REPORT OF THE
JOINT SUBCOMMITTEE STUDYING

The Standards for Subdivision Streets and Related Matters

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

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Studying Standards for
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To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1985

To: Honorable Charles S. Robb, Governor of Virginia
and
The General Assembly of Virginia

INTRODUCTION

A joint resolution sponsored by Delegate Robert T. Andrews was introduced in the 1983 Session and passed (House Joint Resolution No. 119 - Appendix A). The resolution called for a study, by an eight-member panel, of the need for legislation authorizing local governments to adopt standards and criteria requiring subdividers and developers of land to provide road improvements, both on-site and off-site, made necessary because of their activities. The study also was to consider the creation of a transportation improvement program which would be an enlargement of the concept of off-site road improvements by one party to the concept of road improvements over an expanded area by multiple parties.

The principal reason for the study was the decision of the Virginia Supreme Court in the case of Hylton Enterprises, Inc., v. Board of Supervisors of Prince William County, et al. (Appendix B). The decision held county supervisors lacked express or implied statutory authority to require a subdivider to reconstruct abutting public highways as a condition of approval of a plat.

Appointed by the Speaker from the House Committee on Counties, Cities and Towns were Delegates C. Richard Cranwell and R. Beasley Jones, and from the House Committee on Roads and Internal Navigation were Delegates Robert T. Andrews and Robert B. Ball, Sr. Appointed by the Senate Committee on Privileges and Elections from the Senate Committee on Local Government was Senator Charles J. Colgan, and from the Senate Committee on Transportation was Senator R. Edward Houck. Joining the legislative members were Carl F. Bowmer, Esquire, representing the home building industry, and the Honorable Nancy A. Creech, representing local governments. Delegate Ball was elected chairman of the joint subcommittee; Senator Colgan was elected vice chairman.

BACKGROUND

Mr. R. C. Lockwood, with the Department of Highways and Transportation, presented each member of the subcommittee with a notebook describing the background of the subject under study and reviewed same.

Among the points set forth in the Introduction were:

"In recent years, rapid and intense development in many areas has placed a severe strain on the existing road system of the Commonwealth.

Under existing legislation, local governing bodies have very limited ability to require developers to make off-site highway improvements that are necessitated as a result of traffic generated wholly, or in part, by their developments. If needed off-site improvements are not constructed or funded by the developers, they become the responsibility of the State and must be evaluated and prioritized against other roadway deficiencies in the jurisdictions.

Currently, almost every jurisdiction in the Commonwealth has a backlog of highway needs which exceed available funding. The Department's statewide transportation plan identified highway needs that by the year 2000 would require $15.2 billion to construct. Based on the Department's current revenue information, it is estimated that there will be approximately $13.3

billion available for maintenance and construction between now and the year 2000. Maintenance of the highway system will require $7.3 billion and only $6.0 billion will be available for construction, leaving $9.2 billion in unmet needs. This shortfall in funds will become even greater unless a means of alternative funding is established to alleviate deficiencies created by new development.

Since 1980, three bills have been introduced in the Legislature to enable local jurisdictions to require off-site roadway improvements by developers. These bills, which are presented in their entirety in the section titled Existing and Proposed Legislation, are identified as follows:

1. House Bill No. 630 offered on January 30, 1980; Patrons Michie and Murray.

2. House Bill No. 1816 offered on January 19, 1981; Patron McMurtrie (by request).

3. House Bill No. 588 offered on January 28, 1982; Patron F. C. Bagley (by request).

All of these legislative proposals were referred to the Committee on Counties, Cities and Towns, but were never reported out of the Committee for House approval."

All of the three bills mentioned proposed amendments to § 15.1-466, which sets out various items that shall be included in a subdivision ordinance. The road proposals talked of reasonable and required changes caused by the development although one bill used a formula; i.e., traffic from development over estimated traffic from the area when fully developed times cost of improvements.

CONSIDERATIONS AND FINDINGS

The subcommittee's first meeting was devoted to organization and briefing. Thereafter, two public hearings were held: one in the Northern Virginia area and the other in the Tidewater area.

The speakers divided into two groups, developers versus local government officials.

Representatives of the building industry took the position that they were presently doing more than was legally required of them since adequate roads were necessary to enable them to sell houses and rent office space and the time and cost of litigation dictated a speedy resolution of their controversies with local government officials. The point was also made that all costs imposed on developers were passed on to home buyers and renters, thereby increasing the cost of buying homes and renting office space.

