

**WETLANDS BOARD
MINUTES**

MARCH 14, 2001 - 7:00PM

A. ROLL CALL

ABSENT

Henry Lindsey
John Hughes
Philip Duffy

David Gussman
Larry Waltrip

OTHERS PRESENT

Darryl E. Cook, Secretary to the Board
Traycie West, VMRC
Ben Stagg, VMRC
Environmental Staff

Traycie West introduced Ben Stagg to the Board. She informed the Board that Mr. Stagg would be replacing her as the VMRC representative for future Board cases as she had been reassigned to another jurisdiction.

B. MINUTES

Approval of the January 10, 2001 minutes were approved as presented.

C. OLD BUSINESS - None

D. PUBLIC HEARINGS

1. W-15-00: Colonial Williamsburg Foundation - Country Road

Mr. Mike Woolson presented the case stating that Mr. Phillip Goering, of DJG, Inc., on behalf of the owner, Colonial Williamsburg Foundation, had applied for a wetlands permit to raise the existing Carter's Grove Country Road crossing across Grove Creek to reduce the risk/frequency of flooding within the travel lane. The property is further identified as parcel (1-2) found on the James City County Real Estate Tax Map (51-3). The project site in question is located on Grove Creek.

Environmental Division staff visited the site on February 28, 2001 along with representatives from DJG Inc., VMRC and VIMS to discuss the new project scope and associated impacts. Environmental Division staff, along with representatives from DJG, Inc. and VIMS visited the site on March 6, 2001 to review and discuss the proposed mitigation plan. Discussion on the revised site plan and mitigation area follows below. It is estimated that approximately 914 square feet of Type XI; Freshwater Mixed Community will be permanently impacted by this application request.

The project, as originally submitted, had proposed to reshape the road shoulders on the east and west sides of the wooden bridge and had over 2,400 square feet of wetland impacts. It was determined that mitigation was required due to the commercial nature of the applicant. The engineer for the project subsequently redesigned the project to reduce the impacts and resubmitted with a mitigation plan. Sheet C1 has non-tidal impacts associated with it and does not fall under the jurisdiction of the Board. Sheet C2 of the redesigned plan now proposes to re-grade the road shoulders east of the wooden bridge and overlay the existing road surface west of the wooden bridge, not touching the road shoulders at all. The project impacts have been reduced from greater than 2,400 square feet to 914 square feet. The compensation plan increased from no mitigation proposed to 920 square feet of tidal wetland conversion from non-tidal wetlands.

The mitigation plan, Sheet C3, proposes to remove a portion of an old road adjacent to an HRSD force main that appears to be blocking tidal influence from Grove Creek up into an unnamed tributary and converting the now non-tidal wetlands back to tidal wetlands. During the March 6, 2001 site visit, it was determined by Tom Barnard of VIMS that the tidal influence from Grove Creek would not, in fact, physically extend up into the proposed mitigation area and therefore, the mitigation area as proposed would not create tidal wetlands. This ruling from VIMS now makes the mitigation as proposed invalid. In order to have a complete application, the applicant has proposed to pay into the Virginia Wetlands Restoration Trust Fund a sum of \$5,485.00 for the required mitigation.

The applicant has made a good faith effort to avoid, minimize and reduce impacts to the wetlands from the original proposal to the revised proposal. The applicant has reduced potential impacts by 62% by avoiding areas they originally proposed to impact and reducing the impact footprint on the remaining project. It is the staff's recommendation that the Board approve the application as now proposed because of these considerations, with the following conditions:

1. A pre-construction meeting will be held on-site prior to construction.
2. Payment to the Virginia Wetlands Restoration Trust Fund will be made and proof provided to the Environmental Division prior to construction.
3. All riprap used shall be Class 1-A.
4. A JCC Land Disturbance permit will not be required for this work.
5. The permit shall expire March 14, 2002.
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 expiration date

Mr. Duffy asked several questions relating to the Erosion and Sediment Control Notes printed on the plan. He stated that he felt that too much responsibility was placed on staff to ensure all items were adhered to.

Mr. Woolson responded that these notes were standard on all engineered plans and that not all notes necessarily pertained to the project.

Mr. Cook stated that these notes were put on plans to ensure uniformity and to address certain items that are consistent on all plans. He reiterated that the notes are required even if not all notes are applicable to the project.

