

**OP. NO. 05-082**

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

**Locality's approval of preliminary subdivision plat expires after one year when subdivider or developer either fails to submit final plat of property or portion of property within one year of approval, or such longer period prescribed by local ordinance, or diligently pursue approval of final subdivision plat.**

The Honorable Robert D. Orrock  
Member, House of Delegates  
January 5, 2006

**Issue Presented**

You ask whether, under the provisions of § 15.2-2260(F), a preliminary subdivision plat is valid for a minimum period of three years.

**Response**

It is my opinion that the approval of a preliminary subdivision plat by a locality expires after one year when the subdivider or developer either fails to submit a final plat for at least a portion of the property within one year of the approval of the preliminary subdivision plat, or such longer period as prescribed by local ordinance, or diligently pursue the approval of the final subdivision plat.

**Background**

You advise that you understand the purpose of § 15.2-2260(F) is to prevent a subdivider or developer ("subdivider") from having to start over in the local subdivision plat approval process while he is diligently working on the completion of either construction plans for the subdivision or the final subdivision plat. Additionally, you understand that § 15.2-2260(F) protects such on-going subdivision projects from retroactive application of newly adopted zoning and subdivision ordinances.

You present a situation in which a preliminary subdivision plat was submitted for approval to a Virginia county in September, 2003. Because of the large volume of submissions of subdivision plats to the locality for approval, however, final construction plans were not approved until mid-August 2004. Immediately upon approval of the construction plans, the required bond was posted and work commenced on the conversion of an old sewer lagoon and plant within the proposed subdivision into nine building lots. The subdivider cleared, graded, installed a storm water detention pond, installed sewer mains, sewer laterals, water mains, water laterals, storm sewer, curb and gutter, and fire hydrants. The subdivision project, therefore, is almost completed.

You relate that when the final subdivision plat was submitted to the locality in August 2005, the agent for the locality asserted that since the final subdivision

plat had not been submitted within one year of the adoption of the preliminary subdivision plat, the preliminary subdivision plat approval had expired. Therefore, the locality has determined that the subdivision approval process, including the filing of a new preliminary subdivision plat,<sup>1</sup> would require a rehearing by the planning commission under existing local ordinances and regulations. You advise that the position asserted by the locality will create an immense hardship on the subdivider because a number of setback requirements and ordinances have been amended since the developer submitted the preliminary subdivision plat. Furthermore, because there are only nine building lots comprising the entire subdivision, the loss of any single lot coupled with reclaiming the sewer lagoon would be cost prohibitive to the subdivider.

You also advise that § 15.2-2260(F) does not specify what is to happen to the preliminary subdivision plat in the event a final subdivision plat is not submitted within the required one-year period. Furthermore, you advise that the statutory language supports a conclusion that the preliminary plat is valid for a minimum of three years before the locality may require that the subdivider resubmit the matter through the local subdivision approval process, and then only where the developer has not been in "diligent pursuit" of the project.

### **Applicable Law and Discussion**

Section 15.2-2260(F) provides that:

Once a preliminary subdivision plat is approved, it shall be valid for a period of five years, provided the subdivider (i) submits a final subdivision plat for all or a portion of the property within one year of such approval or such longer period as may be prescribed by local ordinance, and (ii) thereafter diligently pursues approval of the final subdivision plat. "*Diligent pursuit of approval*" means that the subdivider has incurred extensive obligations or substantial expenses relating to the submitted final subdivision plat or modifications thereto. However, no sooner than three years following such preliminary subdivision plat approval, and upon ninety days' written notice by certified mail to the subdivider, the commission or other agent may revoke such approval upon a specific finding of facts that the subdivider has not diligently pursued approval of the final subdivision plat.

General rules of statutory construction require that any determination of the intent of the General Assembly be based on the words contained in the statute, unless a literal construction would create an absurd result.<sup>2</sup> When the language of the statute is plain and unambiguous, the plain meaning of the language must be applied.<sup>3</sup> "The province of [statutory] construction lies wholly within the domain of ambiguity."<sup>4</sup>

Section 15.2-2260(F) plainly and unambiguously provides that an approved preliminary subdivision plat is valid for a period of five years, provided that the subdivider meets the required conditions. First, the subdivider must submit a final plat for at least a portion of the property within one year of the approval or such longer period as prescribed by local ordinance. Thereafter, the subdivider must diligently pursue approval of the final subdivision plat. After the subdivider meets these conditions, a locality may revoke the approval of the preliminary plat after no less than three years and upon ninety days' written notice with a specific

finding of fact that the subdivider did not diligently pursue approval of the final subdivision plat.<sup>5</sup>

In the first sentence of § 15.2-2260(F), the General Assembly specifically uses the word "provided" as a term of limitation. When a preliminary subdivision plat is approved, it remains valid for a period of five years only on the specific conditions that the subdivider submits a final plat within one year of such approval and diligently pursues approval of the final subdivision plat. The statute, however, does not specify what is to happen to the preliminary subdivision plat in the event a final subdivision plat is not submitted within the required one-year period.

