

IN THE CHANCERY COURT FOR LOUDON COUNTY, TENNESSEE

JOHN COOK
3571 Louisville Rd
Louisville, TN 37777

COOK BROS. CONSTRUCTION, LLC
3571 Louisville Rd
Louisville, TN 37777

Plaintiffs,

vs.

No. 12889

LOUDON COUNTY
Bob Bowman, County Attorney
P.O. Box 629
Knoxville, TN 37901

LOUDON COUNTY COMMISSION
Bob Bowman, County Attorney
P.O. Box 629
Knoxville, TN 37901

Defendants.

COMPLAINT FOR A DECLARATORY JUDGMENT
AND PETITION FOR A WRIT OF CERTIORARI

Come the Plaintiffs, John Cook and Cook Bros. Construction, LLC (collectively

“Cook Plaintiffs, by and through undersigned counsel, and aver the following:

PARTIES AND JURISDICTION

1. Plaintiff John Cook is a citizen of the State of Tennessee, and the managing member of Plaintiff Cook Bros. Construction, LLC (hereinafter “Cook Homes”) a limited liability company registered in the State of Tennessee with its principle place of business located at the address provided in the style of this Petition.

FILED 1 DAY OF Oct 2021

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Lisa Niles
LOUDON CO. CLERK & MASTER

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2. Defendant Loudon County is a county government organized under the authority of Tenn. Code Ann. § 5-1-101, *et seq.* and may be served pursuant to Rule 4.04(7) of the Tennessee Rules of Civil Procedure “by delivering a copy of the summons and of the complaint to the chief executive officer of the county, or if absent from the county, to the county attorney if there is one designated; if not, by delivering the copies to the county court clerk.”

3. Defendant Loudon County Commission is the legislative body for Loudon County, Tennessee, and is located within the geographical boundaries of Loudon County, Tennessee.

4. This Court has jurisdiction over the parties and subject matter of this action pursuant to Tenn. Code Ann. § 27-8-101 *et seq.*, Tenn. Code Ann. § 27-9-101 *et seq.*, and Tenn. Code Ann. § 29-14-101 *et seq.*

5. Plaintiffs allege and aver that an actual controversy exists.

6. Plaintiffs allege and aver that this is the first application for extraordinary relief in this case.

FACTUAL BACKGROUND

7. On April 29, 2021, Plaintiff Cook contracted with Jim Russell for the purchase and development of property located on HWY 321 in Loudon, County Tennessee identified on Loudon County Tax Map 44, Parcel 038.00 (hereinafter “the Property”) contingent on the Property being rezoned from A-1 Agriculture-Forestry District to R-1, PUD (Suburban Residential District) with a Planned Unit Development (PUD) Overlay, allowing Cook

Plaintiffs to develop a PUD on the Property. A description of the property is attached as **Exhibit 1**.

8. On June 28, 2021, Cook Plaintiffs filed a rezoning request with the Loudon County Regional Planning Commission (“Regional Planning Commission”) to rezone the Property from A-1 Agriculture-Forestry District to R-1, PUD (Suburban Residential District) with a Planned Unit Development (PUD) Overlay.

9. On July 20, 2021, the Regional Planning Commission found that the Plaintiffs had met all of the requirements for rezoning and approved their rezoning request by a unanimous 11-0 vote.

10. On September 7, 2021, the Loudon County Commission held a public hearing on the proposed rezoning of the Property. At this public hearing, a representative from the Regional Planning Commission—Jim Jenkins—reiterated that Plaintiffs had met the requirements for rezoning and that the Regional Planning Commission had approved the rezoning request unanimously.

11. After concluding the public hearing on the proposed rezoning, the Loudon County Commission commenced their ordinary business which included a vote on the Plaintiffs’ rezoning request.

12. Initially, Commissioner Bill Satterfield made a “motion to deny the rezoning request.” To vote to deny Plaintiffs’ rezoning request, a Commissioner was required to vote “yes” on this motion. To approve the rezoning request, a Commissioner was required to vote “no” on this motion.

13. Commissioner Satterfield's "motion to deny the rezoning request" failed by a 6-4 majority vote of "no." Commissioners Satterfield, Shaver, Waller, and Duff voted "yes" on the "motion to deny the rezoning request." Commissioners Meers, Hurley, Tinker, Whitfield, Cullen, and Brewster voted "no" on the "motion to deny the rezoning request."

14. Throughout the voting process, Commissioner Shaver had conversations with Commissioners Duff and Waller and other individuals sitting around him.

15. Shortly after the commission voted to approve the rezoning request, Commissioner Satterfield began apologizing to his constituents stating: "Folks in District 3 I'm sorry, looks like development has won out." At this point, Commissioners Waller and Shaver argued that there was "confusion" with the voting process, and began asking other commissioners how they voted.

