VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 1st day of October, 2015.

Board of Supervisors of
Stafford County, et al., Appellants,

against Record No. 141812
Circuit Court Nos. CL13-259, CL13-261,
CL13-262, CL13-263 and CL13-264

Metts, L.C.[1], et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of Stafford County.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that there is no reversible error in the judgment of the circuit court.

Metts, L.C., D.R. Horton, Inc., Michael and Anita Stonehill, and Poplar Corner Farm LLC own parcels of real property situated in Stafford County.[2] Pursuant to Stafford County Ordinance O12-17 ("the Original Ordinance"), they each submitted to Stafford County's subdivision agent a cluster concept plan ("CCP") to subdivide their respective parcels. The CCPs were submitted between November 27, 2012 and January 20, 2013. Under the Original Ordinance, the minimum lot size applicable to their parcels was reduced from 3 acres to 1 acre if the lot was served by public sewer and water, or to 1.5 acre if served only by well and septic tank.

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[1] The principal appellee was styled Metts, LLC in the appellant's petition for appeal and, consequently, in the Court's April 29, 2015 order awarding this appeal. However, the appellees' pleadings and the record indicate that the party's true name is Metts, L.C., which is corroborated by the records of the State Corporation Commission. See Code § 12.1-12(A); Rule 2:201(a)(2). The true name of this party is not in dispute in this appeal. The Court therefore concludes that references to Metts, LLC are scriveners' errors. The name of the party and the style of the case in the Court's April 29, 2015 order are corrected pursuant to Code § 8.01-428(B).

[2] These parties are referred to collectively as "the Applicants."

On February 19, 2013, the Board of Supervisors of Stafford County purportedly enacted Ordinance O13-04 ("the February Amendment"), by which it intended to amend the Original Ordinance to impose a 1 lot per 1.5 acre average density restriction. The subdivision agent thereafter sent letters to each of the Applicants notifying them of the purported enactment of the February Amendment and that their respective CCPs failed to satisfy the new average density restriction it imposed.

On March 12, 2013, each Applicant filed a complaint in the circuit court asserting that the February Amendment was void ab initio because the Board had failed to provide sufficient notice of the proposed ordinance as required by Code § 15.2-2204. They each sought a declaratory judgment to that effect and an injunction barring the county from enforcing the February Amendment.[3]

On September 17, 2013, while the plaintiffs' complaints were pending in the circuit court, the Board enacted Ordinance O13-38 ("the September Amendment"), which removed the 1 lot per 1.5 acre average density restriction and replaced it with a 1.5-acre minimum lot size. On April 15, 2014, it filed a motion to dismiss the plaintiffs' complaints, arguing that the February Amendment was superseded by the enactment of the September Amendment, so any defects in the enactment of the February Amendment (and, consequently, the plaintiffs' claims that it was void ab initio) were moot. After a hearing, the circuit court entered an order denying the Board's motion to dismiss.

The matter proceeded to trial. Thereafter, the circuit court issued an opinion letter in which it declared the February Amendment void. The Board thereafter filed a motion for clarification. It noted that at trial, it had adduced evidence that the September Amendment had been lawfully enacted and that it therefore superseded the February Amendment. It argued that it had also adduced evidence that the Applicants' CCPs would have been denied irrespective of the February Amendment. The Board asked what additional information was necessary to resolve its mootness defense and how such evidence could be presented.

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[3] Southgate Development, LLC and Mahmoud Gohari also filed a complaint seeking both a declaratory judgment that the February Amendment was void ab initio and an injunction barring its enforcement. However, neither of them ever submitted a CCP to be approved.

The court thereafter entered a final order incorporating its post-trial opinion letter. The order stated that "the [c]ourt finds that it is not persuaded by the County's evidence and arguments, and therefore[] denies the County's defense as to mootness." The Board appeals.

In its sole assignment of error, the Board asserts that the circuit court erred by denying its motion to dismiss because the enactment of the September Amendment rendered any defects in the February Amendment moot. It argues that the plaintiffs did not dispute at trial either that the September Amendment was validly enacted or that it superseded the February Amendment. It also argues that the Applicants' respective CCPs were denied for reasons predating and unrelated to the February Amendment.

"Mootness has two aspects: when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome." McCarthy Holdings LLC v. Burgher, 282 Va. 267, 275, 716 S.E.2d 461, 465 (2011) (internal alteration and quotation marks omitted). However, "a case is not moot where collateral consequences remain." Paugh v. Henrico Area Mental Health & Developmental Servs., 286 Va. 85, 88, 743 S.E.2d 277, 278 (2013); see also Israel v. West Va. Secondary Schs. Activities Comm'n, 388 S.E.2d 480, 483 (W. Va. 1989) (A case is not moot if "sufficient collateral consequences will result from determination of the questions presented so as to justify relief.").

The Board and the appellees have each represented to the Court that the Applicants have commenced separate actions contesting the grounds upon which their CCPs were denied prior to the purported enactment of the February Amendment. The Applicants argue that if they prevail in those proceedings, they will establish that their CCPs should have been approved. Combining such a result with the circuit court's ruling in this case, they argue, would provide them a defense under Planning Commission of the City of Falls Church v. Berman, 211 Va. 774, 180 S.E.2d 670 (1971), against any subsequent attempt to apply the September Amendment to their CCPs.

This Court addresses neither the merit of the Applicants' challenge to the denial of their CCPs in the litigation pending below nor the merit of any Berman defense because those issues are not presented in this appeal. However, the circuit court's ruling that the February Amendment was invalidly enacted and therefore void ab initio may have collateral consequences on the Applicants' ability to pursue those questions. The circuit court recognized these possible collateral consequences in its letter opinion, incorporated into the final order, in which it noted

that it could not grant the motion to dismiss "absent a comprehensive hearing on the issues of project approval[,] which are to be raised in a separate proceeding. [T]o do so would be to hamper one side or the other in the presentation of arguably admissible considerations which are not before the [c]ourt in this particular litigation." The circuit court therefore did not err by denying the Board's motion to dismiss.

Accordingly, the Court affirms the judgment of the circuit court. The appellants shall pay to the appellees two hundred and fifty dollars damages.

This order shall be certified to the Circuit Court of Stafford County.

A Copy,

Teste:

Clerk