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MEMORANDUM

TO: CHAIRMAN AND MEMBERS OF PLANNING COMMISSION
Via **LAUREN KOPISHKE, DIRECTOR OF PLANNING**

FROM: DOUGLAS W. NAPIER, TOWN ATTORNEY

DATE: OCTOBER 7, 2021

RE: PLANNING COMMISSION INTERNAL INQUIRY REPORT

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1. SUMMARY:

At the Planning Commission's September 15, 2021 meeting, Planning Commissioner Darryl Merchant, on his own initiative, made the following motion, which was seconded and voted upon as follows:

RE: Motion made at the 9-15-2021 Planning Commission Regular Meeting.
Commissioner Merchant moved, seconded by Vice Chairman Marshner that the Front Royal Planning Commission ask the Planning Director, and/or designee, to investigate and determine the facts surrounding the circumvention of the subdivision ordinance regarding Minor Subdivision application FRSUB2852-2021. That the Planning Director, and/or designee, prepare a written report of facts for review by the Planning Commission and include recommendations, if any, that would prevent this situation from occurring again.

VOTE: Yes – Jones, Marshner, Gordon, Merchant, Ingram
No – N/A
Abstain – N/A
Absent – N/A

Initially, the inquiry was being conducted by the Director of Planning & Zoning. Subsequently, following some issues, the Chairman of the Planning Commission requested that the inquiry be conducted by the Town Attorney instead. This report is a summary of that inquiry.

Virginia is a Dillon Rule state, meaning that the powers of local governing bodies, judicial bodies, and administrative bodies are all *"fixed by statute and are limited to those conferred expressly or by necessary implication". "This rule is a corollary to Dillon's Rule that municipal*

corporations [or any other local governmental body or agency] *have only those powers expressly granted, those necessarily or fairly implied therefrom, and those that are essential and indispensable."* There is a statute which imposes upon planning commissions the *"duties"* to effectuate the intent of Chapter 22 of Title 15.2 of the Code of Virginia, which intent is to *"improve the public health, safety, convenience, and welfare of their citizens and to plan for the future development of communities"*. The primary method by which the *"development of communities"* is carried out is by the Comprehensive Plan and by the Zoning and Subdivision Ordinances. By statute, Zoning and Subdivision Ordinances and amendments thereto, and the Comprehensive Plan and amendments thereto, before being acted upon by the local governing body, first must have recommendations made by the local planning commission to the governing body.

The Code of Virginia allows local planning commissions to make investigations pertaining to its affairs. Further, case law in Virginia, following what appears to be the universal rule, has "*repeatedly held that an administrative officer or bureau may be invested with the power to ascertain and determine whether the qualifications, facts or conditions comprehended in and required by the general terms of a law, exist in the performance of their duties, and especially when the performance of their duties is necessary for the safety and welfare of the public."*

However, I think the specific actions of local government employees as they relate to specific aspects of their performance of their job duties, in this matter as all others, should be left to their supervisors, including Town Council. I do think planning commissions have a core duty and responsibility to make recommendations to the governing bodies when the planning commission sees local land use ordinances and policies are in need of modification or are not being carried out properly or consistently, without the planning commission getting into the business of employee performance action.

This inquiry is not intended to make accusations or judgments on the part of anyone. That is not my role or the role of the Planning Commission. It does, however, find that the Town Code sets out the processes that are to be followed in given situations involving Town land use matters. When the processes set out in the Town Code are not followed, it creates undue burdens on Town staff and creates opportunities for mistakes that can ultimately harm both staff and applicants for Town land use decisions. It also can also cause the public and staff to feel that two procedural standards are being applied, depending upon who the person is. Most importantly to the land use applicant himself, when the law in the Town or State Code is not followed, there will almost always be serious repercussions, usually financial, to follow at some point, when a future lender or future buyer's title examiner, land surveyor, or attorney discovers the legal error, because the applicant, when he sells the property that has the title defect, has to unconditionally guarantee title to the property in the deed of conveyance ("general warranty of title"). This warranty of title "runs with the land", and, in effect, the problem never goes away until it is discovered and is corrected, by

going back and re-doing the correct process and obtaining a special exception, if a future Town Council is willing, or filing a lawsuit to clear title.

In the facts set out here, it became clear that there was a desire and pressure for much faster than usual land use decision approval. This is understandable that a builder would want this. However, when dealing with complex land use issues, this in turn cause significant mistakes being made by Town staff, in the form of approval of a resubdivision plat and issuance of zoning permits that should not have happened when it did, before it should have, and without the required issuance of a special exception, had those mistakes not been caught after the mistakes were made. Had those mistakes not been caught, title to those lots would have been bad because the private street accessing the subdivision lots would not have been legal. To Town staff, this rush to approval was seemingly done to please the applicant, even in the absence of any overt pressure having been exerted by the applicant.

2. NORMAL PROCESS:

This matter involved an application for what was intended to be a minor subdivision (essentially, a subdivision of eight or fewer lots), plus approval of a private street and approval of the street's name.