16. Commissioner Waller asked Commissioner Cullen how he voted and whether he voted "to approve or deny the PUD." Commissioner Cullen responded that he meant to vote "with [Satterfield] and the people" and was told that he should have voted "yes." Commissioner Meers was also asked how he intended to vote, and he responded that he meant to vote "with [Satterfield]" and was told that he should have voted "yes."

17. Multiple commissioners then debated whether they had already voted to approve the rezoning 6-4, and asked Mayor Bradshaw if they could change their vote. Mayor Bradshaw stated his opinion that the issue "needs to go back to a full vote."

18. During the confusion, multiple commissioners remarked that the procedure was "bad," that "it's not good," and that it "was going to look real bad in court." Mayor Bradshaw remarked: "This looks horrible."

19. Amidst further confusion, Commissioner Shaver stated: "Well what just happened was a 6-4 vote to approve the rezoning," and asked if any commissioner could change their vote at this stage. Commissioner Shaver also stated: "Once you approve this you've given property rights to somebody. If this stands there's no coming back."

20. Mayor Bradshaw then left the room to call the county attorney—Bob Bowman.

21. A few minutes later, Mayor Bradshaw stated that the county attorney had advised him that under Robert's Rules of Order, that "a member of the majority" may make a "motion to reconsider," that required a second, in order to hold another vote on the previous motion.

22. Commissioner Cullen made a "motion to reconsider" seconded by Commissioner Waller. After debating whether a minority-voting member could properly second the motion to reconsider, Mayor Bradshaw contacted the county attorney again, who advised that the second from a minority member was proper.

23. The commissioners then voted on the motion to reconsider and it passed by a vote of 6-4. Commissioners Satterfield, Cullen, Duff, Shaver, Waller, and Meers voted "yes" on the motion to reconsider. Commissioners Hurley, Tinker, Whitfield, and Brewster voted "no" on the motion to reconsider.

24. While discussing which procedure to use in order to vote on the rezoning request again, Commissioner Tinker made a "motion to approve the rezoning amending zoning map of Loudon County, Tennessee" that was properly seconded. Mayor Bradshaw then asked the commissioners to "hold on."

25. The commissioners continued to delay before voting on this motion, and Mayor Bradshaw asked the county attorney over the phone whether they needed to vote on the "original motion" or "start with the new one." The commissioners then voted on the new motion. A vote of "no" would deny the rezoning request and a vote of "yes" would approve the rezoning request.

26. When Commissioner Duff was asked for his vote on this motion, he whispered to Commissioner Shaver and asked how he should vote. Commissioner Shaver instructed Commissioner Duff to vote "no," and Commissioner Duff voted "no."

27. The motion was deadlocked at a 5-5 vote with no majority. Commissioners Cullen, Satterfield, Duff, Shaver, and Waller voted "no." Commissioners Hurley, Tinker, Whitfield, Brewster, and Meers voted "yes."

28. After the vote, some commissioners asked whether they needed to bring a motion to deny the rezoning or if they could table the issue for the next meeting. Commissioner Cullen stated that the motion "failed 5-5." The commissioners explained to the public in attendance that the rezoning request did not pass and carried on with other business.

29. During a recess after the vote, Commissioner Hurley remarked to Commissioner Cullen: "Here we go, another lawsuit. That'll be your third one. Aren't you proud Chairman?"

COUNT I – DECLARATORY JUDGMENT

30. Plaintiffs repeat and incorporate the above paragraphs, allegations, and exhibits as if fully set forth herein.

31. The Tennessee Declaratory Judgments Act, codified at Tenn. Code Ann. § 29-14-101 *et seq.*, states: “Any person . . . whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract, or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status or other legal relations thereunder.”

32. To the extent that the Loudon County Commission’s actions on September 7, 2021 regarding the rezoning request were invalid, arbitrary, and capricious legislative actions, pursuant to their zoning authority delegated under Tenn. Code Ann. § 13-7-101 *et seq.*, Plaintiffs proper remedy is an action for declaratory judgment under § 29-14-101. *See McCallen v. Memphis*, 786 S.W.2d 633, 639 (Tenn. 1990).

33. Through their voting procedures and other actions on September 7, 2021 regarding the Plaintiffs’ rezoning request, the Loudon County Commission acted illegally, arbitrarily, and capriciously and failed to follow the Loudon County Procedural Rules and Robert’s Rules of Order.

34. Plaintiffs aver that an actual controversy exists between the parties.

35. Plaintiffs ask this Court to declare that the Loudon County Commission’s initial 6-4 vote of “no” on their “motion to deny the rezoning request” approved the Plaintiffs rezoning request, and that the Loudon County Commission’s subsequent 5-5 vote on the “motion to approve the rezoning amending zoning map of Loudon County, Tennessee” was invalid, arbitrary, capricious, and void due to the commission’s failure to abide by the Loudon Procedural Rules and Robert’s Rules of Order.

