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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NUMBER 741127

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA;
et al,

Appellant

v.

HYLTON ENTERPRISES, INC.,

Appellee

APPELLANTS AND APPELLEES APPENDIX

F. CALDWELL BAGLEY
County Attorney
9300 Peabody Street, Room 7
Manassas, Virginia 22110

Counsel for Appellants

DONALD C. STEVENS
Hazel, Beckhorn & Hanes
P. O. Box 547
Fairfax, Virginia 22030

Counsel for Appellees

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V I R G I N I A

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

HYLTON ENTERPRISES, INC.,

Petitioner

v. AT LAW NO. 6158

BOARD OF SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA
et al,

Respondents

PETITION FOR PEREMPTORY WRIT OF MANDAMUS

COMES NOW Hylton Enterprises, Inc., by counsel, and respectfully moves this Honorable Court enter an order in the nature of a Peremptory Writ of Mandamus directed to Respondents and all persons acting by and under their direction and control, ordering that all such persons discharge their ministerial responsibilities under the provisions of Chapters 14 (Subdivision Control) and 20 (Zoning) of the Code of Prince William County, with respect to review and the making of recommendations regarding approval of plats, plans, profiles and specifications for the subdivision of land and site development within the Dale City residential planned community, and that all such persons perform such duties and make such recommendations and take such action as may be provided for by such ordinances, and by the statutes of the Commonwealth of Virginia, in a timely manner, and for grounds for said

petition, Hylton Enterprises, Inc., by counsel, respectfully represents to this Honorable Court as follows:

1. That Petitioner is the owner of substantial areas of real property located in the Neabsco, Brentsville and Coles Magisterial Districts of Prince William County, Virginia, which real property lies in the RPC zoning district, as said district is provided for by Article VIII (Section 20-69, et seq.) of Chapter 20 of the Prince William County Code, and which property constitutes part of the Dale City residential planned community.

2. That Petitioner has, from time to time, pursuant to the provisions of the Subdivision Control Ordinance and Site Plan Ordinance contained in the Zoning Ordinance of Prince William County (Chapters 14 and 20, respectively, of Prince William County Code), submitted preliminary subdivision plats, final subdivision plats, plans, profiles and specifications for construction of improvements within said proposed subdivisions, site plans, and plans, profiles and specifications for the construction of improvements thereon, for various subdivisions and site developments within said Dale City residential planned community, as are more specifically listed below:

Project	Date of Submission
Forestdale Apts.	G1 4-3-72 G2 2-21-73
Section 9E	5-25-72
Section 9F	5-25-72
Section 9G	11-10-72
Section 9H	7-5-72

Project	Date of Submission
Section 9I	1-18-73
Section 9J	
Section T11	2-21-73
Section T14	4-20-73
Section T15	3-2-73
Section T6	1-23-72
Section T7	1-23-73
Section T8	3-1-73
Resubd. Sec. 9A Lots 13, 14 and 15	10-11-72
Addit. to Sec. 8	9-8-72
Resubd. Sec. 9A Lots 170-172	6-21-73
Glendale Plaza (S.P. 866)	3-15-73

3. That all of said preliminary subdivision plats, final subdivision plats,site plans, and plans, profiles and specifications for the construction of improvements, are in conformance with the requirements of duly adopted subdivision control and site plan ordinances (Chapters 14 and 20, respectively, of the Prince William County Code), and with the dictates of good engineering practice.

4. That employees of Petitioner, professional engineers and certified land surveyors retained by Petitioner, and counsel for Petitioner, have been unable to secure from Respondents, and persons acting by and under their direction and control, responsive specific commentary concerning the compliance of said preliminary subdivision

plats, final subdivision plats, site plans, and plans, profiles and specifications for construction of improvements with the provisions of subdivision control and/or site plan ordinances, nor have said employees, engineers, surveyors, or counsel been able to obtain from Respondents or persons by and under their direction and control, any indication of the time or times at which any such responsive commentary might become available.

