

VIRGINIA:

IN THE CIRCUIT COURT OF STAFFORD COUNTY

STAFFORD COUNTY BOARD OF SUPERVISORS )

and )

DANIEL J. SCHARDEIN, III )  
DIRECTOR OF CODE ADMINISTRATION, )

Complainants )

v. )

STAFFORD LAKES LIMITED PARTNERSHIP )

Serve at: Kamel M. Tabbara )  
Registered Agent )  
1304 Vincent Place )  
McLean, Virginia 22101 )

Respondent )

CLOB-1008  
CHANCERY No. \_\_\_\_\_

COMPLAINT FOR DECLARATORY JUDGMENT, TEMPORARY  
AND PERMANENT INJUNCTION

COMES NOW the Complainants, the STAFFORD COUNTY BOARD OF SUPERVISORS ("the Board"), and DANIEL J. SCHARDEIN, III, Director of Code Administration, ("the Director of Code Administration") by counsel, and files this Bill of Complaint for Declaratory Judgment, Temporary Injunction and a Permanent Injunction to prevent and abate violations of the Stafford County Erosion and Sediment Control Ordinance on Tax Map Parcel 49-27 and to prevent further violations on said property. In support of this Complaint, the Complainant says:

1. The Stafford County Board of Supervisors (herein “the Board”) is a body corporate and politic, representing the political subdivision of the Commonwealth of Virginia known as Stafford County.

2. The Director of Code Administration is charged with the administration and enforcement of the Erosion and Sediment Control Ordinance of Stafford County, Virginia, and is empowered by Virginia Code Section 15.2-2286(4); Virginia Code Section 10.1-569; Stafford County Code Section 11-8 with the authority to seek injunctions and restraining orders as may be necessary to enforce the Erosion and Sediment Control ordinances.

3. The Respondent, Stafford Lakes Limited Partnership, a registered Virginia Limited Partnership (herein “Stafford Lakes”) and is the owner of Stafford Tax Map Parcels 49-27 and 48-1.

4. Jurisdiction and venue are proper in the Court pursuant to the provisions of Va. Code Sections 8.01-184 through 191, Section 8.01-261, Va. Code Section 10.1-569(C), Stafford County Code Section 11-8, and Virginia Code Section 8.01-620.

5. Although proof of irreparable harm and proof of the lack of an adequate remedy at law are prerequisites to a grant of injunctive relief under a court’s traditional equity jurisdiction (Va. Code Section 8.01-620), neither showing is required when a statute or ordinance expressly empowers a court to grant injunctive relief against its violation as does Stafford County Code Section 11-8, and the authorizing statute found in Virginia Code Section 10.1-569(C).

6. At issue is land-disturbance work presently occurring on Stafford County Tax Map Parcel 49-27, such parcel of land to be referred to as “the property” herein.

7. The property is referenced as “OUTPARCEL C” on a drawing by Dewberry and Davis dated 5/16/06 (attached as Exhibit 1) and consists of approximately 244.58 acres and is zoned Agricultural 2 (A-2) under the County’s zoning ordinance.

8. The Respondent has expressly and impliedly indicated the intent to develop the property, along with adjoining property on Tax Map Parcel 48-1, into a residential subdivision.

9. Allegedly, and in pursuit of applying for approval of a preliminary plan of subdivision for the property, the Respondent has engaged the services of Frazier & Consultants, a duly certified AOSE (Authorized Site Soil Evaluator) to conduct soil sampling tests to determine whether proposed building lot sites have the appropriate and necessary soils for residential on site septic drainfields. The Respondent states that such work is necessary in order to comply with Stafford County Code 22-118(4).

10. On September 11, 2006, the County received a complaint from a citizen stating that grading and clearing activity was occurring on the property.

11. On September 11, 2006, Brad Butler, the County’s Chief Erosion and Sediment Control Investigator, went to the site and found agents of the Respondent using a metal tracked front loader (dozer) and a rubber tired backhoe on site, clearing and denuding brush, small trees and other natural vegetative cover. Additionally, the agents of the Respondent were using the backhoe to dig pits of varying size and depth at different locations on the property. Mr. Butler determined that the clearing and digging activity exceeded 2,500 square feet in the aggregate.

