

**RICHMOND COUNTY PLANNING COMMISSION
MEETING MINUTES**

April 6, 2015

The Richmond County Planning Commission held its regularly scheduled meeting on Monday, April 6, 2015 in the Public Meeting Room, County Administrative Building, Warsaw, VA.

The following members were present:

Glenn Bowen

Jesse Clark

Vice Chairman Darnell Clayton

Rick Cox

Chairperson Martha Hall

Cassandra Jackson

Clifton Jenkins

John W. Lewis

Joyce Pemberton

Patrick Weakland

Also present:

Joseph Quesenberry, Planning and Zoning Administrator

Mercedes Pierce, Planning Commission Secretary

Jeff Howeth

Rob C. Smith, Zoning Attorney, Diatomite Corporation of America

CALL TO ORDER, INVOCATION AND PLEDGE OF ALLEGIANCE

Chairperson Martha Hall called the meeting to order at 7:00p.m. Jesse Clark gave the invocation and Chairperson Hall led everyone in the Pledge of Allegiance.

APPROVAL OF MINUTES FROM MARCH 9, 2015 MEETING

John W. Lewis pointed out a motion had been reflected in paragraph six on page four of the minutes, but there were no names listed as to who made the motion and who seconded it. Mr. Lewis informed everyone he made the motion. Joyce Pemberton stated she seconded this specific motion. Cassandra Jackson made a motion to approve the minutes as amended. Joyce Pemberton seconded the motion and they were approved unanimously.

FONES CLIFFS DEVELOPMENT – DETAILED ZONING REQUEST – REVIEW AND QUESTIONS

Chairperson Martha Hall stated all Planning Commission members received copies of three questions submitted to Mr. Rob Smith and Mr. Jeff Howeth, along with the answers provided by Mr. Smith (Attachment 1).

In discussing Question #1, Rick Cox suggested a benchmark be set before the developers are allowed to turn everything over to the Homeowner's Association, such as once the Class A shares outnumber the Class B shares.

Mr. Cox also stated he feels the developers should be responsible for the costs of the infrastructure and putting everything in place and the Homeowner's Association should then step in and be responsible for the maintenance.

Mr. Rob Smith explained that roads are built, lots are sold, and every developed lot pays dues that collectively pay for the needs of the Homeowner's Association, such as maintenance and whatever the Association votes on doing. Mr. Smith stated he does not feel it would be a problem to set a benchmark to ensure that the land is not transferred until at least 50% of the lots are sold.

Joyce Pemberton and Mr. Cox discussed how a Homeowner's Association is established.

Mr. Smith informed everyone all the roads will be bonded and easements will run with the land. No matter who owns a developed lot, he or she will be subject to the terms of the Homeowner's Association and will have to pay dues like everyone else.

Mr. Smith stated the Homeowner's Association would not have to pick up any costs associated with the maintenance of the roads because they will be maintained by VDOT and the roads will be bonded. He believes all lots will be developed in stages and not done all at once.

In regards to Question #2, Chairperson Hall stated there is no way to be certain of population growth or decline; you can only make assumptions based on trends.

Mr. Cox and Mr. Smith further discussed the possible future trends in Richmond County's population and how it may be affected by the Fones Cliffs development project.

Mr. Cox read a statement from the detailed zoning request regarding broadband and natural gas services being provided by private contractors. Mr. Cox advises the Planning Commission and the County to take a firm stand in requesting the developers to actively work to bring broadband

services to the development, which could act as a selling factor. He also suggests making the broadband services available to this specific part of the County as well.

Patrick Weakland described the internet and television services offered in the area he resides.

Chairperson Hall shared her concern of whether the County would be requiring this action of Diatomite, but not of other developments and if it would only be a requirement because of the projected size of the development.

Mr. Smith suggested bidding providers against one another for a contract to service the entire development. He plans on providing a status report to the Commission in the near future regarding his conversations with the providers.

Chairperson Hall summarized the answer to Question #3, stating development would not occur where floodplain areas are designated. There was no further discussion for this question.

