

September 22, 2009

At a special called meeting of the Prince Edward County Board of Supervisors held at the Court House, on Tuesday, the 22nd day of September, 2009, at 1:00 p.m., there were present:

William G. Fore, Jr.

Sally W. Gilfillan

Robert M. Jones

Charles W. McKay

James C. Moore

Howard F. Simpson

Lacy B. Ward

Mattie P. Wiley

Also Present: Sarah Elam Puckett, Assistant County Administrator; and James Ennis, County Attorney.

Chairman Fore called the meeting to order, stating that its purpose was to discuss the agreement regarding the sewer lines at The Manor Resort and the acceptance of a water line at The Manor Resort.

In Re: Agreement Regarding Sewer Lines at The Manor Resort

Mr. Wade Bartlett, County Administrator, said that in order to resolve the current issue surrounding the sewer lines The Manor is proposing to continue to own and maintain the sewer lines and wishes to reach an agreement whereby the County will accept wastewater flow into the County's pump station for subsequent processing.

Mr. Bartlett said that The Manor agrees to abide by all requirements contained in the Water and Sewer Ordinance and will allow inspection of any future work on the sewer lines to ensure such work meets the County's standards to ensure the system is not compromised. He added a facility fee will be charged which will be equal to one-half of the charge of the connection fee as put forth in the Water and Sewer Ordinance, and he recommended an amendment to the agreement to limit that reduction to a period of two years. He said the limit would be a motivating factor to build more facilities on the property. He said he recommends an amendment inserted into Article 2, Item 2, as follows: "Such charge will be paid

on each and every connection to the Sewer lines in the Collection System and will be paid prior to the issuance of a Certificate of Occupancy.” Mr. Bartlett recommended adding a second amendment to Article II, as follows: “[Item] 10. This agreement shall remain in full force and affect for a period of one year from the date hereof and shall renew automatically for additional periods of one year unless notice of intent to cancel is delivered to the County or the General Managing Partner of the Herberton Group not less than ninety (90) days prior to the annual termination date. This agreement can be amended at any time with mutual consent of both parties.”

Mr. Bartlett said County Attorney James Ennis and Gloria Freye, an attorney with Maguire Woods, reviewed the agreement and said the County has the authority to provide service under multiple state codes including the Public Private Partnership. He said Item 10 would put a time limit on the agreement and how the agreement can be renewed, terminated, and amended; this agreement will only cover the items The Manor owns. Mr. Bartlett said individual homes will be developed by independent developers who will pay the connection fees for the residential homes; the reduction does not apply to the residential homes. Discussion followed.

Supervisor Ward questioned the timing for the meeting and asked about the urgency for the meeting. Mr. Bartlett said the time for the meeting was driven by a number of factors: some Board members were going out of town or had previous engagements; this action was necessary for The Manor to proceed and The Manor desires the delivery of sewage service as soon as possible for the cottages as they would like to open them on October 1.

Supervisor Wiley asked if there was anything in the agreement that would allow the County to be sued. Mr. Ennis said there is a very remote possibility, as nothing is changing at this time in regard to the ownership; the County would not be liable for the lines. Mr. Ennis added that this agreement simply allows the transfer of sewage into the County system, the service for which The Manor will pay. He said the County has the ability to provide service for one year, and the County can serve notice to terminate 91 days ahead of the anniversary date if the Board no longer wishes to operate under this arrangement. It acts as a motivator for The Manor to affect a dedication of the lines within a year’s time. He said those terms would be negotiated at that time. Mr. Ennis said he could see no grounds for a suit. He said the County is a middle-man in this arrangement; the County owns the pump station and the water main.

Further discussion followed.

Supervisor Simpson asked about permits that the county may need to obtain from the state to operate; he asked further if there is a problem with a line, will the state come to the county to remedy the situation. Mr. Bartlett said there are no permits issued for sewer lines; a permit is necessary to construct one, but not to use. He said a Certificate to Operate is necessary for the pump station, which is issued by the DEQ. Supervisor Simpson then asked about changing availability of the service. Mr. Bartlett said service can be terminated for non-payment of their bill, health related issues such as spillage, and the like. Further discussion followed.

Supervisor Simpson then asked who will charge and collect for the water usage. Mr. Bartlett said the County charges and has already begun the process with “Maxine’s,” a restaurant. Supervisor Simpson asked who is charged if 25 houses are built. Mr. Bartlett said each individual residence will be a metered customer and they will pay for their own service. He added each developer will be responsible for paying for the connection fees and sewer lines to the residences. Further discussion followed.

