



COMMONWEALTH of VIRGINIA

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September 20, 2013

James R. Benkahla, Esquire
Interim County Attorney
Office of County Attorney
County of Spotsylvania
9105 Courthouse Road
Spotsylvania, Virginia 22553

Dear Mr. Benkahla:

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

Issue Presented

You ask whether the Spotsylvania County Board of Supervisors (the "Board") may enact a zoning ordinance amendment that applies to parcels located in areas defined by the boundaries of electoral districts, without regard to the boundaries of the county's zoning districts.

Response

It is my opinion that the Board may not enact a zoning ordinance amendment that applies to parcels located in areas defined by the boundaries of electoral districts, without regard to the boundaries of the county's zoning districts.

Background

You relate that the Spotsylvania County zoning ordinance has twenty-eight zoning districts ranging from Agricultural to Mixed Use. You further relate that there are seven electoral districts used to elect the Board, and, that the boundaries of the zoning districts and the electoral districts are not the same. On February 12, 2013, the Board adopted an amendment to the County zoning ordinance (the "February Amendment") that authorized the keeping of laying hens in eleven of the County's zoning districts zoned for agricultural or residential uses, but only in the parts of those eleven zoning districts that also lie within the boundaries of four of the County's electoral districts.¹ The February Amendment did not authorize the keeping of laying hens in the parts of those eleven agricultural and residential zoning districts that lie

¹ COUNTY OF SPOTSYLVANIA, VA., Ordinance No. 23-153 (2013), available at http://www.spotsylvania.va.us/filestorage/2614/4652/4656/4690/16690/Min_021213.pdf (limiting the keeping of domestic laying hens as an accessory use to the Livingston, Chancellor, Salem and Courtland voting districts). See also COUNTY OF SPOTSYLVANIA, VA., Code §§ 23-6.2.2, -6.3.2, -6.4.2, -6.5.2, -6.6.2, -6.7.2, -6.8.2, -6.11.2, -6.12.3, -6.24.2, -6.26.2.

outside the boundaries of those four electoral districts. In effect, the February Amendment treats parcels with the same zoning classification differently based on the electoral district in which they are found.

Applicable Law and Discussion

“In determining the legislative powers of local governing bodies, Virginia follows the Dillon Rule of strict construction.”² This rule states that local governing bodies “have only those powers that are expressly granted, those necessarily or fairly implied from expressly granted powers, and those that are essential and indispensable.”³ Accordingly, if no delegation from the legislature can be found to authorize the enactment of a local ordinance, then the local ordinance is void.⁴ Moreover, when the legislature has created an express grant of authority, that authority exists only to the extent specifically granted,⁵ and when a local ordinance conflicts with a statute enacted by the General Assembly, the statute must prevail.⁶

I find nothing in the *Code of Virginia* that provides express authority to regulate fractional parts of a zoning district according to the boundaries of electoral districts. Nonetheless, Virginia law does enable a locality to enact zoning ordinances to regulate the use and development of the territory under its jurisdiction.⁷ Specifically, § 15.2-2280 permits a locality to adopt ordinances classifying the territory under its jurisdiction into districts “as it may deem best suited to carry out the purposes of [the zoning article],” and once such territory is classified,⁸ the provision further authorizes the locality to regulate or restrict land use within each district according to the applicable “agricultural, business, industrial, residential, flood plain and other specific uses.” Notwithstanding this broad grant of authority, § 15.2-2282 requires that all local zoning regulations “be uniform for each class or kind of buildings and uses throughout each district.”

In construing statutes, the plain meaning of the language used controls and determines legislative intent unless a literal construction would be manifestly absurd.⁹ Further, two statutes that are parts of the same statutory plan or deal with the same subject must be read and construed together.¹⁰ Sections 15.2-2280 and 15.2-2282 are parts of an overall statutory plan enabling, and governing, local authority to zone property.¹¹ When read together, the language of these statutes provides that a locality may classify its territory into zoning districts; however, in so doing, the locality must ensure that all zoning regulations

² *Richmond v. Confre Club of Richmond, Inc.*, 239 Va. 77, 79, 387 S.E.2d 471, 473 (1990).

³ *Sinclair v. New Cingular Wireless PCS, LLC*, 283 Va. 567, 576, 727 S.E.2d 40, 44 (2012) (internal quotation marks omitted).

⁴ *Id.*

⁵ *Cf.*, e.g., 2010 Op. Va. Att’y Gen. 87, 89 n.3; 2010 Op. Va. Att’y Gen. 10, 11; 2002 Op. Va. Att’y Gen. 109, 111; 1992 Op. Va. Att’y Gen. 145, 146.

⁶ *See* VA. CODE ANN. § 1-248 (2011); *Sinclair*, 283 Va. at 576, 727 S.E.2d at 44; *Covel v. Town of Vienna*, 280 Va. 151, 162, 694 S.E.2d 609, 616 (2010).

⁷ *See* VA. CODE ANN. § 15.2-2280 (2012).

⁸ Section 15.2-2284 sets forth the considerations that may be used by a locality in creating, and by extension, regulating, zoning districts. I note that conformity with electoral district boundaries is not listed.

⁹ *Halifax Corp. v. First Union Nat’l Bank*, 262 Va. 91, 99-100, 546 S.E.2d 696, 702 (2001).

¹⁰ *Prillaman v. Commonwealth*, 199 Va. 401, 405-406, 100 S.E.2d 4, 7-8 (1957).

¹¹ *See* VA. CODE ANN. Title 15.2, Chap. 22, art. 7, §§ 15.2-2280 through 2316 (2012 & Supp. 2013) (containing statutes governing local zoning laws and regulations).

are uniform throughout each zoning district. Accordingly, § 15.2-2282 serves to limit the authority granted under § 15.2-2280.

On its face, the February Amendment treats similarly situated persons within the same zoning district differently. It uses a jurisdictional division created for an unrelated purpose, the electoral district, to inconsistently regulate land use within several of its zoning districts.¹² Specifically, owners of property in one of the four electoral districts named in the February Amendment are authorized to use their property in a way that is disallowed to property owners in the county's three other electoral districts. Because the February Amendment does not comply with the requirement that uses be uniform throughout each individual zoning district, it conflicts with a prescribed limitation placed by the General Assembly upon local governing bodies respecting land use regulation.¹³

Conclusion

Accordingly, it is my opinion that the Board of Supervisors may not enact a zoning ordinance amendment that applies to parcels located in areas defined by the boundaries of electoral districts, without regard to the boundaries of the county's zoning districts.

With kindest regards, I am,

Very truly yours,

A handwritten signature in black ink that reads "Ken C II". The signature is stylized, with the first name "Ken" and the second name "C" being larger and more prominent, followed by "II" in a smaller font.

Kenneth T. Cuccinelli, II
Attorney General

¹² Statutory provisions relating to the creation and use of electoral districts are contained in another title of the Code. *See, e.g.*, VA. CODE ANN. § 24.2-304.1 (Supp. 2013).

¹³ Section 15.2-2282; *and see discussion* Schefer v. City Council, 279 Va. 588, 593, 691 S.E.2d 778, 780-81 (2010).