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STATE OF NORTH CAROLINA HAYWOOD COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO. 18 CVS 957
CHARLES DEAVER and FRANK DEAVER, Petitioners, v. TOWN OF WAYNESVILLE and BROWNING BRANCH, LLC, Respondents.	PETITION FOR WRIT OF CERTIORARI

COME NOW the Petitioners, pursuant to N.C. Gen. Stat. § 160A-377, 378, and 388(e2)(2), and give notice of appeal in the nature of a petition for writ of certiorari as follows:

1. Petitioner Charles Deaver is a citizen and resident of the town of Waynesville, Haywood County, North Carolina.
2. Charles Deaver is the owner of real property located at 41 Buchanan Drive, Waynesville, NC 28786, more particularly described at Deed Book 554, Page 1748, Haywood County Registry.
3. Petitioner Frank Deaver is a citizen and resident of the town of Waynesville, Haywood County, North Carolina.
4. Frank Deaver is the owner of real property located at 25 Hayfield Lane, Waynesville, NC 28786, more particularly described at Deed Book 462, Page 508, Haywood County Registry.
5. Frank Deaver is also the owner of real property located at 167 Buchanan Drive, Waynesville, NC 28786, more particularly described at Deed Book 462, Page 508, Haywood County Registry.
6. Respondent Town of Waynesville is a "City" as defined in N.C. Gen. Stat. § 160A-1(2) with it's primary address at 16 South Main Street, Waynesville, NC 28786.
7. The Town of Waynesville has formed a Planning Board by ordinance (Waynesville Mun. Code § 14.3) which is a "board or commission" created pursuant to the provisions of N.C. Gen. Stat. § 160A-361, The principal office of the Planning Board is at 9 South Main Street, Waynesville, NC 28786.
8. Respondent Browning Branch, LLC, is a North Carolina Limited Liability Company with its principle place of business at 37 Branner Avenue, Waynesville, NC 28786.
9. The Superior Court has jurisdiction over the subject matter of this dispute pursuant to N.C. Gen. Stat. § 160A-377, 378, and 388(e2)(2).

10. This Court has jurisdiction over the parties as they are citizens and residents of North Carolina, and each Respondent having taken substantial actions in Haywood County, North Carolina, which are the subject of this dispute.

11. Venue is proper in Haywood County.

12. On June 6, 2018 Browning Branch made application to the Planning Board for development of a subdivision on property located off Buchanan Drive, Waynesville, NC 28786, more particularly described at Deed Book 949, Page 1982, Haywood County Registry (hereafter the "Development Property").

13. The subdivision plan, as amended and presented at the second hearing on July 16, 2018, designates 23 separate lots, each to contain a duplex, thus holding 46 units.

14. Petitioners' land adjoins and abuts the Development Property, amongst other property owners.

15. The proposed primary access to the Development Property crosses a portion of Petitioners' easements over Buchanan Drive at the intersection of said drive with Allens Creek Road. Buchanan Drive is shared by Petitioners and other property owners with easements.

16. The proposed secondary access to the Development Property exits onto the same Buchanan Drive at a point farther northeast, therefore crossing the same easements listed above for access to Allens Creek Road.

17. Buchanan Drive is a private gravel drive.

18. The easements along Buchanan drive follow along the norther boundary line of the Development property and extend onto the Development Property.

19. More than half of the 7.04 acres in the Development Property is within a designated 100-year flood plain.

20. The waterway known as Browning Branch flows across the Development Property and onto the Petitioners' properties.

21. The subdivision plan includes five bio-retention ponds, a wetland area, and two points where roads will cross the Browning Branch waterway.

22. A notice of the public hearing on June 18, 2018 was received by some of the adjoining landowners, but upon information and belief it was not properly sent to all adjoining landowners and owners of property within 100 feet of the Development Property.

23. Upon information and belief, proper notice of the hearing was not provided to all necessary recipients pursuant to N.C. Gen. Stat. § 160A-388 nor Waynesville Mun. Code § 15.3.

