
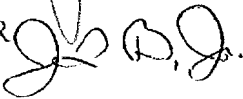


MEMORANDUM

TO: THE HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: RASHAD M. YOUNG 
CITY MANAGER

JAMES L. BANKS, JR. 
CITY ATTORNEY

DATE: May 22, 2012

SUBJECT: IN RE APRIL 12, 2012 DECISION OF THE BOARD OF ZONING APPEALS FOR THE CITY OF ALEXANDRIA; QUESTIONS REGARDING THE BZA'S ROLE

As you know, we are in the unfortunate position of having to appeal a decision made by the Board of Zoning Appeals (BZA) last month regarding how the protest provisions in the Zoning Ordinance apply to the W-1 text amendment and to all text amendments generally. Being in this position has raised a number of questions about how the process of an appeal works when the appeal is brought by the City rather than an outside appellant. To address these questions, the City Attorney provided a memo to the City Manager regarding the legal questions about the process. The City Manager, then taking that advice into consideration, sent a memo to the Board of Zoning Appeals, copying the City Council (dated May 16, 2012) explaining that because the BZA is not a party to this proceeding, there is no need for additional counsel to be brought on to represent the BZA. On Friday, May 18, 2012 the BZA held a worksession to discuss the matter among themselves; at that time, staff, including the City Attorney, was available to answer questions that the BZA had about this matter. During that worksession, staff, the City Attorney, and outside counsel retained by the City Attorney answered the questions of the BZA members with specific citation to case and statutory law.

Below we have provided information regarding 1) why the BZA is not considered a party in this case and does not require outside counsel; 2) what the responsibility of the BZA is in this case and how it will be fulfilled; and 3) how the BZA will be represented if the need arises.

- 1) **The BZA is not considered a party to this case and does not require independent counsel because the State Law has clarified the role of a BZA in an appeal of their decision.**

The BZA is acting in a quasi-judicial function when reviewing the decision of the Director of Planning and Zoning. Its role is to review the decision and make a ruling

about whether the decision was a reasonable and correct interpretation of the zoning ordinance. As such, the BZA's role is similar to that of a lower court judge. When a matter is appealed from a lower court to a higher court, the judge in the lower court is not a party in the case. Similarly, when the BZA's ruling is appealed it is not a party to the case except to the extent that the BZA is required to provide the record.

The law on this matter has been evolving over the years. Traditionally, the BZA has always been a named party in an appeal of its decision and while the BZA does not take an active role in the case, the locality answered the appeal on behalf of the locality and the BZA.

In 2008, the Virginia Supreme Court weighed in on this question when the Fairfax County Board of Zoning Appeals filed a Declaratory Judgment action against the County requesting that the County be required to provide the BZA with counsel. The Virginia Supreme Court found that the BZA is created by statute and is limited to the powers that are expressly granted in such statute and that such powers do not include the ability to institute litigation on its own behalf. BZA of Fairfax County v. Board of Supervisors of Fairfax County, 276 Va. 550 (2008). The result of this ruling is to clarify that the BZA is not a legal entity that can sue; therefore, it also cannot be sued, cannot be subjected to a default judgment, and cannot have any remedy levied against it. The only role the BZA has in an appeal is to provide the record of the matter that was before it.

The General Assembly followed by addressing this issue in 2010 by adding language to State Code Section 15.2-2314 that specifically states that "Any review of a decision of the board shall not be considered an action against the board, and the board shall not be a party to the proceeding, however the board shall participate in the proceedings to the extent required by this section." Virginia Code § 15.2-2314. The statute goes on to allow the court to serve a return on the BZA to require the return of the record. While the City is governed primarily by the City Charter, not exclusively by the State Code (as is the case with counties), this language is informative in understanding the intent of the roles of the parties in a proceeding appealing a BZA decision.

Therefore, for all the reasons stated above, there is no legal reason for the City to retain additional counsel for the BZA and no reason to justify the expenditures related to additional counsel.

2) The BZA's role in the current pending case, In Re April 12, 2012 decision of the Board of Zoning Appeals for the City of Alexandria is limited to providing the record.

