

**RICHMOND COUNTY PLANNING COMMISSION
MEETING MINUTES**

April 27, 2015

The Richmond County Planning Commission held a scheduled work session on Wednesday, April 27, 2015 in the Public Meeting Room, County Administrative Building, Warsaw, Virginia.

The following members were present:

Glenn Bowen
Jesse Clark
Vice Chairman Darnell Clayton
Rick Cox
Chairperson Martha Hall
Clifton Jenkins
John W. Lewis
Joyce Pemberton
Patrick Weakland

The following member was absent:

Cassandra Jackson

Also present:

Joseph Quesenberry, Planning and Zoning Administrator
Denise Dunaway, Planning Commission Alternate Secretary
Jeff Howeth
Rob C. Smith, Zoning Attorney, Diatomite Corporation of America
and approximately 5 others

CALL TO ORDER, INVOCATION AND PLEDGE OF ALLEGIANCE

Chairperson Martha Hall called the work session to order at 5:00p.m. Jesse Clark gave the invocation and Chairperson Hall led everyone in the Pledge of Allegiance.

FONES CLIFFS DEVELOPMENT – DETAILED ZONING REQUEST – WORK SESSION

Chairperson Martha Hall stated that each member should have received Mr. Smith's answers (Attachment #1) from the Commission's initial questions regarding the Fones Cliffs Development. Chairperson Hall informed the members that they would go through each

question and answer during the work session and reminded the members that a public hearing will be held at the next Planning Commission meeting.

In regards to question #1, Chairperson Hall thanked Mr. Clark for the well thought out question and thanked Mr. Smith for answering the question comprehensively. Mr. Clark had no further comment regarding his question.

No further comments were made regarding question #2.

In discussing question #3, Mr. Smith explained that with golfers having to cross the public highway twice during each round of golf, the easiest way to keep that area safe is by markings on the road with pedestrian walkways and signage. Mr. Howeth explained that the normal procedure for any type of crossing is signage, but if needed, a tunnel under the road could be constructed. Chairperson Hall said she hopes that the traffic count will increase with the success of the project but it is a valid concern. Mr. Weakland said if they put in a tunnel, he is concerned with flooding when it rains. Mr. Howeth said there would have to be drainage features to keep the surface water out. Chairperson Hall said this item will need to be decided during the next phase. Mr. Smith said that during the next phase some of the plans may be shifted but assured the Commission that the concerns will be noted.

In regards to questions #4, Mr. Bowen said that he scanned Mr. Smith's comments regarding the EMS strategy and does not have any further questions at this time. Mr. Smith said that based on Mr. Bowen's concern, he met with Mr. Quicke and Mr. Baker and toured the EMS facilities. Chairperson Hall asked how Mr. Smith is planning to consider the EMS situation. Mr. Smith said that Richmond County has a professional, well-trained, and well-financed EMS system; however, there is a question concerning future enhancement in the northern end of the County. Mr. Smith said that once the plat was recorded, their plan would be to have an ambulance stationed in the northern portion of the County right away, and once they reach a certain number of Certificate of Occupancy's, there would be a station on their property full powered.

No further comments were made regarding question #5.

In discussing question #6, Mr. Cox said the questions were answered but he still has concerns about the public road leading to the project site, which are narrow with no site lines, and no shoulders. Mr. Cox asked Mr. Smith if they are willing to do anything to improve the roads. Chairperson Hall agreed with Mr. Cox's road concerns and asked how soon after development starts do they anticipate making improvements to the road. Mr. Smith said that when the subdivision plat is recorded, the road will be engineered to VDOT's standards. Ms. Pemberton questioned the statement "future traffic generation for no need for future road improvement." Mr. Howeth explained that when VDOT takes over the maintenance of a road, the right-of-way

