

YORK COUNTY CHESAPEAKE BAY BOARD

Minutes of April 26, 2017

At a meeting of the York County Chesapeake Bay Board held on Wednesday, April 26, 2017, at 6:00 p.m. in the Multi-Purpose Room in the Public Works Building, located at 105 Service Drive, Yorktown, Virginia, those present were:

Board Members Present:

Richard Wheat, Chair
Brian Almond
Brad Berrane
Paul Brindza
John Tinneney
Michael Woolson

Staff Present:

Anna Drake, Environmental Programs Manager
Kent Henkel, Environmental Specialist II
James Barnett, County Attorney

Board Members Absent:

Stephen Farthing
Iris Anderson

The meeting was called to order at 6:05 p.m. by the Chair, Richard Wheat.

ANNOUNCEMENT OF PERMANENT BOARD MEMBER APPOINTMENT

The Chair announced Brian Almond's appointment by the Board of Supervisors as a permanent, full-time member of the Board.

PUBLIC COMMENT PERIOD

The Chair opened the Chesapeake Bay Board's public comment period; no one came forward; the public comment period was closed.

APPROVAL OF THE MINUTES

The Chair made a motion to approve the Chesapeake Bay Board public hearing minutes for October 26, 2016. The minutes were approved by the Board members by consensus.

Note: PowerPoint slides were shown throughout the public hearing.

CHESAPEAKE BAY EXCEPTIONS/APPEALS

- **Exception 2017-041, Stephen Romeo, L.S., with VHB, Inc. (Agent) and Marquis Williamsburg RE Holding, LLC (Owner), for 900 Marquis Parkway:** Request for exception to Chapter 23.2-7(c) of the York County Code to clear and grade 31,690 square-feet of the Resource Protection Area (RPA) buffer adjacent to Whiteman Swamp which is a tributary of Kings Creek. The purpose of the clearing and grading is for the construction of a residential subdivision.

The Chair opened the public hearing.

Anna Drake, Stormwater Engineer II, gave a brief overview of the history of this project. The CBPA Exception 17-041 is an exception request on behalf of the Marquis Williamsburg. Mr. Shawn Todd is the property owner and could not make it to this public hearing. Ms. Drake stated that Ann Crenshaw, legal counsel for the Marquis Williamsburg with Kaufman & Canoles is in attendance as is Stephen Romeo, land surveyor with VHB, a local consulting firm.

On the west side of the site is Interstate 64. The property owner on the southeast side is the Naval Weapons Station. The property owner on the north side is the Marquis Shopping Center. Water Country is on the northeast side. The application is a request to clear and grade almost 32,000 square feet of the RPA buffer. Currently, the upland area has been logged, but not the RPA. The south pod is 112 acres. Ms. Drake showed numerous slides of the site showing where the road from the Marquis Shopping Center would be extended and where the residential area would be. The topic of discussion tonight is the residential subdivision.

A Natural Resources Inventory map was displayed that showed the contour lines and elevations on the property which range from six-feet to 70-feet, which is why some of that area needs to be graded to prevent future erosion problems. The Board of Supervisors approved this planned development in November, 2013. The Natural Resource Inventory was field checked and approved in 2004. On the south side of the entrance road to the development, there is a portion of the property which will be left in a natural state and placed in a conservation easement. The developer has also donated 15 acres to the County for an elementary school. Slides were shown that indicated which area would be multi-family housing, single-family residential and the school site.

Ms. Drake pointed out the areas in the buffer that the developer and the consultant believe must be graded to prevent future erosion problems. There are 15 areas that would be graded and the sizes of the areas range from 167 square feet to about 10,000 square feet. The areas total 31,686 square feet. The areas being regraded are behind 29 lots. There are 180 lots total. The RPA on this property is not privately owned; it will be in common area owned by the HOA. Ms. Drake then showed slides that depicted the steep slopes and the lots with either walk-out basements or very tall crawl spaces. She pointed out the edge of the RPA and the edge of the clearing.

Steve Romeo, VHB, came forward to address the Board. He reiterated Ms. Drake's presentation and said he has worked with the property owner and home builder on a program that has limited the basement lots to around 24%. There are 43 basement lots out of 180 lots and there are nine tall crawl lots. The streets are set at a higher elevation than the lots because of the gravity sanitary sewer lines. There are one or two basement lots that are forcing grading into the RPA buffer from the elevation change caused by the street. Basements in this area are not common, but they are becoming more of an accepted attribute in homes. In the beginning, the contract builder was reluctant to have 24% basement lots, but eventually came around to be comfortable with the mix of units and the number of basement lots and tall crawls.