12. Mr. Butler determined that neither the Respondent, nor the Respondent's agent (Frazier & Consultants) had submitted a land-disturbing plan, or applied for and obtained a permit for grading and clearing work on the property.

13. Virginia Code Section 10.1-563 and Stafford County Code Section 11-6 provides that non-exempt land-disturbing activity shall not occur until an erosion and sediment control plan for the land-disturbing activity has been submitted, reviewed and approved by the County, and that a bond be posted and a permit obtained.

14. Land-disturbing is defined in Virginia Code Section 10.1-560 (and such language mirrored in Stafford County Code Section 11-2) as "any land change which may result in soil erosion from water or wind and the movement of sediments into State waters or onto lands in the Commonwealth, including, but not limited to clearing, grading, excavating and filling of land."

15. Virginia Code Section 10.1-560 and Stafford County Code Section 11-2 provide for specific activities that are otherwise considered land-disturbing activities but listed as "exempt" from the requirements of the Erosion and Sediment Control enforcement. Specific to the case at large are the following stated exemptions:

(1) "Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work; . . ."

(2) "Septic tank lines and drainage fields, unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system; . . ."

(3) "Disturbed land areas of less than two thousand five hundred (2,500) square feet in size, providing land disturbing activity is not for the development of a residen-

tial lot(s) in a subdivision or no special site conditions or site development plans warrant conservation treatment and no erosion is evident during development;. . .”

16. The County determined that the activity occurring on the property constituted land-disturbing activity and that the activity occurring on the property did not fall under the specific exempt activities listed in the State Code or County ordinance. As a result, on September 13, 2006, Brad Butler issued an “Inspection Report-Correction Notice” (Exhibit 3) which meets the requirements of the Written Notice to Comply, as provided for in County Code Section 11-6.

17. The September 13, 2006 Written Notice to Comply required the Respondent and his agents to stop all land disturbance on site immediately and to take certain corrective measures to prevent potential erosion and sedimentation from occurring at the disturbed areas, to submit a Erosion Control Plan for approval, to post securities, obtain a grading permit and attend a pre-construction meeting.

18. On September 18, Steve Hubble, the Erosion and Sediment Control Program Administrator, issued a “Stop Work Order” as provided for in Stafford County Code Section 11-6(c) and posted a copy on site and delivered a copy to the Respondent’s legal counsel. This order was issued at the direction of the County Attorney’s Office so as to comply with the stop work order requirements of Stafford Code Section 11-6(c).

19. To date (and to the best of the County’s knowledge) no additional work has occurred on site and Respondent has seeded and strawed most denuded areas. However, Respondent has not submitted an Erosion Control Plan or applied for a grading permit.

20. Respondent, through legal counsel, has stated that the County is without authority to require Respondent or his agents to comply with the Erosion and Sediment

Control laws of the County in so much as the activity is exempt under the exceptions to the definition of "land-disturbing activity", namely "septic tank lines or drainage fields" as well as "maintenance and repair" of existing roadbeds.

21. Respondent's legal counsel asserts that the digging of test pits on the property is for purposes of complying with Stafford County Section 22-118(4) requiring the land developer to submit certain soils information regarding the suitability for on site septic drain-fields at time of preliminary plan submittal, and since the digging of the test pits is coincidental to potential future installation of a septic drainfield, the activity is exempt under the "septic tank lines and septic drainage fields" exception found in Stafford County Code Section 11-2, definition of land-disturbing activity.

22. Respondent's legal counsel further asserts that the clearing and grading activity associated with the activity on the property is exempt because the activity is akin to repair and maintenance of existing roadbeds located on the property and is exempt under the "repair and maintenance" exemption found in Stafford County Code Section 11-2, definition of land-disturbing activity.

23. Respondent, through legal counsel, has further stated that County is without legal authority to issue notices of violation or stop work orders for this type of land-disturbance and that the County is singling out Respondent and the property for differential treatment for reasons other than a valid interpretation of the law in so much as the County has apparently never required an Erosion and Sediment Control Plan or permit for this type of activity before now.

24. Neither the County Code nor the State Code definition of "land-disturbing activity" specifically exempts the land-disturbing activities that have been occurring on the

property whether under the “septic tank line and drainage field” exception or the “repair and maintenance” exception; nor can a literal interpretation of the County Code or Virginia Code reasonably include such activities under the exemption.

