

MINUTES

WETLANDS BOARD

January 13, 1993

A. ROLL CALL

ABSENT

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

OTHERS PRESENT:

Bernard M. Farmer, Jr.
John Patton

B. MINUTES

The minutes of the December 9, 1992 meeting were approved as presented.

C. OLD BUSINESS

W-37-92; W. Walker Ware, IV

Mr. Farmer stated that at the last meeting a public hearing was opened. After hearing testimony the board decided to continue the public hearing until this evening to allow staff to conduct a physical survey of the property to verify the amount of fill placed within the jurisdictional wetlands. Staff contracted with Spearman and Associates to conduct the physical survey. Mr. Farmer stated that while the survey was in progress he received a telephone call from Mr. Ware notifying him that it was not his desire to have the survey work continue, but that he was willing to remove the fill material from the area of wetlands in question and place it on high ground. Mr. Farmer stated that he instructed Mr. Ware not to undertake any of the work until the board had the opportunity to review the information. Mr. Farmer then stated that staff recommends a restoration order be executed by the board with the following stipulations:

1. Prior to the removal of the fill material that a land disturbance permit be obtained.
2. That the work be completed by the date specified.

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3. That a surety be posted in order to guarantee that the work will be satisfactorily done and also provide for sufficient monitoring to ensure that the vegetated wetlands area becomes reestablished.

Mr. Hughes questioned Mr. Farmer in reference to the removal of any fill to date, and the need for a land disturbance permit.

Mr. Farmer replied that some of the fill material has been moved contrary to his instructions, and a permit would be required.

Mr. Cobb questioned if any determination was made as to whether fill material was in the wetlands.

Mr. Farmer replied that the best information we still have to offer is the information given at the last meeting. That determination was based on our staff as well as Mr. Tom Barnard establishing the wetlands limits.

Mr. Patton stated that staff estimated the filled area to be approximately 2000 square feet.

Mr. Lindsey questioned Mr. Patton as to how the fill was removed from the wetlands area.

Mr. Patton replied that there was no way of knowing because it has been so wet out there. There are some tracks, but the type of machinery used is unknown.

Mr. Hughes stated to Mr. Farmer that the county incurred a cost of approximately \$800.00 for the survey conducted by Mr. Spearman and then questioned him as to how far the survey was from complete before Mr. Ware halted it.

Mr. Farmer stated that they were approximately 2/3 through the survey.

Ms. McCleary questioned if there was any staff contact with Mr. Ware in reference to the removal of the fill contrary to Mr. Farmer's instructions.

Mr. Patton stated that there was no contact after the 28th of December and that the removal of the fill had come to our attention through one of our Erosion and Sedimentation inspectors.

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Mr. Gussman questioned Mr. Farmer as to any review of the restoration order by the County Attorney.

Mr. Farmer stated that the restoration order was not reviewed by the County Attorney, but that the order followed the language that was provided by VMRC and that it was virtually identical to the last restoration order that the board issued.

Mr. Lindsey reopened the public hearing.

Mr. Walker Ware stated that at this time he was retreating. He stated that he would like to move the fill material out of the questionable area. He stated that he had already attempted to remove the material but the ground was not suitable to hold the trucks necessary to move the fill. He further stated that his attorney, Mr. Jim Wood, had informed him that he did not need to obtain a land disturbance permit in order to dump fill on A-1 zoned land, therefore he had not contacted the county prior to commencing the removal of the fill.

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

Ms. McCleary questioned Mr. Ware as to why he had halted the survey.

Mr. Ware stated that he felt there is no need to carry this on any further. He further stated that he had originally asked to be informed of the procedures and made a part of the survey to be conducted. He then stated that he was not informed of the procedures, just that it was happening.

Mr. Gussman questioned Mr. Farmer as to the way the restoration order is written stating that the fill would have to be pulled back by March 10, 1993. He stated that he feels that with the weather being as it had been that more time should be allotted to complete the removal of the fill.

Mr. Farmer stated that it was estimated that there was approximately twenty five hours of machine work involved in removing the fill and that he felt enough time has been allotted. He further stated that if the Board felt that more time was needed that it would be fine to allow more time.

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Mr. Gussman motioned to adopt the restoration order drafted by staff with the provision that the restoration be completed by April 1, 1993.

Mr. Farmer stated that in staff's recommendations it stated that a bond or letter of credit or other suitable surety would be required as part of the restoration order.

Mr. Gussman questioned Mr. Farmer as to when the bond would be released.

Mr. Farmer stated that the final release of all the surety would be premised upon the monitoring plan.

The motion was carried with a unanimous vote.

