

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 452

An Act to amend and reenact § 15.1-466 of the Code of Virginia, relating to subdivision ordinance; soil characteristics.

[H 1316]

Approved March 31, 1996

Be it enacted by the General Assembly of Virginia:

1. That § 15.1-466 of the Code of Virginia is amended and reenacted as follows:

§ 15.1-466. Provisions of subdivision ordinance.

A. 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 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, 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 and loan association's letter of credit on certain designated funds satisfactory to the governing body or its designated administrative agency as to the bank or savings and loan association, 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 twenty-five percent of the estimated construction costs.

If a developer records a final plat which may be a section of a subdivision as shown on an approved preliminary 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 plat for a period of five years from the recordation date of the first section, 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 accepted the dedication of a road for public use and such road due to factors other than its quality of construction is not acceptable into the secondary system of state highways, then such governing body may, if so provided by its subdivision ordinance, require the subdivider or developer to furnish the county with a maintenance and indemnifying bond, with surety satisfactory to the governing body or its designated administrative agency, in an amount sufficient for and conditioned upon the maintenance of such road until such time as it is accepted into the secondary system of state highways. In lieu of such bond, the governing body

or its designated administrative agency may accept a bank or savings and loan association's letter of credit on certain designated funds satisfactory to the governing body or its designated administrative agency as to the bank or savings and loan association, 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" shall be deemed to mean 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, in appropriate cases, 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. Such easements, the location of which shall be adequate for use by public service corporations which may be expected to occupy them, may be conveyed by reference on the final plat to a declaration of the terms and conditions of such common easements agreed to by franchised cable television operators furnishing cable television and by such public service corporations and recorded in the land records of the county or city. The failure of any such franchised cable television operator to agree to the terms and conditions set out in such declaration shall not defeat or impair any such common easement conveyance;

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 payment by a subdivider or developer of land of the pro rata share of the cost of providing reasonable and necessary sewerage, water, and drainage facilities, located outside the property limits of the land owned or controlled by the subdivider or developer but necessitated or required, at least in part, by the construction or improvement of the subdivision or development; however, no such payment shall be required until such time as the governing body or a designated department or agency thereof shall have established a general sewer, water, and drainage improvement program for an area having related and common sewer, water, and drainage conditions and within which the land owned or controlled by the subdivider or developer is located or the governing body has committed itself by ordinance to the establishment of such a program. Such regulations or ordinance shall set forth and establish reasonable standards to determine the proportionate share of total estimated cost of ultimate sewerage, water, and drainage facilities required adequately to serve a related and common area, when and if fully developed in accord with the adopted comprehensive plan, that shall be borne by each subdivider or developer within the area. Such share shall be limited to the proportion of such total estimated cost which the increased sewage flow, water flow, and/or increased volume and velocity of storm water runoff to be actually caused by the subdivision or development bears to total estimated volume and velocity of such sewage, water, and/or runoff from such area in its fully developed state. In calculating the volume and velocity of stormwater runoff, the governing body shall take into account the effect of all on-site stormwater facilities or best management practices constructed or required to be constructed by the subdivider or developer and give appropriate credit therefor.

Each such payment received shall be expended only for necessary engineering and related studies and the construction of those facilities identified in the established sewer, water, and drainage program; however, in lieu of such payment the governing body may provide for the posting of a personal, corporate or property bond, cash escrow or other method of performance guarantee satisfactory to it conditioned on payment at commencement of such studies or construction. The payments received shall be kept in a separate account for each of the individual improvement programs until such time as they are expended for the improvement program. All bonds, payments, cash escrows or other performance guarantees hereunder shall be released and used, with any interest earned, as a tax credit on the real estate taxes on the property if construction of the facilities identified in the established water, sewer and drainage programs is not commenced within twelve years from the date of the posting of the bond,

payment, cash escrow or other performance guarantee;

