

RICHMOND COUNTY WETLANDS BOARD MEETING MINUTES

November 30, 2017

The Richmond County Wetlands Board held a meeting on November 30, 2017 in the Public Meeting Room, Warsaw, Virginia.

Wetlands Board Members Present: David Gallagher, Michael Sisson, Bobby Yeatman, Greg Gruner and Nancy Finnegan

Others attending the meeting were: Richard English (Environmental Compliance Agent), Randy Owen (VMRC), Craig Palubinski, Donald E. Stolz, Mary L. Stolz, Vanelia Gallagher, Hope Mothershead and two others.

Chairman Gallagher called the meeting to order at 7:00 p.m., welcomed members and guests, and read the opening statement.

MINUTES

“On a motion made by Bobby Yeatman, seconded by Greg Gruner, the Board unanimously approved the September 28, 2017 meeting minutes as written.”

PUBLIC HEARINGS

- Donald E. & Mary L. Stolz, 783 Reisingers Road, Warsaw, VA 22572, has applied for permission to construct a rip-rap revetment along the Cat Point Creek shoreline, further identified as Parcels 5 through 9 of Tax Map 15B. (VMRC#17-1834)

Craig Palubinski from Bay Shore Design presented to the Board members a unique project which consists of constructing 228' of rip rap revetment and backfill (from revetment to top of sloughed bank, directly behind house) to achieve a 2 to 1 stable bank slope with vegetated cover. Mr. Palubinski explained that a 12 foot wide access road would be constructed on the north east side of the property and the excess dirt from this road will be used to build a shelf whereon the excavator will operate. Mr. Palubinski explained drawings of the project to the Board members. Due to the impact that this project will cause to wetlands in the area, Mr. Palubinski explained the opportunity for Mr. & Mrs. Stolz to purchase wetland mitigation credits from Heartquake Creek Bank in King & Queen County (approximately six miles north of West Point, tributary to the Mattaponi) – see Bill of Sale and Purchase/Sale Agreement attached hereto.

Nancy Finnegan inquired about the distance of the access road to the neighbors property. Mr. Palubinski noted that the access road will be approximately 30 feet from the adjoining property. Greg Gruner asked if any other alternative solutions had been discussed such as a retaining wall, etc. Mr. Palubinski noted that the cost to remedy this issue would be extensive with the use retaining walls. Mr. Palubinski noted that a similar project was completed approximately 18 years ago near Merry Point and the bank has stabilized well over time.

Michael Sisson asked about the distance across Menokin Bay from this property. Mr. Palubinski estimated a one-half mile distance. Mr. Sisson is very interested in the use of the mitigation credits bank since Richmond County does not have this type of fund in place.

Mr. English read the staff report as follows:

The applicant proposes to perform bank grading by placing fill material to achieve a more stable slope and the construction of 228 linear feet of rip-rap revetment along their low energy shoreline of Cat Point Creek. The shoreline currently consists of short sections of dilapidated timber retaining walls, steps for access to an existing pier and an undercut, steep sloped scrubby bank with a 10-15' wide sparsely vegetated intertidal mudflat. The upland is primarily a grass lawn maintained to the top of a 25' eroding bluff. The existing residence is located approximately 15' from the top edge of this eroding bluff. The up-creek neighboring shoreline consists of a private pier and fringe marsh located along the base of the same bluff. The down-creek neighboring property consists of a private pier and the same shoreline characteristics as the applicant's.

The project ultimately proposes to construct a more stable 2:1 slope along the applicant's shoreline by locating a substantial amount of earthen fill material on the face of the existing slope while encroaching approximately 16' channel ward of mean low water. A rip-rap revetment is proposed to line the base of the newly constructed bank face. The project as proposed would stabilize this slope in hopes to ward off any potential catastrophic slope failure that could severely impact the residence. Staff ultimately supports the proposed project due to the seriousness of the applicant's fulltime residence being located in such close proximity to the top edge of the eroding bluff. The proposed activity is consistent with guidance that has been provided by the Shoreline Erosion Advisory Service of DCR and it is believed that the proposed encroachment of the project is the minimum necessary required to enhance protection of this property.

Staff Recommendations and/or Proposed Permit Conditions: Current wetlands guidelines established by VIMS and VMRC attempts to achieve a no net loss of tidal vegetated wetlands. In accordance with §28.2-1308 of the Code of Virginia the proposed impacts by fill of vegetated wetlands may be compensated for outside of the local watershed when in-watershed compensation is not practical. Should the Board desire to approve the applicant's request as proposed, Staff believes it should be appropriate to condition the permit to achieve compensation for vegetated wetland impacts in accordance with §28.2-1308 of the Code of Virginia.

