

**King & Queen County
Planning Commission Minutes
September 5, 2023**

The King & Queen County Planning Commission met on Tuesday, September 5, 2023, at 6:00 p.m. in the King & Queen County Courts and Administrations Building in the General District Courtroom for their regular monthly meeting.

Planning Commission Members Present:

Michael Flemming	Comer Jackson
Milton Watkins	David Campbell
Hunter Richardson	Barry Allen
Robert Coleman Jr.	Mark Berry

Also in Attendance:

Vivian Seay, County Attorney/County Administrator
Donna Elliott Sprouse, Director of Community Development

Call to Order

Chairman, Mr. Richardson called the meeting to order.

Roll Call/Determination of Quorum

Mr. Campbell took roll call and determined that a quorum was present.

**Approval of Minutes
August 7, 2023**

After review of the minutes, a motion was made by Mr. Coleman to accept the minutes with a correction on the last page to change the word “State” to “Station”, seconded by Mr. Watkins.

Voting For: Watkins, Campbell, Coleman, Flemming & Jackson
Voting Against: None
Abstain: Allen, Berry, Richardson

Citizens Comment Period

Mr. Richardson opened the floor for citizens comment period.

Hearing none, citizens comment period was closed.

New Business

A. CBPA23-02, Chesapeake Bay Preservation Area Exception, Richard and Lauren Opett *(public hearing)*

Mr. Richardson opened the public hearing for CBPA23-02 in the name of Richard and Lauren Opett. Mr. Richardson asked Mrs. Sprouse to please review the request.

Mrs. Sprouse provided proof of publication, noting that public notice was provided in both the Tidewater Review and Rappahannock Times for two consecutive weeks, in their 8/23 and 8/30 editions. She also added that adjoining property owners were notified via certified return receipt mail.

Mrs. Sprouse noted that the Planning and Zoning Department received an application packet with site plan on August 3, 2023 from Richard and Lauren Opett, requesting a Chesapeake Bay Exception as found in the King & Queen Zoning Ordinance, Article 12, Section 3-277, Exceptions. Approval of the Chesapeake Bay Exception request is required in order for Mr. & Mrs. Opett to preserve a portion of the after the fact patio in the RPA.

Mrs. Sprouse added that the subject property is County Tax Map Parcel #1623-165X-803, a 3.1-acre parcel, located at 384 Shepards Warehouse Road, in the Buena Vista Magisterial District. The prior owner, before selling the property to the Opett family, had submitted a Water Quality Impact Assessment (WQIA) to remove the non-permitted patio in its entirety and to place mulch in the area of the patio. The submitted Water Quality Impact Assessment (WQIA) included mitigation plantings as part of the patio removal (land disturbance in the RPA). Those required mitigation plantings were planted, however the patio was never removed. Subsequently, the current owners purchased the property and now wish to leave a portion of the patio in place rather than removing it per the approved WQIA.

As indicated on the site plan prepared by Scott E. Shorland, Land Surveyor, the patio is 864 sq. ft. total. Of the 864 sq. ft., 690 sq. ft. is in the landward 50' of the RPA buffer and 174 sq. ft. is in the seaward 50' of the RPA buffer. The closest point of the patio to the marsh edge is 46'.

Mrs. Sprouse note that the King & Queen County Zoning & Planning Department received an email from Mr. Opett inquiring about the future development options for the property as a potential buyer in November of 2020. It wasn't until this inquiry regarding the property, that it came to our attention that there were violations on the property as it pertained to non-permitted development and non-permitted modifications in the RPA buffer. Staff then began working with the then property owner in an attempt to resolve the RPA violations on site. While working with the property owner, the sale of the property was still in negotiations. The prior property owner applied for and received approval of a WQIA for the patio's removal. Surety was posted for the mitigation and the plantings were planted for the patio's removal, however the property sold to the Opett's, prior to the patio being removed.

Rather than removing the structure out of the RPA buffer per the approved WQIA application submitted by the prior owner, the Opett's applied for a Chesapeake Bay

Exception. The Planning Commission held a public hearing on July 6, 2022 for the after the fact 864 sq. ft. patio. During the public hearing, the request was denied. The owners still wish to have a portion of the patio to remain and have now reapplied for another exception request. Mr. & Mrs. Opett are requesting approval of a 690 sq. ft. patio, removing all portions of the patio that is currently within the 50' seaward portion of the RPA buffer.

Mrs. Sprouse stated that the owners were present tonight to speak to their request.

Mr. Richardson asked if Mr. or Mrs. Opett wished to speak.