The occasion and necessity for the amendment to the existing § 15.2-2260 with the addition of subsection F by the 2002 Session of the General Assembly is not readily apparent.<sup>6</sup> Statutes relating to the same subject, however, should be considered *in pari materia* where the words used in a particular statute are not sufficiently explicit.<sup>7</sup> Virginia's subdivision enabling statutes are detailed in Article 6, Chapter 22 of Title 15.2, §§ 15.2-2240 through 15.2-2279. Section 15.2-2240 requires that counties, cities and towns adopt a subdivision ordinance "to assure the orderly subdivision of land and its development." Sections 15.2-2258, 15.2-2259, 15.2-2260 and 15.2-2261 require that any person desiring to subdivide a tract of land must submit a plat of the proposed subdivision to the local subdivision agent for approval. Section 15.2-2260(A) also authorizes the local governing body to provide in its ordinance for the submission of preliminary subdivision plats for tentative approval as a part of the orderly subdivision of land within its jurisdiction.

The powers of a county "are limited to those conferred expressly or by necessary implication."<sup>8</sup> This rule is corollary to the Dillon Rule that municipal corporations are similarly limited in their powers.<sup>9</sup> "Where the [General Assembly] grants a local government the power to do something but does not specifically direct the method of implementing that power, the choice made by the local government as to how to implement the conferred power will be upheld as long as the method selected is reasonable."<sup>10</sup> "Any doubt in the reasonableness of the method selected is resolved in favor of the locality."<sup>11</sup>

Article 6, the subdivision enabling statutes, places time constraints on local subdivision agents for the approval of subdivision plats.<sup>12</sup> Furthermore, the General Assembly clearly provides that after a subdivider submits a preliminary subdivision plat, receives approval, submits a final plat within the prescribed period, and diligently pursues approval of the final subdivision plat, a locality may revoke the approval of the preliminary plat.<sup>13</sup> Such revocation may occur after no less than three years, but *only* upon ninety days' written notice and a specific finding of fact that the subdivider failed to diligently pursue approval of the final subdivision plat.<sup>14</sup> In the event that the subdivider either fails to submit the final plat within the required period or diligently pursue the approval of the final subdivision plat, the General Assembly could not mean to simply leave the approval of the preliminary plat in a position of status quo. If such were the case, there would be no need for the requirements to submit at least a portion of the property within the one-year period and diligently pursue the approval of the final subdivision plat. Further, there would be no need for the specific process for a locality to formally revoke the approval of the preliminary subdivision plat. It is not unreasonable to conclude that the preliminary subdivision plat is approved for one year and that such approval expires after one year. It, therefore, appears that the approval of the preliminary subdivision plat expires after the passing of one year when the subdivider fails to either submit a final plat for at least a

portion of the property within the specified period or diligently pursue approval of the final subdivision plat. Thus, I must conclude that the county subdivision agent reasonably asserted that the approval of the preliminary subdivision plat had expired.

### Conclusion

Accordingly, it is my opinion that the approval of a preliminary subdivision plat by a locality expires after one year when the subdivider or developer either fails to submit a final plat for at least a portion of the property within one year of the approval of the preliminary subdivision plat, or such longer period as prescribed by local ordinance, or diligently pursue the approval of the final subdivision plat.

<sup>1</sup>You relate that the developer would have to pay a \$2,400 filing fee for the new plat.

<sup>2</sup>Statutory construction requires that words be given their ordinary meaning, given the context in which they are used. See *City of Virginia Beach v. Bd. of Supvrs.*, 246 Va. 233, 236, 435 S.E.2d 382, 384 (1993). Further, statutes should not be interpreted so as to produce absurd results or irrational consequences. See *McFadden v. McNorton*, 193 Va. 455, 461, 69 S.E.2d 445, 449 (1952); 2001 Op. Va. Att'y Gen. 164, 165.

<sup>3</sup>*Vaughn, Inc. v. Beck*, 262 Va. 673, 677, 554 S.E.2d 88, 90 (2001); *Shelor Motor Co. v. Miller*, 261 Va. 473, 479, 544 S.E.2d 345, 348 (2001).

<sup>4</sup>*Winston v. City of Richmond*, 196 Va. 403, 408, 83 S.E.2d 728, 731 (1954), *quoted in* *Harrison & Bates, Inc. v. Featherstone Assocs. Ltd. P'ship*, 253 Va. 364, 368, 484 S.E.2d 883, 885 (1997).

<sup>5</sup>See Va. Code Ann. § 15.2-2260(F) (2003).

<sup>6</sup>2002 Va. Acts ch. 530, at 723.

<sup>7</sup>See *Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7-8 (1957); *City of Richmond v. Sutherland*, 114 Va. 688, 691, 77 S.E. 470, 471 (1913). "*In pari materia*" is the Latin phrase meaning "[o]n the same subject; relating to the same matter." *Black's Law Dictionary* 807 (8th ed. 2004).

<sup>8</sup>See *Bd. of Supvrs. v. Horne*, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975).

<sup>9</sup>*Id.*

<sup>10</sup>*City of Va. Beach v. Hay*, 258 Va. 217, 221, 518 S.E.2d 314, 316 (1999).

<sup>11</sup>*Arlington County v. White*, 259 Va. 708, 712, 528 S.E.2d 706, 708 (2000) (quoting *Hay*, 258 Va. at 221, 518 S.E.2d at 316).

<sup>12</sup>See §§ 15.2-2259, 15.2-2260 (2003).

<sup>13</sup>See § 15.2-2260(F).

<sup>14</sup>See *id.*

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