

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

BOARD OF COUNTY SUPERVISORS
OF PRINCE WILLIAM COUNTY, VIRGINIA

and

SHERMAN PATRICK,
Zoning Administrator,

Complainants,

v.

RICHMOND AMERICAN HOMES
OF VIRGINIA, INC.,

Serve: William L. Matson
Registered Agent
1650 Tysons Blvd., Suite 700
McLean, Virginia 22102

and

WASHINGTON HOMES OF VIRGINIA, INC.

Serve: CT Corporation System
Registered Agent
4701 Cox Road, Suite 301
Glen Allen, Virginia 23060

Respondents

Chancery No. 54563

BILL OF COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

COME NOW the Complainants, BOARD OF COUNTY SUPERVISORS OF PRINCE WILLIAM COUNTY, VIRGINIA ("the Board") and SHERMAN PATRICK, Zoning Administrator of Prince William County, Virginia ("the Zoning Administrator"), by counsel, and file this Bill of Complaint for Injunctive and Other Relief to abate and

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address violations of the ordinances of Prince William County and common law, as alleged in this Bill of Complaint, and to prevent further such violations. In support of this Bill of Complaint, they say:

1. The Board of County Supervisors is the governing body of Prince William County, Virginia, and is empowered by law to enact and enforce ordinances to govern the use and development of land. Specifically, the Board is authorized enact a zoning ordinance, pursuant to § 15.2- 2280, VA Code Ann. and to rezone property subject to conditions offered by an applicant for rezoning, pursuant to § 15.2-2303, VA Code Ann. Once accepted by the Board, such proffered conditions become part of the zoning regulations applicable to the rezoned property. *Jefferson Green Unit Owners Association v. Gwinn*, 262 Va. 449, 551 S.E.2d 339 (2001).

2. Sherman Patrick is the Zoning Administrator of Prince William County, and is charged with the administration and enforcement of the Zoning Ordinance, as it has been adopted by the Board in Chapter 32 of the Prince William County Code, and as it has been applied by the Board in approving the conditional rezoning of parcels of land in the County. He is empowered by §15.2-2286(4), VA Code Ann. and Prince William County Code §32-200.11 and §32-700.31 to bring legal action to ensure compliance with the Zoning Ordinance and proffered conditions accepted as part of a rezoning.

3. Respondent, Richmond American Homes of Virginia, Inc. ("Richmond American"), a Virginia corporation whose registered agent is William L. Matson, is the record owner of property described on Exhibit 1 to this Bill of Complaint, incorporated herein by reference. The Property is located in the Coles Magisterial District of Prince William County, Virginia.

4. Respondent, Washington Homes of Virginia, Inc. (“Washington Homes”), a Virginia corporation whose registered agent is CT Corporation System, is the record owner of property described on Exhibit 2 to this Bill of Complaint. This property is located in the Coles Magisterial District of Prince William County, Virginia.

5. A portion of the property described on Exhibit 1 and Exhibit 2 (collectively referred to as “the Property”) was rezoned by the Board on July 19, 1994, subject to proffered conditions filed in Prince William County Planning file REZ 94-0006. A copy of the Board’s ordinance of rezoning is attached as Exhibit 3, and a copy of the proffered conditions accepted by the Board as part of the rezoning is attached as Exhibit 4. Both exhibits are incorporated herein by reference. The proffered conditions were submitted to the Board by the applicants for the rezoning, William E.S. Flory, Jr. and DiAnn S, Flory, who then owned the property subject to the rezoning. A list of the parcels making up that portion of the Property subject to the 1994 rezoning is attached as Exhibit 5.

