



The Cruel Rule: Forget States' Rights—What About Ours?

Maybe you've heard about the Dillon Rule. Maybe you know what it is and maybe you don't. On the good chance that there's more to the story than you've been lead to believe, we're here to set the record straight.

The Dillon Rule ties the hands of our local leadership on matters concerning land use, zoning and so on that they would need the skills of Houdini to break free.

Leslie Cheek III, Vice President of the CFFC Board of Directors, has focused on the Dillon Rule and its implications for Fauquier County. His findings are important for all County residents. We'll let him take it from here.

Virginia is one of a handful of States whose laws decree that State assumption of power over a partic-

On the good chance
there's more to
the story
than you've been
lead to believe,
we're here to
set the record straight.

ular activity preempts local authority to regulate that activity. All other States, and the Federal Government, operate on the principle that powers not constitutionally assigned to central governments are to be exercised by their localities.

The next time you want to complain about the noise and traffic emanating from

a "farm winery" in your otherwise quiet rural neighborhood; or about raw sewage erupting from "alternative on-site septic systems" (AOSS) in the adjacent housing development; or about six townhouses slapped up overnight up on the one-acre lot next to your single-family home in an "urban development area," do not call your County Supervisor.

Instead, call or write your State Delegate and Senator and ask them why they and their colleagues haven't acted to stem the accelerating flow of power to the State from its localities.

If you don't think this issue is important to you, consider the local implications of three recent accretions to State power:

Farm Wineries

Beginning in 2007, under the leadership of Fauquier vintners Tareq Salahi and Philip Strother, Virginia's burgeoning wine industry engineered a successful three-year legislative assault on local authority over "farm wineries," culminating in a blanket State prohibition of any local regulation of "usual and customary activities and events of farm wineries," absent a "significant impact on the health, safety or welfare of the public."

Together with the Commonwealth's long-standing exemption of "agricultural buildings" from local building code requirements, the

DILLON, Pg 2

OUR MISSION
To preserve
the natural, historic
and agricultural resources
of Fauquier County
and to protect the County's unique
quality of life
through education and leadership.

CITIZENS FOR FAUQUIER COUNTY
Post Office Box 3486
Warrenton VA 20188

RETURN SERVICE REQUESTED

US Postage
PAID
Nonprofit Org.
Warrenton VA
Permit No. 97

DILLON from Pg1

other zoning regulations.

The farm wineries' legislative trifecta has paralyzed Fauquier's Supervisors, who have yet to fashion a local response to this obliteration of their power to protect Fauquier's rural tranquility.

Alternative On-Site Septic Systems

Roughly two-thirds of Fauquier's land surface consists of soils that are impermeable to sewage waste. For this reason, County law has historically permitted the installation of "alternative on-site septic systems" (AOSS) only where traditional percolating systems have failed. "AOSS" is an acronym that elegantly sidesteps the fundamental reality of sewage: If the local soil won't absorb it, it will ultimately have to be taken elsewhere.

AOSS are
an expensive way
of postponing
the inevitable.

What that typically means is local taxpayer-financed pipelines to distant sewage treatment plants. AOSS are an expensive way of postponing the inevitable: They cost at least \$6,500 for each single-family installation; require up to \$275 in monthly maintenance costs; and are typically designed to

fail within five years of installation. (A Loudoun County AOSS survey found a 50 percent failure rate before the expiration of the assumed five-year life of the surveyed systems.)

The UDA statute
compels the County
to plan for
urban population
densities it neither
wants nor can afford.

Against this depressing factual background, the developers and AOSS manufacturers persuaded the General Assembly in 2009 to make their installation a "by-right" activity under local zoning ordinances.



What this means to you and me is this: No matter where we live in Fauquier, we and our neighbors are now entitled to develop our acreage free of County restrictions on sewage disposal systems that will poison our wells, fill our back

yards with untreated fecal matter, and totally subvert regional efforts to reduce nitrogen pollution of the Chesapeake Bay.

Urban Development Areas

A year ago, marching in lockstep under the "smart-growth" banner, the developers and the realtors persuaded the General Assembly to decree that, by July 1, 2011, every locality's comprehensive plan must include "urban development areas" (UDAs) that, in Fauquier's case, will compel the County to find 2,411 housing units within its service districts.

The UDA statute adds insult to injury by prohibiting localities from offsetting population densities required in UDAs by downzoning

other areas; and by requiring that UDA densities be "sufficient to meet projected residential and commercial growth in the locality for at least 10...years." Fauquier must therefore plan on cramming the entire County's projected 10-year

population growth—6,847 souls—into less than 10 percent of its land area, despite the statute's explicit preservation of "by-right" zoning elsewhere in the County.

Even as Fauquier bumps up against Federal limits on pollution discharge permits and faces new Federal initiatives aimed at restoring the Chesapeake Bay, the UDA statute compels the County to plan for urban population densities it neither wants nor can afford.

The Perfect Storm

The "Dillon Rule" underlying the foregoing illustrations of the General Assembly's preemptive power combines with Virginia's campaign finance laws to create the "perfect storm" for the Commonwealth's business interests: They may (and do) contribute unlimited sums to State legislators, sums no doubt augmented by their assurance that laws passed by the grateful recipients of their largesse will spare them the inconvenience and expense of County-by-County subversion of local preferences. It is no accident that Virginia's home builders and realtors are among the top five contributors to our State legislators, nor is it likely that those legislators will voluntarily surrender the extraordinary power that attracts the special interests' contributions. While this remains true, the Dillon Rule is Fauquier's worst enemy. ■

Everyone Should Win This Wine Contest

Fauquier County wineries have struggled for years to strike a balance in County regulations that promote their welfare while preserving Fauquier's thriving agri-tourism lifestyle.