In response to inquiries from the Board Mr. Woolson explained that the mitigation proposed on sheet C-3 was declared invalid by Tom Barnard, VIMS. The reason for invalidating the proposal was that even after opening the old construction road, the tidal influence would not extend far enough into the mitigation area. It was determined that non-tidal mitigation would not compensate for tidal impacts. He informed the Board that the fee of \$5,485.00 was established using \$6.00 per sq. ft. times the 914 sq. ft. impacted wetlands.

Mr. Lindsay opened the public hearing.

A. Mr. Lawrence Leslie, Director of Construction for Colonial Williamsburg, explained that the Country Road did not permit commercial vehicles access, but the road was open to the public free of charge for their pleasure. He stated that there was no revenue received to help with the upkeep of the road, but Colonial Williamsburg paid for all maintenance and upkeep of the road. He said that the liability issue was important, as Colonial Williamsburg has had to buy cars that were caught by high water. He requested the Board consider the road a residential road, rather than a commercial road. He further stated that other mitigation sites had been reviewed, but they involved greater impacts than their last proposal. He asked the Board to approve the case tonight and not to defer.

B. Mr. Phillip Goering, DJG Inc. and agent for the owner, informed the Board that several design alternatives had been pursued and based on the denial of their last proposal, it was felt that payment into the Virginia Wetlands Restoration Trust Fund was the best solution. He also stated that he felt that if the side slopes had been maintained all along, and the wetlands vegetation had not been allowed to grow, the project would have been able to move forward without mitigation.

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

Mr. Duffy stated he felt this was a worthwhile project, however he believed the road to be commercial and not residential. He felt precedence would be set for other commercial properties in the area if they considered the Country Road a residential use.

Mr. Hughes agreed and further stated that he would have preferred to have mitigation on the site.

Mr. Lindsey stated that he felt the agent and owner had performed a good faith effort.

Mr. Duffy stated that he felt strongly that staff should not be responsible for the daily monitoring of these projects. He said that staff should make it clear to the applicant that someone outside the County staff must be responsible for the maintenance of the project.

Mr. Duffy made a motion to approve case W-15-00 with staff's recommendations.

The motion was approved by a 3-0 vote.

2. W-36-00: Edward Lucas - 201 Sherwood Forest

Mr. Gerald Lewis presented the case stating that Mr. Edward Lucas, the owner, had applied for a wetlands permit to install 190 linear feet of riprap in front of an existing bulkhead. The installation of the riprap would be toward the river. The property is further identified as parcels (17-3) found on the James City County Real Estate Tax Map (2-4).

The property in question is along the York River. Environmental Division staff visited the site along with representatives from VMRC and VIMS on February 28, 2001. The riprap would be installed to reinforce the existing bulkhead. It is estimated that approximately 80 square feet of intertidal wetlands would be impacted and 40 square feet would be permanently filled 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 filter fabric used shall be inspected by the Environmental Division prior to placement of riprap.
3. A JCC Land Disturbance permit will not be required for this work.
4. The permit shall expire March 14, 2002.
5. 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 expiration date

Mr. Duffy inquired if the riprap would spill over onto adjacent properties.

Mr. Lewis responded that it would spill over onto adjacent properties. He stated that a statement had been added to the adjacent property owner's acknowledgement form indicating those owners were aware of the riprap encroachment and that it would be on their property in the area between the existing riprap and mean low water. Both adjacent owners signed the statement indicating they did not object to this encroachment.

Mr. Duffy stated that he was concerned about the liability being placed onto these adjacent property owners, who were not listed on the joint permit application. He stated he felt a new joint permit application should be submitted indicating that these owners were willing to be a part of this project. He felt that the clause placed on the acknowledgement form was too far down on the form and well

below the signature line and he was not comfortable that the adjacent owner actually saw and read the statement. The only other option that he would consider is for Mr. Lucas to remove the existing bulkhead and install the riprap without encroachment onto adjacent properties.

Mr. Lindsey and Mr. Hughes stated that this project needed to be done and if a new application had to be submitted the project may not get done. They both agreed that the removal of the bulkhead would have greater negative impacts on wetlands than the installation of riprap in front of the wall.

