

**IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS
CIVIL DIVISION**

**CHRISTINA CENTOFANTE,
ROGER HENLEY, BARBARA ANN HENLEY,
SCOTT STUBENRAUCH, CHERYL STUBENRAUCH,
STANLEY BUTSKI, NOELLE BUTSKI,
JOHN KILLINGSWORTH, CHERYL KILLINGSWORTH,
HEATH HENDERSON, MARY KATHERINE HENDERSON,
DONALD ROBERT HUDSON, BRIDGET HUDSON,
DALE McDANIEL, TONYA McDANIEL,
CLAYTON MOORE, MIRANDA MOORE,
RANDALL VAN DEN BERGHE, CYNTHIA VAN DEN BERGHE,
And PINNACLE MOUNTAIN COMMUNITY
COALITION**

PLAINTIFFS

vs.

Case No. 60CV-22-_____

**RICK FERGUSON; PARADISE VALLEY, LLC,
WATERVIEW ESTATES, LLC,
WATERVIEW MEADOWS, LLC,
WATERVIEW ESTATES PHASE III, LLC,
WATERVIEW ESTATES PHASE VI AND VII, LLC
AFF HOLDINGS, LLC, PULASKI COUNTY
PROPERTY OWNERS MULTIPURPOSE
IMPROVEMENT DISTRICT NO. 2021-2,
CAPITAL CITY PROPERTY HOLDINGS, LLC,
And PULASKI COUNTY, ARKANSAS**

DEFENDANTS

COMPLAINT

Come the Plaintiffs, Christina Centofante, Roger Henley, Barbara Ann Henley, Scott Stubenrauch, Cheryl Stubenrauch, Stanley Butski, Noelle Butski, John Killingsworth, Cheryl Killingsworth, Heath Henderson, Mary Katherine Henderson, Donald Robert Hudson, Bridget Hudson, Dale McDaniel, Tonya McDaniel, Clayton Moore, Miranda Moore, Randall Van Den Berghe, Cynthia Van Den Berghe and Pinnacle Mountain Community Coalition, and for their cause of action against the Defendants, Rick Ferguson, Paradise Valley, LLC, Waterview Estates, LLC, Waterview Meadows, LLC, Waterview Estates Phase III, LLC, Waterview Estates Phase VI And VII, LLC, AFF Holdings, LLC, the Pulaski County Property Owners Multipurpose Improvement District No. 2021-2, Capital City Property Holdings, LLC, and Pulaski County, Arkansas, state:

Nature of Complaint

1. This is a Complaint by the individual Plaintiffs named above (“the Individual Plaintiffs”) and the Pinnacle Mountain Community Coalition (“PMCC”), a not-for-profit organization, against the Defendant, Rick Ferguson (“Ferguson”) who is the founder, organizer and managing member of the defendant limited liability companies (“the LLC Defendants”) also named above as Defendants.

2. The Individual Plaintiffs are landowners in an area located in the Pinnacle Mountain area of western Pulaski County, Arkansas, in the community of Roland, Arkansas, and most of the Individual Plaintiffs live on or near Roland Cutoff Road. The PMCC is a not-for-profit organization that serves to assist and represent the residents and other landowners in the Pinnacle Mountain area of Pulaski County in matters of common interest to such residents and landowners.

3. Defendant Ferguson is a developer of real estate in Pulaski County, Arkansas, and he does so through various limited liability companies, including the LLC Defendants.

4. The LLC Defendants, acting through Defendant Ferguson, have developed, are in the process of developing, or plan to develop several residential subdivisions located in the Pinnacle Mountain area of western Pulaski County, Arkansas, on land owned by Ferguson or one of the abovenamed LLCs. One of those subdivisions currently in the early stages of development is named Paradise Valley Subdivision (formerly named Saddle Ranch Subdivision).

5. The Pinnacle Mountain area is in the foothills of the Ouachita Mountains, and the topography in the area is hilly. A number of the subdivisions are located on the tops or sides of large hills. As a result of the clearing and grading of lands

required for the development of those subdivisions, and the replacement of natural soils and plant life with concrete, asphalt and buildings, the volume of stormwater runoff from those subdivisions has increased and has been diverted, channelized, and concentrated by the developers of those subdivisions so that it has caused flooding of the properties in areas that are downgradient of the subdivisions.

6. In addition, some of the lands owned by Ferguson or his LLCs on which subdivisions have been or are being constructed, or are planned for construction, are located in the natural watershed of Lake Maumelle, a source of public drinking water for approximately 450,000 residents of central Arkansas and, therefore, highly sensitive to contamination. Pursuant to an agreement entered into in 2007 between Waterview Estates LLC and Central Arkansas Water Authority, which administers Lake Maumelle, a ditch approximately one mile long was constructed downgradient of the subdivisions in an area whose natural drainage would have been to Lake Maumelle. However, the ditch diverts stormwater runoff from the Lake Maumelle watershed to the Mill Bayou watershed in which the Plaintiffs' property and the property of the members of the PMCC is located. The stormwater diverted from the Lake Maumelle watershed by the ditch, together with stormwater that naturally occurs in the Mill Bayou watershed, enter the areas of some

Individual Plaintiffs' residences and other members of the PMCC, causing or contributing to flooding.

