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March 19, 2008

06-103-11

The Arkansas Public Service Commission
Utilities Division
P.O. Box 400
Little Rock, Arkansas 72203-0400

RE: Riviera Utilities, Diamondhead Wastewater, LLC
Diamondhead Resort Communities

Dear Sir or Madame:

The Diamondhead Property Owners Association (DPOA) has previously requested the Arkansas Public Service Commission (PSC) oversee and regulate Riviera Utilities which provides water services (through the City of Hot Springs), and sewer service to the Diamondhead Community. Currently, the PSC regulates the water services.

It has come to our attention that DRC, the parent company of Riviera Utilities, the individuals, or group of individuals controlling DRC and Riviera Utilities have formed a new limited liability corporation known as Diamondhead Wastewater, LLC (see attachment).

We question the intent of this new corporation, and desire to go on record with the PSC concerning this matter.

It has been suggested a primary reason for this new incorporation is to allocate various costs, not necessarily or completely associated with the sewer service, in order to request, or implement a rate increase. This would be a disservice to the Diamondhead community.

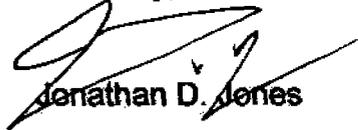
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At a recent DPOA Town Meeting, a spokesman for DRC announced DRC/Riviera Utilities had asked the PSC to regulate its sewer system. Within the next few days a DPOA/Utilities Committee member spoke with PSC representatives and discovered that no such request had taken place. This information was further confirmed by an official of DRC/Riviera.

Attached is a document provided the Diamondhead Board of Directors by the DPOA Utilities Committee. Upon review, you will be able to further understand the history of the system, the service provided by Riviera Utilities, and be more aware of the information provided by them.

Again we wish to ask for PSC regulation of Rivera Utilities/Diamondhead Wastewater, LLC, and question the information of Diamondhead Wastewater, LLC and the actual purpose and motives for doing so.

Sincerely,



Jonathan D. Jones

JDJ/lp

Enclosure

cc: Dan Munroe
Todd Belz
Frank Pohlkamp

ARK. RE. TO S. J. CO. INC.
OFFICE OF THE
SECRETARY OF COMM.

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THE DIAMONDHEAD COMMUNITY

UTILITIES COMMITTEE

REPORT AND POSITION STATEMENT

NOVEMBER 2007

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INTRODUCTION

The community of Diamondhead began in the mid-1960's by a group of real estate investors. After realizing the project would take more time and funding than they were willing to spend, the community was sold to Walter Utley, Holly Springs, MS who created Arkansas Communities, Inc. (ACI). ACI marketed Diamondhead both in and out of state beginning in 1969, and the Diamondhead Property Owners association was incorporated as a non-profit corporation in September 1969.

The sale of properties started in 1969 and was very active until 1978, when the slow-down in the national economy and high interest rates caused the reduction and demise of ACI. In 1980 Walter Utley, President of ACI filed Chapter 11 reorganization plans with the U.S. Bankruptcy Court, which was completed in 1988.

Diamondhead was sold by the court to National American Corp. of Gautier, MS in 1986. After some time, it appeared that Diamondhead would not fit into their plans, and the community was sold to Dean Gordon and Kenneth Boula who formed Equity Builders of Arkansas. This plan also failed.

Diamondhead was purchased in 1995 by Neil Peterson, d.b.a. Diamondhead Resort Community (DRC), and leadership of DRC subsequently passed on to his son-in-law Lee Young. DRC continues to be Grantor today.

HISTORY OVERVIEW AND CURRENT STATUS

On April 25, 2002, the Diamondhead Board of Directors chartered what was then referred to as the Utilities and Property Committee (Utilities). Listed within its Charter are the following:

II. PURPOSE

(A) To advise the Board of Directors and the General Manager in regard to the Diamondhead Community Utility and Property matters.

(B) Receive and review related matters and requests for appropriate action.

DUTIES

(A) Advise and recommend to the Board of Directors and the General Manager regarding matters dealing with utilities and other matters related to the Developer/Grantor (DRC) and the property of The Diamondhead Community.

The initial focus of concerned residents, prior to 1995, was water availability and excessive pricing issues. In 1993, our Board of Directors asked for, and was granted oversight and regulation of our water system by the Public Service Commission (PSC).

Water for the community was being withdrawn from several wells within the community, and by the year 2000, maintenance costs were rapidly rising beyond cost effectiveness, supply for community growth was questionable, and quality was rapidly decreasing due to excessively high mineral content.

The decision was made, by DRC/Riviera Utilities (Riviera) to acquire water supplied by the City of Hot Springs. At the time of this change, Hot Springs had no wholesale rate for water, so the rate was negotiated between DRC/Riviera and the city.

In 2000, Riviera asked the PSC for a 34% increase in water rates. The Utilities Committee, as it was now known, protested saying not only was the increase unwarranted, but in fact, the community should receive a rate decrease. Hearings were held both in Little Rock and in the community.

Following the meetings, the PSC denied the proposed rate increase. Within a short period of time, Riviera again asked the PSC for a rate increase, this time of 14%. Neither the Utilities Committee, nor our Board of Directors was notified of this meeting, and, because there was no opposition present, the increase was granted.

In 1995, with opposition from the Diamondhead Board of Directors, Riviera began construction of its sewer system (gray water) beginning by connecting to the Camp Tanako sewer system treatment plant. This was simply a temporary measure until Riviera could obtain approval and construct its own treatment facility, as the Tanako system was too small and in the process of failing. To date, the terms of this agreement have not been released to the Diamondhead Community.

Following the initial connection to Camp Tanako's system, sewer lines continued to be installed throughout the community, but they appeared to be primarily in the area of developer lots, rather than in the more populated areas of the community as dictated by our Bill of Assurance and state health department regulations. In August 1997, Riviera notified the DPOA Board of Directors it had received approval to install a central sewer treatment plant (gray water) and planned to run lines throughout the community. Larry Stamps, then G.M. of DRC/Riviera, informed the DPOA Board the PSC would be establishing rates charged for the sewer system. Promises were also made by the Grantor in a Town Meeting, that because DRC owned 40% of the lots, they would pay 40% of the construction costs. This promise was later rescinded and denied by Neil Peterson's successors.

The Utilities Committee no longer questions the need of this system. Because of ever increasing regulations of the Arkansas State Health Department, the EPA and future growth of the community, it is to our advantage to have it. The issues involve oversight and regulation. As you will see in attached exhibits, DRC/Riviera has released improper and inaccurate information attributed to the PSC and our Board of Directors, supplied "somewhat non-traditional" (as stated by our attorney) financial statements, and did not respond to a directive by the PSC to correct their letter stating "Because DRC's letter and the handout are so misleading, inaccurate and wrongly attributes information to the Commission and Staff, Staff requests that you destroy the handout and revise it to remove all references to the PSC that misleads the general public into believing you are relying on a Commission order of Staff Directive." It continues by stating "The revised handout should be sent to all property owners who have been given the old handout within two weeks after this letter." This letter from the PSC was dated May 25, 2004, and to our knowledge responsive action by Riviera was never done as directed.

In a November 10, 2005 meeting attended by the DPOA Board of Directors Executive Committee, Lee Young, President of DRC/Riviera and Jack Plumlee, G.M. DRC/Riviera, Mr. Young told the committee he would allow Riviera's financial records to be "transparent" (open) for review, and also supply the board with Riviera's customer list. Numerous attempts, between November 2005 and March 2006, to obtain this information failed. In March 2006, in a letter to the DPOA attorney, Mr. Young stated "We have now made the assumption that no matter what information we provide to the DPOA Board/Utility Committee they will not believe it. Why waste time and money on this effort? I have asked that Tom (Riviera accountant) no longer have any direct communication with the Board or Mark (then DPOA G.M.) and that all requests for information regarding Riviera Utilities be forward to our Attorney in this matter, Stephen Cuffman." The information asked for by the Executive Committee has never been provided.

As stated above, the issue is not the need of the system, but oversight and regulation. An amount exceeding \$300,000.00 is paid annually by the Diamondhead Community to Riviera for sewer construction, availability and operational fees. The distribution of these funds is not made public. At this time, Riviera can charge **whatever** they want, with the DPOA having no recourse. In the same letter to our attorney, Mr. Young stated "We project it (the development of Diamondhead) will require an additional investment in water infrastructure and sewer of approximately \$250,000 and \$400,000 respectfully. We are prepared to make this investment and anticipate cost recovery through water rates and per the existing methods on the sewer." In the opinion of the committee, what has been stated as a total \$1000 construction payment will not necessarily be a "final" payment for future construction. DRC pays nothing, on the over 1000 lots owned by them, in the way of sewer construction and operational costs, nor water availability. In addition, because DRC has no maintenance or development responsibilities in the community, as well as no annual maintenance, water or sewer fees, there is no great or impending incentive to sell Diamondhead lots in order to reduce property owner fees in these areas. As stated, in a letter to the Diamondhead Board of Directors, by the Peterson family: "We are no longer in the business of developing Diamondhead", and "We are the Grantor, not the developer."