Town staff is clear and united as to the normal process to be followed in the case of an application for a subdivision or zoning permit that is received by the Department of Planning & Zoning. Town staff is also clear and united as to what in fact did happen in this matter, and how it differed from the normal and usual process.

Normally, Town policy is that all applications for minor subdivisions have a two (2) week review period to ensure a proper review period by the Town's Department's of Planning & Zoning, Public Works, and Energy Services. (Town Code actually formally allows a much longer period of time for minor subdivisions to be reviewed and acted upon, but Planning Department staff apparently follows the sketch plan review timeline set out in Town Code 148-405. B. 2.) This is in order to create the proper utility accounts, assignments of addresses, creation of the parcels into appropriate GIS form, gather up the appropriate documents and forward them to the Finance Department, Public Works, and Energy Services, for those Departments to do what the Town Code requires during that two week period before a zoning permit can be issued or a subdivision application can be approved, if it can be approved administratively by the Director of Planning & Zoning.

Typically, for a minor subdivision, which is what was intended in the situation that will be discussed here, a minimum of five copies of the subdivision plat, a completed subdivision application form, the appropriate administrative review fees, and appropriate supporting documentation would be submitted to the front desk of the Planning & Zoning Department. A

receipt for the fees paid would then be created. The plat would then be assigned a reference number and the plat and application would be digitally entered into the EnerGov computer tracking system, EnerGov would notify applicable Town Departments, such as Public Works and Energy Services, to review the submitted documents. If, after this review, and review by the Director of Planning & Zoning that the requirements of the Subdivision and, if applicable, the Zoning, Ordinances have been complied with, the minor subdivision would then be approved.

During that two week period, in the case of a subdivision application, the typical process when Public Works receives a request for its review from Planning & Zoning is as follows:

The Public Works Department receives an email from Planning & Zoning with a plan (reference) number and link to connect to EnerGov software, which allows interconnectivity between the affected Town and County Departments. Public Works will log in to the appropriate Planning documents and print the appropriate application and plat and any other needed documents. Public Works has two (2) weeks to review if a Town application or plan and thirty (30) days if a County plan.

There are several different Town reviewers for Public Works besides the Department Head, who review for water, sewer, street and other infrastructure issues.

If Public Works marks the documents "COMPLETE" in EnerGov, there is something that needs to be changed or something(s) additional that needs to be submitted before Public Works will approve from its Departmental standpoint. If there is something to be fixed in the documentation that was submitted, Public Works will not submit the Water & Sewer Connections/System Development Charges attached in the documents as a way for Public Works to know that the Town needs to see updated changes to the application before it can be approved.

If Public Works marks "APPROVED" in EnerGov, it means Public Works has reviewed the application and plans, and nothing additional is needed. Water and Sewer Connections/System Charges are then attached in the documentation that Public Works sends back to Planning & Zoning along with the possibility that a Right of Way Permit may be needed if any curb and gutter work or other work in the Town's right of way may be needed.

In the case of a minor subdivision plat approval, which is what was intended here, the normal process would be, after all the reviews have been finished and approved by all the other Town Departments, that the Director of Planning & Zoning would then approve and sign the plat, the Finance Director, to indicate the Town's real estate taxes had been paid, and the Town Manager would sign the plat, and then it would be recorded in the Clerk's Office of the Circuit Court.

All this is set out because these reviews are labor intensive and time consuming. As always with the Town, as in all local governments, there is an endless stream of such work, with

applications and reviews before this one, and applications and reviews after it, one after another, on and on.

3. THIS APPLICATION:

There are two somewhat differing accounts of what happened here. The first are March, 2021 meetings that the Town Manager had with the then-Planning Director that was relied upon.

The other are events which happened in the summer of 2021 which other Town staff report.

4. *MARCH, 2021 EVENTS, AS RELATED BY TOWN MANAGER.*

The Town Manager states that on March 10, 2021, he, the Clerk of Town Council, and Chris Holloway met with then-Planning Director Tim Wilson to discuss what approvals, whether administrative, Planning Commission, or Town Council, would be needed for vacation of Carter Street. Mr. Holloway wanted to know this prior to purchasing the land and going through the vacation process. During this meeting, according to the Town Manager, Mr. Wilson advised Mr. Holloway that a private street did not need approval of the Planning Commission or Town Council. Based upon this, the Town Manager computed the value of the property in Carter Street to be vacated and sold to Mr. Holloway based upon recent vacations and comparable sales values of properties on Steele Streets and Commonwealth Drive, which were also provided to Town Council in Closed Meeting.

CORRECTION: Another meeting on March 30, 2021 with Mr. Wilson was held to discuss what was needed for Mr. Holloway to build a private street on this property he was purchasing from the Town and resubdividing. Mr. Wilson did ~~not~~ advise Mr. Holloway or the Town Manager that a "special use permit" [sic] was NOT needed.

