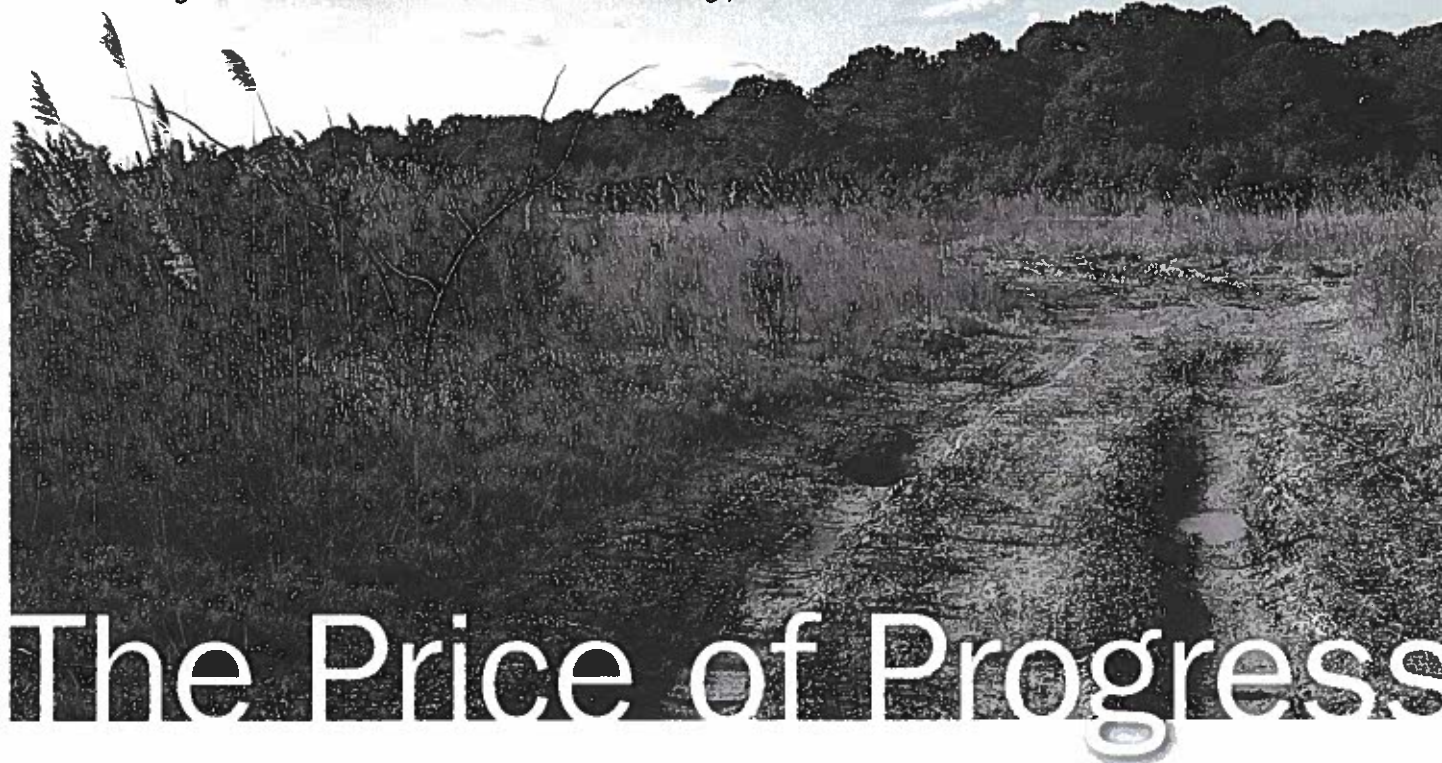


Developer L.M. Sandler and Sons wants to build a 69-acre community on one of Virginia Beach's last waterfront properties. They stand to make millions – while Virginia Beach residents stand to lose something priceless.

BY KRISTEN DE DEYN KIRK
PHOTOS BY KATHY KEENEY



The Price of Progress

POOR BRYAN PLUMLEE.

He's served on the Virginia Beach Wetlands Review Board for two and a half years, quietly going about his business without much notice from city residents. Few, if any, of them attended the Board's monthly meetings in which the eight-member Board yeated or nayted construction projects that happened to include wetlands.

