

property is found on the James City County Real Estate Tax Map (07-2); there is no specific tax parcel identified for the property. The project site in question is located on the York River mainstem.

The project is a community pier, and the Board has consistently taken jurisdiction and required permits for these cases. Environmental Division staff members have visited the site on several occasions, and VMRC and VIMS representatives have also reviewed the project for scope issues and potential impacts. The project crosses over the Intertidal range and will impact 180 square feet of Type XV, Sand/Mud Mixed Flat Community and 20 square feet of Type I, Saltmarsh Cordgrass Community with total fill impacts of 0 square feet to these communities. The project also involves the removal of an existing approximately 3-foot wide pier.

The ownership of the parcel is uncertain even after a title opinion by a private attorney. It has been demonstrated that the property owners making this application have a legal easement to the York River on the Lee Landing parcel but it is unclear who holds the fee-simple ownership to the property. Therefore, even though wetlands permits do not convey property rights, the following disclaimer will be added to the permit: The applicant has been informed of the uncertainty of the ownership of the parcel and understands that any construction is at the applicant's own risk since it is subject to being challenged by anyone with a claim to the title of the land.

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

1. The permit shall expire July 10, 2003.
2. 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 stated he was not opposed to the project. However it concerned him that there was no proof of ownership and felt this could create a liability issue. He highly recommended to this group that they complete all legal documentation to get the ownership issue resolved. He then stated that he felt the ramp was very steep and questioned if this ramp could be considered public property.

Mr. Dohrman stated the County's Real Estate Assessment Office was investigating the issue to try and resolve tax issues. He further stated this group had been maintaining the property for many years and it had been demonstrated that they did have a legal easement to the York River. In his opinion he did not feel the County owned the property and it should not be considered public property.

Mr. Lindsey opened the public hearing.

- A. Frank Will Armstrong, one of the applicants and resides at 10101 Sycamore Landing Road, approached the Board. He informed the Board that there were two signs posted stating private property and there was a chain across the road to prohibit public use. He stated there was a public boat landing approximately one mile away at Croaker Landing. He thanked Darryl Cook and Greg Dohrman for coming up with a solution that would enable the members to move forward with the project.
- B. Helen Philips, resident of Sycamore Landing subdivision, said she had a big boat and the existing ramp at Lee Landing was too steep for her to launch her boat. She uses the Croaker Landing public boat ramp but what she wants to do is to tie-up at the pier at Lee Landing and go home, and then go out in the boat later in the day.
- C. Charles Mihalcoe, one of the applicants and resides at 10131 Sycamore Landing Road, informed the Board that there have been other piers in this location. However none of them had weathered well and disappeared over time.
- D. John Lenthall, one of the applicants and resides at 10139 Sycamore Landing Road, stated that he felt the taxes paid by the owners in Sycamore Landing more than made up for the taxes on this parcel. He stated that the liability issue should be worked out between lawyers, if the need arose. He requested the Board approve their permit request.

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

Mr. Apperson also thanked Mr. Cook and Mr. Dohrman for overcoming the ownership issue so that the property could be utilized, as the role of the Wetlands Board is not to establish ownership but to address wetlands issues.

Mr. Duffy again emphasized that the Wetlands Board was not doing its duty by not ensuring ownership. He stated he feels very strongly that this could be a liability issue.

Mr. Waltrip stated he agreed with Mr. Apperson and further stated the owners pay taxes and should have enjoyment of the pier.

Mr. Duffy made a motion to approve case W-6-02 with staff's recommendations.

The motion was approved with a 5-0 vote.

2. W-15-02/VMRC 02-0932; 1368 Colonial Parkway

Mr. Cook presented the case stating that Mr. Robert Pretlow, U.S. Corps of Engineers, Norfolk District, on behalf of the National Park Service for the Colonial National Historic Park, had applied for a wetlands permit to allow for the implementation of a Shoreline Management Plan for the Jamestown Island portion of the Park located in James City County. The project involves the establishment of vegetative wetlands fringes with the use of rock sills and breakwaters to control eroding shorelines. The construction proposes the installation of 11,094 linear feet of rock sills and breakwaters in 50 different structures, and the establishment of 3.43 acres (149,377 square feet) of vegetative wetlands fringe areas. The property is further identified as parcel (1-1) found on the James City County Real Estate Tax Map (55-1). The project proposes work on the James River mainstem, the Thorofare, and Powhatan Creek.

Environmental Division staff visited the site on April 8, 2002, and on a previous occasion along with representatives from VMRC, VIMS, DEQ, Corps of Engineers, and DGIF to discuss the project scope and potential impacts. The purpose of the project is to stabilize and protect eroding shorelines that have the potential to impact significant archaeological sites by establishing vegetative wetland fringes with the use of rock sills and breakwaters. The 50 sites result in a total impact to 4.31 acres of Type XV, Sand/Mud Mixed Community for the riprap structures and the sand fill. To offset this, the project will create 4.61 acres of Type XVIII, Rubble Community and 0.74 acres of Type I, Saltmarsh Cordgrass and Type II, Saltmeadow Communities. In terms of permanent fill, determined in the manner generally used for the Board, the total loss of wetlands is 3.5 acres. This is offset by the creation of wetlands in the amount of 5.7 acres for the rubble and vegetated communities established. The gain in wetlands exceeds the losses by 2.2 acres.

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

1. Prior to any land disturbing activities, a pre-construction meeting will be held on-site.
2. All riprap used shall be a minimum of Class II Stone.
3. The Environmental Division shall inspect all filter fabric used for the revetments prior to the placement of riprap.
4. If any landward areas of the Resource Protection Area (RPA) buffer are disturbed, a mitigation replanting plan consisting of native trees, shrubs and ground cover will be required.
5. The Environmental Division, prior to any disturbance, shall approve all vegetation requiring removal for this project.
6. A turbidity curtain shall be used for all breakwaters and sand nourishment sites.
7. A time of year restriction, from December 15 to July 15, shall be in place for all work to occur within 1,300 feet of any Bald Eagle nesting sites.
8. The permit shall expire July 10, 2003.
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.

