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Chris Berndt

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Affordable Housing Guidelines Rejected

Arlington Must Cease Requests to Developers

By Peter Whoriskey
Washington Post Staff Writer
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Arlington County officials said yesterday that they would attempt to resurrect an affordable housing development program in the wake of a judge's decision eviscerating the effort.

The County Board, responding to what they said is a growing crisis, had been asking developers of residential buildings to set aside voluntarily at least 10 percent of floor space for affordable housing. Board members similarly asked developers of office buildings to volunteer to make substantial monetary contributions.

Friday, Arlington Circuit Judge Joanne F. Alper issued a ruling finding that those requests were in fact requirements, and that as a result, the county had exceeded its legal authority under state law.

"I'm disappointed," board Chairman Barbara A. Favola (D) said yesterday. "There's a lot at stake here."

John G. "Chip" Dicks, who represented a property owner in the case, Kansas-Lincoln LC, the Northern Virginia Apartment Association and the Apartment and Office Building Association of Metropolitan Washington, said, "We felt the Arlington County Board had overstepped their bounds and detrimentally affected our members who own property in Arlington County."

He added: "We're pleased that the judge agreed with our assessment. At the same time we recognize that this doesn't solve the problem of affordable housing in the area."

Arlington, like much of the rest of the Washington area, suffers a lack of moderately-priced homes, a shortage that has grown worse with the boom in real estate prices during the past five years. The county has lost more than 5,000 affordable apartments in recent years, mostly because of rising rents.

To qualify to live in one of those dwellings, residents can make no more than \$52,200 a year for a family of four.

Fairfax, Loudoun and Montgomery counties have programs similar to the one struck down in Arlington. But lawyers on both sides said those programs probably are not vulnerable to similar lawsuits. Montgomery's initiative is subject to different state laws; Loudoun and Fairfax apply their affordable housing requirements in a different manner than did Arlington.

"My belief is that this is not applicable to what Fairfax County and Loudoun County are doing," Dicks

said.

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The case involved Kansas-Lincoln's property between Kansas and Lincoln streets near the Virginia Square-GMU Metro station.

The county's plan envisions two buildings on the property: a 13-story building and a nine-story building.

But the county's zoning for the property permits buildings of no more than five stories.

To build the project to the maximum allowed in the plan, the developer would have had to undergo the process in which the county applied its guidelines for affordable housing contributions.

The guidelines would have cost the developer \$6.5 million, according to Robert M. Bushkoff, a representative of Kansas-Lincoln.

The county argued that the requested contributions were voluntary and therefore legal.

According to testimony, however, of 50 such applications approved by the county since January 2001, all but six developers committed to meeting the affordable housing guidelines in place at the time. Those six already were affordable housing developments.

An attorney for the developers derided the county's effort as putting "the holy water of voluntariness on the whole exercise."

County Attorney Stephen A. MacIsaac said yesterday that the county would study its options, including appeal.

Favola said she was aware that the county's guidelines were vulnerable to a court challenge. She said the county last year had asked for a 5 percent contribution of space and then boosted it this year to 10 percent.

Board members felt pressure to ask more of developers because each new project in Arlington gets more resistance from neighbors. Deriving a larger community benefit from such projects made it more feasible politically to approve them, she said.

"Arlington, like other places, has people who say, 'I don't want any more growth,'" Favola said. "We, the county board, were willing to stand up to that. But we said we will make growth worth your while.

"We kept upping the bar [on affordable housing]," despite protests from developers, Favola said. "We couldn't tell if they were just bullying us, or if this was going to be a big, big deal."

Staff writer Annie Gowen contributed to this report.

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