

# **VIRGINIA HOUSING COMMISSION**

## **2013 ANNUAL REPORT**

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## **Executive Summary**

The Virginia Housing Commission (VHC), a state legislative commission since 2004, has eight legislative members and three Governor's appointees; throughout the legislative interim the Commission meets for in-depth study of housing based issues. The Commission crafts and recommends housing-related legislation for passage by the Virginia General Assembly as well as presenting non-legislatively based options to create solutions for a wide variety of topics including but not limited to those of the affordable and workforce housing needs, neighborhood stabilization and revitalization, building codes changes, mortgage industry regulations, and property owner association concerns.

The Commission was created by the 1970 Session of the General Assembly "to study the ways and means best designed to utilize existing resources and develop facilities that will provide the Commonwealth's growing population with adequate housing." The Commission works to fulfill its initial mandate while also expanding its scope of topics to incorporate the ever changing housing and housing-related needs of the Commonwealth.

Under the strong leadership of Senator Mamie Locke, who served as Commission Chair, and Delegate Danny Marshall, who served as Vice-Chair the Virginia Housing Commission had a productive interim for 2013. The four permanent workgroups and one sub-workgroup tackled the issues pertaining to each topic area. Stakeholders, who apply to be workgroup members, provide varied perspectives to the workgroup members" legislators. Workgroup chairs were as follows: Senator John Watkins, Housing and the Environmental Standards; Delegate Rosalyn Dance, Neighborhood Transitions and Residential Land Use; Delegate Danny Marshall, Affordability, Real Estate Law and Mortgages; and Delegate David Bulova, Common Interest Communities. (The former delegate, John Cosgrove, chaired this group until his special election this summer where he became a senator and therefore no longer a member of the Virginia Housing Commission.) Elizabeth Palen continued to serve as the Commission's executive director.

Topics are chosen for the Commission's study by the Commission chair with the input of workgroup chairs. Additionally bills are referred by Committee during the General Assembly Session. In addition to the topics usually studied by the Commission, the Housing and Environmental Standards Workgroup discussed sea rise and its implications to coastal Virginia and throughout the Commonwealth. The sea rise effect upon planning, zoning, and building codes and insurance was studied. Familiar topics, such as the construction of the Fair Housing Law, and revitalization of existing structures were also discussed at length.

There were four full Commission meetings, and eleven workgroup and sub-workgroup meetings throughout the interim. The Affordability, Real Estate Law and Mortgages Workgroup and the Housing and the Environment Workgroup were most active; each recommended legislation to be endorsed during the up-coming 2014 Legislative Session. The First Time Home Buyer's Savings Account was recommended by the Affordability, Real Estate and Mortgages Workgroup, and the workgroup proposed a bill concerning the death or disability of a real estate broker. The Housing and the Environment Workgroup recommended an Adaptive Flooding resolution, and the Neighborhood Transitions group recommended a piece of legislation establishing the Building Revitalization Grant Fund. The entire Commission gave their endorsement to these pieces of legislation at the final Commission meeting on December 11, 2013. All details concerning these

bills are outlined in the meeting summaries and materials that are available online under the Virginia Housing Commission (<http://dls.virginia.gov/commissions/vhc.htm>).

This interim the Commission also toured sites in Norfolk and Portsmouth where the Commission viewed former Section 8 housing and an SRO (Single Room Occupancy) for the formerly homeless.

Sonya Wadell from the Federal Reserve spoke at the first Commission meeting in April and at the closing Commission meeting for 2013. She presented the most current housing and mortgage numbers for the Commonwealth to give the members a market overview and direction for housing topics to be studied and housing bills presented during the legislative session.

The Commission had Maurice Jones from HUD give a federal perspective on housing as well as Bob Sledd, from the Governor's office who spoke about the great strides made in combatting homelessness in the Commonwealth.

The Commission members work during the legislative session to assure that the recommended legislation becomes law and will meet again as a Commission in April of 2014.

# COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair  
DELEGATE DANIEL MARSHALL, III, Vice-chair  
ELIZABETH A. PALEN, Executive Director



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## VIRGINIA HOUSING COMMISSION

### SUMMARY

**Virginia Housing Commission**  
**April 18, 2013, 10:00 AM**  
**Housing Room C, General Assembly Building**

#### I. Call to Order

**Senator Mamie Locke, Chair,** called the meeting to order at 10:00 AM.

**Members in attendance:** Senator Mamie E. Locke, *Chair*; Delegate Daniel W. Marshall, III, *Vice-chair*; Senator George L. Barker; Senator John C. Watkins; Delegate David L. Bulova; Delegate Rosalyn R. Dance; Delegate Barry D. Knight; Mark K. Flynn, *Governor Appointee*; T.K. Somanath, *Governor Appointee*; and Laura D. Lafayette, *Governor Appointee*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### II. Quarterly Housing trends

- **Sonya Waddell, Regional Economist, the Federal Reserve Bank of Richmond:**  
Unfortunately, most of my information is not new, and is just an update of the presentation I gave in December. We hope to engage in another survey with the Virginia Association of Realtors.
  - On the whole, we are seeing sustained recovery in housing the U.S. and in Virginia. The foreclosure inventory rate continues to decline both national and in Virginia. The inventory of loans has been declining steadily since the peak in 2009. We do still have twice as many loans in the process than we have had in the most difficult period in the 2001-2003 recessions. We are still in a challenging area in the housing market, but things are getting better in a sustained way. Virginia continues to do better relative to the rest of the country, with a lower foreclosure inventory rates lower than most states. Foreclosure starts are also falling.
- **Watkins:** The rate you calculate, is that the percentage of total loans in foreclosure? If so, has the total number of loans in Virginia gone down as well?
  - **Waddell:** The total number of loans in foreclosure went down by about 2,000. It seems the total number of loans is steady but I can look into it.

- **Watkins:** Now, there are tougher criteria to obtain a loan. Correspondingly, the number of loans produced is lower. If the rate is outstanding, we would need to know that.
  - **Waddell:** The rate and number of loans in foreclosure has gone down. From my understanding, you are absolutely correct from about 2008-2010. I think over the past few years we have seen a steady rate of mortgages being made. Lately, we have also seen more purchase loans.
- **Waddell:** Prime Borrowers still makes up the largest part of the foreclosure inventory, about 47% of all mortgages in foreclosure. In 2000, there was a much lower number of foreclosures. By 2007, the share of subprime in the foreclosure inventory went up considerably. By 2009, the share of prime went up considerably because of challenges in the labor market. In 2012, we see a lower number of foreclosures and the share of prime foreclosure is going down.
  - In the fourth quarter of 2012, 2.4%, about 31,000 loans, were 90 days delinquent.
- **Waddell:** In terms of shadow inventory, which are the total number of loans that are 90 days delinquent or are in the foreclosure process, there were just under 52,000 shadow loans in Virginia. This is down considerably from the peak in 2009.
  - The Virginia Association of Realtors estimates there has been an 18% increase in single family home sales in the Virginia from November 2011 to November 2012. The median sales price went up, and there was a decline in average days on market in Virginia.
  - Housing starts also saw a particular increase in the U.S. and in Virginia as well. However, this has not translated to construction employment, like we have hoped.
  - In February 2013 according to the Core Logic measure, we saw a 6.7% increase in house prices in a year over year basis. This marks consistently positive growth in the Core Logic Measure for a full year, since February 2012. This marks the first time we have seen a year over year increase with the Core Logic since 2006.
  - Core Logic also estimated that 19.3% of homeowners in Virginia are in a negative equity situation. This number has been going down steadily.
- **Waddell:** Looking at the foreclosure rate across the state, we do not see concentrations of high foreclosure rates like we have in previous years. We are not seeing too many changes in these numbers.
  - We are seeing higher rates of 90 day delinquency in central Virginia and in the Hampton Roads area. This has been pretty consistent over the past year.
- **Delegate Dance:** Why is that?
  - **Waddell:** I am not entirely sure, but I am happy to look into it.

- **Waddell:** One concern for Hampton Roads is that sequester is the effect of government employment cuts. In Virginia, we continue to see a decline in the unemployment rate. We have fallen below the national average in terms of employment growth in recent months, which may have to do with sequestration.
  - Residential real estate conditions are improving. Prices are stabilizing. We have evidence of increasing construction, and stabilizing or declining foreclosure and delinquency rates. We have a long way to go, and still have a historically high number of problem loans to work through. The labor market in Virginia is stable and growing, but not growing as quickly as we may hope.
- **Watkins:** In the negative equity calculation, does that include HELOCs?
  - **Waddell:** I am not sure, as that number came from Core Logic's report. I can look into it.
- **Watkins:** Has the Fed zeroed in on HELOCs?
  - **Waddell:** We do not have the data to really understand the link between the first and second mortgage. All we rely on is the information we get from our contacts.
  - **Waddell:** That is not a question anyone has a strong handle on right now. We may see the effect in a few years from now, but we are not certain what that effect will be.
- **Senator Barker:** The situation in Northern Virginia is that there has been no significant decrease in employment. Thus far, it has been absorbed fairly well. We have had sustained increased in private sector employment.

### III. The Future of Public Housing

- **Maurice Jones, Deputy Secretary for the U.S. Department of Housing and Urban Development:** I will utilize the President's proposed Fiscal Year 2014 (FY'14) budget to show you where we think the priorities with respect to public housing will be over the next few years.
  - There are three priorities we are trying to pursue with regard to public and assisted housing. First, is to put our subsidized public and assisted housing on a financially sustainable path. Second, the budget recognizes that we can no longer expect public housing authorities (PHAs) to house over a million families, while subjecting these authorities to regulations that are burdensome and denying them access to private capital. Third, is to improve the way that federal dollars are spent.
  - Public housing faces existing capital needs backlog of over \$25.6 billion nationwide. The key to addressing this backlog is providing PHAs with a variety of options that provide the flexibility they need to make necessary repairs and other investments to better serve their clients.

- To bring the Public Housing program toward mainstream real estate financing and management, the Department will continue to implement the Rental Assistance Demonstration enacted in 2012. In just the initial 30-day application window PHAs submitted and HUD gave initial approval to proposals that can generate over \$650 million in private debt and equity investments and preserve over 12,000 public housing units—all without any additional funding from the government.
- These applications proposed a host of creative solutions, using (???) RAD to meet local needs by modernizing aging properties for families and the elderly, including energy-retrofits to save on energy cost, reducing the densities of larger, troubled projects, demolishing severely distressed or obsolete units and constructing new replacement units on a one-for-one basis, or transferring subsidies to other mixed-income or rehab projects already underway.
- **Jones:** Not only will this produce quality, fully modernized housing, but many applicants proposed to use RAD to create or enhance mixed-income housing developments, which can strengthen neighborhoods, schools, and other resources in ways that most of us take for granted—safer streets, more accessible, better quality retail offerings, grocery stores, and new parks and recreation centers.
  - The budget also provides \$10 million for a targeted expansion of RAD to Public Housing properties in high-poverty neighborhoods.
  - Some of you may be concerned that the effects of sequestration will prevent you from participating in RAD effectively—or at all.
  - PHAs can make up any gap in operating subsidy for the calendar year owing to FY'13 appropriations that are lower than the FY'12 numbers in the RAD Application.
  - You will only have to make up this gap for the balance of 2013 after converting assistance. Going forward, a PBV or PBRA contract will carry the established FY'12 baseline rent through the duration of the contract.
  - Imperfect solution—while this solution is not perfect, it will allow you to proceed with your proposed conversions and continue to participate in the program.
  - The budget proposes to scale up the Moving to Work (MTW) program, which gives high-performing state and local Public Housing Authorities (PHAs) various flexibilities in their use of Housing Choice Voucher and Public Housing funds.
  - In exchange for this flexibility, PHAs will help design and test innovative policies to support self-sufficiency and other positive outcomes for families, streamline and consolidate program delivery, and reduce long-term costs.
  - In addition, PHAs will report on outcomes associated with their MTW activities, and those that choose to implement work requirements, time limits on assistance, or major rent reform initiatives will participate in rigorous evaluations.



- This budget also recognizes the need to simplify, align, and reform programs to reduce administration burdens and increase efficiency across programs.
- To both simplify the program and reduce the administrative burden on state and local public housing authorities, the budget provides all PHAs with full flexibility to use their operating and capital funds for any eligible capital or operating expense.
- **Jones:** The Family Self-Sufficiency (FSS) program will be consolidated and aligned to enable PHAs to more uniformly serve both TBRA and Public Housing residents. In addition, the budget authorizes PHAs to use a portion of their Public Housing and TBRA funding to augment case management and supportive services coordination provided through FSS or provide other supportive services to increase opportunities for residents.
  - Public Housing and Neighborhoods—we all understand the significant impact that public housing can have on the surrounding neighborhood. We need to ensure that we support efforts of PHAs to help create opportunity not just for their residents, but for everyone in the neighborhood.
  - Choice Neighborhoods—the \$400 million we have requested for our Choice Neighborhoods program represents a significant increase that will allow us to transform public and assisted housing in our hardest hit neighborhoods and ensure our children are prepared for the 21st century economy.
  - The Choice Neighborhoods initiative is a central element of the Administration’s inter-agency, place-based strategy to support local communities in developing the tools they need to revitalize neighborhoods of concentrated poverty into neighborhoods of opportunity.
  - Choice Neighborhoods grants exemplify how our practices generate effective partnerships with local housing and community development efforts.
  - In his State of the Union address, the President also spoke about the effort to create Ladders of Opportunity for all Americans. The fundamental premise of the American Dream is that if you work hard and play by the rules that you will have a chance to get ahead and that your kids will have a chance to have a better life than you had.
  - The Promise Zones proposed by the President expand investments by HUD, the Departments of Education and Justice, and other agencies while coordinating and streamlining this work, to maximize our impact and reduce cost. Choice neighborhoods and RAD are essential elements of this place-based strategy.
  - Sequestration went into effect March 1. I want to stress that these cuts are deeply destructive—not just to HUD programs and the people who rely on them—but to entire communities. We have to reverse sequestration and put these misguided cuts behind us.
    - Not everyone will feel the pain of these cuts right away—but it is coming.

- Under sequestration, about 125,000 individuals and families nationwide—more than half of whom are elderly and disabled—would lose assistance provided by the Housing Choice Voucher (HCV) program.
  - PHA residents could be facing higher rent burdens and longer waiting lists to enter public housing as a result of these cuts.
  - While no amount of partnership, belt-tightening, or smarter management will enable us to avoid its effects, we have taken several steps to provide administrative relief which may be helpful during this difficult time.
  - We published two notices on streamlining income verification for both public housing and Housing Choice Vouchers and another on reducing HCV administrative costs.
  - While we are attempting to reduce these impacts, there is simply no way to prevent serious damage this year or the resulting consequences for FY'14 unless sequestration is reversed with the balanced deficit reduction plan proposed by the President.
- In closing, we're taking a broad based approach to support public housing and help PHAs better prepare for the future. I know we can count on your support. It's been a pleasure speaking with you today.
- **Locke:** Do you have any idea where you think budget cuts may come from?
    - **Jones:** We had to cut 5% across the board. With respect to public housing, where you will see cuts is furloughing of employees and PHAs not renewing vouchers.
  - **Barker:** In Northern Virginia, we are already not seeing housing vouchers renewed. That is a major concern, and we have spent great effort to address these issues, like homelessness. I fear our progress will halt and decline.
  - **Watkins:** You discussed capital needs and the need to access private capital funds. Usually the government is tight when providing collateral when getting into private sector funds. What does HUD anticipate?
    - **Jones:** We do provide direct financial assistance to the PHAs. What we are now allowing is for that assistance to be the revenue stream over several years that people can then use to borrow against.
  - **Watkins:** In conjunction, is there a prerequisite on the part of the private sector capital entity to keep the loan percentage at a certain fixed number?
    - **Jones:** HUD does not intervene in the deal terms that the private sector entities are negotiating with lenders.

- **Watkins:** You mentioned giving the PHAs the authority to merge capital. Could you elaborate?
  - **Jones:** We separate an operating fund and a capital fund. However, the funds are not fungible.
- **Watkins:** If there is a bond issuance to raise capital, can those funds be used on the operating side as well as the capital side?
  - **Jones:** No, that is not the case. The terms of the bond issuance determine that.
- **Laura D. Lafayette, Governor Appointee:** The RAD, is that an application based process?
  - **Jones:** Yes.
- **Lafayette:** Could you provide the names of Housing Authorities that applied successfully.
  - **Jones:** I can get that for you.
- **T.K. Somanath, Governor Appointee:** Unfortunately, Virginia has not moved in terms of inclusive zoning in many of the localities. Is there innovation in other states?
  - **Jones:** There are Model Zoning Ordinances that many municipalities around the country are adopting that attempt to insure that fair housing opportunities are not impeded for those families that want to live closer to work. Fair housing challenges that I am dealing with currently are not in Virginia. Based on the data I know, Virginia is not any worse than other places. There are other places out there that are very innovative that we could learn from.
- **Delegate Barry Knight:** Does the federal government have any economic incentives for certain communities to help utilize mixed-income zoning?
  - **Jones:** Yes, we do. Community Development Block Funds is a big beneficiary of those.

#### IV. Brief Overview of Housing Bills 2013 Interim

- **Elizabeth Palen, Director of Legislative Services:** We had 16 bills referred to the Commission, as well as a few other concepts. We are always open to study new topics as we go along. We have no need to start up any new sub-work groups apart from the CCR group which still has to finish up its work.
  - We had two bills that passed the General Assembly and were signed by the Governor; but they still need some tweaking with language if the work groups choose to do so.
  - Bills have been broken up into their work groups, and meetings will start shortly. Chairs remain the same, with Delegate Marshall chairing the Affordability, Real

Estate Law and Mortgages Work Group, with Delegate Dance chairing the Neighborhood Transitions & Residential Land Use Work Group, with Senator Watkins chairing the Housing and Environmental Standards Work Group, and with Delegate Cosgrove chairing the Common Interest Communities Work Group.

- There is a description of each of the bills on the sheet in front of you. If you are not in a work group now and would like to be, please let me know.
- On June 13, we will have a Commission Tour of facilities in Norfolk and Portsmouth.
- **Delegate David Bulova:** There have been a few lawsuits and court decisions relating to the powers of Homeowners' Associations and Condo Associations. I would like to get a better understanding of where the law actually stands and what bills were considered.

#### V. **Public Comment**

- **Senator Locke:** asked for any public comment.

#### VI. **Adjourn**

- Upon hearing no request to comment, **Senator Locke** adjourned the meeting at 11:08 AM.

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

**Virginia Housing Commission**  
**September 18, 2013, 10:00 AM**  
**Housing Room C, General Assembly Building**

#### I. Welcome and Call to Order

**Senator Mamie Locke, Chair,** called the meeting to order at 10:07 AM.

**Members in attendance:** Senator Mamie E. Locke, *Chair*; Delegate Daniel W. Marshall, III, *Vice-chair*; Senator George L. Barker; Senator John C. Watkins; Delegate David L. Bulova; Delegate Rosalyn R. Dance; Delegate Barry D. Knight; Mark K. Flynn, *Governor Appointee*; T.K. Somanath, *Governor Appointee*; and Laura D. Lafayette, *Governor Appointee*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### II. Advancements in Overcoming Homelessness in Virginia

- **Robert Sledd, Advisor to the Governor:**
  - [Please see the attached link.](#)
- **Del. Dance:** You mentioned 60 organizations. Do we have a list of these?
  - **Sledd:** We can provide that for you.
- **Del. Bulova:** These statistics go back to 2010, is there information available from around 2008?
  - **Sledd:** Numbers did not go up dramatically during the recession, as you would expect them to. Virginia is the model now for how one should address homelessness.
- **Del. Bulova:** Prisoners coming out of jail present a target of opportunity with regard to avoiding prisoner reentry. Have you coordinated on the health care side?
  - **Sledd:** Yes. Most people coming out of prison are without a plan, what will they do on the outside? There is generally a transition period of six months. People do not get ID's, and that fosters difficulties getting jobs and finding places to stay.
- **Mark Flynn:** What can the Housing Commission do to facilitate these activities?

- **Sledd:** We would like you to be advocates, and perhaps allocate funds.
- **Sen. Barker:** We are reducing prison population. The prison aversion program is having a significant impact, too. I hope that the 16% decrease is only the tip of the iceberg in terms of what we can do as a legislature.
- **Lafayette:** How dependent is Rapid Re-housing dependent on vouchers?
  - **Bill Shelton:** Not very dependent.
- **Lafayette:** If we can publicize this, we could be more successful.
  - **Sledd:** I hope that in the next administration we will continue to set goals.

### III. Work Group Reports

#### Affordability, Real Estate Law and Mortgages

- Real Estate Board, Death or Disability of a Broker (HB 1973, Delegate S. Surovell, 2013)
  - This topic will be discussed at a meeting in the future.
- Service Members Civil Relief Act and the Virginia Residential Landlord Tenant Act
  - **Chip Dicks, Virginia Association of Realtors:**
    - Regarding the Service Members Civil Relief Act and the VRLTA, we were unable to engage with service groups, and decided not to act on this topic at this time.
    - The Service Members Civil Relief Act does not mention geographical distance, while the VRLTA provisions for lease termination include a 35-mile radius. Federal preemption only applies only when federal law clearly triumphs state law.
- First Time Home Buyer Savings Account (HB 1868, Delegate T. Greason, 2013)
  - **Chip Dicks:** The Bankers Association was concerned with policy regarding this bill. Realtors believe that if you do not receive a deduction for the fund and are able to put that money in an investment account it would be a good program for consumers. Tax department deduced that would have a nominal fiscal impact, while a deduction would have a massive fiscal impact. We would like to have a structure in place for a growth free account. The bankers and realtors agree on the language, but the bankers would like to continue to develop policy. The workgroup has not made an official recommendation on this proposed bill.
- Local Real Property Tax in Certain Service Districts (HB 2131, Delegate M. Keam, 2013)
  - **Palen:** Of the housing developments included in the taxing service district, the residents want just business owners to be taxed, and the businesses want everyone to contribute. There has not yet been a resolution.

- Fair Housing Act; Addition of Source of Income (SB 1224, Senator M. Locke, 2013)
  - **Palen:** We are having a sub work group meeting to discuss the addition of source of income to the Fair Housing Act.

### **Common Interest Communities (CIC)**

- Rules/Regulations
  - **Del. Bulova:** Discussion involved the Supreme Court Ruling to impose a fine by the CIC Board. The fact that HOA declarations require a supermajority to make any changes. We are currently fact finding to get a handle on impacts of the issues. There are no specific posed fixes presented. We have invited stakeholders to see if anything will be introduced in the session. If nothing, we can look into how to be more proactive.
    - Senator Black's bill regarding control period was referred to the CIC. Senator Cosgrove made the decision not to continue discussion of the issue, which we can bring back if desired.

