

JAMES CITY COUNTY WETLANDS BOARD

MINUTES

June 9, 2010

A. ROLL CALL

William Apperson – Appointed Chair
David Gussman
Charles Roadley - Alternate
Richard Mason - Alternate

ABSENT

John Hughes
Terence Elkins
Larry Waltrip

OTHERS PRESENT

Randy Owens - 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.

In the absence of the elected Chairman John Hughes, and Vice Chairman Terence Elkins, the Chesapeake Bay Board voted unanimously to appoint William Apperson to serve as Chairman of the Wetlands Board, for this meeting.

B. MINUTES

The May 12, 2010 Board minutes were approved as written.

C. STAFF PRESENTATION

1. VIMS – CCRM Decision Tree

Mike Woolson, Senior Watershed Planner gave a brief presentation on the decision tree tool designed by the Virginia Institute of Marine Science (VIMS) and Center for Coastal Resource Management (CCRM), to be used for determining the appropriate methods of shoreline protection on undefended shorelines and those with failed structures.

D. PUBLIC HEARINGS

As the two cases on the agenda were for adjacent properties with similar conditions, and represented by Karla Haven, Mid-Atlantic Resource Consulting, Staff requested and the Board granted permission for both cases to be presented prior to opening of the public hearings.

1. W-06-10 / VMRC09-1701-Jeff Fisher/Mid-Atlantic Resource Consulting-7604 Uncles Neck Rd

Mike Woolson, Senior Watershed Planner presented the following case:

Wilbur Jordan and Karla S. Havens on behalf of Mr. Jeff Fisher (applicant) applied for a wetlands permit to install approximately 200 linear feet of riprap revetment to prevent future erosion along the shoreline located at 7604 Uncles Neck Road. The applicant also applied for a wetlands permit to construct a pier on the same property. The pier portion of this application is outside of this Board's jurisdiction was mentioned for information only. The property is further identified by James City County Real Estate as PIN # 2030200026. The project site is located on the Chickahominy River, a tributary to the Chesapeake Bay. The applicant was advised that their attendance at the Wetlands Board meeting is highly recommended.

This project will involve the construction of 200 linear feet of rip-rap revetment. The revetment is proposed to be constructed using Class III riprap armor stone, installed overtop of #3 surge stone and filter fabric. To be consistent with other riprap revetment projects recently installed in the County, staff would propose the Class II riprap armor stone installed overtop of Class I core stone be used. The project will involve impacts to jurisdictional wetlands and it will also include impacts to upland areas not within the Wetlands Board's jurisdiction. The project as proposed will require the excavation of the upland area to create an acceptable 2:1 slope. Grading impacts to the RPA buffer extend landward a maximum of 60 linear feet from existing MHW (existing toe of slope).

Staff estimates the impacts for the proposed revetment to be 100 square feet to the vegetated wetlands (brackish water mixed community, type XII) and 12,000 square feet (0.28 ac) to the upland resource protection area. Total fill impacts for the revetment are estimated to be 300 square feet to non-vegetated wetlands (sand-mud mixed flat community, type XII). The applicant proposes to taper the riprap revetment into the bank adjacent to lot 27. The bank height in this area approaches 25 to 30 feet high. It is unclear how this taper will work without either working on the adjacent property or causing further erosion issues. Therefore, staff proposes that this revetment work stop at the swale that is indicated on the revised drawing (May 4, 2010), near the location of the proposed pier, see figure 4.

There is a bald eagle nest within the proposed limits of work. State and federal agencies are aware of this nest and this project. No comments have been received to date regarding this issue. It will be the sole responsibility of the applicant and property owner to secure any necessary permits and authorizations from these other agencies prior to work commencing. Written authorization from these agencies is required prior to work commencing.

The proposed solution is supported through the use of the VIMS-CCRM Decision Tree for Un defended Shorelines. Where the bank erosion is high, a forested shoreline, and a bank height greater than 30 feet, the decision tree action is to grade the bank and use upland management. Where there is no marsh present, no beach present, fetch is low to moderate, and the near-shore depth is deep, the decision tree action is a revetment. The applicant has provided a reach assessment for this section of the Chickahominy River which outlines the above environmental conditions for this site.

The VIMS report states that if any action is justified and the near-shore depth is as indicated, then the onshore revetment is the appropriate solution.

