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HOUSE BILL NO. 208

Offered January 9, 2008

Prefiled December 27, 2007

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

Patron—Cole

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2242 and 15.2-2280 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 (i) 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 and (ii) that all buildings constructed on lots resulting from subdivision of a larger tract that abuts or adjoins a public water or sewer system or main shall be connected to that public water or sewer system or main subject to the provisions of § 15.2-2121.

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.

INTRODUCED

HB208

59 5. In Arlington County, Fairfax County, Loudoun County, and Prince William County, in any town
60 located within such counties, in Bedford County, Pittsylvania County, Spotsylvania County, and Stafford
61 County, or in the Cities of Alexandria, Fairfax, Falls Church, Hampton, Manassas, and Manassas Park,
62 provisions for payment by a subdivider or developer of land of a pro rata share of the cost of reasonable
63 and necessary road improvements, located outside the property limits of the land owned or controlled by
64 him but serving an area having related traffic needs to which his subdivision or development will
65 contribute, to reimburse an initial subdivider or developer who has advanced such costs or constructed
66 such road improvements. Such ordinance may apply to road improvements constructed after July 1,
67 1988, in Fairfax County; in Arlington County, Loudoun County, and Prince William County, in any
68 town located within such counties, in Bedford County, Pittsylvania County, Spotsylvania County, and
69 Stafford County, or in the Cities of Alexandria, Fairfax, Falls Church, Hampton, Manassas, and
70 Manassas Park, such ordinance may only apply to road improvements constructed after the effective date
71 of such ordinance.

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

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

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

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

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

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

115 8. Provisions for clustering of single-family dwellings and preservation of open space developments,
116 which provisions shall comply with the requirements and procedures set forth in § 15.2-2286.1.

117 9. Provisions requiring that where a lot being subdivided or developed fronts on an existing street,
118 and adjacent property on either side has an existing sidewalk, a locality may require the dedication of
119 land for, and construction of, a sidewalk on the property being subdivided or developed, to connect to
120 the existing sidewalk. Nothing in this paragraph shall alter in any way any authority of localities or the

Department of Transportation to require sidewalks on any newly constructed street or highway.

10. Provisions for requiring and considering Phase I environmental site assessments based on the anticipated use of the property proposed for the subdivision or development that meet generally accepted national standards for such assessments, such as those developed by the American Society for Testing and Materials, and Phase II environmental site assessments, that also meet accepted national standards, such as, but not limited to, those developed by the American Society for Testing and Materials, if the locality deems such to be reasonably necessary, based on findings in the Phase I assessment, and in accordance with regulations of the United States Environmental Protection Agency and the American Society for Testing and Materials. A reasonable fee may be charged for the review of such environmental assessments. Such fees shall not exceed an amount commensurate with the services rendered, taking into consideration the time, skill, and administrative expense involved in such review.

11. Provisions for requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of subdivision and development plans.

12. Reasonable provisions allowing the locality to determine whether 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 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, and 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 subdivision 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 subdivision, 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.

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.

§ 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

182 *the locality has (i) a capital improvements plan that provides the basis for an objective determination of*
183 *the level of inadequacy of such facilities and (ii) a comprehensive plan as required by § 15.2-2223 that*
184 *specifies areas for development. The exercise of the power provided under this subdivision by a locality*
185 *shall not be deemed to create an obligation on the part of such locality to furnish any such public*
186 *facilities.*