

**WETLANDS BOARD**

**MINUTES**

**December 13, 1990**

**A. ROLL CALL**

Present:

Henry Lindsey  
John Hughes  
Carolyn Lowe  
Ralph Cobb  
David Gussman

**OTHERS PRESENT:**

Bernard M. Farmer, Jr. Secretary to the Board  
Leo Rogers, Assistant County Attorney  
John Patton, Code Compliance Officer

**B. MINUTES**

The minutes of the November 14, 1990, meeting were deferred until the January 9, 1991, meeting.

**C. OLD BUSINESS**

Case No. W-22-90. James T. Wood

Mr. Farmer presented the staff report stating that on November 14, 1990 the Board voted to issue a restoration order for a wetlands violation at 213 Turner's Neck Road. The order was hand delivered to Mr. James T. Wood's office on November 16, 1990. Mr. Wood telephoned later that day with some questions about the order and acknowledged its receipt. As of this date no monitoring plan has been received as was required by the restoration order. Staff met with Mr. Wood today and reminded him he must submit a monitoring plan to the Board prior to their meeting on December 13, 1990.

Code Compliance personnel visited the site on November 20, 1990 and flagged the impacted and disturbed wetlands areas. They met with workers on the site who were hired by Mr. Wood to remove the debris from the wetlands. Staff discussed in detail what was necessary to clean out the debris from the wetlands. The estimate at this time is approximately 5046 square feet of wetlands was impacted. A more precise measurement is not possible until all of the debris is removed.

This debris removal was in progress during our most recent site visit today.

Mr Farmer further stated if the Board determines that a civil charge is appropriate, staff recommends a charge of \$2000. This amount is recommended based on the guidelines provided by the State. The environmental impact appears to be minimal and the degree of deviation from the ordinance is deemed moderate.

It is estimated that 1200 feet of silt fence, with 700 feet requiring wire reinforcement, will be necessary to prevent sediment laden runoff from further damaging the wetlands. Some wetlands vegetation is expected to regenerate naturally but a small portion may require sprigging or seeding. Based on an assumption that 50% of the disturbed wetlands will require some seeding, and accounting for the necessary erosion control work needed, staff recommends a surety in the amount of \$10,250. be retained to guarantee the work.

Ms. Lowe asked if most of the surety would go towards the erosion control work which may need to be done, and was told yes.

Mr. Cobb asked of the silt fence is in place.

Mr. Patton responded no but it did arrive on site.

Ms. Lowe asked if the monitoring plan had been received and was told no.

Mr. Wood stated he did clear the land but did not intend to destroy the marsh. He further stated he had hired a crew to clear the debris, and all silt fence is on site and should be in place soon. He stated he fully intends to proceed and feels the bond is not necessary due to the fact he is in under a bond with the Circuit Court.

Ms. Lowe asked how the violation occurred without Mr. Wood's knowledge.

Mr. Wood replied he did not visit the site on a regular basis and was unaware that 3 feet from the water level was considered wetlands. He also, stated he had done what was required once he became aware of the problem.

Mr. Lindsey asked why a Monitoring Plan had not been submitted.

Mr. Wood stated he had overlooked the request for a Monitoring Plan and in his conversations with Bernie Farmer he felt waiting until spring was recommended for doing the restoration work.

Mr. Lindsey asked if Mr. Wood had read the Restoration Order.

Mr. Wood answered no.

Mr. Hughes stated his concern that 90 days had passed and it would appear Mr. Wood was in no hurry to comply.

Mr. Wood replied the first contractor he hired did not do as he was instructed, therefore he had to be replaced and the process took time.

Mr. Gussman asked about the bond to which Mr. Wood referred.

Mr. Rogers explained the difference in penal bonds and a surety bond.

Mr. Hughes expressed a desire in reimbursing the County for hours spent on this violation.

Mr. Patton responded that approximately 40 hours of staff time had been used on this violation.

Mr. Cobb asked when the Monitoring Plan would be submitted.

Mr. Wood responded no later than the next Wetlands Board meeting.

Mr. Gussman asked if in the future the staff could have all negotiations done and make a more complete presentation to the Board.

Mr. Gussman moved to accept the staff recommendation on the posting of the surety and defer action on the civil charge until the next meeting.

