

IN THE CIRCUIT COURT OF MORGAN COUNTY, WEST VIRGINIA

ROBERT DONADIEU, RITA DONADIEU,  
GEORGE NELSON SPARKS, PATIENCE  
T. SPARKS, DONNA FALLIN and  
MARTHA ANN MacNAMARA,

Petitioners,

v.

CIVIL ACTION NO.: 15-P-15  
JUDGE WILKES

MORGAN COUNTY PLANNING  
COMMISSION,

Respondent.

PETITIONERS' MOTION FOR STAY

COME NOW Petitioners, Robert Donadieu, Rita Donadieu, George Nelson Sparks, Patience T. Sparks, Donna Fallin and Martha Ann MacNamara, by counsel, Lawrence Schultz, BURKE SCHULTZ, HARMAN & JENKINSON, and for their Motion for Stay, state as follows:

1. Your Petitioners have become aware that site work is being performed on the subject property. (See attached photograph).
2. Counsel for the Planning Commission had previously assured undersigned counsel that no site work on the project would proceed until Improvement Location Permits were issued.
3. Had undersigned counsel been told there would be site work, Petitioners would have approached the Court earlier to seek a stay of the effect of Preliminary Plat Approval.
4. The owner's or developer's precipitous commencement of site work necessitates this Motion.

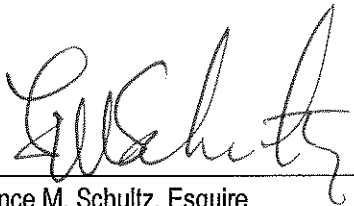
5. West Virginia Code § 8A-9-4 permits this Court to stay of work on the premises until such time as the Court has decided the case. By simply stating the Planning Commission's unlawful grant of Preliminary Plat Approval, the Court would effectively stay the work.

6. Given the serious and patent violations of Petitioners' rights evidenced in the record and the briefs already filed, there is no reason for the work to proceed at this time.

7. This is a Preliminary Plat Approval for a commercial development, in a residential neighborhood on a piece of property for which the restrictive covenants *prohibit* commercial development.

8. Your Petitioners ask that this Court simply stay the effect of the grant of Preliminary Plat Approval, which grant was illegal in any event, so that the owner and developer are under no illusions regarding whether they are permitted to go forward at this time with any work on this commercial development. The only basis upon which this work could have commenced is the Preliminary Plat Approval, and if that is stayed, the work must stop. Petitioners ask that this Court preserve the status quo.

OBERT DONADIEU, RITA DONADIEU,  
GEORGE NELSON SPARKS, PATIENCE  
T. SPARKS, DONNA FALLIN and  
MARTHA ANN MacNAMARA  
By Counsel



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Lawrence M. Schultz, Esquire  
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MORGAN COUNTY PLANNING  
COMMISSION,

Respondent.

ORDER GRANTING PETITIONERS' MOTION FOR STAY

This matter came on for a decision on the \_\_\_\_\_ day of \_\_\_\_\_, 2015;  
upon the filing of Petitioners' Motion for Stay; and upon the papers and proceedings read and had herein.

It appearing to the Court that Petitioners have shown good cause to preserve the state of affairs existing on the day Preliminary Platt Approval was granted, it is ORDERED as follows:

1. The effect of the Morgan County Planning Commission's decision to grant Preliminary Plat Approval in this matter is STAYED pending resolution of the case; and
2. To the extent the Preliminary Plat Approval granted the developer or owner the authority to perform site work pursuant to this proposed development, that authority is STAYED as a result of this Order.

The objections of Respondent are noted for the record.

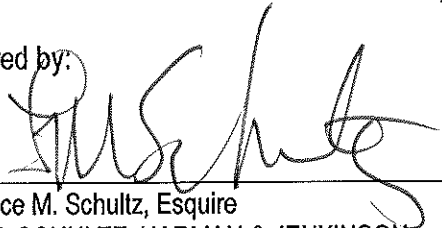
The Clerk shall enter the foregoing as of and for the day and date first written above and shall forward attested copies of this Order to Lawrence M. Schultz, Esquire, BURKE SCHULTZ, HARMAN &

JENKINSON, P. O. Box 1938, Martinsburg, WV 25402; and Richard G. Gay, Esquire, LAW OFFICE OF RICHARD GAY, LC, 31 Congress Street, Berkeley Springs, WV 25411.

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CHRISTOPHER C. WILKES, JUDGE  
MORGAN COUNTY CIRCUIT COURT  
MORGAN COUNTY, WEST VIRGINA

Prepared by:



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