In the recent appeal filed by the City the BZA is listed as a respondent with the limited responsibility of providing the record to the Court. The complaint specifically states: "Respondent BZA is named herein as a party for the purpose of providing the record on

appeal.” Therefore, the case has been specifically filed to make it clear that it is not a proceeding against the BZA but instead it is strictly a review of the BZA’s decision.

As such, the BZA’s responsibility is limited to providing the record which is an administrative function performed by staff for the BZA. Specifically, the following actions will be taken to comply with this responsibility:

- The staff for the BZA will compile the documents that make up the record in this case. The record consists of every document that was before the BZA when it made its decision, the transcript of the proceeding, and the findings of fact and conclusions of law that were ultimately approved by the BZA. The staff will then certify that these are true copies of the documents that make up the record.
- The staff will directly submit that certification and the documents to the Circuit Court (please note that staff has submitted the record of BZA actions to the Circuit Court in numerous other appeals without involvement of outside counsel for the BZA).
- The staff will report to the BZA at the BZA’s next hearing that this record has been submitted and what was included in the record.

This is the extent of the BZA’s responsibility and once this is completed, the BZA will have complied with any requirement of the appeal.

3) The City Attorney is the legal advisor for the BZA and will retain outside counsel if the need arises.

Pursuant to Section 11.02 of the City Charter, the City Attorney is the “...legal advisor of the city council, the city manager, and all departments, boards, commissions and agencies of the city...in all matters affecting the interest of the city...” As such, the City Attorney is the legal advisor for the BZA. There is no conflict of interest in this current case because the appeal as filed is not adverse to the BZA. The BZA is not a party and is only involved in the case to provide the record.

We are not aware of any other case where the BZA as a board, or any individual member was called upon to be a fact witness or to provide additional information in the case. However, if the BZA or any of its individual members were required to provide additional information in the case, additional evidence, or to testify in the Circuit Court appeal, the BZA and/or its individual members would need further advice about how to respond. At that time, the City Attorney would retain and the City Manager would authorize the necessary funds for separate outside counsel for the BZA and/or its individual members.

orals (b)
5-22-12

Jackie Henderson

From: Kathryn Papp <kpappva@gmail.com>
Sent: Wednesday, May 23, 2012 2:33 PM
To: William Euille; Frank Fannon; Kerry Donley; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: COA Contact Us: BZA Independent Council Denial
Attachments: ATT00001.txt

COA Contact Us: Mayor, Vice Mayor, and Council Members

Time: [Wed May 23, 2012 14:33:25] Message ID: [39667]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Kathryn
Last Name: Papp
Street Address: 504 Cameron Street
City: Alexandria
State: VA
Zip: 22314
Phone:
Email Address: kpappva@gmail.com
Subject: BZA Independent Council Denial

Dear Mayor Euille, Vice Mayor, and City Council:

Last night's session

was a tour de force triumph of politics over good governance. To me it

hammered
home the weakness of the city's case and strengthened the

perception of a city hall that has eliminated
"the people" from

the top of its municipal organization chart, even highly qualified,

volunteer, city-appointed
board members.

Comments: At this point, this appears

to be a strictly internal issue. There has been no legal event to trigger

the city's
filing of this brief with any hope of prevailing. We are

dealing with a city's internal legal tool - in this case, an
unclear

ordinance. All boards, commissions etc reside within the city's corporate

structure and issues
concerning them should not reach beyond that

corporate structure for resolution. The chairman of the BZA

is

rightfully concerned that internal city staff and the attorney bringing the appeal will be responsible for producing a body of materials that

substantially and fairly support the BZA's decision. To date various city

officials having acted to deliberately create an environment of hostility and distrust of their actions.

This does have everything to do with the

waterfront development and the downstream implications of this decision.

It is simply disengenuous to insist otherwise. It has nothing to do with

precedent. Policy is used to deal with future possibilities. Prior to a

year ago, I was unconcerned with city hall - but after a year of

watching, listening, and talking with friends in municipal government in

other cities - I'm worried.

