

Chapter 22

Subdivisions

22-100 Introduction

A *subdivision*, unless otherwise defined by local ordinance, means the division of a parcel of land into three or more lots of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. *Virginia Code § 15.2-2201*. In Albemarle County, a *subdivision* means “any division of land, and includes resubdivisions, rural subdivisions, family subdivisions, and the establishment of a condominium regime.” *Albemarle County Code § 14-106*. The agent designated in the locality’s subdivision ordinance for its administration may be authorized to determine whether a proposed division is a subdivision within the meaning of the subdivision ordinance. *See, 1987-88 Va. Op. Atty. Gen. 208*.

Purposes of Subdivision Regulations

- Establish the procedures for dividing land.
- Establish the requirements for the subdivider to provide public infrastructure and other improvements when the land is developed, rather than placing the burden on the public at large.
- Do not regulate land uses, and are not a substitute for zoning regulations.

Where zoning regulations delineate the uses and the permissible ways in which land may be developed, subdivision regulations identify the procedures for dividing land and impose requirements for providing public infrastructure and other improvements when the land is developed. Thus, subdivision regulations are different from zoning regulations, and are not substitutes for zoning regulations. *1985-86 Va. Op. Atty. Gen. 90*.

Subdivision regulations exist to assure the orderly subdivision and development of land and to promote the public health, safety, convenience and welfare of citizens. *Virginia Code §§ 15.2-2200, 15.2-2240; 1989 Va. Op. Atty. Gen. 100*. Among the key concerns addressed by subdivision ordinances are the coordination of existing and planned streets, the provision of adequate water, sewerage and drainage systems, the extent and manner in which streets will be improved, and the dedication for public use of rights-of-way and other site-related improvements. *1989 Va. Op. Atty. Gen. 100*. One of the main purposes of the subdivision enabling legislation is to require a subdivider to lay out and construct streets and other improvements in accordance with state and local standards before the maintenance is taken over by VDOT or the city and to relieve the public to this extent of the burden that would otherwise exist. *Board of Supervisors of Fairfax County v. Ecology One, Inc.*, 219 Va. 29 (1978).

22-200 A summary of the evolution of subdivision regulation

In *Gardner v. City of Baltimore Mayor and City Council*, 969 F.2d 63 (4th Cir. 1992), the court summarized the evolution of subdivision regulations as follows:

“Land use controls over subdivisions date from the late nineteenth century. The original statutes took the form of land platting legislation and were intended to provide a more efficient method of conveying property. See D. Hagman & J. Juergensmeyer, *Urban Planning and Land Development Control Law* § 7.2, at 191 (2d ed. 1986). Before subdivision control, land was sold by reference to metes and bounds, an unreliable system that often resulted in confusion and overlapping titles. *See id.* Subdivision regulations avoided these problems by requiring land developers to record in the local records office a ‘plat,’ or map, of the property. The plat, which contained precise dimensions, subdivided the land into blocks and lots and indicated the location of roads and parks. Once the plat was recorded, individual lots could then be conveyed by reference to the lot, block, and plat name, thereby avoiding the confusion inherent in the metes and bounds system. *See id.*”

Beginning in the 1920s, subdivision control became not only a mechanism to simplify the conveyance of individual lots, but also a means through which localities could regulate urban and suburban development through comprehensive planning. *See id. at 191-92*. Localities began to use subdivision regulations to prevent the construction of new streets that were not well aligned with existing roads. *See D. Mandelker, Land Use Law*, § 9.02, at 362 (2d ed. 1988). Subdivision control also functioned to ensure that development did not result in platted lots of unusable sizes that remained vacant, *see D. Hagman & J. Juergensmeyer, supra*, § 7.2, at 192, or in the splitting of large holdings suited for industrial or agricultural uses into numerous parcels that a private person could not reassemble, *see Note, Land Subdivision Control*, 65 Harv.L.Rev. 1226 (1952).

Following the second world war, localities used subdivision control to implement more extensive substantive regulation. With the expansion of suburban areas, subdivision regulation turned to ensuring the provision of adequate local governmental facilities and services. Thus, such regulation mandated the construction of parks and other recreational facilities as well as schools for area residents. *See D. Hagman & J. Juergensmeyer, supra*, § 7.2, at 193. Comprehensive planning also became concerned with structuring development to avoid serious off-site drainage problems and to avert the negative impact of development on the local environment. *See id.* Subdivision regulation also became a mechanism to ensure that streets were properly constructed and were sufficiently wide for anticipated traffic. *See R. Platt, Land Use Control: Geography, Law, and Public Policy 222* (1991). Finally, localities required each lot to have adequate access to public services and utilities, such as water, sewage, gas, electricity, telephone, and cable television. *See id. at 223.*

22-300 The scope of the authority to regulate the division of land

A locality has considerable discretion to determine which subdivisions should be controlled. *See, Board of Supervisors of Loudoun County v. Georgetown Land Company*, 204 Va. 380 (1963) (subdivision-enabling statutes authorize locality to reasonably define the term “subdivision”). Beyond that, however, the exercise of powers under a subdivision ordinance must be authorized by the subdivision-enabling statutes in Virginia Code § 15.2-2240 *et seq.* *See, National Realty Corp. v. Virginia Beach*, 209 Va. 172 (1968).

The scope of a locality’s subdivision regulations are delineated in Virginia Code § 15.2-2241, which prescribes the mandatory provisions that *must* be included in a subdivision ordinance, and Virginia Code §§ 15.2-2242, 15.2-2243 and 15.2-2244.1, which prescribe the optional provisions that *may* be included in a subdivision ordinance. A locality does not have the power to enact a subdivision ordinance which is more expansive than the enumerated requisites contained in Virginia Code §§ 15.2-2242, 15.2-2243, 15.2-2244 and 15.2-2244.1. *See, Board of Supervisors of Augusta County v. Countryside Investment Co.*, 258 Va. 497 (1999). Finally, a locality is entitled to exercise discretion only to the extent permitted by Virginia Code §§ 15.2-2241 through 15.2-2241.1. *See, Countryside Investment, supra; Helmick v. Town of Warrenton*, 254 Va. 225 (1997).

A subdivision ordinance may not include provisions that effectively allow a locality to make a land use policy decision when considering a subdivision plat. In *Countryside Investment Co., supra*, the county denied a subdivision master plan, relying on a provision of its subdivision ordinance that allowed the board to deny a plat if, in its opinion, the land was unsuitable for subdivision. The ordinance also provided that land was deemed unsuitable for subdivision if it would not preserve a “rural environment.” In finding that the challenged provisions of the subdivision ordinance went beyond that enabled by Virginia Code §§ 15.2-2241 and 15.2-2242, the Virginia Supreme Court said that a locality may not “under the guise of a subdivision ordinance, enact standards which would effectively permit it to rezone property in a manner inconsistent with the uses permitted by the property’s zoning classification.”

A subdivision ordinance may also not consider the anticipated improvements on a subdivider’s proposed lots when considering an application. *Seymour v. City of Alexandria*, 273 Va. 661 (2007) (regulations for resubdivision improperly provided that lots could not be resubdivided “in such a manner as to detract from the value of adjacent property”).

22-310 Mandatory provisions

Virginia Code § 15.2-2241 sets forth several provisions that *must* be included in a subdivision ordinance:

- Plat details: Plat details which meet the standard for plats as adopted under Virginia Code § 42.1-82, which is part of the Virginia Public Records Act. *Virginia Code § 15.2-2241(1)*. See also, Virginia Code § 15.2-2258, which requires, among other things, that if any portion of the land lies in a drainage district or a mapped dam break inundation zone, those facts must be set forth on the plat. In addition, if any grave, object, or structure marking a place of burial exists on the lands, they must be identified on the plat. See also, *Albemarle County Code §§ 14-300 through 14-303 for plat requirements*.
- Coordination of streets: 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. *Virginia Code § 15.2-2241(2)*.
- Drainage, flood control and other public purposes: 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, for light and air, and for identifying soil characteristics. *Virginia Code § 15.2-2241(3)*. Note that Virginia Code § 15.2-2243.1 requires a subdivider to pay 50% of the contract ready costs for necessary upgrades to an impounding structure attributable to the project.
- Design for streets, public utilities and community facilities: The extent and manner in which streets will be graded, graveled or otherwise improved, and water and storm and sanitary sewer and other public utilities or other community facilities will be installed. *Virginia Code § 15.2-2241(4)*. In contrast to Virginia Code § 15.2-2241(2) pertaining to the coordination of streets, the language in subsection (4) does not require that existing or planned streets be present in existing or future subdivisions on adjacent properties in order for a locality to implement regulations providing for the extent to which subdivision streets will be improved. The plain and ordinary meaning of the term *extent* means the “amount of space which [the street] occupies or the distance over which it extends” and includes the *length* and *width* of the street. *Webster’s Third New International Dictionary (1993)*. The term *extend* means “to cause to stretch out or reach” or to “push to a farther point.” *Webster’s Third New International Dictionary (1993)*.
- Dedication of right-of-way and certain public improvements for public use: Accepting the dedication for public use of any right-of-way located within a subdivision where a street, curb, gutter, sidewalk, bicycle trail, drainage or sewerage system, waterline as part of a public system, or other improvement dedicated for public use has been constructed or will be constructed and be publicly maintained. *Virginia Code § 15.2-2241(5)*. Recordation of the plat operates to transfer to the locality, in fee simple, the portion of the subdivision set apart for streets, alleys or other public use and to transfer to the locality any easement on the plat to create a public right of passage and such easements shown on the plat for the conveyance of stormwater, domestic water and sewage, including the installation and maintenance of any facilities used for such purposes as the locality may require. *Virginia Code § 15.2-2265*.
- Vehicular ingress and egress: Site-related improvements for vehicular ingress and egress, including traffic signalization and control, for public access streets. *Virginia Code § 15.2-2241(5)*.
- Critical slope stabilization: Site-related improvements for structures necessary to ensure the stability of critical slopes. *Virginia Code § 15.2-2241(5)*.

