



WEINBERG LAND USE FORUM

NEWS

FALL 2008

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This publication may describe some of the legal matters that the attorneys of Hirschler Fleischer have worked on in the past. Of course, case results depend upon a variety of factors unique to each case and case results do not guarantee or predict a similar result in any future case undertaken by a Hirschler Fleischer attorney.

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Land Use Litigation

BY: GLENN R. MOORE, ESQ.

Hirschler Fleischer has significant experience in litigating land use matters. Currently, Glenn Moore, Chandra Lantz and Farrah de Leon are representing the Town of Purcellville in land use litigation with Loudoun County, relating to the application of a jointly adopted Comprehensive Plan for an area in Loudoun County surrounding the Town.

In 1994, the Town of Purcellville and Loudoun County entered into an Annexation Agreement setting forth controls on the Town's ability to annex areas of the County in proximity to the Town. The Town was willing to accept limitations on its annexation authority, because the agreement called for the adoption of a joint comprehensive plan for the joint land management area affected by the agreement ("JLMA"). That comprehensive plan, known as the Purcellville Urban Growth Area Management Plan ("PUGAMP") was adopted by both the Town Council of the Town and the Board of Supervisors of Loudoun County in 1995. PUGAMP specifies that it "...will be implemented as an element of both the Town's and the County's respective Comprehensive Plans."

Our firm's representation of the Town in connection with the application of the Annexation Agreement and PUGAMP arose as a result of a disagreement between the County and the Town over the interpretation of PUGAMP and the administration of its terms. The County desires to place a public facility, specifically a high school, at a location in the JLMA that the Town contends is inconsistent with PUGAMP. The County's position is that the location of the school at the site in question is consistent with PUGAMP, and that the County alone has the authority to make the determination as to whether the location is consistent with PUGAMP. The Town filed an action for Declaratory Judgment, seeking a determination that each locality had administration rights with respect to PUGAMP. Judge Thomas Horne of the Circuit Court of Loudoun County ruled in favor of the Town's position, finding that both localities have the right to review the location of public facilities in the JLMA pursuant to their agreement for the extension of the Town's ability to undertake comprehensive planning authority in the JLMA.

While the Declaratory Judgment action was pending, the Zoning Administrators of each locality were asked to make determinations as to whether the location of the proposed high school was consistent with PUGAMP. The decisions of the two Zoning Administrators were then appealed to the Board of Zoning Appeals for the respective localities. The Town's Board of Zoning Appeals declined to rule upon the Town's Zoning Administrator's determination that the school was not consistent with PUGAMP, stating that it did not have jurisdiction to make determinations with respect to uses of property outside of the Town. The County's Board of Zoning Appeals affirmed the determination of its Zoning Administrator that the location of the proposed high school at the subject site was

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There are a number of different approvals that fall under the ambit of “land use” regulation. Certain of these approvals are considered “legislative” in character and others are considered “ministerial.” This distinction is perhaps the most important to understand because it determines the standard of review that will be applied by the Courts.

Legislative Matters

Zoning decisions made by the local governing body are clearly “legislative” and are governed by the “fairly debatable” standard articulated by the Virginia Supreme Court. Such decisions include rezoning, conditional zonings and special exceptions. Under this standard, the Court has said that it will not disturb the decision of the local governing body unless it is arbitrary, capricious and unreasonable. If the decision is “fairly debatable”, meaning that reasonable parties could differ as to the outcome, the Court will not substitute its judgment for that of the local governing body and the decision will be affirmed. On the other hand, if the decision is not fairly debatable and therefore arbitrary, capricious or unreasonable, the Court will set it aside.

A corollary to the “fairly debatable” standard that renders zoning decisions particularly difficult to appeal successfully is that if there is more than one “reasonable” use for the subject property, then the Courts will defer to the localities’ selection of permitted uses as “fairly debatable.” In other words, the Court will assume the decision was proper, forcing the landowner to prove not only that the use sought is reasonable but also that all possibly

permitted uses are unreasonable. The latter part of this test is usually the more difficult one to meet.

