Dear Planning Commission,

In preparation for your work session on 2/21/23 we have prepared this information. On your agenda is the gold mining recommendation. Thank you for reading the following before your meeting.

On February 13th, the Buckingham Supervisors voted to send to the Planning Commission a request to amend the County’s zoning code to remove metallic mining as an activity allowed in any district.

We want to recognize the Board’s recommendation to ban all metals and not just gold. It shows true planning and acknowledgement of the risk we would take to limit any solution to just gold.

Before the vote, Supervisor Matthews asked about the rights-based ordinance and suggested sending that ordinance to the Planning Commission as well. We thank Mr. Matthews for speaking up.

The two ordinances together would be a stronger protection for our county and here are the reasons why:

The permission to do a zoning ordinance in this case is given to local municipalities by Virginia Code 15.2-2280. It says that any city or county can “regulate, restrict, permit, prohibit and determine…the excavation or mining of soil or other natural resources.”

This plan has the blessing of the County Attorney, Mr. Wright. The problem is that an ordinance like this would be at risk because it steps on federally-recognized corporate personhood rights that might be grounds for litigation. Why?

Courts have given corporations the right to be compensated for the loss of future profits if government restricts their activities. It is not unusual for corporations to sue localities and force their hands to change the zoning back to favor the corporation, based on the 5th Amendment “takings clause”. If Buckingham County has a zoning ordinance that results in the limiting of future profits of a company, the county can be sued.

On the other hand, the rights-based ordinance is not a land-use law. It doesn’t propose regulation of metallic mining in Buckingham County; rather it insists we protect the rights of the people and communities here to be free of toxic trespass. It’s not a new environmental law; it’s a civil rights law for all of us.

The rights-based ordinance takes its authority from:

- **9th amendment of US Constitution**: The rights of the people are not limited to just the rights listed in the Constitution.
- **14th amendment of US Constitution**: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States
- **5 articles from the VA Constitution**
Mr. Wright says that the County can’t pass the rights-based law because of Dillon’s Rule. **BUT** in 2019, the state legislature granted its municipalities general police powers through which communities can adopt policies to protect public safety and health in Virginia Code § 15.2-1102.

Virginia municipalities have been given “permission” and granted powers “which are necessary or desirable to secure and promote the general welfare of the inhabitants of the municipality”. Dillon’s Rule does not, therefore, prevent us from passing this rights-based ordinance as Mr. Wright claims. This Code appeases Mr. Wright’s concern and gives permission to protect our public safety and health, which is what this ordinance asserts.

Originally, when we crafted this ordinance, we saw that the 14th Amendment gave clear authority for this ordinance in this way: It forbids states from enacting laws that violate privileges and immunities (rights). Therefore the State can’t invoke a legal doctrine (like Dillon’s Rule) that violates our rights. Invoking Dillon’s Rule to stop us from protecting ourselves would be a violation of 14th Amendments rights, or a civil rights violation. The Virginia Code § 15.2-1102 brings another layer of authority.

In addition to protecting our rights in a novel way, a highlight of the rights-based ordinance is the section that speaks to Prove it (safe) First, which acted as a deterrent in Wisconsin as state law for 20 years. No mining permits were requested during this time period when this law was on the books.

Any law can be challenged with enough money and power. The two laws together present substantial roadblocks to stand up to powerful corporate interests. Land-use or zoning ordinances, have a long history of being thrown out and counties being forced to acquiesce to corporate demands.

**SUMMARY**

As it may be clear to you now, the rights-based ordinance is not within your purview. We feel that both ordinances will be stronger **together** though, and thus we ask for your support to recommend both to the Supervisors. While you are working on the zoning amendments, please ask the Supervisors to send the toxic trespass ordinance to a public hearing to protect the home we love.

February 20, 2023

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