COUNTIES, CITIES AND TOWNS: PLANNING, SUBDIVISION OF LAND AND ZONING.

To effect instrument of vacation, only signatures of those lot owners immediately adjoining or contiguous to vacated area are required when vacation of plat does not impede or alter drainage or access of other lot owners not immediately contiguous to vacated area. Where easement or right-of-way impedes or alters drainage or access for all lot owners, signatures of all owners are required.

The Honorable William J. Howell

Member, House of Delegates

January 25, 1996

You ask whether, in vacating a subdivision plat pursuant to the provisions of § 15.1482 of the *Code of Virginia*, all the owners of lots displayed on the plat must consent to the vacation of drainage easements and rights-of-way, or only those owners whose lots are subject to the easement or right-of-way.[1]

Section 15.1482 provides for vacation of any recorded plat or part thereof in areas where any lot has been sold, using the following methods: (1) by recordation of an instrument "agreeing to the vacation signed by all the owners of lots shown on the plat and also signed on behalf of the governing body"[2]; and (2) by ordinance of the governing body, adopted after notice and hearing, with right of appeal to a court of record, which court "may nullify the ordinance if it finds that the owner of any lot shown on the plat will be irreparably damaged."[3] Prior opinions of the Attorney General, issued in 1986 and in 1976, conclude that "[a]n effective instrument of vacation under § 15.1482(a) … must be signed by all the lot owners shown on the plat of which the lots affected are a part."[4]

The 1990 Session of the General Assembly added a new sentence to § 15.1482(a) pertaining to the vacation of plats involving drainage easements or street rights-of-way.[5] When new provisions are added to existing legislation by an amendatory act, a presumption normally arises that a change in the law was intended.[6] A fundamental rule of statutory construction is that the primary object in interpreting a statute is to ascertain and give effect to the intention of the legislature.[7] If the language of a statute is plain and unambiguous, the legislature should be assumed to have intended to mean what it plainly has expressed, and statutory construction is unnecessary.[8]

The General Assembly clearly has stated in § 15.1482(a) that only the signatures of "those lot owners immediately adjoining or contiguous to the vacated area" are required when "the vacation does not impede or alter drainage or access for any [other] lot owners" that are not immediately adjoining or contiguous to the area to be vacated. Where any easement or right-of-way impedes or alters drainage or access for all the owners of lots contained on the plat, then the signatures of all those owners would be required. When a statute creates a specific grant of authority, the authority exists only to the extent specifically granted in the statute. Further, the mention of one thing in a statute implies the exclusion of another.[9]

[1]Section 15.1482(a) provides, in part, that when any lot has been sold, the plat or part thereof may be vacated "[b]y instrument in writing agreeing to the vacation signed by all the owners of lots shown on the plat and also signed on behalf of the governing body of the county or municipality in which the land shown on the plat or part thereof to be

vacated lies for the purpose of showing the approval of such vacation by the governing body. In cases involving drainage easements or street rights-of-way where the vacation does not impede or alter drainage or access for any lot owners other than those lot owners immediately adjoining or contiguous to the vacated area, the governing body shall only be required to obtain the signatures of the lot owners immediately adjoining or contiguous to the vacated area. The word `owners' shall not include lien creditors except those whose debts are secured by a recorded deed of trust or mortgage and shall not include any consort of an owner."

[2]Section 15.1482(a).

[3]Section 15.1482(b).

[4]1986-1987 Op. Va. Att'y Gen. 128, 130; *see also* 1975-1976 Op. Va. Att'y Gen. 279.

[5]Acts of 1990 Ch. 719Ch. 719, 1990 Va. Acts Reg. Sess. 1112, 1112.

[6]*Wisniewski v. Johnson*, 223 Va. 141, 144, 286 S.E.2d 223, 225 (1982); *see also* Op. Va. Att'y Gen.: 1990 at 156, 157; 1986-1987 at 272, 273.

[7]*See Vollin v. Arlington Co. Electoral Bd.*, 216 Va. 674, 222 S.E.2d 793 (1976).

[8]*Town of South Hill v. Allen*, 177 Va. 154, 165, 12 S.E.2d 770, 774 (1941).

[9]*See* Op. Va. Att'y Gen.: 1989 at 252, 253; 1980-1981 at 209, 210.