Mrs. Lauren Opett approached the Commission and noted that she was back before the Commission because during her prior request, she was not permitted to make any concessions and was told that the Commission could only consider what was in the application. She is now back before the Commission with a concession, which is to remove all portions of the patio that is in the 50' seaward portion of the RPA buffer. She noted that once her neighbor received approval for their detached garage in the RPA, she was confident that her current request would be likely approved.

Mr. Richardson opened the floor for public comment. Hearing none, Mr. Richardson closed public comment. Mr. Richardson closed the public hearing.

Mr. Allen asked if the portion of the patio was only for the wall that is at the rear of the patio or did that include any portion of the fire pit. Mrs. Sprouse noted that the portion that would be removed, if approved, is not a square shape. She noted that the 50' RPA would cause for about 4' taken off of the patio and then at one corner it cuts in at an angle. She stated that 174 sq. ft. of the patio will be removed, if approved as submitted.

Hearing no further comments, a motion was made by Mr. Jackson to approved CBPA23-02 as presented, seconded by Mr. Coleman.

Voting For: Watkins, Campbell, Coleman, Allen, Berry, Richardson & Jackson
Voting Against: Flemming
Abstain: None

B. CUP 21-02 & SP21-05, J. E. Liesfeld Contractor, Inc. (public hearing)

Mr. Richardson opened he public hearing for CUP21-02 and SP21-05 in the name of J. E. Liesfeld Contractor, Inc. Mr. Richardson asked Mrs. Sprouse to please review the request.

Mrs. Sprouse noted that the applicant was present and wished to provide a presentation to the Commission via electronic slides.

Mr. Stephen Gallagher with J. E. Liesfeld provided a brief presentation during the public hearing.

Mrs. Sprouse noted that the Planning and Zoning Department received the first application on February 22, 2021 from Randy Hooker on behalf of J. E. Liesfeld Contractor, Inc.,

requesting approval of a Conditional Use Permit and Level 3 Site Plan to permit the “extraction of sand/gravel material from this site. Once the mining process has been completed, the site will be reclaimed by depositing soils and inert materials such as: concrete, concrete blocks, brick, and asphalt.” Over time, the application, the narrative and proposed conditions have changed to what is before you presently. The property owner is requesting approval of a Conditional Use Permit and Level 3 Site Plan to permit the “extraction of earthen material from this site, with no onsite processing. Once mining process has been completed, the site will be reclaimed by redepositing topsoil and seeding per ESC Plan.”

She noted that the subject property is located on State Route 614, Devils Three Jump Road, more specific, between Iris Road and Mount Olive Bottom, in the Buena Vista Magisterial District, further identified as County Tax Map Parcel No. 1623-161L-1325. The property owner is J. E. Liesfeld Contractor, Inc. The accumulative parcel size, according to the Commissioner’s land records is 89.25 acres, however the provided site plan identifies the correct acreage to be 83.50 acres.

Mrs. Sprouse stated that J. E. Liesfeld Contractor, Inc. is requesting approval of a conditional use permit and level 3 site plan to operate a mining facility on 56.03 acres of the 83.50-acre parcel. The proposed mining operation will extract earthen materials per the application, however the DMME permit identifies sand and clay as the mined resource.

She confirmed that the parcel is zoned Agricultural (A).

Mrs. Sprouse stated that Codes Compliance Officer, Joshua Rellick, had received the application, narrative and site plan for review. Areas delineated as the Resource Protection Areas (RPA) and its buffers (100 feet from the Resource feature) will be confirmed, flagged and mitigated (if needed), should the request be approved.

A Department of Mines, Mineral and Energy mining permit has been issued (Permit # 90563AA, effective September 16, 2022) under the Name of J. E. Liesfeld Contractor, Inc.

Stormwater and Erosion and Sediment Control is regulated by Department of Mines Mineral and Energy (DMME).

Mrs. Sprouse noted that Environmental Health Supervisors, Kate Jones, had no additional comments from those that were submitted via email, dated May 26, 2023.

Mrs. Sprouse stated that Ms. Jones was unable to complete her Courtesy Review of the Liesfeld CUP. That Ms. Jones stated that it was up to the county and their ordinances to determine which locations can be added to the permanent pump and haul list.

Ms. Jones provided the following:

Portable toilets and sinks supplied and maintained by a septic hauler are not considered pump and haul, instead they are holding privies and are an option for certain facilities.

Given the proposed 5 employees, they would need 1 portable toilet and sink to comply with the 1 per 25 people criteria. This should be maintained and pumped when 2/3 full.

Holding privies, due to the nature of these devices, i.e., require routine pump and haul and special care shall be taken in selecting these devices for use. These devices are satisfactory

for use at mass gatherings, transient worker populations, construction sites, recreation areas, etc.

