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HOUSE BILL NO. 512

Offered January 13, 2016

Prefiled January 8, 2016

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

Patron—Bulova

Referred to Committee on Counties, Cities and Towns

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. 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 or, at the option of the local governing body, 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. 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, cash escrow, bond or letter of credit, the locality shall be entitled to retain or collect the allowance for administrative costs to the extent the costs of such construction do not exceed the total of the originally estimated costs of construction and the allowance for administrative 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

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

84 As used in this section, "designated administrative agency" means the planning commission of the
85 locality or an agent designated by the governing body of the locality for such purpose as set forth in
86 §§ 15.2-2258 through 15.2-2261;

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

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

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

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

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

12. For the submission of a certification by the developer of a common interest community subject to the Property Owners' Association Act (§ 55-508 et seq.) that the developer has reviewed the best practices developed under subdivision A 8 of § 54.1-2349 and given consideration to the best practices in drafting the declaration.

B. No locality shall require that any certified check, cash escrow, bond, letter of credit or other performance guarantee furnished pursuant to this chapter apply to, or include the cost of, any facility or improvement unless such facility or improvement is shown or described on the approved plat or plan of the project for which such guarantee is being furnished. Furthermore, the terms, conditions, and specifications contained in any agreement, contract, performance agreement, or similar document, however described or delineated, between a locality or its governing body and an owner or developer of property entered into pursuant to this chapter in conjunction with any performance guarantee, as described in this subsection, shall be limited to those items depicted or provided for in the approved plan, plat, permit application, or similar document for which such performance guarantee is applicable.

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