

**JAMES CITY COUNTY WETLANDS BOARD  
MINUTES  
May 13, 2009 - 7:00PM**

**A. ROLL CALL**

John Hughes - Chairman  
Larry Waltrip  
Terence Elkins  
William Apperson  
Charles Roadley

**ABSENT**

**OTHERS PRESENT**

Elizabeth Murphy - VMRC  
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 March 11, 2009 Board minutes were approved as written.

**C. PUBLIC HEARINGS**

**1. W-10-08: Restoration Hearing - 500 Thompson Lane cont from 11/13/08 and 12/10/08**

Mr. Hughes asked for a motion to close this hearing as the corresponding Wetlands Permit was issued for the dam repair on March 11, 2009.

The motion was made and all members agreed to close the restoration hearing.

**D. BOARD CONSIDERATIONS**

**1. Permitting for open pile structures in vegetated wetlands**

Terence Elkins, Chairman of the appointed Special Committee, provided the following report and recommendation to the Board:

The Special Committee of the James City County Wetlands Board was called to Order on April 7, 2009. The Committee heard presentations by staff, representatives from the Virginia Institute of Marine Science (VIMS), and the Virginia Marine Resources Commission (VMRC), on the potential wetlands impacts associated with the construction of open pile structures. Following extensive discussions and consideration of the available information, the Special Committee unanimously adopted the following recommendation to the full Board.

*The Special Committee of the James City County Wetlands Board unanimously recommends to the full Wetlands Board that a Wetlands Permit be required for the construction of open pile structures proposed in vegetated tidal wetlands of the County, in those cases where staff has valid reasons to anticipate that the construction of such a structure may result in the alteration of the natural wetland contours or the unreasonable obstruction of tidal flows.*

## **2. Board Discussion and Motion**

Mr. Apperson stated that based on the comments from Pam Mason, VIMS, there was no way to determine if the impacts shown in the photos were temporary or permanent. He asked if staff could provide a photograph of one of the areas in question a year from now, so the Board could determine if the vegetated wetlands had restored themselves.

Mr. Menichino stated this would only be possible with cooperation from the property owners. He also stated that the only way to determine permanent impacts to wetlands would be to also document the condition of the wetlands prior to construction.

Mr. Hughes stated the Board just wanted to know if the impacts noted in staff's report would lessen over time.

**A.** Danny Winall, Waters Edge Construction, spoke in opposition to Special Committee recommendation. He stated that other counties handled this potential impact administratively, by requiring water quality impact assessments (WQIA's) and by meeting with the applicants to discuss and monitor the construction.

**B.** Boots Johnson, 210 Red Oak Landing Road, spoke in agreement with the Special Committee recommendation. She felt the Wetlands Board should be made aware of and permit all potential impacts to the wetlands.

Mr. Roadley stated the property owner's signature on the current Joint Permit Application (JPA) already granted the County right of access to the property to view the impacts to the tidal wetlands. He asked what the Wetlands Board would be permitting since, according to the Ordinance, they did not have the authority to issue permits for private piers.

Mr. Menichino stated the proposed permit would only be for impacts to vegetated wetlands associated with construction. The structure itself would still be exempt. He pointed out that the Board already routinely reviews impacts to wetlands associated with shoreline stabilization projects and the intent of the Board is to protect the wetlands by evaluating applications in a public forum, when staff feels the application warrants their review.

Mr. Roadley asked Mr. Winall to describe the common practice for construction of piers.

**A.** Mr. Winall stated it depended on the marsh. Timber mats are commonly used in soft marshes and the size of the mats used may create large, temporary impacts to the wetlands in order to reduce the pounds per square inch of pressure on the marsh which might create smaller but permanent impacts. He stated most contractors were not opposed to oversight and were willing to work with staff. He stated the Board review would add cost, cause delay, and unnecessarily involve the public in the application process. He stated that currently a building permit for a pier could be obtained in 2-3 weeks if it qualified for an RP-17 from the Army Corp.

Mr. Menichino stated he researched previous open pile structure projects and noted the JPA's were submitted an average of 5 months prior to the issuance of the building permits. As required by the Ordinance, the Board review would be within 60 days of receipt of the application from VMRC. He reminded the Board that private piers over open water would still be exempt from wetlands permits. He estimated the Board would only be reviewing 2 to 4 additional cases per year.

Mr. Roadley suggested that instead of requiring a permit from the Wetlands Board, the County could require a surety bond before issuing the building permit. He asked how other localities handled permits for piers and if piers were being considered in the current review of the wetlands guidelines and best management practices.

Mr. Menichino stated requiring surety would be creating a new process for the County and the Wetlands Board was already in place to oversee impacts to wetlands.

Elizabeth Murphy, VMRC, stated at this time she believed most localities just signed off on piers and only Fairfax and Virginia Beach required WQIA's for the building permit. She added that when VMRC receives applications for open pile structures, they do not send copies to VIMS. She believed VIMS was currently reviewing the guidelines and perhaps was now considering impacts from open pile structures.

Mr. Hughes stated the concern was the potential impacts to vegetated wetlands during the construction of open pile structures and if staff had valid reasons to believe that wetlands might be adversely affected, they should be able to pass the decision onto this Board, since it is this Board's responsibility to preserve and protect the wetlands.

Mr. Waltrip and Mr. Apperson agreed that protection of the wetlands was the responsibility of this Board and the Special Committee recommendation was specific. They did recognize this review could cause a delay in permitting but since it would only be 2 to 4 projects a year, the applicants should be able to plan for these possible delays.

Mr. Hughes made a motion to adopt the recommendation of the Special Committee.

The motion was approved by a 4-1 vote.

AYE: Apperson, Hughes, Elkins, Waltrip (4)

NAY: Roadley (1)

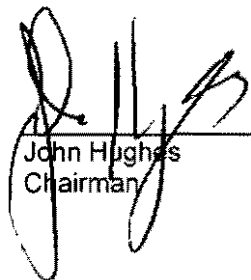
## E. MATTERS OF SPECIAL PRIVILEGE

### 1. Comments from Assistant County Attorney, Angela King


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 Federal Court denied Mr. Ware's motion for reconsideration of the remand order. Mr. Ware filed various motions to dismiss with the State Court and these motions were denied on April 24, 2009. The County is now proceeding with the case in State Court.

## G. ADJOURNMENT

The meeting adjourned at 7:55 PM.



John Hughes  
Chairman



Patrick T. Menichino  
Secretary