REPORT OF THE
SECRETARY OF COMMERCE AND TRADE ON

REGULATORY BARRIERS TO HOUSING AFFORDABILITY

TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 54

COMMONWEALTH OF VIRGINIA
RICHMOND
1995

COMMONWEALTH of VIRGINIA

Office of the Governor

George Allen
Governor

Robert T. Skunda
Secretary of Commerce and Trade

TO: The Honorable George Allen
Members of the General Assembly of Virginia

House Joint Resolution No. 192, agreed to by the General Assembly in 1994, requests that the Secretary of Commerce and Trade undertake a comprehensive study of the regulatory barriers currently existing which hinder the availability of affordable housing.

As directed by this joint resolution, I hereby submit the attached report.

I also wish to express my sincere appreciation to the many individuals who assisted my office in carrying out the request of the General Assembly for this important study.

Respectfully submitted,

Robert T. Skunda
Secretary of Commerce and Trade

P.O. Box 1475 • Richmond, Virginia 23212 • (804) 786-7831 • TDD (804) 786-7765

Table of Contents

Executive Summary

In response to the provisions of HJR 192, enacted by the 1994 General Assembly, the Secretary of Commerce and Trade convened a Task Force comprised of representatives of local government, the development industry, professional organizations, state agencies, and proponents of housing affordability. They were charged with identifying regulatory barriers to increased housing affordability and making recommendations for changes in laws, regulations, and policies. As directed by the resolution, the Task Force used *Making Housing Affordable: A Self-Assessment Guide for States*, developed by the Council of State Community Development Agencies, to help focus its activities.

The Task Force met periodically over a four month period and considered the impact of regulations in five areas: planning and land use, land development and site planning, infrastructure financing and impact fees, building codes and standards, and administration and processing. The Task Force developed a series of recommendations in each of these areas and submitted its findings to the Secretary of Commerce and Trade.

The Secretary reviewed the work of the Task Force and consulted with local government officials; builders, developers, and realtors concerned with increasing housing affordability; and non-profit organizations. As a result of the work of the Task Force and these additional contacts, the Secretary has developed recommendations for addressing regulatory barriers to affordable housing that are summarized below.

Implementation (Page 3)

- The Virginia Housing Development Authority and the Department of Housing and Community Development should adopt a uniform definition of "affordable housing" to provide policy guidance for their individual housing programs.

- An implementation team will be appointed to monitor and report on progress in implementing the recommendations of this report and to identify and recommend additional steps to reduce regulatory barriers to the creation of affordable housing.

Planning and Land Use (Pages 4-10)

- The definition of a "special exception" included in § 15.1-430 of the *Code of Virginia* should be amended to require that conditions imposed in connection with a residential special use permit be reasonably related to the proposed use and to assure that when localities impose conditions on residential projects specifying the materials and methods of construction or specific design feature, they shall consider the impact of those conditions upon the affordability of housing.

- Proffered conditions affecting the affordability of housing should be reasonably related to the scope and purpose of the comprehensive plan and the purpose of zoning ordinances as stated in §§ 15.1-446.1 and 15.1-489 of the *Code of Virginia*.

- A working group formed to consider uniform standards for the local review of multi-family housing developments financed through state-administered programs reached consensus on November 30. It recommended amending § 36-55.39 of the *Code of Virginia* to limit the disapproval by local governing bodies of VHDA-funded multi-family projects to cases where the project failed to meet one or more specific criteria including consistency with land use regulations, consistency with the local Comprehensive Housing Affordablity Strategy (CHAS), and the availability of public and/or private utilities. The Department of Housing and Community Development will consider changes in the scoring process for the low-income housing tax credit program to give greater weight to local government and community comments.

Land Development and Site Planning (Pages 11-21)

- Consideration should be given to the future role of regional planning district commissions in the area of assisting localities to identify regional needs for affordable housing and in helping to broker local agreements to meet those needs.

- Where local reviewing authorities or state agencies fail to act on subdivision plats or site plans within the statutorily prescribed time period, the plat or plan should be considered approved subject to current public notice provisions. Review may be extended with the consent of the subdivider or site developer.

- Local and State government agencies should develop policies and procedures to facilitate the established development review process and, where necessary, undertake innovations or reallocate resources to accomplish essential tasks on a timely basis.

- Public hearings in connection with the review of subdivision plats and site plans should be limited to the applicable code and regulatory standards.

- A guide identifying the steps that local governments could take to foster the provision of more affordable housing within the bounds of existing statutes could be prepared by the Department of Housing and Community Development.

- In conducting the revision of the subdivision street standards called for in the *Virginia Connections* Strategic Plan for Transportation, the Virginia Department of Transportation should consider a number of critical design factors and should assure substantive participation by all components of the development community in its advisory committees.

- Regional (e.g. watershed) management approaches that focus on source controls , erosion controls, and upstream pollutants should be used to respond to urban storm water problems. However, localities should not be required to implement storm water management authorities with taxing powers.

- The Secretary of Commerce and Trade should establish a liaison with the SJR 44 storm water management study group to assure that the relationship between storm water management and affordable housing receives sufficient attention.

- The Chesapeake Bay Local Assistance Board should continue its review of the Bay Act regulations to identify areas where they may be modified or eliminated, reducing their impact on affordable housing, without harming the Bay and its tributaries.

- The Department of Health should assure that, where appropriate, its regulations facilitate the use of alternative systems for sewage handling to the maximum extent possible consistent with public health.

Infrastructure Financing and Impact Fees (Pages 22-24)

- The state should explore various funding mechanisms, including greater use of private participation, to help assure that essential infrastructure be provided to developments meeting predetermined affordability criteria.

- The Secretary of Commerce and Trade should coordinate its activities with the HJR 280 study considering abuse of the proffer zoning system to assure housing affordability issues are considered.

Building Codes and Standards (Pages 25-30)

- The Board of Housing and Community Development should give special attention to the problems associated with the renovation of older, existing structures in communities requiring revitalization and develop an Urban Revitalization Code to overcome problems resulting from the application of new construction standards in these areas.

- The General Assembly should continue to provide instruction and guidance to the Board of Housing and Community Development on building code issues through the passage of relevant resolutions. The Board should continue to rely on open administrative processes to maintain the currency of the Uniform Statewide Building Code.

- Virginia should increase its participation in the code development activities of the Council of American Building Officials (CABO), which guide construction of a majority of the one- and two-family dwellings in the state.

- At such time as the BOCA model code provides accessibility standards equivalent to the ADA, the Board of Housing and Community Development should rescind the Virginia ADA amendments to the USBC and adopt the BOCA model code's provisions.

- Training and certification of code enforcement personnel should emphasize the impact of uniformity and code interpretation upon housing affordability, and the Building Code Academy should place greater emphasis on resolving the special problems associated with the renovation of older structures.

Administration and Processing (Pages 31-39)

- Land-use enabling legislation should be amended to require local administering authorities to conduct pre-application conferences on the request of any individual proposing to submit site plans or subdivision plats for review or requesting a rezoning (including special use permits).

- The use of "on-site" transferrable development rights should be enabled by statute to encourage cluster development techniques that preserve opportunities for more affordable units without harming environmentally sensitive or unique features. The General Assembly should strongly encourage local governments to consider allowing cluster, single-family detached housing by right and consistent with the local zoning district density requirements.

- In certain competitive selection processes for housing and community development programs, the state could offer incentives to local governments that take specific actions to reduce local regulatory barriers or that adopt affordable dwelling unit density bonus programs.

- Non-profit housing organizations should be invited to identify regulatory barriers impeding their activities, suggest remedial measures, and work with state and local agencies and other private sector entities to enhance opportunities for the creation nd preservation of more affordable housing.

- Efforts to foster the use of joint federal-state permitting procedures should be continued and expanded wherever they offer an opportunity to cut processing times and eliminate unanticipated delays and where their use is consistent with Virginia's environmental policies.

I. Overview of the Study Process

HJR 192 requests the Secretary of Commerce and Trade to carry out a comprehensive study of existing regulatory barriers hindering the availability of affordable housing. The resolution specifies an examination of the Self Assessment Guide for States developed by the Council of State Community Development Agencies (COSCDA).[1] It further requires a report on whether the strategies contained in that study would be advisable for use in Virginia and the actions necessary to implement such strategies.

To accomplish these and other tasks outlined in the resolution, the Secretary convened a Task Force comprised of representatives from a number of interested organizations. Participation from the development community included architects, engineers, realtors, and homebuilders. State and local government agencies, environmental organizations, as well as other groups with interests directly or indirectly affected by the relationship between governmental regulations and the continued availability of affordable housing, were also represented.

Schedule for the HJR 192 Study of Regulatory Barriers to Affordable Housing

Activity	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov
Task Force Appointed								
Organizational Meeting								
Work Sessions								
Subcommittee Findings and Recommendations Considered								
Draft for VHSC Review								
VHSC Review and Comments								
Final Report Preparation								
Submission to Governor and General Assembly								

Prior to each meeting, the Task Force reviewed the strategies and techniques recommended by COSCDA, assessing their potential application in Virginia. The full Task Force met in July to consider recommendations that were incorporated in a draft report

[1]Council of State Community Development Agencies/National Conference of States on Building Codes and Standards, *Making Housing Affordable: Breaking Down Regulatory Barriers, A Self-Assessment Guide for States* (Washington, D.C.: COSCDA/NCSBCS [draft], 1994).

submitted to the Virginia Housing Study Commission (VHSC) for its review in early September. In addition to review by the VHSC, numerous other parties commented on the draft document during September and October.

The Task Force reviewed the impact of regulations on affordability within the following four areas: (1) planning, zoning and site plan regulation; (2) the provision of infrastructure and the use of exactions; (3) building regulations; and (4) the overall design, implementation, and enforcement of regulations (e.g. the regulatory process). By responding to both the general questions and specific strategies contained in the COSCDA document, the Task Force evaluated qualitatively the degree to which current regulatory practices may have an adverse affect on housing affordability. Where appropriate, the Task Force recommended actions intended to remove the barriers it has identified.

Topical Areas of the HJR 192 Study of Regulatory Barriers to Affordable Housing

Subject	Potential Issues
Planning, Zoning, and Site Plan Regulations	Effects of local land use regulations on the supply of land available for residential development, the types of residential units permitted, development standards, etc.
Infrastructure and Exactions	Allocation of costs for the provision of major public services such as highways, mass transit, utilities, etc.
Building Regulations	Effects of building regulations (Uniform Statewide Building Code [USBC], Fire Safety Regulations, material and product standards, etc.) on the cost of residential construction.
Design, Implementation, and Enforcement of Regulations	Effects of regulatory procedures on the development process, vesting, etc.