7. In addition, the Mill Bayou watershed is the location of the three wells from which the Maumelle Water Corporation, a public water supplier headquartered in Roland, Arkansas, obtains drinking water for approximately 1,200 households in the northwest portion of Pulaski County, Arkansas, including a portion of the Individual Plaintiffs. Maumelle Water Corporation's Well#1 is located on Roland Cutoff Road in close proximity to Mill Bayou in the area in which the effluent will be discharged. Stormwater runoff from the various subdivisions mentioned above, bearing contamination from pesticides, herbicides, fertilizers, animal wastes and other contaminants, enters Mill Bayou, a recharge area of the Quaternary Aquifer, the aquifer that is the water source for the Maumelle Water Corporation wells, potentially endangering that source of drinking water. The Defendant, Rick Ferguson formed the Defendant, Paradise Valley, LLC, the principal purpose of which is to develop a new subdivision named Paradise Valley Subdivision in the Pinnacle Mountain area, located on the south side of the Roland Cutoff Road. **(See area indicated on Exhibit 1 to the Complaint)** Paradise Valley Subdivision is now in the land preparation phase,

although it does not yet have all of the necessary permits to commence construction.

8. Paradise Valley Subdivision proposes to construct and utilize a 0.05 million gallon/day (MGD) wastewater treatment plant located on the north side of Roland Cutoff Road from the Subdivision. Wastewater would be pumped from the Subdivision, under Roland Cut-Off Road, past the properties of several of the Plaintiffs, and to the proposed wastewater treatment plant.

9. Defendants propose that the wastewater treatment plant discharge its effluent into a small, ephemeral unnamed tributary of the Mill Bayou that runs through property owned by or immediately adjacent to the properties of Individual Plaintiffs Butski, Van Den Berghe, Henderson, Henley, and Hudson (**see Exhibit No. 1 to this Complaint**), and then to Mill Bayou, which runs through property owned by Individual Plaintiffs Moore and discharges into the Arkansas River. Except for periodic storm water flow, the effluent discharge from the wastewater treatment plant would constitute the majority of flow of the unnamed tributary and of Mill Bayou, and would be stagnant at most times.

10. The financial planning documents submitted by Ferguson to the Office of Water Quality, Division of Environmental Quality, Department of Energy and Environment of the State of Arkansas, provides that some 300 – 316 residential connections will be made to the wastewater treatment plant. The 0.05 mgd capacity of the proposed wastewater treatment plant is not sufficient to handle the wastewater from that many residences, and additional treatment capacity would be required.

11. Schematics provided to the county by the developer's engineer indicate that a second wastewater treatment plant is planned to be added next to the first, and an additional 0.05 mgd maximum amount of wastewater will ultimately flow through the second plant, and an increased volume of effluent will be discharged into the unnamed tributary of Mill Bayou, adding to the concentration of sewage effluent in that unnamed tributary.

12. The development of the Paradise Valley Subdivision and additional subdivisions being constructed or planned for construction by the Defendants, will cause or contribute to unprecedented stormwater runoff and damage to Plaintiffs' properties. The discharge of wastewater effluent from the Subdivision's sewage plant will cause or contribute to contamination and degradation of the unnamed

tributary of Mill Bayou, Mill Bayou, and the Arkansas River, and cause overflow onto Plaintiffs' properties, affecting the health and safety of the Plaintiffs, their pets and livestock. The discharge of wastewater effluent from the Subdivision's sewage plant will also cause or contribute to the possible contamination of Maumelle Water Corporation's Well No. 1.

13. The Preliminary Plat for Paradise Valley Subdivision was approved by the Pulaski County Planning Board ("the Board"), an official Board and agency of Pulaski County, Arkansas. However, the Board did not follow or comply with its regulations for approval of such subdivisions as will be elaborated upon herein, and such approval was void and of no effect.

The Parties

Plaintiffs:

14. Plaintiff, Christina Centofante, is a citizen and resident of Pulaski County, Arkansas, who owns and lives on property on Roland Cutoff Road. Her property is indicated on **Exhibit 1 at Location No. 2.**

15. Plaintiffs, Roger Henley and Barbara Ann Henley, are husband and wife who are citizens and residents of Pulaski County, Arkansas, and who own and live on property on Roland Cutoff Road. Their property is indicated on **Exhibit 1 at Location No. 4.**

16. Plaintiffs, Scott Stubenrauch and Cheryl Stubenrauch, are husband and wife who are citizens and residents of Pulaski County, Arkansas, and who own and live on property on Roland Cutoff Road. Their property is indicated on **Exhibit 1 at Location No. 9.**

17. Plaintiffs, Stanley Butski and Noelle Butski, are husband and wife who are citizens and residents of Pulaski County, Arkansas, and who own and live on property on Roland Cutoff Road. Their property is indicated on **Exhibit 1 at Location No. 1.**

18. Plaintiffs, John Killingsworth and Cheryl Killingsworth, are husband and wife who are citizens and residents of Pulaski County, Arkansas, and who own and live on property on Roland Cutoff Road. Their property is indicated on **Exhibit 1 at Location No. 6.**

19. Plaintiffs, Heath Henderson and Mary Katherine Henderson, are husband and wife who are citizens and residents of Pulaski County, Arkansas, and who own and live on property on Roland Cutoff Road. Their property is indicated on **Exhibit 1 at Location No. 3.**

