

February 22, 2021

Mr. Franz Holscher, Esq.
320 North Market Street
Washington, NC 27889

RE: Steven Fuchs Rezoning Petition
Our File No. 100651.02

Dear Mr. Holscher:

This firm represents Mr. Steven Fuchs with regard to issues that have arisen from Mr. Fuchs' attempts to rezone property located at the intersection of Brick Kiln Road and Whootentown Road (hereinafter "Subject Parcel"). The Subject Parcel is approximately 4.98 acres and bears tax identification number 5685-76-7123. Specifically, the record of the proceedings following Mr. Fuchs' rezoning requests demonstrates that the City of Washington (hereinafter "City") violated Mr. Fuchs' right to equal protection under the law as provided by the North Carolina and United States Constitutions. Mr. Fuchs was treated in a discriminatory manner compared to similarly situated property owners when his rezoning requests were arbitrarily and capriciously denied without any connection to, or consideration of, legitimate governmental interests.

The Subject Parcel is currently zoned RA20 (Residential Agricultural). However, the City 2013-2023 Comprehensive Land Use Plan provides for an eventual rezoning of the Subject Parcel to the O&I (Office and Institutional) classification. On February 25, 2020, Mr. Fuchs brought a request to rezone the Subject Parcel to R15S (Residential) before the City Planning Board. Seven parcels of land adjacent to the Subject Parcel are zoned R15S. The Planning Board unanimously recommended approval of the rezoning to the City Council. At the March 9, 2020 City Council meeting, City staff opined that the requested rezoning was compatible with the existing land uses in the area and that the requested rezoning generally meets the intent of the Comprehensive Plan and Future Land Use Map.

However, the City Council immediately indicated opposition to Mr. Fuchs' request without giving the request due consideration and without stating a legitimate basis for the City Council's opposition. Mayor Pro Tem Sadler asked Mr. Fuchs what his plans were for the property, demonstrating that Mr. Sadler had concerns about certain specific land uses allowed under the R15S zoning classification rather than considering all of the permitted uses in the R15S zoning classification. That evening, the City Council did not vote on the rezoning request and tabled the matter until the April 13, 2020 meeting.

At the beginning of the City Council's discussion at the April 13, 2020 meeting, the councilmembers made comments that proved their decisions on the rezoning request that evening were made on arbitrary and capricious bases without consideration of legitimate governmental interests. Councilwoman Finnerty stated that the City Council should simply listen to the neighbors, noting the opposition of some neighboring property owners due to the possibility that multi-family dwellings could be constructed on an R15S-zoned property with a special use permit. Councilwoman Finnerty noted that the key difference between the two zoning classifications was the ability to construct multi-family dwellings, stating that that must be the reason Mr. Fuchs requested the rezoning. Clearly, Councilwoman Finnerty did not consider all of the potential land uses permitted on R15S-zoned properties. Councilman Pitt also voiced his opposition to the rezoning request on the basis that neighboring property owners opposed the rezoning request.

Councilman Brooks went even further, indicating his experience on the Planning Board made him categorically opposed to rezoning once zoning is in place because the neighborhood "has already been set up." The City Council voted to deny the rezoning request, with councilmembers concluding that they should "listen to the citizens." Presumably, this includes the citizen who vocally spoke out against the rezoning and stated as part of her reasoning that Mr. Fuchs would control the Board of Adjustment's decision on any future special use permit even if he recused himself. In voting to deny the rezoning request, the City Council did not consider the Comprehensive Land Use Plan, nor did the City Council explain why the Subject Parcel should be treated differently from the eight adjoining parcels which are currently zoned R15S.

