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Date: Thu, Apr 6, 2023 at 1:30 PM
Subject: APRIL 10, 2023 PC SUBCOMMITTEE MEETING -- ZOR Work Group INPUT
To: Planning Commission and County Staff

ZONING VIOLATION COMPLAINTS – Accuracy and Assistance

In the 4-10-2023 PC Uses Subcommittee packet regarding “complaint themes” Staff stated:

“Since January 2018, the following zoning violation complaint themes can be derived from data available to the Zoning Enforcement Division of Planning and Zoning. Note the Loudoun County Sheriff’s Office (LCSO) may have more information on noise complaints unavailable to Planning and Zoning.”

For Planning Commissioner awareness -- Staff’s “complaint theme” findings are incomplete and flawed for the following reasons:

- Collecting “complaints” since 2018 excludes those from 2006 (Farm winery introduction) and 2014 (Limited Brewery introduction) through 2017.
- Review of public complaints was initiated by [Supervisor Buffington’s 10-17-2016 Letter to REDC](#) requesting recommendations for how to “improve the balance between maintaining a strong rural economy and ensuring a high quality of life for residents.” This letter led to a [Case Study review](#) in 2017 of resident and business concerns regarding zoning use standards, and included interviews conducted with County Planning & Zoning, and Zoning Admin. and Enforcement staff.

CASE STUDY FINDINGS INCLUDED

- Loudoun Express Request (LEx) is a trouble/complaint distribution system, not a trouble *reporting* system. Per interviews, complaints are counted manually and tallied on an external excel file. The system ONLY tracks “complaints” submitted, not requests for “information” regarding zoning and use issues.
- LEx does NOT track all complaints via letters, emails or phone calls submitted to:
 - Board of Supervisors, BOS aides, Planning Commission, State elected officials, State agencies (e.g., VaABC, ODW, VDACS), federal elected officials, federal agencies (e.g., TTB, EPA), social media, news outlets or letters to the editor. Calls/emails to Staff may not be logged in all cases.
- LEx also does not log or include (nor is representative of) comments made at Planning Commission or Board of Supervisor Public Hearings.
- LEx tickets understate total volume as complaints submitted by multiple people on the same topic are/have been combined and closed out as “duplicate” tickets.
- LEx does not fully track or correlate complaints to the Sheriff Department.
 - The Sheriff’s Department does not log “zoning uses” complaints, combines multiple complaints on the same subject into one “complaint,” and excludes complaints via discretion and plea bargaining reporting.
- Also confirmed was the significant public confusion regarding the two noise ordinances (zoning vs. codified) for whom to call (zoning enforcement or sheriff), for what type of noise, which and how tests are performed, and enforcement.

CONCLUSIONS:

- The County has no consolidated complaint tracking, no consolidated complaint reporting, and no means to obtain accurate total complaints across sources and agencies.
- The above findings were presented to the County Administrator and Deputy County Administrator (4-11-2018) and County Administration Senior Staff (5-14-2018) including Zoning Enforcement ([May 2018 handouts attached](#)). Facts presented were not questioned or disputed at either meeting by County Administration or senior staff.
- LEx only reports a subset of complaints, therefore the complaint quantities included in Staff’s report for 4-10- 2023 under-report complaints and will lead to incomplete “theme” identification.
- Reliance on incomplete complaint tracking will lead to a “McNamara (Quantitative) Fallacy”¹ conclusion, which occurs when decisions are made based only on what you can quantitatively measure while ignoring other input.

¹ McNamara Fallacy: 1. Measure whatever can be easily measured. 2. Disregard that which cannot be measured easily. 3. Presume that whatever cannot be measured either does not exist or is not important.



“Problems with Permits” Primer

Executive Committee Briefing: April 11, 2018

County Senior Staff Presentation: May 14, 2018

Enforcement/Inter-departmental Communications: April 14, 2021



This effort began as a consulting case study* in 2017, which included primary research of county documents, interviews with County Staff and consultations with residents and businesses. The case study was focused on the Rural Policy Area, however, a number of findings apply to all areas of the County.

