

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

**Certain Provisions of the  
Subdivision Law**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



**Senate Document No. 16**

**COMMONWEALTH OF VIRGINIA  
RICHMOND  
1987**



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**Report of the  
Joint Subcommittee to Study Certain Provisions  
of the Subdivision Law (SJR 47)  
to  
The Governor and the General Assembly of Virginia  
Richmond, Virginia  
November 1986**

**To: The Honorable Gerald L. Baliles, Governor of Virginia  
and  
The General Assembly of Virginia**

This study was occasioned by perceived delays on the part of at least some local governments in the Commonwealth in performing various reviews and inspections required during the residential subdivision development process. Local governments clearly have a public responsibility to ensure the quality and safety of housing. At the same time, unnecessary delays are of concern to the building industry because they represent economic costs. It also can be argued that they burden the prospective home owner, both in the availability and cost of housing.

In view of the concerns about such delays, the 1986 General Assembly through Senate Joint Resolution No. 47 created this Joint Subcommittee to examine the advisability of expanding the use of private engineering firms in the inspection process for residential development as a means of reducing delay and, given the cyclical pattern of the housing market, to avoid unnecessary overstaffing of local governments for what might prove to be a relatively short period of peak demand for inspection services.

Appointed to the Joint Subcommittee from the Senate were Richard L. Saslaw of Fairfax County, the chief patron of SJR No. 47, and Kevin G. Miller of Harrisonburg. House of Delegates members included John G. Dicks III of Chesterfield, Shirley F. Cooper of York County, and Kenneth E. Calvert of Danville. Citizen members of the Joint Subcommittee were Joseph J. Basgier, P.E., of Virginia Beach, Samuel A. Finz of Loudoun County, and the Honorable Audrey C. Moore, a member of the Fairfax County Board of Supervisors. Senator Saslaw was elected Chairman and Delegate Dicks was elected Vice-Chairman at the first meeting of the Joint Subcommittee.

### Background

The Joint Subcommittee held a total of three meetings and public hearings. The initial meeting was held in Richmond on September 4, 1986. At that meeting the Joint Subcommittee heard testimony from private building

industry spokespersons and representatives of local governments relative to the concerns which had led to the study and to the scope of actions which the Joint Subcommittee might consider. The Joint Subcommittee followed this meeting with a public hearing in the County Board Room of Fairfax County on October 3 since the Northern Virginia area seemed to be the primary center of concern. The third and final session of the Joint Subcommittee took place in Richmond on November 7, where the Joint Subcommittee first held another public hearing and then met in a final work session to reach the conclusions and recommendations contained in this report. In addition to the two public hearings, a number of written statements were filed with the Joint Subcommittee for the record.

Senate Joint Resolution No. 47 makes specific reference to §15.1-466(l) of the Code of Virginia in its call for this study. An examination of the resolution indicates, however, that this particular section is not the real focus of concern but rather an example of the use of private engineering firms as an alternative to local inspection forces which this Joint Subcommittee is asked to consider. This particular section of the Code deals with partial and final releases of performance guarantees posted by subdivision developers for public facilities for which the developer is responsible within the subdivision, such as streets, sidewalks, curbs, gutters, drainage and water systems. The section was amended in 1980 and again in 1981 to permit but not require local governments to accept certificates of partial or final completion of such facilities from licensed professional engineers or land surveyors. The General Assembly in 1985 further addressed the problem of delays in inspections and releases of funds by imposing a specific schedule of partial and total releases and by creating a presumption that a request for release has been approved by the local government unless the governing body or its designated administrative agency notifies the developer of specific defects or deficiencies within thirty days of the request.

From the outset, it became obvious to the Joint Subcommittee that the complaints which led to the request for the study focused upon two other aspects of the residential subdivision development process. One area was that of the individual residential unit inspections which are required during the construction process and prior to the issuance of occupancy permits. The other was the review of preliminary and final subdivision plats and site plans or plans of development by local governments pursuant to §15.1-475 or §15.1-491(h).

#### Residential Building Inspections

Regulation of individual residential building construction is governed by the Virginia Uniform Statewide Building Code adopted by the Board of Housing and Community Development pursuant to Chapter 6 of Title 36 of the Code of Virginia. Enforcement of the Building Code is the responsibility of the local building department under §36-105 of the Code of Virginia. The Uniform

Statewide Building Code permits but does not require the use of private inspections. It requires inspection within a reasonable response time, suggested in the Building Code not to exceed 48 hours under normal circumstances.

