**03-006**

**COUNTIES, CITIES AND TOWNS: PLANNING, SUBDIVISION OF LAND AND ZONING.**

**No authority for Warren County zoning ordinance to require property owner, whose property is rezoned for permitted use, to submit second application for new buildings and structures to planning commission, governing body, or both, for review prior to issuance of zoning permit.**

Mr. Douglas W. Napier
County Attorney for Warren County
March 31, 2003

## Issue Presented

You ask whether Warren County's zoning ordinance may require a property owner, whose property is rezoned for a use that is clearly permitted by the zoning classification, to submit a second zoning permit application for new buildings and structures for review by the planning commission or governing body, or both, before being issued a final zoning permit.

## Response

It is my opinion that Warren County is not authorized to include in its zoning ordinance a requirement that a property owner, whose property is rezoned for a use that is clearly permitted by the zoning classification, to submit a second zoning permit application for new buildings and structures to the planning commission or governing body, or both, for a second review before being issued a final zoning permit.

## Background

You relate that the Warren County zoning ordinance provides that certain defined uses are permitted as a matter of right in each zoning district. Further, you advise that the ordinance allows certain other defined uses only after the county board of supervisors grants a conditional use permit. Finally, you advise that the zoning ordinance provides as follows:

> Zoning permit applications for new buildings and structures for a use by right in both the Commercial Zone and the Industrial Zone shall be approved by the Zoning Administrator relative to the completeness of the application and the inclusion of all plans and statements. The Planning Commission, satisfied that the requested use or structure(s) is consistent with the purpose and intent of this chapter as set forth in § 180-2 shall grant approval to the application and so inform the Board of Supervisors of their action. Should the Planning Commission deny approval, the applicant may appeal the decision to the Board of Supervisors.[1]

## Applicable Authorities and Discussion

The overriding goal of statutory interpretation is to discern and give effect to legislative intent.[2] The Commonwealth follows the rule of strict construction of statutory provisions. "The powers of boards of supervisors are fixed by statute and are only such as are conferred expressly or by necessary implication."[3] This rule is a corollary to Dillon's Rule, which provides that municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable.[4] "[T]he Dillon Rule is applicable to determine in the first instance, from express words or by implication, whether a power exists at all. If the power cannot be found, the inquiry is at an end."[5]

To determine whether the General Assembly has passed enabling legislation that permits localities to adopt a zoning ordinance with the provision you describe, the land use provisions of Title 15.2[6] must be considered. "[A] fundamental rule of statutory construction requires that … the entire body of legislation and the statutory scheme [be reviewed] to determine the 'true intention of each part.'"[7] I am required to "give the fullest possible effect to the legislative intent embodied in the entire statutory enactment."[8] In the land use statutes, "the General Assembly … 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."[9]

The zoning enabling statutes are set out in Article 7, Chapter 22 of Title 15.2, §§ 15.2-2280 through 15.2-2316. Subdivisions A(4) and (7) of § 15.2-2286 expressly authorize zoning ordinance provisions governing the administration and amendment of the ordinance. Other statutory provisions require that specific procedures be followed when amending a zoning ordinance.[10] These statutory requirements are mandatory and must be complied with as part of the rezoning process.[11] The detailed procedures governing the day-to-day administration of a zoning ordinance, however, generally are contained within the zoning ordinance itself.[12]

Section 15.2-2280 grants any locality the power to classify its territory into districts and to regulate the use of land and buildings within each district.[13] In addition to the uses permitted by right in each district, § 15.2-2286(3) authorizes "the granting of special exceptions under suitable regulations and safeguards." Sections 15.2-2285 and 15.2-2286 prescribe the specific procedures that must be followed when a locality proposes to enact a zoning ordinance or adopt an amendment to such an ordinance. First, the governing body may initiate the proposal by adopting a written resolution stating the underlying public purpose.[14] Second, the proposal must be referred to the local planning commission for review.[15] Third, the commission must give public notice pursuant to § 15.2-2204, conduct a public hearing, and report its recommendations to the governing body.[16] Fourth, upon receipt of the commission's report, the governing body must give public notice and conduct its own public hearing.[17] "By complying with these procedures, the governing body acquires the same authority to act upon a zoning proposal as it has to act upon other legislative matters."[18]