Supervisor Jones made a motion to accept the Agreement for the acceptance of wastewater into the County of Prince Edward’s Utility System, with amendments as follows:

- Article 2, Item 2, as follows: “During the initial term hereof and during the first annual renewal period, the owner agrees to pay to the County a Facility Fee equal to one-half of the cost of the sewer connection charge contained in the County's Water and Sewer Ordinance. At the expiration thereof, the Facility Fee will equal the cost of the sewer connection charge contained in the County's Water and Sewer Ordinance. Such charge will be paid on each and every connection to the Sewer lines in the Collection System and will be paid prior to the issuance of a Certificate of Occupancy.”
- “[Item] 10. This agreement shall remain in full force and affect for a period of one year from the date hereof and shall renew automatically for additional periods of one year unless notice of intent to cancel is delivered to the County of the General Managing Partner of the Herberton Group not less than ninety (90) days prior to the annual termination date. This agreement can be amended at any time with mutual consent of both parties.”

After some discussion, Supervisor Ward made a substitute motion to delay voting on the agreement until the next regular Board meeting or until such time as a meeting could be scheduled that would be more convenient to the public. The motion failed:

Aye: Lacy B. Ward

Nay: William G. Fore, Jr.
Sally W. Gilfillan
Robert M. Jones
Charles W. McKay
James C. Moore
Howard F. Simpson
Mattie P. Wiley

Chairman Fore then returned to the main motion made by Supervisor Jones, to accept the Agreement for the acceptance of wastewater into the County of Prince Edward’s Utility System, with amendments as stated above; the motion carried:

Aye: William G. Fore, Jr.
Sally W. Gilfillan
Robert M. Jones
Charles W. McKay
James C. Moore
Howard F. Simpson
Mattie P. Wiley

Nay: Lacy B. Ward

Agreement for the acceptance of wastewater into the County of Prince Edward’s Utility System

This Agreement (“Agreement”) is made and entered into this _____ day of _____, 2009, by and between the County of Prince Edward, Virginia, a political subdivision of the Commonwealth of Virginia (“County”) and Herberton Poplar Hill Residential I, LLLP, a Virginia Registered limited liability limited partnership, Herberton Poplar Hill Residential II, LLLP, a Virginia Registered limited liability limited partnership, Herberton Poplar Hill Hospitality, LLLP, a Virginia Registered limited liability limited partnership, and Herberton Poplar Hill Recreation, LLLP, a Virginia Registered limited liability limited partnership all of who have the same General Managing Partner and are collectively known as the “Owner.”

WITNESSETH

Whereas, the County presently owns and operates a utility system which includes a Force Main and Pump Station, and

Whereas, the County desires to support future development in the Highway 15 corridor, and

Whereas, in order to clearly define the responsibilities of both parties hereto, the parties enter into this Agreement regarding, among other things, ownership, use, operation, maintenance and expansion of the existing wastewater collection system currently owned by the Owner, and

Whereas, in order to clearly define the rates and fees the “County” will charge the Owner for the ability to deliver wastewater to the County’s pump station for subsequent treatment;

Now Therefore, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE 1
DEFINITIONS**

BILLING PERIOD means a bimonthly period imposed upon each water user having a wastewater connection that eventually flows to the County’s utility system.

COLLECTION SYSTEM means a wastewater pipe or system of pipes, manholes or laterals whose flow eventually enters the County's utility system.

