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Of Counsel

Tammy L. Belinsky

December 2005

To: Stafford County Planning Commission Members

Re: Crows Nest Preliminary Subdivision Plan
Project 241944

Dear Planning Commission Members:

My name is David Bailey, I am a licensed attorney in Virginia and I appear before you tonight on behalf of the Fellers family, who reside directly across the waterway from Crows Nest.

This is to advise Commission members that I have today filed with Stafford County a notice of appeal with the Board of Zoning Appeals regarding your Planning Director's determination that the preliminary site plan for the Crows Nest project is in conformance with your zoning ordinance, and specifically the provisions of your zoning ordinance regarding compliance with the Chesapeake Bay Act requirements. The BZA appeal is an appeal of a plan of development and its consistency with your zoning ordinance, not your subdivision ordinance.

This appeal was timely filed today before the close of business, and was accompanied by the appropriate fee and attached documentation. Under the Code of Virginia, section 15.2-2311(B), such appeal, by law, "shall stay all proceedings." The only exception to this statutory mandate is a finding of "imminent peril to life and property," something I really don't think can be said about this preliminary plan case. Virginia is a Dillon Rule state, you must comply with the plain meaning of this code section. Merely by retaining this issue on the agenda, you have violated this code provision.

I have not spoken with your attorney, whom I assume will advise you tonight, and who has already made the decision to keep this issue on the agenda. I am informed third hand by my client that your counsel has (1) concluded that the appeal is frivolous (although I do not think he had reviewed the notice at the time of such determination), and (2) that this is really a subdivision ordinance issue over which the Board of Zoning Appeals has no jurisdiction. However, I respectfully submit to you tonight that even if your attorney is correct, the body that makes that decision, and the only body that makes that decision, is the Board of Zoning Appeals, not their or your attorney. There is no provision in the code for your counsel or anyone else, other than the Board of Zoning Appeals, to make a determinative ruling on a properly filed notice of appeal to the BZA.

For what it is worth, I disagree with your counsel. The appeal is not frivolous; I do not file frivolous claims, and the appeal is thoroughly documented for every claim made. The determination being challenged is a determination of compliance with your zoning ordinance, not

your subdivision ordinance, and your zoning ordinance do not make any such distinction. For this reason I respectfully assert to you tonight that any consideration of the Crow's Nest plan by this Commission tonight is illegal and beyond your authority.

I also bring to your attention that all citizens are supposed to have a full five days to review any submitted plan before this Commission may consider it. That did not happen in this case. The applicant turned in his plan early on the morning of the first day, so I am told, but not all the County staff was made aware of this fact. Citizens who appeared in the morning to review this plan were turned away on the grounds that the staff did not have such plan. This may have been staff error, but it does not change the fact that the full five day review period, as required by your rules, was not provided. This is a procedural error which cannot be corrected at this time. Our Supreme Court has granted Boards and Commissions such as yourselves great leeway in their substantive decisions, but the Court has held fast to compliance with the letter of every procedural rule, particularly where such rules affect citizen rights. It is compliance with these rules that makes planning and the zoning of land constitutionally acceptable.

Thus, for the independent reason that the plan was not made available for the minimum full five day period, an issue which does not go to the Board of Appeals but to the Circuit Court, this Commission does not have authority to consider this plan tonight.

I thank you for your time. I urge you to comply with State Law and your own procedural requirements and remove the Crow's Nest plan consideration from your agenda.

Respectfully,

David S. Bailey