Building Ban Appeal Certain

Although Fairfax County's Interim Development Control Ordinance received a near fatal blow in the courts last week, the County's intention not to grant subdivision or site plan approvals will apparently stay in effect for at least another three or four months.

In accordance with a decree entered by Fairfax Circuit Court Judge William O. Plummer Aug. 16, the County has a 30-day period during which they may appeal the decision against the Interim Development Ordinance. Assistant County Attorney William E. Donnelly says an appeal of the ruling will definitely be made to the Virginia Supreme Court.

Both Donnelly and attorney Harold O. Miller (who represented some of the 13 landowners involved in the suit against the County ordinance) estimate that the Supreme Court will not decide whether to hear the appeal for at least three or four months.

In the meantime, County residents and developers are permitted to file subdivision and site plans, but the County is not required to grant any approvals until the appeals process is completed.

Should the Supreme Court agree to hear the case, the County will probably enjoy an additional delay of from nine months to a year until a decision is handed down. Such a delay would carry the matter past the originally scheduled June 30, 1975 expiration date of the Ordinance.

The Interim Development Ordinance was passed by the County initially in January, 1974. The intent was to halt all submissions and approvals of site plan, subdivision and rezoning applications so that the County would have time to comprehensively replan and rezone the County. Suits were filed against the restraints placed on subdivision and site plan submissions and on rezoning applications.

The suit involving restrictions on receiving rezoning applications was settled out of court July 31. The County agreed to accept such applications for a two-week period in September and to make decisions on those and all other rezoning applications by the end of 1975.

The case involving the subdivision and site plan portion of the Ordinance, however, was tried in Fairfax Circuit Court in July. Judge Plummer's six-page decision of last week totally dismantled those portions of the Ordinance. Among other points, Plummer ruled that the site plan and subdivision sections of the Ordinance are inconsistent with state law and do not uniformly apply to all residents of the County. Plummer also ruled that when the Ordinance was originally passed by the Board of Supervisors on an emergency basis, that emergency was in effect created by the County. Consequently, he wrote in the decision that, "The passage of the emergency ordinance under these circumstances is clearly outside the authority of (the Virginia code) and is arbitrary and capricious."

Although the County sought and was granted the 30-day "stay," the decree entered Aug. 16 revokes some of the contested sections of the ordinance.

Primarily, the decree not only forces the County to accept subdivision and site plan applications, but also directs the staff to process those applications up to the point of approval or

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County Told To Accept Development Plans

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disapproval. Miller labeled the decree "an excellent compromise." He points out that it takes the County "six to nine months to process" the plans up to the final point of approval. "If the (Supreme) Court agrees not to hear the appeal, we've lost nothing," he says. "If it grants the appeal and ultimately rules against the County, we've only lost a few months."

Miller says that the key result of the compromise decree is that applicants can now have their names placed on the sewer availability list. The County has for some time doled out sewer hookups on a first-come, first served basis. By Plummer's ruling, applicants who submit subdivision and site plans enjoy the side benefit of getting in line for sewer taps as they become available in the future. "This is really very important," Miller said. "I don't think we're going to be losing very much, if any, time. If the stay had been granted without that provision (allowing applicants to submit plans immediately), we would have suffered a great hardship."

Regardless of the fact that the County is now being forced to accept the site and subdivision plans, Donnelly says the court-ordered stay and the subsequent appeal "should preserve our planning flexibility." On the other hand, he adds that, "If the site plan and subdivision plan controls of the Interim Development Ordinance are ultimately lost, it would severely restrict our planning options."

Another element of the Aug. 12 decision is that the County's land release program -- an amendment to the Interim Development Ordinance whereby certain areas of the County can be developed immediately while the remaining sectors are being replanned -- will remain in effect pending the outcome of the appeal.

Miller also sees this element of the ruling as "very significant." Had Judge Plummer left the option to approve or disapprove applications from the released areas, Miller says, the County "might have said we won't approve them."

Overall, Miller doesn't give the appeal much chance of success. "Judge Plummer cited six or more grounds (on which the Ordinance is illegal). He has cited enough grounds that at least one -- and I think all -- will be upheld by the appellate court."

Connelly says that even if the Supreme Court decides against the Fairfax government, construction still could not take place in many areas of the County because of the present lack of sewage treatment facilities that serve much of the County.