

MINUTES

WETLANDS BOARD

March 10, 1993

A. ROLL CALL

ABSENT

Henry Lindsey
David Gussman
Susan McCleary
Ralph Cobb

John Hughes

OTHERS PRESENT:

Bernard Farmer, Jr.

NOTE:

Mr. Hughes was not present for roll call, but arrived prior to the discussion of the previous meeting.

B. MINUTES

Minutes of February 17, 1993 were approved and adopted as presented.

C. OLD BUSINESS

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

Mr. Farmer presented a brief history of this case and then said that Mr. Ware had provided a copy of his proposed monitoring plan and then submitted a revised monitoring plan one day prior to the last meeting. Mr. Farmer stated that after reviewing the restoration order submitted, staff's recommendation to the wetlands board is that it fails to meet the requirements of the restoration order issued by the board and is insufficient. If the board agrees then there are two violations that presently exist. One is a violation of the wetlands laws for filling on top of jurisdictional area. The second violation is failure to comply with the restoration order issued by the board.

Mr. Lindsey clarified that the board could treat these violations as two separate violations.

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Ms. McCleary asked if staff notified Mr. Ware that the most recent monitoring plan was inadequate.

Mr. Farmer said yes.

Mr. Lindsey clarified that Mr. Ware was sent a copy of a previous monitoring plan in order to provide a guideline for his plan.

Mr. Farmer stated that the restoration order made by the board outlined certain specific items that had to be included in Mr. Ware's monitoring plan.

Mr. Lindsey asked if Mr. Ware had employed an attorney.

Mr. Farmer said that he is unaware.

Ms. McCleary asked if the board had to do anything formal in order to find Mr. Ware in violation.

Mr. Farmer stated that he is asking for some affirmation of staff's comments and recommendations or to understand that the board disagrees. He also asked for any direction that the board would give staff for further enforcement action.

Mr. Farmer outlined the enforcement options available to the board.

Mr. Hughes asked if civil penalties would be handled in Circuit Court or General District Court?

Mr. Farmer said that it would be Circuit Court.

Mr. Farmer read from Chapter 28.2-1320 of the statute.

Mr. Lindsey stated that he agreed with staff's comments and recommendations, and that the board should seek civil penalties.

Mr. Lindsey made the comment that the board was given permission by Mr. Ware to go out and view the site and a tentative date was set for a site visit. This site visit was cancelled after numerous attempts were made to contact Mr. Ware to inform him of the site visit.

Mr. Hughes motioned to file suit in Circuit Court.

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Mr. Cobb stated that he doesn't feel good about the circuit court approach. He said that the board should keep this matter "low key" and get the problem settled.

Mr. Gussman said that he agreed with Mr. Cobb in that the board should try and negotiate a settlement with a voluntary civil charge.

Ms. McCleary asked Mr. Farmer if two distinct violations existed and if a negotiated civil charge would apply to both of the violations?

Mr. Farmer said that civil charges can apply to each violation.

Ms. McCleary stated that if the board decided to negotiate with Mr. Ware that there should be a firm deadline in which for him to respond to staff.

Ms. McCleary offered an amendment to Mr. Hughes's motion.

Mr. Lindsey stated that he agrees with Mr. Hughes's motion. He said that Mr. Ware has already reneged on two things he had previously agreed to. He said that he is not sure that the board has the obligation to tie up staff anymore with trying to negotiate this matter.

Mr. Farmer stated that he would notify Mr. Ware by Certified Mail of the decision to allow him the opportunity to enter into a consent agreement.

Mr. Hughes stated that he is not opposed to an amendment to his motion instructing staff to inform Mr. Ware that he has until March 31, 1993 to negotiate a settlement with the County and if no agreement is entered then a Bill of Complaint would then be filed with the Circuit Court.

Mr. Cobb stated that the matter of restoration is not included in the civil charge. He asked how the matter of restoration would be resolved.

Mr. Farmer stated in detail the elements (including restoration) that staff would include in their negotiations with Mr. Ware to see that the violations were abated.

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Mr. Hughes motioned to direct staff to inform Mr. Ware that he has until March 31st to negotiate a settlement with staff. If the staff is unable to obtain a settlement, staff is then authorized by the board to pursue other legal remedies.

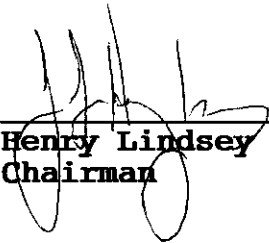
The motion was carried with a unanimous vote.

D. NEW BUSINESS

E. MATTERS OF SPECIAL PRIVILEGE

F. ADJOURNMENT

Mr. Lindsey adjourned the meeting at approximately 8:15 pm.



Henry Lindsey
Chairman



Bernard M. Farmer, Jr.
Secretary