5. SUMMER, 2021 EVENTS AS RELATED BY OTHER TOWN STAFF.

Without getting into the details of what the various individual members of Town staff related as to what happened, the following facts all Town staff members from all these affected Town Departments, both Planning & Zoning, and Public Works, do agree upon, and this seems to directly affect how the Planning Commission might want to consider going forward. In reviewing the individual written reports submitted by the various staff members from those Departments, as well as interviewing the Planning Director, Assistant Town Attorney and the Assistant Town Manager, this is what I have concluded:

This subdivision application was for Mr. Holloway, who is also, of course, the Mayor. Obviously, there is nothing wrong with Mr. Holloway making a living, and in the course of making

a living, Mr. Holloway has as much a right to make application for local land use approvals of his property from the Town as does any other person.

In this case, it is clear from all staff reports that the Town Manager in effect personally "carried the ball" for Mr. Holloway's application by the Town Manager himself making sure that the Planning and Public Works Departments and their staffs knew that the Town Manager was overseeing the resubdivision application for Mr. Holloway, and the Town Manager wanted this application expedited as quickly as possible.

It should be clearly and unambiguously stated that there is no current Town Code provision that states this it is impermissible for the Town Manager to do this, or for a Mayor or Town Councilman to have the Town Manager do this for them.

The Town Manager himself fast-tracked the application and its approval in such a way that the resubdivision plat was approved by the Interim Planning Director on the spot, as soon as it was presented to him by the Town Manager, in the presence of Mr. Holloway. The Town Manager called the Interim Planning Director to his office, while Mr. Holloway was there, and asked the Interim Planning Director to sign the resubdivision plat right then, after the Town Manager himself had already signed it. Because the resubdivision application was to include a private street, Town Code requires that a special exception to be granted by Town Council. This special exception process has not been applied for within the experience of anyone in the memory of current staff, and therefore no one was familiar with it. Because of that unfamiliarity, and because the Interim Planning Director felt there was at least an implicit pressure to sign the resubdivision plat as soon as it was presented to him -- it was presented to him by his boss, the Town Manager, in the presence of the Mayor -- the Interim Planning Director did not feel he had the time, nor did he take the time, to review the Town Code to be certain the correct Town Code procedures were being followed.

As a result, the correct Town Code procedures were not followed, notwithstanding what former Town Planning Director Tim Wilson may have said. What the Town Code very clearly states *"Subdivisions on new non-dedicated private streets may be permitted upon the approval of a special exception by Town Council."* Town Code further states that special exceptions may be granted only after the Planning Commission first makes a recommendation to Town Council as to the special exception following the Commission's public hearing, which itself is following public advertisement once a week for two consecutive weeks in a newspaper, which is required by the Code of Virginia. That recommendation is to be followed by another public hearing by Town Council and approval of the special exception application, after the same public hearing requirements. That process was not followed, which Town Code required, before the Interim Planning Director and the Town Manager, approved and signed the resubdivision plat, and that plat was recorded and zoning permits issued. Because the special exception had not been approved

for the private street in accordance with those laws, the resubdivision plat should not have been signed as approved, and the zoning permits were not properly issued and were a legal nullity.

In addition, the Town Manager himself understandably could have felt pressure to fast-track this application, since the application was for the Mayor. The reports of the individual Town staff members of both the Planning and Public Works Department clearly indicate that they felt pressured, implicitly at least, to get their respective Departmental reviews of this application completed within that same business day if at all possible, when the Town's usual policy was two weeks. While Town Code only makes a recommendation as to this two week period, it should be recalled that Town staff always has a lot of work to do which are already in the queue ahead of any given application, not just for certain people who apply later one but want to have their application finished and approved first.

It was only after the current Planning Director was hired, when she discovered that the special exception requirement was not followed, that this matter was begun to be brought to a head.

As earlier noted, all of this is no abstract, bureaucratic or legalistic mumbo-jumbo, or mere time-consuming annoyance, but one which everyone should be grateful was caught when it was. When Mr. Holloway sells the lots, he will convey each one with a "general warranty of title". A general warranty of title means that the owner, his heirs and personal representatives will forever warrant, or guarantee, and defend the said property to the grantee (buyer), the buyer's heirs, personal representatives and assigns (purchasers from the buyer, and purchasers from the buyer's purchasers, forever, against the claims and demands of all persons whomsoever. Va. Code § 55.1-110; *Booker T. Washington Const. & Design Co. v. Huntington Urban Renewal Authority*, 383 S.E.2d 41, 181 W.Va. 409 (W. Va. 1989). As an example, the Town had a major title issue earlier this year when the Town did not clear up title to property on Hill Street when it should have back in the 1980s. The title problem was discovered earlier this year during the course of the sale of the property, and it caused some significant problems both for the purported owners of the property, who discovered that in fact they did not own the property even though they had paid for it, and for the Town.