Affordable Housing Needs and the Effect of Reducing Barriers to Affordability

One of the initial steps in the study was for the Task Force to examine indicators of the need for additional affordable housing in Virginia. This analysis confirmed that affordability (as expressed in terms of the cost burdens for owners and renters) is the most significant single component among the many housing-related problems facing Virginia households with moderate or below moderate incomes.

The Task Force affirmed the importance of addressing affordability problems attributable to regulations that unnecessarily increase development cost factors. **Without reasonable action to identify and reduce regulatory barriers, whatever potential savings were possible would never be realized.**

In its discussion, the Task Force acknowledged that a number of other factors enter into the actual cost of housing for renters and owners. These included the impact of federal tax policies upon the construction of multi-family housing, housing demand within individual markets, changing preferences in housing, seasonal or cyclical fluctuations in labor and material costs, the regulatory policies of adjacent jurisdictions, as well as other variables. Given this complexity, the Task Force noted that a significant effect of reducing regulatory barriers would likely be a higher level of development activity in lower cost areas rather than as a dollar for dollar reduction in the price of a specific unit.

Defining Affordability

The Task Force observed that "affordability" had not been defined with sufficient clarity. Although there are over 150 references to affordable housing scattered through more than a dozen sections of the Code of Virginia, the term is never explicitly defined. Several definitions of "affordability" appear in other sources, however.

For purposes of preparing a state or local Comprehensive Affordability Strategy (CHAS), HUD has defined "affordable housing" as "housing where the occupant is paying no more than 30 percent of gross income for gross housing costs, including utility costs." State agencies in Virginia and other states, individual localities and non-profit organizations, have developed a variety of definitions of "affordability" for various household income levels. The Virginia Housing Development Authority (VHDA) traditionally has focused its single family program on households with incomes ranging up to a maximum of 115 percent of area median income.

A combination of the HUD and VHDA concepts provides a basis for a reasonable definition of "affordability" that will accommodate the entire range of Virginia's efforts to increase the availability of "affordable housing." A broadly accepted definition of "affordable housing" would add greater clarity to discussions about what to do to make housing more affordable. Thus, it is recommended that VHDA and DHCD adopt a definition along the following lines to serve as a policy guide for their respective programs:

> **"Affordable housing" for the purposes of the Commonwealth of Virginia's programs means, as a guideline, housing that is affordable to households with incomes at or below one hundred fifteen (115) percent of the area median income, provided that the occupant pays no more than thirty percent of gross income for gross housing costs, including utilities. For the purpose of administering affordable dwelling unit ordinances, local governments may establish individual definitions of affordable housing and affordable dwelling units.**

Secretary's Recommendations

In developing recommendations for action through the legislative and regulatory processes, the secretary of commerce and trade considered the findings of the Task Force's comprehensive study of the issues as well as the comments of other individuals and organizations expressing concern about the relationship between governmental regulations and housing affordability. The recommendations of the secretary for reducing regulatory barriers to housing affordability are contained in the following chapters, organized by functional area.

Finally, in accordance with a recommendation received from a member of the Virginia Housing Study Commission and to assure that the report's recommendations reduce regulatory barriers, the secretary will appoint an implementation team with two primary areas of responsibility. First, it will monitor and report on progress in implementing recommended reforms. Second, it will recommend additional steps to reduce regulatory barriers and promote reform.

II. Planning and Land Use

This portion of the review focused primarily on the state's current requirements for local land use planning and regulation, local governments' use of their powers, the actual effect of local regulations on affordable housing, and the need for changes in state enabling legislation as well as local implementation practices.

Virginia's land use enabling legislation attempts to strike a balance between competing principles: the belief that primary responsibility for making decisions about the use of land should rest at the local level but also that local governments should act in a way that advances the legislative intent to improve the public health, safety, convenience, and welfare of citizens. Similarly, planning and zoning law attempts to strike a deliberate balance between private property rights and public interests with the expectation that success will be reflected in the continued vitality of the state's hundreds of localities and communities.

In recent years the state has attempted to encourage *voluntary* local affordability efforts. Virginia has specifically authorized the use of such techniques as planned unit developments (PUD) and mixed use developments, it recently authorized all localities to use affordable dwelling unit ordinances, it indicated that one of the purposes of zoning is to help meet regional affordable housing needs, and the state developed financial programs to encourage cooperative partnerships among non-profit and for-profit developers, local governments, state agencies, and federal programs.

Discussion

Planning

After considering the series of questions in the Self Assessment Guide relating to general planning, the Task Force found no compelling basis for recommending substantive changes to Virginia's local government planning enabling legislation. They noted that virtually all of the state's larger communities had complied with the long-standing mandate to prepare a comprehensive plan. The members expressed the view that no mechanism for state review and approval of local plans was necessary because of the degree of compliance already attained. Last year's decision by the Commission on Population Growth and Development against recommending such a requirement further reinforced this view.

Similarly, after discussing various aspects of the concept, the Task Force did not support *mandating* that local comprehensive plans include a housing element requiring localities to provide for a proportional share of regional housing needs. Amendments to local government planning enabling legislation (§ 15.1-466) developed by the Virginia

Housing Study Commission (VHSC) already *permit* localities to designate areas for the implementation of measures to promote the construction and maintenance of affordable housing to meet the current and future needs of residents of all levels of income within a regional planning district. In addition, and as a result of legislation recommended by the VHSC, local planning commissions are already *required* to "survey and study" regional affordable housing needs in connection with the preparation of the comprehensive plan (§ 15.1-447).

Although the state offers localities neither incentives to encourage nor penalties for failing to undertake local regulatory reform (encouraging inclusionary practices and discouraging exclusionary regulations), the Task Force did not recommend state action in either direction. They noted that a number of localities had participated in voluntary reform efforts sponsored by the National Association of Counties (NACO) and NAHB, while others had acted on their own. Overall, there was little desire to enlarge the role of the state in directing the approach to be taken by localities toward planning and land-use regulation.

Zoning

The Task Force was in general agreement that it was inadvisable to require that local zoning ordinances be consistent with the locally adopted comprehensive plan. The members generally felt such a requirement would impede rather than foster the creation of more affordable housing in Virginia. Similarly, there was little support for implementing "linkage" legislation affecting mixed-use development as a means of promoting more affordable housing. These approaches typically call for developers of non-residential housing to make a contribution (either through fees or the actual construction of affordable units) toward meeting the need for additional housing that may be created as a result of their development.

The Task Force reviewed the current status of "downzoning" in Virginia, noting that downzoning can have the effect of hindering affordable development if it increases lot sizes, decreases permitted densities, or removes residential development as an option for a given area. In general, the group agreed that Virginia law is relatively settled in this area. Piecemeal downzoning will generally be held invalid unless the locality can demonstrate that mistake, change, or fraud sufficient to justify the rezoning is present. Comprehensive rezoning faces a lower hurdle and will be upheld if found to be based on credible planning considerations.

In response to several of the points raised by the Guide, the Task Force noted variations in local responses to a number of housing alternatives, including such conventional approaches as town houses, garden apartments, and other multifamily developments; more innovative approaches as cluster and mixed-use development; or such older standbys as accessory units and Single Room Occupancy (SRO) projects. At present, state enabling legislation neither encourages nor discourages such options. As a result of legislation sponsored by the VHSC, specific definitions are provided in the Code for incentive zoning,

planned unit developments, and mixed developments; localities have specific permission to employ mixed use and planned unit developments as well as to administer incentive zoning programs. Localities have thus been able to exercise considerable flexibility, often relying on discretionary zoning devices (use permits and exceptions) as opposed to as-of-right or "straight" zoning (which specifically lists a use as permitted within a zone without requiring further legislative action) to accommodate or not accommodate these and other alternatives.

The Task Force considered at some length both the benefits and costs associated with conditional use permits and their effects on the availability of affordable housing. While recognizing that they may be employed for exclusionary purposes, the members also observed that use permits provide local governments with a means for permitting affordable alternatives subject to certain limitations. Some members pointed out that if use permits were not available, many localities would be unlikely to provide as-of-right zoning for such housing types as SROs and accessory apartments. For instance, Fairfax County has permitted the development of a new SRO housing project through the use permit process. Other localities have relied on use permits to control the neighborhood impacts of the additional residential density associated with accessory units.

The potential benefits of encouraging "infill" development (particularly in terms of more efficient use of existing infrastructure) were acknowledged. Some localities have attempted to promote infill development; however, a number of drawbacks--including those attributable to local regulation--were noted. Imposing current development standards on areas whose initial development or platting were initially based on older standards (affecting such things as minimum lot size, width, etc.) can inhibit infill development by limiting the opportunity for prospective developers to obtain a reasonable rate of return on their investment.

The Task Force recognized a number of positive features of the state's zoning statutes, including several recent changes initiated by the Virginia Housing Study Commission that promise to expand affordable housing options.

- During the 1994 session, the General Assembly extended to all localities permissive language authorizing local governments that have adopted zoning to enact affordable dwelling unit ordinances meeting certain criteria set in the Code. In the past, only Fairfax County and a limited number of other localities had been permitted to employ such ordinances. These ordinances employ density bonuses as an incentive for the production of affordable housing. Although only a few local ordinances have been adopted to date, many believe that their use will increase in tandem with the recent recovery of the housing market.

- The state has required greater uniformity in the way many local land-use regulations treat manufactured housing, directing that localities permit double-wide units within agricultural use districts on the same basis as site-built homes. Thus far, however, the same standard has not been applied to single-wide units. These units remain likely

to encounter local requirements subjecting them to the granting of a conditional use permit, to be issued only at the discretion of the local governing body, and available only within a limited number of zoning districts.

- The state has introduced mandatory time limits for state agency and local reviews of subdivision plats and site plans. And, in 1994, the General Assembly gave permanent status to legislation effectively vesting a developer's right to proceed with development in accordance with approved final plats and site plans for a period of no less than five years subject to certain limitations.

Recommendations

Action is recommended in connection with two specific items related to the administration of local zoning ordinances.

Special Use Permits and Proffers

- The potentially negative effect on various affordable housing options resulting from reliance on special use permits and proffered conditions is a concern. Special use permits control uses that are specifically provided for in the local ordinance subject to a case by case review and approval by either a Board of Zoning Appeals or the local governing body. The Code [§ 15.1-430 (i)] defines these as "special exceptions"; local ordinances may identify them as special exceptions, special use permits, or conditional use permits. In theory, the proffer system permits landowners with the opportunity , during the local process of considering a zoning amendment, to perform an act or donate money, products, or services to provide additional justification for local approval of the rezoning request.

Special use permits and proffered conditions are doubled-edged swords. They can be applied in a way that prohibits or sharply curtails the use of some affordable housing options, e.g single-wide manufactured units, accessory apartments, etc, but they may also provide the only effective means for obtaining community consent to other forms of development or reuse of residential property. Proffered conditions and special use permits have also given developers and localities an opportunity to add greater flexibility to the conventional zoning process. Innovative development proposals have benefited from the ability to employ proffers. Multi-family housing for the elderly and Single Room Occupancy (SRO) projects were two examples of housing that have been enabled by use permits. Thus, a complete prohibition on employing conditional use permits or other discretionary land use devices in connection with residential uses would, on balance, be detrimental to efforts to expand affordable housing opportunities.