Staff offers the following information and guidance for the Board's consideration:

1. The applicant proposes to construct an armor stone revetment and grade approximately 12,000 square feet of RPA buffer in order to achieve a 2:1 slope. The proposed grading will occur within an RPA buffer that is well vegetated with a heavy canopy and understory shrub layer. The proposed revetment will tie into a proposed armor stone revetment located on an adjacent property (lot 25). The revetment for the three combined properties are self-contained, meaning there are no opportunities for other adjacent properties to tie in to the revetment, if the work stops approximately 50 feet east of the common property line between lots 26 and 27 (near the proposed pier location).
2. The shoreline along this stretch of the Chickahominy River has suffered from wave attack during major storm events resulting in shoreline erosion.
3. There is no imminent danger to existing dwellings that may be caused by the shoreline erosion.
4. The VIMS report states that it is preferable from a marine environmental viewpoint to leave the shoreline in its natural state.
5. As the proposed graded bank is at a 2:1 or steeper slope, the use of canopy trees should be limited to prevent future problems with slope stability.
6. A pier is also proposed for this property.
7. There is a federally protected bald eagle nest on this property within or adjacent to the proposed work zone.

Should the Board vote to approve this application for a permit, staff recommends the following permit conditions be applied to the permit:

1. Prior to any land disturbing activities, a preconstruction meeting will be held on-site.
2. All land disturbing activities shall be coordinated with the adjacent project (7596 and 7600 Uncles Neck Road), if a wetland permit is granted for that project. If a wetlands permit is not granted for the adjacent property, then a revised plan must be submitted showing how this project will terminate on the northern property line (lot 25).
3. The limits of clearing and grading shall be flagged in the field prior to the preconstruction meeting. The flagging should provide a continuous barrier between the work zone and the undisturbed RPA buffer.
4. Written permission from the US Fish and Wildlife Service and/or the Virginia Department of Game and Inland Fisheries is required prior to work commencing. A copy of such authorization shall be provided to the Environmental Division (Division) staff at or prior to the pre-construction meeting.
5. The proposed project grading will impact approximately 12,000 square feet of RPA buffer. An RPA buffer modification plan shall be submitted to the Division to show the proposed species and locations for (30) native canopy trees, (60) native understory trees, and (90) shrubs required for mitigation to offset the RPA impacts. Shrubs may be substituted for canopy trees at a ratio of 3:1 and understory trees at a ratio of 2:1. There shall be no turf grass established within the RPA. The entire disturbed RPA area shall be hardwood mulched, overtop of the erosion control type-2 matting, to a depth of at least 3-inches to stabilize the graded slopes. The implementation of the RPA buffer modification plan and stabilization shall be guaranteed by surety in a form acceptable to the Division and to the County Attorney and be submitted and approved prior to the preconstruction meeting.
6. The armor stone proposed for this revetment is Class II, the core stone shall be a minimum size of Class I. Filter cloth shall be installed underneath of all core stone. Inspections of the excavated core trench and filter cloth are required prior to the installation of core stone.
7. Wetlands compensation shall be required to be paid by the applicant for the proposed 100 sf of impacts to vegetated wetlands. The applicant shall pay a wetlands compensation fee of approximately \$10.00 - \$12.00 per sf directly into a tidal wetlands fund or wetlands bank, approved by the Division. Proof of wetland compensation payment shall be submitted to the Division prior to the pre-construction meeting.
8. A turbidity curtain shall be in place at the start of construction and stay in place until all upland disturbances have been stabilized.
9. The Division reserves the right to require erosion and sediment control measures for this project if field conditions warrant their use.
10. The applicant must obtain authorization from all other regulatory agencies that have jurisdiction over the proposed project and written evidence submitted to the Environmental Division prior to the pre-construction meeting.
11. The permit shall expire June 9, 2011. 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.

2. W-12-10 / VMRC 10-0389 - Uncles Neck LLC, Henry Stevens, Christopher Phillips and Mid Atlantic Resource Consulting- 7604 Uncles Neck Rd

Mike Woolson, Senior Watershed Planner presented the following case:

Karla S. Havens on behalf of Mr. Henry Stevens, Mr. Christopher Phillips, and Uncles Neck LLC (applicants) applied for a wetlands permit to install approximately 258 linear feet of riprap revetment to prevent future erosion along the shoreline located at 7596 and 7600 Uncles Neck Road. The properties are further identified by James City County Real Estate as PIN # 2010200024 (7596 Uncles Neck Road) and PIN # 2010200025 (7600 Uncles Neck Road). The project sites in question are located on the

Chickahominy River, a tributary to the Chesapeake Bay. The applicants were advised that their attendance at the Wetlands Board meeting is highly recommended.

This project will involve the construction of 258 linear feet of rip-rap revetment. The revetment is proposed to be constructed using Class III rip-rap armor stone, installed overtop of #3 surge stone and filter fabric. To be consistent with other riprap revetment projects recently installed in the County, staff would propose that Class II rip-rap armor stone installed overtop of Class I core stone be used. The project will involve impacts to jurisdictional wetlands and it will also include impacts to upland areas not within the Wetlands Board's jurisdiction. The project as proposed will require the excavation of the upland area to create an acceptable 2:1 slope. Grading impacts to the RPA buffer extend landward a maximum of 40 linear feet from existing MHW (existing toe of slope).