6. POLICY RECOMENDATIONS

In order help everyone in the future preserve the integrity of the land use review process and reduce the appearance of impropriety, as well as to help ensure adequate staff time to review applications, the following is recommended as policy, and can even be implemented as part of the Town Code in the Subdivision and Zoning Ordinances:

a) All applications must be processed directly through the Department of Planning & Zoning, at that office itself.

i) The Town Manager, Town Attorney, and Assistant Town Attorney are not authorized to accept Subdivision or Zoning applications to be processed through the Planning Department.

b) No staff member who reports to the Director of Planning will attend a request for a meeting with any Town Manager, Members of Town Council, or appointed Town Official, alone. Planning & Zoning staff should not put themselves into a position where they could be asked to sign or review a document that has not been officially submitted. Planning & Zoning staff must avoid situations where there are no independent, impartial persons who can attest to the nature of the meeting.
   i) By requiring the Planning Director, Assistant Town Manager, or Town Attorney to be present in any meeting it protects all parties present.
   ii) Concerns of improper pressure will not exist because staff will not be placed into a situation where it is one person's word against another.
   iii) Persons in positions of authority have the ethical responsibility of making sure they do not use their position to influence the actions of staff in any manner inconsistent with staff's job duties or with Town policies.

c) The Town's Subdivision Ordinance is confusing and in some area's conflicts with the Town's Zoning Ordinance. It is difficult for staff to navigate the documents at times and even more so for the general public who may not have exposure to the language contained in an Ordinance. To mitigate the confusion of the Ordinance staff will:
   i) Begin working on a general development guide, outlining the proper process for those who are interested in undertaking development projects. This guide will be printed in the office and posted on the Town's Website.
   ii) Staff will also require pre-application meetings for all zoning and subdivision submissions. This will allow Staff to sit down, face to face, with the applicant and explain the process and provide the necessary applications.
   iii) Staff will have not less than two (2) weeks to review and process Subdivision and Zoning applications for land located within Town limits in order to help ensure that proper laws and policies are being followed.
   iv) Staff has begun the process of revising the actual application document for clarity. During the pre-application meeting, staff should review the application, page by page, with each applicant and explain how each page should be completed. This will ensure a completed application is submitted which reduces review times and increases efficiency of the review process.
   v) As part of the application revisions, staff will develop checklists for each type of land use application which applicants will complete and sign. If the checklists are not completed, the application will not be accepted by staff.

FOOTNOTE

7. APPLICABLE LAW IN TOWN CODE :

148-130 ADMINISTRATION

The Director of Planning and Zoning**,** hereafter referred to in this Ordinance as the **"**Director**",** shall administer this Ordinance. The Director may establish such administrative rules and procedures as deemed necessary, under the general direction and guidance of Council.

148-160 INTERPRETATION; WORD USAGE

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C. This Chapter shall be used and interpreted in conjunction with the provisions of Chapter 175, Zoning, and other applicable ordinances of the Town of Front Royal.

D. In the event a term is not defined in this Chapter, the Director shall refer to other Chapters of the Front Royal Code for guidance and to Virginia Code § 15.2-2201 as amended. If ambiguity remains, the Director shall then rely on the conventional, recognized meaning of the word or phrase (e.g. the current edition of *Merriam-Webster's Dictionary).*

148-180 SUBDIVISION APPROVAL AND RECORDING REQUIRED

A. Whenever any subdivision of land is proposed, before any sale, exchange, transfer, or recordation is made of any subdivided part thereof and before any permit for the erection of a structure in such proposed subdivision shall be granted, the applicant shall apply for and secure approval from the Town of Front Royal of such proposed subdivision, in accord with all provisions of this Chapter. Plats for each and every separate parcel comprising the source tract, to include all primary and residual subdivided parcels, shall be required to be submitted for approval. Upon approval, plats shall be recorded among the Land Records of Warren County, Virginia.

B. Hereafter all plans for the subdivision of land within the corporate limits of the Town of Front Royal shall be reviewed and acted upon by the appropriate town, state or other officials in accord with procedures and other requirements as may be provided for in this Chapter. Any change in a recorded plat shall constitute a re-subdivision and shall make said plat subject to any and all of the requirements of this Chapter.

C. No plan or plat for the subdivision of land within the corporate limits of the Town of Front Royal shall be approved unless and until all Town real estate taxes, delinquent taxes, including interest and penalty, on the entire parcel to be subdivided have been paid in full. The Director shall notify the Director of Finance that the plan or plat is ready for signature approval after all review agency comments have been addressed. The Director of Finance shall then be the first person to sign the plans or plats under the notation that all Town real estate taxes have been paid in full.

D. The Town shall not approve a subdivision of land if, after adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public, the site is not suitable for platting and development purposes of the kind proposed. Provisions of this chapter shall be relied upon to determine suitability.

148-200 COMPLIANCE REQUIRED

A. The Warren County Clerk of Court shall not file or record a plat of a subdivision until such plat has been approved as required herein. The penalties provided herein shall apply to any failure to comply with the provisions of this Chapter.

