

**JAMES CITY COUNTY WETLANDS BOARD
MINUTES
Wednesday October 10, 2012**

A. ROLL CALL

John Hughes
David Gussman
Chuck Roadley
Louis Bott - Alternate

ABSENT

Larry Waltrip
William Apperson

OTHERS PRESENT

Juliette Giordano, 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 September 12, 2012 Board minutes were approved as written.

C. PUBLIC HEARINGS

1. W-04-13 / VMRC 12-1213 – Minichiello/Mid-Atlantic/Jordan Marine – 133 Branscome

Mr. Hughes Wetlands Board Chair stated he was an adjacent property owner and therefore was abstaining from considering this case. As Mr. Apperson, Vice Chair was absent, Mr. Hughes appointed David Gussman to serve as Chairman pro tem for this case.

Michael Woolson, Senior Watershed Planner presented the case for the Joint Permit Application (JPA) submitted by Mid-Atlantic Resource Consulting on behalf of property owner Mr. Vittorio Minichiello. The issue before the Board was a permit for wetlands impacts that may occur during the construction of a 5 ft by 245 ft non-commercial, open-pile pier on Powhatan Creek at 133 Branscome in the Powhatan Shores Subdivision, Parcel No. 4731000018.

Mr. Woolson explained this case was before the Board because of the following special committee recommendation adopted by this Board on May 13, 2009. *The Special Committee of the James City County Wetlands Board unanimously recommends to the full Wetlands Board that a wetlands permit be required for the construction of open pile structures proposed in vegetated tidal wetlands of the County, in those cases where staff has valid reasons to anticipate that the construction of such a structure may result in the alteration of the natural wetland contours or the unreasonable obstruction of tidal flow.*

Staff recommended approval of the application for this project with the conditions specified in the Resolution to Grant the Wetlands Permit.

Mr. Roadley stated he did not support the requirement for local Wetlands Board permits on open pile structures however he asked if there was any additional information regarding the construction of the pier.

Mr. Bott asked why Staff recommended this application to the Board.

Mr. Woolson suggested the contractor address the method of construction and stated Staff considered the potential impacts for a pier 200 feet or more in length, over vegetated tidal wetlands, to be the threshold for Board consideration.

Mr. Gussman opened the public hearing.

A. Ann Hewitt, 147 Raleigh Street, representing the Friends of Powhatan Creek Watershed (FOPCW) sent an email to staff and spoke on this case presenting the Board with the following written concerns:

To: JCC Wetlands Board

Re: case W-04-13/VMRC 121213: 133 Branscome Blvd

The Board of Directors of the Friends of Powhatan Creek Watershed has many concerns about staff's recommendation to approve a 5' x 245' pier through undisturbed marshy wetlands and a pier extending 10 feet across water close to the channel. This marsh is one of the few remaining undisturbed areas along Powhatan Creek and should be preserved as is. The reasons are as follows:

The proposed project does NOT meet the three criteria for allowing wetland impact.

Criteria 1- All reasonable mitigative efforts, including alternative siting... must be incorporated into the proposal.

The applicant already has an alternative site: a dock in Powhatan Shores that provides water access. Why would the applicant want to walk 80 yards (almost the length of a football field) across wetlands to get to his boat when he just needs to step outside his door? Nowhere along the creek is there such a long intrusion into wetlands. This structure would destroy one of the last, stunning uninterrupted views along the entire creek. What guarantees are there that he or a new owner if he were to sell the property would not return to the Board or VMRC requesting a dock for lounging or a second boat lift once the incursion has taken place?

Criteria 3 - The proposal must demonstrate clearly its need to be in the wetlands and its overwhelming public and private benefits.

Where are the public benefits to this proposed structure? We see only one private benefit, the applicant's. The Staff Report has bent over backwards to incorporate as many mitigation elements as possible. Their job is to serve the public. However, we are the public as well. No matter how many hoops one jumps through, this application does not comply with the rules allowing wetlands crossings.

We realize that the applicant is a well-respected member of our community but this report, in our opinion, misinterprets the language of the Ches Bay Ordinance to accommodate one person. As stewards of a special resource, we all must realize that Powhatan Creek belongs to everyone. We urge you to deny this application.

