

JAMES CITY COUNTY WETLANDS BOARD
September 10, 2008 - 7:00PM

A. ROLL CALL

John Hughes - Chairman
Henry Lindsey
Larry Waltrip
David Gussman

ABSENT

William Apperson

OTHERS PRESENT

County Staff

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 August 13, 2008 Board minutes were approved as written.

C. PUBLIC HEARINGS - None

D. BOARD CONSIDERATIONS

1. W-10-08 500 Thompson Lane – James Lee Mershon

Patrick Menichino, Wetlands Board Secretary, was sworn in by the Board Chaiman, John Hughes, and presented the following information to the Board:

On April 16, 2008, I received a complaint concerning the possible filling of Wetlands located in the upper portion of Gordon's Creek. Environmental Division Staff performed an initial field investigation to determine the location of the potential violation. Staff then reported the approximate violation location to me for investigation. The location was reported to me as, 500 Thompson Lane, Williamsburg Va.

On April 23, 2008, I met with Mr. Lee Mershon owner of 500 Thompson Lane, to review the Wetlands located adjacent to his property. Upon viewing the Wetlands area, I found that a significant amount of type XI Wetlands, (Freshwater Mixed Community) had been impacted by Mr. Mershon. During our discussion, Mr. Mershon indicated that the impacts to the Wetlands resulted from his attempt to comply with the Commonwealth's Division of Dam Safety's requirements. Mr. Mershon stated that he was being required by Dam Safety to complete improvements to Warburton Pond's dam, which is located on his property and is immediately adjacent to the tidal Wetlands. I discussed the County's Wetlands permit requirements and told Mr. Mershon, that the impacts I observed on his property required a James City County Wetlands Permit. I also told Mr. Mershon that even if the work was being required by the Dam Safety Division, a County Wetlands Permit must be obtained prior to any Wetlands impacts. At the close of the meeting, I told Mr. Mershon that I would contact him again concerning the potential violation.

On April 24, 2008, I contacted the Division of Dam Safety to determine if Mr. Mershon was in fact improving Warburton Pond dam at their direction.

On April 28, 2008, I received an email from Mr. David Connif with Dam Safety indicating that Mr. Mershon "is not doing anything we told him to do".

On May 2, 2008, I sent Mr. Mershon a letter ordering him to submit a restoration plan for the CBPA and Wetlands area located on his property. The order provided a 30-day period for the restoration to be completed.

Staff did not receive a restoration plan from Mr. Mershon and after several phone calls to his consultant and his attorney; an onsite meeting was arranged for July 29, 2008.

On July 29, 2008 the meeting was held, in attendance were Mr. Mershon, Paul Londerlee with McKinney & Company and Environmental Staff. Mr. Mershon agreed to initiate specific actions to begin to resolve the violations.

On July 31, 2008, I sent a letter to Mr. Mershon to confirm our discussion at the meeting of July 29, and to identify the actions required of Mr. Mershon.

On August 28, 2008, I contacted Mr. Mershon's consultant (McKinney & Company) to determine if a restoration plan or JPA was being submitted to the County.

On September 4, 2008, I received an email from McKinney & Company with an attached letter to Mr. Mershon dated July 31, 2008.

This matter remains unresolved as of this date.

Mr. Hughes brought attention to the updated email from Mr. David Connif with Dam Safety that read: "The last part of the first email is in error. I did get a letter out to the Mershans 7/18/07 about proceeding with certification. Nothing about doing any work in the meantime." Mr. Hughes also noticed that the letter from McKinney & Company to Mr. Mershon, on July 31, 2008, referred to the area as tidal wetlands.

Mr. Waltrip asked if Mr. Mershon was allowed to remove trees from the dam.

Mr. Menichino stated the work was being done in the Wetlands Board jurisdiction without a permit.

A. James Lee Mershon, owner, 500 Thompson Lane, was sworn in by the Board Chairman, John Hughes, and provided the following information to the Board:

He agreed with Mr. Menichino's presented chronology however, the events started with the June 22, 2007 site visit and the July 16, 2007 letter from Mr. Connif with the Division of Dam Safety. He removed trees from the dam because it was his understanding he did not need a Wetlands permit for dam maintenance and that Dam Safety requirements took precedence over wetlands. He stated he would work with the Wetlands Board and complete a Joint Permit Application however; he was waiting until the Dam Safety regulations changed on September 28, 2008 to determine what was required to bring the structure into compliance with the new regulations.

Leo Rogers, James City County Attorney, stated dam maintenance was not one of the permitted uses listed in the Wetlands Ordinance.