20. Plaintiffs, Donald Robert Hudson and Bridget Hudson, are husband and wife who are citizens and residents of Pulaski County, Arkansas, and who own and live on property on Roland Cutoff Road. Their property is indicated on **Exhibit 1 at Location No. 5.**

21. Plaintiffs, Dale McDaniel and Tonya McDaniel, are husband and wife who are citizens and residents of Pulaski County, Arkansas, and who own property just North of Roland Cutoff Road and live on Highway 300. Their properties are indicated on **Exhibit 1 at Location No. 7.**

22. Plaintiffs, Clayton Moore and Miranda Moore, are husband and wife who are citizens and residents of Pulaski County, Arkansas, and who own property North of Roland Cutoff Road and live on West Road. Their property is indicated on **Exhibit 1 at Location No. 8.**

23. Plaintiffs, Randall Van Den Berghe and Cynthia Van Den Berghe are husband and wife who are citizens and residents of Pulaski County, Arkansas, and

who own and live on property on Roland Cutoff Road. Their property is indicated on **Exhibit 1 at Location No. 10.**

24. Plaintiff, Pinnacle Mountain Community Coalition (“PMCC”), is a not-for-profit organization. The purpose of PMCC is to assist and represent the residents and other landowners in the Pinnacle Mountain area of Pulaski County in matters of common interest to such residents and landowners.

Defendants:

25. Defendant, Rick Ferguson (“Ferguson”), is an individual citizen and resident of Pulaski County, Arkansas.

26. Defendant, Waterview Estates LLC (“Waterview Estates”), is an Arkansas limited liability company with its principal office and place of business in Pulaski County, Arkansas. Agent for service of Waterview I is Rick Ferguson, and the principal address of Waterview Estates is 11324 Arcade Drive – Suite 12, Little Rock, AR 72221.

27. Defendant, Waterview Estates Phase III (“Waterview III”), is an Arkansas limited liability company with its principal office and place of business in Pulaski County, Arkansas. Agent for service of Waterview I is Price Gardner, and the

principal address of Waterview Estates is 11324 Arcade Drive – Suite 12, Little Rock, AR 72221.

28. Defendant, Waterview Estates Phase VI and VII, LLC (“Waterview VI/VII”) is an Arkansas limited liability company with its principal office and place of business in Pulaski County, Arkansas. Agent for service of Waterview VI/VII is Newland & Associates, PLLC, and the principal address of said agent is 2228 Cottondale Lane – Suite 220, Little Rock, AR 72202.

29. Defendant, Paradise Valley LLC (“Paradise Valley”), is an Arkansas limited liability company with its principal office and place of business in Pulaski County, Arkansas. Agent for service of Paradise Valley is Newland & Associates, PLLC, and the principal address of said agent is 2228 Cottondale Lane – Suite 220, Little Rock, AR 72202.

30. Defendant, AFF Holdings, LLC (“AFF”), is an Arkansas limited liability company with its principal office and place of business in Pulaski County, Arkansas. Agent for service of AFF is Price Gardner, and the principal address of said agent is 400 West Capitol Ave. – Suite 2000, Little Rock, AR 72201. Rick Ferguson is listed as the Manager of AFF.

31. Defendant, Pulaski County Property Owners Multipurpose Improvement District No. 2021-2, is an Arkansas improvement district formed and organized pursuant to Arkansas Code Ann. §14-93-106 and Order #2022-17 of the County Court of Pulaski County, Arkansas filed January 12, 2022, with its principal office and place of business in Pulaski County, Arkansas. Rick Ferguson, Brock Ferguson and German Jimenez are the Commissioners of the Improvement District. Pursuant to said Order #2022-17, the District is responsible for grading and draining the Paradise Valley Subdivision, and for constructing and maintaining a wastewater treatment plant for the Subdivision.

32. Defendant, Capital City Property Holdings, LLC (“CCPH”) is an Arkansas limited liability company with its principal office and place of business in Pulaski County, Arkansas. Agent for service of CCPH is Newland & Associates, PLLC, and the principal address of said agent is 2228 Cottondale Lane – Suite 220, Little Rock, AR 72202.

33. Defendant, Pulaski County, Arkansas (“the County”) is a governmental subdivision of the State of Arkansas, with authority under and by virtue of the statutes of the State of Arkansas to exercise control over and regulate development of lands outside of municipal boundaries but within the boundaries of the county.

Such regulation and control is exercised on behalf of Pulaski County by the Pulaski County Planning Commission, an agency of Pulaski County, Arkansas. References to the County herein include the Pulaski County Planning Commission.

Jurisdiction and Venue

34. This Court has jurisdiction of the parties to this case pursuant to Arkansas Code Ann. § 16-13-201.

35. This Court has venue of this case pursuant to Arkansas Code Ann. § 16-60-101.

Factual Background

36. The Plaintiffs reallege and incorporate herein all allegations contained in the preceding paragraphs.

37. The Individual Plaintiffs are owners of and reside on real property located on or in close proximity to Roland Cut-off Road between Arkansas Highway 10 and the community of Roland, Arkansas in Pulaski County. A map showing the location of the Individual Plaintiffs' ten (10) properties is attached to this Complaint as **Exhibit No. 1**.