Appealing zoning decisions is difficult but not impossible. For example, we recently appealed the denial of a rezoning of property fronting on Route 360 in King & Queen County. The County’s Comprehensive Plan reflected that the property was planned for commercial development. In fact, one of the overriding goals of the plan was to retain the County’s agricultural character by channeling commercial development onto the Route 360 corridor. The reasons given for denial of the rezoning were all demonstrably rebuttable. We were able to obtain a rezoning of the property without going to trial by negotiating some changes to the proffers. Importantly, there is a very short statute of limitations – only thirty (30) days – for initiating this type of appeal.

Special exceptions for particular uses also are considered legislative in nature. Such actions occur where an ordinance provides that certain uses contemplated for a particular zoning category are not permitted “by right” but only with the issuance of a special or conditional use permit. These permits are typically issued by the locality’s Board of Zoning Appeals. When acting on a special use, the Board of Zoning Appeals is deemed to act in a “legislative” capacity. Thus, appeals of these cases are subject to the “fairly debatable” rule discussed above. However, what makes these cases somewhat easier to appeal is that there frequently is a track record of decisions in comparable cases that can be cited in support of the landowner’s appeal. Appeals of these cases are typically structured around showing that the

landowner is being treated differently than others comparably situated.

Ministerial Matters

At the other extreme of the spectrum are cases involving subdivisions, site plans, building permits and other administrative approvals. All of these decisions are considered “ministerial,” meaning that there is not supposed to be any discretion involved. If the landowner meets the requirements of the applicable law or ordinance, then the landowner has a legal right to approval. These cases are not subject to the “fairly debatable” rule. Instead, the standard of review in these cases is whether the local government official followed the applicable law or ordinance. For this reason, these cases are the easiest to appeal.

The foregoing must be tempered with the recognition that even as to ministerial matters, local land use officials have considerable leeway in the “interpretation” of ordinance requirements. The Courts will not overturn an interpretation, particularly one with a history of consistent application, unless it is contrary to the ordinance or otherwise unreasonable. However, administrative officials are not permitted to deviate from the ordinance, add unstated requirements, etc. Landowners are typically aided by a rule of construction that unless there is a definition in the statute or ordinance, words are to be given their ordinary, everyday meaning. If the landowner can show a change in interpretation or inconsistent application, these will go a long way towards demonstrating unreasonableness.

Several years ago, we handled the appeal of a decision denying a sign permit. The applicable ordinance required that the sign be of a certain size and located “on site.” The landowner’s lot was an irregularly shaped “flag” lot that extended out to a major thoroughfare. The local government officials ruled that the proposed sign location did not “function” as part of the building site and, thus, was a prohibited “off site” sign. Employing the rule of construction that words be given their everyday meaning, the Court held that since the sign was on the landowner’s property, it was “on site.” Moreover, we were able to show that the local government had inconsistently applied its interpretation on this issue.

Interpretations of the zoning ordinance are appealable to the Board of Zoning Appeals. By statute, where the Zoning Administrator has rendered an interpretation that will be binding unless appealed, the interpretation must be in writing and it must contain a disclosure of the requirement to appeal to the BZA within 30 days. Conversely, where

the Zoning Administrator has rendered an interpretation and a landowner has relied upon same, the interpretation is binding upon the locality absent a showing of fraud, mistake or change of circumstances. Decisions of the Board of Zoning Appeals are, in turn, appealable to Circuit Court. While the Court will grant certain deference to the BZA in interpreting its ordinance, the foregoing rules, e.g., words have plain meaning, BZA cannot invoke unstated requirements, etc., would all apply at this level.

