



COMMONWEALTH of VIRGINIA

Office of the Attorney General

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The Honorable Thomas K. Norment, Jr.
Member, Senate of Virginia
Post Office Box 6205
Williamsburg, Virginia 23188

Dear Senator Norment:

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 inquire whether proposed amendments to the Right to Farm Act¹ that were put forward during the 2011 General Assembly session by committee substitute Senate Bill 1190² would apply only to areas currently zoned as agricultural districts or also to other land not currently zoned as an agricultural district.

Response

It is my opinion that the proposed amendments would apply to areas currently zoned as agricultural districts or classifications, as well any other areas in which the zoning provisions allow for agricultural activity.

Applicable Law and Discussion

To promote the “health, safety or general welfare of the public[,]”³ localities are authorized to enact zoning ordinances that, first, “classify the territory under its jurisdiction . . . into districts of such number, shape and size as it may deem best . . .” and then, within each district, “regulate, restrict, permit, prohibit, and determine[,]” among other things,

1. The use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses;
2. The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures;

¹ VA. CODE ANN. §§ 3.2-300 through 3.2-302 (2008).

² On February 8, 2011, the Senate of Virginia passed on a vote of 23 to 17 the committee substitute for SB 1190 reported from the Senate Committee on Agriculture, Conservation and Natural Resources. The Virginia House of Delegates Committee on Agriculture, Chesapeake and Natural Resources, however, tabled SB 1190 on February 16, 2011. See <http://leg1.state.va.us/cgi-bin/legp504.exe?ses=111&typ=bil&val=sb1190>.

³ VA. CODE ANN. § 15.2-2283 (2008).

3. The areas and dimensions of land, water, and air space to be occupied by buildings, structures and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures . . . ^[4]

In addition, “to provide a means for a mutual undertaking by landowners and localities to protect and enhance agricultural and forestal land as a viable segment of the Commonwealth’s economy and as an economic and environmental resource of major importance[,]”⁵ the General Assembly has established a statutory scheme⁶ by which landowners may submit to the locality an application for the creation of specially designated “agricultural districts.”⁷ These districts are distinct from zoning districts that have been classified as agricultural.⁸

I further note, however, that while land may be classified as agricultural for zoning purposes or encompassed within specially created agricultural districts, nothing in the Code provides that agricultural activities must be exclusive to those specified areas. Rather, localities are free to permit agricultural uses in areas otherwise zoned or designated.

Notwithstanding the broad control local governing bodies have over land use, The Right to Farm Act restricts the ability of localities to regulate certain activities within particular areas.⁹ Senate Bill 1190 proposes to amend these statutes to add aquaculture¹⁰ as a protected agricultural activity.

Specifically, key definitions would be expanded to include aquaculture references. Section 3.2-300 would be amended as follows:

As used in this chapter, unless the context requires a different meaning:

“Agricultural operation” means any operation devoted to the bona fide production of crops, or animals, or fowl including the production of fruits and vegetables of all kinds; meat, dairy, and poultry products; nuts, tobacco, nursery, and floral products; *the production and harvest of products from the practice of aquaculture, as defined in § 3.2-2600*; and the production and harvest of products from silviculture activity.

“Production agriculture and silviculture” means the bona fide production or harvesting of agricultural, *aquacultural*, or silvicultural products but shall not include the processing of agricultural, *aquacultural*, or silvicultural products or the aboveground application or storage of sewage sludge.^[11]

In addition, § 3.2-301, would provide, as amended, in relevant part, that

⁴ Section 15.2-2280 (2008).

⁵ Section 15.2-4301 (2008).

⁶ Agricultural and Forestal Districts Act, VA. CODE ANN. §§ 15.2-4300 through 15.2-4314 (2008 & Supp. 2011).

⁷ Section 15.2-4305 (Supp. 2011).

⁸ The Agricultural and Forestal Districts Act makes separate reference to zoning provisions and establishes its own criteria and conditions for the creation of agricultural districts under its provisions. See §§ 15.2-4305 (Supp. 2011); 15.2-4306 (2008); 15.2-4312(B) (2008); 15.2-4314 (Supp. 2011).

⁹ See §§ 3.2-300 through 3.2-302.

¹⁰ “Aquaculture” means the propagation, rearing, enhancement, and harvest of aquatic organisms in controlled or selected environments, conducted in marine, estuarine, brackish, or fresh water.” Section 3.2-2600 (2008).

¹¹ S.B. 1190, 2011 Reg. Sess. (Va. 2011), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?111+ful+SB1190S1+pdf>.

In order to limit the circumstances under which agricultural operations may be deemed to be a nuisance, especially when nonagricultural land uses are initiated near existing agricultural operations, no county shall adopt any ordinance that requires that a special exception or special use permit be obtained for any production agriculture or silviculture activity in an area that is zoned as an agricultural district or classification. Counties may adopt setback requirements, minimum area requirements, and other requirements that apply to land on which agriculture and silviculture activity is occurring within the locality that is zoned as an agricultural district or classification. No locality shall enact zoning ordinances that would unreasonably restrict or regulate farm structures, *piers or docks attached to upland property zoned to allow agricultural activity*, or farming and forestry practices in an agricultural district or classification unless such restrictions bear a relationship to the health, safety, and general welfare of its citizens.^[12]

When statutory language is clear and unambiguous, the plain meaning of the language used should determine the legislative intent, unless such a literal construction would lead to a manifest absurdity.¹³ Moreover, “[a] statute is not to be construed by singling out a particular phrase; every part is presumed to have some effect and is not to be disregarded unless absolutely necessary.”¹⁴

The proposed amendment to § 3.2-301 would have added aquaculture to the definition of “agricultural operation.” Concretely, this means that a locality could not require a special exception or a special use permit for aquaculture that occurs “in an area that is zoned as an agricultural district or classification.” The plain language of the statute is not limited to an “agricultural district.” It also includes an “agricultural . . . classification.”

Furthermore, under this proposal, localities could not unreasonably restrict or regulate “piers or docks attached to upland property zoned to allow agricultural activity.” Because property “zoned to allow agricultural activity” may include areas zoned under an agricultural classification, areas designated as agricultural districts, and areas zoned as other classifications that may allow agriculture, each of these areas would be included in the areas afforded protection under the proposed amendment.

Conclusion

Accordingly, it is my opinion that the proposed amendments would apply to areas currently zoned as agricultural districts or classifications, as well any other areas in which the zoning provisions allow for agricultural activity.

With kindest regards, I am

Very truly yours,


Kenneth T. Cuccinelli, II
Attorney General

¹² *Id.*

¹³ *See Wright v. Commonwealth*, 278 Va. 754, 759, 685 S.E.2d 655, 657 (2009).

¹⁴ *Jenearly v. Commonwealth*, 262 Va. 418, 430, 551 S.E.2d 321, 327 (2001) (quoting *Commonwealth v. Zamani*, 256 Va. 391, 395, 507 S.E.2d 608, 609 (1998)).