

OP. NO. 05-079

**HIGHWAYS, BRIDGES AND FERRIES: COMMONWEALTH
TRANSPORTATION BOARD AND HIGHWAYS GENERALLY – SECONDARY
SYSTEM OF STATE HIGHWAYS.**

Certain landowner appears to be developer with speculative interest for assessment by localities of portion of cost of including roadway in state secondary highway system; governing body of county must obtain written declarations of acquiescence in such assessment from owners of at least seventy-five percent of platted parcels of land abutting upon street. To extent of whether landowner is developer is question of fact, Attorney General does not issue opinions regarding questions of fact.

Mr. C. Dean Foster, Jr.
Scott County Attorney
January 4, 2006

Issue Presented

You ask whether a certain landowner is a "developer" with a "speculative interest" as defined in § 33.1-72.1, which governs the taking of streets into the secondary system of state highways.

Response

It is my opinion that the landowner about whom you inquire appears to be a developer with a speculative interest as contemplated by § 33.1-72.1 for the assessment by localities of a portion of the cost of bringing the roadway to the standards required for inclusion in the state secondary highway system. It is further my opinion, however, that the governing body of the county must obtain written declarations from the owners of at least seventy-five percent of the platted parcels of land abutting upon the street stating their acquiescence in such assessments as required by § 33.1-72.1(F)(1). To the extent that the issue of whether a landowner is a developer is a question of fact, this Office does not investigate the facts behind opinion requests and does not issue opinions regarding questions of fact.¹

Background

You state that a 9.84-acre parcel of land, which abuts a road in Scott County, originally was a part of a larger tract that was divided into nine lots. Further, you indicate that a court order partitioned the larger parcel into the nine lots, which were conveyed to family members in a partition suit, and created the road. The current landowner purchased the 9.84-acre lot from an heir of the landowner who received the parcel pursuant to the court order. You also indicate that the current owner utilizes the 9.84-acre parcel as a manufactured/mobile home park where he rents lots for the placement of manufactured or mobile homes.

You state that the Scott County Board of Supervisors has responded to a petition by all the landowners abutting both sides of the road (of the original property) and

approved the road as a rural addition project pursuant to § 33.1-72.1. The question arises, however, about the designation of the current landowner as a "developer" with a "speculative interest" pursuant to § 33.1-72.1, which would determine the amount of pro rata percentage needed to make a special assessment of the landowners.

Applicable Law and Discussion

Section 33.1-72.1(C)² provides that:

"Speculative interest," as used in this section, means that the original developer or a successor developer retains ownership in any lot abutting such street for development or speculative purposes. In instances where it is determined that speculative interest is retained by the original developer, developers, or successor developers and the governing body of the county deems that extenuating circumstances exist, the governing body of the county shall require a pro rata participation by such original developer, developers, or successor developers as prescribed in subsection G of this section as a condition of the county's recommendation pursuant to this section.

Chapter 91 of Title 24, 24 VAC 30-91-10 through 30-91-160, contains the regulations regarding subdivision street requirements. Specifically, 24 VAC 30-91-10 provides that:

"Developer" means an individual, corporation, or registered partnership engaged in the subdivision of land.

....

"Subdivision" means the division of a lot, tract, or parcel into two or more lots, plats, sites, or other divisions of land for the purpose, whether immediate or future, of sale or of building development. Any resubdivision of a previously subdivided tract or parcel of land shall also be interpreted as a "subdivision." The division of a lot or parcel permitted by § 15.2-2244 of the Code of Virginia^[3] will not be considered a "subdivision" under this definition, provided no new road or street is thereby established. However, any further division of such parcels shall be considered a "subdivision."

A 1984 opinion of this Office previously concluded that a developer's ownership of one large tract of land did not constitute a speculative interest where the statutory provision provided that "'ownership or partnership in two or more parcels abutting such streets shall constitute speculative interest.'"⁴ The opinion noted that "[o]ne can certainly argue that the retention of ownership of a large parcel ... constitutes a speculative interest to the same degree as ownership of two small lots."⁵ The opinion, however, reasoned that since the plain language of the statute at that time required ownership of two or more parcels to constitute speculative interest, the plain language of the statute controlled.⁶ Subsequent to the 1984 opinion, the General Assembly has amended § 33.1-72.1(C) to provide that "speculative interest" includes situations in which a developer or subsequent

developer retains ownership in any lot abutting such street for development or speculative purposes.⁷

The Attorney General previously has concluded that § 33.1-72.1(D) provides ample legal authority for the assessment of a pro rata participation on the part of developers who have retained a speculative interest in abutting property when the governing body determines that extenuating circumstances exist which justify such assessment before recommending a street be included in the secondary system of state highways.⁸ As previously noted, the General Assembly has amended § 33.1-72.1,⁹ specifically subsection G, formerly subsection D,¹⁰ currently provides, in part, that:

In instances where it is determined that speculative interest, as defined in subsection C, exists the basis for the pro rata percentage required of such developer, developers, or successor developers shall be the proportion that the value of the abutting parcels owned or partly owned by the developer, developers or successor developers bears to the total value of all abutting property as determined by the current evaluation of the property for real estate purposes.

