Tim’s Line-of-Sight

Summer has rolled around and I have just finished presiding over my second Board meeting. I wish to thank all the Board members for attending and voicing their opinions and concerns on some very important issues.

During the summer board meeting, several motions were made and passed that will affect the general membership. First, dues for 2010 will increase to $185.00 per year. VAS has tried successfully for several years to maintain the current dues rate. Over the years, the operating budget that VAS works within has increased considerably and reserve funds have dwindled to the point of being a major concern.

Second, VAS has elected not to renew the contract of our current lobbyist for the upcoming 2010 legislative session. The Legislative Committee will be reporting back to the Board their recommendations for future lobbyists and monitoring of bills in 2010.

Third, VAS signed a two year contract with an optional third year with Williamsburg Lodge in Williamsburg, VA for the Annual Convention. It was the recommendation of the Convention committee to investigate a multi-year option to help control convention costs and overruns and obtain better room rates and meal packages.

The Floodplain Management seminar held on Friday prior to the Summer Board meeting was a great success with over 70 attendees. With the new continuing education requirements, these Friday seminars are a great way to receive 8 CEU’s and it also helps support VAS. Another added benefit is the time spent with your peers and friends, renewing old friendships and discussing surveying and economic conditions in “their neck of the woods”.

I represented VAS at the South Carolina Society of Professional Land Surveyors convention. The South Carolina licensing board is in the process of reviewing several items that I think will eventually have to be addressed by our APELSCIDLA Board in the near future; 3D modeling, construction staking by contractors, and monumenting wetlands.

I would like to thank all the Chapter Presidents for submitting their chapter meeting dates to me and to the Central Office for publication on the web site and in The ODS. Again I encourage all members of VAS to attend the State Board meetings. In doing so, your voice will be heard on subject matters affecting surveyors across the Commonwealth. I hope to see everyone in Fredericksburg September 18 and 19 for the Fall Board of Directors Meeting and Seminar.

— Timothy Nash, VAS President

Editor’s Note

The VAS is pleased to bring you this edition of The Old Dominion Surveyor. I hope it finds you well and that you are having a fun and safe summer with family and friends. Summer is a great time to enjoy the outdoors. Check out a local Geocache site! And although you’re so busy outside this summer, don’t forget to submit your articles, comments, comics, or other contributions to the magazine. We are only as good as our member’s input. Thanks for reading and I look forward to hearing from you soon.

— Peter Moore, Editor

The Old Dominion Surveyor

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Follow-up to July 2008 article on review of boundary/physical surveys.

COMMONWEALTH of VIRGINIA
Office of the Attorney General
Richmond 23219

February 25, 2009

The Honorable Robert B. Bell
Member, House of Delegates
R.O. Box 406
Richmond, Virginia 23218

Dear Delegate Bell:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the Code of Virginia.

Issues Presented

You ask whether the Virginia Code authorizes localities to require the review and approval of boundary survey plats and physical survey plats by local planning officials as a prerequisite to recordation. You further ask whether clerks of the circuit court are authorized to refuse to record boundary survey plats and physical survey plats until after the review and approval of such plats by local planning officials.

Response

It is my opinion that localities are not authorized to require the review and approval of boundary survey plats and physical survey plats as a prerequisite for recordation. It further is my opinion that circuit court clerks may refuse to record such plats based solely on the lack of such review and approval from the local planning official.

Background

You relate that land surveyors have advised you that several Virginia localities apply an informal policy requiring all boundary and physical survey plats to be reviewed and approved by local planning officials as a prerequisite to recordation. You believe that these localities base their actions upon the delegated authority to regulate land development and the subdivision of land. Further, you state that such

1You advise that the boundary and physical surveys about which you inquire are surveys that do not change or alter property lines or create new parcels of land. Further, you explain that a boundary survey is a survey or a retracement of the metes and bounds of an existing parcel of land based on a prior survey or deed description of the property. A physical survey is a survey of a lot or parcel which also shows the location of all structures, physical and recorded encumbrances, and manmade physical features located within the property's existing boundaries. For purposes of this opinion, any reference to "boundary survey plats" and "physical survey plats" means the surveys you describe and about which you inquire unless otherwise noted.
The Honorable Robert B. Bell  
February 25, 2009  
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policies are not included in those localities’ published ordinances governing the development and subdivision of land. You note that these policies effectively prevent surveyors from recording such plats until after local planning officials have reviewed and approved them.

