

VIRGINIA:

IN THE CIRCUIT COURT OF STAFFORD COUNTY

STAFFORD LAKES LIMITED PARTNERSHIP,)
1304 Vincent Place)
McLean, Virginia 22101)

Plaintiff,)

v.)

Case No. CL06000388-00

BOARD OF SUPERVISORS OF)
STAFFORD COUNTY, VIRGINIA,)
Serve: Joseph L. Howard, Jr., Esq.)
County Attorney)
1300 Courthouse Road)
Stafford, Virginia 22555)

-and-)

STAFFORD COUNTY, VIRGINIA,)
Serve: Joseph L. Howard, Jr., Esq.)
County Attorney)
1300 Courthouse Road)
Stafford, Virginia 22555)

Defendants.)

**COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE
AND OTHER RELIEF**

The Plaintiff, Stafford Lakes Limited Partnership (“Stafford Lakes”), by counsel, submits the following as its Complaint against the Defendants, the Board of Supervisors of Stafford County, Virginia (the “Board”) and Stafford County, Virginia (the “County”):

Identification of the Parties

1. The Plaintiff, Stafford Lakes, is a Virginia limited partnership with offices in McLean, Virginia.
2. The Defendants are the Board and the County. The Board is a body corporate and politic, and is the governing body of the County.

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Jurisdiction and Venue

3. Jurisdiction and venue are proper in this Court pursuant to the provisions of Va. Code Ann. §§ 8.01-184 through -191, -261, and -620 (Michie 2000 Repl. Vol. & 2005 Cum. Supp.), and Va. Code Ann. § 15.2-2208 (Michie 2003 Repl. Vol).

4. Stafford Lakes is aggrieved by certain actions of the Board and the County, as alleged further below.

The Property

5. Stafford Lakes is the owner of land located in Stafford County, Virginia, which is identified on the Stafford County Tax Map as Parcels 39-34A and 40-24D, containing 11.76 and 35.189 acres respectively, and which is located within the A-1 zoning district (the "Property").

6. As of the filing of this suit, any development on the Property could not be served by public sewer or water utilities.

The Drainfield Ordinance

7. In the fall of 2005, and through early 2006, the Board and the Stafford County Planning Commission (the "Planning Commission") began considering an amendment to § 22-58(12) of the Stafford County Subdivision Ordinance (the "Subdivision Ordinance"). The proposed amendment concerned the imposition of new, onerous requirements for locating and obtaining approval of wells and drainfields as a condition of preliminary subdivision plan review and approval.

8. At the time the Board began considering the proposed amendment to Section 22-58(12) of the Subdivision Ordinance, and until the Board's adoption of the final iteration of that amendment, which is the subject of this suit, Section 22-58(12) of the Subdivision Ordinance provided as follows:

Sec-22-58. Content.

The preliminary plan shall include the following:

(12) *Private well and septic*: All lots that are not to be served by public sewer or water utilities shall show the proposed location of well and septic drainfield on each lot.

9. On February 22, 2006, the Planning Commission held a public hearing on proposed Ordinance O06-07, the proposed amendment to Section 22-58(12) of the Subdivision Ordinance.

10. The text of Ordinance O06-07, as considered during the February 22, 2006 public hearing, reads as follows:

Sec-22-58. Content.

The preliminary plan shall include the following:

~~(12) *Private well and septic on-site sewage disposal systems*: All lots that are not to be served by public sewer or water utilities shall show the proposed location of well and septic drainfield on each lot.~~

(a) All lots that are not to be served by public sewer or water utilities shall show the proposed location of well and on-site sewage disposal system on each lot. The location of all wells and on-site sewage disposal systems shall meet Virginia Department of Health requirements.

(b) A signed statement from a certified Authorized Onsite Soil Evaluator (AOSE) stating the soils in the proposed locations of the on-site sewage disposal system for each lot are adequate to accommodate the proposed on-site sewage disposal systems. The signed statement shall include that all proposed lots have been evaluated.

(c) A letter from the Virginia Department of Health approving the AOSE statement.

11. Upon the conclusion of the Planning Commission's public hearing on Ordinance O06-07, and during its February 22, 2006 meeting, the Planning Commission voted to recommend that the Board adopt Ordinance O06-07.

12. On March 21, 2006, the Board held a public hearing on Ordinance O06-07. Upon the conclusion of the public hearing, and during its March 21, 2006 meeting, the Board voted to adopt Ordinance O06-07

13. For the reasons stated more particularly in Counts I and II below (which are incorporated herein by reference), Stafford Lakes asserts that the requirements of Ordinance O06-07 are illegal, *ultra vires* and arbitrary and capricious.

14. Ordinance O06-07 purports to impose onerous, expensive and time-consuming engineering requirements, and mandates a health department review process, which should not be required as a condition of preliminary plan review and approval. Stafford Lakes should not be required to incur the expense and delay attendant to such requirements as a condition of seeking preliminary plan review and approval for its Property.

15. As a result, an actual controversy exists justifying this Court to issue declaratory relief pursuant to the Declaratory Judgment Act, Va. Code Ann. §§ 8.01-184 through -191. In addition, Va. Code Ann. § 8.01-186 specifically authorizes the Court to issue further relief as may be necessary or proper.

Count I

ORDINANCE O06-07 REQUIRES A SOILS EVALUATION FOR THE SUITABILITY OF ON-SITE SEWAGE DISPOSAL SYSTEMS EVEN FOR SUBDIVISIONS WHERE SUCH SYSTEMS ARE NOT REQUIRED, SO THE BOARD'S ADOPTION OF THE ORDINANCE IS *ULTRA VIRES* AND/OR UNREASONABLY OVERBROAD, ARBITRARY AND CAPRICIOUS, AND THE BOARD SHOULD BE ENJOINED FROM ENFORCING THIS ILLEGAL MEASURE.