Type of Activity	Permanent Loss/Fill Area (SF)	Impact Area (SF)
Bank Fill/Grading and Rip-Rap Revetment (228 LF)		
Vegetative wetlands	128	128
Non-vegetative Wetlands	1545	1545
Beach and/or Dune	378	378

Chairman Gallagher opened the floor to the public.

Chairman Gallagher closed the public comment period.

Nancy Finnegan asked the amount of time required for the permit period. Mr. Palubinski noted that a two year period was acceptable.

Michael Sisson noted that establishing grass on the slope would be easier in warm weather.

Chairman Gallagher inquired about VIMS advisory services assisting in the project. Randy Owen noted that guidance from VIMS is available when needed. Mr. Owen added that since this project brings a lack of alternatives, he feels comfortable with proceeding.

Mr. Yeatman added that he and Chairman Gallagher visited the site.

“On a motion made by Bobby Yeatman, seconded by Greg Gruner, the Board voted unanimously to approve VMRC application #17-1834 (together with the mitigation credits) with an expiration date of November 30, 2019.”

OTHER BUSINESS

None

ADJOURNMENT

There being no further business, the meeting was adjourned.

Submitted as observed,
Hope Mothershead
Acting as Secretary

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement"), dated as of December 1, 2017, is made by and between JPM Inc., a Virginia corporation ("Seller"), and Donald E. and Mary L. Stolz, ("Purchaser").

RECITALS:

1. Seller owns certain rights in and to certain real property consisting of approximately 706+/- acres located in King and Queen County, Virginia (the "Property"). The Virginia Marine Resources Commission (VMRC) and the Local Wetland Board has authorized the creation of a tidal wetlands mitigation bank on the Property (the "Bank") and the sale of tidal wetlands mitigation credits in the Bank to third parties to mitigate impacts on tidal wetlands.
2. Pursuant to VMRC and the King & Queen County Local Wetland Board (LWB) Permit (the "Permits"), VMRC and the LWB have approved the unavoidable impact to **Type XI Freshwater Mixed** tidal wetlands at the project site described in the Permits (the "Project") upon the condition that Purchaser acquire .01 **Freshwater mixed** wetlands mitigation credits (the "Bank Credits") in the Bank (the "Mitigation Obligation").
3. Purchaser wishes to purchase and Seller wishes to sell on the terms set forth in this Agreement the Bank Credits for the purpose of satisfying the Mitigation Obligation.

AGREEMENT:

NOW, THEREFORE, in consideration of the sum of TEN DOLLARS (\$10.00), cash in hand paid by Purchaser to Seller and other good and valuable consideration, the receipt sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Agreement to Sell and to Purchase. Seller shall sell to Purchaser, Purchaser shall buy from Seller, the Bank Credits for the purpose of satisfying the Mitigation Obligation.
2. Purchase Price. In consideration of Seller entering into this Agreement, Purchaser shall pay to Seller the sum of **One thousand and five hundred and thirty six Dollars (\$1,536.00)** as follows: (a) upon the full execution of this Agreement by all of the parties hereto, and (b) **One thousand and five hundred and thirty six Dollars (\$1,536.00)** at Closing by company, certified or cashier's check or wired funds.
3. Deposit. The full amount of the Deposit shall be applied toward Price at Closing; returned to Purchaser in the event that Seller defaults; or disbursed to Seller in the event of Purchaser's default.
4. Closing.
 - (a) Date and Location. Closing under this Agreement ("Closing") shall occur on or before 5:00 p.m. on 20__ ("Closing Date"). Closing shall occur at Seller's attorney's

office in Richmond, Virginia, or at such other place as Purchaser and Seller may agree. TIME IS OF THE ESSENCE as to the Closing Date.

(b) Deliveries at Closing. At Closing, Seller shall execute and deliver to Purchaser a Bill of Sale in the form attached hereto as Exhibit A. At Closing, Purchaser shall pay the Purchase Price to Seller.

(c) Delivery to VMRC and the LWB. Promptly following closing, Seller shall provide VMRC and the LWB with copy of the executed Bill of Sale.

