Planning Commission Meeting
October 22, 2008
Verbatim Excerpt

ZONING ORDINANCE AMENDMENT (AMENDED CIVIL PENALTIES AND APPEAL PERIOD)

Decision Only During Commission Matters
(Public Hearing held on October 16, 2008)

Commissioner Sargeant: Mr. Chairman, there was some discussion of this proposed amendment regarding the appeal of civil penalties last week. It prompted last week's deferral. However, following additional consultation I believe this proposed amendment is ready for the Commission's consideration. As you'll recall, questions arose regarding a proposed amendment to Part 3 of Appeals Section 18-303, regarding the time limit on filing. In particular, Item Number 2-G, which states, "Other short-term recurring violations similar to those listed in Paragraphs 2A through 2G [sic] above." This language was initiated in conference with Lee District Supervisor Jeff McKay. The language itself is arrived at as a result of discussions between Supervisor McKay's Office and the County Attorney's Office. Supervisor McKay provided his explanation for this language during the September 22nd Board of Supervisors' meeting. From the Board notes - - the Board Matters for that date, Supervisor McKay noted that his intent in making the motion was to allow the citizens of the County the full advantage of the legislative authority granted by the General Assembly and the recent amendment of the enabling legislation to allow the shortened time period of 10 days to appeal certain types of zoning violations, specified in *Virginia Code* Section 15.2-2286(A) (4), rather than the 30-day appeal period that currently exists. And by adding the proposed language, the Strike Team and Zoning Enforcement will not only be able to issue notices that have a 10-day appeal period for the specified violations, but will also be able to issue notices for violations that are similar in nature to those specified and therefore, the County will be able to have shortened 10-day appeal period for all of those violations that are short-term and recurring like those specified in the proposed amendment. The reference to short-term recurring - - those are from the Board Matters - - the reference to short-term recurring violations comes from the actual amendment to the *Code of Virginia*, as adopted by the General Assembly during the 2008 Session. Section 15.2-2286 of the *Code* was amended to include the following language: "Notwithstanding the provisions of Section 15.2-2311, a zoning ordinance may prescribe an appeal period of less than 30 days, but not less than 10 days, for a notice of violation involving temporary or seasonal commercial uses, parking of commercial trucks in residential zoning districts, maximum occupancy limitations of a residential dwelling unit, or similar short-term, recurring violations." It should also be noted that this proposed amendment, even with the inclusion of Item 2G, still provides for an appeal period. Given this information, I believe it is appropriate for the Commission to consider the proposed Zoning Ordinance amendment, as written. Therefore, Mr. Chairman, I MOVE THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF SUPERVISORS THAT THE PROPOSED APPEAL PERIOD AND CIVIL PENALTIES ZONING ORDINANCE AMENDMENT, AS CONTAINED IN THE SEPTEMBER 22, 2008 STAFF REPORT, WITH AN EFFECTIVE DATE OF 12:01 A.M. ON THE DAY FOLLOWING ADOPTION.

Commissioner Lusk: Second.

Chairman Murphy: Seconded by Mr. Lusk. Is there a discussion of the motion?

Commissioner Hart: Mr. Chairman?

Chairman Murphy: Mr. Hart.

Commissioner Hart: Thank you. I MOVE TO AMEND THE MOTION TO DELETE SECTION 2G. And I'll speak if there is a second.

Commissioner Litzenberger: Second.

Chairman Murphy: Seconded by Mr. Litzenberger. Is there a discussion of the motion?

Commissioner Hart: Mr. Chairman?

Chairman Murphy: All right.

Commissioner Hart: Thank you, Mr. Chairman. I believe we owe the Board and the citizens an obligation to make the most helpful recommendations we can as to the wording of any proposed ordinances. While I understand a Supervisor requested the addition of Paragraph 2G to allow flexibility, which caused the subsequent re-advertising, unfortunately that addition as worded creates more problems than it solves. In my view, the Ordinance as originally advertised without that section was better drafted. I believe we should delete the confusing Section 2G, coupled with the constructive suggestion that the Board can amend this Ordinance later to include any other specific violations which are short-term and recurring and can be objectively designated by number. Unless we can specify which sections of the Ordinance are intended, no citizen can reasonably anticipate exactly which provisions are short-term recurring violations similar to the others listed. If there are specific violations for which we need to shorten the appeal deadline, they should be clearly itemized as our Sections 2A through 2F. Section 2G as written is too vague to be understood objectively. Although it repeats the *State Code* language as to the character of permissible violations for which the appeal period may be shortened, it does not state what those recurring short-term violations might be. We have a massive Zoning Ordinance with many chapters and paragraphs. We may not all agree what violations are similar to others. Is it some unspecified type of outdoor storage? Or, perhaps something about cars, boats, canoes, pets, fences, or whatever? If we're not specific about which items or provisions are referenced, the vagueness of Paragraph 2G will lead to confusion and complicate enforcement. Without further elaboration as to which Ordinance sections are going to be subject to a shorter deadline, neither the Zoning Administrator nor the BZA nor the Court have any guidance as to what is intended and whether the shorter deadline properly applies. With vague Ordinance language, we create legal defenses and unnecessarily undercut the Board's efforts to streamline enforcement of violations. Our constructive recommendation to the Board should question the wisdom of

including vague, unenforceable, or confusing language. So, I would ask that Section 2G be deleted. Thank you.

Commissioner Lawrence: Mr. Chairman?

Chairman Murphy: Discussion of the motion?

Commissioner Lawrence: Mr. Chairman?

Chairman Murphy: Yes, Mr. Lawrence.

Commissioner Lawrence: I align myself with the maker of the amendment for the reasons given in his speech. Thank you.

Commissioners Sargeant and Lusk: Mr. Chairman?