The Board held a short discussion on how a turbidity curtain worked and discussed where it would be required.

Mr. Lindsey stated the applicant in the application requested 24 months to complete the project. He suggested changing the date in condition No. 8 to July 10, 2004 instead of July 10, 2003.

Mr. Lindsey opened the public hearing.

A. Mr. Robert Pretlow and Mark Hudgins, U.S. Corps of Engineers and the applicants, responded to Board questions. They stated a contractor would be selected by bid process and they estimated the project to cost approximately \$2.5 to \$3 million. Powhatan Creek would not be dredged and if boat traffic were affected it would be very temporary. They stated the overall study included the Parkway to College Creek and sites on Jamestown Island, however this application was for Jamestown Island. A new application would be submitted for the remainder of the work if funding were available. The work to be done was not associated with the 2007 celebration.

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

A short discussion was held relating to establishing No Wake Zones and speed limits on Powhatan Creek.

Mr. John Hughes joined in the conversation and stated the Board of Supervisors would need to apply for the No Wake Zone, but only in response to an application by a landowner.

Mr. Gussman made a motion to approve case W-15-02 with staff's recommendations and changes to condition No. 8 to change the expiration date to July 10, 2004.

The motion was approved with a 5-0 vote.

E. NEW BUSINESS - none

F. MATTERS OF SPECIAL PRIVILEGE

1. Resolution of Appreciation – John Hughes

RESOLUTION OF APPRECIATION

FOR SERVICE TO THE

JAMES CITY COUNTY WETLANDS BOARD

WHEREAS, John Hughes served the citizens of James City County on the Wetlands Board continuously from April 21, 1986, to January 5, 2002; and

WHEREAS, incalculable hours of voluntary service given by John and his high qualifications to handle many challenges were invaluable to the successful betterment of the County's wetlands resources by his participation in the development and application of the Wetlands Mitigation Policy; his service as Vice-Chairman of the Board for over 10 years; and his 15 years of service on the Wetlands Board; and

WHEREAS, the Wetlands Board will feel a great loss of one whose ability and personal qualities have meant so much in the protection of the County's wetlands.

NOW, THEREFORE, BE IT RESOLVED that the Wetlands Board of James City County, Virginia, extends congratulations to John on his leadership that has given the County the stature it now enjoys and its sincere appreciation for services as a Wetlands Board member and hopes that the coming years bring good health, happiness, and a full share of those things that make this world a better place in which to live.

BE IT FURTHER RESOLVED that this resolution be entered into the Minutes of the Wetlands Board and that a copy be presented to John Hughes.

Henry Lindsey, Chairman
James City County Wetlands Board

ATTEST:

Darryl E. Cook
Secretary

Adopted by the Wetlands Board of James City County, Virginia, this 10th day of July, 2002.

Mr. John Hughes approached the Board and inquired if the developer at Landfall at Jamestown had applied for a wetlands permit for the stormwater outfall into Powhatan Creek. He stated this issue had been unresolved for over a year and the Board needed to pursue an end to the issue. His main concern was that once the developer had sold the property the new owner would be liable for any damage done.

Mr. Cook stated he had talked to the developer and engineer. He was told that it had been determined the storm drainpipe was not in a tidal area and did not require a wetlands permit. The riprap that had been installed was in a tidal area and was removed. The goal of the developer was to not have to apply for a wetlands permit. Mr. Cook assured the Board that he would conduct a site visit to ensure this information was correct. He would also check the second outfall that had been installed to verify its position. If in his opinion a wetlands permit was required for any of the work done, he would contact the developer to apply for a permit.

Mr. Lindsey asked staff to brief the Board about the proposed project at the Powhatan Creek Access Park.

Mr. Cook informed the Board that James City County Parks and Recreation had applied for a wetlands permit to improve public access and educational opportunities at the park. Per James City County and State Code any governmental activity in wetlands owned or leased by the Commonwealth of Virginia or a political subdivision thereof are exempt from having to obtain a local wetlands permit. Friends of the Powhatan Creek Watershed are concerned with the scope of the work and have been in contact with Parks and Recreation. Their concern is the project is larger than it needs to be and will be detrimental to the area. Staff's decision is that the project has minimal impacts and has positive aspects to it. The Director from Parks and Recreation has prepared a memorandum explaining events about this issue to the Board of Supervisors.

John Hughes stated he was one of the Directors of Friends of the Powhatan Creek Watershed. He stated a matching grant was issued for this project. They felt the application submitted for the grant was misleading as it stated Friends of the Powhatan Creek Watershed were partners in the project and they are not. He told the Board that the park should not be too accessible and become a hang out place. There were other items on the application, which they felt were misleading, and until all issues are resolved funding will not be granted. He is meeting with representatives from Parks and Recreation and hopefully issues will be resolved.

Mr. Lindsey informed the Board that the County is issuing new County ID badges and encouraged them to obtain one if they chose to do so.

Mr. Duffy inquired if the Board of Supervisors had approved gas mileage reimbursement for the Board members.

Mr. Cook stated the budget line item to cover the expense had been reduced considerable and left no money for reimbursement.

Pat Menichino introduced new staff members to the Board: Joe Buchite and Jim Rudnicky, both Environmental Inspectors.

G. ADJOURNMENT

The meeting was adjourned at 8:25 PM.

Henry Lindsey
Chairman

Darryl E. Cook
Darryl E. Cook
Secretary