### **Housing and Environmental Standards**

- Statewide Fire Prevention Code; Changes Authority from DHCD (SB 822, Senator P. Puckett, 2013)
  - **Palen:** We will discuss this issue for the third time at this afternoon's Housing and the Environment meeting; the current Building Code revisions may adequately address this issue.
- Uniform Statewide Building Code; if town does not elect to enforce, county shall enforce (HB 1574, Delegate R. Minchew, 2013/SB 1239 Senator H. Herring, 2013)
  - **Palen:** Regarding the town and county endorsements of building codes, two pieces of legislation have been proposed.
- Generators in High Rise Apartments
  - **Palen:** We have discussed generators for those living in high rise apartments during power outages, but do not yet have a solution for this problem.
- Adaptive Flooding
  - **Palen:** We will be discussing this for the first time this afternoon during the Housing and the Environment Workgroup meeting.

### **Neighborhood Transitions and Residential Land Use**

- Building Revitalization Grant Fund (SB 748, Senator W. Stanley, 2013)
  - **Del. Dance:** The bill encourages the reuse of old buildings to create new businesses. We discussed how to improve the bill and have a draft on the way.

- Electronic Security Systems, Registration for Sales (HB 2302, Delegate J. Cosgrove, 2013)
  - **Del. Dance:** We discussed the topic in the first meeting, but did not the second time we met, as Del. Cosgrove was not present. This is an issue we will continue to work on in later meetings.

#### **IV. Public Comment**

- **Ronda DeSplinter**, *Kingstowne Residential Owners Corporation*, We are represented by Senator Barker. I wanted to follow up on the Commonwealth and Community Development meeting in June. Thank you.
- **Bill Marr**, *VALAL*: Thank you for listening to us. Delegate Bulova mentioned the possibility of legislation, we will be coming forward and are looking forward to working on that with you.
- **Sen. Locke:** asked if those in the audience had any other thoughts or concerns.

#### **V. Adjourn**

- Upon hearing no further comment, **Sen. Locke** adjourned the meeting at 11:03 AM.



# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Full Commission Meeting November 20, 2013, 1:00 PM Waterside Marriot, Norfolk**

**Senator Mamie Locke** called the meeting to order at 1:00 PM.

**Members in attendance:** Senator Mamie E. Locke, *Chair*; Senator George L. Barker; Senator John C. Watkins; Delegate David L. Bulova; Mark K. Flynn, *Governor Appointee*; and Laura D. Lafayette, *Governor Appointee*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

**Senator Locke** asked for a minute of silence for all to reflect on healing for Senator Creigh Deeds of Bath County and for the loss of his son Austin "Gus" Deeds.

**Senator Locke** said that each work group would give a report of their interim work, including potential legislation. A vote on each piece of potential legislation would then take place at this meeting.

#### **Affordable Housing, Real Estate and Mortgage Law Work Group**

**Senator Mamie Locke:** Chip Dicks, Virginia Association of Realtors asked to briefly summarize the proposed real estate-based affordability bills included in the Affordability, and Real Estate Law and Mortgages Work Group report.

**Chip Dicks:** The first bill that was discussed was the Service Members Civil Relief Act. There is currently a conflict between this federal law and state law. Unfortunately no military representatives were brought to the table to discuss the bill; they were asked and declined to attend.. Professional real estate organizations then asked for it to be removed from the table until a full discussion could take place with both military personnel and landlords.

Death and Disability of a broker: the question is whether there was a problem and whether legislation is needed to solve the problem. The issue stemmed from a Northern Virginia case where there was a contest about closing out a real estate business—broker had died and there was a contest about who should handle the winding up of his affairs for his business. Realtors have no recommendation. Delegate Scott Surovell asks for this bill to be approved by the Commission.

Delegate Mark Keam's bill was discussed at an Affordable Housing, Real Estate and Mortgage Law Work Group. He spoke to the Work Group regarding the issue: a special tax rate, an

additional tax on individuals within a certain transportation district. The Work Group collectively felt that the Board of Supervisors should handle the issue. Delegate Keam has not asked for the bill to go forward.

**Senator Watkins:** If we allow mixed-use development bonds, this problem will become more acute. Residential property owners get assessments to pay back bonds. It is one thing when businesses get taxed, but residents prevail on local officials when upset. James City had turnover of several supervisor seats due to a similar taxing scenario.

**Senator Barker:** I am familiar with this situation. There was an agreement to develop a tax district to promote the coming development areas around the coming metro stations. The incremental tax increase paid by the residents here is small compared to the increase in their property value as the result of development. The Board of Supervisors had a strong vote to maintain the tax district.

**Senator Watkins:** That is the same argument used in James City. They took the CDA and paid it off with general funds. We need to be careful in this situation.

**Chip Dicks:** The First-Time Home Buyer Savings Accounts (HB 1868, T. Greason, 2013) would be treated like a Roth IRA. The contribution would be given after income tax, and the growth of the contribution would grow tax-free in perpetuity. We have worked with the bankers to work out technical issues with the language, but the bankers still have policy concerns, believing this account will mislead and frustrate the consumers. I am not aware of any opposition to the bill, other than the Virginia Bankers Association. Thus, we changed the language to not include banks in the definition of financial institutions, eliminating their involvement.

**Senator Barker:** Does the change in the definition of “financial institution” to remove reference to banks affect the position of the Virginia Bankers Association?

**Chip Dicks:** Unfortunately, no. There is no objection to the language, but they have some policy objections.

**Matt Bruning, Virginia Bankers Association:** Consumers may find that the benefit of this account is very minimal, while there is also a penalty that can occur. We are concerned this consumer will come to the banks confused and frustrated with their accounts. Removing banks from the definition of “financial institution” helps, but the consumer may not know this and their displeasure with the bank will still be present.

**Senator Barker:** If this bill were to pass, would you want banks to be included in the definition of “financial institution”?

**Matt Bruning:** I do not think leaving us out of the definition of financial institution alleviates our concerns, as we may have to deal with consumer confusion anyway.

**Chip Dicks:** We are happy to put banks back in the definition if that is the request. This type of account has much greater benefits if the growth is allowed to accrue for a number of years. Then, the growth can be very significant.

**Senator Watkins:** Is an individual limited to only one account?

**Chip Dicks:** An individual can set up only one account per beneficiary.

**Senator Watkins:** Why are they exempt from the APA?

**Chip Dicks:** The idea is to declare this account with a one-page form to turn in with your income tax, so there is no need to go through the APA.

**Senator Barker:** So there is a cap of the contribution of \$50,000?

**Chip Dicks:** Correct.

**Senator Watkins:** So if an individual puts in \$50,000 into an account, interest cannot accrue in the account because the balance will be over the cap?

**Chip Dicks:** The cap is on the contribution. There is no limit on the amount of growth on the account. However, we could also put a cap on the growth.

**Senator Watkins:** I like the concept, but I am not sure all the technicalities have been worked through yet. I am also concerned about fraud issues.

**Chip Dicks:** I will be happy to continue to work on this and add anti-fraud provisions. I ask that you recommend moving the bill forward in concept, subject to deleting the exclusion of banks in the definition of “financial institution” and discussion with the Bureau of Financial Institutions as suggested by Senator Watkins. We can also look at more technical changes before the final meeting next month.

**Elizabeth Palen:** We have just moved the final Housing Commission meeting to December 11 at 10:00 AM, room to be announced.

**Senator Locke:** We will hold endorsing this bill until the December meeting. Regarding the Source of Income bill under the Virginia Fair Housing Law (SB 1224, M. Locke, 2013), the suggestion was to send a letter to the Congressional Delegation. I think that a better idea would be to meet directly with Maurice Jones from HUD.

**Chip Dicks:** We could not reach consensus in the sub-work group, but we agreed that there were problems with the current Housing Choice Voucher program. We thought reaching out on the federal level would be helpful, instead of creating state legislation.

**Laura Lafayette:** I think reaching out to Maurice Jones makes sense, but I think it ultimately comes to the efficiency of the Local Housing Authority.

It was agreed to reach out to Jones at HUD.

Senator Barker made a motion to put forward Death or of Disability of a Broker (HB 1973, S. Surovell, 2013).

It was seconded and was moved forward.

There was no motion to move forward Local Real Property Tax in Certain Service Districts (HB 2131, M. Keam, 2013).

### **Common Interest Communities Work Group**

**Delegate Bulova:** Issues from a Supreme Court ruling that limits homeowners associations their ability to fine residents and change the bi-laws if their declarations were not enough initially or require a super-majority . There is some potential legislation for 2014. If they do come up with something between now and the December meeting, it may be useful for them to give a presentation.

## **Housing and Environmental Standards Work Group**

**Senator Watkins:** Regarding adaptive flooding, we are proposing a joint sub-committee to be put together to put information together before we start any legislation. We do not want to debate the cause, but there is a recurrent flooding problem and it is getting worse. It is a future reality we need to face, and we should start looking into this now.

**Brian Pennington, City of Norfolk:** There happens to be conflicting guidance provided both in the Code and through executive order as far as which state agency is responsible for which component of coastal flooding. We are hoping over the next two years to pull together enough information from institutions of higher education and state agencies to put forward some legislation. We would like to remain in contact with the Commission to ensure progress and up-to-date information.

**Senator Barker:** I was present in the work group meetings and there were some very powerful presentations regarding where we are now with sea level rise. We need to work together to figure this out and come up with some solutions, regardless of the cause.

**Senator Locke:** We will deal with this issue in the December meeting as well.

**Senator Watkins:** Statewide Fire Prevention Code (SB 822, P. Puckett, 2013) changes authority from DHCD. The panel determined there was not substantial reason to move the authority.

**Elizabeth Palen:** Senator Puckett was fine with that recommendation as well.

**Senator Watkins:** I request that there is no further action on this legislation. With the Uniform Statewide Building Code (HB 1574, R. Minchew, 2013/ SB1239, M. Herring, 2013), the feeling of the workgroup was to go back to the table and get an agreement. We do not recommend action with this legislation.

**Mark Flynn:** Delegate Minchew has sent the Commission an email addressing that he could not be here, and he sent another draft with additional changes to the legislation. The current law says that a town with a population over 3,500 people must have its own Building Department or an agreement with the county. This law is not reflected in the reality of the Commonwealth. The first fix is to take out the population condition. The new proposal has this unstruck, but I am not sure if that is an error. We are simply trying to bring the law into compliance with the reality in the Commonwealth.

**Erik Johntson, Virginia Association of Counties:** In the working group, VACO takes no position on the changes made by Emory Rodgers. However, VACO does oppose the amendment changes made by Mr. Flynn, regarding the changes on the 3,500 population threshold.

**Jeff Gore, Loudon County:** We are trying to create a new deal with Leesburg regarding the maintenance portion of the Code, as we already have an agreement to enforce the other provisions of the Building Code for the city. Some of these smaller towns do not have the same resources and staff to provide maintenance like the county does. However, the larger towns, like Leesburg, have other revenue sources that they can apply to these things, but they have not chosen to do so. We think the few localities dealing with this can work it out on their own terms. I think getting rid of the 3,500 threshold would create more problems.

**Mark Flynn:** With the 3,500 threshold struck, more flexibility is given to counties.

**Jeff Gore:** I think that is innocuous.

**Mark Flynn:** Delegate Minchew has responded by email stating that the section where the 3,500 threshold is unstruck was a software error.

**Emory Rodgers:** I think December 11 is a better date to discuss this.

**Senator Locke:** We will defer this issue until December.

**Senator Watkins:** Regarding generators in high-rise apartments, we did a survey and found that new buildings have generators but requiring retrofitting will affect the ability for individuals to pay rent. Those in Alexandria will want us to write a letter expressing to the localities that they endeavor to require reconstruction to include generators. I do not know if we are in a position to do so.

**Senator Barker:** What would this letter say?

**Elizabeth Palen:** The letter would request that the localities have their Building Codes reflect the need for generators in high-rise buildings.

**Laura Lafayette:** What about instances with new buildings?

**Elizabeth Palen:** With new buildings, this is not an issue as they already have generators.

**Layfeayette:** Asking for retrofitting existing buildings creates a financial burden on the tenants of the building. I would argue against the letter.

**Senator Watkins:** I do not think it is appropriate to send this letter.

**Senator Barker:** This issue came up after the derecho last summer, when many elderly residents were without power in the heat. This is not an insignificant issue.

### **Neighborhood Transitions and Residential Land Use**

**Elizabeth Palen:** Delegate Dance cannot be here today, but the Work Group took up two issues. Electronic Security Systems, Registration for Sales (HB 2302, J. Cosgrove, 2013) had to do with unlicensed door-to-door salesmen selling security systems. Delegate Cosgrove chose to take no further action on the issue. The other bill was the Building Revitalization Grant Fund (SB 748, W. Stanley, 2013) that would provide grants to individuals in localities to revitalize older buildings. There is a new draft that allows \$100,000 grants with parameters that the business shall enter into a memorandum with the Department of Housing and Community Development and provides a capital investment of \$1 million. This is statewide.

**Senator Locke:** Without a funding source, setting up this program is an issue.

**Senator Watkins:** We could send a letter to Senator Stanley saying that this is the recommended draft if he wants to pursue it, but we will not take a position on the bill.

**Senator Barker:** I think this would have a better chance if Stanley provided an additional funding source.

**Senator Locke:** Then we will take no action on this, and a letter will be sent to Senator Stanley. We did decide to endorse the Death or Disability of a Broker legislation, and the rest will be discussed in December. We are taking no action on the Puckett, Stanley, Cosgrove, or Kean legislation.

**Senator Locke** asked if there was any public comment. Hearing none, Senator Locke adjourned the meeting at 2:35 PM.

# COMMONWEALTH OF VIRGINIA

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DELEGATE DANIEL MARSHALL, III, Vice-chair  
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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### Virginia Housing Commission December 11, 2013, 10:00 AM Senate Room A, General Assembly Building

#### I. Call to Order

**Senator Mamie Locke, Chair,** called the meeting to order at 10:09 AM.

**Members in attendance:** Senator Mamie E. Locke, *Chair*; Delegate Daniel W. Marshall, III, *Vice-chair*; Senator George L. Barker; Senator John C. Watkins; Delegate David L. Bulova; Delegate Rosalyn R. Dance; Delegate Barry D. Knight; T. K. Somanath, *Governor's Appointee*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### II. Current Mortgage Conditions and Housing Sales in the Commonwealth

- **Sonya Waddell, Regional Economist, The Federal Reserve Bank of Richmond:** We have seen sustained improvement in residential real estate in Virginia and in the country as a whole.
  - The foreclosure inventory rate in the third quarter of 2013 was 1.06%, which translates into 14,000 loans in the foreclosure process. This represents improvement, but we are still in a challenging housing market. There is a strong decline in the number of loans in foreclosure, with the number of mortgages originated holding steady.
  - Virginia's foreclosure inventory rate is much better than other states in the nation. Foreclosure inventory rate is defined by number of loans going into foreclosure and the time a loan spends in foreclosure.
- **Senator George Barker:** Are there concentrated areas with high inventory rates, or are they more evenly distributed?
  - **Waddell:** The foreclosure inventory is definitely more spread out across the state. Delinquency has some more concentrated areas.
- **Waddell:** In terms of the share of foreclosure inventory, we are heading back toward what was normal in the 1990's and early 2000's, with a higher share of FHA and VA loans in foreclosure.
  - Ninety-day delinquency rate has been declining, and in the third quarter of 2013 was 2.1%, translating to 28,000 loans. The shadow inventory, the number of loans either in 90-day delinquency or in foreclosure, also shows a decline, with 43,000 loans in the third quarter.

- For the nation, we have seen an increase in home sales both with new and existing homes. When breaking home sales down in Virginia, we see a slight increase in new construction and resale, a steady decline in REO, and little change with short sales. Resales represent the highest share of this market. We are seeing a comeback in sales and even a low inventory in places like Northern Virginia.
- Recently, an increase in housing construction is reflected in an increase in Virginia housing starts. There is a positive trend, but it is volatile.
- There has been consistent positive growth for the past 18 months for the house price index. However, recently the Commonwealth lags behind the nation in increase of housing prices.
- **Senator John Watkins:** What accounts for that lag? Is that due to sequestration?
  - **Waddell:** We have not been able to adequately quantify the effects of sequestration.
- **Watkins:** Does CoreLogic break down their data by regions in the state?
  - **Waddell:** Yes. We can break down by the county or MSA.
- **Delegate Danny Marshall:** Could you email us the breakdown by counties?
  - **Waddell:** Yes, I can.
- **Barker:** Northern Virginia has seen the highest growth in house prices. That suggests sequestration has not had an effect on housing prices, but suggests sequestration dampened new construction.
  - **Waddell:** Yes, housing prices have not decreased. It is very challenging to determine the effects of sequestration, as we do not know what house prices would have been without sequestration.
- **Marshall:** Can you also provide household income, unemployment rates, and population growth?
  - **Waddell:** Yes.
- **Waddell:** Negative equity has been declining as house prices have been growing. There are concentrations of high delinquency rates in the Richmond area and in the Hampton Roads area. This has been the case for two years.
  - Construction employment has not recovered although new construction is seeing growth.
- **Waddell:** For total payroll employment, Virginia had recovered almost all jobs lost. Virginia is about 6,000 jobs short from the level in 2007.
  - Professional and business services employment is an area that has driven Virginia out of recessions in the past. We have not seen the kind of growth in this area that we have seen in the past or that we have seen in other areas.
  - Virginia has more federal contract spending than in any other state.



- The unemployment rate in Virginia was 5.6% in October, which is quite a bit lower than the national unemployment rate of 7.3% in October. Unemployment is still extremely low in Northern Virginia, which pushes down the state unemployment rate.
- We have seen sustained improvement in residential real estate in Virginia. The housing market improvement is slow and still operating at a low base. Virginia has seen recovery in jobs but more is needed. Federal government spending is a big part of Virginia's economy, which can be good and bad.
- **Watkins:** Is the inventory of REOs back down to reasonable levels, compared to those in 2005-2006?
  - **Waddell:** There is the visible and invisible part of the REO inventory. The visible part has fallen quite a bit, but there remains uncertainty of what banks are holding in terms of property.
- **Watkins:** With the house price index, is the drop between U.S. and Virginia due to growth of the multi-family market in Virginia?
  - **Waddell:** This is actually a repeat sales index, and should not reflect the type of homes being sold.
- **Watkins:** Do you not think the pricing of multi-family homes would be less than single-family homes.
  - **Waddell:** I believe so. However, this repeat sales index never looks at the price, only the percentage change.
- **Marshall:** What is a repeat sales index?
  - **Waddell:** This index looks at homes that have been sold before and aggregates percentage changes for these homes.
- **Marshall:** So it takes out new construction?
  - **Waddell:** Yes, that is correct.
- **Marshall:** Why is that important?
  - **Waddell:** We look at this number because existing home sales is such a large part of the sales market.
- **T. K. Somanath:** Is there a way to include affordability in the housing index?
  - **Waddell:** I can look into that.

### III. Housing Trust Fund; Homelessness; Budget

- **Bill Shelton, DHCD:** Last week, the Governor made an announcement to include additional resources relative to housing. This will include \$4 million to fund the Virginia Housing Trust Fund, half a million dollars to support rapid rehousing efforts, and an additional half million dollars to operate a state database regarding homelessness.

#### IV. Proposed Bills

##### First-Time Home Buyer Savings Accounts (HB 1868, T. Greason, 2013)

- **Chip Dicks**, *Virginia Association of Realtors*: This Commission heard details of this bill in the meeting in Norfolk, where two amendments were proposed. We struck the provision that removed banks from the definition of “financial institution.” I anticipate no issues with the Bureau of Financial Institutions.
- **Delegate Barry Knight**: Would you include bank in the definition of “financial instruction” on line 20 as well?
  - **Dicks**: Yes, that is a good edit.
- **Dicks**: This legislation allows an account holder to designate an account as a First-Time Home Buyer Savings Account. There is no obligation on part of the financial institution. Taxpayers have responsibility to include a form with their income tax returns to designate the account. The account owner then pays no state tax on gain in this account, as long as funds are used for an eligible purpose.
  - We agreed to a \$50,000 cap on the primary contribution. To prevent fraud, we added a cap of \$150,000 on the account including growth.
- **Barker**: To clarify, once the accounts grew to \$150,000, would the account holder then have to take money out of the account to prevent it hitting the cap?
  - **Dicks**: There will be no tax exemption for growth above that cap of \$150,000.
- **Marshall**: I do not agree with setting a limit on the growth.
  - **Watkins**: Without this cap, we are opening ourselves up to fraud, called “stacking.” There is no limitation on the number of accounts you could have, each of which’s interest is tax free.
  - **Dicks**: Multiple accounts could only be opened with respect to different beneficiaries.
- **Marshall**: Then why set the cap at \$150,000? In 30 years, that may not be as significant.
  - **Watkins**: You put a limit because the other taxpayers in the state make up the difference.
- **Knight**: How many accounts could be in your granddaughter’s name?
  - **Dicks**: The intent is that the aggregate amount in one or multiple accounts can only be \$50,000.
- **Barker**: Who monitors the principal investment cap of \$50,000?
  - **Dicks**: This is self-compliance through the Virginia Department of Taxation.
- **Barker**: Will those accounts be identified by beneficiary?
  - **Dicks**: Not necessarily. The taxpayer is responsible for the compliance. If the principal investment is greater than \$50,000, the Department of Taxation will be responsible with identifying the beneficiary.

- **Barker:** What if multiple accounts by separate individuals are opened for a common beneficiary, then at settlement will someone have to pay a penalty if the amount is above the cap?
  - **Dicks:** There is a burden on the taxpayer to be sure this is done correctly. You could also transfer the beneficiary.
- **Somanath:** Is it possible to add co-ops to the definition of family residence?
  - **Dicks:** We would have no problem adding co-ops.
- **Delegate Marshall** made a motion for the Housing Commission to endorse the bill.
- **The motion was seconded and passed.**

#### **Adaptive Flooding; proposed study commission resolution**

- **Locke:** This resolution would create a joint Senate and House Subcommittee to look into a comprehensive flood mitigation plan.
- **Elizabeth Palen, Legislative Services:** Lines 53-56 show the changes made to the legislative draft since the last Full Commission meeting.
- **A motion to endorse this study commission resolution was seconded and passed.**

#### **Uniform Statewide Building Code; if town does not elect to enforce, county shall enforce (HB 1574, R. Minchew, 2013/SB1239 M. Herring, 2013)**

- **Emory Rodgers, Department of Housing & Community Development:** Mark Flynn was going to present his revised legislation. Unfortunately, he could not be here, as he is ill.
  - Most of the changes were made to clarify the language in the current statute, leaving in the population threshold in the Virginia Maintenance Code. It appears Mark Flynn was attempting to remove population threshold, but still allow flexibility for towns and counties to have an agreement.
- **Jeff Gore, Loudon County:** This issue began with a dispute between Leesburg and Loudon County, which is now resolved. Loudon County still opposes striking the 3,500 population threshold. The presumption is that smaller towns do not have the resources to enforce the Maintenance Code. Removing the population threshold would be a significant policy change, creating a new mandate and burden for the county.
- **Erik Johnston, Virginia Association of Counties:** I strongly oppose this legislation, especially in regard to removing the population threshold. We are not convinced there is a problem, as the specific instance with Loudon County and Leesburg was resolved.
- **Marshall:** People often submit legislation to fix a problem, but it seems the problem has been fixed. Does Delegate Minchew still want to put this legislation through?
  - **Palen:** Mr. Flynn discussed this with Delegate Minchew, and he still very much wishes to move forward.
- **Delegate Rosalyn Dance:** If the problem is fixed, why would we continue with the legislation?
  - **Locke:** It is my understanding that the delegate wishes to move forward.