remains the possession of Richmond County. Mr. Howeth said that roads with less than 50 trips per day will remain private and will not be allowed in the Secondary System. Chairperson Hall said she is concerned about the ingress and egress to and from the project site. Mr. Howeth stated the developer's interest is to always get rid of the roads as soon as possible because roads equate to maintenance and questioned why a developer would want to take up maintenance when it is the responsibility of the highway department. Mr. Cox asked if the roads in the development are the same size as Route 624 or Wellfords Wharf Road. Mr. Howeth explained the width of the surface material on the roads and shoulders and the level of service standards in regards to capacity of traffic on highway roads. Mr. Howeth stated that the traffic number dictates what needs to be done on a road, but he has it in the presentation that the developers are willing to surface specific roads and increase road widths and shoulders. Mr. Cox asked Mr. Howeth if he agreed the existing roads are not adequate for serving the future needs of the traffic that will be generated by this project. Mr. Howeth responded by saying that he does not believe the roads are adequate for the sake of marketing and aesthetics. Mr. Howeth explained how an agreement was formed on the final traffic number.

Joseph Quesenberry went over the three phases of development approval in regards to this project. The Planning Commission is currently reviewing phase one of the project, which is the rezoning request and then it goes before the Board for approval. During phase two, the preliminary site plan will be reviewed by the Planning Commission before it goes to the Board for approval. Phase three encompasses the Planning Commission's recommendation of approval to the Board for the final site plan.

Mr. Smith explained they currently do not have engineered plans because they wanted to make sure the project moved along each phase first. They believed they would be able to solve any issues that may come up in the meantime.

Mr. Cox summarized exactly what he was asking in regards to question #7. He requested that Mr. Howeth explain what was meant by "water management area." Mr. Howeth explained that the DEQ has expanded the groundwater management area, meaning the government has stepped in to regulate any user who utilizes more than 10,000 gallons of water per day or 300,000 gallons of water per month. If a user goes over these amounts, they are considered a significant groundwater user for a ten year period and must provide data reports to DEQ each year showing the amounts of water being utilized. Mr. Howeth explained the effort necessary to obtain permits for ground wells, etc. and the benefits behind using private wells for the quality of the water being served. Mr. Howeth stated he believes the water authority should own everything in the water system and the sewer authority should own everything in the sewage disposal system and feels maintenance and all should go back to one authority. He stated citizens in this part of the County would pay a fee for water and sewer.

In regards to question #8, Mr. Smith stated he agrees broadband is critical to this project and is committed to that, but is not sure how to go about doing so at this point in time. He has had conversations with a local provider in regards to running lines to the property and concluded this option is feasible.

No further comments were made regarding question #9.

In regards to question #10, Mr. Howeth feels there is not much reason to put electrical substations underground and further discussed utility easements along lot lines.

In discussing question #11, Mr. Howeth stated VDOT assisted with determining the traffic needs for the project and is satisfied with the final numbers being used.

Mr. Smith clarified the total number of community piers and mooring slips during the discussion for question #12. Mr. Smith stated he does not view this project as a water sports development and the plan does not include any ramps or the sale of gas. Mr. Smith feels the main goal behind this project is to have people enjoy the Northern Neck.

Chairperson Hall reminded everyone of the Public Hearing on May 11th and stated she believes phase two will be more intense.

Mr. Cox asked if hunting would be allowed on the grounds. Mr. Smith feels the zoning and residential association will allow for skeet and trap shooting and feels it would be best if the concierge at the lodge connected individuals with outside people for hunting, rather than actually allowing it on the property.

OTHER BUSINESS

There was no other business to be discussed.

ADJOURNMENT

There being no further business, Chairperson Hall adjourned the meeting at 6:25 p.m.

Respectfully submitted,

Denise Dunaway
Planning Commission Alternate Secretary

ROBERT C. SMITH
ATTORNEY AT LAW

ROBERT C. SMITH

April 28, 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:

Please find additional answers to questions posed at the April 6th meeting and as sent to me by Joseph.

QUESTION # 1:

Mr. Smith, I am sure that considerable time and resources have been spent in determining a benchmark for success on this project. 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?

ANSWER:

The best way to avoid failure is to structure the project in such a manner that will give it the best opportunity to succeed. We have done this.