However, discretionary regulations may potentially be employed in an inappropriate manner. This may result in unnecessarily increasing development costs to satisfy essentially aesthetic considerations rather than more basic concerns about the appropriateness of a

given use at a specific site. This has become a particular concern in connection with the use of conditions specifying the materials and methods to be employed in residential construction or design features of the finished product. These conditions may reflect the opposition of neighbors to a development proposal and efforts by the locality or developer to ameliorate opposition. Because of these problems, the following changes are recommended:

> **The definition of a "special exception" in § 15.1-430 (i) should be amended to (1) require that any conditions imposed in connection with a residential special use permit are reasonably related to the use proposed and (2) to assure that when localities impose conditions on residential projects specifying the materials and methods of construction or specific design features, the locality shall consider the impact of the conditions upon the affordability of housing.**

Furthermore, to assure that the use of proffers does not unduly decrease housing affordability, it is suggested that localities give more explicit consideration to their impact on housing affordability.

> **Proffered conditions affecting the affordability of housing must be reasonably related to the scope and purpose of the comprehensive plan and the purpose of zoning ordinances as stated in § 15.1-446.1 and § 15.1-489 respectively of the Code of Virginia.**

Uniform Standards for the Review of Housing Developments

■ The Task Force noted that government-financed affordable housing developments are sometimes subjected to additional regulatory reviews that are not required of otherwise comparable market rate housing projects. For example, under the provisions of §§ 36-55.33:2 and 36-55.39 B of the Code, VHDA financing for multi-family, new construction or substantial rehabilitation has been subject to a "sixty-day letter" local disapproval process that is not applicable to conventionally financed projects. In 1994 the General Assembly passed HB 1235, which struck that provision; however, the Assembly also agreed to a Governor's amendment that prevented the bill from becoming law unless it was reenacted during the 1995 session. Another bill, SB 431 which was defeated during the same session, would have established a similar local review process for multi-family projects to be financed through the use of low-income housing tax credits administered by DHCD, thereby creating greater uniformity between VHDA and DHCD multi-family financing activities.

The Task Force discussed this issue at length and, on the basis of the information presented to it, recommended the reenactment of HB 1235, which would have the effect of eliminating the sixty-day letter local disapproval process. Some members of the Task Force expressed the position that affordable housing developments should not be subject to local

land use of other regulatory processes differing from those applied to similar developments not identified as "affordable", even though state support is being provided. However, others expressed the need for a continued local government role in reviewing the impact of multi-family projects whose development was being facilitated by state-administered funding programs.

In discussions with the Virginia Municipal League and other municipal and county leaders, DHCD noted strong concerns about the preemption of local authority through state action awarding housing project financing without local involvement. As a result, the Director of DHCD continued the review of this issue, conferring with the Executive Director of VHDA in order to gauge the actual impact of the "sixty-day letter" process on its multi-family activities. In general, VHDA reported that the process appeared "to have worked well over the years." Since 1978 "there have been only five or six local rejections of multi-family projects (versus 369 approvals) . . . ." Significantly, VHDA felt the process afforded localities with a review mechanism that was far more benign in its impact on affordable housing than other alternatives.

To resolve these issues and address the need for greater consistency between the multi-family housing finance activities of VHDA and DHCD, the Governor and the Chairman of the Virginia Housing Study Commission requested that a working group be convened to seek a consensus position that would set forth non-arbitrary, uniform standards for local review of low-income, multi-family projects financed by the two agencies. The working group, consisting of representatives from local government, affected state agencies, homebuilders, realtors, and the Virginia Housing Study Commission, met twice, reaching consensus on November 30.

The working group recommended amending § 36-55.39 to condition local disapprovals of VHDA-funded multi-family projects on a written finding by the local governing body that the project failed to meet one or more of the following specific criteria:

(i) consistency with current zoning or other applicable land use regulations;
(ii) consistency with the local Comprehensive Housing Affordability Strategy (CHAS);
(iii) adequate service by public and/or private utilities.

Although similar statutory criteria were not recommended for adoption in connection with the administration of low income housing tax credits, DHCD indicated that it would, in its revision of program regulations, revise its ranking criteria to give relatively more weight to local comments on proposed tax credit projects.

The proposed changes would increase the degree of uniformity in the administration of multi-family housing programs at VHDA and DHCD, while assuring that local governments and local communities can continue to be constructive partners in the provision of affordable rental housing.

III. Land Development and Site Planning

Discussion

Review of Subdivision Plats and Site Plans

As was true of the state's planning and zoning legislation, the statutory authority for the review of subdivision plats and site plans gives localities a significant degree of discretion over the process. In contrast to zoning ordinances, however, localities are *required* to adopt subdivision ordinances containing a number of provisions specified in the Code of Virginia. But localities may also tailor many other provisions, including aspects of the review and approval process, to suit their own needs.

There is another important distinction between the review of subdivision plats/site plans and planning/zoning activities. The former are ministerial (acts that must be performed after ascertaining compliance with a specified set of facts); the latter involve the discretion of the responsible local authority. Subdivision plats and site plans satisfying all applicable requirements must ultimately be approved. Subdivision platting and site planning provide an orderly process for the division and development of land; they were not intended to address choices among competing land uses.

Much of the Task Force's discussion of subdivision and site plan standards revolved around the question of whether uniform, state-wide standards would be preferable to the current reliance on diverse, locally adopted ordinances. At least one state, New Jersey, has fairly recently adopted uniform standards. In 1993, HUD released a Proposed Model Land Development Standards and Accompanying Model State Enabling Legislation prepared by the National Association of Home Builder's Research Center with the assistance of the National Conference of States on Building Codes and Standards (NCS/BCS).

To explore this issue in greater depth, a subcommittee of the Secretary's Task Force examined the provisions of the Model Land Development Standards and reported on its potential benefits to the larger body. This examination focused on whether the model actually would be likely to improve substantially current local practices. It also reviewed individual sections of the model incorporating local street standards, storm water management regulations, on-site utilities, and other facilities that influence development costs. The subcommittee reported the results of its review to the full Task Force on June 23, 1994, and portions of its recommendations accepted by the Task Force were incorporated into the following discussion.

A state-adopted, mandatory set of development regulations did not appear to the Task Force to be the best vehicle for addressing the impact of regulatory standards on affordable housing in Virginia. To be worthwhile, such a shift in responsibility should

unequivocally prove that it could substantially reduce costs for those subject to regulation. No such proof was available.

Many of the minimum standards employed by Virginia localities are already either statutorily or effectively established on a statewide or regional basis. Others represent conventional engineering practices. Thus, rather than having a welter of completely disparate regulatory standards, Virginia has evolved a mixed approach in which the state has already defined certain development standards (e.g. streets, erosion and sedimentation control) while leaving others to local discretion. Simply substituting state-developed regulations would not remedy the problems inherent in some of the regulatory areas. However, both the subcommittee and the full Task Force found a number of individual components of the land development regulatory system that should be modified in the interest of providing more affordable housing.

There was also agreement that the failings of the current land development standards often reflect shortcomings in local government management rather than defects in enabling statutes. Local ordinances requiring multiple public hearings in connection with site plan and subdivision plat review unnecessarily delay regulatory approvals. Lack of sufficient staff and inefficient processes are among the administrative problems that can lead to delays. Yet efforts to place time limits or deadlines on the review processes of state and local agencies have thus far met with limited success in Virginia. If reviewing agencies fail to approve or disapprove a plat within the prescribed time limit, the subdivider does not receive an automatic approval. Instead, the subdivider must petition the circuit court for a hearing on whether approval should be granted. Mandatory time limits do not, however, directly address agency capacity to perform required reviews. Thus they can misfire, causing agencies to deny permits rather than pass favorably on questionable applications.

Other legislative remedies may be helpful. Recent legislation allowing the Health Department to contract with qualified professionals to provide soil evaluations for on site sewage disposal systems when processing backlogs reach a defined period may offer a more practical model for responding to regulatory delay while providing assurance that basic health and safety standards are preserved.[1]

The Task Force considered a suggestion that certifications of compliance by a professional engineer be considered as an alternative to local or state agency review processes as a means for increasing regulatory efficiency. However, most members agreed that agency review was an essential check on applications for key permits. More importantly, professional engineers might be reluctant to assume the entire weight of assuring project compliance.

A number of individual standards come into play during the subdivision plat and site plan review process depending on the precise nature of a project. The substantive content

[1]SB 415, 1994 Session, amending § 32.1-163 et al.

of these standards and the way in which they are applied can have important consequences for the cost of development. Thus, the Task Force also explored possible areas for where the regulatory burdens associated with major individual standards could be reduced.

Plans Review: Subdivision Street Standards

Local street standards are intended to assure safe, efficient, and economical access within residential areas; they are not expected to facilitate the rapid flow of large volumes of traffic. The Virginia Department of Transportation (VDOT) Subdivision Street Standards (which themselves rely in large part on standards prepared by the American Association of State Highway and Transportation Officials or AASHTO) provide a de facto uniform minimum statewide standard for the construction of residential streets, addressing such factors as radii, horizontal and vertical alignment, and paving. However, some local governments may also increase development costs by requiring design features in excess of the minimum VDOT standards.

The impact of subdivision street standards on housing affordability tends to vary inversely with the with the price range of housing units. In relatively higher cost markets, paving and curb and gutter installations may constitute around three percent of the overall cost to the purchaser. In the case of lower cost housing with streets built to the same standards, the street standards may account for five or more percent of the development cost. There was general agreement that various provisions of the standards sometimes impose unnecessary costs. Local governments generally have expressed a preference for **increased flexibility** without exposing themselves to penalizing trade-offs. Although VDOT's resident engineers have limited discretion to permit variations from the standards, in practice the members of the Task Force noted little evidence of this increased flexibility. The effect of excess pavement and right-of-way widths, the inappropriate use of superelevation on local streets, and the overuse of curb and gutter applications were highlighted. The increase in direct costs in labor and materials attributable to excess width are compounded by secondary consequences such as the need to handle increased runoff resulting from the larger impervious surfaces, a reduction in the proportion of land available for the construction of the housing units themselves, and, because of the prohibition on placing certain utilities below the paved surface, limits on certain design solutions.

Others in the development community have raised concerns about the process for getting a road accepted into the secondary system. Delays in acceptance can defer the timely recovery of funds committed to performance bonds. The minimum service requirements (three or more occupied units of varied proprietorship) contained in § 1.5 of the Secondary Road Standards have also been questioned. However, VDOT will accept cul-de-sacs in subdivision street systems that serve two lots even if they are unoccupied to complete the transfer of all streets under a bond and if the county so requests.