The motion was accepted unanimously.

#### D. NEW BUSINESS

##### Governor's Land - Appeal of Chesapeake Bay Preservation Regulations

Mr. Farmer gave a brief outline of the Chesapeake Bay Preservation Regulations as passed on August 6, 1990. He also stated, under the provisions of Section 19B-17 of the Chesapeake Bay Preservation Regulations Mr. Mike Kelly of the Williamsburg Group has appealed an administrative decision that a proposed storage building is not considered "water dependent". They have proposed locating the structure within the Resource Protection Area adjacent to the Chickahominy River on the Governor's Land project, within the vicinity of the golf clubhouse and near the 18th hole of the golf course. The property is further identified as parcel (1-16) found on James City County Real Estate Tax Map (44-2).

Mr. Farmer said that the applicant has proposed construction of a facility whose primary purpose is to store crew rowing shells for the William and Mary crew teams.

Mr. Farmer stated that he felt the appeal was frivolous and lacked merit. He said the applicant has not shown where the removal of the buffer area and location of the structure closer than 100 feet to the shore is absolutely necessary for the facility to be used. Reasons given for the site proposed tended to show its location is meant to serve other purposes, rather than a location of necessity due to its operation. Though staff agrees that such a storage building must be located within the general proximity of the shoreline it is not relevant whether that distance is 100 feet or some greater distance. Portage of rowing shells normally occurs, and would still be required if the structure was immediately adjacent to the water (though the distance to carry them might be reduced).

Mr. Farmer strongly recommended that the appeal be denied and the applicant be required to preserve the existing buffer in accordance with the development standards contained in the Chesapeake Bay Preservation Regulations. Mr. Farmer also stressed the fact that the decision before the Board was to decide only if the proposed structure is "water dependent". He listed several of the regulatory agencies he consulted before making his decision on the recommendation.

Ms. Lowe asked for a more detailed explanation of where the proposed facility would be built.

Mr. Farmer explained with the help of a map.

Mr. Arthur Schmidt spoke on behalf of Governor's Land, Inc., stating the history of the development and elaborating on the environmentally responsible actions of the developer.

Mike Kelly of the Williamsburg Group, Inc., spoke explaining with the help of pictures what the developer was proposing to build and why he felt it was a "water dependent" facility.

Mike Kelly also stated the developer wanted to provide the Crew Club something better than what they presently have which would encourage competition in this area.

Mr. Matthew Bozart, president of the William and Mary Crew Club spoke on why the club needed a better facility and referred to the letter written by Mr. Sadler, Vice President for Student Affairs, which he presented to the Board.

Ms. Heidi Martell, coach of the Women's Crew Team spoke and presented pictures to the Board.

Mr. Hughes asked for an explanation of how the shells are carried and put into the water.

Mr. Bozart responded with the help of pictures and also submitted pictures of other boat houses on the east coast.

Ms. Lowe stated she was impressed by all the speakers and understood their involvement and strong feelings but did not understand why the proposed facility could not be located outside the buffer area. She stated she was very sympathetic to this developer since they had done such a good job and been so environmentally sensitive.

Mr. Hughes voiced his concern over the facility being used as a marketing tool for the developer.

Ms. Lowe stated she felt an issue should be extremely critical for the Board to grant an appeal which might set a precedent. She went on to compliment the developer for his adherence to the Chesapeake Bay Regulations in the past.

Mr. Schmidt suggested that if the Board were more familiar with the sport they might better understand the reasons for the appeal.

Ms. Lowe suggested that perhaps a compromise might be worked out.

The Chairman recognized the 30 members from the crew team in attendance.

Mr. Gussman stated he did not agree with the staff and could envision how the facility could be considered "water dependent".

Mr. Hughes moved to accept the staff's recommendation and deny the appeal.


The vote for approval of the motion was 4 to 1 with Mr. Gussman opposed.


**E. MATTERS OF SPECIAL PRIVILEGE**

The 1991 calendar of meetings was approved.

**F. Adjournment**

The meeting was adjourned at 9:00 P. M.

  
Henry Lindsey  
Chairman

  
Bernard M. Farmer, Jr.  
Secretary