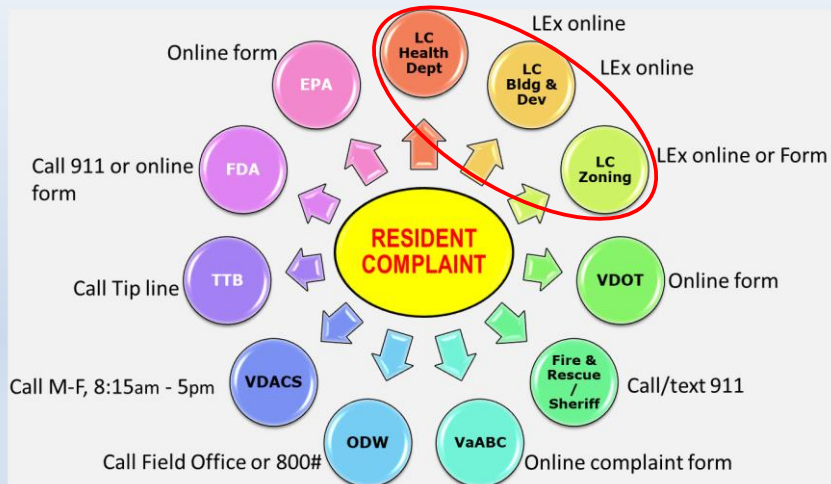
The findings were first presented to County Administrator Hemstreet and Deputy Administrator Yudd and the Zoning Ordinance Action Group (ZOAG) in March/April 2018, with a request to review with County Senior Staff the following month.

The case overview was updated in 2021, with a revised discussion with senior county administration and new assistance county administrators.

* Walsh-Copeland Consulting, LLC

COMPLAINTS:

**No Consolidated Tracking outside
County LEx system**



Similarly, Residents must figure out whom to call to log a complaint.

Only a small subset of all complaints are entered into Loudoun Express Request (LEx) for tracking & resolution.

NOISE COMPLAINTS/ENFORCEMENT

NOISES

- Music
- Shouting
- Truck delivery
- Car horns
- Drones
- Motorcycle revving
- Gun Shots



Mr./Ms. Loudoun
County Resident

WHO YA GONNA CALL?

- Zoning Dept. ?
- Zoning Enforcement ?
- Sheriff ?
- VaABC ?

NOISE COMPLAINTS: ZONING vs. LAW ENFORCEMENT?

NOISE IMPACTS: *Who Ya Gonna Call?*

<p>ZONING: Zoning Ordinance Section 5-652 – B</p> <p><small>Excessive Sound: Residential, Commercial Industrial Uses. Measured by Sound Level Meter (SLM)</small></p> <p><small>(1) Location in Relation to Residential Use.</small></p> <p><small>No loading/unloading activities or other noise-producing activities shall be allowed within 250 feet of an existing single-family residential use.</small></p> <p><small>(2) Maximum dB(A).</small></p> <ul style="list-style-type: none"> Measured at property line of adjacent single family residential lot, shall not exceed 55 dB(A). Outdoor music not allowed after 11:00 PM. 	<p>LAW ENFORCEMENT: Codified Ordinance--Offenses Against Public Peace Ch. 654.02</p> <p><small>Excessive Sound in Residential Areas & Dwellings</small></p> <ul style="list-style-type: none"> *Audible and Discernable – not measured Vehicle noises, horn 20 seconds, Construction, demolition and/or maintenance activities between hours of 8:00 p.m. and 7:00 a.m. Operation of any instrument, machine or device between the hours of 11:00 pm and 7:00 am, in such a manner as to be plainly audible at a distance of 100 feet from the source of the sound.
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ANSWER:
Zoning Enforcement*
703-777-0103
*But not available on weekends unless scheduled



ANSWER:
Sheriff's Department*
703-777-1021
*But measurement criteria / methods new

Clear?