The biggest factor that could lead to the project's failure is debt. The property has no debt, Diatomite has owned the property since 1958, so in addition to not having any debt, the property has a very low basis. Moreover, and just as important, all of the planned infrastructure costs are to be funded with cash (equity) and no debt. This very conservative approach to developing the property is the best way to ensure its success. This is a generational project and will not have the cyclical

pressures to discount lots and cheapen itself in periods of economic downturns, which are inevitable.

The project is also very scalable in that there is not a massive amount of up front development costs and what development costs there are can easily be spent in reasonable proportion to sales.

The project has several distinct revenue centers and is not dependent on one use to drive sales.

QUESTION # 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?

ANSWER:

We spent a considerable amount of time on this question at a previous meeting, and I felt like I talked too long about bankruptcy law, etc. As I mentioned, I have been the lead lawyer in a number of debtor in possession real estate projects that were over loaded with debt. Chapter 11 of the U.S. Code allows for a developer to file a plan of reorganization while staying any enforcement of creditor rights if certain conditions are met. A multi-use project such as this has a very good likelihood of defeating a “motion to lift the automatic stay” because all of the parts of the project affect the other parts, and the courts realize that secured and unsecured creditors may be harmed if a reorganization plan is not approved.

Large real estate projects are “different animals” than many Chapter 11 bankruptcies which involve operating companies whose valuation is or almost always is dependent on its EBITDA value. An operating company that is losing money and has no sales often has no more than a \$0 value. However, real estate is a hard asset. Thus for example, where an undeveloped parcel of zoned land valued at \$5 million with \$5 million of debt, may drive a developer into bankruptcy, that parcel may be a steal to another developer at \$2.5 million. Bankruptcy has a tendency to “wash out” bad debt and bad operators and put property back on the market at much lower prices, giving the new operator/owner a much lower basis to make the property economically sustainable.

There is an old adage in the real estate business that the first guy, the visionary, has a great idea, but goes bankrupt trying to “make his dream come

true,” the second guy buys the property and is later foreclosed on and it is the third guy who buys the property for pennies on the dollar who makes the development project work and becomes rich.

Not having any debt on such a massive project makes our project unique. We will also have other safeguards in place as each operating entity will be a separate limited liability company. This of course is not uncommon, but when there are several different entities, if one “goes bad,” it does not “bring down” the whole project.

As I mentioned in one of our prior meetings, the HOA is a non-stock corporation and the declarations run with the land. The HOA will always have the right to assess dues from any developed lot and a homeowner cannot bankrupt HOA dues, i.e., these dues are not dischargeable in bankruptcy. Also, as I mentioned, there are many protections in § 55-508 et seq. of the Virginia Code to protect home owners associations and provide for their orderly governance.

I cannot promise that we won’t make mistakes or misread the market in the future. However, the best way to ensure success is to recognize that we are human and our judgment is not infallible and to thus, structure our project in a very conservative fashion (no debt) to mitigate against “things that might go wrong.” I think we have done this.

QUESTION # 3:

The proposed golf course is split by the public road that goes to the public boat landing (Carter’s Wharf); with the club house on one side and the 1st tee on the other; and with the 9th hole on one side and the 10th hole on the other. This requires each golfer to have to cross the public highway twice during each round of golf. This road is used by the public to haul their boats to the landing, and can be especially busy on the weekends, which is also true of the golf course. The stopping distance of a vehicle with a boat and trailer is significantly greater than just a vehicle.

ANSWER:

Currently, Carter’s Wharf Road has a traffic count of only 47 cars/day and Cliffs Road has 9 cars/day. The crossing from the first tee to the 10th tee is very close to two intersections where traffic will come to a complete stop: the intersection of Carter’s Wharf and Cliffs Road and the intersection of Carter’s Wharf and the road to Luke’s Island. “Golf Cart Crossing” signs will be posted shortly after this

intersection area before traffic has an opportunity to speed up again. In addition, yellow striped pedestrian and bicycle crossings will also be utilized for this purpose.

