

**ACTION ITEM
BOARD OF SUPERVISORS**

DATE April 1, 2008

TO Board of Supervisors

FROM Jeffrey A Harvey *JAH*
Director of Planning and Zoning'

ISSUE Appeal the Director of Planning and Zoning Decision Regarding Subdivision Vesting Status for Kings Leigh Estates

RECOMMENDATION Affirm Decision

BUDGET IMPACT N/A

ATTACHMENTS. (6)

- | | |
|------------------------------------|------------------------------------|
| [1] Background Report | [5] <u>Reso/Ord/Proc</u> # R08-230 |
| [2] Vesting Letter dtd 3/21/08 | [6] <u>Reso/Ord/Proc</u> # R08-231 |
| [3] Letter of appeal dated 3/24/08 | [] <u>Reso/Ord/Proc</u> # |
| [4] Preliminary Subdivision Plan | |

REVIEW [X] County Administrator's Office *[Signature]*

[X] Legal *[Signature]*

- | | | |
|--------------------------------|---------------------------|----------------------------|
| [] Unfinished Business | [] Public Hearing | [] Consent Agenda |
| [X] New Business | [] Presentation | [] Discussion Item |
| [] Other Business | | |

PRESENTATION BY: Jeff Harvey, Director
Department of Planning and Zoning

ELECTION DISTRICTS Hartwood

BACKGROUND REPORT

On March 26, 2008, a letter to appeal a vesting determination for Kings Leigh Estates (SUB 220763) subdivision was submitted to the Department of Planning and Zoning by Keith Newport, Sunshine Home Builders, Inc. The Kings Leigh Estates preliminary subdivision plan was approved by the Planning Commission on January 22, 2003. The plan proposed development of 15 single family residential lots zoned A-1, Agricultural. A final plat application (SUB240951) for the neighborhood was accepted and processed on February 10, 2004. The date of the subdivider's signature on the application was February 4, 2004.

In a letter dated March 21, 2008, the Director of Planning and Zoning determined that the provisions of Section 22-6 of the County subdivision ordinance specifies that an approved preliminary plan shall be valid for a period of five years. There are a number of conditions to be met in order for the five-year period to accrue, they are submission for application of a final subdivision plat for approval for all or a portion of the subdivision within one year of approval of the preliminary subdivision plan, and diligent pursuit of final approval of the plat, and recordation. The subdivision plat application (SUB240951) was not submitted within the one-year time requirement. It should be noted that no final plat has been approved within five years. Therefore, the vesting determination concluded that the validity of the preliminary plan expired January 21, 2004. The applicant indicates that the validity of the preliminary plan should be extended to allow the completion and recordation of the subdivision plat. The applicant states that the delay in the application completion was due to miscommunication on the County's behalf and due to a family hardship that he was dealing with at a critical time of the plat process.

Pursuant to Section 22-254 of the Stafford County Code, the Board must act on the appeal within fourteen (14) days of it being filed, unless no meeting is scheduled.

If the Board votes to uphold the decision of the Director of Planning and Zoning, the validity of the preliminary subdivision plan expired January 21, 2004. If the Board overrules the decision, the preliminary plan for the Kings Leigh Estates would be vested until a date to be specified by the Board. The vested rights for the preliminary subdivision plan have expired, therefore, the subdivider shall then make a new application for the approval of the preliminary subdivision plan.

BOARD OF SUPERVISORS

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M. S. "JOE" BRITO
VICE CHAIRMAN

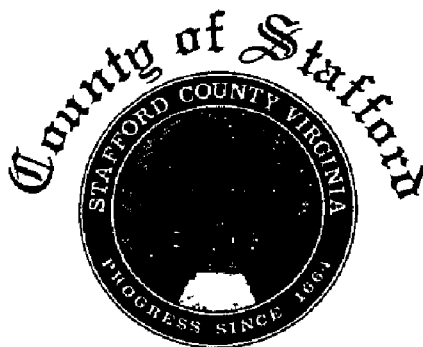
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MARK DUDENHEFER

PAUL V. MILDE III

CORD A. STERLING

ROBERT "BOB" WOODSON



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COUNTY ADMINISTRATOR
ANTHONY J. ROMANELLO ICMA-CM

March 21, 2008

Mr Keith Newport
Sunshine Home Builders, Inc
P O Box 840
Garrisonville, VA 22463-0840

SUBJECT *Kings Leigh Estates Preliminary Subdivision Plan (SUB220763)*

Mr Newport

I am in receipt of your letter dated March 11, 2008 regarding the validity of the preliminary subdivision plan for Kings Leigh Estates. In the letter, you indicated that you had diligently pursued approval of a final subdivision plat. You also asked that I render a determination as to the validity of the plan.