The Utilities Committee has questions that have been asked of DRC/Riviera in the past, but still go unanswered:

1. Why not market Diamondhead in a more aggressive manner? Simply building a few condos in hopes that "Build it and they will come" simply won't work. After showing initial interest, plans for out-of-state marketing, by rejuvenating the Diamondhead Chamber of Commerce and being able to market without the necessity of a HUD report, was dropped by DRC.
2. Why should DRC be exempt from water and sewer fees on previously owned fee paying lots acquired by DRC?
3. How can Riviera's financial statements, especially the sewer financials, be considered accurate if only the water side is audited? Even then, they are not audited on any regular, recurring basis. The water side has not been audited since PSC began regulating it. All figures are simply those of DRC/Riviera.
4. If DRC owns Riviera, why would that ownership preclude DRC from being a Riviera customer? Would this ownership require payment of water & sewer fees on DRC owned lots?
5. Why does DRC/Riviera refuse to provide the POA with customer listings and DRC fee-exempt lots that may possibly include: Camp Tanako, Camp Couchdale, Diamondhead Community Church, Diamondhead Realty, the new offices across from Diamondhead Realty, various condos, the deli, Riviera Utilities, the beauty shop, Farmers Insurance, etc.?
6. How many "Contract for Sale" properties are being held by DRC, where no POA annual maintenance fees are being paid? There is also the probability no water and/or sewer fees being paid.
7. Do we still have the "emergency" water system? If so, why and what is the cost?

8. How does DRC/Riviera/Cooper Creek Properties determine all inclusive sewer charges (built into building construction costs) to Mystic Shores property owners, Lighthouse Cove and the future condos at our former Country Club, when the system has not been completed, and will not be in the foreseeable future?
9. What effluent, other than that of Diamondhead, i.e. Couchdale, Tanako, the deli area, the church, DH Realty, etc. goes into Diamondhead ponds? Would this provide another negative cost and responsibility to Diamondhead property owners?
10. How does Riviera classify customers? How many classes are there, and are they charged on an equal basis?
11. Why would Riviera **not** want to be regulated by the PSC, if they are guaranteed a reasonable profit?
12. Approximately 40% of operational and construction charges are not being paid (as stated by Riviera). What timely measures of collection is Riviera following other than liens placed on properties to be collected at the time of any future sale?
13. DRC/Riviera, under the terms of the 2006 Agreement with the DPOA, agreed to pay \$91K for DPOA lots turned back to them, and an additional \$150K to be paid immediately in lieu of payment at the time of completion of the sewer system. This has not been done.

In the recent past, insufficient water pressure, contamination due to faulty Riviera equipment causing a "boil order", and improper estimated water usage billing problems were corrected only after action taken by the PSC.

In January 2006, without known notice to Diamondhead residents, Riviera increased its sewer operation fees \$2.50 annually. This is a very small amount, but under PSC guidelines it could not have occurred without full accountability of why and if it was necessary for Riviera's sewer profitability. Again, it is important to remember that the PSC guarantees Riviera a reasonable profit margin.

CONCLUSION

The Diamondhead Community has been through many struggles, both financial and broken promises made by former developers, i.e. the completion of unpaved roads. We have been through extremely difficult financial times, but are now in excellent financial condition as evidenced through the elimination of debt, both short and long term, the resurfacing of our roads, and the planning of our new community center/country club.

As stated above, there is still great concern about the expansion, maintenance, completion and funding of our sewer system. Even following the proposed completion of the system, it will remain the property of DRC/Riviera Utilities, with no financial benefit to the community—those who actually funded the system .

As it now stands, the Diamondhead property owners have no say, much less control over sewer construction and operational rates. We are at the mercy of whatever DRC/Riviera decides we will pay.

The Public Service Commission exists for the benefit of **BOTH PARTIES**. As we have experienced with water issues, PSC guarantees Riviera a reasonable profit. For that profit, PSC guarantees The Diamondhead Community property owners **fair and equitable rates and service**.

The Utilities Committee firmly believes, for the present and future of adequate sewer service and rates, the PSC must assume regulatory authority of Riviera Utilities.

Respectfully submitted,

The Diamondhead Community Utilities Committee
November 2007

EXHIBITS

History of Diamondhead Sewer and Related Information

- 1995, Diamondhead Resort Communities (DRC) reached agreement with Camp Tanako to connect to their (Tanako) sewer system and ran a sewer line from the Tanako plant to Pebble Beach. Cost to DPOA property owners was \$42,374. To date we have not been able to find out what the terms of this Agreement were. The DPOA Board was not consulted or involved in the agreement.
- Beginning in April of 1996 lines were run to DRC spec homes, the Acott Pebble Beach Condominiums, the commercial area (deli, Riviera Utilities, etc.), D.H. Manor and throughout areas in the western part of Diamondhead where most of the developer lots are located. It seemed clear to everyone, the Developer was running lines solely for his own use and benefit, and the DPOA at the time had no problem with this. This was especially apparent when no lines were run down Scenic Dr., in the same general area, and where many homes exist along the lake. Also, no lines were being run to Section "A" which had the most homes, and was closest to the 25% buildup of homes which would require a sewer system in that section under' the Diamondhead Bill of Assurance, (BOA).
- During 1996 - 97 DRC ran lines to some new homes and to some whose systems had failed. As of Dec. 1997 the Tanako plant was serving approximately 58 Diamondhead connections and the Tanako plant was at or near capacity.
- In August of 1997 Riviera Utilities notified the DPOA Board that it had received approval to install a central sewer treatment plant and planned to run lines throughout Diamondhead. At that time they identified seven sections where the sewer were available, and that any new homes built in those sections would be required to be connected to the sewer system. Larry Stamps, Mgr. DRC and Riviera, informed the DPOA Board that the Public Service Commission would be establishing the rates to be charged for the sewer.
- On September 19, 1997 Neil Peterson met with the DPOA Board and presented three proposals for paying for the construction of the sewer system. He said that because he owned approximately 40% of the lots in Diamondhead, DRC would pay 40% of the construction costs. He said that all three proposals were based on the cost of the system being \$2M and that the DPOA property owners share would be approximately \$1.2M. The three written proposals he submitted all reflected the 60% - 40% split.
- The DPOA Board protested that DRC did not have a right to install a central sewer system because none of the sections had met the criteria which was established for installing a central sewer system and more importantly, the community could not afford to pay for such a system. It was pointed out that many of the non-resident home owners had quit paying dues and this would cause a snowball effect in the loss of membership.

- In a memorandum dated November 17, 1997 David Goldman, attorney for the DPOA, presented the Board with his opinion that DRC did not have the right to install a central sewer system, and to do so would violate the Diamondhead Bill of Assurance, (BOA). See Attachment 1.
- On Oct. 23, 1997 the DPOA Board approved a letter to be sent to Larry Stamps from John Cummings, Board President, requesting further information on the sewer system costs including one question which dealt with how the 60% - 40% cost would be charged. The only response received from Stamps by Cummings was a copy of a letter addressed to Stamps from DRC's engineer dealing with matters not related to most of the requested information, and no information concerning costs.
- Unfortunately there was no further action taken by the DPOA, and Riviera continued installing lines and construction of the sewer plant.
- In mid 1998 Neil Peterson retired as the CEO of DRC and his son-in-law Lee Young took over.
- On February 11, 2000, DPOA property owners received a letter from Larry Stamps notifying them the rates for the sewer construction fees, availability fees and user rates had been established by the Public Service Commission (PSC). DPOA members would pay a construction fee and if your property was, or was expected to be within 300 feet of the sewer line within the calendar year, you would be subject to an availability fee for that year. If you were hooked up to the sewer the charge would be \$25 per month.
- Because Stamps' letter indicated the rates had been established by the PSC a call was made to Robert Booth a manager at the PSC. When asked if the PSC was aware the Diamondhead Bill of Assurance was being violated by the rates they had set, Mr. Booth became upset and denied the PSC had neither established nor approved the rates being charged by Riviera. He went on to say that originally Riviera had petitioned the PSC for jurisdiction, however when Riviera saw the preliminary figures they withdrew their petition. He concluded the conversation by saying that he would contact Mr. Stamps and order him to write another letter to DPOA members informing them that the PSC had nothing to do with establishing the rates. Within a week Mr. Stamps wrote a letter admitting that in his first letter he had misled the DPOA members and that the rates were established solely by Riviera Utilities.

