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County *Administrator*

March 19, 2018

**NOTICE TO ABUTTING PROPERTY OWNERS**

Subject: *Zoning Administrator Vesting Determination; Application 18152249; Tax Map Parcel No. 16-1C (Forest Hill Estate Subdivision)*

This is to notify you that an application for a Zoning Vesting Determination has been submitted to the Stafford County Zoning Administrator in the Department of Planning and Zoning.

The applicant, Hour Homes at Grouse Pointe Inc., represented by H. Clark Leming, is requesting a vesting determination concerning developing the A-1, Agricultural zoned property in accordance with the approved Forest Hills cluster concept plan.

Enclosed is a copy of the request submitted. You will be notified by copy of the determination when completed. If you have any question, please contact me at the Department of Planning and Zoning at 540-658-8668.

Sincerely,



Susan W. Blackburn  
Zoning Administrator

SWB: mm

Attachment (1)



RECEIVED BUT NOT OFFICIALLY ACCEPTED

DATE: 3/9 INITIALS KS

OFFICIALLY ACCEPTED

DATE: 3/14/18 INITIALS MM

STAFFORD  
COUNTY

Department of Planning and Zoning

ZONING VESTING DETERMINATION APPLICATION

**ZONING VESTING DETERMINATION**

TYPE OF APPLICATION

18152249

APPLICATION NUMBER

**APPLICANT INFORMATION**

NAME H. Clark Leming, Agent for Hour Homes at Grouse Pointe Inc.

STREET ADDRESS 233 Garrisonville Road, Suite 204

CITY Stafford STATE VA ZIP 22554

PHONE 540-659-5155 CELL \_\_\_\_\_

FAX 540-659-1651 EMAIL lemingandhealy1@msn.com

**OWNER INFORMATION (If different than applicant)**

NAME Michael Stonehill, Jr., Vice President of Hour Homes at Grouse Pointe Inc

ADDRESS 35 Walpole St. Unit 205 CITY Stafford STATE VA ZIP 22554-6546

PHONE NUMBER \_\_\_\_\_ CELL \_\_\_\_\_ FAX NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

**PROPERTY INFORMATION**

16-1C Forest Hill Estate Subdivision

TAX MAP \_\_\_\_\_ SECTION \_\_\_\_\_ PARCEL/LOT# \_\_\_\_\_ LOT SIZE \_\_\_\_\_

ORDINANCE (S)# \_\_\_\_\_ DATE(S) OF RECLASSIFICATION \_\_\_\_\_

**FOR OFFICE USE ONLY**

APPLICATION #



NUMBER OF ADJACENT PROPERTY OWNERS

Fees Paid: Yes  No

Amount: \$ 467.31

## Vesting Justification

Pursuant to Virginia Code § 15.2-2286(A)(4), Hour Homes at Grouse Point, Inc. (“Hour Homes”) hereby requests a vesting determination from the Zoning Administrator as to its parcel of land, consisting of 43.73 acres, more or less, identified as Tax Map Parcel 16-1C on the records for the Commissioner of the Revenue of the County of Stafford (the “Property”). The Property is zoned to the County’s A-1, Agricultural Zoning District.

## Background

16151119  
On or about February 26, 2016, Hour Homes, as contract purchaser for the Property, submitted to the County of Stafford (“County”) Department Planning and Zoning (“Planning and Zoning”) a cluster concept plan application to develop the Forest Hills Estates Project (County AP Number 16115119; the “Forest Hills CCP”). The Forest Hills CCP is attached hereto as Exhibit A. The Forest Hills CCP proposed the development of thirteen (13) clustered single family residential lots on approximately 43.73 acres to be served by private well and septic systems. By letter dated May 20, 2016, Jeffrey Harvey, the Planning and Zoning Director and the designated Subdivision Agent for the County Board of Supervisors, issued an administrative approval of the Forest Hills CCP.<sup>1</sup> Mr. Harvey’s approval letter is attached hereto as Exhibit C.