Mr. Hughes stated he remembered when Mr. Krupski, adjacent property owner, came in for his permit to correct his shoreline erosion. Mr. Krupski had stated then that an application would be submitted at a later date to do work on the property next to him. He had also indicated that Mr. Pierce did not want to do any work to correct his shoreline erosion.

Mr. Cook explained to the Board that he directed the Agent to place the additional statement on the acknowledgement form, per the advice from the County Attorney's Office. Mr. Leo Rogers, Deputy County Attorney, felt that adding the statement would be sufficient, rather than requiring the submittal of another joint permit application. Mr. Cook informed the Board that this application had been on hold for several months waiting to get these acknowledgement forms back from the agent.

Mr. Cook also pointed out that many similar projects had been before the Board and the Board required the owner to tie their project into adjacent properties to conform to uniformity and increase the integrity of the structures.

Mr. Hughes noted that this is the first time that a statement had been added to the acknowledgement form.

Mr. Hughes and Mr. Lindsey agreed that it is next to impossible to install riprap without some stone falling over onto adjacent properties.

Mr. Duffy inquired if the County Attorney could force property owners to accept their responsibility as property owners to maintain and preserve their property.

Mr. Cook responded the County did not have the authority to force anyone to preserve their property. Shoreline erosion control projects are exempt from the County's Ordinance.

Mr. Lindsey inquired what would happen to a property owner if they could not afford to have this type of maintenance done on their property. They should not have to sell their house.

Mr. Duffy inquired if staff or anyone had talked to Mr. Pierce.

Staff responded that they had not.

Mr. Lindsey opened the public hearing.

A. Ms. Alor Grantham-Traywick, The Salt & The Earth, Inc. and agent, addressed the Board. She informed the Board that she had sent the acknowledgement form four times to Mr. Pierce. On the fourth time she had sent it return receipt mail and that is when he returned it to her. She said she has done a number of projects like this without having to have this statement, however she understood each county had different requirements. She asked how many Board member votes she would need tonight to gain approval of her project.

Mr. Lindsey responded that all three Board members would need to approve her case.

Ms. Grantham-Traywick stated that she did not want the Board to deny her project, therefore she wanted the case tabled until the May meeting. She wanted an opportunity to talk to Mr. Lewis and the contractor, Earth Resources. She said County staff had requested one thing from her and she had provided it. She stated she was going to take the next hour and a half to drive home. (At this time Ms. Grantham-Traywick left the Board room.)

Mr. Hughes made a motion to defer case W-36-00 until May 9, 2001, per the applicant's request.

Mr. Duffy stated he did not want to table this case. He stated that no one had personally talked to Mr. Pierce to try and gain his help and cooperation to get this project done and to point out to him that if he did not help it could be detrimental to the environment. He stated Mr. Pierce owns property that will be affected by this project and he has property rights. Mr. Duffy stated he feels that no one has shown this man respect and that someone needs to personally speak to him. He further stated that in his opinion property owner's rights are being violated when projects are approved to encroach onto their properties without the proper joint permit application.

The motion to defer the case is to give time to discover if the adjacent property owners, Mr. Pierce and Mr. Krupski, actually read the statement at the bottom of the page before signing the document.

(Due to the complexity of the property owner/property rights issue, the following is taken verbatim from the March 14, 2001, tape recording of the Board meeting.)

Ms. Tracy West addressed the Board. "We have talked about this over and over again. I would like to remind the Board once again, and the point was also brought forth at the Wetlands Symposium that your permits do not convey property rights.

Mr. Lindsay: Right.

Ms. West: It does not matter whether you build something on somebody else's property or not. That gentleman still retains his civic right to sue the neighbor trespassing if he feels that is appropriate.

Mr. Duffy: You're setting us up for a lawsuit again, Ms. West.

Ms. West: Your permits do not convey property rights

Mr. Duffy: And I know that as well as you do and I heard the same seminar you did.

Ms. West: and you are not being setup for a lawsuit. However, I think that this point seems to be getting lost here. This Board is charged with weighing the public and private detriments vs. the public and private benefits of projects, and that's all. None of this whether, or whether this Mr. Pierce is intelligent enough to read the whole form before he signs it, is not relevant, it is not for you to decide.

Mr. Duffy: I disagree with you.