- Stormwater management facilities: Site-related improvements for stormwater management facilities. *Virginia Code § 15.2-2241(5)*.
- Phased subdivisions: The phasing of sections of a subdivision, with certain rights protected, provided the requirements of Virginia Code § 15.2-2241(5) are satisfied. *Virginia Code § 15.2-2241(5)*.
- Security to guarantee construction of required improvements: In lieu of constructing the required improvements prior to final subdivision plat approval, the developer may provide security to guarantee their construction or installation. *Virginia Code § 15.2-2241(5)*. The primary purpose of a performance security requirement is to guarantee the completion of the improvements covered by the security. *See, Board of County Supervisors of Prince William County v. Sie-Gray Developers, Inc.*, 230 Va. 24 (1985). The security primarily protects the locality from assuming undesired financial burdens, but also indirectly protects residents of a new subdivision by ensuring that there will be adequate access and that public facilities will be constructed. *1987-88 Va. Op. Atty. Gen. 204*. A locality may require an acceptable form of surety for the completion of public improvements, such as a bond, letter of credit, escrow or other performance guarantee.
- Security to provide for maintenance of a dedicated street until acceptance into state-maintained system: If the locality accepts the dedication of a road for public use and the street, due to factors other than its quality of construction, is not acceptable into the secondary system of state highways, then the locality may require the developer to provide security to pay for the maintenance of the street until it is accepted into the state system. *Virginia Code § 15.2-2241(5)*.
- Conveyance of easements for cable television and certain utilities: The required 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. *Virginia Code § 15.2-2241(6)*.
- Monuments: Monuments of specific types to be installed establishing street and property lines. *Virginia Code § 15.2-2241(7)*.
- Period of validity of approved final plat: Unless a plat is filed for recordation within six months after final approval thereof or a longer period provided by the locality, the approval must be withdrawn and the plat marked void and returned to the agent. If facilities to be dedicated to public use are under construction or the developer has furnished security to the locality, the time for recording the final plat is one year or the period provided in the security agreement, whichever period is longer. *Virginia Code § 15.2-2241(8)*.
- Administration and enforcement: The administration and enforcement of the subdivision ordinance, including the imposition of reasonable fees and charges for the review of plats and plans, and for the inspection of facilities required to be installed. *Virginia Code § 15.2-2241(9)*.
- Family divisions: Reasonable provisions permitting a single division of a parcel for the purpose of sale or gift to a member of the immediate family of the property owner in accordance with the provisions of Virginia Code § 15.2-2244. *Virginia Code § 15.2-2241(10)*.
- Release of security: The periodic partial and final complete release of any bond, escrow, letter of credit, or other performance guarantee required by the County for required improvements, in accordance with the provisions of Virginia Code § 15.2-2245. *Virginia Code § 15.2-2241(11)*.

22-320 Optional provisions

Virginia Code §§ 15.2-2242, 15.2-2243 and 15.2-2244.1 set forth several provisions that *may* be

included in a subdivision ordinance. This list does not include specific enabling authority in Virginia Code § 15.2-2242 granted to one or a very limited number of localities. Some of these optional provisions have been adopted by Albemarle County, as noted below.

- Variations or exceptions: Variations in or exceptions to the general regulations of a subdivision ordinance may be allowed in cases of unusual situations or when strict adherence to the general regulations would result in substantial injustice or hardship. *Virginia Code § 15.2-2242(1); Albemarle County Code §§ 14-224.1 and 14-225.1; Logan v. City Council of the City of Roanoke, 275 Va. 483 (2008)* (upholding subdivision regulations authorizing the subdivision agent to make exceptions to otherwise applicable subdivision regulations if the size or shape of the land, topography, proposed land use or other special conditions made compliance with the subdivision regulations impractical, and to make exceptions to the minimum paved width of streets if the cross slope would not permit a greater width).
- Health official opinion on subsurface sewage disposal: 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 that method of sewage disposal is to be utilized in the development of a subdivision. *Virginia Code § 15.2-2242(2)(i); Albemarle County Code §§ 14-309 and 14-310.*
- Requirement that buildings will connect to public water or sewer system: All buildings constructed on lots resulting from the subdivision of a larger tract that abuts or adjoins a public water or sewer system or main shall be connected to that public water or sewer system or main, subject to the provisions of Virginia Code § 15.2-2121. *Virginia Code § 15.2-2242(2)(ii); Albemarle County Code § 14-414.*
- Statement that private streets do not meet state standards and will not be publicly maintained: If the streets in a subdivision will not be constructed to meet state standards, 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 VDOT or the locality. Grantors of any subdivision lots to which such statement applies must include the statement on each deed of conveyance thereof. *Virginia Code § 15.2-2242(3); Albemarle County Code §§ 14-303(N) and 14-317.*
- Private street standards: Minimum standards for the construction of streets that will not be built to state standards. *Virginia Code § 15.2-2242(3); Albemarle County Code §§ 14-410 and 14-412.*
- Security to guarantee construction of private streets: In lieu of constructing required private streets prior to plat approval, the developer may provide security to guarantee their construction or installation. *Virginia Code § 15.2-2242(3); Albemarle County Code § 14-435.*
- Voluntary funding of off-site street improvements: The voluntary funding of off-site street improvements and reimbursement of advances by the governing body. *Virginia Code § 15.2-2242(4).* There is no express authority in the subdivision enabling authority for a locality to require a subdivider to construct off-site improvements or to make improvements to existing public roads. *Hylton Enterprises, Inc. v. Board of Supervisors of Prince William County, 220 Va. 435 (1979); see, Potomac Greens v. City Council, 761 F. Supp. 416 (E.D.Va. 1991), rev'd on other grounds and vacated, 6 F.3d 173 (4th Cir. 1993)* (localities have no authority to exact off-site improvements to public highways, but city could require elimination of part of parking facility under its general police powers). However, a subdivider may voluntarily agree to make improvements to existing access roads. *Board of Supervisors of Prince William County v. Sie-Gray Developers, Inc., 230 Va. 24 (1985).* See section 25-400 et seq. for a discussion of the authority to require off-site road improvements as a condition of subdivision plat approval.

- Reimbursement for off-site street improvements, the need for which is substantially generated by the subdivision: If a developer makes an advance of payments for construction of reasonable and necessary street improvements located off-site, and the need for those improvements is substantially generated and reasonably required by the construction or improvement of the subdivision, the locality may agree to reimburse the subdivider under statutorily prescribed conditions. *Virginia Code § 15.2-2242(4)*.
- Provisions pertaining to solar energy: Provisions for establishing and maintaining access to solar energy to encourage the use of solar heating and cooling devices in new subdivisions. The provisions apply to a new subdivision only when so requested by the subdivider. *Virginia Code § 15.2-2242(6)*.
- Provisions for clustering single-family dwellings: Provisions for clustering single-family dwellings and preservation of open space developments that comply with the requirements of Virginia Code § 15.2-2286.1. *Virginia Code § 15.2-2242(8)*.
- Dedication of land and construction of sidewalk on subdivision lot on pre-existing street: Provisions requiring, where a lot being subdivided or developed fronts on an existing street, and adjacent property on either side has an existing sidewalk, the dedication of land for, and construction of, a sidewalk on the property being subdivided or developed, to connect the existing sidewalk. *Virginia Code § 15.2-2242(9)*. This provision does not usurp the authority of localities (*Virginia Code § 15.2-2241(5)*) or VDOT to require sidewalks on a new street or highway. *Virginia Code § 15.2-2242(9)*.
- Phase I environmental site assessments: Provisions requiring and considering Phase I environmental site assessments based on the anticipated use of the property that meet generally accepted national standards. *Virginia Code § 15.2-2242(10)*.
- Disclosure and remediation of contamination: Provisions requiring disclosure and remediation of contamination and other adverse environmental conditions of the property prior to approval of the subdivision plat. *Virginia Code § 15.2-2242(11)*.
- Payment by subdivider of pro rata share of certain facilities: 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. *Virginia Code § 15.2-2243; Albemarle County Code § 14-424*.
- Durational restrictions on a family subdivision; limitation on parcel size: Provisions allowing a family subdivision only if: (1) the property has been owned for at least 15 consecutive years by the current owner or a member of the immediate family; and (2) the landowner agrees to place a restrictive covenant on the property that prohibits the transfer of the subdivided lot to a nonmember of the immediate family for a period of 15 years, subject to any reduction or exceptions to the 15-year period provided in the covenant when changed circumstances so require. *Virginia Code § 15.2-2244.1*. The restrictive covenant may be modified by such a reduction or exception, and the locality must execute a recordable instrument reflecting the modification. *Virginia Code § 15.2-2244.1*. A locality also may require that the subdivided lot be no more than one acre and otherwise meets the requirements of state and local law. *Virginia Code § 15.2-2244.1*

