

"Federation Corner" column
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No justice on building violations

by Jim Humphrey, Chair
MCCF Planning and Land Use Committee

I must confess at the start of this article that my sense of justice has been greatly influenced by the 1930s and 40s Hollywood westerns I saw as a kid. By the final reel of these classic oaters, John Wayne or some other hero had prevailed, the lawbreakers got their comeuppance, and the timid townfolk were safe from the menacing dark forces that had threatened their wellbeing. Audiences left the theatre with a sense of satisfaction that justice had been served.

In June 2004, Clarksburg residents began talking about a developer who was violating the law while building a subdivision in their community. Harken back to the westerns of yesteryear--the townfolk were murmuring that "somethin's not right in town," dark storm clouds were gathering on the horizon and distant thunder could be heard. By the next year, in June 2005, the plot thickened as the citizens' claims were finally heard and believed by "the sheriff," in this case the Planning Board. The Board found developer Newland Communities of San Diego guilty of 102 violations of height and setback restrictions in the Clarksburg Town Center project, along with the other members of their "gang," the home builders--Bozzuto and Associates, NV Homes, Miller and Smith Homes and Craftstar Homes. And, a staffer working for the Planning Board left her job after it was discovered she altered a legal document related to the case.

By August 2005, the Montgomery County Civic Federation had published a study and found six more developments where they alleged that approved Site Plans, which carry the force of law in this county, had been or were being violated. The study is available on the MCCF website--www.montgomerycivic.org--through a click-on on the homepage. It seemed the Clarksburg case was not an isolated incident, but instead part of a wider pattern of development law abuse. By the end of September 2005, the Planning Board staff had identified yet another six development plans that they alleged were violated. And then there came an unexpected twist in the plot--turns out the sheriff was "in on it."

The Planning staffer who resigned in 2005 had been given permission by the Planning Board years before to make any changes to approved Site Plans she felt were necessary. The Clarksburg developer gang claimed they had been allowed by this staffer to make changes to their project, even though county law stated that staff could only approve minor changes. The law stated that any major changes to a plan had to be approved by the Planning Board itself--such as location of buildings, roads, sidewalks or recreation facilities--and the changes to the Clarksburg Town Center project were major ones. So, the Board was "caught red handed" granting a staffer permission that they did not have the legal authority to grant. (The law has since been changed to require the Board to approve any and all changes made to approved Site Plans.)

The jury is still out on this case because the developer and Clarksburg citizens are still in mediation trying to "figger" how to finish the project, since it can't be built the way it was originally approved.

And so the county citizens pushed forward and asked the "sheriff" (the Planning Board) to hold a hearing on another case of suspected violations--the Bethesda Crest project. Well, ya see, in this instance the Board made a goof and approved two different sets of height and setback requirements for this townhouse project. So, they couldn't very well find this developer, Elm Street Development,

guilty of violations. But, garsh, they did start clearing and grading the site before they were given permission, so at a December 2005 hearing they were fined \$6000.

The county citizens pushed again, this time asking the Planning Board to hold a hearing on the Maple Ridge townhouse project in White Oak, where all of the units were found by Department of Permitting Services (DPS) to exceed the height limit allowed by the zoning and the Site Plan. It's a "no-brainer," right? But wait...in strides a lawyer for the developer, in this case Ryan Homes, and claimed DPS measured wrong. And, sure enough, DPS backed down, remeasured using the method suggested by that lawyer feller, and sure enough found eight of the fifty-nine homes were within the height limit, and the roofs of another six unsold units were modified to reduce their height. But forty-five of the homes were still too tall, right? Weeell, at the February 2006 hearing that lawyer feller offered to give the Planning Board a sack of cash containing \$276,750 just so long as the Board didn't find his client guilty of any violations. The Board accepted the deal.

In another plot twist citizens discovered that the U. S. Pharmacopoeia Building case, in which clearing and grading of the site started before permission was given, had been decided "off camera" with the developer making a payment of \$8,000 to the Planning Board.

Now, midway through this drama it's looking like the wrongdoers are getting help from the appointed officials. Meanwhile, what is our elected council up to? Well, they're trying their darnedest to move us past this pesky phase where we're focusing on who did what wrong, and trying to direct our attention to all the wonderful reforms that they're putting in place. The town mayor (County Executive Doug Duncan) is too busy runnin' for governor of this fine state to supervise things back home. And the Planning Director has agreed to hold one more hearing on a minor violation at Greenway Village in Clarksburg, being developed by the Artery Group, and then let the other eight cases go.

My sense of justice is not satisfied. I don't know how this movie will end. I think it's time for the timid townsfolk to gather their courage, grab their pitchforks and run the bad guys out of town themselves.