

**WETLANDS BOARD  
MINUTES**

JANUARY 10, 2001 - 7:00PM

**A. ROLL CALL ABSENT**

Henry Lindsey	None
John Hughes	
Larry Waltrip	
David Gussman	
Philip Duffy	

**OTHERS PRESENT**

Darryl E. Cook, Secretary to the Board  
Traycie West, VMRC  
Leo Rogers, Deputy County Attorney  
Environmental Staff

**B. MINUTES**

Approval of the December 13, 2000 minutes were approved as presented.

**C. OLD BUSINESS - None**

**D. PUBLIC HEARINGS**

1. W-39-00: Roderick MacGillivray - 166 The Maine

Ms. Beth Davis presented the case stating that Mr. Daniel Winall of Water's Edge Construction, on behalf of the owner, Mr. Roderick MacGillivray, had applied for a wetlands permit to install 200 linear feet of riprap revetment wall in front of an existing bulkhead. The property is further identified as parcel (2-56) found on the James City County Real Estate Tax Map (45-4). This property is considered residential property.

The property in question is along the James River. Environmental Division staff visited the site along with representatives from VMRC and VIMS on December 15, 2000. The riprap revetment wall and backfill will repair existing erosion behind the failing bulkhead. It is estimated that approximately 745 square feet of Type XII; Brackish Water Mixed Community will be impacted and 553 square feet will be permanently filled by this application request. 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 pre-construction meeting will be held on-site.
2. The landward areas of the Resource Protection Area (RPA) buffer that are proposed to be cleared and graded will require restoration with native vegetation consisting of trees, shrubs and ground cover. An RPA restoration plan with surety shall be submitted and approved by the Environmental Division prior to the pre-construction meeting.
3. All vegetation requiring removal for this project shall be approved by the Environmental Division prior to any disturbance.
4. All riprap used shall be a minimum of Class II Stone.
5. All filter fabric used shall be inspected by the Environmental Division prior to placement of riprap.
6. The permit shall expire January 10, 2002.
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.

Ms. Davis informed the Board that two changes had been made to the format on staff's reports, beginning with this case. The first change was the elimination of the requirement for a land disturbing permit, which is replaced with the requirement for an RPA restoration plan with surety. The second change is the wetlands impacted and the wetlands loss is shown separately. She also explained how staff would calculate the wetlands impacted and the wetlands loss and why staff's figures may be different from the VIMS report.

Mr. Duffy referred to the letter from the Department of Conservation and Recreation and inquired as to what their involvement was in the case.

Mr. Hughes and Ms. West explained that it was a service provided to citizens, which gives their recommendations on projects, however there was not a requirement for their involvement.

Mr. Duffy asked how ownership of the parcel was determined.

Ms. Etchberger responded that she verified ownership with information supplied by the James City County Real Estate Assessments Office.

Mr. Duffy stated that he had concerns relating to the construction access. He indicated that he had walked along the bank on the adjacent property, 168 The Maine. The bank has several existing

holes and he felt it was unstable and could not support heavy equipment. He asked Ms. Davis if she had considered this when writing staff's recommendations. He also wanted to know why the cypress tree was being removed.

Ms. Davis responded that one cypress tree would be removed for access to the project and the other trees would remain. She then stated that she had not considered the bank on the adjacent property when writing her recommendations.

Mr. Lindsey opened the public hearing.

**A.** Mr. Daniel Winall, Water's Edge Construction, agent and contractor, responded to questions from the Board. He informed the Board that he had met with staff onsite to gain their input prior to submitting his plan. He stated one cypress tree would be removed to gain access to the project, but all other trees would remain. Mr. Winall then stated that his construction access would be from the bank on Mr. MacGillivray's property, not from the adjacent property. He explained how he would be using an excavator to minimize the steepness of the slope. He informed the Board that due to the shallowness of the water in that area, using barges for access would be impractical in that it would be far more costly, much more time consuming as you had to depend on tides, trees would need to be removed to access the site, and more wetlands would be impacted. He further stated that the access road would be removed and revegetated after the project was completed. He also stated that he had spoke to Mr. Funigiello, adjacent neighbor at 168 The Maine, who had agreed to tie into the riprap on Mr. MacGillivray's property. Mr. Winall would apply for a separate permit for that project later in the spring.

Mr. Hughes verified that Mr. Winall would work with staff on construction access.

Mr. Waltrip agreed with Mr. Winall that the best way to approach a project like this would be from landward side as it would be a stronger and better-finished project. He felt that accessing the project from the water could impact more wetlands.

**B.** Mr. MacGillivray, the owner, verified that Mr. Funigiello had agreed to tie into the riprap in a separate permit to be submitted at a later date. He then stated that Mr. Hotchkiss, adjacent neighbor at 164 The Maine, could not afford to do so.

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

Mr. Duffy stated that he still had concerns relating to the construction access on an unstable bank. He further stated that his questions were very pointed to gain information and his intent was to show the lack of detail in staff's reports.

