

**JAMES CITY COUNTY WETLANDS BOARD
MINUTES
Wednesday May 8, 2013**

A. ROLL CALL

ABSENT

John Hughes
William Apperson
David Gussman
Larry Waltrip
Charles Roadley

OTHERS PRESENT

County Staff (Staff)
Juliette Giordano, Virginia Marine Resource Commission (VMRC)

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 April 10, 2013 Board minutes were approved as written.

C. PUBLIC HEARINGS

1. W-21-13 / VMRC 13-0431 – Moore/Winall – 164 The Maine

Michael Woolson, Senior Watershed Planner presented the case for the Joint Permit Application (JPA) submitted by Daniel Winall, on behalf of property owners Mr. Jeffery Moore for installation of two breakwaters, associated beach nourishment and slope grading creating a living shoreline at 164 The Maine in the First Colony Subdivision, Parcel No. 4540200055.

Mr. Woolson described the current conditions of the site, the proposed structures, non-vegetated wetlands impacts, and the proposed plantings. He also advised that a related Exception to the Chesapeake Bay Preservation ordinance, for impacts to the RPA on this and the adjacent property, would be considered by the Chesapeake Bay Board at the subsequent meeting. Staff recommended approval of the for this project with the conditions specified in the Resolution to Grant the Wetlands Permit.

Mr. Hughes closed the public hearing.

Mr. Roadley asked why the slope was not proposed steeper than 4:1 and why the vegetation was proposed behind the breakwaters as opposed to the back shore area.

A. Daniel Winall with Water's Edge Construction, contractor and representative for the property owner stated the slope was proposed for a living shore line and the positioning of the plantings would be explained in the Chesapeake Bay Exception request.

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

Mr. Apperson made a motion adopt the resolution granting the wetlands permit for case #W-21-13/ VMRC #13-0431 at 164 The Maine, Parcel No. 4540200055.

The motion was approved by a 5-0 vote.

RESOLUTION
GRANTING A WETLANDS PERMIT ON JCC RE TAX PARCEL NO. 4540200055

WHEREAS, Mr. Daniel Winall on behalf of Mr. Jeffery Moore (the "Applicant") has appeared before the Wetlands Board of James City County (the "Board") on May 8, 2013 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.4540200055 and further identified as 164 The Maine in the First Colony subdivision (the "Property") as set forth in the application W-21-13/ VMRC 13-0431; 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 will 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 outside of the scope unless approved by the Engineering and Resource Protection Division.
 - 4) Eight hundred (800) square feet of intertidal area shall be planted with a combination of *Spartina patens* and *Spartina alterniflora*. The amount shall be divided evenly behind each breakwater.
 - 5) 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.
 - 6) The limits of work shall be flagged in the field prior to the pre-construction meeting.
 - 7) The wetlands permit for this project shall expire on May 8, 2014. 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

1. **W-02-13 / VMRC 12-1071 – Sweany – 6405 Conservancy**

Michael Woolson, Senior Watershed Planner advised the Board that in September 2012 this Board granted a permit for wetlands impacts associated with construction of a 608' pier at 6405 Conservancy. Condition #6 in the Resolution to Grant this permit stated that after construction a meeting would be held on site and Staff would make a presentation with recommendations to the Board regarding mitigation for the impacts. The Resolution to Grant also required payment of a \$5,000 surety to cover the mitigation for the possible impacts.

Construction of the pier is now complete and Mr. Woolson displayed photographs of the current conditions, advised the Board that he observed regrowth of vegetation during site visits, and recommended the Board remove the condition for a site meeting and mitigation and further release the surety held for this mitigation.

Mr. Apperson stated the site looked good and after a growing season would only improve.

Mr. Waltrip stated he had visited the site and also saw no permanent impacts.

Mr. Hughes asked for procedural guidance.

Lola Perkins, Assistant County Attorney, stated the Board was to consider and vote on eliminating condition 6 from the Resolution to Grant the Wetlands Permit and direct Staff to return the posted surety to the applicant.

Mr. Roadley asked what the procedure would be if there had been impacts to the wetlands.

Mr. Woolson stated he would then call for the on-site meeting and require adequate mitigation for restoration of the impacted wetlands.

Mr. Gussman made a motion to remove condition #6 from the Resolution to Grant the Wetlands Permit for case #W-02-13/ VMRC #12-1071 at 6405 Conservancy, Parcel No. 4930300002.

The motion was approved by a 5-0 vote.

E. MATTERS OF SPECIAL PRIVILEGE

Michael Woolson gave a presentation on the Center for Coastal Resources Management (CCRM) 'Regulatory Fidelity to Guidance in Virginia's Tidal Wetlands Program Final Report' that was recently released by the Virginia Institute of Marine Science (VIMS).

The audit for this report included ten projects in James City County. While the report stated none of the local Wetlands Board decisions met their guidance, it did not clarify that actually only four of the ten projects did not meet their guidance, as the other six were acceptable as submitted. In addition three of the cases not meeting their guidance, were for bulkheads or rip-rap located on the canal system in the Chickahominy Haven subdivision. VIM's recommendation was to grade back and re-vegetate the slope which in Staff's opinion would not work on these properties.

The report also recommended replacing citizen wetlands boards with a state regulatory system or requiring education for members of citizen wetlands boards and enacting regulatory actions to implement VIMS and CCRM technical guidance. The report also suggested development of a wetlands tracking database.

Mr. Roadley stated that this Board was accountable to James City County but overseen by VMRC and asked for a summary of VMRC's response to this report.

Juliette Giordano, VMRC representative, stated that VMRC believed citizen wetlands boards are still the best and fairest way to address local wetlands issues. VMRC has and will continue to not require the enforcement of compensation for non-vegetated wetlands in order to meet the VIMS no net loss policy. However, VMRC does agree with the need for tracking applications and is implementing a tracking database.

Mr. Gussman asked if VIMS still submitted written recommendations on cases that came before the Wetlands Board.

Mr. Woolson stated it was now only on an as-needed basis if formally requested by Staff.


The Board members commented that the report was very misleading, cast the Board in an unfavorable light, and seemed to manipulate the data to reach a specific conclusion. They agreed with VMRC's response to the report and believe the local, volunteer citizen board is best suited for protecting and preserving the local wetlands while acting in the best interest of the County and its citizens.

F. ADJOURNMENT

The meeting adjourned at 7:38 p.m.



John Hughes
Wetland Board Chair



Melanie Davis
Secretary to the Board