11. Any funds collected for pro rata programs under subdivision 10 of this subsection prior to July 1, 1990, shall continue to be held in separate, interest bearing accounts for the project or projects for which the funds were collected and any interest from such accounts shall continue to accrue to the benefit of the subdivider or developer until such time as the project or projects are completed or until such time as a general sewer and drainage improvement program is established to replace a prior sewer and drainage improvement program. If such a general improvement program is established, the governing body of any county or municipality may abolish any remaining separate accounts and require the transfer of the assets therein into a separate fund for the support of each of the established sewer, water, and drainage programs. Upon the transfer of such assets, subdividers and developers who had met the terms of any existing agreements made under a previous pro rata program shall receive any outstanding interest which has accrued up to the date of transfer, and such subdividers and developers shall be released from any further obligation under those existing agreements. All bonds, payments, cash escrows or other performance guarantees hereunder shall be released and used, with any interest earned, as a tax credit on the real estate taxes on the property if construction of the facilities identified in the established water, sewer and drainage programs is not commenced within twelve years from the date of the posting of the bond, payment, cash escrow or other performance guarantee;

12. 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, subject only to any express requirement contained in the Code of Virginia and to any requirement imposed by the local governing body that all lots of less than five acres have reasonable right-of-way of not less than ten feet or more than twenty feet providing ingress and egress to a dedicated recorded public street or thoroughfare. Only one such division shall be allowed per family member, and shall not be for the purpose of circumventing this subdivision. For the purpose of this subdivision, a member of the immediate family is defined as any person who is a natural or legally defined offspring, spouse, grandchild, grandparent, or parent of the owner. The provisions of this subdivision shall apply only to subdivision ordinances adopted by counties and the City of Suffolk;

13. For reasonable provisions, notwithstanding subdivision A 12, in a county having the urban county executive form of government 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, subject only to any express requirement contained in the Code of Virginia and to any requirement imposed by the local governing body that all lots of less than five acres have frontage of not less than ten feet or more than twenty feet on a dedicated recorded public street or thoroughfare. Only one such division shall be allowed per family member, and the division shall not be for the purpose of circumventing a local subdivision ordinance. For the purpose of this subsection, a member of the immediate family is defined as any person who is a natural or legally defined offspring or parent of the owner;

14. 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 within thirty days after receipt of written notice by the subdivider or developer of completion of part or all of any facilities required to be constructed hereunder unless the governing body or its designated administrative agency notifies said subdivider or developer in writing of nonreceipt of approval by applicable state agency, or of any specified defects or deficiencies in construction and suggested corrective measures prior to the expiration of the thirty-day period.

If no such action is taken by the governing body or administrative agency within the time specified above, the request shall be deemed approved, and a partial release granted to the subdivider or developer. No final release shall be granted until after expiration of such thirty-day period and there is an additional request in writing sent by certified mail return receipt to the chief administrative officer of such governing body. The governing body or its designated administrative agency shall act within ten working days of receipt of the request; then if no action is taken the request shall be deemed approved and final release granted to the subdivider or developer.

After receipt of the written notices required above, if the governing body or administrative agency takes no action within the times specified above and the subdivider or developer files suit in the local circuit court to obtain partial or final release of a bond, escrow, letter of credit, or other performance guarantee, as the case may be, the circuit court, upon finding the governing body or its administrative agency was without good cause in failing to act, shall award such subdivider or developer his reasonable costs and attorneys' fees.

No governing body or administrative agency shall refuse to make a periodic partial or final release of a bond, escrow, letter of credit, or other performance guarantee for any reason not directly related to the specified defects or deficiencies in construction of the facilities covered by said bond, escrow, letter of credit or other performance guarantee.

