

**WETLANDS BOARD
MINUTES**

DECEMBER 12, 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
Greg Dohrman, Assistant County Attorney
Ben Stagg, VMRC
Environmental Staff

B. MINUTES

The minutes of the November 14, 2001 meeting were approved as presented.

C. OLD BUSINESS – None

D. NEW BUSINESS

1. Case No. W-16-01: Hampton Roads Sanitation District (HRSD) and Colonial Williamsburg Foundation - 300 Ron Springs Road

Michael Woolson presented the case stating that Tom Langley, of Langley and McDonald, LLC, on behalf of the owner, Colonial Williamsburg Foundation, had applied for a wetlands permit to install two offshore breakwaters with beach nourishment to prevent shoreline erosion along the James River above the HRSD outfall. This project is an extension of a previous project, W-29-94, which was wrongly deemed exempt from the Board's jurisdiction by VMRC in 1994 due to a misunderstanding of the land ownership. The Board has jurisdiction over the proposed sand fill once the fill reaches an elevation greater than the mean low water elevation. The property is further identified as parcel (1-3) found on the James City County Real Estate Tax Map (58-2). 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 jurisdictional impacts for this project are determined to be 16,000 sq. ft. to the Type XIV, Sand Flat Community. Total jurisdictional fill impacts for this project are determined to be 16,000 sq. ft. to the Type XIV, Sand Flat Community.

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

1. The limits of construction shall be flagged in the field prior to the preconstruction meeting.
2. No woody vegetation shall be removed, as per the approved drawings.
3. The created beach areas, now in the Resource Protection Area (RPA) buffer, shall be stabilized with dune grasses. An RPA restoration plan with surety shall be submitted and approved by the Environmental Division prior to the preconstruction meeting. This is consistent with what has occurred on past permits; see W-23-97 and W-08-01.
4. A preconstruction meeting will be held on-site prior to commencement of construction.
5. A turbidity curtain will be required for this project.

6. 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.
7. The permit shall expire December 12, 2002.
8. 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 expiration date.

Mr. Gussman stated that his wife is employed by the applicant and that he would abstain from discussing or voting on the case.

Mr. Lindsey noted that the wetlands impacts were 16,000 square feet and questioned what was being done to provide mitigation for this impact.

Mr. Woolson stated that the impacts were to nonvegetated wetlands and that when the project was complete, the sand would be stabilized with dune grasses. This is consistent with what has been done in previous similar cases.

Mr. Hughes asked if the 16,000 square feet included subaqueous impacts.

Mr. Woolson indicated that the subaqueous impacts were more; the figure only includes wetlands impacts.

Mr. Waltrip asked if the proposed work was consistent with the other shoreline stabilization done previously on the site.

Mr. Woolson indicated that the proposal was consistent with the existing work.

Mr. Lindsey opened the public hearing.

Mr. Tom Langley, Langley and McDonald Engineering, stated that he was there to represent the applicant. He asked that the condition requiring stabilization with dune grasses be removed. He stated that they were not required to stabilize after construction of the previous breakwater system and that the grasses had come in naturally after the work was completed.

Mr. Lindsey asked how long it took for the dune grasses to come in naturally.

Mr. Langley responded that he did not know how long it took for the grasses to come in but stated the other breakwaters were working well and that he felt stabilization was not necessary. Colonial Williamsburg, the applicant, was also concerned about posting a surety to guarantee the stabilization with dune grasses.

Mr. Lindsey asked about boat launching at the beach and if that contributed to the erosion problem.

Mr. Bill Salley, Hampton Roads Sanitation District (HRSD), was unaware of any boat launching at the beach but HRSD did not approve of any boat launching activities.

Mr. Hughes suggested that if Colonial Williamsburg was concerned about posting a surety bond that possibly the County could accept a bond from HRSD.

Mr. Dohrman stated that he knew of no reason why HRSD could not post the surety in place of Colonial Williamsburg.

Mr. Hughes then suggested that if HRSD would enter into an agreement with the County guaranteeing the stabilization with dune grasses, he would be satisfied with that in place of a surety bond.

Mr. Dohrman suggested an amendment to conditions #3 and #6 to change the guarantee from a surety bond to an agreement with the County.

