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February 28, 2020

Via Hand Delivery

The Hon. Charles L. Ricketts, III, Judge
City of Staunton Circuit Court
113 E. Beverley St. 3rd Floor
Staunton, VA 24401

In Re: June 12, 2018 Decision
Case No. CL18000404-00

Dear Judge Ricketts:

You have our prior correspondence and we appreciate and respect that you may have other pressing matters in order to complete your current judicial service this week as you retire from the bench. We believe, however, that we have an obligation to the Court to provide information that sheds further light on both the long pattern of delays demanded by the plaintiff's counsel, purporting to exercise control over the proceedings, and the most recent tactical effort to thwart the Court's control of the case, and final disposition of it, by simple entry of a final order. As was the case with the prior special (and, we continue to believe, unconstitutional) legislation, this latest effort seeks yet another retroactive change in the legal rules, redounding solely to the benefit of one party, Ms. Belloni, who remains in violation of the same zoning laws that apply to all other residents of the City.

During this most recent long delay, Mr. Obenshain, using his privileged legislative position, sought to change the legislative framework yet once again after not being able to prevail on the merits as reflected in the Court's ruling in December. Senator Stanley introduced SB314, seeking to amend the Uncodified Act which was the subject of the plaintiff's Motion to Dismiss. Senator Stanley, who is from the Pittsylvania County area and to our knowledge has no connection to Staunton, in fact acknowledged before the Senate Local Government Committee that he was acting on behalf of Mr. Obenshain. (Please see the attached transcript, memorializing, inter alia, Senator Stanley's comment that "this certainly came from one of my constituents, Senator Obenshain.") This bill, which was yet another piece of special legislation, was tabled by a House subcommittee and was not passed by the full committee. Regardless, it is discouraging to the City and its Zoning Administrator, and anathema to the rule of law and the unique role of the Court, that once again these proceedings have been stalled in an effort to gain

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an unfair, even unconstitutional and inappropriate advantage in pending legal proceedings. This case should have concluded definitively and finally in favor of the City and its Zoning Administrator at least more than a year ago but for the delay now invoked fourteen times.

Thank you for your time and attention to this matter. We ask, again, that a final order be entered, and we wish you well as you complete this week. A copy of this letter is being sent contemporaneously to Mr. Obenshain.

Respectfully,

A handwritten signature in blue ink, appearing to be 'V. Santos', with a stylized, cursive script.

Victor M. Santos

A handwritten signature in blue ink, appearing to be 'J. Wirth', with a more complex, scribbled cursive style.

John C. Wirth

Encl.

cc: Mark D. Obenshain, Esq. and Justin M. Wolcott, Esq. (via fax and mail, w/encl.)

Transcript of Senate Local Government Committee—Senator Stanley's
Presentation of SB314
January 20, 2020

SB 314

January 20, 2020

Sen. Bill Stanley

Stanley: Good morning, Mr. Chairman, members of the committee, uh Senate Bill 314.

Sen. Lynwood Lewis: Senator Stanley, is this a wall bill?

Stanley: It is a wall bill.

Lewis: What is it with you guys and walls?

Stanley: We like 'em.

Lewis: Just asking.

Stanley: We think they have a purpose.

Lewis: Just asking.

Stanley: You guys like 'em too from what I can see outside in the Capitol. Um, Mr. Chairman, this bill has actually been before this committee before and received overwhelming support. Um, this arises out of a specific instance uh in the Harrisonburg area or in Staunton, um over a masonry wall that was built in the front yard of a home in North Augusta. Uh, in 2006, when this uh family was redoing a house, um, and the problem is the house and its location and there was a noise issue and this family went to that to that uh, to to city government agency or the county government agency and asked that they put a retaining wall around the front part of their house and there was a hedge row that was taller than what the fence would have been and the uh those in charge said: "Sure you can do it 'cause its you know, it doesn't violate any zoning ordinance, um, it just has to be behind the hedge row. So they went and they went and did it. Well then, some three years, four years later, all of a sudden, they say that's the wrong thing and you gotta take it down and then they've been involved in enormous litigation that the Supreme Court just reversed but this this bill just simply takes out an exiting piece um of what is already in the code that allows for basically um and you'll see it's under ii that the uh grandfathered wall shall not be subject to removal solely due to a nonconformity in any instance, where and they have certain things and under two, the property owner was informed by a local official that such wall would comply with the zoning ordinance. And what it takes out is that it required no permit and the structure would comply. So what we're saying is, is that when they give when a member of uh a local government gives their word to a homeowner and that homeowner using their rights as a property owner, erects a wall in compliance with what exactly they said at the time was right, then you gotta leave it up and they shouldn't have to take it down. Um, it's amazing that we're even here and discussing something like this when we're when we're doing this but this certainly came from one of my constituents, Senator Obenshain. So, uh, so therefore, that's the bill Mr. Chairman.

Senator Lionell Spruill: Mr. Chairman?

Lewis: Senator Spruill?

Spruill: Um, now you're talking about grandfathering something that's already there? Let me use for an example to make sure—South Norfolk was a city before it merged with Norfolk County and became Chesapeake and in South Norfolk right now, you have a store next to a residential house, you have a petshop or woodshop—all that happened before it became a city, and, but in South Norfolk, uh, the Chesapeake ordinance now says you're grandfathered in, but if you remove that store or want to build it brand new, you cannot put it back, so my question to you is if this wall is already there, it stays, but if you tear it down, then can the city say that you cannot rebuild it back new?

Stanley: Mr. Chairman, I would answer the gentleman, my friend, by saying, you've got it exactly right. It has to be grandfathered—that does not change in the amendments that I'm trying to make in Senate Bill 314. Uh, so if they do tear down the wall, then they can't build it back up.

Spruill: Thank you.

Stanley: Usually in those kind of instances—

Spruill: I got a lawyer now don't mess it up now.

Stanley: Alright alright. You can repair it, but once it's gone, it's gone.

Lewis: Anybody else? Anybody want to speak in favor of 314? Anybody want to speak against 314? Motion to report 314.