A portable privy is a type of vault privy that is generally manufactured as a single unit and is easily transported. The location of portable privies should be determined on a case-by-case basis under the supervision of the district or local health department. Portable privies are normally used in association with mass gatherings, construction sites, etc., where temporary facilities are required. When portable privies are used at mass gatherings, one privy per 100 persons shall be provided as a minimum. When portable privies are used at construction sites or transient worker locations, one privy per 25 persons shall be provided as a minimum.

The containment vessel of the portable privies shall be pumped as often as necessary to prevent overflow. It is recommended that they be pumped when 2/3 full.

Full content may be found here:

<https://law.lis.virginia.gov/admincode/title12/agency5/chapter610/section980/>

If the applicant is required to have piped water in the temporary office trailer, they would need a means of disposal such as a drainfield.

Mrs. Sprouse noted that since latest revised site plan submission, the applicant/owner has removed the office trailer from the site plan, however they will still have employees on site and sanitation facilities shall be provided.

Mrs. Sprouse noted that prior to start of operations/construction, a VDOT entrance permit must be obtained, inspected and approved by Virginia Department of Transportation.

According to Article 4, Permitted Uses, Table 4.1, Permitted Use Table, Surface Mining on at least 5 acres; no processing, is allowed in the Agricultural Zoning District with the approval of a conditional use permit. Special Conditions are as follows: A minimum lot size of five (5) acres shall be required. A 100' fully vegetated buffer along the exterior perimeter of the mining site, a minimum of 6' in height at the time of planting, shall be required/established and maintained. In cases where mining is being lawfully conducted with all federal, state and local permits/approvals on more than one adjoining parcel, a vegetated buffer shall not be required between the parcels being mined. There shall be no processing or manufacturing on the premises other than such activity as may be necessary to facilitate the hauling of materials, specifically, the screening, sifting, separation and washing of the extracted resource on the site of extraction by manual or mechanical means. Processing or other activity taken on material either (i) extracted under a common permit issued by the Virginia Department of Energy or by a common operator from a separate property, the entrance to which is no more than one hundred feet from the entrance to the parcel to which the conditional use permit applies, or (ii) on material extracted from a separate property subject to a common conditional use permit with the subject property, is considered to take place on the premises. A plan shall be submitted showing the original and proposed final grades of areas to be disturbed and the means to be taken to facilitate drainage and to avoid erosion and sedimentation. The area of such use shall have direct access to roads suitably paved and improved to accommodate truck traffic generated by the use.

Mrs. Sprouse noted that there are two separate sets of conditions, one is the applicants requested conditions, the other is staff's suggested conditions, if the application is considered for approval.

Mrs. Sprouse noted that staff has great concerns as it relates to the current truck traffic on Devils Three Jump Road. Approving additional large truck traffic would cause for an even greater impact to the citizens on Devils Three Jump Road and the surrounding area. Staff has provided a data sheet within your packet that provides the latest AADT (Annual Average Daily Traffic Volume Estimates) for Devils Three Jump (2021 figures). Included on the data sheet are load figures (trips across the scales) per month dating back to January of 2021. The load figures were provided by Jeff Davison with Republic Services. Also included on the data sheet is the crash data for Devils Three Jump Road from 2022 to the present. This information was provided by Lee McKnight with VDOT. All 5 accidents involved a large truck/tractor trailer according to the EMS incident reports. We cannot dictate the route in which traffic must take on a public roadway in and out of or through the County. If the proposal should be considered for approval, staff strongly encourages reduced daily trips/traffic within the Conditions.

Mrs. Sprouse stated that staff would also recommend that should the Health Department require a pump and haul agreement from the County, that they do not enter into one and take on the responsibility of its maintenance. Staff would recommend that a proper well and septic system be installed rather than entering into a pump and haul agreement. According to Merriam-Webster Dictionary, transient is defined as "passing through or by a place with only a brief stay or sojourn" or "a guest or boarder who stays only briefly or a person traveling about usually in search of work". Though the applicant notes that mining on the site may be "intermittently operated", County staff is not so sure that this proposal falls in the category of transient workers per VDH regulations.

Mrs. Sprouse stated that she had heard concerns during the DMME public hearing, held July 12, 2022, relating to the lack of proper drinking water for citizens in the area. This is due to the private use of shallow wells and surface water reaching their water supply. There were concerns of mining in the area and the impacts on such shallow wells when the mining reached the water table/aquifer. Though many citizens in the area may not drink their well water, they still use their water for bathing, household chores, and restroom use. If the project is considered for approval, staff encourages a condition that requires the owner/operator to investigate and remediate any groundwater impacts from the mining operation. This is similar to the condition placed on Mt. Glenwood's mining proposal.