The Kings Leigh Estates preliminary subdivision plan was approved on January 22, 2003. This is evidenced by the Planning Commission Chairman's signature on the plan. A final subdivision plat application (SUB240951) for the neighborhood was accepted and processed by this department on February 10, 2004. The date of the subdivider's signature on the application was February 4, 2004.

Section 22-6 of the County subdivision ordinance specifies that an approved preliminary plan shall be valid for a period of five years. There are a number of conditions to be met in order for the five year time period to accrue, they are, submission for application of a final subdivision plat approval for all or a portion of the subdivision within one year of approval of the preliminary subdivision plan, and diligent pursuit of final approval of the plat, and recordation. Subdivision plat application SUB240951 was not submitted within the one year time requirement. A construction plan application (SUB230937) was received and processed on October 20, 2003. The plan depicted construction of necessary public improvements to serve the subdivision lots. That plan was approved May 15, 2007.


I understand that your company diligently pursued approval of the final plat for the subdivision. I also understand the personal hardship that you have recently endured. However, Stafford County Code and the Code of Virginia do not grant me authority to extend the validity of the plan. Therefore, it is my determination that the validity of the preliminary plan expired on January 21, 2004. The review of the final plat by the various County agencies cannot be further processed until such time that a new preliminary subdivision plan is approved by the Planning Commission.

Letter to Keith Newport
March 21, 2008
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Pursuant to Section 22-251 of the subdivision ordinance, when an applicant is aggrieved by the decision of the agent, he may, within ten (10) days of the date of notification of such decision, appeal the decision to the Board of Supervisors. Such appeal shall be made in writing to the agent and shall state the specific act (or failure to act) and/or the specific interpretation which is being appealed. The fee to process an appeal to the Board of Supervisors is \$2,250. The fee must accompany the written notice of appeal for it to be valid.

Please contact me at 540-658-8668 should you have any questions on this matter.

Sincerely,



Jeffrey A. Harvey, AICP
Director of Planning and Zoning

JH/jh

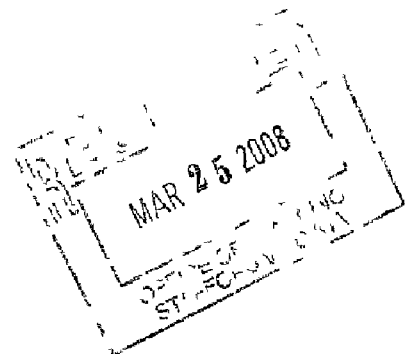
Cc Joseph Howard, County Attorney
Stephen Judy, Deputy County Attorney
Michael Neuhard, Deputy County Administrator
LeAnn Ennis, Planner
File SUB220763

SUNSHINE HOME BUILDERS, INC.
P.O BOX 840
GARRISONVILLE, VIRGINIA 22463-0840
(540) 659-1113

Stafford County
Planning Department
Attn Jeff Harvey
240500240951
March 24, 2008

This is a notification of a request to appeal vesting determination according to Section 22-251

I received your letter and noticing in the letter that the Planning Department on February 10, 2004 accepted a final subdivision plat application with subdividers signature dated February 4, 2004. On Wednesday January 21, 2004 the subdivider along with the engineer for the subdivision Henry Cropp, attempted to submit the application and plan but at the county's request was asked to take it back and resubmit with some changes that were not in effect at the time but would be at the time of review. Concerned about losing the vesting for the preliminary plan we were assured we could continue with the project and our vesting would be fine. I believe this change was adding the drainfield locations to the subdivision plats. As you can tell the project was allowed to continue at that time I would also like to note subdivision ordinance 22-6 could be interrupted or as I read it, (to vest for five years at the date of submission not at preliminary plan approval) Regardless of that interruption I had made a trip to the Planning Department on January 7, 2008 and requested the plan be recorded. Originally I had submitted for approval in June 2007 the Deed of Dedication and Easement signed and notarized. It is at this time I usually give a check for the Clerk of the Court to pay for recording. Shortly after that I was told that the securities posted were insufficient and I had to begin the process of reposting securities all over again. I reposted the securities again in December 2007. After the holidays were over I informed the county that I would like to record the plat. I also asked to be informed if there was anything else I needed to do. At that time I was told no. Thinking all was done and after obtaining a grading plan and starting construction of the road. In early January of this year, my father became ill and passed away on January 20, 2008. My mother has Alzheimer's which left me as an only child dealing with their financial affairs. The first part of February I tried to follow up because I had not received the recorded plat in the mail, only to find it had not been recorded. I was told the vesting had expired.



