

MINUTES OF THE RUTHERFORD COUNTY PLANNING COMMISSION
APRIL 28, 2009

Present:

Steve Wright, Chairman
Jim Still, Secretary
Ronnie Harrill
Jim Huffstickler
Kim Warner
Hicks Owens, Planning Director

Marshall Atchley, Vice Chairman
Mike Hager
Dwayne Harris
Phillip Miller
Danny Searcy, County Planner

Approval of minutes, motion by Kim Warner.

Queen's Gap Bond Extension. Dungan Law Firm of Asheville, Robert Dungan, addressed the Commission representing 6 lot owners who have questions regarding an extension. Mr. Dungan spoke in opposition to an extension of time for construction of infrastructure in Queens Gap Phase I. County Planner states that the site improvement thus far is poor and that Queens Gap would have to greatly increase the pace of progress to be successful, even with an additional 12 months. Burt Baine, Manager of Queen's Gap LLC, states that they share in the eagerness of the lot owners and state that they intend to complete development. He also states that they are not using an "inferior" water system with the community wells. They drilled wells which have been permitted through the State of NC as viable water system yielding as much as 500 GPM. County Planner requested copies of the documents and permit related to the public water system including the GPM and any backup well requirements. Burt Baine also added comments regarding the sewer system saying "due to a continental divide in the development, the plan is to place a wastewater treatment facility in phases on each side of that divide as the need arises." He added that the engineers and state permitting office inform the developer that a minimum amount of flow is necessary which can only come from future houses on the site. Meanwhile, Baine comments, the developer will pay for a septic tank for each home until there are enough homeowners for a wastewater treatment plant. Mr. Hager asks Mr. Baine what he is planning to do differently to meet the deadlines. Mr. Baine states that Queens Gap is talking to more contractors, one of which is from our county and will begin on both ends, working inward. Mr. Warner asks what timeline points the county would use to insure the development is on schedule if bond extension is granted. County Planner referred to the Phase I schedule and construction sequence submitted by the developer. He added that he had met with Burt Baine, James Kiefner and John Hollifield and that they fully understand the potential consequences of missed milestones and these three men had reported that this is a schedule that can be met. Discussion continued with Mr. Warner commenting the idea of shifting personal indemnity in favor of the county to avoid suing the bond company if necessary. Mr. Still commented that a penalty short of calling the bonds for failed performance may be an effective remedy. Mr. Hager agreed that calling the bonds may not be the best solution, adding that the County's GreyRock experience hasn't sped up the process at all. County Planner stated that the one tool that the county has implemented is research bond companies via a legitimate ratings organization (S&P, Moody's, Fitch, AM Best, etc.). Currently, LEXON has an A-

Excellent rating, Stable, with a financial size of \$25M to \$50M. This train of thought and discussion continued with seeking appropriate assurances for the County and a focal point that the best scenario would be for the developer to complete the development; this discussion resulted in the following recommendation:

- Any extension be subject to the timeline and schedule for construction of roads and water as submitted by Queens Gap dated April 13, 2009 titled "Construction Sequence Plan for Phase I." Furthermore, include consequences up to and including calling the bonds if substantial failure.
- Monthly status report from inspections of the progress at the Queens Gap Phase 1 site by the County Planner to the Planning Commission.
- Bi-monthly progress reporting from the developer's professional engineer certifying the completion of progress and certifying payment of contractors to date.
- Provide copies to the county of executed contracts for infrastructure installation reflecting statements of work and the dates to accomplish the work.
- Queens Gap shall provide written verification from N.C. or a P.E. supporting the sewer delays and timeline for public sewer system in Queens Gap Phase 1.
- Owner Devin McCarthy provide a personal financial guarantee directly to Rutherford County for the amount of the performance bonds or post the amount in an escrow account to insure that payment will be made.

This Planning Commission requests that the County Attorney confirm these recommendations and forward to the Board of County Commissioners (BOCC). Mike Hager made a Motion to recommend a twelve month extension to construct Queens Gap Phase I with the conditions as stated and approved by the County's attorney; seconded by Jim Huffstickler. Vote carries unanimously.

Meeting adjourned.