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HOUSE BILL NO. 2034

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact §§ 15.2-2241 and 15.2-2260 of the Code of Virginia, relating to plats.

Patron—Lingamfelter

Referred to Committee on Counties, Cities and Towns

Be it enacted by the General Assembly of Virginia:**1. That §§ 15.2-2241 and 15.2-2260 of the Code of Virginia are amended and reenacted as follows:**

§ 15.2-2241. Mandatory provisions of a subdivision ordinance.

A subdivision ordinance shall include reasonable regulations and provisions that apply to or provide:

1. For plat details which shall meet the standard for plats as adopted under § 42.1-82 of the Virginia Public Records Act (§ 42.1-76 et seq.);

2. For the coordination of streets within and contiguous to the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage, including, for ordinances and amendments thereto adopted on or after January 1, 1990, for the coordination of such streets with existing or planned streets in existing or future adjacent or contiguous to adjacent subdivisions;

3. For adequate provisions for drainage and flood control, for adequate provisions related to the failure of impounding structures and impacts within dam break inundation zones, and other public purposes, and for light and air, and for identifying soil characteristics;

4. For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved and water and storm and sanitary sewer and other public utilities or other community facilities are to be installed;

5. For the acceptance of dedication for public use of any right-of-way located within any subdivision or section thereof, which has constructed or proposed to be constructed within the subdivision or section thereof, 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, financed or to be financed in whole or in part by private funds only if the owner or developer (i) certifies to the governing body that the construction costs have been paid to the person constructing such facilities; (ii) furnishes to the governing body a certified check or cash escrow in the amount of the estimated costs of construction or a personal, corporate or property bond, with surety satisfactory to the governing body or its designated administrative agency, in an amount sufficient for and conditioned upon the construction of such facilities, or a contract for the construction of such facilities and the contractor's bond, with like surety, in like amount and so conditioned; or (iii) furnishes to the governing body a bank or savings institution's letter of credit on certain designated funds satisfactory to the governing body or its designated administrative agency as to the bank or savings institution, the amount and the form. The amount of such certified check, cash escrow, bond, or letter of credit shall not exceed the total of the estimated cost of construction based on unit prices for new public or private sector construction in the locality and a reasonable allowance for estimated administrative costs, inflation, and potential damage to existing roads or utilities, which shall not exceed 25 percent of the estimated construction costs. "Such facilities," as used in this section, means those facilities specifically provided for in this section.

If a developer records a final plat which may be a section of a subdivision as shown on an approved preliminary subdivision plat and furnishes to the governing body a certified check, cash escrow, bond, or letter of credit in the amount of the estimated cost of construction of the facilities to be dedicated within said section for public use and maintained by the locality, the Commonwealth, or other public agency, the developer shall have the right to record the remaining sections shown on the preliminary subdivision plat for a period of five years from the recordation date of ~~the first section~~ any section, or for such longer period as the local commission or other agent may, at the approval, determine to be reasonable, taking into consideration the size and phasing of the proposed development, subject to the terms and conditions of this subsection and subject to engineering and construction standards and zoning requirements in effect at the time that each remaining section is recorded. In the event a governing body of a county, wherein the highway system is maintained by the Department of Transportation, has

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59 accepted the dedication of a road for public use and such road due to factors other than its quality of
60 construction is not acceptable into the secondary system of state highways, then such governing body
61 may, if so provided by its subdivision ordinance, require the subdivider or developer to furnish the
62 county with a maintenance and indemnifying bond, with surety satisfactory to the governing body or its
63 designated administrative agency, in an amount sufficient for and conditioned upon the maintenance of
64 such road until such time as it is accepted into the secondary system of state highways. In lieu of such
65 bond, the governing body or its designated administrative agency may accept a bank or savings
66 institution's letter of credit on certain designated funds satisfactory to the governing body or its
67 designated administrative agency as to the bank or savings institution, the amount and the form, or
68 accept payment of a negotiated sum of money sufficient for and conditioned upon the maintenance of
69 such road until such time as it is accepted into the secondary system of state highways and assume the
70 subdivider's or developer's liability for maintenance of such road. "Maintenance of such road" as used in
71 this section, means maintenance of the streets, curb, gutter, drainage facilities, utilities or other street
72 improvements, including the correction of defects or damages and the removal of snow, water or debris,
73 so as to keep such road reasonably open for public usage;

74 6. For conveyance of common or shared easements to franchised cable television operators furnishing
75 cable television and public service corporations furnishing cable television, gas, telephone and electric
76 service to the proposed subdivision. Once a developer conveys an easement that will permit electric,
77 cable or telephone service to be furnished to a subdivision, the developer shall, within 30 days after
78 written request by a cable television operator or telephone service provider, grant an easement to that
79 cable television operator or telephone service provider for the purpose of providing cable television and
80 communications services to that subdivision, which easement shall be geographically coextensive with
81 the electric service easement, or if only a telephone or cable service easement has been granted, then
82 geographically coextensive with that telephone or cable service easement; however, the developer and
83 franchised cable television operator or telephone service provider may mutually agree on an alternate
84 location for an easement. If the final subdivision plat is recorded and does not include conveyance of a
85 common or shared easement as provided herein, the local planning commission or agent designated by
86 the governing body to review and act on submitted subdivision plats shall not be responsible to enforce
87 the requirements of this subdivision;

