The Legal Case Against the Agritourism Bills

Senate Bill 51 and its companion, House Bill 268, threaten to upend Virginia's current balance between appropriate locally-based land use authority and an individual's personal land use activity. For decades, our local governments have relied on Title 15.2 to create a framework for their communities design. Certain activities belong in their respectively zoned districts for the health, safety, and general welfare of citizens. Each community gets to decide its own land use priorities and protections and to craft policies that reflect those priorities.

Senate Bill 51 and House Bill 268 would strip away localities' abilities to properly maintain this local regulatory framework on agriculturally zoned land. **These bills would undo years of legal precedent by taking from localities the presumption of the reasonableness of land use regulation.** If these bills are passed as currently drafted, localities would bear the burden of proof of the need to regulate activities that have been labeled agriculturally related.

Code of Virginia § 3.2-301 currently provides that *"(n)o locality shall enact zoning ordinances that would unreasonably restrict or regulate farm structures 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.*" (Emphasis added.)

The language in SB51 and HB268 would turn a prospective determination of likely harm into a retrospective exercise: "*No locality shall regulate the carrying out of any of the following activities at an agricultural operation, as defined in 3.2-300, unless there is a substantial impact on the health, safety, or general welfare of the public*." (Emphasis added.)

Additionally, agritourism activities are currently defined so broadly in § 3.2-6400 that the unintended consequences are limitless.

"*'Agritourism activity' means any activity carried out on a farm or ranch that allows members of the general public, for recreational, entertainment, or educational purposes, to view or enjoy rural activities, including farming, wineries, ranching, historical, cultural, harvest-your-own activities, or natural activities and attractions. An activity is an agritourism activity whether or not the participant paid to participate in the activity*."

Few localities object to pick-your-own-farms, roadside stands and similar businesses which can bring needed revenue to farming operations. However, the language of these bills is unlimited in scope and scale. A farming operation could establish, for example, a large shooting range, a farm machinery repair operation, a "farm resort", or even a golf course without the local government having the right to review the impact of such an operation on the community.

Additionally, these bills rely on undefined terms such as "usual and customary", "incidental to the agricultural operation", and "substantial impact". Undefined terms lead to uncertainty and litigation which will ultimately lead to increased financial burdens on local governments.

In addition to these bills' effects on local governments and local residents, there are statewide policy implications that we believe have not been fully considered. For example, conservation easements held by accredited land trusts, Virginia Outdoors Foundation and other state agencies allow for agricultural activity; with agritourism activities allowed by-right and a definition so broad, conservation easement holders may be required to allow activities that are not compatible with the intended purpose of land preservation.