

Facts on Arlington's Planning Process

Lessons for the future on what the Court found in the EHO/Missing Middle case



Court finds: County “missing an analysis of impacts”



“The plaintiff’s expert on planning and zoning testified that the proposal was **missing an analysis of impacts** at the neighborhood level where the EHO development would occur.

This evidence was not contradicted by the defendants’ witnesses.”

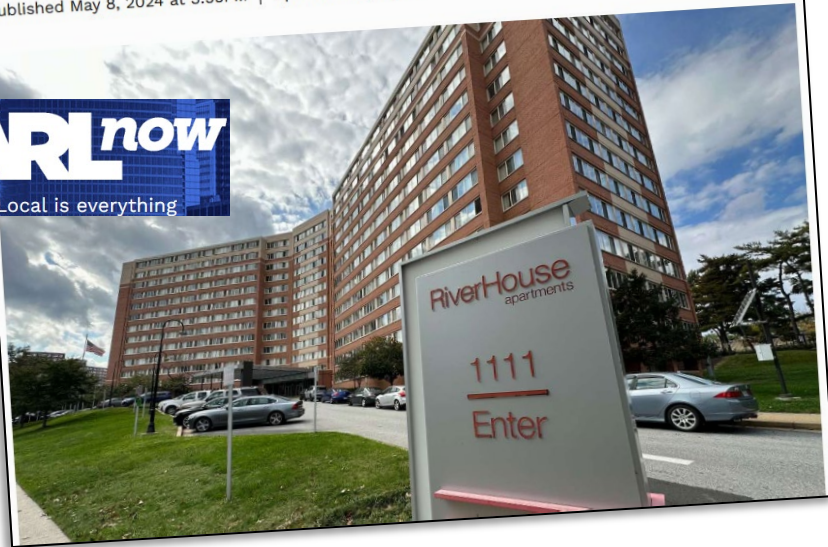
\$1,087,278.52

In outside legal fees by County Board (Jan.-Sept. 2024) in EHO case.

VIRGINIA
Lawyers Weekly

Court overturns Pentagon City plan, raising questions about proposed RiverHouse development

By Dan Egitto
Published May 8, 2024 at 3:55PM | Updated May 8, 2024 at 4:20PM



County Board had
3 court losses in
2024 for poor
planning

Municipal: US prevails in Arlington National Cemetery takings suit

Virginia Lawyers Weekly // April 22, 2024 // 3 Minute Read

Where the United States took 8.929 acres of land from Arlington County, to expand Arlington National Cemetery, and Arlington County argued that 4.23 acres of that land was severable for use as a residential development, but the County failed to show that its development proposals are physically possible, legally permissible or financially feasible, the United States p... on the claim

County Board
outside legal fees

\$1.7m

E.g., [https://arlingtoncountyva.govqa.us/WEBAPP/rs/\(S\(4qt3xp13hhuu3b3cacr3xt4qn\)\)/RequestArchiveDetails.aspx?rid=23755&view=1](https://arlingtoncountyva.govqa.us/WEBAPP/rs/(S(4qt3xp13hhuu3b3cacr3xt4qn))/RequestArchiveDetails.aspx?rid=23755&view=1);
<https://www.arlnow.com/2024/05/08/court-overturns-pentagon-city-sector-plan-raising-questions-for-future-of-proposed-riverhouse-development/>;
<https://valawyersweekly.com/2024/04/22/municipal-us-prevails-in-arlington-national-cemetery-takings-suit/>; <https://x.com/asfvirginia/status/1793694817576476686>;
[https://arlingtoncountyva.govqa.us/WEBAPP/rs/\(S\(l2q0okgwqe4sizh1r2z0u1di\)\)/RequestArchiveDetails.aspx?rid=22342&view=1](https://arlingtoncountyva.govqa.us/WEBAPP/rs/(S(l2q0okgwqe4sizh1r2z0u1di))/RequestArchiveDetails.aspx?rid=22342&view=1)

Court's ruling on EHO. Mixed decision; Plaintiffs win on:

Substance

Standing (fundamental right)
Count III (no studies on localized impacts)
Count VII (tree canopy violated Va. law)

Structure

Count IV (unlawful delegation to staff to issue permits)
[and Count VII]

