



Virginia Local Government Law

Virginia Supreme Court Opinions Affecting Local Government Law: January 13, 2012

By: Andrew McRoberts. Friday, January 13th, 2012

Today, the Virginia Supreme Court issued a number of opinions affecting the practice of Virginia local government law. These summaries are from the [Virginia Supreme Court website](#). Click on the case numbers beside the case names to read the opinions.

101168 Campbell County v. Royal 01/13/2012 In an action by landowners for damages resulting from contamination of groundwater, the trial court erred in granting summary judgment for the plaintiffs under the "Discharge of Oil Into Waters" Law, Code § 62-1.44.34:14 through § 62-1-44.34:23, because those statutes do not apply to the passive, gradual seepage of leachate and landfill gas into groundwater. Since no damage instruction was tendered setting forth the proper measure of recovery on the plaintiff's alternative claim for inverse condemnation, there is no basis on which the plaintiffs can pursue that claim or retain the jury's award of damages. The judgment is reversed and final judgment is entered for the county.

101352 Jean Moreau & Assoc. v. Health Center Comm'n 01/13/2012 In an action by a contracting party against a county healthcare commission arising out of an agreement to plan and develop an independent-living community, the circuit court did not err in dismissing a breach-of-contract claim because plaintiff did not comply with the contractual claims procedure for timely submission of claims under the Virginia Public Procurement Act, Code §§ 2.2-4300 through 2.2-4377, and did not err in finding that a quantum meruit claim was barred by the doctrine of sovereign immunity because it arose out of the commission's exercise of a governmental function. The judgment of the circuit court is affirmed.

101630 Dykes v. Friends of the C.C.C. Road 01/13/2012 In a suit for an injunction to bar owners of real property from interfering with use of a road over their property, which the plaintiffs contended was a public road, the circuit court did not err in finding that there had been no dedication and acceptance of the road as a public road. There can be no implied acceptance of an implied dedication of a rural road, and there is no evidence of a formal acceptance of the road in this case. However, the

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circuit court erred in finding that the road is public solely by virtue of its long and continuous use by the general public and recognition of that use by the county. The law of this Commonwealth simply does not allow for a conversion of private property to public property solely by public use. The judgment of the circuit court granting a permanent injunction and requiring the property owners to remove the pole gates and to allow the general public unrestricted access to the road is reversed, and final judgment is entered for the property owners.

101761 Eberhardt v. Fairfax County Employees' Retirement System 01/13/2012 In a circuit court proceeding seeking review of the denial of service-connected disability retirement benefits by a county, ostensibly pursued under Code § 51.1-823, the court lacked subject-matter jurisdiction to hear the appeal because that Code provision applies only to police officer retirement systems in counties with the urban executive form of government. The judgment of the circuit court granting a motion to dismiss the proceeding is affirmed.

101831 Sinclair v. New Cingular Wireless PCS, LLC 01/13/2012 In a challenge to Albemarle County Code § 18-4.2.5, the circuit court correctly determined that waivers permitting construction on certain slopes within the county are not variances within the meaning of Code § 15.2-2201 and therefore need not be considered solely by the board of zoning appeals under Code § 15.2-2310 using the criteria set forth in Code § 15.2-2309(2). However, the circuit court erred in ruling that such waivers may be granted or denied by the planning commission because the General Assembly has authorized local governing bodies to delegate such legislative power only to the zoning administrator or board of zoning appeals. Accordingly, the judgment is affirmed in part, reversed in part, and the case is remanded.

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