Mr. Waltrip stated that he felt the shore erosion is caused primarily by boat traffic and that the breakwaters were necessary.

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

Mr. Hughes moved to approve W-16-01 with modifications to conditions #3 and #6 using wording suggested by Mr. Dohrman to remove the requirement for a surety for the dune grasses and replace it with an agreement between HRSD and the County.

The motion was approved with a 3-0 vote. (Mr. Gussman abstained from voting.)

2. Case No. W-23-01: Mary H. Stone - 10120 Sycamore Landing Road

Michael Woolson presented the case stating that Mr. Daniel Winall, of Water's Edge Construction, on behalf of the owner, Mrs. Mary Stone, had applied for a wetlands permit to install approximately 75 feet of riprap revetment wall to stop erosion and to replace the existing pier to provide access to the York River. The property is further identified as parcel (3-3) found on the James City County Real Estate Tax Map (7-2). The project site in question is located on the York River main stem.

Environmental Division staff visited the site on November 16, 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 jurisdictional impacts for this project are determined to be 750 sq. ft. to the Type XIV, Sand Flat Community. Total jurisdictional fill impacts for this project are determined to be 375 sq. ft. to the same community.

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

1. The limits of construction shall be flagged in the field prior to the preconstruction meeting. During the preconstruction meeting, minor adjustments in the alignment may occur at the direction of the Environmental Division.
2. The contractor shall not, under any circumstances, remove any bald cypress trees. The contractor shall post a surety guaranteeing that the bald cypress trees shall not be removed or damaged and that they shall be in a living condition one year after completion of the project. The surety shall be in the amount of \$10,000. The Environmental Division has on record the existing damage to the bald cypress next to the existing pier and will not hold the contractor accountable for that damage.
3. 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.
4. A preconstruction meeting will be held on-site prior to commencement of construction.
5. A turbidity curtain will not be required for this project as proposed because the proposed work is at the limits of normal high tide. The Environmental Division reserves the right to require a turbidity curtain if field conditions change.
6. All armor stone riprap used shall be Class 2. All core stone riprap used shall be Class 1. All riprap shall be underlain with filter fabric, which must be inspected by the Environmental Division prior to placement of any riprap.
7. 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.
8. The permit shall expire December 12, 2002.
9. 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. Hughes wanted some clarification on the comment in the VIMS report regarding tie down distances.

Mr. Woolson stated that VIMS noted some discrepancies between the riprap as proposed on the plan and the field dimensions. It was determined that the adjacent project's riprap was installed at mean highwater and therefore, the proposed project's riprap would be installed beginning at mean highwater.

Mr. Lindsey opened the public hearing

Mr. Daniel Winall, Water's Edge Construction, stated he was there representing the applicant. He preferred that the surety for the trees be placed in the homeowner's name rather than be his requirement. He did not want to be responsible for the trees after the project was completed.

Mr. Woolson stated that the surety could be posted by the contractor during the construction process and then transferred to the homeowner's name.

Mr. Gussman suggested that condition #2 be changed to require the homeowner to post the surety.

Mr. Waltrip asked whether this would set a precedent for other cases regarding the surety.

Mr. Woolson stated that the surety amount came from consultation with the County forester's office.

Mr. Waltrip was concerned that the surety requirement could create an impediment to people considering these stabilization projects. He felt the Board should be encouraging these projects to go forward and felt that a surety requirement for tree preservation might create problems for an applicant.

Mr. Lindsey requested that additional photographs be taken to document the condition of the trees prior to the start of construction.

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-23-01 with a modification to condition #2 to have the owner or permittee post the required surety.

The motion was approved with a 4-0 vote.

3. Case No. W-24-01: Mary Ann & Benjamin E. Hermann - 105 Elizabeth Page

Michael Woolson presented the case stating that Mr. Daniel Winall, of Water's Edge Construction, on behalf Mr. Benjamin Herrmann, had applied for a wetlands permit to install approximately 130 feet of tongue and groove timber bulkhead a maximum of 2 feet channel-ward of a failing bulkhead to prevent further erosion and to replace an open pile pier to provide access to Halfway Creek. The property is further identified as parcel (2-59) found on the James City County Real Estate Tax Map (49-4). The project site in question is located on Halfway Creek, a tributary to College Creek and the James River.

