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

If county had not taken final action to adopt zoning ordinance before July 1, 1996, county's adoption of ordinance after that date, following public hearing held pursuant to written notice requirement in effect before its 1996 amendment, is valid.

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You ask whether a new zoning ordinance adopted on July 8, 1996, is valid if the public hearing was held on June 10, 1996, pursuant to notice that, while complying with § 15.1431 of the Code of Virginia as in effect on June 10, would not comply with the statute as in effect on the date of adoption of the ordinance.

You indicate that the new zoning ordinance entirely replaces the previous ordinance and changes the classifications of more than 500 parcels of land in the county. The planning commission and board of supervisors held a joint public hearing on the proposed ordinance on June 10, 1996. In accordance with § 15.1431 as in effect on that date, written notice of the hearing was not sent to the landowners affected by the proposed ordinance. On July 8, 1996, the planning commission made its recommendation to the board of supervisors, and, on that same date, the board adopted the new zoning ordinance.

Section 15.1493(C) requires a governing body to hold at least one public hearing, pursuant to notice as required by § 15.1431, "[b]efore approving and adopting any zoning ordinance or amendment thereof." Section 15.1431 requires newspaper publication advertising the proposed changes and specifying the time and place of the public hearing. Before the 1996 amendment, § 15.1431 required additional written notice to affected landowners only if an amendment to the zoning ordinance involved a change in the zoning map classification of fewer than 500 parcels of land. The 1996 amendment to § 15.1431 deleted the 500 maximum, and § 15.1431 now requires written notice to all landowners of proposed zoning amendments involving their property.

A public hearing is a mandatory preliminary step in the procedure for adopting a zoning ordinance amendment. The purpose of the public hearing is to allow affected persons an opportunity to appear and present their views to the planning commission and board of supervisors. There is no requirement, however, that the board adopt the ordinance at the public hearing. In fact, § 15.1493(C) expressly provides that "after [the public hearing] the governing body may make appropriate changes or corrections in the ordinance or proposed amendment," and that an additional public hearing with additional notice is required if the board determines that land is to be zoned "to a more intensive use classification than was contained in the public notice." Section 15.1-493(C) further provides that "[s]uch ordinances shall be enacted in the same manner as all other ordinances."

Section 15.1493(C) contemplates a process by which the governing body will hold a public hearing on the proposed zoning amendment, may make changes to the ordinance in response to comments received at the hearing, and will then adopt the final ordinance. No language in either § 15.1431 or § 15.1493 suggests that, if a locality had not taken final action to adopt the zoning ordinance by July 1, 1996, the General
Assembly intended to invalidate a public hearing held before July 1, 1996, and to require the locality to reactivate the process by holding an additional public hearing. Accordingly, it is my opinion that the county has not violated § 15.1431 or § 15.1493 by adopting a zoning ordinance after July 1, 1996, following a public hearing held pursuant to notice complying with § 15.1431 on the date of the public hearing.

1Section 15.1431 was amended at the 1996 Session of the General Assembly. See Ch. 667, 1996 Va. Acts 1154. The 1996 amendment contained no emergency clause and, thus, was effective July 1, 1996. VA. CONST. art. IV, § 13 (1971); § 112(A).

2Section 15.1431 provides that the proposed plan need not be advertised in full, but that the advertisement may contain a summary of the plan with a reference to the place(s) within the locality where the full plan may be examined.


4See id.


7Compare § 15.1162.1 (requiring publication of notice of public hearing and of meeting to amend budget; governing body may adopt amendment at meeting after providing public hearing during meeting). See Op. Va. Att'y Gen.: 1971-1972 at 89, 90 (governing body to comply with § 15.1-431 in holding public hearing and with § 15.1504 in adopting ordinance); 1968-1969 at 183 (governing body may make changes in ordinance after public hearing without holding additional hearing).

8If an additional public hearing is held after July 1, 1996, however, that notice should be provided in accordance with § 15.1431, as amended, although the zoning amendment process began before July 1, 1996.

9See Op. Va. Att'y Gen.: 1984-1985 at 279 (statute requiring public hearing before appointment of school board members does not apply to appointments made before effective date of statute, although members will take office after effective date); 1983-1984 at 376, 376 (in absence of clear legislative intent that statute apply retroactively, it applies only to taxpayers falling within its ambit subsequent to effective date).