Sincerely,
Kathryn Papp

Jackie Henderson

From: Mark Allen <mallen@markallenlaw.com>
Sent: Tuesday, May 22, 2012 6:08 PM
To: Kerry Donley
Cc: William Euille; Frank Fannon; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: RE: COA Contact Us: Letter to Council from BZA
Attachments: 20120522180850.pdf

Kerry,

The concern stemmed from the fact that the BZA is named as a Respondent. We all know that the City isn't "suing" its own Board (as unfortunately some have said). The state statute says quite clearly that "any review of a decision of the board *shall not be considered an action against the board* and the board shall not be a party to the proceedings; however, the board shall participate in the proceedings to the extent required by this section." Va Code Sec. 15.2-2314. It goes on to say that the Board shall file a return that "shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified." Board members were concerned about who decides what is "pertinent and material" and who will do the verifying. It's never been a problem before, but in my experience we've never had a case where the City was the one appealing.

In all the other appeals, the complainant/petitioner is a citizen unhappy with a decision, and the City Attorney's office, in conjunction with the Planning staff, has always responded for us. They do fine work. They prepare and file the record for us, which is probably all we have to do. (See attached from the most recent appeal). We never even see it.

But I've been told by the folks opposing the City's appeal that they're going to scour the "record" to see that it's properly compiled and filed, and I'd hate for them to have some sort of objection based on the fact that the City Attorney filed it for us (as they did in prior cases) and at the same time filed the Petition for Review in this case.

Sounds technical, I know. I would imagine that any counsel we have would review the record as prepared by staff, be sure it's as complete as we can make it, and sign off on submitting it, much as Mr. Banks did in the attached. This lawyer would also stand by if we were required to file anything else as the case proceeded. He/she would NOT be filing briefs, NOT appearing in court, NOT arguing the case, etc.,. That'll get done by the lawyers for the other respondents. So the role would be very limited.

And for what it's worth from a policy perspective, it would take the wind out of the sails of those critics who are vociferously critical. Believe me, none of us wants to spend the City's money needlessly.

Mark S. Allen
Law Offices of Mark S. Allen
111 Oronoco Street
Alexandria, Virginia 22314
703-836-8787
f703-836-7459

From: Kerry Donley [<mailto:Kerry.Donley@alexandriava.gov>]
Sent: Tuesday, May 22, 2012 5:37 PM
To: Mark Allen
Cc: William Euille; Frank Fannon; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: Re: COA Contact Us: Letter to Council from BZA

Mark

Thanks for writing and I appreciate the BZA's position. Quick question, since the decision as a matter of record is the subject of the appeal, why I'd there a need for counsel? Surely a judge's decision when appealed does not necessitate hiring outside counsel. Additionally, would the circuit court even consider briefs or opinions from other counsel since the matter is the BZA's decision of record? I would hate to hire counsel and have their work rejected by the court.

Hope you are well.

Kerry

Sent from my iPhone

On May 22, 2012, at 3:44 PM, "Mark Allen" <mallen@markallenlaw.com> wrote:

COA Contact Us: Mayor, Vice Mayor, and Council Members

Time: [Tue May 22, 2012 15:43:04] Message ID: [39645]

Issue Type: Mayor, Vice Mayor, and Council Members

First Name: Mark

Last Name: Allen

Street Address: 111 Oronoco Street

City: Alexandria

State: VA

Zip: 22314

Phone: 703-836-8787

Email Address: mallen@markallenlaw.com

Subject: Letter to Council from BZA

Comments: I wanted to be sure you received this letter from the BZA, which was delivered to the City Clerk's office yesterday. I do not believe this representation will be very expensive, nor long-lasting. We anticipate that such counsel would assist in being sure the record is properly filed and that any other duties which may be asked of the Board be properly fulfilled. Most Board members felt that the City Attorney's office -- which does outstanding work for us in other, more traditional cases--may have at least the appearance of a conflict in advising both the BZA and the Council.

Mark Allen

Attachment: df9b0ab1befd1331f8ad4205c2f58be4.pdf

<df9b0ab1befd1331f8ad4205c2f58be4.pdf>

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

DONNELL R. FULLERTON, NANCY)
JENNINGS, AND SEMINARY HILL)
ASSOCIATION, INC.)

Petitioners,)

v.)

CITY OF ALEXANDRIA CITY COUNCIL)

BOARD OF ZONING APPEALS FOR THE)
CITY OF ALEXANDRIA)

ALEXANDRIA CITY PUBLIC SCHOOLS,)

Respondents.)

