

071659232

HOUSE BILL NO. 3033

Offered January 11, 2007

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

Patron—Bell

Referred to Committee on Counties, Cities and Towns

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 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.

"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.

"Severance of development rights" means the process by which development rights from a sending property are severed and made eligible to transfer to one or more receiving properties.

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

C. Prior to any transfer or severance 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 either sever development rights from the sending property and or to affix development rights to the receiving property. These instruments shall be executed by the affected property owners and lienholders. The instrument shall identify the development rights being transferred or severed, identification of the sending property and/or 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/or the transfer of development rights to a receiving 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

INTRODUCED

HB3033

59 properties;

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

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

64 10. An assessment of the infrastructure in the receiving area that identifies the ability of the area to
65 accept increases in density and its plans to provide necessary utility services within any designated
66 receiving area;

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

72 12. Such other provisions as the locality deems necessary to aid in the implementation of the
73 provisions of this article, *including the purchase and/or sale of development rights by the locality in*
74 *order to establish a clearinghouse for the conveyance of development rights.*

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

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

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

89 G. Approved transfers of development rights *to receiving properties* shall become effective upon the
90 recording of the conveyance and the filing of a certified copy of such recording with the local governing
91 body of the locality.

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

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

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