5. That Respondents, and all persons acting by and under their direction and control, concerning the review and approval of preliminary subdivision plats, final subdivision plats, site plans, and/or plans and profiles and specifications for the construction of improvements, have a ministerial duty under the provisions of Title 15.1 of the Code of Virginia, 1950, as amended, Chapters 14 and 20 of the Prince William County Code, and common law, to perform their review of all of such submissions in a timely and efficient manner, to provide to duly authorized employees, consultants or counsel for the subdivider or site developer responsive and specific commentary with respect to any aspects of said plats or plans which do not in their judgment comply with the provisions of duly adopted subdivision control or site plan ordinances, and to approve in a timely manner all of such plats and/or plans which do comply with the provisions of said duly adopted subdivision control and/or site plan ordinances.

6. That Respondents, and persons acting by and under their direction and control, have, for months past,

neglected, failed and refused to perform the aforesaid ministerial duties, and that Respondent Board has affirmatively indicated its intent to continue to refuse to discharge such ministerial duty and has directed the other Respondents and all persons acting under their direction and control to continue to refuse to discharge their ministerial duty, by the adoption of Resolution No. 73-46-22 at its meeting of June 12, 1973, a copy of which resolution is attached hereto, incorporated herein, and made a part hereof by this reference.

7. That Petitioner, acting through its employees, consultants and counsel, has exhausted every effort administratively to secure timely review of plats and plans, and responsive comment as to compliance with duly adopted ordinances, from Respondents and persons acting by and under their direction and control, and that Petitioner has no other remedy available to it save by means of this petition, seeking an order of this Court directed to Respondents and all persons acting by and under their direction and control, to perform their ministerial duties with respect to the review, commentary upon, and approval of plats and plans submitted by Petitioner.

WHEREFORE, Petitioner, by counsel, respectfully prays this Honorable Court enter an order in the nature of a peremptory writ of mandamus directed to Respondents and all persons acting by and under their direction and control, ordering that timely review of and commentary upon all preliminary subdivision plats, final subdivision plats,

site plans, and plans, profiles and specifications for the construction of improvements, be accomplished, that copies in writing of comments relating to the compliance or lack thereof with duly adopted ordinances be furnished to Petitioner, and that all such plats or plans as are found to comply with the provisions of duly adopted subdivision or site plan ordinances be approved by Respondent Board forthwith, and that such order include a schedule of times certain within which such review, commentary and approval functions must be performed by Respondents and/or persons acting by and under their direction and control.

Respectfully submitted,

HYLTON ENTERPRISES, INC.
BY: S/Donald C. Stevens
Counsel

HAZEL, BECKHORN & HANES
By: S/Donald C. Stevens
Donald C. Stevens
Counsel for Petitioner

VERIFICATION

VIRGINIA
COUNTY OF FAIRFAX

This 3rd day of July, 1973, appeared before me, Donald C. Stevens, who having been first duly sworn, made oath that the allegations of the foregoing Petition for Peremptory Writ of Mandamus are true and correct, to his knowledge and belief.

S/Sandra M. Kauffman
Notary Public

My Commission Expires:
March 18, 1975

FILED WITH THE CLERK July 18, 1973

V I R G I N I A

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

HYLTON ENTERPRISES, INC.,

Petitioner

v. AT LAW NO. 6158

BOARD OF SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA, et al,

Respondents

ORDER

THIS CAUSE came on for hearing on July 2, 1974, on the Petition for Peremptory Writ of Mandamus and the Demurrer filed herein by Respondents, and it

APPEARING TO THE COURT, upon mature consideration of the pleadings, arguments of counsel, and citations of authority that the Demurrer is not well taken, it was therefore

ADJUDGED, ORDERED AND DECREED that the Demurrer should be and the same hereby is overruled, to which ruling of the Court the exception of counsel for Respondents is duly noted, whereupon

THIS CAUSE THEN CAME ON for hearing on the merits on July 2, 1974, upon the Petition and Answer, and it

APPEARING TO THE COURT, upon mature consideration of the pleadings, exhibits, evidence heard ore tenus, and arguments of counsel that Petitioner herein is entitled to some but not all of the relief requested, it is now therefore

ADJUDGED, ORDERED and DECREED that Respondents should be and they hereby are ordered to act with respect to

certain of the plats and plans the review and approval of which is at issue in this matter, in the following manner, on or before the expiration of the following periods:

1. With respect to Sections 9-G-1, 9-I, 9-J and T-15, Respondent Director of Public Works is ordered to make his report and recommenations, and Respondent Board is ordered to take such action to approve or disapprove in accordance with County Ordinances as it deems appropriate, within sixty days of the date of the entry of this order.