D. NEW BUSINESS

W-40-92; F. Fenderson; Colonial Golf Course

Mr. Farmer presented the staff report saying that Mr. Michael Kelly of the Williamsburg Environmental Group, on behalf of Mr. Francis Fenderson and the Colonial Golf Course, applied for a wetlands permit to construct a water intake structure and associated pier at 1301 Hockaday Road for the proposed Colonial Golf Course. The property is further identified as parcel (1-2) found on James City Count Real Estate Tax Map (9-4). He stated that the property in question consists of tidal waters and vegetated marsh land adjacent to Mill Creek. He stated it is the staff's recommendation that a permit be granted with the following conditions:

1. Construction plans shall be approved by the Director of Code Compliance before any land disturbance or construction begins.
2. An erosion control plan, land disturbance permit and surety be in effect for any related upland activity, including construction access prior to commencing the work.
3. A single access road totally in uplands be used for access to the site and have suitable erosion and sedimentation controls installed to insure protection of wetlands from sedimentation run-off.

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4. All necessary federal, state and local permits be obtained prior to commencing any work at the site.
5. No disturbance of tidal waters, shore or tidal wetlands shall occur between February 15 and June 15th.
6. The permit shall expire on January 13, 1994.

Mr. Farmer stated that Ms. McCleary had called him with numerous questions pertaining to the actual withdrawal. He said that he had spoken to Mr. Hassell with the State Water Control Board and that they had not yet drafted their permit, but that they knew what would be put into a draft permit. Mr. Farmer stated that it was his understanding from talking to Mr. Hassell that an individual Corps of Engineers permit may be required specifically for this intake because it didn't fall under any of the nationwide categories. He further stated that there were several things that the water control board intended to do with the withdrawal permit. He stated that certainly there would be a daily and instantaneous withdrawal limitation, which would basically be the size of the pump. There would also be a limitation placed on the permit for the screen size in order to prevent larval fish and eggs from being disturbed or pulled into the pump intake.

Mr. Cobb questioned Mr. Farmer as to whether or not the road way entrance work could be done during the spawning season.

Mr. Farmer stated that he had no objection to having the upland work done provided adequate sedimentation and erosion control measures are in place.

Ms. McCleary questioned Mr. Farmer as to the definition of "monitoring" in the commencement of work.

Mr. Farmer stated that Inland Games and Fisheries would monitor and permit the commencement of work.

Mr. Lindsey opened the public hearing.

Mr. Mike Kelly, Vice President of Williamsburg Environmental Group stated that they would concur with all the conditions that Mr. Farmer had outlined with the substitute condition (No. 5) that had been worked out with the Virginia Department of Game & Inland Fisheries to allow some minimal activity during the February to June period. He requested that the wording read such that "no disturbance of tidal waters, shore or tidal wetlands shall occur

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between February 15 and June 30th unless an exception is granted by the Virginia Department of Game and Inland Fisheries. He also stated that this is the first step in obtaining all the necessary permits. He stated that they had to obtain permits from VMRC and a Water Protection Permit from the State Water Control Board.

Mr. Dave Dowling, Virginia Department of Game & Inland Fisheries stated that he is in agreement with Mr. Kelly and that they would be monitoring the project.

Mr. Alex Penland stated that he lives on Diascund Creek, approximately two miles West of this proposed project and that he has a real problem with the commencement of this project. He stated that it was a great plan in the wrong location. He stated that Mr. Boyd and the Williamsburg Environmental Group are paid lobbyists rather than environmental advocates.

Mr. Walker Ware stated that he is in favor of the project.

Mr. Lindsey closed the public hearing.

Mr. Hughes stated that he is inclined to agree with the general concerns of the overall project, but he doesn't feel that is an issue because the only thing that the Board has any authority on is the little piece of land that is approximately 15 feet in diameter. He stated that the board has no control over the removal of water from the creek.

Mr. Hughes motioned to grant the permit as staff recommended with the suggested modification to condition No. 5.

Ms. McCleary stated that she understands that the board cannot do anything about the overall project, but that she has concerns about the intake of water at this particular location and how it is going to impact the local environment and the surrounding wetlands.

Mr. Ron Boyd asked to address the issue and was allowed to speak. He said he was with Williamsburg Environmental Group and that he is not here to lobby the board but to state some facts. He stated that based on what they had seen from some tidal monitoring that had occurred in Mill Creek, down through Diascund Creek and into the Chickahomony River tidal exchange rates were on the order of 250 to 300 cubic feet per second as the tide came in.