Jesse Clark stated he sent two questions to Mr. Smith prior to the meeting. They are as follows:

1. While it is exciting to consider a positive future, what benchmark for failure is in place that, once reached, would lead to a decision of declaring bankruptcy?
2. If bankruptcy is declared, what impact would that have on the future of the development?
 - a. Who would own and/or manage the golf course, restaurant and lodge?
 - b. What effect would bankruptcy have upon the HOA and any covenants in place regarding the quality of new homes being built and maintenance of the common areas?

Mr. Smith feels the developers have taken the following precautions to avoid being put in bankruptcy: no debt on the property, financing for infrastructure and capital costs in equity, forming LLC's for each separate entity and completing the development in stages. Mr. Smith does not believe the entire project would go into bankruptcy, but the separate LLC's could. He stated if this were to occur, he would file a petition for Chapter 11, attempt to defeat the motion to lift a stay and restructure the debt.

Mr. Clark questioned if the development were to change hands, would the Homeowner's Association have the right to make sure new homes being built abide by the same initial covenant. Mr. Clark provided a real-life example of a similar situation in which this did not occur and the new homes being built after the bankruptcy were highly different than the original homes built prior to the bankruptcy.

Mr. Smith stated a bankruptcy court can break a contract, but believes in the example Mr. Clark provided, the Homeowner's Association voted to make the covenant more lenient as an attempt to sell those lots that may have contributed to the bankruptcy.

Glenn Bowen shared his concern that this development could possibly cause stress on the County's EMS department and be a burden to the County and advised Mr. Smith to consider funding a sub-station in this area.

Mr. Bowen, Mr. Smith and Mr. Cox further discussed the need for additional emergency services in this part of the County and any possibilities of mutual aid from surrounding counties.

Mr. Smith stated the developers would be immediately deeding over three acres for this purpose.

Chairperson Hall informed the Commission they could meet for a separate work session and/or create an ad hoc work group/subcommittee to further discuss this project outside of the regularly scheduled monthly meetings. It was agreed upon to schedule a work session prior to May's public hearing. Chairperson Hall asked Mr. Joseph Quesenberry to poll each of the Planning Commission members to determine which date would work best for the work session.

Mr. Cox and Mr. Quesenberry discussed the need to advertise for the work session.

OTHER BUSINESS

Joseph Quesenberry informed the Planning Commission he visited Downing's Consignment Shop on March 25th to ensure Mr. Russell was following the conditions of his special exceptions approval. Mr. Quesenberry found two issues and asked the owner to remove the "No Parking at Any Time" sign from the wicker chair at the intersection and secure it in the ground and move the directional sign so it points into the correct lot. In summary, Mr. Quesenberry felt Mr. Russell has been doing a good job with parking and informed the Commission Mr. Russell plans on coming to the County to work on the limited food service option. It was clarified Mr. Russell is not currently serving food.

PUBLIC COMMENT

There was no public comment.

ADJOURNMENT

There being no further business, Chairperson Hall adjourned the meeting at 8:17p.m.

Respectfully submitted,

Mercedes Pierce
Planning Commission Secretary

101 COURT CIRCLE · P.O. BOX 1000
WARSAW, VIRGINIA 22572-1000
(804)333-3415
Fax: (804)333-3408
www.co.richmond.va.us



D. BARRY SANDERS
Code Administrator

T. RICHARD ENGLISH
Code Compliance Officer

JOSEPH N. QUESENBERRY
Planner

Mr. Smith and Mr. Howeth,

Below, I have listed questions sent to me by the members of the Richmond County Planning Commission regarding the proposed rezoning of the Fones Cliffs development. I hope you both find this list advantageous in answering as many questions as possible in the small amount of time we have each month. The list was compiled using topics of interest or direct questions sent to me by different members of the Commission. Please attempt to answer each question as substantively as possible and be prepared to address each at our upcoming meeting in April.