22-330 Implied authority, or lack thereof

Over the years, the Attorney General has opined that localities have, or lack, the implied authority to impose additional subdivision regulations, including:

- Requiring assurance of adequate water quantity: Virginia Code §§ 15.2-2121 and 15.2-2241 through 15.2-2246, as well as the legislative intent expressed in Virginia Code § 15.2-2200, may enable a

locality to require assurance of an adequate quantity of water for each lot in a subdivision when water is to be provided by individual wells. *1997 Va. Op. Atty. Gen. 70*. This opinion may be suspect in light of the decision in *Board of Supervisors of Augusta County v. Countryside Investment Co.*, 258 Va. 497 (1999), where the Virginia Supreme Court held that Virginia Code § 15.2-2200 is not a source of power, and a locality does not have the power to enact a subdivision regulation that is more expansive than the enumerated regulations enabled in Virginia Code §§ 15.2-2241 and 15.2-2242.

- Creation of homeowner’s association; ownership and maintenance of private streets: The express grant of authority to localities to allow privately owned roads implies the power to require a subdivider to create a homeowner’s association under the Virginia Property Owners’ Association Act and to own and maintain private streets in a subdivision. *1992 Va. Op. Atty. Gen. 53*.
- No authority to regulate lot sizes under subdivision regulations: The inclusion of provisions allowing the regulation of lot sizes in the zoning enabling legislation, and the lack of similar provisions in the subdivision enabling legislation, compel the conclusion that a locality may not impose a minimum lot size requirement for mobile homes, mobile home parks or campgrounds under its subdivision regulations. *1985-86 Va. Op. Atty. Gen. 90*.
- No authority to prohibit buildings on certain lots: A locality is not authorized to prohibit buildings on subdivision lots abutting private “paper streets” in a subdivision antedating its subdivision ordinance. *1979-80 Va. Op. Atty. Gen. 328*.

22-340 Obligation to comply with the subdivision ordinance in order to subdivide land

Virginia Code § 15.2-2254 provides that a developer cannot subdivide land “without fully complying with the provisions of the subdivision ordinance.” *Board of Supervisors of Culpeper County v. Greengael, L.L.C.*, 271 Va. 266 (2006) (an independent investigation regarding the provision of water and sewer service undertaken by the county, regardless of the information acquired, could not substitute for the written assurance that water and sewer would be provided, as required by the subdivision ordinance). Thus, unless land is divided by order of the court in a partition proceeding, it may be divided only by a plat of subdivision. *Virginia Code § 15.2-2254(1)*.

A *plat* or *plat of subdivision* (hereinafter, “plat”) is a schematic representation of land divided or to be divided and information required by law. *Virginia Code § 15.2-2201*. A plat may not be recorded unless and until it has been submitted to and approved by the locality. *Virginia Code § 15.2-2254(2)*. A person may not sell or transfer any land of a subdivision before a plat has been duly approved and recorded, unless the subdivision was lawfully created prior to the adoption of the subdivision ordinance. *Virginia Code § 15.2-2254(3)* (but also providing that this prohibition does not prevent the recordation of the instrument by which the land is transferred or the passage of title as between the parties to the instrument).

Although recording an approved plat with the clerk of the circuit court is required to lawfully transfer a lot from a subdivision, any alleged failure to comply with the recording requirements does not inhibit the passage of title between the parties. *Virginia Code § 15.2-2254; Matney v. Cedar Land Farms, Inc.*, 216 Va. 932 (1976); *see, Justus v. Lowell*, 28 Va. Cir. 505 (1992) (“compliance with the terms of the ordinance is not a prerequisite to the rights of the parties to convey, as between themselves, or to make use of the recording statutes”; however, the right to convey title “does not insure that such title is marketable”); *Leighton v. Virginia Department of Health*, 2001 Va. Cir. LEXIS 1 (2001) (“a failure to properly subdivide the parcel may impede future plat approval and places significant limitations on the use of the property by the owner”).

22-350 Plat review by VDOT

Within 10 business days after a final subdivision plat is submitted, the locality must submit the plat to VDOT if it will substantially affect transportation on state-controlled highways. *Virginia Code § 15.2-*

2222.1(C). The plat must include a supplement traffic analysis if required by local ordinance or VDOT regulations. *Virginia Code § 15.2-2222.1(C)*.

Within 30 days after its receipt of the plat, VDOT must either provide written comment on the plat to the locality or schedule a meeting with the locality’s planning commission or other agent (to be held within 60 days after VDOT received the plat) and the applicant to discuss potential modifications to the plat to address concerns and deficiencies. *Virginia Code § 15.2-2222.1(C)*.

VDOT must complete its final review within 90 days after it receives the plat from the locality. *Virginia Code § 15.2-2222.1(C)*. The submission of the plat to VDOT tolls all times for local review under Virginia Code § 15.2-2259 until the locality has received VDOT’s final comments. *Virginia Code § 15.2-2222.1(C)*. If the locality has not received any comments from VDOT within the specified period, it may assume that VDOT has no comments. *Virginia Code § 15.2-2222.1(D)*.

22-400 Procedure under Albemarle County’s subdivision ordinance

Localities variously assign subdivision plat review and approval to the locality’s designated subdivision agent, to the planning commission or to the governing body itself. *1991 Va. Op. Atty. Gen. 68*. In Albemarle County, this function is delegated to the chief of zoning and current development, who functions as the agent for the board of supervisors. *Albemarle County Code § 14-200*. If a subdivider has complied with all applicable laws, the approval of a subdivision plat is a ministerial function. *See, Board of County Supervisors of Prince William County v. Hylton Enterprises, Inc.*, 216 Va. 582 (1976).

22-410 The key steps to action on a preliminary subdivision plat in Albemarle County

Following are a table and an outline of the key steps and events in having a preliminary subdivision plat (hereinafter, *preliminary plat*) approved by Albemarle County. Simpler procedures and different improvement requirements apply to plats for rural subdivisions (*Albemarle County Code § 14-209*), family subdivisions (*Albemarle County Code § 14-210 et seq.*; *see section 22-600*) and certain two-lot subdivisions (*Albemarle County Code § 14-213(B)*). A subdivider may submit a final subdivision plat (hereinafter, *final plat*) without first obtaining approval of a preliminary plat. *Albemarle County Code § 14-213(A)*.

Nine Key Steps to Action on a Preliminary Subdivision Plat
<ol style="list-style-type: none">1. Preliminary application conference.2. Submittal of preliminary plat and determination of completeness.3. Notice by agent to abutting landowners and members of the board of supervisors and the planning commission.4. Review of preliminary plat by site review committee.5. Site review committee forwards requirements and recommendations to the agent.6. Subdivider makes revisions to the preliminary plat plan, if necessary.7. Consideration of preliminary plat by the agent or the planning commission.8. Action on preliminary plat by the agent or the planning commission.9. If preliminary plat disapproved, subdivider may appeal decision to the circuit court or the board of supervisors.

- **Preliminary application conference:** Before a preliminary plat is submitted, the subdivider and county staff hold a preliminary application conference. The conference allows the subdivider to inform staff of the nature of the subdivision to allow an informal program to guide the review and approval of the preliminary plat. The developer may present a preliminary schematic showing the boundary lines of the property, existing land conditions and topography, and a general layout design of the proposed subdivision, building setback lines, the zoning of the property and abutting properties, and notations as to whether the land is in a public water supply watershed, an agricultural-forestral district, and whether the property or abutting properties are under open-space or conservation easements. Statements made by staff and the subdivider at the conference are not binding. *Albemarle County Code § 14-215*.

