

Commonwealth of Virginia

FIFTEENTH JUDICIAL CIRCUIT

JUDGES

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Ann Hunter Simpson
John Richard Alderman
Harry T. Taliaferro, III
H. Harrison Braxton, Jr.
George Mason, III
J. Martin Bass

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January 10, 2006

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Hanover County
Essex County
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**Re: Stafford Lakes Limited Partnership v. Board of Zoning Appeals, et al.
Stafford County Circuit Court #CH05-662**

OPINION

The Court heard argument of counsel on January 6, 2006, and took the matter under advisement.

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This matter concerns the partial development of a large area of land known as "Crow's Nest", land believed by many to be far more suitable for game and wildlife than for human habitation. The ultimate decision as to this issue is political.

A Writ of Prohibition is an extraordinary writ and should only be considered where a litigant has no other remedy at law.

Stafford Lakes Limited Partnership has filed a subdivision plat with the Planning Department of Stafford County seeking preliminary approval of their subdivision by the Planning Commission. The County Planner has approved the preliminary plat for the Planning Commission's review. There is, by statute, a 60 day window in which this must be completed.

Linda Fellers and Jack Fellers appealed the County Planner's "decision or determination" to the Board of Zoning Appeals under Section 15.2-2311, Code of Virginia, 1950, as Amended.

Stafford Lakes seeks a Writ of Prohibition on the grounds that the Board of Zoning Appeals has no jurisdiction over the matter. They take the position that this is a planning matter under authority of Title 15.2, Article 6, Code of Virginia, 1950, as amended, as opposed to a zoning matter under Title 15.2, Article 7, Code of Virginia, 1950, as amended. (Stafford County Code Chapter 28 for Zoning and Chapter 22 for Subdivisions have been adopted pursuant to authority granted by the General Assembly)

Attorneys for the Board of Zoning Appeals and the County of Stafford take the position that the Board of Zoning Appeals has jurisdiction over this matter after taking the absolute opposite stand in a similar case pending before this Court. Such inconsistency does not bode well for those who are trying to deal with local governmental agencies in the labyrinth of zoning and planning law nor does it give the Court any confidence in their position.

Counsel for Mr. and Mrs. Fellers claims that the Preliminary Approval by the Planning Staff must include zoning; accordingly, any person aggrieved by a finding of staff or technical review has standing to appeal to the Board of Zoning Appeals. The differences between a preliminary plat review and a final plat review have not been addressed.

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There are additional requirements necessary for a final plat review. The differences are important and cannot be ignored. The Court has concluded that the legal sufficiency of Complainant's preliminary subdivision plat should be addressed by the Planning Commission and not by the Board of Zoning Appeals. It would be the duty of the County Attorney to advise the Planning Commission about the adequacy of the landowner's submission, if requested.

Stafford Code Section 22-64, **Limits of Approval**, provides: "The approval of the preliminary plan does not guarantee or constitute approval or acceptance of the subdivision or authorization to proceed with construction or improvements within the subdivision."

Upon the evidence adduced at the hearing of January 6th, and the submissions of parties the Court finds:

1. There is no remedy at law and "Time is of the Essence".
2. Declaratory Judgment is an appropriate vehicle for deciding the rights and obligations of the parties and granting appropriate relief as to the Zoning Administrator. Board of Supervisors of James City County, et al. v. Rowe, 216 Va. 138 (1975).
3. The issue presented is one of statutory interpretation. Pure statutory interpretation is the prerogative of the judiciary. Sims Wholesale Co. v. Brown-Forman Corp. 468 S.E.2d 905 (1996).
4. The Board of Zoning Appeals of Stafford County does not have jurisdiction to hear this matter. Specifically, the Board of Zoning Appeals does not have jurisdiction to be brought into the subdivision process under these facts.
5. The Zoning Administrator's action in "staying" the Planning Commission hearing was ultra vires as a result of lack of jurisdiction by the Board of Zoning Appeals.
6. The presentation by Planning Staff to the Planning Commission of a Preliminary Plat for a development may not be appealed to the Board of Zoning Appeals. It is a subdivision action and not a zoning action as contemplated under Section 15.2-2311, Code of Virginia (1950) as Amended.

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7. The Court rejects Respondents' position that the Board of Zoning Appeals may have jurisdiction through "implied authority" (under Section 15.2-2309). "Consistent with the necessity to uphold legislative intent, the doctrine of implied authority should never be applied to create a power that does not exist or to expand an existing power beyond rational limits." Commonwealth v. County Board of Arlington County, 217 Va. 558, 577, 232 S.E. 2d 30, 42.

8. A Writ of Prohibition is an appropriate remedy for the landowner. Bee Hive Mining Company v. Industrial Commission, 144 Va. 240, 132 S.E. 177 (1926).

The Court requests that Mr. Schmaltz draw and circulate an order in conformity with these findings.

1. The final order will direct that the subdivision request be sent by the County Administrator and the Board of Zoning Appeals to the Stafford County Planning Commission for further action forthwith.

2. The final order will direct that the time that has been expended in this action will be tolled in determining 60 day period in which the Planning Commission must act.



H. Harrison Braxton, Jr., Judge

Dated: January 10, 2006

HHBJR:cdd

Original to: Barbara G. Decatur, Clerk
Stafford County Circuit Court