The meetings weren't particularly interesting, rarely lively and hardly ever newsworthy. The whole decision-making process was important to the city's environment, but only a handful of folks understood that – and most of them were serving on the board, a board that City Council members sometimes struggle to fill with appointed volunteers.

Now, though, in 2007, hundreds – maybe thousands – of people are interested in the Wetlands Board, and lucky – make that unlucky – Bryan Plumlee, a civil litigation attorney, is its new chairman.

"Rod Rodriguez knew what he was doing," Plumlee joked last week during a phone interview. "He just left as chairman."

Plumlee's board is scheduled to make the

first in a round of decisions that could lead to Indigo Dunes, a development of about 1,000 homes just off Shore Drive. Developer L.M. Sandler and Sons wants to build the mix of apartments, condominiums and houses along Marlin Bay Drive, one street southwest of the Lesner Bridge. They would erect the homes on an undeveloped tract of about 69 acres overlooking Pleasure House Creek and the Lynnhaven River. It is one of the last open spaces in the city, and one of the last buildable tracts along water.

Step onto the property now, and you're breaking the law. It's private property – owned for 30 years by Wayne McLeskey, a man of great wealth: Some say if you see a for-rent or for-sale sign in the city, McLeskey is the man behind it.

As of last Friday, McLeskey was sealing the deal to sell the land to the Sandlers for \$25 million.

Too bad the City of Virginia Beach doesn't have that kind of spare change: Their comprehensive plan states that they'd like to preserve the land as "open space."

And too bad I don't have that kind of money. I would sure love to own the long stretch of

paintballs – little capsules of yellow, green, red and blue – and no other signs of humans on the ground expect for one set of large tire tracks.

As I walked the land with Skip Stiles, executive director of the new organization called Wetlands Watch, I barely noticed the homes behind me – the Ocean Park community of two-story condos shaded by live oaks and pines. Instead, I was feeling sand

"They seem to have Manhattan in mind." – Ocean Park Civic League Member Walt Stone

trees, sand and mud.

I broke the law last week, I think, as I started off on what I believe was a small piece of city property and ventured a little west and south.

The day was sunny but tears-in-your-eyes cold. The wind danced the plants on the land and the water in the river. I saw a few intact

sliding into my shoes and freedom creeping into my heart. I had so many directions to explore with only the sound of the wind and the birds to distract me. The busy swoosh of traffic from Shore Drive felt miles instead of yards away.

Earlier in the week, Lynnhaven River NOW Executive Director Laurie Sorabella explained

to me why parts of the 69 acres are so important – beyond giving me and other Seven Cities residents a place to escape.

First, there's a 100-foot zone from the high-tide point toward the interior of the land that's called a Resource Protection Area. It acts as a buffer, washing out pollutants that would otherwise seep into Pleasure House Creek and the Lynnhaven River and eventually the Chesapeake Bay.

The Chesapeake Bay Preservation Act says you cannot build in that zone without a special permit.

Wetlands also cover parts of the 69 acres. They too filter out pollutants and serve as habitats for wild life. The proposed Indigo Dunes would eat up almost four acres of wetlands and encroach upon about 34 percent of the Resource Protection Area.

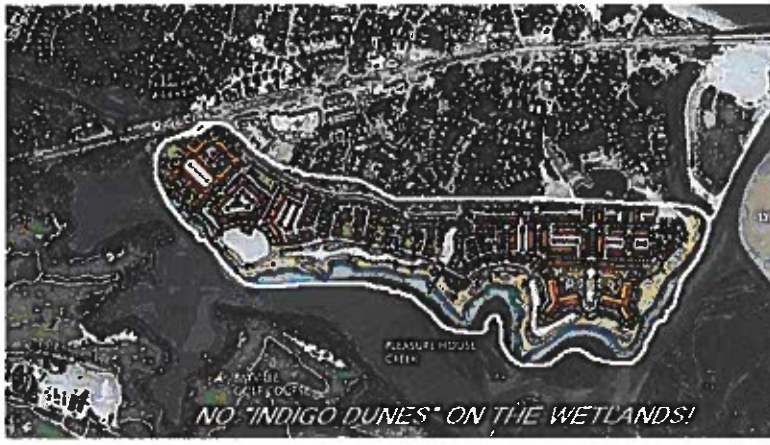
Sorabella patiently explained in scientific terms how pollutants hurt the Lynnhaven River to the point where no oysters could be harvested until her organization started to reverse the trend with education and law and policy changes – yet she seemed surprisingly unimpassioned about Indigo Dunes. She did review with me a four-paragraph letter she had sent to the Wetlands Board and the city's Chesapeake Bay Preservation Board. In the letter, she asked that the Boards honor the city's open space plan, the Chesapeake Bay Preservation Area regulations and the wetlands protection laws.

