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## Arlingtonians For Welcoming and Inclusive Neighborhoods

**ArlingtonWINS.org**

- ...coalition of Arlingtonians that support diverse housing options throughout Arlington County.
- ...supports policies, such as Expanded Housing Options, to help create more housing supply.

# My motivation to get involved

## **MY FRAMEWORK:**

- My personal experiences
- The long view of history...legal and political

Sharing only my own views...

--I come as a free agent....

**With my own observations and questions....no answers**

# QUESTIONS

arising from 9/27/24 bench ruling by Judge Schell

- Why the delay in getting a final order signed and posted with the Clerk's office?
- What is the status of the Motion to Intervene that was filed on 10/11/24?
- Why did Judge Schell feel compelled to begin with his two "particularly telling quotes" from witnesses?
- "More houses, more people, more kids"
- Judge Schell: Self-evident
- But.... history is more complicated (out-migration; birth rates; etc.)

# THE SEPTEMBER 27, 2024 TRIAL TRANSCRIPT

## STANDING

- A case of first impression?
- Interesting reference to the Cupp case...a downzoning case...lots of nuances
- Assuming an appeal.....the Virginia Supremes will be given a chance to make new law.
- Odds of County success on appeal: \_\_\_\_\_%
- -----

FOUR COUNTS IN FAVOR OF PLAINTIFFS:

Process (1); Drafting (2); Substantive (1)

# COUNT ONE: (process)

## The Virginia Code and the Initiating Resolution

- When is a resolution not a resolution?
- Answer: When one omits the phrase "The County Board is resolving to amend the zoning ordinance"
- **Irony**: the Judge's next sentence: "Instead, the resolution authorizes the advertisement of public hearings...."
- Odds of County success on appeal: \_\_\_\_%

# COUNT THREE: (substantive) The Virginia Code and Studies

- Virginia Code Section 15.2.2284 and the "fairly debatable test"
- Key phrase: "...the lack of any consideration of the effect of additional sewer water and stormwater on the local laterals from single-family homes along the length of the sewer system."
- What system? Whose laterals?
- Odds of County success on appeal: \_\_\_\_\_%
- Odds of General Assembly amending Code section 15.2-2284 : \_\_\_\_\_%
- Would the Virginia Supremes remand the case for clarity?

# COUNT FOUR: (drafting)

## Permits, and Delegation of Legislative Authority

- Unlawful delegation of legislative authority
- What is a special exception?
- When is a permit not a permit?
- What to make of this wording from the judge? "The evidence also clearly shows that, for the purposes of this statute, **the zoning in the affecting area has not changed**. The zoning is still single-family homes on the appropriate lots."
- Odds of County success on appeal: \_\_\_\_%

# COUNT SEVEN: (drafting)

## The Dillon Rule and Landscaping Provisions

- "...the municipality must act within the powers expressly or impliedly conferred upon it by the General Assembly."
- "The provisions of the EHO regarding tree canopy are directly contrary to the requirements of 15.2-961." ("exceed those requirements")
- Odds of success on appeal: \_\_\_\_%
- Is any alleged violation "severable"?



# JUDGE'S SUMMARY

- "Count Three: The Board failed to reasonably consider several required factors in Virginia Code 15.2-2284."
- If I were a Supreme, I might ask...
- Which factors specifically?
- If the threshold is not met....tell me, what is the threshold?

WHAT CAN THE COUNTY DO--  
in addition to...or instead of... FILING AN APPEAL?

- Enact a new EHO?
- Enact new amendments...anyone willing to amend the R-10 District to allow duplexes?
- Amend site plan regulations to make them less onerous?
- Approve the existing applications by converting them to site plan applications?

NO ANSWERS....

JUST OBSERVATIONS AND QUESTIONS