- Preliminary plat submittal and determination of completeness: A preliminary plat may be submitted on the dates determined by the agent. A preliminary plat is deemed to be *officially submitted* on the date of the next application deadline following its submittal, and its acceptance for official submittal by the agent. *Albemarle County Code § 14-216(A)*. This date is used for computing the period in which the county is required to approve or disapprove the preliminary plat. Within ten days after the date the preliminary plat is officially submitted, the agent must determine whether it contains the information required by the county's subdivision ordinance or other laws, and if it is incomplete she disapproves the preliminary plat. *Albemarle County Code § 14-216(B)*. Within 15 days after the date of disapproval, the subdivider may correct deficiencies in the preliminary plat and request that its review be reinstated. *Albemarle County Code § 14-216(C)*. The determination as to whether a plat submittal is complete may require the exercise of discretion and not be purely ministerial. *Umstatted v. Centex Homes*, 274 Va. 541 (2007) (mandamus is not a proper remedy to compel a locality to accept a preliminary plat as complete because the determination as to whether the submittal was complete required the official to investigate the submitted plat, the conditions existing on the subject land and the surrounding area, and the exercise of discretion and judgment in applying the applicable statutes, ordinances and regulations to the conditions found to exist (such as whether any waivers would be required)). If the preliminary plat requires the approval of one or more features by a state agency or public authority, the agent must forward the preliminary plat to each agency or authority whose approval is required within ten business days after the preliminary plat is submitted. *Virginia Code § 15.2-2260(A)*.
- Agent provides notice to abutting landowners and members of the board of supervisors and the planning commission: At least five days before the site review committee meets to consider a preliminary plat, the agent must provide notice that a preliminary site plan has been submitted to each abutting landowner and to members of the board of supervisors and the planning commission. *Albemarle County Code § 14-216(E) and (F)*. The notice must describe the proposed subdivision, the office where the plat may be viewed, and the date of the site review committee. *Albemarle County Code § 14-216(E)*. The notice also must advise the recipients of their right to request the planning commission to consider the plat or, if commission review is otherwise required, the date of that review. *Albemarle County Code § 14-216(E)*.
- Site review committee reviews preliminary plat: If the preliminary plat is complete, the agent transmits the preliminary plat to the site review committee. *Albemarle County Code §§ 14-216, 14-217*. The site review committee is composed of representatives of the county's department of community development, the county's department of fire rescue, the architectural review board, the Albemarle County Service Authority, the Virginia Department of Health, VDOT and the United States Department of Agriculture Natural Resource Conservation Service. *Albemarle County Code § 14-216*. The site review committee reviews the preliminary plat for technical compliance with the subdivision ordinance. *Albemarle County Code § 14-217(A)*.
- Site review committee transmits requirements and recommendations to the agent: After review of the preliminary plat, the site review committee transmits its requirements and recommendations to the agent. *Albemarle County Code § 14-217(B)*. *Requirements* are regulations of the subdivision ordinance and the laws of the agencies and authorities represented on the site review committee. *Albemarle County Code § 14-217(B)*. *Recommendations* are suggestions for design change, deemed to be in the public interest by committee members in the area of their respective expertise. *Albemarle County Code § 14-217(B)*.
- Subdivider makes revisions to preliminary plat: The subdivider then must revise the preliminary plat to include all of the required revisions identified by the site review committee, and may revise the plat to include some or all of the recommendations identified by the site review committee. *Albemarle County Code § 14-217(C) and (D)*. If the subdivider does not incorporate a recommended revision, the

subdivider must state the reasons and justification for not doing so. *Albemarle County Code § 14-217(D)*.

- Whether the agent or the planning commission reviews and acts on the preliminary plat: The planning commission will review and act on a preliminary plat if: (1) the subdivider, any abutting landowner, the board of supervisors or any member thereof, the planning commission or any member thereof, the zoning administrator, the county executive, or the subdivision agent requests commission review; (2) review and approval by the commission is required (such as requests for approval of certain private streets or other waivers of requirements); or (3) the subdivider obtained approval of a waiver prior to submittal of the preliminary plat and the plat is not in substantial accord with the conceptual plan considered with the waiver request (such as when the waiver was obtained in conjunction with a rezoning). *Albemarle County Code § 14-218(B)*. In all other cases, the agent will review and act on the preliminary plat. *Albemarle County Code § 14-218(A)*. See section 24-800 for a discussion of private streets.
- Consideration of preliminary plat by the agent or the planning commission: The agent or the planning commission reviews the preliminary plat for compliance with the requirements of the subdivision ordinance, and makes a good faith effort to identify all deficiencies, if any, during the review of the first submittal. *Albemarle County Code §§ 14-219(A) (agent), 14-220(A) (commission)*. The agent considers the recommendations of the site review committee, information provided by the subdivider, and other evidence pertaining to the plat's compliance with the requirements of the subdivision ordinance. *Albemarle County Code § 14-219(A)*. In addition to the recommendations and evidence that the agent must also consider, the planning commission must also consider the agent's comments and recommendation. *Albemarle County Code § 14-220(A)*.
- Time for action by the agent or the planning commission: A preliminary plat must be acted on by the agent or the planning commission within 60 days after the preliminary plat was officially submitted, provided that if state agency approval is required of a feature (such as the street design), the plat shall be acted upon within not more than 35 days after receipt of all state-agency approvals (who must act within 45 days after receiving the preliminary plat) and within 90 days after the plat was officially submitted. *Virginia Code § 15.2-2260(D)*; *Albemarle County Code § 14-214(B)*. If the county fails to timely act on the plat, the subdivider may, after giving ten days' notice to the county, petition the circuit court to decide whether the plat should be approved. *Virginia Code § 15.2-2260*. Localities with a population greater than 90,000 based on the 2000 United States Census must act on a preliminary plat for the development of commercial or industrial uses according to an alternative timeline (not applicable to Albemarle County, whose 2000 population was about 84,000). *Virginia Code § 15.2-2260(C)*.
- Action by the agent or the planning commission: If the agent or the planning commission determines that the preliminary plat complies with the requirements of the subdivision ordinance, the plat *must* be approved. *Albemarle County Code §§ 14-219(B) (agent), 14-220(B) (commission)*. The agent then must issue a letter to the subdivider stating the conditions that must be satisfied before submittal of the final plat. *Albemarle County Code §§ 14-219(B) (agent), 14-220(B) (commission)*. In approving a plat, the county may not impose conditions that require the fulfillment of any requirement unless the requirement is set forth in the zoning or subdivision ordinance. *1990 Va. Op. Atty. Gen. 94* (locality lacked authority to require avigation easements); see, *Roberts v. Board of Zoning Appeals of Madison County*, 64 Va. Cir. 397 (2004) (county properly disapproved subdivision plat because subdivider failed to comply with condition of plat approval that pre-existing entrance be abandoned as required under the subdivision ordinance because it was less than 600 feet from the proposed subdivision entrance). If the agent or the planning commission determines that the preliminary plat does not comply with the requirements of the subdivision ordinance, the preliminary plat must be disapproved and the subdivider must be promptly informed in writing of the reason for disapproval by identifying the deficiencies and citing the applicable sections of the subdivision ordinance or other law, and stating what corrections or modifications must be made to permit approval of the preliminary plat. *Albemarle County Code §§ 14-*

219(B), (C) (agent), 14-220(B), (C) (commission). See also section 22-800 for a discussion of the disapproval of a plat.

- Appeal by subdivider to the circuit court or the board of supervisors:** A subdivider may request judicial review of a decision of the agent or the planning commission by the circuit court. *Virginia Code § 15.2-2260(E)*; *Albemarle County Code § 14-226(A)*. Before doing so, however, the subdivider may appeal the decision of the agent or the commission to the board of supervisors. *Albemarle County Code § 14-226(B)*. The appeal must be in writing and be filed with the agent within ten days of the date of disapproval. *Albemarle County Code § 14-226(B)*. The board may affirm, reverse or modify in whole or in part, the disapproval. *Albemarle County Code § 14-226(B)*. In so doing, the board must give due consideration to the recommendations of the agent, the site review committee, the commission, and such other evidence as it deems necessary for a proper review of the application. *Albemarle County Code § 14-226(B)*.
- Period of validity of preliminary plat:** A preliminary plat is valid for a period of five years, provided the subdivider: (1) submits a final plat for all or a portion of the property within one year after the approval (or a longer period provided in the subdivision ordinance); and (2) thereafter diligently pursues approval of the final plat. *Virginia Code § 15.2-2260(F)*; *Albemarle County Code § 14-228*. After three years have passed since the preliminary plat was approved, and upon 90 days' written notice to the subdivider, the agent or the commission may revoke the approval of the preliminary plat upon a finding that the subdivider has not diligently pursued approval of the final plat. *Virginia Code § 15.2-2260(F)*; *Albemarle County Code § 14-228*. A submitted plat must comply with the requirements of the subdivision ordinance in effect when the county makes its decision to approve or deny, and a plat may not be grandfathered merely because the subdivider submitted the plat prior to the enactment of a revised ordinance. *Parker v. Board of Supervisors of Madison County*, 244 Va. 39 (1992) (plat must comply with the current law limiting the subdivision to fewer lots than permitted under the ordinance in effect when the preliminary plat was filed). However, a locality may expressly grandfather plats submitted, and allow them to be reviewed according to the requirements in effect when the plat was submitted, rather than the new requirements. See, *Bertozzi v. Hanover County*, 261 Va. 608 (2001). If the preliminary plat expires, a final plat may not be submitted based on the expired preliminary plat (though a final plat may be submitted independent of the preliminary plat), no vested rights may accrue and, as a result, the proposed development will be subject to the regulations in effect at the time the new preliminary plat is approved.

