

"Federation Corner" column  
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### **Council missed deadline set in state law**

by Jim Humphrey, Chair, MCCF Planning and Land Use Committee

The County Council has missed the June 15 deadline for appointing a replacement for departing Planning Board member John Robinson, a date set by Maryland state law.

A law enacted in 1928, the Regional District Act, authorized the creation of the Montgomery County Planning Board as a part of the Maryland-National Capital Park and Planning Commission (M-NCPPC). The members of the Board are appointed by the County Council, and they advise on master planning and zoning issues which by law only the Council is authorized to decide. Among its other duties, the Planning Board also considers and votes on development project applications and makes decisions concerning the parks in the county that are under M-NCPPC jurisdiction.

Title 28 of the Annotated Code of Maryland states that the term of office of each member of the Planning Board is four years. Commissioner Robinson's second term expired on June 14 of this year. Title 28 also specifies that "Appointments shall be made on or before June 15 of the year in which any appointment is to be made..." The deadline has come and passed, but a new Planning Board member has not yet been named.

Have Council members knowingly missed the deadline for required action? Or was the Council unaware of the deadline established in law? Even if the latter were true, ignorance is no excuse of the law, as the saying goes. But, in this case the law is not all that simple to interpret.

While stating that appointments to the Planning Board shall be made by June 15, Title 28 goes on to allow that "if any appointment is not made as provided in this section a vacancy exists which shall be filled as provided in this article for the filling of vacancies on this commission." And still another provision in the law specifies that "Members may continue to serve until their successors are appointed and have qualified."

An argument could be made that the Council has made a good faith effort to identify and name a qualified new Board member, and was too busy or otherwise unable to make the appointment by the deadline established in law. That argument seems a little far-fetched when one considers the Council has known for four years that Robinson's successor must be named on or before June 15, 2009, since his appointment in 2005. The Council advertised the vacancy on March 5 of this year, setting an application deadline date of April 22. They seemed to have every intention, and certainly had enough time, to interview candidates in early June and make the appointment by June 15.

Earlier this week I was told that a certain member or members of Council made a purposeful decision to let Commissioner Robinson serve until late July, at which time his successor will be appointed. Apparently this decision was made to allow Robinson to serve until the votes are taken on key issues which he has been involved in considering--namely, the growth policy and the revision of the Gaithersburg West master plan--rather than bring on a new Board member to vote on these issues. This news seems to belie any "good faith effort" argument the Council could make.

So, it now appears that the missing of the deadline established in law for the Council to name a new Planning Board member was purposeful, and a plausible justification is claimed for the violating of a provision of state law. But don't most violators of the law claim to have a good reason for their actions? It is akin to a driver pulling up to a red light where a "no right turn on red" sign is posted, and making an illegal right turn while the signal is red. If caught, the driver will almost always claim some valid reason as

to why they violated the law, such as being late for an important event. Is what the Council did any different than a driver blowing through a red light illegally?

I want to make it clear that my concern over this purposeful violation of a provision of state law by the Montgomery County Council is not meant as a reflection on Commissioner Robinson's abilities or judgment. John has served the county well and faithfully over the eight years of his two terms as a Planning Board member.

But what kind of message does it send when the County Council, the body which enacts the laws by which we live, itself chooses to violate the law?

*The views expressed in this column do not necessarily reflect formal positions adopted by the Federation. To submit an 800-1000 word column for consideration, send as an email attachment to [theelms518@earthlink.net](mailto:theelms518@earthlink.net)*