Upon written request by the subdivider or developer, the governing body or its designated administrative agency shall be required to make periodic partial releases of such bond, escrow, letter of credit, or other performance guarantee in a cumulative amount equal to no less than ninety percent of the original amount for which the bond, escrow, letter of credit, or other performance guarantee was

taken, and may make partial releases to such lower amounts as may be authorized by the governing body or its designated administrative agency based upon the percentage of facilities completed and approved by the governing body, local administrative agency, or state agency having jurisdiction. Periodic partial releases may not occur before the completion of at least thirty percent of the facilities covered by any bond, escrow, letter of credit, or other performance guarantee. The governing body or administrative agency shall not be required to execute more than three periodic partial releases in any twelve-month period. Upon final completion and acceptance of said facilities, the governing body or administrative agency shall release any remaining bond, escrow, letter of credit, or other performance guarantee to the subdivider or developer. For the purpose of final release, the term "acceptance" is deemed to mean: when said public facility is accepted by and taken over for operation and maintenance by the state agency, local government department or agency, or other public authority which is responsible for maintaining and for operating such facility upon acceptance.

For the purposes of this subsection, a certificate of partial or final completion of such facilities from either a duly licensed professional engineer or land surveyor, as defined in and limited to § 54.1-400, or from a department or agency designated by the local government may be accepted without requiring further inspection of such facilities.

B. A subdivision ordinance may include provisions for variations in or exceptions to the general regulations of the subdivision ordinance in cases of unusual situations or when strict adherence to the general regulations would result in substantial injustice or hardship.

C. A subdivision ordinance may require the furnishing of a preliminary opinion from the applicable health official regarding the suitability of a subdivision for installation of subsurface sewage disposal systems where such method of sewage disposal is to be utilized in the development of a subdivision.

D. A subdivision ordinance may require that, in the event streets in a subdivision will not be constructed to meet the standards necessary for inclusion in the secondary system of state highways or for state street maintenance moneys paid to municipalities, the subdivision plat and all approved deeds of subdivision, or similar instruments, must contain a statement advising that the streets in the subdivision do not meet state standards and will not be maintained by the Department of Transportation or the county or the municipalities enacting the ordinances. Grantors of any subdivision lots to which such statement applies must include the statement on each deed of conveyance thereof. However, counties and municipalities in their ordinances may establish minimum standards for construction of streets that will not be built to state standards.

For streets constructed or to be constructed, as provided for in this subsection, a subdivision ordinance may require that the same procedure be followed as that set forth in subdivision A 5 of this section. Further, the subdivision ordinance may provide that the developer's financial commitment shall continue until such time as the local government releases such financial commitment in accordance with the provisions of subdivision A 14 of this section.

E. A subdivision ordinance may include reasonable provision for the voluntary funding of off-site road improvements and reimbursements of advances by the governing body. If a subdivider or developer makes an advance of payments for or construction of reasonable and necessary road improvements located outside the property limits of the land owned or controlled by him, the need for which is substantially generated and reasonably required by the construction or improvement of his subdivision or development, and such advance is accepted, the governing body may agree to reimburse the subdivider or developer from such funds as the governing body may make available for such purpose from time to time for the cost of such advance together with interest, which shall be excludable from gross income for federal income tax purposes, at a rate equal to the rate of interest on bonds most recently issued by the governing body on the following terms and conditions:

1. The governing body shall determine or confirm that the road improvements were substantially generated and reasonably required by the construction or improvement of the subdivision or development and shall determine or confirm the cost thereof, on the basis of a study or studies conducted by qualified traffic engineers and approved and accepted by the subdivider or developer.

2. The governing body shall prepare, or cause to be prepared, a report accepted and approved by the subdivider or developer, indicating the governmental services required to be furnished to the subdivision or development and an estimate of the annual cost thereof for the period during which the reimbursement is to be made to the subdivider or developer.

3. The governing body may make annual reimbursements to the subdivider or developer from funds made available for such purpose from time to time, including but not limited to real estate taxes assessed and collected against the land and improvements on the property included in the subdivision or developments in amounts equal to the amount by which such real estate taxes exceed the annual cost of providing reasonable and necessary governmental services to such subdivision or development.

