

**JAMES CITY COUNTY CHESAPEAKE BAY BOARD
MINUTES
January 12, 2011**

A. ROLL CALL

David Gussman – Chair
John Hughes
Larry Waltrip
Charles Roadley
Roger Schmidt - Alternate

ABSENT
William Apperson

OTHERS PRESENT

County Staff (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 December 8, 2010 Board Meeting minutes were approved as written.

C. PUBLIC HEARINGS

1. CBV-11-007 APPEAL – Haney – 3 Joy Circle

Tina Creech, Senior Environmental Inspector presented the following case:

Mr. Ronald Haney filed an appeal of the Chesapeake Bay Preservation Ordinance Notice of Violation requirements dated November 16, 2010. The Notice of Violation required the execution of a Chesapeake Bay Restoration Agreement, the restoration of RPA with native plantings, and removal of the dog kennel.

On November 8th 2010, staff was contacted about a possible unauthorized dog kennel located in the RPA at this particular residence. Staff initiated an investigation and as a result documented a violation of the County's Chesapeake Bay Preservation Ordinance. Staff subsequently met with the property owner regarding this issue on November 16th 2010. The property owner filed a request to appeal the administrative decision on December 6th 2010 (received December 8th 2010).

Historical Background Information

The property has been sold three times since the home was built in 1994. The current property owners, Ronald and Janice Haney, purchased the property on February 10, 2010 and had no prior knowledge that a Chesapeake Bay Preservation Area was designated on the property. They have stated to staff that no disclosure was provided during the residential sale of the property.

Based on a review of 2007 GIS aerial photography, the area affected by the dog kennel did not have native vegetation removed. Based on site observations, the size of the dog kennel area is approximately 10 ft. wide by 20 ft. long. The dog kennel was placed on existing level ground approximately 10 feet from the creek. The dog kennel area has a mixed gravel and sand bedding surface and thus is considered as impervious cover and fill. The topography of their lot does not allow placement of the dog kennel in another level area on the property. The property owner stated that he utilizes a 50-gallon barrel for the collection, storage, and disposal of waste material from the dog kennel operation. The existence of the barrel and shovel was evident in the picture submitted by the complainant on November 8th 2010 and during the initial site visit by staff.

Staff Guidance and Recommendations

Staff has reviewed the appeal and violation documents and offers the following information for the Board's consideration:

1. Sections 23-10 and 23-11 of the County's Chesapeake Bay Preservation Ordinance require the submission, review and approval of a plan of development for any development or redevelopment exceeding 2,500 square feet of land disturbance in Chesapeake Bay Preservation Area (CBPA) and/or the submission, review and approval of a water quality impact assessment (WQIA) for any proposed land disturbance, development or redevelopment activity in RPA.
2. 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; and
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.

Staff's guidance to the Board on deciding this matter is as follows:

1. The hardship is shared by other properties immediately adjacent to the appellants' property as well as numerous other properties within the Hunter's Creek Subdivision that have RPA components located on them.
2. The granting of the appeal in this case may not adversely affect the Chesapeake Bay, its tributaries and other properties in the vicinity.
3. This hardship was self-inflicted.

Should the Board find in favor the appellant, the Board should require that an application for dog kennel area come before them at a subsequent regularly scheduled Chesapeake Bay Board meeting within 90 days for review and consideration.

Should the Board find in favor of staff, staff will further pursue the violation in accordance with Section 23-18 of the County's Chesapeake Bay Preservation Ordinance and work with the County Attorney's office to resolve the matter through established civil penalty or civil charge provisions of the ordinance. This will involve removal of the dog kennel area and restoration with native plantings.

Resolutions for granting or denial of the appeal for Chesapeake Bay Violation CBV-11-007 are included for the Board's use and decision.

Mr. Gussman asked if there was a name for this tributary to Cranston's Mill Pond

Mike Woolson, Senior Watershed Planner indicated it was unnamed.

Mr. Roadley asked about the construction material used in the kennel.