Local government officials stressed the fact that the need for road improvements was critical and they had three avenues for funds:

1. increase in real property taxes;

2. increase in state aid; and

3. contributions from developers.

Their position was that real estate could not carry a heavier tax burden, that adustment in state aid for roads was presently being studied but they did not forsee substantial increased State aid forthcoming so they were left with seeking developer contributions using legislative tools ill adapted for the purpose.

Members of the joint subcommittee are aware that roads are essential to the economic well-being of local governments, the Commonwealth and the nation since such governments have been developed on the premise of the individually owned automobile.

The joint subcommittee is also of the opinion that the problem of road construction and road improvement, while present in all areas of the Commonwealth to some degree, is most acute in northern Virginia and the Tidewater area. Other local governments appear to be dealing

successfully with these problems by using the statutes currently in place.

Testimony heard by the joint subcommittee from various segments of the building industry disclosed an awareness of its responsiblity to assist in alleviating road congestion caused by its projects coupled with a concern that the industry not be burdened with curing road problems existing due to inadequate planning or curing road problems that are foreseen from future development by others.

The argument was frequently advanced that old residents should not be taxed to pay for improvements needed solely because of new residents. Such argument is subject to question since it overlooks the infrastructure of public improvements bequeathed by one generation to another, inadequate though they may be.

The joint subcommittee was not presented with possible solutions to the road problem that it considered practicable or equitable.

CONCLUSION

The joint subcommittee concludes that adequate planning for roads and streets is imperative and the General Assembly should assist local governments in the planning process with the necessary legislation for this purpose; however, the subcommittee received no proposals for legislation. It does not recommend giving to local governments a blanket power to extract payments from developers for necessary and essential road improvements without some checks and balances. The United States Supreme Court, during its present term, will hear argument on zoning laws and reach a decision that will hopefully give much-needed guidance on land use ordinances. There is a need to determine the authority of local governments to direct and delay development until such time as public facilities are in place for orderly growth to proceed.

The joint subcommittee having concluded that no legislation should be proposed at this time in regard to individual subdividers or developers contributing to streets and roads, other than presently required, it follows that no joint contribution by subdividers or developers within a common area would be proper. The subcommittee therefore presents no legislation for enactment.

Respectfully submitted,

Robert B. Ball, Sr., Chairman
Charles J. Colgan, Vice Chairman
C. Richard Cranwell
R. Edward Houck
R. Beasley Jones
Carl F. Bowmer
Nancy A. Creech

GENERAL ASSEMBLY OF VIRGINIA -- 1984 SESSION

HOUSE JOINT RESOLUTION NO. 119

Requesting the House Committees on Counties, Cities and Towns and on Roads and Internal Navigation and the Senate Committees on Local Government and on Transportation to form a joint subcommittee to study standards for subdivision streets and related matters.

Agreed to by the House of Delegates, February 14, 1984
Agreed to by the Senate, March 6, 1984

WHEREAS, the economy of the Commonwealth of Virginia and the well-being of its citizens are dependent upon the construction and maintenance of a highway transportation system that is responsive to the needs of the traveling public; and

WHEREAS, rapid and intense development in high-growth areas of the Commonwealth has severely strained the capacity of existing road systems, and has necessitated the upgrading and broadening of the road network serving those areas; and

WHEREAS, the Virginia Department of Highways and Transportation and the Joint Legislative Audit and Review Commission have estimated future highway construction needs to exceed $16 billion, which is an unfundable program under any realistic estimate of future revenue receipts, inflation rates and growth patterns; and

WHEREAS, the Commonwealth, in order to be prepared for the demands of its transportation future, must explore new funding initiatives if it is to address growing traffic congestion in high-growth areas as a complement to the ongoing study by the Joint Legislative Audit and Review Commission on the "Equity of the Current Provisions for Allocating Highway and Transportation Funds in Virginia"; and

WHEREAS, it may be in the public interest for counties, cities and towns to assist in the provision of an adequate overall transportation system in accordance with a locality's comprehensive transportation improvement plan, projected growth and development within the locality and other related factors; and

WHEREAS, it may be in the public interest to authorize counties, cities and towns to require subdividers or developers to provide reasonable and necessary on-site and off-site road improvements necessitated or required, at least in part, by the construction or improvement of the subdivision or development; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the House Committees on Counties, Cities and Towns and on Roads and Internal Navigation and the Senate Committees on Local Government and on Transportation are hereby requested to establish a joint subcommittee to study the need for legislation specifically authorizing counties, cities and towns to promulgate standards and criteria requiring subdividers and developers of land to provide reasonable and necessary road improvements within and without their subdivisions or developments. Such study shall also explore the possible creation of a transportation improvement program for a common area, which would set reasonable standards to determine the proportionate share of the road improvements that should be borne by each subdivider or developer within the common area.