B. No zoning clearance permit will be issued by any administrative officer of the Town of Front Royal, for the construction of any building or other improvement requiring a permit upon any land for which a subdivision plat or site development plan is required, unless and until the requirements of this Chapter have been complied with. Any person aggrieved by the decision of any administrative official whose decision is required pursuant to this Chapter may appeal said decision to the Town Council.

148-211 SPECIAL EXCEPTIONS

A. A special exception to the general regulations of this Chapter may be granted by Town Council, for either of the following circumstances:

1. When strict adherence to the general regulations would result in substantial injustice or hardship; provided that, the special exception would not diminish public health, safety or general welfare, including, but not limited to, consideration that adequate provisions are provided to ensure long-term maintenance of public and shared private facilities, and conformance with the goals and objectives of the Comprehensive Plan.

2. When it is demonstrated that use of alternative regulations for a particular development would better achieve at least one of the goals listed below; provided that, the special exception would not diminish public health, safety or general welfare, including, but not limited to, consideration that adequate provisions are provided to ensure long-term maintenance of public and shared private facilities, and conformance with the goals and objectives of the Comprehensive Plan.

    a. Creation of affordable housing.

b. Design emphasis on the principles of traditional neighborhood design, including pedestrian-friendly roads, interconnection of new local streets with existing local streets, connectivity of pedestrian networks, and mixed-use neighborhoods.

c. Conservation or use of on-site natural features to protect water quality or open spaces.

B. Any request for an exception, shall be submitted to the Director, and shall include a signed and completed application form, any application fees, and any supporting documentation submitted by the applicant.

C. Prior to approval or denial of any request for an exception, the Planning Commission shall hold a public hearing, in accordance with Virginia Code § 15.2-2204, to review and provide recommendations to Town Council.

D. ***Prior to approval or denial of any exception to the design standards of this Chapter, Town Council shall hold a public hearing, in accordance with Virginia Code § 15.2-2204. [Emphasis Added.]***

E. Town Council may impose such conditions or restrictions upon the premises benefited by an exception as may be necessary to comply with intent of this Chapter and to protect the public interest, safety and/or general welfare.

Title 15.2 Counties, Cities and Towns
Chap. 22 Planning, Subdivision of Land and Zoning, §§ 15.2-2200 — 15.2-2329
Art. 1 General Provisions, §§ 15.2-2200 — 15.2-2209.2

Va. Code § 15.2-2204. Advertisement of plans, ordinances, etc.; joint public hearings; written notice of certain amendments. —

A. Plans or ordinances, or amendments thereof, recommended or adopted under the powers conferred by this chapter need not be advertised in full, but may be advertised by reference. Every such advertisement shall contain a descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed plans, ordinances or amendments may be examined.

The local planning commission shall not recommend nor the governing body adopt any plan, ordinance or amendment thereof until notice of intention to do so has been published once a week for two successive weeks in some newspaper published or having general circulation in the locality; however, the notice for both the local planning commission and the governing body

may be published concurrently. The notice shall specify the time and place of hearing at which persons affected may appear and present their views, not less than five days nor more than 21 days after the second advertisement appears in such newspaper. The local planning commission and governing body may hold a joint public hearing after public notice as set forth hereinabove. If a joint hearing is held, then public notice as set forth above need be given only by the governing body. The term "two successive weeks" as used in this paragraph shall mean that such notice shall be published at least twice in such newspaper with not less than six days elapsing between the first and second publication. In any instance in which a locality in Planning District 23 has submitted a timely notice request to such newspaper and the newspaper fails to publish the notice, such locality shall be deemed to have met the notice requirements of this subsection so long as the notice was published in the next available edition of a newspaper having general circulation in the locality. After enactment of any plan, ordinance or amendment, further publication thereof shall not be required. ***[Emphasis added.]***

B. When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of 25 or fewer parcels of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner or owners, their agent or the occupant, of each parcel involved; to the owners, their agent or the occupant, of all abutting property and property immediately across the street or road from the property affected, including those parcels which lie in other localities of the Commonwealth; and, if any portion of the affected property is within a planned unit development, then to such incorporated property owner's associations within the planned unit development that have members owning property located within 2,000 feet of the affected property as may be required by the commission or its agent. However, when a proposed amendment to the zoning ordinance involves a tract of land not less than 500 acres owned by the Commonwealth or by the federal government, and when the proposed change affects only a portion of the larger tract, notice need be given only to the owners of those properties that are adjacent to the affected area of the larger tract. Notice sent by registered or certified mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement. If the hearing is continued, notice shall be remailed. Costs of any notice required under this chapter shall be taxed to the applicant.

