

**JAMES CITY COUNTY WETLANDS BOARD  
MINUTES  
April 9, 2008**

**A. ROLL CALL**

**ABSENT**

John Hughes  
Larry Waltrip  
Henry Lindsey  
William Apperson  
David Gussman

**OTHERS PRESENT**

Elizabeth Gallup, VMRC  
County Staff

**The James City County Chesapeake Bay Board meeting was opened concurrently with this Board meeting**

**B. MINUTES**

The March 12, 2008 Board Meeting minutes were approved as presented.

**C. PUBLIC HEARINGS**

**1. W-31-07/VMRC 07-1888: John and Judith Anton - 7511 & 7513 Oak Cove Road continued from 12/12/07 and 1/9/08**

Pat Menichino presented the following information to the Board:

John & Judith Anton applied for a wetlands permit to install approximately 122 feet of vinyl bulkhead with two 5-foot return walls. The applicant also proposed two piers with boatlifts, a 6-foot by 146-foot pier, and a 6-foot by 176-foot pier. The proposed piers and boatlifts are open pile structures and therefore not within the Wetlands Board's jurisdiction. The proposed bulkhead and piers will be installed behind the respective properties on the Chickahominy River. The properties are further identified as parcel identification #s 1910100015 & 191000014. Mr. Wilbur Jordan of Jordan Marine is the authorized agent for this project and both he and the applicants were advised that their attendance at the Wetlands Board meeting on April 9, 2008 was highly recommended.

Approximately 100 feet of the proposed bulkhead is to replace an existing bulkhead located at 7513 Oak Cove Road. The remaining 22 feet is new bulkhead proposed to tie into to a proposed upslope retaining wall that is above the Wetlands Board jurisdiction. The bulkhead will be constructed using vinyl sheeting, a 6 x 6 CCA continuous wale, and galvanized tie rods connected to a 2' x 3' concrete deadman. The bulkhead will be installed and aligned to tie into the existing bulkhead on the north side of the property and is proposed to follow the existing toe of slope to the southern property line. Filter fabric will be installed behind the bulkhead to eliminate the potential of sediment transport.

Environmental Division staff visited the site on November 6, 2007, along with representatives of VMRC and VIMS, to review the project scope and potential impacts. Proposed impacts for this project are determined to be 200 square feet to the Type XV Sand/Mud Mixed Flat Community. The total fill impacts to the non-vegetated Wetlands located on this project are determined to be 200 square feet.

**Staff Comments:**

Staff's field review of the project site located at 7511 Oak Cove Road revealed only minor shoreline erosion confined to a small area located adjacent to the southern property line. The minor erosion problem observed on this property does not warrant the installation of a continuous bulkhead along the shoreline. The principal dwelling on this lot is located significantly upland, therefore there is no potential threat of property damage from shoreline erosion. The applicant has revised their plan and excluded approximately 94 feet of bulkhead from their original proposal.

Within this application is a proposal for installation of 94 linear feet of retaining wall, located slightly upslope from the wetlands. This retaining wall will be connected to the proposed bulkhead on each end. Staff believes this proposed upslope retaining wall is desired by the applicants for aesthetic reasons.

Staff's field review of the existing bulkhead located at 7513 Oak Cove Road revealed moderate erosion resulting from the partial failure of the bulkhead. If this bulkhead is not replaced the potential for significant shoreline erosion and bulkhead failure is high.

**Staff Recommendations:**

If the Board approves this application as requested with the optional retaining wall, staff recommends that the following conditions be included:

1. Prior to any land disturbing activities, a preconstruction meeting will be held on-site.
2. The limits of construction shall be flagged in the field prior to the preconstruction meeting.
3. Any vegetation to be removed shall be clearly flagged or marked with spray paint prior to the preconstruction meeting and shall be approved by the Environmental Division prior to any land disturbance.
4. Any landward areas of the Resource Protection Area (RPA) buffer that are proposed to be graded and disturbed during the construction process will require stabilization with a grass cover. If RPA vegetation is to be removed for construction access, or grading activity, then an RPA restoration plan with surety shall be submitted and approved by the Environmental Division prior to the preconstruction meeting.
5. A turbidity curtain shall be required prior to commencement of any construction activity unless waived by the Environmental Division Director.
6. The bulkhead tiebacks and the filter fabric shall be inspected by the Environmental Division prior to the placement of backfill.
7. This permit shall expire April 9, 2009.
8. If an extension of this permit is needed, a written request shall be submitted to the Environmental Division no later than two weeks prior to expiration date.

**See the Chesapeake Bay Board 4/9/08 minutes for comments from the Board and applicant.**

Mr. Hughes stated the Wetlands permit was for replacement of the existing bulkhead at either end of the property.

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

Mr. Hughes made a motion to adopt the resolution granting the Wetlands permit for tax map numbers 1910100014 and 1910100015, case W-31-07.

The motion was approved by a 5-0 vote.

