

# Minutes of the Herndon Community Association Coalition

## SPECIAL MEETING Topic: Overcrowding

Thursday –May 1, 2003  
Herndon Fortnightly Library

### I. OPEN FORUM

Call to Order – Jean Deavers led everyone in the Pledge of Allegiance.

### II. INTRODUCTIONS

Elizabeth Hagg	Neighborhood Resources Coordinator
Brian Glaser	Neighborhood Improvement Specialist
Tina Sullivan	Office Assistant
Lisa Gilleran	Community Development
Debbie Bevan	Crestview HOA
Bob Bruhns	HCAC Secretary - Gaslight Square Council of Co-Owners
George Burke	HCAC Vice Chairman - Courts of Chandon
Darlene Case	Bluemont HOA
Jean Deavers	Tralee HOA
Kelly Horne	Waterford Park HOA
Bill Marr	Attorney - Courts of Chandon HOA
Jo Miller	Lifestyle Council of Co-Owners
Anna Smith	Park Avenue Square HOA
Jane Tilley	AMSI – Courts of Chandon HOA
Charlie Waddell	HCAC Chairman – Dumbarton Square HOA
Deborah Ward	Tralee HOA

### III. ANNOUNCEMENTS

Charlie Waddell made several announcements:

- **National Night Out – May 28<sup>th</sup>**. Charlie encouraged everyone to participate in this event. Lisa Cammarota, of the Herndon Police Department, may be contacted at (703) 787-7627 if anyone is interested in being included in the motorcade.
- **Republican & Democrat Event for Dranesville Supervisor positions – May 10<sup>th</sup>; 9:00 – 3:00 p.m.** Nominees for Dranesville Supervisors will be present. Charlie stressed that it is key to become involved in the caucus.
- **3<sup>rd</sup> Annual Community Day & Housing Fair – May 10<sup>th</sup>; 12:00 p. – 4:00 p.** HCAC Members were encouraged to attend and bring a cake for the cake walk.
- **Arbor Day – May 3<sup>rd</sup>**. Herndon Harbor House. Charlie will be there at 2:00 p.m.

### IV. OVERCROWDING DISCUSSION

Charlie announced that an Overcrowding Steering Committee was formed for two purposes:

1. To develop short term solutions to overcrowding
2. To develop long term proposals to address overcrowding.

Members of the Steering Committee are as follows: Bob Bruhns, George Burke, Bill Marr, Jane Tilley and Charlie Waddell.

HOW TO FILE A COMPLAINT: Lisa Gilleran, with the Town of Herndon Community Development Department (“CD”) reviewed how a complaint may be filed:

1. e-mail (typically comes from an HOA representative);
2. direct verbal communication at the front counter of the Municipal Center or by phone (the complainant may remain anonymous); or,
3. in writing (seldom are any written complaints received).

A Complaint Form (including the nature of the complaint, property address, etc.) must be filled out as thoroughly as possible, and a phone number is requested in order for CD to respond to the complainant.

CD COMPLAINT PROCEDURES: Last September an internal database was created to track all complaints. The database assigns a violation number and uses the property address to pull up owner(s) information from Fairfax County’s records.

The procedures for CD are listed below:

Step 1	<p>Complaint Form information is entered into the database.</p> <ul style="list-style-type: none"> <li>▪ the database assigns a violation number</li> <li>▪ the property address is used to pull up the owner(s) information from Fairfax County’s records.</li> </ul>
Step 2	<p>Administrative Staff prints information from the database and creates a working paper file. Workload is assigned based on the nature of the complaint:</p> <ul style="list-style-type: none"> <li>▪ <u>Overcrowding</u> – assigned to Community Inspector (Vince)</li> <li>▪ <u>Other Zoning</u> (i.e. inoperative vehicles, commercial vehicles on private property, etc.)</li> <li>▪ <u>Building Code</u> (i.e. tall grass, Building Officials and Code Administrators International, Inc. “BOCA” concerns, etc.) – the Department of Public Works creates a paper file for these complaints.</li> </ul>
Step 3	<p>The working file is delivered to the Community Inspector’s office. Currently Vince is the only Community Inspector assigned to overcrowding cases.</p>
Step 4	<p>Inspector reviews</p> <ul style="list-style-type: none"> <li>▪ water consumption records, and</li> <li>▪ the number of vehicle tags registered to the property.</li> </ul>
Step 5	<p>The Inspector determines if there is enough information to further investigate the complaint.</p> <p><b>OBSERVATION SCHEDULED:</b></p> <p><u>High Priority</u> – visible rapid deterioration of the property. An evening and morning observation are scheduled.</p> <p><u>Lower Priority</u> - water consumption is low and there are few cars registered to the property.</p> <p><b>NOTE:</b> Early morning observations are preferable. An attorney may argue that people observed in the evening left at 2 a.m., etc., and do not reside on the premises. That is a more difficult argument to make when people are witnessed leaving first thing in the morning.</p> <p><b>COLD CALLS:</b></p> <p>The Inspector may make a cold call to the property and knock on the door to speak with the residents. Sometimes names and IDs are furnished during cold calls. Other times, the door is not answered.</p> <p>If there is obvious overcrowding, cold calls are usually not successful. The Inspector will contact the property owner and ask to meet the homeowner at a public place of their choice.</p>