Furthermore, you advise that some circuit court clerks have refused to accept such boundary and physical survey plats for recording until the plats were reviewed and approved by local planning officials. You state that the circuit court clerks of these localities have related they are without authority to accept such plats for recording without the approval of the local planning officials.

You note that the standards for boundary and physical surveys, as developed by the Virginia Board of Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects, are set forth in 18 VAC §§ 10-20-370 and 10-20-380. Finally, it is your understanding that surveys that do require review and approval by local planning officials prior to recording are: (1) subdivision surveys, where an existing parcel is being subdivided into two or more parcels; (2) boundary or property line adjustment surveys, where the boundary line between parcels is changed from the original survey or deed description, but no new parcels are created; and (3) any survey, by any other name, which changes a property line or creates new parcels or lots.

**Applicable Law and Discussion**

The overriding goal of statutory interpretation is to discern and give effect to legislative intent. The Commonwealth follows the rule of strict construction of statutory provisions. The power of a county governing body “must be exercised pursuant to an express grant” because the powers of a county “are limited to those conferred expressly or by necessary implication.” This rule is corollary to the Dillon Rule that municipal corporations similarly are limited in their powers. Thus, the powers of localities acting through either a local planning commission or a local governing body are fixed by statute and are limited to those powers granted expressly or by necessary implication and those that are essential and indispensable.

Localities enact subdivision ordinances pursuant to delegation by the General Assembly of the police power of the Commonwealth. The rule of strict construction applies in interpreting the statutory authority of local governing bodies to adopt land use regulations. Consequently, authority for imposed requirements must be found in the subdivision enabling statutes and may not be implied from other general grants of local powers.

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5. *Id*
9. *See*, e.g., National Realty, 209 Va. at 176-77, 163 S.E.2d at 157-58 (noting general authority to impose fees for licenses and permits did not authorize specific fee for review of subdivision plat).
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Virginia’s subdivision enabling statutes are detailed in Article 6, Chapter 22 of Title 15.2, §§ 15.2-2240 through 15.2-2279. Section 15.2-2240 requires that counties, cities, and towns adopt a subdivision ordinance “to assure the orderly subdivision of land and its development.” Section 15.2-2258 requires that any person desiring to subdivide a tract of land must submit a plat of the proposed subdivision to the local subdivision agent for approval. Sections 15.2-2259, 15.2-2260, and 15.2-2261 govern the actions of the local planning commission and the locality regarding such plats and the approval and validity thereof. Section 15.2-2260(A) also authorizes a local governing body to enact an ordinance providing for submission of preliminary subdivision plats for tentative approval as a part of the orderly subdivision of land within its jurisdiction. Finally, §§ 15.2-2259 and 15.2-2260 impose time constraints for the approval of subdivision plats.

Article 6 is replete with express grants of powers to local governing bodies and their authorized agents to administer and enforce subdivision regulations as they relate to survey plats. I find no express statutory authority elsewhere in Title 15.2 for a Virginia locality to require a review and approval of boundary survey plats and physical survey plats by local planning officials as a prerequisite for recordation.

The Dillon Rule of strict construction also is applicable to constitutional officers. Article VII, § 4 of the Constitution of Virginia creates the office of circuit court clerk and provides that a clerk’s duties “shall be prescribed by general law or special act.” As a general rule, circuit court clerks have no inherent powers, and the scope of their powers must be determined by reference to applicable statutes. A 1987 opinion of the Attorney General (the “1987 Opinion”) concludes that “[i]n general, a clerk is not responsible for determining if an instrument to be recorded is sufficient to meet the requirements of any particular provision of law.” Further, the 1987 Opinion concludes that a clerk may record a plat of division without the approval of the subdivision agent of the locality upon the oral assertion of the person presenting the plat for recordation on behalf of the owner that the subdivision ordinance does not apply to the plat of division offered for recordation. I would suggest, however, that the clerk make a notation on the plat of division concerning the oral assertion that the ordinance does not apply to the division of the parcel in question.

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14 See also § 15.2-1600(A) (2008) (parallel statute).
17 Id.
Ladies and Gentlemen, we wanted to give you some background and an update on a new program that began last year here in your Central Chapter. With our every decreasing numbers of new candidates entering the surveying community here in Virginia, we felt some ideas needed to be explored in order to get young people interested in our profession from the earliest possible age.

