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03-CV-2018-900185.00  
CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA  
TIFFANY B. MCCORD, CLERK

**IN THE CIRCUIT COURT FOR  
MONTGOMERY COUNTY, ALABAMA**

**STONERIDGE HOMES, INC.** )  
**an Alabama corporation and HOME** )  
**BUILDERS ASSOCIATION OF** )  
**ALABAMA, INC., and Alabama** )  
**non-profit corporation,** )

**Plaintiffs,** )

**v.** )

**THE ALABAMA STATE BOARD** )  
**FOR REGISTRATION OF** )  
**ARCHITECTS,** )

**Defendant.** )

**CIVIL ACTION NO.:**  
**03-CV-2018-900185**

**STATE OF ALABAMA BOARD FOR REGISTRATION OF ARCHITECTS'**  
**MOTION TO DISMISS**

COMES NOW the Defendant, the State of Alabama Board for Registration of Architects, (“Board”) through undersigned counsel, and pursuant to Ala. Code Rules 12(b)(1) and 12(b)(6) respectfully moves this Court to dismiss Plaintiffs’ meritless and prematurely filed Appeal and Complaint for Declaratory Judgment; as grounds therefore, Defendant shows as follows:

**I. Overview**

This appeal is based on a preliminary adverse decision the Board issued in response to Plaintiffs’ Petition for Declaratory Ruling (hereinafter referred to as “Petition”). Plaintiffs, Stoneridge Homes and Home Builders Association of Alabama seek judicial review of the Board’s Preliminary Decision under the Alabama Administrative Procedure Act (“AAPA”). (See Doc. 2 at Defendant’s Exhibit A, pp. 8 and 10).

Plaintiffs, as Petitioners, sought a declaratory ruling from the Board regarding the applicability and/or viability of one of the Board's administrative regulations after Stoneridge Homes was denied a building permit to construct townhouses because its proposed plans had not been prepared by a registered architect. (Defendant's Ex. A, p. 18 ¶¶ 18-19). Plaintiffs maintain, incorrectly, that Ala. Code § 34-2-32(b), which exempts certain building types from requiring the services of a registered architect, applies to townhouses. Notwithstanding Plaintiffs' overreaching argument to the contrary, the exemptions set forth under Ala. Code § 34-2-32(b) do not apply to townhouses for public safety reasons relating to, among other things, fire walls.

Based on Plaintiffs' aforesaid faulty premise and self-serving misunderstanding that Ala. Code § 34-2-32(b) purportedly exempts the need for an architect for townhouses, Plaintiffs have manufactured a conflict with Ala. Admin. Code r. 100-X-4-.10, which requires the services of an Architect for townhouses. Based on this alleged conflict, Plaintiffs asked the Board to reconcile, in favor of the homebuilders' monetary interests, this purported conflict between said exemption statute and regulation to try to then argue that the safety expertise and expense of architects is not required when building townhouses. The Board issued a Preliminary Decision on Plaintiffs' Petition wherein the Board found no conflict, as alleged, and denied Plaintiffs' request for a declaratory ruling in their favor. (See Defendant's Ex. A, pp. 10 and 14).

Here, Plaintiffs are prematurely asking the Circuit Court to take jurisdiction over this appeal and complaint and to declare the aforesaid valid regulation

invalid and unenforceable, based on an exemption statute that does not apply to townhouses. (Defendant's Ex. A, p. 6). However, Plaintiffs have not appealed a final decision. Consequently, this Court lacks subject-matter jurisdiction over Plaintiffs' Appeal and Complaint for Declaratory Judgment. A final decision has not yet been issued.

