
New Virginia Supreme Court Decisions – June 2012

This update is not legal advice and reflects only some new decisions which may be of interest to the Virginia construction industry and does not cover all changes and legislative action. Additional information on any of the new laws may be obtained by contacting [Chandra Lantz](mailto:clantz@hf-law.com) at clantz@hf-law.com or 804.771.9586.

CONDEMNATION RIGHTS – FLOODING FROM VDOT IMPROVEMENTS IS COMPENSABLE

Livingston v. Va. Dep't of Transportation, Record No. 101006 (June 7, 2012)

In a suit for property damage under the Just Compensation Clause in Article I, Section 11 of the Constitution of Virginia, it is held that a single event of flooding can support an inverse condemnation claim, and that the plaintiffs' allegations that their homes and various items of personal property were damaged for a public use under Article I, Section 11 are sufficient to withstand demurrer. When VDOT constructs an improvement for the public benefit, it does not thereby become an insurer in perpetuity against flood damage to neighboring property, but a property owner may be entitled to compensation under Article I, Section 11 if VDOT's operation of that improvement causes damage to real or personal property. Thus, where VDOT relocated the channel of a waterway in order to permit highway construction, but failed to maintain the relocated channel via dredging or otherwise, and that failure is alleged to have impacted the magnitude of the damage plaintiffs suffered as the result of the single flooding event at issue, VDOT's choice not to maintain the relocated channel evinced its election to use the highway and nearby residential developments as makeshift storage sites for excess stormwater instead of allocating its resources to maintain the relocated channel. The contentions that plaintiffs lack standing to maintain an inverse condemnation suit and that they cannot recover under Article I, Section 11 for damage to personal property, are rejected. The circuit court's judgment is reversed and the case is remanded for further proceedings.

LEAD PAINT EXPOSURE – LANDLORD IS NOT RESPONSIBLE

Steward v. Holland Family Properties, Record No. 110113 (June 7, 2012)

In a suit for injuries from exposure to lead paint, the trial court did not err in sustaining demurrers filed by two landlords, because a tort duty with regard to tenants of leased properties is not imposed upon the landlords by the common law, by the leases executed in this case, or by provisions of the Virginia Residential Landlord and Tenant Act, Code §§ 55-248.2 et seq., relating to compliance with building and housing codes concerning public health and safety. The judgment of the circuit court, dismissing the complaint for failure to state a cause of action, is affirmed.

ZONING – EXISTING PROFFERS DO NOT GIVE NEIGHBORS VESTED RIGHTS IN RESTRICTIONS ON USE OF NEARBY PROPERTY

Town of Leesburg v. Long Lane Associates, Record No. 111658 (June 7, 2012)

In litigation challenging the rezoning of certain property, the circuit court erred in finding that a locality needs the consent of a neighboring property owner to rezone a parcel that was originally part of an undivided property, to which certain proffers applied. While the landowner has a vested right under Code § 15.2-2307 in the land use allowed by a subdivision rezoning ordinance, it has no vested right in its expectation that neighboring properties would continue to develop in accordance with the zoning they had at the time the landowner purchased its property and developed it in accordance with the prior proffers, even where the property was subdivided from a parcel which was rezoned subject to proffered conditions. Code § 15.2-2303(A) does not require all successors in title to agree prior to any portion of the subdivided parcel being rezoned. The town acted pursuant to its statutory authority in rezoning the neighboring property and granting it a special use permit, and there is no evidence that its actions were unreasonable. A landowner cannot acquire a vested right in a road shown on a town plan. The town's amendment of the town plan was a legislative act that did not require the landowner's consent and was not unreasonable. The judgment of the circuit court is reversed and final judgment is entered.