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
2011 DEC 15 P 3:39
EDWARD SEMERJIAN, CLERK
BY DENNY DEBRI

At Law No. CL11005121

RECORD ON APPEAL

COMES NOW, the Board of Zoning Appeals for the City of Alexandria, Virginia, by counsel, and hereby submits a certified copy of the transcript of the proceeding before the Board of Zoning Appeals in BZA Case #2011-0012.

BOARD OF ZONING APPEALS FOR THE CITY OF ALEXANDRIA
By counsel



James L. Banks, Jr., VSB #28052
Christopher P. Spera, VSB #27904
Joanna C. Anderson, VSB #65463
Office of the City Attorney
301 King Street, Suite 1300
Alexandria, Virginia 22314
(703) 746-3750
Counsel for respondents

Record in
Exhibit Room

Certificate of Service

I hereby certify that a true copy of the foregoing was mailed, postage pre-paid, this 15th
day of December, 2011, to:

Donnell R. Fullerton, VSB 16991
Erika L. Dogan, VSB 70954
Carter, Fullerton, & Hayes, LLC
4115 Annandale Road, Suite 205
Annandale, Virginia 22003
Counsel for Petitioner Donnell R. Fullerton

Frank Putzu, VSB 28828 (Associate Member)
1423 Juliana Place
Alexandria, Virginia 22304
Counsel for petitioners Nancy Jennings and Seminary Hill Association, Inc.

Julia Judkins
Bancroft, McGavin, Horvath & Judkins, PC
3920 University Drive
Fairfax, VA 22030
Counsel for Respondent Alexandria City Public Schools


Joanna C. Anderson

Jackie Henderson

From: Ursula.Weide@www3a.alexandriava.gov
Sent: Tuesday, May 22, 2012 12:33 PM
To: William Euille; Frank Fannon; Kerry Donley; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: COA Contact Us: BZA legal counsel
Attachments: ATT00001.txt

COA Contact Us: Mayor, Vice Mayor, and Council Members

Time: [Tue May 22, 2012 12:32:39] Message ID: [39635]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Ursula
Last Name: Weide, PhD, JD
Street Address: 1302 Bayliss Drive
City: Alexandria
State: Virginia
Zip: 22302
Phone: 703-671-1262
Email Address: sevenfortyseven400@earthlink.net

Subject: BZA legal counsel

Hello Council members,

Please have the BZA choose its own counsel and

make the funds available. Your own outside counsel is expensive enough!

This unnecessary charade is unbelievable. Instead of going back to the drawing board and working with your voters to develop a compromise plan.

Alexandria is becoming the laughing stock of the rational world out

Comments: there. And personally: I pay multiple taxes, business included, so that the City (via

Council) can decide to fight itself. I then pay/donate

again to fight the City determined to "win" against itself and

its citizens, no matter what.

Can you imagine how much more usefully

these funds could be spent to help those in the City who need some help?

I feel I am watching kids in the sandbox play "I am bigger and better than you!" Well, things will

change on June 12...

Ursula Weide

Jackie Henderson

From: Andrew Macdonald <ahmacdonald@mac.com>
Sent: Tuesday, May 22, 2012 12:26 PM
To: William Euille; Frank Fannon; Kerry Donley; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: COA Contact Us: Waterfront/BZA/Legal
Attachments: ATT00001.txt

COA Contact Us: Mayor, Vice Mayor, and Council Members

Time: [Tue May 22, 2012 12:25:31] Message ID: [39634]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Andrew
Last Name: Macdonald
Street Address: 217 North Columbus St
City: Alexandria
State: VA
Zip: 22314
Phone:

Email Address: ahmacdonald@mac.com

Subject: Waterfront/BZA/Legal
Dear Mayor and Council:

I'm writing to ask that the City Council:

1)

Approve tonight the hiring of outside, independent legal counsel to

represent the BZA in Circuit Court:
"City Council for the City of

Alexandria and Faroll Hamer, Director of Planning and Zoning for the City

of
Alexandria v. the City of Alexandria Board of Zoning Appeals and April

Comments: Burke and Elizabeth Gibney and
Marie Kux and Michael Peck and Elizabeth

Baldwin."