16. The allegations made in paragraphs 1 through 15, above, are restated and incorporated into this Count by reference.

17. Ordinance O06-07, on its face, applies to every subdivision with “lots that are not to be served by public sewer or water utilities,” regardless of whether or not the proposed lots are intended or required to use wells and on-site sewage disposal systems.

18. As a result, Ordinance O06-07 requires the time-consuming and expensive process of obtaining “[a] signed statement from a certified Authorized Onsite Soil Evaluator (AOSE)” regarding the adequacy of the soils for use of on-site sewage disposal systems, and approval of such AOSE statement by the Virginia Department of Health, even for subdivisions where no on-site sewage disposal systems are intended to be used, or are required to be used. This is unreasonable, arbitrary and capricious, and beyond the scope of powers that the General Assembly has expressly allowed local governments to exercise with respect to preliminary subdivision plans.

19. Accordingly, Ordinance O06-07 purports to regulate more broadly and expansively than the General Assembly has authorized, and, therefore, the Board lacked any power or authority to adopt Ordinance O06-07. Any attempt to enforce Ordinance O06-07 would be void *ab initio*, illegal, and of no force or effect whatsoever.

20. In addition, because Ordinance O06-07 purports to apply to subdivisions where no wells or on-site sewage disposal systems are intended or required to be used, Ordinance O06-07 has the effect of restricting the uses of subdivided land, which are not to be served by public sewer or water utilities, to those uses that reasonably require wells and on-site sewage disposal systems, and, therefore, effectively restricts other uses which would not reasonably require them. Such an attempt to regulate land use can only be lawfully exercised under the auspices of the zoning powers, and not in the guise of a

subdivision ordinance. As a result, the Board's adoption of Ordinance O06-07 was *ultra vires* and void *ab initio*.

21. The Board's adoption of Ordinance O06-07, was without authority and/or an unlawful act. Stafford Lakes, as well as any other putative subdivider of land not served by public sewer or water utilities, will be forced to incur additional expenses and to expend additional time in order to comply with the requirements for the approval of a preliminary subdivision plan than it would otherwise incur absent the amendment to § 22-58(12) of the Subdivision Ordinance.

Count II
THE REQUIREMENTS OF ORDINANCE O06-07 CANNOT LEGALLY BE APPLIED TO PRELIMINARY SUBDIVISION PLAN REVIEW, AND THE BOARD SHOULD BE ENJOINED FROM ENFORCING THAT ILLEGAL MEASURE.

22. The allegations made in paragraphs 1 through 21, above, are restated and incorporated into this Count by reference.

23. Under both the Virginia Code and the Subdivision Ordinance, preliminary subdivision plan review is intended to provide an abbreviated process and mere conceptual review in order to obtain a tentative approval of a proposed subdivision of land. Prior to the Board's adoption of Ordinance O06-07, the existing requirements for obtaining preliminary subdivision plan approval did not include such extensive and highly-technical engineering and scientific soil testing work and approvals as are now purportedly required.

24. The expensive and time-consuming requirements imposed by Ordinance O06-07 are inconsistent with the abbreviated conceptual review that the General Assembly has prescribed to enable a subdivider to obtain the protections afforded by an approved preliminary subdivision plan. As a result, the Board lacked the legal power to

adopt Ordinance O06-07 because such an ordinance exceeds the powers that the General Assembly has delegated to local governments with respect to the regulation and control of the preliminary subdivision plan review and approval process.

25. Under current law, before a lot owner can record a *final* subdivision plat for which on-site sewage disposal systems will be utilized, the lot owner must obtain Virginia Department of Health approval to ensure that the soils in which the systems will operate meet all applicable Health Department regulations and requirements. Ordinance O06-07, therefore, does not contribute to the health, safety or welfare of the public.

26. Instead, Ordinance O06-07 only makes a subdivider satisfy, at the unreasonably and inappropriately early preliminary plan stage of the development process, sewage disposal system-related requirements that already must be met as a condition of the later final subdivision plat approval. Indeed, because such requirements must still be satisfied at the final subdivision plat stage, Ordinance O06-07 results in an unnecessary burden and duplication of effort, time and expense.

27. Accordingly, the only purpose served by Ordinance O06-07 is to increase significantly the time and expense that it will take for Stafford Lakes, and other property owners in Stafford County, to obtain preliminary subdivision plan approval. In fact, a document relied upon by the County, the Board and their agents in preparing Ordinance O06-07 confirms that an intended purpose and effect of that measure was to delay the process for preliminary subdivision plan approval. (See Exhibit "A" at 3, ¶ V(D)). Delaying land subdivision and development activities is neither a legitimate, nor permissible, objective for a local government's actions.

28. Imposition of Ordinance O06-07's requirements at the preliminary subdivision plan stage is, therefore, unreasonable, arbitrary and capricious, and contrary to good subdivision practice.

RELIEF REQUESTED

WHEREFORE, Stafford Lakes respectfully requests that this Court enter an Order granting the following relief:

- A. A Declaratory Judgment that the adoption of Ordinance O06-07 was and is void *ab initio*, illegal, arbitrary and capricious, unreasonable, contrary to good subdivision practice, and, therefore, unenforceable;
- B. A preliminary and permanent injunction prohibiting the County and the Board from enforcing the requirements of Ordinance O06-07; and
- C. An award to Stafford Lakes 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 the nature of the cause may require.

STAFFORD LAKES LIMITED
PARTNERSHIP

By: _____

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