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ARLINGTON COUNTY BOARD APPEALS DECISION DECLARING MISSING MIDDLE HOUSING/EXPANDED HOUSING OPTIONS (EHO) ZONING VOID

Today, the Arlington County Board filed a Notice of Appeal of Judge Schell's decision declaring EHO zoning void following a five-day trial in July.

The merits of the appeal are called into question in an article authored by the County Board's own private law firm in the case, Gentry Locke. The article is intended to help local governments avoid litigation later by not making mistakes in adopting zoning measures. The article concludes: "Procedural errors are fatal. A locality cannot win if there has been a procedural error in the zoning process."

Judge Schell's ruling that EHO zoning is void was based on multiple procedural errors. Of the seven counts in the complaint, Judge Schell ruled in favor of the plaintiffs on four counts:

- Count I: The Board failed to pass an initiating resolution or motion for the Zoning Amendment in accordance with Virginia Law.
- Count III: The Board failed to reasonably consider several required factors in Virginia Code 15.2-2284.
- Count IV: The Board unlawfully delegated legislative authority in granting a special exception for EHO Development.
- Count VII: The landscaping provision of the Zoning Amendment contains provisions contrary to Virginia Code 15.2-961.

Prior to Judge Schell's final order, he ruled against the County multiple times in its efforts to have the case dismissed.

To date, taxpayers have footed the bill for the County's private law firm fees of nearly $1.1 million for eight months of work from February 2024 through September 2024. The County's response to a Virginia Freedom of Information Act request for more recent bills is expected shortly. Now taxpayers will face more bills as the County seeks to have the Virginia Court of Appeals overturn Judge Schell's ruling – a process that is expected to take more than a year.

Dan Creedon, with Neighbors for Neighborhoods, LLC, which has raised money for the trial and now is raising money to defend against the County's appeal, said today: "Instead of wasting more taxpayer money appealing the Judge's decision declaring EHO void, the County Board should use its resources to address housing for low and moderate-income households - something that Missing Middle Housing/Expanded Housing Options (EHO) zoning did not do."

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