2) Provide the citizens of Alexandria with a complete

accounting (City staff time and outside counsel) of all
the taxpayer

funds that have spent on legal matters related to Wales Alley (Old
Dominion

Boat Club) and the
Protest Petition related to the waterfront rezoning

hearing of January 21.

Sincerely,

Andrew Macdonald

Jackie Henderson

From: Bert Ely <bert@ely-co.com>
Sent: Tuesday, May 22, 2012 9:46 AM
To: William Euille; Frank Fannon; Kerry Donley; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: COA Contact Us: Provide independent legal counsel to the BZA
Attachments: ATT00002.txt

COA Contact Us: Mayor, Vice Mayor, and Council Members

Time: [Tue May 22, 2012 09:46:02] Message ID: [39628]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Bert
Last Name: Ely
Street Address: 200 South Pitt Street
City: Alexandria
State: VA
Zip: 22314
Phone: 703-836-4101
Email Address: bert@ely-co.com
Subject: Provide independent legal counsel to the BZA
Dear Mayor Euille, Vice Mayor Donley, and members of Council:

I am

writing to urge Council to appropriate sufficient funds to the City's Board
of Zoning Appeals to enable the BZA to hire independent legal counsel to
advise and guide it in complying with all applicable laws and regulations
Comments: as the BZA prepares and transmits to the Circuit Court the record of its
decision in the waterfront zoning matter. Hopefully these funds can be
appropriated at tonight's Council meeting so that the BZA can move
forward

in fulfilling its duties.

Very truly yours,

Bert Ely

Jackie Henderson

From: Robert and Barbara Pringle <rpringle9@comcast.net>
Sent: Monday, May 21, 2012 5:56 PM
To: William Euille; Frank Fannon; Kerry Donley; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: COA Contact Us: City should pay legal fees for BZA
Attachments: ATT00001.txt

COA Contact Us: Mayor, Vice Mayor, and Council Members

Time: [Mon May 21, 2012 17:55:46] Message ID: [39618]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Robert and Barbara
Last Name: Pringle
Street Address: 216 wolfe st
City: Alexandria
State: VA
Zip: 22314
Phone: 703 519 8252
Email Address: rpringle9@comcast.net
Subject: City should pay legal fees for BZA
Dear Members of Council:

Having decided to take the BZA to court over

its ruling on Waterfront rezoning, the City is obligated to pay its legal

fees in this matter. Of course it was a ridiculous and vindictive thing to

Comments: do in the first place, but now the City can hardly expect its own Board to

rely on City legal staff to defend itself against the City's

accusation.

Robert and Barbara Pringle
Residents and Taxpayers since

1968

Jackie Henderson

From: Daniel and Christine Bernstein <djbernstein@comcast.net>
Sent: Sunday, May 20, 2012 10:35 AM
To: William Euille; Frank Fannon; Kerry Donley; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: COA Contact Us: BZA Appeal
Attachments: ATT00001.txt

COA Contact Us: Mayor, Vice Mayor, and Council Members

Time: [Sun May 20, 2012 10:34:40] Message ID: [39578]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Daniel and Christine
Last Name: Bernstein
Street Address: 121 Princess St.
City: Alexandria
State: Va
Zip: 22314
Phone: 703-683-0456
Email Address: djbernstein@comcast.net
Subject: BZA Appeal

It is ironic that Jim Banks has no problem spending our taxpayers money to hire outside council to defend his position in the Circuit Court Lawsuit on the BZA appeal on the Waterfront Zoning issue. BUT, when the BZA seeks city funds for a lawyers advise on what their responsibilities are as named defendant in the BZA appeal Banks says "no" If Banks is so

Comments: incompetent that his office cannot handle a simple zoning appeal then he needs to find other employment. If taxpayers money is to be used, it should be used to help the cities council appointed BZA citizen members. It would be a minimal amount, unlike what Mcguire Woods will charge the city. Please provide the BZA with sufficient funds so that it can hire independent legal counsel to advise and guide the BZA in complying

with all applicable laws and regulations as it prepares and transmits to
the
Circuit Court the record of its decision in the waterfront zoning
matter.