(d) Closing Costs. Seller shall pay the cost of preparing the Bill of Sale, this Purchase Agreement, and Seller's attorney's fees. Purchaser shall pay Purchaser's attorney's fees and other costs of Closing, if any.

5. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties:

(a) Authorization, Execution and Delivery. This Agreement has been duly authorized, executed and delivered by all necessary action on the part of Seller, constitutes the binding agreement of Seller and is enforceable in accordance with its terms.

(b) Reservation of Mitigation Capacity. During the period beginning on the date of execution of this Agreement and ending upon the earlier of (i) Closing or (ii) termination of this Agreement, Seller will not sell wetland mitigation credits in the Bank that would cause the remaining credits to be insufficient for the purpose of satisfying Seller's obligations under this Agreement.

(c) Compliance with Laws. Seller will comply with all applicable laws and regulations relating to the sale of the Bank Credits to Purchaser.

6. Purchaser's Representations and Warranties. Purchaser hereby makes the following representations and warranties as of the date of this Agreement.

(a) Authorization, Execution and Delivery. This Agreement has been duly authorized, executed and delivered by all necessary action on the part of Purchaser, constitutes the valid and binding agreement of the Purchaser and is enforceable in accordance with its terms.

(b) Reliance. In entering into this Agreement, Purchaser has not been induced by, and has not relied upon, any representations, warranties or statements, whether express or implied, made by the Seller or any agent, employee or other representative of the Seller, which are not expressly set forth herein.

7. Default.

(a) By Purchaser. If Purchaser defaults in performing any of Purchaser's obligations under this Agreement, and if such default continues for a period often (10) days after Seller has provided written notice to Purchaser of such default, Seller may terminate this Agreement by providing written notice to Purchaser. Upon such termination the Deposit shall be disbursed to Seller as Seller's sole and exclusive remedy and neither party

shall have rights or obligations hereunder, except as expressly provided herein. Seller hereby expressly waives any right that Seller may have to damages, whether compensatory, consequential or otherwise, or to seek specific performance from Purchaser as a result of such default.

(b) By Seller. If Seller defaults in performing any of Seller's obligations under this Agreement, and such default continues for a period of ten (10) days after Purchaser has provided written notice to Seller of such default, the Purchaser's sole remedies shall be to terminate this Agreement by providing written notice thereof to Seller, and to receive a refund of the Deposit, in which event neither party shall have any further rights or obligations hereunder, except as expressly provided herein. Purchaser hereby expressly waives any right that Purchaser may have to damages, whether compensatory, consequential or otherwise as a result of Seller's default.

(c) Attorney's Fees. In the event of any litigation between Seller and Purchaser, the prevailing party shall be entitled to an award of its costs incurred in such litigation, including reasonable attorney's fees and costs, and court costs.

8. Effect of Condemnation, Regulatory Action or Unavoidable Delays.

(a) Condemnation. If the Property or any part thereof is taken prior to Closing pursuant to eminent domain proceedings, or if such proceedings are commenced prior to Closing, and as a result Seller determines that it will be unable to sell the Bank Credits to Purchaser at Closing as specified in this Agreement, then Seller may terminate this Agreement by providing written notice to Purchaser at any time prior to Closing. If Seller elects to terminate this Agreement as provided in this subparagraph; the Deposit shall be refunded to Purchaser and neither party shall have any further rights or obligations hereunder, except as expressly provided herein.

(b) Regulatory Action.

(i) If Seller is unable to sell the Bank Credits to Purchaser as provided in this Agreement because of the action or order of any regulatory agency, regardless of whether or not Seller has contested or challenged such action or order, Seller may terminate this Agreement by providing written notice to the Purchaser. If Seller elects to eliminate the Agreement as provided in this subparagraph, and such termination occurs prior to Closing, then the Deposit shall be refunded to Purchaser and neither party shall have any further rights or obligations hereunder, except as expressly provided herein.

(ii) If prior to Closing Purchaser is prevented by any regulatory agency from satisfying the Mitigation Obligation by purchasing the Bank Credits as provided in the Agreement, or if Purchaser's mitigation plan is not approved by the VMRC or LWB, as may be required, Purchaser may terminate this Agreement by written notice to Seller. If Purchaser elects to terminate the Agreement as provided in this subparagraph, then the Deposit shall be refunded to

Purchaser and neither party shall have any further rights or obligations hereunder, except as expressly provided herein.