However, when I asked what else she was going to do, she said the letter was all. She didn't think she'd attend the Boards' hearings because they're on Mondays and as a part-timer, she doesn't work on Monday. After I expressed shock, she said that maybe someone from her organization would attend.

WETLANDS WATCH Executive Director Skip Stiles, a Norfolk resident who worked in Washington D.C. for a Democratic congressman for about 20 years and researched many environmental projects (he's also a *Port Folio Weekly* contributor), calls his new group "more aggressive" than Sorabella's.

"We flap our arms and piss and moan," he said, "and they go for the middle ground."

Stiles received grant funding from two sources late last year to form Wetlands Watch, and his mission is to empower average citizens



to fight the good fight. He acts as a consultant to groups, explaining forms and procedures, and instructing them on how to analyze those forms and participate in those procedures.

When it comes to eliminating Indigo Dunes, many fighters will be needed.

"The Chesapeake Bay Preservation Board approves about 80 to 90 percent of the exception requests that come before them," Stiles said last week.

The exceptions — and the development — have to stop.

By Stiles' calculations, 28 people a day have moved into the Beach's watershed areas (land which helps filter pollutants) every day from 1960 through the 1990s.

"The watershed is dying," he said, "a death by a 1,000 cuts. Watersheds should support life, not endanger it."

Most confusing to Stiles: The city announced in November that it would like to spend \$100 million to clean up the Lynnhaven River. How could they even consider adding to the pollution problem — allowing maybe another 2,500 residents along the water, many of whom would drive in and out of the community daily and have pets that could litter the land with feces? Does the city want to spend \$110 million instead of \$100 million?

"If I'm a resident in Virginia Beach paying to restore the water," Stiles continued, "I'd say [to the city], 'come on, help me along here.'"

Stiles estimates that if the Sandlers were forced to obey the laws and stay away from the wetlands and the 100-foot buffer zone, they'd only be able to build "maybe four clusters of town homes."

Proposed are 121 detached homes, 147 town houses, 300 apartments and 528 condominiums Two 11-story buildings are included in the plan.

"They seem to have Manhattan in mind," said Walt Stone, an Ocean Park Civic League member.

WATCH IT GROW:
The development would add about 1,000 homes.

Stone would prefer for the area to be preserved as a "municipal-use park-refuge."

He pictures parking, a boat ramp, a visitors' center and a marine research and conservation center.

"This would also be inline with what the city's comprehensive plan calls for and the Shore Drive Advisory Group has called for as part of a gateway-entry point to the Beach corridor," Stone said. "Given that this corridor is four times as dense as any other part of Virginia Beach, we think preserving any remaining open space is justified. It is time to stop the music and regroup."

Stone and his No Indigo Dunes committee have created signs, T-shirts and stickers protesting the development, and they've sent letters and e-mails to the city and members of the Wetlands Board and the Chesapeake Bay Preservation Board.

He's frustrated because he wishes to talk with the Board members, but on several occasions hearings were scheduled and then postponed. The problem: Hearings are held in the morning on weekdays. Working people like Stone can't keep planning to take a day off and then rescheduling that day off.

Stone also questions whether or not the Sandlers are "fighting fair."

"They pissed me off when they said (when



speaking to reporters and in their joint permit application) that the 69 acres are in bad shape," Stone said with a raised voice. "They said there were numerous abandoned vehicles and drug paraphernalia. That is totally misleading. If they say things like that, what else will they do to mislead the public?"

"They also say the area is filled with dog poop (which leads to water runoff pollution). That isn't true, but if that's really their concern, why aren't they saying they're going to ban pets on the property when they develop it? They say residents will be older or single and not drive as much as people with families (so there won't be much traffic and resulting pollution) — but they're not putting an age limit on the community or forbidding families."

"This guy (Art Sandler) is not being square."