Staff estimates the impacts for the proposed revetment to be 50 square feet to the vegetated wetlands (brackish water mixed community, type XII) and 6,000 square feet (0.14 ac) to the upland resource protection area. Total fill impacts for the revetment are estimated to be 466 square feet to non-vegetated wetlands (sand-mud mixed flat community, type XV).

The proposed solution is supported through the use of the VIMS-CCRM Decision Tree for undefended shorelines. Where the bank erosion is high, a forested shoreline, and a bank height greater than 30 feet, the decision tree action is to grade the bank and use upland management. Where there is no marsh present, no beach present, fetch is low to moderate, and the near-shore depth is deep, the decision tree action is a revetment. The applicant has provided a reach assessment for this section of the Chickahominy River which outlines the above environmental conditions for this site.

The VIMS report states that if any action is justified and the near-shore depth is as indicated, then the onshore revetment is the appropriate solution.

Staff offers the following information and guidance for the Board's consideration:

1. The applicant proposes to construct an armor stone revetment and grade approximately 6,000 square feet of RPA buffer in order to achieve a 2:1 slope. The proposed grading will occur within an RPA buffer that is well vegetated with a heavy canopy and understory shrub layer. The proposed revetment will tie into a proposed armor stone revetment located on an adjacent property. The revetment for the three combined properties are self-contained, meaning there are no opportunities for other adjacent properties to tie in.
2. The shoreline along this stretch of the Chickahominy River has suffered from wave attack during major storm events resulting in shoreline erosion.
3. There is no imminent danger to existing dwellings that may be caused by the shoreline erosion.
4. The VIMS report states that it is preferable from a marine environmental viewpoint to leave the shoreline in its natural state.
5. As the proposed graded bank is at a 2:1 or steeper slope, the use of canopy trees should be limited to prevent future problems with slope stability.
6. There is a federally protected bald eagle nest on the adjacent property (7604 Uncles Neck Road).

Should the Board vote to approve this application for a permit, staff recommends the following permit conditions be applied to the permit:

1. Prior to any land disturbing activities, a preconstruction meeting will be held on-site.
2. All land disturbing activities shall be coordinated with the adjacent project (7604 Uncles Neck Road), if wetlands permit is granted for that project. If a wetlands permit is not granted for the adjacent property then a revised plan must be submitted showing the proposed construction access, equipment lay-down area, and soil stockpile areas.

3. The limits of clearing and grading shall be flagged in the field prior to the preconstruction meeting. The flagging should provide a continuous barrier between the work zone and the undisturbed RPA buffer.
4. The proposed project grading will impact approximately 6,000 square feet of RPA buffer. An RPA buffer modification plan shall be submitted to the Division to show the proposed species and locations for (15) native canopy trees, (30) native understory trees, and (45) shrubs required for mitigation to offset the RPA impacts. Shrubs may be substituted for canopy trees at a ratio of 3:1 and understory trees at a ratio of 2:1. There shall be no turf grass established within the RPA. The entire disturbed RPA area shall be hardwood mulched, otop of erosion control type-2 matting, to a depth of at least 3-inches to stabilize the graded slopes. The implementation of the RPA buffer modification plan and stabilization shall be guaranteed by surety in a form acceptable to the Division and to the County Attorney and be submitted and approved prior to the preconstruction meeting.
5. The armor stone proposed for this revetment is Class II, the core stone shall be a minimum size of Class I. Filter cloth shall be installed underneath of all core stone. Inspection of the excavated core trench and filter cloth are required prior to the installation of core stone.
6. Wetlands compensation shall be required to be paid by the applicant for the proposed 50 sf of impacts to vegetated wetlands. The applicant shall pay a wetlands compensation fee of approximately \$10.00 – \$12.00 per sf directly into a tidal wetlands fund or wetlands bank, approved by the Division. Proof of wetland compensation payment shall be submitted to the Division prior to the pre-construction meeting.
7. A turbidity curtain shall be in place at the start of construction and stay in place until all upland disturbances have been stabilized.
8. The Division reserves the right to require erosion and sediment control measures for this project if field conditions warrant their use.
9. Any time-of-year construction restrictions should be coordinated with the US Fish and Wildlife service and/or the Virginia Department of Game and Inland Fisheries.
10. The applicant must obtain authorization from all other regulatory agencies that have jurisdiction over the proposed project and written evidence submitted to the Environmental Division prior to the pre-construction meeting.
11. The permit shall expire June 9, 2011. 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 had three concerns with the applications. First he wanted more information on the bathymetry in this area and why breakwater systems could not be installed instead of the revetments. Second, he wanted more information on the rules regarding construction in the vicinity of an active eagles nest. Third and most importantly, he was concerned with the excessive impacts to the RPA and wanted the Chesapeake Bay Board to review the appropriate exception requests in conjunction with the Wetlands Board applications.

