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The Honorable Planning Commission  
Lynchburg, Virginia

RE: Public Nuisances vs. Private Nuisances

Dear Planning Commission:

The Community Development Department requested that I attend the July 10<sup>th</sup> Planning Commission meeting to discuss the difference between a “public nuisance” and a “private nuisance.” In preparation for the meeting I thought it might be helpful to provide the Planning Commission with some background information on this subject.

Nuisances fall into two categories, public nuisances and private nuisances. A public nuisance is a condition that affects or has the potential to affect the health, safety or welfare of the general public rather than just one individual or a small number of individuals. A private nuisance is a condition that unreasonably interferes with a property owner's use and enjoyment of his property but does not affect the general public.

Several sections of the Virginia Code give local governments the authority to eliminate “public nuisances” in order to protect the public health, safety or welfare of the community. However, the State Code does not give local governments the authority to eliminate a private nuisance. A property owner that is adversely affected by a private nuisance is responsible for taking the necessary steps to protect his property and the law allows a property owner that is being adversely affected by a private nuisance to file a civil action to eliminate the nuisance.

City Officials often receive requests from citizens to deal with alleged “public nuisances.” However, many of these requests involve situations that do not rise to the level of public nuisances and are simply private nuisances. The following example illustrates the difference between a public nuisance and private nuisance. If an unhealthy tree is located in a property owner's front yard and because of its location could fall and injure someone using a public sidewalk or street, the tree is a public nuisance. It poses a threat to the general public, anyone that might be using the public sidewalk or street. In such a situation the City can either require

the property owner to remove the tree or the City can remove the tree and bill the property owner for the costs. However, if the same tree is located in a property owner's rear yard, it only poses a threat to the adjoining properties and not to the general public. In such a situation the tree is a private nuisance and the City does not have the authority to require its removal. But the Virginia Supreme Court has held that the law allows the property owner that is being adversely affected by the tree to file a civil action to eliminate the nuisance. In short, it is the responsibility of a property owner, not the City, to take the appropriate steps to deal with a private nuisance.

To sum up, many of the complaints City officials are asked to deal with do not constitute public nuisances because the conditions complained of do not constitute a threat to the public health, safety or welfare. The complaints are private nuisances because they deal with conditions that affect only a single individual or a relatively small number of individuals and are simply disputes between private citizens. The City's authority is limited to eliminating conditions that pose a threat to the health, safety or welfare of the community; the City has no authority to resolve disputes between property owners. It is the responsibility of a property owner to exercise the rights afforded by our legal system and file a civil action to protect the use and enjoyment of his property.

I hope this background information will be helpful to the Planning Commission and I look forward to the upcoming discussion of this issue.

Sincerely,



Walter C. Erwin