

MINUTES

Commission Meeting**September 23, 2008**

The meeting of the Marine Resources Commission was held at the Marine Resources Commission main office at 2600 Washington Avenue, Newport News, Virginia with the following present:

Steven G. Bowman	Commissioner
Ernest L. Bowden, Jr.)	
J. Carter Fox)	
J. T. Holland)	
William E. Laine, Jr.)	
John R. McConaugha)	Associate Members
Richard B. Robins, Jr.)	
Kyle J. Schick)	
John E. Tankard, III)	
Carl Josephson	Senior, Assistant Attorney General
Jack G. Travelstead	Chief Deputy, Fisheries Mgmt.
John M. R. Bull	Director-Public Relations
Katherine Leonard	Recording Secretary
Sunita Hines	Bs. Applications Specialist
Rob O'Reilly	Deputy Chief, Fisheries Mgmt.
Joe Grist	Head, Plans and Statistics
Jim Wesson	Head, Conservation/Replenishment
Sonya Davis	Fisheries Mgmt. Specialist, Sr.
Alicia Nelson	Fisheries Mgmt. Specialist
Laura Lee	Fisheries Mgmt. Specialist
Mike Meier	Head, Artificial Reef Program
Joe Cimino	Fisheries Mgmt. Specialist, Sr.
Warner Rhodes	Deputy Chief, Law Enforcement
Mike Stallings	Marine Police Officer
Stephen Bennis	Marine Police Officer
Kenny Oliver	Area Supervisor
Charles Clifton	Assistant Area Supervisor
Bob Grabb	Chief, Habitat Management Div.
Tony Watkinson	Deputy Chief, Habitat Mgt. Div.
Chip Neikirk	Environmental Engineer, Sr.

Commission Meeting

Hank Badger	Environmental Engineer, Sr.
Ben Stagg	Environmental Engineer, Sr.
Benjamin McGinnis	Environmental Engineer, Sr.
Elizabeth Gallup	Environmental Engineer, Sr.
Randy Owen	Environmental Engineer, Sr.
Justin Worrell	Environmental Engineer, Sr.
Danny Bacon	Environmental Engineer, Sr.
Jay Woodward	Environmental Engineer, Sr.
Bradley Reams	Project Compliance Technician

Virginia Institute of Marine Science (VIMS)

Lyle Varnell

Other present included:

Patricia Goodman	Etta Wells	Doug Goodman	T. R. Wells
J. F. Cox	E. B. Matheson	Brian Lockwood	C. Gifford
Harold Levinson	Philip E. Prisco	Barbara Prisco	Randy Revercont
Warren Tisdale	Jim Stanton	Deanna Stanton	Tim Davis
Brad Brown	John Cline	Carter M. Crowell	Richard Anderson
Bob Simen	Joe Sweeney	Barbara Butterbaugh	Chris Frye
Jeff Holder	Larry Wilkes	McCoy Butler	Chuck Roadley
Ellis W. James	Charles Dryden	Bob Winstead	Jeff Watkins
Mike Bennett	Brock Ingles	Michael Martz	Patrick Lynch
Ian Carlson	Ken Smith	Roger Parks	Douglas F. Jenkins, Sr.
Robert W. Jenson	Jeff Hammer	John Bundick	Paul Schulz
Dirk Sanford	Dimitri Hionis	Noel Weisburg	Terry Jenkins

and others.

Commissioner Bowman called the meeting to order at approximately 9:35 a.m.

At the request of Commissioner Bowman, Associate Member Holland gave the invocation and Bob Grabb led the pledge of allegiance.

Commissioner Bowman announced that Associate Member Kyle Schick whose term had expired on June 30, 2008 had been reappointed for another term and congratulated him. He went on to explain that Associate Member Wayne McLeskey's term had expired as of June 30th as he was not eligible for another term. He said that Associate Member Bill Laine of Isle of Wight County had been appointed by Governor Kaine to take Associate Member McLeskey's place with the Commission Board and he congratulated him on his appointment. He said that Mr. Laine had retired as Circuit Court Clerk of Isle of Wight County after 30 years of service and he was a long-time recreational angler.

* * * * *

APPROVAL OF AGENDA: Commissioner Bowman asked for any changes to the agenda. Bob Grabb, Chief, Habitat Management, stated that staff was requesting some time at the end of the meeting to provide a report on the results of the Public Informational Hearing requested by the Commission on the proposed regulation related to SAV definitions. Jack Travelstead, Chief Deputy, Fisheries Management, requested in accordance with the Commissioner's instructions that an item for the discussion of the pound net issues be heard during the public comment period.

Commissioner Bowman asked for a motion. **Associate Member Robins moved to approve the agenda, as amended. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.**

* * * * *

MINUTES: Commissioner Bowman asked, if there were no corrections or changes, for a motion to approve the August 26, 2008 meeting minutes. **Associate Member Holland moved to approve the minutes, as circulated. Associate Member McConaugha seconded the motion. The motion carried, 7-0-2. Associate Members Fox and Laine both abstained, since they were not present at the last meeting. The Chair voted yes.**

* * * * *

Commissioner Bowman swore in all VMRC and VIMS staff that would be speaking or presenting testimony during the meeting.

* * * * *

- 2. **PERMITS** (Projects over \$50,000 with no objections and with staff recommendation for approval).

Bob Grabb, Chief, Habitat Management Division, reviewed the page two items, 2A through 2H, for the Commission. He said that staff was recommending approval of these items. His comments are a part of the verbatim record.

Commission Meeting

Commissioner Bowman opened the public hearing and asked if anyone was present, pro or con to address these items. There were none, therefore, the public hearing was closed.

Commissioner Bowman asked for a motion for Items 2A through 2F. **Associate Member Tankard moved to approve these items. Associate Member Schick seconded the motion. The motion carried, 9-0. The Chair voted yes.**

2A. FOREST LODGE, LLC, #08-0072, requests authorization to construct two (2) span bridge road crossings, four (4) elevated trail crossings, and two (2) 12-inch diameter submerged sanitary sewer lines by open-trench method, each crossing Biscuit Run at separate locations, associated with the Biscuit Run mixed-use development project in Albemarle County. Staff recommends inclusion of our standard in-stream permit conditions and the assessment of a royalty in the amount of \$8,145.00 for the road and trail crossing encroachments over 7,755 square feet of State owned submerged land at a rate of \$1.00 per square foot, and the sewer lines' encroachment beneath 130 linear feet of State-owned submerged land at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 7,755 sq. ft. @\$1.00/sq. ft.).....	\$7,755.00
Royalty Fees (encroachment 130 l. ft. @\$3.00/l. ft.).....	\$ 390.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$8,245.00

2B. WINCOFA-GGP, LLC and WINCOFA-FRP, LLC, #08-0749, requests authorization to construct a pier supported bridge crossing over approximately 162 linear feet of the Cowpasture River, adjacent to their property in Bath County. The proposed project will include the temporary installation of causeways from each bank to accommodate construction of the proposed bridge. Staff recommends a time-of-year restriction, which precludes all in-stream work from May 15th through July 31st to minimize impacts to the federal Endangered James spinymussel, and that the applicant shall be required to coordinate with the Department of Game and Inland Fisheries and the U.S. Fish and Wildlife Service with regards to mussel surveys and relocations. Staff further recommends the assessment of a royalty in the amount of \$2,301.00 for the encroachment over 2,301 square feet of State-owned subaqueous bottom at a rate of \$1.00 per square foot.

Royalty Fees (encroachment 2,301 sq. ft. @ \$1.00/sq. ft.).....	\$2,301.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$2,401.00

2C. CITY OF ROANOKE, #08-1389, requests authorization to replace a 26-foot wide by approximately 120-foot long section from the middle of an existing low-water bridge, which crosses the Roanoke River at Wiley Drive in the City of Roanoke. Staff recommends a time-of-year restriction, which precludes all in-stream work from March 15th through June 30th to minimize impacts to the federal Endangered Roanoke logperch and state threatened orangefin madtom.

Permit Fee..... \$100.00

2D. ALLEGHANY COUNTY PUBLIC WORKS DEPARTMENT, #07-1752, requests a modification to an existing permit to now construct a temporary 18-foot wide, pier supported detour bridge crossing over approximately 165 linear feet of the Jackson River, along with the temporary installation of a solid fill construction causeway which will extend a maximum of 110 feet in to the Jackson River from its east bank. The proposed causeway will have an approximate 30-foot base width, and will include five (5) 48-inch diameter and five (5) 36-inch diameter culverts to accommodate river flow through the causeway. These modifications are proposed as substitutes for the previously authorized detour bridge/causeway and construction bridge/trestle related to the replacement of the existing Fork Farm Road (Route 727) bridge, which crosses the Jackson River near the Town of Iron Gate in Botetourt County.

No applicable fees – Permit Modification

2E. FULCO DEVELOPMENT, INC, #08-0630, requests authorization to construct three (3) 5-foot wide, open-pile, private, non-commercial, joint-use piers, extending between 90 and 170 feet channelward of mean low water, each with an 8-foot by 40-foot T-head platform, two (2) 4-foot wide by 30-foot long finger piers, and two (2) boat lifts, adjacent to the planned River's Edge Landing subdivision situated along Broad Creek in the City of Norfolk. Each of the proposed piers will be shared between two adjacent, riparian lots in lieu of private piers on six individual lots.

Permit Fee..... \$100.00

2F. COX COMMUNICATIONS, #08-1339, requests authorization to cross the Southern Branch of the Elizabeth River in Chesapeake, approximately 100 feet north of the Gilmerton Bridge (US Route 460), with a 10-inch diameter, conduit-encased fiber optic line using the horizontal directional drill method at a minimum depth of 20 feet below the natural river bed. Recommend approval with a royalty in the amount of \$3,000.00 for the crossing under the State-owned river bed at a rate of \$3.00 per linear foot.

Royalty Fees (encroachment 1,000 sq. ft. @	
\$3.00/sq. ft.....	\$3,000.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$3,100.00

* * * * *

- 3. **CONSENT ITEMS:** (After-the-fact permit applications with monetary civil charges and triple permit fees that have been agreed upon by both staff and the applicant and need final approval from the Commission’s Board).

Bob Grabb, Chief, Habitat Management, gave the presentation. He reviewed the consent items 3A and 3B for the Commission. His comments are a part of the verbatim record. He stated that the staff was seeking approval of the terms of the consent agreement, which had been negotiated by staff and the parties involved.

Commissioner Bowman asked if there were any questions for staff. There were none. He asked if the applicants were present. The applicants were not present. He asked for action by the Commission.

Associate Member Robins moved to approve the items, as read. Associate Member Tankard seconded the motion. The motion carried, 9-0. The Chair voted yes.

- 3A. **MR. AND MRS. JOHN DRIVER, #08-1195**, request after-the-fact authorization to retain a 76 linear foot timber bulkhead adjacent to their property at 114 Shady Cove Lane situated along Aquia Creek in Stafford County. The applicants have agreed to the payment of a \$600.00 civil charge and triple permit fees of \$300.00 in lieu of further enforcement action.

Civil Charges.....	\$600.00
Permit Fee (ATF-Triple).....	\$300.00
Total Fees.....	\$900.00

* * *

- 3B. **JEFFREY MCWATERS, #05-0504**, requests after the fact authorization for a 5-foot wide by 163-foot long private, noncommercial, open-pile pier with a 10-foot by 50-foot L-head, an uncovered boat lift, a 5-foot wide finger pier, and associated mooring piles for water access, adjacent to his property in the Linkhorn Oaks subdivision, situated along Linkhorn Bay in Virginia Beach. A draft permit was mailed for execution in July of 2005. The final permit documents and permit fee were never returned, however, so the permit was never issued. The applicant has

agreed to the payment of a \$600.00 civil charge and triple permit fees of \$300.00 in lieu of further enforcement action.

Civil Charges.....	\$600.00
Permit Fee (ATF-Triple).....	\$300.00
Total Fees.....	\$900.00

4. CLOSED MEETING FOR CONSULTATION WITH OR BRIEFING BY COUNSEL. It was not necessary to hold a closed meeting.

Commissioner Bowman stated that items 5 and 6 would be heard together.

Associate Member Fox stated that he would be abstaining from this matter since he was not present at the last meeting.

Commissioner Bowman stated that Mr. Laine would also be abstaining for the same reason.

5. CLARK CRIPPEN, #08-1179, request for Commission reconsideration of the August 26, 2008, decision to approve his after-the-fact request contingent on his agreement to pay a \$600.00 civil charge.

Permit Fee(ATF-triple).....	\$75.00
-----------------------------	---------

6. MR. AND MRS. LEO BUTTERBAUGH, #08-1426, request for Commission reconsideration of the August 26, 2008, decision to approve their after-the-fact request contingent on their agreement to pay a \$600.00 civil charge.

Permit Fee(ATF-triple).....	\$75.00
-----------------------------	---------

Dan Bacon, Environmental Engineer, Sr., gave the presentation. His comments are a part of the verbatim record.

Mr. Bacon explained that letters were received from the two applicants requesting that the the civil charge be removed for these two projects heard at the Commission last month

Mr. Bacon explained that letters from both Mr. Crippen and Mrs. Butterbaugh were received by staff requesting that the civil charges be waived that were assessed by the Commission at its meeting on August 26, 2008. The Commissioner by letter informed Mr. Crippen and Mrs. Butterbaugh that he was not authorized to accede to their request, he would consent to the placement of this matter on the agenda for the Commission meeting for the Board to consider their request.

Mr. Bacon said that the imposition of a civil charge, however, is consensual. It is not a penalty that can be unilaterally imposed. Clearly, the civil charge was imposed without either Mr. Crippen or the Butterbaugh's agreement or concurrence since neither attending the last meeting. Since the Commission approved other similar structures, and even moved to grant approval of Mr. Crippen's and the Butterbaugh's structures, it would seem that either denial or further enforcement is unwarranted. Furthermore, as a matter of equity it would seem unreasonable to treat them any different from those that were approved without a civil charge.

Mr. Bacon stated that as a result, in these instances staff would recommend that the Commission agree to grant the after-the-fact approvals without the requirement to consent to a civil charge.

Commissioner Bowman asked if the staff was recommending there be no civil charge assessed. Mr. Bacon responded no.

Commissioner Bowman explained that Associate Member Schick made the motion originally because the applicants had been uncooperative. Associate Member Schick explained that all of the other parties had been cooperative, except for these two who had not cooperated when staff tried to do their site inspection. He said the cooperation of the others had been mitigating.

Associate Member Robins stated that both interfered with the inspections and now staff is recommending that the civil charge be waived. He said that staff is not condoning the fact that they were uncooperative. Mr. Bacon stated that it would be more equitable all around to have the same for all structures.

Commissioner Bowman asked if either party wished to address the Board.

Clark Dennis Crippen, was sworn in and his comments are a part of the verbatim record. Mr. Crippen explained that he should not have had to be here. He provided pictures of the boathouse. He said he had met with staff for four minutes when they showed up in an unmarked car. He said the first thing that he was asked was, "are you the property owner?" to which he responded yes. He was told they wanted to talk about the boathouse and was told that they were all illegal and must be removed. He said at that time he requested a letter be sent to him. He said as far as he was concerned he did not have a reason to be here as it was a simple matter. He said Mr. Couch was present at the meeting

last time. He said in Mrs. Butterbaugh's evaluation it said that staff attempted to contact and to make an inspection, but that 2 property owners refused access to do it. It also said that the structures were viewed from the water in an MPO vessel. He said he received a letter May 3, 2008 and he responded on June 3, 2008 that when he purchased the property it was this way and nothing was changed since. He said the aerials verified this fact. He said in the evaluation it said that his and the Butterbaugh's were the smallest structures. He stated that his structure had been at the location for 39 years. He said he called Mr. Bacon and spoke with Mr. Grabb who very helpful and told him to send in a letter to VMRC.

Barbara Butterbaugh was sworn in and her comments are a part of the verbatim record. Mrs. Butterbaugh stated that they were appealing the civil charge, as an on-site visit was done on April 22, 2008. She said she and her husband had spoken with Mr. Bacon the second time and he had looked at the boathouse. She said her husband told her that the VMRC staff would be back in a couple of days. She said when they were sent a letter instructing them to complete the application, she said they did that plus sent other documentation. She said she could not see how they did not cooperate.

Commissioner Bowman asked Mr. Bacon to comment on his interaction with the Butterbaughs. Mr. Bacon stated that when he and Bradley Reams came back to measure and the wife was not present they did speak with the husband. He said they were going to go first to another property, but Mr. Butterbaugh called them over and started inquiring about the neighbor getting his boathouse repair work done. He said he tried to explain that a permit was going to be necessary for the neighbor to proceed with it. He said after that Mr. Butterbaugh told them to leave his property. He said prior to this time, he had been there three times.

Mrs. Butterbaugh stated that she did not believe her husband did that. She said the \$600.00 civil charge was a hardship for them with their small income. She said \$600.00 was a lot of money.

Commissioner Bowman explained that the Commission did not go out and look for this problem. It was reported to staff and efforts were being made to correct the situation. He said the staff recommendation was to equitably settle the matter and not collect the civil charge.

Associate Member Tankard stated that Mrs. Butterbaugh did provide compelling testimony and he believed the testimony of staff and did not think that the staff did anything wrong. He moved to grant the after-the-fact permits for both parties. Associate Member Robins seconded the motion. He stated that not complying with the staff inspection was not being condoned, even though this action was being taken and any further action to pursue the civil charges would be a waste of the State's resources. He also stated that he agreed with the staff recommendation for no civil

charge. The motion carried, 7-0-2. Both Associate Members Laine and Fox abstained, as they were not present at the previous meeting.

* * * * *

7. **WATERVIEW LANDING, LLC, #08-0534.** Commission review on appeal by 31 Middlesex County freeholders of the August 12, 2008, decision by the Middlesex County Wetlands Board to approve a revised proposal to construct an 8-foot wide by 210-foot long community pier with a 6-foot wide by 40-foot long pier head and a 41-foot long canoe and kayak launching platform adjacent to their property situated along Harry George Creek in Middlesex County.

Chip Neikirk, Environmental Engineer, Sr., gave the presentation. His comments are a part of the verbatim record. Mr. Neikirk explained that he would be brief in his presentation and mainly discuss the staff recommendation.

Mr. Neikirk explained that this was a Commission review of an appeal by 31 Middlesex County freeholders of the August 12, 2008, decision by the Middlesex County Wetlands Board to approve a revised proposal to construct an 8-foot wide by 210-foot long community pier with a 6-foot wide by 40-foot long pier head and a 41-foot long canoe and kayak launching platform adjacent to their property situated along Harry George Creek in Middlesex County.

Mr. Neikirk further explained that on August 18, 2008, staff received a Notice of Appeal signed by 31 Middlesex County residents noting their appeal of the August 12, 2008 Board decision concerning the Waterview Landing proposal. Staff acknowledged the appeal by letter dated August 20, 2008. Staff also notified the chairman of the Middlesex Wetlands Board, Mr. J. Miller Smither, and in accordance with §28.2-1312(B) of the Virginia Code a copy of the record considered by the Board was requested. Section 28.2-1312(B) required the Board to provide a complete record of the proceeding, which included: “the application, any written statements of witnesses, a summary of statements of all witnesses, and the findings and decision of the board, and the rationale for the decision.”

Mr. Neikirk stated that the Board had provided minutes of all three hearings, a copy of the PowerPoint presentation and the Board’s packet from the August meeting. A copy of the audio recording of the August meeting was also provided. To date, however, the Board had been unable to provide either a transcript or the required summary of statements of all witness nor was the rationale for the Board’s decision included with the official minutes. Additionally, based on staff’s attendance at the hearings, the minutes did not appear to include a complete list of all those who testified at the hearings and some pictures that were presented as exhibits at the hearings had not been provided.

Mr. Neikirk said that staff had spoken with the Wetland Board staff and understands that the delay in providing the complete record of the proceedings was related to recent staff

turnover at the County. They had assured us, however, that they would make every effort to provide the complete record in plenty of time to allow us to complete the VMRC review of the project for the October 28, 2008, Commission meeting.

Mr. Neikirk stated that in the absence of a complete record of the proceedings provided by the Board, it was difficult for staff to make a sound recommendation concerning the appeal. Since the Middlesex County Wetlands Board staff has assured us that they would make every effort to prepare and forward the required record in time for us to complete a review before next month's meeting, staff recommended that this matter be continued to the October 28, 2008, Commission meeting.

Commissioner Bowman asked if anyone from the Wetlands Board was present and wished to speak. There was no one present.

Commissioner Bowman asked Mr. Revercomb to come forward.

Randy Revercomb, liaison for the appellants, was sworn in and his comments are a part of the verbatim record. Mr. Revercomb explained that he was the main liaison for the adjoining property owners and as such he needed to be present for the hearing. He further explained that he would not be able to attend the meeting in October as he would be out of the country. He requested that the hearing be continued until November.

Commissioner Bowman asked for advice of counsel. Carl Josephson, Senior, Assistant Attorney General explained that a request for a continuance by the applicant could be granted. Bob Grabb, Chief, Habitat Management, stated that it was the appellant in this case. Mr. Josephson stated that they were included. Mr. Grabb explained that in the typical review of an application, the applicant must agree to a continuance. He said such a continuance was usually not granted to protestants as they could be trying to cause unnecessary delays and the applicant might not agree to a two-month delay. He added that in this case we do not know if the applicants would object to two months but stated that he didn't think it was unreasonable. He noted that the Code required that the appeal hearing be held within 45 days which is why we started the hearing today.

Mr. Josephson read Section 28.2-1311(B) of the Code of Virginia, which said:

“All requests for review or appeal shall be made within ten days of the date of the board's decision. The Commission shall hear and decide the review or appeal within forty-five days of receiving the request for review or notice of appeal. A continuance may be granted by the Commission on a motion of the applicant, the freeholders specified in Subsection A of this section, or the county, city, or town where the wetlands are located.”

Mr. Josephson also noted that in accordance with Section 28.2-1312 (B) of the Code of Virginia, the Commission hears the appeal on the record so there was no problem with

delaying the matter for one month and two months was left to the discretion of the Commission.

Commissioner Bowman stated that he felt that because the appellant had made an effort to be at the meeting and was prepared to proceed today that a two-month continuance was in order.

Mr. Grabb stated that staff had no objection.

Commissioner Bowman asked for a motion.

Associate Member Holland moved to grant the continuance until the November meeting. Associate Member Schick seconded the motion. The motion carried, 9-0.

Continued until the November meeting.

* * * * *

8. **POQUOSON MARINA ASSOCIATES, LLC, #07-1569**, requests authorization to redevelop the existing Poquoson Marina by replacing and reconfiguring the existing piers, constructing five additional piers, and dredging approximately 28,200 cubic yards of subaqueous material to establish maximum depths ranging from minus five (-5) to minus seven (-7) feet at mean low water, in order to create a 164-slip commercial marina adjacent to their property situated along White House Cove in the City of Poquoson. The proposed project will also include the installation of approximately 2,895 linear feet of bulkhead to replace existing deteriorated bulkheads and rubble/riprap revetment. The project is protested by several residents and oyster planting ground leaseholders.

Ben McGinnis, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record.

Mr. McGinnis explained that the subject project was located at the existing Poquoson Marina site situated along White House Cove in the City of Poquoson. The existing property included a 158-slip commercial marina, upland boat storage, a City-owned public pier and boat ramp, and until recently a restaurant, hair salon, mobile home park, and VMRC fisheries laboratory. In addition to the existing marina property, the applicant had purchased an adjacent residential property, which had been incorporated into the overall development plan for the site. Portions of the marina were within a man-made marina basin and a man-made canal, both of which fall outside of the Commission's jurisdiction.

Mr. McGinnis said that Poquoson Marina was previously owned and operated by Mr. David A. Carpenter. Previous permits were granted in the name of Mr. Carpenter and/or

Poquoson Marina going back to 1968 for dredging and the construction of the marina's piers, for which royalties had been paid for dredging 3,300 cubic yards of subaqueous material and for an encroachment over 200 square feet of State-owned subaqueous bottom.

