

SUPREME COURT OF VIRGINIA

Loch Levan Land Limited Partnership, et al. v. Board of Supervisors
of Henrico County, et al.

Loch Levan Land Ltd. P'ship v. Bd. of Supervisors of Henrico County, 831 S.E.2d 690 (Va. 2019) · No. Record
No. 181043 · Decided August 22, 2019

SUMMARY

The Supreme Court of Virginia affirmed a circuit court judgment upholding Henrico County's removal of part of Dominion Club Drive from its Major Thoroughfare Plan and abandonment of an unbuilt road segment. The court held that the developer's statutory right to complete the road was limited to five years under Virginia Code § 15.2-2261(C), that no constitutionally vested property right existed in continuation of the public road, and that the County could use Title 33.2 abandonment procedures. The court further concluded that the record supported the abandonment based on the absence of public necessity and public-welfare considerations.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice Stephen R. McCullough
JURISDICTION	Virginia
DECIDED	August 22, 2019
DOCKET	Record No. 181043
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a consolidated circuit-court judgment entered after a four-day trial upholding Henrico County's removal of a segment of Dominion Club Drive from its Major Thoroughfare Plan and abandonment of an unbuilt portion of the road.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo. The circuit court's review of the road-abandonment decision under Code § 33.2-920 was de novo; on appeal, the Supreme Court reviewed whether the circuit court properly sustained the Board's decision and whether the decision was arbitrary or capricious.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Virginia; precedential.

PARTIES

Loch Levan Land Limited Partnership, Wellesley Land Limited Partnership, HHH Land, LLC, HHHunt Corporation v. Board of Supervisors of Henrico County

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QUESTIONS PRESENTED

1. Whether Code § 15.2-2261(C) or Code § 15.2-2261(F) governed HHHunt's right to complete the Dominion Club Drive extension.
2. Whether HHHunt possessed a constitutionally vested property right in the continuation of a public road.
3. Whether Henrico County could use the road-abandonment procedures in Title 33.2 rather than the subdivision-vacation procedures in Title 15.2.
4. Whether the Board's abandonment decision satisfied the statutory public-necessity and public-welfare requirements and was supported by the evidence.
5. Whether public opposition, together with traffic and safety concerns, could support the abandonment decision.

HOLDINGS

1. Code § 15.2-2261(C), not Code § 15.2-2261(F), governed HHHunt's right to complete the Dominion Club Drive extension because the separately recorded 1C-2 plat dedicated only a right-of-way and conveyed no subdivided property to third parties. HHHunt's statutory right expired five years after the plat was recorded.
2. HHHunt had no constitutionally vested property right in the continuation of Dominion Club Drive after dedicating the road right-of-way to Henrico County.
3. Henrico County could lawfully elect to use the road-abandonment procedures in Title 33.2 rather than the subdivision-vacation procedures in Title 15.2.
4. The Board lawfully abandoned the unbuilt segment of Dominion Club Drive because the statutory requirements were satisfied and the evidentiary record supported the conclusion that no present public necessity required continuation and that the public welfare was best served by abandonment.

KEY QUOTATIONS

“Like the circuit court, we conclude that HHHunt’s right to develop Dominion Club Drive was limited to five years.” (at 696)

“HHHunt had no property right in Dominion Club Drive once it dedicated that road.” (at 700)

“Our cases foreclose the argument that HHHunt can have a vested property right in the continuation of a public road.” (at 701)

“The General Assembly thus expressly provided that the procedures can be employed in the alternative, at the option of the locality.” (at 702)

“Certainly, no present public necessity exists for the continuation of such a “road.”” (at 705)

FACTUAL BACKGROUND

Henrico County's 1989 rezoning of the Wyndham development contemplated Dominion Club Drive extending to the Hanover County line and eventually into Hanover County. HHHunt separately recorded a 1992 plat, known as the 1C-2 plat, dedicating the right-of-way for the final unbuilt segment, but it never completed the road, never connected it across the Chickahominy River, and later described the project as postponed indefinitely. In 2016 and 2017, after HHHunt pursued development in Hanover County and Wyndham residents opposed the resulting traffic, the Board removed the segment from its Major Thoroughfare Plan and abandoned the unbuilt, barricaded portion. Evidence showed that the segment was not open to public travel and that extending it could worsen congestion and create safety problems.

PROCEDURAL HISTORY

The plaintiffs filed separate actions challenging the Board of Supervisors' 2016 removal of a portion of Dominion Club Drive from the Major Thoroughfare Plan and its 2017 abandonment of an unbuilt segment of the road. The actions were consolidated for trial. The Circuit Court of Henrico County ruled for the Board, concluding that the plaintiffs' statutory right to complete the road had expired, that no constitutionally vested right existed, and that the abandonment was lawful and not arbitrary or capricious. The Supreme Court of Virginia affirmed.

DISPOSITION

affirmed

CASES CITED

- Mercer v. MacKinnon, 297 Va. 157, 162 (2019)
- City of Richmond v. Va. Elec. & Power Co., 292 Va. 70, 74 (2016)
- Andrews v. Ring, 266 Va. 311, 319 (2003)
- Davis v. MKR Dev., LLC, 295 Va. 488, 494 (2018)
- Cook v. Commonwealth, 268 Va. 111, 116 (2004)
- Board of Supervisors v. Greengael, L.L.C., 271 Va. 266, 282-83 (2006)
- Holland v. Johnson, 241 Va. 553, 556 (1991)
- Town of Leesburg v. Long Lane Assocs., Ltd. P'ship, 284 Va. 127, 136 (2012)
- Board of Supervisors of Louisa County v. Virginia Electric & Power Co., 213 Va. 407, 412 (1972)
- Smith v. Board of Supervisors, 201 Va. 87, 93-94 (1959)

- Murr v. Wisconsin, 137 S. Ct. 1933 (2017)
- St. Joseph Abbey v. Castille, 712 F.3d 215 (5th Cir. 2013)
- Sensational Smiles, LLC v. Mullen, 793 F.3d 281, 286 (2d Cir. 2015)
- Smith v. Board of Supervisors, 201 Va. 87, 89 (1959)
- AT&T Wireless PCS v. City Council of Virginia Beach, 155 F.3d 423, 430-31 (4th Cir. 1998)

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