Mr. Tinneny asked what the reason was for putting the common areas behind all the lots.

Mr. Romeo said that they did not want the lot owners to have ownership of the buffer. It was felt that it would be better stewardship for that to be under the HOA.

Mr. Tinneny asked about the public sanitary sewer.

Mr. Romeo said the development would connect to the County's gravity sewer system. It will be connected to a sewer line behind Kohl's and Dick's. It will be a long run but it affords the ability to serve the residential area, the future elementary school and the eventual multi-family site.

Mr. Woolson said the report stated that there would be 3:1 slopes; but Mr. Woolson would like to see the slopes tightened up to 2:1 and covered with erosion protection matting to prevent erosion.

Mr. Romeo stated they would be using FlexTerra and a stabilizing soil defender seed mix that creates a very fast-growing, vegetated cover. It involves pre-application of a soil amendment followed by a hydroseed application of a specially engineered seed mix created for the Tidewater area by a company in Richmond. They have been very successful and have received many accolades from peers in the business with respect to how quickly the product actually germinates and establishes root. Mr. Romeo also said that he would be happy to adjust the slopes to 2:1.

The Chair asked if anyone else had any public comments or wished to speak.

Aylin Robertson, 915 Bay Tree Beach Road, addressed the Board. She said that it was her understanding that the infrequent use of basements in this area had more to do with the water table than with the lack of desire for basements. She asked Mr. Romeo to elaborate on that.

Mr. Romeo said he believed that most homes from Richmond eastward do not have basements due to the market perception in this geographic region. He thinks selling homes in this area with a basement is a challenge for the real estate professionals. He does not believe there is a water table issue in the Marquis area.

Mr. Wheat asked if they were trying to maintain a certain price point for the homes in this subdivision. He also asked if homes with basements cost more money to build.

Mr. Romeo said that it did cost more money to build homes with basements, but they were still trying to keep the homes reasonably priced for the average homebuyer to be able to purchase.

Mr. Woolson mentioned that the areas with the most RPA impact are basement lots.

Mr. Romeo said the purpose of the basements is to help prevent erosion.

The Chair closed the public hearing. The Board began deliberations.

Mr. Almond said he respects Mr. Woolson's input on tightening the slope grades from 3:1 to 2:1 and believes that should be made part of the motion to approve in addition to the

implementation of the stabilization plans. He also wants the motion to include a reforestation plan that meets the State guidelines and includes a one-year, post-construction site inspection to ensure that the plants survived.

Mr. Berrane questioned why it was preferred that the slope be changed from 3:1 to 2:1 when a 3:1 slope is considered to be more stable and erosion resistant. He said he understood that a 2:1 slope would reduce the areas of the impact to the RPA, but it would cause the slopes to be steeper and more susceptible to erosion.

Mr. Brindza said he was questioning the same thing. He doesn't understand the motivation to make the slopes steeper. The impact to the area looks to be the minimum to effectively do the job the way it is currently designed.

Mr. Tinneney said he felt this was a good project. He likes that the RPA is in common area and he would support the project. He asked Mr. Woolson to elaborate on the grading question.

Mr. Romeo described the common area that would be community-owned. He said there would be a couple of entrances from the street and a soft-surface trail with a couple of recreational picnic areas. There will be two points of access that will be compatible with the sidewalk network. There will be a decent walking loop.

Mr. Woolson addressed the 2:1 versus the 3:1 slope question. He said that on a site such as this that has a lot of topography, when you are putting lesser grade and slopes on there like a 3:1, you start "chasing the grade" down the slope to tie in to get a smooth transition to the existing grade. By pulling that back tighter to a 2:1 slope, you are, in effect, going to be impacting less than half the area depending on the grade of the impact. The impacts for this project are approximately three-fourths of an acre. He suggested that with a 2:1 slope, the total impact would be about one-third to four-tenths of an acre. If no vegetation is removed to do the final grading and they don't have to reforest it, it would be worth the potential of an increased erosion issue that may occur behind one or two lots. They plan to re-stabilize the slopes with the FlexTerra product that will provide additional erosion control. He expressed his appreciation for the concerted effort to keep the RPA in the common area and off the private lots.