The Supreme Court of Virginia has held that the General Assembly intended "to limit special assessments to owners of land bordering upon, and not merely adjacent or in close proximity to," the portion of a street being improved.¹¹

You question whether the current landowner of the 9.84-acre tract at issue could be a developer within the meaning of § 33.1-72.1 as neither he nor his predecessors in title created the road or the 9.84-acre parcel. It is my opinion that § 33.1-72.1 does not require that a developer create the road which is to be included in the secondary system in order to be subject to the statutory provisions. Instead, § 33.1-72.1 provides localities a way to assess developers or subsequent developers who hold land abutting a roadway for which application has been made by the county for inclusion into the state secondary system of roads for a portion of the costs of bringing the roadway to the required standards for inclusion in the secondary system of highways. I find no requirement that the developer have title to the land when the abutting road was constructed.

The activity of renting lots for the purpose of locating manufactured/mobile homes plainly requires that the overall tract of land be divided into sites which are rented for the placement of buildings. Because the definition of the term "subdivision" in 24 VAC 30-91-10 separates sale of land from the activity of building development, it is clear that the intent of the provision is to include the lease of land for the placement or construction of buildings in the definition of subdivision. The term "speculation" is not defined in the statutes or regulations. In the absence of a statutory definition, the plain and ordinary meaning of the term is controlling.¹² The term "speculation" means "[t]he buying or selling of something with the expectation of profiting from price fluctuations."¹³ For purposes of this opinion, I assume that the landowner leases space in his mobile/manufactured home rental lot park in order to achieve a profit.¹⁴ For purposes of planning, subdivision of land and zoning,¹⁵ § 15.2-2201 defines "development" as "a tract of land developed or to be developed as a unit under single ownership or unified control which is to be used for any business or industrial purpose or is to contain three or more residential dwelling units."

Because the landowner has taken an action which causes his land to contain three or more residential dwelling units for business purposes, he meets the criteria for building development necessary for inclusion of his activities in the definition of subdivision and developer pursuant to 24 VAC 30-91-10. It is, therefore, my opinion that he is a developer with speculative interest as he meets both the criteria for development and use for speculative purposes. Thus, the locality may choose to finance the roadway by assessing the landowner/developer as provided by § 33.1-72.1(G). Before this assessment can be made, however, the governing body of the county must obtain "written declarations from the owners of 75 percent or more of the platted parcels of land abutting upon [the] street stating their acquiescence in such assessments" as required by § 33.1-72.1(F)(1).

Conclusion

Accordingly, it is my opinion that the landowner about whom you inquire appears to be a developer with a speculative interest as contemplated by § 33.1-72.1 for the assessment by localities of a portion of the cost of bringing the roadway to the standards required for inclusion in the state secondary highway system. It is further my opinion, however, that the governing body of the county must obtain written declarations from the owners of at least seventy-five percent of the platted parcels of land abutting upon the street stating their acquiescence in such assessments as required by § 33.1-72.1(F)(1). To the extent that the issue of whether a landowner is a developer is a question of fact, this Office does not investigate the facts behind opinion requests and does not issue opinions regarding questions of fact.¹⁶

¹See 1991 Op. Va. Att'y Gen. 122, 124 and opinions cited therein.

²Section 33.1-72.1 also specifies ways that localities may raise funds for bringing roadways to standards required for inclusion in the state secondary highway system.

³Section 15.2-2244 concerns the subdivision of land for conveyance to immediate family members.

⁴See 1983-1984 Op. Va. Att'y Gen. 194, 195 (quoting § 33.1-72.1(C)).

⁵See *id.*

⁶*Id.* (footnote omitted). It is a general rule of statutory construction that the words of a statute are to be given their usual, commonly understood meaning. See Op. Va. Att'y Gen.: 1985-1986 at 69, 69; *id.* at 65, 66; *id.* at 24, 25. "Where the language of a statute is clear and unambiguous rules of statutory construction are not required." *Ambrogio v. Koontz*, 224 Va. 381, 386, 297 S.E.2d 660, 662 (1982).

⁷See 2004 Va. Acts ch. 677, at 982, 982 (adding subsection C to § 33.1-72.1 and redesignating former subsection C as subsection D); see *also* Va. Code Ann. § 33.1-72.1 (C) (2005) (defining "speculative interest").

⁸See 1984-1985 Op. Va. Att'y Gen. 147, 148.

⁹See 2004 Va. Acts ch. 677, *supra* note 7, at 982-84.

¹⁰Subsection G was formerly codified as subsection D. See *id.* at 983 (amending and redesignating subsection E as subsection G); 1991 Va. Acts ch. 250, at 349, 351 (redesignating subsection D as subsection E).

¹¹Taylor v. Bd. of Supvrs., 243 Va. 409, 412, 416 S.E.2d 433, 435 (1992).

¹²See Sansom v. Bd. of Supvrs., 257 Va. 589, 514 S.E.2d 345 (1999); Commonwealth v. Orange-Madison Coop. Farm Serv., 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); Op. Va. Att'y Gen.: 2004 at 125, 127; 1999 at 10, 11.

¹³Black's Law Dictionary 1435 (8th ed. 2004).

¹⁴This Office, however, does not investigate the facts behind opinion requests, and the Attorney General regularly declines to issue opinions regarding questions of fact. See *supra* note 1.

¹⁵See Va. Code Ann. tit. 15.2, ch. 22, §§ 15.2-2200 to 15.2-2327 (2003 & Supp. 2005).

¹⁶See *supra* note 1.

[Back to January 2006 Opinion Index](#)