

**JAMES CITY COUNTY WETLANDS BOARD  
MINUTES  
July 8, 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 (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 June 10, 2009 Board minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. W-20-09/VMRC09-0413: DeSantis – 7270 Osprey Drive- continued from 6/10/09**

Patrick Menichino presented the following Staff report to the Board:

Southern Landscaping and Construction, Inc. on behalf of John and Holly DeSantis, 7270 Osprey Drive, applied for a wetlands permit to install approximately 175 linear feet of class 1 riprap revetment along the shoreline adjacent to the rear of their property.

On June 10, 2009, the above referenced case was presented to the Board for consideration. The Board granted the applicant's request to defer the matter for 30 days, to allow the applicant time to consider alternate methods of shoreline protection, and to provide an opportunity for the Virginia Institute of Marine Science (VIMS) to reevaluate the JPA proposal following an onsite inspection.

On June 12, 2009 representatives from VIMS, the Board, and the applicant's agent met at the property to inspect the shoreline and to reevaluate the original JPA proposal.

On June 15, 2009 revised plans and revisions to the JPA were faxed to the Environmental Division and submitted to VMRC for distribution to VIMS. The revised application still requests approval for the installation of a riprap structure 175 ft in length. The proposed riprap has been revised to a smaller size class A1 stone. Staff originally estimated that the proposed installation of rip rap would impact approximately 60 sqft of vegetated wetlands. The revised application does not provide for wetlands mitigation or compensation as is required by the Board.

VIMS original shoreline report dated May 28, 2009 concluded that the preferred approach was to grade the existing bank and to densely plant wetlands and riparian vegetation along the shoreline.

VIMS generated a new shoreline report following their onsite inspection and evaluation. This new report concludes that the stabilization of this shoreline through a vegetative solution rather than a hard armoring approach is appropriate and environmentally preferable to address the long-term undercutting that has occurred on this low energy, manmade canal. In addition VIMS, has now estimated the amount of vegetated wetlands impacts with this proposal to be 263 sqft.

Staff supports the conclusions and recommendations offered by VIMS in this case.

Should the Board vote to grant the wetlands permit, Staff recommends the following conditions be imposed and be made part of the permit:

1. An RPA Restoration Plan shall be submitted to James City County for review and approval prior to the required preconstruction meeting which must be held on-site. This RPA Restoration Plan shall show the locations and species of native trees, shrubs, and grasses that shall be installed within the RPA buffer area, landward of the proposed riprap structure.
2. Implementation of the RPA Restoration Plan shall be guaranteed by surety in a form acceptable to the Environmental Division prior to the preconstruction meeting.
3. Wetlands compensation shall be required to be paid by the applicant for the proposed 263 sqft of impacts to vegetated wetlands. The applicant shall pay a wetlands compensation fee of approximately \$10.00 – \$12.00 per sqft (x 263 sqft), directly into a tidal wetlands fund or wetlands bank, approved by the Environmental Division. All surety required by the Environmental Division shall be held until proof of the wetlands compensation payment is submitted and approved by the Environmental Division.
4. The limits of clearing and construction shall be flagged in the field prior to the preconstruction meeting.
5. The Environmental Director reserves the right to require a turbidity curtain for this project if field conditions warrant its use.
6. The permit shall expire July 8, 2010. 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 this expiration date.

Mr. Hughes continued the public hearing.

**A.** Mo Bloxom, Southern Landscaping and Construction, Inc, stated he requested VIMS visit the site because of the scarping he had identified along the shoreline. He stated his opposition to VIMS escalation in square footage of impacted vegetated wetlands and the corresponding additional fees imposed by the County. He also stated his objection to VIMS changing their recommendation from riprap to vegetated wetlands and to the County's support of this recommendation. He displayed recent photographs of the property and stated, in his opinion the shoreline was suffering from significant erosion and the proposed installation of riprap would be the best way to protect the property from further erosion.

