

VIRGINIA:

IN THE CIRCUIT COURT FOR PRINCE WILLIAM COUNTY

OAK VALLEY HOMEOWNERS	)
ASSOCIATION, INC., et al.	)
	)
<b>Plaintiffs,</b>	)
	)
v.	) <u>Case No. CL24-375</u>
	)
BOARD OF COUNTY SUPERVISORS,	)
PRINCE WILLIAM COUNTY, et al.,	)
	)
<u>    <b>Defendants.</b></u>	)

**THE DEVELOPER DEFENDANTS’  
MOTION TO CLARIFY/MODIFY FINAL ORDER FOLLOWING TRIAL ON COUNT I**

GW Acquisition Co., LLC, GW Acquisition Co. I, LLC, and H&H Capital Acquisitions, LLC (together the “**Developer Defendants**”) move this Court to clarify or modify the Final Order Following Trial on Count I entered by the Court on August 7, 2025 (the “**August 7 Order**”). Specifically, the Developer Defendants ask the Court to clarify two aspects of the August 7 Order:

- Although the Amended Complaint contains 7 counts, the August 7 Order only addresses Count I and therefore is not a final order under Rule 1:1; and
- Although the Court’s letter opinion concluded that 9 of the 12 Plaintiffs waived their ability to raise the claims alleged in Count I, the August 7 Order does not enter judgment in favor of the Defendants as to those Plaintiffs.

In support of this Motion, the Developer Defendants state the following:

1. Rule 1:1(b) defines what constitutes a final order for purposes of appeal. It states, in pertinent part,

Unless otherwise provided by rule or statute, a judgment, order or decree is final if it disposes of the entire matter before the court, including all claim(s) and all cause(s) of action against all parties, gives all the relief contemplated, and leaves nothing to be done by the court except the ministerial execution of the court’s judgment, order or decree.

(Emphasis supplied.) The elements of a final order are conjunctive. Therefore, an order is only final if it (i) disposes of “all claim(s) and all cause(s) of action against all parties,” (ii) “gives all the relief

contemplated,” and (iii) “leaves nothing to be done by the court except the ministerial execution of the court’s judgment, order or decree.”

2. Despite its heading, the August 7 Order is not a final order – even on Count I – for multiple reasons.

3. First, it does not dispose of all claims and causes of action against all parties. Instead, it only addresses Count I. There remain 6 Counts that the August 7 Order fails to address. Although the Court’s letter opinion suggests that a ruling in Plaintiffs’ favor on Count I would render the other counts moot (Let. Op. p. 3), the August 7 Order does not make any such finding. “It is well established that a circuit court speaks only through its written orders.” Galiotos v. Gaiotos, 300 Va. 1 (2021). The Developer Defendants maintain as they did on January 30, 2025, that the Court should sustain the outstanding demurrers to Counts II through VII in order to provide the appellate courts with a complete record and avoid lengthy delays in the resolution of this case. However, if the Court is not inclined to do so, the Developer Defendants ask that the Court at least modify the August 7 Order to make a finding that Counts II through VII are moot to allow an appeal to proceed. As it stands now, there is no written order addressing those counts.

4. Second, the August 7 Order is not a final order because it does not address all claims and causes of action brought by each Plaintiff as required by Rule 1:1. Although the Court granted Defendants’ Motion to Strike as to Plaintiffs Roger Yackel and John C. Hermansen, Trustee of the John C. Hermansen Revocable Living Trust, the August 7 Order does not dismiss those claims. Similarly, although the Court’s letter opinion concluded that the claims raised by 7 other Plaintiffs – Oak Valley Homeowners Association, Christopher Wall, Stephanie Chartrand, Gabrielle Pyle, Jeffrey Jensen, Cameron Rohrer, and John Bradshaw – were waived under Virginia Code § 15.2-2204, the August 7 Order fails to dismiss those claims. Because the circuit court only speaks through its written orders, the Developer Defendants request that the August 7 Order be modified

to Order that the claims raised by Mr. Yackel, Mr. Hermansen, Mr. Wall, Ms. Chartrand, Ms. Pyle, Mr. Jensen, Mr. Rohrer, Mr. Bradshaw, and the Oak Valley HOA in Count I are dismissed. Without addressing those claims, the August 7 Order is not a final order under Rule 1:1(b).

5. Third, the August 7 Order does not dispose of all of the relief requested by the Plaintiffs. As to each of the three rezoning applications, the Amended Complaint requests 21 different forms of relief (in addition to a catch all that the Court “[g]rant such other and further relief as the Court may deem just and proper.”) Am. Comp. pp. 82-89. While an order from this Court declaring that the Board of County Supervisors’ approval of the three Digital Gateway rezoning applications is void *ab initio* is certainly a major component of the relief Plaintiffs request, there remain other outstanding requests. Per Rule 1:1(b), an order is not final until it “gives all the relief contemplated.” The August 7 Order does not do that. Once again, if the Court believes that the remaining relief is moot as a result of its decision, then the Developer Defendants request that the Order be modified to state that.