Step 6	A second observation may be scheduled based on the Inspector's initial observations.
Step 7	<p><u>Property Owner 1<sup>st</sup> Contact – Warning Letter.</u> The Town Council wants to continue this step. They prefer to send a warning letter rather than cite someone who maybe in compliance.</p> <p>If a property owner calls and cooperates, the Inspector will work with them and allow people a reasonable amount of time to find another place to live.</p>
Step 8	<p><u>Property Owner 2<sup>nd</sup> Contact – Cease and Desist Certified Letter.</u></p> <p>Under State Code the property owner has the right to appeal to the Board of Zoning Appeals within 30 days. There is a \$100 fee to file an appeal.</p> <p>If an appeal is filed, all action stops.</p> <p><u>Board of Zoning Appeals</u> – is a quasi-judicial board appointed by the Town Council. Their purpose is twofold:</p> <ul style="list-style-type: none"> <li>▪ to hear variance applications; and,</li> <li>▪ to hear appeals of decisions made by the Zoning Administrator</li> </ul> <p>They meet once a month.</p> <p>NOTE: Lisa stated there have been no appeals thus far.</p>
Step 9	<p><u>Property Owner 3<sup>rd</sup> Contact</u> - If the Cease and Desist Letter is ignored, a \$100 fine may be assessed and notice delivered to the property owner every 10 days. There is a cap of \$3,000 on the fines that may be assessed.</p> <p>NOTE: The Inspector must confirm that the property remains in violation every 10 days in order to issue multiple fines. This takes the Inspector's time away from investigating other complaints.</p> <p>The Town Attorney is made aware once the second fine is assessed. If three fines have been assessed, the Town Attorney may pursue collection.</p> <p>NOTE: Very few multiple fines have been assessed to date.</p>

## QUESTION & ANSWER SESSION

Q: How many cases have been entered into the database? How many are currently open? (Charlie Waddell)

A: Brian reported the following information since the database was created last September, 2002.

- 131 total cases in the database
  - 82 overcrowding cases are open (there is a back log)
    - 12 have not been investigated
    - 70 are under investigation
  - 49 – resolved
- on average 2 new complaints are registered each week
- as of April 2003, there were a total of 54 new violations.

Q: What is the average amount of time it takes from receipt of the complaint until first contact with the property owner? (Charlie Waddell)

A: Lisa stated the response time depends primarily on how thoroughly the complaint form is filled out. If there are gaps in the information, the response time will take longer. Lisa stated that there are a great number of “cold cases” due to the limited resources of CD. Charlie asked that Lisa e-mail the Complaint Form to the HOAs.

Brian reported the following average times:

- to 1<sup>st</sup> contact with a property owner – 60 days
- a case is under investigation – 77 days
- on cases where a violation is found and abated – 66 days
- on cases where no violation is found – 80 days

NOTE: One factor that may increase the amount of time until first contact is whether or not the first letter must be translated into another language. Kelly Horne asked if people can go to the NRC to obtain translations. Liz stated that HOAs may request translation assistance (Spanish) from the NRC, but must allow time for turnaround and that the NRC is not open 24/7. The Inspector is working with George Washington University students currently to translate letters into Chinese, but this takes time.

Comment: Kelly Horne stated the Waterford Park HOA filed a complaint on January 24<sup>th</sup>. The walk through was completed on March 22<sup>nd</sup> and the HOA received a response on April 23<sup>rd</sup>.

Q: How can HOAs “jump start” the process? (Jane Tilley)

A: Lisa responded that the better documented complaints received a higher priority due to the limited resources CD has to respond to the complaints (i.e. times people are coming and going from the residence, etc.).

Lisa stated there is a list the Inspector uses to assess whether there may be overcrowding (i.e. more objects outside the property than inside, parking on the grass,

ruts, erosion, exterior becomes run down, etc.). Jane, Charlie and Debbie Bevan asked that the list be sent to the HOAs to be included in their newsletters.

