

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 440

An Act to allow Albemarle County to enact an ordinance for the transfer and severance of development rights.

[H 991]

Approved March 7, 2008

Be it enacted by the General Assembly of Virginia:

1. § 1. Notwithstanding the provisions of Article 7.1 (§ 15.2-2316.1 et seq.) of Chapter 22 of Title 15.2 of the Code of Virginia, the provisions of this act shall apply to Albemarle County.

§ 2. Definitions.

As used in this act, the term:

"Development rights" or "transferable development rights" means the permitted uses and density of development that are allowed on the sending property under any zoning ordinance of a locality 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 affixed to the property. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the development rights being transferred and affixed thereto. Development rights may be transferred between receiving properties, as otherwise permitted in the ordinance.

"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 severed and transferred to a receiving area.

"Sending property" means a lot or parcel within a sending area from which development rights are authorized by the ordinance to be severed.

"Severance of development rights" means the process by which development rights from a sending property are severed pursuant to this act.

"Transfer of development rights" means the process by which development rights are conveyed to one or more parties, or transferred to become affixed to one or more receiving properties, pursuant to this act.

§ 3. Albemarle County may provide for transfer of development rights.

A. Pursuant to the provisions of this act, the governing body of Albemarle County by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer and severance of development rights within its jurisdiction. The county shall give notice and hold a public hearing in accordance with § 15.2-2204 of the Code of Virginia prior to approval by the governing body.

B. Albemarle County may not require property owners to transfer development rights as a condition of the development of any property. The owner of a property may sever development rights from the sending property, pursuant to the provisions of this act. An application to transfer development rights to one or more receiving properties, for the purpose of affixing such rights thereto, shall only be initiated upon application by the owner of such development rights and the owners of the receiving properties. However, if a property in the receiving area does not have sufficient development rights for the proposed development at the time an application for development is submitted by the owner of a receiving property, the owner of said receiving property may accept development rights from a sending property pursuant to this act.

C. In accordance with implementing the provisions of this act, Albemarle County shall adopt an ordinance and shall provide for:

1. The issuance and recordation of the instruments necessary to sever development rights from the sending property, to convey development rights to one or more parties, or to affix development rights to one or more receiving properties. These instruments shall be executed by the property owners of the development rights being transferred, and lienholders of such property owners, if any. The instruments shall identify the development rights being severed and the sending properties or receiving properties, as applicable;

2. 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;

4. The purchase, sale, exchange, or other conveyance of transferable development rights, after severance and 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. 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 severance or 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 to transfer development rights 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 in the land records of the office of the circuit court clerk for the locality that transfers and affixes development rights to one or more receiving properties; and

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

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 severed pursuant to this act shall be interests in real property and shall be considered as such for purposes of conveyance and taxation. Once a deed for transferable development rights, created pursuant to this act, has been recorded in the land records of the office of the circuit court clerk for the locality to reflect the transferable development rights sold, conveyed, or otherwise transferred by the owner of the sending property, the development rights shall vest in the grantee and may be transferred by such grantee to a successor in interest. Nothing herein shall be construed to prevent the owner of the sending property from recording a deed covenant against the sending property severing the development rights on said property, with the owner of the sending property retaining ownership of the severed development rights. 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 subdivision C 11.

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 severed from and recorded as a distinct interest in real property, or the transferable development right is used at a receiving property and becomes appurtenant thereto. Once a transferable development right is severed from the sending property, the assessment of the fee interest in the sending property shall reflect any change in the fair market value that results from the inability of the owner of the fee interest to use such property for such uses terminated by the severance of the transferable development right. Upon severance from the sending property and recordation as a distinct interest in real property, the transferable development right shall be assessed at its fair market value on a separate real estate tax bill sent to the owner of said development right as taxable real estate in accordance with Article 1 (§ 58.1-3200 et seq.) of Chapter 32 of Title 58.1 of the Code of Virginia.

G. Severance of development rights shall become effective upon the recording of the conveyance and submittal of a certified copy of such recording to the local assessor. Transfers of development rights, approved by the County to be affixed to one or more receiving properties, shall become effective upon the recording of the conveyance.

H. Albemarle County shall incorporate the map identified in subdivision C 6 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, materially restrict, or reduce the uses, or the density of use permitted in the zoning district applicable to any receiving properties to which development rights have been transferred and affixed thereto, 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. In adopting an ordinance pursuant to this act, Albemarle County 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. Albemarle 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.) of Title 15.2 of the Code of Virginia, the agreement shall be subject to the review and implementation process established by Chapter 34 (§ 15.2-3400 et seq.) of Title 15.2 of the Code of Virginia.

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 affirm or deny 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.

2. That the provisions of this act shall expire on July 1, 2012, if Albemarle County has not enacted an ordinance for the transfer of development rights as described in this act prior to that time. Further, that the provisions of this act shall not become effective unless or until Albemarle County adopts an ordinance pursuant to this chapter.