

January 5, 2004

Philip A. Shucet, Commissioner
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Re: Subdivision Street Requirements; amendment of

Dear Commissioner Shucet:

The Local Assistance Division desires to amend the Subdivision Street Requirements. I have been asked my opinion whether the Commonwealth Transportation Board or the Commonwealth Transportation Commissioner has statutory authority to amend the current Subdivision Street Requirements to fulfill a requirement of the Registrar of Regulations.

As noted previously the Requirements are, in fact, regulations as defined by the Administrative Process Act, § 2.2-4001 of the Code. There is ample statutory authority whereby the Board and the Commissioner may issue the Subdivision Street Requirements, and logically, amend them.

Specifically, § 33.1-69 of the Code grants to the Department, the Commissioner and Board "the control, Supervision, management and jurisdiction over the secondary system of state highways." Other statutes come into play as well. Section 33.1-229 allocates to the Commissioner the discretion to approve expenditure of State funds on roads in the secondary system. Section 33.1-198 of the Code requires persons desiring commercial entrances to obtain permits from the Department, specifically, referencing the Department's Minimum Standards. Subdivision roads, when they intersect with existing roads in the State system, are considered commercial entrances. Finally, § 33.1-12 delegates to the Board the authority (1) to locate and establish roads comprising the system of State highways; (2) to let all contracts for the construction of the roads; and (3) to make rules and regulations for the protection of, covering traffic on, and the use of systems of State highways.

Subdivision streets are typically taken into the secondary systems of State highways. The proposed requirements deal with standards for acceptance for maintenance, pavement design, drainage design, and capacity analysis among other aspects of roadway design, as well as other requirements necessary to be met before becoming part of the secondary system of State highways.

I am of the opinion that the Board and the Department have the necessary statutory authority to amend the existing Subdivision Street Requirements.

Sincerely,

John J. Beall, Jr.
Senior Assistant Attorney General

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