



# COMMONWEALTH of VIRGINIA

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The Honorable William J. Howell  
Speaker, House of Delegates  
106 Carter Street  
Falmouth, Virginia 22406

Dear Speaker Howell:

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

## Issue Presented

You ask several questions regarding § 15.2-2260(G), a statute relating to local subdivision ordinances, as enacted by the 2008 Session of the General Assembly<sup>1</sup> and added to the enabling statutes governing subdivisions in Article 6, Chapter 22 of Title 15.2, §§ 15.2-2240 through 15.2-2279 (“Article 6”).

## Background

You present a situation where a developer intends to subdivide “Blackacre.” You state that the developer submitted a preliminary subdivision plat for county approval that contained 189 lots. The proposed preliminary plat did not show or indicate that the development was a multiple phase development or that there were specified sections for the development. You state that the county planning commission approved the preliminary plat on July 24, 2003. On January 13, 2005, the developer submitted a final plat, entitled “Blackacre, Section 1,” for only 28 of the 189 lots.

Along with the plat, the developer submitted a construction plan showing the 189-lot subdivision divided into 7 sections with 28 lots shown as Section 1. Additionally, you state that the county planning commission approved the 28-lot plat, which was recorded on January 3, 2007, after the developer posted the surety required by the county subdivision ordinance. You relate that the developer took no further action until January 2008, when he requested a determination regarding the vesting of the preliminary subdivision plat.

The county planning department informed the developer that his preliminary plat is valid for five years from the date of approval, or until July 24, 2008, pursuant to § 15.2-2260. You state that the developer has challenged the planning director’s determination claiming the preliminary subdivision plat should be valid for five years from the date he recorded the 28-lot Section 1 plat, or until January 3, 2012, pursuant to § 15.2-2241(5). Furthermore, the developer advises that pursuant to § 15.2-2260(G), which became effective July 1, 2008, the preliminary plat is entitled to an additional five years of validity every time he records a final plat of a subsequent section. The developer’s position effectively could extend the validity of the preliminary plat for 35 years from the date the first section was recorded.

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<sup>1</sup>2008 Va. Acts. ch. 426, available at <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0426+pdf>.

### Applicable Law and Discussion

As a preliminary matter applicable to all of your questions and in accord with the rule of statutory construction *in pari materia*,<sup>2</sup> statutory provisions are not to be considered as isolated fragments of law. Such provisions are to be considered as a whole, or as parts of a greater connected, homogeneous system of laws, or a single and complete statutory compilation.<sup>3</sup> Statutes *in pari materia* are considered as if they constituted but one act, so that sections of one act may be considered as though they were parts of the other act.<sup>4</sup>

“[A]s a general rule, where legislation dealing with a particular subject consists of a system of related general provisions indicative of a settled policy, new enactments of a fragmentary nature on that subject are to be taken as intended to fit into the existing system and to be carried into effect conformably to it, and they should be so construed as to harmonize the general tenor or purport of the system and make the scheme consistent in all its parts and uniform in its operation, unless a different purpose is shown plainly or with irresistible clearness. It will be assumed or presumed, in the absence of words specifically indicating the contrary, that the legislature did not intend to innovate on, unsettle, disregard, alter or violate a general statute or system of statutory provisions the entire subject matter of which is not directly or necessarily involved in the act.”<sup>[5]</sup>

### Question 1

First, you ask whether a preliminary subdivision plat must show all sections or phases of a development at the time the local planning commission approves the preliminary plat to make the extended validity provisions contained in § 15.2-2241(5) applicable to such plat.

Section 15.2-2241 provides that “[a] subdivision ordinance shall include reasonable regulations and provisions that apply to or provide” and subsection 5 provides, in part, that:

If a developer records a final plat which may be a section of a subdivision as shown on an approved preliminary subdivision 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 subdivision plat for a period of five years from the recordation date of the first section, or for such longer period as the local commission or other agent may, at the approval, determine to be reasonable, taking into consideration the size and phasing of the proposed development, subject to the terms and conditions of this subsection and subject to

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<sup>2</sup>“*In para materia*” is the Latin phrase meaning “[o]n the same subject; relating to the same matter.” BLACK’S LAW DICTIONARY 807 (8th ed. 2004).