Process

Count I (no initiation)

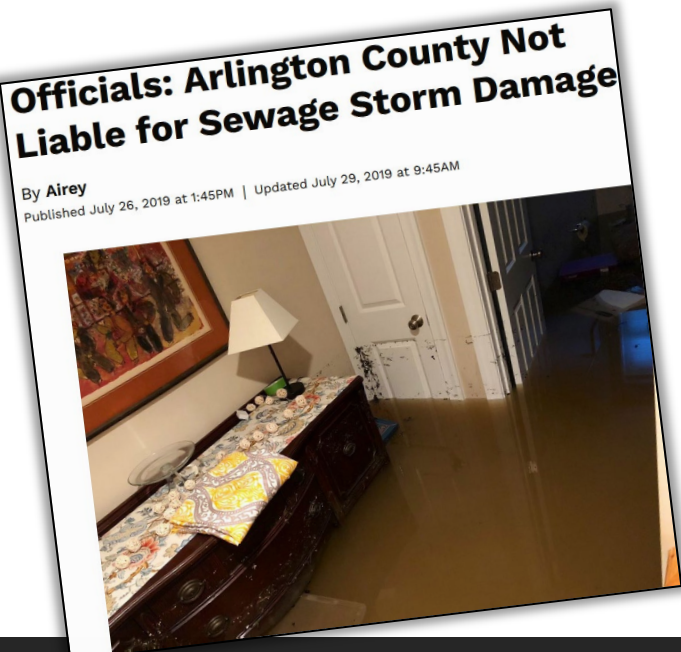
**What do the Court's
factual findings tell us
for *future* planning?**

Court finds: No analysis “on a localized basis”



The chief support engineer for the county’s water, sewer, streets department, testified that he evaluated the EHO development on sanitary sewers on a system wide basis but did not do so on a localized basis. No documents considering the localized impact of EHO were known by him.

Examples of localized impacts of sewer back-ups




Court finds: County “did not analyze”



The Watershed Manager in the Department of Environmental Services for the county admitted that they did not analyze whether there would be any adverse effects from EHO development at the neighborhood level.



Floods Court finds County “dismissed” “serious concerns” with “no...evaluation”, public not told




Staff identified serious concerns with stormwater conveyance if EHO was implemented. These concerns were brought to the attention of their superiors. The lead staff member on stormwater infrastructure sent an e-mail to the Department of Environmental services (DES) as follows:

“I cannot state in strong enough words that this is going to be devastating to the already stressed storm water conveyance system. The issue is not just what will happen in flood inundation zones, but that the areas that drain to these zones also contribute to the flow of stormwater into the inundation zones. Areas that are not problematic now will become problematic because the available land for overland relief shrinks, there are no protections for setback from existing storm water drainage pipe networks, and problems with lot to lot grading/drainage will be harder to address and will be magnified.” PIs. Ex. 136 at ArCo-

County’s “lead” expert:

“I cannot state in strong enough words that **this is going to be devastating** to the already stressed stormwater ... system”



These concerns were dismissed or not considered on the basis that if you are building on the same footprint of a single-family home with a six plex there will be no deleterious effect or increase in storm water drainage requirements. This position appears to be supported by no study or evaluation.

These concerns of staff were not brought to the attention of the public in any meeting.



SFHs v. EHOs: internal docs reveal reality

Staff (internally): SFHs “typically don’t [max out]” lot coverage; “error” to assume “same footprint” means “no adverse impact”

From: Matthew Ladd
Sent: Thursday, March 24, 2022 5:55 PM
To: Anita Morrison <amorrison@wesconsull.com>
Subject: RE: Updated Lot Sized for Design Alternatives

General update: it looks like we will be moving forward with the lot coverages as you’re modeling them now. However, we might be going with reduced parking (0.5 ratio) in all locations, not just Metro. The thought is the areas away from Metro have high availability of street parking.

Most 6,000 and 8,000 square foot lots can do up to 48% lot coverage, but they typically don’t go that high. We’re not sure why—maybe to meet stormwater requirements. 40% is a good assumption across the board.

Anecdotally, we often see they don’t max it out. Will MMHS max it out though, even if the max stays the same? We just don’t know.