The joint subcommittee shall consist of eight members: two to be appointed from the membership of the House Committee on Counties, Cities and Towns and two to be appointed from the membership of the House Committee on Roads and Internal Navigation by the Speaker of the House of Delegates; one to be appointed from the membership of the Senate Committee on Transportation and one to be appointed from the membership of the Senate Committee on Local Government by the Senate Committee on Privileges and Elections. In addition, the Chairmen of the House Committees jointly shall appoint a representative from the home building industry and the Chairman of the Senate Committee on Privileges and Elections shall appoint a representative from local government. The Virginia Department of Highways and Transportation shall provide whatever assistance is needed by the joint subcommittee.

The joint subcommittee shall complete its work and make any recommendations it deems appropriate to the 1985 Session of the General Assembly.

All direct and indirect costs of this study are estimated to be $16,030.

Syllabus.

Richmond

HYLTON ENTERPRISES, INC.

v.

BOARD OF SUPERVISORS OF PRINCE WILLIAM COUNTY, ET AL.

October 5, 1979.

Record No. 771676.

Present: Carrico, Harrison, Cochran, Harman, Poff and Compton, JJ.

County supervisors lack express or implied statutory authority to require subdivider to reconstruct abutting public highways as condition to approval of plat: Trial Court may approve or disapprove plat under Code § 15.1-475 (Repl. Vol. 1973).

(1) Cities, Counties and Towns—Subdivisions—Statutory Construction—No Express or Implied Authority to Condition Approval on Reconstruction of Abutting Public Highways by Subdivider.

(2) Cities, Counties and Towns—Subdivisions—Statutory Construction—Trial Court May Approve Plat under Code § 15.1-475 (Repl. Vol. 1973).

The Board of Supervisors of Prince William County refused to approve the plat of a subdivider, which in other respects complied with all ordinances and statutes, until the subdivider reconstructed, or assumed the cost of reconstruction of, two state secondary roads abutting the subdivision. The subdivider sought approval of the plat and plan from the Trial Court under Code § 15.1-475 (Repl. Vol. 1973). The Trial Court approved the plans subject to the condition that the subdivider reconstruct designated portions of the highways. The subdivider challenges this decision on appeal, and the County assigns cross-error that the Trial Court had no authority to approve or disapprove the plat.

1. There was no authority, express or implied, for the Board of Supervisors to require a subdivider to reconstruct portions of existing public highways abutting the subdivision. As a corollary to Dillon's Rule, the powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication. There is no express authority in statutes in force prior to 1978 to require this reconstruction. (Code § 15.1-491 [setting forth regulations and provisions for local zoning ordinances] and § 15.1-466 [authorizing the adoption of local subdivision ordinances]). No such authority is implied from Code § 15.1-489 requiring local zoning ordinances be designed "to provide for convenience of access" or from Code § 15.1-466(c) to coordinate "streets within and contiguous to the subdivision with other existing or planned streets". The abolition of county roads in 1932 and the establishment of a secondary system of state highways while not expressly precluding county authorities from requiring a developer to construct needed secondary road improvements does not,

by omission, authorize the power. Instead there is indicated a legislative intent that such decisions be exclusively within the province of the General Assembly.

2. The provisions of Code § 15.1-475 (Repl. Vol. 1973), third paragraph, that if a subdivider contends that disapproval of a subdivision by local authorities was arbitrary or capricious he may appeal to the appropriate court "and the court shall hear and determine the case as soon as may be" is sufficiently broad to enable the Trial Court to approve the plat.

Appeal from a judgment of the Circuit Court of Prince William County. Hon. Bernard F. Jennings, judge presiding.

Affirmed in part; reversed in part; and remanded.

Marc E. Bettius (*Russell S. Rosenberger, Jr.; Douglas J. Sanderson; Bettius, Rosenberger & Carter,* on briefs), for appellant.

John F. Rick (*Terrence A. Emerson, County Attorney,* on brief), for appellees.

