

**WETLANDS BOARD
MINUTES**

October 10, 2001 - 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
Leo Rogers, Deputy County Attorney
Greg Dohman, Assistant County Attorney
Ben Stagg, VMRC
Environmental Staff

B. MINUTES

The minutes of the August 8, 2001 meeting were approved as presented.

C. OLD BUSINESS – None

D. NEW BUSINESS

1. W-18-01: Daniel E. Carr - 135 West Landing

Mr. Michael Woolson presented the case stating that Daniel Winall, Water's Edge Construction, on behalf of the owner, Mr. Daniel Carr, had applied for a wetlands permit to repair approximately 100 feet of existing concrete riprap wall by overlaying said wall with Class 2 riprap to prevent erosion. The property is further identified as parcel (12-23) found on the James City County Real Estate Tax Map (50-3). The project site in question is located on the James River main stem.

Environmental Division staff visited the site on September 21, 2001 along with a representative from VMRC to discuss the project scope and potential impacts. VIMS personnel visited the site at a later date. Proposed impacts for this project are determined to be 500 sq. ft. to the Intertidal Rubble Community and 40 sq. ft. to the Type IV, Saltbush Community. Proposed fill impacts for this project are determined to be 250 sq. ft. to the Intertidal Rubble Community and 40 sq. ft. to the Type IV, Saltbush Community, for a total of 290 sq. ft. of fill impacts.

It is the staff's recommendation that the Board approve this application, with the following conditions:

1. An *Adjacent Property Owner's Acknowledgement Form* for each adjacent property owner must be submitted to VMRC and our office prior to the preconstruction meeting.
2. The limits of construction shall be flagged in the field prior to the preconstruction meeting.
3. All vegetation to be removed shall be clearly flagged or marked with spray paint prior to the preconstruction meeting.
4. The landward areas of the Resource Protection Area (RPA) buffer that are proposed to be cleared and disturbed through the placement of the construction access 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 preconstruction meeting.
5. A preconstruction meeting will be held on-site prior to construction.
6. A turbidity curtain will not be required for this project as proposed. The Environmental Division reserves the right to require a turbidity curtain if field conditions change.
7. All riprap used shall be Class 2. The riprap shall tie into existing grade at the toe of slope to allow for a smooth transition between land and stone. No backfilling will be allowed.
8. The construction access shall be regraded to existing slope conditions. The RPA restoration plan shall be installed as approved. The RPA surety will be held a minimum of one year after plant installation to ensure the long-term viability of the installed plant materials.
9. The permit shall expire October 10, 2002.
10. 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.

A short discussion was held relating to when a turbidity curtain would be required, if it would be necessary to remove the rebar from the existing concrete rubble, the lack of visible erosion, and if all adjacent property owners had agreed to the project.

Mr. Woolson stated the contractor had assured him there would be no problem in providing the adjacent property owner's acknowledgement form, however, if the form was not received, the permit would need to be revised.

It was noted that this case and the next case to be heard, Donald Patten at 139 West Landing, were adjacent properties and could have been heard as one case.

Mr. Lindsey opened the public hearing.

A. Mr. Daniel Winall, Water's Edge Construction, informed the Board that the erosion was in the voids under the concrete slabs. His intention was to breakup the concrete and use it to fill in voids and then top it with stone. He stated that there was very little rebar and that he would cover that with stone.

In response to a question from Mr. Duffy, Mr. Woolson explained the access to both Mr. Patten's and Mr. Carr's projects would be through Mr. Patten's property. He stated a RPA restoration plan was required on both projects and Mr. Patten's property would be restored to its original state.

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

Mr. Gussman made a motion to approve case W-18-01 with staff's recommendations.

The motion was approved with a 5-0 vote.

