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HOUSE BILL NO. 991

Offered January 9, 2008

Prefiled January 8, 2008

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.

Patrons—Bell and Landes

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 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. 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.

"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 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 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 instruments shall identify the development rights being transferred, identification of the sending property and the receiving property from which they are being severed or affixed;

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

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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 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.

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

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

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

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

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

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

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

102 K. Any county and an adjacent city may enter voluntarily into an agreement to permit the county to
103 designate eligible receiving areas in the city if the governing body of the city has also amended its
104 zoning ordinance to designate the same areas as eligible to receive density being transferred from
105 sending areas in the county. The city council shall designate areas it deems suitable as receiving areas
106 and shall designate the maximum increases in density in each such receiving area. However, if any such
107 agreement contains any provision addressing any issue provided for in Chapter 32 (§ 15.2-3200 et seq.),
108 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
109 41 (§ 15.2-4100 et seq.), the agreement shall be subject to the review and implementation process
110 established by Chapter 34 (§ 15.2-3400 et seq.).

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

116 2. The governing bodies shall petition a circuit court having jurisdiction in one or more of the
117 localities for an order affirming the proposed agreement. The circuit court shall be limited in its decision
118 to either affirming or denying the agreement and shall have no authority, without the express approval
119 of each local governing body, to amend or change the terms or conditions of the agreement, but shall
120 have the authority to validate the agreement and give it full force and effect. The circuit court shall

121 affirm the agreement unless the court finds either that the agreement is contrary to the best interests of
122 the Commonwealth or that it is not in the best interests of each of the parties thereto.
123 3. The agreement shall not become binding on the localities until affirmed by the court under this
124 subsection. Once approved by the circuit court, the agreement shall also bind future local governing
125 bodies of the localities.

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