<sup>3</sup>See *Moreno v. Moreno*, 24 Va. App. 190, 198, 480 S.E.2d 792, 796 (1997).

<sup>4</sup>*Id.*

<sup>5</sup>*Prillaman v. Commonwealth*, 199 Va. 401, 405-06, 100 S.E.2d 4, 7 (1957) (quoting 50 AM. JUR., *Statutes*, § 349, at 345-47, *quoted in* *Washington v. Commonwealth*, 46 Va. App. 276, 298, 616 S.E.2d 774, 785 (2005) (Benton, J. & Fitzpatrick, C.J., dissenting)); *see also* *Smith v. Kelley*, 162 Va. 645, 651, 174 S.E. 842, 845 (1934) (noting that in absence of words to contrary, legislature did not intend to alter or repeal general statute or system).

engineering and construction standards and zoning requirements in effect at the time that each remaining section is recorded.

The quoted language of § 15.2-2241(5) is clear and unambiguous and addresses the filing of final plats of sections of a subdivision “as shown on an approved preliminary subdivision plat.” Furthermore, the clear language of § 15.2-2241(5) provides that “the developer shall have the right to record *the remaining sections shown on the preliminary subdivision plat.*” (Emphasis added.) “Where a statute is unambiguous, the plain meaning is to be accepted without resort to the rules of statutory interpretation.”<sup>6</sup> Clearly, the preliminary subdivision plat is required to show all sections of the proposed development at the time the local planning commission approves the plat for the developer to benefit from the extended validity provision of § 15.2-2241(5).

Therefore, it is my opinion that a preliminary subdivision plat must show all sections or phases of development at the time it is approved by a local planning commission for the developer to benefit from the five-year period of validity pursuant to § 15.2-2241(5).

## Question 2

Next, you present a situation where the county planning commission has approved a preliminary subdivision plat that does not show a phased or sectioned development. You ask whether subsequent approval by the county planning department of the construction plan for such subdivision that shows phased or sectioned development equates to government approval of the subdivision as a phased or sectioned development thereby making § 15.2-2241(5) applicable to the preliminary subdivision plat.

The power of a local governing body, unlike that of the General Assembly, “must be exercised pursuant to an express grant”<sup>7</sup> because the powers of a county “are limited to those conferred expressly or by necessary implication.”<sup>8</sup> Thus, the powers of a local planning department acting under the authority of either a local planning commission or a local governing body are also fixed by statute and are limited to those powers granted expressly or by necessary implication and those that are essential and indispensable.<sup>9</sup>

County zoning and subdivision ordinances are legislatively enacted.<sup>10</sup> Therefore, “waiver of any provision thereof, or delegation to subordinate officials to waive any such provision, likewise must come

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<sup>6</sup>Last v. Va. State Bd. of Med., 14 Va. App. 906, 910, 421 S.E.2d 201, 205 (1992).

<sup>7</sup>Nat'l Realty Corp. v. Va. Beach, 209 Va. 172, 175, 163 S.E.2d 154, 156 (1968).

<sup>8</sup>Bd. of Supvrs. v. Horne, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975).

<sup>9</sup>Ticonderoga Farms, Inc. v. County of Loudoun, 242 Va. 170, 173-74, 409 S.E.2d 446, 448 (1991).

<sup>10</sup>Dick Kelly Enters. v. Norfolk, 243 Va. 373, 382, 416 S.E.2d 680, 685 (1992); *see also* Commonwealth v. Washington Gas Light Co., 221 Va. 315, 323, 269 S.E.2d 820, 825 (1980) (noting that power of State Corporation Commission to compromise and settle is not power to waive and exempt; refusing to find that Commission may imply authority to waive gross receipts when General Assembly did not expressly grant such authority). Neither waiver nor estoppel may be raised to bar the government from exercising its governmental functions when it acts in a governmental capacity. Gwinn v. Alward, 235 Va. 616, 621, 369 S.E.2d 410, 413 (1988); Bd. of Supvrs. v. Booher, 232 Va. 478, 481, 352 S.E.2d 319, 321 (1987); McMahon v. Va. Beach, 221 Va. 102, 108, 267 S.E.2d 130, 134 (1980); Segaloff v. Newport News, 209 Va. 259, 261, 163 S.E.2d 135, 137 (1968); Main v. Dep't of Highways, 206 Va. 143, 150, 142 S.E.2d 524, 529 (1965).