9. Indemnities.

(a) Seller's Indemnities. Seller shall indemnify, defend and hold harmless Purchaser and Purchaser's authorized successors and assigns from and against any action, order, investigation or proceeding initiated by any government agency and arising from or based upon Seller's breach of the representations and warranties contained in Paragraph 5.

(b) Purchaser's Indemnities. Purchaser shall indemnify, defend and hold harmless the Seller from and against any action, order, investigation or proceeding initiated by any government agency and arising from or based upon Purchaser's breach of the representations and warranties contained in Paragraph 6 and Purchaser's failure to comply with any permit, authorization or condition thereof relating to Purchaser's plan to satisfy the Mitigation Obligation.

(c) Survival. The indemnity provisions of this Paragraph shall survive Closing and termination of this Agreement for a period of three (3) years after the date of this Agreement.

10. Notices. Each notice, request, demand or other communication hereunder will be in writing and will be deemed to have been duly given (i) when delivered by hand, or (ii) three (3) business days after deposit in United States certified or Registered mail, postage prepaid, return receipt requested, or (iii) one (1) business day after delivery to a recognized overnight courier service, in each case addressed to the parties at the following addresses:

If to Seller:	S. Taylor Goodman, P.E 15871 City View Drive Suite 200 Midlothian, VA 23113	or	JPM, Inc. C/O James P. Massie III 9011 Norwick Road Henrico, VA 23229
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If to Purchaser:	Donald E. and Mary L. Stolz 783 Reisingers Road Warsaw, VA 22572
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Each party shall have the right to change its address by providing the other party with at least (10) days prior written notice of the change.

11. Brokers. Each party hereunder represents and warrants that, except for the "Broker" identified below, if any, it did not consult or deal with any broker or agent with regard to this Agreement or the transactions contemplated hereby, and each party agrees to indemnify and hold harmless the other party from all liability, expense, loss, cost or damage, including reasonable attorney's fees, that may arise by reason of any claim, demand or suit of any agent or broker arising out of or constituting a breach by the indemnifying party of the foregoing representation and warranty. This indemnity shall survive Closing and termination of this Agreement and shall not be limited by any provision specifying liquidated damages. Seller shall pay a commission to ("Broker") if and when Closing occurs equal to N/A percent % of the Purchase Price.

12. Entire Agreement and Modifications. There are no other agreements or understandings, written or oral, between the parties regarding this Agreement or the subject matter hereof. This

Agreement shall not be modified or amended except by a written document executed by both parties to this Agreement.

13. Governing Law. The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of laws principles.

14. Compliance with Applicable Laws. Both parties shall comply with all applicable federal, state and local laws, regulations and restrictions in the conduct of their obligations under this Agreement.

15. Severability. The provisions of this Agreement shall be deemed severable and, if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties.

16. Binding Agreement. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns. Any proposed assignment shall be subject to the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

17. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Agreement.

WITNESS the following signatures:

SELLER:

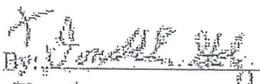
JPM, Inc.,
a Virginia Corporation

By: 
James P. Massie, III
President

TIN: 54-1609956

PURCHASER:

Donald E. Stolz

By: 
Signature



Heartquake Wetland Bank

Bill of Sale

BILL OF SALE, made as of December 1, 2017, by JPM, Inc., a Virginia Corporation ("Seller"), and Donald E. and Mary L. Stolz ("Purchaser").

WHEREAS, Seller and Purchaser agree to the sale by Seller and purchase by Purchaser of wetland mitigation credits (the "Bank Credits") held in Seller's Heartquake Wetland Bank in King and Queen County, Virginia.

NOW, THEREFOR, for and in consideration of payment of the Purchase Price and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, transfers, assigns, conveys, delivers and sets over to Purchaser, its successors and assigns the following wetland credits as such described below:

Production:	.0162 credits
Habitat:	.0132 credits
Erosion:	.0118 credits
Flood:	.0103 credits
Water Quality:	.0147 credits

TO HAVE AND TO HOLD all such Bank Credits hereby sold and transferred to Buyer and its successors and assigns forever.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed by its duly authorized representative as of the date first above written.

JPM, Inc.

A Virginia Corporation

By: James P. Manis

Title: President

12/13/17

WVRC Permit #: 2017-1034
Permittee: Donald E. and Mary L. Stolz
Locality: Richmond County
Impact Location: 783 Reisingers Road, Warsaw, VA 22572
Impact Amount: 128 sf