

**JAMES CITY COUNTY WETLANDS BOARD
MINUTES
March 11, 2009 - 7:00PM**

A. ROLL CALL

John Hughes - Chairman
Larry Waltrip
David Gussman
Terence Elkins
William Apperson

ABSENT

OTHERS PRESENT

County Staff

The responsibility of this Board is to carry out locally the Commonwealth policy to preserve the wetlands and to accommodate economic activity so as to prevent their despoliation.

B. MINUTES

The February 11, 2009 Board minutes were approved as written.

C. PUBLIC HEARINGS

1. W-11-09/VMRC08-2028: Mershon-500 Thompson Lane-dam alteration

Continued from 12/10/08 and 2/11/09

Patrick Menichino presented the following information to the Board:

Recent Background Info

On December 10, 2008, the Board was presented case W-11-09, a Joint Permit Application (JPA) proposal to impact approximately 3,700 sqft of tidal wetlands adjacent to Gordon's Creek. At the request of the applicant, Mr. Mershon, the Board granted a deferral in the case (W-11-09 and a Wetlands Restoration Hearing) until February 11, 2009.

On December 19, 2008, staff sent a letter to Mr. Mershon offering assistance should he require it.

On January 29, 2009, staff was contacted by Williamsburg Environmental Group (WEG), a consulting firm representing Mr. Mershon. They indicated the JPA would be revised to reduce proposed impact to the wetlands. Staff advised WEG that all JPA revisions must be submitted to VMRC, who would then forward the JPA to the County.

On February 11, 2009, the Board was presented case W-11-09 and WEG consultant, Ms. Christine Conrad on behalf of Mr. Mershon, requested an additional deferral of the case until March 11, 2009. The Board voted to grant the deferral.

On February 19, 2009, Staff met onsite with representatives from WEG to discuss revisions to the original JPA.

On February 23, 2009, Staff received a revised report and permit request from WEG. The report now proposes a reduction in wetlands impacts and includes a wetlands restoration plan.

Staff Report

The original JPA submitted by the applicant on October 30, 2008 was in response to a Wetlands Board action, ordering that a Wetlands Restoration Hearing be held on November 12, 2008. The JPA requested 3,700 sqft of impacts to vegetated wetlands necessary for dam improvements required by the Division of Dam Safety.

On February 23, 2009, a revised report and permit request were submitted to Staff for presentation to the Board. Staff reviewed these documents and offered the following information to the Board:

The new application proposed approximately 160 sqft of permanent fill impacts to vegetated wetlands that are adjacent to the downstream toe of the dam embankment. The purpose of the fill is to allow the embankment to be top dressed with topsoil, graded, and stabilized to create an average 2.5:1 slope. Mitigation for the proposed permanent wetlands impacts include the restoration of approximately 505 sqft of historically filled wetlands. These two areas will be restored to adjacent wetlands elevations and then seeded with a wetlands seed mix to facilitate restoration.

In addition, the applicant proposes a restoration of wetland areas previously impacted. The plan proposes the removal of dead trees, logs, and debris from within the wetlands and the removal of partially buried trees and debris on the western side of the dam. As part of this proposal, approximately 1,285 sqft of unauthorized fill will be removed from the wetlands. The proposal for this area is to allow it to revegetate naturally.

Staff has determined the adverse impacts from the proposed 160 sqft of permanent fill within the wetlands to be minimal and the restoration of the impacted wetlands areas will have a beneficial effect on the environment.

Staff Recommendations

Should the Board vote to approve the modified permit request, the following conditions should be required and made part of the permit:

1. A preconstruction meeting shall be held between the County and the permit holder prior to the commencement of restoration activities. A sequence of construction and restoration must be approved by the Environmental Division (Division) prior to the preconstruction meeting.
2. Erosion control measures such as silt fence shall be installed as directed by the Division.
3. Full implementation of the wetlands restoration shall be guaranteed through the provisions of the Ordinance contained in Sections 22-8. Such surety shall be submitted in a form acceptable to the County Attorney. Surety shall be submitted and approved prior to the preconstruction meeting. The amount of surety required has been calculated by Staff to be \$3,000.00.
4. Following the removal of unauthorized fill (1,285 sqft) these areas will be seeded with the same type of wetlands seed mix as the restored wetlands areas (505 sqft).
5. All upland disturbed areas shall be stabilized with an appropriate grass cover immediately upon completion of the authorized activities.
6. A turbidity curtain may be required prior to commencement of any construction activity unless waived by the Division Director.
7. This permit shall expire March 11, 2010.
8. If an extension of this permit is needed, a written request shall be submitted to the Division no later than two weeks prior to the expiration date.