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The first encounter they found with salinity of any measurable quantity was down around Chickahomony Haven at the Marina. This occurred during the Fall months following some extended dry weather. They didn't have any flood flows through any of the creek systems at that time. He further stated that was fairly indicative of a dry situation where salt could begin to migrate up into the system. This was approximately ten miles away from the site. He stated that during a special use permit hearing they did some calculations using the VIMS Salinity Model for the James River, and found that the expected withdrawals at the golf course site might have an impact of one meter in the salt wedge. He stated that the salt in the James River System migrates sixty kilometers in any given year. He stated that he feels that this type of withdrawal is so minute that it wouldn't have an impact.

Ms. McCleary stated to Mr. Boyd that Mr. Penland was right when he stated that the Williamsburg Environment Group was being paid to advocate this project. She stated that she would be more comfortable if she had someone who is an impartial judge of these things to be certain there would be no impact. She stated that she is personally uncomfortable with granting the permit until she had more objective information.

Mr. Kelly asked to speak and stated that she did have scientific and technical advice from VIMS. He stated that VIMS reviewed this project and if they felt there would be a local impact of tidal wetlands they would have brought it out in their comments.

Mr. Lindsey stated that he agreed with Mr. Hughes that the board need concern themselves only with the wetlands involved.

The motion to grant the permit was carried 4 to 1 with Ms. McCleary dissenting.

W-39-92; Florence P. Adsit

Mr. Farmer presented the staff report saying that Colonel Herbert Bell as agent, on behalf of Mrs. Florence P. Adsit, owner, has applied for a wetlands permit to install 200 Square feet of riprap revetment and fill for repair of the Lake Powell spillway. The site is on the southern end of the dam along Lake Powell Road and is identified as the southern boundary of parcel (1-31) found on James City County Real Estate Tax Map (47-4). The site is at the beginning of the tidally influenced portion of Mill Creek. He

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stated it is the applicant's desire to undertake some limited repair of the spillway and outfall to prevent failure of the dam and resulting drainage of the lake. Substantial erosion of the downstream area has occurred to the point that the headwall has leaned away from the dam, has had its structural support completely undermined, and presently appears to be supported mainly by cantilever action of the 3 pipes. Several large cracks have appeared in the concrete headwall. He stated that ideally, any project undertaken should only be done consistent with the following factors:

- The area of wetlands disturbance should be limited to the minimum absolutely necessary to accomplish the project
- The frequency of disturbance to the wetlands should be limited to an absolute minimum, and if possible be only once for permanent repairs
- Work done should not cause increased damage to the wetlands environment.

Mr. Farmer stated that after evaluating those factors in relation to the proposed project it was staff's belief that this project would not prevent further degradation of the spillway and would likely result in additional damage to tidal wetlands due to continued scouring. Additional disturbance is also likely when further repairs have to be made in the immediate future. However, staff was unable to say whether the additional damage caused by this work proposal would be more than the damage which might be caused by catastrophic failure of the dam and spillway. He also stated that staff believed that construction of a proper energy dissipation device would be necessary, and when done would likely result in disturbance of greater wetlands area than shown on the application, but would prevent further erosion and damage downstream. He stated that staff supports any undertaking to save Lake Powell and prevent further damage, but does not recommend support of this specific project. He recommended several conditions for the board to consider if they wanted to grant a permit.

Mr. Hughes questioned Mr. Farmer about Colonel Bell's letter.

Mr. Lindsey opened the public hearing.

Mr. Hughes stated that any help to save Lake Powell was certainly supported by the Wetlands Board.

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Colonel Herbert Bell, agent and close friend of Mrs. Adsit, stated his concern for Lake Powell. He also stated that Mr. Dellinger, the contractor for this proposed project, is here with him. He stated he had received a phone call from a gentleman with the Corps of Engineers and his comments were along the lines of Mr. Hughes's question about dewatering. He stated that he explained the dewatering process to this gentleman and that it was understood. Colonel Bell stated that the VMRC had received comments back from the Health Dept., Historic Resources, Conservation of Recreation, and VDOT stating that each had no objections to accomplishing the project as submitted. He stated that he had received no response from VIMS and the Virginia Game & Inland Fisheries to date. He also stated that he realized this project was only a temporary repair and that it would not necessarily be something that would solve the problems of Lake Powell forever, but that there are resource limitations and he felt that those things had been considered. Colonel Bell said there are things that had been suggested that could extend the life of the repair by reducing the amount of undercut, and certainly the elimination of heavy transportation of trucks or vehicles across that area would help.

Mr. R. E. Gilley stated that he and his wife reside at 227 Gatehouse Blvd. He stated that they live on Mill Creek, which is approximately 600 yards from the spillway at Lake Powell. He further stated that he and his wife own approximately 100 acres of marsh land in Mill Creek. Mr. Gilley respectfully asked that the Wetlands Board deny Mrs. Adsit's application for this permit because it was inadequate and would only be a temporary solution to the problem. He stated that he felt it would be a hazard for his land and possibly for himself and his family. He further went on to read from documentation that he had obtained as well as from letters he had received from the Department of Conservation and Historic Resources and the Virginia Department of Game & Inland Fisheries stating that the owner of the land in which the dam was erected is responsible for any damage or injury incurred to adjacent property.

