

The Property Problem

General Facts

The East Virginia State Legislature (“the Legislature”) has big plans for reinvigorating the State. Despite its rich history and charming old towns, for over two-hundred years, East Virginia has been overshadowed by its more notoriously historic neighboring states: Virginia and North Virginia. As part of a five-step plan to encourage economic development and tourism, the Legislature enacted a statutory scheme in the 2022 session establishing the East Virginia Department of Historic Resources (the “DHR”) and the East Virginia Historic Register (the “Register”). The legislature also established a procedure by which the DHR Board (“the Board”) designates historic properties to appear on the Register. The DHR has broad authority to manage the Register. The DHR Board identifies possible properties for the Register, chooses which homes appear on the Register, sets the appropriate level of funding to help maintain each property on the Register, and establishes standards to ensure houses on the Register comply with period-appropriate guidelines.

Mark Williams (“Williams”) lives in one of the homes that the Legislature envisions including on the Register. The house was originally built by Samuel Hamilton (“Hamilton”) in 1754. Hamilton is a nationally renowned revolutionary figure and is an East Virginian hero for his post-revolutionary career as a governor, senator, and author. Williams has poured thousands of dollars and countless hours into returning the Hamilton Estate to its former eighteenth-century glory. In the process, the improvements left Williams short on cash, as historic homes are incredibly expensive to maintain. Additionally, the improvements have substantially increased the assessed value of his property, and as a result, Williams’s property taxes have more than tripled in the last five years.

The DHR Board is currently engaged in locating properties to place on the Register. Unfortunately for the DHR, it cannot force a homeowner to place their property on the Register. But, once the homeowner agrees to placement on the Register and all the benefits it entails, the homeowner grants the DHR a historic preservation easement.¹ The terms of each historic preservation easement vary considerably depending on the circumstances and each negotiated agreement. However, every historic preservation easement always includes the historic structure’s continued existence, as well as restrictions on exterior design, color, and landscaping. The DHR may also require other restrictions to be placed on the property, such as limits on alienation, modern improvements, making the house more accessible to persons with disabilities, building materials, and interior design. The historic preservation easement often makes it more difficult for the owner to sell the house, as it limits what homeowners can freely do with the property.

Even with these restrictions, placement on the Register is highly sought-after, as it brings a variety of benefits for the homeowner, including lower state property tax rates and state grants to help finance physical improvements. Increased local prestige and possible inclusion on the

¹ In East Virginia, a historic preservation easement is a legal agreement, typically in the form of a deed, which permanently protects a significant historic property. The easement is perpetual, assuring both the owner and the State that the property’s historic character will be preserved. The private owner continues to own, use, and enjoy the property, but the existence and historic nature are secured for the benefit of future generations.

Greater Atlantic Historical Register also motivate homeowners to agree to the restrictive terms of a historic preservation easement.

As part of its initial survey of all homes in East Virginia, the DHR flagged the Hamilton Estate for inclusion on the Register. In keeping with East Virginia Code § 54-10(A), the Board gave Williams and his neighbors written notice that it proposes to designate his house as a historic building and include it on the Register. Thereafter, a DHR representative contacted Williams to commence negotiations. Williams indicated that he would be interested in including the Hamilton Estate on the Register. DHR and Williams hired your respective firms to negotiate a mutually beneficial deal between the two parties. Both parties have full authority to approve an agreement that meets the terms that their clients have requested.

Selected East Virginia Code Sections:

§ 54-10 Procedure for designating a state historic building, structure, object, or site as a historic landmark; historic district defined.

A. In any county, city, or town where the Board of the East Virginia Department of Historic Resources proposes to designate a historic building, structure, object, or site as a historic landmark and place it on the East Virginia Historic Register, the Board shall give written notice of the proposal to the owner, owners, or the owner's agent, of property proposed to be so designated or nominated, and to the owners, or their agents, of all abutting property and property immediately across the street or road from the property. The Board shall give a copy of the written notice of the proposal to the local governing body.

