

March 25, 2019

Four Seasons Files Petition with County Commissioners

In 2002 the Queen Anne's County Commissioners entered into a Developers Rights and Responsibilities Agreement (DRRA) with developer K. Hovnanian at Kent Island, LLC (KHov). The executed DRRA had a 20-year term for the developer to construct their project. KHov is currently constructing Phase I of the Four Seasons at Kent Island which is an age restricted residential community. This project did not begin construction until 2016, in part, due to several legal challenges that needed to be resolved in the Courts. KHov has now submitted a petition to the County Commissioners presenting a legal argument that the construction time lost due to legal challenges was "tolled" and the tolled period of time should not be counted towards the 20-year period that the DRRA is effective. KHov has requested a public hearing to outline this issue. The petition was first presented to the County because they are a party to the DRRA and charged with the administration and enforcement of the agreement. The County Commissioners have agreed to hold a public hearing to have this matter openly presented and to accept public comment on the petition. The public hearing is scheduled for April 9th at 7:00pm.

A DRRA is a negotiated agreement between the County and a Developer that provides protections and certainty for both parties as a development is permitted and constructed over time. For this developer, the DRRA holds the 2002 development regulations in place while the project receives necessary approvals and is constructed. For the County, the DRRA outlines the schedule for construction of infrastructure improvements and payment of fees. The DRRA required major upgrades to water, sewer and road infrastructure exceeding what would be needed to support the full buildout of the community. The DRRA also calls for extra fees to be paid to the County as each unit is constructed. These fees will ultimately result in millions of dollars of revenue not otherwise required by County regulations.

The DRRA has a provision that it is effective for a 20-year period from the date of the agreement until September 2022. The Four Seasons Project began construction of Phase I in 2016. Between 2002, when the DRRA was signed, and 2016 there was ongoing litigation that challenged the required licenses, permits and project approvals that were necessary to initiate construction. These legal challenges had to be concluded in the Courts prior to the County granting construction permits.

KHov has submitted a petition to the County Commissioners making a legal argument that the duration of the DRRA is "tolled." This is due to KHov's position that the litigation which generated the delay was not based on their actions and was beyond their control. The petition requested the County Commissioners hold a public hearing to consider and confirm that the 20-year term of the DRRA be "tolled" as a matter of law for a period of 8-years which is the construction time lost due to the legal challenges. If KHov's position is correct, it would extend the expiration date of the DRRA from September 2022 to September 2030.

The Four Seasons project is proposed to be constructed in four phases that total 1,079 dwelling units and a community clubhouse. The County granted preliminary approval to the entire project in 2004 and conducts an additional review prior to granting final approval for each phase. Currently, Phase I is approved for 162 dwelling units and is under construction. Phase I includes the construction of major water, sewer and road improvements for all phases of the project. Phase II of the project has been submitted to the County for review and is seeking final approval of 249 units and the community clubhouse. Phases III and IV have not yet been submitted for final review and approval.

The improvements and payments required for Phase I by the DRRA include:

Improvements & Dedications

- Build a new Sewer collection station with significant additional capacity
- Build a new sewer collections system
- Build 15,000 feet of force main to connect to the Sewage Treatment Plant
- Build a new water distribution system to service the development
- Post a \$3,000,000 bond with the County to secure sewer allocation
- Build and dedicate to the County a 500,000 gallon elevated water storage tank/tower
- Improve Castle Marina Road from Maryland Route 18 to the entrance of the development including a traffic circle at the development entrance
- Construct an at-grade pedestrian crossing for the Cross Island Trail on Castle Marina Road
- Design and construct a Hazard Identification Beacon for Castle Marina Road at the intersection with the Queen Anne's County Hiker/Biker Trail
- Construct a 8 foot wide paved pedestrian connection to the Cross Island Trail on the west side of Castle Marina Road
- Construct along Piney Creek Road a 325-foot westbound right turn lane
- Reconstruct the roundabout at Castle Marina Road and Maryland Route 18 (so it can be dual-lane roundabout when traffic volumes necessitate the additional lane)
- Construct an exclusive right turn lane on the northbound approach along MD 18 at Piney Creek Road
- Dedicate approximately 27-acres of parkland (Per the agreement to convey real estate 131 acres will be dedicated)

Payments

- Hovnanian will pay directly to the Kent Island Volunteer Fire Department (KIVFD) a total of \$438,750 over 4 year period
- Each dwelling unit constructed shall pay a \$7.00 per month emergency fire and rescue service fee to KIVFD (162 units in Phase I)
- Pay to the County One Million (\$1,000,000) Dollars
- In addition, for each of the 162 dwelling units in Phase I the Developer shall pay the County \$7,750 Dollars for each building permit issued for a total of \$1,255,500

The improvements and payments required for Phase II, III and IV by the DRRA include:

Improvements & Dedications

- Construct and dedicate to the County bathroom and parking facilities on the 5.796 acres property for the Cross Island Trail
- Drill a new 1,500 gallons per minute backup well
- Build and dedicate to the County a new 750 gallons per minute water treatment plant capable of easy expansion to 1,500 gallons per minute
- Reclaim and re-profile Castle Marina Road and roadside drainage ditches

Payments

- Pay \$350,000 to the County for road improvement in the vicinity (MD 18 & 552)
- For the first 513 dwelling units in Phases II and III the Developer shall pay the County \$7,750 Dollars for each building permit issued for a total of \$3,975,750
- For the remaining 404 dwelling units as part of Phases III and IV the Developer shall pay the County \$10,546 Dollars for each building permit issued for a total of \$4,260,584
- Each dwelling unit constructed shall pay a \$7.00 per month emergency fire and rescue service fee to KIVFD (917 units in Phase II, III and IV)

The DRRA allows the final approval of phases to be reviewed consistent with the regulations in place when it was signed in 2002. However, it also restricts the density, permitted uses and community design to be consistent with the approved development concept and preliminary approval. When the DRRA expires, remaining phases of development would be reviewed and approved under current County regulations and not subject to the same limits currently imposed. This would allow and could result in redesign of the project including changes in proposed uses, the mix of housing types, resident age restrictions and density for the remaining phases of the project. When the DRRA expires the County would relinquish rights to any improvements not constructed or fees not collected above and beyond that required by the County Code.