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I have diligently pursued this project from the beginning. Through all the difficult ordinance changes has caused me to continually make changes and in some cases take months to resolve. I know if it was not for my personal problems I would have caught my miscommunication with the Planning Department and this plan would have been recorded prior to the dead line. Thank you for your attention in this matter.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Keith Newport

PROPOSED

BOARD OF SUPERVISORS
COUNTY OF STAFFORD
STAFFORD, VIRGINIA

RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 1st day of April, 2008

MEMBERS

VOTE

George H. Schwartz, Chairman
M. S. "Joe" Brito, Vice Chairman
Harry E. Crisp II
Mark Dudenhefer
Paul V. Milde III
Cord A. Sterling
Robert "Bob" Woodson

On motion of , seconded by , which carried by a vote of , the following was adopted

**A RESOLUTION TO AFFIRM A DECISION BY THE DIRECTOR OF
PLANNING AND ZONING REGARDING THE PRELIMINARY PLAN
STATUS OF KINGS LEIGH ESTATES, HARTWOOD ELECTION
DISTRICTS**

WHEREAS, a preliminary subdivision plan for Kings Leigh Estates was approved by the Planning Commission on January 22, 2003, and

WHEREAS, Sections 15 2-2241(5) and 15 2-2260(f) of the Code of Virginia (1950), as amended, and Stafford County Code Section 22-6, address the validity of preliminary subdivisions plans, and

WHEREAS, the Director of Planning and Zoning determined that the validity for the preliminary subdivision plan for Kings Leigh Estates expired on January 21, 2004, and

WHEREAS, the applicant has appealed the decision of the Director of Planning and Zoning pursuant to Section 22-6 of the Stafford County Subdivision Ordinance, and

WHEREAS, the Board has determined that the decision by the Director of Planning and Zoning is appropriate,

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the 1st day of April, 2008, that the Board be and hereby does affirm the decision of the Director of Planning and Zoning determining that the validity for the preliminary plan for Kings Leigh Estates expired on January 21, 2004

AJR JAH bjs

PROPOSED

BOARD OF SUPERVISORS
COUNTY OF STAFFORD
STAFFORD, VIRGINIA

RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, Stafford County Administration Center, Stafford, Virginia, on the 1st day of April, 2008

MEMBERS

George H Schwartz, Chairman
M S "Joe" Brito, Vice Chairman
Harry E Crisp
Mark Dudenhefer
Paul V Milde III
Cord A Sterling
Robert "Bob" Woodson

VOTE

On motion of , seconded by , which carried by a vote of , the following was adopted

A RESOLUTION TO OVERRULE A DECISION BY THE DIRECTOR OF
PLANNING AND ZONING REGARDING THE PRELIMINARY PLAN
STATUS OF KING LEIGH ESTATES, HARTWOOD ELECTION
DISTRICTS

WHEREAS, a preliminary subdivision plan for Kings Leigh Estates was approved by the Planning Commission on January 22, 2003, and

WHEREAS, Sections 15 2-2241(5) and 15 2-2260(f) of the Code of Virginia (1950), as amended, and Stafford County Code Section 22-6, address the validity of preliminary subdivisions plans, and

WHEREAS, the Director of Planning and Zoning determined that the validity for the preliminary subdivision plan for Kings Leigh Estates expired on January 21, 2004, and

WHEREAS, the applicant has appealed the decision of the Director of Planning and Zoning pursuant to Section 22-6 of the Stafford County Subdivision Ordinance, and

WHEREAS, the Board has determined that the decision by the Director of Planning and Zoning should be overruled,

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the 1st day of April, 2008, that the Board be and hereby does overrule the decision of the Director of Planning and Zoning determining that the validity for the preliminary plan for Kings Leigh expired on January 21, 2004 and extends the plans vesting until _____

AJR JAH bjs