Mr. Berrane was concerned with the use of the FlexTerra and whether it would provide sufficient erosion control.

Mr. Romeo said he was confident that it would provide good erosion protection. He stated it is a very rapid-growing, very hardy vegetative cover. It will work on any of the slopes. He said he had no opposition to going with a 2:1 slope.

Ms. Drake added that there will be an erosion control inspector assigned to this project. The erosion control inspector will have the latitude to request additional erosion control measures if the FlexTerra is not working. There are many other methods and products that can be used if the FlexTerra material fails to perform satisfactorily.

Mr. Woolson made a motion to approve Exception 2017-041, with the following conditions:

1) provide staff with a reforestation plan that at least meets the State's minimum standards for staff to review and approve, 2) have a post-construction site inspection for the reforestation that will occur one-year after planting, 3) the slopes will be tightened up from 3:1 to 2:1, and 4) FlexTerra or another equivalent erosion control measure be used on all graded slopes.

The motion was approved, with the aforementioned conditions, on the following roll call:

Mr. Tinneny	Yes
Mr. Brindza	Yes
Mr. Almond	Yes
Mr. Berrane	Yes
Mr. Woolson	Yes
Mr. Wheat	Yes

NEW BUSINESS

May meeting: The next public hearing will be May 24, 2017, with two applications.

New Contact List: A new contact list was distributed to the Board members with updated Board member information.

Election of Officers: Elections need to be held for the positions of Chair and Vice-Chair. Ms. Drake informed the Board members that these elected positions would run through January, 2018. According to the Rules of Procedure for the Chesapeake Bay Board, elected terms run from January to January.

Mr. Wheat nominated Brian Almond for the position of Chair. No one else was nominated. Mr. Almond was elected as Chair on the following roll call:

Mr. Tinneny	Yes
Mr. Brindza	Yes
Mr. Woolson	Yes
Mr. Berrane	Yes
Mr. Almond	Yes
Mr. Wheat	Yes

Mr. Almond nominated Michael Woolson for the position of Vice-Chair. Mr. Woolson was elected as Vice-Chair by consensus of the Board.

Staff Recommendations: Mr. Woolson asked if it would be possible for the Board to agree to allow staff to provide recommendations for all applications that come before the Board. Mr. Woolson said he was certain that staff would have already worked with the applicant and provided guidance to them and any suggestions or recommendations that staff could make would be greatly appreciated by the Board. Mr. Almond agreed, saying he was definitely in favor of staff recommendations and their recommendations would be greatly appreciated.

Ms. Drake stated that staff would provide recommendations and alternatives for relocating, replanting, etc. Ms. Drake also stated that staff would continue to provide the Board with a spreadsheet of similar cases with addresses and pertinent information.

News Article: Ms. Drake distributed copies of an article that Mr. Tinneny provided about the Chesapeake Bay and some of the rivers that drain into it from Pennsylvania.

Legal Case Update: Mr. Tinneny asked Mr. Barnett, County Attorney, about the status of Dawn Griggs' appeal case. Mr. Barnett said the last communication he had with anyone about this case was a couple of months ago. He had heard from Ms. Griggs' attorney, Tommy Norment, indicating that he was withdrawing from the case. Mr. Barnett has received no more information about the situation. Mr. Barnett said there were several different things he could do to proceed with the case. He could set up a trial and see if that triggers her to retain another attorney, or he could simply petition the court to say that the County is ready to go to trial, in which case, the judge's secretary will call counsel, or in the absence of counsel, will call Ms. Griggs and work out a hearing date. Ms. Griggs should be prompted to retain new legal counsel at that point. We will move forward with one of those scenarios and make something happen.

Mr. Tinneny asked what would happen if she sold the property. Would she have to inform the respective purchasers that there is pending legal action?


Mr. Berrane responded that, by state law, a disclaimer would require her or her real estate agent to disclose any violations that they are aware of to any prospective buyers.

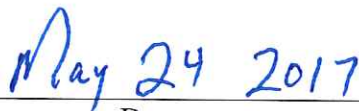
OLD BUSINESS

The Board had no old business to address.

ADJOURNMENT

There being no further business to come before the Board, the meeting adjourned at 7:15 pm.


Richard Wheat, Chair Brian ALMOND FOR
Richard WHEAT


Date