A. Christine Conrad, Williamsburg Environmental Group, described their current assessment of the property and the submitted stabilization and restoration plan for the Boards consideration.

B. Jason Messersmith, Attorney for the applicant, addressed the staff recommendations and requested they be modified to remove the requirements for a preconstruction meeting and surety guarantee.

Mr. Hughes stated the Board established the preconstruction meeting to insure that all parties understood the requirements of the permit and approved plans. He asked staff for comment on the applicant's requests.

Pat Menichino stated the purpose of the preconstruction meeting was to review the recommendations of the Board and as long as the applicant did not change the approved plans there would not be any additional requirements. With regard to the surety, he stated this was to guarantee the restoration of the wetlands.

C. Lee Mershon, applicant, stated his intent had always been maintenance on the dam to ultimately protect the wetlands and none of the unauthorized impacts to wetlands were for development of his property. He asked the Board to consider his request to waive the surety because he was on a fixed income and none of the impacts were done maliciously. His other concern was the requirement that the restoration be completed by the end of May.

Mr. Hughes advised Mr. Mershon that if the Wetlands Board approved his application, the Board and staff would require that he complete the project as specified in the approved plans and the resolution stated the permit would not expire until March 11, 2010. However, the Board could not speak for any requirements from the Department of Dam Safety or DCR.

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

Mr. Gussman stated the Board would be sympathetic to Mr. Mershon if the restoration plan had to be changed due to requirements from the Department of Dam Safety. He also agreed that failure of the dam would destroy more wetlands than the impacts associated with the maintenance.

Mr. Waltrip stated he felt the outlined approach to the maintenance of the dam was correct and he fully supported the proposed application.

Mr. Apperson agreed with Mr. Gussman and Mr. Waltrip's statements and also stated he supported the applicant's request that the surety requirement be removed.

Mr. Waltrip stated he agreed with waiving the surety requirement and asked if the other Board members agreed.

Mr. Gussman stated the applicant was acting in good faith and he would not object to waiving the surety requirement.

Mr. Elkins stated the objectives of the Board and the applicant were the same and stated the new proposal submitted by WEG, greatly reduced the impacts to the wetlands.

Mr. Hughes called for a motion.

Mr. Elkins made a motion to adopt the resolution granting a wetlands permit for cased W-11-09/VMRC-08-2028 on tax parcel #3610100005.

Mr. Gussman asked Mr. Elkins if he would consider amending his motion to include removal of the surety requirement.

Mr. Elkins stated since it seemed to be the intent of the Board; he amended his motion to include removal of the \$3,000 surety requirement from the resolution.

The amended motion was approved by a vote of 5 -0.

D. BOARD CONSIDERATIONS


E. MATTERS OF SPECIAL PRIVILEGE

Due to concerns from a citizen and county staff regarding the review and permitting procedures for the construction of open pile structures in county wetlands, Mr. Hughes stated he wished to appoint a three member committee to examine these procedures and asked for volunteers from the Board. Mr. Gussman, Mr. Elkins, and Mr. Waltrip volunteered and Mr. Hughes appointed Mr. Elkins as chairman of this committee. They set a date of April 7th for the committee meeting with the meeting place and time to be determined and relayed to the committee members as soon as possible with public notice of the meeting to be made at least 3 days prior to the meeting.

Angela King, Assistant County Attorney, provided the Board with an update on the litigation proceedings for case W-09-08, Walker Ware IV, 5004 River Drive. The County filed the petition in state court, Mr. Ware removed it to federal court, the County filed a motion to remand, and the federal court remanded the case back to state court. Mr. Ware filed a motion to reconsider; the County filed a response and is now waiting for the federal judge to make a decision on this motion.

G. ADJOURNMENT

The meeting adjourned at 7:40 PM.



John Hughes
Chairman



Patrick T. Menichino
Secretary