2. W-19-01: Donald Patten - 139 West Landing

Mr. Michael Woolson presented the case stating that Daniel Winall, Water's Edge Construction, on behalf of the owner, Mr. Donald Patten, had applied for a wetlands permit to repair approximately 150 feet of existing concrete riprap wall by overlaying said wall with Class 2 riprap to prevent erosion, and a 150 foot long pier with boat house to provide access to the James River. The property is further identified as parcel (12-22) found on the James City County Real Estate Tax Map (50-3). The project site in question is located on the James River main stem.

Environmental Division staff visited the site on September 21, 2001 along with a representative from VMRC to discuss the project scope and potential impacts. VIMS personnel visited the site at a later date. Proposed impacts for this project are determined to be 750 sq. ft. to the Intertidal Rubble Community. Total fill impacts for this project are determined to be 375 sq. ft. to the Intertidal Rubble Community.

It is the staff's recommendation that the Board approve this application, with the following conditions:

1. *An Adjacent Property Owner's Acknowledgement Form* for each adjacent property owner must be submitted to VMRC and our office prior to the preconstruction meeting.
2. The limits of construction shall be flagged in the field prior to the preconstruction meeting.
3. All vegetation to be removed shall be clearly flagged or marked with spray paint prior to the preconstruction meeting.

4. The landward areas of the Resource Protection Area (RPA) buffer that are proposed to be cleared and disturbed through the placement of the construction access 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 preconstruction meeting.
5. A preconstruction meeting will be held on-site prior to construction.
6. A turbidity curtain will not be required for this project as proposed. The Environmental Division reserves the right to require a turbidity curtain if field conditions change.
7. All riprap used shall be Class 2. The riprap shall tie into existing grade at the toe of slope to allow for a smooth transition between land and stone. No backfilling will be allowed.
8. The construction access shall be regraded to existing slope conditions. The RPA restoration plan shall be installed as approved. The RPA surety will be held a minimum of one year after plant installation to ensure the long-term viability of the installed plant materials.
9. The permit shall expire October 10, 2002.
10. 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. Woolson verified that the RPA restoration would be addressed separate from the wetlands work on both cases.

The Board held a short discussion relating to the RPA requirements for restoration. They felt that property owners were not given adequate information on what their responsibilities were on maintaining RPA areas when they bought their properties. They stated the developer should be required to clearly mark the area.

The Board also inquired if Mr. Casey's adjacent property owner's acknowledgement form had been received.

Mr. Woolson stated the Chesapeake Bay Act Ordinance does state that the RPA lines need to be marked by the developer, not the owners, and the County has begun to enforce that requirement.

Mr. Lindsey opened the public hearing.

A. Mr. Daniel Winall, Water's Edge Construction, stated that Mr. Patten's property would be restored to its original state. He also stated that he would have Mr. Casey's adjacent property owner's acknowledgement form prior to beginning construction.

Mr. Stagg informed the Board that the State Code states that adjacent property owners need to be notified; they are not required to give a written response back.

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

Mr. Duffy stated that he felt the County and the contractors had a responsibility to citizens to inform them what the requirements of the Chesapeake Bay Act are. He stated that if owners knew that they had to maintain their property as the Chesapeake Bay Act states, then they might not want to do these projects.

Mr. Lindsey reminded the Board that the County did send out a brochure explaining what an RPA is and what their responsibilities as property owners were relating to the RPA buffer.

Mr. Hughes made a motion to approve case W-19-01 with staff's recommendations.

The motion was approved with a 5-0 vote.

E. MATTERS OF SPECIAL PRIVILEGE

Mr. Woolson informed the Board that he had been appointed to be the staff contact for future Board cases.

The Board took a short recess at 7:50 pm and returned back to open session at 7:58 pm.

Mr. Woolson informed the Board that on March 5, 2001 the Environmental Division received a joint permit application for the proposed installation of armor stone at property owned by Mr. Stephen Thacker of Glen Allen, VA. The location for the proposed shoreline work was 5048 River Drive, Lanexa. The property is further identified as parcel (7-5) found on the James City County Real Estate Tax Map (9-3). The project site in question is located on Diascund Creek.