- Subsequently several meetings were held in Little Rock with Robert Booth and his PSC staff. The DPOA was represented by J. C. Thompson, President, Jim Brown, Treasurer, Roy Whittlesey, General Manager, David Goldman DPOA Attorney and DH resident Robert Willis.
- A meeting held on June 16, 2000 included representatives of Riviera Utilities, Larry Stamps and Riviera's attorney. The DPOA representatives presented the PSC and Riviera with a document titled "Statement of Position, Diamondhead Property Owners Association". This position was approved by all representatives of the DPOA prior to the meeting. The statement basically affirmed the DPOA position that Riviera sewer charges were in violation of the BOA and other understandings. See Position Statement, Attachment 2. The meeting ended with Robert Booth suggesting that the two parties set up a meeting in Diamondhead where hopefully the matter could be resolved. It was agreed that Riviera would provide DPOA all information requested prior to the meeting.
- At a meeting held on July 25, 2000, Mr. Stamps provided some of the information requested, but said he would need more time to collect all of the information including that which involved Camp Tanako, Couchdale, Lighthouse Cove, Pebble Beach, etc. Information provided indicated there were 91 customers hooked to the sewer at that time, (64 homes, 12 D.H. Manor, 10 Acott Condo's, 4 Commercial and 1 spec. home.) He informed those present it would require about 120 hook-ups for them to break even on the operation costs, or 30 more customers. This information was later reported by then Gen. Mgr. Roy Whittlesey in the September Focus. See Attachment 3.
- During the last part of August, Lee Young came to town, fired Larry Stamps and assumed control of DRC, including Riviera Utilities, etc.
- During the last few days of August and September 2000, Mr. Young held meetings with members of the DPOA Board and several groups of individuals whom he considered to have influence in the community. Although he said he wanted to make it clear his remarks should not be considered a threat, his message to all was the same. If those opposed to the sewer continued to pursue their opposition and efforts to involve other agencies, the results to Diamondhead would be devastating. He said that DRC was now owned by himself, as the CEO, and Neil Peterson's two sons. The older son was very much against spending any more money in Diamondhead and felt that DRC should walk away and turn over all of the assets, including Riviera, into a trust for the Peterson grandchildren. He said he believed that unless Diamondhead put an end to their opposition to the sewer "DRC would shut down its operations in Diamondhead" and the property owners would be the losers. (With the exception of the quoted remark, the above does not represent a direct quote but does represent the context of what was said by Mr. Young).

- During the next several weeks much discussion existed over the pros and cons, but in the end the DPOA Board "caved in" and passed a resolution intended to serve as the basis for reaching an agreement with Riviera. The resolution, as passed, was at best questionable as being in violation of the Bill of Assurance. However DPOA Attorney Goldman, insisted that a last sentence be added which stated; "Operational and/or maintenance costs of the central sewer system should be established by the Developer in such a way as not to conflict with the Diamondhead Bill of Assurance, "
- Representatives of the DPOA met with Riviera and negotiated an agreement dated March 23, 2001. Not only did the agreement go beyond the restrictions set forth in the above quoted last sentence of the board resolution, it also substantially approved Riviera charges for the sewer, which Attorney Goldman had previously advised were in violation of the BOA. The Agreement was approved at the March 22, 2001 Board Meeting. At the meeting DPOA Attorney Goldman "expressed concern that the resolution" (agreement) "appeared to set policy", (This represents a direct quote according to the Board minutes of this meeting.) In considering the status of this agreement it should be noted that it was made with Riviera and not DRC. Riviera is not a party to the Diamondhead BOA and has no standing under the document,
- On April 25, 2002 the DPOA Board approved a charter creating a "Utilities and Property Committee". Since its creation the committee has spent considerable time and effort researching the sewer issue. Last year a local attorney became involved and spent a great deal of his time and money building a class action suit which would have been filed against Riviera and the DRC. He finally concluded however, it would also be necessary to include the DPOA in the suit, because of the March 23, 2000 agreement between Riviera and the DPOA. Due to this fact it was agreed not to proceed with the class action suit. It should be understood however that others could file such a suit in the future.

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Information Relative to Customers Exempt From Sewer Charges

Riviera rate structure for construction fees and availability/operation costs apply only to DPOA members, Known customers of Riviera who are exempt in whole or in part from sewer charges are the following:

- Lots owned by the Developer and held in DRC Inventory. Riviera claims DRC is paying \$1000 towards sewer construction for each lot sold, (approximately 32 to date), however without access to their records, this cannot be confirmed. They pay no availability/operation costs on any of their lots.
- Camp Tanako. As of this date, although we know that Camp Tanako is hooked up to the Diamondhead sewer system, we do not know what the conditions are, or what the cost to Tanako is for using our sewer system. It is our opinion, based on the costs which Riviera has provided, that Tanako has not paid any costs for construction of the sewer.
- Acott Pebble Beach Condominiums, DRC spec. homes, DRC commercial area, D. H. Manor, Diamondhead Realty, and Diamondhead Church, including other business located in this general area. Information provided to the DPOA by Riviera, indicates none of the above have paid anything toward the sewer construction, or availability/operation costs, and some do not pay sewer fees during periods when their units may be vacant but are connected to the sewer system.
- Lighthouse Cove, the marina area, The Ridge, Vista Villa, and other properties, including a large parcel of land adjacent to the western side of Diamondhead named "Mystic Shores at Diamondhead".
- Properties sold by the Developer have been forgiven payment of construction and operation costs despite the fact that they were covered under our BOA in Section K. They are also exempt from paying DPOA dues until a property owner completes construction of a dwelling. DRC agreed to forgive these payments because the new owner/developer put in infrastructure including curbed streets, individual sewer systems etc. Yes, it is a fact that the DPOA is paying for those beautiful streets and curbing in Light House Cove as well as their individual septic systems.
- We also understand the new development "Mystic Shores at Diamondhead", will also be connected to the Diamondhead sewer system and, will not be charged construction costs or availability/operational costs on the same basis as Lighthouse Cove, The Marina, The Ridge, and Vista Villa.
- Camp Couchdale - FFA Camp.
We do not know if they are hooked up to the Diamondhead sewer system. We have no access to the Riviera records even though we own and are paying for the sewer system.

Note: There may be others because we have no access to Riviera financial records on sewer income and expenses, or to those who may be hooked up to the Diamondhead Sewer System being paid for by DPOA members.

Conclusion

In the April issue of the Diamondhead Focus, Jack Plumlee CEO of DRC/Riviera, informed us that, Mystic Shores is still in the planning stages and they have now decided that this new development will consist of single family lake front homes instead of condominiums as previously reported. (This new development was mentioned earlier on the previous page.) This property is not part of Diamondhead at the present time, and while we would welcome more property owners into Diamondhead we do not feel we can afford to repeat the mistake we made in Light House Cove and the adjacent developments. Once this new area is platted the new owners should be required to pay sewer construction fees, availability/operation costs and water availability fees just as DPOA members must pay on their property.

In the same article Mr. Plumlee indicates that we will need to construct a new water tower, and states, "Recent growth and projected growth indicate we will soon reach capacity with our existing water storage facility".

He also reports, "We are also conducting studies regarding modifications and expansion plans for the sewer treatment facilities". The fact is that the sewer treatment facilities would not have to be increased if Diamondhead Property owners were the only ones using the sewer system; after all they are the only ones paying for it.

The information contained in the above writing is factual to the best of our knowledge. We, upon request, will provide documentation and testimony of those involved to support the information in this document.

Utilities and Property Committee

J.D. Welch

**Diamondhead
Utilities and
Property
Committee**

**Report to the
Community**

August 16, 2003

Diamondhead Utilities and Property Committee

Our purpose:

The Diamondhead Utilities and Property Committee was formed in the spring of 2002. Its charter was approved by the Board of Directors April 25, 2002. (charter attached)

Why was our committee formed?

Since 1994, increases in DPOA dues (when we changed from a two-tiered system; one rate for local residents and a lower rate for vacant lot owners) coupled with significant increases in water and sewer fees, have resulted in a significant loss of non-resident property owners. Over 400 lots, now owned by DRC, were once properties owned by dues paying members of this community. That rounds to over \$200,000. annually in lost POA dues or \$1,000,000. (One Million Dollars) every five years!!

We recognize that when an individual sells his or her lot, dues simply change from one owner to another and zero dollars are gained for Diamondhead. Because the developer pays no POA dues (according to Diamondhead Bill of Assurance), we only gain POA revenue when a developer lot is sold. And we lose POA revenue when a lot is turned back to the developer.