Environmental Division staff visited the site on November 16, 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 jurisdictional impacts for this project are determined to be 75 sq. ft. to the Type IV, Saltbush Community and 305 sq. ft. to the Type XVI, Mud Flat Community. Total jurisdictional fill impacts for this project are determined to be 380 sq. ft., 75 sq. ft. to the Type IV, Saltbush Community and 305 sq. ft. to the Type XVI, Mud Flat Community.

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

1. The limits of construction shall be flagged in the field prior to the preconstruction meeting. The proposed alignment straightens out the existing alignment and the Environmental Division is in agreement with the contractor that this should occur. However, the contractor shall take every measure necessary to keep the new alignment within 2 feet of the existing alignment when feasible. During the preconstruction meeting, minor adjustments in the alignment may occur at the direction of the Environmental Division.
2. All vegetation to be removed shall be flagged or spray-painted in the field prior to the preconstruction meeting. During the preconstruction meeting, adjustments to vegetation removal may occur at the direction of the Environmental Division.

3. The landward areas of the Resource Protection Area (RPA) buffer that are proposed to be cleared and disturbed through the installation of the new bulkhead 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.
4. A preconstruction meeting will be held on-site prior to commencement of construction.
5. A turbidity curtain will not be required for this project as proposed because the existing bulkhead is not to be removed. The Environmental Division reserves the right to require a turbidity curtain if field conditions change.
6. Filter fabric shall be used behind the proposed bulkhead, as per the detail. The Environmental Division must inspect the filter fabric prior to any backfilling operations.
7. 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.
8. The permit shall expire December 12, 2002.
9. 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. Lindsey stated that he was unsure of the location of the proposed bulkhead and asked whether a preconstruction meeting would be held.

Mr. Woolson stated that a preconstruction meeting would be held and the location will be fully staked prior to construction. The proposed bulkhead would be curvilinear; there would be no jogs or offsets except at the return walls.

Mr. Waltrip asked if the work would be done from the water.

Mr. Woolson stated that the work would be accomplished from the water and that the only vegetation removed would be that necessary to install the bulkhead.

Mr. Lindsey opened the public hearing.

Mr. Daniel Winall, Water's Edge Construction, stated that he was there to represent the applicant. He said that the best way to construct the project from an environmental standpoint would be to install the new wall in front of the existing bulkhead. He would locate the new wall as close as possible to the existing bulkhead.

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

Mr. Waltrip made a motion to approve case W-24-01 with staff's recommendations and urged the contractor to get the wall as close as possible to the existing bulkhead.

The motion was approved with a 4-0 vote.

E. MATTERS OF SPECIAL PRIVILEGE

At the November 14, 2001 Board meeting the Board had requested staff to present wetland violation cases at this meeting.

Case No. W-25-01 - 135 West Landing: Mr. Woolson presented the case stating that during the site visit for wetlands case W-18-01, it was noticed that riprap on the eastern portion of Mr. Carr's property looked as if it had been recently placed. Upon closer inspection, there were small shrubs and weeds growing through the riprap. During the subsequent Board meeting (October 2001), one of the Board members mentioned that the riprap in question on the eastern portion of the property looked as if it were new and that he did not remember issuing a permit for the work. After researching the real estate records, wetlands permit log, Board minutes and discussing the issue with VMRC, the following facts are determined to exist:

- Mr. Carr bought the property in question on May 31, 2000 from a Mr. Jester.
- No record of any wetlands permit issued to Mr. Carr exists before W-18-01.
- No record of any wetlands permit issued to Mr. Jester exists.
- Mr. Jester applied for, and was granted by VMRC, a permit for a pier. The permit application was considered exempt from the Board's jurisdiction. This permit was issued case number W-26-94. VMRC was not able to provide their case number.
- Aerial photography from December 1995 clearly shows that the riprap exists.

It is the staff's recommendation that the Board take the following actions:

1. Request from Mr. Carr an after-the-fact permit to formally document the riprap shoreline stabilization measures.
2. Not pursue any monetary fine against Mr. Carr for this particular wetlands violation because the facts do not warrant it.