- **Delegate Marshall made a motion to take no further action with this legislation.**
- **The motion was seconded.**
  - **Marshall:** If Minchew wants to move forward with the bill, he can still do so. He just will not have the endorsement of the Housing Commission.
  - **Barker:** I support the motion before us.
  - **Palen:** Mark cannot be here, but he requested that the Commission endorse the legislation.
- **The motion to take no action was passed.**

### **Building Revitalization Grant Fund (SB 748, W. Stanley, 2013)**

- **Senator Bill Stanley:** The Building Revitalization Grant Fund would provide grants to individuals in localities to revitalize older buildings. This draft allows \$100,000 grants, providing the business shall enter into a memorandum with the Department of Housing and Community Development and provides a capital investment of \$1 million.
- **Watkins:** The Senator has assured me that he will introduce a companion amendment to the budget ensure the funds are from sources other than the General Fund.
  - **Stanley:** We had discussed the availability of Tobacco Funds, but it would change the bill to reflect the Tobacco Footprint.
- **Knight:** I had a similar thought about Tobacco Funds.
- **Watkins:** Very recently, the Governor announced a Regional Economic Collaboration Fund that could also be tied into this bill.
  - **Stanley:** I would be more than happy to look into that.
- **Delegate David Bulova:** What is the purpose of the first come first serve nature for the bill? Is there for a reason, or could you entertain the idea of prioritizing the resources based on board recommendation?
  - **Stanley:** The first come first serve basis of the legislation seemed like the easiest way. I have no reservations to remove that, and make it more priority based.
  - **Bill Shelton:** We, too, would have no problem taking that out.
- **Marshall:** So we will strike line 30?
- **Dance:** I have some localities in the Tobacco District. However, I also have some that qualify for the program, but are not in the District. How can we address this to help those areas, too?
  - **Marshall:** We do not just have to go through the Tobacco Commission, but could make this state-wide.
- **Dance:** I have no problems supporting a pathway that could benefit localities. Is there language we could use to address areas of need, not only in the Tobacco District, without including the entire state?

- **Marshall:** We could include a provision where certain unemployment rates would qualify an area, as originally drafted.
- **Watkins:** I think we should endorse the bill. Usually this type of bill gets shut down in finance. With the assumption that Senator Stanley will be creative with his budget amendments, I propose we support the bill as is.
- **Senator Watkins made a motion to endorse the bill.**
- **Delegate Marshall seconded the motion.**
- **Knight:** I think you should keep an amendment with the Tobacco Commission in mind as you move forward, as you may end up needing one.
- **Stanley:** I am open to any kind of funding.
- **The motion passed.**
- **Delegate Dance volunteered to sponsor the bill.**

**Real Estate Board; Death or Disability of a Broker (HB 1973, S. Surovell, 2013) was recommended in the previous meeting.**

- **Senator Barker agreed to carry this through the Senate.**

**V. Legislation not recommended or in need of further study by the Virginia Housing Commission**

**Mortgage Loan Originator Bill**

- **Susan Handcock**, *Bureau of Financial Institutions at Virginia State Corporation Commission*: I am pleased there is now no need for legislation relating to mortgage loan originator licenses. We are tweaking regulations, and I am happy to answer questions.

**VI. Public Comment**

- **Senator Locke** asked if there was any comment from the public.

**VII. Adjourn**

- Hearing no request to comment, **Senator Locke** adjourned the meeting at 11:54 AM.

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### Housing and Environmental Standards Workgroup

May 16, 2013

10:00AM

Senate Room A, General Assembly Building

#### I. Welcome and Call to Order

- **Senator John Watkins, Chair** called the meeting to order at 10:00AM
  - In addition to the invited speakers the following Workgroup members were in attendance:
    - **Workgroup Members:** *Delegate David Bulova; Delegate Barry D. Knight; and Senator John Watkins; Ron Clements, Virginia Building & Code Officials Association; Tyler Craddock, Manufactured & Modular Housing Association; Chip Dicks, Virginia Association of Realtors; Sean P. Farrell, Virginia Building & Code Officials Association; Mark Flynn, Governor Appointee; John Hastings, Virginia Housing Development Authority; John H. Jordan, Manufactured Housing Communities of Virginia; Art Lipscomb, Virginia Professional Fire Fighters; R. Schaefer Oglesby, Virginia Association of Realtors; Ed Rhodes, Virginia Fire Chiefs Association; Neal Rogers, Virginia Housing Development Authority; Michael T. Toalson, Home Builders Association of Virginia; and Cal Whitehead, Whitehead Consulting*
    - **Staff:** *Elizabeth Palen, Executive Director of VHC*

#### II. Generators in High-Rise Buildings

- **Donna Fossum, resident, City of Alexandria:** I was asked by Senator George Barker to address this issue because of the 23 years I served on the City of Alexandria's Planning Commission, reviewing and passing judgment on development proposals; and because, for the past 32 years, I have lived in a high-rise condominium in Alexandria's West End,

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DELEGATE DANIEL W. MARSHALL, III  
DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT

SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR GEORGE L. BARKER

MARK K. FLYNN  
LAURA D. LAFAYETTE  
T.K. SOMANATH

where most of the City's high-rise residential buildings are located. As you may know, Arlington and Alexandria have a higher proportion of residents living in high-rise condominium and apartment buildings than anywhere else in the Commonwealth. Indeed, 26% of all the households in Alexandria are located in one of the 31 high-rise condominium buildings or 43 high-rise apartment buildings located in the City.

- Like many other communities throughout Virginia, Alexandria suffered a tremendous amount of damage from the derecho of June 29-30, 2012, that is said to be one of the most destructive and deadly, fast-moving thunderstorms in North American history.
- Because of the derecho, large parts of the City were without power for extended periods of time. This included a number of high-rise residential buildings. And while the derecho was an unusually severe storm event, hurricanes more regularly cause a loss of power. In fact, while about 1 million customers lost power in Virginia as a result of the derecho, two hurricanes in recent years (Hurricane Isabel in 2003 and Hurricane Irene in 2011) caused even greater power outages.
- If you live in a one or two-story house, it is inconvenient to be without power for an extended period of time. If you live on the 10<sup>th</sup>, 12<sup>th</sup>, or 15<sup>th</sup> floor of a high-rise building, however, it is a major inconvenience to be without power for an extended period of time. Indeed, for people on the upper floors of high-rise residential building who have ambulatory challenges, an extended loss of power can present an extreme hardship. This is especially true for the residents of the 3 high-rise apartment complexes in Alexandria that serve senior citizens exclusively.
- People in residential high-rises, as you know, generally rely on elevators to get in and out of their homes. If the building elevators are not working, it can be a real hardship for residents to get to the doctor, the grocery store, or to a friend's home that *does* have power.
- Ideally, every high-rise residential building would have sufficient alternative generator capacity to power at least one elevator when normal electric power is interrupted. I believe that all of the newer ones – built in or after 1975 – do, as they were required to have alternative generator capacity by the State Building Code. But the older high-rise residential buildings – mostly apartments -- generally do not have backup generators.
- While the City has identified the lack of backup power for many high-rise apartment buildings as a problem, we know it is not an easy problem to address. While it may be wise to require these buildings to have backup generators – we know that it could be expensive to retrofit these buildings.
- The City took this problem to Senator Barker, and because none of us could come up with a simple solution to this problem, he recommended that we ask the

Housing Commission to look into this matter. So I am here today to formally request that the Housing Commission study this matter.

- Alexandria's Legislative Director, Bernie Caton, is here with me, and we will be happy to try and answer any questions that you may have. Thank you.
  
- **Delegate Danny Marshall:** What is the definition for a high rise building?
  - **Fossum:** A high rise residential building is considered over eight stories in Alexandria.
  - **Mr. Emory Rogers:** Under previous legislation, high rise buildings were defined as over 150 feet, and today they are set at 75 feet. Thus, older apartments in Arlington could be as high as 150 feet, although there may be few of them.
  
- **Delegate Marshall:** Would the back-up generators be for the elevators or for heating air?
  - **Fossum:** The generators would be primarily for the elevators, but would also power emergency lights and emergency directionals.
  
- **Mr. Shaun Pharr:** Does the city have specific information on the scope of the problem?
  - **Fossum:** I found the construction dates for all buildings and divided them into condominium and apartments. Over half the apartments do not have generators and were built before the code. A few apartments have retrofitted, but for the purpose of upgrading to become a condominium. However, none have retrofitted voluntarily.
  - **Bernie Caton:** We do not have an exact number, and thought this was a problem bigger than just the city. We understand that this problem is more complex than putting it in a bill and requiring backup generators, and we are open do ideas
  
- **Senator Watkins:** What is the position of the city with regard to generators?
  - **Caton:** If we have never confronted the issue because we do not have the authority; and I have never discussed it with the council, so I do not know their position.
  
- **Delegate Marshall:** Are we only discussing the issue for residential buildings?
  - **Caton:** Yes, and only for apartments. Condominium owners have more opportunity to deal with the problem themselves.
  
- **Delegate Marshall:** What about noise ordinances, as I imagine the generators are quite noisy?
  - **Caton:** I would be surprised if it were a problem. These building usually large parking lots in between the two; and with newer buildings, that has never been an issue.



- **James Dawson, Virginia Fire Prevention Association:** I would suggest looking into HVAC even though there have been problem with it in other jurisdictions. Mobility may be the short-term issue; but with long-term power outages in the summer heat, ventilation becomes a more serious concern.
- **Ron Clements, Virginia Building and Code Officials Association:** You have stated that the bill will only require backup generators for apartment buildings and not condominiums. However, that makes it more complicated. Under the building code, there is not much or a distinction between an apartment and condominium. The current code states that if a building is over 75ft above fire department vehicle access, then the high rise provisions apply to the buildings, regardless of use.
- **Mark Flynn:** What are the current requirements for high rise buildings?
  - **Fossum:** If a building is a high-rise, then the building must provide emergency power to provide for exit signs, means of *ingress/egress* illumination, elevator car lighting, alarm systems, detection systems, elevators, ventilation, and the fire command center.
- **Flynn:** To clarify, a building constructed before 1975 is not subject to those rules?
  - **Fossum:** Yes, these buildings were grandfathered in. The reason that we are focusing mainly on apartment is because virtually all condominiums were built under the code, but many of the apartments are older.
  - **Pharr:** I do not believe ownership is a valid distinction when considering health and welfare of occupants. Does current code require HVAC in the whole building?
    - **Clements:** The requirement is for ventilation, not for comfort or cooling.
- **Rogers:** Creating a study groups is an avenue for further study although it would take a few years. The current regulatory procedure is in the second half of the process, and I suspect there is not enough time to take up for final regulations to be completed by the end of this year.
- **Delegate Marshall:** I would think it appropriate to get more data from the city and surrounding jurisdictions, and get an idea of the scope of the problem.
  - **Caton:** I believe Alexandria, Arlington, and Fairfax counties would be most affected by this issue.
- **Flynn:** I propose a survey of the jurisdictions that are likely candidates.
- **Lipscomb:** Could we find how many emergency calls were made from these buildings while the power was out?
- **Brian Gordon, AOA and Virginia Apartment Managers Association:** Retrofitting existing buildings can be very costly and has a tremendous impact on affordability. For the Condominiums, there would need to be a direct assessment to fund a retrofit. However, for an apartment that is a pass through cost, causing rent prices to rise to cover those expenses.
  - Secondly, I think helpful to see how many high-rise buildings are owned by their jurisdictions, as this would have a cost for the local governments,

too. Ultimately, we would be supportive of the move to push this through the DHCD process and convene all the stakeholders and experts to do a thorough analysis.

- **Dawson:** Are there any estimates of cost for typical retrofit in these buildings?
  - **Gordon:** We can survey our members and get a ball park estimate.
- **Delegate Marshall:** What would the cost for maintenance of these systems be?
- **Senator Watkins:** At our next meeting, we will have more information and discuss this further.

### III. **Statewide Fire Prevention Code: authority to recover enforcement costs (SB 822, Puckett, 2013)**

- **Senator Phillip Puckett, Senator District 38:** During session, we endeavored on the seemingly simple task of placing the Fire Service Board and the State Fire Marshall office together. During the committee process, we encountered issues because the Board of Housing Community Development was left out of the process. The legislation removes them from the State Fire Marshall's responsibility. Most discussion during session concerned fees, and I will be happy to answer any question concerning the legislation.
- **Delegate Marshall:** Was there a fiscal impact from the bill?
  - **Senator Puckett:** Actually no, that was not an issue. This simply is an issue that fire services and those involved think that is where the State Fire Marshall's office ought to be. The bill still tracks old language, saying that the State Fire Marshall can assess fees, but those fees go through an administrative process.
- **Delegate Marshall:** Can you specifically tell us what where the issues discussed last session?
  - **Senator Puckett:** State Fire Marshall has been under the Board of Housing and Community Development for a considerable amount of time, and they felt it should have remained there. This may be due to the cooperative process for how fees determined. Fire Services Board believed that naturally that is where the State fire Marshall should. Personally, I believe it was a bit of a debate over territory.
- **Robbie Dawson:** I believe the State Fire Marshall's office was moved a few years ago, and the fees piece just got left behind inadvertently. The budget and programs are set and established by the Fire Services Board, and, therefore, their fees should also be set under that same program. One question asked last session was whether there are any other state agencies that set fees for a separate agency.
- **Senator Watkins:** The Board of Housing and Community Development is structured is a "stopgap" with regard to making everyone reflects on cost.
  - **Senator Puckett:** Yes that was discussed in the Senate Committee.

- **Senator Watkins:** I can understand why fire services board and fire marshal should go together, but there is also a bias present. Everyone wants safety to be the predominant concern; but there is a problem with affordable housing that is very present, and this could affect it.
- **Dawson:** Most of the fees that Fire Marshals charge are inspection fees for mostly commercial properties. From a residential perspective, the fire code and inspections cannot occur on a regular basis, so there are no inspections regulated to residential buildings.
- These fees are part the Statewide Fire Prevention code; this bill would take a few code sections that one board promulgates and then have another board promulgate a few more sections.
- **Rhodes:** The Fire Service Board made of fifteen or sixteen people not necessarily fire service related. The majority of inspections are done by local Fire Marshals, and they, along with the State Fire Marshal, have the authority to set their own fees.
  - The State Marshal charges roughly \$51-52 per hour, while other areas charge double, as the localities can set own fees, regarding fees. I suspect that of those in opposition of the bill, most of the localities are not inspected by the State Fire Marshal.
- **Pharr:** I would like to add that the fire services board is composed of fifteen members, thirteen members of which are associated with local government, one member associated with the insurance industry, and one representative from public.
  - Board of Housing and Community Development is far more diverse, including far more citizen and stakeholder membership which may explain the huge number of groups opposing this in the General Assembly Is there a history of the Board of Housing and Community Development reducing or rejecting proposed fees?
- **Rhodes:** The Board of Housing has one represented from Fire Board, one from the Building Code Office, and the rest are all developers and builders; so I do not believe they have the diversity that is present on the Fire Board.
- **David Bailey, Virginia State Firefighters Association:** To clarify, Virginia State Firefighter is made up of primarily members of volunteer fire departments. Localities have the authority to set the fees, but the Fire Board does not. The fees may be levied by local governing body in order to defray the cost of such enforcement and appeals. Of those who opposed this bill and subcommittee of House General Laws, most were not in industries that were affected by the State Fire Marshal. They are in jurisdictions were the locality is in charge of these inspections.

- Fire programs board does not have that similar authority. In 2007, the Fire Marshal was moved to Fire Programs. Fees probably stayed with Housing and Community Development because that was all the General Assembly wanted to do that year. I am not certain it was an oversight, but a way to begin this process. I know of other entities that have moved where enforcement was handled, and the fees always went along with it.
  - The code states that the Fire Programs Fund shall not be used for salaries or operating expenses associated with the State Fire Marshal. By code, they should not use any fire programs fund to offset costs. I would contend that the Fire Programs Board and Department of Fire Programs, that has the responsibility of the State Fire Marshal, can ask with dispatch if those needs need to be adjusted.
  - I ask you to reflect on whether they are in jurisdictions where the State Fire Marshal is their concern. If they are concerned on what a specific jurisdiction is charge, then that is a local issue.
- **Delegate Marshall:** Of the 17% of localities are under the State Fire Marshal, how are they distributed throughout the state?
  - **Bailey:** I believe those jurisdictions are predominately in rural areas, and the fees in those areas are probably about half of those under local enforcement.
- **Rhodes:** 17% of population of state and 62% of landmass of state is under the State Fire Marshal. The Fire Marshal covers four of thirty-nine cities, sixty-one of ninety-five counties, and 116 of 190 towns.
- **Sean Farrell, Prince William County:** Has there been a problem setting or adjusting fees through the Board of Housing and Community Development to date?
  - **Bailey:** Yes, recently there has been some tension with timing regarding the budgeting cycle
- **Ed Rhodes:** The Board of Housing sets our fees on a three year cycle, and budget cycles are two years. We have large issues with that, and are unsure if fees are increased or decreased. In 2010, the Fire Service Board asked the Board of Housing to remove the State Fire Marshal fees from the fire code process. It is part of the Fire Code process now, which is not required by the Code of Virginia. In the section 2798 it is an enforcement, not regulatory, part of the code. If that were the case, then the local government fees would be part of the Fire Code. Fire Services Board asked the Board of Housing to remove the fees from the Fire Code, which is on a three year cycle, and put it on a budget cycle, so we could rely more on our own needs at that time. However, the Board of Housing decided against this, and we are still part of a three year cycle. Our fee increase or decrease is not projected until 2014, so we cannot include it in this budget cycle.

By law, we cannot make a profit, so we must continually review the fees we charge.

- **Lipscomb:** In 2007, firefighters came forward with a bill to move the control of the Fire Marshal from the Secretary of Commerce to the Secretary of Public Safety. The Secretary of Commerce would not oppose the move if only the Fire Marshal himself was moved, and no other legislation would be perused to move codes, development of codes, or fees under Governor Kaine. That is how this came to be.
- **Pharr:** How long has the Board of Housing and Community Development had authority over fees and what issues have arisen over the period?
  - **Rogers:** I can get the exact date, but I know that for every cycle from 2003, 2006, 2009, and 2012 we can provide chronological schedule of the fees proposed the Fire Marshal and which ones passed.
  - **Rhodes:** The Fire Marshal's Office became answerable to DHCD in 1978, but we were not authorized to collect fees until 1990.
- **Brian Gordon, AOPA:** I am serving as representative of a broad coalition of organizations that opposed SB 822 last year. Majority of these organizations are statewide and would be affected.
  - This has been presented as an oversight in previous legislation. The legislation in 2007, as originally drafted, did transfer the oversight of the fees as well as the promulgation of the statewide fire prevention code. Based on a deal cut, not just with the administration but also with stakeholder groups. It was agreed that that would not be transferred over.
  - The main concern is that if the administration of the fees is moved from DHCD to Fire Services Board that that body does not represent to stakeholders groups. The Fire Marshal's Office is represented on DHCD, which has worked with the fire services agencies.
- **Rogers:** This year the Fire Prevention Code Development Code was created by the Fire Services Board and Board of Housing consisting of three members from each board, which undertakes and listens to all Fire Prevention Code changes be it administrative, technical, or fees.
- **Gordon:** We do not believe proposed transfer of authority is necessary, and do not believe it is an impediment to the Fire Marshal's Office. We believe DHCD provides the backstop to investigating the fees and to determining that they are reasonable
  - The means do exist to amend the fees off cycle. Regarding the issue of a two year budget and three year development cycle, there is the ability to request that the fees be adjusted at any time.
  - We request if we are to further evaluate the issue that we look at how many times such a request has been put before the BHCD and the

frequency they have been adjusted. We believe that the existing structure is currently working.

- **Rhodes:** What makes you believe that it will be easier for the Fire Marshal to increase fees?
  - **Gordon:** By moving authority to the Fire Services Board, the stakeholders are not represented.
- **Rhodes:** Regarding the DHCD's requirements for the APA, we find they are actually except form going through Planning and Budget in their regulatory process. Fire services board is not.
- **Senator Watkins:** Understanding that DHCD has handled all requests, I would like an understanding the timeline of a request being submitted and time to getting it approved. The flaw present is that the Fire Marshal must live within a budget, which is controlled by that revenue stream provided from the inspections.
  - **Rodgers:** We will provide chronological list of past cycles and current cycle. We had Senator Norman got the fire codes exempted from part of the APA processes, so our agency and board are able to move forward our through the regulatory process much more prudently.
- **Delegate Bulova:** We have timing concerns and checks and balances concerns and a very specific previous piece of legislation. Encouraging the parties to think about how to change process to address concerns and create a compromise.
  - **Dawson:** Why so many volunteer firemen are interested in . Fire prevention and how a building is maintained is critical for firefighter safety. In those areas where volunteer fire service is present, the fire prevention officer is the State Fire Marshal. That is their vested interest in the issue.

#### IV. Public Comment:

- **Eddy Aliff, Virginia Assembly of Independent Baptists:** In 2006-2008, the Fire Marshal charged from \$900 to \$1200 on churches in rural areas, which are now exempt. We show concern as a statewide organization.
- **Senator Watkins** asked if those in the audience had any further thoughts or concerns.

#### V. Adjourn:

- Upon hearing no public comment, **Senator Watkins** adjourned the meeting at 11:19 AM.

# COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair  
DELEGATE DANIEL MARSHALL, III, Vice-chair  
ELIZABETH A. PALEN, Executive Director



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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Housing and Environmental Standards Work Group July 16, 2013, 1:30 PM Senate Room A, General Assembly Building**

#### **I. Welcome and Call to Order**

**Senator John Watkins, Chair,** called the meeting to order at 1:30 PM.

**Work Group members in attendance:** Senator John Watkins, *Chair*; Senator George Barker; Delegate David Bulova; Delegate Daniel Marshall; Delegate Barry Knight; Mark Flynn, *Governor Appointee/Virginia Municipal League*; Brian Buniva; Ron Clements, *Virginia Building & Code Officials Association*; Michael Congleton, *Fairfax County Planning Commission*; Tyler Craddock, *Manufactured & Modular Housing Association*; James R. Dawson, *Virginia Fire Prevention Association*; Chip Dicks, *Virginia Association of Realtors*; Sean P. Farrell, *Virginia Building & Code Officials Association*; John Hastings, *Virginia Housing Development Authority*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Ralston King, *Whitehead Consulting*; Art Lipscomb, *Virginia Professional Fire Fighters*; R. Schaefer Oglesby, *Virginia Association of Realtors*; Shaun Pharr, *Apartment and Office Building Association*; Ed Rhodes, *Virginia Fire Chiefs Association*; Emory Rodgers, *Department of Housing & Community Development*; Neal Rogers, *Virginia Housing Development Authority*; Michael L. Toalson, *Home Builders Association of Virginia*; Cal Whitehead, *Whitehead Consulting*; Jerry M. Wright, *Central Virginia Chapter-Community Association Institute*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### **II. General Survey**

- **Mark Flynn, Virginia Municipal League:** We sent a survey out to localities; and of the 14 good responses we received, there are roughly 200-240 residential buildings over 75 feet tall for mixed uses without generators. With these building that have generators, they operate elevators, emergency lights, and some other private systems. That is the general scope of the issue.