6. The remaining portion of the Property was also rezoned by the Board on December 5, 2000, subject to proffered conditions filed in Prince William County Planning file REZ 2000-00115. A copy of the Board’s ordinance of rezoning is attached as Exhibit 6, and a copy of the proffered conditions accepted by the Board as part of this rezoning is attached as Exhibit 7. Both exhibits are incorporated herein by reference. The proffered conditions were submitted to the Board by the applicants for the rezoning, the then-owners of the property, William E.S. Flory, Ann R.F. Naedele, and Wesiko Partnership, and Richmond American, the contract purchaser of the property at the time of rezoning. A list of the parcels which make up that portion of the Property subject to

the 2000 rezoning is attached as Exhibit 8. Strong concerns were raised during the rezoning process by citizens and County staff, and again by citizens and members of the Board during the public hearing on the rezoning about the environmental sensitivity of the property, given its topography, and its historic sensitivity as a former part of Bel Air Plantation, and property listed on the National Register of Historic Places and the Virginia Landmarks Register. Concerns were also noted during the rezoning process and the public hearing before the Board about the need to protect the viewshed of Bel Air, and otherwise protect that property against negative impacts of the proposed development. The proffers were submitted by the rezoning applicant, and amended by the rezoning applicant, in what was represented by the applicant to be an attempt to address these concerns, among others.

7. The Respondents are jointly developing the Property as a single family residential subdivision of more than 155 lots called Saratoga Hunt. The location of the development is depicted on a map which is attached as Exhibit 9, and which is incorporated herein by reference.

8. The Planning Commission of Prince William County approved a preliminary subdivision plan for Saratoga Hunt, submitted pursuant to § 15.2-2260, VA Code Ann., and §25-41 *et seq.* of the Prince William County Code, on August 30, 2001.

9. A final subdivision plan for Saratoga Hunt, submitted pursuant to § 25-51 *et seq.*, of the Prince William County Code was approved by the Director of Planning on December 13, 2002. The lot numbers assigned to each parcel by that subdivision plan are listed for each address and Geographic Parcel Identification Number on Exhibits 1, 2, 5, and 8. The final subdivision plan is not attached to this Bill of Complaint because it is

made up of over 60 oversized mapping sheets, containing all the technical data and detail necessary to accomplish the development depicted on it.

10. To accomplish the subdivision of the Property into development lots and record dedications and easements for roads, drainage, utilities and other public facilities required by County development ordinances and the rezoning proffers, Respondent Richmond American Homes recorded a subdivision plat for the portion of the Property which it owns on January 10, 2003. That plat is entitled Saratoga Hunt, Phase I, and is recorded as Prince William County Instrument Number 200301100006861.

11. To accomplish the subdivision of the Property into development lots and record dedications and easements for roads, drainage, utilities and other public facilities required by County development ordinances and the rezoning proffers, Respondent Washington Homes recorded a subdivision plat for the portion of the Property which it owns on February 13, 2003. That plat is entitled Saratoga Hunt, Phase II, and is recorded as Prince William County Instrument Number 200301130009002.

COUNT I: VIOLATION OF PROFFERED CONDITIONS
ACCEPTED AS PART OF REZONING 94-0006:
OPEN SPACE PROTECTION AREA COMMITMENTS

12. Paragraphs 1 through 11 are hereby incorporated by reference.

13. Proffer Number 3 of REZ 94-0006 (Exhibit 4) requires the establishment of a "50 foot protection area" on areas of the Property adjacent to existing lots in Colony Woods, a residential subdivision, and on Saratoga Lane on the northern and easternmost boundary of this portion of the Property. Existing vegetation in this "50 foot protection area" was to be retained to the extent feasible, and supplemented with plantings consistent with the Prince William County Design and Construction Standards Manual.

14. A sanitary manhole depicted as SS54 on the final subdivision plan submitted by the Respondents has been constructed, with associated pipes and other structures, by Richmond American, in the protection area. This constitutes a violation of the foregoing Proffer Number 3 of REZ 94-0006 by the Respondents.

15. The final subdivision plan submitted by Respondents does not show the provision of landscaping within the 50 foot protection area that meets the requirements of § 802.12 of the Prince William County Design and Construction Standards Manual, which is the standard to which Proffer Number 3 refers. This also constitutes a violation of Proffer Number 3 of REZ 94-0006.

16. On two of the lots subject to Proffer Number 3, lots 121 and 122, the final subdivision plan submitted by the Respondents depicts proposed houses with little or no distance between the houses and the protection area. The depiction of dwellings with no separation from the protection area also violates Proffer Number 3.

17. To the extent the Director of Planning's approval of the final subdivision plan purports to authorize these violations of Proffer Number 3 of REZ 94-0006, that approval was not authorized by law, and was an *ultra vires* act, pursuant to §32-700.30(5) of the Prince William County Code. Further, pursuant to §32-200.14 of the Prince William County Code, "any plan, permit or license, if issued in conflict with the provisions of [the Zoning Ordinance] shall be null and void and shall confer no lawful status.