County, later: “most” EHOs “are maximizing” lot coverage

Learnings: Application and Permitting

Experiences from Zoning Review

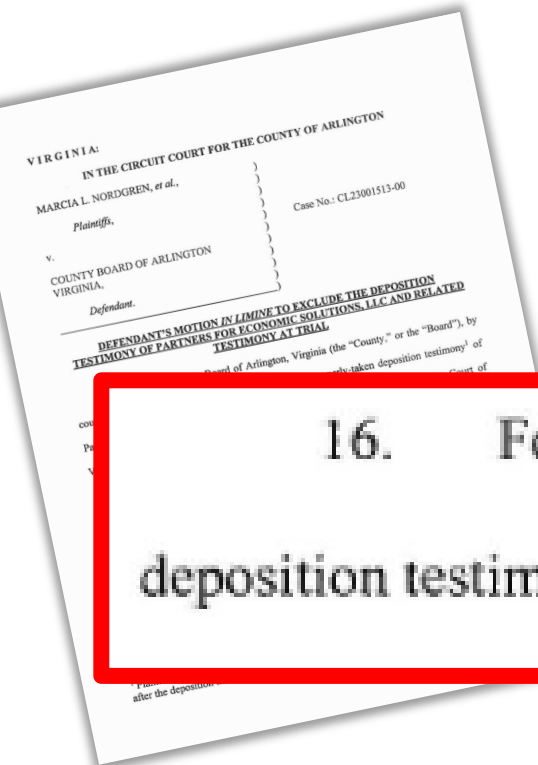
- 14 Townhouse style, 22 Multi family, 5 duplexes, 6 semi-detached
- Zoning Staff recommending and Applicants are becoming more interested in consultation meetings before submitting applications.
- Most developments require approval of subdivision plats prior to building permit applications being accepted which explains the low number of building permits under review.
- In most Applications the coverage and GFA allowances are maximized leaving no margin for error/as built.

From: Demetra McBride <dmcbride@arlingtonva.us>
Sent: Thursday, March 17, 2022 12:25 PM EDT
To: Elizabeth Thurber <ethurber@arlingtonva.us>; Jason Papacosma <jpapacosma@arlingtonva.us>; Greg Emanuel <gemanuel@arlingtonva.us>; Mike Moon <mmoon@arlingtonva.us>; Dennis Leach <dleach@arlingtonva.us>; Luis Araya <laraya@arlingtonva.us>; Qianqian Li <qli@arlingtonva.us>
Subject: Re: MMHS: Prelim. Recommendations for Staff Review

I have a number of deep concerns:

5. Flooding (Slide 16 - how is this possibly titled "Key Findings") - This slide seems to presume that, so long as you keep the same footprint as a large SFR home, no adverse impact on SW (error). That we currently have sufficient funding to alleviate flooding (error). And that SW quality and quantity mitigation is identical (error).

County Board tried to exclude the deposition of its own consultant & preclude it from testifying at trial.



16. For the foregoing reasons, the Board respectfully requests that the court exclude the deposition testimony of PES and preclude Ms. Morrison and Ms. Ferretti from testifying at trial.

Court finds: County told consultant to “avoid disagreement with [us] because the public ‘will FOIA it’”



The county only retained one outside consultant to assist them in evaluating the impact of EHO. That outside consultant will be known as the primary consultant for the purpose of this ruling. The evidence supports the view that the primary consultant for the Board regarding EHO was instructed to avoid disagreement with the staff of the county because the public “will FOIA it,” Pls. Ex.98 PES Dep. 179:20-181:1. The primary consultant understood that to mean “we shouldn’t be making recommendations that didn’t comply with the policy decision that had been made by the County.” Further inquiry resulted in the testimony that the primary consultant was “[not] to be on record making recommendations that didn’t comport with the staff’s judgment as to what could be approved, and what was the right thing to do, given all the concerns they had to figure in” Def. Ex. 341 July 12, 2024, PES Dep. Tr. 28: 10-14. These communications took place before the first report to the Board.