F. Site plan or plans of development which are required to be submitted and approved in accordance with § 15.1-491 (h) shall be subject to the provisions of this section, *mutatis mutandis*.

G. Notwithstanding subdivisions A 12 and A 13 of this section, a subdivision ordinance may include reasonable provisions permitting divisions of lots or parcels for the purpose of sale or gift to a member of the immediate family of the property owner in (i) any county or city which has had population

growth of ten percent or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census, provided that until the 1990 census is reported, any county or city instead may qualify only if it has had an estimated population growth of ten percent or more from 1980 to the most recent year for which population estimates are available from the Center for Public Service of the University of Virginia; (ii) any city or county adjoining such city or county; (iii) any towns located within such county; and (iv) any county contiguous with at least three such counties, and any town located in that county. Such divisions shall be subject to all requirements of the Code of Virginia and to any requirements imposed by the local governing body.

H. That, in a county having the urban county executive form of government, in any city located within or adjacent thereto, or any county adjacent thereto or a town located within such county, in any county with a population between 57,000 and 57,450, or in any county with a population between 60,000 and 63,000, and in any city with a population between 140,000 and 160,000, the subdivision ordinance may include provisions for payment by a subdivider or developer of land of a pro rata share of the cost of reasonable and necessary road improvements, located outside the property limits of the land owned or controlled by him but serving an area having related traffic needs to which his subdivision or development will contribute, to reimburse an initial subdivider or developer who has advanced such costs or constructed such road improvements. Such ordinance may apply to road improvements constructed after July 1, 1988, in a county having the urban county executive form of government; in a city located within or adjacent to a county having the urban county executive form of government, or in a county adjacent to a county having the urban county executive form of government or town located within such county, in any county with a population between 57,000 and 57,450, or in any county with a population between 60,000 and 63,000, such ordinance may only apply to road improvements constructed after the effective date of such ordinance.

Such provisions shall provide for the adoption of a pro rata reimbursement plan which shall include reasonable standards to identify the area having related traffic needs, to determine the total estimated or actual cost of road improvements required to adequately serve the area when fully developed in accordance with the comprehensive plan or as required by proffered conditions, and to determine the proportionate share of such costs to be reimbursed by each subsequent subdivider or developer within the area, with interest (i) at the legal rate or (ii) at an inflation rate prescribed by a generally accepted index of road construction costs, whichever is less.

For any subdivision ordinance adopted pursuant to this subsection after February 1, 1993, no such payment shall be assessed or imposed upon a subsequent developer or subdivider if (i) prior to the adoption of a pro rata reimbursement plan the subsequent subdivider or developer has proffered conditions pursuant to § 15.1-491 (a) for offsite road improvements and such proffered conditions have been accepted by the local government, (ii) the local government has assessed or imposed an impact fee on the subsequent development or subdivision pursuant to Article 8.1 (§ 15.1-498.1 et seq.) of Chapter 11 of this title, or (iii) the subsequent subdivider or developer has received final site plan, subdivision plan, or plan of development approval from the local government prior to the adoption of a pro rata reimbursement plan for the area having related traffic needs.

The amount of the costs to be reimbursed by a subsequent developer or subdivider shall be determined before or at the time the site plan or subdivision is approved. The ordinance shall specify that such costs are to be collected at the time of the issuance of a temporary or final certificate of occupancy or functional use and occupancy within the development, whichever shall come first. The ordinance also may provide that the required reimbursement may be paid (i) in lump sum, (ii) by agreement of the parties on installment at a reasonable rate of interest or rate of inflation, whichever is less, for a fixed number of years, or (iii) on such terms as otherwise agreed to by the initial and subsequent subdividers and developers.

Such ordinance provisions may provide that no certificate of occupancy shall be issued to a subsequent developer or subdivider until (i) the initial developer certifies to the local government that the subsequent developer has made the required reimbursement directly to him as provided above or (ii) the subsequent developer has deposited the reimbursement amount with the local government for transfer forthwith to the initial developer.