SOMERSET Crossing

May 8, 2017

VIA Email

Chairman Stewart and Members
of the Board of County Supervisors
1 County Complex Court
Prince William VA 22192

Re: Haymarket 230 kV Double Circuit Transmission Line – Response to Dominion Virginia Power's Request for Removal of Legal Constraints

Chairman Stewart and Members of the Board of County Supervisors:

I am writing you on behalf of the residents of Somerset Crossing and neighboring communities with respect to Dominion Virginia Power's Request for Removal of Legal Constraints to Implement the State Corporation Commission-Approved Railroad Route dated May 3, 2017 ("Request"). True to form as exhibited throughout the SCC process, Dominion Virginia Power ("DVP") overstates its legal position and misses important facts that are pertinent to this matter in its Request.[1]

Dominion's Request

DVP, at the invitation of the SCC, is requesting that the Board of County Supervisors set aside the Open Space Easement and authorize DVP to enter onto Somerset Crossing HOA owned property that is protected by the Easement for purposes of denuding the property of trees and other vegetation in furtherance of constructing 230 kV Double Circuit Transmission Lines through this wooded wetland area. DVP cites Section II.1 and .2 of the Deed of Gift of Easement that establishes the Open Space Easement as the grounds upon which the Board of County Supervisors may approve DVP' request. A copy of the Deed of Gift of Easement is enclosed.

Significantly, DVP fails to cite qualifying language within Section II of the Deed of Gift of Easement that limits the County's ability to permit uses other than those consistent with the Easement to the "Grantor" (i.e., Somerset Crossing HOA"). The pertinent language reads as follows (*emphasis added*):

> ***Restrictions are hereby imposed on the use of the Property pursuant to the public policies set forth above. The acts that***

[1] As set forth in Somerset Crossing's Motion for Rehearing or Reconsideration, a copy of which is enclosed, the SCC appears to itself have missed pertinent facts in handing down its Interim Order. That said, this Letter focuses on DVP's Request since action on the Request is currently pending before the Board of County Supervisors.

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Grantor covenants to do and not to do upon the Property, and the restrictions that Grantee is hereby entitled to enforce, are and shall be as follows:

1. No use shall be made of, nor shall any improvements be made within, the conservation easement area without prior written authorization of the County.

2. All existing vegetation in the conservation easement area shall be preserved and protected and no clearing or grading shall be permitted, nor shall the easement area be denuded, defaced or otherwise disturbed without the prior written approval of the appropriate County agency or department.

Section II, as is expressly stated in the black letter of said Section, is meant to: (1) define the restrictions on the property subject to the Open Space Easement and (2) define the relationship between the Grantor (i.e., Somerset Crossing HOA) and Grantee (i.e., PWC) vis-à-vis the acts and restrictions set forth in the Deed of Gift of Easement. With respect to issue (1), clearly, denuding, defacing or otherwise disturbing the property subject to the Easement for purposes of constructing a 230 kV Double Circuit Transmission Line is not consistent with Section II.2 of the Deed of Gift of Easement inasmuch as such destruction for such a purpose falls well outside "use of the Property pursuant to the public policies" set forth in the Deed of Gift of Easement. Likewise, calling a 230 kV Double Circuit Transmission Line in the Easement an "improvement" that is contemplated under Section II.1 of the Deed of Gift of Easement is fanciful, particularly when measured against the public policies for which the property is to be used as set forth in the Deed of Gift of Easement.

Moreover, the Board need not even get to an interpretation of Section II.1 and .2 as applied to the destruction of protected property as requested by DVP in its Request. This is because Section II of the Deed of Gift of Easement is limited to defining the relationship between the Grantor (i.e., Somerset Crossing HOA) and Grantee (i.e., PWC) vis-à-vis the acts and restrictions set forth in the Deed of Gift of Easement. Having been a party to the negotiations that resulted in the Deed of Gift of Easement, I can say with absolute certainty that the language cited by DVP in its Request was <u>not</u> meant to permit the County to open access to the Easement to third parties. Rather, Section II permits the County to authorize the HOA entry onto the subject property for purposes of maintaining and improving the property. The restrictions placed on the HOA and the authority granted to the County to regulate the HOA's use of the subject property as set forth in Section II of the Deed of Gift of Easement is essential to the efficacy of the easement.