Mr. McGinnis stated that the applicant planned to redevelop and expand the existing marina to accommodate 132 seasonal and 32 transient wet slips, of which 27 seasonal and 10 transient were to be located outside of the Commission's jurisdiction within either the man-made basin or canal. The proposed project included 28,200 cubic yards of dredging, of which 23,605 cubic yards of the material were to be taken from State-owned subaqueous bottom located within the natural limits of White House Cove. The dredging was proposed to establish maximum depths ranging from minus five (-5) to minus seven (-7) feet at mean low water. The project also included the installation and backfilling of 2,895 linear feet of replacement bulkhead, of which only 194 linear feet would be located channelward of mean low water along the natural portion of White House Cove.

Mr. McGinnis noted that staff had received numerous telephone calls and letters of protest for the proposed marina redevelopment project. Many of the individuals who object to the proposed project had also previously participated in a freeholder appeal of the Poquoson Wetland Board's decision to approve the project at their September 19, 2007, meeting, which was subsequently heard and remanded back to the Board by the Commission at its meeting on October 23, 2007. The Poquoson Wetland Board reheard and approved a modified proposal at their meeting on November 28, 2007. That decision was not appealed to the Commission.

Mr. McGinnis said that those who have directly sent protest letters to staff included Harold Levinson, Ed Matheson, Don and Barbra Anderson, Julian F. Cox, Jr., Brian Lockwood, and Corey Gifford. The protest letters received by staff covered varying concerns including impacts to water quality, the placement of fill within the Resource Protection Area (RPA) and the resulting height of proposed bulkheads, an increased risk of flood damage, the location of a proposed boat ramp within a man-made canal, navigability, the volume of proposed dredging, impacts to the local oyster population, restrictions to public use of the existing fishing pier, wetland impacts, and the use of a dredge buffer and zonation mooring, as recommended by VIMS.

Mr. McGinnis stated that in addition, staff had received a letter of objection dated June 10, 2008, from the adjacent oyster ground leaseholders, Charles Dryden and Jesse Dryden, whose lease falls within the proposed dredge area and over which proposed piers were to be constructed. The Dryden's stated in their letter that they did not previously object to the City's pier because it was intended for public use, but that they were concerned about the loss of the use of existing mooring poles they had historically been used to tie up their commercial fishing boats during periods of rough weather. Their letter did not state nor make any claim that the proposed project would impact their lease ground or any shellfish that might exist on it.

Mr. McGinnis explained that in contrast to the objections received, staff had also received letters of support for the project from 20 individuals or families from the Cities of Poquoson and Hampton. While many of these letters expressed general support, several went further to state that the proposed project would improve the environmental and physical conditions of the marina and upland property, provide safe mooring/harbor for boats, and aid in the growth of the local economy.

Mr. McGinnis stated that the Virginia Institute of Marine Science (VIMS) Shoreline Application Report, dated November 7, 2007, provided general comments in regards to the potential impacts of dredging, the operation of a commercial marina, and the replacement of bulkheads. Their report stated that dredging volumes could be reduced and tidal wetlands protected through the use of a dredge buffer adjacent to existing wetlands and through the implementation of a zonation mooring strategy, which would site deep draft vessels in the naturally deeper waters at the marina and vice versa for shallow draft vessels. The VIMS report also commented on other aspects of the project outside of the Commission's jurisdiction, such as those aspects located within the man-made areas, direct wetland impacts such as portions of the proposed bulkhead and the dredging within the intertidal area, and redevelopment of the upland property. Staff noted that since this report was produced, the applicant had modified their proposal to provide a dredge buffer around a large stand of vegetated tidal wetlands on the western side of the project.

Mr. McGinnis said that the Virginia Department of Health (VDH) Office of Environmental Health, by letter dated July 7, 2008, had determined that the proposed marina was in compliance with their Sanitary Regulations for Marinas and Boat Moorings. The Virginia Department of Health (VDH) Division of Shellfish Sanitation, by inter-office correspondence dated July 1, 2008, stated that the project was located in condemned shellfish growing waters, and would not change or result in an increase in size of the current closure.

Mr. McGinnis stated that the Virginia Department of Environmental Quality (DEQ) Tidewater Regional Office, in an agency evaluation form dated June 24, 2008, stated that the proposed project was acceptable.

Mr. McGinnis also stated that the Virginia Department of Game and Inland Fisheries (DGIF), in e-mails dated June 24, 2008 and December 21, 2007, stated that living shoreline techniques and dredge buffers should be utilized for this project. In addition, they recommended a time-of-year restriction that would preclude all dredging activities between May 15th and October 31st to minimize impacts upon sea turtles that had been documented in the area.

Mr. McGinnis said that the applicant and their agent had worked closely with staff over the last year to discuss and modify the proposed project to address several issues including navigation, the use of a dredge buffer, and a reduction in dredge volume. Staff had also discussed with the applicant at length the recommendation to implement a zonation

mooring plan for the marina. Zonation mooring typically involved a dredging plan that was designed to accommodate shallower draft vessels closer to the shore with increasing depths, as you move channelward. The applicant's plan actually called for the dredging depths to increase as you move from the western side of the marina to the eastern side. Staff agreed with the applicant that it would be difficult to effectively manage the assignments of slips on a single pier based upon a vessel's draft after having considered the relatively short length of the marina's piers. Although not typical, staff believed that the applicant's plan did represent a type of zonation mooring strategy that might be more reasonable for marinas located in such narrow waterbodies.

Mr. McGinnis said that although previously addressed by the Poquoson Wetland Board, staff believed that the applicant's modified proposal, which included a dredge buffer in the area of the largest stand of vegetated wetlands would enhance the utilization of this valuable resource by marine species whose wetland access in this area would have otherwise been cutoff under the previous proposal. Additionally, this change had also resulted in a reduction in the proposed dredge volume.

Mr. McGinnis stated that staff was sympathetic to the remaining concerns expressed by the protestants, but does not believe that the proposed project, as a whole, was unreasonable. As was discussed before the Commission during the appeal of the Poquoson Wetland Board decision, many of the concerns of the protestants fall outside of the Commission's jurisdiction. Staff had no reason to believe that the proposed dredging would result in any more temporary impacts than any other standard dredging project regularly permitted by the Commission. One of the letters of protest suggested a time-of-year restriction, which would preclude dredging activities outside of the winter months to protect the local oyster population. VIMS did not address this issue as a concern in their comments, however, staff was not aware of any significant oyster resource in the immediate vicinity. Therefore, it did not seem that such a permit restriction was warranted.

Mr. McGinnis said that in regards to the objections made by the oyster ground leaseholders, no specific concerns regarding potential impacts to the use or production of their leased ground were stated. While staff did not feel that it was necessary to restrict the applicant's proposal based upon the presence of the leased ground itself, staff would point out that one of the Commission's standard permit conditions stated that the permit was subject to any leased oyster planting ground, that the permit did not allow the applicant to encroach on any lease without the leaseholders' consent, and that the applicant would be responsible for any damages to the lease. As such, staff believed that this should be considered a civil matter between the applicant and leaseholders.

Mr. McGinnis explained that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, since impacts resulting from the use of State-owned submerged land should be minimal, and after considering all of the factors contained in Section 28.2-1205 (A) of the Code of Virginia, staff recommended the project be approved as proposed. Staff further recommended the inclusion of the standard

dredging conditions, which included the requirement for pre- and post-dredge bathymetric surveys and a pre-dredge conference with staff. Staff also recommended the assessment of a royalty in the amount of \$176,886.25 for the bold outline encroachment of the marina over 165,796 square feet of State-owned submerged land at a rate of \$1.00 per square foot, the encroachment of the replacement bulkhead and backfill over 651 square feet of State-owned submerged land at a rate of \$3.00 per square foot, and the dredging of 20,305 cubic yards of State-owned subaqueous material at a rate of \$0.45 per cubic yard. This assessment took into account the royalties that were previously paid on 3,300 cubic yards of dredging and 200 square feet of encroachment at the marina.

Commissioner Bowman asked if the applicant or his representative wished to comment.

Brad Brown, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Brown explained that he was a resident of Poquoson and this was a family-owned business that they had been developing for years. He said he appreciated all of the staff's efforts and what their briefing covered he would not need to repeat. He said that everyone has been to the site and this will provide services all around. He said they have considered the environmental impacts, as this is being developed for the long-term. He said they have signed a clean marina pledge and hope to work towards that. He said the docking for transient vessels is satisfying a grant that they have. He stated that currently there is no storm water treatment system and the new system they have will reduce pollution by 10% and improve storm water. He said they agree to the permit conditions recommended by staff. He said this will be a first class marina that will benefit all including the City. He said he felt this would encourage other marina owners to improve their facilities. He said he wants to get this approved so that he can get the rest of the permits required. He said there are others present in support of the project. He requested time for rebuttal at the end.

Commissioner Bowman asked if anyone in support of the project wished to speak.

Crosby Forrest, Poquoson Resident, was sworn in and his comments are a part of the verbatim. Mr. Forrest stated he lived one mile from the marina. He explained that there was 165 square miles of waterfront and no marina to provide these services. He said there was only one pump out station which works but is deteriorating. He said the improvements are needed because the marina is in disrepair and the structures were failing. He stated this was a high quality project and community needs it. He said he was a lifetime resident.

Commissioner Bowman asked for anyone in opposition who wished to speak.

Ed Matheson, Poquoson Resident, was sworn in and his comments are a part of the record. Mr. Matheson said he had lived in the area for 45 years. He said that he had written letters and he appreciated staff's work as a result of the letters. He said this included an area where there was a public pier that the taxpayer's paid to have built. He asked if the developer owns the pier who does he get it from.

Commissioner Bowman asked staff to respond. Mr. McGinnis stated that staff did look into that and it was covered in the contract with the City and the Game Department. He said the grant funds could be paid back.

Carl Josephson, Senior, Assistant Attorney General, explained that the City can convey the property but there would be a penalty to be paid to the grantor who gave the funds. He asked was it private or government funds.

Commissioner Bowman explained that before the Recreational Fishing Advisory Board (RFAB) the Virginia Department of Game and Inland Fisheries granted and sometimes conveyed them, but the conditions are unknown.

Corey Gifford, resident of Poquoson, was sworn and his comments are a part of the verbatim record. Mr. Gifford explained that there was pressure to provide this for the development to benefit. He said he agreed that it would be a benefit to improve the marina. He stated that if there are now two boat ramps for offloading boats, then there will be more parking spaces required. He said the pilings were restricting the public's access. He stated that the smaller boats will be displaced to shallower area. He said there was to be 70 small boat slips and 80 larger boat slips. He said the deeper draft boats bring in higher revenues. He said the height of the bulkhead on the drawings is 2 - 4 to 2 - 10. He explained that in the staff recommendation they recommended approval of 8 feet 4 inches. He said the Wetlands Board approved the bulkhead to be a height equal to the top of the bank, not what was recommended by staff. If this is approved at this height, then VMRC is overruling the Wetlands Board. He was also concerned about the proposed transient slips.

Julian Cox, resident of Poquoson, was sworn in and his comments are a part of the verbatim record. Mr. Cox stated that he has been a resident since 1970 and he supports the marina, but not the dredging portion. He explained that he has an oyster restoration site in the Bennetts and Lion Creeks area which also provides erosion control, helps the wetlands, and cleanses the water. He said he is raising oysters there. He added that he is 7/8-mile from the marina. He said originally this was a VMRC supported project and he personally invested \$45,000.00 into it. He said he also provides a big nursery for a lot of other critters as well. He provided a handout of his project.

Bryan Lockwood, resident of Poquoson, was sworn in and his comments are a part of the verbatim record. Mr. Lockwood stated that he also support the marina, but not the dredging. He said he did not see a need for the dredging as it was risky, as it would damage marine life by the impact from the sediment. He said that oversight for this dredging is needed.

Harold M. Levinson, resident of Poquoson, was sworn and his comments are a part of the verbatim record. Mr. Levinson said that his property adjoined the marina property and that he was 84 years old. He said he objected to the dredging as it was unreasonable. He stated

that VIMS had been asked to comment about the dredging and they had recommended that there be a Zonation plan where larger vessels are put offshore and smaller vessels are placed inshore and that way there would be ample depth for the large vessels and small vessels. He said that larger boats bring in more revenue than smaller one. He said he did not want to stop the development, but the developer did promise to keep to all code, rules, etc. and they should do that. He said in the agreement with the City they were to comply with all rules, regulations, laws; State, Federal and local. He said the Bay was in trouble and more control over development was needed. He said he was not asking to give up, but to just make concessions.

Charles Dryden, leaseholder, was sworn in and his comments are a part of the verbatim record. Mr. Dryden said he has spoken with the applicant and he told him what they were doing. He said that when the City was proposing to build the pier they came to them and said if they did not cooperate, then the City would take the lease. He said he and his family just decided to cooperate. He said the poles have been there since before his time and they had just always been there. He said they were concerned about losing the pilings, especially the one across the creek and the ones next to the pier, that now belongs to the marina.

Commissioner Bowman asked staff to comment on the status of these poles. Mr. Grabb explained that the pilings are all over and they are not permitted. He said yes, because of the conflict they must be after-the-fact permitted, if the Commission wanted to do that. He said staff would not be opposed if these were of longstanding use. He as far as the City, they do have the right to eminent domain, but whether they could condemn the lease is a question of counsel.

Commissioner Bowman asked if these interfere with the project. Mr. McGinnis said that Mr. Dryden could point them out on the side, which he did.

Commissioner Bowman stated that they would work with the Dryden's on the pilings, but they could not promise anything, as they would have to consider the benefits against the detriments.

Associate Member Fox asked if the two pilings were in the dredge area that was outside of VMRC jurisdiction. Mr. McGinnis responded no, they were just outside. He said that was something the applicant could address. He said later on slips were proposed in here and in the man-made area. Commissioner Bowman stated that staff would need to evaluate it.

Don Anderson, resident of Poquoson, was sworn in and his comments are a part of the verbatim record. Mr. Anderson stated that he had been a resident for 27 years. He expressed his concern for the height of the bulkhead. He explained that when storms come through his is six foot and it was affected. At mean low tide others are within a foot of his. He said at 8 feet 4 inches height as proposed would affect shorter bulkheads that are only 5

Commission Meeting

feet. He said it would also affect his bulkhead. He said the bulkhead should be at the current grade

Commissioner Bowman asked if Mr. Brown wished to rebut.

Mr. Brown provided a hand out for the Commission. He said this was a civil matter and Mr. Dryden ties up to two poles at the City pier. He said he could tie up as long as he insured his boat. He said that transient slips could be available. He said he does not object to the poles on the far side of the channel. He stated that Julian Cox’s oyster ground was 4,000 feet away from the marina. He said there is a time of year restriction, he defers to the Commission’s judgment. He said the height of the bulkhead was within the Wetlands Board jurisdiction.

Associate Member Tankard asked whether he had a problem with the VIMS’ report recommending that no dredging would be necessary if a zonation plan were established. Mr. Brown stated that originally he did not, but depths differ and changes had been made to accommodate various restrictions or requirements. He said in order to be able to fill all of the slips you have to be flexible. He said the VIMS’ report had been written a year ago and he is now on version 4 or 5.

Associate Member Schick asked if the Federal grant required the additional depth. Mr. Brown said the grant was to allow for transient size boats.

Commissioner Bowman asked for discussion or a motion.

Associate Member Robins said that they had heard a lot of comments. He said the applicant was working with staff and responding to the concerns. He said he was concerned about commercial access and slips and dockage areas becoming scarce for watermen. He said the dredging impacts were addressed. He said the applicant has been responsive and it was a reasonable use of State-owned bottom. Associate Member Schick said he agreed with Mr. Robins.

Commissioner Bowman asked for a motion.

Associate Member Robins stated that he felt this was a reasonable use of State-owned bottom and the applicant had been responsive to all concerns and he moved to approve the project. Associate Member Holland seconded the motion. The motion carried, 9-0.

Royalty Fees (encroachment 165,796 sq. ft. @ \$1.00 sq. ft.).....	\$165,796.00
Royalty Fees (filling 651 sq. ft. @ \$3.00/sq. ft.).....	\$ 1,953.00

Royalty Fees (dredging 20,305 cu. yds. @\$0.45/cu. yd.).....	\$ 9,137.25
Permit Fee.....	\$ 100.00
Total Fees.....	\$176,986.25

- 9. **ROCKETTS LANDING, #06-0326**, requests authorization to install 2,218 linear feet of riprap revetment, a floating debris/ice deflector and an 87-wet slip floating marina with fuel dock at their property situated along the James River in the City of Richmond and Henrico County. Both Wetlands and Subaqueous permits are required.

Randy Owen, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Owen explained that the project site was located approximately 1.1 miles downstream of the I-95 crossing of the James River in both the City of Richmond and Henrico County. The river at this location was approximately 470 feet wide and was utilized by both recreational boat and commercial barge traffic. The federal project channel extended upriver an additional 0.4 miles, terminating at the Richmond Locks. The site was formally zoned industrial and was home to Richmond Cedar Works. The upland portion of the property is currently being redeveloped as an urban, mixed-use community.

Mr. Owen further explained that the marina would consist of six floating dock sections. Each section would be attached to a “stiff arm” anchoring system that was bolted to a concrete pedestal mounted in the river bank. Three gangway ramps would provide access to the floating docks. The facility would include a fuel dock and a floating debris/ice deflector. A total of 87 wet slips were proposed for boats measuring from 30’ to 50’ in length. The shoreline along this reach of the river was largely unhardened and was currently experiencing erosion. Some riprap and a deteriorated wooden cribbing structure existed along portions of the shoreline. A tidal mudflat existed, however, no vegetated wetlands were present. The bank was steep in places and shaded by numerous trees. The remainder of the site was actively being redeveloped to include condominiums, retail stores and at least one restaurant.

Mr. Owen said that the original application was received on February 13, 2006, and sought authorization for a 151 slip marina that encroached 100 feet into the adjacent 200 feet wide Federal Project Channel. Concerns for navigation, raised by the U. S. Army Corps of Engineers, the U. S. Coast Guard and staff, resulted in the current proposal, which maintains a 25-foot setback from the Federal Project Channel. This setback agreement was

recently made between the Corps' Fort Norfolk District and the Coast Guard's Captain of the Port.

Mr. Owen explained that since neither the City of Richmond nor Henrico County had adopted the model Wetlands Ordinance contained within the Virginia Wetlands Act, the Marine Resources Commission was charged with the responsibility of acting as the local Wetlands Board for this project.

Mr. Owen stated that the riprap portion of the project, as proposed, would impact 26,914 square feet (0.62 acres) of non-vegetated wetlands (mudflat) and 10,293 square feet (0.24 acres) of State-owned subaqueous bottom. The wet slip marina and debris deflector will encroach over 149,230 square feet (3.42 acres) of subaqueous bottom. As such, Commission authorization is required for this project pursuant to both Chapters 12 and 13, Subtitle III, of Title 28.2 of the Code of Virginia.

Mr. Owen said that the Virginia Institute of Marine Science, in their Shoreline Report dated September 16, 2008, stated that the project area was located in a reach of the James River that served as a migratory pathway for anadromous fish and was habitat for striped bass, largemouth bass and blue catfish. They add that this reach was considered spawning habitat for River Herring and American Shad and noted that current investigations were also underway to determine spawning and habitat area for Sturgeon in the upper tidal James.

Mr. Owen said further that VIMS questioned the need to toe the proposed revetment to -5' MLW and concluded that the revetment footprint should be uniform and not variable in width along the entire shoreline. They further cautioned that the proposed stiff arm anchoring system should be adequately designed to withstand flood elevations and tidal velocities typical to the Upper James River during storm conditions.

Mr. Owen noted that the Department of Game and Inland Fisheries recommended that a February 15 to June 30 time-of-year instream work restriction be imposed to protect anadromous fish. The Department of Environmental Quality advised that a Virginia Water Protection permit would not be required because impacts to water quality were anticipated to be minimal and/or temporary. The Department of Conservation and Recreation advised that the project would not conflict with their existing programs. The Virginia Department of Health stated in their August 11, 2008 letter that the project had obtained all of the necessary approvals for the required on-site sanitary facilities. No other State agencies had commented on the project and the project was unopposed to date.

Mr. Owen explained that the rip-rap portion of the project, as proposed, should not adversely impact tidal wetlands or State-owned subaqueous land. The project also should not negatively impact navigation in the adjacent Federal Project Channel in light of the 25' setback agreement reached with the Corps of Engineers and the Coast Guard.

Mr. Owen said that staff continued to have concerns over siting a marina in a riverine environment prone to extensive flooding and high debris loads. Hydrologic data collected immediately upstream at the Richmond Locks indicated that this section of the James experiences 35-foot crest elevations above MHW and ten knot currents during a 100-year storm. Nevertheless, staff had been advised by the applicant's engineer that the current design was sufficient to withstand on-site conditions.

Mr. Owen stated that after evaluating the merits of the project, and after considering all of the factors contained in §28.2-1302.10(B) and §28.2-1205(A) of the Code of Virginia, staff recommended approval of the revised project contingent on the applicant's agreement to adhere to an instream time-of-year work restriction of February 15 to June 30 to protect anadromous fish and the submittal of a fuel spill contingency plan.

Mr. Owen said that in addition, staff recommended the assessment of a royalty of \$149,230.00 for the encroachment of the wet slip marina, fuel dock and debris deflector over 149,230 square feet of State-owned submerged land at a rate of \$1.00 per square foot.

Commissioner Bowman asked if the applicant or their representative wished to speak.

John Daniel, Attorney representing the applicant, was present and his comments are a part of the verbatim record. Mr. Daniel stated this was a vision of several individuals for many years. He said that there others present for the project. He said what was being done here was something unusable was being significantly used to benefit both the City of Richmond and Henrico County. He said it was a waterfront town restoration. He explained that it was an urban community formed in the 1700's as ferry point site and later restored during the steamboat era. He said it was a historical area where goods were brought up and down the James River. He said that the staff has been professional and made more than one site visit to assist with modifications over the years. He said that they were pleased to concur with the staff report presented. He stated they felt that they had met all the criteria in Chapter 12, so that VMRC should be able to approve it. He further stated that there were no protestants to this project. He said the Commission is here to decide on both the wetlands portion and subaqueous portion of the project. He said the proposal was consistent with the Public Trust Doctrine in that it would be beneficial to both the private and public. He said this project respects the marine resources and riches of the James. He said it will enrich the adjoining property and not impact water quality or submerged aquatic vegetation. He said he hoped it would be considered positively.

Commissioner Bowman asked if there were any questions. Associate Member Fox stated he had some structural integrity questions.

McCoy Butler was sworn in and his comments are a part of the verbatim record.

Associate Member Fox asked why this system was proposed to be used with this project and what other alternatives had been looked at. He asked if their decision was based on it being the best financially or best system and how will it handle the 200-year flood.

Mr. Butler in response to Associate Member Fox's question explained that there are multiple systems to moor the floating docks. One is typically is the guide pile system. Economically it is very large and difficult to design. The second one was frequently used in lakes which serve as a flood control lake and that is a mooring system consisting of either chains or wire rope or etc. tied to anchors. This system works very good, but does not have a significant strength to control the currents. This one is a hybrid system. The steel member is my structural support. It is tied directly to the dock and it rides up and down on the dock with a hinge at the pedestal. Structurally it gives you a great chance to do something with your anchorage because you are on the bank in dry land and in relatively good condition. Our original design is advantageous to us from a design standpoint in that we have a very directional load as it is coming in from only one direction at least as far as the current is concerned. Then we can adapt our load to that current. We've gone through the process with FEMA and the Corps looking at levels of discharge flows in this section of the James and confirmed some currents. He said it was ten miles per second not ten knots as stated by staff. He said to design the loading conditions, they adapted the Navy mooring design and they will be placing a restriction on the level change when boats are to be removed. He said that the structure is very determinate and analysis can be accommodated with standard engineering. He said they are continuing their investigation and looking at ground anchors, mini piles within a structural system that is anchored down. Associate Member Fox asked with the 35 foot elevation on flood, did they take into account the Richmond flood walls and how that could change the flow. Mr. Butler explained that they were in the downstream flood plain and the overflow goes across the river from the project where the city's sewage treatment plant is located.

Commissioner Bowman asked if anyone present was opposed and wished to speak. There were none.

Mr. Daniel in his rebuttal explained that they were developing the site for slip-users safety by developing an evacuation plan. They were setting a location and should have as much as 72 hours prior to determine the type of flow coming and to make plans accordingly. He said if it was determined to be excessive the boats would be removed. He said they would have everyone's contact information on record.

