

WETLANDS BOARD

MINUTES

DECEMBER 9, 1992

A. ROLL CALL

PRESENT

ABSENT

Mr. Lindsey
Mr. Cobb
Mr. Gussman
Mr. Hughes
Ms. McCleary

OTHERS PRESENT:

Bernard M. Farmer, Jr.
John Patton

B. MINUTES

The minutes of the November 18, 1992 meeting were revised and approved as presented.

C. OLD BUSINESS

No Old Business.

D. NEW BUSINESS

Case W-33-92, Recreational Concepts/T.R. Vermillion

Mr. Farmer presented the staff report stating that Mr. Thomas Mountjoy with Recreational Concepts has applied on behalf of the Property owner, T. R. Vermillion for a permit to construct a commercial pier approximately 100' long, along the James River at 2299 Jamestown Road. The proposed pier would be very close to the VDOT right of way to the ferry operation. it is their desire to operate a tour boat activity from that commercial pier. He stated that subsequent to receiving that application we received some suggestions from VDOT as to some alternatives. The applicant has sent a request asking that the board defer any action on the application until the amendments to his permit are received and reviewed. His amendments would attempt to address issues raised by VDOT. Staff recommendation is that action on this application be deferred based on the applicants request, until all the amendments are received and reviewed.

Mr. Lindsey opened the public hearing.

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John McCambridge, Virginia Department of Transportation, Suffolk District, stated that he was here on behalf of VDOT. He stated that VDOT was an adjacent property owner, believed that there was potential for the boat pier to harm their ferry operation, and that he would be available to review any proposed amendments.

Mr. Lindsey continued the public hearing and by acclamation accepted the motion to continue Case No. W-33-92.

Case W-36-92, Robert McManamy

Mr. Farmer presented the staff report stating that Robert McManamy has applied for Wetlands permit to construct a 60' Tongue and Groove Bulkhead along a canal draining to the Chickahomony River located at 7250 Otey Drive. The property in question is at the end of a man made canal on an undeveloped lot. There are some indications of minor erosion occurring along the bank of the canal. It is estimated that approximately 120 square feet of Type 15 Mud/Sand Flat community will be impacted by this request. Staff reviewed the request along with VIMS and VMRC personnel and finds that as proposed it would have a minimal adverse impact.

Mr. Farmer recommended that the permit be approved subject to the following conditions:

1. That the bulkhead tie into the existing bulkhead.
2. Be constructed in no less than two straight segments as close to the tow of the bank as possible.
3. A building permit be obtained prior to commencing work and an inspection of the filter cloth tie backs and bulkhead be conducted and approved by the Code Compliance office prior to backfilling. Permit would expire one year from date of issue.

Mr. Lindsey opened the public hearing.

There being no one to speak, Mr. Lindsey closed the public hearing.

The permit was approved unanimously with staff recommendations.

Case W-37-92, Walker Ware

Mr. Farmer stated that in this case he would call upon John Patton to present the staff report. He said at issue in this case is a wetlands violation that occurred at 5004 River Dr. Notice was
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given to the property owner, and activity had continued. Staff then prepared a sworn complaint. At this point the public hearing is to discuss the violation. It would be at the Boards pleasure what further enforcement action they would direct staff to take after hearing any evidence concerning activity on property.

Mr. Patton, Code Compliance Officer, presented the staff report by stating that this case began as an enforcement action based on a complaint of dump trucks being seen offloading into Cypress Point subdivision. He went to investigate the complaint on August 28, 1992 and noted that 18 dump truck loads of fill material (dirt, concrete, asphalt) had been dumped on what appeared to be vegetated Wetlands. He posted stop work orders at three locations on the property stating that no more fill could be brought in until Wetlands and Land Disturbance Permits are obtained.

Mr. Patton presented photographs to the board members.

Mr. Patton stated that on September 1, 1992 Pat Menichino, a James City County Erosion and Sedimentation Inspector noticed a truck hauling fill into the Chickahomony Haven area. This was the site that had been posted the Friday prior. On September 4, 1992, Mr. Cook, of our office sent a letter to Mr. Ware informing him of the E & S Ordinance and the Land Disturbing and Wetlands Permits that would be required.

On September 8, 1992 a sworn complaint in accordance with the Wetlands Ordinance was prepared and notarized.

On September 11, we met Mr. Tom Barnard of VIMS and Mr. Ware on site. We determined that at least the front row of the fill material had been dumped in vegetated Wetlands.

Mr. Patton presented photographs of September 2, 1992.

Mr. Patton stated that following the meeting with Mr. Ware on the 11th he prepared a "Notice to Comply" and delivered it to Mr. Ware's secretary, Ms. Linda Markham. On the 17th he met with Mr. Ware on the site. Mr. Ware stated once again that he did not agree that he was in Wetlands and had cut all the vegetation down and stated that "it will not grow back again."

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Mr. Patton said Code Compliance elected to bring this matter before the Wetlands Board for a violation hearing in a public forum. On November 2, 1992, since Mr. Ware had not responded, we sent a letter to Mr. Ware advising him of this decision to treat this as a violation in front of the Wetlands Board. On December 2, 1992 we received permission from the tenant whom is now renting the home and went to the site to take photographs.

On December 8, 1992 Code Compliance received a letter from Mr. Barnard concerning the case again stating that in his opinion he considered this a Wetlands matter.

