VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Thursday the 20th day of May, 2021.

Present: All the Justices

Dulles Professional Center Condominium
Unit Owners Association, et al., Appellants,

against Record No. 200105
Circuit Court No. CL-2018-11870

Board of Supervisors of Fairfax County, et al., Appellees.

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

Dulles Professional Center Condominium is an office condominium located on 2.6 acres of land in Fairfax County (the "Dulles Property"), near the site for the Dulles Metro Station. Section 2.1 of the Dulles Professional Center Condominium Bylaws (the "Bylaws") establishes the Dulles Professional Center Condominium Unit Owners Association (the "Association") as the unit owners association. The unit owners include, Spectrum Innovative Properties, LLC; McWhorter, LLC; and Mulpuri Properties LLC (collectively the "Unit Owners").

In 2017, the Fairfax County Board of Supervisors (the "County") approved an application from JLB Dulles Tech LLC ("JLB") to build apartments on a property which partially abuts the Dulles Property. As part of the application, the County approved the construction of two lanes of a contemplated four-lane extension of McNair Farms Drive ("the Extension") (collectively the

"2017 Approval"). The Association did not appeal the 2017 Approval.

Stanley Martin Companies, LLC ("SM") subsequently entered into a contract with JLB to purchase the subject property. In 2018, the County approved SM's application to build townhouses and the Extension (the "2018 Approval"). The application indicated that SM also wished to retain the option to build apartments.

The Association and the Unit Owners (collectively "Dulles") appealed the 2018 Approval to the Circuit Court of Fairfax County. JLB and SM (collectively, the "Developers") were subsequently added to Dulles's complaint as necessary parties. In the complaint, Dulles alleged that it "was made clear" during certain planning commission hearings and discussions with the County that two of the four lanes of the Extension would have to be built on the Dulles Property at Dulles's or its successors' expense if the Dulles Property was ever redeveloped. Dulles averred that it was likely it would need to redevelop or sell the property for redevelopment, given the growth in the area due to the incoming metro station. It claimed that the Extension would take approximately 12 percent of its property. Dulles further alleged that approval of the Extension caused an immediate $3.3 million diminution in the property's value due to the fact that it would have to inform prospective buyers about the Extension and its possible cost, or alternatively, that the County would take such property by eminent domain.

In Count I of its complaint, Dulles alleged that the County acted arbitrarily and capriciously in the 2018 Approval by separately calculating the stormwater runoff from the townhomes and the Extension, in violation of the Stormwater Management Act (the "SWMA"), Code § 62.1-44.15 et seq., and the Fairfax County Stormwater Management Ordinance (the ("SWMO"). In Count II, Dulles alleged that the County had failed to comply with Section 16-

101(4) of the Fairfax County Zoning Ordinance, which provides that "planned development shall be designed to prevent substantial injury to the use and value of existing surrounding developments." Dulles's complaint specifically sought to have the 2018 Approval vacated.

The County and the Developers demurred. The circuit court sustained the demurrers with regard to Count I, finding that Dulles "failed to offer any factual background . . . that the proposed stormwater management plan on the property adjacent to theirs would cause sufficient noise, particulate matter, pollution off-site, or some other harm, so as to inadequately protect their property rights." The circuit court did, however, grant Dulles leave to amend its complaint with regard to Count I. With regard to Count II, the circuit court overruled the demurrer.

Dulles filed an amended complaint, adding 22 additional paragraphs that specifically addressed the alleged violations of the SWMA and the SWMO. The County and the Developers demurred again. The circuit court sustained the demurrer as to Count I, determining that Dulles's injuries related only to the construction of the Extension "and are extraneous to [the County's] approval of the stormwater treatment."

The County and the Developers also filed pleas in bar as to Count II, asserting that the Association lacked standing to bring the suit because, under Code §§ 55-79.53(A) and -79.80(B) and Section 3.10 of the Bylaws, only the Board could bring the action. The County and the Developers further argued that the Unit Owners lacked standing because the complaint only alleged harms related to the common elements. They also again raised the issue of justiciability, noting that the Extension could be built under the 2017 Approval, which Dulles had not challenged and, therefore, the circuit court could not provide the relief that Dulles sought.