Associate Member Schick asked about the size of slips. Mr. Daniel explained that there would be sizes of slips to provide for transient and residential boats.

Commissioner Bowman stated that two motions would be needed.

Associate Member Holland moved to approve the staff recommendations for wetlands portion of the project. Associate Member Robins seconded the motion. The motion carried, 9-0.

Associate Member Holland moved to approve the staff recommendations for the subaqueous portion of the project. Associate Member McConaugha seconded the motion. The motion carried, 9-0.

Wetlands Permit Fee.....	\$ 10.00
Royalty Fees (encroachment 1,492 sq. ft. @ \$1.00/sq. ft.).....	\$1,492.00
Permit Fee.....	\$ 100.00
Total Fees.....	\$1,602.00

Commissioner Bowman adjourned the meeting for lunch at approximately 12:14 p.m. The meeting was reconvened by him at approximately 1:05 p.m.

10. MAGNOLIA GREEN DEVELOPMENT, LLC, #08-0260, requests authorization to install a 42-inch intake pipe, with a 5-foot by 7-foot intake screen within Blackman Creek, near Otterdale Road, to be used for supplemental irrigation at the Westham Golf Club within the development in Chesterfield County. The project is protested by two nearby property owners.

Ben Stagg, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record. Mr. Stagg stated that there were no protestants present.

Mr. Stagg explained that the proposed intake pipe was to be located along Blackman Creek, approximately 100 feet west of Otterdale Road and within the Magnolia Green subdivision in Chesterfield County. The intake would be installed within an area that was previously disturbed during a sewer line installation and the bank had been stabilized with rip-rap. The intake structure would consist of a 7.5-foot by 8-foot box with a 5-foot by 7-foot intake screen. The applicant proposed to withdraw up to a maximum of 1,000 gallons per minute (gpm) from Blackman Creek to provide supplemental irrigation for the Westham Golf Club at Magnolia Green.

Mr. Stagg said the proposed intake was protested by two nearby property owners. The protestants' objections included both previous and potential future sedimentation issues downstream of the proposed intake structure. Both protestants cited previous sediment issues with downstream wetlands and ponds related to ongoing construction at the development. They both felt that the installation of another structure would continue these

problems. The applicant had originally requested two intake structures, with a second intake further upstream, but that upstream intake request had been abandoned.

Mr. Stagg stated that the applicant had received a permit from the Department of Environmental Quality (DEQ), which incorporated recommendations from the Department of Game and Inland Fisheries to include a screen width opening no larger than 1 millimeter and a maximum screen face intake velocity of 0.25 feet per second. Additionally, the DEQ permit included standard erosion and sedimentation requirements during construction and installation of the intake structure. Additional permit restrictions from DEQ included the incorporation of a maximum pumping capacity at design total system head not to exceed 1,000 gallons per minute and a restriction that the permittee shall not withdraw more than 10% of the natural flow of Blackman Creek at the intake site location. Other restrictions include a pumping hiatus if stream flow rates drop below certain monthly thresholds as defined in the permit. No other agencies had commented on the project.

Mr. Stagg explained that provided the applicant adheres to the provisions required within the Virginia Water Protection (VWP) permit, as issued by DEQ, installation of the intake pipe appeared to be a reasonable use of State-owned subaqueous lands. Additionally, it did not appear that the water withdrawal would result in any additional sedimentation issues after installation.

Mr. Stagg stated that based on the foregoing, and after evaluating the merits of the project and after considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff recommended approval with the following standard in-stream work conditions:

- (a) The instream construction activities authorized herein shall be accomplished within cofferdams constructed of non-erodible materials in such a manner that no more than half the width of the waterway shall be obstructed at any point in time;
- (b) The cofferdams and any excess material will be removed to the approved upland areas upon completion of construction, and that the streambed shall be restored to its pre-existing contours and conditions;
- (c) The construction should be performed during low-flow conditions to the greatest extent possible;
- (d) The Virginia Erosion and Sediment Control Handbook (3rd Edition, 1992) will be followed throughout construction.

Mr. Stagg further stated that staff also recommended a royalty of \$120.00 be assessed for the encroachment over 60 square feet of State-owned subaqueous bottomland at a rate of \$2.00 per square foot.

Commissioner Bowman asked if the applicant wished to speak.

Michael Bennett, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Bennett stated that staff presentation was very good and he would just answer any questions.

After some further questions for clarification, Commissioner Bowman asked for a motion.

Associate Member Holland moved to accept the staff recommendation. Associate Member Robins seconded the motion. The motion carried, 9-0.

Royalty Fees (encroachment 60 sq. ft. @	
\$2.00 sq. ft.).....	\$120.00
Permit Fee.....	\$100.00
Total Fees.....	\$220.00

* * * * *

- 11. **JIM STANTON, #07-2696**, requests authorization to construct a 14-foot wide by 40-foot long, single-slip, open-sided boathouse, onto his recently constructed private, non-commercial pier adjacent to his property situated along the Western Branch of the Elizabeth River in the City of Portsmouth. The project is protested by an adjacent property owner and several nearby property owners.

Ben McGinnis, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record.

Mr. McGinnis explained that the proposed project was to be located along the Western Branch of the Elizabeth River in the City of Portsmouth, approximately 1.2-miles northeast of the Portsmouth Boulevard (Route 337) bridge. The applicant had an existing pier, which extended approximately 230 feet channelward of mean low water. This structure was previously determined by staff to qualify for statutory authorization, pursuant to Section 28.2-1203 (A)(5) of the Code of Virginia. The applicant now sought authorization to construct a 14-foot wide by 40-foot long, open-sided boathouse, onto his existing private, non-commercial pier. As proposed, the boathouse would cover a single slip with an existing boat lift.

Mr. McGinnis said that by letter, dated March 24, 2008, Mr. Jerry R. Askew, Sr., an adjacent property owner, stated that he objected to the proposed project. Mr. Askew's letter indicates that he was concerned with the accuracy of Mr. Stanton's application and the project drawings. Staff had spoken with Mr. Askew several times over the past six months. He continued to maintain his objections to the project citing the impact to his view and the length of the proposed pier. Staff also received telephone calls from two other nearby property owners, Ms. Lisa Woolridge and Mr. Bernard Tugwell, who were also concerned about the loss of their view due to the proposed boathouse.

Mr. McGinnis stated that if it were not for Mr. Askew’s objection, the proposed boathouse would have otherwise qualified for the statutory authorization provided in Section 28.2-1203 (A)(5)(iv) of the Code of Virginia, since the proposed 560 square foot roof did not exceed the 700 square foot threshold allowed for private, non-commercial boathouses.

Mr. McGinnis noted that no State agencies had commented on the proposed project.

Mr. McGinnis said that while staff was sensitive to the concerns of the protestants, staff did not feel that the proposed boathouse was excessive since it falls below the 700 square foot threshold provided in the statutory authorization in Section 28.2-1203 of the Code of Virginia.

Mr. McGinnis stated that after evaluating the merits of the project against the concerns expressed by those in opposition to the project, since impacts resulting from the use of State-owned submerged lands should be minimal, and after considering all of the factors contained in Section 28.2-1205 (A) of the Code of Virginia, staff recommended the project be approved, as proposed.

Both Mr. and Mrs. Stanton, applicants were present but did not make any comments.

After a few clarification questions of staff, Commissioner Bowman asked for a motion.

Associate Member Tankard moved to accept the staff recommendation. Associate Member Schick seconded the motion. The motion carried, 9-0.

Permit Fee..... \$100.00

12. T. RANDOLPH WELLS, #07-1024, requests authorization to construct an 8-foot wide private pier extending 825 feet channelward of mean low water with a 23-foot by 50-foot open deck area, an 8-foot by 24-foot golf cart passing area, a 7-foot by 38-foot L-head, two (2) 7-foot by 30-foot finger piers, two (2) 5-foot by 30-foot finger piers, four (4) uncovered boatlifts, three (3) personal watercraft davits, a 19-foot by 50-foot wet slip area, and five additional freestanding mooring piles adjacent to his property situated along the North River at 9774 Anchorage Lane near Lone Point in Gloucester County. The project is protested by three nearby property owners.

Chip Neikirk, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Neikirk explained that Mr. Wells’ property was located along the western shore of the North River in the Ware Neck area of Gloucester County. The property was located just

south of Lone Point. A very wide tidal marsh and extensive shallow sand flat bordered the property. According to the application, the minus four (-4) foot contour was located approximately 800 feet channelward of the edge of the marsh. The site was exposed to a one (1) mile fetch to the north and east and there was essentially an unlimited fetch toward the southeast. Development along the shoreline was primarily residential. There were no other piers of similar length in the immediate vicinity. In fact, the existing piers between Lone Point and Ware Point along the North River generally extended 200 feet channelward of mean low water or less.

Mr. Neikirk further explained that the applicant proposed to construct an 8-foot wide by 1,510-foot long private pier extending 860 feet channelward of the marsh edge. At the channelward end of the pier he proposed to construct a 23-foot by 50-foot open deck area, a 7-foot by 37-foot L-head, two (2) 7-foot by 30-foot finger piers, two (2) 5-foot by 30-foot finger piers, four (4) uncovered boatlifts, three (3) personal watercraft davits, a 19-foot by 50-foot wet-slip area, and install five additional free-standing mooring poles.

Mr. Neikirk said that Mr. Wells in his letter to staff, dated July 5, 2007, explained that the house he was building would be home to his mother, two sisters and his sister's husband. He said on the weekends he expected his sister's children and their families to also stay at the house. That was the only reason he had given for proposing a pier designed to service multiple boats. He also stated in the letter that he proposed to moor three boats in the lifts. The listed boats were 19, 20, and 25 feet in length. He further stated that a fourth boat would be purchased when the pier was completed. At present, only one of the listed boats was owned by Mr. Wells. Finally, he explained that he had multiple sclerosis (MS) and that given the pier length, he and his older family members would need to use golf carts to access the end of the pier. That was the sole rationale for the 8-foot wide pier, large deck area, and wide finger piers. The proposed golf cart passing area was to be located over the marsh and landward of mean low water. Since the pier was wider than six feet and the deck area associated with the pier far exceeded 400 square feet, the pier did not qualify for the statutory authorization for private piers provided in §28.2-1203(A)(5) of the Code of Virginia and a subaqueous permit was, therefore, required.

Mr. Neikirk said that the project was protested by both adjoining waterfront property owners (John Munger and the Petti-Stonburner Family Trust) and a third adjoining property owner (Miarka Mazur) whose property appeared to front along Mr. Wells' marsh. All of the protestants were concerned that the pier far exceeded the permissible size for piers specified in the statutory exemption for private piers. Ms. Mazur is also concerned with the "light pollution" from the lights required to be installed on the pier by the Corps of Engineers. In a letter from Mr. Breckenridge Ingles dated July 18, 2008, written on behalf of The Petti-Stoneburner Family Trust, he stated that the pier would adversely affect wetlands and that the size of the pier was unprecedented and represented a hazard to navigation. He also stated that the pier could possibly encroach on his client's riparian area. Mr. Ingles recently advised staff that a pleading had been filed with the Gloucester

County Circuit Court to have the riparian area associated with the Petti-Stoneburner property apportioned.

Mr. Neikirk explained that the proposed pier was located close to the southern boundary of oyster planting ground leased by Mr. John Vigliotta. Mr. Vigliotta was notified of the project and stated he had no objection to it.

Mr. Neikirk stated that the 2007 submerged aquatic vegetation (SAV) distribution maps prepared by VIMS depicted a bed of SAV that extended approximately 600 feet offshore in the vicinity of the project. Although site specific, Dr. Orth believed that SAV in this area likely becomes sparse at depths exceeding minus four (-4) feet at mean low water (mlw). He added that the SAV under the pier would be adversely affected by the shading associated with the proposed structures. The adverse impacts associated with shading can be reduced by the size of the proposed structures being limited or by increasing the height of the proposed structures to allow more sunlight under the pier. Although the proposed pier would be very long, staff was of the opinion that it should not adversely affect navigation given the presence of the wide shallow sand bar. According to Mr. Rick Henderson with the U.S. Army Corps of Engineers, they had come to the same conclusion. Although the adverse affect on navigation associated with most boats traversing the North River should be minimal, any boat with a shallow enough draft to traverse the sand bar would need to go out and around the pier. To minimize impacts on navigation, the Corps would require the pier to be lighted and a lighting plan had been incorporated in Mr. Wells' most recent revised drawings. The proposed pier would also be in a very exposed location. In a paper titled "Design Wave Information for Chesapeake Bay and Major Tributaries in Virginia" Dr. David R. Basco found that a 35 mile per hour wind could produce a 5.5-foot wave near Ware Point. That wave height would likely be reduced, as it moved the additional 2.5 miles up the North River to the project site; however, a 35 mile-per-hour wind was not uncommon and numerous piers, even in more protected embayments near Ware Point, had been significantly damaged during Hurricane Isabel.

Mr. Neikirk stated that although it was extremely long, staff did not believe the proposed pier's length constituted an undue navigational hazard. If the proposed pier met the size specifications contained §28.2-1203(A)(5) of the Code of Virginia, staff believed that it would be statutorily authorized. Staff was concerned, however, with the proposed 8-foot width, especially given the presence of a wide bed of SAV at the site. Staff also believed the pierhead was excessively large and represented an unreasonable and largely unnecessary encroachment over State-owned submerged land.

Mr. Neikirk said that when reviewing proposals to build over State-owned submerged land, staff considered, among other things, the water dependency and the necessity of the proposed structure. The intended goal of this review was to limit the encroachment of structures to the absolute minimum amount necessary to reasonably achieve the intended use. Reducing the size of structures to the minimum necessary served to reduce potential adverse impacts on neighbors and the general public, as well as the potential for building

materials to enter the waterway during storm events or when the structures fall into a state of disrepair. Given the exposed nature of this specific project site, staff believed there was a higher than average potential for the pier to be seriously damaged during storm events.

Mr. Neikirk said that staff was cognizant of Mr. Wells' special needs and appreciated the fact that a golf cart or similar vehicle might be necessary to allow him to access the excessively lengthy pier. Staff was not convinced that an 8-foot wide pier was required to provide such access. Staff had reviewed numerous 6-foot wide piers for which golf carts were intended to be used. If an additional degree of safety was desired, the pier could be constructed with railings or staff could support the addition of a timber 6-inch by 6-inch timber "curb" on the outside of the 6-foot width. Staff also did not see a need for multiple golf carts and a golf cart passing area. Staff considered the size of the pier-head to be excessive. Even if a golf cart must be used to access the end of the pier, staff believed the statutorily authorized 400-square foot pier-head coupled with 5-foot wide finger piers should provide a reasonable parking and turning area while also providing the required boat access. Although the applicant stated that the pier would be used by his immediate and extended family, staff did not believe this justified the construction of a pier that exceeded the size restrictions for a private pier specified in the Code. In addition to minimizing the encroachment over State-owned submerged land, reducing the size of the pier-head would also reduce the volume of debris in the water when the pier was damaged by a storm or falls into a state-of-disrepair. Staff believed this was particularly important given the exposed location of the proposed pier.

Mr. Neikirk explained that after evaluating the merits of the project and considering all of the factors contained in §28.2-1205(A) of the Code of Virginia, staff was compelled to recommend denial of the application, as proposed. Staff would be able to support the construction of a 6-foot wide pier with railings or 6-inch by 6-inch bumper rail on the outside of the 6-foot wide pier provided the remainder of the pier met the size restrictions specified in §28.2-1203(A)(5) of the Code of Virginia. Should the Commission determine that a pier wider than 6 feet was justified; staff recommended the proposed pier be constructed with a minimum height over mean high water of five (5) feet to minimize shading impacts on SAV where SAV is present.

Commissioner Bowman asked if there were questions for staff. After numerous questions regarding the structure size and design and concern regarding the fact that others vessels not belonging to the applicant were to be utilizing the dock. It was established in the discussion that the Corps was requiring lighting, but not because it was a hazard, just for safety purposes.

Commissioner Bowman asked Mr. Neikirk about the pleading currently pending before the Court regarding the riparian area. Mr. Neikirk stated that he did not know when the matter would be resolved but noted that a permit from VMRC would not affect either party's property rights. Commissioner Bowman asked if the applicant or his representative wished to speak.

Randy Wells, applicant, was sworn in and his comments are a part of the verbatim record. Mr. Wells said he appreciated the opportunity to address this matter with the Commission. He explained that he does have multiple sclerosis (MS), which makes it difficult for him to maneuver. He said he had this house built for his family as his mother now lives with him permanently. His sister and her family visit most weekends now and eventually they will come there to live permanently. He wanted it to be safe for all of them. He said the length of the pier was to get to the proper depth of water and because he can not walk that far, he needs the golf cart. He stated he needed area on the pier to turn and park the golf cart and storage area. He said the wider finger piers would help him to access the boat. He said he wanted the pier to conform with the American Disability Act (ADA) requirements.

Commissioner Bowman asked for questions of the applicant.

Associate Member Robins asked if the width of the finger piers was an ADA requirement. Mr. Wells stated that with the angles near the bow of the boat he could go back to 5-foot wide finger piers.

Bob Winstead, contractor, was sworn in and his comments are a part of the verbatim record. Mr. Winstead stated that he appreciated staff's efforts in working with them. He said the 6 feet width with the curbing was okay. He said that the finger piers being 5 feet each was acceptable if they can keep the angles. He said the passing area was landward of the Commission's jurisdiction. He said they were now down to 400 square feet. He said they would take the 15-foot area for the jet skis and golf cart. He said the T-head could be cut back from 14 feet X 42 feet to 12 feet X 50 feet, as they will need some room to turn golf carts. He said they would need about 600 square feet in addition to the pier width. He said they had some concern with the height requirement and said the sun should be able to get under the pier given its orientation. He said if they had to make it any higher, it would require the end to have to be dropped down. He said they need some relief from staff's recommendation for pier height.

Associate Member Holland stated that the height requirement would not be required if the pier were reduced in width.

Associate Member Schick said as a recap that they can reduce the catwalk to five feet and the angles would be needed with a 600 foot L-head and a six foot walkway.

Commissioner Bowman said that he didn't believe the applicant would be building a pier of such length, especially with the added expenses, unless it was necessary to reach the required depth. He asked Mr. Winstead if that was the case.

Mr. Winstead responded yes, they have visited the site several times to take measurements. He said Mr. Henderson of the Corps asked if the applicant would be willing to add lights and the applicant agreed. He added that there would be a dedicated power supply to the lights. He explained that color lights were different from navigation lights. He said he had

not seen any boat traffic in the area only what comes from the Mobjack Marina about 200 yards away in the channel.

Commissioner Bowman asked for those in opposition who wished to speak.

Breck Ingles, attorney for the Petti-Stonburner, was present and his comments are a part of the verbatim record. Mr. Ingles explained that they had just purchased the property so when notification was sent out, they did not get it and therefore found out later. He said they questioned whether this was truly a private pier since it was not just for the use of immediate family. He said this went well beyond what is considered a private pier and was more like a marina with all the boats, jetskis, piers and lifts. He said the local yacht club's pier was only 600 feet. He said the length of this pier was unprecedented. He said they had understood that the Wetlands Board had met and approved it, but if not, then someone needed to consider the wetlands encroachment. He said they had written a letter stating the concerns with encroachment on their riparian rights. He said a riparian suit had been filed and staff had been notified by the letter dated July 8, 2008. He said he did not know how long it would be before the court made a decision. He noted that only one of the boats listed in the application is owned by the applicant. He said they were concerned that a precedent would be set with such an excessive pier. He said this would impact his clients view. He said they felt it would be a hazard to navigation and promote a lot of boat traffic. He said if the pier was moved to the south it would encroach upon Mr. Vigliotta's oyster ground lease. He said again that a decision on the wetlands encroachment must be made.

Commissioner Bowman asked for staff to respond to the wetlands portion. Mr. Neikirk explained that private, non-commercial open-pile piers are statutorily exempt provided they are constructed on pilings to allow the ebb and flood of the water under the pier.

Commissioner Bowman asked about anyone else in opposition. There was no one else. He asked Mr. Winstead or Mr. Wells if they wish to offer rebuttal comments.

Mr. Winstead in his rebuttal stated that the Corps had four regulations for the crossing of a pier and it was five feet about the substrate. He said he had seen other piers that crossed over wetlands 200 and 300 feet. He said it would be proper height. He said he felt they had complied with staff's recommendations.

Commissioner Bowman asked for discussion or action.

Associate Member Schick said he felt this project did need to be downsized and he was also concerned with the mooring pilings for the jet skis and lifts since there were lifts on the pier. He said he felt they should be eliminated. He said in the Habitat Management Advisory Committee (HMAC) meetings they had discussed this and decided that 400 square feet was adequate for one golf cart and he did not want to make accommodations

for multiple golf carts for non property owners. He said he felt it should be kept under 600 square feet, closer to 400, as allowed by statute.

Associate Member Tankard stated that as Mr. Ingles had stated there was no other piers that size in the area. He said he felt for the adjoining property owners to have to navigate around this pier and to have to look at this lighted structure. He stated he could not support it as proposed since it impedes navigation even in the shallower water. He said it was an encumbrance to the rights of other property owners.

Associate Member Robins stated that the project does appear to be excessive in length. He stated that staff had addressed the navigation issue. He said the bigger concern was scale of the structures at the end of the pier. He said 6 feet wide with the curbs on the edge would accommodate the width, while downsizing the finger pier to five feet and 45 degree angles to help with access. He explained that he recognized the need because of the physical condition of the applicant and that is mitigating factor. He said he agreed with Associate Member Schick to make it less than 600 square feet to more reasonably accommodate the needs.

Associate Member Fox asked why there was a need for 4 ½ feet depth at mean low water. He stated maybe the pier could be shorten and still maintain a reasonable depth.

Mr. Neikirk explained that the far end of the pier is shown reaching a depth of 4 feet at mean low water and the landward end of the slip is shown at 3.5 feet at mean low water. The boats now listed have about a two foot draft, but the applicant had indicated he would purchase a larger boat. He stated the bulk of the pier was in very shallow water and then it drops off rapidly.

Associate Member Fox said that Mr. Ingles explained wherever the pier is located will either encroach on his client's riparian rights or Mr. Vigliotta's oyster ground lease. He said the Commission should look some more at this pier if it is later determined the pier can't be in this location.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel explained that the court will determine the riparian rights. If the applicant builds it as proposed, he would be risking the court's decision going against him.

Commissioner Bowman asked for a motion.

Associate Member Schick moved to approve the pier being 6 feet wide with railings or a bumper rail, finger pier 5 feet wide; the T-head or L-head be a maximum of 500 feet of additional T-head, L-head, or angled access, elimination of the five mooring piles at the jet ski lifts and the pilings on the left of the pierhead, and six foot width with bumper as recommended by staff. Associate Member Holland seconded the

motion. Associate Member Robins asked if this included the 45 degree angles. Associate Member Schick stated it was included in the 500 feet.

Commissioner Bowman asked staff about limiting the number of slips at a private pier.

Mr. Grabb said that staff typically considers a private pier to include one or two slips. More slips than that might not be considered statutorily exempt. He added that it is really up to the Commission to decide.

Commissioner Bowman said that he sympathized with the applicant but the Commission must consider the Public Trust as regards the impacts to the other property owners. He said he was not comfortable with the number of slips and lifts and the amount of activity and said he could not support the motion.

After much discussion about concerns over the large size of the project, an amendment was offered by Associate Member Fox. Associate Member Fox said he agreed with Commissioner Bowman and had a problem with the various different slips. He suggested modifying the motion to two slips, make it 400 square feet not 500, and include the 45 degree corners. He said he also agreed with Associate Member Tankard and was troubled by the whole concept. He said such a large pier being hit by a storm would cause damage to other properties. Associate Member Holland asked if the lifts were included. Associate Member Fox responded, yes and said it included 2 slips and 2 lifts. Associate Member Schick clarified the amended motion. He said the motion was for a 400-foot T-head or L-head with the 45 degree angles, two slips with lifts, three jet-ski lifts, and to allow the total length of pier and the catwalks. Associate Members Schick and Holland stated that they accepted the amendments. Associate Member Schick said he wanted to add to the motion, also, that revised drawings must be submitted and approved by the staff.