## **II. Statement of the Case.**

One of the Plaintiffs, Stoneridge Homes, is in the business of constructing attached townhouses for single family occupancy. (Defendant's Ex. A, p. 21, ¶ 24). For public safety reasons primarily relating to fire hazards, the Board requires homebuilders, like Stoneridge Homes, to have their plans and specifications for townhouses prepared by a registered architect. To save costs, at the expense of public safety, on November 28, 2017, Plaintiffs, as Petitioners, submitted a Petition for Declaratory Ruling (Defendant's Ex. A, p. 13; p. 21, ¶ 23) with the Board asking the Board to reconsider and remove this safety requirement.

On December 20, 2017, a Board meeting was held wherein the attorney for the Petitioners, Jesse P. Evans, III, and Jason Reid with the Home Builders Association of Alabama appeared before the Board about their Petition. (Defendant's Ex. A, p. 13). Board members present were Chair Marzette Fisher, Vice-Chair Mike Chapman, Dan Bennett, Courtney Brett, and Jimmy Seay. Others in attendance included, but were not limited to, the State Fire Marshal Scott Pilgreen, Deputy State Fire Marshal Mark Drinkard, and Bob Herbert, Investigator

for the Alabama Board of Engineers and Land Surveyors. (Defendant's Ex. A, p. 13).

On January 3, 2018 the Board issued a detailed five (5) page Preliminary Decision wherein the Plaintiffs' request was denied based on the Board's unanimous finding that the Board's Regulation 100-X-4-.10 is consistent with Ala. Code § 34-2-32(b). (Defendant's Ex. A, pp. 10 and 14). The Board's Preliminary Decision was submitted to the Legislative Fiscal Office for an independent review and final decision, where it is currently pending. (Defendant's Ex. A, p. 14).

### **III. Statement of the Facts.**

The Petition focuses on the exemption set forth in Ala. Code § 34-2-32(b) for "any single family residence building.". This code section states:

No person shall be required to register as an architect in order to make plans and specifications for or administer the erection, enlargement, or alteration of any building upon any farm for the use of any farmer, irrespective of the cost of such building, or any single family residence building or any utility works, structures, or building, provided that the person performing such architectural works is employed by an electric, gas, or telephone public utility regulated pursuant to the laws of Alabama or by a corporation affiliated with such utility or of any other type buildings which has a total area of less than 2,500 square feet provided it is not intended for use as a school, church, auditorium, or other building intended for the assembly occupancy of people. Ala. Code § 34-2-32(b) (emphasis added).

Regulation 100-X-4-.10 likewise exempts the services of a registered architect for the design of "a detached single-family residence." This regulation states:

An architect is not required for design of a detached single-family residence, a farm building, or utility works, structure or building (provided that the person performing architectural works is employed by an electric, gas, or telephone public utility regulated pursuant to Alabama law or by a corporation affiliated with such utility). Ala. Admin. Code 100-X-4-.10. (emphasis added).

Plaintiffs insist that townhouses fall under Ala. Code § 34-2-32(b)'s "any single family residence" exemption and therefore purportedly do not require the expert services and expense of an architect. Plaintiffs are wrong. Regardless, Ala. Admin. Code r. 100-X-4-.10 unequivocally states that a single family residence must be detached to be exempt from the expert services of a registered architect. (Defendant's Ex. A, p. 11). Plaintiffs claim, in conclusory fashion, that the Board purportedly exceeded its rule and regulation making authority by including the word "detached" in this regulation. (Defendant's Ex. A, p. 4, ¶ 14).

Plaintiffs claim Stoneridge Builders "has been put to additional costs, expenses, and delays in having plans and specifications for its townhouse project prepared by a registered architect." (Defendant's Ex. A, pp. 6, ¶ 22, 13 and 21, ¶ 23). Plaintiffs also mistakenly claim that, unlike the administrative regulation in issue, the corresponding statute does not purportedly require a homebuilder to retain the services of an architect when constructing attached townhouses. Thus, Plaintiffs incorrectly contend that Ala. Code § 34-2-32(b) exempts from the practice of architecture the design of any single-family residence whether

detached or not and asked the Board through its Petition to issue a declaratory ruling to that effect. (Defendant's Ex. A, p. 21)