We hope to make our community aware of the significance of these lost lots and the absolute necessity of developer lots being sold rather than acquired. We keep talking about ways to make the Grill and Lodge more profitable. Those are great discussions, but metaphorically the equivalent of putting a band aid on a bleeding artery. Lost lot revenue and no developer lot sales are the bleeding arteries. If we don't stop the bleeding, we die. Period. The following are statistical examples:

- Diamondhead's Long Range Plan of 1997 lists # of developer lots as 1,448 and a five year projection reducing this # of developer lots to 1,157 by 2001. The assumption was that the developer would sell 291 lots between 1997 and 2001, resulting in 291 new dues paying members.
- Diamondhead's Long Range Plan of 2001 lists # of developer lots as 1,803. • In 2003 that number is higher. Instead of selling 291 lots between 1997 and 2001, DRC has acquired over 400 lots and majority ownership (50%) of Diamondhead's 3700 lots.
- Seven developer lots were sold this past year.

What have we done:

Water rate increase:

On February 14, 2002, Rivera Utilities petitioned the Public Services Commission seeking a 35% rate increase for water usage charges to homeowners and water availability fees for vacant lot owners. This committee represented all property owners through the various stages of this process, resulting in PSC granting only a 14% increase in water usage rates to homeowners. No rate increase was approved by the PSC for nonresident lot owners.

Sewer construction costs:

Representatives have met with the Public Service Commission concerning our sewer system.

Board minutes and other written records document that Neil Peterson (former owner/developer) verbally committed to pay 40% of the cost related to the construction of the sewer project. (At that time, 40% represented the percentage of lots owned by his company). We believe Mr. Peterson's pledge was made in good faith but it has not been honored by his successor, Lee Young, son-in-law of Mr. Peterson. (It was publicly and verbally renounced by Lee Young, current developer of record). Consequently, DRC is neither billed for nor pays sewer fees on any of their undeveloped lots.

What we now recommend:

1. It is our recommendation to the Board of Directors that a petition requesting the Public Service Commission to oversee Riviera Utilities sewer system be drawn up by our DPOA attorney, David Goldman. We encourage every resident to sign this petition. Our hope is that Diamondhead's petition to the PSC to regulate our sewer system will result in DRC being required to pay sewer fees on their lots. This should result in lower fees for all other property owners.

PETITIONS ARE AVAILABLE AT THE ANNUAL MEETING,
SATURDAY, AUGUST 16, 2003 and WILL BE AVAILABLE LATER IN
VARIOUS LOCATIONS THROUGHOUT THE COMMUNITY.

PLEASE SIGN WITH OWNER'S NAME(S) AND LOT #.

2. It is our recommendation to the Board of Directors that we return to a two tiered system of assessing POA dues. One rate for those of us who live here and daily enjoy Diamondhead's amenities. A lesser rate for non-resident property owners (providing them with some much needed relief and encouraging the retention of their lots). Now that the courts may have cleared the way for this to happen, we need to move quickly to communicate this to all property owners.

3. It is our recommendation to DRC that they begin to aggressively market and sell Diamondhead to out of state buyers. Sale of lots owned by DRC (resulting in new POA dues to our community) have been pitiful. It is our opinion that since DRC pays no POA dues or sewer fees, they have neither the incentive or intent to see Diamondhead grow as it is currently organized.

4. It is our recommendation to the Board of Directors that previous agreements with DRC resulting in acquisition of lots without POA dues required be rescinded immediately (or renounced as Lee Young renounced any obligation to pay percentage of sewer construction). Several of the agreements mentioned in the Diamondhead Focus by Jack Plumlee are examples of those agreements. Arkansas' Attorney General's office and private attorneys indicate there is evidence that certain parts of those agreements violated our DPOA Bill of Assurance and were not in the best interest of our community.

TO THE DIAMONDHEAD BOARD OF DIRECTORS

FROM THE GRANTOR
Diamondhead Resort Community, Inc.
Riviera utilities of Arkansas
by: The Neil Peterson Family (Owners)

SUBJECT: Financing of a SEWER SYSTEM UTILITY for DIAMONDHEAD

With the presentation of this proposal to the DPOA Board, The Neil Peterson family wish to formally announce that:

- A) We are no longer in the business of developing Diamondhead.
- B) We are the Grantor, not the Developer.
- C) The owners of Diamondhead Realty are to be credited (or responsible) for all development and property value improvement by means of a Listing Agreement they have had with the Grantor as of the beginning of -year. The Listing Agreement is subject to certain terms and conditions of PERFO-CE set by the Grantor.
- D) The Grantor commercial property, platted lots and the Utility ownership position is for sale to any right buyer with the right price for the package.
- E) The SEWER SYSTEM UTILITY PLAN proposed by the Grantor is as unbiased and realistic as they could formulate.
- F) We will strive to accommodate all unbiased and realistic changes in the PLAN.
- G) The PLAN is based upon the UTILITY providing all of the finance and billing costs. If the DPOA wishes to finance their 60% of the initial systems cost and billing costs, we have provided for a lump sum buyout of that part.
- H) We believe that it would serve the best interest of all DPOA members for the Board of Directors to purchase Riviera Utilities of Arkansas at some time in the future if the price was right.
- I) The final PLAN shall be subject to review and approval by legal and governmental authority wherein such may apply.



440 Catherine Park Rd., Suite C· Hot Springs, Arkansas 71913· Phone: 501-262-2620· Fax: 501-262-1297 email:
jackp@hsnp.com · www.diamondheadcommunity.net

Dear Diamondhead Property Owner/DPOA Board:

Most recently you received a communication from the Diamondhead Utilities and Property Committee. The committee asked that you take certain actions that may not be in your or Diamondhead's best interest. We hope that you will consider a different perspective.

Diamondhead is a great community. Over the past 6 years we have overcome many obstacles that have prevented the community from developing to its full potential. These obstacles were present before Diamondhead Resort Community (DRC) became the developer.

HISTORICAL PERSPECTIVE:

While held by the bankruptcy receiver Diamondhead languished. Property values plummeted. The water source for Diamondhead was from shallow surface wells subject to contamination and high mineral content. The wells were producing less and less water making Diamondhead's future questionable. The lack of a central sewer system prevented use, sale or resale of lots. The public health department was refusing to approve new septic field installations further lowering property values and bank financing options on existing homes. Between 1990 and 1995 there were ZERO new dues paying members added to the DPOA. The process of lot "turnbacks" began before DRC. The DPOA was holding over 200 "turnback" lots in their inventory when DRC purchased the developer inventory in 1995. The plummeting property values gave little incentive to own Diamondhead property. People who purchased lots in the 1970's and early 1980's, speculating on Diamondhead's potential, began to give up their lots as Diamondhead's potential diminished. The decision by the Arkansas courts requiring dues to be equalized between lot owners and homeowners had the most dramatic impact on lot "turnbacks" to the DPOA. This court decision increased the lot owner dues from less than \$200 per year to over \$500 today. Today the "turnback" of lots has less to do with increasing DPOA dues or water and sewer fees than the aging demographics of the original lot owners. Many of the lots returned to the DPOA most recently are from estates, children and grandchildren of the original lot owners. Also any action or inaction that lowers property values has caused "turnbacks". Why pay DPOA dues if lots are selling for \$500.00? Why pay DPOA dues if the water is bad? Why pay DPOA dues if a person cannot build on your lot due to the lack of sewer? The perception of a Diamondhead lot having value is critical to retaining lot owners. Another key factor in lot "turnbacks" is the result of changing home, tastes. Diamondhead was originally platted to serve the "second home" market and the smaller home of the 1970's and 1980's. Today many homes in Diamondhead cover 2 if not 3 lots. This is another

reason lots have been turned back. Lot owners with only a single 50' wide lot cannot build the home of their dreams. Many such lots have been repurchased by existing home owners to enhance their property and privacy.