- **Sean Farrel:** The column “what the generators run,” what does the “five” next to some of the jurisdictions mean?
  - **Flynn:** I had some technical issues with Excel and meant that to be a footnote meaning “other systems.”
  - **Flynn:** Henrico notes one tall building for the purpose of this discussion. It has a generator and runs the elevators, emergency lighting, and other systems.
- **Emory Rodgers:** I believe Innsbrook has applied for some high buildings as well.
  - **Flynn:** This is a survey of what is present today, so that would not be in the survey.
- **Watkins:** What does the Building Code require now for residential buildings 75 feet and over?
  - **Emory Rodgers:** There is a standby power system requirement, which includes automatic fire detection equipment, power lighting elevators, and ventilation, and an emergency power system requirement, which includes emergency lights, automatic fire detection systems, emergency voice communication systems, and alarm systems.
- **Watkins:** Has there been any movement towards changing the code?
  - **Emory Rodgers:** There have been no code changes for this cycle.
- **Watkins:** I think as more people move to high rises, especially those of older ages, they will have additional needs.
- **Bernie Caton, City of Alexandria:** The health department is looking specifically at nursing homes.
- **Flynn:** From our survey, I extrapolate there are some 200-250 who do not have generators.
- **Caton:** New buildings and parts of the building under renovation do require generators; parts not under renovation do not.
- **Flynn:** Often the localities have certain priorities, and they are persuasive in their recommendations like this. Usually for Building Code issues, letters are sent to the Board of Housing and Community Development; and they adequately address the issues. It may be too late for this session, but I suggest sending a letter.
- **Caton:** We would be happy to do that, and expedite the process.

### III. **Uniform Statewide Building Code; County/Town Enforcement (HC 1574, R. Minchew, 2013) (SB 1239, M Herring, 2013)**

- **Emory Rodgers, Department of Housing and Community Development:** Localities elect to enforce Virginia Maintenance Code, and we may want to revise to make this clear



whether a county enforcing this code can enforce it in a town with a population of less than 3,500. We will be happy to work with parties to craft the legislation to create clarity.

- **Mike Toalson:** Could you take a minute to describe the Maintenance Code as opposed to the Construction Code?
  - **Rodgers:** The Virginia Construction and Rehabilitation Code were promulgated for new construction and for alternations to existing buildings. The Maintenance Code was promulgated to preserve the maintenance of safety systems and structure, but it was also made optional to each community. More rural jurisdictions tend to opt out.
  - **Sean Farrell:** These structures are to be maintained under the code to which they were started, and to not require retrofits.
- **John R. Roberts, Attorney, Loudoun County:** With respect to the optional provisions, our county adopted some of them to address localized problems. The town of Leesburg approached us and asked us to enforce the occupancy provisions. We then entered a memorandum of understanding (MOU). They later asked us to enter a MOU to enforce maintenance provisions, and since this legislation has been put forward we have been working to get a similar agreement.
  - I say this type of agreement is preferable. This tends to be a complaint driven process, referred to us through the town. We also have more resources to enforce those previsions. The town also determines when to bring legal action.
  - We think this works wonderfully, and we can add the maintenance provisions to the agreement we already have. I do not think the mandate is necessary.
- **Watkins:** Do you agree with Mr. Roger’s clarification changes?
  - **Roberts:** We understood this bill was driven by the issue with Leesburg. It may be helpful for smaller towns, but we think our agreement approach with Leesburg works well.
- **Watkins:** Leesburg has a population of 4,500 people. Do you enforce the building code, or does the county?
  - **Roberts:** New construction is all done by the county. We prefer to do it through an agreement, and not being forced to do it.
- **Ron Clements, Virginia Building and Code Officials, Chesterfield:** This states that a town with a population of 3,500 people or fewer may choose whether to adopt this legislation rather than the county, but a larger town has no option. But it also says that a municipality can enter into an agreement, which means a larger city has the option to choose an agreement.
- **Flynn:** It seems to me that we would be better served with one set of basic rules about which locality is responsible for enforcement. Clarity in the legislation would be helpful.

- **Jeanette Irby**, *Attorney, Town of Leesburg*: We are pleased with our previous agreement with Loudoun County, and asked the county to enter into another agreement regarding the provisions they adopted in the maintenance code. We do not feel comfortable prescribing those duties to our zoning department. Certainly MOU's can work, but we ask that you look into this legislation carefully, and adopt the legislation so that towns in similar situations do not have to rely on a written agreement.
- **Toalson**: In the agreement, would the town have a provision stating that they will reimburse the county the expenses?
  - **Irby**: I do not think that is appropriate, as the town residents pay the same tax, in addition to town taxes, as county residents.
- **Ron Clements**: I think the proposed legislation still needs some work. I think we should address the maintenance issue, as well as the issue of rental inspections.
- **Flynn**: Do you know number of towns that have their own building department?
  - **Irby**: Sixteen of 36 did not have a building department. Eight did not respond.
- **Farrell**: Virginia Construction Code requires a code official to act in unsafe conditions, whether or not the Maintenance Code has been adopted.

#### IV. Response/Timeline; State Fire Marshal Inspection Fees

- **Emory Rodgers**: During 2012, there was discussion of Fire Marshal fees. On June 3, the Fire Marshal submitted additional fee proposals. On August 22 and October 11, there will be a stakeholder meeting. On September 23, there is a public hearing. Our board for the Statewide Fire Prevention Code will also meet. December 16, the Board of Housing will make their decisions on proposed fees. It is a regulatory process we have used for some time.
  - The Fire Marshal's Office moved to the Department of Housing and Community Development in the 1970's, and then limited approval was given to give fees for inspecting hospitals and explosives. In 2004, the State Fire Marshal was given the authority by the General Assembly to implement fee programs that are approved by DHCD in our regulatory process.
- **Watkins**: I understand that the Fire Marshal had not requested changes for fees in a timely fashion, and that was part of the problem.
  - **Rodgers**: Yes, that is correct.
- **Watkins**: I am not sure we have to take any specific action. I think it would be helpful for an update when you have made some recommendations.
  - **Rodgers**: We will be able to update you what was approved and what was supported by stakeholders by October 28.

- **Watkins:** The Senate Joint Resolution passed in 2012 that requested a study be conducted by the Virginia Institute of Marine Sciences concerning recurrent flooding. I suggest you take a look at the study.
  - I have been contacted from some folks in Tidewater, VA. I do not want to debate the issue, but flooding is becoming more frequent. We need to look into this issue and come up with some best practice standards.

**V. Public Comment**

- **Watkins** asked for public comment.

**VI. Adjourn**

- Upon hearing no request for public comment, **Senator Watkins** adjourned the meeting at 2:34 PM.

# COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair  
DELEGATE DANIEL MARSHALL, III, Vice-chair  
ELIZABETH A. PALEN, Executive Director



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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Housing and Environmental Standards Work Group Wednesday, September 18, 2013, 2:00 PM Senate Room A, General Assembly Building**

#### **I. Welcome and Call to Order**

**Senator John Watkins, Chair,** called the meeting to order at 2:03 PM.

**Work Group members in attendance:** Senator John Watkins, *Chair*; Senator George Barker; Delegate David Bulova; Delegate Daniel Marshall; Delegate Barry Knight; Mark Flynn, *Governor Appointee/Virginia Municipal League*; Brian Buniva; Ron Clements, *Virginia Building & Code Officials Association*; Michael Congleton, *Fairfax County Planning Commission*; Tyler Craddock, *Manufactured & Modular Housing Association*; James R. Dawson, *Virginia Fire Prevention Association*; Chip Dicks, *Virginia Association of Realtors*; Sean P. Farrell, *Virginia Building & Code Officials Association*; John Hastings, *Virginia Housing Development Authority*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Ralston King, *Whitehead Consulting*; Art Lipscomb, *Virginia Professional Fire Fighters*; R. Schaefer Oglesby, *Virginia Association of Realtors*; Shaun Pharr, *Apartment and Office Building Association*; Ed Rhodes, *Virginia Fire Chiefs Association*; Emory Rodgers, *Department of Housing & Community Development*; Neal Rogers, *Virginia Housing Development Authority*; Michael L. Toalson, *Home Builders Association of Virginia*; Cal Whitehead, *Whitehead Consulting*; Jerry M. Wright, *Central Virginia Chapter-Community Association Institute*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### **II. Recurrent Flooding Study for Tidewater (SJR 76, 2012)**

- **Bob Bradshaw, President and CEO, Independent Insurance Agents:** I will give a brief overview of the 2012 Biggert-Waters Flood Insurance Reform Act. In 2010, 103.3 million or 39% of the national population lived in counties along the shoreline. These counties constitute 10% of the total land area. From 1970 to 2010, the population of these counties increased almost 40% and is projected to increase 10% by 2020.

- The National Flood Insurance Program (NFIP) is a program created by the Congress of the United States in 1968 through the National Flood Insurance Act of 1968. The Program enables property owners in participating communities to purchase insurance protection from the government against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. As of April 2010, the program insured about 5.5 million homes, the majority of which were in Texas and Florida. The NFIP was actuarially sound until Hurricane Katrina – a \$17 billion event. The NFIP collects around \$3 billion a year in premiums.
- 2012 Biggert-Waters Flood Insurance Reform Act (FIRM) eliminated short term reauthorizations, phased out subsidized rates, created changes in grandfathering, created non-primary dwelling changes, added installment payment options, and added requirements to escrow NFIP premium in all cases.
- The major provisions of this act included program extension, an increase in average annual limit on premium growth, and a phase-in of actuarial rates for certain properties.
- Eighty-one percent of insured are not affected because they already are actuarially rated (over 4 million properties). Five percent pre-FIRM non-primary residences, business properties, and those with severe repetitive loss will see 25% increases until the true risk premium is reached (over 252,000 properties).
- Ten percent of the pre-FIRM primary residences (over 578,000 policies) will retain their subsidies until sold to a new owner or if there is a policy lapse. Four percent (over 244,000 policies), which include multifamily or condos, will not see an immediate increase.
- Some primary provisions include actuarial rates for Certain Severe Repetitive Loss Properties, extension of premium rate subsidy on new policies or lapsed policies, considerations in determining chargeable premium rates, payment of premium in installments, use of private insurance to satisfy mandatory purchase requirement, penalties for lender non-compliance with mandatory purchase requirements, the escrow of flood insurance payments, availability of insurance for multi-family properties, clarity regarding coverage limits for residential and commercial properties, and participation in state disaster claims mitigation.
- The bill required many studies, including a Study on Business Interruption and Additional Living Expenses Coverage, Study of Participation and Affordability for certain policy holders, Study on Interagency Coordination, Study on Pre-FIRM Structures, Study on Contractors Unused by FEMA, Study on NFIP Determinations, Study on Privatization, Study on the Participation of Native Americans in the NFIP, Report on Financial Conditions of the NFIP.

- Insurers are required to be educated before selling this type of insurance.
- **Mike Toalson:** On a typical residence, what percentage of the premium gets subsidized today?
  - **Bradshaw:** Twenty percent of policies are subsidized. How much of that would be hard to say.
- **Toalson:** Are they updating maps that determine who is in flood zones?
  - **Bradshaw:** Flood mapping is improving greatly.
  - **Emory Rodgers:** Yes, they are improving maps, and there will be a greater number of properties that will deal with flooding issues.
- **Art Lipscomb:** How will these affect residents who live in condos where some residents are full time and others are not? How does that affect their policy?
  - **Bradshaw:** It depends on the independent insurance agency.
- **Sen. Watkins:** Could you list the types of property that would incur higher insurance rates?
  - **Bradshaw:** Non-primary residences, severe repetitive loss property, any property where flood losses have exceeded property value, any business property, and any property that has sustained substantial damage over 50% of market value or has improved over 30%. They will see skyrocketing premiums over the next four years.
- **Del. Knight:** Can a private insurer be competitive?
  - **Bradshaw:** It would be in the excess surplus lines market, which can have broader policies and is not regulated by the Bureau of Insurance
- **William Skrabak, Director, Office of Environmental Quality:** In Alexandria, we are very susceptible to tidal influences. Old Towne has been getting nuisance flooding for hundreds of years, and we have a pretty aggressive flood plain ordinance.
  - We are planning flood mitigation at the 10-year flooding event. If we targeted the 100-year event, the character of old town would change with the levee that protects from such an event.
  - We are looking at an elevated walkway. We will be flood proofing buildings and connecting alleyways. We will use sandbagging and other techniques, but we are also looking into new technology tackle flooding episodes.
  - One of our most recent loses was from a rain event, not tidal. With that, we have an aggressive stream and flood channel maintenance program. We go in and try to manage vegetation on the banks of the flood control channels. Costs going up on maintaining carrying capacity in these channels.

- We are prone to flash flooding events, and we have been working with our neighbors to encourage awareness. We have several flood flow gauges to monitor our streams in real time. We recently installed a warning system in one of our more susceptible areas.
- We do a lot of community education and outreach. We participate in the Community Rating System, and training for staff is a necessity. We have been successful partnering with our universities, and I encourage that.
- With this Community Rating System, we are currently at a scale of 7. That means that anyone buying flooding insurance in Alexandria will get a 35% discount off the top. We are one of the few that will be shifting to a 6, making it a 20% discount.
- Our main effort is not just to educate those in the flood plain, but those neighboring the floodplain. I think getting the resources to the local floodplain administrators, like grants and training, is vital.
- **George Homewood**, *AICP CFM Assistant Director of Planning, City of Norfolk*: The idea of recurrent flooding poses some interesting questions. The City of Norfolk is culturally important, commercially and economically important, strategically and militarily important (US and Atlantic Alliance/NATO), and is home to a quarter of a million Virginians.
  - Sea levels are rising; the cause is not relevant to discussion about adaption. Land is subsiding due to groundwater depletion combined with continued kinetic energy from historic asteroid impact that created the Chesapeake Bay. Storm frequency and intensity are increasing. The result is more places are getting wetter more often.
  - There are two components of recurrent flooding. The first is temporary flooding from storm events. This is managed primarily through floodplain regulation and building codes, it is familiar to local officials and the public in Virginia, and is tied to NFIP—height and extent are mapped on FIRM.
  - The second is permanent inundation, which is an unfamiliar new phenomenon in Virginia, and the extent will depend on amount of new sea level rise.
- **Homewood**: Norfolk has a long history of flooding from major storms. The 1933 Chesapeake-Potomac Hurricane and 1962 Ash Wednesday storms are the benchmarks. There have been four major flooding events in the past 10 years. Today, basic summer thunderstorms and lunar cycle spring tides can create serious flooding—“routine” flooding.
  - Over 44,000 parcels in Norfolk today are at risk of flooding, just under 25% of the land area of Norfolk.

- Repetitive loss properties have suffered more than one event that was covered by insurance or the payout was over \$1000, and have increased over four times since 2005.
- Assuming only 1.5 of relative sea level rise following the historic trend, approximately 5,500 parcels would be underwater entirely or in significant part. The assessed value of these parcels is \$3.37 billion. At 3 feet of sea level rise, nearly 20,000 parcels valued in excess of \$10 billion are inundated. Also inundated is 14-120 miles of roadways, 110-950 businesses employing 2,000-15,000 employees, 3,500-13,000 housing units with 10,000-36,000 residents, and 125-250 acres of public parkland and protected open space.
- Norfolk's approach to adaptation has three parts. The first, plan and prepare, includes Floodplain Development Standards requiring three feet of freeboard, U.S. Army Corps of Engineers Studies, Secure Commonwealth Panel, and Public/Private partnerships. The second, adapt, would include action with the Brambleton Avenue Improvement Project, Breach Nourishment and Dune Protection, and Potential Flood Barriers. The last, communication, would require use of web and mobile networks, community meetings, public media, and public notification.
- **Homewood:** Combination of tide gates and flood barriers together with substantial barriers together with substantial redesign of storm sewer systems is estimated to cost in excess of \$1 billion, and will protect about half of the at-risk parcels from inundation.
  - Adaptions to live with the water include raising roadways and improving drainage systems, improving construction techniques and building codes, and relocation critical facilities. For parcels we cannot protect, the process would consist of identifying where the water will be allowed to reclaim the land, developing strategies for graceful retreat to protect public safety and welfare, and establishing rough timelines based on water levels.
  - The time to begin thinking about this is now, now when the water is lapping at our doorsteps.
- **Homewood:** Governmental takings are well resolved constitutionally, by statute and in the courts. The Impacts of Acts of God, when one-time events, are generally settled with respect to legal ramifications. Sea level rise is slowly occurring—what are the Takings Doctrine implications for governmental entities trying to build in resilience while also protecting the public treasury? This is an important issue to work out now while not in a crisis situation. A legislative solution may be better than a judicial solution.
  - Another issue that a study commission may consider is that Flood Insurance through the NFIP is getting more expensive as we move toward Congressionally mandated full actuarial rates. Some private insurance providers are pulling out of flood-prone regions. Those continuing to cover casualty losses are raising premium rates and



increasing deductibles. This may lead to market-based realignments. Owners may be unable to repair damaged structures because of increased deductibles.

- **Sen. Barker:** Is the magnitude of the situation the same in jurisdictions with the same dynamics?
  - **Homewood:** There is a South Hampton Roads study, but I am no expert on it. I have seen the maps. Norfolk is heavily impacted as well as Poquoson and Portsmouth.
- **Toalson:** What percentage of your flooding is the result of rising seas and storm water events?
  - **Brian Pennington:** In the Hague area, 50% of the flooding causality is attributed to precipitation and the other 50% to tidal. In the city of Norfolk, the outflow pipes, which are submerged, create a syphoning affect pulling up the seawater and exacerbating the problem.
- **Del. Watkins:** Norfolk is so vitally located, particularly with the Department of Defense. Is there an evaluation of exactly how much water that can handle without adversely affecting national defense?
  - **Homewood:** That has been studied from many angles. The Core of Engineers is studying it, as well as the Navy. If you are talking about the access approaches, congestion and low elevation are both issues. It also depends greatly on the particular event.
  - **Pennington:** There has been a lot of analysis of all the property inside the gate to address the sea level issue. I do not have the exact details, but there has been a recent analysis by the Department of Defense where they highlight the Norfolk Naval Base as one of the top five military bases more susceptible to sea level rise.
- **Sen. Watkins:** It would be a huge deal for Virginia and our economy if these bases along with their ships and jobs left our state. We should take this seriously.

### III. **Uniform Statewide Building Code; County/Town Enforcement (HB 1574, R. Minchew, 2013) (SB 1239, M. Herring, 2013)**

- **Emory Rodgers, Department of Housing and Community Development:** We have a proposed draft legislation that brings clarity and puts the terminology up to date in how the Uniform Statewide Building Code (USBC) is structured.
  - Part I of our proposed legislation is the USBC Virginia Construction Code changes only for correlation purposes, and Part II is USBC Virginia Rehabilitation Code changes for correlations purposes. Part III is clarification and correlation changes that deals with towns with a population of less than 3,500 people within counties.
- **Erik Johnston:** For a town with a population under 3,500, you have to inspect elevators; the county would have to do that currently. But there are other portions of the

Maintenance Code where that is optional, like for sidewalks, drainage, and overcrowding. The concern is that this language would prevent a county from adopting the Maintenance Code if they only wanted to focus on, say overcrowding, in one portion of the county.

- **Rodgers:** If the town wanted to go beyond those maintenance procedures, I do not believe this discourages them. That also goes beyond our scope, which is clarity.
- **Mark Flynn, Virginia Municipal League:** Does the county have authority to adopt the Maintenance Code for part of the county as opposed to part of the county?
  - **Sean Farrell:** I believe Stafford County attempted to do that, and was unable to in previous sessions. The Maintenance Code can be adopted in part, but it must be adopted county wide.
  - **Rodgers:** The county can also elect to do it on a complaint basis or a proactive basis.
- **Sen. Barker:** In towns with more than 3,500 people, are there other situations, beyond that of elevator maintenance, where the town may opt not to adopt to code, and the county is forced to take responsibility?
  - **Rodgers:** County would only be responsible for unsafe tenants and elevators.
- **Sen. Watkins:** Mark Flynn, can you show us the differences in your draft?
- **Flynn:** I believe the law ought to reflect the reality of the Commonwealth, which is not true with the current code.
  - For Parts II and III, if a town does not have its own building department or have an agreement with the county, then the county becomes responsible. My general proposal for Part III is that if the county and town have both adopted Part III, the county would be responsible for enforcement after the two have come to a non-monetary agreement.
  - I do think there is an unresolved issue dealing with the elevator inspections.
- **Sen. Watkins:** Mr. Rodgers, I am assuming your draft was the recommendation of the sub-group?
  - **Rodgers:** Yes, that's correct.
- **Sen. Watkins:** I think it would be helpful to take a vote on the recommendation from the sub-group. Mr. Flynn, I think it would be helpful for you to underline the differences between your drafts.
- **Flynn:** I think the sub-group was focusing on the technical changes, and my draft has more of a policy change.
- **Sen. Watkins:** Do I hear a motion that we go forward with the recommendation from the subgroup?

- The motion was seconded and the motion passed.

#### IV. Statewide Fire Prevention code: Authority to Recover Costs (SB 822, 2013)

- **Emory Rodgers**, *Department of Housing and community Development*: I am reporting on the regulatory status of proposed State Fire Marshal fees for the operation of the State Fire Marshal's Office. There are many upcoming meetings to discuss these.
- **Sen. Watkins**: My understanding is that the fee structure process had become too slow, and that was why the authority was to move to the Fire Services Board.
  - **Rodgers**: In our regulatory process, fees have to go through a large process. Our codes are very regularly changed to bring them up to date, and I believe they are some of the best in the country.
- **Sen. Watkins**: I think the Fire Services Board would run up against the same regulatory structure.
- **Michael Toalson**: The private sector supports retaining it where it is, and those are the people who pay the fees.
- **Sen. Watkins** asked if there were a recommendation.
- There was none.

#### V. Public Comment

- **Sen. Watkins** asked if there were questions or comments from the public.
- **Bob Matthias**, *City of Virginia Beach*: Sea level rise is a major concern and I thank you for taking time to discuss this issue.
- **Randy Wheeler**, *City of Poquoson*: Especially on the tenth anniversary of Hurricane Isabelle, it is becoming apparent that flooding is a huge issue, and I believe that state legislation can be of great help in facing this issue.
- **Fred Brusso**, *City of Portsmouth*: I have been involved with flood plain management for a long time. There are a number of ways the state could help with this through regulations, as well as training. Thank you for your time.
- **Flynn**: In real estate conveyance world, if a house is in the flood plain now, what notice is there?
  - **Sen. Watkins**: It is all in the contract.

#### VI. Adjourn

- Upon hearing no further comment, **Sen. Watkins** adjourned the meeting at 4:09 PM.

# COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair  
DELEGATE DANIEL MARSHALL, III, Vice-chair  
ELIZABETH A. PALEN, Executive Director



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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Common Interest Communities Work Group House Room C, General Assembly Building June 20, 2013, 10:00 a.m.**

**Members present:** Delegate John A. Cosgrove, Delegate David Bulova, Delegate Barry Knight; Janice Burgess, *Virginia Housing Development Authority*; Heather Gillespie, *Common Interest Communities Ombudsman*; Trisha Henshaw, *Common Interest Communities Board*; Mike Inman, *Community Association Institute*; Ronald P. Kirby, *Virginia Association of Community Managers*; Michael Toalson, *Home Builders Association of Virginia*; Pia Trigiani, *Common Interest Communities Board*; and Jerry Wright, *Community Associations Institute*

**Staff:** Elizabeth Palen, *Director of Virginia Housing Commission*

**Delegate Cosgrove** called the meeting to order at 10:05.

Several speakers, each who represented various homeowner associations in the Northern Virginia area, spoke about their concerns regarding rules and regulation enforcement.

#### **Gorden Boezer of Westridge.**

Mr. Boezer gave a sketch of Westridge: It is composed of 15,000 units, including subsidized housing, single-family homes, and town homes, and it is supported by a neighborhood board. It also has a Board of Trustees, two standing committees, and two paid managers on staff. The facility includes four swimming pools, a lake, and four and one-half miles of roads (maintained by prince William County), tennis courts, and a club house. The services include security and safety features, such as hiring of off-duty police officers. There are some private roads, trash collection, rain water management, erosion control measures, and civic organizations such as Girl Scout and Brownie troops. It is estimated that 5,000 people live in the community that includes some private and some public spaces. The objective of the community is to protect, preserve, and enhance the property values of the area.

There are adverse consequences concerning sale/disclosure packets, they must be tracked; need simpler-to-understand packets and there is a need to simplify language in the packets.

\$1.6 million in homeowner dues are collected annually, and there is a need for efficiency in operation. Currently, it is subject to a patchwork collection system. If residents do not pay their fees in a timely manner, there are late fee charges, which are now a 5% penalty after 60 days. These don't cover association costs. There is a need to have dues and fees cost more than recovery, otherwise they need to spread cost to meet obligation.

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DELEGATE DAVID L. BULOVA  
DELEGATE ROSALYN R. DANCE  
DELEGATE BARRY D. KNIGHT

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T.K. SOMANATH

Costs are \$200 in quarterly dues for a single family, which varies by neighborhood, and condos pay for more services. Violations are investigated, and if a homeowner has a plan to pay for unpaid dues, the association will work with the homeowner to develop a plan to pay.

Additionally, there is a need for a governance overhaul. They currently have some bad governance documents. The goal is to work toward compliance and the organization cannot amend the by-laws without a 90% consensus of all homeowners in the association.

**Delegate Knight** asked whether the 90% was imposed by the original documents. Was it deliberately to make it difficult to change? Is there a way to make modifying the documents easier?

**Pia Trigiani** responded by replying that there is no legislative fix, the organizations are bound by their own documents. The Condominium Act narrowed the authority of associations.

**Gayle Whitlock, Board President of Lake Ridge.**

Lake Ridge has 4,000 acres and 12,000 acres of common ground. This is the 41st year it has been the second largest association in Virginia, and is the fourth largest in the nation.

It has five pools, tot lots, tennis courts, basketball courts, staffed recreation, 32 miles of private roads, 50 people on staff, and 73,000 members.

The organization needs tools that can be used for collection purposes.

Assessments are capped at 5% each year. There is a need for a special assessment but the current by-laws make that very difficult.

**Ron Kirby** asked what their documents require.

Ms. Whitlock replied that 75% of the residents have to agree to a change in order for a special assessment.

**Kathleen Snyder, Kingstown, president for 23 years.**

Kingstown is composed of 54,000 homes, 12,000 acres, 17,000 residents (size of Falls Church or Fairfax City), and 600 acres groomed and landscaped. There are 44 neighborhoods, five pools, and three community centers.

The Association performs municipal duties, including the plowing of 10 miles of roads and storm water management for 35 acres. The association has done a good job for 30 years; this is the sixth time they have conducted a five-year survey. People want the facilities maintained and the property values to go up.

Out of 34,000 units; there are 1,900 architectural violations and 14 cases left unresolved. The Association wants the ability to fine.

Ms. Snyder asked that the Legislature allow homeowner associations to adopt and enforce rules and penalties without the super majority necessary as currently stated in the by-laws.

It appears all the homeowner association documents in the region are documents created in the early 1980s and are boiler-plate documents. Each has the provision, that requires approximately 90% of the residents' votes to approve any change in bylaws and does not give the Board broad authority.

**Denise Harover, Manchester Oaks homeowner association.**

Ms. Harover reported on a court action that occurred last spring in circuit court, involving this community development corporation :*Shadowood (condo) changes to a particular owner) v Fairfax Redevelopment and Housing Authority*. The Circuit Court, reacting to the statute, said authority had to be directly stated and had to read OR as AND. Fairfax prevailed in the suit, and it is currently on appeal by the association.

In Shadowood's case, there was a question of due process and procedure and whether or not the association could impose changes akin to local government, and if it could have written standard procedures and notification of a violation through certified mail.

Currently in Shadowood, you can only impose a fine for common area infractions.

Loudoun Circuit Case Authority relied on an unpublished opinion whose only authority is precedential and was created in 1974. It was found that the Association exceeded the authority of its documents and that there were contravening documents. In the footnote, the court may have made a stronger recommendation.

In Manchester Oaks, they wish to collect assessments but are not debt collectors (cannot misrepresent debt); and they are looking to distinguish debt as not the same as collecting an authorized charge (fine) or suing to collect in Class Action suits.

**In Summary:**

All the organizations who spoke today want right to go to District Court instead of Circuit Court. They are willing to have voluntary compliance but would like an enabling statute to enforce the rule changes.

The organizations all had representatives who spoke about wishing that their association's rule enforcement could go through a due process change to mirror local level government. Each would like to be able to use the General District Court to sue for charges, but without express authority they cannot proceed in General District Court and now have to go to Circuit Court.

Collectively this group has expressed a need to amend their own documents; but without achieving the current majority of association homeowners and they ask for legislation to allow them to do so. They believe the common interest community needs the ability to fine.

The organizations are dealing with boiler-plate documents adopted in the early 1980s and need 90% of homeowners to give board broad authority. They expressed interest in having the legislature facilitate the ability to change the documents.

**Ron Kirby** commented that community management firms are affected. There needs to be a due process procedure to impose charges akin to acting as a local government. As long as there are written standard procedures and residents are notified of a violation by certified mail perhaps this should be allowed to be done.

**Bill Mar**, the Vice-Chair of Legislative Action Community Institutes, said there are more than 10,000 homeowner associations, and only one-half of them are registered with the state of Virginia. Also, there is no Condominium Act provision for merger.

Hearing no public comment **Delegate Cosgrove** adjourned the meeting at 11:40 AM.

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Affordability, Real Estate Law and Mortgages Workgroup May 16, 2013, 1:30 PM House Room C, General Assembly Building**

#### **I. Welcome and Call to Order/Introductions**

- **Delegate Danny Marshall, Chair** called the meeting to order at 1:30 PM.
  - In addition to the invited speakers the following Workgroup members were in attendance:
    - **Workgroup Members:** *Delegate Rosalyn Dance; Delegate Barry Knight; Senator Mamie Locke; and Senator George Barker; Mark Flynn, Governor Appointee; T.K. Somanath, Governor Appointee; Neal J. Barber, Community Futures; Steve Baugher, Virginia Association Mortgage Brokers; Paul Brennan, Virginia Housing Development Authority; Robert N. Bradshaw, Independent Insurance Agents of Virginia; J.G. Carter, SunTrust; Tyler Craddock, Manufactured & Modular Housing Association; Chip Dicks, Virginia Association of Realtors; Andrew M. Friedman, Virginia Beach Dept. Housing & Neighborhood Preservation; Kelly Harris-Braxton, Virginia First Cities; Shea Hollifield, Dept. of Housing and Community Development; Kelly King Horne, Homeward; Erik Johnston, Virginia Association of Counties; John H. Jordan, Manufactured Housing Communities of Virginia; Alexander Macaulay, CitiGroup; R. Schaefer Oglesby, Virginia Association of Realtors; Renee Pulliam, Virginia Apartment Management Association; Jay Speer, Poverty Law Center; Michael Toalson, Home Builders Association of Virginia; Michele Watson, Virginia Housing Development Authority; Cal Whitehead, Whitehead Consulting*
    - **Staff:** *Elizabeth Palen, Executive Director of VHC*

#### **II. Housing Trust Fund-update**

- **Bill Shelton, Department of Housing and Community Development:** *Piece of legislation, HB 2005, made changes to modify what was historically called the*

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Virginia Partnership Revolving Fund and is now the Virginia Housing Trust Fund. There were two fundamental changes to the legislation:

- The legislation picked up language from the previous year's budget bill and codified it through 2005. We have cleaned up other sections of the code because the old partnership revolving fund was referenced in many places. We picked up these citations and brought them forward into what is now the Virginia Housing Trust Fund.
- As the bill made it through the legislature, the budget language created confusion. In the old partnership fund, an appropriation would be deposited into an account at the Virginia Housing Development Authority, which would essentially function as the banker.
- Because it was an appropriation, the budget language said it would go Non-reverting fund at treasury. As it now gets pulled into the code, VHDA's role became confused.
- The amendments make clear that while we have a non-reverting fund at treasury, we still have the authority to work through the VHDA to serve as underwriter and to serve as legal counsel on closing the loans, servicing the loans, and enforcing provisions of the loan documents.
- It remains property of trust funds which still is a non-reverting account. We can redirect the return of funds into treasury as we desire. For administrative ease, we need VHDA to have some flexibility.
- At this year's session there was an additional million dollars, so the original seven million is now eight million. We created a plan as directed in original budget language. Having no comment on that, we hope to move forward with implementation. Funding becomes available as of July 1 of this year.
- We have already gone out with a series of workshops, and solicited our first round of application. A second round is scheduled in July to August, and a possible third in October. Interest was very high, with a large number of applications for both the loans and grants. We can get that to you shortly.
- We have partnered with VHDA for a foreclosure counseling component, which we will implement this in the upcoming fiscal year. We are also assisting with entities that will be purchasing foreclosed properties, performing modest renovations, and putting them back on the market.
- The final piece is the grants portion, which targeted at entities that are undertaking permanent support of housing for the homeless. All programs moving forward and on track.
  - **Delegate Marshall:** asked for questions. Hearing none, the meeting proceeded to the following part of the agenda.



### III. First-Time Home Buyer Savings Account

- **Chip Dicks**, *Virginia Association of Realtors*: We thought it was a good idea to create a first-time home buyers account problem. While performing research, we discovered that Montana has established such a program. We approached Delegate Tag Greason, and we massaged the Montana legislation and brought it into Virginia Code.
- During the legislative process, we worked with the Virginia Bankers Association and the Virginia Credit Union League, and others. Questions arose as to whether first time saving accounts would it create additional liability and responsibility on the providers of those account, the financial institutions. Mr. Mel Tull, *General Counsel to the Virginia Bankers Association*, and I made a significant effort to address issues of potential additional regulatory responsibilities.
- The legislation began with the Montana legislation allowing someone to make a deduction from income to put aside money into a first-time homebuyers saving account for a beneficiary. However, that would be significant on a financial impact basis for the Commonwealth, so we eliminated that feature of the bill.
- Instead of deducting that amount, it would be treated like a Roth IRA or some other tax preference account, which could accumulate tax-free. The revenue impact of the substitute projects that it is \$300,000 in 2014 and projects the negative fiscal impact going forward.
- The legislation would allow someone to open an account in their name, where the bank would remain unaware of the type of account opened. The tax department has agreed to create guideline that would allow that the account number based on the 1099 that the financial institution has given me, would be claimed as a first time home buyer tax preference under the legislation. All of the burden of making sure I file the proper tax form and claim the proper tax preference would fall onto the taxpayer.
- The legislation is long, but the changes are in the front portion of the bill. Changes to legislation can be found in the attached files (found under “materials.”)
- We see two situations where a first time home owner’s account may be opened: One where an account is opened when a child is born or young for the purpose of exempting the growth on the account from state to the point where it is used for the beneficiary.
- The second situation is where the beneficiary is nearing a point where they may buy a home, but they need down payment assistance. A parent or relative could put money into a first time home owners account and facilitate their purchase.
- We have added a disincentive to use the funds of the account for a non-eligible purchase, where the account holder must pay both a penalty and tax on the gains of the account.

- The legislation further described the interest on the income can be claimed as exempt, but no tax deduction will be awarded for making the contribution.
  - **Delegate Marshall:** In lines 19-21, can the first-time homeowner defined by a couple or by an individual.
- **Dicks:** This is addressed in line 22 in the definition of “qualified beneficiary,” which is described as someone who has neither owned a home individually or jointly.
  - **Delegate Marshall:** How long has this been a law in Montana, and has it been a success?
- **Dicks:** It is a quite recent law, so we do not have any history. We will report back with more information.
  - **Mark Flynn, Governor Appointee:** Is there any problem with the beneficiary also being the account holder?
- **Dicks:** No, there is no limitation on that, so you may set up an account for yourself.
  - **Flynn:** When setting up an account, does the beneficiary need to be immediately identified?
- **Dicks:** At the financial institution, an account would be opened under your name, and then on tax form, the beneficiary would be identified.
  - **Bob Bradshaw:** Even with the many type of investment funds, no similar type of savings account exists already?
- **Dicks:** I would create an account and hire a lawyer to create a marital trust or gift to minors trust; the account would still get the 1099 at the end of the year, but the trust document would denominate how to exempt that from taxation going forward.
- We began with a federal gift tax exclusion for purposed of being able to make a contribution, however that had a negative fiscal impact on the Commonwealth. The long-term value of these accounts is the amount of growth that can be accumulated over the long term.
  - **Bradshaw:** Say I open an account for my granddaughter, when she turns eighteen can she go and use the funds in the account as she pleases?
- **Dicks:** The account is under your name. When you die, however your disposes of your account, that would describe what happens to the account.
- You control when she gets the money because the account is under your name. If you set it up in her name or with some other trust document, then at eighteen she would control the account.
  - **Delegate Marshall:** In Montana, are the majority account bought for grandchildren or for individuals saving for down payment?
- **Dicks:** Because the legislation is so recent, I believe it is the latter situation, people trying to set up accounts to get benefits for accounts now. In the current economic environment, banks do not pay much interest on traditional accounts. To get growth on these accounts, funds are put into investment accounts like stocks and mutual funds.

- **Delegate Marshall:** Is the \$50,000 amount what Montana used or was this amount determined amount specifically for Virginia?
- **Dicks:** In the House Finance Committee, some concern were raised that over-funding could be put in the account to raise growth and committing fraud on the system. We named this amount as a cap that also allowed tax department to create model of the fiscal impact.
  - **Matt Bruning Virginia Bankers Association:** Going through the Taxes Fiscal Impact Statement on Montana, I believe it says there is a \$3,000 limit on an individual contribution per year over a period of 10 years, and \$6000 limit for a joint account. This corresponds to a \$30,000 and \$60,000 limit respectively over a ten year period, which is similar the cap amount in Virginia.
- The VBA certainly support the concept of the bill, and the current draft addresses concerns regarding the responsibilities of the financial institutions concerning the accounts. Language of the bill alleviates technical concerns, but some policy concerns are still present on the creation of such a program.
- While we understand the realtors’ desire for a minimal fiscal impact, we are concerned by the potential penalties when compared to the negligible tax benefits. The penalty for funds withdrawn non-home buying purchases is 5% of interest accumulated for such amounts on top of payments that the tax would have otherwise been paid out on such funds.
- While we appreciate lack of administrative burden on our part, our concern related to customer relations. When faced with unexpected penalties, we believe that they will they may come back to us or our regulators with complaints.
- Our members bare the reputational risk on a program that provides minimal benefit to the consumer. Even with no reporting burden on banks, at a minimum there would need to be some awareness training.
- This confusion factor juxtaposed against the minimal consumer benefit and possible regulatory concern regarding the penalty all make it difficult for us to support the legislation.
  - **Delegate Marshall:** Did you bring these concerns to finance committee and subcommittee last session?
- **Dicks:** We had a gentleman’s agreement that we would not fight issue in House Finance Committee. We had not quite revolved our concerns, but the legislative count was such that we had to move forward. It is fair to say we never had a full legislative debate.
- If the concern is the penalties, we could cap penalties at no greater than the amount of the interest.
  - **Alexander Macaulay:** On line 77-79, what qualifies as an “additional burden”? Is that in the opinion of the financial institution?

- **Bruning:** Yes, I believe that was the intent of the language.
  - **Macaulay:** Will the Bureau's Financial Institutions and the Department of Taxation do any regulations to flush this language out?
- **Bruning:** On line 84 describes how the Department of Taxation is to develop the guidelines. The Bureau for our state chartered institutions is to have regulatory oversight of state charter banks.
  - **Macaulay:** Will regulations specify the point regarding the bank making the decision of the administrative burden?
- **Bruning:** Line 87 has same general statement. When the Department of Taxation releases those guidelines, any guideline should not have any additional administrative or reporting burdens.
  - **Macaulay:** Those are the guidelines applicable to the account holders, not to the financial institution. I believed that is something to be further discussed.
- **Mel Tull:** The intent of the line was to make clear by legislation that there was no intent to put any additional burden on banks other than to maintain the ordinary accounts.
  - **Macaulay:** I suggest to strike words “to account holders” and just say “the guidelines to implement the provisions of this chapter” to not restrict which guidelines being discussed.
- **Bruning:** The reason we had specifically “to account holders” was that we did not want any assistance from Tax Department articulating what we can and cannot do. The burden, as drafted, falls on the user.
  - **Macaulay:** I believe it ought to be clearer that it is in the judgment of the financial institution whether there is a burden. Secondly, on line 32 says that “a first time homebuyer’s savings account may be established at a financial institution,” and then on line 77 is says “financial institutions that maintain first time homebuyer’s savings accounts.” Is it optional for the bank to open these accounts?
- It says that a first time homebuyer may be established at a financial institution by an account holder pursuing to this chapter, so does that give me the right to open the account? It does not say at an institution willing to open such an account
- **Tull:** It is theoretically possible that a bank not know you are setting an account up with this intent. That is a fair point. On the other hand, I do not think there is anything in the statute that would compel a bank to open these accounts.
  - **Macaulay:** Respectfully, I disagree. I believe the way this is written if I want to open an account, I can do so.
- **Dicks:** We could add language that does not require the bank to open such accounts.
  - **Macaulay:** I would defer to the opinion of Counsel of the Banker’s Association.

- **Delegate Marshall:** On line 32, what is a financial institution defined as? Is it a bank or stockbroker or credit union?
- **Tull:** Yes, it is a broader term than just bank and does include credit unions and other financial entities.
  - **Watson:** Was consideration given that intent of accountholder opening for a grandchild? At some point does the responsibility transfer from the account holder to the beneficiary to use the funds for appropriate means? Or does the penalty always lie with the account holder?
- **Dicks:** It would be the account holder's responsibility with this legislation. If the account is placed in the name of the grandchild, then they need to address that with some trust document. If the account holder keeps the account in their name, then regardless of the child's age, the account goes in accordance to their will.
  - **Mark Haskins, Virginia Department of Taxation:** Firstly, the Department of Taxation does not take positions on legislation. We offer technical assistance. The original bill treated this more like a 529 plan. Virginia gives a deduction for the amount of money contributed into a 529 plan, which is capped at up to \$5,000 annually. That created a huge fiscal impact.
- This is a state only benefit; and there is no state deduction for the contributed, but a deduction for the amount of interest earned on the account. I do not believe the penalty will be an issue, as it is limited to 5% of the benefits.
- The Department has some concern dealing with the enforcement once the banking community is relieved of any identification for these accounts. , We will end up with a tax return where someone takes a deduction for an amount of interest on an account that looks just like the other savings accounts. It is not marked "First Time Homebuyer Savings Account."
- We will likely require some information from the people claiming these deductions, and will build some sort of database to compare information they submit one year to the next to determine if the funds are used permissible reasons.
- It is a voluntary tax system, but we have fiduciary obligation to enforce the law.
- The fiscal impact assessment is our best estimate is based on current interest rates and information from realtors. Generally, the amount of tax we lose is in proportion to the amount of benefits that someone gets. This specific legislation has minimal impact on the Commonwealth's General Fund budget, which it also means it has minimal benefit.
- However, it does provide a benefit to the extent that if Commission believes this is a good policy going forward, then we will be there to implement it.
  - **Marshall:** What happens if a beneficiary is out of state?
- **Haskins:** The fund of the account must be for a home bought in Virginia. We would need proof that home purchased is in the Commonwealth.

- **Macaulay:** What if its marketable security is \$50,000, and the penalty was substantial?
- **Haskins:** Department of Taxation will be imposing the penalty, and we usually get the first complaints.
- **Dicks:** It seems that there are a few takeaways. One is further work on the penalty provision. Another would be with respect to Tax Department guidelines, where the account holder would provide copy of deed and settlement statement. Lastly, is to discuss whether a bank is required to offer this.

#### IV. Introduction Service Members Civil Relief Act and VRLTA

- **Dicks:** The Service Member Civil Relief Act is a relatively new law the war in Iraq that enhances the Soldiers' and Sailors' Relief Act from post-World War II to gives service members extra rights. The concept is that service members are often in remote locations and are not effectively able to deal with their financial obligations.
- Within the SMCRA are provisions that deal with residential landlord tenant issues. These provisions allow a service member to terminate an existing lease, if they give at least thirty days notice prior to the next rent due date.
- Under the Virginia Residential Tenant Act is a provision that states that their provision for lease termination is limited to permanent change of duty station more than a thirty-five mile radius from the residence or temporary duty longer than 90 days and more than thirty-five miles, or someone is discharged from active service or from the National Guard, or ordered to report to on-base housing and they will lose their basic housing allowance.
- We reconciled the other provisions about notices a few years ago, but a conflict remains. The JAG officers say and what the housing officers say that the SMCRA trumps all VRLTA provision. However, most residential landlords in Virginia follow the VRLTA and follow the thirty-five mile radius in terms of notices and such.
- I suggest bringing together JAG officers, representatives of multi-family housing industry, and member of poverty law center to build consensus of whether the VRLTA provisions need to be modified.
  - **Delegate Marshall:** Would the service members include both current and retired members?
- **Dicks:** The SMCRA only applies to current active duty service members.
  - **Bradshaw:** Has the VAR invited the service department to discuss these issues?
- **Dicks:** VAR has had some preliminary discussion. The government service departments do not always communicate and have different perspectives. We thought a legislative forum would be an appropriate way to get all the branches together to have a discussion, as we have not yet been able to do so.

**V. Public Comment:**

- **Delegate Marshall** asked if those in the audience had any further thoughts or concerns.

**VI. Adjourn:**

- Upon hearing no public comment, **Delegate Marshall** adjourned the meeting at 2:40 PM.

# COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair  
DELEGATE DANIEL MARSHALL, III, Vice-chair  
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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Affordability, Real Estate Law, and Mortgages Work Group July 16, 2013, 10:00 AM House Room D, General Assembly Building**

#### **I. Call to Order - Affordability, Real Estate Law, and Mortgages Work Group**

**Delegate Danny Marshall, Chair**, called the meeting to order at 10:07 AM.

**Work Group members in attendance:** Delegate Rosalyn Dance; Delegate Barry Knight; Senator Mamie Locke; Senator George Barker; Mark Flynn, *Governor Appointee/Virginia Municipal League*; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Steve Baugher, *Virginia Association Mortgage Brokers*; Paul Brennan, *Virginia Housing Development Authority*; Robert N. Bradshaw, *Independent Insurance Agents of Virginia*; J.G. Carter, *SunTrust*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Andrew M. Friedman, *Virginia Beach Dept. Housing & Neighborhood Preservation*; Kelly Harris-Braxton, *Virginia First Cities*; Shea Hollifield, *Dept. of Housing and Community Development*; Kelly King Horne, *Homeward*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Alexander Macaulay, *CitiGroup*; R. Schaefer Oglesby, *Virginia Association of Realtors*; Renee Pulliam, *Virginia Apartment Management Association*; Michael Toalson, *Home Builders Association of Virginia*; William Walton, *Real Property, Inc.*; Michele Watson, *Virginia Housing Development Authority*; Cal Whitehead, *Whitehead Consulting*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### **II. Discussion: Source of Income; Relating to the Virginia Fair Housing Law (SB 1224, M. Locke, 2013)**

- **Senator Mamie Locke:** Senate Bill 1224 was drawn under Virginia Fair Housing Law and it would add lawful source of income to the list of unlawful discriminatory housing practices. I think this issue needs broad and balanced views for the workgroup to draw some conclusions.
- **Lizbeth Hayes, Virginia Fair Housing Office, DPOR:** Our agency does not maintain any statistics on complaints on source of income. A large number of our complaints are referred from the Department of Housing and Urban Development, where they have already completed a thorough intake process. We track complaints based on Covered



Protected Classes that may also include an allegation involving source of income if it was filed with our agency.

- Typically, these complaints will be processed on disability because the client is alleging some unfair treatment. Occasionally, we receive complaints based on retirement income, where it is generally processed based on elderliness because it is a covered class under state law.
- There are 13 states already that include source of income as a protected class, but we do not have any jurisdictions in our state that do.
- Generally, findings will be mixed between no cause, reasonable cause, and resolved by mediation or reconciliation.
- **Christie Marra, Virginia Poverty Law Center:** This proposed bill would impact a large range of people. A number of those individuals are already protected under the Virginia Fair Housing Law, either under the portion on disability or discrimination based on elderliness.
  - One of the major changes would include protection for people who receive rental subsidies. For the most part, that will mean a Housing Choice voucher, which were designed to deconcentrate poverty by providing people receiving vouchers more mobility. In order to qualify, you are vetting through an application process, to ensure you pass certain check, like a criminal background check. However, waiting lists for these vouchers can extremely long and close for many years.
  - The use of these vouchers is very concentrated. The main reason for the creation of this program is to give financially stressed people a subsidy that is not tied to a particular unit or conventional public housing. It gives more mobility.
  - Many landlords in low poverty, high opportunity areas do not accept renters with these vouchers, so people with the vouchers are often forced to remain in high poverty areas.
  - Living in poverty has negative impacts like youth crime, poor health outcomes, and limited access to employment.
- **Marra:** This bill will prohibit landlords from refusing to rent to someone based solely on their source of funds by adding protections based on source of funds to the Virginia Fair Housing law. Source of funds includes child support, wages, social security, public assistance and housing subsidies. One exception is if the tenancy is not approved by the Housing Authority within 10 days of the landlord's approval of the tenant, the landlord is not obligated to rent the unit to that tenant.
  - Landlords will continue to have the right to do the following checks on prospective tenants: credit check, criminal records check, and references from prior landlords. SB 1224 does NOT prohibit landlords from refusing to rent based on poor credit, bad references or criminal records.
  - The tenant applies for voucher at local housing authority. If approved, housing authority issues 60 day search voucher. The tenant will find a landlord willing to accept voucher and tenant, providing the tenant passes all checks. The landlord will send the housing authority request for approval of tenancy. This is where there may

be a delay as this approval is based on the landlord's property passing the Housing Quality Standards (HQS), to ensure the unit is safe and habitable. Then the housing authority will approve tenancy, and the landlord and housing authority will sign the Housing Assistance Payment contract. The landlord and tenant will sign lease, and the tenant will pay the security deposit. The tenant will pay a portion of rent (30% of income), and the housing authority pays balance directly to landlord.

- **Marshall:** How does an individual apply for the Housing Voucher Program?
  - **Marra:** Each locality will have a different organization to provide these vouchers. Most of the time, you have to put your name on a waiting list. Once your name comes up on the list, you fill out an application. In most places they are limiting vouchers to those that fall under the very low income, which is 30% of median income or less. There are other checks to go through as well
- **Marshall:** Do you list the number of dependents on the application?
  - **Marra:** I believe they mainly look at income, but the number of dependents that you have determines the size of the unit for which you qualify, which in term determines the amount of your subsidy.
- **Senator George Barker:** What is the rationale for requiring someone to approve tenancy? If the individual has a voucher and somewhere they wish to live, why would the housing authority not approve the unit, and allow them to live there?
  - **Marra:** That is a federal requirement. My understanding of the rationale is that the federal government wants to ensure it is safe.
- **Renee Pulliam:** You stated that there is an exception if the housing authority does not approve the tenancy within 10 days. In the draft language, I see the exception stated at 14 days. Which is correct?
  - **Marra:** I apologize. I forgot the number was 14, as we had discussed 10 days as an alternative.
- **Marra:** HQS requires: operational bathrooms; place to prepare, store and serve food; space and security must be adequate for family; heat; if unit has AC it must work; adequate light and working electrical outlets; structure and materials must be sound; interior air free of hazardous pollutants; water supply free of contamination; compliance with federal law on lead-based paint; access to unit; safe and sanitary site and conditions; working smoke detectors on each floor. All of these are very reasonable.
  - Over 43,000 households in Virginia receive tenant-based vouchers, with 20% going to elderly people, and with 42% going to disabled people, and with 50% going to households that include at least one minor child. 75% of the non-elderly, non-disabled people receiving vouchers are employed.
- **Marshall:** Can you e-mail those statistics to the group? Have it broken down by locality?
  - **Marra:** I believe I can get that information for you. Connecticut, Maine, Massachusetts, New Jersey, North Dakota, Oklahoma, Oregon (to become effective July 2014), Vermont, counties in Maryland (Frederick, Howard, Montgomery, Prince Georges) and Memphis Tennessee already have Source of Funds laws.

- **Pulliam:** You mentioned the closed and long waiting list. What are the reasons for these waitlists being closed? Is it due to lack of funds from HUD?
  - **Marra:** That is correct. There are not enough vouchers being provided or enough funds. There are some localities that have local rental subsidies. Some states have state rental subsidies that provide additional support.
- **Pulliam:** Is there currently a limit on how long a person can have a voucher if it is meant to be temporary?
  - **Marra:** There is currently no limit, but there is discussion on limiting it to five years.
- **Brian Koziol, *Housing Opportunities Made Equal*:** I will show the geographic distribution of housing vouchers across the state, and in some major urban areas. The highest percent of households with vouchers live in census tracts with 7%-15% poverty.
- **Barker:** I assume those households in areas with less than 7% poverty mainly single-family households. These households' rental prices would be above what the maximum would be under the HCV system.
  - **Koziol:** Yes, there are some market barriers.
- **Koziol:** There is a concentration of Housing Choice Vouchers in the urban Richmond area, mainly in higher poverty census tracts. We see the same trend with the overall percentage of households, but there is a spike in HCS in census tracts with poverty between 25%-50%.
- **Barker:** Does the property owned by Richmond Redevelopment and Housing Authority (RRHA) affect the distribution of vouchers in the city of Richmond, or are those HCV being given to non-RRHA properties.
  - **Koziol:** Mainly, they are given to non-RRHA owned properties.
- **Koziol:** In Hampton Roads, we see the same general distribution, with HCV's in the highest poverty census tracts. We again see the same trend with overall percentage of households, and an overrepresentation of HCV's in all areas with poverty rates 7% and higher.
  - In Northern Virginia, it is less obvious, but there are definite concentrations of HCV's in certain areas. Northern Virginia is relatively better off, and poverty is rather evenly distributed. We see 74% of households live in census tracts of less than 7% poverty, but we still see overrepresentation of HCV's within neighborhoods of greater than 7% poverty.
- **Mark Flynn, *Governor Appointee/Virginia Municipal League*:** Of the distribution in Northern Virginia, there are three main blocks of high concentrations of HCV's. What are those areas?
  - **Barker:** One of those is Bailey's Crossroads. Another is in the Seven Corners area, and another is in the Annandale area. These all have large garden apartments with modest rents and are in older areas.

- **Flynn:** Are any of those in Alexandria?
  - **Barker:** No, all of those are in Fairfax County.
- **Chip Dicks, Virginia Association of Realtors:** On behalf of the Real Property Organizations of Virginia, I will explain my concerns about this legislation. Virginians are protective of the private property rights of its citizens. The effects of this legislation would be to mandate that every residential property owner in Virginia accept a certain statutory “lawful sources of income.”
  - This legislation would trump other laws and require those landlords to accept these sources of income as defined by the statute, regardless of whether those landlords wanted to use different financial criteria.
  - The legislation would provide that residential property owners’ failure to use these regulations correction would be a fair housing violation under Virginia Law. Penalties for a fair housing violation may include compensatory damages, punitive damages, up to \$50,000 civil penalty at the first violation, up to \$100,000 at the second, and any prevailing attorneys fees and costs. The consequences of being accused of a fair housing violation are significant.
  - The Real estate Board or the Fair Housing Board sets an administrative hearing on the complaints. If “reasonable cause” is determined, then the Attorney General is required to bring legal action against the named fair housing respondents, which can take a variety of forms.
  - What is a lawful source of income? Every professional real estate company supports the principles of the Fair Housing Law. The issue is whether the legislation as proposed and the policy behind it, and whether to expand the Fair Housing Law to include source of income as a protected class.
- **Dicks:** The categories of “sources of income” listed in the legislation include public assistance; gross income; Supplemental Security Income (SSI); child support; and any Federal, State or Local Housing Assistance.
  - Including child support as a “source of income” raises a question of whether a landlord can determine the reliability of the mandated “sources of income” without committing a fair housing violation. Is a landlord mandated to include back child support from a “deadbeat father” that is unlikely ever to be collected? With protected classes, the landlord cannot inquire to someone’s protected class status. What limits are there for a Realtor or landlord to ask about say child support or alimony?
  - The primary tenant based housing assistance is HUD Section 8 Housing Choice Vouchers. The federal laws and regulations are substantial, and the federal law trumps the state landlord tenant laws. Every property owner, property manager, and realtor would then be require to have a good working knowledge and property administer the HUD Section 8 program, or suffer a fair housing violation.
  - In addition, the realtor and/or property manager would likely be liable to their owner-clients for negligence and breach of the property management contracts for failure to properly administer the HUD Section 8 programs.

- I would be happy to answer any question the commission may have.
- **Barker:** Would your perspective be affected if the proposal were limited to things that are not temporary in terms of income?
  - **Dicks:** Our perspective is that those issues should be left to the landlord that is renting the property, to develop tenant selection criteria that includes financial criteria for those particular properties. It is important that the landlord retains the right because the landlord pays the mortgage. The Federal Fair Housing Law does not include source of income as a protected class. Eliminating the temporary types of public assistance would improve our perspective, but we oppose the legislation from a policy perspective.
- **Andrew Chisolm, *Multi-family Management, Drucker and Falk:*** Our company is an advocate for affordable housing, and manages in a large range of communities across the state. As a third party company, we would like to advise more of our owners to participate in the affordable housing program; however, the management of those programs has prevented many of those owners from becoming involved.
  - We are in the business of renting apartments, and would like to consider all reliable income to include social security, retirement, and disability. We want to rent to everyone who qualifies. If the HCV program works as described, then there may not be a program. However, the reality is the program with the Housing Authority is often broken.
  - The time between a tenant approaching a landlord and the move-in date in a unit can range between six to nine weeks. This whole time the apartment is off the market, which is not fair to the landlord or the resident.
  - During the voucher renewal process, there is another inspection. If there is a resident-caused issue, the onus and financial burden is on the landlord to have that issue resolved. In the meantime, payment from the voucher will be withheld until it is resolved.
- **Marshall:** Who is doing that inspection?
  - **Chisolm:** Our RHA.
- **Marshall:** Do they use a third party?
  - **Chisolm:** They perform the inspection themselves.
- **Chisolm:** There is also an issue with termination. Currently, with most conventional housing, if you want to terminate a lease at the end of the term, you can non-renew without cause. With this program, you cannot; you need a very good case to not renew.
  - This takes more than a property manager to administer these programs. It takes a property administrator for each property, depending on its size and number of vouchers, to avoid lawsuits. This is additional staff and additional financial burden to the property, which drives disrepair and may run the risk of blight in rare cases.
  - The administrative process is our largest concern. The vacancy cost during the application and inspection process is an issue.

- **Michele Watson:** You spoke of the inspection process. If there is a violation during re-inspection; the rent is abated until it is resolved. Do you have any experience with how long it takes for the inspector to “back out” after you have resolved the issue?
  - **Chisolm:** It can take two to three weeks. Over the years our RHA’s staffing has decreased, so I am sure that contributed to the problem.
- **Watson:** The tenant is occupying the unit throughout this process?
  - **Chisolm:** Correct.
- **Watson:** Is the tenant obligated to pay their portion during this process?
  - **Chisolm:** Yes, they are.
- **Lizbeth Hayes:** Could you elaborate on how funds are received at the property on a regular monthly basis?
  - **Chisolm:** Typically there is a large check written to the property with a stub that outlines how. That is also an administrative problem because often the checks do not match up to what the rent is supposed to be. There is an audit process along with the Housing Authority, which can be quite burdensome.
- **Hayes:** I would comment for the group that similar processes are in place at other Housing Authorities across the state. They are not consistent across the board. Overall, the federal law and regulations are to be administered the same, and that is challenging at the state level.
  - **Chisolm:** We are very much in favor of affordable housing and like the theory of the voucher program. However, the way it is currently working is not cost effective, and does not make good business sense for both the landlord and tenant.
- **Mike Toalson, Home Builders Association of Virginia (HBAV):** Often HBAV members have investments in the types of properties targeted by this program. Just to break even on those projects, they need to have the units 90% filled. To make a profit, the units need to be at least 95-97% occupancy. So why would they not be willing to accept these Section 8 vouchers? I believe this is because of the problems Mr. Dicks and Mr. Chisolm outlined.
  - I suggest to the workgroup and the advocates of this bill that perhaps they are in the wrong venue. We are all advocates of affordable housing, but we believe this is just a government mandate. We believe the correct venue is at the foot of the Housing Authorities that are administering the program that create the delays Mr. Chisolm mentioned. We should urge HUD to make their program more efficient for the Housing Authorities.
  - This would make landlords and property owners much more willing to accept these vouchers.
- **Ali Faruk, Housing Opportunities Made Equal:** We have some clients who were unable to make it. We videotaped their testimony and will play it for you now.

- The video detailed various Virginians and their difficulties and disappointments associated with their experience with the voucher program, including the long waiting periods and the landlords' unwillingness to accept tenants with the vouchers.
- **Kelly Harris -Braxton:** Is there statewide data on the turn-over rates of those 43,000 vouchers?
  - **Marra:** I can look into that.
- **Braxton:** On Mr. Koziol's slides, it looked like when you compare those households in low poverty census tracts, the metropolitan area in Northern Virginia had a much better dispersal rate because there was less overall concentration of poverty. Richmond was the starkest example that we saw, and Hampton Roads was a bit better. Does anyone understand why that is? Is it practices of the Housing Authority or the culture?
  - **Koziol:** There are many factors at play, and it is almost impossible to narrow it down to a few. Richmond's RHA is notoriously bad with handling the voucher program. Newport News had a bit more of an integrated housing pattern, and there seems to be more jurisdictional cooperation
- **Flynn:** Are the landlords concerned with where the rent money is coming from?
  - **Dicks:** The landlord community feels like this should be a business decision for the property manager. The acceptance of Section 8 affects a property's appraisal and subjects the property to a control agreement for restricted rents for a time. There are many variables and some banks and investors that will lend for non-Section 8 projects. Likewise, local governments regulate from a zoning standpoint and can create a zoning restriction that requires no Section 8 properties. This is a very complex issue, and the landlord concerns are in a number of areas.
- **Flynn:** The issue is: will the administrative burden and possible Fair Housing Law violations, correct?
  - **Dicks:** Yes, but the Housing Authorities have not been able to recruit private landlords to do deficiencies with the program because lenders will not fund housing communities with the Section 8 program.
- **Flynn:** There is no way to fix the risks associated with Section 8, correct?
  - **Dicks:** Yes.
- **Locke:** I put this forward to the Commission for discussion today. We need to see the consumers because they are the face of this issue. This is an issue that will not go away.
- **Marshall:** Do you want to create a sub-group to work through this?
  - **Locke:** Yes.
- **Marshall:** Then I ask you to put it together.

### III. Public Comment

- **Delegate Marshall** asked for comment from the public.

### IV. Adjourn

- Upon hearing no request for public comment, **Delegate Marshall** adjourned the meeting at 11:30 AM.



# COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair  
DELEGATE DANIEL MARSHALL, III, Vice-chair  
ELIZABETH A. PALEN, Executive Director



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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Joint Meeting of the Affordability, Real Estate Law, and Mortgages Work Group and the Neighborhood Transitions and Residential Land Use Work Group**

**Thursday, September 12, 2013, 10:00 AM  
House Room C, General Assembly Building**

#### **I. Call to Order - Affordability, Real Estate Law, and Mortgages Work Group**

**Delegate Danny Marshall, Chair**, called the meeting to order at 10:07 AM.

**Work Group members in attendance:** Delegate Rosalyn Dance; Delegate Barry Knight; Senator Mamie Locke; Senator George Barker; Mark Flynn, *Governor Appointee/Virginia Municipal League*; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Steve Baugher, *Virginia Association of Mortgage Brokers*; Paul Brennan, *Virginia Housing Development Authority*; Robert N. Bradshaw, *Independent Insurance Agents of Virginia*; J.G. Carter, *SunTrust*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Andrew M. Friedman, *Virginia Beach Dept. of Housing & Neighborhood Preservation*; Kelly Harris-Braxton, *Virginia First Cities*; Shea Hollifield, *Dept. of Housing and Community Development*; Kelly King Horne, *Homeward*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Alexander Macaulay, *CitiGroup*; R. Schaefer Oglesby, *Virginia Association of Realtors*; Renee Pulliam, *Virginia Apartment Management Association*; Jay Speer, *Poverty Law Center*; Michael Toalson, *Home Builders Association of Virginia*; William Walton, *Real Property, Inc.*; Michele Watson, *Virginia Housing Development Authority*; Cal Whitehead, *Whitehead Consulting*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### **II. Service Members Civil Relief Act (SCRA) and the VRLTA**

- **Chip Dicks, Virginia Association of Realtors:** The issue is whether the federal law trumps the state law in several respects.
  - Post Iraq war, the federal government adopted the Service Members Civil Relief Act, and I will describe the applicable provisions that interface with the Virginia Residential Landlord Tenant Act. Firstly, under the SCRA a landlord or any other party can ask a service member to waive their rights under the SCRA.

- **Del. Marshall:** Why would someone want to waive his rights?
  - **Dicks:** A member would waive to incentivize a landlord to permit them as a tenant. The tenant has the right to terminate their lease at their option at least 30 days prior to the next rent due date. These are the only provisions for termination under the SCRA.
    - The corresponding provision in the VRLTA predates that in the SCRA. The conflicting provision states that a service member may terminate a lease “if the member has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit.” [§ 55-248.21:1] This is inconsistent with the federal law.
    - Generally federal law trumps state law, but federal law only trumps state law when state law is inconsistent with federal law. Federal law does not say you cannot have a radius in state law. The issue is whether the SCRA trumps the state law on the 35-mile radius.

### III. Real Local Property Tax in Certain Service Districts (HB 2131, Delegate M. Keam, 2013)

- **Delegate Mark Keam:** I introduced HB 2131 in an effort to deal with a local issue in Tysons Corner. The bill was designed to provide Fairfax County Board of Supervisors latitude to redefine and [needs a verb here] what rate property tax depending on the purpose. It was drafted this way because the Fairfax County Board of Supervisors adopted a regulation to impose a new tax to provide transportation and other infrastructure in Tysons Corner.
  - This district includes both residential and commercial property, and the board assessed the tax equally. For residents, especially those retired and on a fixed income, an extra 7-9% tax is burdensome and unfair. This bill would provide flexibility to the county to determine which properties to be taxed and different rates, offering financial relief to residents.
- **Andrew Friedman:** In Virginia Beach, we have a property tax exemption program that is income or asset based for elderly and disabled homeowners. Have you considered that as a simpler alternative?
  - **Claudia Arco, Fairfax County:** The Board does have that property tax exemption for the elderly and disables. The concern is for residents who do not qualify for that tax exemption.
- **Sen. George Barker:** What is the Board position in relation to this bill?
  - **Arco:** Yes, the Fairfax County Board of Supervisors supports this bill as introduced.
- **Sen. Barker:** Is the value of the condominiums in this area likely to appreciate?
  - **Arco:** Yes, property values will increase with the transportation development.
- **Sean Farr:** For a homeowner such as described, would they be likely to seek a reverse mortgage and thus realize the appreciation of their property value?
  - **Arco:** I am not an expert on that issue.