Sincerely,
Ann Hewitt, Craig Metcalfe, Boots Johnson,
Kensett Teller, John Schmerfeld
Board of Directors, FOPCW

Mr. Roadley clarified and Ms. Hewitt stated she understood that the Wetlands Board had no jurisdiction over the pier only the potential impacts to wetlands during construction of the pier.

The following email and phone call were also relayed to Staff regarding this case:

Email Sent: Sunday, October 07, 2012 9:58 AM

Hi Scott,

I see that Vittorio Minichiello wants to build a 245 foot dock across wetlands and put up a boat lift along the Powhatan Creek. He already has a lift on the side of his house along the canal in Powhatan Shores. Is a second one really necessary?

Craig Metcalfe

10/10/12 Staff received a phone call from APO, Vincent Campana, 4 Hiawatha Court stating he was in favor of this permit request.

B. Wilbur Jordan, Jordan Marine Construction described the construction methods for the pier indicating there would be little impact to wetlands as the pile driver would only be used during high tide and the materials would be brought in through land and down the pier as it was constructed.

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

Mr. Bott asked the reason behind the request for a second pier.

Mr. Woolson stated Staff had not discussed this with the applicant or his agent, as the pier itself was not under consideration or permitted by the local Board.

Mr. Gussman asked VMRC to explain their permitting process for piers.

Mr. Roadley stated he felt the Board was in an awkward position because the application did not give much detail on the construction methods and the Board only had Mr. Jordan's comments to consider regarding the temporary or permanent impacts to wetlands that may occur. He asked what would happen if the Board did not have three affirmative votes to approve the application.

Juliette Giordano with VMRC advised the Board that according to state code, a private open pile pier did not require a permit from VMRC provided the pier is less than a third of the way across a waterway not hindering navigation and no more than six feet wide. If there is a deck it must be no more than 400 square feet and if there is a roof it must be less than 700 square feet and approved by neighbors on both sides. She also advised that the current pier on this property was in a manmade canal not state owned bottom and therefore not under VMRC jurisdiction. By state code a waterfront property owner has riparian rights to construct a single pier over state owned bottom and this application was for that pier. Furthermore state code allows for the construction of these piers without local Wetlands Board permits. However, VMRC does support the decision to require local wetland permits to construct piers over an extensive amount of marsh. She responded to Mr. Roadley that without three affirmative votes the Board would be denying the construction of the pier which is permitted by state code and VMRC would have to address the conflict.

Lola Perkins, Assistant County Attorney, advised the Board that due to a recent change in the Conflict of Interest Act, when one member of the Board abstains (as Mr. Hughes had), the remaining members constitute a quorum and therefore in this situation the majority of two votes would be sufficient for approval.

Mr. Gussman asked if the County had authority to seek restoration of wetlands if they were damaged during the construction of a pier.

Mr. Woolson explained that the County could and has in the past pursued wetlands violations.

Mr. Bott asked if the three criteria required for a wetlands permit applied to this case.

Mr. Woolson stated he did not believe the criteria applied to the pier, as it was exempt from requiring a permit. He added that one purpose of the local permit was to allow Staff to monitor the impacts.

Mr. Roadley stated he understood the need for monitoring during construction and putting the applicant on notice to minimize wetland impacts or be subject to the mitigation requirements of the permit.

Mr. Gussman made a motion to adopt the resolution granting the wetlands permit for case #W-04-13 / VMRC #12-1213 at 133 Branscome Blvd, Parcel No. 4731000018.

The motion was approved by a 2-1-1 vote: (Aye: Roadley, Gussman) (Nay: Bott) (Abstain: Hughes)
(Note: After reporting the decision to VMRC, in consultation with VMRC it was determined that the state code requiring three affirmative votes for approval is controlling. Therefore although the

quorum requirements were met, the failure to obtain three affirmative votes meant the application was denied.)