18. To allow these violations of Proffer Number 3 of REZ 94-0006 to continue uncorrected would cause the public to suffer irreparable injury for which the Complainants have no adequate remedy at law.

**COUNT II: VIOLATION OF PROFFERED CONDITIONS ACCEPTED AS
PART OF REZ 2000-00115: HISTORIC PRESERVATION COMMITMENTS**

19. Paragraphs 1 through 11 are hereby incorporated by reference.
20. Proffer Number 16(A) of REZ 2000-00115 (Exhibit 7), entitled "Archeology" requires that two existing grave sites on the Property be protected by a 25 foot wide buffer around them, that a pedestrian access easement be provided, and that the gravesite area be fenced with a material approved by the Prince William County Historical Commission. These features were required by the time of final subdivision approval.
21. The approved final subdivision plan submitted by Respondents does not clearly depict the required 25 foot buffer area, does not depict a pedestrian access easement to the grave sites, nor does it provide that the gravesite area will be fenced, and fenced with materials approved by the Historical Commission, as required by Proffer 16(A). Respondents' failures to provide the required buffer, pedestrian access easement and the fencing as approved by the Historical Commission constitute violations of Proffer 16(A) of REZ 2000-00115.
22. To the extent the Director of Planning's approval of the final subdivision plan submitted by Respondents purports to authorize these violations of Proffer Number 16 of REZ 2000-00115, that approval was not authorized by law, and was an *ultra vires* act, pursuant to §32-700.30(5) of the Prince William County Code. Further, pursuant to §32-200.14 of the Prince William County Code, "any plan, permit or license, if issued in conflict with the provisions of [the Zoning Ordinance] shall be null and void and shall confer no lawful status.

23. The Respondents have not submitted any proposal for fencing material to the Historical Commission for approval as required by Proffer Number 16(A)

24. Proffer Number 16(C) required an archeologist to inspect areas of "high and moderate potential [for the discovery of historically or culturally significant features or artifacts]" in each area of the property, as identified in the approved Phase I archeological report, as topsoil is removed to identify any historically significant structures or graves ("features") which might be uncovered. Proffer 16(C) further required that a member or designated representative of the Historical Commission be offered the opportunity to accompany the archeologist.

25. Since February of 2003, the Respondents have disturbed or removed topsoil on the Property in areas of high or moderate potential. The Historical Commission was never notified of these operations, or given the opportunity to accompany any archeologist during these operations.

26. Respondents' failure to notify the Historical Commission of the disturbance or removal of topsoil in areas of high or moderate potential, and their failure to afford the Historical Commission the opportunity to accompany the archeologist during monitoring of the disturbance or removal of topsoil constitutes a violation of Proffer 16(C).

27. Other areas identified as high or moderate potential remain on the Property. According to the final subdivision plan submitted by Respondents, topsoil will be disturbed or removed from these areas in the future.

28. To allow the Respondents to disturb topsoil in areas identified as high or moderate potential for the discovery of historically or culturally significant features or

artifacts without providing notice to the Historical Commission, in violation of Proffer 16(C) of Rezoning 2000-00115 would cause the public to suffer irreparable injury for which the Complainants have no adequate remedy at law.

COUNT III. VIOLATION OF PROFFERED CONDITIONS ACCEPTED AS PART OF REZ 2000-00115: TRANSPORTATION COMMITMENTS

29. Paragraphs 1 through 11 are hereby incorporated by reference.

30. Proffer Number 2 of REZ 2000-00115 (Exhibit 7) establishes transportation requirements for the development of the portion of the Property subject to that rezoning.

31. Proffer 2(A) prohibits the construction of a public street connection from Saratoga Lane to the proposed development spine road (General Washington Drive). The purpose of this provision was to prevent traffic from or through the completed Saratoga Hunt subdivision from using Saratoga Lane to get to Silverdale Drive and thereby avoid negative impacts of such traffic on residents of the existing neighborhood. Proffer 2(A) requires the owner/developer of the Property to provide a driveway easement between the spine road and Saratoga Lane to the All Saints' Episcopal Church, so that the Church could continue to use its existing access to Saratoga Lane.