- **Mike Toalson:** The tax has been imposed. Was their substantial opposition?
  - **Arco:** There were many concerned residents with the establishment of the district. To address the concerns, the Board did manage to create a lower tax rate than was originally planned.
- **Philip Abraham, Virginia Association of Commercial Real Estate:** Mr. Chairman and Members of the Housing Commission, I am Philip Abraham, appearing before you today on behalf of the Virginia Association for Commercial Real Estate (VACRE). VACRE represents the Northern Virginia, Hampton Roads, and Richmond area commercial and industrial developers who have teamed with other professionals from Virginia's urban crescent to serve as the voice of the commercial and industrial development community in Virginia. NAIOP Northern Virginia, the Hampton Roads Association for Commercial Real Estate (HRACRE), and the Greater Richmond Association for Commercial Real Estate (GRACRE) comprise the three member chapters of VACRE. There are about 800 member companies and more than 2000 individuals in VACRE's three chapters.
  - VACRE strongly opposed HB 2131 as introduced during the 2013 Session, which would have applied throughout Fairfax County, as well as the substitute bill that was presented by Delegate Kean to a Subcommittee of House Counties, Cities and Towns, which would only apply in Tysons Corner. We continue to strongly oppose this special legislation today.
  - VACRE's opposes this legislation because it would establish a harmful precedent within Virginia's tax law by allowing a locality to impose a significant real estate tax increase on the business community, without the consent of a majority of taxpayers within the designated area, while exempting homeowners from the real estate tax increase.
  - Fairfax County is generally recognized as the economic engine of Virginia and Tysons Corner is the central component of that economic engine that benefits the entire Commonwealth. Singling out the business community for a real estate tax hike county-wide or just in Tysons Corner would do significant damage to Virginia's reputation as one of the best states to do business. Property taxes play a significant role in setting Virginia's business climate. A 2010 study by JLARC found that property taxes comprise 41% of the state and local tax burden on the business community, by far the largest percentage of the tax burden on Virginia businesses, the second largest being excise and gross receipt taxes at only 17% of the burden
  - Virginia law already provides two exceptions to the long-standing precedent of uniform real estate taxation of business and residential property. First, the transportation improvement district statutes allow bifurcated taxation if 51% of the landowners consent to it. This authority has been used effectively by Fairfax County to make improvements to Route 28 as well to the metro system. Second, HB 3202 from the 2007 Session, with the support of the business community, gave the localities in Northern Virginia and Hampton Roads the ability to impose an additional real estate tax on businesses for transportation improvements. Fairfax County has already used this authority to impose an 11-cent-per-\$100 tax on the business community to fund transportation improvements within the County.

- While the proposed legislation would exempt homeowners from the Tysons [want to change all Tysons to Tysons Corner?] real estate tax increase that went into effect on July 1, 2013, as Mr. Gordon will elaborate, it would impose the tax on apartments which is grossly unfair and certainly in conflict with the interest of the Housing Commission in promoting affordable housing options in the Commonwealth. While homeowners make up only about 10% of the assessed value of property within Tysons, this is by no means a small pocket of residences. Residential landowners comprise ten percent of the \$11.15 billion value of property within Tysons or a value of \$1.15 billion. Fairfax County reports the median value of a single family detached home in the County is about \$543,000 while a town home is \$329,594. If you assume all the homes in Tysons are detached, which they are not, that equals more than 2100 homes in Tysons who are sharing a small portion of the cost of the transportation improvements.
- Significantly, the primary goal of the Tysons redevelopment plan that is driving the transportation improvements being funded by the new tax district is to significantly increase the amount of residents within Tysons. Tysons today is home to 17,000 residents and 105,000 jobs. The County’s redevelopment plan for Tysons calls for homes for 100,000 residents and 200,000 jobs by 2050. On June 24, 2013 the County announced approval of the plan to transform Tysons and stated “It will become a 24 hour urban center where people will live, work and play—instead of a sprawling suburban office park.” Why should homeowners be exempted from funding transportation improvements designed to accommodate a more than five-fold increase in residences within the area and to make their community much more resident friendly?
- Finally, the business community already is bearing the vast majority of the cost of the transportation improvements within Tysons. As Mr. Gordon will elaborate, developers are solely bearing more than \$1 billion of Grid Street and Tyson-wide transportation infrastructure improvements planned Tysons. This does not include the HB 3202 transportation taxes already paid solely by the business community, the funds the business community has paid towards metro rail improvements as well as the proffers offered by Tysons developers. This legislation simply addresses the remaining \$253 million of improvements, 90% of the cost of which will be not be paid by homeowners.
- These improvements will benefit residents and businesses alike and therefore it is appropriate that homeowners join with apartment residents and businesses to pay a small portion of these costs. While nobody likes tax increases, and I sympathize with the burden they can place on families, to quote the Fairfax County Planning Commission in its September 12, 2102 recommendations to the Board of Supervisors, “the Tysons-wide road improvements will benefit all residents and landowners who work, play and shop within Tysons, whether they are new office workers or longtime residents. Therefore a portion of the cost of these improvements should be borne by all Tysons landowners.”
- Thank you for your time. I urge you to oppose this and any other legislation that would undo Virginia’s longstanding tax policy that businesses and residents should

pay uniform real estate tax rates unless a majority of the property owners consent otherwise.

- **Brian Gordon, AOPA:** We oppose this legislation for three reasons:
  - This legislation would foster the regressive tax scheme that would discriminate between different types of housing.
  - Fairfax County already has authority to provide relief or fully exempt residential owners in the district.
  - Commercial property owners already contribute disproportionately to infrastructure development in Fairfax County.
- **Ronke Luke, McLean Chase Condominium Association:** Fairfax County Board did not act carefully or fairly. The Board embarked on this plan to build a metro line without a clear plan of how to pay for it. The homeowners were shocked and appalled that Fairfax County was just going to push this bill through the system. There was no conversation with the homeowners. We were just given a bill. I ask you to consider the homeowners and support HB 2131.
- **Mike Toalson:** Will you benefit from the more efficient transportation systems?
  - **Luke:** The only transportation improvements I have heard about is the metro station, which for me, personally, is inconvenient.
- **Toalson:** It seems to me that everyone benefiting, either from the transportation improvements or appreciation of property value, should pay their fair share.
  - **Luke:** I agree. However, the boundary for the tax district has been drawn arbitrarily, and does not necessary reflect the residents who benefit.
- **Renee Pulliam:** What were the percentages of the tax base that come from homeowners and business community?
  - **Abraham:** 10% of the assessed value of Tysons Corner is homeowners, and 90% is business.
- **Pulliam:** The additional tax would be imposed on everyone in those districts, other than those exempt.
  - **Abraham:** Correct.
- **Ron Parson:** The Fairfax County Transit Development Plan provides that 95% of development will happen within a half-mile radius of the new metro stops. The two HOA's I represent are far outside that radius and will not benefit from the transportation improvements. We request that Fairfax County adjust the boundary and create a boundary that has meaning.
- **Andrew Friedman:** Are you in favor of the bill as presented today?
  - **Parson:** If I thought it would pass, I would support it. It strikes me as politically unrealistic.

- **Sen. Barker:** Does the map represent what the county defines as Tyson’s Corner?
  - **Arco:** Yes, that’s accurate.
- **Barker:** There was no change to what was previously defines as Tyson’s Corner?
  - **Arco:** Yes, I believe so. The county tried to be careful in how they drew the district.
- **Del. Keam:** Our goal is to provide citizens relief, and, beyond that, use this as an example as a statewide policy. Would love a chance to continue to work on this.
- **Del. Marshall:** We will not vote today, but we will take up this issue in a later meeting.

**IV. Call to Order - Neighborhood Transition and Residential Land Use Work Group**

**Delegate Rosalyn Dance,** Chair called the meeting to order at 11:24 AM.

**Workgroup members in attendance:** Delegate David Bulova; Delegate Daniel W. Marshall, III; Senator Mamie Locke; Mark Flynn, *Governor Appointee/Virginia Municipal League*; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Anthony Burfoot, *Vice Mayor, Norfolk*; Bernard Caton, *City of Alexandria, Legislative Director*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Bill Ernst, *Dept. of Housing & Community Development*; Chris Freund, *Family Foundation of Virginia*; Brian Gordon, *Apartment and Office Building Association*; Kelly Harris-Braxton, *Virginia First Cities*; John H. Jordan, *Manufactured Housing Communities*; Erik Johnston, *Virginia Association of Counties*; Ted Koebel, *Center for Housing Research at Virginia Tech*; Barry Merchant, *Virginia Housing Development Authority*; A. Vaughn Poller, *Hampton Roads Housing Consortium*; Michael Toalson, *Home Builders Association of Virginia*; Cal Whitehead, *Whitehead Consulting*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

**V. Building Revitalization Grant- Follow-up Discussion from June 20, 2013 (SB 748, Senator W. Stanley, 2013)**

- **Senator Bill Stanley:** SB 748 is a Building Revitalization Grant, which started out as a tax credit for previous industrial centers. The bill creates a grant fund to allow private ministries to relocate and utilize the buildings to retrofit, upfit, and put people back to work.
  - The cap was originally set at 100,000, but may not be significant enough. We modified to cap at 600,000. We need more flexibility in that number, as an add-on. The undertaking and monitoring would be under the Department of Housing and Community Development.
- **Del. Marshall:** Are there other states doing this?
  - **Sen. Stanley:** North Carolina has a more robust version. We are in direct competition with them, and they have better incentives to revitalize these companies.
- **Del. Marshall:** Is this bill drawn statewide or areas of high unemployment?
  - **Sen. Stanley:** It is a statewide opportunity. The utilization would hopefully be in areas of high unemployment. Most of the opportunities for revitalization are in

Southwest, south side, Petersburg, and Central Virginia, where those industries once were.

- **Del. Marshall:** Under paragraph C, as we both serve under Tobacco Commission when we give grants, we have a Performance Agreement. It is a capital investment, employment [missing word?], and a private match. If the company does not do what they say they will, then they have to give the money back. Under C, is that what this is about?
  - **Sen. Stanley:** Yes, that is exactly what C is. If they fail to perform as they agreed, the state money will be recouped.
- **Friedman:** Having it available to any business in any part of the state could result in business planning to do this, could go anywhere outside southside, meet the cap, and then not have any new investment in southside. The cap on what is outstanding makes it difficult to manage. I'm afraid this may not have the intended effect.
  - **Sen. Stanley:** Instead of building a new building, we have industrial parks that need retrofitting. The idea is to direct them to the building. With the age requirement and the competitiveness of it, I think it will be adequately distributed.
- **Del. Dance:** Why are we not tailoring it to the areas that could benefit the most?
- **Del. Marshall:** In a previous bill, if an area had one and a half times the state's unemployment rate, they were qualified for benefits. You may want to think about that.
  - **Sen. Stanley:** I thought that was a great system. When it comes to State Finance, they do not like tax credits and things that do not apply to the whole state. In order to get the bill before this committee, those things had to be reduced. I am happy to put those provisions back into the bill.
- **Del. Dance:** But can you define this so that it includes the whole state, but still takes care of a specific area?
  - **Sen. Stanley:** Yes, I can.
- **Kelly Harris-Braxton, *Virginia First Cities*:** We would support this tool and the tailoring to specific areas. Would a private investor be able to apply for this instead of local government?
  - **Sen. Stanley:** Correct
- **Harris-Braxton:** If it were tailored to specific areas with the greatest need, I would feel more supportive. If the local government were involved in this, I would also support that.
  - **Sen. Stanley:** I agree, and I will include an amendment to tailor it to specific areas with the greatest need.
- **Barkley:** The Fund could be set up as a competitive process and have one of the factors be the area's economic situation. That is a way to make it statewide, but target specific areas.
- **Del. Marshall:** Would you want to narrow it to manufacturing rather than any type of business?

- **Sen. Stanley:** I wouldn't want to limit it, especially when considering competition with North Carolina. I will be willing to continue drafting this bill.
- **Del. Dance** adjourned the Neighborhood Transition and Residential Land Use Work Group meeting at 11:52 AM.

**VI. Public Comment**

- **Del. Marshall** asked if there were any comments from the public.

**VII. Adjourn**

- Hearing no request for comment, **Del. Marshall** adjourned the Affordability, Real Estate Law, and Mortgages Work Group meeting at 11:52 AM.



# COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair  
DELEGATE DANIEL MARSHALL, III, Vice-chair  
ELIZABETH A. PALEN, Executive Director



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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Affordability, Real Estate Law Mortgages Work Group**

**November 13, 2013, 10:00 AM**

**House Room C, General Assembly Building**

#### **I. Welcome and Call to Order**

**Delegate David Marshall, Chair**, called the meeting to order at 10:00 AM.

**Work Group members in attendance:** Delegate Daniel Marshall, *Chair*; Delegate Rosalyn Dance; Delegate Barry Knight; Senator Mamie Locke; Senator George Barker; Mark Flynn, *Governor Appointee/Virginia Municipal League*; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Steve Baugher, *Virginia Association of Mortgage Brokers*; Paul Brennan, *Virginia Housing Development Authority*; Robert N. Bradshaw, *Independent Insurance Agents of Virginia*; J.G. Carter, *SunTrust*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Andrew M. Friedman, *Virginia Beach Dept. of Housing & Neighborhood Preservation*; Kelly Harris-Braxton, *Virginia First Cities*; Shea Hollifield, *Dept. of Housing and Community Development*; Kelly King Horne, *Homeward*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Alexander Macaulay, *CitiGroup*; R. Schaefer Oglesby, *Virginia Association of Realtors*; Renee Pulliam, *Virginia Apartment Management Association*; Jay Speer, *Poverty Law Center*; Michael Toalson, *Home Builders Association of Virginia*; William Walton, *Real Property, Inc.*; Michele Watson, *Virginia Housing Development Authority*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### **II. Real Estate Board; Death or Disability of a Broker (HB 1973, S. Surovell, 2013)**

- **Delegate Scott Surovell:** This proposed legislation sets out an order of priority that the board ought to defer to when a broker dies. Someone who owns a business should have the authority to designate in advance who winds their business down. There should be more accountability, and the code should recognize this.
- **Deborah Matthews:** I was confronted with this case a year and a half ago. My client's husband had been killed. He was a real estate broker with a small business that he owned, and we were managing his estate. It took some time to figure out how to formally be able

to act in his place as the broker. In the meantime, the deceased's brother was granted the authority to close the business.

- The problem was that the court had appointed my client to administer his estate. My client was responsible to the Commonwealth for all activities, but there was one asset that she had no authority over: his business.
- The person given authority by the Real Estate Board was not licensed and was not responsive with us regarding information. The only option was to appeal to the board, which we did. The Board reversed its decision and gave my client authority to wind down the business.
- As a consumer, I would be very disappointed if an individual without any licensing is allowed to complete the transaction.
- **Marshall:** If it had not been a real estate situation, but a lawyer had been killed, is there a procedure for that?
  - **Matthews:** I am able to execute a power of attorney that could designate my colleague as my power of attorney.
- **Marshall:** What happens if an attorney had not designated a power of attorney?
  - **Matthews:** Only a lawyer is allowed to do anything in a lawyer's office. Clients in Virginia are assured always to have an attorney deal with their matters.
- **Surovell:** I believe that someone who owns their own business should have more control over who winds their business down. I think the default being the personal representative of the estate, rather than the first person to write a letter to the Real Estate Board provides more consistency and accountability.
- **Marshall:** Do you want to make any tweaks to this bill before the 2014 Session?
  - **Surovell:** Yes, sir.
- **Bob Bradshaw:** The Insurance Bureau grants a temporary license to a family member who is then allowed to sell the business. Who is opposed to the bill?
  - **Surovell:** No one expressed reservations through the process.
- **Marshall:** If there is no opposition, then why are you here?
  - **Surovell:** Del. Peace thought this needed more "seasoning." No one spoke against it, but it needed more vetting.
- **Chip Dicks:** Virginia Association of Realtors does not have a position on the bill. There was some discussion that we thought the current bill was sufficient.
- **Del. Dance:** I think you might want to consider those Chip Dicks' tweaks.
- **Chip Dicks:** VAR has not authorized me to make any of those tweaks.

### III. First-Time Home Buyer Savings Accounts Act

- **Chip Dicks, Virginia Association of Realtors:** With the bankers, we have created an account that works like a Roth IRA, where money is in after tax and all growth on the money is tax free in perpetuity. To avoid fraud, we limited the amount of contribution at \$50,000, not including growth. The source of discussion is on the penalties for unauthorized use of the funds.
  - We ask that the bill go by for the day, and then Mr. Tull and I can continue to work through the language by the meeting next week. If that is not possible, then the Bankers Association will oppose the bill.
  - In response to this, we have eliminated all responsibility from the financial institution. All the burden lies with the taxpayer. We still have some work to do on this bill.
- **Mel Tull, Virginia Bankers Association:** We still have the same primary concern. Because this bill will offer an account that will incentivize certain behaviors by offering a tax benefit, but this tax benefit is not significant in actuality. This is ineffective and misleading, and the consumer will take out his frustration on the bank.
- **Sen. Barker:** Does your concern stem from the fact we are able to offer a state tax benefit but not a federal tax benefit?
  - **Tull:** It is partly that, but there is no tax deduction for the contribution. The tax benefit offered is on the earnings, and that is next to zero.
- **Sen. Barker:** Is that not the case for Roth IRAs already?
  - **Tull:** I believe that's true, but I believe they also get a tax benefit from the contribution.
- **Del. Marshall:** Not for Roth IRAs.
- **Sen. Barker:** Regarding the issue of people using the money for other purposes, is there something you are anticipating people wanting to use the money for other than its delegated purpose?
  - **Tull:** If you use the funds for a non-first-time home purchase, they will pay a penalty. Since these funds would be saved for many years, conceivably taxpayers' situations may change and they may need those funds for a different purpose. They will be disappointed when they try to use those funds and must pay a penalty.
  - **Dicks:** First, we could agree to take banks out of this bill completely. Second, the growth could be significant if the growth accumulates over many years. We still feel there is terrific value in these accounts, and they are not misleading.

- **Sen. Barker:** Is the expectation that the incentive of not having to pay tax on that interest will provide benefit to people over time, or having this vehicle will get people to exercise more discipline on their spending and enable them to have the money to buy a home?
  - **Dicks:** We completely agree. It is a creative way to incentivize savings, yet we would prefer to have a large deduction. However, that had a negative fiscal impact, so that was eliminated.
- **Del. Marshall:** What happens if the recipient moves out of state?
  - **Dicks:** The eligible closing cost would only be for a purchase in Virginia.
- **Del. Marshall:** What happens in case of divorce?
  - **Dicks:** The funds belong to whoever the account holder is. Like inheritance money, it would not be treated as joint income for purposes of a divorce.
- **Del. Marshall:** So there is no ceiling with regard to growth?
  - **Dicks:** That's correct.
- **Del Marshall:** If you open an account for your granddaughter, what happens if she chooses not to use the money?
  - **Dicks:** The account holder can transfer the money from one grandchild to another.
- **Michele Watson, Virginia Housing Development Authority:** Does the bill state who can gift the funds? Some of the insurance programs restrict who can gift funds for closing and down payment costs.
  - **Dicks:** There is no limitation on that relationship because there is no gift tax deduction.
- **Watson:** That could be an impediment to some using the federal insurance programs if they are not related to the donor. FHA has indemnity of interest. They want to make sure there is a relationship between the donor and the borrower, usually a family relationship.
- **Erik Johnston, Virginia Association of Counties:** If you are implementing this, what are some challenges you foresee and how this will work with other programs?
  - **Dicks:** We will apply to the Issues Mobilization Fund to create an educational campaign, and educate the consumers on this program. We also contemplated reaching out to local government in areas where affordable housing is a critical issue. We anticipated we would reach out to financial institutions, educate them, and determine which ones wanted referrals. We anticipated some institutions would not want to participate. Virginia Association of Realtors is committed to an educational campaign upon passage.

- **Bob Bradshaw:** So, this is the best language you can come up with together, but the bankers are philosophically opposed?
  - **Tull:** There were changes made by the tax department and legislative services that we think have some substantive impact.
  - **Dicks:** The two of us need to work on that, and will report back.
- **Bradshaw:** But would that address the philosophical difference?
  - **Tull:** No, the changes made would not address those issues, would not address the fundamental issues we see in the legislation.
- **Bradshaw:** Who would sell these or is it self-directed?
  - **Dicks:** It is self-directed.
- **Sen. Barker:** If you have five grandchildren, can you set up five accounts?
  - **Dicks:** Yes.

#### IV. Source of Income; Virginia Fair Housing Law (SB 1224, M. Locke, 2013)

- **Christie Marra, Virginia Poverty Law Center:** This bill will add a protective class to the Virginia Fair Housing Law. We were not able to reach consensus on the legislation. At the very least we would ask the Virginia Housing Commission to send a letter to the Virginia Housing Delegation to ask to put forth federal legislation that would revise HUD's regulation regarding the Housing Choice Voucher Program. This is an excellent first step to see if there is a waiver to offer.
- **Chip Dicks:** We recognize that this is a federal program, and there are a number of issues with that. That is why we reached out to the congressional program. We discussed working with Housing Authorities to create a pilot project to see if we could encourage more participation. The Property Groups were opposed to the requirement that they participate in a federal program.
- **Del. Marshall:** The Chair of the Housing Commission will send a letter to the Congressional delegation for the Commonwealth.

#### V. Public Comment

- **Del. Marshall** asked for any comment from the public.

#### VI. Adjourn

- Upon hearing no request for comments, **Del. Marshall** adjourned the meeting at 11:01 AM.

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Affordability, Real Estate Law and Mortgages Workgroup**

#### **Fair Housing Sub Work Group October 21, 2013, 2:00 PM 6th Floor, Speaker's Conference Room**

**Sub Workgroup Members:** *Delegate Rosalyn Dance; Chip Dicks, Northern Virginia Apartment Association; Ali Faruk, Housing Opportunities Made Equal of Virginia; Brian Gordon, Apartment and Office Building Association/Virginia Apartment Management Association; Kelly Harris-Braxton, Virginia First Cities; Christie Marra, Virginia Law Poverty Center; Patrick McCloud, Virginia Apartment Management Association; Scott Pitts, Good Shepherd Housing & Family Services; Michael Toalson, Home Builders Association of Virginia; Staff: Elizabeth Palen, Executive Director of VHC*

On October 21 at 2:00 PM a sub workgroup of the Affordable Housing and Real Estate Workgroup met in the Speaker's Conference Room to discuss the addition of source of income to the Fair Housing Act.

Delegate Rosalyn Dance presided as Chair and set the ground rules by which the group would conduct the meeting. The rules stated that only those on the workgroup would be invited to speak; with the caveat unless clarification or further information was requested by the Chair, of those in the audience. Each sub-workgroup member was encouraged to speak freely about all relevant points concerning the topic so that a compromise solution could possibly be achieved.

Delegate Dance said she views her role to take the "temperature" or pulse of the group to see what outcomes should be recommended by the Commission and ultimately incorporated into law.

Christie Marra said her goal is to have lower-income individuals live in desirable neighborhoods. The first portion of the meeting was devoted to social security disability payments, retirement pensions as sources of income. A discussion ensued regarding funding sources that do not allow for garnishment; i.e. SSDI.

Lizbeth Hayes of the Virginia Fair Housing Office interjected that it is currently unlawful to refuse an application for those in a protected class; including in Virginia elderliness and discussed disparate impact. A complete exploration of this topic was undertaken by the group with Chip Dicks taking the lead.

Selective advertising was fully vetted as well.

The second hour of the meeting was devoted to using a Housing Choice Voucher (formerly Section 8) to fund a lease.

Overall, within this group, mandatory participation in federal programs was not viewed favorably; instead the majority suggested allowing the market to determine if it was a wise decision for a landlord to sign a lease with a particular tenant.

VAMA wanted it noted that application to landlords with one rental unit and all multifamily properties will be treated universally as it has been done in the past. There was no disagreement on this issue.

Considerable contemplation was put forth on the issue: Is there currently an actual problem? Neither side had direct evidence; instead antidotal stories were offered concerning the tenant perspective as well as the landlord perspective on the issue.

The language choice, "A landlord shall consider verifiable sources of income and treat like any other income" was acceptable to all as long as disability payments and Housing Choice Vouchers were not part of the equation.