36. In the alternative, Plaintiffs ask this Court to declare that the Loudon County Commission's apparent denial of Plaintiffs' rezoning request was illegal, arbitrary, capricious, and void with no rational basis as Plaintiffs met all of the requirements for rezoning and the Regional Planning Commission unanimously approved their request.

COUNT II – PETITION FOR WRIT OF CERTIORARI

37. Plaintiffs repeat and incorporate the above paragraphs, allegations, and exhibits as if fully set forth herein.

38. Pursuant to Tenn. Code Ann. § 27-8-101 *et seq.* and § 27-9-101 *et seq.*, this Court is authorized to review any final order or judgment of any board, commission, inferior tribunal, or officer functioning under the laws of this state through a writ of certiorari.

39. To the extent that the Loudon County Commission's actions on September 7, 2021 regarding the rezoning request were invalid, arbitrary, and capricious administrative actions, Plaintiffs proper remedy is a common law writ of certiorari pursuant to Tenn. Code Ann. § 27-8-101 *et seq.* or § 27-9-101 *et seq.*. *See McCallen*, 786 S.W.2d at 639 (quoting *Fallin v. Knox Cnty. Bd. of Commr's*, 656 S.W.2d 338, 342 (Tenn. 1983)).

40. Plaintiffs ask this Court to find that the Loudon County Commission abused its discretion and acted illegally, arbitrarily, and capriciously in their subsequent 5-5 vote on the "motion to approve the rezoning amending zoning map of Loudon County, Tennessee" by failing to adhere to the Loudon County Procedural Rules and Robert's Rules of Order.

41. In the alternative, Plaintiffs ask this Court to find that the Loudon County Commission abused its discretion and acted illegally, arbitrarily, and capriciously in their

apparent denial of Plaintiffs rezoning request as Plaintiffs met all of the requirements for rezoning and the Regional Planning Commission unanimously approved their request.

42. This is the first application for writ of certiorari, judicial review, or other extraordinary relief in this case and no judge has refused the relief requested herein.

COUNT III – VIOLATION OF OPEN MEETINGS ACT

43. Plaintiffs repeat and incorporate the above paragraphs, allegations, and exhibits as if fully set forth herein.

44. Defendant Loudon County Commission is considered a “governing body” under the Tenn. Code Ann. § 8-44-102(b)(1)(A) as the public legislative body for Loudon County, Tennessee.

45. On information and belief, two or more members of the Loudon County Commission met or communicated privately to deliberate toward a decision on Plaintiffs’ rezoning request in circumvention of the spirit or requirements of the Tennessee Open Meetings Act codified at Tenn. Code Ann. § 8-44-101 *et seq.*

46. As a result, the Loudon County Commission’s decision regarding Plaintiffs’ rezoning request was not open to the public at all times, and their vote on Plaintiffs’ rezoning request is null and void under Tenn. Code Ann. § 8-44-105.

PRAYERS FOR RELIEF


47. Plaintiffs repeat and incorporate the above paragraphs, allegations, and exhibits as if fully set forth herein.

48. Plaintiffs pray as follows:

- a. That this Court issue process against Defendants;
- b. That this Court issue the attached Writ of Certiorari to the county attorney for Loudon County, Tennessee;
- c. That this Court declare that the Loudon County Commission approved Plaintiffs' rezoning request by a 6-4 vote of "no" on the initial "motion to deny the rezoning request" and abused their discretion and acted illegally, arbitrarily, and capriciously in their subsequent 5-5 vote on the "motion to approve the rezoning amending zoning map of Loudon County, Tennessee" and that this motion is void due to the commission's failure to adhere to the Loudon County Procedural Rules and Robert's Rules of Order; or in the alternative, that the Loudon County Commission abused its discretion and acted illegally, arbitrarily, and capriciously in their apparent denial of Plaintiffs' rezoning request as Plaintiffs met all of the requirements for rezoning and the Regional Planning Commission unanimously approved their request;
- d. That this Court declare the actions taken by the Loudon County Commission void and of no effect pursuant to Tenn. Code Ann. § 8-44-105;
- e. That Plaintiffs receive such further and other relief to which they may be entitled by law.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request this Court enter a judgment against the Defendants granting the relief requested, as well as costs of the cause to Defendants and all of the relief to which is just and determinable by this Honorable Court.

Respectfully submitted this 1st day of October, 2021.