As permitted under the Zoning Ordinance, Mr. Fuchs, through his agent and option-holder Mike Weaver, subsequently submitted a second rezoning request which was heard by the Planning Board on June 23, 2020. This time, the request was for the property to be rezoned from RA20 to O&I, consistent with the Comprehensive Plan and Future Land Use Map. This request was also consistent with parcels bearing tax identification numbers 5685-75-4533 and 5685-75-3711, directly across the intersection of Brick Kiln Road and Whootentown Road from the Subject Parcel, and for which a rezoning request to O&I was granted by the City Council in 2003. Mr. Weaver gave a detailed presentation and the Planning Board once again unanimously recommended that the City Council approve the rezoning request.

However, at the July 13, 2020 City Council meeting, the City Council again failed to impartially preside over a fair hearing. After hearing from a few citizens in favor of the rezoning and a few citizens voicing vague, generalized concerns about traffic and drainage, the City Council voted to deny the rezoning request, despite the fact that the requested rezoning is consistent with the City's Comprehensive Land Use Plan.

Similar to the March and April City Council meetings, the City Council did not provide any bases for its decision that were connected to legitimate governmental interests and made

comments demonstrating arbitrary and capricious reasons for denying Mr. Fuchs' request. At one point, a councilmember discussed an anecdote of a developer walking around his neighborhood improperly lobbying children to increase support for a proposed project. Later in the meeting, a councilmember discussed his personal experience of hiring a lawyer to oppose rezoning in the councilmember's neighborhood. One councilmember surveyed the audience to see where the citizens in opposition to the rezoning request reside. Yet another councilmember acknowledged that the rezoning request was consistent with the City's Comprehensive Land Use Plan, but said, "There is nothing unusual about a City Council revisiting such things." It is my understanding that, to date, the City has not amended its Comprehensive Land Use Plan.

Ultimately, it was clear that the denial of the rezoning request was the result of personal biases against rezoning and of extreme deference to a handful of citizens who opposed the rezoning request. The deference to the opposing citizens was so extreme that the motion to deny the rezoning request was "due to the reasons expressed by the neighboring citizens." The City Council as a whole even recognized in the motion to deny the rezoning request that the rezoning request was consistent with the Comprehensive Land Use Plan. Interestingly, the motion to deny the rezoning request articulated no specific basis to support the denial.

To summarize, the conduct of the City Council in the March, April, and July regular meetings resulted in the denial of Mr. Fuchs' constitutional right to equal protection under the law. More specifically, members of the City Council:

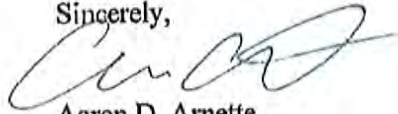
1. Voted to deny both rezoning requests, despite unanimous approval from the Planning Board and the fact that the rezoning requests were consistent with City's Comprehensive Land Use Plan.
2. Although the motion to deny the rezoning requests specifically noted that Mr. Fuchs' requests were consistent with the City's Comprehensive Land Use Plan, the motions failed to articulate any reasoning or rational basis for denying Mr. Fuchs' requests.
3. Failed to provide any justification for treating Mr. Fuchs differently from the adjacent and similarly situated property owners whose properties are zoned R15S and those who received a rezoning of their property to O&I in 2003.
4. Demonstrated on numerous occasions that its members have personal biases against specific uses permitted in the zoning classifications requested by Mr. Fuchs.
5. Expressed opposition to rezoning in general.
6. Cast their votes on the basis of the generalized, vague, and evidence-lacking assertions of a few neighboring property owners without performing a proper analysis of the rezoning request in the context of governmental interests.
7. Acted arbitrarily and capriciously in disregarding the City's Comprehensive Land Use Plan.

I believe that the City Council's actions as described above will support a claim for equal protection violations, as well as claims that the Council's decisions to deny the rezoning requests were arbitrary and capricious, and I further believe that both of these claims will support an award of attorney fees, which I doubt would be covered by insurance.

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I respectfully request that you contact me at your earliest convenience to discuss possible solutions to this matter. I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Arnette', written in a cursive style.

Aaron D. Arnette

LSS:119132