22-420 The key steps to action on a final subdivision plat in Albemarle County

Following are a table and an outline of the key steps and events in having a final plat approved by Albemarle County.

Seven Key Steps to Action on a Final Subdivision Plat	
1.	Final plat submitted within one year of approval of preliminary plat and determination of completeness and all tentative approvals obtained.
2.	Agent provides notice to abutting owners, board of supervisors and planning commission if the commission reviewed the preliminary plat or a preliminary plat was not submitted and approved.
3.	Review of final plat by site review committee.
4.	Site review committee recommends action on the final plat.
5.	Consideration of final plat by the agent or the planning commission.
6.	Action on final plat by the agent or the planning commission.
7.	If final plat disapproved, subdivider may appeal decision to the circuit court or the board of supervisors.

- Final plat submittal within one year of date of approval of preliminary plat:** Except as provided for phased subdivisions, a final plat must be submitted for approval within one year after the date of approval of the preliminary plat. *Albemarle County Code § 14-221(A)*. For phased subdivisions, if a

subdivider records a final plat which is a section shown on an approved preliminary plat, the subdivider has the right to record the remaining sections shown on the preliminary plat for a period of five (5) years from the date the final plat for the first section was recorded, or for any longer period as the agent or commission determined to be reasonable. *Virginia Code § 15.2-2241(5); Albemarle County Code § 14-230*. Section 15.2-2241(5) appears to be somewhat at odds with Virginia Code § 15.2-2260(G), which 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.”

- Determination of completeness and that all tentative approvals obtained: The final plat may not be accepted by the agent if the subdivider has not obtained all required tentative approvals or if the plat is deemed to be incomplete because it fails to include the information required by Albemarle County Code § 14-303. *Albemarle County Code § 14-221(B) and (C)*. Within ten days after the date the final plat is submitted, the agent must determine whether it contains the required information, and if it does not, she rejects the plat. *Albemarle County Code § 14-221(B)*. Within 15 days after the agent’s notice of rejection, the subdivider may resubmit the plat and pay the fee to reinstate review. *Albemarle County Code § 14-221(D)*. If the final plat is not resubmitted within the 15-day period, a new fee for a final plat is required. *Albemarle County Code § 14-221(D)*.
- Agent provides notice to abutting landowners and members of the board of supervisors and the planning commission if the commission reviewed the preliminary plat or a preliminary plat was not first submitted and approved: If the commission reviewed the preliminary plat or a preliminary plat was not first submitted and approved, the agent must provide notice that a final plat has been submitted to each abutting landowner and to members of the board of supervisors and the planning commission. The notice must be provided at least five days before the site review committee meets to consider the final plat. *Albemarle County Code § 14-221(F)*, cross referencing *Albemarle County Code § 14-216(E) and (F)*. The notice must describe the proposed subdivision, the office where the plat may be viewed, and the date of the site review committee. *Albemarle County Code § 14-221(F)*, cross referencing *Albemarle County Code § 14-216(E)*. Finally, the notice also must advise the recipients of their right to request the planning commission to consider the plat or, if commission review is otherwise required, the date of that review. *Albemarle County Code § 14-221(F)*, cross referencing *Albemarle County Code § 14-216(E)*.
- Site review committee reviews final plat: If the final plat is complete, the agent transmits it to the site review committee. *Albemarle County Code §§ 14-221(E) and 14-222*. The site review committee reviews the final plat for compliance with the technical requirements of the subdivision ordinance *in effect at the time of preliminary plat approval* and satisfaction of all of the conditions of preliminary plat approval. *Albemarle County Code § 14-222(A)*.
- Site review committee transmits recommendations to agent: After review of the final plat, the site review committee transmits its recommendations to the agent. *Albemarle County Code § 14-222(B)*. If the site review committee determines that the plat complies with the technical requirements of the subdivision ordinance *in effect at the time of preliminary plat approval* and satisfies all of the conditions of preliminary plat approval, it must recommend approval. *Albemarle County Code § 14-222(B)*. If the site review committee is unable to make those determinations, it identifies in a writing submitted to the agent the requirements that have not been complied with and the conditions that have not been satisfied. *Albemarle County Code § 14-222(B) and (C)*.
- Whether the agent or the planning commission reviews and acts on the final plat: The planning commission will review and act on a final plat if: (1) the agent determines there is a substantial change from the preliminary plat approved by the commission; (2) the commission requested review of the final plat during preliminary plat approval; (3) the subdivider requests review; or (4) the subdivider obtained approval of a waiver prior to submittal of the preliminary plat and the final plat is not in substantial

accord with the conceptual plan considered with the waiver request. *Albemarle County Code § 14-223(B)*. In all other cases, the agent will review and act on the preliminary plat. *Albemarle County Code § 14-223(A)*.

- Consideration of final plat by the agent or the planning commission: The agent or the planning commission reviews the final plat for compliance with the technical requirements of the subdivision ordinance *in effect at the time of preliminary plat approval* and satisfaction of all of the conditions of preliminary plat approval. *Albemarle County Code §§ 14-224(A) (agent), 14-225(A) (commission)*.
- Time for action by the agent or the planning commission: A final plat must be acted on by the agent or the planning commission within 60 days after the plat was officially submitted. *Albemarle County Code § 14-214(A)*, imposing a shorter timeline that provided in *Virginia Code § 15.2-2259*. If the county fails to timely act on the plat, the subdivider may, after giving ten days' notice to the county, petition the circuit court to decide whether the plat should be approved. *Virginia Code § 15.2-2259*. The period within which a decision must be made does not begin with filing a plat that is in an inappropriate form. *Fairview Co. v. Board of Supervisors of Spotsylvania County*, 21 Va. Cir. 193 (1990). A plat is *officially submitted* within the meaning of *Virginia Code § 15.2-2259* when the subdivider files an application in appropriate form in the proper office, accompanied by the fee, and submits a plat for the purpose of review which contains all of the data reasonably required by the subdivision regulations and by *Virginia Code § 15.2-2262* (requisites of plat). *Fairview Co., supra* (once the basic requirements are met, the agent must review the plat and approve or disapprove it; the agent may not refuse to act on a plat, otherwise properly submitted, on the ground that the proposed plat violates certain applicable regulations). Localities with a population greater than 90,000 based on the 2000 United States Census must act on a plat for the development of commercial or industrial uses according to an alternative timeline (not applicable to Albemarle County, whose 2000 population was about 84,000). *Virginia Code § 15.2-2259(A)(2)*.
- Action by the agent or the planning commission: If the agent or the planning commission determines that the final plat complies with the requirements of the subdivision ordinance *in effect at the time of preliminary plat approval* and satisfies all of the conditions of preliminary plat approval, the plat *must* be approved and the agent must sign the final plat. *Albemarle County Code §§ 14-224(B) (agent), 14-225(B) (commission)*. In approving a plat, the county may not impose conditions that require the fulfillment of any requirement unless the requirement is set forth in the zoning or subdivision ordinances. *1990 Va. Op. Atty. Gen. 94* (locality lacked authority to require avigation easements); *see, Roberts v. Board of Zoning Appeals of Madison County*, 64 Va. Cir. 397 (2004) (county properly disapproved subdivision plat because subdivider failed to comply with condition of plat approval that pre-existing entrance be abandoned as required under the subdivision ordinance because it was less than 600 feet from the proposed subdivision entrance). If the agent or the planning commission determines that the final plat does not comply with the requirements of the subdivision ordinance or that all conditions of approval of the preliminary plat have not been satisfied, the final plat must be disapproved. *Albemarle County Code §§ 14-224(B) (agent), 14-225(B) (commission)*. If the final plat is disapproved, the agent or the commission must identify the deficiencies and cite the applicable sections of the subdivision ordinance or other law, and state what corrections or modifications must be made to permit approval of the final plat. *Albemarle County Code §§ 14-224(B) (agent), 14-225(B) (commission)*. *See also section 22-800 for a discussion of the disapproval of a plat.*
- Appeal by subdivider to the circuit court or the board of supervisors: A subdivider may request judicial review of a decision of the agent or the planning commission to the circuit court. *Virginia Code § 15.2-2259(C)*; *Albemarle County Code § 14-226(A)*; *see also sections 22-700 and 22-810*. Before doing so, however, the subdivider may appeal the decision of the agent or the commission to the board of supervisors. *Albemarle County Code § 14-226(B)*. The appeal must be in writing and be filed with the agent within ten days of the date of disapproval. *Albemarle County Code § 14-226(B)*. The board may affirm, reverse or modify in whole or in part, the disapproval. *Albemarle County Code § 14-226(B)*. In

so doing, the board must give due consideration to the recommendations of the agent, the site review committee, the commission, and such other evidence as it deems necessary for a proper review of the application. *Albemarle County Code § 14-226(B)*.