When a proposed amendment of the zoning ordinance involves a change in the zoning map classification of more than 25 parcels of land, or a change to the applicable zoning ordinance text regulations that decreases the allowed dwelling unit density of any parcel of land, then, in addition to the advertising as required by subsection A, written notice shall be given by the local planning commission, or its representative, at least five days before the hearing to the owner, owners, or their agent of each parcel of land involved, provided, however, that written notice of such changes to zoning ordinance text regulations shall not have to be mailed to the owner, owners, or their agent of lots shown on a subdivision plat approved and recorded pursuant to the provisions of

Article 6 (§ 15.2-2240 et seq.) where such lots are less than 11,500 square feet. One notice sent by first class mail to the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall be deemed adequate compliance with this requirement, provided that a representative of the local commission shall make affidavit that such mailings have been made and file such affidavit with the papers in the case. Nothing in this subsection shall be construed as to invalidate any subsequently adopted amendment or ordinance because of the inadvertent failure by the representative of the local commission to give written notice to the owner, owners or their agent of any parcel involved.

The governing body may provide that, in the case of a condominium or a cooperative, the written notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in lieu of each individual unit owner.

Whenever the notices required hereby are sent by an agency, department or division of the local governing body, or their representative, such notices may be sent by first class mail; however, a representative of such agency, department or division shall make affidavit that such mailings have been made and file such affidavit with the papers in the case.

A party's actual notice of, or active participation in, the proceedings for which the written notice provided by this section is required shall waive the right of that party to challenge the validity of the proceeding due to failure of the party to receive the written notice required by this section.

C. When a proposed comprehensive plan or amendment thereto; a proposed change in zoning map classification; or an application for special exception for a change in use or to increase by greater than 50 percent of the bulk or height of an existing or proposed building, but not including renewals of previously approved special exceptions, involves any parcel of land located within one-half mile of a boundary of an adjoining locality of the Commonwealth, then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local commission, or its representative, at least 10 days before the hearing to the chief administrative officer, or his designee, of such adjoining locality.

D. When (i) a proposed comprehensive plan or amendment thereto, (ii) a proposed change in zoning map classification, or (iii) an application for special exception for a change in use involves any parcel of land located within 3,000 feet of a boundary of a military base, military installation, military airport, excluding armories operated by the Virginia National Guard, or licensed public-use airport then, in addition to the advertising and written notification as required by this section, written notice shall also be given by the local commission, or its representative, at least 30 days before the hearing to the commander of the military base, military installation, military airport, or owner of such public-use airport, and the notice shall advise the military commander or owner of such public-use airport of the opportunity to submit comments or recommendations.

E. The adoption or amendment prior to July 1, 1996, of any plan or ordinance under the authority of prior acts shall not be declared invalid by reason of a failure to advertise or give notice as may be required by such act or by this chapter, provided a public hearing was conducted by the governing body prior to such adoption or amendment. Every action contesting a decision of a locality based on a failure to advertise or give notice as may be required by this chapter shall be filed within 30 days of such decision with the circuit court having jurisdiction of the land affected by the decision. However, any litigation pending prior to July 1, 1996, shall not be affected by the 1996 amendment to this section.

F. Notwithstanding any contrary provision of law, general or special, the City of Richmond may cause such notice to be published in any newspaper of general circulation in the city.

G. When a proposed comprehensive plan or amendment of an existing plan designates or alters previously designated corridors or routes for electric transmission lines of 150 kilovolts or more, written notice shall also be given by the local planning commission, or its representative, at least 10 days before the hearing to each electric utility with a certificated service territory that includes all or any part of such designated electric transmission corridors or routes.

H. When any applicant requesting a written order, requirement, decision, or determination from the zoning administrator, other administrative officer, or a board of zoning appeals that is subject to the appeal provisions contained in § 15.2-2311 or 15.2-2314, is not the owner or the agent of the owner of the real property subject to the written order, requirement, decision or determination, written notice shall be given to the owner of the property within 10 days of the receipt of such request. Such written notice shall be given by the zoning administrator or other administrative officer or, at the direction of the administrator or officer, the requesting applicant shall be required to give the owner such notice and to provide satisfactory evidence to the zoning administrator or other administrative officer that the notice has been given. Written notice mailed to the owner at the last known address of the owner as shown on the current real estate tax assessment books or current real estate tax assessment records shall satisfy the notice requirements of this subsection.

This subsection shall not apply to inquiries from the governing body, planning commission, or employees of the locality made in the normal course of business. (Code 1950, § 15-961.4; 1962, c. 407, § 15.1-431; 1964, c. 632; 1968, cc. 354, 714; 1973, cc. 117, 334; 1974, cc. 100, 570; 1975, c. 641; 1976, c. 642; 1977, c. 65; 1982, c. 291; 1990, c. 61; 1992, cc. 353, 757; 1993, cc. 128, 734; 1994, c. 774; 1995, c. 178; 1996, cc. 613, 667; 1997, c. 587; 2001, c. 406; 2002, c. 634; 2004, cc. 539, 799; 2005, c. 514; 2007, cc. 761, 813; 2011, c. 457; 2012, c. 548; 2013, cc. 149, 213; 2020, cc. 22, 761.)

