

**JAMES CITY COUNTY WETLANDS BOARD  
MINUTES  
Wednesday August 12, 2015**

**A. ROLL CALL**

John Hughes – Chair  
David Gussman  
Charles Roadley  
Roger Schmidt - Alternate  
Louis Bott - Alternate

**ABSENT**

Larry Waltrip  
William Apperson

**OTHERS PRESENT**

County Staff:

Michael Woolson, Senior Watershed Planner  
Scott J Thomas, Engineering and Resource Protection Director  
Maxwell Hlavin, Assistant County Attorney  
Melanie Davis, Secretary to the Board  
Mark Eversole, 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 July 8, 2015 Board minutes were approved as written.

**C. PUBLIC HEARINGS**

1. **W-21-15 / VMRC 15-0873: Reece – 258 Sandy Bay Rd**

Michael Woolson presented this case for the Joint Permit Application (JPA) submitted by Mr. John Reece, for construction of a bulkhead at 258 Sandy Bay Road, JCC Parcel Number 4730100012. Mr. Reece requested a deferral however, because of unadvertised changes to the application, Staff requested a withdrawal so the case could be re-advertised and re-scheduled for the September 9, 2015.

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

2. **W-22-15 / VMRC 15-0891: Dively and Xanterra Kingsmill LLC /Water's Edge Construction – 175 West Landing and a portion of the adjacent parcel**

Michael Woolson presented this case for the Joint Permit Application (JPA) submitted by Daniel Winall with Water's Edge Construction, on behalf of property owners Robert and Linda Dively and Xanterra Kingsmill LLC. The application was to construct a 65 foot breakwater, extend a stone sill 25 feet and provide beach nourishment to create a living shoreline at 175 West Landing JCC Parcel 5031200013 and a portion of the adjacent parcel JCC Parcel 5030100001. Mr. Woolson described the current conditions of the site and the location and construction of the proposed structures and beach nourishment. The access for the project would be through the existing driveway and RPA on the property and materials would be stockpiled near the end of the driveway. As this project does not propose impacts to vegetated wetlands, no vegetated wetlands compensation is required. The access through the RPA will be regraded and stabilized at the end of the project. Staff recommended approval of this project with the conditions specified in the Resolution to Grant the permit.

Mr. Gussman asked if the RPA clearing required a permit from the Chesapeake Bay Board.

Mr. Woolson explained the clearing was only for access and was permitted by the Chesapeake Bay Preservation ordinance, for a shoreline project.

Mr. Bott said the JPA indicated *Spartina Alterniflora* and *Spartina Patens* would be planted in the intertidal and beach fill areas of the project.

Mr. Hughes asked if additional surety would be required for these plantings.

Mr. Woolson stated these grasses were not required for mitigation and Staff was satisfied with the \$2,000 surety requirement for the RPA plantings. However, the Board could increase this surety amount or add another surety requirement.

Mr. Gussman asked if there were other breakwaters in this area and if so, how they were working.

Mr. Woolson stated there were a lot of revetments but the nearest breakwaters would be downstream of Wareham's Pond and they were working well.

Mr. Hughes opened the public hearing.

A. Daniel Winall with Waters Edge Construction, contractor and agent for the project, stated the Army Corp of Engineers (ACOE) required the beach plantings.

Mr. Hughes asked if the ACOE required a surety bond for the plantings.

B. Mr. Winall said they did not and he would modify the submitted drawings to show the location of the plantings on each end of the beach nourishment.

Mr. Roadley asked if the area was experiencing deflation and if the sand fill berm would be high enough to keep water out of the wetlands system behind it.

A. Mr. Winall said that the deflation was significant as all the exposed cypress knees were not visible 2 or 3 years ago. He confirmed the berm would be high enough for the tide in this area.

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

The Board members decided they would not require additional surety for the wetlands grasses and requested Staff monitor the completion of these plantings.

Mr. Gussman made a motion to adopt the resolution granting the wetlands permit for case W-22-15/VMRC 15-0891 at 175 West Landing, Parcel 503120013 and a portion of the adjacent parcel 5030100001.

The motion was approved by a 5-0 vote.

**RESOLUTION**  
**GRANTING A WETLANDS PERMIT ON JCC RE TAX PARCELS**  
**503120013 and 5030100001**

WHEREAS, Daniel Winall, Water's Edge Construction on behalf of Robert and Linda Dively and Xanterra Kingsmill LLC (the "Applicant") has applied to the Wetlands Board of James City County (the "Board") to request a permit to use and develop in areas designated as wetlands on properties identified as JCC RE Tax Parcels 503120013 and 5030100001, and further identified as 175 West Landing and a portion of the adjoining parcel owned by Xanterra Kingsmill LLC in the Kingsmill subdivision (the "Property") as set forth in the application W-22-15/VMRC 15-0891: 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, on August 12, 2015, 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) The applicant must obtain all other necessary federal, state, and/or local permits required for the project.
  - 2) Prior to construction, the limits of the sill and revetment shall be re-staked in the field if necessary.
  - 3) Prior to construction, a pre-construction meeting will be held on-site.
  - 4) Prior to construction, a \$2,000 surety for the restoration of the access road through the Resource Protection Area (RPA) shall be submitted in a form acceptable to the County Attorney's office.
  - 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 wetlands permit for this project shall expire on August 12, 2016 if construction has not begun. If an extension of the permit is needed, a written request shall be submitted to the Engineering and Resource Protection Division no later than six weeks prior to the expiration date.