The testimony which the Joint Subcommittee heard with regards to delays in the inspection process centered upon Northern Virginia and upon Fairfax County in particular. In Fairfax County, new subdivision construction increased dramatically with the recovery in the housing industry and in the economy in general. Both the county and developers seem to agree that the surge in new housing starts overtaxed the capacity of the county's own inspection personnel to complete inspections in as timely a fashion as would be desirable. The county initially responded to the problem by accepting certification of inspection by private engineers for at least some of the inspection requirements, but subsequently became dissatisfied with this alternative. It cited statistics showing that the approval rate of inspections by private inspectors was significantly higher than that of county inspectors and that the private inspectors in fact almost never issued a rejection. Private engineers and the building industry, on the other hand, argued that the county's case was misleading. Their contention was that private inspectors were allowing a builder to correct initial deficiencies, after which a certificate of inspection would be issued, whereas county inspectors issue a rejection and then return for a second inspection. The Joint Subcommittee did not feel it necessary ultimately to resolve the dispute. The private sector's explanation did appear to account for a great deal of the statistical difference between county and private inspection approval rates. At the same time, the county was able to illustrate in a few instances clear cases where private inspection abuses had occurred. The result in any case was that as of September 1, 1986, Fairfax County ceased to accept certification by private inspectors hired by developers. Instead, the county entered into contracts with a limited number of private engineering firms to conduct inspections on behalf of the county as a way of meeting the peak demand for inspection.

While this study was in progress, Fairfax County and the Northern Virginia Building Industry Association (formerly the Northern Virginia Home Builders Association) reached an agreement to settle the ongoing difficulties between the two. Fairfax County agreed to take steps to expedite plan review and inspection procedures by expanding the contract services outlined above and by adding a limited number of county positions in order to achieve a goal of meeting state-mandated time limits on reviews and inspections no later than August 1, 1987. The Association in turn agreed to necessary fee increases to help offset the additional costs, which the county placed at \$3.7 million for fiscal 1987 and \$5.4 million for fiscal 1988.

There was no indication that delays in the residential inspection process were a major problem elsewhere in the state. Testimony did show that local

governments across the state make use of some private inspections. A large number of local governments, both counties and municipalities, filed statements or resolutions with the Joint Subcommittee urging that the use of private engineers and land surveyors remain an optional or voluntary choice and strongly opposing any mandatory system by the state which would require that local governments accept private inspection and certification.

The Joint Subcommittee is of the opinion that the most desirable policy is for the choice of public or private inspection to remain in the hands of the local government. The ultimate responsibility for safety and quality is that of the local government as a matter of public policy, as a moral commitment, and as a matter of legal liability. At the same time, the Subcommittee would note that the local government has an obligation to private developers and ultimately to those who seek housing to perform necessary inspections and reviews in a timely fashion. Failure to do so might at some future time force the General Assembly to reexamine the inspection process. In the meantime, given that the local government has the ultimate responsibility, that there does not appear to be a widespread problem across the state, and that the most immediate source of concern in Fairfax County admirably seems to have been resolved by the parties involved, the Joint Subcommittee does not find that any legislation or legislative action is needed in the area of construction inspection provisions at this time.

#### Subdivision Plat and Site Plan Reviews

The Joint Subcommittee found the matter of subdivision plat and site plan review to be of somewhat wider concern. While the primary problem may be in Northern Virginia, indications were that there is some difficulty in most areas of the state where development is concentrated. Section 15.1-475 of the Code of Virginia requires the local planning commission, or other agent designated by the local governing body to review plats and plans, to act on final plats within 60 days of submission. The section also permits local governments to provide for submission of preliminary subdivision plats for tentative approval. In actual practice, the use of pre-submission conferences and the submission of preliminary plans is an effective method of identifying possible problem areas and facilitating the review process. However, prior to 1986 the statute had exempted the preliminary plat submission and review process from the 60 day time limit, an omission which sometimes had allowed excessive delays to intrude into the process. Senate Bill No. 218, approved by the 1986 session, sought to address this problem by extending the 60 day requirement to the preliminary plat review by the local planning commission or designated agent. The bill recognized the need for review by state agencies in some instances and allowed additional time in which to do so, but in no case can the entire process run more than 90 days.

The Joint Subcommittee heard testimony from developers indicating that the process frequently takes longer than these time frames. A part of this

problem may stem from the same cause as noted in the case of residential building inspection, namely that in times and locations of intensive subdivision development, the local government staff may simply be overrun by the demand. Testimony also indicates that in many localities the process is extended because submitted plats and plans must go through an extensive number of local agencies which review various components of the plan. A further problem frequently is that no official or agency has a clear responsibility for moving the plat or plan through the various stages of review to ensure that expedited treatment results. Delays also may occur if the local governing body itself wishes to be directly involved in the review and approval process.

On the other side of the picture, several local officials testified that a common problem lay in the quality of the plats and plans submitted for review. The thrust of the testimony was that the plans frequently were inadequate or incomplete and had to be returned because they did not meet the requirements nor provide the requisite information for review. The result is that a considerable amount of delay arises not within the local agencies during review but in additional work required of the developer's engineers and consultants to bring the preliminary plats and plans up to standard in order that they may be resubmitted.