Ellis "Sandy" Sharp, BPR No.: 5070
sandy@stokeswilliams.com

STOKES, WILLIAMS, SHARP, COPE & MANN
920 Volunteer Landing Lane, Suite 100
Knoxville, Tn 37915
865-544-3833


Attorney for Plaintiffs, John Cook
Cook Brothers Construction, LLC

COST BOND

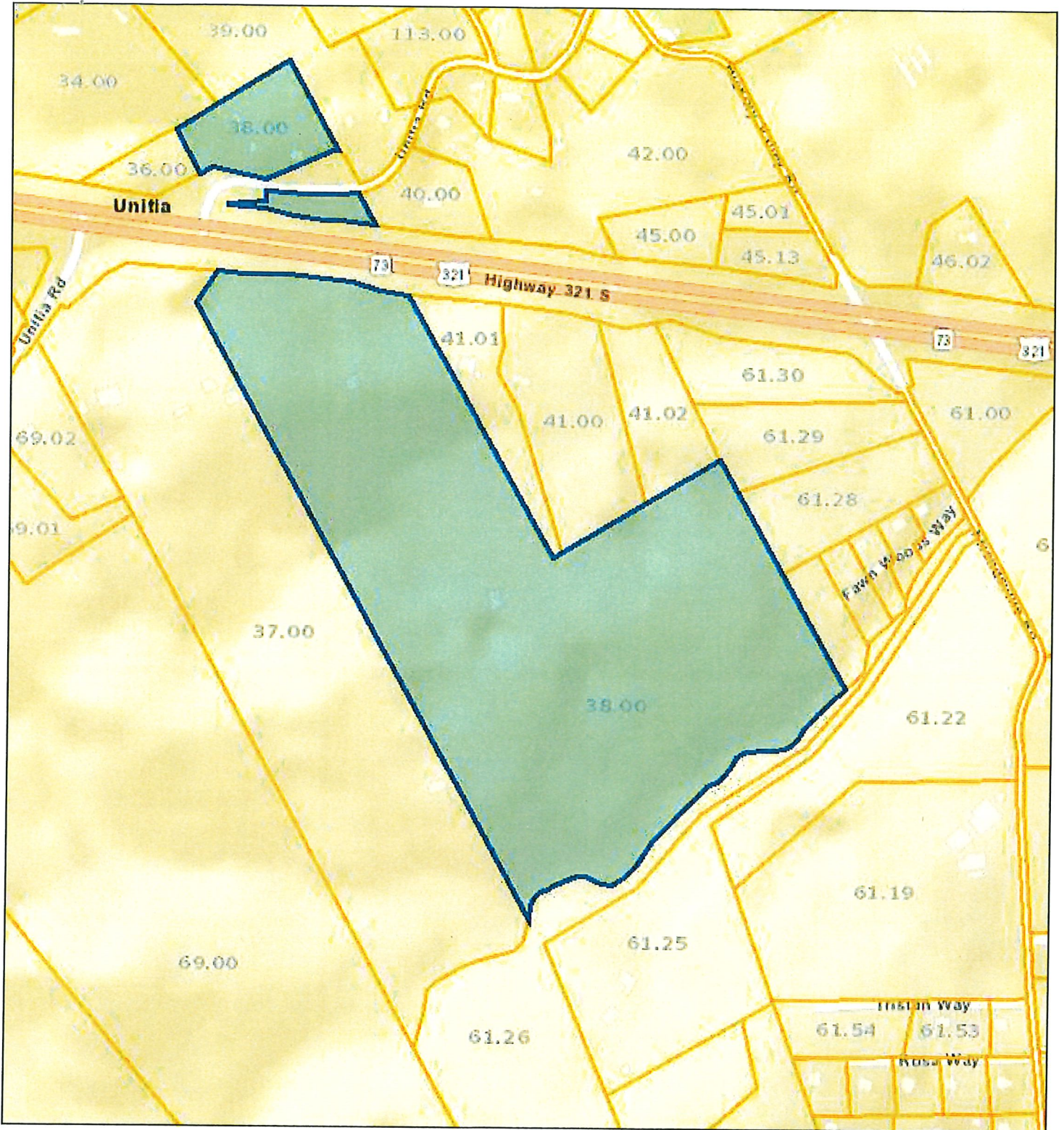
We acknowledge ourselves as surety for all costs, taxes and damages in this matter in accordance with Tenn. Code Ann. § 20-12-120.

STOKES, WILLIAMS, SHARP, COPE & MANN PC

By:


Ellis "Sandy" Sharp, BPR No.: 5070

Loudon County - Parcel: 044 038.00



Date: October 1, 2021

County: Loudon

Owner: RUSSELL JIM ETUX TAMMY

Address: UNITIA RD 3001

Parcel Number: 044 038.00

Deeded Acreage: 85.8

Calculated Acreage: 0

Date of Imagery: 2019

FILED 1 DAY OF Oct 2021

AT 12:06 P M

Lisa Miles
LOUDON CO. CLERK & MASTER *LM*



TN Comptroller - DPA
Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community
State of Tennessee, Comptroller of the Treasury, Department of Property

The property lines are compiled from information maintained by your local county Assessor's office but are not conclusive evidence of property ownership in any court of law.