- 1.) Under Section 6, Article 4 (page 5), entitled "Common Area," the language is ambiguous in stating that: "At or before such time as the last lot is sold and free of all liens and encumbrances."
 - This could leave the HOA 'high and dry' with few parcels sold, no capital to work from, yet having to maintain these common areas. What can you do to improve this?
- 2.) In a recent study with the Town of Warsaw, the Weldon Cooper Center projected the population of Richmond County to rise each decade, from 9,183 in 2014 to 10,587 by 2040. Although the gains seem small, the population is still projected to grow. Can you please address this discrepancy, or ask the Weldon Cooper Center to work on providing more insightful data?
- 3.) In the Richmond County Subdivision Ordinance, it states that no more than 30% of each parcel is allowed to be within a designated floodplain. In congruence with our revised flood map to be effective as of April 16th, 2015, can you please work to verify that no projected parcel will have more than 30% of the land area to be located within a floodplain, in accordance with the updated flood map that can be referenced on the FEMA website?

ROBERT C. SMITH
ATTORNEY AT LAW

ROBERT C. SMITH

March 26, 2015

Planning Commission Members
Richmond County
101 Court Circle
Warsaw, Virginia 22572

Re: Answers to Questions Posed By Planning Commission Members

Dear Planning Commission Members:

As of today, I have three questions that Joseph has sent me:

QUESTION # 1:

Under Section 6, Article 4 (page 5), entitled "Common Area," the language is ambiguous in stating that: "At or before such time as the last lot is sold and free of all liens and encumbrances."

- This could leave the HOA 'high and dry' with few parcels sold, no capital to work from, yet having to maintain these common areas. What can you do to improve this?

ANSWER:

The Declarations state that a non-stock corporation will be formed at the recordation of the Declarations to govern the "Homeowners Association" and these declarations, of course are recorded with the subdivision plat's recordation. The Declarations are an easement which runs with the land to govern the Homeowner's Association. Thus, even though initially there is no fee simple ownership of the common area by the Homeowner's Association, each lot owner has rights to the common area which "run with the land and are part of the title."

BRANCH HOUSE * 2501 MONUMENT AVENUE * RICHMOND, VIRGINIA 23220
MAILING ADDRESS: P. O. BOX 8273, RICHMOND, VIRGINIA 23226
Telephone: 804-357-5977 • Email: rsmith@chartwellcapital.net

At the outset, the developer will have 100% control of the Homeowner's Association, but will be governed by the terms of the Homeowner's Association. While the developer may still "own" the common area after subdivision plat recordation, the common area and all of the developable lots are still encumbered by the declarations and still 100% subject to the governance of the Homeowner's Association, which of course is a perpetual covenant that runs with the land. Please note that the Declarations cover all of the lots in the subdivision; any lot that comes on line is automatically part of the Homeowner's Association and its governance.

Thus, the concern, as I read this question, is a situation where, for instance, after the developer sells 10 lots, it deeds the common area over to the Homeowner's Association and thus the fear is the 10 lots would have to carry the burden of the maintenance of the common area and the developer would have no more responsibility. Per the Declarations, if this were to occur, the developer could not escape its responsibilities to be a dues paying member just like the 10 lot owners, as again, being governed by the Homeowner's Association is part is an encumbrance of each developed lot. Likewise, any future lot that comes on line is also part of the Homeowner's Association. Thus, even if the developer conveys the common area back to Homeowner's Association, the developer and any future lot holders cannot escape any responsibilities to the Homeowners Association.

The Declarations provide protection to both the lot owner and the developer, in that they allow the developer to front various costs for the benefit of the Homeowner's Association and then to set up an orderly method for the Homeowners Association to govern itself and to pay for the upkeep of the common area after the developer finishes the project.

§ 55-508 et seq. of the Virginia Code, the "Property Owner's Association Act," also provides for a myriad of protections for lot owners. A smart developer wants an active Homeowner Association as this self-governing mechanism tends to preserve property values and takes on indices of ownership, often relieving the developer of having to take on these duties by itself. By law, association governance and fees have to be disclosed at contract and as such, a developer will have a difficult time selling lots if association fees are deemed to be unreasonable. Having declarations that run with the land and subject to the Property Owner's Association Act create a healthy framework where there are useful rules and procedures to protect lot purchasers and to properly govern large communities. (as an editorial note, many municipalities would be better served if they operated under the same legal parameters).