DRC ACCOMPLISHMENTS:

Let us review what has happened since 1995 with the involvement of DRC as the developer: (These are the facts supported by deed transfers and written records and DPOA board minutes)

- At the request of the DPOA board in 1995, with an inventory of 200 plus "turnback" lots, DRC took title to the lots relieving the DPOA of back taxes, deed and recording fees. In return DRC paved the parking lot of the Nineteenth Hole and over seven miles of road. This saved the DPOA tens of thousands of dollars. (The DPOA had tried for several years to sell these lots without success and when a lot was sold it was sold for less than \$500 or transferred to existing lot owners resulting in lowering lot values and ultimately more "turnbacks" and reduced DPOA income.) DRC has always encouraged the DPOA to refuse "turnback lots" and to collect past due fees. The Developer, according to a decree by a federal bankruptcy court and in agreement with the DPOA is not obligated to pay DPOA dues for lots held in its inventory. To do so would effectively eliminate any method for replatting and reselling any "turnback" lots. DRC is the only legal entity that is allowed to replat lots.
- DRC continues to work with the DPOA in taking "turnback" lots by paying \$1,000 per lot to the DPOA when the lot is sold and by relieving the DPOA of past due taxes, deed and recording fees on those properties. Most recently DRC paid \$70,000 to the DPOA in advance of the sale of these lots in order to help with paving roads. Again, DRC is the only legal entity that has the authority to replat existing lots to combine acreage for resale. This accommodates the market desire for larger lots.
- SINCE 1995 DRC HAS SOLD OVER 300 LOTS ADDING 215 NEW DPOA DUES PAYING MEMBERS. This DOES includes 12 dues paying members from the Diamondhead Manor, 10 dues paying members from the Pebble Beach townhomes, 21 houses renovated and resold by DRC and over 18 properties at Lighthouse Cove. Lighthouse Cove was unplatted commercial property prior to its development. From January 2002 through August 20, 2003 DRC AND ITS ASSOCIATES HAVE ADDED 34 NEW DUES PAYING MEMBERS!!!

THIS DOES NOT INCLUDE AN ADDITIONAL 68 LOTS THAT WERE OWNED BY NONPAYING LOT OWNERS AND WERE RESOLD BY DRC/DIAMONDHEAD REALTY. DRC SUPPORTS THE PROCESS BY DIAMONDHEAD REALTY IN SELLING OWNER LOTS IN ORDER TO MAINTAIN DPOA DUES. THIS EFFECTIVELY LIMITS DRC'S ABILITY TO SELL ITS OWN INVENTORY.

- Diamondhead Resort Community (DRC) takes its obligations as Grantor/Developer very seriously. Its obligations are set out in the Bill of Assurance (and as modified by previous bankruptcy court decrees and by agreements with the DPOA). As Grantor/Developer DRC holds the unsold property for resale. DRC has invested large sums to promote Diamondhead to both local and regional prospects. DRC promotes the Diamondhead community as a place to live as opposed to selling lots. DRC markets to those prospects wanting to relocate to Diamondhead. "Lot only/investment" marketing plans as suggested by the Diamondhead Utilities and Property Committee are contrary to current HUD regulations. DRC is highly motivated to sell lots but has had to compete against those who are willing to give away or sell (cheaply) their lot(s) to avoid paying DPOA dues. This makes it difficult to sell developer lots. DRC is facing the same marketing issues as Red Oak, the upscale development between Hot Springs and Diamondhead. Red Oak is highly marketed to out-of-state prospects yet they have been unsuccessful in creating interest in their land development even though they have spent large sums to promote the community.
- One of DRC's duties under the Bill of Assurance is to provide a quality and abundant source of water. This clearly separates the Developer and his responsibilities from the lot owner and their responsibilities under the Bill of Assurance. Some in the Diamondhead community see no distinction between the Developer/Grantor and a lot owner. DRC/Riviera Utilities invested over \$700,000 in water infrastructure to assure water availability. Today Riviera Utilities operates at a loss and will continue to do so into the future. Our motivation is to sell lots to increase water revenue to assure breakeven operation and ongoing investment in the water infrastructure. (A new water tower will be needed in the near future to serve the growing number of homes in Diamondhead.)

THE FACTS ABOUT THE WATER RATE INCREASE:

Riviera Utilities requested a water rate increase in order to recover the costs of investing in new water infrastructure as well as to cover water rate increases from the Hot Springs water department. Hot Spring water department did not have a wholesale rate established when the water rate increase requested by Riviera Utilities was established. This required Riviera to apply for an increase that reflected a retail rate from the Hot Springs water Department. When a wholesale rate was established Riviera was able accept the lower rate increase. Additionally Rivera was experiencing, at the time, a recorded loss of 12,000,000 gallons of water annually. This turned out to be caused by a bad "master" meter provided by the Hot Springs water department. With these issues satisfactorily

addressed the Public Service Commission felt a 14% increase was justified and Riviera agreed. Riviera /DRC plans to grow out of the current operation deficits.

- As required by the Bill of Assurance and determined by the Arkansas Public Health Department DRC was required to provide a central sewer system to serve new homes as well as existing homes having failed septic field systems. This again reflects a clear distinction between the responsibilities of the Developer/Grantor and "property owners". The current and future growth of Diamondhead is assured by having a central sewer system. Riviera has connected to the sewer over 20 older homes over the last two years after failure of their septic systems. Riviera currently serves 166 sewer customers. As per the agreement with the DPOA, DRC is to pay \$1,000 for each developer lot sold toward the sewer construction costs. In so doing DRC will ultimately pay for about 40% of the systems construction cost as per the agreement with Neil Peterson.

SEWER CONSTRUCTION AND OPERATION:

The Diamondhead Utilities and Property Committee is recommending to your Board of Directors that a sewer system petition requesting the Public Service Commission to oversee Riviera Sewer System be approved. Their "hope" is that DRC will be required to pay sewer fees or construction fees on their lots.

Clearly DRC DOES pay construction fees as detailed above. Clearly DRC as Grantor/developer is not an intended "user" of the sewer or water system as defined by the Bill of Assurance. "Property Owners" are the intended, users of the water and sewer system.

The PSC in the water rate review DID NOT recommend DRC pay "stand-by fees". The PSC did reduce revenue requirements for Riviera based upon an "excess capacity" ruling only because water lines were ran to EVERY lot in Diamondhead. They felt it was not fair for Diamondhead residents to pay for something that the original developer did in error that would drive up costs. Riviera/DRC in the installation of the sewer lines has been very careful NOT to build excess capacity into the system. All lines have been extended to serve existing property owners and lake front property where environmental Issues are a concern.

What is the risk in having the PSC oversee Riviera?

The risks are numerous and maybe disastrous for the future development of Diamondhead. * The Diamondhead Utilities and Property Committee has been told by the PSC that "they nor Riviera will be happy with the PSC findings." Once initiated the petition cannot be withdrawn if it is not to everyone's liking. Riviera petitioned the PSC

for sewer rate fees in 1998 and found out that the PSC does not have regulations that govern a system under construction or where such a system is required by a Bill of Assurance to be paid for by the property owners. Statewide there are no sewer utilities covered under the Public Service Commission.

If Riviera is not allowed to charge for construction of the system as it is extended to failed septic systems and new house construction Riviera will have to abandon this practice. This would quickly stop development, lot sales and the connection of failed septic systems without sewer lines in front of the house. Additionally the cost of the sewer rate review will be born by the ratepayer.

As originally proposed Riviera/DRC has agreed to operate the sewer system at a LOSS in order to get the system installed and be affordable to all. The plan as with the water operations is to grow out of the current deficits.

If the PSC decides all existing houses are required to hook onto the system the associated sewer use fees should cover current operating expenses. This, however, does not include paying construction costs. Riviera would be well served but the community would be devastated by the cost to each homeowner to hook onto the sewer system. This cost is estimated to be between \$5,500 and \$6,500. NEITHER PARTY WINS! Additional construction costs would be required to extend lines to existing homes DRIVING UP COSTS TO ALL. NEITHER PARTY WINS! The bigger risk maybe for the 166 current sewer users where they maybe required to "shoulder" all the costs of sewer operations making their sewer costs prohibitive. NEITHER PARTY WINS! DRC/Riviera has a concern about this potential outcome and so should everyone that may have to hook onto the sewer system before there are enough people to share in the costs.

THE PROPERTY OWNERS AND THE DEVELOPER MUST WORK TOGETHER IN ORDER TO MAKE DIAMONDHEAD A SUCCESS.

THE RISK ARE MANY AND THE REWARDS ARE SMALL considering "operation fees are only \$6.78 per month and limited to those only with sewer lines within 300 feet of their property and current sewer users paying a rate which is capped at \$25 per month. Payment of construction costs are a contractual obligation under the Bill of Assurance and should remain, in the opinion of legal council, an obligation of each Diamondhead property owner. The PSC would have to "break" the Bill of Assurance in order to change its contractual obligations.

Your thoughtful review of this information is appreciated. Your questions are welcome. Please feel free to call Jack Plumlee at Riviera Utilities for additional information.