by legislation; there can be no implicit waiver or implicit delegation of such authority.”<sup>11</sup> Article 6 contains Virginia’s subdivision enabling statutes and is replete with express grants of powers to local governing bodies and their authorized agents to administer and enforce subdivision regulations.<sup>12</sup> I find no statutory authority that empowers a county planning department to bind the governing body of a county by implication.

Therefore, it is my opinion that subsequent approval by the county planning department of a subdivision construction plan that shows phased or sectioned development does not operate as governmental approval as a phased or sectioned development where the approved preliminary subdivision plat did not show a phased or sectioned development. Consequently, it is my opinion that § 15.2-2241(5) would not be applicable to such preliminary plat.

### Question 3

Next, you inquire concerning application of § 15.2-2260(G) as enacted by the 2008 Session of the General Assembly.<sup>13</sup> You ask whether approval by a locality of a preliminary subdivision plat that does not identify a phased or sectioned development provides the subdivider with the right to successive five-year periods of extension each time he records a final plat of a portion or section of that subdivision.

Section 15.2-2260(G) provides that:

Once an approved final subdivision plat for all or a portion of the property of a multiple phase development is recorded pursuant to § 15.2-2261, the underlying preliminary plat shall remain valid for a period of five years from the date of the latest recorded plat of subdivision for the property.

The primary goal of statutory interpretation is to interpret statutes in accordance with the legislature’s intent and to construe them in a manner that gives effect to such intent.<sup>14</sup> Legislative intent “‘must be gathered from the words used, unless a literal construction would involve a manifest absurdity.’”<sup>15</sup> The entire statutory provision must be reviewed to ascertain legislative intent.<sup>16</sup>

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<sup>11</sup>*Dick Kelly Enterprises*, 243 Va. at 382, 416 S.E.2d at 685.

<sup>12</sup>*See, e.g.*, VA. CODE ANN. § 15.2-2245(A) (2008) (granting power to act on performance bonds); § 15.2-2254(2) (2003) (granting power to approve plats for recordation); § 15.2-2258 (2008) (granting power of planning commission to act on subdivision plans); §§ 15.2-2259, 15.2-2260, 15.2-2261(B)(1), 15.2-2271(1) (2008) (granting various powers of governing body regarding plats).

<sup>13</sup>*See supra* note 1.

<sup>14</sup>*See Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); 1999 Op. Va. Att’y Gen. 198, 198.

<sup>15</sup>*Watkins v. Hall*, 161 Va. 924, 930, 172 S.E. 445, 447 (1934) (quoting *Floyd v. Harding*, 69 Va. (28 Gratt.) 401, 405 (1877)).

<sup>16</sup>*See Herndon v. St. Mary’s Hospital, Inc.*, 266 Va. 472, 476, 587 S.E.2d 567, 569 (2003) (“In ascertaining legislative intent, we will not single out a particular term or phrase in a statute. Instead, we will construe the words and terms at issue in the context of all the language contained in the statute.”); *Commonwealth v. Jones*, 194 Va. 727, 731, 74 S.E.2d 817, 820 (1953) (noting that, to derive true purpose of act, statute should be construed to give effect to its component parts).