Where statutes prescribe procedural steps that must be followed, the required procedure normally is regarded as mandatory.[19] Neither the express procedural requirements nor the purposes and authorized provisions of zoning ordinances specifically permit a governing body to insert additional steps that must be completed after the initial rezoning request is approved to a particular use, which use is clearly within those permitted by the zoning classification, such as requiring the submission of a second zoning permit application for new buildings

and structures to the planning commission or governing body, or both, for review before issuance of a zoning permit. The General Assembly clearly intends that a locality require a landowner to run the rezoning legislative gauntlet only once to obtain a requested rezoning of his property.[20]

**Conclusion**

I must, therefore, conclude that Warren County is not authorized to include in its zoning ordinance a requirement that a property owner, whose property is rezoned for a use that is clearly permitted by the zoning classification, to submit a second zoning permit application for new buildings and structures to the planning commission or governing body, or both, for a second review before being issued a final zoning permit.

[1]Warren County, Va., Code § 180-64.A(5) (2002), *available at* http://gcp.esub.net/cgi-bin/om_isapi.dll?clientID=428427&infobase=warrenco.nfo&softpage=Browse_Frame_Pg42 (last visited Feb. 27, 2003).

[2]*See* Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); Vollin v. Arlington County Electoral Bd., 216 Va. 674, 678-79, 222 S.E.2d 793, 797 (1976); 1990 Op. Va. Att'y Gen. 155, 155, and opinions cited therein.

[3]Johnson v. Goochland County, 206 Va. 235, 237, 142 S.E.2d 501, 502 (1965), *cited in* Gordon v. Bd. of Supvrs., 207 Va. 827, 832, 153 S.E.2d 270, 274 (1967); *see also* County Bd. v. Brown, 229 Va. 341, 344, 329 S.E.2d 468, 470 (1985).

[4]City of Richmond v. Bd. of Supvrs., 199 Va. 679, 684, 101 S.E.2d 641, 645 (1958).

[5]Commonwealth v. County Bd., 217 Va. 558, 575, 232 S.E.2d 30, 41 (1977).

[6]*See* Va. Code Ann. §§ 15.2-2200 to 15.2-2327 (Michie Repl. Vol. 1997 & LexisNexis Supp. 2002).

[7]Va. Real Estate Bd. v. Clay, 9 Va. App. 152, 157, 384 S.E.2d 622, 625 (1989) (quoting McDaniel v. Commonwealth, 199 Va. 287, 292, 99 S.E.2d 623, 627 (1957)).

[8]*Id.* (citations omitted).

[9]Bd. of Supvrs. v. Horne, 216 Va. 113, 120, 215 S.E.2d 453, 458 (1975).

[10]*See, e.g.*, §§ 15.2-2204, 15.2-2286(7) (LexisNexis Supp. 2002); § 15.2-2285 (Michie Repl. Vol. 1997).

[11]*See* Town of Vinton v. Falcun Corp., 226 Va. 62, 306 S.E.2d 867 (1983).

[12]*See* 8A Eugene McQuillin, The Law of Municipal Corporations §§ 25.242.10, 25.245 (3d ed. 1994); Kenneth H. Young, Anderson's American Law of Zoning § 4.04 (4th ed. 1996); *see generally* 1 E.C. Yokley, Zoning Law and Practice §§ 7-9, 7-10 (Douglas Scott MacGregor rev. 2000) (4th ed. 1978) (listing administrative provisions of zoning laws).

[13]*See also* § 15.2-2283 (Michie Repl. Vol. 1997) (stating general purpose of zoning ordinances is to promote health, safety or general welfare of public).

[14]Section 15.2-2286(7) (providing further that local planning commission may initiate amendment by motion which states public purpose or land owner may petition for amendment).

[15]Section 15.2-2285(B).

[16]Section 15.2-2285(A).

[17]Section 15.2-2285(C).

[18]*Falcun Corp.*, 226 Va. at 66, 306 S.E.2d at 869 (construing §§ 15.1-491, 15.1-493, predecessors to §§ 15.2-2285, 15.2-2286).

[19]1977-1978 Op. Va. Att'y Gen. 248, 250 (citing 82 Am. Jur. *Zoning and Planning*, § 47 (1976)); *id*. at 285.

[20]*See, e.g.*, Rinker v. City of Fairfax, 238 Va. 24, 30, 381 S.E.2d 215, 218 (1989).

**Back to March 2003 Index**