Environmental Division staff visited the site on March 12, 2001 and based on that inspection and the application submitted, a determination was made that only subaqueous bottom would be impacted as a result of this proposal. On April 4, 2001 Mr. Wilber Jordan, the authorized agent for Mr. Thacker was sent a letter which stated a James City County Wetlands Permit would not be required because the proposal did not impact Wetlands, only subaqueous bottom.

On August 29, 2001 Environmental Staff performed a random unannounced inspection of the project site. That inspection revealed significant construction impacts to jurisdictional wetlands as well as RPA uplands. Staff immediately contacted Ben Stagg of VMRC and informed him of the violation.

On October 1, 2001, Staff along with Mr. Henry Lindsey visited the project site and following an inspection, Staff posted a Stop Work Notice on the site. On October 2, 2001 Staff sent a Notice of Violation to Mr. Stephen Thacker of Glen Allen, VA.

It is the Staff's recommendation that the Board consider all of the enforcement actions and penalties authorized under JCC 's Wetlands Ordinance and the Virginia Code (28.2-1316) to remedy this violation. Staff is prepared to implement enforcement actions as directed by the Board.

A short discussion was held where Mr. Rogers explained the civil process. He further explained why the County directs the civil charge to the property owner instead of to the contractor. The maximum civil penalty is \$10,000 per incident. Mr. Rogers stated that even though there were also violations of the Chesapeake Bay Act and the Erosion and Sediment Control Ordinance, it was felt that as this was one incident it should all be handled under the Wetlands Ordinance violation.

Mr. Cook informed the Board their course of action would be to: 1) authorize action for civil penalty, 2) direct the property be restored to its previous condition, and 3) direct an after-the-fact permit be completed.

Mr. Hughes inquired why there was a delay posting a stop work order between the initial visit on August 29, 2001 and October 2, 2001.

Mr. Lindsey stated that Patrick Menichino, staff, had contacted him on October 1, 2001, and had asked for his advice. His advice was to post a stop work order.

Mr. Stagg stated that on September 7, 2001 he spoke to Wilber Jordan, contractor, and told him to stop work.

Mr. Steve Thacker, owner of 5048 River Drive, addressed the Board. He responded to their questions and stated he relied on the contractor to do what was best for the project. He stated he found out there was a violation a week ago. He stated that he had spoken to Leo Rogers and Darryl Cook and would take all necessary steps to stabilize the project as quickly as possible. If Mr. Jordan responded quickly, then he would still use him as his contractor to complete the job. He also stated that he would complete an after-the-fact permit.

Mr. Thacker informed the Board that Mr. Jordan did not want to add a bulkhead in front of the existing bulkhead as the existing bulkhead had failed on different occasions after being repaired. Mr. Jordan felt riprap would be a better solution.

The Board stated that they did not want to make a decision on the matter until they had discussed the facts with Mr. Jordan. The Board stated they would hear this matter at their November meeting and highly recommended that Mr. Jordan be present for that meeting.

Ms. Boots Johnson, 210 Red Oak Landing Road, inquired what the outcome was of the outfalls that had been installed in the Landfall subdivision. She said there was a lot of silt and she had concerns on how they were done. She also inquired about the new Non-tidal Wetlands Law that took effect October 1, 2001.

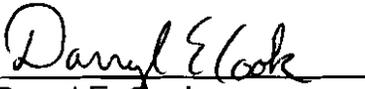
Mr. Cook stated that one outfall was installed that did require a wetlands permit; the other outfalls were outside of the tidal area. He stated the applicant had already picked up a permit application and he would check to see why the application had not been submitted.

The Board responded that the law was not a local law, but a state law enforced by the Department of Environmental Quality.

F. ADJOURNMENT

The meeting was adjourned at 9:00 PM.


Henry Lindsey
Chairman


Darryl E. Cook
Secretary