A 2006 Opinion of the Attorney General<sup>17</sup> concludes that pursuant to § 15.2-2260(F), when a preliminary subdivision plat is approved by the local planning commission, or its agent, the plat is valid for a period of five years, provided the subdivider meets the conditions required by the statute. The conditions are that the subdivider must submit a final plat for at least a portion of the property within one year of the approval or such longer period as prescribed by local ordinance.<sup>18</sup> Another 2006 opinion concludes that pursuant to § 15.2-2260(F) the approval of a preliminary subdivision plat expires after the passing of one year when the subdivider or developer fails either to submit a final plat for at least a portion of the property within one year of the approval of the preliminary subdivision plat, or such longer period as prescribed by local ordinance, or diligently pursues approval of the final subdivision plat.<sup>19</sup>

The General Assembly is presumed to have knowledge of and acquiesce in the Attorney General's interpretation of a statute when no corrective amendments are thereafter enacted.<sup>20</sup> Section 15.2-2260(F) concerns preliminary subdivision plats submitted for approval while § 15.2-2260(G) concerns preliminary subdivision plats for multiple phase developments in relation to the recordation of final subdivision plats for such developments. Section 15.2-2260(G) adds to the existing validity period for preliminary subdivision plats for multiple phase developments in circumstances where a final subdivision plat is recorded. However, in cases where the preliminary subdivision plat did not show a phased or sectioned development, it is my opinion that the validity period of five years may not be read to be cumulative.<sup>21</sup> Therefore, I answer your inquiry in the negative.<sup>22</sup>

#### Question 4

Depending on the size of the subdivision shown on an approved preliminary subdivision plat, you ask whether the language of § 15.2-2260(G) gives a developer multiple five-year periods in which to record any and all remaining portioned or sectioned final plats. Subsection G begins with the statutory condition precedent phrase “[o]nce an approved final subdivision plat for all or a portion of the property” for establishing the five-year validity period for an underlying preliminary plat. The phrase “from the

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<sup>17</sup>2006 Op. Va. Att’y Gen. 75, 78.

<sup>18</sup>*Id.*

<sup>19</sup>2006 Op. Va. Att’y Gen. 71.

<sup>20</sup>*See Lee Gardens Arlington Ltd. P’ship v. Arlington County Bd.*, 250 Va. 534, 540, 463 S.E.2d 646, 649 (1995); 1996 Op. Va. Att’y Gen.123, 124 n.4.

<sup>21</sup>*See supra* “Questions 1 and 2” and discussion therein.

<sup>22</sup>Since the fact situation you present, as contained in the “Background” section of this opinion, concerns a preliminary subdivision plat that does not show a phased or sectioned development, I answer your question based on that fact. However, you also ask concerning application of § 15.2-2260(G) where the approved preliminary subdivision plat *does* show a phased or sectioned development. In that factual situation, it is my opinion that the recordation of a final subdivision plat for all or a portion of the property of such phased or sectioned development would invoke subsection G and extend the validity period of the preliminary subdivision plat for a period of five years from the latest recorded plat provided all other requirements concerning preliminary and final plats are met. For example, assuming a preliminary subdivision plat for a phased development containing four sections is approved July 1, 2008, such preliminary plat is then valid under § 15.2-2260(F) until July 1, 2009. At that time, an approved final plat of all or a portion of the sections must be recorded. Assuming an approved final plat for Section 1 is recorded by July 1, 2009, the underlying preliminary plat is now valid until July 1, 2014. Assuming the approved final plat for Section 2 is recorded by July 1, 2014, the preliminary plat is now valid until July 1, 2019, etc. Should the approved final plat for Section 2 be recorded on May 1, 2012, the preliminary plat would be valid until May 1, 2017, and for like periods for the remaining sections.

date of the latest recorded plat of subdivision for the property” refers to the “final subdivision plat” contained in the opening statutory condition precedent phrase.

It is my opinion that the plain meaning of the words used in § 15.2-2260(G) is that the approved preliminary subdivision plat is extended for only one five-year period from the date of the latest recorded plat of subdivision for the property.<sup>23</sup>

### Question 5

Regardless of the number of “final” plats that may be approved and recorded in relation to an approved preliminary subdivision plat, you next ask whether § 15.2-2260(G) intends that all such plats are vested regardless of the time that has lapsed. Further, you ask whether such plats are protected from any subsequent changes in the subdivision and zoning ordinances. The clear language of § 15.2-2260(G) pertains to “the underlying preliminary plat.” The five-year period of validity begins only “[o]nce an approved final subdivision plat for all or a portion of the property of a multiple phase development is recorded.”<sup>24</sup>