The Code of Virginia provides that where strict application of zoning or subdivision requirements would result in a hardship on the landowner, the Board of Zoning Appeals may grant a variance. When acting on a variance, the Supreme Court has held that the BZA acts in a ministerial capacity. In a recent case, *Cochran v. Fairfax County BZA*, however, the Virginia Supreme Court interpreted the hardship requirements of the Code so restrictively as to virtually negate this practice. The Court considered three situations, one each from Fairfax,

Pulaski and Virginia Beach involving various variance requests. In each case, the Supreme Court held that reasonable use of the property was possible without the variance. For example, in the Fairfax situation, the landowner wished to demolish his existing house and build a somewhat larger house. He sought a side yard variance (15 feet reduced to 13 feet) to accommodate a “side load” garage instead of a “front load” garage as per the existing construction. The Court examined all sorts of ways the building could be accommodated, e.g., construct a “front load” garage, reduce size of the house, build a third floor, etc. Based upon this finding, the Court ruled that the BZA did not have statutory power to grant the variances at issue. The rule of law that emerged from *Cochran* was that a variance is permissible only where application of the ordinance would be so onerous that it would amount to a taking of the property. The General Assembly has since amended the controlling statutes; but the application of these amendments is as yet untested in Court decisions.

Land Use Litigation

FROM PAGE 1

consistent with PUGAMP. Both decisions were subsequently appealed to Circuit Court.

Judge Horne concluded that the County Board of Zoning Appeals properly affirmed the County’s Zoning Administrator’s determination that the location of the school at the subject site was a feature shown on PUGAMP, and additionally ruled that the Purcellville Board of Zoning Appeals had no authority to review determinations made with respect to uses of land outside of the Town’s corporate limits.

The County appealed the decision in the Declaratory Judgment case regarding joint authority of the Town and County to administer PUGAMP, to the Virginia Supreme Court. The Town appealed the Court’s determinations with respect to the authority of the Purcellville Board of Zoning Appeals outside of the Town limits and the ruling by the County’s Board of Zoning Appeals that the proposed high school was authorized at the subject site under PUGAMP. The appeals were accepted by the Court, and Chandra Lantz argued

the appeals before the Court in June. The Court’s rulings on the appeals are expected in September, 2008.

It should be noted that related litigation regarding the Town’s effort to condemn the subject property for public water supply purposes is also in progress. Additionally, the Town has appealed the County’s approval of the special exception authorizing the location of the high school at the subject site to the Circuit Court of Loudoun County.

The Virginia Department of Transportation (“VDOT”) continues to develop transportation related regulations that have an impact on development activities. While only partially implemented, these new regulations are adding time and cost to the overall development process. Once the new regulations are fully implemented, the added time and cost will only increase. Considering and planning for the impacts of these new regulations during the initial stages of the development process will help avoid delays at critical junctures and added expenses as a result of revising completed studies or plans. Our experience with these new regulations indicates that efficiencies can be gained by addressing the new regulations simultaneously and early on in the development process.

As you will find below, we will continue to provide updates on VDOT’s activities with respect to these new regulations.

New Access Management Regulations for Principal Arterial Roads

VDOT recently made changes to its requirements for approving private and commercial entrances onto public rights-of-way. Effective July 1, 2008, the process for obtaining both types of entrance permits from VDOT changed with respect to entrances onto “Principal Arterial” roads. A list of Virginia’s roads deemed to be Principal Arterials is provided on VDOT’s website at http://www.virginiadot.org/projects/resources/access_management/List_of_VDOTControlledPrincipalArterials.pdf.

Under the new process, VDOT does not have to approve a location that is most convenient or preferred by the applicant. In addition, if the subject property is located at the intersection of two roads, VDOT may choose the road upon which the entrance will be located. A property owner cannot assume that VDOT will permit an entrance onto a “major” road when an entrance onto a side street is available. Further, a property owner cannot assume that VDOT will permit

two entrances, one onto the “major” road and one onto the side street. The entrance location VDOT approves must merely provide “reasonably convenient access” to the subject property. However, this approved entrance may not even be on the applicant’s property if certain spacing requirements cannot be met by the applicant’s road frontage. Applicants without enough road frontage to satisfy these spacing requirements may have to “buy their way out” to a road through adjacent properties. Applicants fortunate enough to have an entrance on their property may have to construct the entrance and lay out their site to accommodate adjacent property owners. There are a few exceptions to these new spacing requirements that may permit an entrance on the subject property even if there is not sufficient road frontage to satisfy the spacing requirements.