CFFC rose to the challenge of helping all parties strike that balance.

Fauquier's continuing struggle with the first of three "Dillon Rule" State preemptions of local authority discussed in the preceding article – that governing "usual and customary activities and events of farm wineries" – vividly illustrates the political, legal and socio-economic difficulties inherent in reconciling the State's "hands-off" mandate with the County government's fundamental obligation to protect the "health, safety and welfare" of Fauquier's citizens.

After more than three years of frustrating and inconclusive debate over issues dividing the County's robust farm winery community (now more than 30 out of the State's total of 189) and organizations concerned about the impact of farm winery promotional activities on the County's rural tranquility, Supervisors Peter Schwartz and Holder Trumbo late last year asked the Fauquier Wine Council (FWC) and CFFC to participate in a collaborative process aimed at producing a farm winery ordinance respectful of both State and County law and Fauquier's rural agricultural tranquility.

In January 2011, CFFC's Board of Directors created



a five-member Farm Winery Task Force to respond to the Supervisors' request. That task force met with representatives of six FWC wineries on February 19, and briefed the Supervisors on the results of that session at the February 22 CFFC Board meeting.

On April 25, County Zoning Administrator Kim Johnson released for comment a draft farm winery ordinance reflecting input from the parties involved in the collaborative discussions. While the draft adequately addressed CFFC's concerns about on-site food preparation in "agricultural buildings" exempt from local health and safety regulation and the audibility of outdoor amplified music (OAM) beyond farm winery property lines, it was deficient in a number of aspects relevant to the County's obligation to pro-

tect the "health, safety and welfare" of its citizens.

Farm winery events
should be subject to
local requirements for
adequate sanitary
services, parking
facilities and
traffic control.

Accordingly, the CFFC Board approved a May 31 letter to Ms. Johnson (accessible on CFFC's website) identifying needed improvements in the April 25 draft. Chief among these are the following:

- A farm winery should be required to manufacture wine in order to be eligible

for the "accessory uses" permitted under the ordinance, such as the "activities and events" that localities are precluded from regulating.

- Farm winery tasting rooms should have "regular business hours" that will allow patrons to get home before darkness makes their transit of unlit and unfamiliar rural roads dangerous.

- Farm winery events beginning after tasting room closure should have "hard" closing times (everyone out) of 10 p.m. on Sundays through Thursdays and 11 p.m. on Fridays and Saturdays, enforced by the Sheriff's Department.

- Farm wineries should be required to give abutting neighbors the names, addresses, and 24/7 telephone/cell phone numbers of contact persons authorized to respond to complaints of excessive OAM or other permit violations.

- Farm winery events should be subject to local requirements for adequate sanitary services, parking facilities and traffic control.

- The number of events allowed to a farm winery should be a function, not only of its acreage and access road quality, but also

of the distance of its event structure from the nearest non-winery residence.

Attached to CFFC's four-page summary letter were a page-length proposed preamble to the ordinance and a twelve-page, section-by-section analysis of the April 25 draft, including statements of CFFC support, where appropriate, and specific recommendations for needed improvements.

None of this gargantuan effort would have been necessary had Virginia decided, as did our Nation's forefathers long ago, that it makes sense to allow localities to regulate matters not specifically and constitutionally assigned to central government or constitutionally prohibited to localities.

CFFC wants Fauquier's wineries to thrive, and would have earlier arrived at an accommodation of their concerns in the absence of a State law that forecloses local control of farm winery "activities and events," some of which are far more commercial than agricultural.

At this writing, CFFC anticipates continuing to assist interested parties in hammering out the final details of an ordinance that will be submitted to the Board of Supervisors for action later this summer.

Update: The BOS is expected to vote on the Wine Ordinance at its September meeting. CFFC will endeavor to post the latest information about the vote on the organization's website, www.citizensforfauquier.org.

A Splendid Summer Sunday at Oakwood

New and long-time members of CFFC gathered on June 12, 2011 at Oakwood, the home of **Mr. and Mrs. Bertrand Collomb**, located near Warrenton. It was a perfect opportunity to recognize the benefits of conservation and historic easements that help preserve places like Oakwood and the surrounding countryside for future appreciation and study. A highlight of the event was a tour, guided by our gracious hostess, of the main house and a stone cottage where the original owners had lived following the Revolutionary War. CFFC board member Julie Broaddus gave a riveting talk about the history of the entire "Great Valley," much of it culled from Civil War-era journals. You can read more about Oakwood on the CFFC website.



“The joy of living is his who has the heart to demand it.”*

Too soon after the day at Oakwood, which we'd had the pleasure of sharing with a lively and hope-filled **Todd Benson**, we were called upon to mourn his passing, as was the entire conservation community. We halted printing of this issue of the *Monitor* in order that we might include this brief tribute.



advocate for conservation and historic preservation. His love for the Piedmont region of Virginia was compelling, his work in its cause relentless. We learned so much from him, and have so much to thank him for. We are grateful to have been blessed by our association with Todd.

We'll never forget him. ■

Todd Benson
1953–2011

Todd, who worked for the Piedmont Environmental Council, was more than a staunch and brilliant

**Todd admired Theodore Roosevelt. This was one of Todd's favorite TR quotations.*