Appendix D

Understanding the Citations of Judicial Opinions for the Non-Lawyer

1. Introduction

Public officers, planners and zoning officials will, from time to time, read materials (such as this handbook) in which court cases are cited. Case law may often be cited in contested matters before the BZA or even hotly challenged rezoning or special use permit applications. This appendix is a basic guide to understanding the references to these cases.

2. The courts issuing decisions that will be cited

In the United States, both the federal and state judicial systems may consider land use issues, although the overwhelming majority of the cases are decided in the state courts.

In the federal court system, the trial courts are called "district courts," the intermediate appellate courts are called "courts of appeals," which are separated into multi-state territories called "circuits" and, of course, the United States Supreme Court. Virginia has two "districts" – an eastern and a western district, and is one of several mid-Atlantic states that make up the Fourth Appellate Circuit of the Court of Appeals. Federal courts typically consider land use cases when the United States Constitution (such as an equal protection claim) or a federal law (such as the Religious Land Use and Institutionalized Persons Act of 2000 or the Telecommunications Act of 1996) is in issue.

In the Virginia state court system, the trial courts are called the "general district court" and the "circuit court." With limited exceptions where multiple localities may share a district or circuit court, each locality has its own general district and circuit courts. The land use issues considered by a general district court are generally limited to zoning enforcement cases. The circuit court is the trial court for most other land use issues, such as challenges to rezonings, special use permits, disapproved subdivision plats and site plans, appeals of BZA decisions, and enforcement actions seeking injunctive relief. The Virginia Court of Appeals is the intermediate appellate court, and its involvement in land use issues is generally limited to appeals of criminal convictions in zoning enforcement cases. Finally, the Virginia Supreme Court considers appeals from decisions of the circuit court and the Court of Appeals.

3. The format of the case citations

The case citations inform the reader of the court that issued a decision and when that decision was issued. A case citation identifies the names of the parties, followed by the volume of the official reporter service, identification of the reporter service, followed by the page number at which the case begins, and ending with the year in which the decision was issued.

A citation will list the parties' names (where there are multiple plaintiffs or defendants, the common practice is to refer to just the first party on each side), followed by references to the volume of the reporter service, the page number on which the opinion begins, ending with the year the opinion was issued. For example, a citation to *Cook v. Board of Zoning Appeals of City of Falls Church*, 244 Va. 107 (1992) informs the reader that the two parties were a person named Cook and the Falls Church BZA, that the case can be found on page 107 of volume 244 of the Virginia Reports ("Va."), and that the decision was issued in 1992.

Virginia cases are cited as follows:

- *Virginia Supreme Court*: *Cook v. Board of Zoning Appeals of City of Falls Church*, 244 Va. 107 (1992). The "Va." refers to Virginia Reports, which contains only opinions from the Virginia Supreme Court. A citation from the unofficial reporter – South Eastern Reporter – also may be included ("___ S.E.2d ___").

- *Virginia Court of Appeals*: *Lawless v. County of Chesterfield*, 21 Va. App. 495 (1995). The "Va. App." refers to the Virginia Court of Appeals Reports, which contains only opinions of the Virginia Court of Appeals. A citation from the unofficial reporter – South Eastern Reporter – also may be included ("___ S.E.2d ___").

- *Virginia Circuit Court*: *Edenton v. Board of Zoning Appeals of Spotsylvania County*, 37 Va. Cir. 176 (1995). Virginia Circuit Court decisions are not reported in an official reporting service. A Virginia circuit court decision may be cited at least three different ways, depending on which service is reporting the case. The volume number, reporting service and page numbers may appear as either "___ Va. Cir. ___," if the case is reported in a published hardbound series, "___ Va. Cir. LEXIS ___," if the case is reported by LEXIS, or "___ WL ___" with a reference to the circuit court that immediately precedes the date, if the case is reported by Westlaw.

Federal cases are cited as follows:

- *United States Supreme Court*: *Smith v. Jones*, 555 U.S. 777, 854 S.Ct. 123, 940 L.Ed. 333 (2004). The published opinions of the United States Supreme Court appear in the United States Reports ("___U.S. ___") and in two unofficial reporter services as well. All three reporter services have only United States Supreme Court decisions.

- *United States Court of Appeals*: *360 Communications v. Board of Supervisors of Albemarle County*, 211 F.3d 79 (4th Cir. 2000). Published opinions from the United States Court of Appeals appear in the Federal Reporter. "F.3d" refers to the Federal Reporter (Third Series), which contains only opinions from the United States Courts of Appeals. "(4th Cir. 2000)" informs the reader that the decision is from the Court of Appeals, Fourth Appellate Circuit (*i.e.*, the "Fourth Circuit"), and was issued in 2000. Unpublished opinions do not appear in the Federal Reporter, but may appear in a service such as LEXIS. Unpublished opinions appearing in LEXIS are cited as, for example, *Living Water Church of God v. Charter Township of Meridian*, 2007 U.S. App. LEXIS 28825 (6th Cir. 2007) (unpublished).

