



For Immediate Release: November 25, 2023

County Continues Misinformation Campaign, Attacks Residents, To Prevent Judicial Review of Whether Amendments Were Passed Illegally

Both the Arlington County Attorney and County Board continue a misinformation campaign that has come to be seen as the cornerstone of the MMH/EHO zoning amendment process. In recent weeks the County has publicly and repeatedly asserted County officials govern in effectively an authoritarian manner, arguing that no resident ever has standing to challenge the legality of their processes and decisions (such as the EHO zoning amendments) for compliance with Virginia law.

Specifically, the County Attorney during the September 19 oral hearing argued that the lawsuit which asks for the judicial review of the County's processes under the requirements of Virginia law, was somehow "improper" and "a subversion of the democratic process." However, on November 16, the Court dismissed the County's fantasyland arguments, ruling the ten resident plaintiffs have standing and setting a July 8, 2024, trial date on the legality of zoning amendments. The Court, found it "readily apparent" that a homeowner whose land is rezoned could sue, adding that it would be difficult to understand how such a property owner would not have standing. Such a challenge, the Court stated, was a "quintessential use" of the law.

The County responded to the dismissal of its theories and to the setting of a date for trial by asserting it will file an interlocutory appeal of the Judge's standing decision before trial – a litigation tactic common of defendants dreading a case going to trial on the merits. Unfortunately, County taxpayers will be footing the bill for the County to try and maintain an authoritarian manner of governance.

Arlingtonians for Upzoning Transparency (AFUT), deeply concerned with the County's disturbing attack on democratic processes and residents themselves, wrote to the County Board in an October 13 letter asking the County to disavow its Attorney's September 19 statements. AFUT stated in its letter, "[t]he right of the people 'to petition the government for the redress of grievances' is a hallmark of the democratic process and is included in Article 1 of

the Virginia Constitution. The September 19th hearing is an example of the people seeking redress for their grievances. Rather than being an improper effort to subvert the legislative process, the 162-page complaint includes seven counts alleging improper actions by County government in the adoption of its MMH/EHO zoning ordinance.”

Instead of disavowing the County’s attacks on a pillar of the American democratic process (judicial review) and attacks on Arlington residents themselves, Board Chair Christian Dorsey doubled down in a November 3 response to AFUT. Dorsey’s letter stated the Board’s EHO decision “is wholly within the purview of the local legislative body, which has the constitutional authority to make county-wide land use decisions, revisions, and repeals if necessary. It is our position that the Judiciary should not substitute its judgment for decision-making expressly reserved for the local legislative body.”

Mr. Dorsey and the County Board has either forgotten American civics or truly believes it really does rule in authoritarian fashion. “What should be of concern to all Arlingtonians is the Board’s continuation of a misinformation campaign that was the hallmark of the MMH/EHO,” stated David Gerk, AFUT member. “It is clear from the court filings,” he continued, “the residents in this case are not challenging the County Board’s authority to make zoning decisions, but the fact that the decision emanated from such a process that was not in compliance with Virginia laws that exist to ensure these zoning decisions are made in transparent fashion with meaningful, not perfunctory, impact analysis and community engagement. More misinformation, more conflating facts – the County seems to be continuing the approach it has taken from day 1 on MMH/EHO.”

While AFUT is not a party in the lawsuit, it has consistently raised concerns about the legality and appropriateness of the process not to mention the County’s continued misinformation campaign related to the zoning amendments that confused residents as the purpose and effects of the EHO zoning amendments. The April 21, 2023 complaint on behalf of ten Arlington homeowners raises concerns emblematic of the many concerns ignored by the County throughout the process. The complaint highlights that state law requires zoning laws reasonably consider needs for transportation, schools, parks, recreation, and public spaces, as well as the conservation of natural resources.

Plain and simple - the County messed up and did not do what it was supposed to do. Review of illegally passed/implemented laws is one of the few recourses of residents in a democratic society and a hallmark of the American democratic system of governance. We are disappointed to see the County trample these principles. Again, while AFUT is not a party to the litigation, we are highly supportive of the grievances of residents being heard via the very American democratic process of judicial review and the rule of law.

###

Media Contact: AfUT, afut.upzoningtransparency@gmail.com