Jackie Henderson

From: Kahryn Papp <kpappva@gmail.com>
Sent: Sunday, May 20, 2012 7:03 PM
To: William Euille; Frank Fannon; Kerry Donley; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: COA Contact Us: Fund BZA
Attachments: ATT00001.txt

COA Contact Us: Mayor, Vice Mayor, and Council Members

Time: [Sun May 20, 2012 19:02:48] **Message ID:** [39583]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Kahryn
Last Name: Papp
Street Address: 504 Cameron Street
City: Alexandria
State: VA
Zip: 22314
Phone:
Email Address: kpappva@gmail.com
Subject: Fund BZA

Dear Mayor, Vice Mayor and Council Members:

Provide the BZA with

sufficient funds so that it can hire independent legal counsel to advise

and guide the BZA in complying with all applicable laws and regulations

as it prepares and transmits to the Circuit Court the record of its

decision in the waterfront zoning matter.

Comments: This is not beyond the means or bounds of good governance for the City of Alexandria. Any hesitation or reluctance to provide this fundamental and necessary legal assistance to the city's chartered Board of Zoning Appeals might be interpreted as an act of poor judgment by elected officials.

Sincerely,
Kathryn Papp

Jackie Henderson

From: Hugh Van Horn <vanhorns1@verizon.net>
Sent: Sunday, May 20, 2012 3:57 PM
To: William Euille; Frank Fannon; Kerry Donley; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: COA Contact Us: BZA representation
Attachments: ATT00001.txt

COA Contact Us: Mayor, Vice Mayor, and Council Members

Time: [Sun May 20, 2012 15:56:40] Message ID: [39582]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Hugh
Last Name: Van Horn
Street Address: 416 South Pitt Street
City: Alexandria
State: VA
Zip: 22314
Phone: (703) 836-1066
Email Address: vanhorns1@verizon.net
Subject: BZA representation

Dear Mr. Mayor, Mr. Vice-Mayor, and Members of City Council:

Please

provide the BZA with sufficient funds so that it can hire independent legal counsel to advise and guide the BZA members in complying with all applicable laws and regulations as it prepares and transmits to the Circuit Court the record of its decision in the waterfront zoning matter.

Thank you.

Jackie Henderson

From: Christine Bernstein <chbernstein@comcast.net>
Sent: Sunday, May 20, 2012 1:32 PM
To: William Euille; Frank Fannon; Kerry Donley; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: COA Contact Us: Legal Counsel for BZA
Attachments: ATT00001.txt

COA Contact Us: Mayor, Vice Mayor, and Council Members

Time: [Sun May 20, 2012 13:31:32] Message ID: [39581]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Christine
Last Name: Bernstein
Street Address: 121 Princess St.
City: alexandria
State: VA
Zip: 22314
Phone: 703 683-0456
Email Address: chbernstein@comcast.net
Subject: Legal Counsel for BZA
City Attorney, Mr. Banks, does not believe it is necessary for BZA to have legal counsel for the City's Circuit Court appeal of the BZA decision. I would like to suggest that since McGuire Woods has already been retained by the City, that they be redirected to represent BZA and that Mr. Banks do the job that he was hired to do and that is to represent the City.

Comments: It seems to me that a trained attorney for the City should be capable of handling a zoning issue at the Circuit Court level. If not, we have the wrong man for the job. What is Mr. Banks going to do during the court appeal, carry the briefcase for the McGuire Woods attorney? I urge you to support the BZA in their interest to hire legal counsel.

Thank you.

Jackie Henderson

From: Michael Peck <mpeck@mapagroup.net>
Sent: Monday, May 21, 2012 5:09 AM
To: William Euille; Frank Fannon; Kerry Donley; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: COA Contact Us: BZA vs. City in VA Circuit Court re waterfront
Attachments: ATT00001.txt

COA Contact Us: Mayor, Vice Mayor, and Council Members

Time: [Mon May 21, 2012 05:08:39] Message ID: [39589]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: Michael
Last Name: Peck
Street Address: 420 North Union Street
City: Alexandria
State: VA
Zip: 22314
Phone: 202-412-2499
Email Address: mpeck@mapagroup.net
Subject: BZA vs. City in VA Circuit Court re waterfront
The City must provide the BZA with sufficient funds so that it can hire independent legal counsel to advise and guide the BZA in complying with all applicable laws and regulations as it prepares and transmits to the Circuit Court the record of its decision in the waterfront zoning matter. To do otherwise would be another flagrant example of political and institutional
Comments: conflicts of interest...the City playing any angle it can invent to disenfranchise and discriminate against its own tax-paying citizens. Doesn't the fact that so many of Alexandria's citizens now have to resort to the courts so many times to get this current city government to act responsibly mean anything to anyone in city public office able to think outside of their own bathwater drinking bubble?