VDOT has several initiatives currently underway that address some of the issues raised by Task Force participants. One, which combines an agency initiative with the requirements of Senate Joint Resolution No. 61, will report this fall on the need for establishing more flexible design standards to insure that the special needs of historic districts and environmentally sensitive areas are accommodated. A second, and more comprehensive initiative will provide resident engineers with guidelines relating to the subdivision plat and site plan review process, while a second portion will relate to traffic engineering in connection with the development process. These may give resident engineers a firmer basis for making discretionary judgments about specific development proposals. The new guidelines are anticipated to be available toward the end of 1994.

Plans Review: Erosion and Sedimentation Control

Erosion and Sedimentation Control standards are intended to protect development sites, adjacent properties, and downstream locations from damages attributable to excessive erosion and sediment deposition. In general, the members of the Task Force found the technical requirements under Virginia's Erosion and Sediment Control Law (§§ 10.1-560 through 10.1-571) and associated regulations to be reasonable.

However, the Task Force identified at least two problem areas. Dissatisfaction was expressed with the actual application of the performance bond provisions authorized by the statute. Performance guarantees were recognized as a legitimate concept for assuring compliance with key requirements, but exorbitant bonding levels or letter of credit requirements constitute an unnecessary burden, heightening the uncertainty and level of risk associated with the process of developing affordable housing. While the requirements of the Erosion and Sediment Control Law are relatively straightforward, the increasing complexity and breadth of other regulations related to water quality and the growing potential for overlapping or conflicting requirements has raised concerns in many quarters.

The Task Force also called attention to research commissioned in 1993 by the National League of Cities and the National Realty Committee suggesting that storm water runoff from residential and commercial areas plays a smaller role in contributing to water pollution than has generally been acknowledged. Urban storm water control strategies should, therefore, be careful not to overemphasize those areas where the marginal costs may be high in comparison to the results attained.

The Task Force also noted several potential problem areas that could affect the ability of developers to produce affordable housing, including inconsistencies in the definitions (such as that for a "perennial stream") employed by the various permitting agencies and confusion associated with the application of the standards of Section 404 of the Clean Water Act (respecting the dredging or placement of fill material in waters of the United States) to wetlands. Federal Section 404 permits cannot be issued prior to the

issuance of a Virginia Water Protection Permit (401 Certification) respecting effluent limitations and water quality standards.

After considering a review of the relationships between local erosion and sedimentation controls, the role of the Department of Conservation and Recreation (DCR) in establishing storm water regulations, the concerns of the Chesapeake Bay Local Assistance Department (CBLAD) in this area, the relationship of the Department of Environmental Quality (DEQ) and its permitting activities in regard to water quality, as well as the continuing work of a joint legislative study (SJR 44), the Task Force concluded that housing affordability should be accorded specific recognition by both the Joint Committee and its separate technical committees in their effort to develop a uniform set of storm water management regulations for the state.

Plans Review: Chesapeake Bay Regulations

Chesapeake Bay regulations are unique to those states adjacent to the estuary. In Virginia the major impact of the regulations occurs in those localities designated as Tidewater Virginia.

Members of the Task Force expressed a number of concerns about the impact of the regulations upon opportunities to develop housing in the Tidewater area. These included differences in the applicability of various standards to urban and rural settings; the perception that the regulations placed too heavy a reliance on prescriptive instead of performance-based standards; and whether sufficient data was available to began to assess the impacts of the regulations on the Bay objectively.

In general, there was agreement that the regulations tended to be more difficult to implement and enforce in urban/suburban areas than in rural portions of the state. Thus, their impact on housing affordability would be most significant in these more rapidly developing areas. However, in discussing the balance between prescriptive and performance-based standards, it was noted that some performance criteria were employed in developing the regulatory standards for some areas, such as runoff. The Task Force also received information indicating that some monitoring and assessment programs were already underway and that more would be developed in conjunction with a database over the next three to five years.

The Task Force agreed that the regulations should undergo substantive periodic assessment based upon empirical data such as that being developed through a Caroline County monitoring program. Such reviews could focus upon the effectiveness of various regulatory requirements, the necessity for retaining them, and alternative means for assuring the continued viability of the Bay and its tributaries.

Plans Review: On-Site Waste Water Treatment (Septic Tank Requirements)

Septic tank and drain field regulations are critical factors affecting the ability to construct affordable housing in areas where public sewers are not available. If septic tanks or other alternative systems cannot be employed, then residential development cannot occur.

The Task Force noted that the Department of Health has completed revisions to the sewage handling regulations, which had been in preparation for some time. A review of the new draft regulations was scheduled to begin during the summer of 1994. One major change, an increase in the separation distance between the drain field and the water table in order to prevent contamination of underground water, may eliminate some building sites from use, but provisions that facilitate the use of alternative sanitary systems may offset these restrictions. Alternatives such as sand mounds may provide additional sites for development.

In their discussion of this topic, the members agreed that alternative systems have higher, in some cases significantly higher, installation and maintenance costs than septic tanks. But because these systems also have the potential to increase the supply of buildable sites, the increased installation and O & M costs may be offset by the reduction in other development expenses. Local regulations that limit or prohibit the use of septic tank and drainfield systems or other alternate waste handling technologies can prevent their potential benefits from being realized.

Site Utilities and Related Standards

The subcommittee on uniform development regulations reported that the design standards employed in most circumstances derived from a variety of widely accepted sources, provided reasonable methods for designing utility networks, and were capable of allocating most costs appropriately. The subcommittee also noted, however, that the wide array of regulations impinging on the development process and the multiple sources of these regulations created the potential for confusion. Although a statewide uniform land development standard was not recommended, the subcommittee and the Task Force agreed that the creation of a single document that compiled (and kept current) all relevant standards and regulations in a single source would be a useful adjunct to the development process. Such a reference manual could be developed cooperatively by representatives of the building and design professions, local government organizations, groups or organizations associated with technical areas such as building code administrators, local engineers, etc.

Recommendations

Several recommendations respecting local and state regulatory policies and practices and their effects on land development and site planning are presented for consideration.

Affordable Housing Needs

■ The difficulties inherent in effecting change to a regulatory system dominated by scores of highly diverse local governments and one in which there are few if any incentives for change were noted. It is therefore suggested that consideration be given to **whether planning district commissions could play a helpful role in determining regional needs for affordable housing and in brokering local agreements to meet these needs.** The Joint Legislative Audit and Review Commission (JLARC) recently concluded a review of the Area Development Act, which established the PDC system. This suggestion, respecting a role for PDCs in the realm of affordable housing, could be considered within the context of JLARC's comprehensive review and recommendations for the future of regional planning.

The Review Process

■ Unwarranted delays attributable to the regulatory process frustrate not only developers but ultimately the housing consumer. A number of commentators have suggested various procedural reforms, several of which have already been adopted by Virginia state agencies as well as local governments. One recommendation is that the legislature reinforce the statutory time limits on project reviews by state agencies and local governments by adding "deemed approved" provisions to current enabling legislation. (If the reviewing authority fails to complete its review within the prescribed time, the project is deemed to have been approved.) In a number of states, including California, Minnesota, Oregon, and Washington, the legislature has imposed such time limits on regulatory project reviews. The California Regulatory Streamlining Act has strong "deemed approved" provisions.

Although "deemed approved" provisions can alleviate costly delays, they are not panaceas. Such permit streamlining approaches apply only to those administrative approvals such as subdivision and site plan review that are ministerial in nature. Local discretionary actions that are legislative in nature would not be subject to automatic approvals, and there may be a limited number of development proposals whose scope or complexity require review extending beyond the statutory period. In such cases, provision could be made for allowing an extended review following notice to the developer and other interested parties. Finally, "deemed approved" provisions must accommodate procedural due process by providing adequate public notice prior to a "deemed approval" taking effect.

Legislative actions may not improve all of the shortcomings of the current system because they often represent a failure to manage within the system rather than a defect in the legislative framework. Nonetheless, if localities decide to implement regulatory requirements, they then have a clear obligation to assure that their procedures and staff are adequate for the task at hand. To limit long-term budgetary impacts they should consider contracting with appropriate professionals to supplement local staff to assure that reviews are completed in a timely manner. If necessary, localities should consider seeking enabling legislation similar to § 15.1-501, which established authority for Prince William and Loudoun Counties to establish expedited land development review procedures. It is recommended

that legislation be considered that reinforces the current time limits established for local and state agency reviews of pending development proposals:

> **In cases where the local reviewing authority or responsible state agency fails to act on a subdivision plat or site plan within the statutory time limits set forth in § 15.1-475, the plat or plan shall be considered approved, subject to prior notice of adjacent property owners and others in accordance with current law. Local authorities and state agencies would only be able to extend the review period following notice to and consent of the developer.**

■ Virginia localities have employed public hearings at various points in the land development review process. Most are properly undertaken to assure public knowledge of and participation in important decisions affecting the future of the locality. However, public hearings on site plans and subdivision plats can needlessly encumber the review process, delay decision-making, sometimes overburden local staff, and permit the introduction of numerous outside parties and issues into a ministerial function of local government.

> **Given the direct and indirect costs associated with hearings undertaken in connection with the review of site plans and subdivision plats and their tendency to blur the distinction between the discretionary and ministerial functions of local government, it is recommended that those hearings be limited to considering whether the plat or site plan complies with the applicable code and regulatory standards.**

■ It was recognized that local government might require more information to act on their own initiative to foster the creation of affordable housing. A guide to affordable housing options authorized by Virginia statutes could be prepared by the Department of Housing and Community Development or the Virginia Housing Development Authority at relatively low cost.

> **It is therefore recommended that the Department of Housing and Community Development or the Virginia Housing Development Authority prepare a guide identifying the steps that local governments could take within the bounds of existing statutes to foster the provision of more affordable housing.**

Subdivision Street Standards

■ The VDOT Subdivision Street Standards have engendered controversy in both the development community and the realm of local governments. Both generally agree that the

standards may at times effectively impose inappropriate design standards upon development proposals. However, local governments sometimes increase development costs by requiring design features in excess of the accepted VDOT minimum standard. Uniform requirements for the width of paved surfaces on most subdivision streets received particular criticism as have local requirements for curb and gutter installations. Recently, the Engineers and Surveyors Institute issued a critique of the current VDOT *Subdivision Street Standards* that pointed out inconsistencies in design speeds and geometric standards between the *Requirements* and the *Road Design Manual* as well as deviations from some provisions of standards developed by such national organizations as AASHTO.

Under the provisions of the *Virginia Connections* strategic plan for transportation, VDOT has recently launched several initiatives that are intended to reduce or eliminate unnecessary and duplicative regulations and improve relations with local governments. One of the components of the action plan is a revision of the existing regulations enumerating standards for local subdivision streets. Any truly comprehensive review should be undertaken with the goal of adjusting specific standards and administrative policies that may have a detrimental impact on housing affordability.

