

031145406

SENATE BILL NO. 1292

Offered January 16, 2003

A BILL to amend and reenact §§ 15.2-2242, 15.2-2280 and 15.2-2283 of the Code of Virginia, relating to adequate public facilities.

Patrons—Byrne and Mims

Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2242, 15.2-2280 and 15.2-2283 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2242. Optional provisions of a subdivision ordinance.

A subdivision ordinance may include:

1. Provisions for variations in or exceptions to the general regulations of the subdivision ordinance in cases of unusual situations or when strict adherence to the general regulations would result in substantial injustice or hardship.

2. A requirement for the furnishing of a preliminary opinion from the applicable health official regarding the suitability of a subdivision for installation of subsurface sewage disposal systems where such method of sewage disposal is to be utilized in the development of a subdivision.

3. A requirement that, in the event streets in a subdivision will not be constructed to meet the standards necessary for inclusion in the secondary system of state highways or for state street maintenance moneys paid to municipalities, the subdivision plat and all approved deeds of subdivision, or similar instruments, must contain a statement advising that the streets in the subdivision do not meet state standards and will not be maintained by the Department of Transportation or the localities enacting the ordinances. Grantors of any subdivision lots to which such statement applies must include the statement on each deed of conveyance thereof. However, localities in their ordinances may establish minimum standards for construction of streets that will not be built to state standards.

For streets constructed or to be constructed, as provided for in this subsection, a subdivision ordinance may require that the same procedure be followed as that set forth in provision 5 of § 15.2-2241. Further, the subdivision ordinance may provide that the developer's financial commitment shall continue until such time as the local government releases such financial commitment in accordance with provision 11 of § 15.2-2241.

4. Reasonable provision for the voluntary funding of off-site road improvements and reimbursements of advances by the governing body. If a subdivider or developer makes an advance of payments for or construction of reasonable and necessary road improvements located outside the property limits of the land owned or controlled by him, the need for which is substantially generated and reasonably required by the construction or improvement of his subdivision or development, and such advance is accepted, the governing body may agree to reimburse the subdivider or developer from such funds as the governing body may make available for such purpose from time to time for the cost of such advance together with interest, which shall be excludable from gross income for federal income tax purposes, at a rate equal to the rate of interest on bonds most recently issued by the governing body on the following terms and conditions:

a. The governing body shall determine or confirm that the road improvements were substantially generated and reasonably required by the construction or improvement of the subdivision or development and shall determine or confirm the cost thereof, on the basis of a study or studies conducted by qualified traffic engineers and approved and accepted by the subdivider or developer.

b. The governing body shall prepare, or cause to be prepared, a report accepted and approved by the subdivider or developer, indicating the governmental services required to be furnished to the subdivision or development and an estimate of the annual cost thereof for the period during which the reimbursement is to be made to the subdivider or developer.

c. The governing body may make annual reimbursements to the subdivider or developer from funds made available for such purpose from time to time, including but not limited to real estate taxes assessed and collected against the land and improvements on the property included in the subdivision or development in amounts equal to the amount by which such real estate taxes exceed the annual cost of providing reasonable and necessary governmental services to such subdivision or development.

5. In a county having the urban county executive form of government, in any city located within or adjacent thereto, or any county adjacent thereto or a town located within such county, in any county with a population between 57,000 and 57,450, or in any county with a population between 60,000 and

INTRODUCED

SB1292

59 63,000, and in any city with a population between 140,000 and 160,000, provisions for payment by a
60 subdivider or developer of land of a pro rata share of the cost of reasonable and necessary road
61 improvements, located outside the property limits of the land owned or controlled by him but serving an
62 area having related traffic needs to which his subdivision or development will contribute, to reimburse
63 an initial subdivider or developer who has advanced such costs or constructed such road improvements.
64 Such ordinance may apply to road improvements constructed after July 1, 1988, in a county having the
65 urban county executive form of government; in a city located within or adjacent to a county having the
66 urban county executive form of government, or in a county adjacent to a county having the urban
67 county executive form of government or town located within such county and in any county with a
68 population between 57,000 and 57,450, or in any county with a population between 60,000 and 63,000,
69 such ordinance may only apply to road improvements constructed after the effective date of such
70 ordinance.

71 Such provisions shall provide for the adoption of a pro rata reimbursement plan which shall include
72 reasonable standards to identify the area having related traffic needs, to determine the total estimated or
73 actual cost of road improvements required to adequately serve the area when fully developed in
74 accordance with the comprehensive plan or as required by proffered conditions, and to determine the
75 proportionate share of such costs to be reimbursed by each subsequent subdivider or developer within
76 the area, with interest (i) at the legal rate or (ii) at an inflation rate prescribed by a generally accepted
77 index of road construction costs, whichever is less.

