

York County, Virginia

York County Board of Supervisors

224 Ballard Street

P.O. Box 532

Yorktown, VA 23690

Supplemental to Letter sent to YC BOS from QL residents dated November 11, 2024

Attachment: Original letter dated November 11, 2024 (revised – additional signatures)

Residents represented:

120 Copse Way

152 W Queens Drive

131 Little John Road

241 E Queens Drive

120 Will Scarlet

103 Charles Landing Road

103 Greenwood Drive

150 W Queens Drive

102 Ringfinger Court

187 W Queens Drive

142 W Queens Drive

MI 2/26/25

On November 11, 2024, a group of Queens Lake residents issued a letter to the York County Board of Supervisors (BOS) with questions regarding the County's actions involving Stormwater Management activities related to Queens Lake.

The QL Residents first question regarded the validity of an agreement between YC BOS and Queens Lake Community Association (QLCA). Their concerns are founded on the actions and non-actions of the QLCA Board of Directors (BOD) and it's then current president as recorded in the QLCA records (minutes), and bylaws, and communications with shareholders. Pertinent events are listed below.

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February 8, 2022, QLCA board meeting minutes:

Rebecca (Cho) made a motion to have a sub-committee of the lake to coordinate information for grants, political help, etc. for repairs to the dam and spillway, this sub-committee will report back to the Board. This will include a Finance committee member. Kathy seconded. All approved except Adrienne and Kate abstained. Motion passed.

August 9, 2022, QLCA BOD meeting minutes:

Doug (Ellis) made a motion that no contracts or negotiations, amendments, or obligations be made without Board approval. All Board members approved.

September 26, 2023, QLCA BOD Special Meeting minutes:

MOA: Discuss and compile questions regarding draft agreement; Record questions and designate appropriate responder, e.g. "define maintenance obligations: York Co Administrator/York County Public Works Staff," Confirm response date. Portal for members to submit questions to be established. MOA Questions from QLC BOD to Legal Counsel developed.

October 10, 2023, QLCA BOD meeting minutes:

Motion 1: Because the QLCA board has a fiduciary and ethical responsibility to the membership of Queens Lake. The Memorandum of Agreement between QLCA and York County needs to be revised to include clearly stated obligations of both parties. These parties being QLCA. and York County. These revisions should be completed no later than October 25. Melanie seconded the revised motion. All approved except: Opposed, Chuck Hertz and John Walters. Motion passed.

Bob Gaschen said the MOA needs more detail in the final agreement, and that a portal is open for members.

Doug Ellis said the October 16 member meeting will allow members to ask questions about the MOA.

Board members had a discussion on getting an agreement with York County and including more specific items in it and Liability. Board members want an agreement soon. They need the MOA

to go in the Annual Meeting pkg. that has a deadline for October 25. Doug Ellis suggested getting an appointment with the attorney for Board members to ask the attorney questions. Doug will set up an appointment with the attorney for a meeting for about an hour. ASAP

October 16, 2023, Informational Meeting for Members:

York County representatives' presentation concerning upcoming MOA provided. Q&A period included.

November 14, 2023, Annual Members Meeting:

Vote for or against entering into a collaborative agreement with York County for dam, spillway with stormwater ravine remediation beginning with the FY24 Capital Improvement project.

For ___ Against ___

Draft version of Second Agreement between the County of York, Virginia and Queens Lake Community Association, Inc. Regarding Stormwater Management of the Queens Lake Drainage Basin (undated) included in Members Packet.

FAQ Letter from QLCA president to Members, Released Nov. 7, 2023

Question: Is QLCA voting on the Agreement as provided in the Annual Packet?

Answer: No, the vote is not specifically on the draft provided in the annual package but on the collaboration with the County and integrating the dam and spillway to the stormwater ravine repairs as already approved in the County's current Capital Improvement Project (CIP) budget; as well the financial terms 110K and 20K/20yr, which remain unchanged.

FAQ Letter was sent out after the Membership Meeting packet was issued. FAQ letter was not vetted or approved by the BOD.

Portal for Members Questions in September 2023 received 65 questions up to the November 14, 2023, meeting, QLCA board did not issue any responses to the portal questions.