To assure a more comprehensive review, it is recommended that the revision of the *Subdivision Street Requirements* identified in *Virginia Connections* include a study of the impact of the standards and local policies related to them, that there be direct participation by organizations such as those represented on the Secretary's Task Force as well as other interested parties, and that such a study include a number of specific critical issues relating to the impact of VDOT secondary road standards on the development of affordable housing. These key issues should include:

- **changes in specific standards (such as design speed, the use of superelevation, curb and gutter, and pavement and right-of-way widths) that have a tangible effect on the cost of development;**
- **changes in administrative policies to facilitate more flexible responses by local government and VDOT staff so that alternatives with equivalent levels of performance may be accepted;**
- **greater consideration to the evaluation of proposals on the basis of "value engineering", "life cycle costing", or other economically efficient approaches to road design and construction; and**
- **that VDOT give serious consideration to the greater use of easements as opposed to the acquisition of right-of-way, where appropriate to provide sites for buried**

water/sewer lines or other facilities associated with a development project.

Any consideration of the impact of standards on affordable housing as well as related technical or policy issues should be undertaken with the broadest possible involvement by the principal affected parties.

Thus, it is also recommended that any reconsideration or revision of the provisions of the subdivision street standards incorporate an advisory committee encompassing representatives from the design, engineering, and development communities as well as local governments.

Sedimentation and Erosion Control

■ Although the technical provisions of the regulations appeared to be generally appropriate, there were two caveats. Concern was expressed from several quarters over the administration of performance guarantees resulting in excessive costs for the developer. Also, the increasing complexity of regulations related to storm water management and water quality and their interaction with erosion and sediment control regulations is a growing concern for many developers. Because of the latter concern, and based on its review of the ongoing multi-agency effort to develop a unified storm water management program, a number of recommendations developed by the Task Force's subcommittee on uniform development regulations are suggested for implementation.

It is recommended that regional (e.g. watershed) management approaches that focus on source controls, erosion controls, and upstream pollutants be used to respond to urban storm water quality problems. Recent information developed for the National League of Cities and the National Realty Committee should be incorporated in policy assessments of storm water.

The Secretary of Commerce and Trade also will establish a permanent liaison between his Office and the SJR 44 storm water study group to assure that the relationship between the state's approach to storm water management and affordable housing receives the attention of the legislative study group.

■ Financing mechanisms for watershed-based storm water management remain an area of serious concern. Some have suggested that storm water utility districts with special taxing authority are the fairest and most appropriate method of public finance. Such districts would make it more difficult to place the heaviest burden for managing storm water on new development. Storm water utilities provide a potential mechanism for allocating costs to all properties contributing to storm water runoff instead of to those properties within a

watershed that are subject to the most recent development proposal. However, requiring localities to employ such authorities would effectively amount to mandating a general tax increase. It also raises questions about the proper basis for such a tax, including whether it should be based on property value, land area, the actual or presumed contributions of a property to the total runoff within a watershed, or some other basis or combination of factors.

> **Because of the number of significant unresolved issues in this area, and to avoid placing a mandate on localities that would compel an increase in taxes, the Secretary recommends against requiring localities to implement storm water utility districts with taxing authority.**

Chesapeake Bay Act Regulations

■ Based on the early experience with these regulations, several concerns were noted. Additional assurance is needed that the regulations are, in fact, helping achieve their goals with respect to the quality of the Bay. In addition, there is a need to see that the regulations rely to as great an extent as possible on performance-based rather than prescriptive standards.

> **The Chesapeake Bay Local Assistance Board should continue its review of the Bay regulations to (1) identify specific areas where they may be modified or eliminated, (2)make more effective use of performance-based standards, and (3) reduce their impact on the affordability of housing, without causing detrimental effects to the Bay and its tributaries.**

On-Site Waste Water Regulations (Septic Tanks and Drain Fields)

■ The Department of Health's proposed revisions of regulations for sewage handling may have a critical impact on residential development.

> **It is recommended that, where appropriate, the Board of Health assure that its regulations facilitate the use of alternative systems for sewage handling to the maximum extent possible consistent with public health.**

IV. Infrastructure Financing and Impact Fees

Discussion

Infrastructure Financing Options

The Task Force considered a number of new options for financing essential public facilities required to serve new development. These included such concepts as adequate public facilities (APF) ordinances, capital improvements programs, impact fees, tax increment financing, and enhanced debt financing. The members generally recognized and agreed that rapid residential development challenges the ability of localities to meet fiscal and capital facilities obligations. Any attempt to resolve the problems associated with rapid population growth involves serious issues of equity and fairness in the allocation of costs and responsibilities. Current residents desire to maintain their perceived quality of life. Newer residents do not wish to pay a premium to share in it.

There was no consensus in favor of one approach over the others. **Developers concerned about the affordability of their product fear that these tools can too easily be used to serve as growth control devices or improperly and inequitably shift the burden of infrastructure onto the most recent development. Local governments fear that pressure of rapid development on existing public facilities shifts costs onto current residents.**

In addition to the tools specifically mentioned above, the Task Force identified several other potential options for attaining the equitable and efficient provision of infrastructure finance. Regional cooperation and the elimination of duplicate services offered by various localities could reduce construction and operating costs for localities. This, in turn, could result in lower rates for customers and more moderate charges to the developers of housing. Increased use of privatization offers another alternative that could be beneficial under the appropriate circumstances.

Finally, the question of local capacity to fund infrastructure necessitated by residential development was discussed. Often the problem has not been a question of local authority to issue debt and construct key infrastructure, but rather the lack of adequate cash flows from some more affordable development proposals to assure repayment of the debt incurred. Over time, the capacity of the Virginia Resources Authority to provide more assistance to localities lacking the resources to market small issues of revenue bonds independently has increased. However, this kind of assistance has not been available to smaller scale affordable housing projects. Interest was expressed in a small scale, low-interest revolving loan fund to finance utility infrastructure for affordable housing projects.

Impact Fees

The Task Force undertook an extensive discussion of the perceived advantages and disadvantages of development impact fees. In Virginia most rapidly growing localities currently rely on the use of cash proffers authorized under various provisions of the state's land use enabling legislation to offset their perceived capital costs resulting from new residential development.[1] Proffers apply only to development proposals requiring rezoning by the locality, whereas impact fees would apply to any residential development regardless of whether rezoning was required. Although proffers are intended to reflect the circumstances of a specific development proposal, in actual practice some localities have established levels of cash proffers that they indicate would be accepted in connection with a request for residential rezoning. Road impact fees have been authorized for use by certain Northern Virginia localities, but none of these localities have elected to implement their authority.

Much of the discussion focused on these distinctions between proffered conditions and impact fees and whether either system was preferable. The principal complaints were that impact fees, like cash proffers and other types of exactions, were inherently unfair to newcomers, that they shrank property tax receipts by lowering the value of raw land, that they were an inconsistent source of revenues, and that they encouraged sprawl by forcing development into areas with lower fees or those without any fees. Also, the necessity of assessing development exactions on all units, regardless of cost and without waivers or special considerations for "affordable" units, hits lower cost housing with relatively more impact than higher cost units.

Thus, despite agreement on the general need to have a means for assuring the equitable allocation between existing residents and newcomers, of costs for public facilities required as a result of new development, none of the current techniques nor proposed alternatives could command a consensus among Task Force members. Any expenses, whether resulting from an impact fee, a utility connection charge, or a cash proffer would adversely affect the affordability of a new dwelling unit. At the same time, any new taxes, fees, or reductions in the level of services affecting existing residents that could reasonably be viewed in whole or part as a result of new development could be seen as representing a decline in the quality of life for current residents.

A separate legislative study authorized under House Joint Resolution 280 is currently scheduled to consider a variety of abuses associated with the proffer system, suggest alternatives or remedies, and report its findings to the Governor and General Assembly prior to the 1995 session. This study should address in more detail a number of the critical

---

[1] §§ 15.1-491, 15.1-491.2, and 15.1-491.2:1 of the Code of Virginia provide the general authority for various forms of proffered conditions that may be accepted by different classes of local governments. Northern Virginia and "high-growth" localities may accept cash proffers, which have proved to be controversial.

concerns identified by the Task Force and may provide a forum for recommending steps to respond more equitably and effectively issues of infrastructure finance.

Recommendations

Infrastructure Financing Options

■ There is a need to assure that critical facilities commonly provided by local governments are available to facilitate the development of affordable housing. There has been general dissatisfaction with various aspects of the development exaction devices commonly employed by Virginia localities, but the Task Force was unable to identify specific legislation or policy changes that would substantially alter these practices or substitute for them to provide a reliable and equitable source of infrastructure finance. Nonetheless, growing localities continue to face critical infrastructure needs that must be met to assure that affordable housing continues to be available. The inability to bring needed infrastructure on line in a timely manner may slow or even stop the development process, raising prices for new and existing housing, thereby exacerbating the shortage of affordable units.

> **It is recommended that the state examine a variety of funding mechanisms to help assure that essential infrastructure can be provided for specified affordable housing developments. A number of possibilities could be considered. A small scale, low-interest revolving loan fund established at the Virginia Resources Authority specifically to help finance the cost of providing needed facilities to projects meeting predetermined affordability criteria. Greater emphasis should be placed on exploring increased private participation as an alternative to traditional methods of infrastructure finance.**

■ Local governments currently lack authority to impose impact fees, except for roads in certain Northern Virginia localities. Cash proffer systems have been initiated in a number of localities, subject to conditions incorporated in the underlying enabling legislation. Cash proffers have become subject to litigation. Their use and potential for abuse will also be examined in much greater detail during the latter half of 1994 by a legislative study established by HJR 280 specifically for that purpose.

> **The Secretary of Commerce and Trade will engage in active dialogue with the HJR 280 group studying proffers to assure that housing affordability is a major factor in their considerations.**

V. Building Codes and Standards

As the Self Assessment Guide notes, effective residential building codes require uniform standards, authoritative interpretations of code provisions, and qualified code enforcement personnel. The COSCDA Guide also suggests that this is most likely to be achieved through the adoption on a statewide basis of uniform building regulations. When such statewide regulations are updated periodically and rely on one of the recognized model codes, they can promote significant savings at various stages of the process of designing and building residential structures by:

- eliminating the need to customize structures to meet varying local regulatory provisions;
- providing a means for the timely and simultaneous acceptance of cost saving materials and methods of construction throughout the state; and
- increasing the uniformity of local administrative procedures in connection with building regulation.

Virginia was among the first of the states to employ a uniform statewide building code applicable to all construction--including residential units. Several of the recommendations or strategies contained in the Guide employ examples from Virginia as models for assuring building safety while promoting increased affordability.