Stone says about 4,000 people have signed a petition against Indigo Dunes. He, co-chair Elizabeth Dyer and Ocean Park Civic League President Dr. Howard Weinberg and others have been working to spread the word and collect signatures for about six months. They're backed by the Shore Drive Community Coalition.

The Coalition's web site (www.sdcc.info) features mini-surveys (such as "Did you know that the Sandlers stand to make \$500 million profit from Indigo Dunes?"), site plans, and a copy of the Indigo Dunes joint permit application.



SMILE, SANDLERS:
Steve and Art



On one page, the web site succinctly summarizes the Coalition's concerns about the development:

- [It] raises Pleasure House Point (the common name for the 69 acres) five to seven feet
- Requires about 39,800 dump trucks to... travel on Shore Drive
- Fills acres of existing wetlands
- Removes trees, bushes, and grasses that provide homes for wetlands wildlife
- Encroaches on wetland buffer zones
- Opposes the city's outdoor plan that recommends acquiring the property for open space
- Attempts to acquire City property to become private property
- Requests density that would be four times greater than the Bayfront average and two times greater than Ocean Park
- Paves or covers with concrete more than 50 percent of Pleasure House Point

- Creates about 8,000 to 9,000 vehicle trips per day on Shore Drive

I CALLED ART and Steve Sandler and the Indigo Dunes project coordinator and project manager hoping to speak directly to the people building the development about this list—but no one returned my call.

Joel Rubin, a hired spokesman, told me they asked him to speak with me.

"They're media shy," he said. He also said the list on the Coalition's site sounds correct.

However, he said the Sandlers have taken many steps to minimize the development's impact.

For example, Rubin noted, they met twice with Lynnhaven River NOW.

"They're concerned about the health of the Lynnhaven River," Rubin noted, "and we're concerned, too. We're going to be treating storm water from Ocean Park that is currently untreated. We're bringing in a complex bio-infiltration system. Engineers took a real look at this fragile piece of property and decided that much of it — 50 percent — will be open space. With 69 acres, we believe the land can handle the density (of people)."

I was eager to learn more about wetlands and how construction affects them and how the impact can be eliminated or minimized

House Creek and Lynnhaven River meet (one of the farthest points from Ocean Park); we have public use areas; you can see through (the spaces between the buildings) to the river and wetlands have been replaced at a one-to-one ratio, it's maybe even increased by a couple of acres; oyster planting areas have been added and osprey nesting platforms."

Dierks emphasized that he has attended at least a half dozen City of Virginia Beach staff meetings to hear concerns from employees charged with environmental protection and planning.

"I have incorporated many ideas from the

"The wetlands will be in better condition. We make wetlands with construction faster than nature can." — Environmental Engineer Ken Dierks

— or "mitigated," as I later learned it's called. My husband is a project manager for an engineering and construction company. He has supervised the building of large apartment complexes, town houses, industrial buildings and single-family homes — and a small project he's working on right now impacts some wetlands. So, to a certain degree, I appreciate the dilemma of profit versus environmental protection.

Ken Dierks, an environmental engineer with 30 years of experience, offered me more specifics on the Indigo Dunes project and how the Sandlers could be environmentally friendly.

The developers hired Chesapeake-based Kinley-Horn, where Dierks works, along with another environmental engineering firm, about 18 months ago.

Dierks' first task was to survey the land extensively, measuring wetlands, mapping the Chesapeake Bay Preservation area, identifying species, determining flood plain elevations, noting vegetation, soil and ground water and sampling water quality.

A design charette was held with architects, engineers, landscape architects and Rick Scarper, a City of Virginia Beach employee. Land plans were proposed and then key members of the charette group held what Dierks called "pre-application consultations." Representatives from the Wetlands Board, the Chesapeake Bay Preservation Board, the state Department of Environmental Quality, the Virginia Institute of Marine Science and the Virginia Marine Resources Commission participated.

Dierks said he had a few design principles in mind throughout the process:

- Preserve the scale of the area, which meant keeping it similar to the two-story Ocean Park community
 - Maximize green space as much as possible
 - Provide public use of private property
- "We moved the two 11-story buildings to the southeast corner, near where Pleasure

staff," he said.

Last Tuesday, the Sandlers submitted a new joint permit application that will be reviewed by the Wetlands Board, the Chesapeake Bay Preservation Board, the Department of Environmental Quality (DEQ) and other agencies.