- **Period of validity of final plat:** A final plat that has not been recorded is valid for a period of one year from the date the agent affixes his signature to the plat, or for any other period specified in a surety agreement entered into by and between the subdivider and the locality (the county's bond forms (surety agreements) propose a 24-month period), whichever is later if: (1) the subdivider has begun construction of facilities to be dedicated to public use pursuant to an approved plan or permit with approved surety; or (2) the subdivider has furnished surety in a form authorized by the subdivision ordinance in the amount of the estimated cost of construction of the facilities. *Virginia Code § 15.2-2241(8)*; *Albemarle County Code § 14-229(A)*. An approved final subdivision plat that has been recorded, from which any part of the property subdivided has been conveyed to third parties (other than to the developer or the locality), remains valid for an indefinite period of time unless and until any portion of the plat is vacated under Virginia Code §§ 15.2-2270 through 15.2-2278. *Virginia Code § 15.2-2261(F)*.

22-500 Family subdivisions

A *family subdivision* is a division of land under family division regulations resulting in a transfer of land from the property owner to a member of his or her immediate family. Compared to a regular subdivision, the procedure for a family division is greatly simplified, and the required improvements and design requirements are minimal. The principal focus of the family division is to promote the values society places upon the disposition of family estates during the lifetime of the owner with a minimum of government regulation and to promote the cohesiveness of the family. *1989 Va. Op. Atty. Gen. 100*. On the other hand, the family division procedure was not intended to authorize the subdivision of property for short-term investment purposes without complying with otherwise applicable requirements of the Subdivision Ordinance. *1989 Va. Op. Atty. Gen. 100*.

Although exempt from most of a locality's subdivision regulations, the lots created by family division are nevertheless subject to the locality's zoning regulations. *Crestar Bank v. Martin*, 238 Va. 232 (1989) (subdivision lots created by family division subject to a zoning regulation limiting the placement of mobile homes); *1989 Va. Op. Atty. Gen. 100*.

There are three types of family divisions, two of which are discussed below. *Virginia Code § 15.2-2244*. The third type, which may be established in counties having the urban county executive form of government (the County of Fairfax), is governed by Virginia Code § 15.2-2244(B).

22-510 Standard family divisions

The City of Suffolk and those counties not experiencing 10% population growth from the next to latest to the latest decennial census ("high growth localities") are *required* to adopt reasonable provisions permitting the single division of a parcel for the purpose of sale or gift to a member of the immediate family. *Virginia Code §§ 15.2-2241(10) and 15.2-2244(A)*. The reference to a *single division* may include a single lot for each member of the property owner's immediate family. *1989 Va. Op. Atty. Gen. 100*.

Family divisions under Virginia Code § 15.2-2244(A) are subject only to the following requirements:

- Any express requirement contained in the Virginia Code.
- Any requirement imposed by the locality 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 is allowed per family member. A property owner whose property is subdivided pursuant to Virginia Code § 15.2-2244(A) in one county is not prohibited from dividing property by family division which he owns in another county. *2000 Va. AG LEXIS 16.*

Under this type of family subdivision, a *member of the immediate family* is defined as any person who is a natural or legally defined offspring, stepchild, spouse, sibling, grandchild, grandparent, or parent of the owner. *Virginia Code § 15.2-2244(A).* In addition, a locality may include aunts, uncles, nieces and nephews in its definition of immediate family. *Virginia Code § 15.2-2244(A).* The transfer of lots may go in any direction (e.g., not only from parent to offspring, but from offspring to parent). Also, the family division regulations do not concern themselves with how the property was originally acquired. Thus, offspring can convey their joint interests in a lot to a parent, who may then effect a family division among the offspring. *1989 Va. Op. Atty. Gen. 100.*

22-520 Family subdivisions in high-growth localities such as Albemarle County

Albemarle County is a high-growth locality and is not required to allow division by family subdivision. *Virginia Code § 15.2-2244(C).* A family subdivision in Albemarle County is subject to all requirements of the Virginia Code and county regulations.

The county's subdivision ordinance defines *member of the immediate family* much more narrowly than state law under Virginia Code § 15.2-2244(A). The term means the "natural or legally defined off-spring, grandchild, grandparent, or parent of the owner of property." *Albemarle County Code § 14-106.* Business entities and trusts are not considered members of the immediate family under this definition and may neither create, convey nor receive a lot created by family subdivision; the only exceptions to this rule are a conveyance to a custodian under the Virginia Uniform Transfers to Minors Act (*Virginia Code § 31-37 et seq.*) and in very limited circumstances when the land is held in a trust approved by the county attorney. One circumstance where the county attorney approved such a transfer was as follows:

A widow owned a ½ interest in a parcel; the other ½ interest was owned by a trust established by her now-deceased husband, and the widow was the sole beneficiary. The widow wanted to convey a 2-acre parcel to her grandson. The widow would get the ½ interest out of the trust before the 2-acre parcel was conveyed, and was willing to have a condition on the family division plat, stating that the ½ interest in the trust would be transferred to the widow before the parcel could be conveyed to a member of the immediate family. For tax reasons, the widow's attorney claimed that the plat needed to be approved by the county before the ½ trust interest was transferred to the widow. The plat and the deed(s) would be recorded simultaneously. The conclusion of the county attorney was that the conveyance would be between members of the immediate family.

The county's subdivision regulations require minimal improvements and only minimal design requirements for private streets and utilities. *Albemarle County Code § 14-208(D).* Under Albemarle County Code § 14-211, a family subdivision will be approved only if, in addition to satisfying all other applicable requirements of the subdivision ordinance, the agent is satisfied that:

- Only one lot is created for transfer by sale or gift to the same family member.
- The subdivider has not previously divided any other land within the county by family subdivision for transfer by sale or gift to the same family member.
- Each lot proposed to be created complies with the all applicable requirements of the zoning ordinance.
- The family subdivision is not sought for the purpose of circumventing the requirements of the subdivision ordinance. In determining whether a family subdivision is sought for the purpose of

circumventing the subdivision ordinance, the following factors are considered: (1) whether the subdivision promotes the cohesiveness of the family; (2) whether the subdivision is profit motivated for short-term investment purposes; (3) the length of time the subdivider has owned the property; and (4) whether, after the family subdivision is approved, a lot created by the family subdivision is conveyed back to the grantor or to a third party.

Under Albemarle County Code § 14-212, an approved family subdivision will be subject to three conditions of approval: (1) the lot must be held by the grantee for a minimum period of two years, except for the purposes of securing any purchase money and/or construction loan, including bona fide refinancing; (2) the entrance of the principal means of access for each lot onto any public street must comply with VDOT standards and be approved by VDOT; and (3) a note must be added to the plat for family subdivision that includes a warning that no lot shown on the plat may be sold or conveyed to anyone other than a member of the immediate family for the two-year period.

22-530 One concern about family subdivisions: circumvention of the standard subdivision procedures and requirements

One of the concerns localities and members of the general public have about family subdivisions is that they may be used as a means to circumvent the standard subdivision procedures and improvement requirements of a conventional subdivision. A family subdivision may not be pursued for the purpose of circumventing the subdivision ordinance. *Albemarle County Code § 14-211(D), discussed in section 22-520.*

Circumvention can result in long-term problems for the locality because family division regulations require only minimal improvements. Thus, purchasers of family division lots may be faced with poor roads leading to their lots, inadequate public services and utilities, drainage problems, and poor access for police, fire and rescue vehicles. To counter potential abuse, a locality is enabled to enact reasonable provisions to protect against the abuse of the family division scheme. *1986-87 Va. Op. Atty. Gen. 121; Virginia Code § 15.2-2244.1.* This authority is greatest for high growth localities operating under Virginia Code § 15.2-2244(C), which allows the locality to define *member of the immediate family* as it chooses and to impose any other requirements it deems to be appropriate. In fact, high growth localities are not required to allow for family subdivisions. *Virginia Code § 15.2-2244(C) (“a subdivision ordinance may include reasonable provisions”).*

The locality may require that the proposed family division be submitted to the locality’s subdivision agent for review and approval. *1989 Va. Op. Atty. Gen. 100.* If the underlying circumstances indicate that the proposed family division is for the purpose of circumventing the subdivision ordinance, the agent may deny the family division. *1989 Va. Op. Atty. Gen. 100; Virginia Code § 15.2-2244(A).* It is reasonable for a locality to require the property owner and the members of the immediate family to execute an affidavit to the effect that the proposed family subdivision is not for the purpose of circumventing the requirements of the subdivision ordinance. *1989 Va. Op. Atty. Gen. 100.*

If implemented by a locality, Virginia Code § 15.2-2244.1 allows a locality to address most of the concerns about circumvention of the subdivision ordinance. Section 15.2-2244.1 allows a locality to require that before land may be divided by family subdivision: (1) the property must have been owned for up to 15 consecutive years by the current landowner or a member of the immediate family; and (2) the landowner must agree to place a restrictive covenant on the subdivided property that would prohibit the transfer of the property to a nonmember of the immediate family for a period of 15 years or, effective July 1, 2007, a lesser period allowed by the locality under prescribed circumstances. *Virginia Code § 15.2-2244.1.* Finally, a locality may require that the subdivided lot be no more than one acre and otherwise meet any other express requirement imposed by the locality. *Virginia Code § 15.2-2244.1.*

Albemarle County requires that the land that is the subject of a family division be owned by the current owner or a member of his or her immediate family for at least four consecutive years immediately preceding the date the family subdivision plat is submitted for review. *Albemarle County Code § 14-212(A).* The county also

prohibits any lot created by the family subdivision, including the residue, from being transferred to a person other than an eligible member of the immediate family for a period of four years after the date of recordation of the plat, with limited exceptions. *Albemarle County Code § 14-212(B)*.