On October 17, 2016, Hour Homes closed on the Property at a purchase price of \$365,000 in good faith reliance on the County’s approval of the Forest Hills CCP. Immediately thereafter, Hour Homes began pursuing development of the Property pursuant to the Forest Hills CCP. From October 21, 2016 to present, Hour Homes expended approximately \$322,214.83 in planning, engineering, site preparation, construction, consultation, and application fees in pursuit of developing the Property in accordance with the approved Forest Hills CCP. An itemized list of such expenditures is attached hereto as Exhibit D.<sup>2</sup> Such development work included but was not limited to: (a) development and submission of construction, stormwater management, and grading plans and permit applications to the County; (b) site preparation work including surveying, clearing, excavating, grading, and erosion and sediment control; and (c) the construction of road infrastructure to serve the Forest Hills Project in accordance with the grading plan approved by the County.

## Justification

Pursuant to Virginia Code § 15.2-2286(A)(4), the Zoning Administrator is authorized to “make findings of fact, and with the concurrence of the attorney for the governing body, conclusions of law regarding the determinations rights accruing under §15.2-2307 . . . .”

Virginia Code § 15.2-2307 establishes a three-pronged test for determining whether a landowner’s development rights are deemed vested in a land use notwithstanding a subsequent

<sup>1</sup> The County’s Integrated Web Response (“IWR”) records showing the various administrative reviews and approvals of the Forest Hills CCP is attached hereto as Exhibit B.

<sup>2</sup> Additional expense documentation can be provided upon request.

amendment to the applicable zoning ordinance. In order for development rights to vest, the landowner must: (i) obtain or be the beneficiary of a significant affirmative governmental act (“SAGA”) which remains in effect allowing development of a specific project; (ii) rely in good faith on the SAGA; and (iii) incur extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the SAGA (the “Statutory Test”).

For the reasons that follow, Hour Homes meets the Statutory Test and is vested to the Forest Hills Project shown on the approved Forest Hills CCP.

1. The County’s approval of the Forest Hills CCP is a SAGA under the Statutory Test.

Virginia Code § 15.2-2307(B) lists seven SAGAs that “are deemed to be significant affirmative governmental acts allowing development of a specific project.” The list of SAGAs in Virginia Code § 15.2-2307 are not exhaustive and are provided “without limitation.”

a. The County’s approval of the Forest Hills CCP was the approval of “a plan of development for the landowner’s property” under SAGA(vi).

SAGA(vi) states that “the governing body or its designated agent has approved a final subdivision plat, site plan, **or plan of development for the landowner’s property.**” (Emphasis added.)

As both a factual and legal matter, a Cluster Concept Plan (“CCP”) plainly constitutes a “plan of development,” and the County has admitted and acknowledged as such under oath in judicial proceedings regarding CCPs before the Stafford County Circuit Court. For example, the County responded as follows to Requests for Admission served on the County in the case of Dr. Horton, Inc. et al v. County of Stafford Virginia. et al (Stafford County Case No. CL12-1389) (the “Horton Cluster Case”):<sup>3</sup>

1. Admit that a Cluster Concept Plan is a “plan of development.”

RESPONSE: Admitted

2. Admit that a Cluster Concept Plan is a “plan of development” as that term is used in Virginia Code Section 15.2-2259(A)

RESPONSE: Admitted.

Furthermore, in Mr. Harvey’s sworn responses to Interrogatory requests in the Horton Cluster Case, he affirmed that a Cluster Concept Plan is a “plan of development,” and further acknowledged that such Cluster Concept Plan “does not meet the definition of a preliminary subdivision plat under [Code of Virginia] section 15.2-2201.”<sup>4</sup>

<sup>3</sup> The County’s responses are attached hereto as Exhibit E.

<sup>4</sup> See Mr. Harvey’s responses to numbers 1-3 of the Second Request for Interrogatories that are found on pages 4-5 of Exhibit E. Mr. Harvey’s sworn attestation is found on page 9.

Based on the foregoing, the approval of the Forest Hills CCP by Mr. Harvey, the County's designated Subdivision Agent, satisfies SAGA(vi) as "the governing body or its designated agent has approved . . . a plan of development for the landowner's property."

- b. The County's approval of the Forest Hills CCP is also a decision by an administrative office regarding the permissibility of a specific use or density of the Property under SAGA(vii).

The County's approval of the Forest Hills CCP also meets SAGA(vii), which states:

the zoning administrator or other administrative officer has issued a written order, requirement, decision or determination regarding the permissibility of a specific use or density of the landowner's property that is no longer subject to appeal and no longer subject to change, modification or reversal under subsection C of § 15.2-2311.