Associate Member Tankard stated that he was still concerned over the precedent being set and had concerns for the safety and impacts to other property owners, because of the length.

The motion carried, 6-3. Associate Members Tankard and Laine, as well as, Commissioner Bowman all voted no.

Permit Fee..... \$100.00

- 13. ENFORCEMENT ACTION:** Commission review of information indicating possible violation of Chapter 12 of Title 28.2 of the Code of Virginia, specifically unauthorized dredging undertaken by Mr. John Alvey at or near his property situated along Neabsco Creek at 16127 Neabsco Road, in Prince William County.

Dan Bacon, Environmental Engineer, Sr., gave the presentation with slides. His comments are a part of the verbatim record.

Mr. Bacon explained that this was not the first time that Mr. Alvey and the Commission had been involved in a dispute over unpermitted dredging activities. The last time occurred over three years ago. In the spring of 2005, Commission staff became aware of ongoing activities at Mr. Alvey's property that appeared to involve dredging in conjunction with the removal of derelict structures.

Mr. Bacon stated that on April 22, 2005, the Commission sent Mr. Alvey a formal letter directing him to cease all further dredging activities at his property, whether intentional or incidental. At the time, while the Commission elected to withhold further enforcement action, we clearly and unambiguously warned Mr. Alvey that any further dredging in the absence of the required permits would constitute a violation of Chapter 12 of Title 28.2 of the Code of Virginia, and would necessitate VMRC enforcement action.

Mr. Bacon said that on August 21, 2008, staff received an e-mail from the Department of Environmental Quality (DEQ) about dredging activities that were occurring at Mr. Alvey's property at 16127 Neabsco Road along Neabsco Creek in Prince William County. DEQ's contact was precipitated by their receipt of an anonymous complaint with pictures that showed Mr. Alvey dredging at his property.

Mr. Bacon stated that on August 25, 2008, Commission staff contacted Prince William County's Wetlands Board's staff and asked if they could conduct a site visit of the property to further investigate the alleged violation, as well as, take pictures to assist us in determining the extent of any illegal dredging activity. Upon arrival, the County staff was told to leave the property by Mr. Alvey. County staff was, however, able to secure photos of the site from an adjacent marina

Mr. Bacon said that based on the foregoing, Commission staff, in conjunction with a Marine Police Officer, visited the site by boat on August 27, 2008. Random soundings taken in the vicinity of the reported dredging showed several areas where the depth of the water was much deeper than the surrounding area. Mr. Alvey was not on site at the time of this investigation. While on site, staff observed and documented a moderate amount of wet dredged material on shore, as well as on the barge that was apparently used as a platform for the dredging equipment.

Mr. Bacon said that Commission staff was also able to speak with a nearby resident who provided photographs that were reportedly taken on August 15, 17 and 21, 2008. Those photographs clearly show Mr. Alvey engaged in dredging activities. Staff was also told that Mr. Alvey had dredged on other occasions, primarily on weeknights and weekends.

Mr. Bacon explained that staff believed that the continued dredging operations that were occurring at Mr. Alvey's property were a clear violation of Chapter 12 of Title 28.2 of the

Code of Virginia, and necessitated Marine Resources enforcement action. The Commission had previously warned Mr. Alvey that future incidents would result in enforcement action. Accordingly, in light of the current information, staff had no recourse but to recommend that the Commission find Mr. Alvey in violation of §§28.2-1203 and 28.2-1212 of the Code of Virginia with referral to the Commonwealth’s Attorney and Attorney General, respectively, for the appropriate enforcement action, including possible restoration and/or civil penalties.

Commissioner Bowman asked if there were questions for staff.

Associate Member Schick asked if Mr. Alvey explained what he was doing to the staff. Mr. Bacon said that Mr. Alvey thinks a permit is not needed as he did in 2005 for removing items from the bottom.

Carl Josephson, Senior Assistant Attorney General, asked if the witness was willing to testify. Mr. Bacon responded that he was in the Bahamas. Mr. Josephson stated he could testify to the authenticity of the photographs.

Commissioner Bowman asked if he did need to authenticate the dates, etc. Mr. Josephson responded, yes. Commissioner Bowman stated the Marine Police Officer could interview the photographer. He further asked if Mr. Alvey was present. He was not present. He asked for a motion from the board.

Associate Member Schick moved to approve continuing Law Enforcement’s investigation and with Habitat’s staff and conduct an interview with the photographer. He said they were to report their findings to the Board at next month’s meeting. Associate Member McConaugha seconded the motion. The motion carried, 9-0.

Deferred until the next meeting.

14. PUBLIC COMMENTS:

Robert W. Jensen, Rappahannock River Preservation Society, reported to the Commission on the success of the oyster restoration efforts on Steamers Rock. Provided a hand-out on his future plans.

Associate Member Fox asked about the Secretary of Natural Resources letter received by the Commission.

Bob Grabb, Chief, Habitat Management, briefed the Commission on the September 16, 2008 letter the Commissioner received from the Secretary of Natural Resources regarding what might constitute “unique circumstances” that the Commission would use in determining a reduced rate of compensation for the conveyance of previously filled subaqueous lands. He further stated that staff would bring it back to the Commission for their further consideration.

Associate Member Fox moved to recommend that the Commissioner contact the Secretary and discuss his ideas on this matter. Associate Member Schick seconded the motion. The motion carried, 9-0.

Doug Jenkins, President of the Twin Rivers Watermen’s Association, requested that the Commission establish a member of the Board as the Chairman of the Shellfish Management Advisory Committee. Associate Member Carter Fox was unanimously asked to Chair the Commission’s Shellfish Management Advisory Committee. He responded that he would speak to the Commissioner about his decision.

Pound Nets: Jack Travelstead, Chief Deputy, Fisheries Management, explained that H. M. Arnold, et als, were requesting that the Commission at their next meeting take into consideration an exemption to the regulation to allow those licenses to be renewed for priority rights to locations where nets have not been set and fished in the previous year because of the loss of nets and economic impacts due to severe weather. He stated that an exemption had been approved for the past two years. He explained that Regulation 4 VAC 20-20-10, et seq., “Pertaining to the Licensing of Fixed Fishing Devices” prohibited the renewal the following year of the pound net stand, if a pound net was not setup and fished the previous year. He said staff suggested that this be considered for longer than a year so that they would not have to come back year to year. He stated it doesn’t make sense to set the nets when conditions were not right.

Associate Member Bowden explained he had talked with a waterman who had lost his nets due to storms and he would not be able meet the criteria for renewing his license. He suggested that it would be a good idea to extend this exemption for a two-year period.

Commissioner Bowman stated that they should consider it for a two-year period and staff could be evaluating it during that time.

After some discussion, Associate Member Fox moved to hold a public hearing at the next meeting. Associate Member Bowden seconded the motion. The motion carried, 9-0.

15. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-720-10 et seq., "Pertaining to Restrictions on Oyster Harvest" to establish harvest seasons for the 2008/09 fishery and to make permanent Emergency Chapter 4VAC20-720-106. "Public Health and Warm Water Harvest Restrictions." Emergency action requested to amend Regulation 4VAC 20-260-10 et seq., "Pertaining to Designation of Seed Areas and Clean Cull Areas.", at the request of the industry to eliminate the maximum size limits for oysters harvested from public grounds within the Rappahannock River Rotational Area Nos. 4, 5, and 6; Request for Public Hearing.

Dr. Jim Wesson, Head, Conservation and Replenishment, gave the presentation. His comments are a part of the verbatim record.

Dr. Wesson explained that a public hearing was requested last month to amend Chapter 4VAC 20-720-106 of the regulation to make permanent the changes in the cut off times for the harvesting of oysters during the summer months.

Commissioner Bowman opened the public hearing. There were no public comments, therefore, the public hearing was closed. He explained that this was a separate issue and he asked for a motion.

Associate Member Robins moved to make the amendments a permanent part of Regulation 4 VAC 20-720-10, et seq., "Pertaining to the Restrictions on Oyster Harvest." Associate Member Bowden seconded the motion. The motion carried, 9-0.

Dr. Wesson explained that there were more oysters to harvest this year because in 2006 there had been a good set in the Rappahannock and Great Wicomico Rivers and Mobjack Bay. He said also that there was a decent strike in the Pocomoke-Tangier area. He said at this time there were problems in the Gulf which was good for the local industry.

Dr. Wesson stated that it was proposed to open Rotational Areas 2 and 4 in the Rappahannock River with a broodstock buyback program as was done last year. These oysters would be transplanted as broodstock to a designated sanctuary area. He said that the Shellfish Management Advisory Committee suggested that there only be a buyback program in Area 2 and removing the maximum size limit on harvested from Area 4. He stated that last year all of the oysters harvested came from area 1 and none were taken from area 6. He said staff found in the survey that areas 1 through 3 had big oysters and area 4 had a lot oysters but not so many were big. He said open both 2 and 4 at the same time would cause enforcement issues, so staff suggested that area 4 open October and November and open area 2 December 1.

Dr. Wesson stated that staff was recommending that emergency action be taken to remove the maximum size limit from areas 4, 5, and 6.

Dr. Wesson explained that there had been contention among the members of SMAC in regards to the Potomac River Tributaries. He said staff had focused see transplanting in areas of the Potomac River Tributaries for the last two years, when they transplanted seed oysters from the Great Wicomico River to the Coan, Nomini, and Yeocomico Rivers. In order to monitor the harvest from these seed plants staff would prefer to handle it with a replenishment project. He said the Blue Ribbon Oyster Panel was requesting information regarding the cost benefits that come from the transplanting of seed. He said there were 3 small areas in the Yeocomico, one area in the Coan and one area in the Rappahannock River. He said staff wants to advertise to start December 1st and rotating these area. He said there would be catch limit, but they would need to sign up to work. He stated that staff recommends the project and Section 28.2-550 of the Code allows the Commission to use watermen for research projects.

After some discussion, Commissioner Bowman opened the public hearing.

Douglas Jenkins, representing the Twin River Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Jenkins stated that he was also on Shellfish committee. He said he objected to the rotation of areas as recommended by BROP and he felt there should be distribution of the resource in each locality for the watermen to work on. He said these oysters should be caught up before they die. He said this looked promising and he was against the same plan being used in the Potomac River Tributaries. He stated that Dr. Wesson mentioned it being a gift to get as much as could. He said the Machodoc and other tributaries are areas where smaller boats can work and in the other areas all the boats come and clean the areas up and the local watermen are left out. He said the Nomini was opened last year and he suggested he be opened November when the other areas are opened.

Mr. Jenkins suggested that to get back dollar for dollar spent the seed oysters should be less than \$12 per bushel. He said the crab season had been bad and the watermen want to work in their own areas, not in other areas.

Ken Smith, representing the Virginia Watermen's Association, was present and his comments are a part of the verbatim record. Mr. Smith stated that he admired the way Mr. Jenkins always looked out for the little man. He said he'd like to see the project go forward and it would be good for them to be able to catch as much as 20 bushels. He said he liked the project. He said he hoped that people would sign up from the area. He said he went out with the staff on their boat to observe. He said the areas are small so that no James River watermen will be coming up there to harvest.

Commissioner Bowman closed the public hearing.

Associate Member Robins said that staff had discussed this thoroughly. He moved to approve the staff's recommendations for the harvest seasons; eliminating the maximum cull size in certain areas by emergency action, a public hearing to be held

at next month's meeting; and approval of the replenishment project. After some discussion about an earlier starting date for the project, such as the last week in November, staff agreed to do this if they were able to get the fall stock assessment program completed in time. Associate Member Fox seconded the motion. The motion carried, 9-0.

* * * * *

16. **PUBLIC HEARING:** Proposed amendments to Regulation 4VAC20-620-10 et seq., "Pertaining to Summer Flounder", to establish the commercial harvest seasons, trip limits, and landing periods and to repeal possession limits. Approval of the proposed Emergency Regulation 4 VAC 20-1170-10, et seq., "Requirements Related to the Purchase of Fish, from the Catcher", to make it a requirement for buyers to use certified scales.

Joe Grist, Head, Plans and Statistics, gave the presentation. His comments are a part of the verbatim record.

Mr. Grist explained that staff had received a letter from C. M. Amory of L. D. Amory Company, Inc. on behalf of the company, Mr. Joey Daniels of Wanchese Fish Company, Mr. Wesley McDonald of Chincoteague fisheries and Mr. Frank McLaughlin of Chesapeake Bay Packing requesting that the current 10-day landing periods during the directed fishery be expanded to 15-day landing periods. That the winter period open the last Monday of February and the fall period open the first Monday in December. He said they also requested that there be no vessel possession limit and to prohibit any unloading more than once in any 5-day consecutive period. He stated that the increase in fuel and packing cost are the reason for this request.

Mr. Grist explained that currently during the winter period vessels may land no more than 12, 500 pounds for commercial purposes, within each 10-day consecutive period. He said during the fall period vessels may land no more than 10,000 pounds for commercial purposes, within each 10-day consecutive period. He said the fall period begins the last Monday in October until the directed fishery approaches 100 percent of the annual commercial quota and is closed by VMRC.

Mr. Grist explained that for the periods that provide only for a bycatch fishery, it is unlawful for any person harvesting summer flounder outside of Virginia's waters to possess aboard any vessel in Virginia any amount of summer flounder in excess of 10% by weight of all other landed species. He further explained that the periods that provide for a directed fishery, possession limits include vessel limits, a start day or specific date, and whether the fishery will revert back to a bycatch fishery, or would prohibit any flounder landings, when closed.

Mr. Grist stated that in North Carolina doubled the quota for North Carolina to allow for Virginia quota to be also onboard at the time of offloading and the Director of North Carolina's Division of Marine Fisheries can do this simply by proclamation. He said as a result this tactic during the winter, the market was flooded by increased effort. More effort and the delay of fish reaching the Virginia market, where the vessels offload in North Carolina first, then 3 – 5 days later in Virginia, resulted in poor quality fish being processed by Virginia dealers. He said that FMAC agreed that the proposals would help the industry.

Mr. Grist said that after the meeting with FMAC, staff asked Law Enforcement and they agreed that all measures were acceptable except the possession limit. He said a major problem for Law Enforcement is that they cannot monitor all of the docks and vessels, as they have limited staff. He said further that Law Enforcement was having a hard time getting convictions for overages because no certified scales are required to be used by the buyers. Usually this fact results in dismissals.

Mr. Grist stated that there had been 5 public comments received to date.

Commissioner Bowman asked if there were questions for staff.

Associate Member Robins asked if the law enforcement concerns were a reflection of limited resources. Mr. Grist stated yes and that Law Enforcement cannot realize a conviction when certified scales are not used by the buyers.

Commissioner Bowman stated that with the certified scales they could possibly realize more convictions and ensure the quota was managed. He said requiring the certified scales would require an emergency regulation.

Mr. Grist noted that Law Enforcement was working towards having certified weighmasters. He said they were working with the Department of Agriculture personnel. He said there was nothing in the Code of Virginia to keep the buyers out of the Department of Agriculture's certified scale program. He said they already have the personnel and also use contractors. He stated a draft of a proposed Emergency Regulation had been prepared.

Associate Member Schick stated they do his fuel pumps at his marina. Commissioner Bowman explained that they were required to do this for retail businesses not wholesale.

Mr. Grist stated that the season currently opens at the end of October for Summer Flounder, so they need something in effect now if the season opening did not change, which made the emergency action necessary.

Commissioner Bowman asked for a motion.

Associate Member Robins stated that even though Law Enforcement had problems making convictions in the courts, because the scales being used were not certified, he hesitated to make this an emergency action. He felt this should go through the normal process, therefore, he moved for a public hearing to be held at the October meeting. Associate Member Tankard seconded the motion. The motion carried, 9-0.

Commissioner Bowman opened the public hearing.

Meade Amory, representing Amory Seafood, was present and his comments are a part of the verbatim record. Mr. Amory stated that he thanked the staff for working with the industry in the past years as it had gone well. He stated for such high fuel cost, they had a small quota. He said they need to get two quotas so they have one to take to North Carolina. He said the way it was now penalized Virginia fishermen and the extra quota would help. He said they were asking that the 15-day landing period be cut to 12 which would also work. He said that this would only be during the time when the Virginia and North Carolina seasons overlap, which was the end of December until the end of January.

Associate Member Robins asked if they had considered an alternative of an offloading time and inspection hours. Mr. Amory suggested 7 to 10 as there was not much after 10 that is packed. He said they start before 5 and finish the second day. He said that would spread the quota.

Commissioner Bowman asked Lt. Col. Warner Rhodes to comment. Lt. Col. Rhodes said that the State's budget was a problem and if watermen have reduced hours, then Law Enforcement can accomplish what is necessary. He said at the present time the cost of fuel was down, but it will be going back up.

Associate Member Bowden stated that he agreed with Mr. Amory's suggestion of a 12-day landing period.

When asked about impact to staff, Mr. Grist stated it would not impact staff, but the industry had requested 15-day periods in their letter.

Associate Member Bowden asked if Mr. Amory agreed with the 12. Mr. Amory responded that he supported 12 days.

Associate Member Bowden moved to approve the industry recommendation for a 12-day landing period; keep the current trip limit and make the hours for offloading 7 a.m. until 6 p.m. Associate Member Tankard seconded the motion.

Mr. Travelstead asked if the possession limit would stay at 12,500 pounds. He said industry was requesting that the possession limit in the hold of the vessel be eliminated, but there was still a need to have a possession limit. Associate Member Bowden stated

that the problem was that unlike Virginia, North Carolina could make regulatory changes at any time with just a Proclamation.

He suggested amending the motion making the possession limit to be no more than two times the Virginia possession limit and to allow half to be unloaded in Virginia.

Mr. Amory suggested that the amendment include limiting the landings to one time for each 5-day period.

Associate Member Bowden agreed to this stipulation being added to the motion. Commissioner Bowman asked if Associate Member Tankard because he had seconded the motion agreed to these amendments. Mr. Tankard agreed to the amendments.

Mr. Grist expressed his concern for enforcement problems.

Lt. Col. Rhodes expressed his concern over the amount to be offloaded in order for them to check the fish. Commissioner Bowman explained that this was a preventative measure.

Commissioner Bowman asked for a vote for the amended motion. The motion carried, 8-0-1. Associate Member Robins abstained.

* * * * *

17. **DISCUSSION:** Proposed amendments to Regulation 4 VAC 20-910-10, et. seq., "Pertaining to Scup (Porgy)," to establish landing limits for the commercial fishery during the Winter II period; Request for a Public Hearing.

Alicia Nelson, Fisheries Management Specialist, gave the presentation. Her comments are a part of the verbatim record.

Mrs. Nelson explained that the Scup Fishery Management Plan provides for an annual Coast-wide quota which is to be divided into three periods, the Winter I period, the Summer period, and Winter II period. Therefore the unused portion of the Winter 1 period of 96,912 pounds shall be transferred to the Winter II period, as is allowed by the Management Plan. Since the unused quota to be transferred is less than 500,000 pounds, the possession limit will remain at 2,000 pounds for the Winter II period. Staff recommends the advertisement of an October public hearing in order to adjust the Winter 2 period possession limit.

Commissioner Bowman asked for a motion from the Board.

Associate Member Robins moved to accept the staff recommendation. Associate Member Fox seconded the motion. The motion carried, 8-0. Associate Member Laine was not present.

* * * * *

19. **DISCUSSION:** Industry request for emergency amendments to Regulation 4vac 20-751-10, Et Seq., “Pertaining to the Setting and Mesh Size of Gill Nets,” to allow the placement of anchored or weighted gill nets within 500 yards of the beach on the Seaside of the Eastern Shore; Request for Public Hearing.

Rob O’Reilly, Deputy Chief, Fisheries Management, gave the presentation. His comments are a part of the verbatim record.

Mr. O’Reilly explained that this was a request by industry for the approval of an emergency regulation. He referred to and read into the record from page three of the draft Emergency Regulation 4 VAC 20-751-10, et seq., “Pertaining to the Setting and Mesh Size of Gill Nets”, Subsection E, which said:

“From June 1 through October 15, it shall be unlawful for any person to place any ~~anchored, weighted, or~~ unattended gill net, within 500 yards of the mean high-water mark, on the ocean side of Northampton and Accomack Counties, north of a line, beginning at the southern most point of Smith Island and thence extending due east to the three-mile limit line.”

Associate Member Laine returned to the meeting during this presentation.

Mr. O’Reilly explained that the words anchored, weighted, or were being struck out. He said at the February meeting the Commission looked at what staff had proposed, which is the same as now, but at the request of industry the two words anchored and weighted were added. He explained that the Finfish Management Advisory Committee (FMAC) had met several times in the last few months and most recently, the previous week to discuss this issue further and now ask that these words be removed. He said that at the February meeting, Associate Member Bowden had stressed the need to regulate the unattended nets. He explained that FMAC in their discussion felt that unlike the Chincoteague area where they could work their drift nets without problems, the fishermen to the North of Wachapreague and Cedar Island areas needed to have some weighting on theirs. He stated the reason for this urgency now was that the fishermen who usually target the spot, close to shore, did not realize that those changes had been added in February and the time to catch spot was now. He explained that members of FMAC felt that there were still a few individuals who could catch and market this fish in this manner.

Mr. O' Reilly stated that the staff recommended the adoption of the emergency regulation because the time for catching spot was now and it would be of benefit to some fishermen. He also stated that staff recommended the advertisement of a public hearing for next month.

Commissioner Bowman asked for action by the Commission.

Associate Member Bowden stated that there have been problems in Chincoteague, but his main concern was the unattended nets and he felt that it should remain a part of the regulation. He moved to approve the staff recommendation. Associate Member Holland seconded the motion. Commissioner Bowman asked if this included the advertising for a public hearing. Associate Member Bowden responded, yes, next month. The motion carried, 9-0.

* * * * *

20. STATUS REPORT: The results of the Public Informational Hearing held at the request of the Commission regarding the proposed regulation for Submerged Aquatic Vegetation (SAV).

Tony Watkinson, Deputy Chief, Habitat Management, gave this presentation. His comments are a part of the verbatim record.

Mr. Watkinson explained that as a result of the workgroup meeting, it was the consensus of those present that the public hearing be deferred until such time as the workgroup has resolved some concerns in regards to the conditions of the regulation and on-bottom aquaculture. He stated that staff recommended deferring the public hearing until a later date.

Commissioner Bowman asked if the Board members concurred with staff to delay this matter and have the staff and workgroup continue to look at this matter before bringing it to the Commission. There was a unanimous consensus of the Board to accept the staff's recommendation.

Commissioner Bowman stated that staff should look further into this matter with the workgroup and when it was right to bring it back to the Board. No further action was taken.

* * * * *

18. **DIMITRIOS HIONIS:** Formal hearing on the matter of priority rights to pound nets located in the Cape Henry area.

Commissioner Bowman stated that this was a formal hearing pursuant to Sections 28.2-216, Hearings before the Commission, and 28.2-217, Procedure of Hearing, of the Code of Virginia, which he then read into the record. They read, as follows:

Section 28.2-216, Hearings before the Commission. “A. Any person whose rights, duties, or privileges, including matters relating to licenses, shellfish planting ground, or fishing stands, have been or may be affected by any action or inaction of the Commission or Commissioner without a formal hearing may demand in writing a formal hearing of his complaint. The Commission shall be informed of the hearing on the complaint as soon as practicable. All known interested parties shall be afforded an opportunity to be heard before the Commission. All persons who have noted their interest with the Commission shall be informed of the hearing by first class mail at least five days prior to the scheduled date of the hearing. The notice shall indicate the time and place of the hearing and the issues involved. All parties shall have the opportunity to present evidence and argument. The proponents for any regulation or matter shall be heard first, then the proponents. The Commissioner, if present, or any member of the Commission in his absence, shall preside over the hearing. The rules of evidence shall apply insofar as possible. Depositions may be taken and read as in actions of law.”

“B. The Commission or Commissioner shall have power to issue subpoenas and subpoenae duces tecum and, at the request of any part, shall issue such subpoena. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Commission in a manner prescribed in Section 2.2-4022.”

Section 28.2-217, Procedure of Hearing. “Every party shall have the right to cross-examine adverse witnesses including employees of the Commission and to submit rebuttal evidence.

The decision of the Commission shall be based only on evidence received at the hearing and matters of which a court of record could take judicial notice.

Any party may, at his own expense, have a stenographic report made of the hearing. A copy of the report shall be made available to the Commission, if it so requests, at cost to the Commission.”

