VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 27th *day of* March, 2015.

April Burke, et al., Appellants,

against Record No. 140666
Circuit Court No. CL13002261

City Council for the City of Alexandria, et al., Appellees.

Upon an appeal from a judgment rendered by the Circuit Court of the City of Alexandria.

Upon consideration of the record, briefs, and argument of counsel, the Court is of opinion that the judgment of the Circuit Court of the City of Alexandria should be affirmed.

Pursuant to Code § 15.2-2311, April Burke, Elizabeth Gibney, and Marie Kux (collectively, "plaintiffs") submitted an application for appeal with the Alexandria Board of Zoning Appeals ("BZA") on March 14, 2013. The appeal sought review of "[t]he Director [of Planning and Zoning]'s determinations relating to Text Amendment 2013-0005 and Text Amendment 2013-0006 that she provided at the Planning Commission's March 5, 2013 meeting." The Director of Planning and Zoning ("the Director") refused to process the appeal based on, among other things, her conclusion that she had not made any such determination on that date.

Pursuant to the same Code section, plaintiffs then sought to appeal the Director's decision to refuse to process their original appeal, but the Director again refused the application. Due to these refusals, the subsequent proceedings on the amendments before City Council were not stayed, and plaintiffs, having exhausted

their administrative remedies, sought declaratory relief in circuit court. Naming the City Council, the Director, and the BZA as defendants, plaintiffs requested a declaration that the appeals be considered filed, that all proceedings relating to Text Amendments 2013-0005 and -0006 be stayed pending an appeal before the BZA, and that the City Council's March 16, 2013 vote on the amendments be considered void ab initio.

Defendants craved oyer as to the content of the March 5, 2013 Planning Commission hearing, positing that it would allow the circuit court to establish whether a "determination" had been made at that time. Plaintiffs argued that their complaint merely sought the court's judgment as to the Director's power to summarily refuse appeals, not as to whether she had made a determination subject to appeal, and that the content of the hearing should thus not be joined to the complaint under a motion craving oyer.

The circuit court granted the motion craving oyer of the March 5, 2013 hearing, to be tendered in either transcribed form or electronic medium. After plaintiffs submitted the requested content, the circuit court sustained defendants' demurrer. The circuit court granted leave to amend, with instructions that plaintiffs should specifically identify the Director's determination or decision that formed the basis of the appeal and state how plaintiffs were aggrieved. Plaintiffs filed an amended complaint, to which defendants again demurred. The circuit court sustained the second demurrer with prejudice.

Plaintiffs now appeal, arguing that the circuit court erred in granting the motion craving oyer and in reaching the merits of the

BZA appeal rather than reviewing the Director's actions for procedural error.

Assuming without deciding that the Director lacked authority to decline to process the appeal to the BZA, that the complaint was based solely on the lack of such authority, and that the motion craving oyer erroneously widened the scope of the complaint, any error arising therefrom was harmless because the circuit court did not err in sustaining the demurrer.

Plaintiffs seek relief in the form of a declaratory judgment under the Declaratory Judgment Act, Code §§ 8.01-184 through -191. "The intent of the act is to have courts render declaratory judgments which may guide parties in their future conduct in relation to each other, thereby relieving them from the risk of taking undirected action incident to their rights, which action, without direction, would jeopardize their interests." Liberty Mut. Ins. Co. v. Bishop, 211 Va. 414, 421, 177 S.E.2d 519, 524 (1970). However, the act "does not give trial courts the authority to render advisory opinions, decide moot questions, or answer inquiries that are merely speculative." Treacy v. Smithfield Foods, Inc., 256 Va. 97, 104, 50 S.E.2d 503, 506 (1998). Courts may only issue declaratory judgments "in cases of actual controversy when there is antagonistic assertion and denial of right." Id. at 103, 50 S.E.2d at 506 (internal quotation marks and citations omitted).

Had the circuit court ruled in favor of the plaintiffs, and plaintiffs were heard and prevailed before the Board of Zoning Appeals, the result would have been that Text Amendment 2013-0005 would have been considered to be a map amendment under Alexandria

Zoning Ordinance § 11-807. This would have subjected the amendment to the protest provisions of Alexandria Zoning Ordinance § 11-808, including the requirement of a supermajority vote before the City Council. However, the City Council determined that, in considering Text Amendment 2013-0005, it would proceed as if a valid protest petition was applicable to the Text Amendment, which would require that the amendment would be passed by a supermajority vote. When Text Amendment 2013-0005 was considered on March 16, 2013, it passed by supermajority.

The plaintiffs failed to articulate in either complaint any injury or denial of right that was not rendered moot by the supermajority vote of the City Council. The Court is left to conclude that any error on the part of the circuit court was harmless. The demurrer was properly sustained as a matter of law.

The judgment of the Circuit Court of the City of Alexandria is therefore affirmed. The appellants shall pay to the appellees two hundred and fifty dollars damages.

This order shall be certified to the said circuit court.

A Copy,

Teste: Patricia L Harrington

Clerk