There is significant confusion regarding two Noise Ordinances:

- Zoning noise ordinance and performance standards (Section 5-652-B)
- Versus**
- Codified ordinance - offenses against public peace (Ch. 654.02)

It is not clear to residents how to address types of noise complaints

- Whom they should call (Sheriff? County Zoning Enforcement?)
- Which organization performs enforcement for what noise type (Sheriff or Zoning Enforcement)?
- How and what is used to performs noise measurements?
- When enforcement will come out (Sheriff when called, Zoning with an appointment)?

Clarification for noise complaints should be addressed in the Zoning Ordinance Rewrite.

COMPLAINTS: 2021 UPDATE

STILL Not Tracked; **STILL** Discretionary Reporting

NOT TRACKED:

Letters/emails to

- BOS
- Planning Commission
- State elected officials
- State Agencies
- Federal elected officials
- Federal Agencies
- Social Media/News

INCOMPLETE TRACKING*

- Calls to Sheriff
- Virginia ABC

* Not all complaints reported on public reports. Discretion and plea bargaining impact incident reports.


RESULT: TOTAL COMPLAINTS UNDER REPORTED




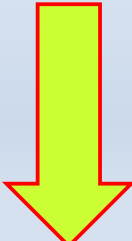
Complaints logged via social media, calls, letters or emails to a federal, state or county elected official or agency are NOT added to LEx unless requested.

There is:

- No consolidated complaint tracking
- No consolidated complaint reporting
- Therefore, total complaints are under reported.



LEX: Loudoun Express Request

PROS

- “Efficient way to connect with county staff”
- “24/7. Question or concern after business hours “

CONS


- Who knows about it?
- Limited / insufficient back-end reporting of complaints by type/source
- Does not consolidate all complaints sources

LEX does have benefits as a trouble/complaint ticket communication vehicle for citizens to document and send requests to Staff and allow Staff to respond.

However, LEX may still be underutilized, has back-end reporting issues, and does not consolidate all complaint sources.

Therefore, Zoning Enforcement action does not equal the actual quantity of complaints.

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LEX: Loudoun Express Request

LEX Ticket Consolidation

“Due to the previously received inquiries and complaints, your LEX request will be closed as a duplicate to Enforcement Case: 9263XXX.”