- *United States District Court*: *Pathways Psychological v. Town of Leonardtown*, 133 F. Supp. 2d 772 (D.Md. 2001). "F. Supp. 2d" refers to the Federal Supplement (Second Series), which contains only decisions of the United States District Courts (trial courts). "(W.D. Va. 1999)" informs the reader that the decision is from the United States District Court for the Western District of Virginia, and was issued in 1999. Not all opinions from the United States District Courts are published in the Federal Supplement and, instead, may appear only in a service such as LEXIS. Opinions appearing in LEXIS are cited as, for example, as *United States v. Town of Garner*, 2010 U.S. Dist. LEXIS 62097 (E.D.N.C. 2010).

Decisions reported from other State courts include the citations from the official reporter and the unofficial reporter.

4. The precedential value of the cases cited, *i.e.*, how much weight should be given to a decision

In the federal court system, United States Supreme Court decisions are controlling throughout the United States on the legal issues decided. Descending the federal court hierarchy, the decisions of the United States Court of Appeals, Fourth Appellate Circuit (the "Fourth Circuit") are controlling in Virginia on the issues decided, and trump any decisions of the lower United States District Courts. As between decisions of the Fourth Circuit and other federal Courts of Appeal, the decisions of the Fourth Circuit are controlling in Virginia. As between decisions of the United States District Courts, the decisions of the District Courts of the Eastern and Western Districts of Virginia are controlling over District Court decisions from other states. Of course, decisions from other Courts of Appeals and District Court are instructive on those issues not directly decided by the Fourth Circuit Court of Appeals or a federal District Court in Virginia.

In the Virginia state court system, Virginia Supreme Court decisions are controlling throughout Virginia on the legal issues decided by that court. A circuit court is a state trial court, and a decision of a circuit court is instructive and may be controlling within the locality served by the court (but not necessarily) on an issue not decided by the Virginia Supreme Court. Circuit court decisions may be considered to be instructive and, in certain cases, persuasive,

to another circuit court, particularly where the Virginia Supreme Court has not addressed the topic at issue. *See, e.g., Johnson v. Niemela*, 58 Va. Cir. 199 (2002).

However, the decisions of circuit court judges are not binding on other circuit court judges, *Jay-Ton Construction Co. v. Bowen Construction Services*, 62 Va. Cir. 414 (2003); *7600 Limited Partnership v. QuesTech, Inc.*, 41 Va. Cir. 60 (1996), even assuming complete similarity of the facts. *Laws v. Coleman-Bullington, Inc.*, 5 Va. Cir. 251 (1985). Indeed, a circuit court decision is not even binding on the same circuit court or on the same circuit court judge. *Johnson, supra* ("Counsel for the Plaintiff correctly points out that I held to the contrary in *Leasecomm Corp. v. Product Group, et al.*, 46 Va. Cir. 135 (Fairfax 1998). But consistency is an overrated virtue, and Judge Johnson's reasoning is more persuasive"). This principle is particularly true if the circuit court judge determines that the prior decision was erroneous. As one Circuit Court has said, the balanced application of legal principles and the cause of equal justice under the law "cannot be advanced if a judge makes an erroneous decision solely to maintain consistency with the judge's own equally-erroneous past decision. In the words of then-Chief Justice Harry L. Carrico, 'the law does not follow the thesis that two wrongs make a right.'" *Robertson v. Western Virginia Water Authority*, letter opinion dated July 25, 2011.

The circuit courts throughout the Commonwealth, as well as the Attorney General and state agencies, may rely upon decisions of the circuit courts.

5. Whether a cited case is relevant to the pending matter

When a case is cited, it should be relied upon only if the purpose for which it is cited is relevant to the pending matter. In order to understand a case's relevance, the reader must know whether the cited case includes similar legally significant facts as the pending matter, and/or whether the cited case's holding, or ruling, has application to the pending matter.

A strategy often employed by a party in the hopes of avoiding a damaging case is to claim that it has no application to the pending matter because the facts in the cited case are different. In reality, it is highly unlikely that a cited case will ever have a fact pattern that is identical to the pending matter. Look for *similarities* in the *legally significant facts* and/or the relevance of the cited court's ruling. Understand that the party citing the case will focus on the cited case's similarities to the pending matter, and that another party will highlight the cited case's differences. The cases cited in section 18-610 in the bulleted text are examples of cases that might be cited in a matter pending before a BZA where it will be important to consider factual similarities and the legal reasoning employed. The case examples pertain to nonconforming uses where the issue was whether the character of a particular use had changed. The cited cases would be compared to the pending matter to decide whether those cases should guide the BZA to a particular result.

Of course, there are a number of holdings, or rulings, of the Virginia Supreme Court that apply to all similar cases, regardless of the underlying facts. For example, the court's holding in *Knowlton v. Browning-Ferris Industries of Virginia, Inc.*, 220 Va. 571, 260 S.E.2d 232 (1979) that an accessory use cannot become a primary nonconforming use would apply to any nonconforming use issue pending before the BZA, regardless of whether the primary and accessory uses considered in *Knowlton* were present in the pending matter.