COCHRAN, J., delivered the opinion of the Court.

This appeal presents the question whether a local governing body may require, as a prerequisite to approval of a subdivision plat, that the developer construct improvements to existing public highways that abut the subdivision.

Hylton Enterprises, Inc. (Hylton), filed in the trial court a petition under the provisions of Code § 15.1-475 against the Board of Supervisors and the Director of Public Works of Prince William County alleging that the Board had arbitrarily and capriciously disapproved a final subdivision plat and construction plans for development of Subdivision No. 77-3 for Section 9-J of Dale City because of Hylton's refusal to reconstruct portions of two state secondary roads abutting Section 9-J. Hylton sought approval by the trial court of the subdivision plat and construction plans. The answer of the Board and the Director (collectively, the County) admitted that the subdivision plat and accompanying construction plans had been filed, but denied that they complied with the applicable local ordinances and state statutes.

During the evidentiary hearing conducted by the trial court, the parties stipulated that Hylton's plat and plans complied with all ordinances and statutes except for failure to show that Hylton would assume the cost of making certain improvements to Routes 640 and 643

that abutted the property. The plat and testimonial evidence showed that Hylton would dedicate the necessary lands for the road improvements. The trial court, by final order entered August 12, 1977, *nunc pro tunc* June 29, 1977, approved the plat subject to the condition that Hylton construct in the areas designated thereon, including the area specified for relocation of Route 643, "two lane sections of Routes 641[1] and 643, where those roads abut the subject subdivision". On appeal, Hylton challenges this condition imposed by the trial court. The County has assigned cross-error, contending that the trial court had no authority to approve or disapprove the plat, but had jurisdiction only to determine whether the County's action in denying approval was based upon ordinance requirements, or was arbitrary and capricious.[2]

In 1969, the County approved Hylton's application for the rezoning of approximately 5,500 acres on which the applicant sought to develop a planned community. The property was rezoned as a Residential Planned Community Division (RPC), pursuant to Chapter 20 of the Zoning Ordinance of Prince William County.[3] Hylton developed Dale City upon the rezoned land. Section 9-J, containing

[1] The reference, twice made in the order, to Route 641 is erroneous. The plat, construction plans, and evidence refer to the two public roads in question that abutted the property as Routes 640 and 643.

[2] In an earlier case, we affirmed the order of the trial court that directed the County to act upon various plats filed by Hylton, including the plat of Section 9-J of Dale City, in accordance with a prescribed time schedule. *Prince William Co.* v. *Hylton Enterprises*, 216 Va. 582, 221 S.E.2d 543 (1976).

[3] Section 20-60 of the Zoning Ordinance defined the purpose and intent of such zoning as follows:

The residential planned community division RPC is intended to permit, in accordance with the comprehensive plan, the development of planned satellite communities containing not less than five hundred contiguous acres under one ownership or control in those areas of the county where provisions for sanitary sewers, sewage disposal facilities, adequate highway access and public water supply are assured. Within such planned communities, the location of all residential, commercial, industrial and governmental uses, school sites, parks, playgrounds, recreational areas, parking areas and other open spaces shall be controlled in such a manner as to permit a variety of housing accommodations and land uses in orderly relationship to one another. Such planned communities, when approved, shall constitute a part of the comprehensive plan.

Section 20-63 provides in pertinent part the procedure for establishment of an RPC zone as follows:

(1) Following approval of an area as being suitable for a residential planned community type development, such area, having been assured provision for adequate sewer, water and access and being in conformance with the comprehensive development plan of the county, the board of county supervisors may create within such location an RPC division. . . .

approximately 274 acres, is a part of Dale City. Under Section 20-64 of the Zoning Ordinance, Dale City may be developed to a maximum population density of eleven persons per acre, or approximately 57,000 people. At the time of trial it was estimated, without contradiction, that the population of Dale City was approximately 30,000.