Our goal with this program is to put at least one piece of modern survey equipment in the hands of every middle school child in the Richmond area who shows a desire for mathematics. So with that in mind we would like to present how this program started and what our plans are for its expansion across many of the counties covered by your Central Chapter.

In December 2008, Cheryn Clark (cheryn.clark@gmail.com), a middle school teacher for the gifted program with Matoaca Middle School, contacted Frank “Chip” Richardson III, LS with Jordan Engineering.

Miss Clark had begun a program within Matoaca Middle School that aims to teach her students about the art and science of Geomatics and the use of GPS and other survey equipment in its execution. She was interested to see if the local surveying community would be available to help her students become more aware of some of the equipment available to complete the tasks we, as surveyors, do on a day to day basis.

Chip contacted me to see if there was the possibility of putting on a field day for her students and to see if we could reach a few others within our community of surveyors to lend a hand.

With some very generous support from Chip Richardson and Jay Meade of Jordan Engineering, Jimmy Wallen and Pete Orbovich from Caron East, John Claytor from NXL, and Mike DeHoff and myself from JMT along with some GPS equipment very gratefully donated by our friends at Loyola Spatial Systems arrived at Point of Rocks Park in southern Chesterfield County on December 18th, 2008, to a very cold and overcast morning.

A little later in the morning around 40 students, a very excited Miss Clarke, and one very cold mum showed up in a bright yellow school bus and we proceeded to divide the group up into equal teams for the day’s hands-on exhibits.

Very early on, Chip and I agreed to make this more than just an opportunity for young students to play with the latest survey equipment; we wanted these students to understand what it took to complete a project, so we devised a series of areas where we would have them complete a topo assignment that would later be graded by Miss Clark. By lunch time, most of the students had been to four of the five stations we set up around the park and definitely had a chance to see many of the strengths of today’s modern survey equipment in some realistic projects.

At the end of a long and very cold day, all of our guests had a better understanding of what it takes to use a robotic instrument, an RTK GPS unit, or a regular theodolite and EDM. Many of them were demonstrating a keen understanding of what it takes to operate some of our data collectors and some may even have the option of interning with some of us in the years to come if the economy improves somewhat.

Our goal for the 2009/2010 school year is threefold; firstly we are looking to expand the number of schools invited to a total of four middle schools. We currently have Matoaca signed up for another year along with Carver Middle. We have been approached by a fellow surveyor who now teaches at one of the math/science high schools within Chesterfield to possibly include his students as assistants this year.

Secondly, we are looking for more help from our survey community. With the potential of more than 150 students coming to the next field day, the five teams we had last year will definitely not be enough.

Thirdly, we are looking for some help in advertising this event in the local media. Last year we were advised that one of the local news stations would be there along with a representative from the Chesterfield Gazette, but with the cold, they never materialized. With some additional coverage from the local media, our association stands a good chance of attracting some of the best and brightest from around the area. Many of today’s youth are looking for those that are both leaders within the community and care enough to donate their time and talents to others.

All of us understand that the economy is currently extremely tough and we are all very focused on making every dollar count. Investing in our youth, especially those that demonstrate a propensity for math, the building block that is a very large part of today’s surveying, will return untold rewards for generations to come. Speaking from my own experience, it was a young surveyor from the Royal Engineers in England when I was 12 years old that formulated in my young mind that drawing maps for fun could make you a living in the outside world and is part of the reason I became a land surveyor.

Please contact me at SLetchford@jmt.com with any comments, suggestions or questions about the program.

Cheers,
Stephen Letchford, LS
A pulpwood company, making a routine investigation of the titles to a proposed pulpwood yard site in Mississippi, received the proof as far back as 1803. A legal advisor for the company was not satisfied with this and wrote for evidence as to prior title. He received the following reply from the Mississippi attorney:

GENTLEMEN:

I note your comment upon the fact that the record title sent you as applying to the lands under consideration dates only from the year 1803 and your request for an extension of the records prior to that date. Please be advised that the Government of the United States acquired the territory, including the tract to which your inquiry applies, by purchase from the Government of France in the year 1803. The Government of France acquired title by conquest from the Government of Spain; that Government of Spain acquired title by discovery by one Christopher Columbus, a resident of Genoa, Italy, traveler and explorer, who by agreement concerning the acquisition of title to any lands discovered, traveled and explored under the sponsorship and patronage of her Majesty, the Queen of Spain. And the Queen of Spain had verified her agreement and received sanction of her title by the consent of the Pope, a resident of Rome, and Ex-officio representative and vice-regent of Jesus Christ. Jesus Christ was the son and heir apparent of the Almighty God from whom He received His authority, and the Almighty God made Mississippi.

