

**JAMES CITY COUNTY WETLANDS BOARD
MINUTES
June 10, 2009 - 7:00PM**

- A. ROLL CALL** **ABSENT**
John Hughes - Chairman
Larry Waltrip
David Gussman
Terence Elkins
William Apperson

OTHERS PRESENT

Elizabeth Murphy - Virginia Marine Resource Commission (VMRC)
County Staff

The responsibility of this Board is to carry out locally the Commonwealth policy to preserve the wetlands and to accommodate economic activity so as to prevent their despoliation.

B. MINUTES

The May13, 2009 Board minutes were approved as written.

C. PUBLIC HEARINGS

1. W-20-09/VMRC09-0413: DeSantis – 7270 Osprey Drive

Patrick Menichino presented the following staff report to the Board:

Southern Landscaping and Construction, Inc. applied for a wetlands permit on behalf of the property owners, John and Holly DeSantis, 7270 Osprey Drive, Lanexa, for installation of riprap revetment along the shoreline, adjacent to the rear of this property. The property is further identified by James City County Real Estate as PIN #1910800006. The project is located on a canal with immediate access to the Chickahominy River. Representatives from Southern Landscaping were advised their attendance at this Wetlands Board meeting was highly recommended.

This project will involve the re-grading of 175 linear feet of shoreline and the installation of a class-1 riprap revetment. The project will involve impacts to jurisdictional wetlands and will also include impacts to upland areas not within the Wetlands Board's jurisdiction.

Environmental Division staff (Staff) along with a representative from Southern Landscaping visited the site on April 9, 2009 and again on May 14, 2009, to discuss the proposed project and possible alternate methods of stabilizing the minor shoreline erosion problem. Proposed impacts for this project were estimated by The Virginia Institute of Marine Science (VIMS) to be 350 sqft. Total fill impacts (permanent loss / fill area) from the proposed riprap structure was estimated to be 180 sqft. Although the VIMS report does not specify the amount of impacts to Type XI Fresh Water Mixed Community, Staff estimated that approximately 60 sqft of vegetated wetlands will be impacted.

The installation of the proposed riprap revetment structure will require land disturbing activities within the RPA buffer which are not identified or addressed in the Joint Permit Application (JPA).

Staff recommended to the applicant, that a vegetative solution to the minor shoreline erosion problem should be explored and proposed in lieu of a riprap revetment structure.

Staff and VIMS do not support the applicant's proposal for the following reasons:

1. VIMS provides guidance and recommendations to Staff on proposed shoreline projects. VIMS guidance documents and recommendations for stabilizing low energy shorelines is through the establishment of adequate wetland and riparian vegetation. Hard armoring of shorelines is only recommended in cases that are experiencing significant erosion do to wave climate and/or boat wakes.
2. The existing shoreline is located along a freshwater canal approximately 60 feet wide. The limited fetch that exists precludes the possibility of wave energy. In addition, the potential for boat wakes has been eliminated through the establishment of no-wake regulations. This shoreline has been evaluated to be a low energy shoreline with a low potential for erosion. The existing bank top is stable with only minor erosion scour located below mean high tide.
3. The Virginia Marine Resources Commission's Wetlands Guidelines Manual states on page 44:
A: Shoreline protection strategies:
 1. Shoreline protection structures are justified only if there is active, detrimental shoreline erosion which cannot be otherwise controlled; if there is rapid sedimentation adversely affecting marine life or impairing navigation which cannot be corrected by upland modifications; or if there is a clear and definite need to accrete beaches.
4. The bank along this shoreline has been subjected to routine mowing and the removal of riparian plant material down to mean high water. This type of vegetative maintenance is detrimental to establishing a stable shoreline. Despite the ongoing vegetative maintenance, wetlands vegetation is colonizing within the tidal range along this shoreline in an attempt to create a stable and environmentally functional shoreline.
5. The proposed shoreline structure will impact vegetated wetlands and the submitted JPA does not address the issue of wetlands mitigation or compensation, as required by the Board.

It was recommended the Board offer the applicant the opportunity to defer this case until the deficiencies in the application can be resolved. If the applicant did not request a deferral, Staff recommended the Board vote to deny the permit.

If the Board voted to approve the permit, Staff recommended the following conditions be imposed and be made part of the permit:

1. A revised plan, showing all proposed upland impacts within the RPA components, shall be submitted to VMRC, VIMS, and James City County for review and approval.
2. An RPA Restoration Plan shall be submitted to James City County for review and approval prior to the required, on-site preconstruction meeting. This RPA Restoration Plan shall show the locations and species of native trees and shrubs and grasses to be installed within the RPA buffer area, landward of the proposed riprap structure.
3. Implementation of the RPA Restoration Plan shall be guaranteed by surety in a form acceptable to the Environmental Division (Division) prior to the preconstruction meeting.
4. Wetlands compensation shall be required to be paid by the applicant, for the proposed 60 sqft of impacts to vegetated wetlands. The applicant shall pay a wetlands compensation fee of approximately \$10.00 – \$12.00 per sqft (x 150 sqft), directly into a Tidal Wetlands Fund or Wetlands Bank, approved by the Division. All surety required by the Division shall be held until proof of the wetlands compensation payment is submitted and approved by the Division.
5. The limits of clearing and construction shall be flagged in the field prior to the preconstruction meeting.
6. The Environmental Director reserved the right to require a turbidity curtain for this project if field conditions warrant its use.
7. The permit shall expire on June 10, 2010. If an extension of this permit is needed, a written request shall be submitted to the Division no later than two weeks prior to the expiration date.

Mr. Menichino stated the applicant had submitted a revised plan late this afternoon and although he did not have an opportunity to thoroughly review this revision, it appeared the only change was to the size of stone from class-1 to class-A1, a smaller stone.