38. An area of real property consisting of approximately 20 acres, more or less, owned by Paradise Valley, LLC is located adjacent to the south side of Roland Cut-Off Road and also adjacent to or in the immediate vicinity of the real property owned by a portion of the Individual Plaintiffs, and is the area proposed by Paradise Valley and Ferguson to be developed as the first phase of a subdivision of approximately 76 residences to be known as Paradise Valley Subdivision. The location of the 20 acres owned by Paradise Valley LLC is also shown on the map attached hereto as **Exhibit No. 1** to this Complaint.

39. An area of real property consisting of approximately 30 acres, more or less, owned by Capital City Property Holdings LLC is located north of Roland Cut-Off Road across from Paradise Valley LLC & Waterview Meadows LLC properties, and also adjacent to or in the immediate vicinity of real property owned by some of the Individual Plaintiffs, and is the area proposed by Paradise Valley and Ferguson to be the location of the Paradise Valley Subdivision's wastewater treatment plants. **(See Exhibit No. 1 to this Complaint)**

The Pulaski County Planning Board's Approval Of The Paradise Valley Subdivision's Preliminary Plat is Void

40. Paradise Valley LLC proposes to develop the first phase of a housing subdivision on the 20 acres it owns, such development to be known as "Paradise Valley Subdivision," (herein "the Subdivision"). The Subdivision would consist of approximately 76 lots. The Subdivision has already commenced development of the site by clearing trees and other vegetation and grading the property, which development is in violation of the rules and regulations of the Pulaski County Subdivision and Development Code ("the Code") adopted by the Pulaski County Quorum Court pursuant to Arkansas Code Ann. §14-17-201 *et seq.*

41. Chapter 3, Section 3.5.4. of the Code states:

Subsequent to approval of the major subdivision Preliminary Plat by the Pulaski County Planning Board, the Director of the Department of Planning and Development or their designee shall sign to certify the submitted plat *if the applicant has met all requirements and conditions of the Pulaski County Planning Board* and the construction of the subdivision may commence. (Italics provided)

42. Chapter 1, Section 1.4.B. of the Code also provides:

No subdivider within the unincorporated portion of Pulaski County shall proceed with any construction or

work on the proposed subdivision, including grading, clearing, or other ground preparations, before obtaining Preliminary Plat approval, and shall not convey title to any lot or lots before obtaining from the Pulaski County Planning Board Final Plat approval and acceptance of the plat. (Italics provided)

43. The 20 acres on which the Subdivision is proposed to be located was, during the years 2018 to 2021, also proposed as a 76-lot development named Saddle Ranch Subdivision, and plans were submitted by the Defendant Ferguson, the proposed developer of Saddle Ranch Subdivision, or by his agents or contractors, to the Arkansas Department of Environmental Quality (ADEQ), and to the Arkansas Department of Health (“ADH”), for permits for a wastewater treatment system for Saddle Ranch Subdivision under which wastewater generated by that Subdivision would be pumped to an existing wastewater treatment system of Waterview Estates, a development owned by Defendant Waterview (which, in turn, is owned by Defendant Ferguson), located a distance from the area occupied by Plaintiffs and the 20 acres proposed for the Subdivision. The Waterview system had an existing ADEQ-issued permit for discharge of treated wastewater.

44. Plans for the development of Saddle Ranch Subdivision, including the proposed disposal of wastewater from that Subdivision by pumping to the Waterview Estates wastewater treatment plant, were submitted to and approved by ADH in 2018. The ADH approval was subject to the condition that the plans were implemented and constructed within one (1) year of the date of approval. However, those plans were not implemented within that period of time.

45. On February 23, 2021, Defendant Ferguson submitted a proposed Preliminary Plat to the Pulaski County Planning Board for approval as the Paradise Valley Subdivision (aka “Saddle Ranch”), but failed to include the additional 30 acre property essential to the subdivision as the site location of the wastewater treatment plant across and adjacent to Roland Cutoff Road. In addition, other information required by the Code was not included in the Preliminary Plat application package. See the Pulaski County Preliminary Plat Checklist attached as **Exhibit No. 2** to this Complaint noting the absence of a Proposed Bill of Assurance, provisions for sewage disposal, drainage and flood control, letters of approval from fire departments, utilities, and other required information.

46. Notwithstanding the absence of vital information relative to the proposed Paradise Valley Subdivision project, on February 23, 2021, the Board approved the Plat application in violation of Chapter 3, Section 3.5.4. and Section 3.6 of the Code.

47. Also in late February, 2021 following the preliminary plat approval by the Board for Paradise Valley, Defendant Ferguson resubmitted the original Saddle Ranch Subdivision plans to the ADH for an updated approval, and represented that no changes had been made to the design or other plans for the Subdivision. The plans that were resubmitted to ADH showed that the wastewater from the Subdivision would be pumped to the Waterview wastewater treatment plant, as originally proposed in 2018, and failed to include the proposed wastewater treatment plant on the 30 acres on the north side of Roland Cut-Off Road. Based upon such representations by Defendant Ferguson, ADH updated the approval for the Saddle Ranch wastewater disposal system in May 2021.

48. However, in July 2021, AHD was notified by ADEQ that a new development named Paradise Valley Subdivision was the same development known as Saddle Ranch, and that the wastewater treatment plan for the Subdivision had been modified from that of connecting with the Waterview I treatment plant, to

a package treatment plant to be located across Roland Cut-Off Road from the Subdivision that would discharge to a tributary of Mill Bayou.