History

148-220 VIOLATIONS AND PENALTIES

Any person, firm or corporation violating, causing or permitting the violation of any of the provisions of this Chapter shall be guilty of a misdemeanor and, upon conviction thereof, may be punishable by a fine of not less than $10 nor more than $1,000. If the violation is uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in compliance with the zoning ordinance, within a time period established by the court. Failure to remove or abate a zoning violation within the specified time period shall constitute a separate misdemeanor offense punishable by a fine of not less than $10 nor more than $1,000, and any such failure during any succeeding 10-day period shall constitute a separate misdemeanor offence for each 10-day period punishable by a fine of not less than $100 nor more than $1,500.

148-320 FINAL SUBDIVISION PLAT RECORDATION REQUIREMENTS

The purpose of good subdivision and site development design is to create a functional and attractive development, to minimize adverse impacts and to ensure that a project will be an asset to the general welfare of the community. To promote this purpose, all subdivision and site development plans shall conform to the standard herein, which are designed to result in a well-planned community without adding unnecessarily to the cost of development.

148-401 PRE-APPLICATION PROCEDURE

A pre-application consultation between the applicant and the Director is encouraged prior to the submission of any proposed subdivision. This is desirable to minimize development planning costs, to avoid misunderstanding or misinterpretation and to ensure compliance with the requirements of this Chapter. Representations made at pre-application meetings shall not be binding on the Town or the applicant.

148-405 SKETCH PLAN SUBMISSION REQUIREMENTS AND REVIEW PROCEDURES

A. Sketch Plan Submission Procedures.

1. A sketch plan of the proposed minor subdivision may be submitted prior to the preparation of engineered plans. In such cases, a sketch plan shall be considered a submission for informal discussion and shall not constitute official submission of a plan to the Town. A sketch plan shall be submitted to the Director in numbers sufficient for distribution to and/or review by appropriate Town departments. The sketch plan shall be prepared in accordance

with the detail requirements of Section 148-1005.

2. Additional information may be provided at the option of the applicant.

B. Sketch Plan Review Procedures.

1. The sketch plan shall be reviewed administratively by the appropriate Town departments, taking into consideration the requirements of the Subdivision and Zoning Ordinances, the arrangement, location and width of streets, the topography of the land, sewage disposal, water supply, drainage and stormwater control, lot sizes and lot arrangement, further development of adjoining lands, the guidelines of the Town Comprehensive Plan and the requirements of other plans and ordinances as adopted by the Town. The advice of other officials or consultants may be sought in reviewing a sketch plan. Within one week of receipt by the Director, the sketch plan submission shall be reviewed for completeness. If found complete, it shall be immediately forwarded to the appropriate Town departments for review.

2. The reviewing departments shall have two (2) weeks for the review of the sketch plan and to provide written comments to the Director. The Director shall then contact the applicant and schedule a meeting to discuss any changes or modifications regarding any aspect of the plan that will be required for approval of future plan submissions. These discussions are informal and will not result in an official summary letter to the applicant, but are intended to serve as a guideline in the preparation of plans.

148-415 MINOR SUBDIVISION SUBMISSION REQUIREMENTS AND REVIEW PROCEDURES

A final subdivision plat is required for all minor subdivisions.

A. Minor Subdivision Submission Procedures.

1. An applicant shall submit a minor subdivision application form and checklist for a final subdivision plat to the Director along with sufficient number of the plat for distribution to and review by the appropriate Town departments.

2. The application shall be accompanied by a nonrefundable filing fee in the amount set in the schedule of fees.

B. Final Subdivision Plat Detail Requirements. The final subdivision plat shall be prepared by a

land surveyor or professional engineer licensed by the Commonwealth of Virginia and shall conform to the Standards for Plats of the Virginia State Library Board (17VAC15-60-10, et seq). The Final Plat shall be prepared in accordance with the detail requirements of Section 148-1035.

C. Supplemental Data to Accompany Minor Subdivision Submission.

1. An overlot grading plan or generalized development plan as determined by the Director. The overlot grading plan and/or generalized development plan shall be prepared in accord with the requirements contained herein.

2. In the event that public water and/or sewer is not available to the site to be subdivided, a certificate of appropriate approval of the State Health Department for the water supply and/or sanitary sewage disposal system(s) for a proposed subdivision. If individual on-site sewage disposal systems are to be used, the applicant shall submit Health Department tentative approval of each lot in the subdivision as having a suitable site for a septic system at the state lot size. This shall be done on a lot-by-lot basis. This tentative approval does not guarantee the issuance of a permit for a septic system when construction occurs. The State Health Department reserves the right to withdraw any tentative approval at the time a permit for a septic system is applied for.

D. Minor Subdivision Review Procedures.

1. The Director shall determine whether the submitted plat, plan and application is complete, in accord with this Chapter. The Director must notify the applicant of any items that are required to make the application complete and eligible for official submission within ten (10) business days of submission. The date of official acceptance of the application by the Town shall be noted on the application.

2. After official acceptance of the application, the Director shall submit the plat and plan to the appropriate Town departments for review. The Director shall take action on the application within 60 days of submission. However, if approval of a feature or features of the proposed subdivision by a state agency or public authority is necessary, the commission or agent shall forward the plat and plan to the appropriate state agency or agencies for review within 10 business days of receipt of such plat or plan. Upon receipt of the approvals from all state agencies, the Director shall act upon the submission within 35 days.

