

STATEMENT TO ALBEMARLE COUNTY BOARD OF SUPERVISORS

AUGUST 5, 2009

FOREST LAKES COMMUNITY ASSOCIATION

SCOTT ELLIFF, MEMBER – BOARD OF DIRECTORS

Thank you for the opportunity to appear before you today.

My name is Scott Elliff and I am representing the Board of Directors of the Forest Lakes Community Association. Forest Lakes comprises 1,400 homes and 5,000 residents, making it the largest homeowners association in the area. Our community includes Lake Hollymead, a 20-plus acre lake that we own jointly with the Hollymead Citizens Association. We are located directly across the street from the Hollymead Town Center development.

We strongly support the ordinance change that is before you.

Several of you attended the premiere of the documentary film about the Shenandoah River recently at the Paramount Theater. It graphically depicted what happens when there is a lack of attention to the consequences of development and industrialization -- pollution, fish kills, reduced recreational and scenic value and so forth. George Ohrstrom, the producer of the film, calls his venture The Downstream Project, and made the comment that “we all live downstream” from something, and need to be aware of the consequences of upstream actions.

Our community is directly downstream from Hollymead Town Center. We have been substantially damaged during the development process. Tons of silt have been deposited in Lake Hollymead – reducing the quality of our lake and leaving us to foot the clean-up bill which is estimated at over \$1 million.

A combination of weaknesses or loopholes in existing ordinances, inadequate oversight by county staff, and lack of attention, concern and stewardship by local developers all contributed to this situation.

What has happened to us should never happen again to anyone else, and this new ordinance is a good first step toward that objective.

For a long time the site was a moonscape, having been cleared of all vegetation and left as a huge patch of dried clay as far as the eye could see. There were little or no effective methods in place to prevent and/or capture runoff – no grass, no siltation ponds, nothing that we could see except perhaps piece or two of a plastic fencing, often fallen over.

After every rain, Lake Hollymead would turn a red-brown color that looked something like YooHoo chocolate drink. Prior board members repeatedly called the county staff to urge tighter controls, but we never saw any real progress. We even requested “stop work” orders but we have no record that any were ever issued. Occasionally it appeared that some grass seed was thrown onto the site (and never took hold) but that was about it. The project apparently waited, indefinitely perhaps, until economic conditions improved.

We have conducted several studies of Lake Hollymead conditions over the past several years, and the findings are staggering.

- Over the three year period of 2005 through 2007, the annual rate of siltation was 28 times the historical rate that had occurred prior to development activity.
- In effect, we received more than 50 years of ‘normal’ siltation over about three years.
- If the silt from HTC development were all piled in one place, the estimated 60,000 cubic yards would cover an entire soccer field - and the pile would be over 19 feet high.
- Near the head of the lake, we have lost more than 50% of the lake’s prior depth.
- The cost of dredging Lake Hollymead is estimated at \$1 million dollars and potentially much higher. This is an expense that would normally occur about 30 years from now, but has been accelerated due to this massive siltation. We do not have the funds to pay for this unexpected expense and we consider it an unreasonable burden to impose on a single group of private homeowners.

If the levels of siltation we received were to continue – or resume when the next section of Hollymead Town Center is constructed – we would lose 50% to 75% of the depth over most of the lake. The head of the lake and other sections would in effect be fully filled in. We are told that the lake would basically die due to lack of enough dissolved oxygen, so dead fish would be floating on the surface and the lake would start to smell.

Voluntary and ‘good faith’ efforts by developers simply don’t work. You need to adopt stronger statutes, such as the one before you today.

This situation was brought before you in September of 2007, in conjunction with approval of the second phase of Hollymead Town Center development. A proposal was on the table for proffers to cover the cost of remediating the situation at Forest Lakes, but it was not approved. Instead, the developer’s representative promised to make a good faith effort to work with the community to help address the situation.

Here is what has happened since then:

- A community meeting was held but at the last minute the developer’s representative did not show up. Mr. Boyd and a representative of the county environmental staff answered questions from a frustrated audience. And the staff commented that “siltation is a natural

process” and implied that the county was unlikely to do anything in response to the situation.

- Our board sought repeatedly to meet with the developer’s representative, who had unofficially indicated that the developer might make a financial contribution to help with the situation. The representative was repeatedly unavailable, never answered phone calls or emails and it became clear that nothing was going to happen. No funds have been forthcoming either.
- Our board recently met with Mr. Boyd in his office to express our ongoing concerns and frustrations, and we were told in effect that there was nothing he could do, since this was something in the past, and the property had changed hands to new owners. He pointed out that the Board is seeking now seeking proffers that require having measures in place that are designed to capture 80% of the silt, vs. 60% beforehand – and that is a terrific improvement that the Board of Supervisors should be commended for pursuing.
- Subsequent actions at the initial HTC site seem to have improved – there is a more extensive settlement pond on the north end, and there are sections that have been planted with sod. However, the south end of the site, which is the area approved by the Board of Supervisors in the 2007 meeting, remains an ominously similar moonscape.

