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

HOUSING: MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS LAW.

Definition of "manufactured home" in Virginia Manufactured Housing Construction and Safety Standards Law, which incorporates federal regulations into zoning laws, is made applicable to zoning ordinances throughout Commonwealth. Locality may not enact zoning ordinance prohibiting manufactured homes constructed before effective date of federal regulations—June 15, 1976—from locating in agricultural zoning districts if such structures meet federal standards of quality, durability and safety, and statutory specifications as to size and other physical characteristics.

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You ask whether the Cumberland County Board of Supervisors may enact a zoning ordinance that prohibits manufactured homes constructed before 1976 from locating in the county.

Section 15.1486.4(A) of the Code of Virginia requires local zoning ordinances to permit "the placement of manufactured houses that are on a permanent foundation and on individual lots" in agricultural districts or similar classifications where agricultural, horticultural or forest uses are the dominant use. The manufactured houses may be subject to the same development standards applicable to site-built dwellings within the district.

The term "manufactured houses" is not defined in Chapter 11 of Title 15.1, Virginia's land use and zoning statutes. The term "manufactured home" as defined in the Virginia Manufactured Housing Construction and Safety Standards Law (the "Virginia Act") is made applicable to zoning ordinances pursuant to § 3685.11. Section 3685.3 of the Virginia Act defines "manufactured home" as a structure subject to federal regulation, which is transportable in one or more sections; is eight body feet or more in width and forty body feet or more in length in the traveling mode, or is 320 or more square feet when erected on site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air-conditioning, and electrical systems contained in the structure.

Since its amendment in 1988, § 3685.11 has provided that structures meeting this definition "shall be defined in local zoning ordinances as 'manufactured homes,'" and that "[t]he term 'manufactured home' shall be defined in local zoning ordinances solely as it is defined in § 36-85.3." In 1974, Congress enacted the National Manufactured Housing Construction and Safety Standards Act of 1974 (the "Federal Act"). One of the purposes of the Federal Act is "to improve the quality and durability of manufactured homes." The Federal Act requires the Secretary of Housing and Urban Development to establish "Federal manufactured home construction and safety standards," defined as reasonable standards...
"for the construction, design, and performance of a manufactured home which meets the needs of the public including the need for quality, durability, and safety." The Federal Act permits a state to assume responsibility for enforcement of the federal standards within the state.

The purpose of the Virginia Act is "to provide for enforcement by Virginia of the Federal Act." The Virginia Act is applicable to any manufactured home constructed on or after June 15, 1976, which is the effective date of the federal standards.

In your written opinion, you state that, because the federal standards apply only to manufactured homes constructed on or after June 15, 1976, it is your view that manufactured homes constructed before that date are not "subject to federal regulation" and, accordingly, are not encompassed within the definition of "manufactured home" in § 3685.3. You conclude, therefore, that § 15.1486.4 does not require Cumberland County to allow the placement of manufactured homes constructed before June 15, 1976, in agricultural zoning districts.

The primary purpose of statutory construction is to ascertain and give effect to the intent of the legislature. The question presented, therefore, is whether the General Assembly intended to make § 15.1486.4 applicable only to manufactured homes constructed after June 15, 1976.

The authority to enact zoning regulations is a legislative power vested in the General Assembly, and a local governing body may take action in connection with zoning matters only when the power to do so is expressly granted or may be necessarily implied. While the General Assembly in Article 8, Chapter 11 of Title 15.1 has delegated to counties and municipalities broad and comprehensive zoning powers, it also has enacted statutes that expressly limit a locality's exercise of its zoning powers. Section 15.1486.4 is such a statute. When the General Assembly expressly limits a locality's power to restrict land use, a locality may not enact zoning ordinances that exceed the statutory restriction.

Section 15.1486.4 limits a locality's zoning powers in connection with manufactured homes. Section 3685.11 further limits this zoning power by requiring localities to define manufactured homes "solely as ... defined in § 3685.3." The obvious intent of § 15.1486.4 is to prohibit zoning ordinances that would exclude a "manufactured home" as defined in § 3685.3. Neither of the sections expressly excludes from the protection afforded manufactured homes those homes constructed before June 15, 1976. Accordingly, a county may enact an ordinance excluding such manufactured homes from locating in the county only if it may be necessarily implied that the General Assembly intended to grant a locality such authority.

While § 15.1486.4(A) expresses a clear legislative intent to deny a locality the power to exclude certain manufactured housing from agricultural zoning districts, the restriction must be interpreted in conjunction with §§ 3685.3 and 3685.11. When the legislature enacted § 15.1486.4 in 1990, § 3685.11 had already been amended to require that the definition of "manufactured home" in § 3685.3 apply in all local zoning ordinances. Unlike the definition of "manufactured home" elsewhere in the Virginia Code, the definition in § 3685.3 contains the language "subject to federal regulation." It is thus reasonable to conclude that when the General Assembly enacted § 15.1486.4, it intended to limit its application not only in a manner related to the size and
other physical characteristics of such a structure specified in § 3685.3 but also in a manner related to the federal regulations.

Since the federal regulations were not effective until June 15, 1976, a narrow and literal reading of the language "subject to federal regulation" would mean that only manufactured homes constructed after that date satisfy the definition in § 3685.3 of "manufactured home." For purposes of §§ 3685.11 and 15.1486.4, this literal reading would mean that, because all manufactured homes meeting the specified physical requirements and constructed after June 15, 1976, are "subject to" federal regulation, localities must permit manufactured homes constructed after June 15, 1976, to locate in agricultural districts, regardless of whether the structure actually satisfies the federal standards of quality, durability and safety enacted under the Federal Act. Similarly, because a manufactured home constructed before June 15, 1976, would not be "subject to" federal regulation, a locality could ban a manufactured home that satisfies or even exceeds the federal standards of quality, durability and safety. This interpretation of the language "subject to federal regulation" for zoning purposes on the basis of the effective date of the standards enacted under the Federal Act, rather than on the content of the federal standards themselves, would frustrate rather than further legitimate zoning goals.

