FOR IMMEDIATE RELEASE: JULY 8, 2024

JUDGE REJECTS COUNTY'S EFFORTS TO EXCLUDE EVIDENCE FROM THE MISSING MIDDLE HOUSING/EXPANDED HOUSING OPTIONS (EHO) TRIAL

PLAINTIFFS' OPENING STATEMENT: COUNTY UNDERESTIMATED THE PACE OF GROWTH OF EHO DEVELOPMENT – KEPT FACTS FROM THE PUBLIC

Today's proceedings in the EHO case began with Judge David Schell's ruling in favor of the plaintiffs suing the County to allow the deposition testimony of the County's only retained expert on EHO, Partners for Economic Solutions (PES) to be offered at trial.

The Judge stated that he granted the County Board's motion last week to exclude this evidence because he had the impression, based on representations by the County's attorney, that the witness left during the deposition and could not be cross-examined. He continued that now having reviewed the deposition transcript, his impression was incorrect. The Judge noted that the County's attorney asked questions of the witness during the deposition and then stated that he had no further questions.

Why did the County Board try to keep this PES evidence from the Court? Today's opening statement from the plaintiffs' attorney, Gifford Hampshire of Blankingship & Keith, offered an answer. Mr. Hampshire said that the evidence at trial will show that the PES estimate of only 19-21 EHO projects each year was a "best guess" with "no science behind it." He added that County staff relied on this estimate of the pace of development for its conclusion that EHO would be incremental and modest.

Central to the plaintiffs' complaint is Count III, which alleges that the County failed to conduct proper studies of the impact of increased density from EHO development on infrastructure, as required by Virginia law when zoning changes are made. Mr. Hampshire said that the evidence will show that EHO development could change density in Arlington from 1-10 units per acre in certain residential zoning districts to up to 42 units per acre.

He added that the County did no analysis about where this development might occur, concluding without a factual basis that it would be dispersed throughout the County.

The plaintiffs' opening statement offered a preview of the evidence to be introduced at trial, including information that was never shared with the public during the County's consideration and adoption of EHO. This includes statements by a County staff member of her concerns of the effect of EHO on the County's stormwater system, which she characterized as "inadequate."

It also includes the fact that Arlington Public Schools based its estimates of the effect of EHO development on school enrollment on the PES "best guess" estimate of 19-21 EHO projects per year, rather than on higher estimates.

Since July 1, 2023, the County has approved 37 EHO applications and more than 20 more are under review.

The County Board's opening statement, presented by the County's private law firm that has now billed more than $500,000 in legal fees, claimed both that EHO is "real reform" and that no outside study of its impact was needed because of the modest number of units expected to be produced per year.

The defense's opening statement referred to the "very ugly history" of single-family zoning in Arlington and claimed that it would show "the truth" of what happened with EHO during the process to adopt this elimination of single-family zoning. That claim despite its effort to prevent the Court from hearing the PES deposition testimony.

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