The new process also permits VDOT to require road improvements beyond what was imposed by the locality at zoning without any credit towards other obligations (such as cash proffers). VDOT may also require a traffic study if one was not completed pursuant to the new traffic impact analysis regulations.

VDOT will exempt proposed entrances onto principal arterial roads from the new review process in two limited circumstances. The two circumstances are (1) entrance locations shown on a proffered plan of development accepted by a locality prior to July 1, 2008 and (2) entrance locations shown on a site plan approved prior to July 1, 2008. In these two instances, VDOT will review these entrances under the prior review process.

If you are planning to develop or purchase land adjoining a principal arterial road, you need to consider as early as possible the impact of this new process on your plans and/or purchase price. Also, we are researching the legalities of these regulations in general and would appreciate your sharing your stories with Jeff Geiger in our office.

Forthcoming Access Management Regulations for Minor Arterial and Collector Roads

Changes are also coming to the process for obtaining entrance permits onto minor arterial and collector roads. These changes will take effect on October 1, 2009. VDOT intends to make the same changes to the entrance permit process for minor arterial and collector roads that were made to the process for obtaining entrance permits onto principal arterial roads.

Developers and other interested parties should consider the feasibility of obtaining entrance permits onto minor arterial and collector roads before the forthcoming changes take effect on October 1, 2009. In addition, the forthcoming changes may create exemptions similar to the two exemptions used for entrances onto principal arterial roads. If similar exemptions are provided, then entrances shown on proffered plans of development that are accepted by localities prior to October 1, 2009 and shown on site plans approved by localities prior to October 1, 2009 may be exempted from the new review process for entrances onto minor arterial and collector roads. As soon as VDOT announces these forthcoming changes, we will update you on the availability of any exemptions provided by VDOT.

Traffic Impact Analysis Regulations

The phased implementation of VDOT’s Traffic Impact Analysis Regulations (“527 Regulations”) is now complete. These regulations were implemented across the Commonwealth in three phases based on geography over an eighteen month period. The last phase covering Hampton Roads, Bristol, and Lynchburg commenced on July 1, 2008. As a result, all areas of the Commonwealth must now comply with these regulations during the local approval process for rezoning proposals or site plans.

VDOT also issued revisions to the 527 Regulations and these revisions became

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Pending ZONING CASES

THE COUNTY OF Chesterfield

Jim Theobald will go before the Board of Supervisors September 24 to amend conditions on seven acres of land on the north side of Hull Street Road immediately west of Duckridge Road. The property is currently zoned C-3 but essentially proffered for office use. Jim's client, EWN Investments, who is also the developer of Hancock Village across the street, would like to develop the property for boutique retail purposes.

THE COUNTY OF Hanover

Jim Theobald was successful in rezoning approximately 6.2 acres on the north side of Route 360 and Compass Point Road for a self-service storage facility and other retail uses.

THE CITY OF Fredericksburg

Charlie Payne is currently working with city officials to assist our client, Prince Edward Street, LLC, with its special exception application to convert an historical property damaged by fire from an apartment complex to luxury condominiums. A public hearing has been scheduled for Sept. 9, 2008.

Charlie Payne is assisting Amero Real Estate Company (U-Haul) with a sign zoning issue for purposes of possibly filing a special exception or zoning text amendment to exceed the sign height zoning requirements for a commercial highway district.

Charlie Payne continues to assist the U.S. National Slavery Museum with its real estate tax exempt application.

