

COURT DISMISSES RA GOVERNANCE BY REFERENDUM

By William Nicoson

The Fairfax County Circuit Court has upheld the capacity of Reston Association to perform long-term planning without a referendum of Reston residents. That sounds like a no-brainer, but a former director of RA took it to court seeking to overturn a 4-year plan designed to improve RA's nature center because it hadn't been approved by referendum. As it happened, it hadn't even been approved by RA's Board of Directors. The judge dismissed the case out of hand, refusing the plaintiff both summary judgment and a trial.

Long-term planning is at the heart of all business strategy, including the strategy of non-profits like RA. RA's bylaws require a referendum of RA members for "any one new capital improvement" costing more than a ceiling determined by the consumer price index (now \$309,000). This requirement surely must apply to the budgeting for and actual construction of the improvement, not to the drafting or approval of any long-term plan.

Defending law suits is expensive in terms of time committed by both RA staff and counsel. Defending frivolous law suits brought against RA is a waste of community resources and tends to drive up insurance premiums. I'm happy to pay my RA assessment to fund RA's planning and management of community facilities. I'm not pleased to be paying for wasteful litigation instigated by a former director whose favorite hobby-horse must be governance by referendum.

Individuals and interest groups who perceive themselves to be consistently in the political minority will naturally favor decision-making by referendum. This offers a chance of trumping the majority judgment of elected office-holders and will, at a minimum, postpone adoption of majority-backed proposals. Referendums are costly and for this reason prohibited by Virginia law in many instances for local government agencies. But non-profits like RA are open to referendum abuse by minority nay-sayers.

I vote for directors of RA who have the experience and time to study community issues that I lack. If I learn their judgment is unsound, I'll vote for someone else next time. I'll certainly vote to oust any director intent on passing the buck back to me and other RA members in a non-mandatory referendum on a hot-potato issue the director wants to duck. Some issues of overwhelming significance require a referendum as a matter of law. All other issues should be decided by the Board of Directors elected to manage RA's performance.

The losing plaintiff sought to turn long-term planning for RA's nature center into an issue for which a referendum was mandated by law. Judge M. Longhorne Keith wasn't buying it. He found no evidence adduced by deposition or otherwise to support the plaintiff's view, and spoke darkly of the risk of court sanctions against lawyers wasting the court's time with frivolous claims. It may or may not be relevant that plaintiff's lawyer at the hearing was the third counsel retained to pursue plaintiff's case.

Is this the last RA will hear from litigious-minded members bent on managing RA by community referendum? Probably not. But the next case has been made substantially easier to win based on the decisive precedent established by Judge Keith.

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