22-600 Vacation of a subdivision plat

All or part of a subdivision plat may be vacated according to the procedures provided by law. *See, Virginia Code § 15.2-2271 et seq.* The term *vacation* implies an abandonment, extinguishment, or a permanent ending of the recorded plat, rather than a modification or alteration of it. *1980-81 Va. Op. Atty. Gen. 335.* Not every change to a subdivision plat requires that the plat be vacated to effect the change. *1979-80 Va. Op. Atty. Gen. 330.* For example, if the subdivider makes changes affecting lot sizes, or desires to remove a lot from a plat, vacation is necessary. *1979-80 Va. Op. Atty. Gen. 330.* However, the division of one lot of a subdivision into two or more lots constitutes a resubdivision, which is treated and processed as a subdivision. *1979-80 Va. Op. Atty. Gen. 330; Virginia Code § 15.2-2201; Albemarle County Code § 14-106 (definition of subdivision).*

A plat may be vacated either before or after a lot created by the plat is sold. *Virginia Code §§ 15.2-2271 (before), 15.2-2272 (after).* The statutory procedures for vacating all or part of a plat are mandatory in order for the vacation to be effective. *1986-87 Va. Op. Atty. Gen. 128.* The manifest purpose of the statutory procedures is to prevent diminution of public uses and conveniences guaranteed in the original plan of subdivision. *1986-87 Va. Op. Atty. Gen. 128.*

22-610 Vacation of a plat before a lot is sold

Before a lot is sold, a recorded subdivision plat or part thereof may be vacated either by written instrument or by ordinance, as follows:

- **Written instrument:** A plat may be vacated by a written instrument declaring the plat to be vacated. *Virginia Code § 15.2-2271(1).* The instrument must be signed by the owners, proprietors and trustees who signed the plat, and must be consented to by the locality. *Virginia Code § 15.2-2271(1).* Once duly executed and approved by the locality, the instrument is recorded. *Virginia Code § 15.2-2271(1).*
- **Ordinance:** A plat may be vacated by ordinance, provided that no facilities for which bonding is required by the locality have been constructed on the property and no facilities have been constructed on any related section of the property located in the subdivision within five years of the date on which the plat was first recorded. *Virginia Code § 15.2-2271(2).* In determining whether to adopt the ordinance, the locality's governing body should consider whether the owner of the property shown on the plat will be irreparably damaged by the vacation. *See, Virginia Code § 15.2-2271(2).* A noticed public hearing must be held and any person aggrieved by file an action in circuit court challenging the adoption of the ordinance. *Virginia Code § 15.2-2271(2).* A certified copy of the ordinance of vacation may be recorded with the clerk of the circuit court. *Virginia Code § 15.2-2271(2).*

The recording of the written instrument or ordinance operates to destroy the force and effect of the recording of the vacated plat and divests all public rights in, and reinvests the owners, proprietors and trustees, if any, with the title to the streets, alleys, easements for public passage and other public areas laid out or described in the plat. *Virginia Code § 15.2-2271(1) and (2).*

22-620 Vacation of a plat after a lot is sold

If any lot has been sold, a recorded subdivision plat or part thereof may be vacated either by written instrument or ordinance, as provided below. Obviously, vacation of all or part of a plat after a lot has sold becomes more complicated because more parties (lot owners and the subdivider), sometimes having competing interests.

- **Written instrument:** A plat may be vacated by written instrument stating agreement to the vacation. *Virginia Code § 15.2-2272(1)*. The instrument must be signed by all of the owners (including creditors whose debts are secured by a recorded deed of trust or mortgage) of lots shown on the plat and by a representative of the locality. *Virginia Code § 15.2-2272(1)*. If the instrument has the effect of extinguishing utility easements, the owners of those easements must sign the instrument as well. *1986-87 Va. Op. Atty. Gen. 128; see, Virginia Code § 15.2-2275*. If only areas involving drainage easements or street rights-of-way will be vacated, and the vacation does not impede or alter drainage or access for any lot owners other than those lot owners immediately adjoining or contiguous to the vacated area, then only the owners immediately adjoining or contiguous to the vacated area must sign the instrument. *Virginia Code § 15.2-2272(1)*. Conversely, if the vacation would impede or alter the drainage or access for all the owners of lots contained on the plat, then the signatures of all those owners are required. *1996 Va. Op. Atty. Gen. 61*. Once duly executed, the instrument is recorded with the clerk of the circuit court. *Virginia Code § 15.2-2272(1)*.
- **Ordinance:** A plat may be vacated by ordinance, initiated on the motion of one of the members of the governing body or on the application of any interested person. *Virginia Code § 15.2-2272(2)*. In determining whether to adopt the ordinance, the governing body should consider whether the owner of the property shown on the plat will be irreparably damaged by the vacation. *See, Virginia Code § 15.2-2272(2)*. In addition, the governing body should observe constitutional principles such as due process and understand that, as always, the legislative power must be exercised in good faith. *1984-85 Va. Op. Atty. Gen. 297*. A noticed public hearing must be held and any person aggrieved by filing an action in circuit court challenging the adoption of the ordinance. *Virginia Code § 15.2-2272(2)*.

The recording of the written instrument or ordinance operates to destroy the force and effect of the original recording of the vacated plat and vests fee simple title to the centerline of any streets, alleys or easements for public passage so vacated in the abutting lot owners free and clear of any rights of the public or other owners of lots shown on the plat. *Virginia Code § 15.2-2274*. This vesting of fee simple title is also subject to the rights of the owners of any public utility installations which have been previously erected in the streets, alleys or easements. *Virginia Code § 15.2-2274*. If a street, alley or easement for public passage is located on the periphery of the plat, the title for its entire width vests in the abutting lot owners. *Virginia Code § 15.2-2274*. The fee simple title to any portion of the plat vacated that was set apart for any other public use is revested in the owners, proprietors and trustees, if any, who signed the plat, free and clear of any rights of public use in the same. *Virginia Code § 15.2-2274*. The vesting of title is automatic; a separate deed is not required. *1980-81 Va. Op. Atty. Gen. 332*.

22-630 Relocating or vacating boundary lines by plat

A locality may authorize the boundary lines of any lot to be vacated, relocated or otherwise altered as part of an otherwise valid and properly recorded plat of subdivision or resubdivision. *Virginia Code § 15.2-2275*. No easements or utility rights-of-way may be relocated or altered without the express consent of all persons holding any interest therein. *Virginia Code § 15.2-2275*. This procedure may be used only if it does not involve relocating or altering streets, alleys, easements for public passage, or other public areas. *Virginia Code § 15.2-2275*.

Alternatively, a locality may allow lot lines to be vacated by deed provided that no easements or utility rights-of-way located along any of the lot lines may be extinguished or altered without the express consent of the easement holders. *Virginia Code § 15.2-2275*. The deed must be approved in writing on its face by the locality and must reference the recorded plat by which the lot line was originally created. *Virginia Code § 15.2-2275*. Once approved by the locality, the deed must be recorded. *Virginia Code § 15.2-2275*.

22-640 Lot owners do not necessarily have a vested right to maintain lots in subdivision at a certain size

One purpose for vacating a plat or resubdividing is to change the sizes of some of the lots. In the

absence of a general plan for development restricting lots to a certain size, a conveyance of lots by reference to a recorded map or plat does not in itself raise any implied covenant that the lots will remain as shown on the plat, or that they may not be later changed in size or further subdivided. *1979-80 Va. Op. Atty. Gen. 327*.

However, when the necessary covenants or other terms and conditions restricting lot sizes are in the deed of conveyance itself, or otherwise in the chain of title, the resubdivision of originally platted lots is prohibited. *Friedberg v. Riverpoint Building Committee*, 218 Va. 659 (1977). The subdivision enabling legislation (*Virginia Code § 15.2-2240 et seq.*) does not require that a subdivider set forth restrictions on lot sizes in deeds or on plats. Thus, the recording of deeds and plats under those provisions does not in itself give rise to any implied covenant as to lot sizes. *1979-80 Va. Op. Atty. Gen. 327*. As a result, unless there is a general plan for the development restricting lot sizes in a subdivision, there is no covenant between subdivider and purchasers, or among purchasers, as to the lot sizes and the purchasers have no vested right in retaining the status quo. *1979-80 Va. Op. Atty. Gen. 327*. Note that today subdividers often record restrictive covenants that prohibit the further subdivision of the lots within the development.

22-700 Disapproval of a subdivision plat

If a preliminary or final plat is disapproved, the specific reasons for disapproval must be provided, either in a separate document or on the plat itself. *Virginia Code §§ 15.2-2259(A) (final), 15.2-2260(C) (preliminary)*.