Mr. Gussman suggested waiving the application fee for cases such as this where no violation by the current owner is involved.

Mr. Hughes stated that it did not seem unreasonable to remove a cloud over the title to the property for \$100.

Mr. Stagg suggested that it was possible to do a memo for the file to document the situation if a permit was not required.

Mr. Hughes made a motion for the staff to contact the property owner, make them aware of the circumstances involved and present to them the option of applying for a permit to resolve the matter.

The motion was approved with a 4-0 vote.

Case No. W-26-01 - 5050 River Drive: Mr. Woolson presented the case stating that during the site visit for wetlands case W-03-01, it was noticed that riprap on the adjacent property looked as if it had been recently placed. Upon closer inspection, there was no evidence of small shrubs and weeds growing through the riprap. During the subsequent Board meeting (November 2001), one of the Board members mentioned that the riprap in question looked as if it were new and that he did not remember issuing a permit for the work. After researching the real estate records, Code Compliance records, wetlands permit log, Board minutes and discussing the issue with VMRC, the following facts are determined to exist:

- Mr. Todd bought the property in question on July 29, 1998 from a Mr. Sweat.
- No record of any wetlands permit issued to Mr. Todd exists.
- A wetlands permit issued to Mr. Sweat exists for a bulkhead and is W-19-85.
- Mr. Sweat applied for, and was granted by VMRC, a permit for a bulkhead and pier, case number 85-0975.
- Aerial photography from April 1997 clearly shows that the bulkhead and pier exist.
- On June 15, 2000, a building permit was applied for and granted for the placement of riprap behind the existing bulkhead. Once the riprap was in place, the bulkhead was removed. The work was considered emergency repair work by the Environmental Division and thus did not require a wetlands permit.
- At the November 2001 Board meeting, it was stated by a contractor that he knew who had done this work. He did not divulge the name, nor was he asked to.

It is the staff's recommendation that the Board take the following actions:

1. Not require an after-the-fact permit from Mr. Todd nor issue any fines for unpermitted work.

Pat Menichino stated that the work was conducted behind the existing bulkhead and that the bulkhead was then removed. It was his opinion that the work did not impact wetlands and felt no violation occurred.

The Board agreed with that assessment and stated no further action was required.

Case No. W-27-01 - 10124 Sycamore Landing Road: Mr. Woolson presented the case stating that during the site visit for wetlands case W-23-01, it was noticed that there appeared to be new wooden groins installed. Shoreline stabilization work was permitted under W-18-00, however the existing groins were to be saved, not replaced.

During another site visit at low tide, the new groin construction was confirmed. After researching the real estate records, wetlands permit log, Board minutes and discussing the issue with VMRC, the following facts are determined to exist:

- ❑ The property in question has been in the Baughan family at least since March 14, 1994, either owned outright or in trust.
- ❑ No record of any wetlands permit issued to Mr. Baughan exists for the groin construction.
- ❑ A wetlands permit issued to Mr. Baughan exists for the shoreline stabilization and is W-18-00.
- ❑ VMRC did not issue a permit for the shoreline stabilization because it was determined to be outside their jurisdiction, case number 00-1073.
- ❑ Aerial photography from June 1996 clearly shows that groins exist.
- ❑ During the site visit for wetlands case number W-18-00 (June 15, 2000), the existing groins were documented and found to be almost entirely non-existent, except for the pilings.
- ❑ During a follow up site visit in October 2001 for the closing out of W-18-00, the groins were again documented at high tide.
- ❑ During a follow up site visit in November 2001, the groins were documented at low tide. The groins extend an average of 36 linear feet from mean high water to mean low water.
- ❑ During a phone conversation in November with the contractor for W-18-00, he stated that he did neither the groin work nor the open pile deck construction, but that he had a reasonable idea as to who did it. He stated that the homeowner had asked him to do the groin work, but he said no because he did not have the proper permits to do the work.

It is the staff's recommendation that the Board take the following actions:

1. Request from Mr. Baughan an after-the-fact permit to formally document the new wooden groin structures.
2. Pursue a monetary fine, either a civil charge or penalty, against Mr. Baughan and the contractor (if it can be determined) for this particular wetlands violation.