QUESTION # 4:

The current Richmond County EMS strategy is to have the squad building located at Warsaw because 80% of the county population is located between Warsaw and the southern end of the county. The 4-lane roads thru the southern end of the county help to reduce response time. District 5 (Stonewall) covers approximately 30% of the northern end of the county, but only accounts for 20% of the county population. In addition, it only has a 2-lane road to access it, which adds to the response times, but until there is population redistribution, this is the best that the county can do for now.

The development proposal has two EMS items of interest: (1) will provide a Police / Fire / EMS building when 150 lots have been sold and (2) there will be no impact to local EMS.

These two items leads one to believe that only homeowners impact EMS services, for which, I disagree.

It is my hypothesis that once the following items are constructed: barn / stables / golf course / restaurant / lecture-seminar conference room and even before the first lot is sold, there will be a significant number of people (workers and customers) at these venues. Given the above, at any time there could be several hundred people at the development area; and at some point in time, some of these people will need EMS support. The current response time (only one recent data point from 5:00 AM) was 29 minutes to middle of Newland. The development area is at the farthest end of the county and you could easily expect to add another 10 to 15 minutes to the above response time.

So what I am suggesting is going to happen, even before the first lot is sold, is that there is going to a population (not residential, but business) shift in the county, and the current EMS strategy does not support this.

Following this thread, this would support the need for a satellite EMS station (currently have only a fire station now) in the upper end of the county. Using the current Richmond County EMS staffing schedule, this would require 6 new personnel. Now, applying the National Firefighter / EMS standards, where you really need 1 ½ personnel for each 1 person needed; then you would actually need 9 new personnel. If you assume 40K per person, then the County is now responsible for an additional 360K in labor. In addition, there is the need for an additional EMS vehicle to support this area, which would be approximately 250K (one time buy, but there is always maintenance support). This does not take into account the

cost for the land and building to support the above. These numbers are just ROMs but are meant to give an idea of the potential financial burden that the County may have account for as a direct consequence of the development.

ANSWER:

Since our last Planning Commission meeting, I have immersed myself in the EMS budget, and I have had extensive discussions with Morgan and Greg Baker, Chief of Emergency Services. They have been awesome to work with, very accommodating and very eager to work with us to ensure no disruption in emergency medical services in the northern end of the County. Working with Morgan and Greg, our initial goal was to make sure that Fones Cliffs did not diminish any services to the northern end of the County. However, through their efforts, I can now report that our development will improve response times in the northern end of the County from "Day 1." I am very appreciative of the attention that both Greg and Morgan have given to this issue.

Political Issues:

Before outlining the future blueprint of EMS resources in the northern end of the County, it is important to acknowledge how emergency medical services are currently deployed in Richmond County and the Northern Neck.

It is a stark reality that there are territorial tensions between different volunteer and government run EMS services in the Northern Neck. A prime example of this is Montross has an EMS unit that "in theory" could quickly serve more urgent emergencies in the northern end of the County. There is a mutual aid agreement in place between Richmond County and Montross. So what's the problem? The following bullet points were considered by Greg, Morgan and me in developing our plan:

- Montross is a volunteer EMS outfit from 6pm-6am and on weekends.
- Richmond County is the only non-volunteer EMS department in the Northern Neck.
- The EMS station is in Warsaw. It is located there to be in a central location to serve both ends of the County and approximately 80% of the calls come from the immediate Warsaw area. Current resources and budget issues make this the best possible location for the EMS station.
- Richmond County gets reimbursed for its services, the volunteer services do not.
- Richmond County's personnel are highly trained and "on duty and ready to go" "24/7."

- Montross's unit a 20 minute response call to get volunteers to the unit before they can respond to a call.
- In many instances, Richmond County gets to a call in the northern end of the County at or before Montross.
- There is no guarantee that even if Montross is called that they will be there before Richmond County.
- If Montross is called, they may only show up with Basic Life Support (BLS) and not Advanced Life Support (ALS) services which may be needed.
- Per the mutual aid agreement, if a call comes into Richmond County from the northern end of the County and such call can be identified as an advanced life support issue, Richmond County will immediately dispatch Montross.
- However, in no way can Richmond County rely on Montross to even show up.

