

**WETLANDS BOARD
MINUTES**

DECEMBER 13, 2000 - 7:00PM

A. ROLL CALL **ABSENT**

Henry Lindsey
John Hughes
Larry Waltrip
David Gussman
Philip Duffy

OTHERS PRESENT

Darryl E. Cook, Secretary to the Board
Tracy West, VMRC
Environmental Staff

B. MINUTES

Approval of the November 8, 2000 minutes were approved as presented.

C. OLD BUSINESS - None

D. PUBLIC HEARINGS

1. W-37-00: Dennis K. Johnson - 3054 North Riverside Drive

Mr. Gerry Lewis presented the case stating that Mr. Dennis Johnson, the owner, had applied for a wetlands permit to install 75 linear feet of bulkhead to be installed landward of an existing partial bulkhead. The property is further identified as parcels (2-39) found on the James City County Real Estate Tax Map (19-1)

The property in question is along the Chickahominy River. Environmental Division staff visited the site along with representatives from VMRC and VIMS on November 17, 2000. The bulkhead will replace the existing dilapidated structure and prevent erosion of the shore line. It is estimated that approximately 150 square feet of Type XI, freshwater mixed wetlands will be permanently filled and impacted by this application request..

It is the staff's recommendation that this application be approved with the following conditions:

1. Prior to any land disturbing activities, a pre-construction meeting will be held on-site.

2. All vegetation requiring removal for this project shall be approved by the Environmental Division prior to any disturbance.
3. All filter fabric used shall be inspected by the Environmental Division prior to placement of backfill.
4. 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 due to the extent of the proposed grading. This permit shall be obtained prior to the pre-construction meeting.
5. The permit shall expire December 13, 2001.
6. 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.

The Board requested staff for future cases to place a marker on the project area prior to taking pictures in order to aid them in identifying the scope of the project.

The Board inquired about what would happen to the cypress knees, the placement of the new bulkhead in relation to the existing bulkhead and if the property was commercial or rental property. They also suggested a sharper angle be used in order to increase the effectiveness of the bulkhead.

Mr. Lindsey opened the public hearing.

- A. Mr. Dennis Johnson, the owner, responded that the property was for his residential use, the cypress trees would not be affected as the bulkhead fill would be landward of them. He further stated that there were two existing structures in place and that is why the structure could not be angled more. He informed the Board that he would hire a contractor to perform the work, but his goal was to improve the property and asked them to approve his permit.

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

Mr. Duffy made a motion to approve case W-37-00 with staff's recommendations.

The motion was approved by a 5-0 vote.

E. BOARD CONSIDERATIONS - None

F. MATTERS OF SPECIAL PRIVILEGE

Year 2001 Calendar of Meetings

In response to reviewing the proposed 2001 meeting schedule the Board held a short discussion about James City County and York County holding their Wetlands Board meetings on the same day of the month. This creates a conflict for VMRC, Traycie West, as she needs to alternate months between

the two counties to attend the meetings. Also, Mr. Duffy stated that he is a member on another Board in which they meet once a quarter, which is the same night the Wetlands Board meets. The Board requested staff check into any potential conflicts that would prohibit the Board from moving their Board meetings to the first, third, or fourth Wednesday of the month. (Tracye West submitted her schedule to staff and on the third Wednesday of the month she has a Wetlands Board meeting in Poquoson.)

Tracye West, VMRC, informed the Board that Pam Mason, VIMS, would be out for approximately four months on maternity leave. She stated that Mr. Jim Perry would be filling in for her during that time. She also stated that the format for the VIMS report had changed and the changes would be explained to the Board at the next Board meeting.

James City County Wetlands Mitigation-Compensation Policy Discussion

The Board held a discussion on the current policy and how it might be changed. Mr. Duffy summarized the memo he presented to the Board proposing changes he would like considered. (Memo is attached.) Some of the issues of concern included how to determine the dollar value of impacted wetlands and how to determine how much surety should be required, where would the surety be held and where could it be spent. Other issues were how to determine legal ownership of the project location and could residential property being used as rental property be considered commercial.

