

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 363

An Act to amend and reenact §§ 15.2-2316.1 and 15.2-2316.2 of the Code of Virginia, relating to transfer of development rights.

[S 869]

Approved March 15, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2316.1 and 15.2-2316.2 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2316.1. Definitions.

As used in this article, the term:

"Development rights" means the permitted uses and density of development that ~~would be~~ are allowed on the sending property under any ~~local~~ zoning ordinance of a locality ~~in effect on the date an application is submitted pursuant to this article~~ on a date prescribed by the ordinance.

"Receiving area" means an area identified by an ordinance and designated by the comprehensive plan as an area authorized to receive development rights transferred from a sending area.

"Receiving property" means a lot or parcel within which development rights are increased pursuant to a transfer of development rights. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property.

"Sending area" means an area identified by an ordinance and designated by the comprehensive plan as an area from which development rights are authorized to be transferred to a receiving area.

"Sending property" means a lot or parcel that a locality deems necessary to limit future development in accordance with the ordinance adopted in subsection C of § 15.2-2316.2 *or a receiving property that has received development rights from a sending property.*

"Transfer of development rights" means the process by which development rights from a sending property are affixed to one or more receiving properties.

§ 15.2-2316.2. Localities may provide for transfer of development rights.

A. Pursuant to the provisions of this article, the governing body of any locality by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction. Any locality adopting or amending any such transfer of development rights ordinance shall give notice and hold a public hearing in accordance with § 15.2-2204 prior to approval by the governing body.

B. Any proposed transfer of development rights shall only be initiated upon application by the property owners of both the sending and receiving properties. A locality may not require property owners to transfer development rights as a condition of the development of any property.

C. Prior to any transfer of development rights, a locality shall adopt an ordinance based on findings of public benefit. Such ordinance shall provide for:

1. The issuance and recordation of the instruments necessary to sever development rights from the sending property and to affix development rights to the receiving property. These instruments shall be executed by the affected property owners and lienholders. The ~~instrument~~ instruments shall identify the development rights being transferred, identification of the sending property and the receiving property;

2. The preservation of the character of the sending property and assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner;

3. The severance of transferable development rights from the sending property and the transfer of development rights to a receiving property;

4. The purchase, sale, exchange, or other conveyance of transferable development rights prior to the rights being affixed to a receiving property;

5. A system for monitoring the severance, ownership, assignment, and transfer of transferable development rights;

6. A map or other description of areas designated as sending and receiving areas for the transfer of development rights between properties;

7. The identification of parcels, if any, within a receiving area that are inappropriate as receiving properties;

8. The ordinance shall include permitted uses and the maximum increases in density in the receiving area;

9. The minimum acreage of a sending property and the minimum reduction in density of the sending property that may be conveyed in a transfer of development rights;

10. An assessment of the infrastructure in the receiving area that identifies the ability of the area to

accept increases in density and its plans to provide necessary utility services within any designated receiving area;

11. The review of an application by the planning commission or its agent to determine whether the application complies with the provisions of the ordinance. The application shall be deemed approved upon the determination of compliance with the ordinance and upon recordation of the instrument transferring the development rights in the land records of the office of the circuit court clerk for the locality; and

12. Such other provisions as the locality deems necessary to aid in the implementation of the provisions of this article.

D. The ordinance may provide for the allowance for residential density to be converted to an increase in the square feet of a commercial, industrial or other use on the receiving property.

E. Development rights made transferable pursuant to this article shall be interests in real property and shall be considered as such for purposes of conveyance and taxation. Once an application has been approved and a deed of transferable development rights created pursuant to this article has been sold, conveyed, or otherwise transferred by the owner of the sending property, the transfer of development rights shall vest in the grantee and may be transferred to a successor in interest. Any transfer of the development rights to a different property in a receiving area shall be subject to review pursuant to the provisions of the ordinance adopted pursuant to provision 11 of subsection C.

F. For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the transferable development right is recorded as a distinct interest in real property with the appropriate tax assessor or the transferable development right is used at a receiving property and becomes appurtenant thereto.

G. Approved transfers of development rights shall become effective upon the recording of the conveyance and the filing of a certified copy of such recording with the local governing body of the locality.

H. Localities shall incorporate the map identified in provision 6 of subsection C into the comprehensive plan.

I. No amendment to the zoning map, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, or the density of use permitted in the zoning district applicable to any property to which development rights have been transferred, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

J. A county adopting an ordinance pursuant to this article may designate eligible receiving areas in any incorporated town within such county, if the governing body of the town has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county.

K. Any county and an adjacent city may enter voluntarily into an agreement to permit the county to designate eligible receiving areas in the city if the governing body of the city has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. The city council shall designate areas it deems suitable as receiving areas and shall designate the maximum increases in density in each such receiving area. However, if any such agreement contains any provision addressing any issue provided for in Chapter 32 (§ 15.2-3200 et seq.), 33 (§ 15.2-3300 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39 (§ 15.2-3900 et seq.), or 41 (§ 15.2-4100 et seq.), the agreement shall be subject to the review and implementation process established by Chapter 34 (§ 15.2-3400 et seq.).

1. The terms and conditions of the density transfer agreement as provided in this subsection shall be determined by the affected localities and shall be approved by the governing body of each locality participating in the agreement, provided the governing body of each such locality first holds a public hearing, which shall be advertised once a week for two successive weeks in a newspaper of general circulation in the locality.

2. The governing bodies shall petition a circuit court having jurisdiction in one or more of the localities for an order affirming the proposed agreement. The circuit court shall be limited in its decision to either affirming or denying the agreement and shall have no authority, without the express approval of each local governing body, to amend or change the terms or conditions of the agreement, but shall have the authority to validate the agreement and give it full force and effect. The circuit court shall affirm the agreement unless the court finds either that the agreement is contrary to the best interests of the Commonwealth or that it is not in the best interests of each of the parties thereto.

3. The agreement shall not become binding on the localities until affirmed by the court under this subsection. Once approved by the circuit court, the agreement shall also bind future local governing bodies of the localities.