These political issues predate any impact that Fones Cliffs Resort and Spa will have on EMS services. We as developers, have very little control over these entrenched political issues.

After my discussions with Morgan and Greg, it is clear to me that the County cannot turn back and rely on volunteer outfits, especially volunteer outfits from outside Richmond County to improve services to the northern end of the County. State regulations require more advanced training for ALS providers, making it increasingly more difficult for volunteers to become ALS providers. It is inevitable that the solution to improving services in the future will be by effectively utilizing full time career resources and not by relying on Montross or other outside EMS services.

PLAN:

In our proffers, we have proffered a 3 acre site to the County for use as a public safety facility which will be conveyed to the County at subdivision plat recordation. We further proffered that we will build a 4 bay, 3,000 square foot building and dedicate this asset to the County when 150 houses have sold.

Working with Morgan and Greg, the County will initially provide a response vehicle to the northern end of the County which will be deployed at our site and or the Newland fire station. Initially the response vehicle will be deployed from 8:00 am to 8:00 pm, seven days/week.

We have changed our proffer, when there are 125 certificates of occupancy for residential units at Fones Cliffs, we will dedicate the 3,000 square foot building
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to the County. At this stage, the County will have 2 full time EMS people stationed at Fones Cliffs, one of which will be ALS trained and certified.

CONCLUSION:

I would like to thank Glen for bringing these issues to my attention. Thus, before the first house is built at Fones Cliffs, there will be improved response times and emergency medical services in the northern end of the County. The station we build will ensure a much higher quality of emergency services for the northern end of the County than currently exists now. If Glen had not asked this question, then these issues may not have been addressed in the fashion that they have been.

QUESTION # 5

Architectural Review Board or Architectural Control Board....which is it?

ANSWER:

The draft Declarations, Conditions, Restrictions and Easements use the term Architectural Control Board (ACB) and the Fones Cliffs Resort and Spa Design Standards refer to this entity as the Architectural Review Board (ARB). Both are intended to be the same entity. In order to eliminate any confusion, these documents have been changed such that "Architectural Review Board" and "ARB" will be used for both documents.

QUESTION # 6

The Documents refer to surface treatment of roads. What does this mean....gravel, asphalt, VDOT standard?

ANSWER:

Fones Cliffs Resort and Spa intends to have all roads intended for dedication to Richmond County meet the current VDOT standard of construction such that inclusion of these roads into the state Secondary System is done as soon as possible. VDOT regulations allow for several different standards of surface treatment, such as full depth bituminous concrete, blotted seal coating and simple gravel surfacing. The type of surface to be used is based on the volume of traffic projected by VDOT on that particular road. For example, a gravel surface is allowed for roads carrying up to 50 vehicles per day while a blotted seal coat surface can be utilized for roads carrying up to 1000 vehicles per day.

QUESTION # 7

I want more detail about the water supply. A public water supply with fire hydrants that serves the entire subdivision should be installed as both a safety measure and to protect public health...individual wells should be prohibited.

ANSWER:

Since Richmond County falls within the Eastern Groundwater Management Area of the Virginia Department of Environmental Quality, community wells in addition to private wells will be regulated as one system with a withdrawal limit set on the amount of groundwater withdrawn. Therefore, fire flows will be provided to all portions of the potable water system where it is practical to do so without having stagnant water conditions within water mains. Remotely located individual residences with more than thirty feet of exposure distance between residences could be served by individual wells. Since all infrastructure would be typically under one permit limit, it would be prudent to have all of the water system components owned and maintained by one central water authority.