Section 20-63 of the Zoning Ordinance required an applicant for RPC division zoning to furnish with his application "ten copies of a preliminary plan, showing the proposed general layout, . . . a major thoroughfare plan . . . ," and various other plans. Upon approval of the preliminary plan, the applicant was required to furnish ten copies of a final plan of any section of not less than 100 acres showing, among other things, the "layout of all major and local thoroughfares and local streets". Prior to the development of Dale City, Routes 640 and 643 existed as two-lane, hard-surfaced roads comprising parts of the secondary road system of the Virginia Department of Highways (now the Virginia Department of Highways and Transportation and herein referred to as the Highway Department). A Traffic Analysis Plan completed in 1972, and signed by Hylton, whose representatives participated in extensive preliminary discussions prior to final approval, provided for certain improvements to Routes 640 and 643, including the four-laning of these roads where they adjoined Section 9-J. There was evidence that in 1982 traffic generated by Section 9-J would account for 3,500 vehicles per day, or 45% to 47% of the estimated number of vehicles that would then be using Route 643; traffic on that road at time of trial was only 400-900 vehicles per day.

Although there was evidence that representatives of the County assumed that by approving the Traffic Analysis Plan Hylton agreed to construct two of the new lanes of Routes 640 and 643 abutting Section 9-J, as shown on the Plan, the trial court found the evidence insufficient to show any firm agreement. The basis of the trial court's ruling in favor of the County was that the statutes vesting control of secondary highways in the Highway Department did not preclude the County from requiring a developer of land under RPC zoning to provide adequate highway access by making needed highway improvements. The court found that the evidence was "more than sufficient" to show the need for the improvements which the County sought to require of Hylton, and that the County's position "was justified".

[4] Route 643, as shown on the Traffic Analysis Plan, abutted Section 9-J. However, Hylton's final subdivision plat and construction plans showed that Route 643 would be relocated within the boundaries of Section 9-J. The evidence disclosed that the Highway Department and the County required this relocation in order to

Clearly, the development of Section 9-J of Dale City will substantially increase the use of Routes 640 and 643. Moreover, the record contains ample evidence from which the trial court could properly find, as it did, that the need was established for the road improvements which the County and the Highway Department planned. We are not concerned with the question of dedication of the land for the highway improvements because the evidence shows conclusively that Hylton has agreed to dedicate the necessary land for that purpose. But the crucial question is whether, in the absence of agreement, Hylton may be required to pay a portion of the cost of improving these secondary roads.

In *Board of Supervisors of James City County* v. *Rowe,* 216 Va. 128, 216 S.E.2d 199 (1975), we held that a county board of supervisors did not have the power to enact a zoning ordinance that required landowners to dedicate a portion of their lands for road purposes when the need for the road was "substantially generated by public traffic demands rather than by the proposed development". *Id.* at 138, 216 S.E.2d at 208. We expressly refrained from deciding whether local governing bodies were empowered to require dedication of land for access roads. *Id.* at 138, 216 S.E.2d at 208. We also reserved decision on the question now before us, whether local governing bodies were empowered to require construction or maintenance of such facilities. *Id.* at 139-40, n. 9, 216 S.E.2d at 209.

[1] Code § 15.1-489 (Repl. Vol. 1973) required that local zoning ordinances be designed "to provide for adequate . . . convenience of access" and to expedite the provision of public requirements, including adequate transportation. Prior to 1978, the regulations and provisions that could be included in local zoning ordinances were set forth in Code § 15.1-491, and conditional zoning was not therein listed.[5] Thus, the enabling legislation gave county governing bodies considerable leeway in their zoning ordinances to require provision for adequate access before granting rezoning applications. But there was no express grant of authority to require an applicant to construct improvements in public highways as a prerequisite to rezoning.

Code § 15.1-466, as amended in 1973 (Acts 1973, c. 169), au-

straighten the alignment of the road. Hylton's plans showed dedication of land for the roads with reservation:

"NOTE: RIGHT-OF-WAY DEDICATED TO PUBLIC USE.
CONSTRUCTION TO BE DONE BY OTHERS."

[5] By Acts 1978, c. 320, inapplicable in the present case, new provisions, §§ 15.1-491.1, *et seq.*, were included to enable local governing bodies to permit conditional zoning within the strict limitations therein specified.

thorized localities to adopt subdivision ordinances containing reasonable regulations and provisions that apply to or provide:

* * *

"(c) For the coordination of streets within and contiguous to the subdivision with other existing or planned streets within the general area as to location, widths, grades and drainage;

* * *

"(e) For the extent to which and the manner in which streets shall be graded, graveled or otherwise improved . . . ;

"(f) For the acceptance of dedication for public use of any right-of-way located within any subdivision which has constructed therein, or proposed to be constructed therein, any street. . . ."

