

**OP. NO. 03-104**

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

**Locality may not require that remainder parcel meet access standards imposed on nonfamily subdivisions; may impose requirement that remainder parcel of less than 5 acres have reasonable right-of-way providing access to public roadway.**

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January 21, 2004

**Issues Presented**

Your inquiry relates to the "family subdivision exception" in § 15.2-2244(A). You ask whether a parcel remaining from a lot conveyed to a family member ("remainder parcel") must meet the access standards imposed on subdivisions that do not qualify as family subdivisions. In the alternative, you ask whether such remainder parcel may meet access requirements by satisfying the access standards for family subdivisions as described in § 15.2-2244(A).

**Response**

It is my opinion that a locality may not require that a remainder parcel meet the access standards imposed on nonfamily subdivisions. A locality may, however, impose a requirement that a remainder parcel of less than five acres have reasonable right-of-way providing access to a public roadway as prescribed in § 15.2-2244(A).

**Applicable Law and Discussion**

Section 15.2-2244(A)<sup>1</sup> requires a locality to include in its subdivision ordinance reasonable provisions permitting a single division of a parcel for transfer to a member of the property owner's immediate family.<sup>2</sup> These "family subdivisions" generally are exempt from the requirements of the locality's subdivision ordinance.<sup>3</sup> A locality may, however, impose particular access standards on a lot created pursuant to the family subdivision provisions if the newly created lot is "less than five acres."<sup>4</sup> Specifically, a locality may require such lots to "have reasonable right-of-way of not less than ten feet or more than twenty feet providing ingress and egress to a dedicated recorded public street or thoroughfare."<sup>5</sup>

The issues relevant to your inquiries are (1) whether the remainder parcel is exempt from the requirements of the locality's subdivision ordinance by operation of the family subdivision exception,<sup>6</sup> and (2) if so, whether the locality may impose the family subdivision access standards on the remainder parcel.

Section 15.2-2244(A) provides:

In any county ... a subdivision ordinance shall provide for reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or gift to a member of the immediate family<sup>[7]</sup> of the property owner, subject only to any express requirement contained in the Code of Virginia and to any requirement imposed by the local governing body that all lots of less than five acres have reasonable right-of-way of not less than ten feet or more than twenty feet providing ingress and egress to a dedicated recorded public street or thoroughfare.

It is first necessary to determine whether § 15.2-2244(A) exempts the remainder parcel from the otherwise applicable requirements of the locality's subdivision ordinance, including access requirements.<sup>8</sup> Section 15.2-2244(A) makes no explicit distinction between the newly created lot and the remainder parcel. "When the language of a statute is unambiguous, we are bound by the plain meaning of that language and may not assign the words a construction that amounts to holding that the General Assembly did not mean what it actually stated."<sup>9</sup> In addition, "the plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, or strained construction."<sup>10</sup> A careful reading of § 15.2-2244(A) indicates that the General Assembly did not make a distinction between the newly created lot and the remainder parcel.

It is true that, as an exception to otherwise applicable subdivision requirements, § 15.2-2244(A) must be narrowly construed consistent with the purpose underlying the exception.<sup>11</sup> It is, however, also true that "the primary objective of statutory construction is to ascertain and give effect to legislative intent."<sup>12</sup> An examination of the legislative purposes underlying § 15.2-2244(A) supports this reading of the statute.

With respect to § 15.2-2244(A), a 1989 opinion of the Attorney General notes:

The manifest intent of the General Assembly in enacting [§ 15.2-2244(A)] was to permit property owners in counties ... to divide existing parcels by a single transfer by a property owner to a family member without being subject to the formalities and expenses attendant to compliance with otherwise applicable provisions of the subdivision ordinance.<sup>[13]</sup>

A 1986 opinion of the Attorney General notes that § 15.2-2244(A) is "intended to promote the values society places upon the *inter vivos*<sup>[14]</sup> disposition of family estates with a minimum of government regulation. By permitting family divisions without compliance with otherwise applicable requirements, such divisions promote the cohesiveness of the family."<sup>15</sup> The exception in § 15.2-2244(A) is rooted in the objective of enhancing such family values, including keeping the family estate within the immediate family and passing real property interests from one family generation to another.<sup>16</sup>

The underlying purposes of § 15.2-2244(A) support exclusion of the remainder parcel from compliance with otherwise applicable requirements of the subdivision ordinance. In fact, limiting the application of the exclusion only to the newly created lot would restrict the ability of property owners to enjoy the opportunity that the General Assembly intended to create with the exception. These points, in combination with the plain language of the statute, lead me to conclude that the remainder parcel is not subject to the otherwise applicable requirements of the subdivision ordinance.

Because localities are prohibited from subjecting the remainder parcel to the otherwise applicable requirements of the subdivision ordinance, it is necessary to determine whether a locality may impose the right-of-way requirements specified in § 15.2-2244(A) on the remainder parcel. If the right-of-way requirements specified in § 15.2-2244(A) are inapplicable, the remainder parcel would be subject to no access standards through the subdivision ordinance. This, however, does not appear to be the case. Because § 15.2-2244(A) makes no distinction between the remainder parcel and the newly created lot, the right-of-way requirements specified therein apply to both the remainder parcel and the newly created lot.