QUESTION # 8

The Detailed Zoning Request states that "natural gas and broadband services will be provided by private contractors" (pg. 6). This should be unacceptable. For a development of this size, broadband is critical and the developer should proactively take steps to insure that it is installed....maybe negotiate a contract with Metrocast or another provider, but something to make it happen. Please address this issue.

ANSWER:

We agree that high speed internet is critical to the success of the project. The detailed zoning requests states that broadband services will be provided by private contractors. This does not mean that all homeowners will be left to their own devices to obtain these services. The developer will use its critical mass to obtain the most qualitative services available in both speed and reliability.

These private providers will compete for our business to be the exclusive provider for all the residents and potential cable and internet hookups at Fones Cliffs.

We anticipate going through a request for proposal process. We have had extensive conversations with one broadband provider, and we know that it is possible to get a hard wired broadband infrastructure to the site.

We have engaged a technology consultant in Richmond to help us navigate broadband and other technology issues. We have been advised that technology is changing rapidly and that there are and likely will be a myriad of broadband options for a project such as ours.

It is too early in the process for us "to contract" with a provider now, as the zoning process is not complete, and we have not exhausted all of our available options. However, we recognize that a project such as ours will demand the very best technology options available.

QUESTION # 9

Natural gas? Not available in the Northern Neck (to my knowledge)....do you mean propane?

ANSWER:

Propane can be either centrally located or located within individual tanks located on the consumer's property. In areas where density of individual tanks becomes a safety issue, a central tank may be installed with individual meters installed to each residence. Natural gas is not available in the project area at this time.

QUESTION # 10:

Can we assume all utilities will be installed underground? No utilities installed under road beds (crossing is OK). Utility easements along all lot lines?

ANSWER:

Most utilities will be installed underground by necessity. However, due to certain capacity and location issues, some utilities such as primary power conductors may be installed overhead to distribution points such as substations. All utilities will be installed underground within the immediate vicinity of the proposed residences. All utilities will be located within utility easements.

QUESTION # 11

I note that a traffic study was done and the results sent to VDOT. What was VDOT's response...you say no need for future improvements, does VDOT agree?

ANSWER:

Jeff, Morgan and I met with VDOT on August 12, 2014. We met with:

Adam Campbell
Michael Doczi
Ronald Brooks
Dave Brown
Peter Hendrich
Craig Van Dussen
Stephen Haynes

Prior to the meeting, we had disclosed our plans to local VDOT land use officials. We had a robust discussion among all ten of us about all aspects of the project. VDOT gave us the ITE Codes for each classification of the project.

The most important and substantive consideration of the traffic study we performed at Fones Cliffs is this: the road structure to carry all of the traffic to and from Fones Cliffs is already in place and is virtually unused. Cliffs Road has a current traffic count of 9 cars/day and Carter's Wharf Road has a current traffic count of 47 cars/day. Generally, public roads are built with a right of way, compacted base and other engineering features to carry approximately 2,000 cars per hour for each lane of traffic. In theory, these roads with minor improvements and surfacing should have the capacity to carry at least 20 percent of their theoretical capacity, or 400 cars per hour which would equate to 9800 cars per day.

In analyzing the traffic needs at Fones Cliffs, we ask that the Planning Commission visualize a project where there are no roads from Newland Road (624) leading into the property. Thus, what kind of road would we design and build to service Fones Cliffs Spa and Resort ?

It would be exactly like the road structure that is already there and is virtually unused, and this road, with a few minor improvements is already at a capacity to service the project for 25 years.

At full build out in 25 years, the project would generate 3,602 trips per day and only 304 pm peak hour trips. VDOT generally does not require that a county submit a project to VDOT for analysis unless the project generates at least 5,000 trips per day and or 1,000 peak hour trips per day.

QUESTION # 12:

How many piers....narrative says 7, presentation says 9. How many mooring slips (2/pier)...Proffers indicate a community pier w/30 slips (Exhibit 6, pg.17)?

ANSWER:

7 community piers with 2 mooring slips per pier. All conflicting information in proffers has been deleted.

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

Very truly yours,



Robert C. Smith

Cc: Jeff Howeth

