



Virginia Local Government Law

Arogas v. Frederick County BZA: Proffer Amendment After the Public Hearing

By: Andrew McRoberts. *This was posted Wednesday, September 22nd, 2010*

The Virginia Supreme Court handed down two significant cases on local government law on September 16, 2010. One was a proffered zoning case.

[*Arogas v. Frederick County BZA*](#) deals with a proffer amendment made by the Board of Supervisors at the meeting but after the public hearing, and agreed to in writing by the landowner after the date of the public hearing. The petitioner argued that the proffer amendment was void because it was made after the date of the public hearing and without a new public hearing. The Supreme Court disagreed, saying that [Virginia Code section 15.2-2285\(C\)](#) and its local ordinance counterpart authorizes a governing body to make “appropriate changes or corrections in the [zoning] ordinance or proposed amendment” after the public hearing.

Other than a passing mention in footnote 3, the Court did not address (because the public hearing in this case was held back in 2004), the 2006 amendment of Virginia Code section 15.2-2297, 15.2-2298 and 15.2-2303 to add the language, “*The governing body may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal.*” See [2006 Va Acts of Assembly ch. 450](#).

Interestingly, since the *Arogas* opinion says that a later amendment of a proffer is permitted under the general zoning amendment statute, Virginia Code section 15.2-2285(C), the insertion of this language in 2006 allowing amendments after the public hearing if the amendment does not “material affect the overall proposal” may actually *limit rather than expand* the authority of the governing body to make amendments after the public hearing.

If so, this is appropriate. If an amended proffer materially changes the overall proposal, the applicant should take the time to get the proffered conditions right, and the public certainly would appreciate an opportunity to speak to the materially changed proposal at a public hearing.

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