Chairman Murphy: Mr. Sargeant and then Mr. Lusk.

Commissioner Sargeant: I appreciate and respect Mr. Hart's point of view on this. I would note that this language was worked out between the Supervisor's Office in conjunction and in concert with the County Attorney's Office, so I have to believe there's some reasonable assumption of its enforcement. I would also note within the proposed amendment that Section - - Item 2G says, "other short-term recurring violations similar to those listed in Paragraphs 2A through 2G [sic]." And then there is a list above 2G that suggests and provides examples of what types of short-term or other recurring violations this may include, such as parking a commercial vehicle on a lot, if removing it during the day and bringing it back, may be one example that might be cited. I think there is some language to suggest and some reasonable effort to suggest that this provides some flexibility that the County's Enforcement Team - - Strike Enforcement Team needs.

Chairman Murphy: Mr. Lusk.

Commissioner Lusk: Pretty much going to say almost the same thing that was just indicated. We have the County Attorney's Office supporting the language that has been placed in this document. We have the intent of the Board member, which is pretty well-established in the Board Matter. I think the residents who are faced with these specific zoning violations do need some clarity and I would argue that by striking this language, you create another issue, which we probably don't intend, and that is you could establish two sets of notices of violations for one property, one that has a 10-day appeal period and the second has a 30-day appeal period. And that's - - that's befuddling to me to even try to consider that as a person sitting at this dais. I think that doesn't help solve this problem either. I have to say I have schizophrenia. I do trust and value the input of Mr. Hart. I think his experience not just here at the Planning Commission, but also the Board of Zoning Appeals, gives him some credence and I would argue that his point does make some sense. However - - however, the attorneys for the County, who've looked at this, have not indicated that we need to specify those specific sections here. So, with that, I'm

going to concur with the maker of the motion - - the original maker of the motion and agree with the inclusion of the language for similar short-term or recurring violations. Thank you, Mr. Chairman.

Chairman Murphy: Further discussion?

Commissioner Litzenberger: Mr. Chairman?

Chairman Murphy: Mr. Litzenberger.

Commissioner Litzenberger: I think it should read, "Paragraphs 2A through 2F above," rather than 2G. It doesn't make any sense.

Commissioner Hart: They fixed that last week, I think.

Chairman Murphy: Ms. Kirst?

Commissioner Litzenberger: They did?

Lorrie Kirst: Mr. Litzenberger is correct. It should say, "Paragraphs 2A through 2F."

Commissioner Litzenberger: Okay. Thank you.

Chairman Murphy: What should say, "2A through 2F"?

Commissioner Sargeant: The proposed Zoning Ordinance amendment itself.

Ms. Kirst: The proposed Zoning Ordinance amendment - -

Chairman Murphy: G.

Ms. Kirst: - - specifically for Paragraph 2G, when it talks about other short-term recurring violations similar to those listed in Paragraphs 2A through 2F above.

Chairman Murphy: All right. So, Mr. Hart's motion is correct with the 2G, right? I mean is that what we're saying?

Commissioner Hart: My motion is to delete 2G.

Chairman Murphy: Delete 2G. Okay. All right. Further discussion of the motion? All those in favor of the motion that Mr. Hart made to delete Paragraph 2G, say aye.

Commissioners de la Fe, Donahue, Flanagan, Hart, Lawrence, and Litzenberger: Aye.

Chairman Murphy: Opposed?

Commissioners Sargeant and Lusk: Nay.

Commissioner Hall: Mr. Chairman?

Chairman Murphy: Ms. Hall.

Commissioner Hall: I'm going to abstain both from this vote and also from voting on the application; not present for the public hearing.

Chairman Murphy: I will poll. Mr. Donahue?

Commissioner Donahue: Aye.

Chairman Murphy: Mr. Sargeant?

Commissioner Sargeant: Nay.

Chairman Murphy: Mr. Lawrence?

Commissioner Lawrence: Aye.

Chairman Murphy: Mr. Lusk?

Commissioner Lusk: Nay.

Chairman Murphy: Ms. Hall abstains.

Commissioner Harsel: Ms. Harsel abstains.

Chairman Murphy: Ms. Harsel abstains.

Commissioner Harsel: I wasn't here for the public hearing.

Chairman Murphy: Mr. de la Fe?

Commissioner de la Fe: Aye.

Chairman Murphy: Mr. Hart?

Commissioner Hart: Aye.

Chairman Murphy: Mr. Flanagan?

Commissioner Flanagan: Aye.

Chairman Murphy: Mr. Litzenberger?

Commissioner Litzenberger: Aye.

Chairman Murphy: And the Chair votes no. Then the motion carries 7-2 [sic], 2 abstentions.

Commissioner Harsel: So, how many no?

Chairman Murphy: Seven.

Commissioner Sargeant: Are there three abstentions?

Chairman Murphy: Three abstentions, I'm sorry.

Commissioner Sargeant: Three no's.

Commissioner Lawrence: Three nays.

Commissioner Harsel: Three no's, two abstentions.

Chairman Murphy: Yes, right. All right. Return to the main motion. All those in favor of the main motion, which would now delete Paragraph 2G, say aye.

Commissioners de la Fe, Donahue, Flanagan, Hart, Lawrence, and Litzenberger: Aye.

Chairman Murphy: Opposed?

Commissioners Lusk and Sargeant: Nay.

Commissioners Harsel and Hall: Abstain.

Chairman Murphy: Motion carries. Same division, with three no's, two abstentions. Okay. Thank you very much.

//

(The motions carried by votes of 6-3-2 with Commissioners Lusk, Murphy, and Sargeant opposed; Commissioners Hall and Harsel abstaining; Commissioner Alcorn absent from the meeting.)

KAD