CCPs are reviewed and approved administratively by Planning and Zoning Staff under both the County's Subdivision Ordinance (County Code Sec. 22-266 et seq.) and the County's Zoning Ordinance (County Code Sec. 28-35, Table 3.1). See also Virginia Code § 15.2-2286.1(B) (Providing that localities shall make provision for clustering "in its zoning or subdivision ordinances" and further providing that "[t]he implementation and approval of the cluster development and open space preservation shall be done administratively by the locality's staff and without a public hearing.")

In approving the Forest Hills CCP, Mr. Harvey, an administrative officer, issued an administrative decision regarding the permissibility of a specific use (clustered single-family dwellings as shown on the Forest Hills CCP) and a specific density (13 units on 43.73 acres as shown on the Forest Hills CCP) of the Property. Moreover, this approval is no longer subject to appeal, change, modification, or reversal under Virginia Code § 15.2-2311(C) as more than 60 days have elapsed from the date of its issuance (to wit: May 20, 2016). Thus, the County's approval of the Forest Hills CCP also meets the requirements for a SAGA(vii).<sup>5</sup>

2. Hour Homes relied on the Forest Hills CCP approval in good faith.

When a landowner takes any extensive or substantial subsequent action in reliance on a SAGA, it is presumed to be done in good faith under the second prong of the Statutory Test.<sup>6</sup> Hour Homes relied on the Forest Hills CCP approval in good faith when it closed on the Property at a purchase price of \$365,000 shortly after the CCP

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<sup>5</sup> If for some reason the County found that both SAGA(vi) and SAGA(vii) were inapplicable, the County's approval of the Forest Hills CCP would still be a SAGA under the "without limitation" provision of Virginia Code § 15.2-2307(B).

<sup>6</sup> See e.g. City of Suffolk v. Board of Zoning Appeals, 580 SE 2d 796 (2003).



approval, and immediately thereafter Hour Homes undertook (and continues to undertake) the extensive planning, development, site preparation, and construction work detailed in Exhibit D and above in good faith reliance on the Forest Hills CCP approval.

3. Hour Homes has incurred substantial expenditures in diligent pursuit of developing the Property in reliance on the approval of the Forest Hills CCP.

The third prong may be satisfied by either “extensive obligations or substantial expenses” incurred “in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.” As detailed in Exhibit D and above, Hour Homes has expended over \$322,000 in planning, development, site preparation, and construction costs in diligent pursuit of developing the Forest Hills Project in reliance on the Forest Hills CCP approval, and further expended \$365,000 in land costs to acquire the Property in good faith reliance on the Forest Hills CCP approval.

Hour Home’s expenditures of over \$687,000 in diligent pursuit of developing the Property in reliance on the Forest Hills CCP are plainly substantial and are more than sufficient to meet the “substantial expenditures” element of the Statutory Test in light of the applicable cases on the subject. For instance, in City of Suffolk v. Board of Zoning Appeals, 580 SE 2d 796, 780 (2003), the Supreme Court concluded that a landowner’s expenditure of “over \$158,000 between 1993 and 1998 toward development of the Property” was sufficiently substantial. Moreover, in the matter of Stafford County Board of Supervisors v. Board of Zoning Appeals, (Stafford County Case No. 2000-505) the Stafford County Circuit Court found \$20,000 spent in pursuit of development to constitute “substantial expenditures,” while the Spotsylvania County Circuit Court in Salem Fields, L.L.C. v. Spotsylvania County Zoning Appeals Board, 40 Va. Circ. 289 (1996) found that approximately \$57,000 spent in furtherance of a development constituted “substantial expenditures.” Furthermore, as recently as 2010, the Prince George County Circuit Court found in the matter of John B. McQueen v. Board of Supervisors of Prince George County (Prince George County Case No. CL10-432), that the sum of “\$35,000 is a significant investment to force a citizen to forfeit in case law changes, and it meets the standard of §15.2-2307.” Hour Homes thereby satisfies the third and final prong of the Statutory Test.<sup>7</sup>

### **Conclusion**

Based on the foregoing, Hour Homes respectfully requests that you find that it has met all three prongs of the Statutory Test, and has thereby acquired a vested right to develop the A-1 Zoned Property in accordance with the approved Forest Hills CCP.

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<sup>7</sup> Copies of these cases can be provided upon request.