Lisa also stated that CD may be able to hire a Community Inspector Assistant. The position if funded, will require this individual be bi-lingual and will go on observations with Vince. Brian Glaser is not always available to go on observations with Vince, nor is this is primary scope of work for the Neighborhood Resource Office.

Q: Do police reports on the property assist with the complaint process? (Kelly Horne)

A: Lisa responded with a definitive “Yes”. The Inspector works with the police to ensure they are aware there may be overcrowding at a particular property. If the police are aware of the complaint and are called out to the property, they will file paperwork with the Inspector after the property visit.

Q: Can school records be used to determine if there is overcrowding? (Charlie Waddell)

A: Lisa responded that school records are private across the country. They may only be obtained with a subpoena as a result of a court case in progress.

Q: What if the Inspector does not witness the signs of overcrowding that a complainant reports?

A: Then further action cannot be taken by CD. That is why specific information regarding the property, in particular, the time(s) of day when overcrowding activity is witnessed is so critical on the complaint form.

George Burke stated that the HOAs must bridge the gap and provide information that will allow CD and the Inspector to corroborate the complaint.

Q: What happens if the individual(s) refuse to allow entrance to the property or meet with the Inspector?

A: Than the Inspector must make a determination based on the observations of the property, water consumption history, and the number of vehicles registered to the property.

Q: What can HOAs do to help “police” their communities for overcrowding violations? (Darlene Case)

A: Lisa stated that the HOA representative can serve as a witness. However, many people do not want to go this route because the fact that they filed the complaint is made public and they will have to face the property owner in court.

Q: Can citizen affidavits be entered in to validate sending the Cease and Desist Certified letter? (George Burke)

A: Lisa stated that they prefer to have an individual act as a witness rather than provide an affidavit. Darlene Case stated that there is not much difference in confronting someone as a witness in court versus attending an HOA hearing.

Q: What part of the process is required legally versus the part of the process that is required by the Town Council? (George Burke)

A: Bill Marr stated that the first contact “Violation” letter is a courtesy by the Town Council and is not required legally; however, the Town Council feels strongly that this step be kept in place. The first legal action is the Cease and Desist letter, or the second contact with the property owner.

Bill also stated that zoning issues are statute drive and there are limitations to these requirements. Because Virginia is a Dillon Rule State, state legislators set the notice and appeal requirements for the localities.

Q: If there is a 3 bedroom home and 15 people are living there, are they in violation of the Building Code? (Anna Smith)

A: Lisa stated they would have to go in and measure the sizes of the bedrooms to determine how many people can reside in the home. Based on BOCA, there may be 9-10 people legally residing in such a property. If there are more than four (4) people not related by blood or marriage living in a home, it may be considered a zoning or building code violation. If everyone is related, and there is not a BOCA violation, it is not a violation. If rental agreements can be obtained, then transient housing may be proven.

Anna asked that Brian forward an electronic copy of the applicable Building and Zoning Codes to HCAC members.

Q: Do you need to establish that only one person is not related to have an overcrowding violation? (George Burke)

A: Yes. However, Lisa stated that courts do not look kindly upon definition of family cases. They prefer transient housing or illegal use cases. The Town of Herndon definition of a family may not stand up in court. Note, up to four unrelated individuals can legally occupy a housing unit.

## PROPOSED SOLUTIONS

### Short Term

- information sharing between the Zoning Board and the HOAs
- HOAs can act as a partner to the Inspector providing him information
- attach photos to the complaints
- maintain open communication on building permit applications

### Hold a workshop to educate HOAs on remedies they may take for overcrowding.

Bill Marr agreed to hold a workshop from 9:00 a.m. – 1:00 p.m. on either Saturday, June 7<sup>th</sup>, or Saturday, July 12<sup>th</sup>. The purpose of the workshop is for Bill to provide HOAs with information on what they can accomplish through due process if it is properly established to address overcrowding. The greatest concern should be what is happening on the outside of the property, not the inside. HOAs may assess sanctions and take steps to involve the homeowner immediately. Each HOA can bring more than one representative

to this session. Liz will check on meeting space availability and get back to HCAC members with this information.

George Burke asked Bill if it is viable for an association not to have an attorney. Bill stated that a HOA cannot afford not to have an attorney if they are facing overcrowding issues. This is on the same level as stating that a HOA cannot afford insurance.

V. ADJOURNMENT

The meeting adjourned at approximately 8:50 p.m.