Mr. Mason stated he had the same concerns and was also concerned with runoff from the proposed grading on this project.

Mr. Apperson stated he felt there was an existing functioning buffer in the area and referred to the VIMS report preference for leaving the shoreline in a natural state. He agreed with Mr. Mason's comments regarding the 2:1 slope creating an access route for runoff of nutrients from managed lawns. He also stated a concern for the cumulative impacts as adjacent properties proposed similar shoreline projects.

Mr. Apperson then opened the public hearing for both cases W-06-10/VMRC 09-170 and W-12-10/VMRC 10-0389.

- A. Karla Havens, Mid-Atlantic Resource Consulting, addressed the Board's comments and referred to the Reach Assessment provided with the applications. This report listed the main factor contributing to bank erosion as waves that are wind-driven or caused by numerous boat wakes. She referenced the closeness of the bathymetric contours illustrated on Page 6, Figure 3 as indicating a severe drop off that was confirmed by Scott Hardaway, VIMS. Regarding the RPA impacts she stated that they were working with Staff on developing a restoration plan for the graded bank and based on the soil survey provided with the Reach Assessment, the soils are well drained and if not compacted will provide good infiltration. She stated the erosion rate was also calculated by Scott Hardaway an about 1 foot per year. She also asked how the \$10 - \$12 compensation rate was determined.
- B. Henry Stephens, applicant and developer, stated they hired consultants back in 2007, evaluated the eagles on the property, and developed an eagle management plan with the Department of Game and Inland Fisheries. He stated they would get a letter from DGIF in reference to this plan.
- C. Donald Hazelwood, owner and developer, stated the Reach Assessment showed the mouth of Uncle's Neck Creek was being filled in by the erosion of this bluff. He also stated in his observations the water was deep and dropped off quickly.

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

Mr. Roadley asked if the applicant could address the changes in stone size and the termination of the revetment 50 ft short of the property line.

Ms. Havens stated Mr. Jordan, Jordan Marine, was agreeable with Staff's recommendation on stone size however, Mr. Fisher would rather extend the revetment to the end of his property line as proposed, because the bank may continue to erode where not protected.

Mr. Roadley stated he was concerned with the eagle's nest however; it was not under the purview of this Board and did not feel it should be a consideration in the decision on these permits. While he understood the concern with the slope grading and resulting RPA impacts, in his experience this was often appropriate and necessary for a shoreline protection project and after a home was constructed on this site it would be more difficult to complete. He also asked for an explanation of the compensations amounts specified in Staff's recommendations.

Mr. Mason asked why the staff report described the proposed bank grading at a 2:1 or steeper slope and asked for more specific documentation or calculations on the erosion rate and water depth.

Mr. Woolson stated the eagle nest was referenced for the Board's general information regarding the site. He stated the dollar amount for compensation was flexible and the specific dollar amounts could be removed from the permit conditions. He explained the slope may be steeper in some areas to preserve existing trees. He said the photographs depicted the high bank erosion described by the VIMS decision tree as "evidence of active soil movement, including bare exposed soil areas, numerous leaning and fallen trees, dead tree stumps in the water and/or bank slumping".

Mr. Gussman stated the majority of the Board members desired more information on these projects and asked if the applicant wished more time to address the Board's concerns.

Scott Thomas, Environmental Director, and Administrator of the County's Chesapeake Bay Preservation Ordinance stated that RPA impacts associated with shoreline projects could be decided administratively however due to the Board's concerns with these cases, he is agreeable to these exception requests being considered by the Chesapeake Bay Board at a public hearing.

Mr. Stephens stated they wished to request a deferral on the Board's decision for case W-12-10/VMRC10-0389 in order to address the Board's concerns.

Mr. Fisher also requested a deferral on the decision for case W-06-10/VMRC09-170.

Mr. Woolson suggested the Board defer up to 90-days to allow enough time for the applicants to complete the required paperwork.

Mr. Apperson reopened the public hearings for cases W-06-10/VMRC09-170 and W-12-10/VMRC10-0389.

Mr. Mason made a motion to accept the deferral on case W-06-10/VMRC09-170 and case W-12-10/VMRC10-0389 and continue the public hearings for up to 90-days.

The motion was approved by a 4-0 vote.

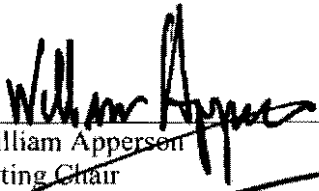
D. BOARD CONSIDERATIONS - None

E. MATTERS OF SPECIAL PRIVILEGE


Staff suggested and the Board agreed the presentations on completed projects would be postponed to a later meeting.

F. ADJOURNMENT

The meeting adjourned at 9:45 PM.



William Apperson
Acting Chair



Melanie Davis
Secretary to the Board