49. ADH thereupon notified the developers that they would be required to reapply for approval of the new proposed wastewater treatment system. Such reapplication was made, and on December 17, 2021, ADH issued an approval letter with conditions.

50. On or about May 28, 2021, ADEQ received a Permit Transfer Request from Defendant Rick Ferguson, proposing to change the facility name of the Saddle Ranch wastewater permit from Saddle Ranch Subdivision WWT [wastewater treatment] to Paradise Subdivision WWT.

51. On or about November 23, 2021, ADEQ received a second Permit Transfer Request from Defendant Rick Ferguson, proposing to change the permittee of the Paradise Valley Subdivision WWT from Southwest Equity Investments to the Pulaski County Property Owners Multipurpose Improvement District No. 2021-2 (“the Improvement District”), Defendant herein, and the facility name to Paradise Valley Subdivision WWT.

52. ADEQ issued a letter to the developer on January 6, 2022 enumerating discrepancies in the application to be resolved before the National Pollutant Discharge Elimination System (“NPDES”) permit could be processed. Because of such discrepancies mentioned in the letter, a new 30-day public comment period was opened on March 6, 2022. Public notice of the application was issued, and a draft permit issued by ADEQ for public comment. Following a 30-day public comment period, a public hearing was held on May 18, 2022 and comments have been received on the application and draft permit which are currently under consideration by ADEQ.

53. Notwithstanding that no permit has been issued by ADEQ for construction and operation of the proposed Paradise Valley Subdivision wastewater treatment plant, and notwithstanding the absence of other critical information from the Preliminary Plat documentation that the Pulaski County Planning Board needed to fully evaluate the merits of the application, that Board approved the Preliminary Plat of Paradise Valley Subdivision on February 23, 2021 and the Director of DP&D signed and certified the preliminary plat on December 21, 2021, contrary to the rules and regulations governing the approval of preliminary plats of proposed subdivisions. As a result, the approval of the Paradise Valley Subdivision

Preliminary Plat was *ultra vires*, and therefore void and of no effect. The Preliminary Plat application must be resubmitted to the Board by the Defendant-developers of Paradise Valley Subdivision.

Flooding Caused By Defendants' Developments

54. Further, the Defendants Waterview Estates and Waterview Meadows own real property that consists of a drainage area of approximately 356 acres, more or less, most of which is locate south and up-gradient of the proposed Paradise Valley Subdivision property. Runoff from that drainage area runs downgradient from Waterview Estates, crosses the property owned by Waterview Meadows and Paradise Valley from the south to the north, where a portion of the Individual Plaintiffs' property is located south of Roland Cut-Off Road, and then crosses under and over Roland Cut-Off Road, and onto other property owned by Individual Plaintiffs located north of Roland Cut-Off Road.

55. The flooding described in the preceding paragraph inundates the properties of a portion the Individual Plaintiffs and that of other members of the Pinnacle Mountain Community Coalition ("PMCC"), and causes or threatens to cause damages to the houses, shops, barns, sheds, equipment, fixtures, and other

improvements to the real estate and to the personal property of such Individual Plaintiffs and other members of the PMCC.

56. In addition to the diversion of the flow of water by the Defendants from the above-described 356 acres, more or less, from the Defendants Waterview Estates and Waterview Meadows, the Defendants Ferguson and Waterview Estates have constructed a stormwater collection and diversion ditch (“the Ditch”) on property located in the Lake Maumelle watershed (which would not normally drain toward the Individual Plaintiffs’ Property) pursuant to an agreement negotiated between those Defendants with the Central Arkansas Water authority.

57. The Ditch, which is approximately one mile long, diverts stormwater draining from Defendant Ferguson’s Waterview Subdivisions in the Lake Maumelle watershed to the Mill Bayou watershed in which the Individual Plaintiffs’ properties are located. Such diversion ditch was negotiated in order to allow Defendant Ferguson and the Defendant LLCs owned by Ferguson to construct the Waterview Subdivisions in the Lake Maumelle Watershed by reducing the potential for discharging contaminated stormwater into Lake Maumelle, the major source of drinking water for central Arkansas.

58. The diversion of stormwater from the Lake Maumelle watershed, through the diversion ditch, into the Mill Bayou watershed containing the property owned and occupied by a portion of the Individual Plaintiffs and other members of the PMCC, adds significantly to the volume of water that enters the Mill Bayou watershed, increasing the probability of flooding of properties of the Individual Plaintiffs and other members of the PMCC, adding and contributing to damages to the houses, shops, barns, sheds, equipment, fixtures, and other improvements to the real estate and to the personal property of the Individual Plaintiffs and other members of the PMCC.

59. The flow of water by the Defendants from the above described 356 acres, more or less, owned by the Defendants Waterview Estates and Waterview Meadows, in conjunction with the flow of water from the diversion of stormwater from the Lake Maumelle watershed through the diversion ditch, also overflows Roland Cut-Off Road, which is a main artery for vehicular traffic between northwest Pulaski County and the metropolitan Little Rock area, thereby interfering with the ability of persons to safely travel to and from both areas during rainfall events.

60. Further, preliminary surveys and drawings were prepared in 2021 for Paradise Valley Subdivision containing a large stormwater detention pond that would be placed on the northeast border of Paradise Valley Subdivision adjacent to Roland Cut-Off Road that would assist in slowing and controlling stormwaters crossing that Subdivision before reaching Roland Cut-Off Road. No such feature has been constructed, and subsequent drawings for the Subdivision do not contain the detention pond, but a “recreational area” instead. Stormwater detention ponds are generally-accepted and frequently used as means of controlling the volume and velocity of stormwater, and are considered prudent stormwater management devices.

