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

Zoning amendment process commenced before July 1, 1996, is not invalid due to failure to advertise or provide notice to landowners, provided public hearing was held before adoption of amendment. Written notice to landowners is required as condition to adoption of zoning ordinance amendment for which public hearing was not held before July 1, 1996.

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September 11, 1996

You ask whether Louisa County must comply with the written notice requirements of § 15.1431 of the Code of Virginia, as amended by the 1996 Session of the General Assembly, before adopting amendments to the county zoning map after July 1, 1996.

You advise that on March 18, 1996, following newspaper notice, the county board of supervisors held a joint public hearing with the county planning commission to consider amendments to the county zoning map. The amendments involve approximately ninety percent of the land in the county, including over 20,000 parcels. In accordance with § 15.1431 as then in effect, no written notice to landowners was given.

Furthermore, at the March hearing, the board and commission adopted a resolution stating their intent to adopt proposed revisions to the county zoning map and to keep open the public hearing for six months to allow landowners to express their preference as to agricultural zoning classifications. At the end of six months, the board and planning commission intend to hold another joint hearing for final adoption of the amendments to the zoning map.
Section 15.1493(C) requires a governing body to hold "at least one public hearing pursuant to public notice as required by § 15.1431," "[b]efore approving and adopting any zoning ordinance or amendment."\(^6\)

Section 15.1431 requires newspaper publication and written notice to landowners of the time and place of the hearing. Prior to the 1996 amendments, § 15.1431 required written notice to the landowners only if the amendment involved a change in the zoning map classification of fewer than 500 parcels of land.\(^7\)

Section 15.1431 was amended at the 1996 Session to delete the 500 maximum and, thus, to require written notice in all instances.\(^8\)

It is my opinion that, under the facts you present, § 15.1431 requires written notice to be provided to the landowners before the hearing proposed to be held after July 1, 1996. Section 15.1431 imposes the notice requirement as a condition to the adoption of a zoning ordinance amendment. While the original hearing was held in March, the zoning ordinance amendment will not be adopted until the board meets in September 1996, after the 1996 amendment to § 15.1431 has taken effect.\(^9\) There is no language in § 15.1431 suggesting that the General Assembly intended to provide an exception from the notice requirement if a locality has commenced the zoning amendment process before July 1, 1996. In fact, § 15.1431 expressly provides that "adoption or amendment prior to July 1, 1996, of an[] ordinance shall not be declared invalid" due to failure to advertise or to provide written notice to the landowners, provided a public hearing was held before such adoption or amendment. It is clear in this instance that the adoption or amendment did not occur prior to July 1, 1996.

Moreover, a six-month time lapse is excessive to support an argument that the September hearing constitutes a continuance of the March hearing and does not require additional notice.\(^10\) In my opinion, this is particularly unpersuasive when the General
Assembly adopts a significant change in the notice requirement during the relevant time period, as it did in § 15.1431.

1Section 15.1431 provides, in part:

"[O]rdinances, or amendments thereof, recommended or adopted under the powers conferred by [Chapter 11 of Title 15.1] need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the county where copies of the proposed ordinances or amendments may be examined.

"The local commission shall not recommend nor the governing body adopt any ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in such county; however, such notice for both the local commission and the governing body may be published concurrently. Such notice shall specify the time and place of hearing at which persons affected may appear and present their views. The local commission and governing body may hold a joint public hearing after public notice as set forth hereinabove.

"When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of twenty-five or fewer parcels of land, then, in addition to the advertising as above required, written notice shall be given by the local commission, or its representative, at least five days before the hearing to the owner or owners of each parcel involved.

"When a proposed amendment of the zoning ordinance involves a change to the zoning map classification of more than 25 parcels of land, then, in addition to
the advertising as above required, written notice shall be given by the local commission, or its representative, at least five days before the hearing to the owner [or] owners of each parcel of land involved.

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"The adoption or amendment prior to July 1, 1996, of any ordinance shall not be declared invalid by reason of a failure to advertise or give notice as may be required by this chapter, provided a public hearing was conducted by the governing body prior to such adoption or amendment."

2 See Ch. 613, 1996 Va. Acts Reg. Sess. (substituting July 1, 1996, as date before which adoption or amendment of zoning ordinance shall not be declared invalid due to failure to advertise or provide written notice to landowners, provided public hearing was held prior to such adoption or amendment); Ch. 667, id. (deleting requirement that written notice be provided to landowners if amendment involves change in zoning map classification of fewer than 500 parcels of land).

3 Section 15.1493(A) imposes the public hearing requirement on planning commissions. Section 15.1431 permits the planning commission and governing body to hold a joint public hearing.

4 Before the 1996 amendments became effective on July 1, 1996, § 15.1431 stated: "The adoption or amendment prior to January 1, 1974, of any ordinance shall not be declared invalid by reason of a failure to advertise or give notice as may be required by [Chapter 11 of Title 15.1], provided a public hearing was conducted by the governing body prior to such adoption or amendment." Ch. 613, 1996 Va. Acts, supra (emphasis added).
The landowners could express their preference by contacting their representative on the board or by contacting the county planning department. The board also could suggest changes on its own motion.

In addition, § 15.1493(C) provides that "no land may be zoned to a more intensive use classification than was contained in the public notice without an additional public hearing after notice required by § 15.1431." I do not know what information was provided in the notice or to what extent the final amendments conform to the amendments described in the notice. Accordingly, I cannot determine whether § 15.1493(C) applies to the factual situation you present.


Section 15.1431 requires that written notice be sent also to the owners of abutting property if the amendment involves a change in classification of 25 or fewer parcels. The 1996 amendment made no change in this requirement.

Section 15.1431 provides that the local commission shall not recommend nor shall the governing body adopt an amendment until a notice of intent has been published. The March resolution stated the board's "intent to adopt" amendments to the zoning ordinance after the six-month period.

Prior opinions of the Attorney General conclude that, when notice is properly given, a public body need not give additional notice if the meeting is continued for conclusion to a date, time and place certain if the public body announces at the public meeting that it will recess and reconvene the hearing. See Op. Va. Att'y Gen.: 1991 at 5, 7; 1972-1973 at 489, 48990. It does not appear from the information you provide that the governing body satisfied this requirement. Section 15.1431 provides that, even if the public announcement requirement is
met, additional written notice must be provided if the number of parcels does not exceed 25.