

**JAMES CITY COUNTY WETLANDS BOARD  
MINUTES  
RESTORATION HEARING for 5004 RIVER DRIVE  
June 25, 2008 – 7:00 PM**

**A. ROLL CALL**

**ABSENT**

John Hughes - Chair  
Larry Waltrip - Vice Chair  
Henry Lindsey  
William Apperson  
David Gussman

**OTHERS PRESENT**

Elizabeth Gallup, VMRC  
County Staff

**B. BOARD CONSIDERATIONS**

Pat Menichino advised the Board and audience that this hearing was being video taped.

Mr. Hughes asked if the video tape would be available to the public.

Pat Menichino stated that at the Board's request, the videotaped sessions of this case could be aired on the James City County public television channel.

Mr. Hughes made a motion requesting the County to air the videotaped sessions of the Wetlands and Cheapeake Bay Board Meetings.

Mr. Gussman seconded the motion and made a comment that anything promoting transparency in government and educating the public on environmental issues was worthwhile.

The motion was passed by a 5-0 vote.

**C. RESTORATION HEARING**

**1. Presentation, Public Comment, and Board Decision on plan submitted by Walker Ware,**

Mr. Menichino described the specific requirements listed in the Notice of Comply issued by the Board on May 14, 2008. He described the 3-page plan submitted by Walker Ware on June 11, 2008 (Walker Ware's plan) and stated that staff did not recommend approval of this plan because it did not meet the requirements listed in the Notice to Comply.

Mr. Hughes opened the hearing for public comment.

Timothy Murphy, Attorney for Walker Ware, stated the Board did not have to accept Walkers Ware's plan or the County's plan and could devise a new plan for Mr. Ware to consider.

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

Mr. Gussman stated in his opinion the Walker Ware's plan was not adequate and asked for clarification on the steps the Board was required to take.

Leo Rogers, County Attorney, stated the Board's actions were consistent with the state code. The issuance of a Notice to Comply gave Mr. Ware an opportunity to work with staff to devise an acceptable plan. If the Board did not accept Walker Ware's plan, the final step for the Board would be to issue a Restoration Order.

Mr. Lindsey stated Walker Ware's plan indicated the riprap would be moved to the river but a wetlands application had not been submitted for this.

Mr. Hughes stated all of the items listed in the Notice to Comply, had not been addressed in Walker Ware's plan.

Mr. Lindsey made a motion to deny approval of Walker Ware's plan.

The motion to deny was granted by a 5-0 vote.

2. **Presentation, Public Comment, and Board Decision on Plan submitted by the County.**

Pat Menichino described the Restoration Narrative and Plan submitted by County (County's plan) as well as a proposed Restoration Order. He provided Walker Ware and his attorney, Timothy Murphy with copies of these documents.

Mr. Waltrip and Mr. Apperson asked if the County would be agreeable to allowing a turn around near the pier.

Pat Menichino stated the County's plan met the requirements specified in the Notice to Comply. He stated Mr. Ware like all other James City County citizens, could apply for a wetlands permit for additional impacts. Although staff recommended approval of the County's plan as submitted, the Board could amend the plan if they so desired.

Leo Rogers suggested the Board order complete removal of all fill placed in the wetlands and require that Mr. Ware then apply for a wetlands permit for any fill, pathway, or turn around area he wished to add or construct. He stated this would enable the County to enforce or withdraw a permit if activity exceeded what was allowed and thus prevent a reoccurrence of the current situation.

Mr. Hughes opened the hearing for public comment.

Timothy Murphy stated there was a pre-existing road and requiring removal was a violation of eminent domain. He stated he would try to convince Mr. Ware to reach a compromise by modifying this plan by adding a 50 ft radius turn around and resubmitting it to the Board. He stated that if the Board rubber-stamped the County's plan as they have others, Mr. Ware would not do anything because he really does not have to.

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

Mr. Gussman stated the Board did not rubber-stamp plans and gave all applications careful consideration. He stated most applicants before the Board were well-prepared and spent time and money to prepare plans that limited and/or mitigated for impacts to sensitive areas. The Notice to Comply issued by the Board contained very specific requirements; Mr. Ware's plan did not satisfy those requirements, and the County's plan did. He stated the Board had to be careful in their decision, as this was a restoration plan for a violation, not a proposal submitted with a permit application. He added that if Mr. Ware later applied for a permit to add a turn around area, the Board would fairly consider the application the same as they would for all citizens.

Mr. Hughes stated the pathway was not pre-existing because it was in a different location from the original path that Mr. Ware had already removed.

Mr. Apperson stated he also approved of the County's plan but thought the turn around could be added in order to resolve this matter now.

Mr. Waltrip agreed it would save time to add the turn around area now instead of removing it now and reinstalling in later.

Mr. Lindsey stated no application had ever been made for wetlands permits. He did not feel the Board could approve something without an application.

Pat Menichino stated the Notice to Comply did not specify a turn around.

Mr. Lindsey made a motion to approve the County's Restoration Narrative and Plan (County's plan) as submitted.

The motion was approved by a 5-0 vote.

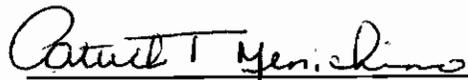
Mr. Hughes made a motion to adopt the Restoration Order for the County's plan.

The motion was approved by a 5-0 vote.

## D. Adjournment

The meeting adjourned at 8:10 PM

  
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John Hughes  
Chairman

  
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Patrick T. Menichino  
Secretary