Mr. Hughes stated the matter for Board consideration was to determine if a wetlands violation had occurred and subsequently schedule a restoration hearing.

Mr. Waltrip asked Mr. Mershon if he was the sole owner of the dam.

A. Mr. Mershon stated the dam might also be partially on Mr. Armistead's property.

All Board members agreed that the removal of vegetation from the dam constituted a violation of the James City County Wetlands Ordinance but that Mr. Mershon should have an opportunity to assess the new Dam Safety regulations and apply for the required permits.

Mr. Menichino asked that the Board set a hearing date to coincide with the November Wetlands Board meeting.

Mr. Gussman made a motion to conduct a Restoration Hearing for case W-10-08, Mr. Lee Mershon, 500 Thompson Lane, on November 12, 2008 at 7:00 pm.

The motion was approved by a 4-0 vote.

2. W-09-08 – 5004 River Drive

Patrick Menichino presented the following information to the Board:

On June 25, 2008, the Wetlands Board conducted a restoration hearing in the above referenced case and following that hearing, the Board issued a Wetlands Restoration Order to the property owner, Walker W. Ware. The restoration order required that Mr. Ware restore the Wetlands on his property. The restoration order clearly identified specific actions that Mr. Ware must initiate along with the specific timeframes required to begin the Wetlands restoration process. Mr. Ware has failed to initiate the specific actions required within the order.

On July 31, 2008, I sent Mr. Ware a letter informing him of his failure to comply with the requirements set forth in the order.

On August 18, 2008, I sent Mr. Ware a letter urging him to contact me to discuss a resolution of the case. I also reminded him of the August 25, 2008 deadline identified within the Boards Restoration Order.

On August 20, 2008, Timothy Murphy (attorney for Mr. Ware) sent a letter in response to my August 18, 2008 letter.

On August 22, 2008, Leo Rogers, sent a letter in response to Timothy Murphy's letter of August 20, 2008.

On September 5, 2008, I sent Mr. Ware a letter urging him to contact me and advising him that the Wetlands Board would discuss this matter at the September 10, 2008 meeting.

As of September 10, 2008, Mr. Ware has not contacted the Environmental Division or the Wetlands Board Secretary in an attempt to discuss a resolution of this matter.

As of September 10, 2008, Mr. Ware has failed to meet any of the requirements and timeframes identified in the Wetlands Board's Restoration Order.

The Board voted 4-0 instructing Leo Rogers, County Attorney, to pursue this matter in the Circuit Court.

E. MATTERS OF SPECIAL PRIVILEGE

1. Introduction of new Assistant County Attorney

Leo Rogers introduced and the Board welcomed Angela King, Assistant County Attorney.

2. VIMS Advisory Services

At Pat Menichino's request, the Board instructed the County Attorney's office to pursue the reestablishment of the Virginia Institute of Marine Science's (VIMS) shoreline advisory service to local Wetland Boards and staff.

3. Videotaping Board meetings

Scott Thomas, Board Secretary and Environmental Director, advised the Board that he was working with the James City County Communications Director about videotaping both the Wetlands and Chesapeake Bay Board meetings when they are conducted in the boardroom of building F, where the facilities are available.

4. Virginia Dept of Emergency Management – Surge Maps

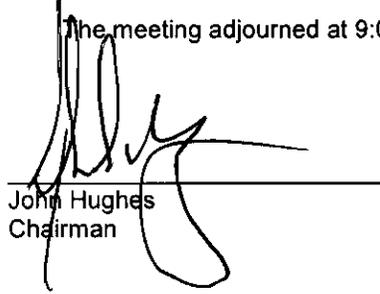
Scott Thomas stated he had discussed the storm surge maps with Kathleen Hale, James City County Director of Emergency Services, and provided there are no conflicting emergencies, she will address the Board at the next Board meeting in October.

5. Mr. Henry Lindsey's service to the Board

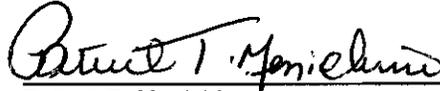
Pat Menichino advised the Board that after more than 24 years, this was Henry Lindsey's last night of service on the Wetlands and Chesapeake Bay Boards. At Mr. Menichino's request the Board directed staff to prepare a proclamation acknowledging Mr. Lindsey's exceptional service to the citizens of James City County and to make it part of the official record of the Boards.

F. ADJOURNMENT

The meeting adjourned at 9:00 PM.



John Hughes
Chairman



Patrick T. Menichino
Secretary