

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 353

An Act to amend and reenact § 15.1-475 of the Code of Virginia, relating to subdivision plats.

[H 770]

Approved March 22, 1996

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-475 of the Code of Virginia is amended and reenacted as follows:

§ 15.1-475. Plat of proposed subdivision and site plans to be submitted for approval.

A. Whenever the owner or proprietor of any tract of land located within any territory to which a subdivision ordinance applies desires to subdivide the same, he shall submit a plat of the proposed subdivision to the local commission of the county or municipality, or an agent designated by the governing body thereof for such purpose. When any part of the land proposed for subdivision lies in a drainage district such fact shall be set forth on the plat of the proposed subdivision. When any grave, object or structure marking a place of burial is located on the land proposed for subdivision, such grave, object or structure shall be identified on any plans or site plans required by this article. When the land involved lies wholly or partly within an area subject to the joint control of more than one political subdivision, the plat shall be submitted to the local commission or other designated agent of the political subdivision in which the tract of land is located. Site plan or plans of development required by § 15.1-491 (h) shall also be subject to the provisions of this section, *mutatis mutandis*.

B. 1. The local commission or other agent shall act on any proposed plat within sixty days after it has been officially submitted for approval by either approving or disapproving such plat in writing, and giving with the latter specific reasons therefor. Specific reasons for disapproval may be contained in a separate document or may be written on the plat itself. The reasons for disapproval shall identify deficiencies in the plat which cause the disapproval by reference to specific duly adopted ordinances, regulations, or policies and shall generally identify such modifications or corrections as will permit approval of the plat.

2. If the local commission or other agent fails to approve or disapprove the plat within sixty days after it has been officially submitted for approval the subdivider, after ten days' written notice to the commission, or agent, may petition the circuit court of the county or municipality in which the land involved, or the major part thereof, is located, to decide whether the plat should or should not be approved. The court shall hear the matter and make and enter such order with respect thereto as it deems proper, which may include directing approval of the plat.

3. If a local commission or other agent disapproves a plat and the subdivider contends that such 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 sixty days of the written disapproval by such local commission or other agent.

C. 1. Nothing in this article shall be deemed to prohibit the local governing body from providing in its ordinance for the submission of preliminary subdivision plats for tentative approval. The local agent designated by the local commission or the agent designated by the governing body to review preliminary subdivision plats or the local commission shall complete action on such preliminary plats within sixty days of submission to such agent. However, if approval of a feature or features of the preliminary plat by a state agency is necessary, the local agent shall forthwith forward the preliminary plat to the appropriate state agency or agencies for review.

2. Any state agency making such a review of a plat forwarded to it under this section, including, without limitation, the Virginia Department of Transportation, shall complete its review within forty-five days of receipt of such preliminary plat. *The Virginia Department of Transportation shall allow use of its public rights-of-way for placement of utilities by permit when practical and shall not unreasonably deny plat approval.* If ~~the~~ a state agency does not approve the plat, it shall comply with the requirements, and be subject to the restrictions, set forth in the second paragraph of this section (except for the time period therein specified). Upon receipt of the approvals from all state agencies, the local agent shall act upon a preliminary plat within thirty-five days.

3. If a planning commission has the responsibility of review of preliminary plats and conducts a public hearing, it shall act on such plat within forty-five days after receiving approval from all state agencies. If the local agent or commission does not approve the preliminary 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; provided, however, that no local commission or agent shall be required to approve a preliminary subdivision plat in less than sixty days from the date of its original submission to the local commission or agent, and that all actions on

preliminary subdivision plats shall be completed by the local agent or commission and, if necessary, state agencies, within a total of ninety days of submission to the local agent or commission.

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

5. If a local commission or other agent disapproves a preliminary plat and the subdivider contends that such 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 sixty days of the written disapproval by such local commission or other agent.

D. An approved final subdivision plat which has been recorded or an approved final site plan, hereinafter referred to as "recorded plat or final site plan," shall be valid for a period of not less than five years from the date of approval thereof or for such longer period as the local commission or other agent may, at the time of approval, determine to be reasonable, taking into consideration the size and phasing of the proposed development. A site plan shall be deemed final once it has been reviewed and approved by the locality if the only requirement remaining to be satisfied in order to obtain a building permit is the posting of any bonds and escrows.

E. 1. Upon application of the subdivider or developer filed prior to expiration of a recorded plat or final site plan, the local commission or other agent may grant one or more extensions of such approval for additional periods as the local commission or other agent may, at the time the extension is granted, determine to be reasonable, taking into consideration the size and phasing of the proposed development, the laws, ordinances and regulations in effect at the time of the request for an extension.

2. If the local commission or other agent denies an extension requested as provided herein and the subdivider or developer contends that such denial was not properly based on the ordinance applicable thereto, the foregoing considerations for granting an extension, or was arbitrary or capricious, he may appeal to the circuit court having jurisdiction of land subject to the recorded plat or final site plan, provided that such appeal is filed with the circuit court within sixty days of the written denial by the local commission or other agency.

F. For so long as the final site plan remains valid in accordance with the provisions of this section, or in the case of a recorded plat for five years after approval, no change or amendment to any local ordinance, map, resolution, rule, regulation, policy or plan adopted subsequent to the date of approval of the recorded plat or final site plan shall adversely affect the right of the subdivider or developer or his successor in interest to commence and complete an approved development in accordance with the lawful terms of the recorded plat or site plan unless the change or amendment is required to comply with state law or there has been a mistake, fraud or a change in circumstances substantially affecting the public health, safety or welfare.

G. Application for minor modifications to recorded plats or final site plans made during the periods of validity of such plats or plans established in accordance with this section shall not constitute a waiver of the provisions hereof nor shall the approval of such minor modifications extend the period of validity of such plats or plans.

H. The provisions of this section shall be applicable to all recorded plats and final site plans valid on or after January 1, 1992. Nothing contained in subsections D, E, F, G and H of this section shall be construed to affect (i) any litigation concerning the validity of a site plan pending prior to January 1, 1992, or any such litigation nonsuited and thereafter refiled; (ii) the authority of a governing body to impose valid conditions upon approval of any special use permit, conditional use permit or special exception; (iii) the application to individual lots on recorded plats or parcels of land subject to final site plans, to the greatest extent possible, of the provisions of any local ordinance adopted pursuant to the Chesapeake Bay Preservation Act (§ 10.1-2100 et seq.); or (iv) the application to individual lots on recorded plats or parcels of land subject to final site plans of the provisions of any local ordinance adopted to comply with the requirements of the federal Clean Water Act, Section 402 (p.) of the Stormwater Program and regulations promulgated thereunder by the Environmental Protection Agency.