



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

June 26, 2007

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Mr. C. Dean Foster, Jr.
Scott County Attorney
112 Water Street, Suite 1
Gate City, Virginia 24251-3401

Dear Mr. Foster:

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 § 15.2-2204(B), which requires individual notice of zoning amendments, applies to a locality adopting its first zoning ordinance.

Response

It is my opinion that the individual notice required by § 15.2-2204(B) is applicable to an initial zoning ordinance that imposes regulations which decrease the allowed dwelling density.

Background

You advise that Scott County currently does not have a zoning ordinance. You further advise that the County plans to adopt a zoning ordinance. You note¹ that § 15.2-2204(B) requires individual mailed notices of public hearings for zoning plans, ordinances, or amendments. You relate that you find no case law or other guidance regarding whether an initial zoning ordinance requires a mailing of the individual notices associated with zoning amendments. However, you note that Scott County does not have an existing ordinance so there is nothing to amend. Therefore, you conclude that individual notices are not required.²

¹A request by a county attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions." VA. CODE ANN. § 2.2-505(B) (2005).

²*Id.*

Applicable Law and Discussion

Chapter 22 of Title 15.2, §§ 15.2-2200 through 15.2-2327, governs planning, subdivision of land, and zoning. Section 15.2-2204(B) provides, in pertinent part, that:

When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of more than 25 parcels of land, or 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, provided, however, that written notice of such changes to zoning ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a subdivision plat approved and recorded pursuant to the provisions of Article 6 (§ 15.2-2240 et seq.) of [Chapter 22] where such lots are less than 11,500 square feet.

The plain language of the pertinent part of § 15.2-2204(B) provides that notice by mail to landowners is required if it “involves a change in the zoning ... that decreases the allowed dwelling unit density of any parcel of land.” You note that Scott County does not have a zoning ordinance; however, all the landowners in the county will be affected by the proposed zoning ordinance.³ Thus, it appears that there is no current limitation on the “allowed dwelling unit density.” Therefore, the adoption of an initial zoning ordinance will mean a change that, at least, theoretically decreases that “allowed dwelling unit density” for some, if not all, landowners.

A fundamental rule of statutory construction requires that the fullest possible effect must be given to the legislative intent embodied in the entire statutory enactment.⁴ 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.”⁵ 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. Such is the essence of due process and necessary before a citizen’s property rights may be adversely affected. Therefore, an individual notice should be mailed to each landowner prior to the consideration of adopting an initial zoning ordinance.

Conclusion

Accordingly, it is my opinion that the individual notice required by § 15.2-2204(B) is applicable to an initial zoning ordinance that imposes regulations which decrease the allowed dwelling density.

³See generally SCOTT COUNTY PLANNING COMMISSION, A QUESTION AND ANSWER GUIDE TO ZONING IN SCOTT COUNTY, available at <http://scottcountyva.com/Documents/web%20version%20zoning%20brochure%20-%20062304.pdf> (last visited May 11, 2007).

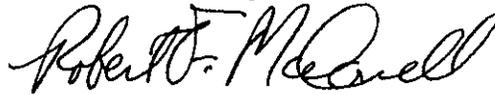
⁴Va. Real Estate Bd. v. Clay, 9 Va. App. 152, 157, 384 S.E.2d 622, 625 (1989).

⁵Bd. of Supvrs. v. Horne, 216 Va. 113, 120, 215 S.E.2d 453, 458 (1975).

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Thank you for letting me be of service to you.

Sincerely,

A handwritten signature in black ink, reading "Robert F. McDonnell". The signature is written in a cursive style with a large, prominent "R" and "M".

Robert F. McDonnell

1:875; 1:941/07-025