To: Mark

Sandra L. Hochstetter
Chairman
(501) 682-1455

Daryl E. Bassett
Commissioner
(501) 682-1453

Randy Bynum
Commissioner
(501) 682-1451

ARKANSAS
PUBLIC SERVICE COMMISSION
UTILITIES DIVISION
1000 Center
P.O. Box 400
Little Rock, Arkansas 72203-0400
<http://www.AccessArkansas.org/psc>



John P. Bethel
Director (501)
682-1794

May 25, 2004

Diamondhead Resort Community,
Inc. c/o Jack Plumlee
440 Catherine Park Road, Suite C
Hot Springs, AR 71913

Dear Mr. Plumlee:

Recently, you sent a letter on behalf of Diamondhead Resort Community, Inc. (DRC) to the Diamondhead Property Owners/DPOA Board that has been brought to the attention of the Staff of the Arkansas Public Service Commission (PSC). The letter is not dated so we are not certain when the letter was sent. However, Staff takes exception to some of the inaccurate and misleading statements contained in the letter and wrongly attributed to Staff. DRC has not requested or received guidance regarding these matters from either Staff or the Commission. Consequently, Staff requests that you cease making inaccurate and misleading representations and that you promptly take action to correct your erroneous representations.

Specifically, Staff takes exception with the statements on pages four and five of the letter in response to the question, "What is the risk in having the PSC oversee Riviera?" In response the letter states, "The Diamondhead Utilities and Property Committee has been told by the PSC that they nor Riviera will be happy with the PSC findings. Once initiated the petition cannot be withdrawn if it is not to everyone's liking. Riviera petitioned the PSC for sewer rate fees in 1998 and found out that the PSC does not have regulations that govern a system under construction or where such a system is required by a Bill of Assurance to be paid for by the property owners. Statewide there are no sewer utilities covered under the Public Service Commission."

First, Riviera's statement "that they nor Riviera will be happy with the PSC findings" is inaccurate and was never conveyed to Riviera by Staff. Second, the statement regarding the Commission petition process is inaccurate. A petition filed

Jack Plumlee
May 25, 2004
Page 2

pursuant to Ark. Code Ann. 23-1-101 can be withdrawn at any time prior to a Commission order in this instance. Third, this Commission has in the past and does now regulate another sewer utility.

On page five, the letter also seems to be implying that, if the PSC decides all existing houses are required to hook onto the system, the associated cost could be \$5,500 to \$6,500. Because Staff could only estimate this cost after completing an audit of Riviera in the context of a rate application before the Commission, Riviera should clarify that any estimate is based upon cost estimates by Riviera or by some other source.

Further, it is our understanding that you provide a fourteen page handout to Diamondhead property owners of which we have been provided a copy. Again, this handout is not dated but Staff takes exception to the inaccurate and misleading statements contained in the handout and attributed to the Commission and Staff. The handout seems to have been generated after Riviera filed a petition in APSC Docket No. 98-338-U and is titled "Riviera Utilities of Arkansas, Inc. RATES Wastewater Treatment and Collection Operations & Construction". However, Riviera withdrew the petition and the docket was closed.

Staff specifically takes exception to statements on pages five and six discussing "Exhibit E" to the booklet detailing the actual costs of the sewer system. The handout states, "The cost figures have been audited by the Arkansas Public Service Commission The debt to DRC will be repaid by Riviera Utilities and financed at the interest rate established by the Public Service Commission ... Riviera Utilities requested the assistance of the Arkansas Public Service Commission in establishing the cost basis, repayment of debt and operation costs. The Public Service Commission reviewed the unique circumstances of building the sewer system in an already established community ... The rigid rules governing the Public Service Commission did not allow for establishing rates on a sewer system that is under construction that allows all property owners to pay for the system as set out in the Diamondhead Bill of Assurance."

Additionally, on page six the handout states, "Although not regulated, Riviera Utilities will be using the financial parameters recommended by the Public Service Commission. The audited construction costs shown in Exhibit "E" are those established by the PSC as well as the accrued and future interest rate on the debt and the rate of return that could be earned by Riviera on the asset."

This information in the handout given to Diamondhead property owners is absolutely incorrect. In Docket No. 98-338-U, Staff did not establish an interest rate to be repaid to DRC; Staff did not aid Riviera in establishing a cost basis, repayment of debt and operation costs; Staff did not communicate to Riviera that rigid rules governing the Commission did not allow for establishing rates on a sewer system under construction that allows all property owners to pay as set out in the Diamondhead Bill of Assurance and Staff did not establish financial parameters for Riviera and the construction costs shown on Exhibit E to the booklet were not established by the PSC nor the accrued and future interest rate on the debt and rate of return to be earned by Riviera.

Jack Plumlee
May 25, 2004
Page 3

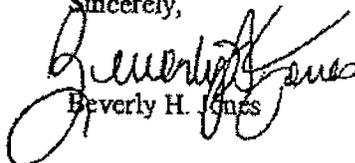
Moreover, the booklet states on page eight that "construction cost less interest through December 31, 1998 has been established at \$547,144 by the Public Service Commission and rate projections for repayment of the construction costs are based upon an 8.75% interest rate established by the Public Service Commission," On page ten, the booklet states "the Public Service Commission proposed a monthly sewer usage fee of \$25.00 and a line connection fee of \$500.00 and the Public Service Commission recommended that the balance of the "Operational" costs be paid for by all property owners within 300 feet of any central collection line. And finally on page thirteen, the conclusion states, that the multi-tiered rate structure (not possible under the Public Service rate structure) allows those who benefit the most from the current sewer to pay accordingly. All of the above statements are misleading in that the property owners are lead to believe that these are Commission approved recommendations.

Preliminary analysis by Staff during the pendency of any docketed matter before the Commission is for discussion purposes only and cannot be relied upon and attributed to the Commission or Staff in disseminating information to the general public. Riviera's petition was dismissed in Docket No. 98-338-U on August 12, 1999, before Staff conducted an extensive audit of Riviera's operations. The final order of the Commission in any docketed matter is separate from Staff's preliminary analysis and audit and the final order may or may not incorporate any or all of Staff's or other parties' to the docket recommendations. However, in this instance, the information contained above is clearly wrongly attributed to the Commission and the Staff since the petition was dismissed before a final order of the Commission.

Because DRC's letter and the handout are so misleading, inaccurate and wrongly attributes information to the Commission and Staff, Staff requests that you destroy the handout and revise it to remove all references to the PSC that misleads the general public into believing you are relying on a Commission order or Staff directive. Riviera has not sought or received guidance from Staff or the Commission regarding these matters. Secondly, Staff requests that you send a letter within one week of receipt of this letter to each and every Diamondhead property owner that has received DRC's letter or handout correcting the inaccurate attributed information. The revised handout should be sent to all property owners who have been given the old handout within two weeks after this letter. Please copy me on the letter and the revised handout so that Staff can confirm you have corrected this misleading and inaccurate information.

If you have any questions or concerns please contact me at (501) 682-5875.

Sincerely,



Beverly H. Jones

cc: David Goldman

To: Arkansas Public Service Commission
Date: October 10, 2006
From: Tom Wright
Re: Request For PSC Jurisdiction of Riviera Utilities

On behalf of the Board of Directors of the Diamondhead Property Owners Association, and serving as board secretary at the time of filing, I would like to submit the following clarification to the:

REPLY OF RIVIERA UTILITIES OF ARKANSAS, INC.
TO INFORMATION PROVIDED BY THE
DIAMONDHEAD PROPERTY OWNERS ASSOCIATION, INC.

The above document, in Paragraph 9, page 5, states: "In addition, while the DPOA suggests in Paragraph 9 that all members of the DPOA Board of Directors support the filing of the instant petition, the Minutes of the appropriate DPOA Board of Directors' meeting state that only six of the nine board members actually voted in support of the filing of the instant petition."

The Board of Directors, when completely filled, consists of nine (9) directors. The President is only permitted to cast a vote when there is a tie. At the time of the resolution and request to file for PSC jurisdiction of Riviera Utilities, there was one vacancy on the board, leaving only seven (7) members eligible to vote. (See highlighted paragraph)

As shown in the attachment of the June 22, 2006 monthly meeting minutes, all members eligible to vote were in attendance with the vote being 6 for the request and 1 against the request out of a possible 7, not 9 votes.

I can appreciate Riviera's counsel in his attempt to cloud this issue, and hope my statement will clarify this misrepresentation.

Thank you for your assistance,

Tom Wright

Heartsill:

A few weeks ago Jack Plumlee relayed a question from you regarding our interest in selling Riviera Utilities to the DPOA. My first reaction was one of surprise considering the historically weak financial strength of the DPOA and the somewhat dysfunctional nature of a political, revolving Board of Directors. I think we all agree that the water and sewer infrastructure is one of the most important assets for a growing community like Diamondhead. The current DPOA Board of Directors has individuals that questioned or are influenced by individuals that questioned the need for expanded water infrastructure as well as the need for a central sewer. I question whether this kind of thinking would result in decisions that are good for the long-term success of the Diamondhead community.

