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HOUSE BILL NO. 2055

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns on January 30, 2009)

(Patron Prior to Substitute—Delegate Lohr)

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.

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. *"Development rights" includes "transferable development rights."*

"Receiving area" means ~~an area~~ *one or more areas* 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 *a receiving area and within* which development rights are increased pursuant to a transfer of development rights *affixed to the property*. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property. *Development rights may be transferred between receiving properties, as otherwise permitted in the ordinance.*

"Sending area" means ~~an area~~ *one or more areas* identified by an ordinance and designated by the comprehensive plan as an area from which development rights are authorized to be *severed and* 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~~ *within a sending area from which development rights are authorized to be severed.*

"Severance of development rights" means the process by which development rights from a sending property are severed pursuant to this act.

"Transfer of development rights" means the process by which development rights from a sending property are affixed to one or more receiving properties.

"Transferable development rights" means all or that portion of development rights that are transferred or are transferable.

§ 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 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,~~ *In order to implement the provisions of this act,* a locality shall adopt an ordinance ~~based on findings of public benefit. Such ordinance~~ *that* shall provide for:

1. The issuance and recordation of the instruments necessary to sever development rights from the sending property*, to convey development rights to one or more parties, or* ~~and~~ to affix development rights to ~~the~~ *one or more* receiving ~~property~~ *properties*. These instruments shall be executed by the ~~affected~~ property owners *of the development rights being transferred,* and *any* ~~lienholders~~*lien holders of such property owners*. The instruments shall identify the development rights being ~~transferred~~ *severed,* ~~identification of~~ *and* the sending ~~property and~~ *properties or* the receiving ~~property~~ *properties, as applicable*;

2. ~~The preservation of the character of the sending property and assurance~~*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 the transfer of development rights to a receiving property~~;

2/11/09 14:46

HOUSE SUBSTITUTE

HB2055H1

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 properties;

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

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

10. *The development rights severed from the sending areas to be equal to the development rights permitted to be attached in the receiving areas;*

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

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

~~12. Such other provisions as the locality deems necessary to aid in the implementation of the provisions of this article~~.

12. The application to be deemed approved upon the determination of compliance with the ordinance by the agent of the planning commission, or other agent designated by the locality.

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

C. In order to implement the provisions of this act, a locality may provide in its ordinance for:

1. The purchase of all or part of such development rights, which shall retire the development rights so purchased;

2. The severance of development rights from existing zoned or subdivided properties as otherwise provided in subsection E;

3. The owner of such development rights to make application to the locality for a real estate tax abatement for a period up to 25 years, to compensate the owner of such development rights for the fair market value of all or part of the development rights, which shall retire the number of development rights equal to the amount of the tax abatement, and such abatement is transferable with the property;

4. The owner of a property to request designation by the locality of the owner's property as a "sending property" or a "receiving property";

5. The allowance for residential density to be converted to bonus density on the receiving property by (i) an increase in the residential density on the receiving property or (ii) an increase in the square feet of commercial, industrial, or other uses on the receiving property, which upon conversion shall retire the development rights so converted;

6. The receiving areas to include such urban development areas in the locality established pursuant to § 15.2-2223.1;

7. The sending properties, subsequent to severance of development rights, to generate one or more forms of renewable energy, as defined in § 56-576, subject to the provisions of the local zoning ordinance;

8. The sending properties, subsequent to severance of development rights, to produce agricultural products or forestal products, as defined in § 15.2-4302;

9. The review of an application by the planning commission to determine whether the application complies with the provisions of the ordinance;

10. Such other provisions as the locality deems necessary to aid in the implementation of the provisions of this act; and

11. Approval of an application upon the determination of compliance with the ordinance by the agent of the planning commission.

D. The locality may, by ordinance, designate receiving areas or receiving properties, or add to, supplement, or amend its designations of receiving areas or receiving properties, so long as the development rights permitted to be attached in the receiving areas are equal to the development rights permitted to be severed in the sending areas.

E. Any proposed severance or transfer of development rights shall only be initiated upon application by the property owners of the sending properties, development rights, or receiving properties as

otherwise provided herein.

F. A locality may not require property owners to sever or transfer development rights as a condition of the development of any property.