RESOLUTION

DENYING A WETLANDS PERMIT ON JCC RE TAX PARCEL NO. 4731000018

WHEREAS, Ms. Karla Havens, Mid-Atlantic Resource Consulting, on behalf of Mr. Vittorio Minichiello, (the "Applicant") has appeared before the Wetlands Board of James City County (the "Board") on October 10, 2012 to request a permit to use and develop in areas designated as wetlands on a parcel of property identified as JCC RE Tax Parcel No. 4731000018 and further identified as 133 Branscome Boulevard within the Powhatan Shores subdivision (the "Property") as set forth in the application W-04-13 / VMRC 12-1213; and

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

NOW, THEREFORE, following a public hearing, the Wetlands Board of James City County by a majority vote of its members FINDS that all of the following conditions have NOT been met:

1. The anticipated public and private benefit of the proposed activity in the wetlands exceeds its anticipated public and private detriment.
2. The proposed development conforms to the standards prescribed in section 28.2-1308 of the *Code of Virginia*, and the guidelines promulgated pursuant to section 28.2-1301 of the *Code of Virginia*.
3. The proposed activity does not violate the purpose and intent of Chapter 22 of the James City County Code or sections 28.2-1300 et. seq. of the *Code of Virginia*.

2. W-05-13 / VMRC 12-1274 – Kelley/Winall – 7519 Oak Cove

Michael Woolson, Senior Watershed Planner presented the case for the Joint Permit Application (JPA) submitted by Daniel Winall, on behalf of property owners Mr. and Mrs. Patrick Kelly for construction of a stone revetment 115 ft wide X 5 ft tall X 10 ft wide, to replace a failing bulkhead on the Chickahominy River at 7519 Oak Cove Road in the Cypress Point Subdivision, Parcel No. 1910100011. Staff recommended approval of the application for this project with the conditions specified in the Resolution to Grant the Wetlands Permit.

Mr. Hughes opened the public hearing.

A. Daniel Winall, Waters Edge Construction, Contractor and Agent stated he would answer any questions from the Board.

Mr. Hughes closed the public hearing as the Board had no questions and no one else wished to speak.

Mr. Roadley made a motion to adopt the resolution granting the wetlands permit for case #W-05-13 / VMRC #12-1274 at 7519 Oak Cove Road, Parcel No. 1910100011.

The motion was approved by a 4-0 vote.

RESOLUTION

GRANTING A WETLANDS PERMIT ON JCC RE TAX PARCEL NO. 1910100011

WHEREAS, Daniel Winall on behalf of Mr. and Mrs. Patrick Kelley, (the "Applicant") appeared before the Wetlands Board of James City County (the "Board") on October 10, 2012 to request a permit to use and develop in areas designated as wetlands on a parcel of property identified as JCC RE Tax Parcel No. 1910100011 and further identified as 7519 Oak Cove in the Cypress Point subdivision (the "Property") as set forth in the application W-05-13 / VMRC 12-1274; and

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

NOW, THEREFORE, following a public hearing, the Wetlands Board of James City County by a majority vote of its members FINDS that:

1. The anticipated public and private benefit of the proposed activity in the wetlands exceeds its anticipated public and private detriment.
2. The proposed development conforms to the standards prescribed in section 28.2-1308 of the *Code of Virginia*, and the guidelines promulgated pursuant to section 28.2-1301 of the *Code of Virginia*.
3. The proposed activity does not violate the purpose and intent of Chapter 22 of the James City County Code or sections 28.2-1300 et. seq. of the *Code of Virginia*.
4. In granting this wetlands permit, the following conditions are hereby imposed:
 - 1) Prior to any land disturbing activities, a preconstruction meeting shall be held on-site.
 - 2) All other Federal, State, and Local permits required for this project shall be obtained prior to commencing work. Evidence of the securing of these permits must be provided prior to the pre-construction meeting.
 - 3) No woody vegetation shall be removed as part of this project unless approved by the Engineering and Resource Protection Division.
 - 4) The Engineering and Resource Protection Division Director reserves the right to require additional erosion and sediment control measures, including a turbidity curtain, for this project if field conditions warrant their use.
 - 5) The limits of work shall be flagged in the field prior to the pre-construction meeting.
 - 6) The wetlands permit for this project shall expire on October 10, 2013. If an extension of the permit is needed, a written request shall be submitted to the Engineering and Resource Protection Division no later than two weeks prior to the expiration date

4. W-06-13 / VMRC 12-1321 – Tucker/Mid-Atlantic/Jordan Marine – 2030 Bush Neck Rd

Michael Woolson, Senior Watershed Planner presented the case for the Joint Permit Application (JPA) submitted by Mid-Atlantic Resource Consulting on behalf of property owner Mr. Thomas Tucker for construction of a non-commercial 16 ft x 40 ft concrete boat ramp over an existing stone (gravel) boat ramp on Gordon Creek at 2030 Bush Neck Road, Parcel No. 34201000025A. Staff recently learned the original boat ramp has been in place in the 1950s and this was why there were no records of its installation. Staff recommended approval for the project with the conditions specified in the Resolution to Grant the Wetlands Permit.