B. Any written notice required to be given by the Department to any person shall be deemed to comply with the requirements of this section if sent by first class mail to the last known address of such person as shown on the current real estate tax assessment books, provided that a representative of the Department shall make an affidavit that such mailings have been made.

C. Definitions

(1) For the purposes of this chapter, "local governing body" shall mean the board of supervisors of a county, council of a city, or council of a town, responsible for levying and collecting property tax for the relevant property.

(3) A "historic preservation easement" shall mean a nonpossessory interest of a holder in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations to preserve the historical, architectural, or archaeological aspects of said real property. Such an easement shall continue in perpetuity, preserving the historic nature of the property for posterity.

(4) For the purposes of this chapter, "the Board" shall mean the Board of the East Virginia Department of Historic Resources.

(5) For the purposes of this chapter, a "State Historic Site" shall mean a building, buildings, site, or structure which shall be kept and maintained by the Department of Historic Resources for the benefit of East Virginia residents.

History: 2022 c. 402.

§ 54-11. Consent of owners required for certain designations by the Board.

A. Before the Board shall designate any building, structure, object, or site as a historic landmark in accordance with § 54-10, the owners of such property proposed for designation shall be given the opportunity to concur in or object to such designation by the Board. If a majority of the owners of the property within such area proposed for designation object to such designation, the Board shall take no formal action to designate the property as historic until such objection is withdrawn. If a majority of the owners of the property within such area proposed do not object, the Board shall seek and obtain an agreement with the owner of the historic building, structure, object, or site before designating the building, structure, or site as a historic site. The agreement shall contain the details of the historic preservation easement. The Board shall negotiate in good faith with the owner, owners, or agents to establish the terms of the historic preservation. If the owner, owners, or agents agree to the terms of the agreement, the Board shall place the building, structure, object, or site on the East Virginia Historic Register.

B. For the purposes of this section, “majority of owners of the property” shall mean a majority of the number of property owners of or within the proposed property or district.

C. Nothing contained herein shall be deemed or construed to affect any local government charter or ordinance regarding historic districts or historic preservation.

2022 c. 402.

§ 54-13. Property to reflect change in market value.

A. Where the State has obtained from a landowner a historic preservation easement or other partial interest in property which places restrictions on the use or development of that property so as to preserve those features which led to the designation of that property as a historic landmark, the easement or other partial interest shall be recorded in the clerk's office of the county or city where deeds are admitted to record. Assessments for local taxation of the property shall reflect any resulting change in the market value of the property. The Board shall notify the official having the taxing power to make assessments of properties for purposes of taxation within the locality of the restrictions that have been placed on the property.

B. The Board shall have the authority to negotiate with the local governing body on behalf of the owner of a home to establish a lower property tax rate.

2022 c. 403

§ 54-21. Supervision of expenditure of appropriations made to localities and private organizations.

The Board shall oversee the expenditure of State appropriations made available to organizations, whether localities or private entities, for purposes related to the historical collections, historic landmarks, and historic sites of East Virginia, to assure that such purposes are consistent with the statewide plan for historic preservation as established by the Board. The Board shall establish and require adherence to sound professional standards of historical, architectural, and archaeological research in the planning, preservation, restoration, interpretation, and display of such collections, landmarks, and sites.

2022 c. 402.

§ 54-32. Purchase of private historic property

The Board shall oversee the purchase of those historic buildings, structures, or sites which it deems to be of such a significant historic nature that it is in the best interest of the State to purchase the historic building, structure, or site to create a State Historic Site. The Board shall purchase the property at a price between 90 percent and 110 percent of the market rate.

2022 c. 402.

§ 10.1-2209. Erection of markers, requirements, etc., without certificate of approval forbidden.

It shall be unlawful to post or erect any historical marker, monument, sign or notice, on public property or upon any public street, road, or highway in the Commonwealth of East Virginia bearing any legend, inscription, or notice which purports to record any historic event, incident, or fact, or to maintain any such historical marker, monument, notice, or sign posted or erected after June 17, 1930, unless a written certificate has been issued by the Board or an appropriate predecessor agency attesting to the validity and correct record of the historic event, incident or fact set forth in the marker.

Code 1950, § 42-66.