78 For any subdivision ordinance adopted pursuant to provision 5 of this section after February 1, 1993,
79 no such payment shall be assessed or imposed upon a subsequent developer or subdivider if (i) prior to
80 the adoption of a pro rata reimbursement plan the subsequent subdivider or developer has proffered
81 conditions pursuant to § 15.2-2303 for offsite road improvements and such proffered conditions have
82 been accepted by the locality, (ii) the locality has assessed or imposed an impact fee on the subsequent
83 development or subdivision pursuant to Article 8 (§ 15.2-2317 et seq.) of Chapter 22, or (iii) the
84 subsequent subdivider or developer has received final site plan, subdivision plan, or plan of development
85 approval from the locality prior to the adoption of a pro rata reimbursement plan for the area having
86 related traffic needs.

87 The amount of the costs to be reimbursed by a subsequent developer or subdivider shall be
88 determined before or at the time the site plan or subdivision is approved. The ordinance shall specify
89 that such costs are to be collected at the time of the issuance of a temporary or final certificate of
90 occupancy or functional use and occupancy within the development, whichever shall come first. The
91 ordinance also may provide that the required reimbursement may be paid (i) in lump sum, (ii) by
92 agreement of the parties on installment at a reasonable rate of interest or rate of inflation, whichever is
93 less, for a fixed number of years, or (iii) on such terms as otherwise agreed to by the initial and
94 subsequent subdividers and developers.

95 Such ordinance provisions may provide that no certificate of occupancy shall be issued to a
96 subsequent developer or subdivider until (i) the initial developer certifies to the locality that the
97 subsequent developer has made the required reimbursement directly to him as provided above or (ii) the
98 subsequent developer has deposited the reimbursement amount with the locality for transfer forthwith to
99 the initial developer.

100 6. Provisions for establishing and maintaining access to solar energy to encourage the use of solar
101 heating and cooling devices in new subdivisions. The provisions shall be applicable to a new subdivision
102 only when so requested by the subdivider.

103 7. Provisions, in any town with a population between 14,500 and 15,000, granting authority to the
104 governing body, in its discretion, to use funds escrowed pursuant to provision 5 of § 15.2-2241 for
105 improvements similar to but other than those for which the funds were escrowed, if the governing body
106 (i) obtains the written consent of the owner or developer who submitted the escrowed funds; (ii) finds
107 that the facilities for which funds are escrowed are not immediately required; (iii) releases the owner or
108 developer from liability for the construction or for the future cost of constructing those improvements
109 for which the funds were escrowed; and (iv) accepts liability for future construction of these
110 improvements. If such town fails to locate such owner or developer after making a reasonable attempt to
111 do so, the town may proceed as if such consent had been granted. In addition, the escrowed funds to be
112 used for such other improvement may only come from an escrow that does not exceed a principal
113 amount of \$30,000 plus any accrued interest and shall have been escrowed for at least five years.

114 8. Provisions for clustering of single-family dwellings and preservation of open space developments,
115 which provisions shall comply with the requirements and procedures set forth in subdivision A 12 of
116 § 15.2-2286.

117 9. Reasonable provisions allowing the locality to determine whether public facilities, including
118 schools, roads, public safety facilities including fire and police, public sewer and water including both
119 collection and distribution lines, treatment capacity and availability of adequate water supply are
120 adequate to support the development, at build out, proposed in any subdivision plat or site plan, or

preliminary plat or plan where preliminary plats or plans are required, submitted for approval. Approval of such plat or plan may be deferred based upon a finding by the governing body that such facilities are not adequate to support the proposed development at build out. Infrastructure shall be deemed inadequate if, at the time of the submission of a plat or plan, or preliminary plat or plan where preliminary plats or plans are required, the cost to the locality of providing infrastructure necessary to serve the development proposed in such plat or plan at build out would exceed \$100,000.

In order to defer approval of a plat or plan under this subsection a locality must have in force, or promptly initiate and diligently pursue the adoption, for the area in which the plat or plan is proposed, a capital improvement plan that provides that adequate infrastructure, as defined in this subsection, shall be available to serve the development shown in such proposed plat or plan within no more than 12 years of the date of submission of such plat or plan, provided that the plat or plan at the time of submission otherwise meets the requirements of the local ordinance for approval. Such capital improvement plan shall be funded on at least an annual basis in an amount necessary to provide sufficient funds to ensure that those elements of infrastructure that were deemed inadequate for purposes of such deferral will be adequate at the end of such 12-year period.