### Conclusion

Accordingly, it is my opinion that a locality may not require that a remainder parcel meet the access standards imposed on nonfamily subdivisions. A locality may, however, impose a requirement that a remainder parcel of less than five acres have reasonable right-of-way providing access to a public roadway as prescribed in § 15.2-2244(A).

<sup>1</sup>Botetourt County appears to have enacted its ordinance pursuant to § 15.2-2244(A).

<sup>2</sup>See *also* Va. Code Ann. § 15.2-2241(10) (LexisNexis Repl. Vol. 2003).

<sup>3</sup>See *Crestar Bank v. Martin*, 238 Va. 232, 236, 383 S.E.2d 714, 716 (1989) (interpreting local subdivision and zoning ordinances); 1989 Op. Va. Att'y Gen. 100, 101 (interpreting predecessor statute to § 15.2-2244(A)).

<sup>4</sup>Section 15.2-2244(A) (LexisNexis Repl. Vol. 2003).

<sup>5</sup>*Id.*

<sup>6</sup>If the remainder parcel is not exempt, the requirements of the subdivision ordinance, including those addressing frontage and access, govern the parcel. See tit. 15.2, ch. 22, art. 6, §§ 15.2-2240 to 15.2-2279 (LexisNexis Repl. Vol. 2003) ("Land Subdivision and Development"). *But see, e.g.*, 1992 Op. Va. Att'y Gen. 53, 57 n.3, and accompanying text (noting that street improvement requirements may not be imposed on landowners creating family subdivision, as permitted by predecessor statute to § 15.2-2244(A)). If the remainder parcel is exempt, the provisions of the locality's subdivision ordinance, including those addressing frontage and access, do not apply. See *Crestar Bank*, 238 Va. at 236, 383 S.E.2d at 716; Op. Va. Att'y Gen.: 1989, *supra* note 3, at 101; 1986-1987 at 121 (interpreting predecessor statute to § 15.2-2244(A)).

<sup>7</sup>For purposes of § 15.2-2244(A), "member of the immediate family" means "any person who is a natural or legally defined offspring, spouse, sibling, grandchild, grandparent, or parent of the owner [and] may include aunts, uncles, nieces and nephews." Section 15.2-2244(A).

<sup>8</sup>I note that Botetourt County's subdivision ordinance specifies area requirements similar to lots created under § 15.2-2244(A). See Botetourt County, Va., Code § 21-70(4) (Jan. 1, 2002), available at <http://www.co.botetourt.va.us/code/ch021.htm>. I have not reviewed Botetourt County's zoning ordinance. If such zoning ordinance requires lot sizes different from those

provided in its subdivision ordinance, the specification of lot sizes in § 21-70(4) is improper. *Crestar Bank*, 238 Va. at 235-36, 383 S.E.2d at 716 (noting that lots created pursuant to family subdivision exception are subject to land use controls of zoning ordinance); *Mason v. Bd. of Zoning Appeals*; 25 Va. Cir. 198, 199 (1991) (noting that family gift lots are subject to zoning ordinance); Op. Va. Att'y Gen.: 1989, *supra* note 3, at 102 (determining that lots created by family subdivision are subject to zoning and other land use regulations); 1985-1986 at 83 (determining that, under predecessor statute to § 15.2-2244(A), family subdivisions are not exempt from local zoning ordinances).

<sup>9</sup>*Commonwealth v. Diaz*, 266 Va. 260, 265, 585 S.E.2d 552, 554 (2003).

<sup>10</sup>*Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

<sup>11</sup>1989 Op. Va. Att'y Gen. *supra* note 3, at 101, and opinions cited therein.

<sup>12</sup>*Turner*, 226 Va. at 459, 309 S.E.2d at 338, *cited in* Op. Va. Att'y Gen.: 1990 at 92, 93; 1986-1987, *supra* note 6, at 123.

<sup>13</sup>1989 Op. Va. Att'y Gen. *supra* note 3, at 101, *quoted in* 2000 Op. Va. Att'y Gen. 73, 74. "The principal focus of the exception in [§ 15.2-2244(A)] is to promote the values society places upon the disposition of family estates during the lifetime of the owner with a minimum of government regulation and to promote the cohesiveness of the family." *Id.*

<sup>14</sup>"*Inter vivos*" means "[o]f or relating to property conveyed not by will or in contemplation of an imminent death, but during the conveyor's lifetime." Black's Law Dictionary 826-27 (7th ed. 1999).

<sup>15</sup>1986-1987 Op. Va. Att'y Gen. *supra* note 6, at 123.

<sup>16</sup>See Op. Va. Att'y Gen.: 2000, *supra* note 13, at 74; 1986-1987 *supra* note 6, at 124.

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