88 7. For monuments of specific types to be installed establishing street and property lines;

89 8. That unless a plat is filed for recordation within six months after final approval thereof or such
90 longer period as may be approved by the governing body, such approval shall be withdrawn and the plat
91 marked void and returned to the approving official; however, in any case where construction of facilities
92 to be dedicated for public use has commenced pursuant to an approved plan or permit with surety
93 approved by the governing body or its designated administrative agency, or where the developer has
94 furnished surety to the governing body or its designated administrative agency by certified check, cash
95 escrow, bond, or letter of credit in the amount of the estimated cost of construction of such facilities, the
96 time for plat recordation shall be extended to one year after final approval or to the time limit specified
97 in the surety agreement approved by the governing body or its designated administrative agency,
98 whichever is greater;

99 9. For the administration and enforcement of such ordinance, not inconsistent with provisions
100 contained in this chapter, and specifically for the imposition of reasonable fees and charges for the
101 review of plats and plans, and for the inspection of facilities required by any such ordinance to be
102 installed; such fees and charges shall in no instance exceed an amount commensurate with the services
103 rendered taking into consideration the time, skill and administrator's expense involved. All such charges
104 heretofore made are hereby validated;

105 10. For reasonable provisions permitting a single division of a lot or parcel for the purpose of sale or
106 gift to a member of the immediate family of the property owner in accordance with the provisions of
107 § 15.2-2244; and

108 11. For the periodic partial and final complete release of any bond, escrow, letter of credit, or other
109 performance guarantee required by the governing body under this section in accordance with the
110 provisions of § 15.2-2245.

111 § 15.2-2260. Localities may provide for submission of preliminary subdivision plats; how long valid.

112 A. Nothing in this article shall be deemed to prohibit the local governing body from providing in its
113 ordinance for the submission of preliminary subdivision plats for tentative approval. The local planning
114 commission, or an agent designated by the commission or by the governing body to review preliminary
115 subdivision plats shall complete action on the preliminary subdivision plats within 60 days of
116 submission. However, if approval of a feature or features of the preliminary subdivision plat by a state
117 agency or public authority authorized by state law is necessary, the commission or agent shall forward
118 the preliminary subdivision plat to the appropriate state agency or agencies for review within 10
119 business days of receipt of such preliminary subdivision plat.

120 B. Any state agency or public authority authorized by state law making a review of a preliminary

subdivision plat forwarded to it under this section, including, without limitation, the Virginia Department of Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.), shall complete its review within 45 days of receipt of the preliminary subdivision plat upon first submission and within 45 days for any proposed plat that has previously been disapproved, provided, however, that the time period set forth in § 15.2-2222.1 shall apply to plats triggering the applicability of said section. The Virginia Department of Transportation and authorities authorized by Chapter 51 (§ 15.2-5100 et seq.) shall allow use of public rights-of-way for public street purposes for placement of utilities by permit when practical and shall not unreasonably deny plat approval. If a state agency or public authority authorized by state law does not approve the plat, it shall comply with the requirements, and be subject to the restrictions, set forth in § 15.2-2259 A with the exception of the time period therein specified. Upon receipt of the approvals from all state agencies, the local agent shall act upon a preliminary subdivision plat within 35 days.

C. If a commission has the responsibility of review of preliminary subdivision plats and conducts a public hearing, it shall act on the plat within 45 days after receiving approval from all state agencies. If the local agent or commission does not approve the preliminary subdivision plat, the local agent or commission shall set forth in writing the reasons for such denial and shall state what corrections or modifications will permit approval by such agent or commission. With regard to plats involving commercial property, as that term is defined in subdivision A 2 of § 15.2-2259, the review process for such plats shall be the same as provided in subdivisions A 2 and A 3 of § 15.2-2259. However, no commission or agent shall be required to approve a preliminary subdivision plat in less than 60 days from the date of its original submission to the commission or agent, and all actions on preliminary subdivision plats shall be completed by the agent or commission and, if necessary, state agencies, within a total of 90 days of submission to the local agent or commission.

D. If the commission or other agent fails to approve or disapprove the preliminary subdivision plat within 90 days after it has been officially submitted for approval, the subdivider after 10 days' written notice to the commission, or agent, may petition the circuit court for the locality in which the land involved, or the major part thereof, is located to enter an order with respect thereto as it deems proper, which may include directing approval of the plat.

E. If a commission or other agent disapproves a preliminary subdivision plat and the subdivider contends that the disapproval was not properly based on the ordinance applicable thereto, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction of such land and the court shall hear and determine the case as soon as may be, provided that his appeal is filed with the circuit court within 60 days of the written disapproval by the commission or other agent.

F. 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 90 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.

G. Once an approved final subdivision plat for all or a portion of the property of a ~~multiple phase development~~ is recorded pursuant to § 15.2-2261, the underlying preliminary plat shall remain valid for a period of five years from the date of the latest recorded plat of subdivision for the property. *The five year period of validity shall extend from the date of the last recorded plat.*