I trust this complies with your request.
Mark your calendars!!! The 2010 Annual Meeting of the Virginia Association of Surveyors will be here before you know it. The annual meeting will be held January 21 through 23, 2010 at the Hilton Mark Center in Alexandria, Virginia. An interesting spouse's program is being assembled for Friday. The Exhibit Hall will open Thursday afternoon. Continuing with the format established this year in Roanoke, the banquet will be on Friday evening. The annual meeting will conclude after the Awards Luncheon on Saturday. The Hilton is a great facility conveniently located at the intersection of I-395 and Seminary Road in Alexandria, Virginia. Look forward to seeing everyone there.

Hilton Mark Center, Alexandria

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June 11, 2009 at the Dulles Hilton in Fairfax we honored the accomplishments of the students of the Apprenticeship Related Education – Surveying Apprenticeship Program with a dinner and awards presentation ceremony during a General Membership Meeting. 83 members and guests were in attendance to recognize the students’ accomplishments. The meeting began with the invocation given by Curt Sumner. We enjoyed dinner and dessert in the banquet room overlooking Dulles and the mountains to the west.

For some students, the Educational Supplement Fund (ESF) is their first introduction to the Virginia Association of Surveyors. Contributors to the ESF can be assured their money is working hard! In 2008 we spent $4,281.31 on educational supplies for this program (State contributions through the distribution of funds were $4,132.65; additional contributions from the Mount Vernon Chapter 50/50 raffle were $148.64). A Huge “Thank you” goes out to everyone who contributed and especially to those who designated their contributions to go to this program.

You bought a fantastic investment in our future Land Surveyors. Last fall your investment supplied the following:

- 2nd year students received NCEES FLS Practice Exam Booklets.
- 4th year students received signed copies of the “Land Development Handbook”.
- 5th year students received Evidence and Procedures for Boundary Location, Brown Robilard, Wilson, the Black’s Law Dictionary (hardcover), and NCEES PLS Practice Exam Booklets. Feild’s Hydraulics Calculators were purchased for the 5th year classes to use again and again in the drainage portion of the program.

This dinner and ceremony was the first contact with the Virginia Association of Surveyors for many of the students’ family members. We hope it will not be their last experience. The MVC Board of Directors works diligently to present a meaningful meeting the graduates and their families will remember. Thanks go to all the generous table sponsors: the Bull Run Chapter VAS, Caron East, Christopher Consultants, Dewberry, Dominion Surveys, Loyola Enterprises, LS2PC, Rice & Associates, Webb & Associates, Wetland Studies and Solutions, and VIKA, Inc. Thanks to all the members who came out to support the meeting.

We were fortunate to have a great line up of distinguished speakers including Curt Sumner, Executive Director, NSPS, Nancy McIntyre, APELSIDLA Board Member, and Richard Cronin, Chapter President. I had the extreme honor of introduction of the graduates. I presented students to the Chapter. A number of the students completing the Apprenticeship Related Education five-year program were also being recognized as formal VDOLI Apprentices. The certificates of accomplishment were presented by Cetrelle Coleman of Virginia Department of Labor and Industry and by Joey Teets, Program Director, Fairfax Adult Education. Richard Cronin, Nancy McIntyre, and Curt Sumner had the pleasure of presenting each student with hand shakes and congratulations.

For the Class of 2009, in December 2008 we received news that one of the then current students, Matthew Hazzard, had passed his FLS examination. Matt said the apprenticeship program had been very helpful to him. I am happy to announce that as of this writing we have news reported of one student, Richard Burke, being accepted to sit for his PLS exam in the fall 2009 and one student, David Jordan, passed his PLS which he had taken in April 2009. Congratulations on your successes, gentlemen. I am very confident that these fellows will be joined by many of their classmates as successful Land Surveyors in the Commonwealth!

The Class of 2009 – Congratulations!