The meeting concluded with the outcome being that the Commission would write a letter noting the following recommendations:

- 1) Fix delayed inspections by HUD
- 2) Have Housing Authorities pay landlords in a timely manner
- 3) Use the principles of the Rental Inspection legislation (i.e. 10% of units inspected)
- 4) Enabling legislation would be helpful
- 5) Incentivize landlords to use the Housing Choice Voucher Program

All present felt that dialog with legislators at a federal level would be beneficial; this is to be achieved by the efforts of the interested parties outside of the purview of the Virginia Housing Commission.

The meeting was adjourned at 4:05 PM.

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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Neighborhood Transitions and Residential Land Use Work Group June 20, 2013, 1:00 PM House Room C, General Assembly Building**

#### **I. Welcome and Call to Order**

**Delegate Rosylyn Dance, Chair**, called the meeting to order at 1:00 PM.

**Workgroup members in attendance:** Delegate Rosylyn Dance, *Chair*; Delegate John Cosgrove; Delegate David Bulova; Delegate Daniel W. Marshall, III; Mark Flynn, *Governor Appointee/Virginia Municipal League*; Neal J. Barber, *Community Futures*; Bernard Caton, *City of Alexandria, Legislative Director*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Bill Ernst, *Dept. of Housing & Community Development*; Brian Gordon, *Apartment and Office Building Association*; Kelly Harris-Braxton, *Virginia First Cities*; Erik Johnston, *Virginia Association of Counties*; Barry Merchant, *Virginia Housing Development Authority*; A. Vaughn Poller, *Hampton Roads Housing Consortium*; Michael Toalson, *Home Builders Association of Virginia*; Cal Whitehead, *Whitehead Consulting*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### **II. Building Revitalization Grant Fund (SB 748, W. Stanley, 2013)**

- **Senator Bill Stanley:** The textile and tobacco industries have each taken a major hit with the change in the economy in the state and nation. Infrastructure is left—as much as 50,000 square feet of manufacturing space in buildings. There is a need for up-fitting and retro-fitting of existing structures. He reminded the Work Group and audience of the psychological effects on the community when a building lies dormant.
  - There is a lack of tax revenue for the locality as well as the state.
  - The mentality is if mega-parks or industrial parks are built, the manufacturing industry will follow.
  - If you compare Southside Virginia to North Carolina; North Carolina has had the better approach as they provide a dollar-for-dollar tax credit for companies to invest in communities. Senator Stosch had suggested in the 2013 Legislative Session establishing a grant fund with a limited amount of money, with the purpose to put buildings back in service.



- Jim McKelvey started buying buildings in Bedford County and retrofitted the buildings. He is now renting to start-up companies. Entrepreneurs should be encouraged with government assistance.
- In Ferrum, there is a building where the owner is using innovative gray water filtering—there needs to be encouragement for such projects across the state.
- There is the old Corning Building in Danville; it is ideal for up-fitting and retro-fitting but money is needed.
- We need a partnership between the localities and the state. The use of state funds would encourage job growth and companies to come to set up their industries in Virginia.
- **Bill Earnst, DHCD:** The Industrial Revitalization Fund would only make grants to localities? Currently the local government can make loans to a private entity—see §§ 36-152 through 36-156 in the Code of Virginia. The local government would have to come to the state to seek funding—what would the disbursement look like to private entities?
- **Delegate David Bulova:** I am sensitive to new programs taking funds from existing programs. I want to know more about how the public/private partnership will work.
  - DHCD has experience, it seems a reasonable choice for them to run the program.
- **Chip Dicks:** If I am a potential purchaser, it might take \$500,000 to \$1 million to repurpose a building—especially if there are environmental issues. Will a \$100,000 program make a difference?
- **Senator Bill Stanley:** It would be a pilot project—a \$1 million appropriation would allow a meaningful difference in some projects. If there is a choice of a company relocating to Greensboro, North Carolina, or to Danville, they should be incentivized to choose Danville.
- **Delegate John Cosgrove:** North Carolina is luring businesses from Chesapeake; this may be a good springboard to attract new businesses.
- **Delegate Rosylyn Dance:** You are invited to return to a Housing Commission meeting with new funding concepts.

### III. Electronic Security Sales Representatives (HB 2302, J. Cosgrove, 2013)

- **Delegate Cosgrove:** Any security company can hire anyone to solicit business door-to-door to residential homes. The problem lies with the Department of Criminal Justice Services; the sales personnel need to be licensed but then are not allowed to solicit for 90 days' time while a background check is performed on those soliciting business at people's homes.

- The bill under discussion says a license is needed first before going door-to-door; there is a critical glitch in the Code allowing unvetted persons to knock on elderly persons' doors.
- **Wayne Boggs**, *Richmond Alarm Company*: There is a serious problem in the industry; college students are sent to people's residences without any training.
  - There needs to be a compliance agent in Virginia. Virginia companies with a license in Virginia could be exempt but out-of-state companies who send out quick hires without fingerprinting need to be regulated.
- **Dicks**: What would I have to do now to go door-to-door selling security systems?
- **Boggs**: Receive eight hours of training and be fingerprinted and a receive temporary registration.
- **Lisa McGee**, *Regulatory Manager, Department of Criminal Justice Services*: Currently a person may work for 90 days while waiting to be trained and 120 days before the results of fingerprinting are returned.
- **Delegate Bulova**: Perhaps there should be a check such as the check to purchase a firearm; should we talk to the State Police?
- **Stan Collins**, *Alarms, Inc.*: I own a Virginia-based alarm company in Goochland. Currently there are no penalties and young people from Utah are brought into Virginia to go door-to-door with securities sales. Suggestions are: (1) create an outrageously expensive fine if companies operate without licensure of the employees; (2) repeal the 90-day grace period where new employees can work without certification or taking a class; or (3) wait until fingerprinting results are returned to allow door-to-door solicitation.
  - Teeth should be put into enforcement; this should be an arrestable offense.
- **Delegate Dance**: Arrest the college students? Perhaps we can find a better solution; a compliance agent within company? We can work on solutions at our next meeting.

#### IV. Public Comment

- **Del. Dance** asked for any comment from the public.

#### V. Adjourn

- Upon hearing no request for comments, **Del. Dance** adjourned the meeting at 2:35 PM.

# COMMONWEALTH OF VIRGINIA

SENATOR MAMIE LOCKE, Chair  
DELEGATE DANIEL MARSHALL, III, Vice-chair  
ELIZABETH A. PALEN, Executive Director



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## VIRGINIA HOUSING COMMISSION

### SUMMARY

#### **Joint Meeting of the Affordability, Real Estate Law, and Mortgages Work Group and the Neighborhood Transitions and Residential Land Use Work Group**

**Thursday, September 12, 2013, 10:00 AM  
House Room C, General Assembly Building**

#### **I. Call to Order - Affordability, Real Estate Law, and Mortgages Work Group**

**Delegate Danny Marshall, Chair**, called the meeting to order at 10:07 AM.

**Work Group members in attendance:** Delegate Rosalyn Dance; Delegate Barry Knight; Senator Mamie Locke; Senator George Barker; Mark Flynn, *Governor Appointee/Virginia Municipal League*; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Steve Baugher, *Virginia Association of Mortgage Brokers*; Paul Brennan, *Virginia Housing Development Authority*; Robert N. Bradshaw, *Independent Insurance Agents of Virginia*; J.G. Carter, *SunTrust*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Andrew M. Friedman, *Virginia Beach Dept. of Housing & Neighborhood Preservation*; Kelly Harris-Braxton, *Virginia First Cities*; Shea Hollifield, *Dept. of Housing and Community Development*; Kelly King Horne, *Homeward*; Erik Johnston, *Virginia Association of Counties*; John H. Jordan, *Manufactured Housing Communities of Virginia*; Alexander Macaulay, *CitiGroup*; R. Schaefer Oglesby, *Virginia Association of Realtors*; Renee Pulliam, *Virginia Apartment Management Association*; Jay Speer, *Poverty Law Center*; Michael Toalson, *Home Builders Association of Virginia*; William Walton, *Real Property, Inc.*; Michele Watson, *Virginia Housing Development Authority*; Cal Whitehead, *Whitehead Consulting*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### **II. Service Members Civil Relief Act (SCRA) and the VRLTA**

- **Chip Dicks, Virginia Association of Realtors:** The issue is whether the federal law trumps the state law in several respects.
  - Post Iraq war, the federal government adopted the Service Members Civil Relief Act, and I will describe the applicable provisions that interface with the Virginia Residential Landlord Tenant Act. Firstly, under the SCRA a landlord or any other party can ask a service member to waive their rights under the SCRA.

- **Del. Marshall:** Why would someone want to waive his rights?
  - **Dicks:** A member would waive to incentivize a landlord to permit them as a tenant. The tenant has the right to terminate their lease at their option at least 30 days prior to the next rent due date. These are the only provisions for termination under the SCRA.
    - The corresponding provision in the VRLTA predates that in the SCRA. The conflicting provision states that a service member may terminate a lease “if the member has received permanent change of station orders to depart 35 miles or more (radius) from the location of the dwelling unit.” [§ 55-248.21:1] This is inconsistent with the federal law.
    - Generally federal law trumps state law, but federal law only trumps state law when state law is inconsistent with federal law. Federal law does not say you cannot have a radius in state law. The issue is whether the SCRA trumps the state law on the 35-mile radius.

### III. Real Local Property Tax in Certain Service Districts (HB 2131, Delegate M. Keam, 2013)

- **Delegate Mark Keam:** I introduced HB 2131 in an effort to deal with a local issue in Tysons Corner. The bill was designed to provide Fairfax County Board of Supervisors latitude to redefine and [needs a verb here] what rate property tax depending on the purpose. It was drafted this way because the Fairfax County Board of Supervisors adopted a regulation to impose a new tax to provide transportation and other infrastructure in Tysons Corner.
  - This district includes both residential and commercial property, and the board assessed the tax equally. For residents, especially those retired and on a fixed income, an extra 7-9% tax is burdensome and unfair. This bill would provide flexibility to the county to determine which properties to be taxed and different rates, offering financial relief to residents.
- **Andrew Friedman:** In Virginia Beach, we have a property tax exemption program that is income or asset based for elderly and disabled homeowners. Have you considered that as a simpler alternative?
  - **Claudia Arco, Fairfax County:** The Board does have that property tax exemption for the elderly and disables. The concern is for residents who do not qualify for that tax exemption.
- **Sen. George Barker:** What is the Board position in relation to this bill?
  - **Arco:** Yes, the Fairfax County Board of Supervisors supports this bill as introduced.
- **Sen. Barker:** Is the value of the condominiums in this area likely to appreciate?
  - **Arco:** Yes, property values will increase with the transportation development.
- **Sean Farr:** For a homeowner such as described, would they be likely to seek a reverse mortgage and thus realize the appreciation of their property value?
  - **Arco:** I am not an expert on that issue.

- **Mike Toalson:** The tax has been imposed. Was their substantial opposition?
  - **Arco:** There were many concerned residents with the establishment of the district. To address the concerns, the Board did manage to create a lower tax rate than was originally planned.
- **Philip Abraham, Virginia Association of Commercial Real Estate:** Mr. Chairman and Members of the Housing Commission, I am Philip Abraham, appearing before you today on behalf of the Virginia Association for Commercial Real Estate (VACRE). VACRE represents the Northern Virginia, Hampton Roads, and Richmond area commercial and industrial developers who have teamed with other professionals from Virginia's urban crescent to serve as the voice of the commercial and industrial development community in Virginia. NAIOP Northern Virginia, the Hampton Roads Association for Commercial Real Estate (HRACRE), and the Greater Richmond Association for Commercial Real Estate (GRACRE) comprise the three member chapters of VACRE. There are about 800 member companies and more than 2000 individuals in VACRE's three chapters.
  - VACRE strongly opposed HB 2131 as introduced during the 2013 Session, which would have applied throughout Fairfax County, as well as the substitute bill that was presented by Delegate Kean to a Subcommittee of House Counties, Cities and Towns, which would only apply in Tysons Corner. We continue to strongly oppose this special legislation today.
  - VACRE's opposes this legislation because it would establish a harmful precedent within Virginia's tax law by allowing a locality to impose a significant real estate tax increase on the business community, without the consent of a majority of taxpayers within the designated area, while exempting homeowners from the real estate tax increase.
  - Fairfax County is generally recognized as the economic engine of Virginia and Tysons Corner is the central component of that economic engine that benefits the entire Commonwealth. Singling out the business community for a real estate tax hike county-wide or just in Tysons Corner would do significant damage to Virginia's reputation as one of the best states to do business. Property taxes play a significant role in setting Virginia's business climate. A 2010 study by JLARC found that property taxes comprise 41% of the state and local tax burden on the business community, by far the largest percentage of the tax burden on Virginia businesses, the second largest being excise and gross receipt taxes at only 17% of the burden
  - Virginia law already provides two exceptions to the long-standing precedent of uniform real estate taxation of business and residential property. First, the transportation improvement district statutes allow bifurcated taxation if 51% of the landowners consent to it. This authority has been used effectively by Fairfax County to make improvements to Route 28 as well to the metro system. Second, HB 3202 from the 2007 Session, with the support of the business community, gave the localities in Northern Virginia and Hampton Roads the ability to impose an additional real estate tax on businesses for transportation improvements. Fairfax County has already used this authority to impose an 11-cent-per-\$100 tax on the business community to fund transportation improvements within the County.

- While the proposed legislation would exempt homeowners from the Tysons [want to change all Tysons to Tysons Corner?] real estate tax increase that went into effect on July 1, 2013, as Mr. Gordon will elaborate, it would impose the tax on apartments which is grossly unfair and certainly in conflict with the interest of the Housing Commission in promoting affordable housing options in the Commonwealth. While homeowners make up only about 10% of the assessed value of property within Tysons, this is by no means a small pocket of residences. Residential landowners comprise ten percent of the \$11.15 billion value of property within Tysons or a value of \$1.15 billion. Fairfax County reports the median value of a single family detached home in the County is about \$543,000 while a town home is \$329,594. If you assume all the homes in Tysons are detached, which they are not, that equals more than 2100 homes in Tysons who are sharing a small portion of the cost of the transportation improvements.
- Significantly, the primary goal of the Tysons redevelopment plan that is driving the transportation improvements being funded by the new tax district is to significantly increase the amount of residents within Tysons. Tysons today is home to 17,000 residents and 105,000 jobs. The County's redevelopment plan for Tysons calls for homes for 100,000 residents and 200,000 jobs by 2050. On June 24, 2013 the County announced approval of the plan to transform Tysons and stated "It will become a 24 hour urban center where people will live, work and play—instead of a sprawling suburban office park." Why should homeowners be exempted from funding transportation improvements designed to accommodate a more than five-fold increase in residences within the area and to make their community much more resident friendly?
- Finally, the business community already is bearing the vast majority of the cost of the transportation improvements within Tysons. As Mr. Gordon will elaborate, developers are solely bearing more than \$1 billion of Grid Street and Tyson-wide transportation infrastructure improvements planned Tysons. This does not include the HB 3202 transportation taxes already paid solely by the business community, the funds the business community has paid towards metro rail improvements as well as the proffers offered by Tysons developers. This legislation simply addresses the remaining \$253 million of improvements, 90% of the cost of which will be not be paid by homeowners.
- These improvements will benefit residents and businesses alike and therefore it is appropriate that homeowners join with apartment residents and businesses to pay a small portion of these costs. While nobody likes tax increases, and I sympathize with the burden they can place on families, to quote the Fairfax County Planning Commission in its September 12, 2102 recommendations to the Board of Supervisors, "the Tysons-wide road improvements will benefit all residents and landowners who work, play and shop within Tysons, whether they are new office workers or longtime residents. Therefore a portion of the cost of these improvements should be borne by all Tysons landowners."
- Thank you for your time. I urge you to oppose this and any other legislation that would undo Virginia's longstanding tax policy that businesses and residents should

pay uniform real estate tax rates unless a majority of the property owners consent otherwise.

- **Brian Gordon, AOPA:** We oppose this legislation for three reasons:
  - This legislation would foster the regressive tax scheme that would discriminate between different types of housing.
  - Fairfax County already has authority to provide relief or fully exempt residential owners in the district.
  - Commercial property owners already contribute disproportionately to infrastructure development in Fairfax County.
- **Ronke Luke, McLean Chase Condominium Association:** Fairfax County Board did not act carefully or fairly. The Board embarked on this plan to build a metro line without a clear plan of how to pay for it. The homeowners were shocked and appalled that Fairfax County was just going to push this bill through the system. There was no conversation with the homeowners. We were just given a bill. I ask you to consider the homeowners and support HB 2131.
- **Mike Toalson:** Will you benefit from the more efficient transportation systems?
  - **Luke:** The only transportation improvements I have heard about is the metro station, which for me, personally, is inconvenient.
- **Toalson:** It seems to me that everyone benefiting, either from the transportation improvements or appreciation of property value, should pay their fair share.
  - **Luke:** I agree. However, the boundary for the tax district has been drawn arbitrarily, and does not necessary reflect the residents who benefit.
- **Renee Pulliam:** What were the percentages of the tax base that come from homeowners and business community?
  - **Abraham:** 10% of the assessed value of Tysons Corner is homeowners, and 90% is business.
- **Pulliam:** The additional tax would be imposed on everyone in those districts, other than those exempt.
  - **Abraham:** Correct.
- **Ron Parson:** The Fairfax County Transit Development Plan provides that 95% of development will happen within a half-mile radius of the new metro stops. The two HOA's I represent are far outside that radius and will not benefit from the transportation improvements. We request that Fairfax County adjust the boundary and create a boundary that has meaning.
- **Andrew Friedman:** Are you in favor of the bill as presented today?
  - **Parson:** If I thought it would pass, I would support it. It strikes me as politically unrealistic.

- **Sen. Barker:** Does the map represent what the county defines as Tyson’s Corner?
  - **Arco:** Yes, that’s accurate.
- **Barker:** There was no change to what was previously defines as Tyson’s Corner?
  - **Arco:** Yes, I believe so. The county tried to be careful in how they drew the district.
- **Del. Keam:** Our goal is to provide citizens relief, and, beyond that, use this as an example as a statewide policy. Would love a chance to continue to work on this.
- **Del. Marshall:** We will not vote today, but we will take up this issue in a later meeting.

#### IV. Call to Order - Neighborhood Transition and Residential Land Use Work Group

**Delegate Rosalyn Dance,** Chair called the meeting to order at 11:24 AM.

**Workgroup members in attendance:** Delegate David Bulova; Delegate Daniel W. Marshall, III; Senator Mamie Locke; Mark Flynn, *Governor Appointee/Virginia Municipal League*; T.K. Somanath, *Governor Appointee*; Neal J. Barber, *Community Futures*; Anthony Burfoot, *Vice Mayor, Norfolk*; Bernard Caton, *City of Alexandria, Legislative Director*; Tyler Craddock, *Manufactured & Modular Housing Association*; Chip Dicks, *Virginia Association of Realtors*; Bill Ernst, *Dept. of Housing & Community Development*; Chris Freund, *Family Foundation of Virginia*; Brian Gordon, *Apartment and Office Building Association*; Kelly Harris-Braxton, *Virginia First Cities*; John H. Jordan, *Manufactured Housing Communities*; Erik Johnston, *Virginia Association of Counties*; Ted Koebel, *Center for Housing Research at Virginia Tech*; Barry Merchant, *Virginia Housing Development Authority*; A. Vaughn Poller, *Hampton Roads Housing Consortium*; Michael Toalson, *Home Builders Association of Virginia*; Cal Whitehead, *Whitehead Consulting*.

**Staff:** Elizabeth Palen, *Executive Director of VHC*

#### V. Building Revitalization Grant- Follow-up Discussion from June 20, 2013 (SB 748, Senator W. Stanley, 2013)

- **Senator Bill Stanley:** SB 748 is a Building Revitalization Grant, which started out as a tax credit for previous industrial centers. The bill creates a grant fund to allow private ministries to relocate and utilize the buildings to retrofit, upfit, and put people back to work.
  - The cap was originally set at 100,000, but may not be significant enough. We modified to cap at 600,000. We need more flexibility in that number, as an add-on. The undertaking and monitoring would be under the Department of Housing and Community Development.
- **Del. Marshall:** Are there other states doing this?
  - **Sen. Stanley:** North Carolina has a more robust version. We are in direct competition with them, and they have better incentives to revitalize these companies.
- **Del. Marshall:** Is this bill drawn statewide or areas of high unemployment?
  - **Sen. Stanley:** It is a statewide opportunity. The utilization would hopefully be in areas of high unemployment. Most of the opportunities for revitalization are in



Southwest, south side, Petersburg, and Central Virginia, where those industries once were.

- **Del. Marshall:** Under paragraph C, as we both serve under Tobacco Commission when we give grants, we have a Performance Agreement. It is a capital investment, employment [missing word?], and a private match. If the company does not do what they say they will, then they have to give the money back. Under C, is that what this is about?
  - **Sen. Stanley:** Yes, that is exactly what C is. If they fail to perform as they agreed, the state money will be recouped.
- **Friedman:** Having it available to any business in any part of the state could result in business planning to do this, could go anywhere outside southside, meet the cap, and then not have any new investment in southside. The cap on what is outstanding makes it difficult to manage. I'm afraid this may not have the intended effect.
  - **Sen. Stanley:** Instead of building a new building, we have industrial parks that need retrofitting. The idea is to direct them to the building. With the age requirement and the competitiveness of it, I think it will be adequately distributed.
- **Del. Dance:** Why are we not tailoring it to the areas that could benefit the most?
- **Del. Marshall:** In a previous bill, if an area had one and a half times the state's unemployment rate, they were qualified for benefits. You may want to think about that.
  - **Sen. Stanley:** I thought that was a great system. When it comes to State Finance, they do not like tax credits and things that do not apply to the whole state. In order to get the bill before this committee, those things had to be reduced. I am happy to put those provisions back into the bill.
- **Del. Dance:** But can you define this so that it includes the whole state, but still takes care of a specific area?
  - **Sen. Stanley:** Yes, I can.
- **Kelly Harris-Braxton, Virginia First Cities:** We would support this tool and the tailoring to specific areas. Would a private investor be able to apply for this instead of local government?
  - **Sen. Stanley:** Correct
- **Harris-Braxton:** If it were tailored to specific areas with the greatest need, I would feel more supportive. If the local government were involved in this, I would also support that.
  - **Sen. Stanley:** I agree, and I will include an amendment to tailor it to specific areas with the greatest need.
- **Barkley:** The Fund could be set up as a competitive process and have one of the factors be the area's economic situation. That is a way to make it statewide, but target specific areas.
- **Del. Marshall:** Would you want to narrow it to manufacturing rather than any type of business?

- **Sen. Stanley:** I wouldn't want to limit it, especially when considering competition with North Carolina. I will be willing to continue drafting this bill.
- **Del. Dance** adjourned the Neighborhood Transition and Residential Land Use Work Group meeting at 11:52 AM.

**VI. Public Comment**

- **Del. Marshall** asked if there were any comments from the public.

**VII. Adjourn**

- Hearing no request for comment, **Del. Marshall** adjourned the Affordability, Real Estate Law, and Mortgages Work Group meeting at 11:52 AM.