In the event of a determination of the inadequacy of any such facilities by a locality leading to a proposed deferral of a plat or plan, the applicant for such plat or plan may, in its sole discretion, agree to pay for, or provide at its expense, the share of such inadequate facilities that represents the demand for or burden imposed upon such facilities created by the development embodied in such plat or plan, as determined by the locality. Upon providing for such payment or provision, to the reasonable satisfaction of the locality, such plat or plan shall be processed by the locality as though all such facilities were adequate. Any payment made by an applicant pursuant hereto shall be placed by the locality in its capital improvements budget for use in implementation of its capital plan relevant to the area affected by the application.

During the deferral period, the applicant shall be entitled to the approval of a subdivision plat, otherwise in compliance with applicable regulations, at the lowest density permitted in the locality for any zoning district.

A deferral pursuant to any local ordinance adopted in conformity with this subsection shall not be subject to the provisions of subdivisions B and C of § 15.2-2297 or subdivisions B and C of § 15.2-2298, or § 15.2-2307.

The exercise of the power provided under this subdivision by a locality shall not be deemed to create an obligation on the part of such locality to furnish any such public facilities.

Nothing contained in this subdivision shall be deemed to affect the ability of a locality to approve or deny a site plan or subdivision plat for reasons other than the adequacy of infrastructure.

Any appraisal of property subject to a deferral under this subdivision conducted pursuant to Chapter 32 (§ 58.1-3200 et seq.) of Title 58.1 or any other provision of the Code shall reflect the effect of such deferral on the fair market value of the property.

§ 15.2-2280. Zoning ordinances generally.

Any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof into districts of such number, shape and size as it may deem best suited to carry out the purposes of this article, and in each district it may regulate, restrict, permit, prohibit, and determine the following:

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;

2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;

3. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including variations in the sizes of lots based on whether a public or community water supply or sewer system is available and used; or

4. The excavation or mining of soil or other natural resources; or

5. The timing of development of uses otherwise permitted when public facilities, including schools, roads, public safety facilities including fire and police, public sewer and water including both collection and distribution lines, treatment capacity and availability of adequate water supply are not deemed by the governing body to be adequate to support development otherwise permitted in the district, provided the locality has (i) a capital improvements plan that provides the basis for an objective determination of the level of inadequacy of such facilities and (ii) a comprehensive plan as required by § 15.2-2223 that specifies areas for development. The exercise of the power provided under this subdivision by a locality shall not be deemed to create an obligation on the part of such locality to furnish any such public facilities.

§ 15.2-2283. Purpose of zoning ordinances.

182 Zoning ordinances shall be for the general purpose of promoting the health, safety or general welfare
183 of the public and of further accomplishing the objectives of § 15.2-2200. To these ends, such ordinances
184 shall be designed to give reasonable consideration to each of the following purposes, where applicable:
185 (i) to provide for adequate light, air, convenience of access, and safety from fire, flood, crime and other
186 dangers; (ii) to reduce or prevent congestion in the public streets; (iii) to facilitate the creation of a
187 convenient, attractive and harmonious community; (iv) to facilitate the provision of adequate police and
188 fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection,
189 schools, parks, forests, playgrounds, recreational facilities, airports and other public requirements; (v) to
190 protect against destruction of or encroachment upon historic areas; (vi) to protect against one or more of
191 the following: overcrowding of land, undue density of population *or rate of development* in relation to
192 ~~the community facilities~~ existing or available *public facilities*, obstruction of light and air, danger and
193 congestion in travel and transportation, or loss of life, health, or property from fire, flood, panic or other
194 dangers; (vii) to encourage economic development activities that provide desirable employment and
195 enlarge the tax base; (viii) to provide for the preservation of agricultural and forestal lands and other
196 lands of significance for the protection of the natural environment; (ix) to protect approach slopes and
197 other safety areas of licensed airports, including United States government and military air facilities; and
198 (x) to promote the creation and preservation of affordable housing suitable for meeting the current and
199 future needs of the locality as well as a reasonable proportion of the current and future needs of the
200 planning district within which the locality is situated. Such ordinance may also include reasonable
201 provisions, not inconsistent with applicable state water quality standards, to protect surface water and
202 ground water as defined in § 62.1-255.