DVP's Request should be rejected by the Board. As set forth above, the HOA takes the position that it is questionable at best whether the Board has the authority under Section II of the Deed of Gift of Easement to grant DVP's Request to the extent the Board is so inclined. Assuming arguendo that the Board feels it does have authority under Section II of



the Deed of Gift of Easement to permit an unrelated third-party to denude, deface or otherwise disturb the Easement for purposes of constructing an "improvement" (i.e., a 230 kV Double Circuit Transmission Line), clearly said "improvement" is not within the public interest as outlined in the Deed of Gift of Easement.

Related Considerations

Somerset Crossing HOA rests on the arguments set forth in our enclosed Motion for Rehearing or Reconsideration with respect to the positions set forth by DVP in the first two paragraphs under the "Related Considerations" section of its Request. With respect to DVP's position related to the Carver Route, it appears DVP missed a key fact; namely, that a piece of land that would be compromised under the Somerset Crossing Drive Variation to the Carver Route is subject to the Open Space Easement.

The Deed of Gift of Easement defines the "Property" subject to the Open Space Easement as including HOA common area located in Somerset Sec 8 PCL 8A. Significantly, Somerset Sec 8 PCL 8A contains common area that runs up to and parallel to Old Carolina Road from the back of said parcel (i.e., the property line near the railroad tracks) up to Somerset Crossing Drive. As can be seen on the map showing the Somerset Crossing Drive Variation to the Carver Route, DVP would need to place a structure on common area located in Somerset Sec 8 PCL 8A in order to effectuate the Variation. Significantly, this common area is subject to the Open Space Easement pursuant to the Deed of Gift of Easement.

If the Board were inclined not to provide DVP the requested authorization or permission to cross the dedicated property under control of the County (i.e., land for the Somerset Crossing Drive extension), then the Carver Road alternate route would be called into question altogether. This is because the Somerset Crossing Drive Variation, as currently contemplated, cannot be achieved because the Variation calls for placement of a tower and/or other structure(s) on HOA property that is subject to the Open Space Easement.

Effectively, then, if the Board were to, both, (1) sustain the Open Space Easement and reject DVP's Request to invade the Open Space Easement and (2) deny DVP permission to cross the dedicated property, the Board would effectively block the Railroad Route and call into question the efficacy of the Carver Route. Somerset Crossing HOA and its members supports such actions by the Board.

Conclusion

It is no surprise to me that we find ourselves at this juncture. In fact, as if a prophet, during our bus tour of the proposed routes last summer, the Hearing Examiner mentioned to counsel for DVP and participants within earshot that this case was going to come down to easements and whether a particular easement would withstand scrutiny. My interpretation of that comment was that the Open Space Easement held by the Board would be challenged at some level, which is exactly where the parties find themselves today.

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In late 2014, after careful consideration of numerous issues, our Board of County Supervisors made a decision that accepting the Deed of Gift of Easement from Somerset Crossing was in the best interests of the PWC citizenry. Through the easement granted under the Deed, citizens of PWC now have access to trails in a wooded wetland area as well as other open space, including a stocked fishing pond. We have noticed increased usage of "Rolling Creek Park" and its amenities since the acceptance of the Deed of Gift of Easement. Significantly, much of this increase is due to an increase in usage by non-residents of Somerset Crossing, usage we embrace.

We are a community that is built in harmony with our natural surroundings. The Easement property is part of the fabric of our community and is essential to maintaining Somerset Crossing's character and appeal.

For the reasons set forth in this Letter, on behalf of the HOA and the residents who we represent, I request that the Board reject DVP's request outright.

Sincerely,

James R. Napoli, Esq.
President
Somerset Crossing HOA

Enclosures

cc: Christopher E. Martino, County Executive
J. Chris Price, Deputy County Executive
Michelle Robl, County Attorney
Curt Spear, Assistant County Supervisor
Bill Chambliss, General Counsel, Virginia State Corporation Commission
Deborah Tompkins Johnson, Dominion Resources
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