3. With respect to Section T-6, Respondent Director of Public Works is ordered to accept the final plat and site plan and make his report and recommendations, and Respondent Board is ordered to take such action to approve or disapprove in accordance with County ordinances as it deems appropriate, within ninety days of the date of the entry of this order.

4. With respect to Forestdale Apartments, Respondent Board is ordered to take such action to approve or disapprove in accordance with County ordinances the final site plan for Section G-1, within thirty days of the date of the entry hereof, and Respondent Director of Public Works is ordered to make his report and recommendations, and Respondent Board is ordered to take such action to approve or disapprove in accord with County ordinances, the final site plan for Section G-2, within ninety days of the date of the entry hereof.

And it is further ADJUDGED, ORDERED and DECREED that all other relief requested by Petitioner is hereby denied, provided that the Court shall retain jurisdiction for the purpose of ensuring compliance with the foregoing orders, and it is further

ADJUDGED, ORDERED and DECREED that the effect of this order shall be suspended for a period of thirty days from the entry hereof to permit Respondents to take such steps as they deem appropriate to appeal this order of the Court, and it is hereby provided that the time periods specified above shall be deemed to commence upon the expiration of said thirty day period of the suspension of the effect of this order.

The exceptions of counsel for the Respondents to the granting of the aforesaid relief are hereby duly noted, and the exceptions of counsel for Petitioner to the denial of additional relief is hereby noted.

Entered this 19th day of July, 1974.

S/ Barnard F. Jennings
Barnard F. Jennings, Judge

I ask for this
(ecepted to in part):

HAZEL, BECKHORN AND HANES

BY: S/ Donald C. Stevens
Donald C. Stevens
Counsel for Petitioner

Seen and excepted to
(in part):

S/ F. C. Bagley
Floyd Caldwell Bagley
County Attorney
Counsel for Respondents

FILED WITH THE CLERK JULY 19, 1974

V I R G I N I A

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

HYLTON ENTERPRISES, INC.,

Petitioner

vs. AT LAW NO. 6158

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA,
et al,

Respondents

D E M U R R E R

COME NOW your Respondents and allege that the Petition for Writ of Mandamus is insufficient in law upon the following grounds, but not limited thereto:

1. Other remedy does exist by suit for declaratory judgment or Petition under Code Section 15.1-475.

2. No allegation of any clearly established right in Petitioner and legal duty on Respondents to perform within any particular time period.

WHEREFORE, Respondents pray this Demurrer be sustained and the Petition be dismissed.

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA,
et al

BY: S/ Caldwell Bagley
F. CALDWELL BAGLEY
County Attorney

S/ F. Caldwell Bagley
F. CALDWELL BAGLEY
County Attorney
9300 Peabody Street
Manassas, Virginia 22110

C E R T I F I C A T E

I hereby certify that a copy of the foregoing was mailed, postage prepaid, to Donald C. Stevens, Hazel, Beckhorn and Hanes, P. O. Box 547, Fairfax, Virginia, 22030, Counsel for Petitioner this 30th day of July, 1973.

S/ F. Caldwell Bagley

FILED WITH THE CLERK July 30, 1973

V I R G I N I A

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

HYLTON ENTERPRISES, INC.,

Petitioner

vs. AT LAW NO. 6158

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA,
et al,

Respondents

A N S W E R

COMES NOW your Respondents, by Counsel, County Attorney for Prince William County, and for their Answer to the Petition represent as follows:

1. That Paragraph 1 is Admitted.

2. That Paragraph 2 insofar as it alleges submission of plans and plats is admitted, otherwise denied.

3. That Paragraph 3 is denied as not yet determined.

4. That Paragraph 4 is denied insofar as it alleges respondents do not comment on plans and plats submitted. Respondents have presently under review some 141 such plans and plats of which those of petitioner are but a part. A total of some 20,000 living units represented by said plats and plans are presently being considered and time scheduling is difficult if not impossible.

5. Paragraph 5 is denied insofar as an inference that such matters must be performed for petitioner sooner than at present.

6. Paragraph 6 is denied and it is alleged that Respondent Board has by its Resolution attached hereto as Exhibit "A", rescinded its Resolution Number 73-46-22.