Commissioner Bowman asked that the hearing proceed.

Gary Jenkins, Attorney for Mr. Hionis, made a motion that the witnesses be excluded from the hearing. Mr. Jenkins provided notebooks for the board of all evidence to be presented.

Mr. Weisburg asked to be given a notebook and for time to review the contents. Commissioner Bowman stated that at the time the item is entered will be the time to make any objections to the evidence. Mr. Weisburg agreed.

Commissioner Bowman granted the attorney's motion and asked that all parties who were testifying to wait outside the room until they were called.

Noel Weisburg, Attorney for Mr. Sanford, requested that Mr. Sanford be allowed to stay.

Mr. Jenkins said that the last time this was heard the Commission was under the impression that it had no jurisdiction to correct technical errors and no authority to revoke licenses given out. He said there were two instances where a license could be revoked, one being because a violation of the law had occurred (Section 28.2-232 of the Code) and second, because a false statement had been made to obtain a license (Section 28.2-230 of the Code)

Mr. Jenkins said the first issue was that an administrative error had occurred on May 1, 2008. He said Mr. Hionis had gone to the agent to renew his licenses. He wanted the same ones that had once been owned by Kenny Etheridge. He said these 4 locations had cost him \$140,000 plus to obtain the rights to them, and he has been licensing them and fishing them since 2005. He explained that Mr. Hionis had spent approximately \$150,000 just to refurbish them and establish these nets. He said when Mr. Hionis went to get his license he did not know about forfeiture.

Mr. Jenkins stated that prior to 2007 the Marine Police Officers issued these licenses until it was changed. He said Mr. Hionis requested the licenses he had the previous year and he got four plates.

Mr. Jenkins said the second issue was what happens to Mr. Sanford who purchased invalid licenses. He said in the minimum it involved fraud in making the application or would be considered an administrative error.

Mr. Weisburg stated that the Commission needed to keep an eye on the ball as there would be a lot of mud slinging here. He said it was the responsibility of the waterman to keep up with the regulations and take care of his own interest. He stated the Commission went above and beyond in assisting Mr. Hionis. He said when in January the licenses were not renewed, as in prior years the Marine Police Officer called Mr. Hionis. But just the previous year a letter was mailed to him telling him that the procedure had changed. He said Mr. Hionis in January took no action to get his license, but still the Marine Police Officer called him to remind him and now he has been fishing without a license. He said when he was called May 1, he went to purchase his plates, and in all prior years he gets 6, but he walks out with only 4. He said in May, it was beyond the deadline. Mr. Sanford purchased the license in July. He said this meant it was months and plenty of time to fix the oversight before someone else bought them. He said he does not see any fraud and no

conspiracy. He said if you look at the law which sets the rules of priority and if you do not get them by January 10th, the law says they will be available to others. He said Mr. Hionis failed to renew them by January 10th and put the licenses at risk. He said he was not licensed for the nets and continued to fish them. He said Regulation 4 VAC 20-20-10 sets forth the priority rights. He said the evidence shows no fraud and that Mr. Hionis did not take care of his priority rights; and he was lucky to have any licenses.

Officer Stephen Bennis was sworn in and questioned by Mr. Jenkins, which is a part of the verbatim record:

Officer Bennis was asked to identify numerous documents. He said the first was the application for a fixed fishing device location. It was dated, for the calendar year of 2005, for Mr. Hionis for locations previously licensed by Kenneth Etheridge. It was dated March 5, 2005 and received March 9, 2005 and signed by Sergeant Clifton. He said the second document was another application, for a fixed fishing device, in the name of Mr. Hionis again. He stated that the only differences in the six documents was the description. There were a total of six documents. He said the next documents were the licenses for the various locations. Officer Bennis read off the descriptions. These documents were entered into the record. Officer Bennis said he was certain he would only be able to locate 4 of the sites. Officer Bennis reviewed each license indicating which he could locate and which he could not. Officer Bennis said he only knew what was put on these licenses when they were issued in March 2005. Officer Bennis was asked to compare the document, from 2005, with the computer print out. Officer Bennis said that he could not match them up. He was asked about a chart given to him July 9 and 10th and produced by Sergeant Clifton. Officer Bennis said it was produced, as a result of the information request.

Officer Bennis was asked to look at a chart on the screen and asked to match the descriptions on the documents to the location on the chart, which he did. Officer Bennis was asked if he testified previously that there were six locations in consecutive order along the shoreline. Mr. Weisburg stated that he objected to this question as the witness had not been previously impeached and until he is he can not impeach him now. He said he must get a commitment to a statement before accusing him of lying. Mr. Jenkins said that Officer Bennis had made a statement in the past that there were six along the shoreline, and now he has said that there were four inshore and two offshore.

Officer Bennis was asked if he knew that Mr. Hionis was fishing these nets, to which he responded yes. Officer Bennis was asked if he had approached Mr. Hionis prior to 2004 to which he responded he did not work for VMRC. Officer Bennis was asked if when he responded to a report of a net on the beach in 2006, if he questioned Mr. Hionis or was concerned about the nets. Officer Bennis said no, he did not have that information, and he was only asked to on investigate a reported net on the beach.

Officer Bennis was asked how he became involved in the investigation over the dispute of the nets. Officer Bennis answered that he was called by his supervisor, and when he came

to the office he was given this assignment as the District officer by his Supervisor, Sergeant Clifton.

Officer Bennis asked about any relationship he might have with Mr. Wray and if he had any family members working for this business. Officer Bennis said his daughters only worked there during the summer and probably would not return, especially since his oldest would start her internship. Officer Bennis was asked if he discussed this with his daughters. Officer Bennis said he had asked his daughters, if they were present at the time the license were purchased and they responded no. Officer Bennis said that he did know Mr. Wray for several years prior to working with VMRC and had been in the business on a number of occasions. Officer Bennis said now that he does checks on all marinas and goes into this business about twice a week. Officer Bennis was asked if this caused him a conflict in this investigation. Officer Bennis said he felt it did not.

Officer Bennis was asked about any conversations with the marina personnel since the investigation and last hearing. Officer Bennis said he had not discussed anything only told them the hearing was coming up at this meeting.

Officer Bennis was asked about the procedure to follow for new applications. Officer Bennis said it would have to put out on public notice and if it were to be protested it would be heard by the Commission Board. Officer Bennis stated if was not protested it would not require a public hearing and would be assigned to the applicant.

Officer Bennis was asked if he was given this assignment for investigation on July 9th and was he involved in the application. Officer Bennis said he received this assignment July 9th and he was not involved until with Sanford application until after July 7th.

Officer Bennis was asked about his note in his report regarding the numbering on the license. Officer Bennis said he had noted that no number had been issued on these licenses and he did not know the significance or when they were given a number. Officer Bennis said on other licenses he had seen a number.

Officer Bennis was asked about talking to other parties that he had noted in his report. Officer Bennis said he spoke with Mr. Sanford, Mr. Meekins, Mr. Hionis, Mr. Wray, and Mr. Barber.

Officer Bennis was asked if there was any confusion about what nets Mr. Hionis had been working for years. Officer Bennis said he was not clear as whether they are the same nets and poles, because some have been replaced because of damage, but they were in the approximate locations. Officer Bennis said the poles were moved slightly when they have to be replaced, which is an accepted practice as the removal of old pilings is too difficult.

Officer Bennis was asked if in his investigation he was told that Mr. Hionis had only asked to renew four licenses when he came to the store. Officer Bennis said he was told that Mr.

Hionis asked for four licenses and that Mr. Wray said he read off the description. Officer Bennis said Mr. Wray said he was told by Mr. Hionis that he wanted the first four and he paid for them and got them.

Officer Bennis was asked about the statement that Mr. Sanford had found out about the licenses on July 8th and applied for them. He said that he did eventually tell him that he was in the VMRC office, Erik Barth's office, when he found out about them and he applied for them after that.

Officer Bennis was asked further about his report that said that Mr. Sanford seemed reluctant to speak with him any further on the matter. Officer stated that Mr. Sanford had been issued some summons by Law Enforcement officers in the past and when he approached him about this matter, he seemed to be hesitant to speak with him. Officer Bennis was asked about his statement that he had been able to set the location for number six. Officer Bennis said he found information about the original pound nets, found where they were and reset the site. Officer Bennis said he had talked with his chain of command before doing this. Officer Bennis said he was given authority by this Commission to set this location, but the Board did not vote on it.

Commissioner Bowman said he thought it would be better to say determination of the location versus the setting of the location. He said that this made it seem like the officer was doing this on his own when he was actually using the information available to him to do this.

Officer Bennis was asked about site number 5, he said he did the description to make it a better location as apparently there was an error in the original location. Officer Bennis said this with the approval of his chain of command.

Officer Bennis was asked that when he set the site for net number six he was determined to set it near net number four. Officer Bennis responded that he used the information he had from the license and that was the closest location and also staying on the Fort Story property line and not on that property.

Officer Bennis was asked to read from the two applications from Dirk Sanford submitted to Officer Clifton on July 7, 2008. He said these were given to him by Officer Clifton on July 9th. Officer Bennis was asked to identify three documents. Officer Bennis said these were three applications received by him from Mr. Sanford and ones that he had done. Officer Bennis said he could not set the first two application descriptions from the original description given. Officer Bennis was asked to read the description from the application he received and he said they were not the same as he had to reset them. Officer Bennis was asked what authority he had to make the changes to the application. Officer Bennis said he got his authority from his chain of command and he was setting a more accurate description with Latitudes and Longitudes. Officer Bennis said his chain of command was Sergeant Clifton, Captain Oliver and Colonel Lauderman. Officer Bennis reviewed

Commission Meeting

another application when asked, and he said he had advised Mr. Sanford to put these coordinates on the application. Officer Bennis said he used the equipment provided by State to set the numbers for this location. Officer Bennis said the original locations were too vague and he had put them in an exact location with latitudes and longitudes. Officer Bennis was asked if the Commission had authorized that the locations be reset. Officer Bennis said all of this was done with authority given him by his chain of command.

Officer Bennis was asked if he recalled a meeting with Mr. Hionis on July 9th about these licenses. Officer Bennis said he spoke with him to set a time to meet with him, which was done the following Monday. Officer Bennis said in response to a question if Mr. Hionis had asked to buy the licenses. Officer Bennis said he did not recall that. Officer Bennis said when he met with Mr. Hionis he did not remember telling Mr. Hionis that the Dirk Sanford's licenses would not be issued, only that they could not be issued until his investigation was done.

Officer Bennis was asked again about how he set the locations. Officer Bennis said he went out there and took approximate latitudes and longitudes at the old poles, it was not surveyed. Officer Bennis was asked when he was out did he see the nets. Officer Bennis responded yes, and when asked about it again, stated that net was not on an established license. When asked Officer Bennis said the location on the original application was incorrect and he was establishing a better description in the same approximate location.

Officer Bennis was asked about the original applications by Mr. Sanford submitted to Officer Clifton. Officer Bennis said there were dated 7/7/08. When asked, Officer Bennis said he was present when these were received. Officer Bennis was then asked about the applications received by him. Officer Bennis said was correcting the description with these applications and because it asked for the date submitted he dated them the same as the original ones. Officer Bennis was asked if he knew that the date's significance was that the first received was the one to be approved. Officer Bennis said he knew that. When asked, Officer Bennis explained that the original applications were off on the description and needed latitudes and longitudes. When asked about Mr. Hionis' making applications for the locations on July 9, 2008, Officer Bennis said he told Mr. Hionis that he could not accept them since other applications had been received.

When asked about site 5 and his changing the location. Officer Bennis said he did this in order to provide a better description and provide latitudes and longitudes for the site. Officer Bennis was asked if he was doing this under his own rules. Officer Bennis responded no, he was doing with approval of his chain of command.

Mr. Weisburg cross-examined Officer Bennis:

Officer Bennis was asked if he had reviewed the file of this case. Officer Bennis responded yes. Officer Bennis was asked if he remembered that Mr. Hionis on March 5, 2005 had purchased these licenses from Mr. Etheridge. Officer Bennis responded yes.

Officer Bennis was asked if he knew the history that Mr. Hionis renewed them. Officer Bennis said the original applications were March 9, 2005. Officer Bennis said that these documents were created by Officer Clifford. Officer Bennis said the 2006 document was not familiar. Officer Bennis read the document and it said January 5, 2006. When asked when they were next renewed by Mr. Hionis, Officer Bennis responded by reading from the file that they were renewed for 2007 on December 20, 2006. Officer Bennis was asked about the description for what was renewed on December 20, 2006. Officer Bennis read the descriptions off from his file and he read the license, which he believed were license number six and was forfeited. Officer Bennis was asked to pinpoint it on the slide on the screen, which he did, but stated it was approximate because of the slide was not very good. Officer Bennis was also asked to provide his map that depicted the sites of the pound nets and told to put number 6 by the one he considered number six, which he did. Officer Bennis was asked about if Mr. Hionis had renewed his licenses on January 10, 2008. Officer Bennis said not that he knew of. Officer Bennis was asked if he knew when Mr. Hionis did renew his license. He responded May 1, 2008. When asked if Mr. Hionis, prior to May 1, 2008, usually renewed all of his licenses when he renewed them. Officer Bennis responded that as far as he knew from the documentation, yes. Officer Bennis was asked about him receiving Mr. Sanford's application on July 7, 2007. Officer Bennis responded they were received by Officer Clifton. Officer Bennis was asked if Mr. Hionis had made application prior to July 7, 2007. Officer Bennis stated as far as Officer Bennis knew, no. Officer Bennis was asked if to date whether Mr. Hionis had made application for those nets. He responded, no. Officer Bennis was asked if he was aware of Mr. Hionis was fishing his nets. He said he knew he was fishing 1, 2, and 3 and he had not seen him at the last location, the east end near Cape Henry, net number 4. Officer Bennis was asked his method for setting nets. He said he started from the line from Fort Story, and he estimated that the existing stand was approximately 197 yards offshore. He said he started at this location because he could look at the highland and set it at approximately 197 yards. He said there were poles there and in order to have enough space between the other nets he determined this to be the correct location. Officer Bennis was asked if his description matched up with any of the license descriptions. He said it did to the original license number 6, which he read, which he used to establish the new location. Officer Bennis was asked if any of the descriptions on the licenses renewed by Mr. Hionis for 2008 matched this description. He responded no. Officer Bennis was asked to point out the ones that were renewed in 2008 by Mr. Hionis, which he did and stated they were license numbers 1, 2, 3, and he read the description of number 4 and pointed out where he thought it was located. Officer Bennis was asked if he knew Mr. Sanford. He responded no, but he did know of him as a waterman.

Mr. Jenkins asked questions on redirect of Officer Bennis:

Officer Bennis was asked if it was correct about Mr. Hionis applying for his licenses or renewing his licenses May 1, 2008. Officer Bennis responded yes. Officer Bennis was asked if he was aware of any applications for those 6 licenses that were submitted between January 10, 2008 and May 1, 2008. He responded that he was not aware of any

applications. Officer Bennis was asked if he said he could locate 4 of 6. He responded yes. Officer Bennis was asked about his meeting with Mr. Hionis and him telling Mr. Hionis that he could not apply as another application had been received. He responded yes. Officer Bennis was asked if he was asked if Mr. Hionis had every applied by Counsel and that he responded no. Officer Bennis was asked if he was the only officer to accept applications. He said that he did not believe that was not sure, but at that time he was the designated to do so, as of July 9, 2008. Officer Bennis was asked about a document for renewal submitted and he had pointed out the locations for counsel. He responded yes. Officer Bennis was show a chart of the pound nets and asked to point out the one he could not place previously. He pointed it out. Officer Bennis was asked if it fit the description. He responded yes. Officer Bennis was asked to read the 2008 renewal. He did so and he said on the license that they were now 2 through 7 and not actually 1 through 6 as he uses. He said in the past there were 7 licenses, but now there are 6. He agreed that it was confusing and from now on they were being numbered in a different way and he did not know why it was done as it was in the past. Officer Bennis was asked if in fact these nets had been there for 30 years. He said as far as he knew, but it could have been even longer.

Associate Member Robins asked him to designate the locations that had been purchased and then surrendered. Officer Bennis said that from what he had determined from the records in 2005, was that license nets 3 and 4 had been surrendered and in 2006, 5 & 6 had been surrendered and that had continued until this issue. He said in 2007 and 2006, licenses 5 and 6 had been surrendered.

Associate Member Schick asked if he had been working license 6. Officer Bennis said Mr. Hionis had been working license 6 in 2006 and 2007. He said at licensed site 5 he did not believe there were any nets.

Associate Member Tankard asked about his testimony that stands could be moved from 50 to 100 yards. Officer Bennis stated that was his impression from talking to the fishermen that when stands were damaged they would build it back beside where it had been located. Commissioner Bowman stated to clarify that the stand is not moved, just the stand location.

Commissioner Bowman asked Officer Bennis to stay for further questions later.

Sergeant Ed Clifton was sworn in and questioned by Mr. Jenkins:

Sergeant Clifton was asked if he received any training for accepting applications for pound nets. He said he learned from observation of other officers. Sergeant Clifton asked how it was done. He explained that if there was an opening, they would bring him the application. Sergeant Clifton was asked about a change in the rules that made it so that Officers were not selling these licenses any more. He responded it changed in 2007.

Commission Meeting

Commissioner Bowman explained that while he was Chief of Law Enforcement, he worked towards a change being made so that the officers would not be accepting monies as a part of their duties. He said work was done to change over to the computers so the officers would only be involved in the investigation and validation and location of stands, but not actually the transaction where money was involved. He explained that this part was transferred to the licensed agents. He explained that there were no problems, but he had felt that it was in the best interest of law enforcement to take the handling of money out of the uniformed officer's hands.

Officer Clifton was asked if there was any confusion among the officers. He responded no not really. He was asked about the weakfish closed season and what it meant to pound nets. He responded in this case it was 6 locations and in order to work during the weakfish season you would have to surrender 2 licenses. He said you would buy all six 6 licenses but surrender 2. Sergeant Clifton was asked about Mr. Hionis and his purchasing of the tags. He explained that Mr. Hionis would have had 6 tags, then would surrender 2 tags, and he (Marine Police Officer) would hold the 2. He said Mr. Hionis would expect to get 4 tags. Sergeant Clifton was asked to identify a document. He said it was a document for the transfer of license from Mr. Etheridge. Sergeant Clifton was asked if numbers such as 1 through 6 were used to identify these sites. He responded that he received a computerized copy of the renewal document with the licenses listed for Mr. Hionis and then he would indicate what were relinquished. Sergeant Clifton was asked if officers wrote out the licenses. He responded yes and collected the money for the license. Sergeant Clifton was asked to look at more documents. He said one was a document for the day Mr. Hionis bought the licenses, originally purchased from Mr. Etheridge. He said the second one was the following year when Mr. Hionis purchased 6 licenses then and he kept two of them. He said Officer Bennis checked his nets the next day and Mr. Hionis did not have tags on them. He said it was reported that they had been lost. He said he went to Mr. Hionis and issued 4 replacement tags at a dollar a piece. Sergeant Clifton was asked about two more documents, which he identified as the 2006 license and the document for the replacement tags. He said he believed he sold the tags to Mr. Hionis' wife and receive payment from her. Sergeant Clifton was asked if he could look at the licenses given to fishermen to keep on their boats and correlate the tag numbers on these and the 2005 licenses, which ones were which. Sergeant Clifton was asked if he could match the tags to the ones on the licenses. He said the 2005 applications had a star on them, because they were surrendered. He was asked if he could tell which tag went to which license. He responded it was up to the person to put the tag on the location he wanted to. Sergeant Clifton was asked if in the system it said which tag went to which license. He said on the computer list it does say. He was asked if the only thing concerning officers was that the fisherman was fishing only four nets. He responded yes. Sergeant Clifton was asked about the forfeiture notation. He responded yes after he is told which are to be surrendered. Sergeant Clifton was asked if in 2006 on the list tags were assigned to location and the only thing given to the license holder was the print out of the licenses. Sergeant Clifton was asked if it was correct that Mr. Hionis got only the 4 replacement tags. He responded that he had the two that were surrendered. Sergeant Clifton was asked

if when he was issuing the tags in 2005 and 2006 they were not concerned with which tags were surrendered. He responded no, only that the ones he was fishing did have tags on them. Sergeant Clifton was asked about May 1, 2008 when Mr. Hionis was notified by him that he would lose the licenses since he had not renewed them. He responded that he went there and told him he would have to renew them or lose his license. Sergeant Clifton was asked if he spoke with anyone at Long Bay. He said he did ask if Mr. Hionis has renewed his license, but did not discuss it any further. Sergeant Clifton was again asked if he knew the locations of the two surrendered licenses. He said no, that they put the tags where they wanted to. Sergeant Clifton was asked about a book that he kept with a record of the locations. He said that it was just a record he kept for himself not something the Commission had asked him to do. He said they would go by there and make sure that the tags were on the poles. Sergeant Clifton was asked if the nets had to be located. He said they just had to be licensed and have a plaque on it. He was asked if he spoke with Mr. Hionis after July 7th. He said no, the only time was on May 1st when he went and spoke with him. Sergeant Clifton was asked to identify 3 more documents. He said the first was the application for license filled out for Mr. Sanford for the two nets not bought. Sergeant Clifton was asked if his understanding was he was purchasing two sites that were vacant in the system. He responded, right, according to the main office they were. He said he also called the main office to make sure of that. He was asked if from his experience and training, he would you have changed locations on licenses that were applied for. He responded no. Sergeant Clifton was asked if this was something that you're trained to do. He said the applicant tells him the locations that he wants and he just writes that down. He was asked if he would go out on one of the VMRC boats and set a new location. He responded no. Sergeant Clifton was asked if this would be a proper thing for an officer to do. He responded no, it would not. He was asked if he would date it for a date other than when he signed it. He said no, July 7th was the date. Sergeant Clifton was asked if that was the date as an Officer of the law that he received it. He responded yeah, because that is the date he came into Operations at 1500 hours. He also added that it was time and date sensitive.

Mr. Weisburg cross-examined Sergeant Clifton:

Sergeant Clifton was asked if he testified that it did not matter to him what stand the tags were put on. He responded no, not what stands they put them on. Sergeant Clifton was asked if it matter to him that the locations fished are licensed. He responded right, a tag must be on the pole. Sergeant Clifton was asked if when the system was changed and if sent a letter out. He said he did not. Sergeant Clifton was asked if a letter was sent out by someone. He responded that he had heard that a letter was sent when it changed over to the computer system and the only a time was sent out was the first year. Sergeant Clifton was asked if then he testified that in May he went out and told Mr. Hionis that he still had not renewed his license. He said he notified him he would lose those locations if he did not renew them. Sergeant Clifton was asked if he explained to him that if he did not renew his license January 10, it was up for grabs. He said he was told that. Sergeant Clifton was asked if he was familiar with the license out at Fort Story. He said he knew that the

locations were out there and some the locations are there, but they have no poles there. Sergeant Clifton was asked to look at a map that was put into evidence. He said he had seen them when Officer Bennis showed them to him, he had not up until that. Sergeant Clifton was asked if he recognized the landscape. He said he knew it was the Lynnhaven area, just east of Cape Henry. Sergeant Clifton was asked if it was east of Cape Henry. He responded that he meant west of Cape Henry. He said it was between Cape Henry and the Lynnhaven fishing pier. Sergeant Clifton was asked if these were a true and accurate the way they were depicted. He responded that from Lynnhaven Inlet to Rudee Inlet. Sergeant Clifton was asked if he was familiar for these descriptions. He said he was familiar with the licenses. He said only by what was on the license. Sergeant Clifton was asked if he recognized what the document he was shown. He said it was it was one of the them and there should be five more. Sergeant Clifton was asked if it knew what it was. He said it was what the application for a fixed fishing device that they filled out when the met with Mr. Hionis at his restaurant that he and Mr. Oliver issued. Sergeant Clifton was asked if he could identify it on a map. He said he could not, because on some they have street names and you would have to get the street name and you would have to be on a boat to find the location. Sergeant Clifton was asked about the description on the document where it indicated the Fort Story line and was 425 yards offshore. He agreed. Sergeant Clifton was asked if with this description he could tell what this is. He said he would have to out there with another officer that up on the highland. Sergeant Clifton was asked if he was on shore, he could tell where it is. He said he would have to be out on the boat and someone else on the shore to line him up with it. Sergeant Clifton was again asked if the he with someone else on shore could tell where it was at. He said yes he could. Sergeant Clifton was asked if it would be exact. He said it would be close. He was again asked if he would be able to tell where it was from the map. He said he would not. Sergeant Clifton was asked if he knew which licenses Mr. Hionis renewed in 2007. He said he have to bring it up on the computer when they went to the computer system. Sergeant Clifton was asked if he knew which ones in 2008. He responded that he would have to have the computer printout to do so. He said in 2007 the printout showed the license forfeited and 2008 showed only the 4 licenses and he did not renew the other 2 stands. Sergeant Clifton was asked if he knew which 2 stands. He said he did not know. Sergeant Clifton was asked about when he did this transaction where he forfeited two and if he gave him the licenses as well to go with the tag. He said that is the license, he surrendered 2. He was asked if he got the licenses with the plate. He said this comes from the agent. Sergeant Clifton was asked if when they forfeit the license they keep the license. He responded that he gets it 6 locations and they keep 2. He said that this is what is printed out by the agent and he does not see it. Sergeant Clifton was asked if all he gave Mr. Hionis was the 6 tags and he gave him back 2. He said up until 2007. He said in 2007 all he did was go online and approve him to be able to go to an agent to purchase his licenses. Sergeant Clifton was asked if he said that when Mr. Sanford wanted to buy some licenses. He said he could not understand why Mr. Hionis did not buy the 2 licenses. He said he was confused because had always bought 6 licenses and surrendered 2. He was asked if he went out there on May 1st to see Mr. Hionis. He said he was not clear on the date and he was told it was a misunderstanding. He said he told Mr. Hionis that he could not help that as the man had

come in and applied for the license. He said he had to give them to him. Sergeant Clifton said he was again told by Mr. Hionis that it was a misunderstanding and he was going to check on it. Sergeant Clifton was asked if he asked him why he did not buy the licenses. He said he did not ask him that, but told him he had to buy the 6 to keep the 4 that he had.