**2. W-25-07: Vanasse Hangen Brustlin, Inc – Spencer’s Grant – shoreline stabilization – continued from 11/14/07, 1/9/08, 2/13/08 and 3/12/08**

**See the April 9, 2008, Chesapeake Bay Board Minutes for staff’s presentation of the case.**

Mr. Hughes asked staff for clarification on the items to be considered by the Wetlands Board and asked if there was anything in the wetlands application that could not be constructed without approval of the Chesapeake Bay Exception Request.

Mr. Menichino stated the Wetlands Permit was for the extension of the breakwaters, beach nourishment, and plantings along the beach. He stated the entire application was initially submitted as a wetlands shoreline stabilization project but because of the scope of the project, staff determined the impacts to the RPA should be considered by the Chesapeake Bay Board. He stated the cases could be considered separately.

**See the April 9, 2008, Chesapeake Bay Board Minutes for additional comments from the Board, applicant, and interested parties.**

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

Mr. Hughes made a motion to adopt the resolution granting the Wetlands Permit for the riprap and beach nourishment on tax map numbers 5130100004 and 5130100005, case number W-25-07.

Mr. Menichino stated the Wetlands Permit did not include the riprap armor stone revetment because the elevation placed it out of the jurisdiction of the Wetlands Board.

Mr. Hughes withdrew his motion.

The Boards took a short recess at 9:20 and reconvened at 9:25.

Mr. Gussman made a motion to adopt the resolution granting the Wetlands Permit for extension of the breakwaters, beach nourishment, and plantings along the beach at tax map numbers 5130100004 and 5130100005, case number W-25-07.

The motion was approved by a 5-0 vote.

**D. BOARD CONSIDERATIONS**

Pat Menichino presented the Board Members with sworn affidavits from Scott J. Thomas and himself regarding alleged wetlands violations at 5004 River Drive. (copies attached). Staff requested that the Board order a hearing on May 14, 2008 to address these alleged violations.

Mr. Hughes made a motion to conduct a hearing on this matter on May 14, 2008.

The motion was approved by a 5-0 vote.

**E. MATTERS OF SPECIAL PRIVILEGE – Resolution of Appreciation – Jennifer C. Lytle**

WHEREAS, Jennifer C. Lytle has served the citizens of James City County as Counsel to the Wetlands and Chesapeake Bay Boards from August 2006 to March 2008; and

WHEREAS, Jennifer C. Lyttle has provided invaluable legal guidance to the Boards and to County Staff; and

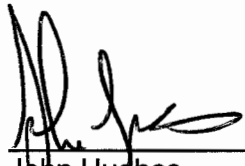
WHEREAS, through her guidance the Boards have rendered fair and impartial decisions, resolutions, and provided exceptional public access to the Boards.

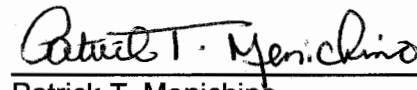
NOW, THEREFORE BE IT RESOLVED that the Wetlands Board and Chesapeake Bay Board of James City County do hereby proclaim, great appreciation to Jennifer C. Lyttle for her dedication, commitment and exceptional service to the Boards and to the citizens of James City County.

BE IT FURTHER RESOLVED that the issuance of this Proclamation be entered into the official minutes of the Wetlands Board and Chesapeake Bay Board of James City County.

**G. ADJOURNMENT**

The meeting adjourned at 9:55 PM

  
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John Hughes  
Chairman

  
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Patrick T. Menichino  
Secretary

WETLANDS BOARD OF JAMES CITY COUNTY, VIRGINIA

IN RE: 5004 River Drive, James City County, Virginia  
W. Walker Ware, IV, Owner

AFFIDAVIT OF SCOTT J. THOMAS

COMMONWEALTH OF VIRGINIA,  
County of James City, to wit:

This day personally appeared the undersigned, Scott J. Thomas ("Mr. Thomas"), before me a Notary Public in the County of James City, Virginia, and, being first duly sworn, Mr. Thomas deposes, states and represents as follows:

1. Mr. Thomas is currently the Director of the Environmental Division and Secretary to the Chesapeake Bay Board of James City County, Virginia, a registered professional engineer in the Commonwealth of Virginia and holds a certificate of competence for combined administrator from the Virginia Soil and Water Conservation Board.
2. That on or about April 7, 2008, Mr. Thomas visited a property known as 5008 River Drive and further identified as PIN 0930100005 (The "Adjacent Property") which is the property adjacent to and northwest of a parcel owned by W. Walker Ware, IV ("Mr. Ware") and known as 5004 River Drive, Lanexa, VA, and further identified as PIN 0930100006 (The "Ware Property").
3. That on that date Mr. Thomas, from the Adjacent Property, observed what appeared to be previously placed fill over top of areas identified as Wetlands on the Ware Property.