CLAIMS

Count 1. PUBLIC NUISANCE

61. The allegations contained in the paragraphs above are incorporated by reference as if set out in full.

62. Nuisance is defined as conduct by one landowner which unreasonably interferes with the use and enjoyment of the lands of another and includes conduct on property which disturbs the peaceful, quiet, and undisturbed use and enjoyment of nearby property. *Milligan v. General Oil Co.*, 293 Ark. 401, 738 S.W.2d 404 (1987); *City of Newport v. Emery et al.*, 262 Ark. 591, 559 S.W.2d 707 (1977).

63. The courts will enjoin conduct that culminates in a private or public nuisance where the resulting injury to the nearby property and residents is certain, substantial and beyond speculation and conjecture. *See Higgs v. Anderson*, 14 Ark.App. 113, 685 S.W.2d 521 (1985); *Ark. Release Guidance Foundation v. Needler*, 252 Ark. 194, 477 S.W.2d 821 (1972). In order to constitute a nuisance, the intrusion must result in physical harm (as distinguished from unfounded fear of harm) which must be proven to be certain, substantial, and beyond speculation and conjecture. *Miller v. Jasinski*, 17 Ark. App. 131, 705 S.W.2d 442 (1986). The distinction between private and public nuisance is simply the extent of the injury, *i.e.* the number of persons suffering the effects of the nuisance. *Arkansas Release Guidance Foundation v. Needler*, 252 Ark. 194, 477 S.W.2d 821 (1972).

64. The stormwater runoff that is channeled to and released from the Defendants' properties into the downgradient area occupied by Individual Plaintiffs and their properties and other persons and their property who are associated with the PMCC, and the adverse consequences that the volume and velocity of such stormwater runoff causes to the persons and property of Individual Plaintiffs and other members of the PMCC through flooding of their properties constitutes an unreasonable interference with Individual Plaintiffs' and other owners' use and enjoyment of their property that is certain, substantial and beyond speculation and conjecture; creates a hazard to their health and welfare; diminishes the utility, value and function of their property for many purposes.

65. The actions of Defendants herein in their design, construction, operation, maintenance and monitoring of their stormwater discharge, and the resulting flooding of such stormwaters onto the properties of Individual Plaintiffs, affects a significant number of persons in the geographic area described above, and has created and continues to create a public nuisance, all to the detriment of each of the plaintiffs individually and all persons who are members of the PMCC.

66. The actions of Defendants described above affects not only persons who reside in the geographic area described above, but also affects and endangers the safety and health of members of the general public using the Roland Cut-Off Road, due to floodwater overtopping of that Road.

67. An injunction should be issued by the Court to the Defendants ordering and directing the Defendants to (i) obtain a study and analysis by a reputable firm (to be approved by the Court) with expertise in hydrology of surface waters; and (ii) obtain recommendations regarding measures that should be taken to reduce or minimize the flow of stormwater discharge from the Defendants' property to the area in which Plaintiffs' properties are located.

68. Upon receipt of such study/analysis and recommendations, the Court should conduct a hearing thereon, and any other proposals on the subject from credible sources; and (iv) order Defendants to implement at its expense a plan approved by the Court for such reduction or minimization of stormwater discharge.

Count 2.
PRIVATE NUISANCE

69. The allegations contained in the paragraphs above are incorporated by reference as if set out in full.

70. The conduct by the Defendants in directing stormwater flows to the properties of Individual Plaintiffs and other members of the PMCC as described above, unreasonably interferes with the peaceful, quiet, and undisturbed use and enjoyment of their lands by Individual Plaintiffs and other members of the PMCC.

71. An injunction should be issued by the Court to the Defendants ordering and directing the Defendants to (i) obtain a study and analysis by a reputable firm (to be approved by the Court) with expertise in hydrology of surface waters; and (ii) obtain recommendations regarding measures that should be taken to reduce or minimize the flow of stormwater discharge from the Defendants' property to the area in which Plaintiffs' properties are located.

72. Upon receipt of such study/analysis and recommendations, the Court should conduct a hearing thereon, and any other proposals on the subject from credible sources; and (iv) order Defendants to implement at its expense a plan approved by the Court for such reduction or minimization of stormwater discharge.

Count 3.
DIVERSION OF WATER ONTO PROPERTY OF PLAINTIFFS

73. Plaintiffs reallege and incorporate herein all allegations contained in the preceding paragraphs.

74. Under the law of Arkansas, a landowner may not use or improve his land in such a way as to increase the total volume of surface water which flows from it to adjacent property, or as to discharge it or any part of it upon such property in a manner different in volume or course from its natural flow, to the substantial damage of the owner of that property.” *Dent v. Alexander*, 218 Ark. 277, 235 S.W.2d 953 (1951); *Hedger Bros. Cement and Materials, Inc. v. Stump*, 69 Ark. App. 21910 S.W.3d 926 (2000).

75. Defendants, without plaintiffs’ consent and without legal right, have, by alteration of the natural drainage of stormwater on their properties, caused and continue to cause such stormwater to be released from their properties onto the properties of Individual Plaintiffs and others who are members of PMCC, causing the damages referred to above. The unauthorized invasion by flooding of the properties of Individual Plaintiffs and other members of PMCC is contrary to Arkansas law and should be enjoined.