Mr. Duffy made a motion to approve case W-39-00 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**

At last months meeting the Board had 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. The Board's desire is to have a representative from VMRC present at all their meetings. At present time Traycie West, VMRC, alternates between James City County and York County, as they hold their Wetlands Board meeting on the same day of the month.

Staff informed the Board that there was a conflict on the first and fourth Wednesday. The third Wednesday was available, however Ms. West has a conflict as she has a meeting in Poquoson that night.

The Board requested staff check into other nights that would not pose conflicts. Staff will report back to the Board at their next meeting.

**James City County Wetlands Mitigation-Compensation Policy Discussion**

At last months Board meeting the Board had requested staff ask the County Attorney to attend this meeting and be prepared to answer these three questions. 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.

Mr. Leo Rogers, Deputy County Attorney, addressed the Board. His response is as follows:

**Question 1: How far can the Board go in establishing ownership relating to the joint permit application (such as a title search)?**

Mr. Rogers stated that he would not recommend conducting a title search unless there was a real question as to who actually owns the property. At that point he would recommend that we inform the applicant that their Attorney would need to prepare an Attorney's Opinion letter to be presented to the County. He informed the Board that the joint permit application does not convey property rights.

The owner's signature would need to be placed on the application to show agreement on an application that is submitted by either an agent or a contractor. On property that has more than one owner, it would be necessary to gain only one signature to include the relationship to the property. In cases where an application has been submitted with incorrect owner information, unknown to staff and the Board, and the Board grants the case, then it would become a civil matter to be worked out between the parties involved through the legal court system.

The Board inquired if it would be legal for them to require the presence of the contractor and the owner prior to making a decision on a case.

Mr. Rogers responded that they could do it from a legal standpoint, however he cautioned the Board that they would need to be careful, especially in cases where the Board denied the project.

The Board inquired who would be responsible for repairs on property owned by a Homeowner's Association, but an adjacent property owner had applied for the permit to have the work performed.

Mr. Rogers responded that the Homeowner's Association would need to sign off on the application to indicate their agreement with the project. He then stated that the Homeowner's Association would be responsible for the repairs, unless they had a written agreement with the adjacent property owner that the adjacent property owner would be responsible.

In response to a Board question relating to Conservation Easements and RPA buffers, Mr. Rogers explained that the land is actually owned by the legal property owner, who could apply for a permit. The easement holder would not need to apply for the permit. However, the easement holder would need to agree to the project. He stated there was a real need to increase the awareness of damage to wetlands to include significant fines.

The Board requested staff enter a statement on all future staff reports that ownership had been verified with information supplied from the James City County Real Estate Assessments Office.

**Question 2: Is there a mechanism in place to establish the dollar value of impacted wetlands?**

Mr. Rogers stated that there was no code or case that spells out the way to establish this figure. He advised the Board that they would need to establish their own objectives and then establish criteria to determine impacted wetlands. He highly suggested that they rely on State and Federal Agencies as well as other jurisdictions, which are presently active in this endeavor.

Mr. Gussman suggested the Board review the Virginia Wetland Restoration Trust Fund to gain information on how they could meet

their objective. (Staff will research this program and forward information to Board members.)

**Question 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?**

Mr. Rogers stated that a distinction between the uses of the property could determine its status as residential or commercial. Example, he felt a Bed & Breakfast could be considered commercial as it is conducting business for income on a daily basis, however rental property would still be considered residential as it is not really conducting business on a daily basis.

Mr. Rogers recommended the Board hold a Work Session to have opportunity to have a more thorough discussion on this matter. He said it would need to be an advertised public meeting open to the public, however the Board would not need to hear public comment. The meeting would not need to be recorded and only action minutes would need to be submitted to show the outcome of the meeting. Mr. Gussman had several comments in response to Mr. Duffy's written proposal. It was agreed that Mr. Gussman would forward his comments to Mr. Duffy through computer e-mail. Mr. Rogers stated that was acceptable but to save all comments as it was subject to the Freedom of Information Act.

The Board will continue their discussion on the mitigation-compensation policy at their next Board meeting.

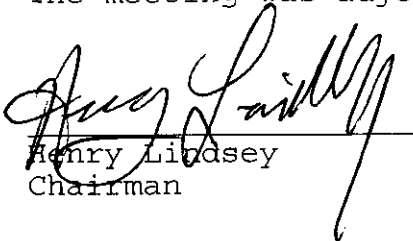
Ms. West encouraged the Board to attend the 20<sup>th</sup> Annual Virginia Wetlands Management Symposium to be held on February 24, 2001. She stated that one of the topics to be discussed would be the change in the VIMS report.

**G. ADJOURNMENT**

Mr. Hughes made a motion to adjourn.

The motion was approved by a 5-0 vote.

The meeting was adjourned at 8:35 PM.

  
Henry Lindsey  
Chairman

  
Darryl E. Cook  
Secretary