**ARTICLE 2
AGREEMENT**

1. Acceptance of the Agreement is acknowledged by the execution of this document.
2. The owner agrees to pay the County a facility fee equal to two-thirds the cost of the Sewer connection charge contained in the County's Water and Sewer ordinance.
3. The owner or any individual customer whose wastewater flows to the County's pump station agrees to pay the County a bimonthly sewer charge as contained in the County's Water and Sewer ordinance.
4. The owner will be responsible to maintain and operate the Collection System in accordance with all requirements contained in the County's Water and Sewer ordinance.
5. The County Administrator or his designated representative shall be permitted to enter all premises where an effluent source or treatment system is located at any reasonable time for the purpose of inspection, observation, measurement, sampling and/or copying records of the wastewater discharge to ensure that discharge is in accordance with the County's Water and Sewer ordinance.
6. The County Administrator or his designated representative shall be permitted to enter all private property for the purposes of inspection, observation, measurement and sampling to ensure all construction and maintenance is in accordance with the County's Water and Sewer Ordinance.
7. The Owner shall notify the County when any new connection, construction, and/or maintenance is performed on the Collection System. Any such work must be performed in accordance with the County's Water and Sewer ordinance. The owner shall allow the County to inspect such work to ensure compliance with the County's Water and Sewer ordinance.
8. If flow to the pump station in any one month exceeds the metered water use by 20% the County will assume there is an Inflow and Infiltration issue. The County Administrator will contact the Owner and request the Owner for an explanation of the excess flow. If no adequate explanation is received the County Administrator at his discretion will take the necessary action required to determine the cause of the excess flow and bill the owner for the cost of such inspection and repair. Such action may include the temporary termination of sewer service at any private lateral connection to protect the County's Utility System. Sewer service shall be restored after corrective actions are complete or by agreement between the County Administrator and the Owner/customer.
9. The County and Owner do hereby agree to execute such other future documents as may be deemed necessary in order to give full force and effect to this agreement.
10. This agreement shall remain in full force and effect for a period of one year from the date hereof and shall renew automatically for additional periods of one year unless notice of intent to cancel is delivered to the County or the General managing partner not less than ninety (90) days prior to the annual termination date.

WITNESS the following signature and seals

BOARD OF SUPERVISORS OF THE COUNTY
OF PRINCE EDWARD, VIRGINIA

Chairman , Board of Supervisors

ATTEST

Clerk

HERBERTON POPLAR HILL RESIDENTIAL I LLLP
By: HEBERTON VIRGINIA DEVELOPMENT, LLC,
A VIRGINIA LIMITED LIABILITY COMPANY

Michael Heffernan, Manager

ATTEST

In Re: Acceptance of a Water Line at The Manor Resort

Mr. Bartlett said the County has received a request from Herberston Virginia Development to convey a water line to the County. This line which was installed by a private contractor is approximately 800 feet long and its location is described as “located along the eastern property line of “Parcel O” as shown on that certain plat entitled “Plat Showing 443.5+/- acres of land, being the remainder of Poplar Hill Farm, (Parcels #1 and #2), Parcel “T” and Parcel “U”, located in the Farmville District of Prince Edward County, Virginia”, dated December 12, 2001 and with final revision on June 7, 2006, and made by Draper Aden Associates, which is recorded in the Clerk’s Office of the Circuit Court of Prince Edward County, Virginia at Plat Cabinet A, 373, #3 and #4.”

He said it is an eight inch line with one fire hydrant that will serve the cottages and eventually the golf club house. He added the County has received the certification that all costs have been paid, the Deed of Easement, and the engineering plan for the water line; the line is not part of the system that has been purchased from the Town.

Chairman Fore asked if the line is currently functioning. Mr. Bartlett said it is not; the easements will allow the County to go onto the property for inspection and maintenance.

Supervisor Moore made a motion to accept the conveyance of the water line and authorize the Chairman to sign the proposed Deed of Easement.

Supervisor Simpson asked if future lines would be installed, the developer would have to contact the County to enter into the system. Mr. Bartlett said that is correct.

Supervisor Wiley asked if the line has been inspected; Mr. Bartlett said the line has been inspected, and will also have to be flushed and a bacteriological test will be done. He said it will also be inspected for leaks; any repairs would be at The Manor’s expense. A “blow-off” valve has already been installed.

After further discussion, Supervisor Ward made a substitute motion to delay the vote on the acceptance of the water line at The Manor Resort until the next regular Board of Supervisors meeting or until such time as it would be more convenient to the public. The motion failed:

Aye: Lacy B. Ward

Nay: William G. Fore, Jr.
Sally W. Gilfillan
Robert M. Jones
Charles W. McKay
James C. Moore
Howard F. Simpson
Mattie P. Wiley

Chairman Fore then returned to Supervisor Moore's motion to accept the conveyance of the water line and authorize the Chairman to sign the proposed Deed of Easement. The motion carried:

Aye: William G. Fore, Jr.
Sally W. Gilfillan
Robert M. Jones
Charles W. McKay
James C. Moore
Howard F. Simpson
Mattie P. Wiley

Nay: Lacy B. Ward

Supervisor Gilfillan said the Board of Supervisors does a good job of meeting in the evenings. She added that this meeting was well advertised.

On motion of Supervisor Simpson and adopted by the following vote:

Aye: William G. Fore, Jr.
Sally W. Gilfillan
Robert M. Jones
Charles W. McKay
James C. Moore
Howard F. Simpson
Lacy B. Ward
Mattie P. Wiley

Nay: None

the meeting was adjourned at 1:39 p.m.