7. Paragarph 7 is denied and Respondent Board alleges presently there are plans to meet with Petitioner to ascertain the validity of Petitioner's demands for accelleration of his submissions.

WHEREFORE, Respondents pray that the relief prayed for, to-wit, that this Court undertake to direct the time within which complicated plans, specifications, plats and profiles, be processed, be denied.

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA,
et al,

BY: S/ F. Caldwell Bagley
F. CALDWELL BAGLEY
County Attorney

S/ F. Caldwell Bagley
F. CALDWELL BAGLEY
County Attorney
9300 Peabody Street, Room 7
Manassas, Virginia 22110

C E R T I F I C A T E

I hereby certify that a copy of the foregoing was mailed, postage prepaid, to Donald C. Stevens, Hazel, Beckhorn and Hanes, P. O. Box 547, Fairfax, Virginia 22030, Counsel for Petitioner, this 30th day of July, 1973.

S/ F. Caldwell Bagley

FILED WITH THE CLERK July 30, 1973

V I R G I N I A

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

HYLTON ENTERPRISES, INC.,

Petitioner

vs. AT LAW NO. 6158

THE BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA, et al,

Respondents

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

TO: The Clerk of This Court

The Respondents, by their County, hereby give Notice of Appeal from a Final Judgment entered herein on July 19, 1974.

The Respondents will apply to the Supreme Court of Virginia for a Writ of Error and Supersedeas to said Judgment and set forth the following Assignments of Error.

1. It was error for the Court to overrule the Demurrer filed herein in full view of the principles enunciated by the Supreme Court of Virginia in RF&P Railroad Company v. Fugate, 206 Va. 159 and other decisions of said Court.

2. It was error for the Court to inquire and adjudicate questions of fact in this proceeding for Mandamus.

3. It was error for the Court to grant Petitioner relief by Mandamus not provided by the Constitution of Virginia, the statutes, the decisions of the Supreme Court

or the common law.

4. It was error for the Court to mandate discretionary acts.

5. It was error for the Court to enter the final order herein in violation of the doctrine of the separation of powers.

The transcripts of the hearings in this cause will be filed herein. The foregoing Assignments of Error are filed without benefit of the transcripts, and Respondents, by counsel, reserve the right to file such further assignments as may be necessary after receipt of such transcript requested at hearing date July 2, 1974.

THE BOARD OF COUNTY SUPERVISORS
OF PRINCE WILLIAM COUNTY,
VIRGINIA, et al,

BY: S/ F. Caldwell Bagley
F. CALDWELL BAGLEY
County Attorney

S/ F. Caldwell Bagley
F. Caldwell Bagley, County Attorney
9300 Peabody Street
Manassas, Virginia 22110

C E R T I F I C A T E

This is to certify that I have this 16th day of August, 1974, mailed a copy of the foregoing to other counsel of record at or before the time of filing as required by Rule 1:12, Rules of Court.

S/ F. Caldwell Bagley
COUNTY ATTORNEY
Prince William County

FILED WITH THE CLERK August 16, 1974

[Transcript, 7/2/74 , Pages 18 and 19] MR. TAYLOE

*** Q. You do know there are probably 140 or 150 site plans in the process all the time in the county, do you not?

A. That's true.

Q. You work for a number of developers?

A. Yes, I have a number of plans in the Public Works Department.

Q. How many people do they have over there to process them, do you know?

A. I really don't know. I know when the majority of these plans were submitted, they had more people than they have now.

Q. About three more engineers than they have now, didn't they, Mr. Yates and Mr. Kelley?

A. At that time, yes, they did have.

Q. And at least one other one, but do you have any evidence you can give the Court of the site plans of yours for this particular client being delayed in any way by Mr. Payne or his staff?

A. That this particular client has been singled out, no, I don't. ***

[Transcript 7/2/74, Page 7] MR. STEVENS IN ARGUMENT ON DEMURRER

*** There is a statutory remedy for the approval of subdivision plats once submitted and not approved or not acted upon by the locality.***

[Transcript, 7/2/74, Page 41] MR. PAYNE

*** A. There are quite a number of plans in Dale City submitted and at our office. I'm sure there has been every - -

Q. What percentage do these plans bear, do you know, to the total plans you have in review for the entire county?

A. A large percentage. I don't know specifically.

Q. Is it half or one-fourth or any estimation at all?

A. It might well be between those two. ***