Ms West: You are here to decide the environmental detriments and benefits of the projects.

Mr. Duffy: We are also here to protect the property rights of every landowner in this county.

Ms. West: You are not charged with protecting property rights; you are overstepping your bounds.

Mr. Duffy: That is your interpretation Ms. West.

Ms. West: It is a legal interpretation.

Mr. Duffy: I disagree with you. I heard it at the same seminar you did.

Ms. West: You and I, neither of us are lawyers and I suppose we are going to get something written from Leo before we can get past this problem.”

(End of verbatim record.)

Mr. Hughes said that he thought it was good to have both adjacent property owners sign a statement acknowledging that the scope of the work would fall onto their properties. He stated that perhaps the form could have been formatted differently so as not to leave doubt if the adjacent owners had actually read the statement, understood that the work would fall onto their property, and then have them initial next to the statement that they did see the statement.

Mr. Duffy felt the project could be restructured so that the work would fall directly on this property, and not on adjacent property.

Mr. Hughes and Mr. Lindsey stated that they would oppose an application for just this property. They stated in order to do this project the existing bulkhead would need to be removed. If the bulkhead were removed there would be a tremendous amount of environmental damage done which is what the Board is trying to alleviate.

Mr. Lindsey and Mr. Hughes stated that the general policy is for the work to be tied into adjacent properties. The Board requires the tie in as part of the conditions of granting the permit. They further stated that it is common for construction to fall onto adjacent properties, as large rocks cannot be laid in a straight line.

Mr. Hughes inquired if VMRC required a permit for work being done at the below mean low water on this project.

Mr. West responded that the general policy of VMRC is to wait for James City County to act on the case prior to releasing the VMRC permit. She did say a permit was required for this case and that it was ready to issue once James City County had acted on the case.

Mr. Duffy inquired why Mr. Lucas had a peninsula in the river while the adjacent owners did not.

Mr. Lewis explained that the adjacent properties had eroded away from Mr. Lucas' property. Mr. Lucas had preserved his land when he constructed his bulkhead years ago.

Mr. Lindsey explained that Mr. Lucas had installed his bulkhead long before Mr. Krupski had his constructed.

Mr. Hughes explained that when Mr. Lucas had his bulkhead constructed the tiebacks were installed into the land, however due to the hard wash in that area, the adjacent properties eroded back, while his stayed the same. He further stated that he imagined that the backside of the bulkhead is exposed and is vulnerable to breaking. The work needed to be done as quickly as possible.

The vote on deferring case W-36-00 until the May 9, 2001 meeting per the applicant's request was approved by a 3-0 vote.

The public hearing will remain open until the May 9, 2001 meeting.

E. BOARD CONSIDERATIONS - None

F. MATTERS OF SPECIAL PRIVILEGE

Year 2001 Calendar of Meetings

Mr. Cook inquired if the Board was still interested in changing the Board's regular meeting schedule as Ben Staff, VMRC, does not have a conflict from other meetings and he would be able to attend the Board meetings

The Board approved the 2001 Wetlands Board Meeting Schedule, which is to be held on the 2nd Wednesday of each month at 7:00 pm, provided there are wetland cases to be considered.

James City County Wetlands Mitigation-Compensation Policy Discussion

The Board agreed that they wanted to continue their discussion on the mitigation-compensation policy in a Work Session with all Board members in attendance. They asked staff to set up a time between April 23 and April 27, 2001 and notify them of the date.

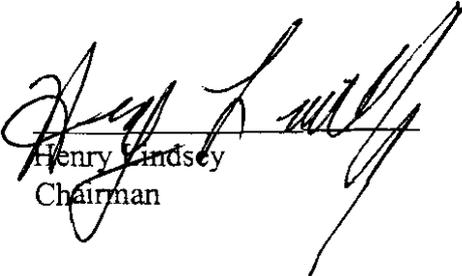
The Board presented Traycie West with a farewell card and wished her success in her new assignment.

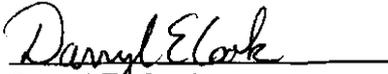
G. ADJOURNMENT

Mr. Hughes made a motion to adjourn.

The motion was approved by a 3-0 vote.

The meeting was adjourned at 8:25 PM.


Henry Lindsey
Chairman


Darryl E. Cook
Secretary