Gary Nuckols and Charlie Payne are assisting the Rappahannock Community Services Board with its special use permit to construct a 12 bed mental wellness center. The wellness center is being funded by the Sunshine Lady Foundation. A public hearing is scheduled for Sept. 9, 2008

Miscellaneous

Marshall Jones, Jeff Geiger, Caroline Nadal and Chuck Rothenberg continue to represent Verizon Wireless in a number of requests for communication tower locations in the Cities of Richmond, Petersburg and Colonial Heights, and in Chesterfield, Henrico, Hanover, New Kent, Prince George, Lunenburg and Caroline Counties.

THE COUNTY OF New Kent

Chuck Rothenberg and Caroline Nadal are representing Bridgewater Crossings, Inc. in obtaining approval for a Planned Unit Development, which proposes a mix of residential and commercial uses on approximately 113 acres in the vicinity of Bottoms Bridge.

THE TOWN OF Purcellville LOUDOUN COUNTY

Chandra Lantz, Farrah deLeon and Glenn Moore have been representing the Town of Purcellville in a comprehensive plan dispute with Loudoun County which impacts the location of a high school proposed for construction just outside of the Town. A more complete description of the representation appears elsewhere in this newsletter.

THE CITY OF Richmond

Glenn Moore is working with a social service provider in the City on the adoption of two Special Use Permits to authorize the provider to improve and expand the scope of its services to its client base.

THE COUNTY OF Spotsylvania

Charlie Payne is assisting Jefferson Contracting Corp. with a proffer amendment and rezoning application to develop a 30,000 square foot professional office building at the corner of Hood Drive and Courthouse Road. A public hearing is scheduled for this coming September 9, 2008.

On behalf of our client Stacy Development, LLC, Charlie Payne will soon be submitting an application to rezone certain property along River Road from residential use (R-1) to planned development housing (PDH) for purposes of developing an assisted living and age-restricted development.

Assisting JVB, LLC, Charlie Payne is encouraging the County Board of Supervisors to move a property owned by our client from rural residential use to Mixed Use, Courthouse Village, under the new proposed county comprehensive land use plan. A public hearing is scheduled for this coming September 9, 2008.

Jim Theobald is assisting the Silver Companies and the Committee of 500 citizens' group in commenting on proposed development standards in the Highway Corridor Overlay Districts.

THE COUNTY OF Stafford

Charlie Payne will soon assist our client Silver Companies with a proposed rezoning and proffer amendment of certain properties located in Celebrate Virginia North. The purpose will be to increase the current recreational business campus (RBC) district, which is a mix use district of high residential density, office, commercial, and recreational uses.

On behalf of our client American Life League, Inc., Charlie Payne will soon be filing an application to rezone 78 acres near the Stafford Courthouse area from agricultural zoned property to commercial/office. The proposed use is a commercial center for the arts.

Jurisdictional UPDATES

THE TOWN OF Ashland

The Town's Comprehensive Plan update process continues. The Town has engaged Renaissance Planning Group of Charlottesville to assist with the update process. Urban Partners of Philadelphia has completed an Economic and Demographic Analysis as part of the Comprehensive Plan update process. The current update is anticipated to result in a major overhaul of the Town's Comprehensive Plan and is anticipated to contain more in the nature of specific recommendations for land uses within the Town, followed by policy statements. The Town will also be taking another look at the mapping

under the Land Use Plan. Consequently, if you have an interest in land in the Town of Ashland, you should be aware of how the mapping could affect the future development potential of your property. Within the next three months, the Planning department anticipates rapid progress on the update. It is reported that the update process is likely to be completed in the Spring of 2009. Following adoption of the update, the planning Department anticipates the adoption of Zoning Ordinance revisions to accomplish some of the adopted goals.