QUESTION # 2:

In a recent study with the Town of Warsaw, the Weldon Cooper Center projected the population of Richmond County to rise each decade, from 9,183 in 2014 to 10,587 by

BRANCH HOUSE * 2501 MONUMENT AVENUE * RICHMOND, VIRGINIA 23220
Telephone: 804-357-5977 • Email: rsmith@chartwellcapital.net

2040. Although the gains seem small, the population is still projected to grow. Can you please address this discrepancy, or ask the Weldon Cooper Center to work on providing more insightful data?

ANSWER:

In an effort to answer this question, I have had extensive, recent discussions with Harrison Lombard, Research Specialist, Demographics Research Group, Weldon Cooper Center. The Town of Warsaw data cited above was pulled from Virginia Employment Commission (VEC) data. Please note that the information may not be reliable for a number of reasons. This VEC data was compiled using an historical statistical analysis and is flawed. The prison population is often used in these types of analyses without segregating this population out from permanent residents. This has a tendency to create aberrations in the full time (non-prison) population. For example:

- The 2040 VEC projected population is based on historical population growth, and assumes that if the County had grown at a certain rate in previous decades, once a recession or downturn is over, it will continue to grow at the historical rate for future decades.
- The prison population grew significantly in the 1990s and early 2000s. It grew by 1,000 people from 1993-1994, and then the Northern Neck Regional Jail opened in 1995. This population growth is included in the population growth of Richmond County for the same period. This rate of growth is factored into the projected rates of growth in our current decade and each subsequent decade until 2040. Thus, the growth projected is based on a flawed analysis, and there would be no growth were it not for this anomaly of the growth in the prison population distorting the projected growth of the entire County's population.
- In some studies, the prison population distorts the average age of County residents.
- Weldon Cooper believes that this VEC population projection needs to be revised downward, and would like to produce another statewide projection which captures the recent trend of slow growth and decline since the Great Recession began. An updated projection would lower the projected population for Richmond County.
- In addition to the projections being flawed based on the distorting effects of the prison population, they are also flawed due to the effects of the 2007 "Great Recession." These assumptions assume that if there is a recession, County growth patterns snap back to previous growth patterns after a year or two.
- Weldon Cooper states that the effects of the 2007 Great Recession have not abated at all, and now we are into the 8th year of this pattern: young people move away and do not come back. The most significant effect of this pattern is deaths exceed births and there is no migration to the County, because there are no jobs.
- Now, the most dangerous element of this "Great Recession Syndrome," is the rapidly declining birth rate combined with an escalating death rate as baby

boomers are dying off. As there is a declining base of 20-35 year olds, there are less babies being born, which means there are less babies to have babies in the future, and this trend could cause a spiraling effect on the County's population.

There is much empirical evidence to suggest that this "spiraling" effect of a precipitous population decline is a real possibility simply because it is a trend that has already happened across Virginia in many rural counties. Thus, by looking at what has already happened in many rural counties, we know what the future could look like, and we know why these counties declined so quickly: no jobs and no young people. We also know that we are experiencing these exact same trends now and are in the 8th year of this phenomenon.

In my economic analysis, I stated that "if these trends continue, the population of Richmond County will decrease by 25% over the next 20 years" (page 3, ¶ 1 of Economic Impact Study). No one can predict the future; however, we are in downward trend that very well could be a serious problem.

QUESTION # 3:

In the Richmond County Subdivision Ordinance, it states that no more than 30% of each parcel is allowed to be within a designated floodplain. In congruence with our revised flood map to be effective as of April 16th, 2015, can you please work to verify that no projected parcel will have more than 30% of the land area to be located within a floodplain, in accordance with the updated flood map that can be referenced on the FEMA website?

ANSWER:

We are at a high elevation and there is very little flood plain on the property, and what flood plain there is in the bottom of deep ravines where there will be no buildable lots. Thus, the 30% subdivision ordinance will not affect our development, even with the new FEMA guidelines. Also, please note that pursuant to the zoning process we will submit fully engineered plans that have to comply with the subdivision ordinance before recordation of any subdivision plat.

Should anyone have any further questions, please do not hesitate to contact me.

Very truly yours,



Robert C. Smith

Cc: Jeff Howeth