Officer Clifton was asked questions in redirect by Mr. Jenkins:

Officer Clifton was asked about the ability to place these on a map. He responded for him to do it would be difficult. Sergeant Clifton was asked as 2 officers being needed to do this. He responded yes, or by GPS. Sergeant Clifton was asked if GPS was sometimes incorrect. He said sometimes it could be, but not by much. Sergeant Clifton was asked if this was a non exact science used by the officers. He responded that this is the way they have done it before he even came on. He said they would use street locations and landmarks, like that.

Commissioner Bowman asked if there were questions by the Commission.

Associate Member Tankard said he wanted to clarify this. He asked if in May when he visited Mr. Hionis, if he had purchased any license at that time. Officer Clifton said he had only purchased 4 and he did not understand why he did not purchase the 6. He asked if he knew when he had purchased the 4. Officer Clifton said he did not as he had purchased them at Long Bay Point Marina. He said he did not sell them to him as that was done by computer. He asked when Mr. Sanford approached him to buy the other two. Officer Clifton responded that it was July 7th.

Mr. Holland asked about the metal tags that where put on the stand. He asked what stands the metal tags were put on in 2006 and 2007. He asked if they put on 6 and if there was any record. He responded that he puts them on what ones he wants to. Mr. Holland said that we do not know stands they were put on in 2006 and 2007. Officer Clifton agreed they did not.

Associate Member Schick if when he gave back the 2 licenses, but he is not telling you give two back and he noted it on the license. Associate Member Schick asked if tag number 185 that was surrendered would correlate with a stand. Officer Clifton said no.

Commissioner Bowman said to clarify, if he purchased 6 licenses and there was the printout, he would tell you he was giving back 1 and 2, just for example, did he know which stand he was not going to fish. Officer Clifton responded no.

Officer Clifton was excused and allowed to leave.

Lt. Col. Warner Rhodes was sworn in and questioned by Mr. Jenkins:

Lt. Col. Rhodes was asked about his position in respect to the chain of command. He stated that he was the Deputy Chief of Law Enforcement and in charge of field operations. He was asked if the field officers reported to him. He explained that they reported to the area supervisors and the area supervisors reported to him. He was asked if there was any training for the officers in their acceptance of the applications for pound nets. He responded yes. He was asked to describe what they were trained in. He explained that they were to accept the applications and were supposed to scan it for completeness and correctness and that is it. He said they sign and date it as to when it was received. Lt. Col. Rhodes was asked if the signature and date were essentially saying this was the day it was received. He responded yes. Lt. Col. Rhodes was asked if they signed it to a date previous would that be incorrect. He responded yes it would. Lt. Col. Rhodes was asked if that would be something that would cause an alarm within your force. He said that would cause an alarm with him. Lt. Col. Rhodes was asked if someone applied with an application and the officer in looking at it realized the description was incorrect or not vacant. What would be recommended that he do that. He explained that they should get with the applicant and correct it. Lt. Col. Rhodes was asked if they were authorized to correct it themselves. He stated that they are authorized to make the description is as complete as possible and clear. He was asked if the applicant came back three weeks later and the officer realized something was wrong. He asked him if they redid the application and back dated for the date when it was originally received, would that be a problem. He responded that he would have made an amendment on the application that was originally received. Lt. Col. Rhodes was asked if it was appropriate to change a location of a vacant pound net license and redesignated the coordinates. He answered that it would not be appropriate without first talking to the applicant and working it out. Lt. Col. Rhodes was asked if there were authorized to change locations. He said to clarify a location and to make it as accurate as possible, yes they would be, essentially to avoid situations like this. Lt. Col. Rhodes was asked if there were any regulations authorizing that. He said he could not think of any that spelled out that in particular. Lt. Col. Rhodes was asked if Officer Bennis was asked to investigate this situation. He responded no. Lt. Col. Rhodes asked him if he were aware of what was going on. He said at some point he did. He asked if he was asked to prepare a presentation for the August Commission meeting. He responded yes, he was. Lt. Col. Rhodes asked when he had become aware that Officer Bennis family was working at Long Bay Marina. He responded on the day he has spoken with Mr. Jenkins and the question was raised. Lt. Col. Rhodes was asked what he found out after that. He explained that he had two daughters occupying same position at Long Point Marina, and when one was not working the other one was working that position. Lt. Col. Rhodes was asked if he felt the chain of command should have been advised of that. He responded no. Lt. Col. Rhodes was asked if he did not see any problem. He said he did not see any relevance. He was asked if Officer Bennis were good friends of the owners of that facility. He said he did not see a problem with that, we all have friends. Lt. Col. Rhodes was asked if that should have been disclosed at the presentation. He said he did not believe so. Lt. Col. Rhodes asked if he had investigated any further Officer Bennis' involvement with the individuals that own that facility. He answered he had not, not since he had inquired about his daughters working at the marina. Lt. Col. Rhodes was asked if

the Marine Resources Commission has any rules or manuals regarding conflicts of interest. He said they do. He was asked to give examples of what would be considered conflicts. He said if any officers were owners in a business being investigated he would that a conflict. He said also if they socialized with people they were investigating. He was asked to further on the word socialize. He explained that meant spending more time than a casual conversation together. He said he was talking about taking trips or vacations together, spending numerous hours. He was asked if he was aware that Officer Bennis backdated a couple of documents in this matter. This questions was objected to and was sustained by Commissioner Bowman. He was asked if he had knowledge of the date discrepancy on Mr. Sanford's application. He responded that he did not. He was asked to look at the documents in question. He was shown the 2 applications received by Office Clifton on July 7, 2008. He was asked if he recognized these types of documents. He said he recognized it as an application for a fixed fishing device. Lt. Col. Rhodes was asked if he was aware of any training, provision or any within the department that would instruct an officer to accept an application for a vacant pound net. He said he could not think of any.

Mr. Weisburg did not cross-examine Lt. Col. Rhodes.

Lt. Col. Rhodes was asked about an exhibit of an application and if he recognized it. He said it was an application for a fixed fishing device. Lt. Col. Rhodes was asked if was submitted by Dirk Sanford. He responded, yes. Lt. Col. Rhodes was to read the description, which he did. He was asked if he would be able to identify it. He said he could with the coordinates. He was asked if he could identify it without the coordinates. He explained that he would have to go to the site and look. He was asked that if he did, could he. He responded that he could come close. He was asked to look at another document and asked if he recognized it. He responded that that was also an application for a license for a fixed fishing device. He was asked if it was submitted by Dimitri Hionis in 2005. He said that was accepted by Officer Clifton in March of 2005. He was asked if he could tell any difference in what was submitted by Mr. Hionis and what was submitted by Mr. Sanford in 2008. He responded that it seems to be the same description, except it does not have the latitude and longitude on it. He was asked if it was true that that was the only difference. He responded that was all that he could detect here.

Mr. Jenkins asked him some redirect questions.

He was asked to look at the same documents. He was asked if he had received those documents with the latitude and longitude on it, where would he have gone to see where they were asking to put the item. He responded that he would go to a chart with latitude and longitudes on it or he would go to the location and see where the landmarks were and go from there. He was asked if it had the latitudes and longitudes on it that would be all that was needed. He said you want make sure that they agree with each other.

At this point Commissioner Bowman asked if the Board members wished to continue with the hearing. He explained that some of the Board members had 3 or 4 hour drives to get

back to their homes. He realized the importance to their clients. He asked the attorneys how much more they had. He said there were 6 witnesses for Mr. Hionis and two witness and recalling Officer Bennis for Mr. Weisburg. He estimated that it would be approximately 2 more hours. He asked if they wished to continue in order to finish and if not a special hearing would have to be scheduled, because he was told by staff that the October agenda would be full. He said he would need to have the whole board present. The general consensus of the Board members was to continue with the hearing.

* * *

He adjourned the meeting for a 5-minute break.

* * *

When the meeting was reconvened, Dirk Sanford was sworn in and questioned by Mr. Jenkins.

Mr. Sanford was asked if he had been convicted of a felony. He responded yes. Mr. Sanford was asked what that was for. He said that it was for malicious wounding. He was asked when that occurred. He responded twelve years ago. Mr. Sanford was asked where it occurred. That response was not audible. This was objected by Mr. Weisburg and was sustained. Mr. Sanford was asked about he found out about the licenses he obtained. He responded from Erik Barth. He was asked who that was. He explained that Erik Barth was a VMRC employee and he guessed he counted the licenses that are available. He was asked if he had conversations with Officer Bennis regarding how you acquired that knowledge. He said he did not know. He was asked to look at an exhibit which he said were copies of two applications and if he was familiar with them. He responded yes. He was asked when he submitted those documents. He responded July 7, 2008. He was asked about the next two documents. He then asked which ones. There was an objection made for and it was asked that more identification information needed to be put on the documents. Mr. Jenkins was asked to do that. He said he would identify them as 3A, B, C, and D. Mr. Sanford was asked if 3A was the application submitted to Officer Clifton. He responded yes. He was asked if this was the one that the description started at 1,800 yards. He responded yes. He was asked if B would have the description that started with east of Lynnhaven Inlet. He responded yes. He was asked if this submitted to Officer Clifton as well. He said yes. He was asked if this was the first set of his applications. He responded yes. He was asked if C and D were those in the second set and if the descriptions on the first one started with approximately 200 yards. He responded yes. He was asked if this was given to Officer Bennis. He said yes. He was asked if D is the one with the description that starts with lower Chesapeake Bay. He said yes. He was asked if it was also given to Officer Bennis. He said yes. He was asked if all the applications were filled out on the same date. He responded no. He said when these were filled out the applications was it done in his hand writing on the top and he got it from Officer Bennis. He said yes. He was asked what the date was when it was submitted. He responded he did

not know. He was then asked if it was July 7th. He responded no. He was asked to read the portion next to his signature. He read it and it said, given under my hand this 7th day of July, 2008. He was asked if then signed it. He responded yes. He was asked if it was his signature that stipulated the date it was submitted. Mr. Weisburg said they would accept those were submitted sometime after the 7th. Mr Jenkins agreed to the stipulation. He was asked if he recalled if the date was discussed. He said he did not remember. He was asked if he owned any other fixed fish licenses. He said yes. He was asked how many he owned. This was objected to and it was sustained. He was asked what he had purchased with the \$10,000. He said nets, poles and rope. He was asked if he did not have some existing supplies. He answered not to go on these stands. He was asked if he had receipts. He said yes, but he did not have them with him.

Mr. Weisburg cross-examined Mr. Sanford:

He was asked if he was of any relation to Officer Bennis or Sergeant Clifton. He answered he did not. He was asked if he found out about this from calling the Commission. He stated that he talked with Erik Barth. He was asked when he called what was he told was available. He said he was told there were licenses available up the Bay and he asked where Mr. Hionis's were because he wanted to move the ones up the Bay down to the lower part of the Bay and he did not want to go over top of his other two stands that weren't being fished. He was asked about his initial intention when you thought about this business endeavor. He was asked if it was his goal to take Mr. Hionis fishing spots specifically. He responded no to both questions. He was asked what his goal was. He said was to put out two more pound nets. He was asked if he called the Commission and you found out what was available. He said yes. He was asked if he made his application the first time July 7th. He said yes. He was asked to look at the now marked 3A and asked if he recognized that document. He said yes he did. He was asked if it read 1,800 yards east of stand 5 in line with State Park-Fort Story approximately 425 yards offshore running in a northerly direction. He agreed that was correct. He was asked if it had GPS coordinates on it. He said yes. And he was asked if he submitted this one through Sergeant Clifton and submitted on July 7th. He said yes. He was asked if it was actually July 7th. He said yes. He was asked about 3B and if the application states that the location of device, east of Lynnhaven Inlet, west of Fort Story approximately 1,400 east of stand number 4 running in a northerly direction. He agreed it was correct. He was asked if it had GPS coordinates on it. He said yes. He was asked if he submitted this one through Sergeant Clifton on July 7. He said yes. He was asked if it was actually submitted on July 7th. He said yes. He was asked about 3D and if the application said location of device stated lower western shore of Chesapeake Bay. He agreed that was correct. He was asked if it included the GPS coordinates. He stated yes. He was asked if that application was dated August 26, 2008. He said yes. He was asked about the next one designated as 3C, tendered on July 7, 2008 is what it is dated. He said yes. He was asked if this was not when he submitted it. He responded no. He was asked if he submitted it sometime after July 7th. He responded, sometime later in July. He was asked about the description on that which said the location of device was 200 yards west of Fort Story Army Base and First Landing State Park

property line, 97 off MMLW. He agreed that was correct. He was asked if it also had some GPS designation. He said yes. He was asked if he had resubmitted this application. He said on this one the description was made more correct in the location of Hionis site. He was asked if he paid attention to the date when he signed it and dated it. He explained that he was trying to copy it. He was asked about the first application he made and what he did he understand about that spot. He said after he filled out the application he thought it was the vacant spot and where there was not any poles. He said also that the second day when he was looking at it he realized it was where his trap 6 was. Mr. Weisburg noted that it had been marked as D and the description was lower Chesapeake Bay at Cape Henry, approximate latitude and longitude is given. He was asked if this was true. Mr. Sanford responded yes. He was asked if it was dated July 7, 2008 and that was also submitted later in July. He said yes. He was asked where he thought this location was. He said just west of stand 6. He was asked if he understood that a net was there. He said no, not there. He was asked when he made the later application you were actually applying for spot you knew Mr. Hionis did not even have a net at. Mr. Sanford responded yes. He was asked about some earlier testimony about his going into see Sergeant Clifton in May and if he remembered it. He said he did not. He was asked if he could explain why he thought that. He said he though he was confusing him with his brother. My brother was looking for some licenses. He was asked if he did not go and talk with him in May. He said no, he did not. He was asked if he had any question of that in his mind. He said no he did not.

Commissioner Bowman said that Counsel had told him there are now three 3D's. Mr. Weisburg said there was a 3D and one was just D and he would redesignate that one. He designated that as 3E.

Mr. Weisburg continued his questioning of Mr. Sanford.

Mr. Sanford was asked about how much money had he spent on this endeavor. He responded also \$10,000 and quite a bit of time. He was asked if he had seen Mr. Hionis fish in these spots after this or after July. He responded yes he did. He was asked when. He said that last Sunday, he and his wife witnessed Hionis' boat, the Russell fishing trap 6. He was asked if trap 6 was which trap in his mind. He stated that it was the furthest to the east near Fort Story, 400 or 500 feet or so from Fort Story.

Mr. Jenkins did not have any redirect questions for Mr. Sanford.

Commissioner Bowman said he had a question of Mr. Sanford. He asked him if anyone from the Marine Resources contacted him prior to you contacted Erik Barth who is for the record our coordinator as far as these licenses are concerned. He asked if anyone from the Commission without solicitation call you and advise you that there were stands available. Mr. Sanford said no.

Associate Member Robins asked at what point in the application process did he realize that trap number 6 was active or actually being fished. Mr. Sanford said it was probably the

next day July 8th after he submitted the application. Mr. Sanford said he had never realized that that trap was being fished when he filled out the application.

Associate Member Tankard asked about trap 6. He asked if he came back after July 7th to make it more correct the positions. He asked if that was his testimony. Mr. Sanford said he did not, but Steve Bennis came back and he wanted him to do the application and he did not know the reason behind that.

Connie Barber was sworn in and questioned by Mr. Jenkins:

Mr. Barber was asked what his occupation was. He said he was part owner of Long Bay Bait and Tackle. He was asked how long he had been part owner. He said ten years. He was asked if he worked for Mr. Hionis. He responded yes. He was asked how long he worked for him. He said for about 6 and a half years. He was asked when he left was it under bad terms. He responded sort of. He was asked if it was safe to say he and Mr. Hionis were not best friends. He said he was not there when he quit. He asked again if the two of them got along. He said they talked and communicated. He was asked when he gained any information that this incident occurred with two licenses not being renewed in the computer system. He said he guessed probably a month or so after Mr. Hionis had bought his. He was asked if this was in August. He said no, his understanding was that he bought the licenses on May 1st. He was asked if he was saying a month or so after Mr. Hionis came in. He said yes, he wasn't there that day. He was asked if that would have been sometime in early June. He said mid-June. He was asked how he found out. He said his partner told him that they had called inquiring about Dimitri purchases. He was asked who was they. He said the VMRC officer. He was asked if he knew which officer. He said he was not there, he thought he had been told that it was either Officer Clifton or Officer Bennis. He was asked if this was sometime in mid-June. He said yes. He asked how familiar he was with Officer Bennis. He said he had known him since he went to work for VMRC. He was asked in what respect he knew him. He said as an officer and he said they had been license agents probably about 5 or 6 years. He was asked if he saw him regularly. He said when they are making their patrols they stop in. He was asked how many times a week. This was objected to, but he was allowed to continue. Mr. Barber was asked if he came in daily. He said no. He was asked if it was a couple times a week. He said sometimes it might be twice a week and sometimes not all. He asked him if Officer Bennis had family members working there. He said that his daughters worked for him. He was asked if he visited more when his daughters worked there. He said no. He asked if they still worked for him. He said they were just summertime help. He was asked if they would come back the next summer. He said he did not know as she would be graduating college and probably move on to her career choice. He asked if he had had any conversations with Officer Bennis regarding this dispute. He said if he had questions about any procedures that we do and nothing that he could really put his hands on. He was asked if he could recall any conversations that he had with Officer Bennis about the licenses. He said the time frame as far as when this all went down, he is not positive because he was not paying attention, what time of the month, he said he worked 7 days a

week and when the questions came up as far as when they called and asked about the license and at the same within a week or so the first time that Mr. Sanford had showed up and asked me to look into the computer and see if they had released the license. He said if this was in regards to his July application. He said right. He was asked if he came back to his facility to purchase the license. He said right, once they told him whatever information he needed and he just needed to see if it was released yet. He was asked when he discovered in mid-June that these licenses may be vacant in the system did you tell anyone else. He said he did not know they were vacant. He was asked about his statement about finding out about this in mid-June. He said there were inquiries about Dimitri purchasing his licenses and nobody had told him that anything was available. He said the only time he found out anything was available was when Mr. Sanford had come and that was when he learned that there was two licenses that he had applied for. He was asked about his comment about his position as an agent to sell these licenses and was asked if he got any training for that. He said when they first came by to set the system up, that was when they trained him. He was asked if everybody was trained on it. He said yes. He was asked if everybody was certified as an agent. He said it was he and Mr. Wray and they would show anybody else, our managers who needed to know. He was asked if he understood what forfeit meant in the computer and had he seen it come up from a previous year for these licenses. He said he had never seen it come up. He was asked if he had never seen the identifier that something was forfeited in the previous year of the computer system. He said right. He was asked how many pound nets licenses did he sell in a year. This was objected to and it was sustained. Commissioner Bowman said at this point that this gentleman was not present when the license was purchased. He said he could ask the person who conducted this transaction the same questions and he felt this would be the most appropriate one to know whether he is confident.

Commissioner Bowman told Mr. Barber he was excused and could leave. He asked him also not to discussed his testimony with anyone.

Mr. Weisburg did not cross-examine Mr. Barber.

Steven Wray was sworn in and questioned by Mr. Jenkins:

Mr. Wray was asked about his training that he received as an agent to sell licenses for the State. Mr. Wray said the only training he received had been when they set up the computer system and they showed them how to operate the computer program. He was asked if he were co-owner of Long Bay Point Bait and Tackle. He said he was. He was asked if he and Mr. Barber were the owners. He said yes. He was asked if he could identify a document for him. He said it appeared to be a license renewal for pound nets. He was asked if he saw it that day when he was pulled up the computer dealing with Mr. Hionis application. He said unless he saw he pages before that he would not know it was his or not. He was asked if he testified at the Commission previously in this matter. He responded yes, he did. He was asked if he submitted a document and testified that the document was a computer printout. He said he did not. He was asked if he talked about

what he saw. He said he talked about a document that he saw that Officer Bennis had with him and presented it. He also said he did not present it. He was asked if this was not the same document that Officer Bennis showed you. He said it appears to be. An objection was made and was sustained. He was asked if this a fair depiction of what he saw that day. He said he would say yes that was a fair depiction.

Commissioner Bowman asked which day, the day he sold the license or the day of the previous hearing. Mr. Jenkins said on May 1st when he sold the license. Mr. Wray said in the previous hearing Officer Bennis handed this up and said that the document he had in his hand was the document that he came to his shop and printed it off the computer.

Mr. Jenkins continued his questioning of Mr. Wray.

Mr. Wray was asked if this was fair depiction of that document. Mr. Wray said that looking at the document he would say yes, because it is showing the licenses sold and the 2 that were still available. He was asked if it was true that he testified that he does not understand how all these commercial fishing licenses work. Mr. Wray said that that was correct. He was asked if that was specifically fixed net licenses. He said that was correct. He was asked if he said that he rarely sold these things. He said that was correct. He also said he believed checking his records, he believed that he had 7 that he would sell each year. He said he was sent seven plates for this year. He was asked if he was true that he did not any idea how pound net fishing worked as far as the surrendering worked and these sorts of things. He said that was correct and until this situation came up he had no idea. He asked if he understood the whole concept of surrendering or forfeiture. He said no, he did not. He was asked to look at the bottom of the screen and on the second page of the two page computer printout of one computer screen. Mr. Wray said right. He was asked he saw where it says forfeited at the bottom, that it was forfeiture in 2006. He responded right. He was asked if he understood what that meant when he pulled it up. He said no, he did not. He was asked about the one above that where it said forfeited in 2006, east of Lynnhaven Inlet, if he did not understand what that meant. He said no, he did not. He was asked if he told him previously that when Mr. Hionis came in there was always some contention when he comes in or something to that effect. He said not contention, usually trying to buy a license or whatever without the proper card. He continued to say that it had only been several occasions of that and once before an agent had come and tried to buy his crab pot licenses and at that time they were handwritten and they had to be signed by the person who owned the license. He said those were only two. He was asked if he had made the comment that it was memorable. He said right. He was asked on the day when that transaction took place that he testified previously that there was no discussion about whether or not there was 6 licenses available. He responded correct. He was asked if it was safe to assume that he might have misinterpreted that forfeited meant that those were not available. He said that was possible. He was asked if he had any conversations with Officer Bennis regarding this case. He said yes, he had. He was asked what these conversations were about. He said that Officer called him when he was assigned to investigate it and asked me what transpired with the sale of the licenses. He was asked if

that was when this was pulled up the document and printed it. He said no, he did not. He also said that he actually came back before the last hearing and printed that out so that he would have it with him. He said he was asked if he had a conversation other than this. He said right, that he our agent in our area so he is in and out of the shop all the time. He said he had not seen him much in the last month. He was asked if he had conversations with his daughters about this case. He said he had not. He was asked when he had that transaction with Mr. Hionis how many plates did he give him. He responded 4. He was asked if he pulled out 6 plates. He said no. He was asked if he pulled out just 4 plates and hand them to him. He said no, he had to take the plates out and take the plate number that assigned to that plate and affix it to one these screens that pops up and he has to assign each to that license. He was asked if he did that. He said that he does that himself.