It is my opinion that the General Assembly did not intend this result for zoning purposes. An obvious concern in permitting manufactured homes to locate in agricultural districts along with other residential housing is to assure that the manufactured homes meet certain standards of quality, durability and safety. The Federal Act establishes such standards. It is reasonable to conclude that the intent of the legislature in making the definition in § 3685.3 applicable to zoning ordinances throughout the Commonwealth was to incorporate these standards into the definition of "manufactured homes" for zoning purposes. Accordingly, it is my opinion that for zoning purposes the language "subject to federal regulation" in § 3685.3 means manufactured homes that satisfy the standards of quality, durability and safety established under the Federal Act. This interpretation not only promotes sound zoning considerations but also gives effect to the legislature's intent to incorporate the federal regulations into the zoning laws. If a manufactured home constructed before June 15, 1976, meets the federal standards and otherwise fits within the definition in § 3685.3, it is my opinion that the General Assembly has not granted a county the power to prohibit such homes from locating within the county under the conditions set forth in § 15.1486.4.

Because I conclude that the enabling legislation does not authorize a locality to enact a zoning ordinance banning manufactured homes constructed before June 15, 1976, it is unnecessary to reach your question of whether such an ordinance would be subject to constitutional challenge as being arbitrary, overbroad or discriminatory. I note, however, that a statutory construction that raises constitutional concerns is to be avoided whenever possible.

1Section 15.1486.4(A).

2Sections 15.1427 to 15.1503.4.

3Sections 3685.2 to 3685.15.

Section 5401.

Section 5403(a).

Section 5402(7). The Federal Act prohibits the use of interstate or foreign commerce or the mails to sell or lease, or offer for sale or lease, any manufactured home which is manufactured after the effective date of the federal standards and which fails to comply with the standards. Section 5409(a)(1).

Section 5422.

Ch. 37, 1986 Va. Acts Reg. Sess. 38, 42 (quoting § 3685.4, not set out in Virginia Code). The Virginia Act enables the Department of Housing and Community Development to enforce the federal standards enacted pursuant to the Federal Act with respect to manufactured homes manufactured in Virginia. Id.; § 3685.5(1).


Any 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." Section 2.1118.

The practical effect of such an ordinance may result in the displacement of low-income and disadvantaged families who may not be able to afford manufactured homes constructed after June 15, 1976. Such a result could engender litigation contesting the validity of such an ordinance.


Sections 15.1486 to 15.1498.

See § 15.1486 (governing body may classify territory into districts and "regulate, restrict, permit, prohibit, and determine" use of land, buildings and structures within districts).

See also § 15.1486.3(A) (zoning ordinances may not exclude group home for mentally ill, mentally retarded and developmentally disabled from residential districts); § 15.1486.5(A) (zoning ordinance must consider family day home serving one through five children as residential occupancy by single family).

See 1980-1981 Op. Va. Att'y Gen., supra note 16, at 107 (any doubt as to exercise of zoning power must be resolved against locality); see also 3A Norman J. Singer, Sutherland Statutory Construction § 75.07, at 440 (5th ed. 1992) (zoning bodies must strictly adhere to state statutes delegating them authority; key to interpretation of authority is to give effect to intent of legislature).

See also § 15.1486.4(B) (uniform standards applicable to all residential structures within agricultural zoning district "shall not have the effect of excluding manufactured housing").

See 1995 Op. Va. Att'y Gen. 146, 147 (statutes relating to same subject are not to be considered in isolation but must be construed together to give effect to all provisions).

See Ch. 840, 1990 Va. Acts 1440 (enacting § 15.1486.3, which subsequently was assigned by Virginia Code Commission as § 15.1486.4).

See § 55248.41. The definition of "manufactured home" in § 55248.41, a portion of the Manufactured Home Lot Rental Act, is substantially identical to the definition in § 3685.3, except that it does not include the language "subject to federal regulation."

Although the purpose for adoption of the Federal Act was to assure that manufactured homes constructed on or after June 15, 1976, meet certain quality, safety and durability standards, it cannot be assumed that all manufactured homes constructed before that date would necessarily fail to meet the standards. Reliable evidence to the contrary, however, could alter the conclusions I reach in this opinion.

The interpretation also is inconsistent with the paramount principle of statutory construction that acts of the legislature are not to be interpreted in ways that produce an irrational consequence but, rather, are to be harmonized with existing statutes to produce a logical result that gives effect to the legislative intent. See 1995 Op. Va. Att'y Gen. 118, 120.

Since I conclude that manufactured homes meeting the definition in § 3685.3 and satisfying the federal standards constitute "manufactured houses" under § 15.1486.4, I find no basis for a county to designate the homes "mobile homes" if they were constructed before June 15, 1976.

See 2A Norman J. Singer, supra note 21, § 45.11, at 4849 (legislative enactments should be construed to avoid constitutional difficulties if possible; even though presumption of constitutionality of legislation exists, if issue can be decided on either ground involving constitutional question or one of statutory interpretation, it is preferable to decide on basis of interpretation of statute; fact that one among alternative constructions would involve serious constitutional difficulties is reason to reject that interpretation in favor of another); see also City of Manassas v. Rosson, 224 Va. 12, 18,