November 14, 2023, Annual Meeting Minutes

Establish Quorum Secretary: A quorum was established - 177

Approval of collaboration: For: 138 Against – 14 Abstain – 25

No special meetings or executive sessions are recorded by QLCA board between November 14, 2023 and December 4, 2023 to vet, review final wording, ratify or approve an agreement with the county government or designate the president to execute agreement. No record of QLCA board delegating negotiating authority to individual or individual.

Bypassing QLCA Board ratification/approval, Doug Ellis, QLCA president, executes signature on Second Agreement with York County on December 4, 2023. In the agreement, a statement reads *"This agreement was authorized by QLCA at the annual meeting held on November 14, 2023."* Signed agreement is different from agreement presented to Shareholders in November and not shared before signature added.

York County BOS adopted Resolution R23-170 – Second agreement on December 19, 2023, board meeting.

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Questions raised by QLCA board and officers' action or non-action. Were fiduciary duties, responsibilities and authority properly fulfilled?

Is the vote to enter into a collaborative agreement by shareholders sufficient authorization to enter into a binding agreement? Who bears the fiduciary responsibility to carry out the wishes of the shareholders – QLCA board or president? Does the QLCA board have fiduciary responsibility to vet agreement, accept final language and authorize president to execute agreement on QLCA behalf? Does the QLCA president have the authority to determine final language and execute agreement without expressed permission of the QLCA board?

Does the lack of QLCA board action and exercise of fiduciary responsibility render the agreement null and void?

Does the unilateral action of the QLCA president to determine final language and execute agreement, bypassing QLCA board action render the agreement null and void?

Does generally accepted corporate rules require shareholder to receive a proposal in writing to commit expenditure of \$510,000+, grant easements for an extended term (20 years) prior to actual vote to approve?

Did the shareholder vote to authorize entering into a "collaborative" agreement give the board or the president the responsibility to finalize the agreement and execute a binding agreement with YC BOS?

The version of the second agreement presented to shareholders in the annual packet was changed after the vote? Per generally accepted corporate action, does the QLCA Board have a responsibility to present a final revised agreement before approving or executing binding agreement?

Should final agreement be formally presented and ratified by the QLCA Board and/or shareholders before the agreement is binding?

Per the Corporate Stock Act and/or generally accepted corporate action, must shareholders approve the final terms of any long-term binding agreement?

To comply with Section 8 of the bylaws, Authority to Obligate Funds, do generally accepted legal procedures include presenting actual agreement to shareholders for approval?

Section 9 of the bylaws Disposition of Property... no Association property may be ...transferred by easement...without a majority of shareholders in Good standing voting at any meeting, providing the proposal is submitted to the shareholders in writing and mailed so as to arrive no less than two weeks prior to the meeting. Does this require the actual agreement and/or easement to be presented or just a statement of acceptance?

Without express designation by the QLCA board to the president to act on behalf of the association, is any agreement rendered null and void? Based on the sequence of events listed above, has the approval to enter into an agreement been misrepresented by the president to the YC BOS render the agreement null and void?

Did QLCA Board show good faith in establishing portal for receiving shareholder questions without providing responses prior to deadline for voting?

What is the legal effect of D. Ellis signing a contract without Board approval, as required by his motion in August 2022 and unanimously agreed upon by the Board?

Did Board Counsel forward any legal document to the County concerning the validity of Doug's signature on the Stormwater Management Agreement in December 2023? If so, when did the Board review and approve this action by Board counsel?

This information has been compiled by Bruce Keener for your consideration. No response from the York County Board of Supervisors has been received to date.

Attachment: Original letter to YC BOS (revised – added signatures)

To: Board of Supervisors – York County VA

Re: Taxpayers' Concerns with Actions of BOS related to the Stormwater Management issues associated with Queens Lake and related properties

Date: Nov. 11, 2024

As taxpayers in York County, VA, we have concerns with the Agreement entitled *Second Agreement Between the County of York, Virginia, and Queens Lake Community Association, Inc. Regarding Stormwater Management of the Queens Lake Drainage Basin* ("2nd Agreement"), signed by the County on December 20, 2023. The Board Resolution R23-~~17~~¹⁷⁹, dated December 19, 2023, authorized then-County Administrator Neil Morgan to execute the 2nd Agreement.