25. The purpose for which a statute is enacted is of primary importance in its interpretation or construction.”<sup>1</sup> In the language of Va. Code Section 10.1-561, the manifest legislative purpose of the Erosion and Sediment Control Law was to “. . . develop a program and promulgate regulations for the affective control of soil erosion, sediment deposition, and non-agricultural runoff that must be met in any control program to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources.” Allowing an interpretation of an exemption that strays from the stated purpose is contrary to the intent of the law.

26. Even though the County or its officials may waive, or fail to enforce, certain conditions or requirements of the law in past instances, such failure to enforce does not constitute a waiver of the ordinance as it applies to the Respondent.<sup>2</sup>

WHEREFORE, the County respectfully requests that this Court enter an order granting the following relief:

A. A declaratory judgment that clearing and denuding of natural vegetative cover and the digging of test pits for testing of soils for the suitability of drainfield/septic system sites in excess of 2,500 square feet of disturbed area is a land-disturbing activity as defined under Virginia Code Section 10.1-560 and Stafford County Code Section 11-2 and is not exempt as “installation of septic tank lines or drainage fields” and that such activity re-

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<sup>1</sup> *Norfolk So. Ry. Co. v. Lassiter*, 193 Va. 360, 364, 68 S.E. 2d 641, 643 (1952).

<sup>2</sup> *Commonwealth v. Washington Gas Light Co.*, 221 Va. 315, 323 (1980).

quires the Respondent and its agents to fully comply with the County's Erosion and Sediment Control Laws.

B. A declaratory judgment that clearing and denuding of natural vegetative cover, clearing of brush and trees in excess of 2,500 square feet where such clearing includes areas adjacent to or significantly off of any previously existing road bed constitutes land-disturbing activity as defined under Virginia Code Section 10.1-560 and Stafford County Code Section 11-2 and is not exempt as "repair or maintenance" work and that such activity requires the Respondent and its agents to fully comply with the County's Erosion and Sediment Control Laws.

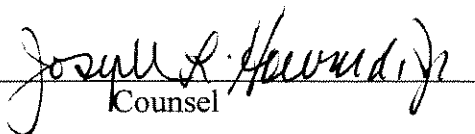
C. A preliminary injunction prohibiting the Respondent and its agents from proceeding with any further land-disturbance activity on the property as described herein pending a full evidentiary hearing on this matter.

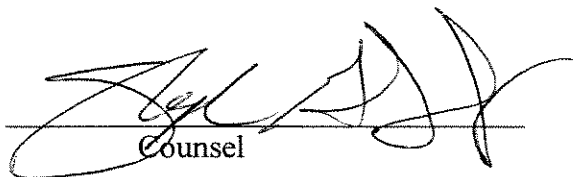
D. A permanent injunction prohibiting the Respondent and its agents from proceeding with any further land-disturbance activity on the property as described herein without complying with the conditions of the County's Soil and Erosion Control laws as found in Stafford County Code Chapter 11, specifically to include the requirement that the Respondent submit an application for a grading and clearing permit together with an adequate and approvable Erosion and Sediment Control Plan and surety in the form of a bond, letter of credit or cash bond in an amount required under the Code.

E. An award to Complainants of all costs, fees and/or other expenses to which it may be entitled to recover under applicable law, together with such other and further relief as this Court may deem it to be entitled to.



**STAFFORD COUNTY BOARD OF  
SUPERVISORS and  
DANIEL J. SCHARDEIN, III,  
DIRECTOR OF CODE ADMINISTRATION**

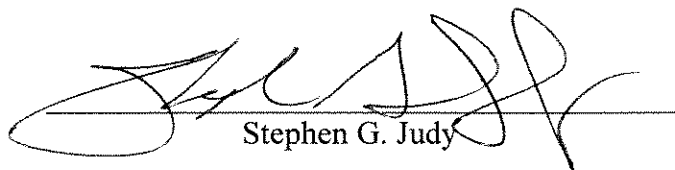
By:   
Counsel

By:   
Counsel

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(540) 658-8636  
FAX (540) 658-4530  
Counsel for the Complainants

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Complaint was mailed to H. Clark Leming,  
Leming and Healy, P.C., at Post Office Box 445, Garrisonville, Virginia 22463-0445, on this  
28th day of September, 2006.

  
Stephen G. Judy