6. Fourth, given the procedural posture of this case, an interlocutory appeal of the Court’s August 7 Order is unavailable to the Developer Defendants. Under Virginia Code § 8.01-675.5, a circuit court may certify an order or decree for interlocutory appeal only if the certification is entered “prior to the commencement of trial.” Because the Court conducted a trial on Count I, the August 7 Order cannot be the subject of an interlocutory appeal. Only a final order may be appealed, and for the reasons stated above, the August 7 Order is not final.

7. The Developer Defendants’ concerns about the need for a final order that resolves all claims and causes of action are not hypothetical. In the past, these issues have prevented timely resolution of appeals taken from orders that were later deemed to not meet the requirements of Rule 1:1(b). For example, in Fauquier County Board of Supervisors v. RCH, LLC, Rec. No. 210486 (Jan 10, 2022) (unpublished), the Virginia Supreme Court sent a case back to the circuit court because

its order—despite all parties believing it to be final—did not comply with the requirements Rule 1:1(b) by failing to address one of the elements of relief originally requested by the plaintiff in its prayer for relief. A copy of the Supreme Court’s Order is attached. It is important to note that the Supreme Court’s *sua sponte* decision followed an appeal to and decision by the Court of Appeals, which decided the case as if the order appealed from was final. Fauquier Cnty. Bd. of Super’s v. RCH, LLC, Rec. No. 1276-20-4 (Va. Ct. App. May 20, 2021). Thus, despite spending 15 months going through a full appeal to the Court of Appeals, the case was remanded to the trial court as if that appeal never occurred because the “final” order was not final in the eyes of the Supreme Court, even though no party or court previously raised that issue. The Developer Defendants wish to avoid such a result in this case.

8. Just last week, the Virginia Court of Appeals did the same thing and remanded a case to the circuit court because the “final” order appealed from was not final under Rule 1:1 since it did not address all of the requested relief in a complaint – specifically a request for attorneys’ fees. Va. State Conf. NAACP v. Youngkin, Rec. No. 0264-24-2, 0948-24-2, 2025 Va. App. LEXIS 446 (Aug. 5, 2025) (unpublished). In that case, the Petition’s prayer for relief requested 4 different forms of relief (in addition to the similar catch all contained in the Amended Complaint here): (A) to hold a hearing within 7 days as required by VFOIA, (B) issue a declaration that the Petitioner’s violated VFOIA, (C) issue a writ of mandamus, and (D) award Petitioners their reasonable attorneys fees and costs. Id. at \*4. The trial court held a hearing and sustained the Governor’s demurrer. Id. at \*5. The court’s “final” order denied the request for declaratory relief and the mandamus. Id. at \*5-6. It did not, however, address the request for attorneys’ fees. On appeal, the Court of Appeals held that the order was not final because it did not dispose of all of the relief requested in the Petition – specifically the request for attorneys’ fees. Quoting from multiple binding Virginia Supreme Court decisions, the Court of Appeals said, in language that is controlling here, “A ‘final judgment’

on the ‘entire action,’ ... require[s] final dispositions on all pending claims before any of them can be appealed.” Id. at \* 9 (emphasis in original) (quoting Robert & Bertha Robinson Family LLC v. Allen, 295 Va. 130 (2018), Hackett v. Comm’w, 293 Va. 392 (2017)).

9. Like the Petitioners in NAACP, the Plaintiffs here seek the recovery of attorneys’ fees. Am. Comp. p. 85 ¶ u; p. 89 ¶ u. Like many other forms of relief requested by Petitioners, the August 7 Order does not address this request. As the Court of Appeals reiterated last week, that issue alone prevents the August 7 Order from being final for purposes of appeal. Notably, the request for attorneys’ fees is the subject of the Developer Defendants’ Demurrer since such relief is not available in a land use case like this one. H&H Demurrer p. 5, ¶ 17. Like other arguments raised in those demurrers, the Court has thus far failed to rule on that issue.

### **Conclusion**

For these reasons and those that may be argued at a hearing on this Motion, the Developer Defendants request the Court modify the August 7 Order to allow this case to be appealed without delay.

Respectfully submitted,

**H&H CAPITAL ACQUISITIONS, LLC**  
**And GW ACQUISITION CO. I, LLC AND GW**  
**ACQUISITION CO., LLC**  
By Counsel



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## CERTIFICATE OF SERVICE

I certify that on August 13, 2025 a true and correct copy of the foregoing was served, via e-mail and First-Class Mail, postage prepaid, on the following:

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*Counsel for the Board of County Supervisors  
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Counsel

**VIRGINIA:**

*In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 10th day of January, 2022.*

Fauquier County Board of Supervisors, et al.,

Appellants,

against

Record No. 210486  
Circuit Court No. CL19-459

RCH, LLC,

Appellee.

From the Circuit Court of Fauquier County

Finding the October 13, 2020 order appealed from is not a final, appealable order because it does not dismiss the Stop Work Order, as requested in the plaintiff's prayer for relief, and therefore does not dispose of the entire matter before the court, Rule 1:1(b), the Court dismisses the petition for appeal filed in the above-styled case.

This dismissal is without prejudice to the right of any party to appeal a final order of the Circuit Court of Fauquier County.

A Copy,

Teste:

Muriel-Theresa Pitney, Clerk

By:



Deputy Clerk