Mr. Woolson read the following email received from an adjacent property owner:

Dear Mike,

I write in my capacity as a member of Nayses Bay Land Company LLC, which owns the property adjacent to Mr. Tucker, the applicant in the above Wetlands Board case set for hearing on Wednesday October 10. Nayses Bay Land Company LLC ("NBLC") supports Mr. Tucker's application.

The boat landing area at issue is shared between NBLC and the Tuckers, pursuant to a longstanding written agreement which pre-dates the Tuckers' ownership of the subject property. Further, the area in question has been used for launching boats for many years. Prior owners of the NBLC land, hunters and fishermen on Gordon's Creek have reported use of the boat launch at issue since the 1950s. I have not observed erosion, siltation or other impacts on Gordon's Creek wetlands as a result of the existence of the small boat ramp.

Mr. Tucker has been an excellent steward of his property, and NBLC offers its unqualified support for the application. Since I have a conflicting business meeting tomorrow evening, please share this e-mail with members of the Wetlands Board, as discussed during our telephone conversation this morning. Many thanks.

Gregory R. Davis
Kaufman & Canoles, P.C.
4801 Courthouse Street, Suite 300
Williamsburg, VA 23188

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

All Board members agreed the application and request were reasonable and acceptable.

Mr. Bott made a motion to adopt the resolution granting the wetlands permit for case #W-06-13 / VMRC #12-1321 at 2030 Bush Neck Rd, Parcel No. 34201000025A.

The motion was approved by a 4-0 vote.

RESOLUTION

GRANTING A WETLANDS PERMIT ON JCC RE TAX PARCEL NO. 34201000025A

WHEREAS, Karla Havens, Mid-Atlantic Resource Consulting, on behalf of Thomas Tucker, (the "Applicant") appeared before the Wetlands Board of James City County (the "Board") on October 10, 2012 to request a permit to use and develop in areas designated as wetlands on a parcel of property identified as JCC RE Tax Parcel No. 34201000025A and further identified as 2030 Bush Neck Road (the "Property") as set forth in the application W-06-13 / VMRC 12-1321; and

WHEREAS, the Board has listened to the arguments presented and has carefully considered all evidence entered into the record.

NOW, THEREFORE, following a public hearing, the Wetlands Board of James City County by a majority vote of its members FINDS that:

1. The anticipated public and private benefit of the proposed activity in the wetlands exceeds its anticipated public and private detriment.
2. The proposed development conforms to the standards prescribed in section 28.2-1308 of the *Code of Virginia*, and the guidelines promulgated pursuant to section 28.2-1301 of the *Code of Virginia*.

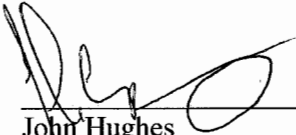
3. The proposed activity does not violate the purpose and intent of Chapter 22 of the James City County Code or sections 28.2-1300 et. seq. of the *Code of Virginia*.
4. In granting this wetlands permit, the following conditions are hereby imposed:
 - 1) Prior to any land disturbing activities, a pre-construction meeting shall be held on-site.
 - 2) All other Federal, State, and Local permits required for this project shall be obtained prior to commencing work. Evidence of the securing of these permits must be provided prior to the pre-construction meeting.
 - 3) The Engineering and Resource Protection Division Director reserves the right to require additional erosion and sediment control measures, including a turbidity curtain, for this project if field conditions warrant their use.
 - 4) The wetlands permit for this project shall expire on October 10, 2013. If an extension of the permit is needed, a written request shall be submitted to the Engineering and Resource Protection Division no later than two weeks prior to the expiration date.

D. BOARD CONSIDERATIONS - None

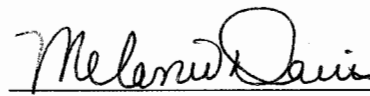
E. MATTERS OF SPECIAL PRIVILEGE - None

F. ADJOURNMENT

The meeting adjourned at 7:55 p.m.



John Hughes
Chair



Melanie Davis
Secretary