The decision-maker must identify the deficiencies in the plat that caused the disapproval by reference to specific ordinances, regulations or policies, and also must generally identify modifications or corrections that will permit approval of the plat. *Virginia Code §§ 15.2-2259(A) (final), 15.2-2260(C) (preliminary)*. The decision-maker is required to make a good faith effort to identify all deficiencies, if any, in a final plat. *Virginia Code § 15.2-2259(A)*.

One trial court has said that, in order for the reasons in writing requirement to have any legitimate meaning and effect, the reasons must: (1) be the reasons expressed by the agent or the collective action of the members of the planning commission; (2) be clearly communicated to the applicant so that he knows exactly why the plat was not approved; and (3) be in writing. *Mountain Venture Partnership Lovettsville II v. Planning Commission of Lovettsville*, 26 Va. Cir. 50 (1991). Neither approval by default nor a declaration that the disapproval is null and void is the judicial remedy if the locality fails to provide the required explanation. *Mountain Venture, supra*.

Because Virginia Code §§ 15.2-2259 and 15.2-2260 apply to both subdivision plats and site plans, cases pertaining to site plans are included below.

22-710 Disapproval because the plat fails to comply with an ordinance requirement

If the subdivider contends that the disapproval was not properly based on applicable regulations, or was arbitrary or capricious, the disapproval may be appealed to the circuit court. *Virginia Code §§ 15.2-2259(C) (final), 15.2-2260(E) (preliminary)*. The disapproval of a plat because the subdivider failed to show compliance with the law outside of the state and local planning, subdivision and zoning laws (*Virginia Code § 15.2-2200 et seq.*) is not arbitrary and capricious. *Dorn v. Board of Supervisors of Fairfax County*, 28 Va. Cir. 133 (1992) (but also holding that a decision based on the determination that the applicant failed to properly withdraw the subject property from a condominium regime – a decision of law rather than a decision of fact – was arbitrary and capricious).

Any failure to comply with an ordinance requirement will support the disapproval of a plat. In *VACOM, Inc. v. Fairfax County Board of Supervisors*, 33 Va. Cir. 39 (1993), one of the issues before the court was whether the county's disapproval of VACOM's sixth revision of a site plan for a proposed development near the Route 28/Route 29 intersection in Fairfax County was improperly based on minor deficiencies that served as a mere pretext for the county's real concern – the redesign of the intersection. The court identified a number of

minor deficiencies in the site plan related to frontage, drainage, berms, and correct acreage totals. Although noting that these deficiencies were minor and could be corrected in seven to ten days, the court found that these were legitimate grounds to disapprove the site plan. The court rejected VACOM's argument that the disapproval of the site plan based on the above deficiencies served as a mere pretext, finding that "any proper basis for rejecting the sixth site plan is sufficient. The failure of the sixth site plan to meet the frontage requirements was clearly a proper basis for objection. Whether the county had ulterior motives for rejecting the sixth site plan is inconsequential if one of the bases of its rejection was proper."

22-720 Neither the comprehensive plan nor other policy considerations may be a basis for disapproval

A plat may be approved only on the basis of whether it complies with all applicable regulations. The comprehensive plan may not be the basis for denying a plat that is otherwise in conformity with duly adopted standards, ordinances and statutes. *Rackham v. Vanguard Limited Partnership*, 34 Va. Cir. 478 (1994).

A subdivision ordinance may not include provisions that effectively allow a locality to make a land use policy decision when considering a subdivision plat. In *Board of Supervisors of Augusta County v. Countryside Investment Co.*, 258 Va. 497 (1999), the county denied a subdivision master plan, relying on a provision of its subdivision ordinance that allowed the board to deny a plat if, in its opinion, the land was unsuitable for subdivision. The ordinance also provided that land was deemed unsuitable for subdivision if it would not preserve a "rural environment." In finding that the challenged provisions of the subdivision ordinance went beyond that enabled by Virginia Code §§ 15.2-2241 and 15.2-2242, the Virginia Supreme Court said that a locality may not "under the guise of a subdivision ordinance, enact standards which would effectively permit it to rezone property in a manner inconsistent with the uses permitted by the property's zoning classification."

22-800 Judicial challenges to the approval or disapproval of a preliminary or final plat

There are at least four possible scenarios when a decision to approve or disapprove a preliminary or final plat may be challenged in court. Because Virginia Code §§ 15.2-2259 and 15.2-2260 apply to both subdivision plats and site plans, cases pertaining to site plans are included below.

22-810 Challenge by a subdivider to the disapproval of a plat

A subdivider may appeal the locality's disapproval of a plat to the circuit court within 60 days of the decision. *Virginia Code §§ 15.2-2259(C) (final), 15.2-2260(E) (preliminary)*. The circuit court's review is limited to a determination of whether the locality's disapproval was "not properly based on the ordinance applicable thereto, or was arbitrary or capricious." *Virginia Code §§ 15.2-2259(C) (final), 15.2-2260(E) (preliminary)*; *Sansom v. Board of Supervisors of Madison County*, 257 Va. 589 (1999); *West v. Mills*, 238 Va. 162 (1989). Likewise, the court must sustain the locality's decision unless the locality failed to comply with the applicable ordinances or acted arbitrarily or capriciously. *Board of Supervisors of Culpeper County v. Greengael, LLC*, 271 Va. 266 (2006) (applied to final plat).

The courts have said that their authority under Virginia Code §§ 15.2-2259(C) and 15.2-2260(E) is sufficiently broad to permit a trial court to approve a plat, if the evidence supports the subdivider's allegations. *Hylton Enterprises, Inc. v. Board of Supervisors of Prince William County*, 220 Va. 435 (1979) (under state enabling authority, the trial court had authority to approve a plat that met all applicable requirements; limiting the court's role to determining whether the county's disapproval was not properly based upon the applicable ordinance, or was arbitrary or capricious, would be an overly restrictive interpretation of the statute); *Sterling Land Corp. v. Planning Commission of Town of Hamilton*, 51 Va. Cir. 307 (2000).

If an appeal is filed regarding the disapproval of a plat, the locality is not required to consider an alternative plat pending the appeal. *West, supra*.

22-820 Third party challenge against the locality under Virginia Code §§ 15.2-2259 or 15.2-2260

A third party may not judicially challenge the approval of a plat in an action against the locality under Virginia Code §§ 15.2-2259 or 15.2-2260. *See, Barton v. Town of Middleburg*, 27 Va. Cir. 20 (1991). Virginia Code § 15.2-2259 “confers the right to appeal only upon the applicant. There is no language giving such a right to appeal to a circuit court to a third party or even an ‘aggrieved’ party” as provided in Virginia Code § 15.2-2314 (certiorari to review a decision of board of zoning appeals) or Virginia Code § 15.2-2311 (appeal to board of zoning appeals of a decision by a zoning administrator or other officer). *Barton, supra*.

22-830 Third party challenge against a locality in a declaratory judgment action

A third party may not judicially challenge the approval of a plat in a declaratory judgment action brought under Virginia Code § 8.01-184. *Logan v. City Council of the City of Roanoke*, 275 Va. 483 (2008). In *Logan*, neighboring landowners brought a declaratory relief action under Virginia Code § 8.01-184, challenging the city’s approval of a subdivision, including the approval of various exceptions authorized under the subdivision ordinance. In dismissing the neighboring landowners’ right to declaratory judgment, the Virginia Supreme Court said:

. . . Logan has attempted to use the declaratory judgment statutes to create a right of appeal to the circuit courts that does not otherwise exist. Because the declaratory judgment statutes do not create such rights, and in the absence of statutory authority granting her a right of appeal to actions taken under the Subdivision Ordinance, Logan remained a stranger to the subdivision approval process and was not authorized to challenge [the director of planning’s] actions under that Ordinance.

See also, Miller v. Highland County, 274 Va. 355 (2007), in which the Virginia Supreme Court rejected a third party challenge under Virginia Code § 8.01-184 to the board of supervisors’ finding of substantial accord under Virginia Code § 15.2-2232). The court said that “the declaratory judgment statutes may not be used to attempt a third-party challenge to a governmental action when such challenge is not otherwise authorized by statute.”

22-840 Third party challenge against the subdivider

A third party may not judicially challenge the approval of a plat in an action against the subdivider. *See, Shilling v. Jimenez*, 268 Va. 202 (2004) (third parties have no right to challenge the approval of a subdivision plat in an action against the developer). The landowners in *Shilling* claimed that Loudoun County’s subdivision ordinance had extended to them the right to enforce the requirements of the subdivision ordinance. The court disagreed, noting that the enabling acts reaffirmed the authority of localities to regulate the subdivision and development of land, and that there was a clear legislative intent to vest in the governing body and its agents the sole power to enforce its subdivision ordinances. After noting the applicable 5-year statute of limitations under Virginia Code § 8.01-243(B), the court said that “[t]hird-party suits challenging subdivisions long after their approval and recordation could have a profound effect on the vested property rights of innocent purchasers and lenders. We will not impute to the General Assembly an intent to create such an effect in the absence of express statutory language.”