Thus, briefly, Virginia has implemented a statewide uniform building code, which has been effective since 1973. The General Assembly assigned authority for adopting and maintaining the Uniform Statewide Building Code (USBC) to the Board of Housing and Community Development, which has based the USBC on major model codes. It has linked triennial code revisions to the code change cycle of the modal code organizations and participated to a significant degree in the development of the BOCA model. The uniform code is both a minimum and maximum, preventing localities from unilaterally imposing more stringent and potentially costly requirements. But, while limiting local ability to modify the code, the state has provided local governments with the authority to make their administration of the USBC financially self-supporting. Finally, the state has developed training and certification programs to bolster uniform application and interpretation of the USBC at the local level.

Discussion

While crediting Virginia with these significant achievements, the Task Force recognized a number of individual areas where further changes might be necessary to further refine the USBC and assure that it helps rather than hinders the attainment of more affordable housing for Virginians. Executive Order No. 15, which was recently issued by the Governor, provides an opportunity for the comprehensive review of existing agency regulations, including the building code. The state's primary building regulations, Volumes I and II of the USBC, will be reviewed during the initial year of the process, affording an opportunity to give priority to identifying and eliminating any barriers to housing affordability associated with the USBC. In addition, the Board of Housing and Community Development and the Department will give priority consideration to a more intensive review of the affordability implications of the USBC than is required under the terms of Executive Order.

Building Code Provisions and the Rehabilitation of Existing Housing

The COSCDA Guide noted that building codes and standards can complicate the conversion of abandoned structures into affordable housing by insisting on rigid adherence to the most recent standards for new construction. Concern was expressed as to whether the USBC provided sufficient flexibility within its current provisions to accommodate cost-effective renovations that result in affordable housing. If new construction standards respecting building design and the materials and methods of construction must be applied to the older, existing structures that comprise the neighborhoods most in need of new investment, potential redevelopers and remodelers may be deterred from even initiating projects. It was noted that Virginia has adopted, through the BOCA Code, a method for accommodating the rehabilitation of existing commercial structures; however, this same flexibility has not been available for residential structures.

Thus, the Department of Housing and Community Development has begun actively exploring, with the encouragement of the Board of Housing and Community Development, local government officials, an ad hoc group of homebuilders, and others vitally concerned with urban revitalization, the creation of an alternative urban revitalization code that would enable localities and investors to facilitate neighborhood renewal. Additional incentive for localities to employ the provisions of the revitalization code could be provided by including local adoption among the factors considered in evaluating a local application for enterprise zone designation.

Code Amendments

The Guide recommends that states not attempt to update specific building code provisions through the legislative process. Instead, it is strongly suggested that an administrative procedure be followed once the legislature has granted the initial authority to establish a uniform code. The legislative process may unnecessarily delay the adoption

of cost-saving changes to the underlying model codes. It also provides a forum that encourages the introduction and adoption of "special interest" technical amendments that deviate substantially from the broadly accepted model codes, and which may add materially to costs as well as the complexity of the state and local administrative process.

However, the Task Force noted that there had been a recent trend for the General Assembly to involve itself more directly in the process of amending the USBC. Members cited a number of examples, including asbestos regulation, water saving fixtures, and smoke detectors. Such statutory provisions take on a life of their own and may remain in place even after the model code organizations have developed widely accepted standards that may differ in their approach to particular health or safety hazards.

Virginia received praise for its active participation in the primary model code organization's code development process. Through its involvement, Virginia has been able to shape a number of model code provisions to meet the needs not only of this state, but also others, for least-cost approaches to building safety. The only shortcoming of this trend is that it has focused on the BOCA model code, which is less directly relevant to single family construction than is the CABO One- and Two-Family Dwelling Code. Increased participation in the CABO process might reap benefits similar to those that have resulted from Virginia's active engagement in BOCA processes.

One other area related to the amendment process received the Task Force's attention. The USBC has been amended several times to respond to issues related to accessibility for persons with disabilities. The advent of the Americans with Disabilities Act (ADA) has further complicated regulations in this area. The Board of Housing and Community Development has attempted to include ADA standards in the USBC rather than rely on the parallel provisions of the BOCA model code. However, the BOCA model has not yet been accorded full ADA equivalency status. The Task Force felt until the BOCA provisions could be incorporated within the USBC, there would be continued confusion among those charged with enforcing the regulations as well as those, such as building owners, subject to them.

Training and Certification of Enforcement Personnel

Virginia has pioneered the training and certification of key code enforcement personnel, increasing the level of professionalism while encouraging greater uniformity in the application and interpretation of the USBC. The Task Force considered whether this training had given sufficient emphasis to construction costs, their effect on housing affordability, and the relationship of the USBC to these issues.

In general, training and certification have emphasized technical and safety issues, although instruction on the administration of the USBC stresses the historic commitment of the code to the goal of assuring a minimum acceptable level of safety at the least cost. The consensus of the Task Force was that **there was room for increasing the emphasis in both**

technical and administrative training on the importance of housing affordability as a major concern underlying the regulation of building safety.

Recommendations

After considering the range of issues associated with the impact of building codes and standards, action is recommended in the following areas.

Conversion and Rehabilitation of Existing Structures

Although the USBC has been amended in recent years to provide additional flexibility in connection with the renovation of some older structures, there is doubt and some confusion about the effectiveness of the changes and the actual application of rules relating to these projects. Information provided by realtors and homebuilders has cited building regulations as constituting a roadblock to increased private investment in blighted areas of inner cities. Part of this question was addressed in a previous recommendation relating to the certification and training of building code personnel. However, additional steps may be required to provide a means for better using existing, sometimes abandoned, structures--particularly in inner city areas--as a source of affordable housing. A number of groups, including local government officials, builders, and developers with an interest in promoting increased urban revitalization activities have joined in calling for increased flexibility in the uniform code through the introduction of a set of rehabilitation/renovation standards that would not hinder private efforts to reuse existing structures.

It is therefore recommended that, as proposed by Governor Allen during the Governor's Housing Conference, the Board of Housing and Community Development initiate the creation of an Urban Revitalization Code providing sufficient latitude to accommodate cost-effective renovations that result in affordable housing without compromising essential health and safety features.

Code Amendments

■ The General Assembly is to be commended for not making extensive technical revisions to the USBC by statute.

It is recommended that the General Assembly continue to provide instruction and guidance to the Board of Housing and Community Development on building code issues through the passage of resolutions. Further, it is recommended that the Board continue to rely on administrative processes employing public hearings and other open procedures to maintain the

currency of the codes, assure full participation by all affected parties, and avoid unnecessary and potentially costly technical amendments.

The ongoing participation of the state in the code development processes conducted by the major model code organization should also be continued. However, the participation has occurred primarily in connection with revisions to the BOCA model code. Greater involvement in the code writing process undertaken by the CABO group might have more immediate and direct consequences for affordable housing in Virginia as well as other states.

To increase its impact on the process of developing code provisions that guide construction of a majority of the one- and two-family dwellings erected in the state, it is recommended that Virginia increase its participation in the code development activities of the Council of American Building Officials.

The state has attempted to meet the accessibility requirements associated with the Americans with Disabilities Act (ADA) though amendments to the USBC that are unique to the state. However, BOCA is now in the process of developing ADA equivalent standards within the context of its model code. Shifting from the Virginia ADA amendments to a more broadly accepted model would eliminate some of the current confusion among both regulators and regulated parties over what is required to meet the ADA requirements. However, to avoid penalizing building owners and design personnel, this transfer should be pursued only when the BOCA model is in full compliance with the ADA requirements.

It is recommended that as soon as the BOCA model code provisions regarding accessibility are in full compliance with the ADA standard, the Board of Housing and Community Development rescind the Virginia ADA amendments to the USBC and adopt the relevant provisions of the BOCA model.

Training and Certification of Code Enforcement Personnel

■ The state's current certification and training programs associated with the USBC support the effort to reduce regulatory burdens by assuring both the general uniformity of building code provisions and their appropriate interpretation. The initial focus of training and certification has been on safety and technical concerns, but additional emphasis could be given to areas with the intent of increasing affordability.

To assure that building officials and other code enforcement personnel are fully cognizant of the role of building regulations in the production of affordable housing it is recommended: (1) that the building code academy and other training efforts

associated with the USBC emphasize the impact of uniformity and interpretation on attainment of the goal of affordable housing and (2) that the academy place greater emphasis on resolving the special problems associated with the renovation of older structures and provisions for the more flexible application of the USBC.

The first of these objectives could be accomplished by modifying the USBC to require that local Building Officials complete an advanced course on the uniform administration of the building code.

The second objective could be met by developing a training module specifically focused on the use of provisions of Chapter 34 of the BOCA Code or other recognized standards to facilitate the rehabilitation of residential buildings.

VI. Administration and Processing

How state and local regulations are administered can have as significant an impact on housing affordability as the substantive content of rules and regulations themselves. Unnecessary delays can increase a developer's costs, adversely affecting overall housing affordability. Experienced developers anticipate that certain periods of time will be employed in securing various approvals, particularly those where public notice is required. However, duplicative permits, multiple consecutive reviews, and lengthy approval processes can encumber the developer seeking increased affordability with higher carrying costs for construction loans and taxes. This, in turn, may compel the developer to restructure the bottom line to accommodate the heightened risk that every delay entails. Conversely, streamlining state and local administrative processes can reduce the developer's risks and carrying costs, creating an opportunity to offer a more affordable product without sacrificing either quality or profit.

Typical remedies for these problems include state action to bring greater uniformity to the local regulatory process, establishing deadlines for regulatory decision-making, limiting opportunities for unnecessary hearings, and coordinating all state-mandated environmental permitting processes. In recent years Virginia has taken a number of these steps with the expressed purpose of removing state and local regulatory impediments to orderly development. Other additional administrative incentives may be developed by the state to help encourage local efforts at regulatory reform.

Discussion

A number of strategies and techniques incorporated in COSCDA's Guide were reviewed as potential ways to streamline and consolidate critical permitting and approval processes.

One-Stop and Parallel Permit Processing

Localities, particularly suburban counties, have made efforts to institute one-stop permitting procedures for residential or, indeed, any form of development. A number of localities have introduced various procedural policies and reforms, sometimes for the purpose of clearing up backlogged work or generally smoothing the flow.

The Task Force noted that the state had acted within recent years to rationalize some of its most significant permitting responsibilities. Recent legislation consolidated the principal environmental permitting agencies into a single entity responsible for administering critical (and federally-mandated) programs for air and water quality. A single application/permitting process is under study for multiple permits related to air and water quality as well as solid waste. The changes at the Department of Environmental Quality (DEQ) are relatively new. It should be possible to evaluate their effectiveness and suggest additional changes where needed as soon as they have compiled a track record. At present,

most regulatory permitting times at DEQ lie within a range that is comparable to that of other states; however, efforts to streamline its processes will continue.