I have a significant on-going financial interest in the successful development of Diamondhead, the 33 acres of lake front, currently developed commercial property and undeveloped commercial acreage. Additionally, NRP expects us to remain a committed partner in the development of the water and sewer infrastructure. We assume NRP will be successful in the rapid development of Diamondhead. **This accrues to the benefit of all.** We project it will require an additional investment in water infrastructure and sewer of approximately \$250,000 and \$400,000 respectfully. We are prepared to make this investment and anticipate cost recovery through water rates and per the existing methods on the sewer.

I question whether an elected body (DPOA Board) can effectively own and operate a utility that requires the near-term flexibility rapid growth suggests. That being said I feel that once the infrastructure is established and operations are less variable that a property owners association could possibly own and operate such a business.

Riviera Utilities can currently cash flow its operations with combined water and sewer operations and use of the sewer construction debt repayment, however, it can not repay the debt to DRC on the sewer or self-finance the extension of the sewer lines and water storage capacity. We can personally finance the near-term investment requirements and feel it will be better for the community and our on-going investment interests.

My response to your question is that we are not interested in selling Riviera Utilities near-term for the reasons given. I would, however, consider selling in the future as our investments mature and a more stable Diamondhead Community develops. We are interested in developing a utility business that is stable, with manageable debt and to the extent possible, profitable. I believe it would be a disservice to the Diamondhead Community to buy a business that was otherwise.

Communications with the DPOA Board of Directors per Riviera Utilities:

In the interest of maintaining a working relationship with the DPOA Board we had expressed our interest in sharing general financial information so that greater understanding could be reached regarding the operation of Riviera Utilities. We provided preliminary financials to the Board. Not satisfied with the information provided, a face-to-face meeting with Tom Pickel and I was requested. My schedule and Tom's schedule did not allow for this. We indicated our desire to answer their questions, however, it was preferable to do so via teleconference or in writing due to the cost of having Tom appear for a two hour meeting...my cost \$3,000. The process of communication between Tom, Mark Campbell and the Board has already cost me \$1,000 plus. A recent March 6th communication from Mark indicated that the Board wanted a detailed trial balance/general ledger printout (800 pages) by March 8th or "they were going to the PSC". Needless to say we felt that providing such a printout would be a mistake. This would result in every person in Diamondhead having a say in running Riviera Utilities. (There is nothing confidential in Diamondhead).

We have now made the assumption that no matter what information we provide to the DPOA Board/Utility Committee they will not believe it. Why waste time and money on this effort? I have asked that Tom no longer have any direct communication with the Board or Mark and that all requests for information regarding Riviera Utilities be forward to our Attorney in this matter, Stephen Cuffman. We plan to file the required annual financial information with the Public Service Commission (PSC). They will post it as required for public consumption. The PSC has audited our books and is fully aware of all our financial dealings, water and sewer revenues and related costs. We are following all the operational recommendations of the PSC. We feel the DPOA Board needs to have confidence that the PSC is capable of monitoring Riviera Utilities and is acting in the best interest of the community. (A bankrupt utility is not in the best interest of the community)

You should know that the signed petition filed with the PSC for jurisdiction over the sewer operations indicates that less than 30% of the Diamondhead community supports a change in the sewer utility status. We believe the failure of the Utility Committee to present a valid petition for sewer operations to come under the PSC is the motivating force behind these inappropriate requests for financial information. All I can say is that the annual reports filed with the PSC accurately state our financial position. We have to exceed \$150,000 in annual sewer revenues for three years to qualify automatically for PSC regulation. We remain under this threshold. (Even for one year)

Heartsill, I have a great deal of respect for your knowledge in these matters and hope that you can guide the DPOA Board in a direction that serves its best long-term interests. I truly believe that our best interests are served through a good relationship with the DPOA Board. We have had good working relations with the Board over the years. It seems that only recently we have seen this relationship change. ???

Best regards

Lee

ARK: ...
JUL 25 3 23 PM '06

**BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF THE)
PETITION FOR COMMISSION)
JURISDICTION OF RIVIERA)
UTILITIES SEWER SYSTEM)**

FILED
Docket No. 06-103-11

PETITION

Comes Now Diamondhead Property Owners Association, Inc., an Arkansas not-for-profit corporation ("DPOA"), and for its petition, states as follows:

1. DPOA is a property owners association that is responsible for the management and oversight of all common areas within the Diamondhead community, located in Garland and Hot Spring Counties, Arkansas ("Diamondhead"), and the addressing of property owner and resident concerns.

2. Riviera Utilities, Inc. ("Riviera") is an Arkansas corporation that provides potable water and wastewater collection and treatment services to the residents of Diamondhead and others.

3. Riviera's potable water service is regulated by the Arkansas Public Service Commission (the "Commission"), but its wastewater service is not so regulated.

4. Based upon its knowledge and belief, DPOA understands that Riviera realizes annual operating revenues from the operation of its wastewater collection and treatment facility in excess of \$150,000.

5. Arkansas Code Annotated Section 23-1-101(9)(A)(vi)(b) requires that the Commission exert jurisdiction over sewage collection systems that are classified as Class B or higher sewer companies.



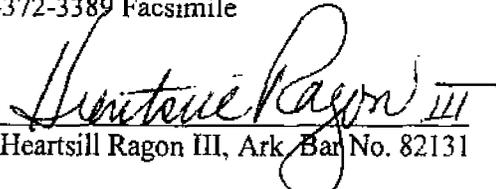
6. Pursuant to Rule 9.02 of the Commission's Rules of Practice and Procedure, a "Class B" utility in one with annual revenues of \$150,000 or greater.

7. DPOA believes that its jurisdictional oversight of Riviera will result in the operation of Riviera in a more equitable manner than is currently being employed by the utility.

Wherefore, based upon the foregoing, DPOA prays and requests that the Commission undertake discovery to determine whether Riviera, in fact, is a Class B utility and, if so, that it take all steps that might be necessary and appropriate in order to exert jurisdiction over the administration, management and ratemaking procedures of Riviera.

Respectfully submitted,

GILL ELROD RAGON OWEN &
SHERMAN, P.A.
425 W. Capitol Ave., Suite 3801
Little Rock, AR 72201
501-376-3800 Telephone
501-372-3389 Facsimile

By: 
Heartsill Ragon III, Ark. Bar No. 82131

ATTORNEYS FOR DIAMONDHEAD
PROPERTY OWNERS ASSOCIATION, INC

CERTIFICATE OF SERVICE

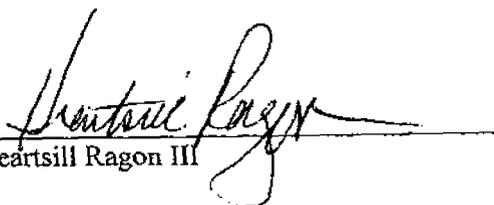
I hereby certify that a copy of the foregoing Petition has been served on the following parties by placing same in the United States Mail, postage prepaid, addressed as follows on this 25th day of July, 2006:

Beverly Hood Jones
Party for APSC General Staff
APSC General Staff
Arkansas Public Service Commission
P.O. Box 400
Little Rock, AR 72203-0400

Jack Plumlee
Party
Riviera Utilities Diamondhead
440 Catherine Park Road, Suite C
Hot Springs, AR 71913

Stephen Cuffman
Attorney of Record for Riviera Utilities
425 West Capitol Avenue, Suite 3801
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J. D. Welch
Initiating Party
Diamondhead Property Owners Association, Inc.
124 Gatehouse Road
Hot Springs, AR 71913


Heartsill Ragon III

LIMITED DEVELOPER STATUS AGREEMENT

This Agreement entered into on this 9th day June, 2006, by and between DIAMONDHEAD PROPERTY OWNER'S ASSOCIATION, INC. ("DPOA"), an Arkansas non-profit corporation, and DIAMONDHEAD RESORT COMMUNITY, INC. ("DRC"), an Arkansas corporation, and RIVIERA UTILITIES of ARKANSAS, INC. ("RIVIERA"), an Arkansas corporation.