Accordingly, it is my opinion that it is the underlying preliminary subdivision plat “for a multiple phase development” that remains immune from changes in a subdivision and zoning ordinance for a period of five years from the time an approved final subdivision plat “for all or a portion of the property of a multiple phase development is recorded.”<sup>25</sup>

### Question 6

You also ask whether the term “multiple phase development” in § 15.2-2260(G) limits the vesting period for a preliminary plat to only those preliminary plats that are submitted and approved by a locality’s planning commission as multiple phase developments. The meaning of doubtful words in a statute may be determined by reference to their association with related words and phrases. Thus, according to the maxim *noscitur a sociis*,<sup>26</sup> “the meaning of a word takes color and expression from the purport of the entire phrase of which it is a part, and it must be read in harmony with its context.”<sup>27</sup> The unambiguous language of § 15.2-2260(G) provides that recordation of “an approved final subdivision plat for *all or a portion* of the property of a *multiple phase development*” validates the “underlying preliminary plat” for a period of five years. (Emphasis added.)

Therefore, it is my opinion that § 15.2-2260(G) applies only to an underlying preliminary plat that was approved as a multiple phase development.

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<sup>23</sup> See *supra* note 22 and accompanying text.

<sup>24</sup> Section 15.2-2260(G) (2008).

<sup>25</sup> *Id.*

<sup>26</sup> “The meaning of a word ... takes color and expression from the purport of the entire phrase of which it is a part, and it must be construed so as to harmonize with the context as a whole.” *Kohlberg v. Va. Real Estate Comm’n*, 212 Va. 237, 239, 183 S.E.2d 170, 172 (1971) (explaining doctrine of *noscitur a sociis*). “[I]t is known by its associates.” BLACK’S LAW DICTIONARY, *supra* note 2, at 1087 (noting Latin derivation of *noscitur a sociis*); see also *Va. Beach v. Bd. of Supvrs.*, 246 Va. 233, 236-37, 435 S.E.2d 382, 384 (1993) (noting that words in statute are construed according to context in which they are used and by considering language used in statute and in other statutes dealing with closely related subjects).

<sup>27</sup> *Andrews v. Am. Health & Life Ins. Co.*, 236 Va. 221, 225, 372 S.E.2d 399, 401 (1988) (quoting *Turner*, 226 Va. at 460, 309 S.E.2d at 339).

Honorable William J. Howell  
August 26, 2008  
Page 7

### Question 7

Finally, you ask whether the time deadlines established in §§ 15.2-2241 and 15.2-2260 regarding approval and validity of preliminary subdivision plats are to be strictly construed. The General Assembly, “in providing for local control of land subdivision, delegated to each locality a portion of the police power of the [Commonwealth].”<sup>28</sup> Unlike the General Assembly, however, the “powers of boards of supervisors are fixed by statute and are only such as are conferred expressly or by necessary implication.”<sup>29</sup> This means that localities, “in the exercise of their powers, may validly act only within the authority conferred upon them.”<sup>30</sup>

Therefore, it is my opinion that the deadlines set forth in §§ 15.2-2241 and 15.2-2260 or enacted in local ordinances must be strictly construed. Accordingly, a locality does not have the ability to waive or extend such deadlines in matters where the subdivider can show that application of the statutorily imposed deadlines would be fundamentally unfair given the circumstances that led to his failure to meet such deadlines for obtaining approval for the recording final plats.

Thank you for letting me be of service to you.

Sincerely,



Robert F. McDonnell

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<sup>28</sup> *National Realty*, 209 Va. at 174-75, 163 S.E.2d at 156; *see also* *Bd. of Supvrs. v. Georgetown Land Co.*, 204 Va. 380, 383, 131 S.E.2d 290, 292 (1963) (noting that enactment of Land Subdivision Act has delegated portion of police power of Commonwealth to localities).

<sup>29</sup> *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).

<sup>30</sup> *Sydnor Pump & Well Co. v. Taylor*, 201 Va. 311, 316, 110 S.E.2d 525, 529 (1959), *quoted in Segaloff*, 209 Va. at 261, 163 S.E.2d at 137.