In full disclosure, we are Members and Non-members of Queens Lake Community Association (QLCA), but we are all taxpayers and voters in York County. This letter raises and focuses on our concerns as taxpayers in York County.

As the County moves toward activities on private property owned by QLCA concerning its obligations to manage stormwater in the Queens Lake (QL) drainage basin, we have attempted over the course of months to address issues concerning this Agreement with former and current Board of Directors of QLCA. These issues involve the validity of the 2nd Agreement, the validity of the easements anticipated under the 2nd Agreement, the County's approach to taxing properties to pay for work in the QL drainage basin, and the ongoing and historical use of QLCA private property for the public purpose of stormwater management without compensating QLCA. We want to emphasize we do not seek to derail an agreement that addresses the County's and QLCA's concerns and needs, but we do believe that there are outstanding issues that can, hopefully, be addressed to our mutual satisfaction.

First, since January 2024, Board members and shareholders have challenged Doug Ellis's decision to sign the 2nd Agreement on December 4, 2023. In that Agreement, paragraph 3, Mr. Ellis represented to the Board that "This agreement was authorized by QLCA at the annual meeting held on November 14, 2023."

In fact, the document Mr. Ellis signed was **never presented to** shareholders or the Board before he signed it on Dec.4, 2023. No one at QLCA saw, voted on, or authorized a signature from Mr. Ellis. The information provided to shareholders at the annual meeting in November was that no final agreement existed that shareholders could review, approve, and authorize. Mr. Ellis represented to shareholders that the draft agreement provided with annual meeting information was **not** final, that negotiations were still ongoing, and that changes were anticipated prior to finalizing the Agreement. Thus, shareholders and the Board never saw the document that Mr. Ellis signed and represented as authorized by QLCA.

Although there have been numerous requests from multiple shareholders and Board members requesting an explanation from Mr. Ellis as to his personal decision to move forward with signing the 2nd Agreement, he has provided no explanation. Thus, pursuant to QLCA Bylaws, there does not appear to be any basis to represent that shareholders have authorized QLCA to enter into a legally

binding and enforceable Agreement with York County concerning stormwater management in the QL drainage basin.

Because the Board of Supervisor Resolution appears to rely solely on Mr. Ellis's representation to the County of shareholder authorization (a FOIA request confirmed that no QLCA Board Resolution accompanied the Agreement from Mr. Ellis), as taxpayers, we are concerned with the County's commitment of monies and resources on this project. Determining a valid agreement exists between QLCA and the County would seem prudent before the County commits money and resources.

A second concern relates to a recent request by Mr. Ellis to approve easements for the County to begin work on the QLCA dam and spillway to manage the County's obligations concerning stormwater management. If the validity of the 2nd Agreement is in question, any provision within the Agreement is in question. The use of York County resources and funds under the 2nd Agreement continues to be a concern that should be addressed before these funds and resources are committed to avoid a waste of government dollars.

A third concern is the funding mechanism devised under the Agreement and then-County Administrator Neil Morgan's refusal to consider the concerns of York County taxpayers whose properties do not contribute to the QL drainage basin. The 2nd Agreement, by its terms, solely addresses stormwater management. This document includes a provision stating that contributions by taxpayers who are members of QLCA, including those whose properties do not contribute to the QL drainage basin, will be used outside of the QL Development and thus will not benefit any QLCA property.

On several occasions throughout discussions with the County on the pending Agreement, several lot owners questioned Mr. Morgan as to why properties not within the QL drainage basin would be required to fund County stormwater management activities within the basin. Yet, over one thousand properties within the drainage basin, inside and outside the QL Development, would not be assessed for the benefits they received from these activities. (See attached map)

Mr. Morgan stated he refused to consider any type of assessment on properties for stormwater management activities by the County other than a few hundred taxpayers within the QL Development who are members of QLCA, most of whom do not contribute to the drainage basin. In other words, taxpayers within QL Development who do not contribute and receive no benefit from the County's stormwater management of the QL drainage basin are, in effect, taxed a fee through their dues to support properties that are within the basin and benefit from the County's management of stormwater but are, nonetheless, not obligated to contribute to maintenance and upkeep of the basin.

