

SPEAK UP! Don't Be Shy About Correcting Your Local Zoning Administrator

By Heidi Meinzer and Tad Lunger

How many times have you heard a Zoning Administrator state something in a hearing or other public forum that you did not agree with? Did you know that, if you don't challenge the Zoning Administrator and appeal her oral opinion within the applicable (and quite short) time frame, the Zoning Administrator's oral statements may have just become "a thing decided" and as final as a formal written determination?

So was the case in *Lilly, et al. v. Caroline County, et al.*, 259 Va. 291, 526 S.E.2d 743 (2000). Albert and Judith Lilly were owners of real property in the vicinity of a two-acre parcel of land in rural Caroline County which was to be developed for construction of a broadcast studio, office building, tower and transmitting facilities for an FM radio station. Mr. and Ms. Lilly filed a motion contesting the Zoning Administrator's decision that the construction of a radio tower was a use permitted by right under the County's zoning ordinances.

Mr. and Ms. Lilly attended several public meetings and spoke against the construction of the tower. During one of these meetings with the Board of Zoning Appeals, the Zoning Administrator orally stated that he had determined that the tower was a by-right use, and that his opinion could be appealed to the Board if anyone was interested. The Board approved the zoning ordinance and special exception permit application, and by the time the Lilly's appealed the approval, the Virginia Supreme Court held that they had lost their right to appeal because the Zoning Administrator's oral comments had become "a thing decided" that they had not timely appealed, and just as binding as a final formal written determination. The result was that Mr. and Ms. Lilly's case contesting construction of the tower was dismissed for failure to timely exhaust their administrative remedies.

The next time you are in a forum with a public official, think carefully about statements the official makes that are contrary to your interests. Recently, the Arlington County Zoning Administrator asserted, in a public hearing, that the authority to make these final binding oral determinations may be delegated to deputies and agents. If you stay silent and do not challenge or appeal those statements, you may fall victim to the unforeseen consequence of being bound by those statements.

This article is not intended to provide specific legal advice but, instead, as a general commentary regarding legal matters. You should consult with an attorney regarding your legal issues, as the advice will depend on your facts and the laws of your jurisdiction.

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