COMMONWEALTH of VIRGINIA

Office of the Attorney General

Robert F. McDonnell
Attorney General

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

June 20, 2006

Mr. Roger W. Mullins
Tazewell County Attorney
P. O. Box 647
Tazewell, Virginia 24651

Dear Mr. Mullins:

I am responding to your request for an official advisory opinion in accordance with the requirements of § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the board of supervisors in a county having the county administrator form of government may designate an agent other than the planning commission to approve preliminary and final subdivision plats.

Response

It is my opinion that the board of supervisors of a county having the county administrator form of government may designate an agent other than the planning commission to approve preliminary and final subdivision plats.

Background

You advise that a member of the planning commission has inquired whether the board of supervisors may designate an agent other than the planning commission to approve subdivision plats.

You note[1] that the *Virginia Code* contains numerous references to the "planning commission or other agent." You relate that you find no provisions regarding subdivision ordinances that require the planning commission to be the agent. Therefore, you conclude that the planning commission is the "default" agent for approval where a locality fails to designate an agent.

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[1] A request by a county attorney for an opinion from the Attorney General "shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions." VA. CODE ANN. § 2.2-505(B) (2005).

Applicable Law and Discussion

The overriding goal of statutory interpretation is to discern and give effect to legislative intent.[2] The Commonwealth follows the rule of strict construction of statutory provisions.[3] The powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication.[4] "'This rule is a corollary to Dillon's Rule that municipal corporations have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable.'"[5] "[T]he Dillon Rule is applicable to determine in the first instance, from express words or by implication, whether a power exists at all. If the power cannot be found, the inquiry is at an end."[6]

A fundamental rule of statutory construction requires that the fullest possible effect must be given to the legislative intent embodied in the entire statutory enactment.[7] In the land use statutes, the General Assembly "has undertaken to achieve ... a delicate balance between the individual property rights of its citizens and the health, safety and general welfare of the public as promoted by reasonable restrictions on those property rights."[8]

Article 7, Chapter 22 of Title 15.2, §§ 15.2-2280 through 15.2-2316 contains the enabling statutes governing zoning in Virginia. Section 15.2-2286(4) and (7) expressly authorizes zoning ordinance provisions governing the administration and the amendment of the ordinance. Other statutory provisions require that specific procedures be followed in the amendment of a zoning ordinance.[9] These statutory requirements are mandatory and must be followed as part of the rezoning process.[10] The detailed procedures governing the day-to-day administration of a zoning ordinance, however, generally are provided by the zoning ordinance itself.[11]

The Supreme Court of Virginia consistently has recognized a significant distinction in the roles a local governing body plays in adopting zoning regulations and in reviewing and approving site plans and subdivision ordinances. The zoning and rezoning of properties is a legislative function that the governing

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[2] *See* Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); Vollin v. Arlington Co. Electoral Bd., 216 Va. 674, 678-79, 222 S.E.2d 793, 797 (1976); 1990 Op. Va. Att'y Gen. 155, 155 and opinions cited therein.

[3] 2003 Op. Va. Att'y Gen. 45, 46.

[4] *See* County Bd. v. Brown, 229 Va. 341, 344, 329 S.E.2d 468, 470 (1985); Gordon v. Bd. of Supvrs., 207 Va. 827, 832, 153 S.E.2d 270, 274 (1967); Johnson v. County of Goochland, 206 Va. 235, 237, 142 S.E.2d 501, 502 (1965).

[5] Commonwealth v. County Bd., 217 Va. 558, 574, 232 S.E.2d 30, 40 (1977) (quoting Bd. of Supvrs. v. Horne, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975)); *see also Brown*, 229 Va. at 344, 329 S.E.2d at 470.

[6] *County Board*, 217 Va. at 575, 232 S.E.2d at 41.

[7] Va. Real Estate Bd. v. Clay, 9 Va. App. 152, 157, 384 S.E.2d 622, 625 (1989).

[8] *Horne*, 216 Va. at 120, 215 S.E.2d at 458.

[9] *See, e.g.*, VA. CODE ANN. § 15.2-2204 (Supp. 2005); § 15.2-2285 (2003); § 15.2-2286(A)(7) (Supp. 2005).

[10] *See* Town of Vinton v. Falcun Corp., 226 Va. 62, 306 S.E.2d 867 (1983).

[11] *See* JOHN MARTINEZ, 3 SANDS & LIBONATI, LOCAL GOVERNMENT LAW, § 16.11 (2006); 1 E. YOKLEY, ZONING LAW AND PRACTICE §§ 7-9, 7-10 (4th ed. 2000).

body may not delegate to others.[12] Approval of subdivision plats and site plans, on the other hand, is a ministerial, rather than a discretionary, function, which may be delegated and enforced by mandamus when the applicant has complied with the requirements of the local ordinance.[13]

Section 15.2-2258 provides, in part, that:

> Whenever the owner or proprietor of any tract of land located within any territory to which a subdivision ordinance applies desires to subdivide the tract, he shall submit a plat of the proposed subdivision to the planning commission of the locality, or an agent designated by the governing body thereof for such purpose.

Where the language of a statute is free from ambiguity, its plain meaning will control.[14] The language of § 15.2-2258 is clear and unambiguous. The board of supervisors, as the governing body of the county, is authorized to designate either the planning commission or some other entity or individual as its agent for approval of preliminary and final subdivision plats.

Conclusion

Accordingly, it is my opinion that the board of supervisors of a county having the county administrator form of government may designate an agent other than the planning commission to approve preliminary and final subdivision plats.

Thank you for letting me be of service to you.

Sincerely,

Robert F. McDonnell

2:213;1:1055; 1:941/06-039

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[12] Laird v. City of Danville, 225 Va. 256, 261, 302 S.E.2d 21, 24 (1983).

[13] *See Horne*, 216 Va. at 119, 215 S.E.2d at 457.

[14] *See* Portsmouth v. Chesapeake, 205 Va. 259, 269, 136 S.E.2d 817, 825 (1964).