There is no express authority in this statute for local ordinances to require a subdivider to construct improvements to existing public roads. Code § 15.1-466(j), as amended in 1973 (Acts 1973, c. 480), authorized local subdivision ordinances to require payment by a subdivider or developer of his "pro rata share of the cost of providing reasonable and necessary sewerage and drainage facilities, located outside" the property but required, at least in part, by the construction or development of the subdivision. This express authorization significantly evidences the legislative intent that only provisions explicitly approved by the General Assembly may be included in local subdivision ordinances.

We have heretofore acknowledged in *Board of Supervisors* v. *Horne*, 216 Va. 113, 117, 215 S.E.2d 453, 455 (1975), that in Virginia, as a corollary to Dillon's Rule, the powers of boards of supervisors are fixed by statute and are limited to those conferred expressly or by necessary implication. Adherence to this principle has not been merely perfunctory, but has been conclusively evidenced by the affirmative action of the General Assembly in rejecting, before submitting to the electorate the proposed constitutional revisions which became effective July 1, 1971, a recommendation of the Commission on Constitutional Revision to reverse Dillon's Rule as to cities and certain counties.

Neither the enabling statutes nor local ordinances provided the County with express authority to exact of Hylton construction costs for portions of Routes 640 and 643. Nor do we find any necessarily implied authority for that purpose. Authorization under the enabling

zoning statute to assure adequate access to a residential planned community does not imply authorization to exact payment for improvement of existing public highways. Similarly, the authority granted by the statute to localities to coordinate streets within and contiguous to a subdivision with other existing or planned streets does not imply authority to charge a private landowner for the expense of reconstructing public highways.

In 1932, the General Assembly abolished the county road system and established a secondary system of State highways under the direction of the Highway Department, and charged the State Highway Commissioner with responsibility for the maintenance and improvement, including construction and reconstruction, of the secondary roads. Acts 1932, c. 415.[6] *Board of Supervisors* v. *Combs*, 160 Va. 487, 494, 169 S.E. 589, 592 (1933). Although nothing in this statute expressly precludes a county from requiring a developer to construct needed secondary road improvements, this omission does not itself suffice to authorize such power. Ever since 1932, financing the construction, repair and maintenance of the State primary and secondary highway systems has constituted a major function of our State government. The theory of centralized control in and allocation of funds by an objective arbiter presupposes that priorities for highway improvements will be established on a statewide basis in accordance with traffic demands scientifically ascertained, and will not comprise a disconnected assortment of decisions made under the influence of local pressures. Determination of the appropriate method or methods of funding highway projects is a policy decision affecting all areas of the State, a decision that is peculiarly within the exclusive province of the General Assembly.

We hold, therefore, that there was no authority, express or necessarily implied, for the County to require Hylton to construct portions of Routes 640 and 643, and that the trial court erred in so ruling.

[2] We reject the contention of the County, advanced on brief but not argued before us, that the trial court had no authority to approve Hylton's plat, but could only determine whether the County's disapproval was not properly based upon the applicable ordinance, or was arbitrary or capricious. This contention is based upon a highly

[6] Code § 33.1-69 (Repl. Vol. 1973) provides:

The control, supervision, management and jurisdiction over the secondary system of State highways shall be vested in the Department of Highways and the maintenance and improvement, including construction and reconstruction, of such secondary system . . . shall be by the State under the supervision of the State Highway Commissioner.

restrictive construction of the pertinent provisions of Code § 15.1-475 (Repl. Vol. 1973). The second paragraph of this statute provided that where the local authorities fail to act upon a subdivision plat the subdivider may petition the circuit court "to decide whether the plat should or should not be approved". The third paragraph of the statute provided that where the local authorities have disapproved a plat and the subdivider contends that the disapproval was not properly-based upon the applicable ordinances, or was arbitrary or capricious, he may appeal to the appropriate court "and the court shall hear and determine the case as soon as may be". We hold that this language is sufficiently broad to enable the trial court to approve the plat. Any other construction would, as Hylton argues, place a subdivider whose plat was ignored in a better position to obtain relief than one whose plat has been disapproved. We believe that the legislative intent is to afford prompt relief in each instance.

Holding as we do that the condition attached by the trial court to its approval is invalid, we have a plat which the evidence shows conforms with all ordinances and regulations of the County that are properly applicable thereto. Accordingly, the final order of the trial court will be affirmed in part and reversed in part, and the case will be remanded for such further proceedings as may be necessary consistent with the views expressed herein.

Affirmed in part;
reversed in part;
and remanded.