Zoning Enforcement response to Citizen, 4/12/2021

**ACTION/
Enforcement**

→ **Inductive/McNamara Fallacy**

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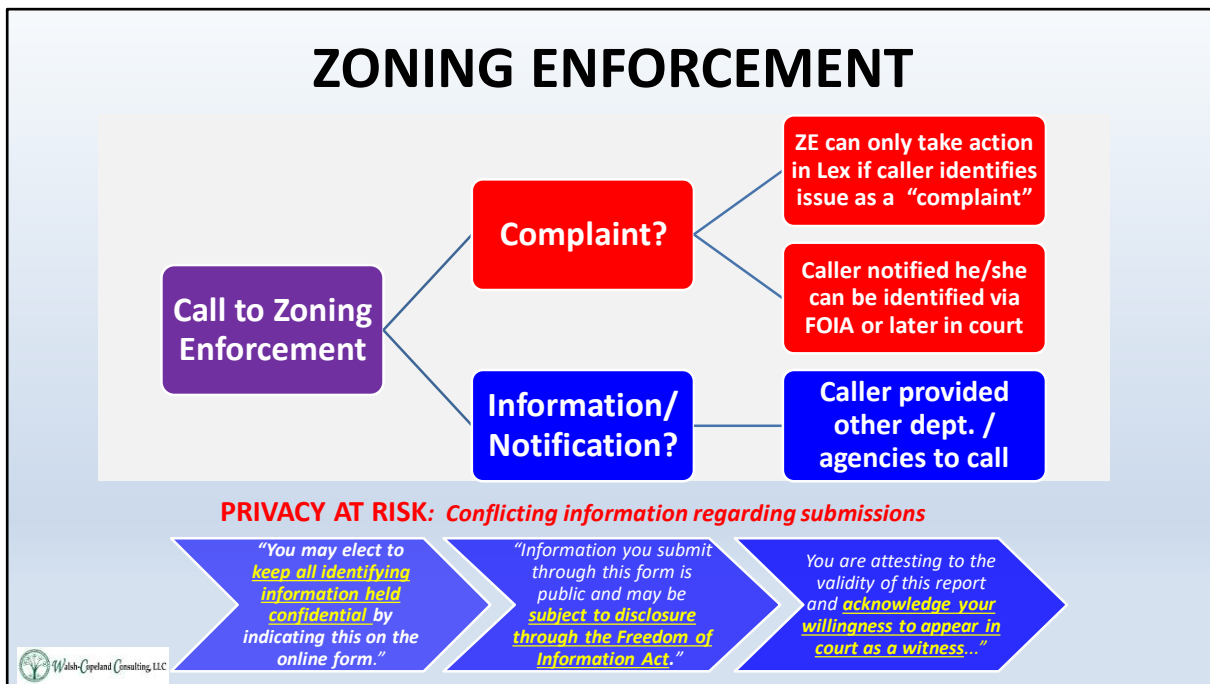
**Actual Qty of
Complaints**

LEX trouble tickets also understate total volume as complaints submitted by multiple people on the same topic may/will be combined and closed out as “duplicate” tickets.

McNamara fallacy involves making a decision based solely on quantitative observations and ignoring all others. The reason given is often that these other observations (in this case, tickets not entered in Lex) cannot be proven.

Fallacy steps:

- Measure whatever can be easily measured.
- Disregard (do not count) what can't be easily measured
- Presume what can't be measured easily is not an important metric.
- Presume what can't be easily measured doesn't exist.



The Zoning Complaint procedure may be an obstacle for residents concerned about privacy or retaliation:

1. Residents who use LEx are also required to acknowledge privacy limitations when selecting online complaints/tickets to be private:
 - "You may elect to keep all identifying information held confidential by indicating this on the online form."
 - "Information you submit through this form is public and may be subject to disclosure through the Freedom of Information Act."
 - "You are attesting to the validity of this report and acknowledge your willingness to appear in court as a witness..."
2. Callers to Zoning Enforcement must identify their issue as a COMPLAINT for Zoning Enforcement to take action. (Callers who request "information" are provided numbers to other departments to call directly.)

WHY?

ZONING ENFORCEMENT POLICY*

Since 1992 BOS direction is for Zoning Enforcement Staff to investigate:

Written complaints
(LEx, email);



Complaints from
Supervisor or
other county
agencies; and



PROACTIVELY ONLY
in cases of eminent
peril to life or
property.

As of June, 2010:

- Zoning Enforcement approved for **Proactive Enforcement in Sterling Area (only)**.
Mon-Fri workweek, weekend inspections as necessary.

*BOS Action #11, June 15, 2010
BOS Action #11, Nov. 17, 2009
BOS Action #13.b April 19, 2005



WHY is Zoning Enforcement by Complaint ONLY?

Not well known is that since 1992 the Board of Supervisors has instituted and renewed the **Policy of reactive vs. proactive enforcement.**

BOS/County Policy Documents:

[2010 06-15-Item 11-Sterling proactiveEnforcement-finalPDF](#)

[2009 11-17-Saturday Proactive Zoning Enforcement BMI](#)

[2005 04-19-Item 13b-Proactive Zoning Enforcement within Rt 50](#)

Zoning Enforcement IS doing the job they are legally allowed and have been directed to do by the Board of Supervisors.

Zoning Enforcement Staff just cannot do their job proactively (except in Sterling).