

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD  
MINUTES  
June 10, 2009 – 7:00PM**

**A. ROLL CALL**

William Apperson – Chair  
Larry Waltrip  
John Hughes  
Terence Elkins  
David Gussman

**ABSENT**

**OTHERS PRESENT**

County Staff

**The responsibility of this Board is to carry out locally the Commonwealth policy to protect against and minimize pollution and deposition of sediment in wetlands, streams, and lakes in James City County, which are tributaries of the Chesapeake Bay.**

**B. MINUTES**

The May 13, 2009 Board Meeting minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. CBV-09-001 – APPEAL- Hutchens – 516 Sir George Percy – continued from May 13, 2009**

Pat Menichino presented the following memo to the Board:

On May 13, 2009, Mr. Thomas Hutchens requested a deferral to provide additional time to complete the conservation easement exchange with the County. Staff had not been informed if the required exchange was completed.

Thomas Hutchens, owner, 516 Sir George Percy, Kingsmill, filed an appeal to James City County's Chesapeake Bay Board (Board) on March 23, 2009. Mr. Hutchens appealed a Notice of Violation and administrative order issued by the County on February 24, 2009. The Notice of Violation ordered the removal of an unauthorized retaining wall from within the Resource Protection Area (RPA) buffer and Conservation Easement (CE) located on his property. Staff reviewed the unauthorized encroachment and estimated the RPA impacts as 50 sqft of decorative concrete block retaining wall, and 500 sqft of turf lawn.

On September 8, 2008 Staff became aware of the unauthorized encroachments following the submission of a buffer modification request to the Environmental Division by the owner. Staff has met with the owner several times to discuss resolving the RPA and CE issues on the property. The existence of a CE on the property requires that the CE be vacated and exchanged for a similar sized CE elsewhere in Kingsmill.

Staff reviewed the appeal and violation documents and offered the following information for the Board's consideration.

1. Mr. Hutchens is the original owner of the property. The lot was recorded after the 1990 adoption of the Ordinance. The residence was constructed in 2005 and both the RPA and CE boundaries were identified on the residence's site development plan.
2. Mr. Hutchens contracted to have a 50' long x 5' high decorative concrete block retaining wall installed on his property. The wall is situated approximately 20' channel ward of the 100' RPA buffer line.
3. Mr. Hutchens recently applied for an after the fact building permit for the wall.
4. Staff evaluated the adverse impacts associated with the 50 sqft of impervious retaining wall and determined them to be minimal. Staff also noted a significant amount of turf grass (approx. 500 sqft) has been established within the RPA.

5. The owner in his appeal letter indicates a willingness to provide native mitigation plantings in an area below the wall. However, the plan submitted along with the appeal does not show any proposed mitigation plantings.
6. The issue of the CE exchange has not yet been resolved. Staffs recommend the Board not act upon this appeal until the CE issue is finalized.
7. The retaining wall is considered to be an accessory structure.
8. To be consistent with the intent of the Ordinance, Staff does not support the granting of this appeal.

Section 23-17(b) Appeals; states that in rendering its decision, the Board shall balance the hardship to the property owner with the purpose, intent and objectives of the Ordinance.

The Board shall not decide in favor to the appellant unless it finds:

1. The hardship is not generally shared by other properties in the vicinity;
2. The Chesapeake Bay, its tributaries and other properties in the vicinity will not be adversely affected; and
3. The appellant acquired the property in good faith and the hardship is not self-inflicted.

Should the Board vote to grant the appeal, staff offers the following recommendations and guidance for consideration.

1. The owner shall mitigate for the retaining wall by installing (2) canopy trees, (4) understory trees and (6) shrubs in the area below the existing retaining wall. All plant material shall be native species and should meet the following size requirements: shrubs 3-5 gallon container size and trees 6-7 feet in height and 1"-1 1/2" in caliper.
2. The removal of the existing turf from within the RPA buffer should be considered as a condition of approval.
3. A revised plan titled "Mitigation & Restoration Plan, for 516 Sir George Percy", incorporating any Board recommendations must be submitted to the Environmental Division for approval.
4. A Chesapeake Bay Restoration Agreement must be executed and submitted to the County with \$1,000.00 surety in a form acceptable to the County Attorney to guarantee the full implementation of the "Mitigation & Restoration Plan for 516 Sir George Percy".

Mr. Menichino stated that the conservation easement issue had not yet been resolved.

A. Tom Hutchens, property owner, requested a 60-day continuance from the Board.

Mr. Gussman made a motion to defer the Board decision and continue the public hearing on the appeal for case CBV-09-001 for 60 days to the Board meeting on August 12, 2009.

The motion was approved by a 5-0 vote.

**D. BOARD CONSIDERATIONS – none.**

**E. MATTERS OF SPECIAL PRIVILEGE**

**1. Public Comments**

A. Boots Johnson, 210 Red Oak Landing Road, referring to Wetlands case W-20-09/VMRC09-0413 presented this evening, asked how long the continuous bulkhead, on the opposite side of canal, had been in place.

Mr. Hughes stated the Wetlands Board had adjourned but the information could probably be obtained by searching County records.

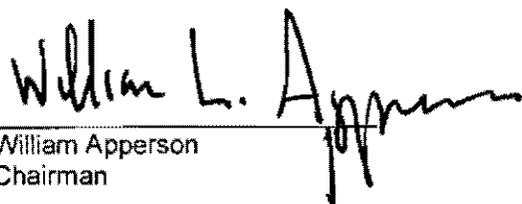
**2. Comments from Environmental Director, Scott Thomas**

Mr. Thomas described the Chesapeake Bay Exemption issued on May 29, 2009 for the James City Service Authority (JCSA) Easement Clearing Project currently under way in the County. He stated JCSA was acting under a consent order from the Department of Environmental Quality (DEQ) for a sewer system evaluation study and for access to the sewer lines for maintenance and repair. Phase 1 (70 miles) of the project will begin in mid-June and phase 2 (100-130 miles) will begin in the next 18 months. He described the property owner and HOA notification process and displayed maps of the areas that would be included in the both phases of the project.

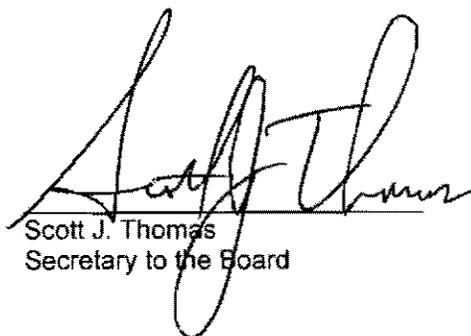
The Board thanked Mr. Thomas for the update.

**F. ADJOURNMENT**

The meeting adjourned at 8:45 PM.



William Apperson  
Chairman



Scott J. Thomas  
Secretary to the Board