Dierks said that concerns raised by the DEQ in a three-page letter were addressed in the new application.

On Wednesday, Sheri Kattan from DEQ's Virginia Beach office told me she hadn't yet seen a new proposal. Among her concerns with the initial proposal were measurements of wetlands that changed throughout the proposal and graphics not matching narratives. She wanted details on the proposed oyster plantings — where and how they'd be planted — and to know why open water areas that were being taken away weren't being replaced.

One of her biggest worries: "They haven't given us enough information to determine if it's necessary to build on most of the wetlands."

Dierks said the new plan addresses many issues and he's proud that less of the buffer zone will be impacted now: Only 1,063 units — a drop of 33 — are being proposed. (The Sandlers had originally wanted 1,700 units, and at one point talked about building a hotel and retail complexes on the property.)

The engineer argued that some key points are "getting lost in the discussion."

Among them: The facts that Sandler will add "tidal channels" that will provide better tidal flushing of pollutants and that wetlands are being relocated.

"Wetlands had been killed on this property by dredge material wastes that were placed there," Dierks said. "The wetlands will be in better condition. We make wetlands with construction faster than nature can. We don't have to wait 25 years (for new wetlands)."

(Continued on page 27)

(Continued from page 24)

LATE LAST THURSDAY evening, after talking with Dierks, I wondered what I should write in this article. I loved the part of the 69 acres I toured and when I left that day, I thought it should remain just as it is – completely undeveloped. I wouldn't even have wanted a parking lot, a boat ramp, an observation tower, a marine center – like Ocean Park Civic League member Walt Stone talks about.

I remembered Wetlands Watch Executive Director Skip Stiles saying that constructed wetlands are never as good as natural wet-

lands; I remembered the pride in Lynnhaven River NOW Executive Director Laurie Sorabella's voice when she said her group's efforts have rejuvenated a 7 percent strip of the Lynnhaven – enough for some oysters to thrive.

ing for exceptions that many other developers are granted so that he can make money? Others with opinions that actually matter in the City of Virginia Beach seem to share my confusion:

City Councilman Jim Wood and Louis Jones, who represent opposite sides of Shore Drive, told me that they're against Indigo Dunes because of the density – as it stands now. But they wouldn't say that their council vote will be a definite "no." They were interested in more information and further negotiations with the

Sandlers. (Jones also noted that details on the exact zoning, and therefore the allowable density, for the Indigo Dunes site is being debated by the City staff and the Sandlers' attorney – which could lead to a legal battle.) Chesapeake Bay Preservation Board Member Paul Schmidt is concerned about what he understands will be a high amount of impervious surface – but he does like what he's heard

about the Sandlers' plan to treat storm water from Ocean Park.

Wetlands Board Member Dr. Stephen Vinson wants to wait to make his decision at the upcoming Feb. 19 hearing. He does have a fear, though, that the proposed density is too high, and he'd "probably" like to see further modifications.

Wetlands Board Chairman Bryan Plumlee has an open mind, too. He says he understands citizens' frustration with the proposed development – and the workings of Plumlee's

last-minute decisions to defer the hearing so that they can rework their proposal.

Citizens can, however, call Plumlee or any of the board members (the numbers are listed at www.vbgov.com) and attend both an informal meeting scheduled for Feb. 12 and the Feb. 19 hearing meeting, both at 9:30 a.m. Plumlee cannot guarantee that Indigo Dunes will be discussed at the informal meeting – which is generally reserved for new business.

"They can come if they want to," he said last Thursday. "We'll be in the planning department, on the first floor."

Only problem: Plumlee might run into his own density problem if 200 people show up.

"The room is very small," he said. ●

"They haven't given us enough information to determine if it's necessary to build on most of the wetlands." – Department of Environmental Quality Manager Sheri Kattan

The formal Wetlands Board hearing on Indigo Dunes is scheduled for Feb. 19 at 9:30 a.m. in Building One of the Virginia Beach Municipal Center. If approved by the Wetlands Board, the proposal will later be reviewed by the Chesapeake Bay Preservation Board, the City planning department and City Council. For more information on this project, please see www.indigodunesinfo.com; www.opcl.org/noindigodunes.pdf; chesbayfront-phb.tripod.com; and www.sdcc.info.

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