The Joint Subcommittee notes that much of the delay in the process occurs at the preliminary conference and preliminary review stage. We also note that the changes made as of July 1, 1986, by Senate Bill No. 218 are intended to address this problem. This new provision has not had time to work and many of the complaints heard by the Subcommittee clearly relate to problems which gave rise to Senate Bill No. 218 and happened prior to July 1 of 1986.

For this reason, and the reason cited above in the case of residential inspections, the Joint Subcommittee does not believe that legislative action to further mandate schedules, or to require that local governments accept certification from private engineers, architects, and land surveyors that submitted plans meet local requirements, is called for at this time. We do suggest that both parties can help address the problem, the developers by ensuring that their submissions are in order and local officials by examining ways to better coordinate the review process and to expedite consideration.

#### Recommendations

As a result of its study, this Joint Subcommittee recommends that:

1. No statutory action, either to mandate the acceptance of private inspections or to impose additional time constraints on local government inspection and review, should be taken.



2. Local governments should take the necessary steps to operate in a timely fashion and within time limits already mandated by State law and administrative regulations. These steps may include the acceptance of private inspection or the use of private firms under contract if the locality finds these approaches to be preferable to increases in the permanent local inspection staff.
3. The Board of Housing and Community Development, under its authority to promulgate the Uniform Statewide Building Code, is requested to examine the question of whether changes in the Building Code should be made to address the timing problems identified in this report. This review should include (i) the issue of whether requirements for adequate numbers of inspection personnel should be included and (ii) the question of administrative procedures to enforce the applicable requirements of the Building Code.
4. Local governments are encouraged to examine the process by which they review preliminary and final subdivision plat submissions, site plans, and other requests incident to the subdivision development process. Particular attention might be paid to the number of separate agency reviews involved in the process and the extent to which a supervisory agency bears the responsibility for expediting the various stages of the review process.
5. The development community, and the professional associations whose members are responsible for the preparation of the subdivision development proposal upon which the local government must act, are encouraged to monitor the quality of that work in order to ensure that submissions are accurate and complete from the outset.

Respectfully Submitted,

Richard L. Saslaw, Chairman

John G. Dicks, III, Vice-Chairman

Kevin G. Miller

Shirley F. Cooper

Kenneth E. Calvert

Joseph J. Basgier, P.E.

Samuel A. Finz

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**SENATE JOINT RESOLUTION NO. 47**

*Requesting a joint subcommittee to study certain provisions of the subdivision law and its local application.*

Agreed to by the Senate, March 3, 1986  
Agreed to by the House of Delegates, February 27, 1986

WHEREAS, the General Assembly of Virginia, through enactment of House Bill 1033 during the 1985 session, amended § 15.1-466(1) of the Code of Virginia to provide that for the purposes of that subsection a certificate of partial or final completion of certain subdivision facilities from either a duly licensed professional engineer as defined in and limited to § 54-17.1 of the Code of Virginia, or from a department or agency designated by the local government, may be accepted without requiring further inspection of such subdivision facilities; and

WHEREAS, the above provision of the Code of Virginia affirms the approval by the General Assembly of the permissibility of consideration by the various localities of the Commonwealth of the utilization of private sector engineering firms in the subdivision construction process, and this provision has been implemented in localities with certain restrictions which prevent additional utilization of the private sector; and

WHEREAS, the utilization of private sector firms may be economical because it may provide relief to the various localities in addressing delays which have been experienced in inspection of subdivision facilities during periods of intensive land development activities; and

WHEREAS, such utilization of private sector employment may additionally serve to relieve localities from the necessity of maintaining large engineering forces during slow periods of residential construction, thus resulting in considerable savings to the taxpayers of the Commonwealth; and

WHEREAS, the engineering community has expressed a willingness to assist the localities in regard to the inspection of subdivision facilities required by § 15.1-466(1) of the Code of Virginia; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That a joint subcommittee be appointed to examine the operation of § 15.1-466(1) of the Code of Virginia, with respect to the utilization of private engineering firms in the inspection of residential subdivision facilities, and to consider the advisability of expansion of the acceptance by localities with respect to such private sector inspections for residential development.

The joint subcommittee shall be comprised of eight members appointed as follows: two members of the Senate to be appointed by the Senate Committee on Privileges and Elections; three members of the House of Delegates to be appointed by the Speaker of the House of Delegates and three members appointed by the Governor, a licensed professional engineer, a representative from the building industry, and a representative from local government.

The joint subcommittee shall complete its work prior to November 15, 1986.

The direct and indirect costs of this study are estimated to be \$12,575.