Mr. Hughes asked Mr. Menichino to identify the property lines on a photograph from the Board package. He also asked the depth of the water at the shoreline, and if the shorelines on the opposite side of the canal were hardened.

Mr. Menichino pointed out the property lines, stated the depth of the water was a foot or less, and confirmed that shorelines on the opposite side of the canal were hardened with bulkheads but noted the properties adjacent to the applicant were not.

Mr. Elkins asked about the land disturbing associated with the proposed project.

Mr. Menichino stated installation of the revetment would require excavation of the shoreline, possible stockpile of fill material, and disturbance from access to the property.

Mr. Waltrip asked if the revetment was proposed for the entire length of the shoreline on the property and if the Wetlands Board had ever approved the use of armor stone for aesthetic reasons.

Mr. Menichino stated the revetment was proposed for the entire shoreline and to the best of his knowledge the Wetlands Board had never approved the hardening of a shoreline when no erosion was evident or anticipated.

Mr. Hughes asked if the shoreline grading would require a permit from the Chesapeake Bay Board.

Mr. Menichino stated for a small project the grading would be authorized through the wetlands permit.

Mr. Hughes opened the public hearing.

A. Mo Bloxom, Southern Landscaping and Construction, Inc, stated the VIMS report was based on looking at overhead pictures. In his opinion the shoreline was undercut and the scarping was not obvious from an overhead view. He displayed photographs that he believed demonstrated this scarping. He also displayed photographs of bulkheads and boathouses on the opposite side of the canal and stated the wave reflection from these bulkheads as well as boat traffic was contributing to the erosion of this shoreline. In his opinion the riprap would help absorb the reflective energy and prevent further erosion. He referred to a VIMS report from 2007 on another property, which stated riprap was preferred to bulkheads. He stated the riprap would be stockpiled next to the driveway, there would be no back fill or major excavation, and the impacts to the property would be minimal.

Mr. Hughes stated the drawings submitted with the JPA did not show the scarping or how the core stone would be placed. He described a method used on another project, where core stone was used to fill the scarping then filter cloth and the armor stone were placed over it. He stated this method did not require cutting of the bank.

Mr. Waltrip agreed that this method would not require as much excavation.

A. Mr. Bloxom stated the drawing he submitted with the JPA only showed the proposed construction not the problem being corrected. He stated the method described by Mr. Hughes was a viable option he would consider. In his opinion the armor stone would cause less disturbance than a vegetative stabilization, which would require cutting the shoreline back to create a 3 to 1 slope.

Mr. Hughes stated the application before the Board did not employ the methods discussed and asked if the applicant wanted to request a deferral, modify the application, and resubmit it for the next Board meeting.

Mr. Menichino stated the modification should be submitted to VMRC and reviewed by VIMS and Staff for comments. This process may take more time than available, to schedule it for the next Board meeting.

B. Elizabeth Murphy, VMRC, stated the applicant could submit the modification to VMRC and the County at the same time, in order to expedite the process.

Mr. Gussman asked if upon inspection, Staff believed the bank was severely undercut and when the applicant was notified of Staff's evaluation.

Mr. Menichino displayed a copy of the email sent to the applicant, VMRC and VIMS on April 14, 2009 in which he stated the erosion present on the shoreline was minor and did not warrant the extensive hard armoring proposed in the JPA. The email also suggested a less intensive method of erosion abatement including a vegetative solution.

A. Mr. Bloxom asked the Board to also consider the rights of this property owner. He stated this property was on a manmade canal where there were many bulkheads and boathouses. This owner should have the right to increase the value of his property to match others on the canal, who had apparently been allowed to harden their shorelines.

Mr. Hughes closed the public hearing as no one else wished to speak.

Mr. Gussman stated he was not convinced there was serious enough erosion to warrant the proposed revetment and loss of vegetated wetlands from excessive shoreline hardening. It would be easier and less expensive for the applicant to try the vegetative approach. Therefore he was inclined to deny the application.

Mr. Elkins stated he also supported Staff and VIMS recommendations for a vegetative solution.

Mr. Waltrip stated if there were areas of scarping, he felt they could be repaired with armoring but unaffected areas of the shoreline should remain vegetative.

Mr. Apperson stated the applicant presented a good case but he was also swayed by the VIMS report.

Mr. Hughes stated if there was scarping it needed to be properly repaired. However, the application now before the Board did not meet the conditions or describe the methods discussed.

Mr. Hughes reopened the public hearing for additional comments from the applicant.

A. Mr. Bloxom requested a deferral to the next Board meeting so he could submit a modified drawing and VIMS could visit the site and make additional comments. He also asked the Board which agency would have information on the permits for the bulkheads on the opposite side of the canal.

Mr. Hughes stated the County would have the information.

Mr. Hughes made a motion to defer the Board decision and continue the public hearing on Wetlands case W-20-09/VMRC09-0413 to the next Board meeting on July 8, 2009.

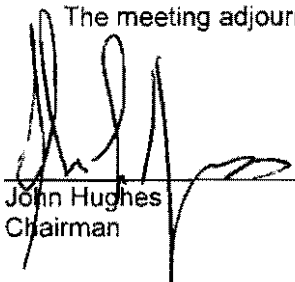
The motion was approved by a 5-0 vote.

D. BOARD CONSIDERATIONS

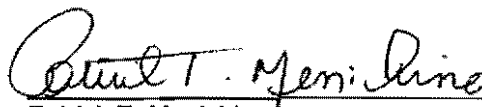
E. MATTERS OF SPECIAL PRIVILEGE

G. ADJOURNMENT

The meeting adjourned at 8:25 PM.



John Hughes
Chairman



Patrick T. Menichino
Secretary