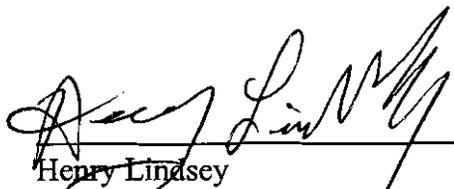
The Board decided that they would hold another discussion on this matter at their next board meeting. They instructed staff to contact the County Attorney and ask him to attend the next Board meeting. They gave staff three questions to present to the County Attorney: 1) How far can the Board go in establishing ownership relating to the joint permit application (such as a title search); 2) Is there a mechanism in place to establish the dollar value of impacted wetlands; and 3) Can residential property being used as a business, i.e. Bed & Breakfast or rental property, be considered commercial and not be eligible for the 1,000 sq. ft. mitigation requirement exemption.

G. ADJOURNMENT

Mr. Duffy made a motion to adjourn.

The motion was approved by a 5-0 vote.

The meeting was adjourned at 8:50 PM.


Henry Lindsey
Chairman


Darryl E. Cook
Secretary

Darryl Cook

From: Philip Duffy [pfduffy@widomaker.com]
Sent: Wednesday, December 13, 2000 12:05 PM
To: decook@james-city.va.us
Cc: mwoolson@james-city.va.us
Subject: Wetlands Policy review

In addition to the material submitted yesterday I want to make a special note regarding the proposed change of policy for petitions involving property within the jurisdiction of the Wetlands Board.

On more than one occasion The Wetlands Board has been asked to approve projects on property not owner by the petitioner. In each of those cases you have heard me speak against such deliberations. More recently other Board members have stated that they too do not abide any consideration of these kinds of petitions. In addition, one known case of a petitioner claiming rights for petitioning not found in either land ownership or formal concurrence by the deed holder of record has come to my attention. I wish to state unequivocally that such a petition is considered illegal in my view and should have been rejected for consideration upon its receipt (Lime vs GLF ARB). Further, I wish to know whether the JCC Attorney has a similar opinion of such a matter.

It must become part of the JCC policy that **no construction or landscaping of any kind may take place within the boundaries of property not owned by the petitioner.** It is suggested that a procedure be established within the JCC offices to establish ownership of property before any correspondence or consideration of the petition takes place. Should the ownership test fail then a formal, registered letter should be sent to the petitioner advising that the petition is rejected forthwith. Action to consider a petition for construction or disturbance of land owned by another person just develops decisiveness within the community and pits neighbor against neighbor. This results in many hard feelings being established, and some false hopes as well.

Please be advised that this matter will be raised as part of the discussion on Policy changes this evening and I wish for all members and Staff receive a copy of this correspondence. Thank you,
Philip Duffy

Memorandum

To: Wetlands Board Members
From: Philip Duffy
Date: 12/12/2000
Re: Salient points of the proposed policy

This memo summarizes the draft policy that is attached.

The change is needed to clarify areas of the current policy that are ambiguous, unresolved and in dispute. Further, it attempts to define certain terms that appear in the VMRC and JCC policy statements that currently exist.

The draft policy tightens some of the leniency of the current policy with respect to residential property used for commercial purposes.

The draft attempts to set a dollar figure and collection location for the permanent loss of wetlands, and attempts to establish a position that favors the use of wetland banks for future development.

This Draft policy is incomplete in both content and scope as it is intended to become a baseline for further development.

P. F. Duffy

CONFIDENTIAL

Memorandum

To: Chairman, JCC Wetlands Board
CC: All Members
From: Philip Duffy
Date: 12/12/2000
Re: JCC Wetlands Board Policy

JCC Wetlands Mitigation Policy

This document reflects the policy of the JCC government, as endorsed and implemented by the Wetlands Board on behalf of the Board of Supervisors. This policy statement carries with it certain compulsory actions on the part of all citizens and, in particular, those individuals and property owners who apply for building permits within the jurisdiction of the Wetlands Board. Those actions are called out in the paragraphs below. This policy is intended to provide specific interpretations for the application of the Virginia Marine Resources Commission guidance contained in the document labeled; "Wetlands Mitigation-Compensation Policy". The document is further identified as; VR450-01-0051. It needs to be understood that this policy statement is supplemental to the VMRC document and should be read along with that document for a complete understanding of the regulations regarding mitigation in James City County.



Application; The Citizens of JCC, having been endowed by the natural resources of three rivers; the James River to the south and west, the York River to the North and East, and the Chickahominy River to the North and West, are required by federal and state law to preserve the wetland areas of the county in their natural state.