3. The Director shall not approve any plan or plat until such plan or plat comply with the Town Code and until all required modifications are made. The Director shall notify the applicant if the plan or plat is disapproved, in writing, and the reasons for disapproval shall be specifically enumerated and the modifications or corrections necessary for approval shall

be identified.

4. The Director shall act on any subdivision plan and plat that was previously disapproved within 45 days after the plan has been modified, corrected and resubmitted for approval.

5. If the review is favorable, the plat will be signed by the Director, the Director of Finance and the Town Manager, with the date of action.

E. As-built Survey Required.

1. An as-built plan is required for all minor subdivision overlot grading plans. The as-built drawing shall be prepared in accordance with the detail requirements of Section 148-1025.

148-820 STREET DESIGN

A. General Standards

1. All streets shall be dedicated to the Town of Front Royal for public use, and shall be designed, engineered and constructed to the public street design standards found within the Construction Standards and Specifications Manual.

2. Proposed subdivisions and developments shall coordinate the location, width and other street improvements associated with proposed streets with existing and planned streets that are contiguous to, or within, the property boundaries. For the purposes of this subsection, planned streets shall include streets, rights-of-way, and street improvements designated as a future road improvement by the Town of Front Royal Comprehensive Plan. Town Council, upon recommendation by the Planning Commission, may waive this requirement where the continuation of the planned, existing or platted street will create adverse traffic impacts.

    a. The proposed street system shall extend existing or planned streets at the same width or larger, but at not less than the required minimum width as specified in this chapter. Where possible, a new intersection into an existing street shall align with an existing street intersection on the opposite side of such street.

    b. Streets that are designated for continuation to adjoining properties shall be designed and constructed to the property line with a temporary cul-de-sac turnaround, or other temporary turn-around approved by the Town.

3. Whenever a property proposed for subdivision or development abuts or contains an existing public street that does not meet the minimum right-of-way width requirements of this article,

additional right-of-way shall be provided on each side of the existing public street abutting the proposed subdivision or development so the minimum right-of-way width requirement is ultimately achieved.

4. On-site road improvements shall be required for new subdivisions or developments based on the requirements of this chapter.

5. In accordance with Virginia Code §15.2-2242.A.4, the Town may accept certain off-site road improvements that are reasonable and necessary, the need for which is substantially generated and reasonably required by the construction or improvement of the subdivision or development. Off-site road improvements may include, but are not limited to, acceleration and deceleration lanes, a center turning lane, a parallel service drive, reverse frontage lots, and/or the dedication of additional right-of-way.

6. In accordance with Virginia Code §15.2-2242.A.4, the Town may develop reasonable provisions for the advancement of payments for, or construction of, reasonable and necessary road improvements located outside the property limits of the land owned or controlled by the subdivider or development, the need for which is substantially generated and reasonably required by the construction or improvement.

7. Private lanes or streets shall not be authorized for any new or existing subdivision or development without approval by the Town in accordance with Section 148-820.N.

N. Private Streets, Common Driveways, and Common Parking Courts.

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b. Subdivisions on new non-dedicated private streets may be permitted upon the approval of a special exception by Town Council. In addition to the general submission requirements for special exceptions, as prescribed under this Chapter, requests for private streets through the special exception process shall include a concept plan prepared by a Virginia registered architect, landscape architect, land surveyor or engineer with seal and signature affixed to the plan. The plan shall be approximately to scale and clearly show the following:

[1] Location map showing existing zoning and ownership of property and adjacent land;

[2] Identification of principal site features, including topography, steep slopes, wetlands, wooded areas, archeological areas, floodplains, and other features of significant public interest.

[3] Relationship of the proposal with surrounding utilities and public facilities to serve the tract at the ultimate proposed densities;

[4] A general layout of the road system within the project, including all proposed private and public streets and land uses.

[5] Detailed information on the proposed private street standards with an explanation of the reason for any modifications to the public street standards of this Chapter.

[6] A description of the provisions for continued maintenance of any proposed private street.

[7] A description of the private deed restrictions that will be provided as notice to future property owners regarding the limitations of service available on any proposed private streets.

ARTICLE 9 - DEFINITIONS

148-900 DEFINITIONS

As used in this Chapter, the following terms shall have the meanings indicated:

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SUBDIVISION - The division of a parcel of land into separate parts, under the terms of this Chapter, regardless of whether the parts are held, developed, sold, leased, rented or transferred. The term includes resubdivision**,** and~~,~~ when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

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SUBDIVISION, MAJOR - Any subdivision other than a minor subdivision.

SUBDIVISION, MINOR - A subdivision that does not involve any of the following: the creation of more than a total of eight (8) lots, the creation of any new public streets, the extension of a public water or sewer system, or the installation of drainage improvements through one (1) or more lots to serve one (1) or more other lots.