Mr. Weisburg cross-examined Mr. Wray.

Mr. Wray was asked when Mr. Hionis came into his shop. He said for purchasing of the licenses on May 1st. He was asked if when Mr. Hionis came in there on May 1st had he ever been in there before to purchase these licenses that year. He said no. He was asked if he was talking to somebody when Mr. Hionis came in. He said correct. He was asked if it were a salesman. He said right. He was asked his name. He said it was Doug Menning. He was asked if Mr. Hionis came in and said he wanted to purchase his licenses. He said that was correct. He asked if he typed up his information on the screen. He said the first thing he had to do was sign in and get onto the system and then I have to have his commercial ID number in order to access his information. He was asked if he told Mr. Hionis that you needed his commercial ID number. He said he said he needed his ID number. He was asked if there was a discussion where Mr. Hionis said you can just pull me up. He said right, he said he said to look his number up. He was asked if he told him that no you can not. He said that was correct. He said that Mr. Hionis went out to his car and came back few minutes later and brought his license in. He was asked about the license that he brought in and was it the license that is license for each of these pound nets. He said no, it was just his commercial card that he has to have in order to purchase any of his licenses. He was asked if he plugged that into the computer. He said right. He said he was asked if it pulled up all the licenses that he has. He said that was correct and anything that he is eligible for purchase. He was asked what was discussed about the licenses on the computer and how many he would renew. He stated that he asked him which ones he wanted. He was asked what did Mr. Hionis say. He said Mr. Hionis said that it did not matter and he said he told him that addresses were assigned to them and which ones did he want. He said also he checked for the amount of plates he had to make sure there would be enough. He was asked if he only had 4. He said he had 7 o r it might have been 6. He was asked if he were sure. He said he did not know how many, he just wanted to make sure he had enough. He was asked if he told Mr. Hionis that it did matter. He said that he told him there were addresses with each of them, which one did he want. He was asked what Mr. Hionis said. He said that Mr. Hionis said that it did not matter. He was asked what did he say. He said he asked him which ones he was fishing. He was asked if he showed him the screen. He said yes, the screen was right there in front. He was asked

how he was told which ones he wanted. He said he just read off the addresses. He was asked if Mr. Hionis said I'll take that one. He said Mr. Hionis said he take that one and that one. He was asked if he discussed if he was sure he did not want that one. He said when we were done with 4 that was it. He was asked if the he issued licenses for the first 4 that he said. He said correct. He was asked if he assigned a plate for that address. He said he did for each license, right. He was asked if anything else happen after that. He said I gave him license and he wrote a check and then went out the door. He was asked if Mr. Hionis tried to give back 2 licenses. He responded no. He was asked if he talked about any other licenses he had. He said no.

Mr. Jenkins continued questioning Mr. Wray in redirect.

He was asked if he asked which ones do you want and he said that it does not matter. He said correct. He was asked if he had said that he did not understand the forfeiture concept. He said that was correct. He was asked if Mr. Hionis said he did not want 2 of his licenses. He said no. He was asked if he read off 4. He said correct. He was asked if he read off anymore. He said no. He was asked if Mr. Hionis ever said he did not want that one or that one. He said no. He was asked if he went through 4 after Mr. Hionis said he wanted to renew his licenses. He said correct. He was asked if he gave him 4 plates. He said correct. He was asked if he thought Mr. Hionis had the authority to fish off all 4 plates. He said he had no idea.

Commissioner Bowman told Mr. Wray was free to go and asked him not to discuss his testimony with anyone.

Paul Schulz was sworn in and questioned by Mr. Jenkins:

He was asked if he was familiar with the pound nets between Lynnhaven Inlet and Fort Story. He said yes, that he had been around them for a number of years. He was asked what was his exposure to them and how long had he been around them. He said in the early 90's he had a charter boat and he was with Lynnhaven Inlet, but he got know Kenny Etheridge with the pound nets so he got to go out and help him out just because it was good exercise and he was a physically active person. He said he got to learn how it all worked. He said he never learned to mend or make a net, but he put one up and fished one. He said when Dimitri got them, he went to him and told him he liked to do this stuff and offered to help him out. He said Mr. Hionis said no problem and he goes and helps whenever he wants to and he was not on a time clock and he still did it to this day. He said he was going to be 74 years old and it kept him physically active and in good shape. He said he had this experience since the early 90's. He was asked if off and on and on a part time bases he had helped worked these nets. He said yes. He was asked if there had ever been any confusion over which nets were being fished out there. He said no there have always been 4 sites out there and fished historically as far as he were familiar with it. He said that's the 4 basic places that they are set up now within a few feet. He said if they were torn up they would put the new pilings over a few feet where you have clean ground

and it would not tear up the net. He was asked if there had been confusion over the surrendering over of certain licenses and being able to fish those nets. He said no there were always the 4 nets fished and the 2 offshore nets that were not fished and other than that these basic 4 sites have been fished as far as he was familiar with it. He was asked if he was familiar with any contention involving Mr. Etheridge's licenses to these nets. He answered the only thing that he recalled was that he had to give up the two for weakfish and the number 4 which he always called the Cape Henry net he had not put a net on it and he was approached and told he would lose that net because someone else was interested in that net if he was not fishing it. Mr. Etheridge just put a piece of net on it so he could legally say I'm working that net. He said he heard rumors as to who it was but it was a questioning of that and it was just hearsay

Mr. Weisburg did not cross-examine Mr. Schulz

Commissioner Bowman told Mr. Schulz that he could leave and told to not discuss his testimony with anyone else.

Richard Welton was sworn in and questioned by Mr. Jenkins:

Mr. Welton was asked to tell what his familiarity was with this matter. He said several years ago he went to work for Mr. Hionis for the purpose of running the new net that was under construction at the time. He said also that he was present with Mr. Hionis when he negotiated with Mr. Etheridge and bought the nets. He said as a matter of fact he was sort of a part owner and paid some money to Mr. Etheridge too. He said he actually ran the operation for a year and a half. He was asked if in all this time was there any confusion about the nets. He said no. He explained that when it was bought that one net was not being fished. He said they bought 6 nets and 3 of them were not being fished and 2 were not intended to be fished and given back to the VMRC. He said the license were given back so as to comply with the National Marine Fisheries to reduce the catch of grey trout. He said there was a 4th one that did not get fished for several years, however, a piece of net was put on it every year to maintain the right and eventually while he was there the net was rebuilt and it was fished. He was asked if he worked on the nets on the behalf of Mr. Hionis. He said yes. He was asked if he was involved when Officer Bennis raised an issue regarding an extension coming off one of the nets. He said no. He said as there any concern that you know of that was expressed by the VMRC as to which license was surrendered and which licenses were identified on the pound net. He said no. He said the first time they (VMRC) asked the licenses he did not have them and he was afraid they did not have them and he went to Mrs. Hionis and she did indeed have them. He said he understood that Officer Clifton had dropped them off and he kept them in a notebook in a plastic sleeve and a canvas bag. He said he took them on the boat with him every day after that so that he had them. He said he was only asked if he had the 4 licenses. He was asked if essentially they were only concerned with that there were 4 plates to put out there. He said absolutely.

Mr. Weisburg cross-examined Mr. Welton.

Mr. Welton was asked how long he had worked there. He said a year and a half. He was asked if he was involved in any of the renewal process of his licenses. He said no.

Commissioner Bowman told Mr. Welton that he was free to go

Mr. Dimitri Hionis was sworn in and questioned by Mr. Jenkins:

Mr. Hionis was asked to describe what happened on May 1 involving the renewal of his licenses. He said he received a phone call from Mr. Clifton who told him he had no licenses. He said was told he needed to go to Long Bay Point and get them right now. He said he said he would do it and he left right then to go to Long Bay. He was asked to explain what happened when he went there. He said that it was hard to describe, but here the people do not like him and he arrived there and asked if he could get the licenses. He said that he was talking to someone about a problem. He said he had to wait and then he was told they needed his ID number. He said he told him he did not have it with him. He said he was trying to avoid going back to get it. He said he realize that he could not go through him because he had done the same thing with Mr. Welton the year before. He said he told them he would go back, but when he went to his car he decided to look in his wallet and he found it. He said he came right back into the marina and he gave them his license. He said he was approximately 10 feet from him and they asked him what he wanted. He said he said that he wanted his licenses for his pound nets that he had from last year, copy the same license. He said they looked at the computer and they came up with the license. He said he was given the license and he paid him and left. He was asked what he was given. He said he gave him the license. He was asked if he got some plaques. He said he was given the 4 plates and the tapes from the computer. He was asked when he got his license in the past how many plates did you get. He said he got 4. He was asked if when he left he believed he had purchased all 6. He said no. He was asked that when he bought the licenses from Mr. Etheridge how much did he pay for those licenses. He said \$140,000 plus what he spent. He was asked how much did he spend on these nets since he purchased them. He said approximately \$150,000 more. He was asked what he purchased for the nets. He said he purchased a number of pilings and brand new nets and he had all the receipts. He said he paid for all the labor, all the work and the materials at approximately \$150,000. He was asked if he had employees working these nets. He said yes. He asked if they had been employed since 2005 in that time frame. He said pretty much. He was asked how many employees he had. He said 8 to 12 people and it was 12 most of the times. He said it actually more because he had employees that worked in his other store. He said he had a fish market that depends a lot on this business. He said he could say there are more than 12 people. He was asked the time period in July and how he found out that there was this error or vacancy. He said Mr. Bennis came up he claimed to his deck and came up in the office and he asked me if he could see the licenses. He said told Officer Bennis they were on the boat and not with me. He said he asked him if he remembered what license he had. He said asked Officer Bennis what he meant. Officer

Bennis said the you are missing 2 licenses. He said he told him he did not know and was this something new. He explained that at this time he put him on the speaker phone and called Connie Barber or Steve Wray at the Long Bay Point Marina. He said on the speaker phone he asked whose license he had. He explained that there was a claim that he had only 4 not 6. He said Officer Bennis was sitting right next to him and listening.

Commissioner Bowman asked who was he speaking with, Connie Barber or Steve Wray. Mr. Hionis stated it was Steve Wray.

Mr. Jenkins asked him what happen in that conversation with Mr. Wray. Mr. Hionis said that Mr. Wray said he would let him know. He said he was told then he could not get into the computer to let him know what it was. He said he did not know what he had. He was asked if Officer Bennis there in his office or somewhere outside of your business. He said yes. He was asked if he asked to purchase those two license at that time. He said immediately. He asked if he were told that he was not allowed to. He responded that there was something else that Officer Bennis and Officer Clifton called him. He said Officer Clifton never came to see him, but he called him. He said he asked Officer Clifton if he could have these licenses that he was told he did have any longer. He said he was told he would have to go to Officer Bennis. He said Officer Bennis came to him. He said he asked him if he could have this license. He said he was told that they were working on something and he did not know if they could do that. He was asked if this was on or about July 9th. He said it was July 9th, yes. He was asked if Officer Bennis made any other statements about what was going to happen with these 2 licenses at issue. He said Officer Bennis told him that Mr. Sanford would never get those licenses. He was asked if he had something he had to say to the Commission. He said he was listening to the testimony from almost everybody here and he really respects Officer Clifton as he thought he was a very honest man. He said Officer Clifton said he came to see him in his office and he was a 100% sure he called him. He said he told him to go right now to Long Bay Point and get your licenses. He said he was trying to help him that time. He said he went immediately and did exactly as he had said. He said he originally had spoken with Connie Barber who is more experienced in what he is doing. He said he asked him to do exactly what VMRC told him to do and he showed him the license. He said this year he went to Steve Wray and told him he wanted the license that were here and he never said 4. He said that he never called names because if he called names he would know what to say Mr. Bennis when he was sitting in the office and asked him, which licenses you have. He said he did not know which licenses he was missing.

Mr. Weisburg cross-examined Mr. Hionis.

He was asked if he remembered going into the bait shop to get his licenses. He said yes. He was asked if he had spoken with Officer Clifton prior to May about renewing his licenses. He said yes, he did. He was asked how long prior to May was it that he talked to you about not having your licenses. He said it was five minutes before May. He was asked if May was the first time he had talked with him. He said yes. He was asked if he

went down there as soon as he was told. He said yes. He was asked if he did not want to take any chances. He said yes. He was asked if when he got there he spoke with Mr. Wray. He said yes. He was asked if he was told by Mr. Wray that he had to have his fishing license to get the license. He said yes. He was asked if he argued with him a little bit. He said he did not argue, he just asked him to help him get his name and it is going to pop up his license. He was asked if he asked that he do it with his name only. He said yes, he did. He was asked if he was told that he can not do it. He said yes. He was asked if he eventually went out and got his license. He said yes. He was asked if he went back in and he pulled up your permission with your ID number. He said yes. He was asked if he could see the screen after it was pulled up. He said no, he could not. He said he could not see the screen from here to the other side. He was asked if the screen was not facing away from him. He said he did not remember the screen. He was asked if when he was standing at the counter the screen was facing him. He said he did not really recall that. He was asked if he knew he was looking at the back or the front. He said he did not recall him being shown the screen. He was asked if the screen had it's back to him or its front and the truth was it had it's front to him. He said Steve Wray was sitting in front of it. He said he was here and Steve Wray's back was always facing him. He was asked if he agree that he was asked what licenses he wanted to renew. He said he never heard him say that. He asked if he agreed that they had a discussion about needing to designate a license with an address. He said he never heard that. He was asked if he ever heard about any addresses at all. He said absolutely no. He said the question was clear, that he said give me my licenses of the last year. He was asked if in prior years he made application for these sites, since 2005. He said that was correct. He was asked if he got the licenses. He said yes. He was asked if up until this year he had gotten 6 licenses. He said yes. He was asked if of those 6 licenses he had surrendered 2 back. He was asked if in prior years he has surrendered and he never knew which 2 he had given back. He said right. He was if he knew the locations of his licenses in prior years and you knew you had to put a location down where your devices where. He said the locations had been given to him by professionals through Mr. Etheridge. He said that Mr. Etheridge had been fishing for 28 years or 25 years before me. He said he gave them those licenses and it was acceptable for us to keep them. He said he followed the description where they are located. He said he had done exactly what they say. He was asked if in 2005 he filled out an application for license of fixed fishing device and you designate a location. He said he never designated a location. He was asked to look at the document and to identify the signature. He said yes. He was asked if he was signing a valid application for a fixed fishing device and in that application he had a description of where he was allowed to fish. He said that it did. He was asked if he signed it. He said yes he did. He asked what year was on the document. Mr. Weisburg told him 2005. Mr. Hionis said that was the year he transferred the licenses from Mr. Etheridge and he signed the application for those that belonged to Mr. Etheridge. He was asked if he signed an application and that information was left blank. He when he purchased the licenses he purchased he 6 sites that were Mr. Etheridge's and he gave him \$140,000. He also said he when he purchased the 6 licenses he did not look to make sure all the street information was correct and he signed what they gave him. He was shown the document from 2006 and asked if that was his signature on it, dated January 5, 2006.

He said yes. He was asked if this was a true and accurate of this document with his signature on it. He said this was his signature. He was asked if he agreed in the document that there were specific descriptions of the licenses for which he was applying and his signature was on it and dated January 5, 2006. He said he did not recall and did not know if someone had fixed the document for him and asked him to sign it without him being aware. He was asked if this was all filled in when he signed it. He was asked if he was testifying if he signed a blank document that was later filled in. He said he did not say that. He was asked if it was filled in with all of the descriptions and all the numbers were all filled in and then he signed it. He said he trusted the Marine Police that this was the right direction. He was asked if he trusted that they knew this was the right license to 1,800 yards east of stand 5 on line with the State Park at Fort Story. He said he trusted them. He was asked if he never renewed the location for that license this past year in 2008. He said that the computer papers say that. He was asked if to this date he had never made application to fish 1,800 yards, east of stand 5 on line with State Park at Fort Story. He said he has asked to take his permits back and to pay for it, but he was told they do not allow him yet. He was asked if the first time he did it was it in May. He said yes. He was asked when he had the discussion with Mr. Wray did he tell him the addresses do not matter. He said he never said that. He was asked if he were fishing these spots. He said he was fishing those spots, yes. He was asked if that was all of them, including 1,800 feet off of Fort Story. He said yes he had fished those spots and it was over a week that he has not touched them. He was asked about the pound net at the Fort Story location referred to as number 6 has next to it old poles. He said yes. He was asked if a storm had come through and there were more than one old pole out there. He said yes, there is a pole. He was asked why he never tried to remove them. He said he tried many times to remove them, but it was very expensive to move. He said he was going to break them down, but he was afraid if he did it could be dangerous for someone. He said he was waiting until something happened to the next big nets and he would have to hire a big company, because nobody can just set the piles in that area except a big barge and he will make them remove them. He was asked if he was advised to stop fishing there. He said he was told by Officer Clifton about a week before not to go there. He was asked if he was told before that. He asked from who. He was asked if he was told by somebody. He said he wrote a letter to VMRC but there was no answer back. He said he asked Officer Bennis if it would be alright to fish until the Commissioners make a decision. He was asked how much money he had made off the license off Fort Story, license number 6. He said this year he had not made any money at all. He said if he could he will make it now until the closing of the season and he will break even. He was asked how many fish he had brought in from number 6 the one off Fort Story. He said he could show him the records and that he did not know. He was asked if it was a lot of fish. He said he had he records, because he did not recall. He said if he was asked if that was the best net, he would say yes it is. He was asked if he testified earlier that he bought these nets from Kenny Etheridge. He said yes he did. He was how he paid. He said \$140,000. He was asked if he originally refused to pay for the nets. He said he promised to give him the nets and he paid him and then he disappeared. He said he had to take him to court. He was asked if after going to court if he did not pay. He said he still paid the \$140,000. He stated he had receipts for that. He

was asked what he originally agreed to pay him. He said \$140,000. He was asked that when Sergeant Clifton use to come to him and he gave you his license and his license plates, if he remembered that. He said he always went to his wife. He was asked if he ever remembered getting any plates from. He said yes that one year he lost the plates and he called Officer Clifton and he came up and brought him 4 new plates and he went and put them on the nets right away. He asked if it was his testimony that he had never given him 6 plates and took back 2. He said he never had got 6 plates from him or anybody. He said Officer Clifton may have kept he 2 without asking, but he never knew 2 were forfeited and that they also have plates. He said there was nowhere to put the plates because the forfeit did not exist. He said that they do not exist and the pilings had never been set as long as he had been here for 29 years. He said he never saw it. He was asked if he disagree with Sergeant Clifton when testified that when he gave you 6 plates and you would give him back 2. He said yes.

Mr. Jenkins questioned Mr. Hionis on redirect.

He was asked when he went into purchase his license if his intent to express. He said he wanted his licenses to comply with Mr. Clifton's problem he gave him. He said he wanted to make he had his licenses for the pound nets. He was asked if he wanted all 6 licenses. He said absolutely. He was asked if he said that he did not want 2 of them. He said he never said it, no.

Associate Member Holland asked if you purchased 6 licenses you surrender 2 and keep 4. He said if you purchased 4 licenses what do you have to surrender? Mr. Hionis stated he had to surrender 2 or 1, he was not sure. He said they know more than he did. Commissioner Bowman asked Mr. Travelstead what as the equation. Mr. Travelstead stated he was 2. Associate Member Holland said his question was he purchased 4 licenses so he should not have gotten but 2 licenses, two plates.

Associate Member Tankard asked if he walked out with 4 plates? Mr. Hionis said 4 plates. Associate Member Tankard stated that if he got 4 plates and if he was to surrender 2 then he would not have walked out then but with 2. Associate Member Holland stated that was the way he understood it.

Associate Member Schick asked him when he left the bait and tackle shop if he had 4 plates. He said there was also a receipt. Mr. Hionis said yes. Associate Member Schick asked what the receipt said on the number of licenses. Mr. Hionis stated he did not look at what they gave him. He said he purchased license before and it had never happen to him. He said he had every other licenses such as for crabbing, etc. and he had never looked at what he was given. He said that was a mistake, but he never had looked at it. Associate Member Schick asked how much one license cost. Mr. Hionis stated that he had found out since that it was \$41. Associate Member Schick said when he bought the license he paid for 4. Mr. Hionis said yes. Associate Member Schick asked if he did know they were \$41 a piece. Mr. Hionis said that he did not know that because always Officer Clifton came

and he went upstairs and he gave his wife the paper and left. He said he was not aware. He said plus he was too nervous to deal with these people. He said when Officer Clifton told him he was behind, he said he wanted it done and he did not care how much it was going to cost. He said he wanted to have his licenses. He said it was not an issue because he had a \$120 and \$150,000 invested in a net just for a \$41 license. Associate Member Schick asked if he gave the receipts to his wife and did she do the bookwork. He said he went to the board and they did not have any license. He said Mr. Schulz who worked for him wanted to get to the nets so he could post them. He said he did not remember if he gave it to his wife. He said he gave her the bill.

Associate Member Robins asked Mr. Hionis if he handled the license renewals for the nets in 2007 and 2006 or did his wife handled that transaction. Mr. Hionis stated that it was his wife in 2006 and in 2007 it was him.

Officer Stephen Bennis was recalled by Mr. Weisburg and questioned:

Officer was told that on the screen was a map and if he recognized it. Officer Bennis said yes. He was asked to look at several documents entered into the record as Hionis 3. He was asked to look at them one at a time and he was asked if he recognized Hionis 3A. He said that this was what he knew as the 6th license. He was asked if he had put the number 6 on it. He said yes. He was asked to look at 3B and asked if he recognized that. He said that he did. He was asked if he could from the description put it on the map. He said no. He was asked why not. He said because of the latitudes and longitudes. He was asked what was wrong with the latitudes and longitudes. He said he believed they were offshore from Fort Story in an area where the military would not allow them to be put. He was asked to look at 3C and if he saw the description. He said yes. He was asked if he could put that anywhere. He said yes he could and this was going to be the location that he modified to be a more accurate location. He said asked to put a 3c on the map, which he did and said he could only do it approximately. He was asked to put a 3A at number six, which he did. He was asked about 3D and asked to mark it on the map. He said yes he could. He said this was an application from Mr. Sanford that was taken on 8/26 and was not introduced as evidence when he testified earlier. He said it would be located approximately 200 yards seaward of what he was saying was license number 1 and he was asked to put 3D on there, which he did. He said this was an open application which had not been noticed. He was shown 3B and 3E asked to do the same, which he did. He said this is the update for the number 5. He was asked of the ones he had marked with H's stay there without interfering with Mr. Hionis' currently placed nets. He said H3E could stay there that it was with 300 yards and H3C and 3A would interfere with each other. He said H3D a new application and not involved in this issue vaguely can go out there. He was asked about H3A and H3C would either one of those be able to be put there without interfering with Mr. Hionis currently placed net. He said he was confused as H3A was Mr. Hionis'. He was asked if this one match the description of net 6, 1,800 off of the Fort Story. He said the Fort Story was license number 6. He said that was H3A and if H3C

went in there they would interfere with each other as they would be within the 300 yards. He was asked if H3A and H3C could coexist under the regulation for net 6. He said they could not coexist. He said he would have to look at the distance between that existing net and where this one would be because that it does have enough space to be there with about 20 or 30 yards either way. He stated that he could not say positively on that it is not interfering with this existing one, but he did not think it interfere with it. He was asked to explain what interfere meant. He said legally you have to have 300 yards clearance from center poles to center poles. He was asked if he asked Mr. Sanford to resign a set these applications. He said yes. He was asked why he did that. He said that the descriptions that were on the original ones were not accurate or correct or anywhere near where these things should be. He was asked were they incorrect and if it was because of the GPS. He said yes, it was the GPS locations that were added to the description that came up from the old licenses. He was asked if the GPS was struck from the application would they then match. He said yes they would. He was asked if when the applications were redone if they discussed the date. He said yes, he did. He said he was dating them as the same date as the original application and he asked if he should throw away his original application and he told him not to do that. He told him to keep that for future reference. He said he put the two together. He was asked if in his mind this was an updated or an amended application. He said it was an amended application and not a second application or new application or anything, it was just an amendment of the original application. He said he told him that was why he dated it the same date and he was not going to sign it Sargeant Clifton name to it and he signed as himself for the amended. He was asked if he were trying to hide anything. He said that the application was accepted on July 7th. He said that the date of the original application and that was why he put that.