Time Limits on Agency Reviews

The Task Force considered the potential benefits as well as the shortcomings that might be anticipated from the imposition of any further time limits on the review process for site plans and subdivision permits. The General Assembly acted several years ago to limit the time granted to local planning commissions, subdivision agents, and state agencies (including the Department of Transportation) to review preliminary and final plats and site plans. Although the current limits appear to represent a reasonable balance between the expectations of subdividers and site planners for prompt review and the need of local governments and state agencies for sufficient time to provide a thorough and accurate review, their enforcement is ultimately contingent upon action by a circuit court. The Task Force noted that efforts to shorten time limits could encourage local governments or state agencies to deny approval and require additional submissions, perhaps increasing rather than reducing delays. However, making the time limits self-executing, with reasonable safeguards to procedural due process as well as the public health and safety could improve the responsiveness of the regulatory process.

Reasonable time lines for regulatory action have not heretofore been applied to the building code enforcement process. Thus, while the locality and affected state agencies must respond within a specified time to development plans and plats, once construction has commenced, new delays could be encountered at the local level. The Board of Housing and Community Development could address this problem by amending relevant portions of the USBC to establish reasonable minimum time standards for the review of construction plans and the conduct of on-site inspections. Local building officials have a number of options for reviewing construction plans. Establishing an appropriate review period within the context of the USBC could spur local officials to use available resources to expedite this critical phase of the development process. Time lines for carrying out inspections would reinforce the best practices that local building departments should have been striving to attain.

Deemed Approved Provisions

Provisions in state legislation that deem a plat or site plan approved if a reviewing authority fails to approve or disapprove it within a specified time period may encourage prompt action by the responsible authority. The Task Force noted that a similar Virginia statute (§ 15.1-475) does not provide for automatic approvals, but permits the subdivider or developer of the site plan to apply directly to the appropriate circuit court for relief, which may direct an approval. Although the review times established by state law are generally sufficient to ensure adequate consideration by the reviewing agencies, additional legislation may be required to ensure that discretionary reviews take place within the prescribed time period.

Preapplication Conferences

Preapplication conferences provide an effective means for identifying technical problems and screening out impractical or infeasible proposals prior initiating actual applications or reviews. They are particularly useful for large or complex proposals. They may be helpful even in smaller-scale projects where the developer is new to the market. Such reviews cannot provide specific assurances about the outcome of discretionary reviews and approvals, but they may prevent wasted efforts and needless delay.

"Vested Rights" Protection

Vested rights provisions, which "lock-in" approvals and prevent the imposition of most additional requirements for specified periods of time, vary from state to state. In Virginia, recent legislation amending § 15.1-475 provided that final plats or site plans approved by the locality shall be valid for a period of not less than five years from the date of approval. Regulatory changes, with a few exceptions including the Chesapeake Bay Act and § 402 of the Clean Water Act, cannot adversely impact the right of the developer to complete the project in accordance with the plat or plan. The 1994 General Assembly session removed a sunset provision so that this protection will not expire in 1998.

Administration of Building Regulations

In reviewing various provisions of the building regulatory process employed in Virginia, the Task Force noted that the state had already implemented the principal reforms recommended in the COSCDA Guide. A number of these items were included in the previous discussion and recommendations relating to building regulations.

Virginia has encouraged active involvement in the model building code change process, which helps assure that nearly unamended model codes can be used within the state, producing greater uniformity as well as potential savings for building design and construction personnel. The code enforcement training activities of the Department of Housing and Community Development and the support provided for regional code academies also encourage consistency and uniformity in the application and interpretation of the Uniform Statewide Building Code.

The uniformity that characterizes the Virginia's building regulations also applies to materials approved for use in Virginia. Individual building materials or products are generally either accepted or prohibited on a statewide basis. And the use of a single code--closely linked to a model code that itself can tap into extensive product research and approval networks--means that innovative products, materials, and design features can be incorporated simultaneously across the state.

Because of the continuous and increasingly rapid changes in the technology of buildings, it is important for building regulations to incorporate effective appeals mechanisms

to assure that items not yet incorporated in code standards receive fair consideration from local officials. Virginia has established both local Boards of Building Appeals and the State Technical Review Board to provide a route for appeals of the decisions of local building officials. By providing a local board as well as a state level body, Virginia has enabled disputes to be resolved at the local level, if possible, but also provided for the broadest possible consideration on issues revolving around applications of the state's construction codes.

Public Hearings for Non-Discretionary Land Use Decisions

In its previous consideration of local land use regulation, the Task Force noted that public hearings held in connection with request for essentially ministerial actions by the administering authority unnecessarily prolonged and complicated the development process. The Task Force recommended a change in the enabling statute to curb the excessive use of such hearings. Other approaches could be explored. Recently enacted legislation that takes effect in January enables localities to employ an alternative, administrative review and approval procedure for some family day care homes, with the process subject to a mandatory public notice and a comment period. Similar approaches could be explored for other relatively routine, essentially ministerial activities of local government undertaken in connection with reviews of proposed development.

Transferrable Development Rights

The Task Force discussed several aspects of this controversial land management tool, ultimately rejecting the use of transferrable development rights in their traditional form. (Development rights adhering to one parcel being shifted to another location in order to preserve some unique feature or characteristic of the original site.) However, the concept of transferring levels of development within a single development proposal received more favorable response. In such cases, for example, the preservation of wetlands or an historic feature could be exchanged for increased development density or some other benefit elsewhere in the development. On-site transferrable development proposals would provide one approach to cluster zoning, permitting the concentration of all a site's potential development capacity within a more limited area, thereby preserving the developer's monetary interest without disrupting the overall level of development anticipated within various areas of a community.

State Environmental Permitting Procedures

Environmental permitting delays, the Task Force noted, add uncertainty and delay to the development process, reducing affordability as a consequence. Recent efforts to consolidate and coordinate environmental permitting activities at state agencies, including consideration of the use of single application forms, should be continued and enhanced. Where the state has received the responsibility for administering the application of federally-established and mandated environmental permitting programs, care should be taken to avoid

adding in additional requirements or layers of review not included in the original federal program.

The Task Force acknowledged recent efforts in the area of storm water management to clarify areas of responsibility, eliminate conflicts among different programs related to storm water, and create a uniform approach to water quantity and quality issues associated with it.

Review of State Regulations

The COSCDA Guide suggested the utility of establishing an affordable housing task force comprised of administrators from key rule making agencies and charging it with the task of identifying and eliminating duplicative rules that unnecessarily affect affordability. The Task Force itself has been carrying out some of those functions. Since 1988 the Virginia Housing Study Commission has examined a number of regulatory barriers affecting housing and successfully promoted legislation reducing a number of those barriers. Most recently, the issuance of the Governor's Executive Order Number Fifteen, which establishes a two-year process for the comprehensive review of virtually all regulations issued by state agencies has begun a process that will accomplish many of the objectives identified in the Guide. All state-level building and environmental regulations, which can facilitate or hinder the process of developing affordable housing, will be reviewed between 1994 and 1996. Volumes I and II of the USBC will be among the first set of regulations evaluated at the Department of Housing and Community Development. In addition a further review of the impact of building regulations upon housing affordability, focusing on their cumulative impact and the addition of unreasonable cost burdens over time will be undertaken in conjunction with the activities mandated by Executive Order No. 15.

Barriers to Non-Profit Participation in Affordable Housing Development

Various components of the residential development community are vitally concerned with the effect of regulatory barriers on housing affordability. These concerns are not limited to the traditional for-profit builder, realtor, or developer. Non-profit organizations are an important participant in many affordable housing ventures. And they may also experience frustrations comparable to those of the for-profit developer, as well as others that are unique to them. Although this report has focused primarily upon the concerns of the for-profit sector, the experience of non-profit providers may point to other regulatory barriers that should be addressed in any comprehensive approach to regulatory change. In September 1994, non-profit housing organizations participated in a "summit" that elicited their concerns, needs, and recommendations for actions, including regulatory changes, to facilitate their participation in future affordable housing projects.

Recommendations

In several key regulatory areas, change has been underway but the results will not be clear for some time. Thus, the major impacts of changes in permit processing at DEQ cannot yet be evaluated; changes in VDOT policies respecting variations from street standards are still months from implementation; storm water management programs may require further legislative action in 1995 to assure increased coordination and uniformity among the several federal, state, and local parties involved. Despite being a period of flux, recommendations are offered in a number of areas that could be considered and acted upon in the near future.

Preapplication Conferences

■ One promising trend is the growing reliance upon preapplication conferences a means for clarifying questions and issues at the outset of submitting proposals to local development review processes. The Task Force observed that preapplication conferences are widely used in Virginia localities and that their use should be encouraged wherever possible. Such conferences are not required under the state's enabling legislation nor are they likely to be necessary in all cases; however, those planning to submit development proposals to the rezoning, subdivision, or site plan review processes should have the opportunity to avail themselves of the benefits of the preapplication conference.

> **It is therefore recommended that the appropriate sections of the land use enabling legislation be amended to require the local administering authority to conduct a preapplication conference on the request of any party proposing to submit a subdivision plat or site plan for review or who is proposing to submit a rezoning request. Applicants would not be required to make such a request, nor would local governments be required to conduct a preapplication conference unless one were requested. Localities could continue, however, to conduct such conferences on their own initiative.**

Administration of Building Regulations

■ Virginia state and local officials as well as professionals affected by provisions of the model codes have been active participants in the BOCA model code development process. However, greater participation in the CABO code development process could produce more direct benefits for affordability in construction because that organizations one- and two-family code provisions are the most commonly used source of regulations affecting the materials and methods of residential construction in the Commonwealth.

As mentioned in the section on building regulations, it is recommended that state and local building regulatory officials become more active in the code development processes associated with the CABO One- and Two-Family Dwelling code.

■ Specific provisions of the USBC that direct the local administration of building regulations could be modified in a number of ways to facilitate the actual progress of new construction or renovation.

It is recommended that the Board of Housing and Community Development amend three sections of the current USBC to (1) provide more specific guidance about the required acceptance of proposed modifications based on accepted national standards not necessarily incorporated in the BOCA code; (2) establish a specific time frame for the review of building plans and specifications by the local building official or designee; and (3) require that inspections be accomplished within a specific time frame.

On Site Transfer of Development Rights/Cluster Zoning

■ The Task Force discussed various aspects of the use of transferrable development rights (TDR) and concluded that it could strongly opposed intrajurisdictional TDR programs. However, the concept of transferring development densities within a site to avoid sacrificing either unique/sensitive resources or the opportunity to develop housing affordably was considered favorably by the Task Force. Such a proposal, which was recommended by representatives of homebuilders and the real estate industry, could enhance efforts to support the increased use of clustered development concepts by establishing a framework for fully utilizing the nominal development rights attached to a given site. Some localities may already offer similar provisions within their development regulations, but the practice is not universal. Enabling legislation could encourage more localities to consider and implement on-site transfers of development rights.

