



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

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

Kevin J. Burke, Esquire
Fauquier County Attorney
10 Hotel Street, Suite 206
Warrenton, Virginia 20186

Dear Mr. Burke:

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

Issues Presented

You ask whether construction plans that contain sewer or water infrastructure plans are subject to the requirement that the County refer such plans to the Sanitation Authority and, if so, whether the review is subject to statutory time limitations.

Response

It is my opinion that water and sewer construction plans are subject to the requirement that the Authority review the plans upon referral from the County, and that the review is subject to statutory time limitations.

Applicable Law and Discussion

Section 15.2-2259 provides for the review and approval of final subdivision plats. Under subsection A of § 15.2-2259, when "approval of a feature or features of the plat by . . . a public authority authorized by state law" is required, the County must forward the plat to this authority for review within 10 days of receipt. Section 15.2-2259(A)(3) provides that "the provision of this subsection shall not apply to the review and approval of construction plans." Section 15.2-2269 provides that whenever "the owners of such subdivision desire to construct in, on, under, or adjacent to any streets or alleys located in such subdivision any . . . water [or] sewer or . . . pipes . . . fixtures or systems, they shall present plans or specifications therefore to the governing body of the locality in which the subdivision is located or its authorized agent, for approval." Under its plain language, the provisions of subsection 15.2-2259(A)(3) do not apply to construction plans.

This provision distinguishes between a "plat" and a "construction plan." A "plat" is defined as "the schematic representation of land divided or to be divided and information in accordance with the provisions of . . . applicable statutes."¹ "Construction plan" is not defined.

¹ VA. CODE ANN. § 15.2-2201 (2008). "Normally, plats will show the dimensions, boundaries, and courses of dedicated land, open space, and the lots to be sold. The lots will be identified by number or letter. The location of

Another provision, § 15.2-2269(A), provides that

If the owners of any such subdivision desire to construct in, on, under, or adjacent to any streets or alleys located in such subdivision any gas, water, sewer or electric light or power works, pipes, wires, fixtures or systems, they shall present plans or specifications therefor to the governing body of the locality in which the subdivision is located or its authorized agent, for approval.^[2]

That section further contemplates that such plans might be referred to an authority for review.³ Therefore, under the plain language of § 15.2-2269(A), such plans must be submitted to the county or its authorized agent, rather than to the sanitation authority. The governing body, or its agent, then has 45 days within which to approve or disapprove of these plans. In instances where the locality is required to forward the plan to a state agency or an authorized public authority for review, § 15.2-2269(B) provides that the reviewing body complete its review within 45 days of receipt of the plan.

In sum, § 15.2-2259 provides a procedure for the approval of subdivision "plats" and excludes "construction plans" from its scope. Section 15.2-2269 addresses "construction plans" for "gas, water, sewer or electric light or power works, pipes, wires, fixtures or systems" and calls for the presentation of these plans to "the governing body of the locality in which the subdivision is located or its authorized agent, for approval." The Code further contemplates that, when required, the governing body will refer those plans to the proper "state agency or public authority" for review by that authority or agency, which will approve or disapprove the plans within 45 days of their receipt.

Conclusion

Accordingly, it is my opinion that water and sewer construction plans are subject to the requirement that the Authority review the plans upon referral from the County, and that the review is subject to statutory time limitations.

With kindest regards, I am

Very truly yours,

A handwritten signature in blue ink, appearing to read "Ken C II".

Kenneth T. Cuccinelli, II
Attorney General

the subdivision will be described by reference to other known points. The plat will also show where utilities will be located." 8 PATRICK J. ROHAN & ERIC DAMIAN KELLY, ZONING & LAND USE CONTROLS § 45.03[1][d] (2010).

² As the legislative history makes clear, the term "such subdivision" in § 15.2-2269(A) refers to subdivisions mentioned in § 15.2-2258, rather than the subdivisions mentioned in § 15.2-2266. Section 15.2-2266 provides that "subdivision plat[s] recorded prior to January 1, 1975, if otherwise valid, [are] hereby validated and declared effective even though the technical requirements for recordation existing at the time such plat was recorded were not complied with." The precursor to that section was inserted in the Code in 1968. 1986 Va. Acts. ch. 279. As originally written, it is clear that the term "such subdivision" currently codified in § 15.2-2269(A) referenced the subdivisions now mentioned in § 15.2-2258. See 1962 Va. Acts. ch. 407.

³ Confusingly, § 15.2-2269(B) provides that "[a]ny state agency or public authority authorized by state law making a review of any plat forwarded to it under this article . . . shall complete its review within 45 days of receipt of the plans." This sentence refers to a "plat" and a "plan." I conclude that the term "plat" in this subsection embraces the construction plans referenced in the immediately preceding subsection.