

Board of Supervisors

Meg Bohmke, Chairman
Gary F. Snellings, Vice Chairman
Jack R. Cavalier
Thomas C. Coen
L. Mark Dudenhefer
Wendy E. Maurer
Cindy C. Shelton

May 30, 2018

Thomas C. Foley
County Administrator

Mr. Justin R. Franklin
Fairbanks and Franklin
1005 Mahone Street
Fredericksburg, VA 22401

SUBJECT: *Determination of the Vested Right in a Land Use; Tax Map Parcel Nos. 59-72B and 59-75A; Proposed "Albion" Subdivision*

Dear Mr. Franklin:

This letter is in response to your request for a determination of the vested right in a land use for tax map parcel numbers 59-72B and 59-75A ("Property"). The Property is zoned A-1, Agricultural, and consists of 184.02 acres.

In your request, you state Resolution R14-16, approved by the Board of Supervisors on February 4, 2014, approves a community sewage disposal system ("Community Drainfield") specifically for the development of a proposed 49 lot cluster subdivision on the Property (the "Subdivision"), and that the developer has relied on this information to diligently pursue the development of the Subdivision. You state that you have secured "health department approval for the community drainfield" and that you have submitted and resubmitted "construction plans." And for these reasons, you believe the Property is vested for a 49 lot residential cluster subdivision served by a Community Drainfield.

According to the Virginia Code § 15.2-2307, a landowner's rights shall be deemed vested in a land use and such vesting shall not be affected by a subsequent amendment to a zoning ordinance when the follow occurs:

1. *The landowner (i) obtains or is the beneficiary of a significant affirmative governmental act (SAGA) which remains in effect allowing development of a specific project.*

Examples of SAGAs are:

(i) the governing body has accepted proffers or proffered conditions which specify use related to a zoning amendment; (ii) the governing body has approved an application for



a rezoning for a specific use or density; (iii) the governing body or board of zoning appeals has granted a special exception or use permit with conditions; (iv) the board of zoning appeals has approved a variance; (v) the governing body or its designated agent has approved a preliminary subdivision plat, site plan or plan of development for the landowner's property and the applicant diligently pursues approval of the final plat or plan within a reasonable period of time under the circumstances; (vi) the governing body or its designated agent has approved a final subdivision plat, site plan or plan of development for the landowner's property; or (vii) 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.

There is no record of an approved rezoning with proffered conditions, a variance for this Property, or a written order issued by a zoning administrator regarding a specific use or density for the Property or an approved preliminary subdivision plat, site plan or plan of development for a cluster designed subdivision containing 49 lots. The resolution that you cite, R14-16, is an approval by the Board of Supervisors to allow a Community Drainfield on the Property. To the extent R14-16 could be considered a SAGA, it would only allow for the approval of the proposed Community Drainfield facility, and not for a 49 lot residential subdivision.

Resolution R14-16 is not an approval of any particular subdivision plan, and it does not contain the necessary details contained in such plans. Because the application and sketch drawing associated with R14-16 do not contain the necessary details contained in a residential subdivision plan, it cannot take the place of such a plan. Such details that are lacking include, but are not limited to: proposed street names and dimensions; proposed lots with dimensions and bearings; boundary survey of site; open space calculations and use, Table 3.1 width and setback information and source of title. Even if R14-16 did contain all necessary subdivision details, it could not lawfully serve as a subdivision plan approval as such plans are not approved by the Board of Supervisors, and thus approval of the sketch plan falls outside of the lawful procedure for adopting such plans. Therefore, the developer has not been the beneficiary of a SAGA allowing for the development of the specific project of a 49 lot cluster subdivision.

2. *Relies in good faith on the significant affirmative governmental act (SAGA)*

There is no approved SAGA to rely on for the specific use or project. There were no subdivision details approved as part of R14-16, and although you mention the pursuit of a construction plan, there has been no construction plan approved. Because the purpose of R14-16 was to approve a Community Drainfield, and the application and sketch plan associated with the application did not contain necessary subdivision details as stated above, it would not be good faith reliance for a person to rely on R14-16 as if it were approval of a subdivision plan. Additionally, as R14-16 was not an approval by an administrative official, and was approved by the Board of Supervisors which does not lawfully approve subdivision plans, it would not be

Letter to: Justin Franklin

May 30, 2018

Page 3 of 3

good faith reliance for the developer to rely on R14-16 as if it were approval of a subdivision plan.

3. *Incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative government act.*

You state the approved Resolution R14-16 for the Community Drainfield by the Virginia Department of Health and the submittal of construction drawings represents the diligent pursuit of the specific project of a 49 lot cluster subdivision. The developer has not been the recipient of a subdivision plan approval, or some other SAGA containing the necessary subdivision details, and therefore there is no approved specific subdivision project to pursue.

There has been no showing that the developer incurred extensive obligations or substantial expense in pursuing a cluster subdivision on the Property. Expenses incurred in seeking subsequent necessary approvals before constructing a subdivision—but before obtaining those approvals—are insufficient to support a claim that extensive obligations or substantial expenses were made. To find otherwise would potentially turn the mere payment of application fees into a SAGA. The VDH permit which was obtained is likewise not a subdivision approval. You have also provided no information to show that the application fees and engineering costs allegedly incurred were extensive or substantial.

Additionally, the four years that have elapsed since the adoption of R14-16 indicate that there has not been diligent pursuit of the project on the developer's part. Only preliminary steps were taken to move forward towards developing the project—including obtaining a VDH permit and submitting a cluster concept plan for approval—and after four years there has still been no subdivision plan approved for the Property.

Due to these findings, the Property is not vested to the specific project of a 49 lot cluster subdivision. You have thirty (30) days from the receipt of this letter in which to appeal this decision to the Board of Zoning Appeals, in accordance with Virginia Code § 15.2-2311, or this decision shall be final and unappealable. You may obtain the BZA appeal application at www.staffordcountyva.gov. The associated appeal fee for a residential appeal application is \$616.50.

Sincerely,



Susan W. Blackburn
Zoning Administrator

SWB:dk