Left to Right – David Jordan, Jeffrey Hoosier, Anthony Bapple, Keith Neary, Daniel Anderson, Christopher Ferrara, James Thull, Matthias Streek, Kevin Early, Lisa Goodwin, Travis Dreelin, Paul Lee, Jeffrey Webb, Michael Dunnington, Matthew Hazzard, Jeffrey Monaco, Jeffrey Miller, Emilio Lemeni

A quick update on the progress of the seven students we honored in June 2008 includes two who have passed the FLS, David Price and Eric Calladine, two have been seated for the FLS, and two who have applications in to DPOR for the same. Congratulations to all.

Each year the instructors select one student who exemplifies excellence in surveying to be the recipient of the “Calvin Allen Award for Excellence”.

see Apprenticeship, page 12
Selecting only one of these fine students is quite a task. The recipient has no idea what is coming and over the years many students have been very surprised. 2009 is no exception there. Richard O. Spencer presented Lisa Goodwin the 2009 Calvin Allen Award. She can certainly be proud of earning the award. I believe she will proudly display the original hand made oak stake plaque award for years to come. Each award is unique, hand made, and hard earned. Congratulations Ms. Goodwin.

Lisa Goodwin accepts the Calvin Allen Award for Excellence 2009
I find no statutory provision authorizing a circuit court clerk to refuse to record boundary survey plats and physical survey plats until after the review and approval of such plats by local planning officials. Pursuant to the authority granted in Article 6, a circuit court clerk may refuse to record boundary survey plats and physical survey plats that are: (1) subdivision surveys, where an existing parcel is being subdivided into two or more parcels; (2) boundary or property line adjustment surveys, where the boundary line between parcels is changed from the original survey or deed description, but no new parcels are created; or (3) a survey, by any other name, which changes a property line or creates new parcels or lots. However, the boundary survey plats and physical survey plats about which you inquire do not meet these criteria.

Conclusion

Accordingly, it is my opinion that localities are not authorized to require the review and approval of boundary survey plats and physical survey plats as a prerequisite for recordation. It further is my opinion that circuit court clerks may not refuse to record such plats based solely on the lack of such review and approval from the local planning official.

Thank you for letting me be of service to you.

Sincerely,

William C. Mims
Acting Attorney General

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15 See, e.g., §§ 15.2-2254, 15.2-2258, 15.2-2265, and 15.2-2275 (2008).
16 See supra note 1.
Golfing Memories from Spring Board Meeting

Roy Easter and Doug Seward discuss old times.

Stephen Letchford gets ready for 18.

Doug Seward shows off his golf swing.

Roy Easter hits from women’s tee on hole #18.

The Charter House, Independence Golf Club

Roy Easter swings AGAIN from hole #18.
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Calendar of Events for 2009

Appalachian Chapter— December 8 Christmas Dinner, Culinary School, Bristol. Contact Tony Holbrook, tony@holbrooksurveyors.com or Ken Sorrels, ksorrels@tuckmapping.com.

Central Chapter – Membership meeting dates – September 25 Picnic and Crab Feast, November 18, December 11, Christmas Party. Locations to be determined. Contact Alison Hanson at ahanson@hbsurveying.com.

Monticello Chapter – Dinner Meetings – August 20, October 22. Locations to be determined. Contact Chris Kean at ckean.tbls@mindspring.com.

Mount Vernon Chapter – September 16, December 16 Holiday dinner; Board of Directors Meetings – May 5, July 22, October 28. Locations to be determined. Contact John Walsh at jwalsh@bccon.com.

Rappahannock Chapter – Dinner Meetings – September 19 Crab Feast, October 15, December 17, Holiday dinner; Board of Directors – April 16, June 18, August 21, November 19. Locations to be determined. Contact Eric Sullivan at 540-898-5878, ext. 15.

Southern Chapter – Meeting October 1. Location to be determined. Contact Troy Williams, tdw@handp.com or Elizabeth Rosser at elizabethrosser@comcast.net.

Tidewater Chapter – Board meetings September 17, and October 15; General membership meeting November 19, December Christmas dinner TBD. Contact Timothy Fletcher at tim.fletcher@phra.com or 757-599-1050.

Western Chapter—General Membership meeting October 6, location to be determined. Contact Chris Pappas at 540-639-0999 or pappas@greenforestsurveys.com.