G. The owner of a property may sever development rights from the sending property, pursuant to the provisions of this act. An application to transfer development rights to one or more receiving properties, for the purpose of affixing such rights thereto, shall only be initiated upon application by the owner of such development rights and the owners of the receiving properties.

~~E~~*H*. Development rights ~~made~~ ~~transferable~~ *severed* pursuant to this article shall be interests in real property and shall be considered as such for purposes of conveyance and taxation. ~~Once an application has been approved and a deed of transferable development rights created pursuant to this article has been sold, conveyed, or otherwise transferred by the owner of the sending property, the transfer of development rights shall vest in the grantee and may be transferred to a successor in interest. Any transfer of the development rights to a different property in a receiving area shall be subject to review pursuant to the provisions of the ordinance adopted pursuant to provision 11 of subsection C.~~ *Once a deed for transferable development rights, created pursuant to this act, has been recorded in the land records of the office of the circuit court clerk for the locality to reflect the transferable development rights sold, conveyed, or otherwise transferred by the owner of the sending property, the development rights shall vest in the grantee and may be transferred by such grantee to a successor in interest. Nothing herein shall be construed to prevent the owner of the sending property from recording a deed covenant against the sending property severing the development rights on said property, with the owner of the sending property retaining ownership of the severed development rights. Any transfer of the development rights to a property in a receiving area shall be in accordance with the provisions of the ordinance adopted pursuant to this article. -*

~~F~~*I*. ~~For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the transferable development right is recorded as a distinct interest in real property with the appropriate tax assessor or the transferable development right is used at a receiving property and becomes appurtenant thereto.~~ *For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the transferable development right is severed from and recorded as a distinct interest in real property, or the transferable development right is used at a receiving property and becomes appurtenant thereto. Once a transferable development right is severed from the sending property, the assessment of the fee interest in the sending property shall reflect any change in the fair market value that results from the inability of the owner of the fee interest to use such property for such uses terminated by the severance of the transferable development right. Upon severance from the sending property and recordation as a distinct interest in real property, the transferable development right shall be assessed at its fair market value on a separate real estate tax bill sent to the owner of said development right as taxable real estate in accordance with Article 1 (§ 58.1-3200 et seq.) of Chapter 32 of Title 58.1. The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.*

~~G~~*J*. ~~Approved transfers of development rights shall become effective upon the recording of the conveyance and the filing of a certified copy of such recording with the local governing body of the locality.~~ *The owner of a sending property from which development rights are severed shall provide a copy of the instrument, showing the deed book and page number, or instrument or GPIN, to the real estate tax assessor for the locality.*

~~H~~*K*. Localities, *from time to time as the locality designates sending and receiving areas,* shall incorporate the map identified in ~~provision 6 of subsection C~~ *subdivision B 6* into the comprehensive plan.

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

~~J~~*M*. A county adopting an ordinance pursuant to this article may designate eligible receiving areas in any incorporated town within such county, if the governing body of the town has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. *The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local*

jurisdiction where the receiving property is located.

~~K~~*N*. Any county and an adjacent city may enter voluntarily into an agreement to permit the county to designate eligible receiving areas in the city if the governing body of the city has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. The city council shall designate areas it deems suitable as receiving areas and shall designate the maximum increases in density in each such receiving area. However, if any such agreement contains any provision addressing any issue provided for in Chapter 32 (§ 15.2-3200 et seq.), 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 41 (§ 15.2-4100 et seq.), the agreement shall be subject to the review and implementation process established by Chapter 34 (§ 15.2-3400 et seq.). *The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.*

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

2. The governing bodies shall petition a circuit court having jurisdiction in one or more of the localities for an order affirming the proposed agreement. The circuit court shall be limited in its decision to either affirming or denying the agreement and shall have no authority, without the express approval of each local governing body, to amend or change the terms or conditions of the agreement, but shall have the authority to validate the agreement and give it full force and effect. The circuit court shall affirm the agreement unless the court finds either that the agreement is contrary to the best interests of the Commonwealth or that it is not in the best interests of each of the parties thereto.

3. The agreement shall not become binding on the localities until affirmed by the court under this subsection. Once approved by the circuit court, the agreement shall also bind future local governing bodies of the localities.