Plaintiffs' counsel presented their position to the Board arguing that the Ala. Admin. Code r. 100-X-4-.10 requiring homebuilders to utilize a registered architect for townhouses is costly as well as purportedly overreaching and allegedly inconsistent with the exemption set forth in the Board's corresponding statute Ala. Code § 34-2-32(b). Mr. Reid of the Home Builders Association expounded on Plaintiffs' counsel's comments. (Defendant's Ex. A, p. 13). The Alabama Licensing Board for General Contractors was the only agency identified as having a provision that exempted townhomes. (Defendant's Ex. A, p. 13).

Board members discussed the relief requested by the Petitioners as follows: Mr. Seay explained that the word "detached" was added to the regulation in issue to clarify the exemption set forth in Ala. Code § 34-2-32(b) that Plaintiffs have placed in issue. Mr. Bennett further explained that the word "detached" was added to avoid ambiguity. Both Board members were serving on the Board in 2010 when the administrative regulation in issue 100-X-4-.10 was adopted. (Defendant's Ex. A, p. 13).

Another Board member, Mrs. Brett agreed with Mr. Seay that a single family residence building is a one dwelling unit. Mrs. Brett further explained that there is a real health, safety, and welfare issue when combining residential units into multifamily arrangements, like Stoneridge Builders' townhouse project. (Defendant's Ex. A, p. 14).

Chair Fisher noted that relevant building codes call for a one-hour Underwriter's Laboratories' approved separation between townhome units. He further noted that a one-hour wall or floor separating units is not easily accomplished given the conventional wood-frame construction details used in townhomes. Consequently, it is clearly in the interest of the safety of the public that the inclusion of townhome construction comes under the purview of an architect's life-safety fire-code expertise. (Defendant's Ex. A, p. 14).

Significantly, Board members noted that the Board's interpretation would remain the same even if the word "detached" was removed from the regulation in issue. Mr. Seay reiterated that single means "one" and that if two dwellings are joined, then they become multifamily and are no longer single family. (Defendant's Ex. A, p. 14).

Board members discussed the need for the continued existence of the law and the regulation to protect the health, safety, and welfare of the public and to protect the citizens of the State of Alabama. They further noted that a change in the law would be necessary to grant the relief requested by the Petitioners which would not be in the best interest of the health, safety, and welfare of the public. (Defendant's Ex. A, p. 14).

As noted above, the Board unanimously voted that Ala. Admin. Code r. 100-X-4-.10 is consistent with Ala. Code § 34-2-32(b). This Preliminary Decision is consistent with the Board's long-standing interpretation that a single-family residence building is a detached single-family residence, and not a multifamily dwelling unit, like a townhouse. (Defendant's Ex. A, p. 14).

**IV. The Court Lacks Subject-Matter Jurisdiction Over This Action.**

The AAPA provides, in pertinent part, that a party who has exhausted all administrative remedies and who is aggrieved by a *final* agency decision in a contested case is entitled to judicial review. Ala. Code § 41-22-20(a). (emphasis added). Therefore, under the AAPA, the Board's Preliminary Decision dated January 3, 2018 does not constitute a judicially reviewable final decision. See Huntsville Housing Authority v. State of Alabama Licensing Bd. For General Contractors, 179 So.3d 146 (Ala. Civ. App. 2014) (holding that without a written final order, there was nothing from which the housing authority could appeal to invest the circuit court with subject-matter jurisdiction.)

When the Plaintiffs filed this action on January 31, 2018, the Board had not issued a final decision. Without a written final decision, there is nothing from which the Plaintiffs can appeal to invest the circuit court with subject-matter jurisdiction over this action. Id. at 156. Because there is no final written decision within the meaning of the AAPA, this court does not have subject-matter jurisdiction over this this Appeal and Complaint. A Court without subject-matter jurisdiction, as in the case at bar, may take no action other than to exercise its power to dismiss the action; any other action is null and void. State of Alabama and City of Gadsden v Property at 2018 Rainbow Drive, known as the Oasis, 740 So.2d 1025 (Ala. 1999).