So let me reiterate. This situation should never occur again - to any community that you represent.

By tightening the ordinance so that permanent vegetation must be put in place within 9 months of the start of construction, and the use of bond money to address shortfalls that occur, the requirement will be clear, the penalties and follow up actions for non-compliance will be spelled out, and there should be adequate incentive in place for developers to proceed expeditiously with the construction process.

On behalf of all of us in Forest Lakes, we urge you to adopt this new ordinance.

We see it as a next step but not the full solution. It’s not perfect and no doubt can later be improved – and we have a number of specific suggestions for further Board action. But this has been studied extensively and the concept of a single, simple standard time frame has been discussed with you already – as far back as May and maybe earlier.

Our family visited New York this summer, and we learned that the Empire State Building was built entirely in one year, so I don’t think a 9 month standard is unreasonable. The waiver provisions provide plenty of opportunity to deal with special situations. Will developers and builders need to adjust their practices to these timelines? Yes, of course – and indeed that is what we want and expect to happen. If development needs to start early in the calendar year, so that it is completed and vegetation can be put in place in the fall, then so be it. Of course, development can start in the summer or the fall, work through the winter, and be completed by the following summer too – there is plenty of flexibility and of course efficiency will be required

and rewarded. To allow a longer time frame, with added siltation occurring day after day would be unreasonable and inappropriate for everyone who lives downstream. And we all live downstream, don't we?

So it's time to act – and approve this proposal as drafted.

We have a number of observations and suggestions about next steps and improvements beyond this ordinance change.

- (1) We remain concerned about what will happen during the 9 month period. A lot of storms can come through during that time – hurricanes, big snowstorms, whatever. Interim controls need to be in place and actively monitored.
 - The existing provisions regarding planting temporary vegetation if there has not been construction activity within a 30 day period seem too loose – as stories abound of developers coming in on the 29th day to fire up a bulldozer for 10 minutes to push a little dirt around to remain in nominal compliance.
 - As well, the oversight process needs to be as strong as possible, with frequent site visits by county staff to assess the quality of the measures that have been installed to hopefully or presumably achieve the 80% silt capture rate, and active oversight by you at the Board of Supervisors level.
- (2) The ordinance needs to apply to any and all further development at Hollymead Town Center, of course – including the new section that was approved in 2007 but for which no further development work has been done as far as I know. Without ensuring that the new ordinance fully applies to this section we of course run the risks of further siltation as outlined above.
- (3) The provision for “installing” permanent vegetation is too loose and too vague. As we understand it, throwing down some grass seed, knowing full well that it won't grow, is considered to be in compliance with the requirement – even though it does not really accomplish the objective of reducing siltation levels. Surely whenever you require someone to do something, you want them to do it fully and in an effort to achieve the intent and spirit of the ordinance. Rather, the standard should be that permanent vegetation be “established: - e.g., be in place and doing its job – recognizing that this can take some time to achieve, or at a minimum there needs to be follow through so that sites do in fact transition from “installed” to “established.”
- (4) The standard of siltation control that the Board has recently begun seeking through proffers should be tightened in the ordinance itself, so that all development projects are required to use the “best available technology” or “best management practices” – e.g., those that are projected to catch 80% of siltation. Why in a progressive county

that cares about protection of our resources and serving the public interest would we possibly choose not to require the use of best available practices and technology?

- (5) Actual siltation levels should be measured in order to ensure that the controls are working. We have been surprised to learn that no measurement has ever been done by county staff, at Hollymead or any other development project.
- (6) Finally, there is a major issue of how to deal with the remaining 20% of siltation that even in the best of circumstances and with the best existing technology cannot be contained at the site. We consider it outrageous that those who live downstream should be asked to bear the consequences – both diminished quality of water and also the financial responsibility for cleaning up the mess. We all remember our Mom telling us that we needed to leave it the way we found it. And those of us who were Boy Scouts were trained to leave it better than how we found it. Why do we now allow and officially sanction that developers can let 20% of the impact of their activities simply flow downstream for others to take care of? I recognize that this last issue in particular is outside the scope of the action before you today, but we intend to raise it more fully at a later point, as a matter of good public policy.

Thank you for the opportunity to provide our comments to you, on behalf of all 5,000 Forest Lakes residents.