76. An injunction should be issued by the Court to the Defendants ordering and directing the Defendants to (i) obtain a study and analysis by a reputable firm (to be approved by the Court) with expertise in hydrology of surface waters; and (ii) obtain recommendations regarding measures that should be taken to reduce or minimize the flow of stormwater discharge from the Defendants' property to the area in which Plaintiffs' properties are located.

77. Upon receipt of such study/analysis and recommendations, the Court should conduct a hearing thereon, and any other proposals on the subject from credible sources; and (iv) order Defendants to implement at its expense a plan approved by the Court for such reduction or minimization of stormwater discharge.

COUNT 4. NEGLIGENCE

78. The allegations contained in the preceding paragraphs are incorporated herein by reference as if set out in full.

79. The stormwater that is discharged from the Defendants' upgradient property are well known to be harmful to persons and property located downgradient of the Defendants' property.

80. Defendants owed and continue to owe a duty to Plaintiffs as downgradient property owners to use ordinary care in the management, handling, storage, diversion and discharge of stormwater on or crossing their property, and to not negligently manage, handle, dispose, divert or release such stormwater so as to allow it to harm downgradient persons and their property.

81. Defendants have failed to use ordinary care in the management, handling, storage, diversion and discharge of stormwater entering or on their respective properties in the following respects:

- (a) improperly designing, constructing and managing their stormwater runoff disposal system in a manner such that they knew or should have known would cause excessive volumes and velocities of water to migrate to and adversely affect plaintiffs' persons and property;
- (b) failing to adequately monitor and prevent the releasing, discharging, and/or disposing of stormwater from Defendants' properties in volumes and velocities that they knew or should have known would cause harm to the Plaintiffs and their property;

- (c) failing to take measures to abate, remediate or otherwise prevent the aforementioned discharge of stormwater in large volumes and high velocities from the Defendants' property when they knew or should have known that such discharges would adversely affect and was adversely affecting the property of Individual Plaintiffs and that of other members of the PMCC.

82. Such acts and omissions by Defendants were and are the direct and proximate cause of damages sustained by Plaintiffs and other members of PMCC to their real and personal properties.

83. An injunction should be issued by the Court to the Defendants ordering and directing the Defendants to (i) obtain a study and analysis by a reputable firm (to be approved by the Court) with expertise in hydrology of surface waters; and (ii) obtain recommendations regarding measures that should be taken to reduce or minimize the flow of stormwater discharge from the Defendants' property to the area in which Plaintiffs' properties are located.

84. Upon receipt of such study/analysis and recommendations, the Court should conduct a hearing thereon, and any other proposals on the subject from

credible sources; and (iv) order Defendants to implement at its expense a plan approved by the Court for such reduction or minimization of stormwater discharge.

COUNT 5.
**The Approval of the Preliminary Plat of
Paradise Valley Subdivision By The
Pulaski County Planning Board Is Void**

85. The allegations contained in the preceding paragraphs are incorporated herein by reference as if set out in full.

86. “It has become axiomatic that an agency is bound by its own regulations,” *Regional Care Facilities, Inc. v. Rose Care, Inc.*, 322 Ark. 767, 912 S.W.2d 409 (1995). The decision of an administrative agency may be reversed “if the substantial rights of the petitioner have been prejudiced because the administrative findings ... are ... made upon unlawful procedure....” (*Id.*) A procedure is “unlawful” when an agency fails to follow that which it has prescribed. ... The fact that a regulation as written does not provide [the agency] a quick way to reach a desired result does not authorize it to ignore the regulation....” *Stueart v. Arkansas State Police Com'n*, 329 Ark. 469, 45 S.W.2d 377 (1997).

87. The procedures for approval of residential subdivisions, such as Paradise Valley Subdivision, and the procedures of the Pulaski County Planning Board in reviewing and taking action on applications for approval of residential subdivisions are contained in the Pulaski County Subdivision and Development Code (“the Code”), as amended (Ordinance 21-OR-19).

88. Pursuant to Section 3.5 of the Code, the procedure for approval of a “major subdivision” (i.e., a subdivision of four or more lots (Code, Ch. 2) is that the subdivider shall submit to the Department of Planning and Development (“DP&D”) an application in the form of a Preliminary Plat of the proposed subdivision and supporting documents that meet the requirements of the Code, and the Director of DP&D shall forward the application to the Pulaski County Planning Board (“the Board”). (Code, Ch. 3.5 B.1 and 2.)

89. A Preliminary Plat application is required to contain (i) a letter of request from the developer to be considered for Preliminary Plat approval, and to be placed on the agenda of the Board; (ii) plats, plans and data as specified in Section 3.6.C. Specifications, and (iii) a proposed Bill of Assurance. All of these documents are considered as part of the Preliminary Plat application.

90. Section 3.6.C Specifications include approximately 31 separate items of information or data relative to the proposed subdivision. Those items of information or data “shall” include:

- Water courses leaving the tract and the direction of flow and all water courses entering the tract with the drainage area noted above the point of entry; (Code Ch. 3.6.C.3.m.)
- Provisions for sewage disposal, drainage and flood control regardless of lot size. (Code Ch. 3.6.C.4.d.)
- Letters or certificates of approval or disapproval from the city, county, state, federal or other agencies, as well as from applicable utility companies and volunteer fire districts. Such information shall be obtained and submitted by the subdivider. (Code Ch. 3.6.C.4.e.)