**V. Simultaneous Actions are Prohibited.**

As noted, Plaintiffs have appealed a Preliminary Decision. Therefore, Plaintiffs' premature filing of an Appeal and a Complaint for Declaratory

Judgment in Circuit Court amounts to another action involving the same cause, and the same dispositive issue and the same parties as the action that is still pending before the Board which appears to be contrary to the letter and spirit of Ala. Code § 6-5-440. Regardless, as noted, a Court without subject-matter jurisdiction, as in the case at bar, may take no action other than to exercise its power to dismiss the action; any other action is null and void. Id.

**VI. A Presumption of Correctness Attaches to the Board's Decision.**

In the alternative and for arguments sake only, even if the Court had jurisdiction over this action, the Plaintiffs' Complaint is nonetheless due to be dismissed. Judicial review of an agency's administrative decision is limited to determining whether the decision is supported by substantial evidence, whether the agency's actions were reasonable and not arbitrary, and whether the agency's actions were within its statutory and constitutional power. Ferlisi v. Alabama Medicaid Agency, 481 So.2d 400 (Ala. Civ. App. 1985). "Judicial review is also limited by the presumption of correctness which attaches to a decision by an administrative agency." Alabama Medicaid Agency v. Peoples, 549 So.2d 504, 506 (Ala. Civ. App. 1989). In other words, a reviewing court must give the Board's decision a presumption of correctness. See Dawson v. Alabama Dept. of Environmental Management, 529 So.2d 1012 (Ala. Civ. App. 1988); Alabama Medicaid Agency v. Light, 507 So.2d 107 (Ala. Civ. App. 1987) (A reviewing Circuit Court must attribute to the Medicaid Agency's decision a presumption of correctness.).

Furthermore, the order of an administrative agency must be taken as *prima facie* just and reasonable, and the court shall not substitute its judgment for that of the agency as to weight of the evidence on questions of fact if those findings and conclusions are supported by substantial evidence. Alabama Alcoholic Beverage Control Bd. v. Tyson, 500 So.2d 1124 (Ala. Civ. App. 1986); Ala. Code 1975 § 41-22-20(k). Alabama Renal Stone Inst., Inc. v. Alabama Statewide Health Coordinating Council, 628 So.2d 821, 823 (Ala. Civ. App. 1993)(holding that “[T]he trial court may not substitute its judgment for that of the administrative agency.”) “This holds true even in cases where the testimony is generalized, the evidence is meager, and reasonable minds might differ as to the correct result.” Health Care Auth. Of Huntsville v. State Planning Agency, 549 So.2d 973, 975 (Ala. Civ. App. 1989). Regardless, substantial evidence supports the Board’s above-referenced decision.

**VII. The Defendant is Entitled to Immunity.**

To the extent a result favorable to the Plaintiffs could, among other things, affect a contract or property right of the State, and/or the financial status of the State Treasury, the Board is afforded sovereign immunity and there would be no exception to the immunity afforded the State by § 14 that would permit the trial court to entertain an action against it, regardless of whether monetary, injunctive, or declaratory relief is being sought.

**Conclusion**

Based upon the foregoing, this Complaint should be dismissed outright for lack of subject-matter jurisdiction. In the alternative, the Complaint should be dismissed based on the well-reasoned action taken by the Board pursuant to the AAPA.

Respectfully submitted,

STEVE MARSHALL  
ATTORNEY GENERAL

/s/ Mary Goldthwaite  
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**CERTIFICATE OF SERVICE**

I hereby certify that on March 2, 2018, I electronically filed the foregoing State of Alabama Board for Registration of Architects' Motion to Dismiss with the Clerk of the Court, using the Alafile system and by placing the same in the United States Mail, postage prepaid and properly addressed as follows:

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