Arlington
Principal
Planner

Arl. Housing
Coordinator

Arl. Senior
Housing
Planner

Handwritten notes of County’s consultant on instructions from County staff

Consultant report - how does it track
w/ recommendations
Avoid - our rec disagreeing
Will FOIA it

Transcription (of left):

“Consultant [report] how does it track [with respect to Staff’s] recommendations Avoid - our rec[ommendation]s disagreeing [The public] will FOIA it”

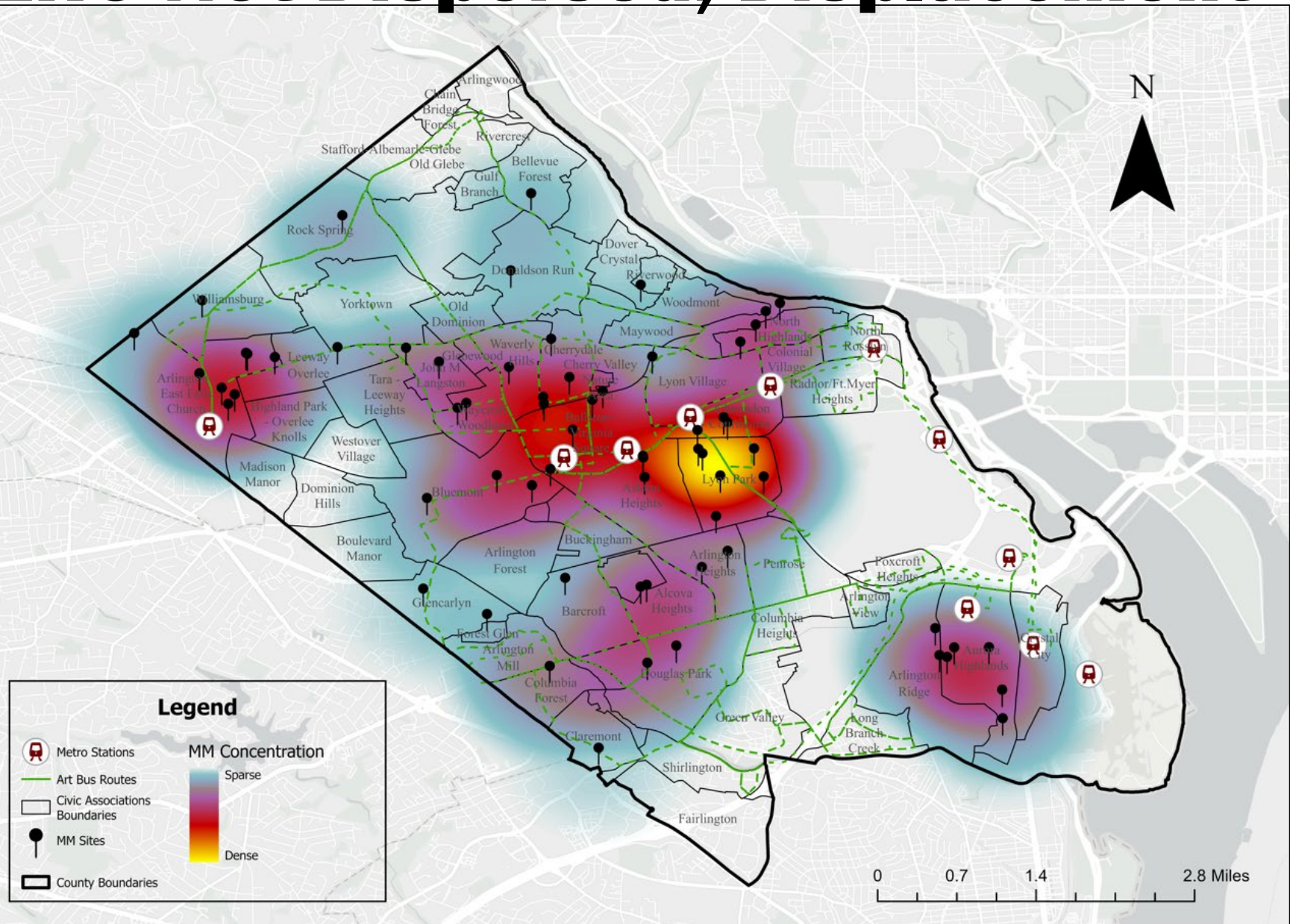
Court finds: EHOs would not be “dispersed” (contrary to what public told)



In addition, the county staff was informed by a third party that the primary consultant had determined that EHO development would be dispersed across the county. This was contrary to the conclusion of the primary consultant that EHO properties would not be evenly dispersed throughout the county. Their analysis was that EHO development would occur in " more affluent neighborhoods that had higher — higher value properties that could support higher prices and higher rents, yeah, which would suggest near-- metro," Pls. Ex. 98 PES Tr. 128:16-129:5

None of the above inconsistencies were brought to the attention of the public at any of the public hearings.