Mr. Jenkins asked Officer Bennis questions on redirect.

Mr. Jenkins said that there was a lot of H3, a, e. Officer Bennis said that there was a lot of confusion on that. He was asked if he told Sanford to sign a new application. He said yes he did. He was asked if he was characterizing those applications as an amended. He said as an update. He was asked if he was claiming that he amended it. He said he updated and amended to try to put a more precise location on it. He was asked if he understood that what he was amending was an existing pound net license location. He said it was an application. He was asked if he considered it a vacant license that existed. He said yes. He was asked if he had authority to amend a vacant license. He said he did at that time through his command, yes. He was asked if he knew that his authority was through his command. He said yes.

* * *

Commissioner Bowman adjourned the meeting for a 5-minute break.

* * *

Commissioner Bowman stated he was convening a formal hearing and just explained the rules that this was more of a civil matter than it is a criminal so you will get to make closing comments. He said they were being 15 minutes maximum.

Mr. Jenkins gave his closing comments.

He said it was the final stretch and he appreciated everybody staying so late and giving them the opportunity. He said he wanted to thank the board on behalf of Mr. Hionis and his employees.

He said that there were really two issues involved in this. He said the first was the question of the administrative or technical error that occurred on May 1 when Mr. Hionis went into Long Bay Point Bait and Tackle and asked to renew his license. He said he went and intended to renew 6 licenses and expected to come out with 4 plaques so that he could fish the 4 nets that he had with the understanding that he was forfeiting two of the licenses to be held because that is the only way he would be allowed under the law be allowed to fish them. He said all four nets can not be fished because of this weakfish. He said he spent considerable amount of money purchasing the licenses in the first place. He said it seems that everybody considers this like property rights over time and he thought it was passed down to heirs pursuant to law. He said this is something people put value on and on the Commissioner Website there is a list of them that are up for sale. He said it was like a secondary market of license sales. He said if Mr. Hionis had intended to give up some of his license it was absurd to think that the two chosen, especially number 6, and one he had been fishing this whole time, the one he had spent considerable amount of funds to fix when he took over it. He said since there were old poles he had to put poles in. He said he had to use a crane to put these in and a lot of money had to be spent. He said removing it cost a significant amount because it is removed the same way. He asked why would he forfeit that license and be in a position where he would have to spend significant amount of funds to pull those poles out. He said just from a common sense perspective, it does not make sense that would be his intent. He said that was why he felt it was reasonable to say that some of administrative or technical error. He said Mr. Wray who conducted the transaction and for all intents and purpose is an agent for the state in that regard. He said under this new system where bait and tackle shops can become certified to sell these licenses. He said this was something that the Commission created as the Commissioner has explained that the purpose of that was to take the money handling away from the Officers. He said the problem was that a system had been in place for many, many years and transferring it from paper to computer and then to individuals that had never done it before. He said there was a strong likelihood that would be some confusion and some mistakes made. He said and this Commission has the authority to fix these kinds of mistakes. He said that was what they were asking the board to do. He said Mr. Hionis went in there he walked out with 4 license plates or plaques or however you want to call them. He said these are the items you have to post on the nets to show the police force when they go by that this is valid net. He said that it has never been questioned that these pound nets were unlicensed and now there are all these technicalities about this many feet

from here and this many feet from there and the specifications. He said there was also discussion in going through these applications about in 2005 when Mr. Hionis had those licenses transferred to him from Mr. Etheridge. He said these things were set up with the knowledge that they could be transferred between two individuals. He said when the transfer occurred Mr. Hionis was taking the existing licenses and he did not go out and get new descriptions. He said they were same descriptions that existed on those licenses since their inception. He said they were retranscribed and adopted by Mr. Hionis. He said he did not know that anyone knew which one went to which net at the time and he did not think it mattered. He said that he felt that all that matter over the last 30 years is that there were 6 licenses to that region. He said all the police knew was that there were 6 licenses available and there were 2 that were always being forfeited and the end result was there were 4 nets out there and 4 nets being fished. He said there was no confusion as to which one went to which as it did not matter. He said it did not matter which plates you picked the fishermen do not think so and he thought that it did not matter to the police officer either. He said Officer Clifton testified that all he cared was they had 4 and you did a little exchange when you came in and you put 4 plates out on 4 nets. He said the plates were good for a net and that was how it was treated and that was how it had been policed over the years and that's how the fishermen rely on it. He said if you looked at the connection between the tag numbers and these 2005 applications that set up these licenses for Mr. Hionis. He said those tag numbers are not identified on those license applications. He said when we looked at those hand written license that were provided to the fishermen that Officer Clifton talked about. He said it just had a list of tag numbers that changed from year to year and there is no identification on there as to how those tag numbers relate. He said there was a third document kept by the police force where those numbers are floating around in there but that was not a document that the fishermen have. He said they have it on the day of the transaction, but there was no clear connection between all these things and even that document does not track year to year. He said it just all very confusing and he thought it might be something to be addressed in the future as far as clarifying the system. He said ultimately there is plenty of opportunity for a mistake in there. He said this was why they were asking the Commission to reinstate 6 licenses that Mr. Hionis applied for, thought he had purchased and was relying on that when he walked out of there with his plates.

Mr. Jenkins stated that the second issue is what happens if the Commission decides that they are not going to give Mr. Hionis more than than 4 licenses that are checked off in the computer. He said next it needs to be decided what 4 licenses mean. He said he felt that Officer Bennis was certain that one of the licenses not renewed in the system is the one that goes to pound net which he called 4, the most eastward. He said that Officer Bennis went out on the boat and set a location. He said a new location was set that was not even a location from the previous license. He set a new location and made sure that it set next to this net and he felt he was consciously making a decision to cause this controversy between these two nets. He said he felt that he set the second net arbitrarily 600 feet away because he thought that would be a compromise and the second net would be in another location to comply with the rules and be separate from any license that had existed.

He said that this brought it to the issue of these 4 licenses and the 2 vacant licenses, if there is no opportunity to correct those. He said their position was that Mr. Hionis went to get all 6 licenses and if he got only 4 licenses it was because he intended to get the 4 he was fishing. He said it was indescribable that he would do anything else. He said a mistake as made, but his intent was to get all that he was fishing. He said he took the plagues and put them on the nets that he was fishing so he obviously believed that they went to those nets. He said that from the testimony and from what Officer Bennis seems to think that one of the applications by Mr. Sanford is not an issue and only the one he was calling number 4 was at issue. He said that Officer Bennis was saying that one of these vacated locations applies to net number 4. He said if we can get that point and the Commission has to make a decision on it then a second thing has to be decided. He said it needs to be decided if the 4 applications by Mr. Sanford are valid and the question is which of the 4 documents are going to be treated as the application. He said was it the first two submitted on July 7th that should be considered or decided on as being valid applications. He said if the July 7th applications have got the location with the GPS then those locations have been moved to new locations and that can not be done without a public hearing, being posted 30 days and after a public hearing it has to be decided by the Commission. He said the license was issued, he question was if it valid. He said the next thing going on was the second set of applications that came in essentially at the direction of Officer Bennis. He said that Officer Bennis went out and picked completely different locations and did not use what was on them before, but completely rewrote them. He said that Officer Bennis testified that he made his own decision as to where what he called license number 5 should be placed. He said it seemed that Officer Bennis had made himself the arbiter of how it was going to all fall out. He said if this was the approved license then it was the same as the other and would be a new license. He said to adopt those and go forward he said was goes against the statute that require an opened hearing and the Commission to make that determination. He said the third issue was if the Commission were going to adopt those license with holding a public hearing and without the posting of the public notice. He said final thing to decide was whether those licenses needed to be revoked because he felt they were not valid anyway or properly acquired. He said under the statute they can not be acquire without the public hearing. He said if they are going to be considered properly acquired that is one step and the next step then is should they be revoked. He said he would say yes. He said based on the fact that, whether it was modifying or amending the application, they signed those second set of applications for Mr. Sanford on July 21st but they dated them for July 7, 2008 the same date that Officer Clifton signed and accepted the original applications. He said they did not note on that application that it was amended and they left it as a new application. He said the significance of a vacant license being in the system was that it was first come, first serve. He said had Mr. Sanford resubmitted an application that was proper on July 21st, Mr. Hionis had already asked Marine Police Officers to apply for those licenses and he would be first in line. He said the first applications by Mr. Sanford were incorrect and Officer Bennis testified to that. He said so when Mr. Hionis asked on July 9th let me apply for those licenses he was told he could not. He said if an officer says that you cannot submit it what is a fisherman to believe. He was told he had to wait and see how it pans out. He said then Officer Bennis wrote these applications and

backdated them to July 7th with the full knowledge that Mr. Hionis had tried to apply for them or a certain desire to apply for them. He said the Commission was going to have to decide to adopt, at a minimum, this loose practice of application dating, amending application and moving locations of vacated licenses. He said the real decision was whether a backdated application is valid and can be adopted. He said he thought it was a difficult hurdle and it lays on line the integrity of the process and the effect that will have on the public trust. He said he felt the administrative error can be corrected and Mr. Hionis' licenses can be reinstated based on this Commission's inherent authority to oversee its regulations and correct errors made in the administrative process. He thanked the Commission for hearing them and said he was sorry to keep them here so late. He said that ultimately they were asking that the 6 applications that Mr. Hionis applied for, paid \$140,000, spent \$150,000 to fix them, employing 8 to 12 people, be reinstated. He said if the Commission should decide not to reinstate them, he said they say that technically he paid for at the time with the intent of getting the 4 nets that he is fishing. He said they say also that any licenses that Mr. Dirk Sanford was holding were invalid. He said if they are determined that he does truly have licenses then those licenses should be revoked because they were obtained due to fraud.

Mr. Weisburg gave his closing comments.

Mr. Weisburg said he was told that when a squid gets into trouble and can go no longer it squirts out dark ink that clouds the water and makes it difficult for its prey to see. He said this was what was being done here and he was going to attempt to move out of that water and get out of it entirely and keep everyone's eye on the ball as far as what is really going on here. He said it was not as complicated as it seemed to be and it was not even close. He said there were times in life when intentions are irrelevant. He said sometimes in life we are adults and we have to live with what we do and what we do not do. Sometimes when you miss a boat, the boat is gone and they are not turning it around so you can try to catch it again. He said it was not fair to everybody else on the boat and sometimes it is just not possible. He said that just not possible and nobody wants Mr. Hionis to lose \$140,000 investment. He said nobody wants that and his client did not want that. He said he testified that he was fine with those licenses that did not impede on him at all. He said Mr. Hionis was here to argue that he should not get those as he was not entitled to those. He asked what did he want and he suggested he did not want his client to work there at all or anywhere. He said the theme was Mr. Hionis and what was good for him. He said if the Commission was listening, he said he knows they were and they would see that Mr. Hionis is trying to put the blame on everybody else. He said he tried to say that Officer Bennis was responsible and that his daughters were involved. He said for someone at some point to call them, a man's family into question over something like this for a couple of licenses. He said this speaks to their action, what they did and did not do and to their integrity. He said it shows that he is desperate and he is shooting out his ink and it is not making sense. He said his client made his applications in July not knowing or caring about Mr. Hionis and not having known Officer Bennis that well. He said here is where the ball comes in. He referred to Sanford's exhibit number 1 and he said that this was the issue today, license

number 6. He said that is the issue and that that was it. He said what is on the agenda was whether the 2 licenses were going to be given back to him. He said and then there was his client's application, which should not be on the agenda because it was not the issue. He said that unlike Mr. Hionis' counsel said there were two issues he felt that there was only one. He said that they conceded that as the counsel has said that the license should be processed and go ahead and be published. He said they did not argue with that. He said go ahead and put the notice out there and have a hearing. He said they did not want to talk about that, he is right. He said it was right and it was an attempt to compromise by the Officers and not the parties and that is why we are here today. He said to put that aside and the only reason here is because the first application by his client mirrors the application that Mr. Hionis failed to renew. He said the identification of this net had he renewed it, is the 1,800 feet, Fort Story intersection, license number 6. He said the only difference in the testimony is was that his client's from 2005 application, 2006, and 2007 was that it had the GPS location on it. He said that GPS location on there does not make sense and it does not matter. He said when you find ambiguity you seek clarity. He said the language mirrors the application before. He said if someone tried to make something more specific and they fail in that attempt then you discard it and you make sense of that which can be made sense of. He referred to Hionis 3A and their exhibit. He displayed exhibit Sanford 7 for the Board and pointed out license number 6. He read it was 1,800 feet east of stand 5 on line with State Park and Fort Story approximately 425 feet offshore running in a northerly direction. He said that this is dated 2005 and as pointed out by Mr. Hionis, that it is written at the top of the application that this is a 2006 renewal dated January 2006. He said this date is the most relevant and that this is his prior application with the description at the bottom and all the officers have testified that they can identify precisely where it is and that is all that is being argued. He said the only thing his client wants to argue with and respectively concede is that license because that was the one license that could be identified with precision. He said see that you can look at his client's first application tendered in truth on July 7th with the same description of 1,800 yards, east of stand 5, on line with State Park and Fort Story and approximately 425 feet offshore and running in a northerly direction. He asked what was different. He said anyone looking at the application can tell that they are the same place. He said it was the same application that these two individuals want to apply to fish in the exact same spot and that is what matters. He said they are trying to fish the same spot. He said the description made sense and you know where it is. He said what followed all that was an attempt to compromise. He said the later application dated July 7th and was actually filled out towards the end of July was an attempt to compromise. He said the Colonel said that he did not have any problem with an amended application being filed as it is first in line and first in time. He said after all is not that only fair. He said the Marine Officer was saying we made a mistake and we are no going to make you lose you place in line and it was my mistake and you are not going to pay. He said this makes total sense. He said Mr. Hionis was asking the Commission to use their ability, theoretically, to correct a clerical mistake in his request for relief. He said he then turned around and said that they were engaging in fraud because they tried to fix a clerical mistake. He said to say that Mr. Sanford is engaged in engaged in fraud and he does not know about anything. He said he calls up like a good

citizen and says he wants to apply for some licenses and finds out what is available, gets the licenses and goes on down the road. He said it turned out that somebody made a big stink and Officer Bennis tried to fix things and said let us clear this up. He said that that gets turned into fraud. He said it turned into questions about his daughter. He said it is simple and Mr. Hionis' intent is totally irrelevant and how much money he threw away when he failed to preserve his interest is irrelevant. He said \$10,000 to his client may be same as the \$140,000 is to him. He said they had not put his client's financials on because it was irrelevant and so were his. He said the only thing relevant is what is under the Code and he went through it. He said this is where this issue gets determined and that was the law. He reference the Administrative Code and he said it said that it passes in accordance to priority. He said it passes if A you have a license and you can keep it for a 100 years as long as you comply with the deadlines for renewal. He said then it said that if you fail it is up for grabs. He said and then it goes to anyone who applied first. He said that who it goes to assuming they qualify. He said if it were a joint application and received on July 7th, then there is a lottery. He said the Code is very detailed. He referred to 4VAC 20-20-40 and said that it talked about priority generally. He said that it said, except for, as it was otherwise provided chronological order receipt of all applications shall be used to establish priority rights. He said it was clear and it was the general proposition here. He referred to 4VAC 20-20-50 and read from it. He said it said applications for renewal of licenses for existing fishing devices, such as license number 6, may be accepted by the Officer starting at 9 a.m. on December 1 the current license year, through noon, January 10th. He said May was the first time there was attempt by Mr. Hionis to get the licenses that he needed. He said this was four months later. He said for four months he had been breaking the law and he had been fishing without a license. He said Mr. Sanford had nothing to do with that and Mr. Bennis had nothing with that. He said now he wants to put it on Sergeant Clifton. Saying why did not you remind him. He said the law made it very clear that if you wanted to preserve your interest you have got to get your renewal in between December 1 and January 10th. He said if he did not get it in he was out of luck. He said it said that any license during this period of time shall be considered vacant and available to any qualified applicant after noon, January 10th. He said in came Mr. Sanford client not after noon on January 10th but in July. He said he said Mr. Hionis came in May, which was late. He said his client could have gotten them all and there would be nothing he could do, other than make a mess. He said then he had until July to fix whatever confusion that may have arisen when he walked out of that bait and tackle store and he doesn't do it. He said and he asserts that it is Officer Clifton's fault and VMRC's fault because they changed the system to an electronical system and the changed the VMRC officers from being able to issue the licenses. He said they had sent a letter letting him know that had happen. He said that was the key evidence they sent him a letter year prior saying they are changing it and Sergeant Clifton is not coming anymore and you have got to go and get your license. He said he also got Sergeant Clifton's warning. He said he would assert that the Board should believe what Mr. Wray said when he said which licenses. He said Mr. Wray had no interest in these proceedings. He said why would he come here and lie and he is not as he is telling the truth. He said he was asked which ones did he want and Mr. Hionis said it really did not matter. He said he was wrong as it matters. He said it matters a lot. He said

it matters to him and it matters to all of us. He said after that discussion he does not seek counsel and he does not seek to call Officer Clifton and asked if he had got it straight. He said he was asking that you rely on the fact that he gets 4 licenses and 4 plates every year. He said the problem with that is he had testified that his wife usually handled everything. He said it never matter to him if he got 4 licenses because he never knew how it worked anyway. He said that that should not go anywhere, because according to him he almost never handled the plates, it was his wife. He referred to 4VAC 20-20-70 where it said application for a fixed fishing device by any qualified applicant at a vacant location shall be accepted by the Officer for license in the year for which it is intended, except that any application received prior to noon on January 10th for any location believed to be vacant and unlicensed shall be considered as received at noon and in chronological order. He said the point of the Codes which was really laid out in the beginning, is that if you do not protect your interest you lose them. He said the Code said shall and it did not say May. He said counsel was asking for him to be given relief basically by finding my client engaged in fraud. He said there could be an argument for that but there were no facts to support that. He said there was none. He said he would have to make a misrepresentation on t that and to attempt to capitalize on that. He said they were asking the Commission to deny the ones he did not apply for. He said there was simply no choice and he simply did not make the application in time. He said his client meant him no ill will and he took action based on his action. He said he has gone out and gotten \$10,000 worth of equipment to put them where he got his licenses. He said the Code was clear about fishing without licenses, it was a criminal offense. He said to keep fishing to him sounded like wrong to him and his client was being accused of fraud. He said the only thing to do here was to deny the request. He said they were also asking that the Commission start the process and put these notices up so the other license can be licensed and finally because his client was first in time they asked that the license on number 6 should be ruled his. He said Mr. Hionis should be ordered to cease fishing forthwith these places and be given a reasonable amount of time to pull his poles or make other arrangements, even if he want to sell them. He said that that was what needed to be done here. He said it was time for the Commission to stop Mr. Hionis from capitalizing on this and making a mess. He said they were asking the Commission to release these licenses as requested.

Commissioner Bowman asked for discussion and action.

Associate Member Schick stated as an agent Mr. Wray deals with them all the same. He said it is not for the agent to tell the customer what he wants. He said Mr. Hionis had opportunities to purchase the licenses, but he did not even look at the receipt. He said neither did his wife. He said there was no fraud, no intentional mistake, but there was confusion here that needed to be corrected.

Associate Member Laine stated it was a simple matter of Mr. Hionis' failure to purchase the licenses on time and he forfeited his rights.

Associate Member Tankard stated that Mr. Hionis at a later time asked Officer Bennis if he could apply for the license and was told no. This was a matter of a process that had been changed. He said Officer Clifton was only concerned that Mr. Hionis had four tags and Mr. Hionis had the same concern to have four tags. He said this was the same transaction as done in the past. Officer Clifton stated that the tags are not connected to a net and Mr. Hionis believed he was purchasing the rights to four nets. He stated that Mr. Sanford was informed through the system that they were available.

Associate Member Robins stated that Mr. Hionis intended to purchase 4 nets for fishing, but the error here predates 2007 and in 2006 the error was made. He said a license should have been forfeited, but neither Mr. Hionis nor the clerk understood the process and a mistake was made. He said that based on the testimony, there were problems with the system because of the loose issuance of the plate and license. He said it was a matter of law that the applicant was responsible. He said the site was not vacant as it was fished, but by law it was available and vacant, which resulted in an opportunity for Mr. Sanford. He said Counsel had said that Mr. Sanford's application was valid.

Carl Josephson, Senior Assistant Attorney General and VMRC Counsel, explained that it was still at the discretion of the board as the law was not clear. He said the latitude and longitude only make it so the description can be plotted and it appeared to be an error. He said it was the same description, only the latitude and longitude numbers had been added. He said a conflict on document can be corrected. He said he did not see any fraud.

Associate Member Bowden said that a lot of mistakes had been made. He said on January 10th it had not been applied for and he was called in May by VMRC and told he needed to apply. In this case he was told he could not apply. He said the officer should not have corrected the description as it was not his responsibility and not within his authority. He said he believed that Mr. Hionis intended to get his licenses as he had always done. He said he felt he did not intend to give up the license and that it was an administrative error.

Associate Member McConaugha stated the locations were wrong, but Mr. Hionis went with the intent of purchasing his license and assumed the location on ground was correct. He said he felt he intended to purchase 4 sites. He said he believed it was a clerical error.

Associate Member Fox said it was a confusing situation with the grey trout regulations requiring the forfeiture of 2 sites. He said if he only got the four, he should have given 2 back and kept 2. He said he agreed with Dr. McConaugha that the description was mixed up. He said it was Mr. Hionis mistake that he did not get his license on January 10th and needed to be looked at by VMRC. He said he did not see any fraud.

Associate Member Holland stated that he felt the same as Mr. Fox and Dr. McConaugha. He said Mr. Hionis had 4 active nets he was fishing and he went to get what he had before. He said the four plates made him think he had the right to fish the same locations. He said he believed he intended to get the nets.

Commissioner Bowman stated that he would not be voting unless it turned out to be a tie. He told Mr. Bowden that it was not a mistake by VMRC and that the officer was simply trying to help out. He said like Dr. McConaugha said the descriptions were confusing as we are now using latitude and longitude numbers. He said it was human to make a mistake and Mr. Hionis did not intend this.

Associate Member Schick asked about the regulatory requirement to forfeiture two nets. Commissioner Bowman asked staff to comment.

Rob O'Reilly, Deputy Chief, Fisheries Management, was sworn in. Mr. O'Reilly explained that he did not have to forfeit two nets and could have fished them, but according to the regulation he could not keep any grey trout.

Associate Member Schick said that no one should have to know what Mr. Hionis intended to do and say it was a clerical error. He said when he goes to get his he makes sure he looks at the paperwork to be sure he gotten what he wanted.

Associate Member Tankard stated that he saw this as a clerical error and did not consider any fraud was involved. He said the Commission should reinstate the licenses to Mr. Hionis, as they were necessary to his livelihood.

Commissioner Bowman asked if this were a motion. Associate Member Tankard responded yes. Associate Member Bowden seconded the motion.

Associate Member Robins said he felt sympathetic for Mr. Hionis, but he could not support the motion. He said that the regulation supported that the sites were vacant and Counsel had said that Sanford's application was valid. He stated he was not able to support the motion.

Associate Member Holland called the motion to question. The Roll Call Vote was taken:

Bowden	Aye
Fox	Aye
Holland	Aye
Laine	No
McConaugha	Aye
Robins	No
Schick	No
Tankard	Aye

The motion carried, 5-3.

Commission Meeting

**15019
September 23, 2008**

There was no further business and the meeting was adjourned at approximately 10:00 p.m. The next regular meeting will be Tuesday, October 28, 2008.

Steven G. Bowman, Commissioner

Katherine Leonard, Recording Secretary