Mr. Spencer Adsit, son of Mrs. Adsit stated that they are only proposing a repair of the spillway. He stated that all of the fill and the riprap would be concreted down. This proposed project is what they could afford at this time.

Mr. William Matthews stated that he supports the repair of the dam.

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Mr. Gerald Mephanm stated that The Virginia Department of Transportation had abandoned the Road and that he was in support of repair to the dam.

Mitchell Norman stated on behalf of Virginia Department of Game & Inland Fisheries that they did not foresee any problems with spawning and that he was in favor of the proposed repairs also.

Mr. Gussman questioned Mr. Norman as to any fish kill with the concrete being used to hold the riprap.

Mr. Norman stated that he didn't feel that this concrete would have an ill effect.

Mr. Farmer stated some facts referring to the concrete and how it could affect the fish.

Mr. H. R. Dellinger stated that he is the contractor hired to do the proposed project and described the work to be done and the machinery to be used in doing the work. He also commented on the additional cost of using the filter fabric, the graded course granular material and the Class II material as opposed to what had been proposed.

Mr. Edwin Gilley stated his feelings against the spillway repairs and questioned who would be at fault if damage was incurred by the heavy machinery needed to place the riprap.

Mr. Lindsey closed the public hearing.

Ms. McCleary stated she cannot judge exactly how much wetlands is being impacted by this project. She stated that she doesn't see how she could support the project because she does not have a clear understanding of the proposed project.

Colonel Bell stated that the undercut is actually 1/2 of what it looks in the pictures.

Ms. McCleary stated that with one good drawing that matched what the photographs showed, she would be able to better judge what was being impacted.

Mr. Hughes stated that he agreed with Ms. McCleary, but his concern is with the crushed concrete to be used.

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Mr. Cobb stated that he feels that "doing something as opposed to doing nothing is better."

Ms. McCleary proposed that the board grant time for Colonel Bell to come up with better, more accurate drawings, and also resolve some of the problems such as the proposed crushed concrete.

Colonel Bell stated that it would cause more of a financial burden on Ms. Adsit and that he would not request a continuation.

Mr. Gussman questioned Colonel Bell asking if the board were to adopt the project with staff's suggestions if he would still be able to carry out the project.

Mr. Farmer commented that he had no objection to omitting items three and four of staff's recommendations. He stated that the board should give serious consideration to items one and two because those items are an attempt to limit any damage that may occur from the activity.

Mr. Hughes stated that he believed that Colonel Bell and staff could work on these recommendations so that they would not have to come back out in another two years and do the work over again. He further stated that he would have to go with staff's recommendation that crushed concrete not be used.

Mr. Hughes made a motion that the board accept staff's recommendations, deleting items three and four.

Mr. Lindsey granted a five minute recess.

Mr. Lindsey reconvened the meeting at the end of the recess.

Colonel Bell stated that he, as well as his colleagues, would have no problem proceeding with the project with staff's recommendations, omitting items three and four.

Ms. McCleary questioned Mr. Farmer in reference to his foreseeing any problem with the use of heavy equipment reaching down to place riprap.

Mr. Farmer stated that the work could be done.

Ms. McCleary commented that she felt that it was not a good idea for the board to set a precedent of approving a project that was so ill defined in the application.

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Motion was carried 4 to 1 with Ms. McCleary dissenting.

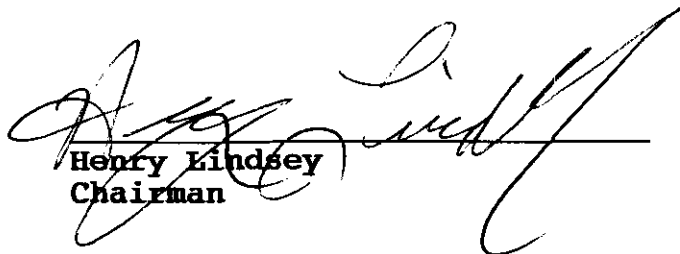
E. MATTERS OF SPECIAL PRIVILEGE

Mr. Farmer stated that the annual wetlands symposium is to be held on February 20, 1993 at the Hampton University Marine Science Center and that staff needs to know who will be attending by the end of January.

Mr. Farmer briefly described the new amendments to the Wetlands Ordinance.

F. ADJOURNMENT

Mr. Lindsey adjourned the meeting at 9:37pm.



Henry Lindsey
Chairman



Bernard M. Farmer, Jr.
Secretary