Mr. Waltrip asked whether the work could be considered repair work.

Mr. Woolson felt that in his opinion it should not be considered repair, as the only structure left was the pilings.

Mr. Lindsey suggested that the owners get a permit. If they did not do that on a voluntary basis, they could still be subject to a fine.

Mr. Hughes suggested that staff should contact the owners and get them to apply for a permit and that the Board would decide on a course of action after that.

Mr. Hughes made a motion for the staff to contact the property owner, make them aware of the circumstances involved and present to them the option of applying for a permit to resolve the matter.

The motion was approved with a 4-0 vote.

Case No. W-28-01 - 10120 Sycamore Landing Road: Mr. Woolson presented the case stating that during the site visit for wetlands case W-23-01, it was noticed that there appeared to be new wooden groins installed. Shoreline stabilization work was permitted under W-18-00, however the existing groins were to be saved, not replaced. During another site visit at low tide, the new groin construction was confirmed. After researching the real estate records, wetlands permit log, Board minutes and discussing the issue with VMRC, the following facts are determined to exist:

- ❑ The property in question has been in the Stone family at least since August 8, 1997.
- ❑ No record of any wetlands permit issued to Mrs. Stone exists for the groin construction.
- ❑ A wetlands permit issued to Mrs. Stone exists for the shoreline stabilization and is W-18-00.
- ❑ VMRC did not issue a permit for the shoreline stabilization because it was determined to be outside their jurisdiction, case number 00-1073.
- ❑ Aerial photography from June 1996 clearly shows that groins exist.
- ❑ During the site visit for wetlands case number W-18-00 (June 15, 2000), the existing groins were documented and found to be almost entirely non-existent, except for the pilings.

- ❑ During a follow up site visit in October 2001 for the closing out of W-18-00, the groins were again documented at high tide.
- ❑ During a follow up site visit in November 2001, the groins were documented at low tide. The groins extend an average of 36 linear feet from mean high water to mean low water.
- ❑ During a phone conversation in November with the contractor for W-18-00, he stated that he did neither the groin work nor the open pile deck construction (on the Baughan property), but that he had a reasonable idea as to who did it. He stated that the homeowner had asked him to do the groin work, but he said no because he did not have the proper permits to do the work.

It is the staff's recommendation that the Board take the following actions:

1. Request from Mrs. Stone an after-the-fact permit to formally document the new wooden groin structures.
2. Pursue a monetary fine, either a civil charge or penalty, against Mrs. Stone and the contractor (if it can be determined) for this particular wetlands violation.

Mr. Hughes suggested that staff should contact the owners and get them to apply for a permit and that the Board would decide on a course of action after that.

Mr. Hughes made a motion for the staff to contact the property owner, make them aware of the circumstances involved and present to them the option of applying for a permit to resolve the matter.

The motion was approved with a 4-0 vote.

Calendar Year 2002 Meeting Schedule

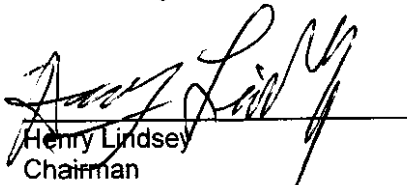
The Board unanimously adopted the 2002 Wetlands Board Meeting schedule, which is to be held on the 2nd Wednesday of each month at 7:00 p.m., provided there are cases to be considered.

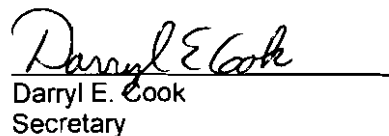
Board Meeting Protocol

A general discussion was held on how Board meetings should be conducted and how Board members should interact with applicants, staff and the general public. Mr. Lindsey also wanted to know what matters should be addressed during the public hearing process and he wanted input from other members on what his role as Chairman should be in directing the meetings. There was a general consensus that the Board members are to be courteous to the public and staff, and also that the Chairman has the authority to direct the meeting and to keep the discussion on track and focused on pertinent issues related to the application.

F. ADJOURNMENT

The meeting was adjourned at 9:20 PM.


Henry Lindsey
Chairman


Darryl E. Cook
Secretary