3. **W-23-15 / VMRC 15-0911: Lyons/Mid-Atlantic -120 Greenbrier**

Michael Woolson presented this case for the Joint Permit Application (JPA) submitted by Karla Havens with Mid-Atlantic Resource Consulting, on behalf of property owners Paul and Judy Lyons. The application was to construct a 60 foot stone revetment on Shellbank Creek at 120 Greenbrier in the Shellbank Woods subdivision, JCC Parcel Number 4510400099. Mr. Woolson described the location and construction of the proposed revetment, the current conditions of the site, the access through the RPA and the required compensation for wetland loss through the purchase of wetland credits. Mr. Woolson also suggested a reduction in the surety requirement proposed in the staff report, from \$1,000 to \$500. Staff recommended approval of this project with the conditions specified in the Resolution to Grant.

Mr. Hughes opened the public hearing.

**A.** Karla Havens with Mid-Atlantic Resource Consulting, agent for the applicant, thanked Mr Woolson for the presentation and stated she and Mr. Lyons were available to answer any questions.

Mr. Roadley asked if a softer approach to address the erosion had been considered.

**A.** Ms. Havens described the creek as narrow and meandering and the shoreline as irregular so an off shore structure was not feasible and bank grading would destroy the existing mature trees they were attempting to protect.

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

Mr. Roadley said he appreciated the constraints on the site and would support the application.

Mr Hughes stated he also supported the application.

Mr. Bott asked if some of the small shrubbery would be removed and if there was a plan for mitigation.

Mr. Woolson advised the Board that Mr. Lyons had also applied for and was administratively granted an access path to the shoreline which included a mitigation plan with surety.

Mr. Roadley made a motion to adopt the resolution granting the wetlands permit for case W-23-15/VMRC 15-0911 at 120 Greenbrier, Parcel No. 4510400099.

The motion was approved by a 5-0 vote.

**RESOLUTION**  
**GRANTING A WETLANDS PERMIT ON JCC RE TAX PARCEL 4510400099**

WHEREAS, Karla Havens, Mid-Atlantic Resource Consulting on behalf of Paul and Judy Lyons (the "Applicant"), has applied to the Wetlands Board of James City County (the "Board") to request a permit to use and develop in areas designated as wetlands on a parcel of property identified as JCC RE Tax Parcel 4510400099 and further identified as 120 Greenbrier in the Shellbank Woods subdivision (the "Property") as set forth in the application W-23-15/VMRC JPA #15-0911; 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 on August 12, 2015, 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) The applicant must obtain all other necessary local, state, and/or federal permits required for the project.
  - 2) Prior to construction, the limits of the revetment shall be re-staked in the field if necessary.
  - 3) Prior to construction, a pre-construction meeting will be held on-site.
  - 4) Prior to construction, a \$500 surety for restoration of the access road through the Resource Protection Area (RPA) shall be submitted in a form acceptable to the County Attorney's office.
  - 5) Prior to construction, 10 sqft of tidal wetland credits must be purchased from an approved tidal wetland mitigation bank and proof of purchase submitted to the County Engineering and Resource Protection Division office.
  - 6) The Engineering and Resource Protection Division Director reserves the right to require additional erosion and sediment control measures, including a turbidity curtain, for the project if field conditions warrant their use.
  - 7) The wetlands permit for this project shall expire on August 12, 2016 if construction has not begun. If an extension of the permit is needed, a written request shall be submitted to the Engineering and Resource Protection Division no later than six weeks prior to the expiration date.

**D. BOARD CONSIDERATIONS – None**

**E. CLOSED SESSION**

Mr. Hughes moved the Board go into closed session pursuant to Section 2.2-3711(A)(7) of the Code of Virginia for consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel.

The motion was approved by a 5-0 vote

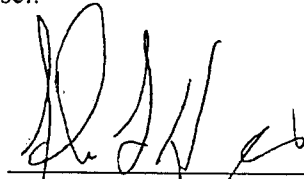
**RESOLUTION**

**CERTIFICATION OF CLOSED MEETING**

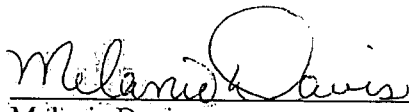
WHEREAS, the Wetlands Board of James City County, Virginia (Board), has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the Board that such closed meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Wetlands Board of James City County, Virginia, hereby certifies that, to the best of each member's knowledge: i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, Section 2.2-3711(A)(7) of the Code of Virginia, to consult with legal counsel and be briefed by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consult with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel.

  
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John Hughes  
Chairman, Wetlands Board

ATTEST:

  
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Melanie Davis  
Clerk to the Board

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
GUSSMAN	✓	—	—
BOTT	✓	—	—
SCHMIDT	✓	—	—
ROADLEY	✓	—	—
HUGHES	✓	—	—

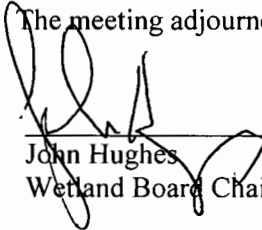
Adopted by the Wetlands Board of James City County, Virginia, this 12th day of August, 2015.

**F. MATTERS OF SPECIAL PRIVILEGE**

Mr. Woolson advised the Board of the recently approved VMRC Living Shoreline Group 1 General Permit Regulation and stated that Mark Eversole with VMRC would be presenting additional information to Wetlands Board in the next couple months.

**F. ADJOURNMENT**

The meeting adjourned at 7:50 p.m.

  
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John Hughes  
Wetland Board Chair

  
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Melanie Davis  
Secretary to the Board