Mr. Menichino advised the Board that the VIMS report stated, "in the past, we raised few objections to bulkhead construction in Chickahominy Haven. However, our recommendations change over time as our scientific knowledge increases." He also advised the Board that Staff had estimated the original 60 sqft of vegetated wetlands at mid-tide. VIMS observed the site at low-tide and therefore changed the estimate to 263 sqft.

**B.** John DeSantis, property owner, stated he bought the property with the knowledge and recommendation from the real estate agent that the shoreline was eroding and would have to be protected. He stated he walked his property every day and observed the erosion. He asked the Board to approve the Wetlands Permit and allow him to protect and improve his property.

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

Mr. Gussman stated he had visited the property. In his opinion there was minimal erosion and he supported the vegetative solution recommended by VIMS. He also stated a concern that hardening the shoreline on this property might cause erosion on the adjacent properties.

Mr. Waltrip stated Mr. Bloxom made some good points regarding the evidence of erosion with the exposed roots. He also supported the owner's right to protect his property. He stated in his opinion the riprap should be used where the erosion was evident and vegetation where erosion was not occurring.

Mr. Apperson stated he also visited the property and although he respects the opinions of VIMS and Staff, he believed there was a potential for additional erosion and would support the request for a permit to install riprap.

Mr. Elkins stated he was concerned with this project causing erosion on adjacent properties thus creating a need for additional hardening of their shorelines. He stated that a riprap revetment was an environmentally undesirable approach and he agreed with Mr. Gussman's comments and the VIMS recommendation for a soft, vegetative approach.

Mr. Hughes stated he was concerned with the undercutting of the bank and in his opinion this area would suffer further erosion that would adversely affect water quality. He stated riprap would be the only acceptable method for hardening this shoreline and if properly installed and untreated, vegetation would fill in around the riprap therefore, he would support this application.

Mr. Gussman made a motion to deny the Wetlands Permit for case #W-20-09/VMRC 09-0413.

The motion to deny the Wetlands Permit was approved by a 3-2 vote.

AYE: Gussman, Waltrip, Elkins (3) NAY: Apperson, Hughes (2)

A. Mr. Bloxom asked for clarification on Mr. Waltrip's position and vote.

Mr. Waltrip stated he was in favor of the application and was confused by the motion.

Mr. Hughes made a motion to rescind the vote.

The motion to rescind the vote was approved by a 5-0 vote.

Mr. Gussman again made a motion to deny the Wetlands Permit for case #W-20-09/VMRC 09-0413.

The motion to deny the Wetlands Permit was denied by a 3-2 vote.

AYE: Gussman, Elkins (2) NAY: Waltrip, Apperson, Hughes (3)

Mr. Hughes made a motion to adopt the Resolution granting the Wetland's Permit for case #W-20-09/VMRC 09-0413 with Staff recommendations.

The motion to grant the Wetlands Permit with Staff recommendations was approved by a 3-2 vote.

AYE: Waltrip, Apperson, Hughes (3) NAY: Gussman, Elkins (2)

Mr. Hughes commented this was a rare case where the vote was not unanimous.

A. Mr. Bloxom asked if the conditions of the permit could be appealed.

Mr. Hughes and Staff advised Mr. Bloxom that the decision of the Board could be appealed to VMRC.

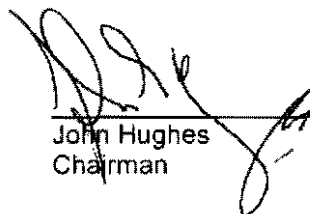
#### **D. BOARD CONSIDERATIONS**

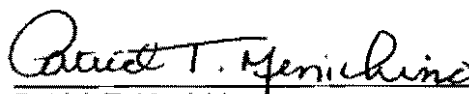
#### **E. MATTERS OF SPECIAL PRIVILEGE**

See the Chesapeake Bay Board minutes from July 8, 2009 for comments from Scott J. Thomas, Environmental Director on the Wetlands Board cases for fiscal year '09 (July 1, 2008 – June 30, 2009).

#### **G. ADJOURNMENT**

The meeting adjourned at 8:22 PM.

  
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John Hughes  
Chairman

  
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Patrick T. Menichino  
Secretary