EHO Not Dispersed; Displacement



EHO concentrated, not dispersed

Expert testimony at trial by Arlington economist Michael O'Grady:

EHO “could possibly displace upwards of 2,000 households from Arlington”

Using *actual* market data shows new EHO prices likely to be far higher than County said in passing EHO

Arlington EHO Heat Map (as of 9/27/2024)

Author: Michael O'Grady

Esri, FAO, NOAA, USGS, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community, DCGIS, Fairfax County, VA, VGIN, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA, USFWS

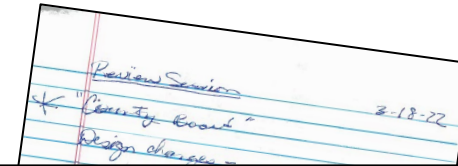
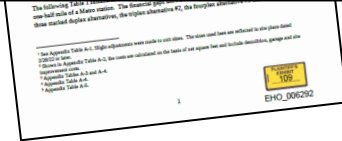
County: EHOs ~1:1 replace new SFHs

Reality: Consultant said teardowns ↑ 20%

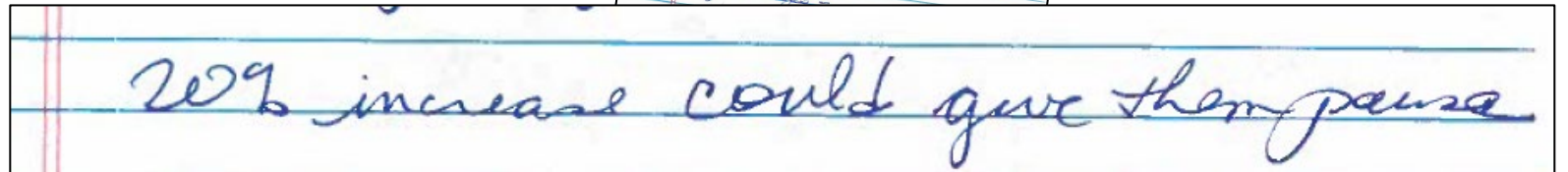
Consultant said
20% ↑ in SFH
tear downs with
EHO



However, that rate has slowed to less than 160 units annually during 2019 and 2020. Going forward, we project that the redevelopment pace with matter-of-right zoning would be between 160 and 190 lots redeveloped annually; this includes a possible 20-percent increase in the pace in response to the greater profits available from multiplex and other Missing Middle Housing options. In the absence of Missing

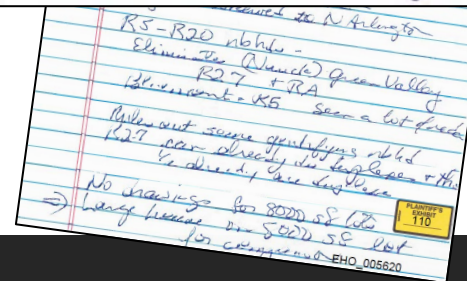


Staff pushes back



Consultant deletes

(even though it believed it true)



Arlington DES said it "cannot support dynamics that allow for MM to potentially accelerate [stormwater] infrastructure/ capacity challenges". ArCo14832

Courts find multiple failings in County planning & practices.

How to fix?

Audit the true scope of the County's concerning practices, involve County Auditor

Engage the public in the process

Clean-up poor practices; create a code of ethics

Plan right – do the hard work, an inclusive “Arlington Way”



ASF's principal asks



The County should:

Project total population of maximum buildout for each project, land use or zoning increase or bonus density

Prepare forecasts comparing current zoning to up-zoning vis-a-vis:

- ❖ Long-term operating budget;
- ❖ Long-term environmental impact;
- ❖ Long-term household income by quintiles

<https://www.asf-virginia.org/>

Appendix