Ms. Creech stated it was crushed stone surrounded by landscape timbers and was considered impervious.

Mr. Gussman opened the public hearing.

A. Mr. Haney, stated Staff's presentation was thorough and reiterated that they were cleaned daily.

Mr. Schmidt asked if Mr. Haney owned all of the dogs he kenneled.

Mr. Roadley asked why the kennel was not located further up on the property.

Mr. Waltrip asked if the neighbors had complained about the dogs.

A. Mr. Haney said the dogs were all his. The current location was the only flat surface on his property that was away from his neighbor's properties and the neighbors, who received adjacent property owner notifications, supported his appeal.

Staff read the email from J4C member, Craig Metcalfe, objecting to the appeal due to the possible water contamination from animal waste.

Mr. Gussman closed the public hearing as no one else wished to speak.

Mr. Gussman stated he visited the site and was concerned with the close proximity of the kennel to the stream channel. He stated if this case was brought before the board as an exception request, he would not approve it. In his opinion this structure was not only in the RPA but actually in jurisdictional wetlands. He also felt that although it might be an inconvenience, there was room next to the house for the kennel.

Mr. Waltrip stated there were probably a lot of deer in the area that contributed to stream contamination and asked if any other properties around the pond had kennels.

Mr. Schmidt asked if Cranston's Mill Pond was considered a BMP.

Mr. Woolson stated Staff was not aware of any other kennels around the pond and the pond was not a County BMP.

Mr. Hughes appreciated the owner's desire to house the dogs and understood there were limited areas on his property however, he felt the current location was a detriment to water quality and did not feel it could be satisfactorily mitigated.

Mr. Waltrip asked if the owner could move the kennel to a different location.

Mr. Gussman asked Staff if there was a time constraint for removal of the kennel.

Scott J. Thomas, Environmental Director, explained the process to the Board stating the only options for the Board at this time were:

- Granting the appeal and having the owner come back with an exception request for the kennel in its current location.
- Denying the appeal and moving forward with the violation process through the County Attorney's office, ultimately requiring the owner to remove the kennel and restore the RPA, which would need to be done in a reasonable time frame.

The Board Members all agreed they would be receptive to considering an exception for the kennel if it were located farther upland and only partially impacting the landward RPA.

Mr. Roadley asked if the owner would be penalized if he agreed to remove the kennel and restore the RPA.

Mr. Thomas explained the civil charge process. The owner must consent to settle with the County to avoid a civil penalty case in court. Settling with the County requires action by the Board of Supervisors. He is subject to a civil charge based on the detriment to water quality and his prior knowledge of the regulations. He must remove the unauthorized structure and enter into a Chesapeake Bay Restoration Agreement for restoration of the RPA disturbed by the structure.

Mr. Gussman stated the three criteria the Board must consider in making their decision were not met.

1. The hardship is not shared by other homeowners in the neighborhood
2. The structure will have an adverse effect on water quality in tributaries to the Chesapeake Bay.
3. The hardship is self-inflicted as it was built without prior approval from the Board.

Mr. Hughes agreed with Mr. Gussman's comments and made a motion to adopt the resolution denying the appeal on case #CBV-11-007 at 3 Joy's Circle, tax parcel No. 2220500010.

The motion to deny the appeal was approved by a 3-2 vote (Aye: Hughes, Schmidt, and Gussman)
(Nay: Roadley, Waltrip)


Mr. Hughes asked staff to work expeditiously with Mr. Haney to resolve this hardship, if he wishes to move the kennel to another location.

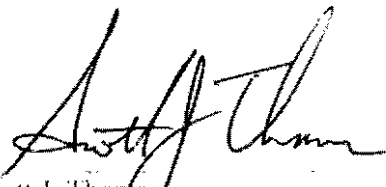
D. BOARD CONSIDERATIONS - none

E. MATTERS OF SPECIAL PRIVILEGE - none

F. ADJOURNMENT

The meeting adjourned at 7:32 PM.


David Gussman
Chair


Scott J. Thomas
Secretary to the Board