OCTOBER 25, 2024: FOR IMMEDIATE RELEASE

JUDGE'S FINAL ORDER FINDS COUNTY FAILED TO INFORM PUBLIC OF "INCONSISTENCIES" DURING EHO CONSIDERATION

County Board Announces That it Will Appeal Judge's Ruling That EHO is Void

Today Judge David Schell issued a final written order in the case brought by Arlington homeowners against the County Board. The order follows his September 27th ruling from the bench.

The Judge's order details the legal basis for his decision to declare EHO void on four counts: failure to adopt an initiating resolution, failure to conduct studies of localized impact, unlawful delegation of the County Board's authority to the Zoning Administrator to issue EHO permits, and exceeding its authority re: tree requirements.

Of particular note are the Judge's factual findings that the County failed to inform the public about a number of "inconsistencies" during the EHO adoption process, including:

- The lead County staff member on stormwater infrastructure warned: "I cannot state in strong enough words that this is going to be devastating to the already stressed stormwater conveyance system." But the County concluded publicly that EHO would have no greater effect on stormwater management than do single-family houses;
- "There is no evidence that the Board considered that a six plex with at least six toilets, additional washing machines, showers, sinks and dishwashers would increase the flow into the County system so that homeowners sharing the sewer line with that six plex will suffer sewage backup into their homes."
- The sole County consultant "whose principle task was to determine what developers would do" under EHO "did not talk to a single developer" about what they would or would not do;

- That consultant was instructed "to avoid disagreement with the staff," which the consultant understood to mean not to make recommendations "that didn't comport with the staff's judgement;"
- County staff were told by a third party that EHO development would be dispersed throughout the County, but the consultant said it would not be dispersed; and
- An Arlington Public Schools' planner's estimate of 80-94 additional students each year resulting from EHO was changed without explanation by his supervisor to 9-13, and the original estimate was based on the faulty premise provided to the planner that EHO would be dispersed throughout the County and that only 19-20 lots would be developed each year.

The Court also considered today motions by two developers to intervene in the case, even though the trial has concluded and the County Board has spent more than $1 million on a private law firm to vigorously defend its EHO zoning. The judge denied these motions.

Finally, the Court granted the County's motion for a partial stay of its ruling until the Court of Appeals decides this case. The Court agreed to allow the County to issue building and other related permits to those who had received the 45 EHO permits issued prior to the ruling, but with a significant condition. The County can only issue such permits after the EHO-permit holder who seeks to build a multi-family building places a notice in the land records for that property that there is pending litigation, the outcome of which could require residents of the property to move or the owner to change the property, if the Court of Appeals affirms Judge Schell's ruling.

Judge Schell issued a clear warning today to developers, stating: "I warn you" that you are proceeding "in a very dangerous way" and "taking a huge risk" if you build a six plex and the County loses on appeal: "that six plex cannot exist."

Dan Creedon of Neighbors for Neighborhoods (NfN) commented that in addition to the inconsistencies the judge found, the County was not straight with the public about EHO and affordability: "EHO is not affordable housing. Fifteen months of EHO shows that it should be called "Expensive Housing Options." Developers sought to tear down modest homes and replace them with much larger 6-plexes, townhouses, and other multi-family buildings with each unit often costing more than the original house."

With respect to the stay, Mr. Creeden stated: "Time will tell if the developers with EHO permits will file the required papers and to build multi-family units. The papers inform the public that ongoing litigation could make these units illegal. The Judge was clear today that if his ruling is affirmed, these can't exist. I take that to mean they'd have to be torn down or reconfigured as single-family houses."

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In the Matter of:

Marcia L. Nordgren, et al
v.
County Board of Arlington, Virginia, et al

Judge's Ruling - Transcript

September 27, 2024

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