

# STAFFORD *Virginia*

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June 1, 2018

Thomas C. Foley  
County Administrator

H. Clark Leming  
Agent for Hour Homes at Grouse Pointe, Inc.  
P O Box 445  
Garrisonville, VA 22463

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

Dear Mr. Leming:

This letter is in response to your request for a zoning determination of a vested right in a land use for Tax Map Parcel Number 16-1C (Property). You state that the Property is zoned A-1, Agricultural and consists of approximately 34.770 acres within Stafford County.

In your request, you state that Hour Homes at Grouse Point Inc. (Hour Homes), as the contract purchaser for the Property at that time, submitted Application Number 161151119 in February, 2016 seeking approval of a cluster concept plan consisting of 13 single-family residential lots (Forest Hill Estates Subdivision). The cluster concept plan titled, "Forest Hill Estates Cluster Concept Plan," dated May 12, 2016, as last revised, was approved on May 18, 2016, for 13 lots and 21.9 acres, more or less, of open space (Forest Hill CCP).

You also state that on October 17, 2016, Hour Homes purchased the Property for \$365,000 in reliance on the approved Forest Hill CCP. You further state and provide documentation showing that Hour Homes spent approximately \$322,214.83 in pursuit of developing the Property in accordance with the Forest Hill CCP since October 21, 2016. For these reasons, in conjunction with your legal analysis, you believe the Property is vested and allowed to develop pursuant to the Forest Hill CCP.

It should be clarified that that the Forest Hill Estates Subdivision is split between Stafford and Fauquier Counties. As provided in that Deed recorded amongst the land records of Stafford County, Virginia as Instrument Number LR160019075, the Stafford County portion of the Property consists of 34.77 acres and accounts for 86% of the purchase price, which equals \$313,300 (SC Property). The Fauquier County portion of the Property (Tax Map No. 7846-26-3354-000) consists of 8.793 acres and accounts for 14% of the purchase price, which equals \$52,700. This determination is limited to an analysis of the vesting of the SC Property to the Forest Hill CCP.



According to the Virginia Code § 15.2-2307(A), 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 following three elements occur:

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

Virginia Code § 15.2-2307(B) provides, without limitation, a list of acts deemed to be SAGAs. You base your vesting justification on the following SAGAs:

(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; and

(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.<sup>1</sup>

From subsection (vi) directly above, you only address a cluster concept plan as a "plan of development for the landowner's property" approved by the governing body's designated agent. You conclude that Jeff Harvey's approval as Subdivision Agent of the Forest Hills CCP is a SAGA under this criterion. The documentation submitted as Exhibits to your request support this point.

Therefore, the approval of the Forest Hill CCP provided Hour Homes with a SAGA. Only one SAGA needs to be found to meet the first element of Virginia Code § 15.2-2307(A). Therefore, the consideration of the other claimed SAGAs is unnecessary.

The SAGA obtained must remain in effect allowing for development of a specific project. The Forest Hill CCP is for the development of the specific Forest Hill Estates Subdivision project and approval of the Forest Hill CCP remains in effect.

2. *The landowner relies in good faith on the SAGA; and*

You state that Hour Homes was the contract purchaser of the Property upon submission and approval of the Forest Hill CCP. The Forest Hill CCP was approved on May 18, 2016. Hour Homes completed the purchase of the Property in October, 2016. The documentation submitted with your request illustrates that Hour Homes relied in good faith on the approval of the Forest Hill CCP.

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<sup>1</sup> You reference the "without limitation" language from Virginia Code § 15.2-2307(B) as a possible third SAGA.

3. *The landowner incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the SAGA.*

You state that Hour Homes has spent \$365,000 on the purchase of the Property and \$322,214.83 in expenses to date pursuing development of the specific project Forest Hill Estate Subdivision in reliance on the approval of the Forest Hill CCP.

Hour Homes expended funds on the specific project when it purchased the Property on October 17, 2016, and has incurred the aforementioned expenses to date. The expenses include, but are not limited to, engineering costs for surveys, drafting of construction plans, site preparation work, application fees, and consulting fees. The inclusion of application fees is not considered a substantial expense, as it is an expense incurred by all, and is also an extensive obligation.

Nonetheless, the documentation submitted with your request supports the conclusion that most of the expenses incurred are substantial and in pursuit of a specific project.<sup>2</sup>

Additionally, the documentation submitted with your request evidences the diligent pursuit of this development over the last two years – from the time of the approval of the Forest Hill CCP to the present – without a significant lapse in time between development processes.

Due to these findings, the Property is vested to that specific cluster concept plan entitled “Forest Hill Estates Cluster Concept Plan,” dated May 12, 2016, approved on May 18, 2016, located on Tax Map Parcel No. 16-1C. Any amendments to this plan will require compliance with the standards at the time of the amendment and void the vesting of this plan.

You have thirty (30) days from the receipt of this letter in which to appeal this decision to the Board of Zoning Appeals (BZA), 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](http://www.staffordcountyva.gov). The fee for a residential appeal application is \$616.50.

Sincerely,



Susan W. Blackburn  
Zoning Administrator

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<sup>2</sup> It is without significance but worth noting that Hour Homes’ reliance on the SAGA and the associated expenses incurred, should only be proportionally attributed to the approval of the Forest Hill CCP due to only 86% of the Property being within the jurisdictional boundaries of Stafford County. Even proportionally attributed, Hour Homes has incurred significant expense, which is recognized by the determination.