

STATE OF NORTH CAROLINA **FILED** IN THE GENERAL COURT OF JUSTICE

COUNTY OF CASWELL 2022 MAR 18 P 1:20 FILE NO. 21 CVS 125

CASWELL CO., C.S.C.
CAROLINA SUNROCK LLC;
CASWELL PROPERTIES LLC; and
PROSPECT HILL FARMS, LLC,

Plaintiffs,

v.

**ORDER GRANTING NAACP
DEFENDANTS' MOTION TO
DISMISS**

EDWARD J. DOUGHERTY; DAWN
LEITH-DOUGHERTY; JAMES
WILKINSON; SHEILA WILKINSON;
SUSAN HESTER; ED WILLIAMS;
ROBERT ANDERSON; JACKIE
TICE; THERESA NEWMAN;
CHARLES CLOTFELTER;
RANDOLPH HESTER; MARCIA
McNALLY; PATRICK TIGHE;
ELIZABETH NORMAN; THOMAS
NICHOLAIS; HOWARD DuBOSE,
JR.; TIM SOLOMAN; GELNDA
SOLOMAN; SUSAN CHANDLER;
PETER CHRISTOPHER; KAREN
MEEK; MARK WREN; STEPHEN
PIETSCH; SYLVIA HEDRICK;
STEPHEN C. LONG; PATRICIA
CARVER; CASEY KEMPER;
ASHLEY KEMPER; JOHN T.
CARVER, JR.; VIRGINIA PIETSCH;
BEN SOLOMAN; MATT SOLOMAN;
CHRISTOPHER WOERDEMAN;
JULIANNA WOERDEMAN; LYDIA
JERNIGAN; GARRY MASSEY;
HERMAN ROBERTS; JEAN
ROBERTS; SYLVIA SAUNDERS;
JENNIFER CONNOR; JOHN
CONNOR; HOMER SAUNDERS;
KIM MERRITT; JUNIOR MERRITT;
DONNA HUDSON; TIMOTHY W.
HUDSON; EVANGELINE VINSON
GAUDETTE; SHARON VINSON;

RONNIE VINSON; ARTHUR W.
MILLER, JR.; JOYCE G. MILLER;
ANITA FOUST; BYRON
SHOFFNER; and THOMAS DAY-
CASWELL HOLT BRANCH, NAACP,

Defendants.

THIS MATTER came on to be heard before the undersigned on Defendants Byron Shoffner, Anita Foust, and the Thomas Day-Caswell Holt Branch of the NAACP's (the "NAACP Defendants") motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6). Upon considering the pleadings, parties' briefs and submitted materials, arguments, pertinent case law, and the record established thus far, the Court finds and concludes as follows:

FINDINGS OF FACT

1. In 2018, Plaintiff Sunrock identified two parcels of land in Caswell County as potential sites for a rock quarry and asphalt and concrete plants.
2. The Caswell County community, based on concerns about noise, pollution, and effects on ground water, responded to these activities.
3. On January 6, 2020, Caswell County passed a one-year moratorium on the development of polluting industries within Caswell County.
4. On January 4, 2021, this moratorium was extended by 6 months.
5. Also in January of 2021, Caswell County issued certain permits to Plaintiff Sunrock for development of the two identified sites.

6. In February of 2021, members of the community began submitting letters to the Caswell County Watershed Review Board protesting the issuance of these permits. In these letters, the community members argued that the issuance of the permits ran counter to the moratorium.
7. Also in February of 2021, the NAACP Defendants submitted emails to the Caswell County Planning Department appealing the grant of the permits.
8. The matter is currently on appeal under N.C. Gen. Stat. § 160D-405. The Caswell County Watershed Review Board has indicated that it intends to conduct a quasi-judicial hearing during which it will receive evidence and determine whether the Watershed Administrator properly issued the permits.
9. On October 4, 2021, Plaintiff Sunrock filed the present lawsuit, requesting a Declaratory Judgment with respect to their rights.

CONCLUSIONS OF LAW

1. For a court to have subject matter jurisdiction to issue a declaratory judgment, "an actual controversy must exist between the parties at the time the pleading requesting declaratory relief is filed." *Sharpe v. Park Newspapers of Lumberton, Inc.*, 317 N.C. 579, 584, 347 S.E.2d 25, 29 (1986).
2. A request for declaratory relief will be dismissed under Rule 12(b)(6) when "the complaint does not allege an actual genuine existing controversy" *Gaston Bd. Of Realtors, Inc. v. Harrison*, 311 N.C. 230, 234-35, 316 S.E.2d 59, 62 (1984). For there to be a genuine controversy, litigation must appear

unavoidable; “[m]ere apprehension or the mere threat of an action or a suit is not enough.” *Id.* at 234, 326 S.E.2d 62.

3. Standing “is a necessary prerequisite to a court’s proper exercise of subject matter jurisdiction.” *Aubin v. Susi*, 149 N.C. App. 320, 324, 560 S.E.2d 875, 878 (2002).
4. N.C. Gen. Stat. § 160D-1403.1 establishes procedures for disputes regarding land development. This statute confers standing only upon a person who (1) has a property interest in the subject matter of a final and binding decision made by an administrative official charged with applying or enforcing a land development regulation, (2) was a development permit applicant before the decision-making board whose decision is being challenged, or (3) was a development permit applicant who is aggrieved by a final and binding decision of an administrative official charged with applying or enforcing a land development regulation. N.C.G.S. § 160D-1403.1(b). Plaintiffs are not conferred standing by any of these provisions.
5. N.C. Gen. Stat. § 160D-1401 dictates that the local development ordinance administrators, and not individual citizens, are the proper defendants to these types of disputes.
6. If a ruling adverse to Plaintiffs is issued, it will be issued by the Watershed Review Board, not by the NAACP Defendants. The declaratory relief sought will not require the NAACP Defendants to be named defendants. In fact,

Plaintiffs alleged vested rights are against Caswell County, not against the NAACP Defendants.

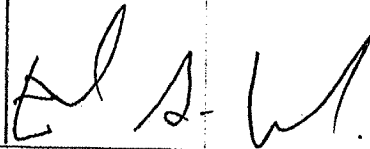
7. This lawsuit asks the Court to prevent the NAACP Defendants from making certain legal arguments during a hearing which has not yet occurred, and may not occur at all. As such, there is no present controversy between Plaintiffs and NAACP Defendants, making this lawsuit premature.

8. The United States Constitution and the North Carolina Constitution protect an individual's constitutional right to petition their elected official for redress of grievances. *Cheryl Lloyd Humphrey Inv. Co., LLC v. Resco Prods.*, 337 N.C. 384, 384-85, 858 S.E.2d 795, 797 (2021). This Court will not foreclose NAACP Defendants' legal arguments before the time has arisen to make them. That will only serve to dissuade petition activity, which is constitutionally protected.

It is therefore ORDERED, ADJUDGED, and DECREED that:

9. Defendants' Motion to Dismiss is GRANTED.

This the 18 day of March, 2022.



Edwin G. Wilson, Superior Court Judge