THE COUNTY OF Chesterfield

New initiatives continue to be floated, considered and deferred for further study. Road impact fees have been deferred at the Board of Supervisors' level after having been recommended for denial by the Planning Commission. The County's Public Facilities Plan has been deferred for six months. A somewhat confusing version of the Upper Swift Creek Area Plan was approved by the Board of Supervisors, which includes Level of Service standards for schools, along with

a deferred growth area. Litigation has been filed by a number of landowners challenging whether proper notice was given with regard to the finally-adopted plan, whether or not the Plan constitutes a de facto moratorium, and the ability of the County to consider levels of service in light of their authority granted by the General Assembly. Chesterfield has also circulated Request for Proposals for planning firms to assist with a County-wide Land Use Plan revision.

THE COUNTY OF Hanover

David Maloney, Deputy Director of Planning, reports that the Planning Department has almost completed work on draft revisions to the Industrial District provisions in the County's Zoning Ordinance. The intent of the revisions is, in part, to make the list of permitted uses and their regulation more in keeping with the type of development now seen in industrial areas. It is anticipated that the draft ordinance revisions will be forwarded to a community group for review and comment before the ordinance amendment language is submitted to the Planning Commission and Board of Supervisors for consideration.

The County is also considering stiffening civil penalties for Zoning Ordinance violations. Concern over how the increased penalties might affect those cited for sign violations has led the County to consider whether sign ordinance provisions should be modified. It is anticipated that the Staff will consider the sign ordinance amendment issues and make recommendations to the Board's Community Development Committee. Work on any sign ordinance revisions is at a very early stage

THE COUNTY OF Stafford

Charlie Payne is working with local businesses, local business advocacy groups (including the Fredericksburg Regional Chamber and Stafford For Progress) and Stafford County officials to address proposed changes to the urban service area districts. The Stafford County planning commission has recommended shrinking the current urban service area district by approximately 40%. Dr. Stephen Fuller, Dwight Schar Faculty Chair and University Chair from George Mason

University has been retained by the Fredericksburg Regional Chamber for purposes of showing the fiscal impact of such a reduction. The Stafford County Board of Supervisors must, in accordance with state law, designate the urban service area before the end of this year. The proposed reduction could have a significant adverse impact on Stafford County commercial developers. A work session has been scheduled for September 16, 2008.

THE COMMONWEALTH OF Virginia

The Department of Conservation and Recreation is considering sweeping stormwater regulations that would have a significant adverse impact on development. The regulations would reduce the amount of phosphorus runoff from .45 pounds per acre per year to .28 pounds per acre per year. Experts in the home building industry, with assistance from scientists at Virginia Tech, are attempting to convince the DCR of the errors of its ways.

VDOT access management and 527 regulations are beginning to have a significant impact on proposed developments – see related article. We are researching the legalities of these regulations in general and would appreciate your sharing your stories with Jeff Geiger in our office. VDOT's secondary street connectivity regulations are just around the corner.

RABLF OVERVIEW

This past June 9, 2008, the Hirschler Fleischer, P.C., Fredericksburg office held its inaugural Rappahannock Area Business Leadership Forum (“RABLF”). There were over seventy-five (75) business leaders and elected officials who attended the event, which featured “Why Stafford County is a great place to get ahead.” The keynote speaker for the event was Anthony Romanello, County Administrator.

Mr. Romanello discussed why Forbes.com named Stafford County, Virginia the “Greatest Place to Get Ahead”. In this regard, Stafford County is one of the fastest growing counties in the country. It is also the eleventh (11th) wealthiest county in the country with an average median income over \$95,000.00 per household, which is also the third (3rd) highest in the Commonwealth of

Virginia. Stafford is also home to the Quantico Marine Corps base, which will be the beneficiary of approximately 6,000 new highly skilled jobs pursuant to the Defense Base Closure and Realignment (“BRAC”).

In addition, Mr. Romanello shared his vision for the future growth of Stafford County, including the redevelopment of four (4) key areas within the county. Other hot topic issues included future transportation plans and spending, providing necessary utilities to all properties within the urban service area, proposed business professional and occupational license (“BPOL”) fee, and the opening of the new Stafford Hospital. The audience was actively engaged during the question and answer period, and a reception followed the event.