Mr. Patton presented areial photographs.

Several board members questioned Mr. Patton regarding mowing wetlands vegetation and the chronology of actions.

Ms. McCleary questioned Mr. Patton in reference to having any contact with Mr. Ware prior to August 28, 1992 in reference to this matter.

Mr. Patton replied that we had not contacted Mr. Ware in reference to a Wetlands issue since February, 1989. We notified Mr. Ware in relation to other activity that was being undertaken that he needed a Wetlands Permit.

Mr. Patton produced a letter from Code Compliance to Mr. Ware dated February 1989.

Mr. Farmer stated to Ms. McCleary that over the years he had had contact with Mr. Ware several times pertaining to this property. Mr. Ware had indicated a desire to create a marina facility or a boat storage facility. He had informally submitted several sketch plans that we have discussed. We have explained the need for a site plan review and in his case special use permitting, as well as the local Wetlands Board authority and jurisdiction.

Mr. Lindsey opened the public hearing.

Mr. Walker Ware stated to the Board that he acknowledges receipt of the 1989 letter. He also noted that it was a case of jumping the gun on Ms. Carolyn Murphy's part. He approached our Code Compliance office with a question of putting a boat ramp on his property and questioned the need for a permit. Mr. Ware stated that Ms. Murphy had overheard this conversation and sent this letter of February, 1989 to his attention.

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Mr. Lindsey granted a five minute recess so that Mr. Ware would have an opportunity to review the board's files.

Mr. Ware stated to the Board that he has a problem with the Code Compliance staff stating that this matter "in their opinion" is considered a wetlands violation. "I submit to you that this is an alleged violation."

Mr. Ware stated how long he has owned this property and went on to explain the condition of the property and vegetation.

Mr. Ware noted that the day he went down and met Mr. Patton on site it was a surprise to him because he was not aware of any "Stop Work Orders" being posted. He said he dumped this fill material because he had the opportunity to buy it cheap. He states that he did not have a chance to obtain a wetlands disturbing permit. He also stated that he would not have applied to obtain a wetlands disturbing permit, and still wouldn't.

Mr. Ware spoke about damage from boat wakes. He also stated his intended use of the fill. He said he would like to place some horses on the land.

Mr. Gussman questioned Mr. Ware's statement that we would do this to other property owners. He made Mr. Ware aware that if he had made proper application for a Wetlands permit that the Board would have reviewed the application and probably granted some permit.

Mr. Gussman questioned Mr. Ware in reference to any plans of building a boat storage facility, or if he planned to make the land feasible to house horses?

Mr. Ware stated that it is not feasible at this time to build a boat storage facility.

Discussion ensued regarding Mr. Ware's refusal to apply for a permit and his proposed use of the land.

Mr. Ware stated that he had hoped to build it up enough to avoid flooding, no matter what the tide may be.

Mr. Hughes asked if Mr. Ware had spoken with anyone in reference to how he could stabilize the shoreline? He said services are available through SEAS (Shoreline Erosion Advisory Service) at no charge.

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Mr. Ware stated he continues to feel that this "violation" is only an assumption. He requested proof that this area in question is in fact "Jurisdictional Wetlands."

S. McCleary summarized the facts as she understood them. They were that: Mr. Ware did go to the Code and Compliance Office in 1989 to question the need for a permit to build a boat ramp; that Mr. Ware is a "builder" himself; and, Mr. Ware was present at the public hearing for the Chesapeake Bay Act before the Local Ordinance was adopted. She said she feels that Mr. Ware is well aware of the rules and regulations governing the County.

Mr. Ware stated he is fully aware. He felt he was far enough away from the shoreline.

Ms. McCleary questioned Mr. Ware's intent and asked if he weighed his options?

Mr. Ware said he intended to fill the land in order to save it. He still does not feel as if he is involved in a wetlands violation.

Mr. Patton commented on Mr. Ware's testimony and said that wetlands vegetation was present. He said the determination was not totally arbitrary but based on the best information available.

Mr. Farmer stated that if conducting a physical survey is an issue, and Mr. Ware will give access to the property, the county can undertake a physical survey to establish the jurisdiction of the Wetlands Board.

Mr. Ware stated that he would like to be present at such survey.

Discussion among the board indicated approval of conducting a physical survey.

Mr. Farmer stated that the public hearing would need to be continued and he understood Mr. Ware has agreed to give surveyors access to the property. He said we will proceed and have an accurate survey done to establish the jurisdictional limits and will have documentation prepared to indicate where that lies in relation to the dirt piles that are out there.

Mr. Lindsey stated that the board has agreed to continue this hearing on the wetlands violation at 5004 River Drive, Cypress Point subdivision.

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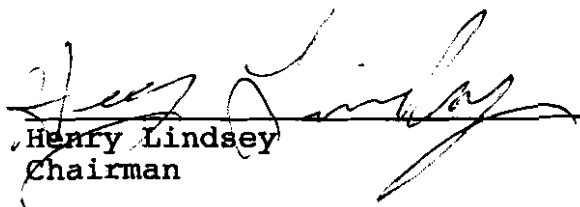
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E. MATTERS OF SPECIAL PRIVILEGE

The proposed meeting calendar for 1993 was adopted.

F. ADJOURNMENT

The meeting was adjourned at approximately 9:30.


Henry Lindsey
Chairman


Bernard M. Farmer, Jr.
Secretary