Jackie Henderson

From: dennis kux <denniskux@yahoo.com>
Sent: Sunday, May 20, 2012 8:27 AM
To: William Euille; Frank Fannon; Kerry Donley; Alicia Hughes; Del Pepper; Paul Smedberg; Rose Boyd; Jackie Henderson; Rob Krupicka; Linda Owens; Elizabeth Jones
Subject: COA Contact Us: Requirement for Independent Legal Help for the BZA
Attachments: ATT00001.txt

COA Contact Us: Mayor, Vice Mayor, and Council Members

Time: [Sun May 20, 2012 08:27:09] Message ID: [39576]

Issue Type: Mayor, Vice Mayor, and Council Members
First Name: dennis
Last Name: kux
Street Address: 125 duke street
City: alexandria
State: va
Zip: 22314
Phone: 703-836-3398
Email Address: denniskux@yahoo.com
Subject: Requirement for Independent Legal Help for the BZA
Dear Mr. Mayor and Members of Council:

On Friday, the BZA voted to

request funds from the City to hire independent counsel to advise on its

response to the Council's appeal of its April 12 ruling overturning the

City Planning Director's rejection of
the citizens' protest petition

against the proposed rezoning under the Waterfront Plan.

The City

Comments: Attorney has publicly declared that the BZA has no need for outside legal
help. He is wrong. He
would be right if the City's appeal to the

Circuit Court had limited itself to the legal merits of the BZA's
finding

of fact. It would then be up to the lawyers for the protesters to argue

why the decision was correct.
The BZA could stay on the sidelines. The

transcript of the open public hearing and BZA deliberations
speak for

themselves. But the City's appeal not only attacks the substance of the

BZA's action but the
BZA's process as well. Why the City opted to this
course of action is unclear.

What is clear is that that the BZA has
the right to defend its integrity, called into question by the city's
appeal. For that it needs legal counsel. The city attorney, having
attacked the BZA, cannot defend it at the
same time. Hence, the City,
being unable to provide legal defense for the BZA, has the obligation to
provide funds for the BZA to seek independent counsel. Under these
circumstances, the Council would
be remiss if it voted to deny the BZA, a
Council appointed body, the funds needed to defend itself against
the
serious allegations contained in the City's
appeal.

Respectfully,

Dennis Kux

LAW OFFICES

orals
5-22-12

MARK S. ALLEN
111 ORONOCO STREET
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MARK S. ALLEN

May 21, 2012

Hon. William D. Euille and Members
of the Alexandria City Council
City Hall
301 King Street
Alexandria, Virginia 22314

VIA HAND DELIVERY

Re: In Re: April 12, 2012 Decision of the Board of
Zoning Appeals for the City of Alexandria
Case No. CL 12002769, Alexandria Circuit Court

Dear Mr. Mayor and Members of Council:

As Chairman of the Alexandria Board of Zoning Appeals, I write to forward to you the Board's request that the City Council direct the appointment of outside counsel to represent and assist the Board in fulfilling its duties as a respondent in the above-referenced matter.

This request is made as a result of extensive discussions held during the Board's work session on May 18, 2012, which included the Board's members, City staff, the City Attorney, and outside counsel that has been retained to assist the City Attorney in this case. The request was supported by a vote of 6-1 and is made consistent with the provisions set forth in Section 15.2-2308(D) of the Code of Virginia, which authorizes a Board of Zoning Appeals to hire legal counsel to be paid for by the applicable City or County authority.

Please feel free to contact me or other Board members if you have questions. We thank you for your consideration and look forward to hearing your response as quickly as possible.

Sincerely,



Mark S. Allen