltrip and Mr. Lindsey indicated that when the Policy was adopted in April 1999, the Board understood that each case would be evaluated on a case-by-case basis. The Policy would be used as a guideline to assist the Board in making their decision relating to mitigation-compensation. They also agreed that the Policy was adopted mainly to control commercial projects, and not to discourage residential owners from installing shoreline controls to prevent deterioration of their property. The goal of the Board is to encourage the protection of the environment.

In response to a question from the Board Mr. Cook responded that staff uses the Virginia Institute of Marine Science (VIMS), report to obtain the total loss of wetlands and the total impacted wetlands. He stated that wetlands that are temporarily disturbed and over time come back, even though they may provide for a different type of habitat, are considered impacted wetlands as they are not permanently destroyed. He then stated that wetlands that are permanently destroyed are considered wetlands loss.

Mr. Lindsey asked if anyone from the audience wished to speak.

A. Mr. Danny Winall, Water's Edge Construction, encouraged the Board to approve his application without requiring mitigation. He stated that most riprap projects will be over 1,000 square feet. He stated that if mitigation were required, some homeowners would find it too costly to install riprap and would either construct a bulkhead or not do anything to prevent deterioration of their property. He noted that in the VIMS report the total loss of wetlands is 780 sq.ft., less than the 1,000 sq.ft limitation set in the Mitigation Policy. He also informed the Board that all his work was upland of the cypress knees as shown on his drawings.

B. Mr. Robert Beck, the owner, presented the Board with pictures of his property showing the deterioration. He asked the Board to support his request to install riprap as it would prevent further deterioration of his property as well as provide a habitat for aquatic life.

Mr. Duffy asked Mr. Beck if he felt providing compensation would be too expensive. He further stated that he felt that those who can afford to pay, should pay.

Mr. Beck responded that if that was the law and marsh lands were being lost, he would support it. However, he stated that he did not believe that he was impacting marsh land and did not feel compensation should be a requirement on this project.

C. Dr. James C. Windsor, 130 Shellbank Drive, spoke of the support that he received from staff when he installed a riprap wall three years ago. He stated that if the current Mitigation Policy had been in effect then, he would not have done the project because it would have been too costly. He stated that literature suggests that implementing compensatory mitigation has been difficult because of a poor track record of creating wetlands and the absence of any standardized method of measuring success. He requested the Board consider using compensation only as a last resort and then only on unavoidable wetland losses. He encouraged the Board to use mitigation on a very limited basis so as not to discourage the use of riprap walls, which in the long run is best for the environment, over the construction of bulkheads.

Mr. Duffy stated the issue was are people going to be made to comply with the policy or not and whether staff was going to encourage the use of the policy.

Mr. Gussman stated that science had greatly improved from the time the State Policy was adopted in the early 1970s. He said that it was now possible to create and track wetlands. He did question the \$275,000 per acre or \$6 per square foot for tidal wetlands under the Virginia Wetlands Restoration Trust Fund program.

Mr. Cook responded that he did verify this amount with the Army Corps of Engineers, Mr. Greg Culpepper. He then advised the Board it was up to them to decide on an acceptable compensation.

The Board agreed that the loss of wetlands on this project was less than 1,000 sq.ft.

Mr. Hughes made a motion to approve case W-7-00 with staff's recommendations as it falls under the 1,000 sq.ft. wetlands loss of only 780 sq.ft. and does not fall within the jurisdiction of the County Mitigation Policy.

The motion was approved by a unanimous voice vote.

2. W-10-00: Michelle Jacobs: 172 & 174 The Maine

Mr. Pat Menichino presented the case stating that Mr. Charles Roadley of Williamsburg Environmental Group, on behalf of the owner Ms. Michelle R. Jacobs, had applied for a wetlands

permit to install 250 linear feet of riprap revetment at 172 & 174 The Maine, in First Colony. The property is further identified as parcels (2-59 & 2-60) found on the James City County Real Estate Tax Map (45-4).

The property in question is along the James River. On May 22, 2000 an onsite meeting was held with the following people in attendance: Mr. Darryl Cook and Mr. Pat Menichino of JCC's Environmental Division, Mr. Henry Lindsey and Mr. Philip Duffy, JCC Wetlands Board members, Mr. Charles Roadley of Williamsburg Environmental Group, Mr. Jim Gunn of Coastal Design and Construction, Mr. Marc Bennett of AES Consultants, Ms. Michelle R. Jacobs, property owner and Mr. and Mrs. Richard Jones adjacent property owners. The purpose of this meeting was to discuss the project and determine any possible adverse impacts of this proposal. As a result of this meeting modifications to the proposed project have been submitted along with revised construction drawings. It is estimated that approximately 160 square feet of tidal area (Type XIV, Sand Flat Community) will be permanently impacted by this application request. In addition there will be approximately 1600 square feet of temporary impacts which are proposed with the beach nourishment but will be mitigated by the creation of a new Intertidal Beach Community along with the planting of approximately 325 square feet of *Spartina patens*. 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.
2. The proposed toe of the 15' of riprap installed on over top of the existing riprap shall not encroach channelward of the existing's present location.
3. The proposed 110' of riprap used as toe armor along the existing bulkhead shall not exceed the proposed 6' of channelward encroachment.
4. All riprap used shall be a minimum of Class II Stone.
5. Any filter fabric used shall be inspected by the Environmental Division prior to placement of riprap.
6. The two proposed 12" drainage outfall pipes may be installed as shown on this plan but the completion of the entire drainage system and its operation shall be subject to review and approval by the Environmental Division prior to its installation.
7. A JCC Land Disturbance permit will be required and must be obtained by the land owner for all of the proposed landward grading and earth moving operations. This permit shall be obtained prior to the preconstruction meeting.
8. Those Landward areas of the Resource Protection Area (RPA) buffer disturbed, will require mitigation replanting with native vegetation consisting of trees, shrubs and ground cover. A RPA replanting plan shall be submitted and approved by the Environmental Division prior to the preconstruction meeting.