32. Proffer 2(A) and Proffer 2(N) provide that at the time the spine road (General Washington Drive) is completed and open for public use between Minnieville Road to the All Saints' Episcopal Church driveway, the property owner must place a gate on the driveway to be provided to the Church to limit access to that driveway only for events at the Church.

33. The only way in which the Respondents could make legal provision for the construction of the configuration of public roads, private driveway easement and gate

required by Proffers 2(A) and 2(N) was to show this configuration on the final subdivision plan.

34. The final approved subdivision plan submitted by Respondents does not show the configuration of public roads, private driveway easement and gate required by Proffers 2(A) and 2(N). The final subdivision plan shows a public street connection from Saratoga Lane to the proposed development spine road. The Respondents have, therefore, violated Proffers 2(A) and 2(N) of REZ 2000-90115.

35. Proffer 2(C) requires the Respondents to submit construction plans for a four-lane divided section of Minnieville Road from Silverdale Drive to Cardinal Drive, and to construct a portion of the improvements depicted on those plans.

36. The Respondents did not submit the required construction plans as part of the final subdivision plan, nor are they constructing the required improvements to Minnieville Road.

37. The Respondents' failures to submit the required construction plans and to provide for the required construction constitute violations of Proffer 2(C) of REZ 2000-90115.

38. Proffer 2(L) provides that construction vehicles can only enter the Property during development from Minnieville Road, and are prohibited from entering the Property from Saratoga Lane, and therefore via Silverdale Drive. The purpose of this proffer was to avoid negative impacts of construction traffic on residents of the existing neighborhood.

39. At various times since development activity began on the Property in February of 2003, Respondents have allowed construction vehicles to enter the Property

via Saratoga Lane. Every occasion on which this occurred constitutes a violation of Proffer 2(L).

40. To the extent the Director of Planning's approval of the final subdivision plan submitted by Respondents purports to authorize these violations of Proffer Number 2 of REZ 2000-0015, that approval was not authorized by law, and was an *ultra vires* act pursuant to §32-700.36(S) of the Prince William County Code. Further, pursuant to §52-200.14 of the Prince William County Code, "any plan, permit or license, if issued in conflict with the provisions of [the Zoning Ordinance] shall be null and void and shall confer no lawful status.

41. If Respondents are permitted to continue development in violation of Proffer 2, or are allowed to continue development without complying fully with Proffer 2 of Rezoning 2000-0115, then the public will suffer irreparable harm for which the Complainants have no adequate remedy at law.

**COUNT IV: VIOLATION OF PROFFERED CONDITIONS ACCEPTED AS
PART OF REZ 2000-00115: ENVIRONMENTAL
PROTECTION COMMITMENTS**

42. Paragraphs 1 through 11 are hereby incorporated by reference.

43. Proffer Number 4 of REZ 2000-00115 (Exhibit 7) provides environmental protection measures in the form of protection of open space and limitations on permissible land disturbance.

44. Proffer 4(B) required the provision of "open space" areas on the Property as shown on the proffered Generalized Development Plan. Pursuant to Proffer 4(B), these open space areas would remain undisturbed "except for disturbance necessary for

the construction and maintenance of utility crossings, stormwater management facilities, drainage facilities, roads, driveways, and other infrastructure.”

45. The final subdivision plan submitted by Respondents shows clearing in the open space on lots 18-22, 28-32, 37-39, 101, and 103-106. Respondents have already conducted some of the land-disturbing activities depicted in the open space on the final subdivision plan.

46. The final subdivision plan submitted by Respondents shows the proposed location of houses in the open space areas on lots 30 and 101.

47. The proposed grading, and the actual grading, described in Paragraphs 45 and 46 constitute violations of Proffer 4(B) of REZ.2000-00115.

48. To the extent the Director of Planning’s approval of the final subdivision plan submitted by Respondents purports to authorize these violations of Proffer 4(B), that approval was not authorized by law, and was an *ultra vires* act, pursuant to §32-700.30(5) of the Prince William County Code. Further, pursuant to §32-200.14 of the Prince William County Code, “any plan, permit or license, if issued in conflict with the provisions of [the Zoning Ordinance] shall be null and void and shall confer no lawful status.