For example, a given parcel might lie within a zoning district permitting a gross density of 4 units/acre. The project would be permitted to build (4 x total acres). However, identified wetlands or other sensitive features on the site might reduce the developable land area by one-half, thus reducing the actual density to ½(4 x total acres) and increasing the cost per unit if the zoning density were applied rigidly to the remaining acreage. However, if the developer were enabled, using clustered design techniques, to produce the same number of units originally permitted on the available land area, per unit development costs could be reduced to a level at or even below the original proposal. Such a situation more closely resembles a win/win outcome than the usual confrontation between permitting authorities and prospective developers.

It is recommended that the concept of on-site transferrable development be encouraged through enabling legislation amending § 15.1-430 to add a definition for cluster development that incorporates on-site transferrable development rights and amending § 15.1-491 to include zoning districts for the administration of such a program among the permitted provisions of a zoning ordinance. While this would resemble the use of affordable housing density bonuses, it would be distinguished from that program because it would not *add* additional density to a project, but simply insure that the developer would have an opportunity to realize more fully the available land without exceeding the general densities contemplated in the comprehensive plan and zoning ordinance.

It is also recommended that the General Assembly strongly encourage, by resolution, local governments to consider allowing cluster, single-family detached housing by right, provided that overall development density does not exceed that permitted by the underlying zoning district classification.

Applications for State Grant and Loan Programs

■ During a period of austerity it may be difficult to find additional financial resources to encourage, stimulate, or reward local efforts to increase the affordability of housing. However, the selection process for numerous grant and loan programs administered by the state could provide an opportunity to offer incentives to local governments to take voluntary actions in favor of more affordable housing.

As proposed by Governor Allen at the Governor's Housing Conference, it is recommended that competitive state administered grant and loan programs for housing and community development include provisions for additional or bonus points to be awarded to applicants that undertake specific actions to remove local regulatory barriers to housing affordability or that adopt and implement affordable dwelling unit density bonus programs. The Department of Housing and Community Development and the Virginia Housing Development Authority should review their current program portfolios to identify those programs where such incentives might appropriately be offered.

Barriers to Non-Profit Participation in Affordable Housing Development

■ The same regulatory barriers that impede for-profit developers may also adversely affect those non-profit housing organizations that play an important role in many communities. However, there may be other threshold or administrative barriers that are unique to the non-profit provider. These should be identified and dealt with in the same manner as other regulatory barriers.

It is recommended that any regulatory barriers identified by the participants in the September 1994 non-profit housing "summit" be remove or ameliorated, and that these efforts should be pursued cooperatively with state and local agencies and other key actors in the creation and preservation of affordable housing.

Joint Federal State Environmental Procedures

■ Delays and duplication of effort associated with various levels of environmental permitting activity reduce the affordability of new housing. Joint permitting procedures among federal and state agencies can help by reducing the tendency for various permit reviews to cover the same ground with overlapping and sometimes inconsistent regulatory rulings. Efforts within the state's environmental permitting agencies have been underway to begin to rationalize and resolve jurisdictional as well as definitional problems associated with the state's role in relation to air and water quality, solid waste, and the complex arena of storm water management.

It is recommended that these efforts within the environmental permitting agencies be continued and expanded to promote an effective and rational regulatory structure to help Virginia meet broadly accepted environmental goals that protect the state's quality of life without unnecessarily sacrificing housing affordability or restricting Virginia's prerogatives.

It is further recommended that the SJR 44 study on storm water management and the various agencies involved complete their effort to streamline and unify key regulations in this area as soon as possible.

Appendix A

HJR 192
Study of Regulatory Barriers to Affordable Housing
Mailing List

Task Force Chairman

The Honorable Robert T. Skunda
Secretary of Commerce and Trade
Ninth Street Office Bldg.
202 North Ninth Street
Richmond, VA 23219
(804) 371-0173

B. Gayle Morgan
Deputy Secretary of Commerce and Trade
Ninth Street Office Bldg.
202 North Ninth Street
Richmond, Va 23219
(804) 786-7831

Virginia Housing Study Commission

Nancy M. Ambler, Esquire
Executive Director
Virginia Housing Study Commission
601 S. Belvidere Street
Richmond, VA 23220
(804) 225-3797

Homebuilders Association of Virginia

Mr. Henry H. Stephens
Home Builder's Association of Virginia
2 Eaton St. Suite 1101
Hampton, Va 23669
(804) 727-7772
Fax (804) 722-3881

Northern Virginia Building Industry Association

Mr. Walter (Ron) Frazier
Sycamore Homes, Inc.
2241 K Tackett's Mill Dr.
Lake Ridge, Virginia 22192-3207
(703) 643-1007

Virginia Association of Counties

Mr. Larry Land
Virginia Association of Counties
1001 East Broad Street, Suite LL20
Richmond, Virginia 23219-1901
(804) 788-6652

Virginia Municipal League

Mr. Robert J. Scott
Director of Planning
Planning Department - City of Virginia Beach, Operations Building
Virginia Beach, VA 23456-9019
(804) 426-5790

Virginia Environmental Network

Mr. Francis H. Fife
Virginia Environmental Network
P.O. Box 557
Charlottesville, VA 22902
(804) 293-8480

Virginia Chapter American Planning Association

Mr. Terry Harrington, AICP
President, Virginia Chapter-American Planning Association
P.O. Box 29800
Roanoke, VA 24018
(703) 772-2068

Virginia Society of Professional Engineers

Mr. Bruce Hulcher
Virginia Society of Professional Engineers
5511 Staples Mill Road
Richmond, VA 23228
(804) 262-7622

Virginia Association of Realtors

Mr. F. Andrew Heatwole
Ripley-Wright Realtors
808 New Town Road
Virginia Beach, VA 23462
(804) 473-8575

Apartment and Office Building Association of Metropolitan Washington

Mr. Thomas R. Hyland
Director of Governmental Affairs
Apartment & Office Building
Association of Metropolitan Washington
1050 17th Street, N.W., Suite 300
Washington, D.C. 20036
(202) 296-3390

Virginia Apartment and Management Association

Ms. Barbara Eubank
Executive Director
Virginia Apartment and Management Association
8537 Mayland Drive
Richmond, VA 23294
(804) 346-4440

Virginia Manufactured Housing Association

Mr. Ron Dunlap
Executive Director
Virginia Manufactured Housing Association
8413 Patterson Avenue
Richmond, VA 23229
(804) 750-2500

Virginia Building and Code Administrators Officials Association

Gregory H. Revels
Deputy Building Official, County of Henrico
Parham and Hungary Springs Roads
P.O. Box 27032
Richmond, VA 23273
(804) 672-4757

Mr. William D. Dupler
Building Official, County of Chesterfield
Department of Building Inspection
P.O. Box 40
Chesterfield, VA 23832-0040
(804) 748-1057

American Institute of Architects (Virginia Society)

Mr. Gary Arnold, AIA
Virginia Society of the American Institute of Architects
AP2 Architects
11838 Rock Landing Drive
Suite 143
Newport News, Va 23606
(804) 873-6711

Other Representatives

Carson Lee Fifer, Jr., Esquire
McGuire, Woods, Battle, & Boothe
8280 Greensboro Drive
Suite 900, Tysons Corner
McLean, Virginia 22102-0346
(703) 712-5343
(Representing NOVA, NAIOP, and AHOME)

Mr. Douglas R. Fahl
Managing Principal
Dewberry & Davis
8401 Arlington Blvd.
Fairfax, VA 22031
(703) 849-0121

State Agency Representatives

Virginia Department of Transportation

Dr. Mary Lynn Tischer
Policy Office Director
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
(804) 225-4698

Virginia Department of Environmental Quality

Mr. Harry Gregori
Director, Division of Policy and Research
Virginia Department of Environmental Quality
629 East Main Street
Richmond, Virginia 23219
(804) 762-4374

Virginia Department of Health

Mr. Robert W. Hicks
Director, Office of Environmental Health Services
Virginia Department of Health
Main Street Station
P.O. Box 2448
Richmond, VA 23218
(804) 786-3559

Chesapeake Bay Local Assistance Department

Mr. Stan Balderson, Jr.
Deputy Administrator
Chesapeake Bay Local Assistance Department
701 Eighth St. Office Building
Richmond, VA 23219
(804) 225-3440

Virginia Department of Housing and Community Development

Paul J. Grasewicz
Virginia Department of Housing and Community Development
The Jackson Center
501 N. Second Street
Richmond, Virginia 23219
(804) 371-7000

Virginia Housing Development Authority

Mr. Robert Washington
Virginia Housing Development Authority
601 South Belvidere Street
Richmond, VA 23220
(804) 782-1986

Appendix B

1994 SESSION

LD0639346

HOUSE JOINT RESOLUTION NO. 192

Offered January 25, 1994

Requesting the Secretary of Commerce and Trade to study the current regulatory barriers which hinder the availability of affordable housing.

Patrons—McClure, Albo, Brickley, Dickinson and Keating; Senators: Barry and Woods

---

Referred to Committee on General Laws

WHEREAS, the cost of housing is increasing substantially and fewer people can afford the purchase of housing or can afford to pay rent for reasonably safe and decent housing; and

WHEREAS, middle-income persons and many of our public servants are unable to live close to their centers of employment due to the high cost of housing in many urban and suburban areas; and

WHEREAS, the lack of affordable housing for employees required to relocate from other states has a detrimental impact on the Commonwealth of Virginia's ability to attract new businesses and industry; and

WHEREAS, state and local governmental regulations may be one of the largest obstacles to affordable housing; and

WHEREAS, the Council of State Community Development Agencies has developed a book, *Breaking Down Regulatory Barriers: A Self-Assessment Guide for States*, which sets forth guides and proposals for reducing regulatory barriers to affordable housing; now, therefore, be it

RESOLVED, by the House of Delegates, the Senate concurring, That the Secretary of Commerce and Trade undertake a comprehensive study of the regulatory barriers currently existing which hinder the availability of affordable housing; and, be it

RESOLVED FURTHER, that this study examine the *Self-Assessment Guide for States* and make recommendations on each strategy set forth in the Guide as to whether such strategy is advisable in Virginia and what actions should be taken to implement such strategy.

This study shall review the (i) impact of local land use environmental regulations on the affordability of housing, (ii) the impact of local land use and transportation planning and the integration or lack thereof of these planning systems on the availability of affordable housing, and (iii) the extent to which the time and costs for holding land pending land use and transportation planning approvals impact the purchase price of dwelling units or the profitability of dwelling unit construction.

The Secretary of Commerce and Trade shall submit the results of this study to the Virginia Housing Study Commission for review and comment.

The Secretary of Commerce and Trade shall complete its work in time to submit its findings and recommendations to the Governor and the 1995 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for processing legislative documents.