9. All vegetation requiring removal for this project shall be approved by the Environmental Division prior to any disturbance.
10. The permit shall expire June 14, 2001.
11. 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. Duffy inquired why an inspection was made on the filter fabric.

Mr. Menichino responded the inspection was made to ensure the toe was properly installed as well as to make sure filter fabric was used.

It was noted that new drawings had been submitted which more accurately depicted the scope of the project.

Mr. Lindsey asked if anyone from the audience wished to speak.

A. Mr. Richard Jones, 170 The Maine, presented the Board with a picture which he said was of four healthy cypress trees located on his property. He requested staff keep the picture on file for the record. He stated that he appreciated the onsite meeting and was assured by Mr. Gunn, the contractor, that his property would not receive adverse affects from this project.

B. Mr. Charles Roadley, agent for the owner, encouraged the Board to approve the application. He stated revised drawings had been submitted for their review and he was available for questions.

Mr. Waltrip stated that Jim Gunn was a reputable contractor and was confident the project would be done right.

Mr. Duffy made a motion to approve case W-10-00 with staff's recommendations.

The motion was approved by a unanimous voice vote.

D. PUBLIC HEARINGS - None

E. BOARD CONSIDERATIONS - None

F. MATTERS OF SPECIAL PRIVILEGE

Mr. Cook informed the Board that the County Attorney's office had responded back relating to the Conflict of Interest issue. Their office determined that a Board member could not vote on an issue

if they had an economic interest in the project. Mr. Cook stated that if the Board wanted something more definite, a Formal Opinion from the Commonwealth's Attorney would need to be requested.

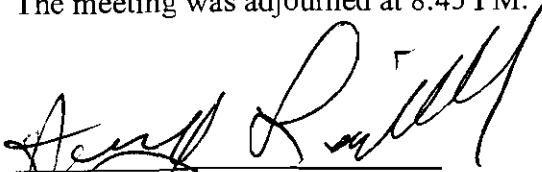
The Board agreed that they did not need anything more definite on this issue.

The Board held a short discussion relating to the County Wetlands Mitigation Policy. It was agreed that Mr. Duffy would bring back a proposal for the Board to review clarifying the difference between wetlands losses and wetlands impacts.

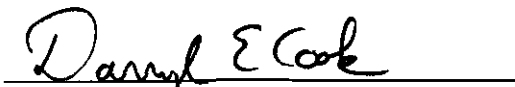
Mr. Lindsey informed the Board and staff that on July 27, 2000, he and Mr. Jim Burnett, National Park Service, would be evaluating the erosion damage on Jamestown Island. He invited a staff member to join them. Mr. Burnett's phone numbers are: 898-2425 or 898-2426.

G. ADJOURNMENT

The meeting was adjourned at 8:45 PM.



Henry Lindsey
Chairman



Darryl E. Cook
Secretary

JAMES CITY COUNTY WETLANDS BOARD

June 14, 2000

Statement by Dr. James C. Windsor

Mr. Chairman, members of the board, I am Dr. James C. Windsor. I live at 130 Shellbank Drive. Mr. Darryl Cook, and his staff have been very helpful to me recently in preparing for the construction of a house. I am an environmentalist in the sense that i am dedicated to preserving the environment in anyway possible and it is for this reason that I appreciate the opportunity to comment on the County wetlands mitigation policies.

I have lived in my present home on the James River for 37 years. My property has approximately 500 feet of riverfront. For approximately 34 years half of this property was protected by timber retaining walls; the other half was unprotected. Three years ago I had constructed a rifrap retaining wall over the balance of the property.

I give you this background in order to provide the context for my comments on the county regulations on compensatory mitigation. Your own literature suggests that:

1. Implementing compensatory mitigation has been difficult because of a poor track record of creating wetlands and the absence of any standardized method of measuring success.
2. Compensation should be used only as a last resort, and that the guidelines to not require that all wetlands losses be compensated but should be used on a limited basis to replace unavoidable wetland losses.

This brings me to the point I wish to make which is that I hope that this board will use compensatory mitigation in a very limited basis so as not to discourage what might be best for the environment in the long run. I built and paid for three timber walls over a period of 34 years. Three different construction projects disrupted the enviroment much more than would have occurred had I put a riprap wall in from the beginning. Also, I could have funded a riprap wall over the entire

Page Two

500 feet for less than the cost of the three timber walls. Riprap walls take up a little more space than a timber wall, but the protection is indefinite. To implement a compensatory mitigation policy which would discourage the construction of riprap walls, especially for a loss of more than only 1000 square feet of wetlands, would in the long run not be in the best interests of the environment.

I urge you to follow the example of North Carolina and New Jersey where they rely on wetland compensation only as a last resort to replace wetlands whose loss is highly justified and unavoidable.

Thank you for the opportunity to speak.