49. Proffer 4(B) also required Respondents to provide a courtesy consultation with the County Arborist, LOCCA/PELT (a local citizens advocacy group), and citizens for the purpose of identifying the buffer areas and other areas that will remain undisturbed, prior to the commencement of any land disturbing activities on the site.

50. Respondents have commenced land disturbing activities on the Property, and they did not provide the courtesy consultation required by Proffer 4(B). This failure

constitutes a violation of Proffer 4(B). Further, had this courtesy consultation been provided, it is likely that the illegal clearing in proffered open space areas described in Paragraphs 45 and 46 of this Bill of Complaint would have been avoided.

51. Proffer 4(C) of REZ 2000-00115 requires the Respondents to provide a courtesy consultation with surrounding neighbors for the purpose of identifying areas with slopes of 25% or greater that will be developed as home sites.

52. To date, Respondents have not provided this courtesy consultation. This failure constitutes a violation of Proffer 4(C) of REZ 2000-00115.

53. To allow Respondents to continue development in violation of the specified provisions of Proffer 4, or without fully complying with Proffer 4 of REZ 2000-00115 would cause irreparable injury to the public for which Complainants have no adequate remedy at law.

**COUNT V. VIOLATIONS OF PROFFERED CONDITIONS ACCEPTED AS
PART OF REZ 2000-00115: BUFFERS/LANDSCAPING**

54. Proffer 9(A) of REZ 2000-00115 (Exhibit 7) requires the creation of a 25 foot wide open space strip and an additional 10 foot wide conservation area in certain portions of the Property.

55. Respondents propose to grade and/or have graded a portion of lots 14 and 15 in violation of Proffer 9(A).

56. Respondents have failed to provide the full extent of the 25 foot wide open space strip and the 10 foot wide conservation easement required by Proffer 9(A) north of existing Saratoga Lane.

57. Respondents have failed to show the 25 foot buffer on the recorded plats for the subdivision.

58. Respondents have failed to provide, as part of the final subdivision plan, the supplemental landscaping required by Proffer 9(A) in the 10 foot wide conservation easement.

59. Proffer 9(B) of REZ 2000-00115 required the creation of a 50 foot wide buffer in all areas of the Property adjacent to Bel Air Plantation and another adjacent lot, identified as Prince William County GPN 8091-88-7371. Proffer 9(B) also required supplemental plantings within this 50 foot wide buffer sufficient to meet the standard set by § 802.12 of the Prince William County Design and Construction Standards Manual.

60. Respondents have failed to provide the required plantings, either by depiction on the final subdivision plan, or on site. This failure constitutes a violation of Proffer 9(B).

61. Proffer 9(C) requires the creation of an additional 50 foot wide conservation easement adjacent to the 50-foot wide buffer required by Proffer 9(B). This easement must be provided in the rear yard of individual lots. Proffer 9(C) prohibits clearing or grading within this area, with a few exceptions for utilities and infrastructure.

62. Respondents propose to grade and/or have already graded within the required conservation easement on lots 81-90. This grading violates Proffer 9(C)

63. Respondents have failed to clearly label the 50-foot conservation easement on lots 81 and 82 on the final subdivision plan which they submitted.

64. To the extent the Director of Planning's approval of the final subdivision plan purports to authorize these violations of Proffer 9 of REZ 2000-00115, that approval was not authorized by law, and was an *ultra vires* act, pursuant to §32-700.30(5) of the Prince William County Code. Further, pursuant to §32-200.14 of the Prince William

County Code, "any plan, permit or license, if issued in conflict with the provisions of [the Zoning Ordinance] shall be null and void and shall confer no lawful status.

65. To allow Respondents to continue development in violation of the specified provisions of Proffer 9, or without fully complying with Proffer 9 of REZ 2000-00115 would cause irreparable injury to the public for which Complainants have no adequate remedy at law.

COUNT VI. VIOLATIONS OF PROFFERED CONDITIONS ACCEPTED AS PART OF REZ 2000-00115: STREETSCAPE ADJACENT TO ROADWAYS

66. Proffer 10(A) of REZ 2000-00115 (Exhibit 7) requires a 20 foot wide landscaped strip with a 3-foot berm along the Minnieville Road frontage of the Property in accordance with a landscape plan which was also proffered as part of that rezoning.