4. That on that date Mr. Thomas observed, from the Adjacent Property, what appeared to be a pile of previously placed riprap stone within an area identified as Wetlands on the southwest portion of the Ware Property.
5. That on that date Mr. Thomas observed, from the Adjacent Property, that runoff and erosion from disturbed areas on the Ware Property were impacting areas identified as Wetlands on the Ware Property and Wetlands on the Adjacent Property to the northwest.
6. That on that date Mr. Thomas, from the Adjacent Property, took photographs of previously placed fill within the area identified as Wetlands on the Ware Property and of runoff and erosion from disturbed areas on the Ware Property which were impacting areas identified as Wetlands on the Ware Property and Wetlands on Adjacent Property to the northwest.
7. That the placement of previously placed fill within areas identified as Wetlands on the Ware Property and/or runoff and erosion impacts from disturbed areas on the Ware Property which were impacting areas identified as Wetlands on the Ware Property and Wetlands on Adjacent Property to the northwest require a permit and authorization from the County's Wetlands Board, and that the un-authorized placement of fill by Mr. Ware without a permit, constitutes a violation of County Code and Title 28.2, Chapter 13 of the Virginia Code.

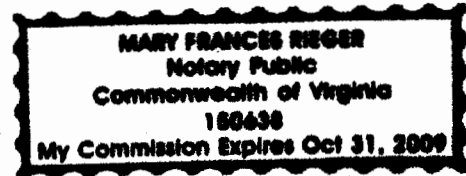
Scott J. Thomas  
Scott J. Thomas

Sworn and subscribed to before me this 9<sup>th</sup> day of April, 2008 in the aforesaid County and State.

Mary Frances Rieger  
Notary Public

My Commission expires: October 31, 2009

Notary Registration Number 150638



WETLANDS BOARD OF JAMES CITY COUNTY, VIRGINIA

IN RE: 5004 River Drive, James City County, Virginia  
W. WALKER WARE, IV, Owner

AFFIDAVIT OF PATRICK T. MENICHINO

Commonwealth of Virginia,  
Wetlands Board, County of James City, to wit:

This day personally appeared the undersigned, Patrick T. Menichino ("Mr. Menichino") before me a Notary Public in the County of James City, Virginia, and, being first duly sworn, Mr. Menichino deposes, states and represents as follows:

1. Mr. Menichino is currently the Environmental Compliance Specialist and Secretary to the Wetlands Board for James City County, Virginia.
2. That on or about February 27, 2006, Mr. Menichino visited the property owned by Walker Ware, IV (Mr. Ware), located at 5004 River Drive, Lanexa, VA, further identified as PIN 0930100006 (The "Property").
3. That on that date Mr. Menichino entered the Property and observed Mr. Ware operating a Caterpillar track excavator within an area of the Property designated as Wetlands, as defined in the County Code, Chapter 22, *Wetlands*. Mr. Menichino observed Mr. Ware using the Caterpillar track excavator to place fill over top of existing vegetation within the area identified as Wetlands. That on that date, following his observations, Mr. Menichino spoke with Mr. Ware and informed Mr. Ware that the placement of fill within the Wetlands area on the Property, was not authorized by the County.



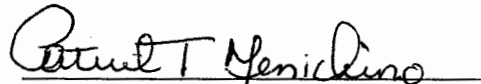
4. That on that date Mr. Menichino requested Mr. Ware to discontinue filling and grading within the Wetlands area on the Property. Mr. Ware agreed to discontinue filling and grading within the Wetlands Area.
5. That on that date Mr. Menichino took a photograph of the filling and grading activity on the Property. Mr. Menichino reported the above information to the Environmental Division Director by phone.
6. That the placement of fill, gravel, stone, or armor stone within areas identified as Wetlands require prior County authorization and a permit from the County's Wetlands Board, and that the un-authorized placement of fill, gravel, stone and armor stone by Mr. Ware without prior County authorization and a Wetlands permit, constitutes a violation of County Code, Chapter 22, *Wetlands*, and of Title 28.2, Chapter 13, *Wetlands*, of the Code of Virginia, 1950, as amended, (the "Virginia Code").
7. That on March 17, 2006 Mr. Menichino sent Mr. Ware a letter which instructed Mr. Ware to remove all of the un-authorized fill that was placed in the Wetlands area on the Property.
8. That on March 20, 2006 an onsite meeting was held between Division Staff and Mr. Ware and Mr. Menichino discussed the Wetlands violation with Mr. Ware.
9. That on July 6, 2006 Mr. Menichino, was present at a meeting held between Division Staff, the

County Attorney and Mr. Ware. The meeting was held to discuss the unresolved Wetlands violation of February 27, 2006. Following that meeting Mr. Ware requested that Mr. Menichino not enter the Property.

10. That on August 8, 2006 Mr. Menichino observed the Property from an adjacent parcel and determined that gravel had be added and placed over top of the fill within the Wetlands and a large gravel cul-de-sac had been installed at the rivers edge by an existing pier.

11. That between the dates of August 8, 2006 and April 9, 2008 Mr. Menichino has observed the Property, and has reviewed aerial photography, photographs, and video tapes that clearly document unauthorized impacts to the Wetlands area on the Property.

12. That as of April 9, 2008 Mr. Ware has not removed the fill, gravel, stone, and armor stone from the Wetlands area on the Property, and the violations of County Code and of the Virginia Code still exist on the Property.

  
Patrick T. Menichino

Sworn and subscribed to before me this 9<sup>th</sup> day of April, 2008 in the aforesaid County and

  
Notary Public

My Commission expires: October 31, 2009.