- a. While it is acknowledged that not all wetland areas can be preserved it is the Policy of JCC that those losses will be held to an absolute minimum.
- b. This policy is in compliance with both Virginia and Federal intend and interpretation of the law. It behooves all of the citizens to acknowledge that the current law prohibits many building methods and site locations previously approved without reservation. Current law prohibits those methods and locations, or requires replacement of the lost wetland, either in direct kind, or by monetary compensation to the county.
- c. Private homeowners and especially industrial developments are required to comply with this policy and the VA code of laws. Additionally, it is incumbent upon all citizens to require enforcement of the laws of this county and this policy.

- d. All permit hearings regarding wetland permit requests are governed by this policy. Building permits that do not meet the requirements and specifications of this policy will not be approved. Those who feel that they have been a need to appeal to a higher authority are notified to take such action up with the County Attorney.

Definitions;

- . This policy makes no distinction between **vegetated and non-vegetated** wetland areas and requires that all persons treat them by the same regulation herein, except that the Board may require vegetated wetland areas to include only those plants and trees indigenous to the area, and may prohibit other plantings.
- a. Compensation is the process of allocating privately held resources to the county for the right to use wetland areas for a purpose that violates the natural order and appearance of a wetland area. Such wetland areas adversely affected by the process of a building permit are regulated for the JCC by the Wetlands Board permit process. Such a process may be temporary or permanent.

- b. By definition, **temporary** is defined as a process of disruption that is recoverable to the natural order of the wetlands; and that process is fully recover at the completion of the building process; and is expected to be less than six months from the approval of the application. Building permits that require temporary disruption for periods of time longer than six months will be extended by the Wetlands Board on a case by case basis at a public hearing. In no case will the permit process extend the work period past one year.

- c. **Permanent lost land compensation** is defined as the loss of the wetlands due to the construction process, and there is no estimated recovery period. That is, the land is lost as a wetland for the foreseeable future. Land permanently lost will be measured on the basis of the square footage of the land affected. Land upon which a rip rap is built will be assessed on the basis of one-half the square footage affected since that form of storm damage prevention structure has been determined to be an excellent location for natural wildlife.

C. Compensation can take different forms to include;

Remediation; the process of creating a wetland area that does not currently exist. Such a wetland must be on a ratio of 2:1 for every square foot/acre of land, and the size of the area remediated and be of a like form and habitat content. The Wetlands Board and Secretary will consult with, and seek the agreement of the Habitat Division of the VIMS in regards to the suitability of the proposal. The cost of the project shall be borne by the applicant of the permit. In no case may a third party property owner substitute his/her land for the original applicant without approval of the contract for such a substitution by the Wetlands Board and the County Attorney. Property of a land owner who decides to designate lands of his/her ownership in substitution may do so when that land is of a like natural value, and when accepted by the Wetlands Board for such a designation. When approved, that wetland area must be designated as JCC Wetlands and a permanent lien to that affect shall be placed on the property and registered with the County Attorney.

1. **Monetary compensation** is required by Virginia Code. It is generally accepted that the money accumulated by the JJC will be held by the County Treasurer, pending a distribution ruling by the Commonwealth of Virginia. Money will be paid at the rate of \$6 per square foot for wetland areas that are to be permanently lost.

2. Temporary land disruptions will be approved on a case by case basis by the Wetlands Board. Should the nature of the temporary disruption of the land be of such a magnitude as to not allow the land to be restored to the original state then the Wetland Board reserves the right to declare the disruption permanent and to require compensation.
3. Monetary compensation is considered to be the last resort effort of the JCC in regards to Permanent Mitigation. It is a course of conduct that shall be enforced on all property permits when that permit has no other resolution available. Monetary Compensation will be assessed at the rate of \$6/acre from the date of the granting of the permit. Temporary land disruptions will be assessed at the same rate from the date of declaration by the Wetlands Board.
4. Private home owners will be granted a 500 ft² exemption on permanent land losses on all permits. These exemptions apply after calculation of the land lost due to rip ram construction methods, when applicable. This exemption applies only to the primary residence of the owner and not to rental income properties or other commercial properties.
5. Money accumulated by the JCC Treasurer from Temporary and Permanent permits will be used to purchase lands that are convertible to wetlands and are of a like nature to the county's wetlands.

It is acknowledged that this process of compensation is one of many variables, facets and features. Not all land and wetland areas are of the same commercial or economic value, and neither are all wetland areas of the same value as habitat to creatures and wildlife. Never the less, it is the Wetlands Boards charter to adjudicate the VA wetlands guidance and try to bring some clarity to the residents of JCC. The Wetlands Board will endeavor to be objective at all times and apply fair judgement.