67. Respondents have failed to provide the required berm on the final subdivision plan, and they have failed to depict on the final subdivision plan the landscaping that was proffered for the berm. These failures constitute violations of Proffer 10(A) of REZ 2000-00115.

68. Proffer 10(B) requires Respondents to provide a streetscape along all internal roads in the Property, as shown on the Generalized Development Plan which was also proffered. The exact combination of plantings and the location of plantings within the streetscape were to be determined during final subdivision plan review.

69. Respondents have failed to provide the proffered streetscape in all the areas shown on the proffered Generalized Development Plan. This constitutes a violation of Proffer 10(B).

70. To the extent the Director of Planning's approval of the final subdivision plan submitted by Respondents purports to authorize these violations of Proffer 10 of

REZ 2000-00115, that approval was not authorized by law, and was an *ultra vires* act, pursuant to §32-700.30(5) of the Prince William County Code. Further, pursuant to §32-200.14 of the Prince William County Code, “any plan, permit or license, if issued in conflict with the provisions of [the Zoning Ordinance] shall be null and void and shall confer no lawful status.

71. To allow Respondents to continue development in violation of the specified provisions of Proffer 10, or without fully complying with Proffer 10 of REZ 2000-00115 would cause irreparable injury to the public for which Complainants have no adequate remedy at law.

COUNT VII. VIOLATIONS OF PROFFERED CONDITIONS ACCEPTED AS PART OF REZ 2000-00115: ENTRANCE FEATURE/SIGNAGE

72. Proffer 11(A) of REZ 2000-00115 requires landscaping for the entrance feature for the subdivision, as shown on the proffered landscape plan.

73. Respondents failed to provide the proffered landscaping for the entrance feature as part of the final subdivision plan.

74. To the extent the Director of Planning’s approval of the final subdivision plan submitted by the Respondents purports to authorize these violations of Proffer 11 of REZ 2000-00115, that approval was not authorized by law, and was an *ultra vires* act, pursuant to §32-700.30(5) of the Prince William County Code. Further, pursuant to §32-200.14 of the Prince William County Code, “any plan, permit or license, if issued in conflict with the provisions of [the Zoning Ordinance] shall be null and void and shall confer no lawful status.

75. If Respondents are allowed to continue development activities in violation of Proffer 11, or without fully complying with Proffer 11, the public will suffer irreparable injury for which the Complainants have no adequate remedy at law. To the extent the Director of Planning's approval of the final subdivision plan purports to authorize these violations of Proffer of REZ 94-0006, that approval was not authorized by law, and was an *ultra vires* act, pursuant to §32-700.30(5) of the Prince William County Code. Further, pursuant to §32-200.14 of the Prince William County Code, "any plan, permit or license, if issued in conflict with the provisions of [the Zoning Ordinance] shall be null and void and shall confer no lawful status.

76. To allow Respondents to continue development in violation of the specified provisions of Proffer 11, or without fully complying with Proffer 11 of REZ 2000-00115 would cause irreparable injury to the public for which Complainants have no adequate remedy at law.

WHEREFORE, Complainants pray that the Court grant the following relief:

- 1) Enjoin any and all further construction/development activity on the Property which violates proffers accepted under REZ 94-0006 and 2000-00115;
- 2) Enter an injunction requiring Respondents to immediately correct all violations of proffers accepted under REZ 94-0006 and 2000-00115;
- 3) Enter an injunction requiring Respondents to immediately submit a revision to the final approved subdivision plan to bring the final subdivision plan into full compliance with the proffers;

- 4) Assess a penalty against Respondents in the amount of \$1000 per day for every day on which development of the Property is found in to be in violation the proffers accepted as part of REZ 94-0006 and REZ 2000-00115, and hence, in violation of the Zoning Ordinance of Prince William County; and
- 5) Award such other relief as the Court deems appropriate.

Respectfully submitted,

BOARD OF COUNTY SUPERVISORS OF
PRINCE WILLIAM COUNTY, VIRGINIA
SHERMAN PATRICK
Zoning Administrator

By: Counsel

SHARON E. PANDAK
County Attorney



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