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PRINCE WILLIAM OFFICE

Land Use Newsletter

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Legislature Extends Validity Periods

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The Virginia General Assembly has passed two measures which, if signed into law by the Governor, will extend the validity periods for subdivision plats, site plans and special use permits (SUPs).

House Bill 2077: Any subdivision plat or site plan which is valid and outstanding as of January 1, 2009 shall remain valid until at least July 1, 2014. Any other plan or permit associated with the plat or site plan is likewise extended.

Performance of SUP conditions and proffered development conditions is also extended under certain circumstances. The practical benefits may be limited; in order to take advantage of the extensions, any performance bonds/agreements or other financial guarantees of completion of public improvements associated with the development must be continued in force.

Senate Bill 1533: Any SUP which was valid and outstanding as of January 1, 2009 is extended to July 1, 2011.

County Fee Increases

County staff is considering increases to land use application fees. If adopted, the increases could become effective as of July 2009.

Bond Release Policies Revisions to Be Considered

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Prince William County staff is considering revisions to its bond policies to include a bond deferral option. Owners must presently incur costs associated with keeping their bonds current while waiting for construction to commence or finish (once initiated) on a project. The private sector has urged the County to change its policies to allow owners to request a temporary release of bonds in certain circumstances. An owner would enter into an agreement with the County whereby all construction would cease on, and no lots would be sold from, the property until the bond is re-posted. The agreement (known as a bond deferral or moratorium agreement) was previously allowed in the County, but applicable provisions were removed from the DCSM in 2006.

Staff will present the proposal and associated DCSM revisions to the Policy and Standards Committee on March 19, 2009.

Comprehensive Plan Land Use Chapter Update

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The Planning Commission has not yet finalized its recommendation to the Board of County Supervisors (BOCS). Planning staff has prepared a separate, modified proposal, which it will be presenting to the BOCS at a work session on March 17, 2009. Staff will also be seeking further BOCS direction on the update.

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VA Supreme Court – Vested Rights Landmark Case

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On February 27, 2009, the Virginia Supreme Court clarified the scope of vested rights in proffered rezonings under Va. Code Ann. §15.2-2307 and §15.2-2298(B). Hale v. BZA arose out of determinations by the Blacksburg Zoning Administrator concluding that a recently rezoned project, which was intended to include a "big box" store, was not vested against a subsequent Town Zoning Ordinance amendment that required a special use permit for big box stores.

The Court found that "flexibility is the opposite of specificity, and specificity is what §15.2-2307 requires...the rights that vest are only those that the government affirmatively acts upon, and the evidence to support the claim to those rights must be clear, express and unambiguous." In this case, the proffers failed to identify the big box use specifically as a by-right use for the project.

The Court also found that other proffers fell short of allowing vesting based on §15.2-2298(B), which offers protections for certain proffered rezonings that contain "a requirement for the dedication of real property of substantial value, or substantial cash payments for construction of substantial public improvements, the need for which is not generated solely by the rezoning itself". As would be anticipated, the facts associated with individual cases will drive an ultimate vesting determination. Hale v. BZA provides a framework not only for future vesting determinations, but also for drafting proffers in future rezoning cases.

To read the decision in its entirety, please click <http://www.courts.state.va.us/opinions/opnscvwp/1081000.pdf>.

Greening Prince William County

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The Board of County Supervisors (BOCS) identified a "Green Community" Initiative ("Green Initiative") for Fiscal Year 2009 to include "elements affecting the County government, land use and community behavior." The initiative was established, in part, based on citizen feedback.

While the bulk of the initiative is focused on how County Government can become more environmentally responsible and show "environmental stewardship," there is a clear indication that citizens rate the environment as a "major issue of importance." It is anticipated the County will work toward incorporating "green policies" in its everyday business, as well as in the community at-large.

WCLEW's LEED-accredited professionals will continue to track the County's green initiatives. In addition, WCLEW can assist developers seeking opportunities to incorporate green principles into their County projects, by applying a holistic approach that evaluates entitlements in light of evolving sustainable practices.

Upcoming BOCS Meetings

March 17, 2009: Work session with the Planning Office on the Land Use Chapter of the Comprehensive Plan

April 21, 2009: Public hearing on revisions to the DCSM and Zoning Ordinance

Dates subject to change.

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