



# COMMONWEALTH of VIRGINIA

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August 23, 2013

The Honorable Lacey E. Putney  
Member, House of Delegates  
Post Office Box 127  
Bedford, Virginia 24523

Dear Delegate Putney:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

## Issue Presented

In your request, you specifically ask, "Does a municipality have the right to aggregate differing and other rezoning proposals by alleging no net loss of subdividable lots under new rezoning in order to avoid sending written notice to directly affected landowners subject to proposed down zoning as require by [§ 15.2-2204(B) of the *Code of Virginia*]?" Thus, in other words, you inquire whether § 15.2-2204(B) requires a local planning commission to give written notice to the owner of each parcel of land involved in a downzoning when other rezoning proposals under consideration include increases in density allowances that, when considered in conjunction with the downzoning, result in no net loss of subdividable lots in the locality.

## Response

It is my opinion that § 15.2-2204(B) of the *Code of Virginia* requires a local planning commission to give written notice to the owner of each parcel of land involved in a downzoning under the circumstances you present.

## Background

You indicate that Bedford County's Board of Supervisors proposes eliminating a twenty-acre agricultural subdivision provision contained in the county's current zoning ordinance. You further state that this change would constitute a downzoning of numerous properties in the county. The county is also considering other amendments to the zoning ordinance that would increase the number of subdividable lots in certain portions of the county. These increases would offset the loss of subdividable lots eliminated by the downzoning, thereby resulting in no net loss of subdividable lots in the county. In all, you indicate that more than 600 lots or parcels would be affected by the proposed rezonings. You also indicate that not all of the properties affected by the downzoning would receive an offsetting increase in subdividable lots from the other proposed rezoning actions.

### Applicable Law and Discussion

Section 15.2-2204(B) provides, in pertinent part, that:

When a proposed amendment of the zoning ordinance involves . . . a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to the advertising as above required . . . written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved . . . .

“The primary objective in statutory construction is to ascertain and give effect to legislative intent[.]”<sup>1</sup> and “[i]n construing statutes, courts should give the fullest possible effect to the legislative intent embodied in the entire statutory enactment.”<sup>2</sup> Courts “must determine legislative intent by what the statute says and not by what [the court] think[s] it should have said.”<sup>3</sup> Finally, “[w]hen the language of a statute is unambiguous, we are bound by the plain meaning of that language.”<sup>4</sup>

The plain language of § 15.2-2204(B) provides that notice must be mailed to affected landowners if the zoning ordinance text amendment “decreases the allowed dwelling unit density of *any parcel* of land.”<sup>5</sup> When enacting § 15.2-2204, the focus was placed on the rights adhering to each parcel of land and the General Assembly included no provisions allowing a locality to modify the requirement to notify landowners by offsetting the proposed decrease in the allowed dwelling unit density on some properties with proposed increases in density allowances on other properties. Instead, the statute clearly specifies that the owners of each individual parcel affected by a proposed decrease in allowed development density are entitled to notice prior to reductions in those density allowances. Accordingly, the plain and unambiguous terms of the statute require that individual notice must be mailed to the owners of all parcels of land affected by any proposed downzoning at least five days prior prior to the hearing on the proposed downzoning.<sup>6</sup>

In enacting zoning enabling legislation, “the General Assembly of Virginia has undertaken to achieve . . . a delicate balance between the individual property rights of its citizens and the health, safety and general welfare of the public as promoted by reasonable restrictions on those property rights.”<sup>7</sup> “Critical to this balance is ensuring that landowners have notice and opportunity to be heard when zoning ordinances will change the permitted use of land”<sup>8</sup> This notice is an essential component

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<sup>1</sup> Conger v. Barrett, 280 Va. 627, 630, 702 S.E.2d 117 (2010) (quoting Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983)) (further citation omitted).

<sup>2</sup> Va. Real Estate Bd. v. Clay, 9 Va. App. 152, 157, 384 S.E.2d 622, 625 (1989).

<sup>3</sup> Commonwealth v. Anderson, 281 Va. 414, 421, 706 S.E.2d 879, 884 (2011) (quoting Virginian-Pilot Media Cos., LLC v. Dow Jones & Co., 280 Va. 464, 469, 698 S.E.2d 900, 902 (2010)) (further citation omitted).

<sup>4</sup> Cuccinelli v. Rector & Visitors of the Univ. of Va., 283 Va. 420, 425, 722 S.E.2d 626, 629 (2012) (quoting Kozmina v. Commonwealth, 281 Va. 347, 349, 706 S.E.2d 860, 862 (2011)) (further citation and internal quotation marks omitted).

<sup>5</sup> VA. CODE ANN. § 15.2-2204(B) (Supp. 2013) (emphasis added). See 1981-82 Op. Va. Att’y Gen. 464, 464 (finding that notice requirements of predecessor statute to § 15.2-2204 are plain and must be satisfied).

<sup>6</sup> *Id.*

<sup>7</sup> Bd. of Supvrs. v. Horne, 216 Va. 113, 120, 215 S.E.2d 453, 458 (1975).

<sup>8</sup> 2007 Op. Va. Att’y. Gen. 50, 51.

of due process and a prerequisite to actions adversely affecting a citizen's property rights.<sup>9</sup> Thus, a locality must adhere to applicable statutory notice requirements.

### Conclusion

Accordingly, it is my opinion that § 15.2-2204(B) of the *Code of Virginia* requires a local planning commission to give written notice to the owner of each parcel of land involved in a downzoning, notwithstanding the fact that other rezoning proposals under consideration include increases in density allowances which, considered in conjunction with the downzoning, result in no net loss of subdividable lots in the locality.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is stylized with a large, sweeping "K" and a "C" that loops back to underline the "II".

Kenneth T. Cuccinelli, II  
Attorney General

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<sup>9</sup> *Id.*