91. The Pulaski County Planning Board may approve, approve with conditions, table for no longer than 60 days, deny, defer at applicant’s request, or grant variance(s) for the Preliminary Plat application. (Code, Ch. 3.5.B.3). There is no provision in the Code or statute for the Board to delegate any of its duties to the Planning Board staff.

92. Subsequent to approval of the Preliminary Plat by the Board, the Director of DP&D shall sign to certify the submitted Preliminary Plat if the applicant has met all of the requirements and conditions of the Board, and the construction of the subdivision may then commence. (Code, Ch. 3.5.B.4)

93. In the submission of the Preliminary Plat application for Paradise Valley Subdivision, the application package did not contain a proposed Bill of Assurance, provisions for sewage disposal, drainage and flood control, letters of approval (permits) from the Arkansas Department of Environmental Quality and Arkansas Department of Health, The Water Utility approval, the Fire Department approval and various other information or data required by the Code to be included in the Preliminary Plat application.

94. As heretofore alleged in this Complaint, in an earlier application for approval of this subdivision under the name of Saddle Ranch Subdivision, it was proposed that the wastewater treatment for the proposed subdivision would consist of pumping the subdivision's wastewater to the Waterview Subdivision wastewater treatment plant. At the time of filing of the Preliminary Plat application for the proposed Paradise Valley Subdivision, the wastewater treatment plant site across the road on an adjacent parcel to Roland Cutoff Road was not disclosed by the

developer to the DP&D and the Board. As a result, the DP&D and the Board were unaware that the wastewater disposal plan for Paradise Valley Subdivision was, in fact, to pump the subdivision's wastewater under Roland Cut-Off Road to a separate site in a residential area surrounded by the property and residences of the Individual Plaintiffs and other members of the PMCC.

95. Notwithstanding that there was a lack of information and data necessary for the Paradise Valley Preliminary Plat application to be complete as required by the Code, the Board voted on February 23, 2021 to approve the application. In doing so, the Board violated the requirements of the Code, cited above, requiring that the application contain the information required by Code Ch. 3.6.C.4.

96. At this time, the approval of the Arkansas Department of Environmental Quality has not yet been provided for the wastewater treatment and effluent discharge for the Paradise Valley Subdivision, and the Preliminary Plat application is not eligible for approval.

97. As a result of the failure of the applicant, Rick Ferguson, Paradise Valley LLC, the Pulaski County Property Owners Multipurpose Improvement District No. 2021-2, or other Defendants, to provide all information and documents necessary to the consideration by the Board of the Preliminary Plat application, the approval

of such application by the Board on February 23, 2021, was in violation of the express terms, provisions and requirements of the Code. The action of the Board of February 23, 2021, approving the Preliminary Plat application should be declared null and void, and the Board ordered to comply with the express terms, provisions and requirements of the Code in future actions.

WHEREFORE, Plaintiffs herein pray that the Court issue an Order for the following relief:

1. An injunction to the Defendants ordering and directing the Defendants to cease and desist from further work or disturbance of the site for the Paradise Valley Subdivision pending resolution of this case and any further action that may be directed by the Court;
2. An injunction to the Defendants ordering them to (i) obtain a study and analysis by a reputable firm (to be approved by the Court) with expertise in hydrology of surface waters; and (ii) obtain recommendations regarding measures that should be taken to reduce or minimize the flow of stormwater discharge from the Defendants' property to the area in which Plaintiffs' properties are located.

3. Upon receipt of such study/analysis and recommendations, the Court should conduct a hearing thereon, and any other proposals on the subject from credible sources; and (iv) order Defendants to implement at its expense a plan approved by the Court for such reduction or minimization of stormwater discharge.
4. An Order setting aside and voiding the approval by the Pulaski County Planning Board dated February 23, 2021, of the Preliminary Subdivision Plat for Paradise Valley Subdivision, and enjoining the Board from taking further action on the Preliminary Subdivision Plat for Paradise Valley Subdivision that is not in full compliance with the Pulaski County Subdivision and Development Code, as amended.
5. An Order awarding attorney fees and costs to the Plaintiffs herein, and for all other legal, equitable and proper relief.

Respectfully submitted,

RICHARD MAYS LAW FIRM PLLC

/s/ Richard H. Mays _____

Richard H. Mays

Ark. Bar No. 61043

2226 Cottondale Lane – Suite 210

Little Rock, AR 72202

Tel: 501-891-6116

Email: rmays@richmayslaw.com

njackson@richmayslaw.com

VERIFICATION


STATE OF ARKANSAS)
)ss.
COUNTY OF PULASKI)

Now comes Christina Centofante, who, after being duly identified by official government identification and sworn to tell the truth, stated that she is a Plaintiff named in the above and foregoing Complaint; that she has read the above and foregoing Complaint, and that the facts and allegations contained therein are true and correct to the best of her knowledge, information and belief.

Witness my hand on this 23 day of September, 2022.


Christina Centofante

SUBSCRIBED AND SWORN TO BEFORE ME, a Notary Public in and for the State and County aforesaid, on this 23 day of September, 2022.


Notary Public

