



COMMONWEALTH of VIRGINIA

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Honorable M. Keith Hodges
Member, House of Delegates
Post Office Box 298
Urbanna, Virginia 23175

Dear Delegate Hodges:

The Supreme Court of Virginia recognizes that construction of the Constitution and statutes of the Commonwealth by the Attorney General under § 2.2-505 of the *Code of Virginia* “is of the most persuasive character and is entitled to due consideration.”¹ The same status and weight, however, are not afforded informal opinions and advice rendered by deputy and assistant attorneys general. The views expressed herein do not constitute an opinion of the Attorney General under the provisions of § 2.2-505. This opinion represents only the individual views and advice of one of the counsel to the Attorney General.²

Issues Presented

You ask several questions about the effect a locality’s approval of a subdivision plat has on construction of the public streets³ identified in the plat:

- Does approval of the plat serve to dedicate the public streets?
- If the developer thereafter fails to convey the public streets to the locality or to the Virginia Department of Transportation (“VDOT”), or if he fails to develop them, is the locality required to construct and maintain them?

¹ *Barber v. City of Danville*, 149 Va. 418, 424 (1928); *see also* *City of Va. Beach v. Va. Rest. Ass’n, Inc.*, 231 Va. 130, 135 (1986); *Bd. of Supvrs. v. Marshall*, 215 Va. 756, 762 (1975).

² *See* VA. CODE ANN. § 2.2-501 (2014) (permitting Attorney General to appoint such deputy and assistant attorneys general as may be necessary).

³ Subdivision plats may identify realty to be used for a number of different public purposes, including “any right-of-way . . . [such as] any street, curb, gutter, sidewalk, bicycle trail, drainage or sewerage system, waterline as part of a public system or other improvement dedicated for public use, and maintained by the locality, the Commonwealth, or other public agency, and for the provision of other site-related improvements required by local ordinances for vehicular ingress and egress, including traffic signalization and control, for public access streets, for structures necessary to ensure stability of critical slopes, and for storm water management facilities.” VA. CODE ANN. § 15.2-2241(A)(5) (2012). In the interest of brevity, any and all such public facilities will be referred to herein simply as “public streets.”

- If the locality holds from the developer a surety bond and the developer fails to complete construction of the public streets, is the locality required to use the bond to complete construction and thereafter to maintain the public streets?

Applicable Law and Discussion

By statute, localities must enact subdivision ordinances.⁴ While there are certain required provisions such ordinances must contain,⁵ and other provisions they are permitted to contain,⁶ localities have broad discretion in determining their own subdivision procedures and requirements, so long as statutory requirements and limitations are honored. Thus, this opinion addresses only the powers, duties, and procedures set forth in state enabling legislation for subdivision ordinances. I express no opinion about what any particular local subdivision ordinance may require or authorize.

I note initially that approval of a subdivision plat does not dedicate or convey the public streets. Dedication or conveyance occurs only by recordation of an approved subdivision plat. Section 15.2-2265 of the *Code of Virginia* provides, “The recordation of an approved plat shall operate to transfer, in fee simple, to the respective localities in which the land lies the portion of the premises platted as is on the plat set apart for streets, alleys, or other public use” Thus, recording a subdivision plat which dedicates public streets serves to convey legal ownership of those public streets, and no subsequent conveyance by the developer is needed.

While recordation usually conveys dedicated public streets to the host locality, that is not always the case. The language of any particular subdivision plat would have to be reviewed in order to determine to whom public streets are conveyed.

Of course, conveyance of title to public streets is independent of the task of constructing them. As to whether the failure of a developer to construct platted public streets in an approved, recorded subdivision plat imposes a duty on the locality to do so, the *Code of Virginia* makes it quite clear that there is no such duty, regardless of whether or not there is surety. Section 15.2-2241(A)(5) of the *Code* provides, in relevant part, “If the owner or developer defaults on construction of such facilities, *and such facilities are constructed by the surety or with funding from the aforesaid check [to the locality]* . . . the locality shall be entitled to retain or collect [an] allowance for administrative costs”⁷ Further, 15.2-2265 of the *Code* states “Nothing in this section shall obligate the locality . . . to install or maintain such [public] facilities unless otherwise agreed to by the locality”⁸ In addition, § 15.2-2268 of the *Code* states, “Nothing herein shall be construed as creating an obligation upon any locality to pay for grading or paving, or for sidewalk, curb and gutter improvements or construction.”

The statutory scheme for subdivisions thus makes it abundantly clear that when a developer fails to complete public streets in a subdivision, the locality has the power, in its discretion, but not the duty to complete them.

⁴ VA. CODE ANN. § 15.2-2240 (2012).

⁵ Section 15.2-2241(2012).

⁶ Section 15.2-2242 (Supp. 2014).

⁷ Section 15.2-2241(A)(5) (2012).

⁸ Section 15.2-2265 (2012).

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Conclusion

For the foregoing reasons, it is my view that public streets in a subdivision are dedicated when the subdivision plat is recorded, not when it is approved; that recordation of the plat serves to transfer fee simple ownership of the dedicated public streets to whatever grantee is identified on the subdivision plat; and that if the public streets are not thereafter constructed by the developer, the locality has the power, in its discretion, to construct them, but state law does not impose a duty on the locality to do so, regardless of whether or not there is a surety bond.

With kind regards, I am

Very truly yours,



G. Timothy Oksman
Opinions Counsel