



Virginia Local Government Law

Virginia Supreme Court Opinions Affecting Local Government Law: June 7, 2012

By: Andrew McRoberts. Thursday, June 7th, 2012

Today, the Virginia Supreme Court issued several opinions affecting the practice of Virginia local government law.

The cases involve (1) an inverse condemnation claim against VDOT for flooding, (2) another application of the principles of *West Creek Associates* and *TB Venture* in a City of Richmond assessment appeal case, (3) the ability of landowners to amend proffers on their land despite opposition from neighbors covered by the same proffers in a Town of Leesburg case, and (4) the application of the FOIA definition of "meeting" in the context of email exchanges between local school board members in a Fairfax County School Board case. In this last case, the Local Government Attorneys of Virginia, Inc. filed an amicus brief in support of the school board.

While VDOT did not prevail, I am pleased to note that the local government entities did. Congratulations to the winners.

The following summaries come from the [Virginia Supreme Court website](http://valocalitylaw.com/) (click on the case number to read the opinion):

101006 Livingston v. Va. Dep't of Transportation 06/07/2012 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.

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110820 City of Richmond v. Jackson Ward Partners 06/07/2012 In a taxpayer's challenge to city real estate taxes assessed for multiple tax years on structures located on eight tax parcels that were renovated for use as a low-income, affordable residential housing development, the taxpayer failed to carry its burden to prove the fair market value of the eight parcels of real property at issue. By appraising the eight separate, non-contiguous parcels of real property in bulk as a single apartment complex, i.e., as one tax parcel, and then assigning a value to each tax parcel based on a mathematical calculation, the taxpayer's appraiser failed as a matter of law to carry its burden to prove the fair market value of each parcel. For these reasons, the judgment of the circuit court is reversed and the case is remanded for entry of an order reinstating the city's tax assessments on the eight parcels for the tax years in question.

111658 Town of Leesburg v. Long Lane Associates 06/07/2012 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.

111805 Hill v. Fairfax County School Board 06/07/2012 In proceedings under the Virginia Freedom of Information Act, Code § 2.2-3700 et seq., the circuit court did not err in determining that certain exchanges of e-mails between members of a local school board did not constitute a "Meeting" within the meaning of Code § 2.2-3701 and, thus, did not violate the notice and open meeting requirements of the Act. Nor did the circuit court err in concluding that because the citizen requesting information under the Act had not substantially prevailed on the merits of the case as provided in Code § 2.2-3713(D) in the principal focus of the petition, she was not entitled to an award of attorneys' fees and costs. The judgment of the trial court is affirmed.

Look for more on some of these cases on this blog.

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