24. On July 11, 2018, Charles Deaver received a notice dated June 5, 2018. June 5 was one day prior to the filing of the application for development.

25. Since Browning Branch is applying to develop a "major subdivision," a quasi-judicial public hearing is required.

26. A public hearing was held on June 18, 2018, which was continued and completed on July 16, 2018.

27. At the second meeting on July 16, prior to the start of the public hearing at 5:39 PM, the Planning Board asked if anyone present wished to be recognized as having standing. No one came forward.

28. Upon information and belief, persons who had or may have had standing did not understand what was being asked. Further, a general question posed as it was under these circumstances is not legally sufficient to extinguish standing for any persons having it.

29. The hearing had been held open from the previous month in order for the applicant Browning Branch to address certain issues raised by the Planning Board and the public.

30. Browning Branch presented a new survey on July 16, however, it was not previously provided to other interested parties except the Town.

31. Because of the complexity and numerous details of the plan, including the multiple changes from the previous month, interested parties did not have sufficient time to review it, determine what damages might be suffered from it, prepare cross-examinations for the applicant's witnesses, compile testimony to rebut the assertions of the applicant, and prepare & present their side of the case in the public hearing. In short, the applicant and the Town presented an essentially new plan and brought it to a vote approximately one hour and fifteen minutes later before anyone could adequately oppose it.

32. Upon information and belief, a great deal of evidence was considered by the Planning Board that was not competent evidence under N.C. Gen. Stat. § 160A-393.

33. The Planning Board acknowledged a legal uncertainty as to whether road requirements for subdivisions are applicable to roads used to access those subdivisions.

34. After the

35. Petitioners have standing due to their shared ownership and use of Buchanan Drive and the easements thereon, as well as special damages which are likely to be suffered if the plan goes through, including but not limited to:

- a. Overburdenment of easements and increased traffic, potentially trespass
- b. Traffic problems and safety issues from an additional road put partially across and otherwise nearby Buchanan drive and intersecting with Allens Creek Road
- c. Decrease in property values
- d. Increased noise and other nuisances from 52 households in a small area
- e. Access and parking problems due to lack of sufficient parking in the subdivision which will likely cause inhabitants to park outside of the designated spots (only one parking spot is planned per unit)

- f. Water quality problems due to the flow of water along Browning Branch waterway from the Development Property to the Petitioners' lands, and
- g. Other and further grounds to be discovered.

36. Petitioners' rights to due process were violated by the manner in which the public hearing was conducted.

37. Even if the public hearing is found to have been conducted properly, the plan as approved has multiple substantive violations of the North Carolina Statutes and the Waynesville Land Development Standards, including but not limited to:

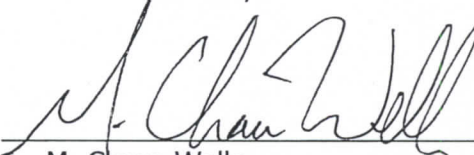
- a. Multiple setback violations both in front and back of the proposed units
- b. Insufficient road widths and access, particularly to support on-street parking as will be necessary in this subdivision
- c. Insufficient distance between driveways/intersections
- d. Insufficient "civic areas"
- e. Insufficient parking and driveway design
- f. Insufficient space for vegetation buffers, and
- g. Other and further grounds to be discovered.

38. Therefore, Petitioners assert that both that the findings of fact made by the Planning Board are not supported by the evidence and that the conclusions of Law are not supported by the findings of fact.

WHEREFORE Petitioners respectfully pray the Court to reverse the decision of the Planning Board made verbally on July 16, 2018 and reduced to writing on August 22, 2018, to enjoin the Respondents from proceeding forward with the subdivision plan, for costs and attorneys' if provided by applicable law, and for any other or further relief the Court deems just and proper.

This the 21st day of September, 2018.

M. Chase Wells, PLLC

By: 

M. Chase Wells
168 Tate St. Ste. B
Waynesville NC 28786
NC Bar No. 41815
Phone: (828) 417-0235
Fax: (828) 417-0223