As taxpayers in York County, this appears to raise questions under the Virginia Constitution and statutory laws. Mr. Morgan refused to address any such concerns. It should be noted that the draft agreement presented to shareholders specifically stated that the \$20,000/year payment by QLCA members would be used to manage Queens Lake and its water quality. The agreement signed by Mr. Ellis states this payment can be used anywhere in the basin. This change appears to convert the payment to a targeted tax on specific landowners. This view is reinforced by another provision in the agreement that states this payment ends if the County adopts a stormwater management assessment on landowners in the County. This clearly indicates that the payment – which may be

used to fund projects anywhere in the basin – is a targeted stormwater management tax imposed on only some landowners through their dues since QLCA is a shareholder corporation. Research since Mr. Morgan's retirement has not alleviated this concern. Given concerns with the validity of the Agreement, we wanted to raise this issue directly with the Board, hoping for some resolution to our concerns as taxpayers.

A final concern involves the historic and ongoing use of QLCA private property for a public purpose, i.e., to manage stormwater drainage in the QL Basin. While we understand that this is not an improper use of QLCA property for a public purpose, it appears that this activity constitutes a 'Taking' under the Virginia Constitution.

The current version of the 2nd Agreement clearly indicates the historic and ongoing use of QLCA private property: the lake, Princess Pond, the dam, and spillway, for the County's obligation to manage stormwater within the basin. The County has also documented damage resulting from its historic and ongoing use of the QLCA properties for this purpose over several decades.

If this activity falls within the state constitutional provisions involving Takings of private property, then the Constitution provides for compensation to the private property owners. As taxpayers concerned with the use of County funds, it seems prudent to address these matters to avoid potential future costly and contentious litigation and to determine rights and obligations under the Virginia Constitution that could directly affect taxpayers throughout the County.

We want to emphasize, again, we seek an effective partnership with the County to solve several problems noted above that are of mutual interest. We are eager to find mutually agreeable approaches to expeditiously address the dam/spillway, and the County's use and damage of Queens Lake and Princess Pond. We are concerned that the current version of the 2nd Agreement does not adequately or appropriately consider these concerns.

We appreciate the BOS's attention to these matters. As taxpayers, it is important that the BOS understands all concerns about the use of County monies and resources. Ms. Whitaker is copied on this letter requesting that she include it in the public record related to the ongoing activities concerning stormwater management issues in the QL drainage basin.

Sincerely,



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Williamsburg VA 23185



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Penny Bonadonna
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Cc: Ms. Gail Whitaker

Bcc:

Attachment

AMENDMENT - 12 DEC 2024

FORREST R. WHITE
181 WEST QUEENS DR

Forrest R. White

AMENDMENT - 17 DEC 2024

Paul R. Basby
142 West Queens Dr

Paul R. Basby



Drainage Area= 985 ac (1.54 sq mi)

West Queens Lake Drive

Queens Dr
Queens Lake (199016)

East Queens Lake Drive

Properties on this side of blue line are **not** within the Drainage Basin - MUST pay fee to maintain QL Basin stormwater management

~ 60% of properties within QL (some waterfront) and within QL Drainage Basin DO NOT pay a fee to maintain QL Basin stormwater management

Properties on this side of blue line are **not** within QL Drainage Basin - MUST pay fee to maintain QL Basin stormwater management

Queens Lake Dam Safety Inventory #199016 (Feb 2021)- Blue represents Drainage Area Boundary Feb 2, 2021 - Appendix A QL Watershed Map -
https://www.queenslake.net/_documents/lake/Engineering_Reports//2021_Dam_Break_Inundation_Study.pdf

Areas within QL Drainage Basin but outside of QL - These contribute to stormwater flows into QL - DO NOT pay any fees for contributions

Legend

- Drainage Area Boundary
- Time-of-Concentration
- River
- Parcels

To Flowpath
 A-B=37 min (150 ft - Sheet Flow)
 B-C=42.8 min (2002 ft - Shallow Concentration)
 C-D=21 mins (6010 ft - Channelized Flow)
 D-E=17.9 mins (6740 ft - Lake Flow)