Mrs. Sprouse concluded that staff does not recommend approval of the request; however, if the request is considered for approval, staff asks that conditions are properly placed to address the issues raised in this report and the citizens' concerns.

Mr. Richardson opened the floor for public comments.

Kenneth Byrd, of Dabney Road and the President of the NAACP, had traffic and water table concerns as a result of the proposal.

Regional Williams, of Devils Three Jump Road, has a 30' shallow well on his property and feels that mining at a depth of 29' will impact his well. He also had truck traffic concerns.

Sandra Burrell, of Devils Three Jump Road, noted that her brother's home is in front of the proposed mining site. Traffic is a concern of hers and the number of accidents presently is a concern. She doesn't want anyone to get killed on the roadway.

Marcellas Dungee, of Tappahannock (notes that family owns land on Devils Three Jump Road) has concerns of flooding of a pond in the rear of the property. He also noted truck traffic concerns.

Carol Holmes, of Davis Beach Road and member of Second Mount Olive Church, noted that traffic is her concern because they already have farm trucks, log trucks, landfill trucks, school buses on the roadway. She didn't understand why or how this site was selected. She quoted the Comp Plan as it pertains to the Economic Development Corridor and said it would be better suited on Rt. 33 or Rt. 360 where the roads can handle the traffic.

Freddie Byrd, of Truhart Road asked how or what benefit will this be to the citizens in the area. He had concerns of hours of operations, and how it coincides with the landfill. He had concerns of waste cleanup, truck traffic, and environmental impacts.

Hearing no further comments, public comment period was closed.

The Planning Commission noted the following questions/concerns:

Mr. Allen noted that he had concerns with the traffic that this may cause throughout the county and felt that burning the stumps and trees on site would be a health hazard to the citizens of the area.

Mr. Berry asked the applicant if they have any contracts or agreement with the landfill to provide them with the material for cover. Mr. Kelby Morgan with J. E. Liesfeld stated that they do not have an agreement. However, if the landfill needed cover, they would be the closest location for the material and would sell it to them.

Mr. Coleman stated that as a member of the fire department, one thing that he has observed on scene of these truck accidents is that these drivers are not bad people. However, they are not familiar with the roads. He stated that these drivers are operating an 80,000-pound truck that is hard to navigate on a narrow road. He is concerned with the added trucks on the roads and there being an accident where there is a loss of life.

Mr. Coleman noted prior to a motion being made that he felt it would be a good project, but it is located in the wrong location based on the truck traffic and existing road conditions. He did not think that this location was within the comprehensive plan to have this use at this particular location. Mr. Coleman further noted that the applicant stated that this dirt was nothing special, therefore he believes it would behoove them to look for another suitable location. He noted concerns of stormwater collecting on site and how it may impact the

citizens in the area. Specifically, regarding the citizens wells and stagnant water being a breeding pit for mosquitos.

Mr. Berry noted that he has not heard anything positive tonight and feels that their discussions revolved around ways to attempt to remediate concerns with the proposal. He stated that King & Queen is pro-business and we want to support businesses. At the same time, he believes there is a public safety issue that cannot be overlooked. Public safety is a critical piece when it comes to truck traffic. The accident data from VDOT notes 5 accidents on that one road. Adding another 172 trucks on that road a day is what the applicant wants, and they have noted that limiting their trips to 25 is not a viable business model for them. Based on that, Mr. Berry was ready to make a motion.

A motion was made by Mr. Berry to recommend denial of CUP21-02 and SP21-05. Mr. Berry's motion for denial was seconded by Mr. Coleman.

Voting For: Fleming, Berry, Watkins, Campbell, Coleman, Jackson, Allen

Voting Against: Richardson

Abstain: None

Mr. Richardson noted that he voted against the motion to give the consideration to the Board of Supervisors so they may continue to discuss this. He added that there is a lot of concern related to traffic, standing water, and wood disposal but does see agreement in other places with the County.

Old Business

None.

Staff's Comments

Ms. Seay provided the Commission with an update regarding the following:

- State Forest Tree Cutting Revenue presented by VDOF
- Telework Center Update
- King & Queen County Library
- Extended invitation to the Planning Commission to attend the Economic Development Strategic Plan meeting with the EDA and the Board of Supervisors, held September 25th at 6 p.m. in the General District Courtroom

Commissioner's Comments

None.

Adjournment

Mr. Richardson noted that the next meeting is set for Monday, October 2, 2023 at 6 p.m., unless otherwise cancelled.

There being no further business, a motion was made by Mr. Watkins to adjourn the meeting. The meeting was adjourned by all present members stating "Aye".

Hunter Richardson, Chairman