After hearing argument on the matter, the circuit court explained that Section 3.10 of the Bylaws required that the Board bring any claims on behalf of the Association. The circuit court further ruled that the Unit Owners lacked standing because the claims concerned only common elements, which could only be pursued by the Association. As such, the circuit court sustained the pleas in bar and dismissed Count II with prejudice.

On appeal, Dulles takes issue with the circuit court's decision to sustain the demurrer to Count I, as well as its determination that the Association and the Unit Owners lack standing to bring their claims under Count II. Additionally, the County and the Developers assigned cross-error to the circuit court's denial of their demurrer to Count II, asserting that the circuit court erred in ruling that Dulles had standing to challenge the 2018 Approval. As the standing issue raised in the cross-error is ultimately dispositive of the entire case, the Court need only address that issue.

> A plaintiff has standing to institute a declaratory judgment proceeding if it has a "justiciable interest" in the subject matter of the proceeding, either in its own right or in a representative capacity. In order to have a "justiciable interest" in a proceeding, the plaintiff must demonstrate an actual controversy between the plaintiff and the defendant.

W.S. Carnes, Inc. v. Board of Supervisors, 252 Va. 377, 383 (1996) (citations omitted).

To establish the existence of an actual controversy, a complainant must allege sufficient facts to demonstrate that the complainant's "'rights will be affected by the outcome of the case.'" *Friends of the Rappahannock v. Caroline County Bd. of Supervisors*, 286 Va. 38, 46 (2013) (quoting *Charlottesville Area Fitness Club Operators Ass'n v. Albemarle County Bd. of Supervisors*, 285 Va. 87, 97-98 (2013)).

In the present case, Dulles's complaint sought to have the 2018 Approval vacated on the basis that the Extension had a significant negative effect on Dulles's property value. As the County points out, however, the Extension existed prior to the 2018 Approval. Specifically, the Extension was part of the 2017 Approval, which was unchallenged by Dulles. Thus, vacating the 2018 Approval will ultimately have no impact on Dulles's property rights.

Dulles attempts to rebut this fact by claiming that the Extension permitted under the 2017 Approval differed from the Extension permitted under the 2018 Approval. In making this argument, Dulles relies on the fact that the stormwater treatment requirements differ between the 2017 Approval and the 2018 Approval, thereby making the 2017 Approval less financially viable. Dulles's reliance on the differences between the two Approvals is misplaced. During the December 14, 2018 hearing on the County's and the Developers' original demurrer, Dulles explained the theory underlying its claim, stating "the announcement of an intent to take this – to require the plaintiffs to dedicate this property to a road and to build a road . . . results in a direct and immediate diminution in value." (JA 600). Thus, by its own admission, Dulles's alleged damages all flow from the possibility that the Extension will be built. Given that the Extension approved in the 2017 Approval is identical to the Extension approved in the 2018 Approval, it is axiomatic that the construction of the Extension under either approval would have the same effect on the Dulles Property.

As it cannot be said that the 2018 Approval resulted in any additional injuries to Dulles beyond those it had suffered as a result of the 2017 Approval, it is clear that Dulles's rights will not be affected by vacating the 2018 Approval. Thus, no actual controversy exists and, in the absence of an actual controversy between the parties, Dulles lacks a justiciable interest in

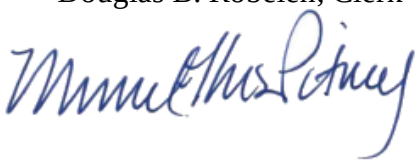
vacating the 2018 Approval. Accordingly, Dulles does not have standing to bring the present action.*

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

A Copy,

Teste:

Douglas B. Robelen, Clerk



By: Deputy Clerk

* As the Court has determined that Dulles collectively lacks standing to bring any claim seeking the vacatur of the 2018 Approval, it is readily apparent that its component entities (i.e., the Association, Board and/or the Unit Owners) would similarly lack standing to bring such a claim. Therefore, the Court does not need to address the circuit court's rulings on the pleas in bar or the demurrers. Additionally, the County's assignment of cross-error regarding the circuit court's application of *Federal Land Bank of Baltimore v. Worrell*, 170 S.E. 567 (1933), is moot.