WHEREAS, pursuant to that certain Diamondhead Revised Bill of Assurance, effective July 1, 1997 that has been filed of record in Garland and Hot Spring Counties, Arkansas, respectively, in Book 2444 at Page 0796 et seq. and Book 179 Page 267 et seq. (collectively, the "Bill of Assurance"), DPOA is the entity charged with the operations and management of those common areas that are located within the Diamondhead Community (the "Subdivision") as defined in the Bill of Assurance and documents related thereto; and

WHEREAS, DRC is the bulk owner of certain real property lots that are located within the Subdivision and that are subject to the Bill of Assurance; and

WHEREAS, DPOA and DRC have entered into two separate previous agreements that have pertained to the manner in which they have conducted business, and the DPOA and RIVIERA have entered into a separate agreement under which they have conducted business, the first of those agreements being dated March 1, 1995 by and between DPOA and DRC, the second such document being dated December 3, 1998 (hereinafter, collectively, the "DRC Agreements") and an agreement by and between DPOA and Riviera Utilities dated March 23, 2001, (hereinafter, the "RIVIERA AGREEMENT"); and

WHEREAS, in connection with DRC's contemplated bulk sale of Subdivision lots to National Recreational Properties of Diamondhead, LLC ("NRPD"), the parties hereto desire to terminate in full the DRC Agreements and the RIVIERA Agreements and replace the agreements referenced therein with the provisions hereof;

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions that will benefit the parties hereto, and for other good and valuable consideration received, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. Lot Conveyances. In consideration for the previous conveyance by DPOA to DRC of those lots identified in Exhibit "A", attached hereto, DRC agrees to pay to DPOA from bulk sales proceeds derived by ORC from its sale to NRPD, the cash sum of \$91 ,000.00 payable as follows: DRC shall direct the title company charged with closing DRC's bulk lot sale to NRPD (the "NRPD Transaction") to withhold said sum of \$9,100.00 from gross sales proceeds and directly pay said sum to DPOA contemporaneously with the closing of the NRPD Transaction, the balance \$81 ,900.00 shall be due upon receipt by DRC of the balance of the purchase price, which shall be due June 9, 2007. Upon payment of said sum, \$91,000.00, DRC, shall have no further obligations for payment to DPOA for such lot sales. Should NRPD purchase lots from DRC prior to June 9, 2007, and should DRC receive proceeds therefrom, DRC shall pay to DPOA a sum equal to 10% of the sum so received which shall result in a credit of funds otherwise due under this

paragraph.

2. Sewer Construction. In full and complete settlement and resolution of all previous agreements pursuant to which the parties hereto agree to share real estate sales proceeds in furtherance of the development of the Subdivision's sewer system, DRC agrees to pay to DPOA from NRPD Transaction gross sales proceeds the cash sum of One Hundred Fifty Thousand Dollars (\$150,000.00). DRC shall direct the title company charged with closing the NRPD transaction to withhold said sum of \$15,000.00, from gross sales proceeds and directly pay said sum to DPOA contemporaneously with the closing of the NRPD transaction, the balance \$135,000.00 shall be due upon receipt by DRC of the balance of the purchase price, which shall be due June 9, 2007. Thereafter, upon the payment of such sum, the relationship of the parties as it may relate to the providing of utilities or lot ownership, shall be governed by the Bill of Assurance and this Agreement. Should NRPD purchase lots from DRC prior to June 9, 2007, and should DRC receive proceeds therefrom, DRC shall pay to DPOA a sum equal to 10% of the sum so received which shall result in a credit of funds otherwise due under this paragraph.
3. Delinquent Utility Assessments. With regard to any lots within the Subdivision to which DPOA gains title pursuant to foreclosure, deed in lieu of foreclosure or other transaction, to the extent that any such lot maintains delinquent, outstanding and unpaid water and sewer fees that is owed to

RIVIERA UTILITIES, INC. ("RIVIERA"), then DPOA shall pay a sum up to \$250.00, or such lesser sum as may be owed to RIVIERA for utility assessments, from proceeds derived from DPOA's subsequent sale of any such lot to a third party purchaser and during that period of time in which DPOA holds ownership of any such lot, DPOA shall be exempted and excused from paying water and sewer fees otherwise payable by other third parties to RIVIERA. Upon the payment of such fee, RIVIERA shall deem all delinquent, outstanding and unpaid water and sewer fees to be paid in full, with the exception of sewer construction fees which shall be deferred until the lot is sold as to that lot or lots, and thereafter said party shall possess no lien or arrearage claim against said lot associated with said delinquency. This paragraph shall terminate on April 10, 2009, thereafter any lot owned by the DPOA as described herein, shall be responsible for payment in full to RIVIERA.

4. Payment of DPOA Assessments. With regard to lots owned by DRC as of the date of this agreement that do not become conveyed to NRPD pursuant to the NRPD transaction, DPOA does hereby state and declare that DRC is and shall be entitled to all rights of whatever nature that are reserved to the developer under certain Bills of Assurance, Amendments to Bills of Assurance, covenants, conditions, restrictions and related documents which have been filed of record and which pertain to the structure and organization of development (collectively, the "Developer rights") and the DPOA agrees

that it shall not assess against any such lot as described herein those annual DPOA charges and assessments that are otherwise charged to property owners within the subdivision. However, should DRC, after the date of this agreement, become the owner of additional lots or regain ownership of lots previously conveyed to it by others, then such lots shall become subject to the annually recurring obligation to pay those OPOA assessments that are levied against other lots located within the subdivision. However, as to those lots upon which DRC shall be paying the assessments, DRC shall be entitled to cast any vote that it might otherwise possess regarding DPOA issues that come before its membership.

5. Affiliated Development Transactions. Should DRC or its affiliates, develop any property which is accessed by utilization of the DPOA road, then DRC or its affiliates shall cause covenants and restrictions to be filed of record against such property that will require the property owners within that development to pay DPOA dues thereunder, commencing on the sale by DRC or its affiliates to a third party purchaser. Any property which is owned by DRC or its affiliates, outside the Diamondhead property, or can be accessed utilizing roadways not the property of the DPOA, shall not be subject to this paragraph. DRC shall be entitled to utilize the roadways owned by DPOA to access its property, residential or commercial.
6. Non-Competition. DRC and RIVIERA shall not compete against DPOA in connection with DPOA's efforts to obtain ownership of Subdivision lots that

might be offered for sale by third parties at state tax auctions, delinquent lien foreclosure actions or in similar circumstances. DRC also agrees that it shall not solicit ownership of Subdivision lots from persons who are in default in their payment of DPOA dues and assessments. The provisions of this paragraph, No.6, shall terminate on April 10, 2009, thereafter DRC and RIVIERA shall be entitled to obtain ownership of Subdivision lots in any manner that DRC and RIVIERA determines appropriate.

7. Continuing Obligation of Riviera. The DPOA, DRC and RIVIERA recognize, that RIVIERA shall, continue to have an obligation to provide, in accordance with the terms and conditions of the Bill of Assurance and this agreement, water and sewer to the Diamondhead development, however, the DPOA recognizes, that DRC contemplates the sale of a significant number of its presently owned lots to NRPD and the parties hereto do specifically agree that the payment of construction costs of \$1,000.00 per lot immediately upon sale of lots by DRC will be postponed until such time as NRPD sells said property to third party independent buyers at which time the \$1,000.00 per lot payment of construction costs fee shall be due and payable from the third party buyer or, if elected by the third party buyer, they may pay the same semi-annually together with interest in accordance with present practice.
8. Fulfillment of Obligation to Construct Sewer and Water Facilities. In recognition of the continuing obligation to construct sewer and water

facilities in the development, RIVIERA, shall have the right to continue to utilize all rights-of-way or reservations otherwise recognized under any Deed, covenant or Bill of Assurance herein before filed of record in this cause, in order to facilitate the construction and extension of such water and sewer lines and to lay and construct the water and sewer lines across the existing roadways within Diamondhead and RIVIERA, shall be entitled to crosscut roads within the development, but shall adhere to those policies presently in force by the DPOA which govern the right to crosscut roads, and also shall restore any damage which shall accrue to the roads or other property of the DPOA to its condition prior to the placement of the sewer and water lines and/or the maintenance thereof.

9. Termination of Prior Agreements. This agreement is intended to be an amendment and restatement of the agreements entered into on or about March 1, 1995 and December 3, 1998 and March 23, 2001, but shall not, in any respect, be construed as effecting the Amended Bill of Assurance.
10. Miscellaneous. This agreement constitutes the entire agreement between the parties hereto and may not be orally modified. This agreement may only be modified by a written document that is executed by the parties hereto. It is agreed that this agreement has been drafted through the mutual efforts of the parties hereto and any ambiguities herein shall not be construed against one party or the other.

This agreement is executed as of the date first referenced above.

DIAMONDHEAD PROPERTY OWNER'S
ASSOCIATION, INC.

By: 
PRESIDENT

DIAMONDHEAD RESORT COMMUNITY, INC.

By: 
Title: TREASURER / ASSISTANT SEC.

RIVIERA UTILITIES OF ARKANSAS, INC.

By: 
Title: TREASURER / ASSISTANT SEC.