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Struck Down: Overlay Districts Nixed

Mar 31, 2004 -- Loudoun County Circuit Court Judge Thomas D. Horne yesterday struck down the county's new environmental overlay zoning districts and agreed to hear arguments on claims that the county's 2003 downzoning of rural land in western Loudoun was illegal.

Local land use attorneys, who were still poring over the 32-page ruling, said today that the ruling was not a clear victory for either side in the case, which is a consolidation of 131 pending lawsuits challenging the county's adoption of a new zoning ordinance last year.

Horne ruled that the county didn't adequately inform landowners of the restrictions that would be imposed on land that was included in new environmental overlay districts, including the controversial River Stream Corridor Overlay District (RSCOD) that critics say goes too far in prohibiting construction along creeks and drainage ways.

Advertisements didn't give property owners proper notice of rules that would be applied to densities, uses and building restrictions on land included in the RSCOD, Limestone Conglomerate Overlay District and the Mountainside Development Overlay District. As a result, the county government would be barred from enforcing those zoning provisions unless the ruling is appealed and overturned or the board of supervisors re-advertises the zoning changes, holds new public hearings and re-adopts the districts. At least with the RSCOD, that approach seems unlikely as the board of supervisors is slated to vote this month on a proposal to reduce development restrictions along streams and floodplain to allow more recreation uses. Horne's ruling, if left to stand, would not require the board to take action on that change.

Horne did not grant the landowners' motion to nullify the rural

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downzoning based on claims that supervisors enacted significant changes to the AR-1 and AR-2 zoning districts after the public hearing on the new zoning ordinance had been concluded. Horne said that he will consider further evidence on that point as the cases move to trial. The AR districts were applied in western Loudoun where the county replaced the A-3 district (one home per three acres) with new rules that require average lot sizes of 20 or 50 acres for new homes.

The ruling follows a Feb. 20 hearing when landowners represented by 13 law firms laid out their claims that the board of supervisors failed to comply with public notice requirements and other procedural rules spelled out in state code.

Among the common issues in the group of lawsuit that have been consolidated for review are the claims that they were not notified of changes made to the draft ordinance during the time between public hearings in November 2002 and the final vote on Jan. 6, 2003. The changes were substantive and ongoing, lawyers for the landowners said. Those changes included more intensive land uses that were in the final adopted ordinance without prior notification. They included doubling the capacity of day and boarding camps; allowing monopolies as a by-right use and deleting a requirement that adjacent landowners be notified; allowing rural commercial hayrides and petting zoos and similar operations as a by-right use that replaced a requirement that such an application undergo the special exception permit process; and rules for clustering houses that reduced from 100 acres to 60 acres the minimum lot size for clustering.

County supervisors Wednesday had not yet been briefed by County Attorney John R. Roberts on the full ramifications of Horne's ruling.

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