RABLF was established by the Hirschler Fleischer, P.C., Fredericksburg office for purposes of bringing together the Fredericksburg area’s local business leaders and elected officials to discuss current and future business development initiatives, issues, and solutions and to further improve the business relationships between local business and government. The next RABLF event is scheduled for this coming September 24, 2008, at 5:30 p.m., Fredericksburg Country Club, featuring Spotsylvania County. The keynote speaker will be Hap Connors, Vice Chairman of the Spotsylvania County Board of Supervisors. The theme will be re-branding Spotsylvania County by promoting smart growth and 21st Century economic development strategies and transportation solutions.

VDOT Updates

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effective on June 30, 2008. While the revisions mainly added clarity to definitions and requirements in the 527 Regulations, there are a few notable changes to the portion of the 527 Regulations dealing with impacts on low volume roads.

The 527 Regulations contain a low volume road threshold for residential rezoning proposals and site plans. This threshold has two tests and, if they are both met, then a traffic impact analysis will be required for the proposed rezoning or site plan. The recent revisions left the first test unchanged, but modified the second test. The first test requires the proposal to generate more than 200 daily vehicle trips on a state-controlled highway. The second test used to require that the proposal more than double the daily traffic volume the highway presently carries. Under the revised regulations, the second test has been clarified. It now requires that the proposal’s generated vehicle trips on a highway exceed the daily traffic volume such highway presently carries after the site-generated trips are distributed to the fronting highway. If the proposal fronts onto two highways, then both “fronting”

highways will be evaluated to determine whether both tests are met and a traffic impact analysis is required for the proposed rezoning or site plan.

The revised regulations also created a separate set of elements VDOT will require at a minimum for traffic impact analysis for proposals that meet the low volume threshold. Based on this new section, it appears that VDOT is willing to accept a traffic impact analysis with a narrowed scope for low volume proposals. However, this new set of elements is only a minimum and VDOT has the discretion to require a broader scope for the traffic impact analysis.

Connectivity Requirements for Secondary Street Acceptance

VDOT continues its work on developing new requirements for VDOT’s acceptance of new secondary streets. Public comments were solicited through June 30, 2008 and VDOT is in the process of reviewing these comments. VDOT’s responses to the comments and hopefully a revised draft of

these new requirements will be released this fall. A projected effective date for these new regulations has not been announced.

VDOT’s objective in developing the proposed requirements is to promote connectivity among secondary streets, both within new secondary street networks and between existing and new secondary streets. Under the proposed “connectivity” requirements, developers will be required to connect with existing stub roads on adjoining properties (without consideration of neighbor opposition) and to provide stub roads to adjoining undeveloped properties before VDOT will accept new secondary streets. The proposed “connectivity” requirements also impose a grid-like design for subdivision streets, as opposed to the popular cul-de-sac design. The imposition of the grid-like design of subdivision streets may limit a developer’s ability to design subdivisions to meet market demands. If developers cannot meet these new “connectivity” requirements for VDOT acceptance, then private roads may become more prevalent and a project’s viability may be threatened.



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Hirschler Fleischer PROFILE

Marshall L. Jones



Marshall is an associate in the real estate section where his practice focuses on a wide range of matters

including the sale, acquisition, financing, leasing, development and rezoning of commercial real estate.

MARSHALL'S SCORECARD:

- Birthplace:** Fairfax, Virginia
- Undergraduate School:** University of Virginia
- Law School:** University of Kentucky
- Practicing Law at Hirschler Fleischer since:** September 2005
- What do you like most about your job:** I have the opportunity to help clients understand the issues they face and work with them to achieve a desirable outcome.
- Community Involvement:** Pro bono work for Central Virginia Legal Aid Society and Commonwealth Catholic Charities
- Anything else you wish for people to know:** Before attending law school, I worked in the homebuilding industry.