

September Real Estate Update | Loch Levan Land L.P. v. Board of Supervisors of Henrico County

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On August 22, 2019, the Supreme Court of Virginia issued an opinion denying a developer's claim of vested rights in a dedicated road. In *Loch Levan Land L.P. v. Board of Supervisors of Henrico County*, the Court affirmed the Circuit Court's judgment and brought major disruptions to plans for development of 1,089 acres of land located only a few miles from Richmond.

The matter begins in 1989 when the 1,089 acres were rezoned to include plans for an existing spine road to be continued through the new development. Beginning in 1991, Henrico County included the road in its Major Thoroughfare Plan. In 1992, the developer recorded a plat for the sole purpose of dedicating a right-of-way to complete the road. No construction was ever commenced on the road and the project remained stalled for many years.

With economic prospects improving, the developer filed a rezoning application in 2016. Almost immediately, the neighboring residents grew worried that the development would unreasonably increase traffic. The Board of Supervisors, responding to the complaining neighbors, removed the unbuilt road from the Major Thoroughfare Plan and in February 2017 abandoned the road. The developer soon brought suit alleging, among other things, that it had vested property rights in perpetuity to develop the road.

The Supreme Court of Virginia examined Va. Code §15.2-2261(C) and noted its plain language that the Board was prohibited from adversely affecting the developer's rights to complete an approved development in the case of a recorded plat for five years after approval. However, since the road was not constructed within the five-year period from 1992—a significant period for a developer to complete a road—the developer's statutory rights expired.

The developer contended that it held a constitutionally vested property right that augmented the statutory five-year right. The Supreme Court of Virginia, however, quickly dismissed this notion by citing the dedication statute and noting that the dedication of a road shall operate to transfer, in fee simple, the premises platted. As the developer had transferred fee simple title to the property, it had no property right in the road and, thus, no constitutionally protected property right. The Supreme Court of Virginia further concluded that the developer only had a *statutory* right to construct the road within five years. It forfeited that right through inaction.

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If you have any questions about this case or laws impacting real estate in and the Washington, D.C. region, feel



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free to contact us. Our Real Estate Litigation and Transactions Practice Group is ready to assist. This summary is not intended to contain legal advice or to be an exhaustive review. If you have any questions, please contact [Chris Glaser](#) at Jackson & Campbell, P.C.

TAGGED: Supreme Court of Virginia, Loch Levan Land L.P. v. Board of Supervisors of Henrico County, Va. Code §15.2-2261(C), Virginia Real Estate Update