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SENATE BILL NO. 318

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact § 15.2-2241 of the Code of Virginia, relating to provisions of a subdivision ordinance.*

 Patron—Ruff

 Referred to Committee on Local Government

Be it enacted by the General Assembly of Virginia:**1. That § 15.2-2241 of the Code of Virginia is 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. (Effective until July 1, 2014) 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 *or presents evidence satisfactory to the governing body that the time for recordation of any mechanics lien has expired or evidence that any debt for said construction that may be due and owing is contested and further provides indemnity with adequate surety in an amount deemed sufficient by the governing body or its designated administrative agency*; (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 10 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 any section, or for such longer period as the

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59 local commission or other agent may, at the approval, determine to be reasonable, taking into
60 consideration the size and phasing of the proposed development, subject to the terms and conditions of
61 this subsection and subject to engineering and construction standards and zoning requirements in effect
62 at the time that each remaining section is recorded. In the event a governing body of a county, wherein
63 the highway system is maintained by the Department of Transportation, has accepted the dedication of a
64 road for public use and such road due to factors other than its quality of construction is not acceptable
65 into the secondary system of state highways, then such governing body may, if so provided by its
66 subdivision ordinance, require the subdivider or developer to furnish the county with a maintenance and
67 indemnifying bond, with surety satisfactory to the governing body or its designated administrative
68 agency, in an amount sufficient for and conditioned upon the maintenance of such road until such time
69 as it is accepted into the secondary system of state highways. In lieu of such bond, the governing body
70 or its designated administrative agency may accept a bank or savings institution's letter of credit on
71 certain designated funds satisfactory to the governing body or its designated administrative agency as to
72 the bank or savings institution, the amount and the form, or accept payment of a negotiated sum of
73 money sufficient for and conditioned upon the maintenance of such road until such time as it is
74 accepted into the secondary system of state highways and assume the subdivider's or developer's liability
75 for maintenance of such road. "Maintenance of such road" as used in this section, means maintenance of
76 the streets, curb, gutter, drainage facilities, utilities or other street improvements, including the correction
77 of defects or damages and the removal of snow, water or debris, so as to keep such road reasonably
78 open for public usage;

79 5. (Effective July 1, 2014) For the acceptance of dedication for public use of any right-of-way
80 located within any subdivision or section thereof, which has constructed or proposed to be constructed
81 within the subdivision or section thereof, any street, curb, gutter, sidewalk, bicycle trail, drainage or
82 sewerage system, waterline as part of a public system or other improvement dedicated for public use,
83 and maintained by the locality, the Commonwealth, or other public agency, and for the provision of
84 other site-related improvements required by local ordinances for vehicular ingress and egress, including
85 traffic signalization and control, for public access streets, for structures necessary to ensure stability of
86 critical slopes, and for storm water management facilities, financed or to be financed in whole or in part
87 by private funds only if the owner or developer (i) certifies to the governing body that the construction
88 costs have been paid to the person constructing such facilities; (ii) furnishes to the governing body a
89 certified check or cash escrow in the amount of the estimated costs of construction or a personal,
90 corporate or property bond, with surety satisfactory to the governing body or its designated
91 administrative agency, in an amount sufficient for and conditioned upon the construction of such
92 facilities, or a contract for the construction of such facilities and the contractor's bond, with like surety,
93 in like amount and so conditioned; or (iii) furnishes to the governing body a bank or savings institution's
94 letter of credit on certain designated funds satisfactory to the governing body or its designated
95 administrative agency as to the bank or savings institution, the amount and the form. The amount of
96 such certified check, cash escrow, bond, or letter of credit shall not exceed the total of the estimated
97 cost of construction based on unit prices for new public or private sector construction in the locality and
98 a reasonable allowance for estimated administrative costs, inflation, and potential damage to existing
99 roads or utilities, which shall not exceed 25 percent of the estimated construction costs. "Such facilities,"
100 as used in this section, means those facilities specifically provided for in this section.

101 If a developer records a final plat which may be a section of a subdivision as shown on an approved
102 preliminary subdivision plat and furnishes to the governing body a certified check, cash escrow, bond, or
103 letter of credit in the amount of the estimated cost of construction of the facilities to be dedicated within
104 said section for public use and maintained by the locality, the Commonwealth, or other public agency,
105 the developer shall have the right to record the remaining sections shown on the preliminary subdivision
106 plat for a period of five years from the recordation date of any section, or for such longer period as the
107 local commission or other agent may, at the approval, determine to be reasonable, taking into
108 consideration the size and phasing of the proposed development, subject to the terms and conditions of
109 this subsection and subject to engineering and construction standards and zoning requirements in effect
110 at the time that each remaining section is recorded. In the event a governing body of a county, wherein
111 the highway system is maintained by the Department of Transportation, has accepted the dedication of a
112 road for public use and such road due to factors other than its quality of construction is not acceptable
113 into the secondary system of state highways, then such governing body may, if so provided by its
114 subdivision ordinance, require the subdivider or developer to furnish the county with a maintenance and
115 indemnifying bond, with surety satisfactory to the governing body or its designated administrative
116 agency, in an amount sufficient for and conditioned upon the maintenance of such road until such time
117 as it is accepted into the secondary system of state highways. In lieu of such bond, the governing body
118 or its designated administrative agency may accept a bank or savings institution's letter of credit on
119 certain designated funds satisfactory to the governing body or its designated administrative agency as to
120 the bank or savings institution, the amount and the form, or accept payment of a negotiated sum of

money sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways and assume the subdivider's or developer's liability for maintenance of such road. "Maintenance of such road" as used in this section, means maintenance of the streets, curb, gutter, drainage facilities, utilities or other street improvements, including the correction of defects or damages and the removal of snow, water or debris, so as to keep such road reasonably open for public usage;

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

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

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

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

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

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