

VIRGINIA HOUSING COMMISSION

2004 ANNUAL REPORT

MEMBERS

Delegate Thelma Drake, Chair
Delegate Jackie T. Stump, Vice-Chair
Senator William C. Mims
Senator Mary Margaret Whipple
Senator Mamie Locke
Delegate Terrie L. Suit
Delegate Bradley P. Marrs
Delegate Melanie Rapp
F. Gary Garczynski
F. Andrew Heatwole
T.K. Somanath

Staff

Amigo R. Wade, Senior Attorney
Elizabeth Palen, Research Associate
Lisa Gilmer, Senior Staff Assistant

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**Full copies of presentations made to the work groups are available at the Commission's website: <http://dls.state.va.us/houscomm.htm>*

Executive Summary

Created by the 1970 General Assembly, the Virginia Housing Study Commission was originally mandated "to study the ways and means best designed to utilize existing resources and to develop facilities that will provide the Commonwealth's growing population with adequate housing." The Commission has long been recognized as a forum for new ideas in housing and community development, and serves as a focal point for developing a consensus on those ideas in the form of statutory, regulatory and non-governmental initiatives. The Commission is comprised of eleven members, including five members of the Virginia House of Delegates, three members of the Virginia Senate, and three citizen members appointed by the Governor. Delegate Thelma Drake serves as the Chair of the Commission and Delegate Jackie Stump serves as the Vice Chair.

In 2004, the General Assembly passed House Bill 1231 establishing the Virginia Housing Commission as a permanent legislative commission charged with studying and providing recommendations to ensure and foster the availability of safe, sound, and affordable housing for every Virginian. One of the first actions of the Commission was to discontinue the use of independent staff support and relocate its office and staffing and administrative support to the Division of Legislative Services. This resulted in a savings of \$174,000 that had been provided for the support of the Commission from special fund appropriations.

The Commission's activities in the 2004 interim centered on establishing an organizational basis for the development of a statewide housing policy. Significant activities of the Commission during the 2004 interim included:

- Holding three meetings over the course of the interim (June 8, July 6 and November 15).
- Establishing three component work groups for developing the statewide housing policy: i) Regulatory and Financial Issues, ii) Local Revitalization and Blight Removal, and iii) Special Populations.
- Reviewing and incorporating key housing policy documents into the statewide housing policy study.
- Establishing an eminent domain work group to review and provide recommendations on referred legislation and other issues pertaining to the state's eminent domain laws.
- Establishing a Commission website to serve as an information resource and focal point for housing partners and the general public.(website address: <http://dls.state.va.us/houscomm.htm>)

MEETING SUMMARY

June 8, 2004, General Assembly Building, House Room C, Richmond, Virginia

Members in Attendance:

Delegate Thelma Drake, Chair
Delegate Jackie Stump, Vice Chair
Senator William C. Mims
Delegate Terrie L. Suit
Senator Marry Margaret Whipple
Delegate Bradley P. Marrs
Delegate Melanie Rapp
Senator Mamie Locke
F. Gary Garczynski
F. Andrew Heatwole
T.K. Somanath
Staff: Nancy Ambler, Nancy Blanchard

Delegate Drake called the first meeting of the interim, which also served as the Commission's organizational meeting, to order at 1:00 p.m.

I. Election

The first order of business was the election of the leadership. The Commission elected **Delegate Drake** as Chair and **Delegate Stump** as Vice-Chair.

II. Administrative Support

The Commission then discussed a proposal made by **Delegate Suit** for changing the manner in which the Commission is staffed and funded. Under the proposal, the Commission would cease having an independent Executive Director and separate office space and have all of its staffing and support services provided by the Division of Legislative Services. This staffing and administrative support change would result in saving the \$174,000 provided for the support of the Commission from special fund appropriations the balance of which would be returned to the Virginia Housing Development Authority at the end of the fiscal year. The Commission voted 10-1 to accept the proposal, with **Delegate Stump** in opposition.

III. Reports From Agency Partners

The Commission then received reports from the following state agency partners:

- Susan F. Dewey, Executive Director, Virginia Housing Development Authority
- William C. Shelton, Director, Department of Housing and Community Development

- Dr. C. Theodore Koebel, Director, Virginia Center for Housing Research, Virginia Polytechnic Institute and State University

After the reports, **Delegate Drake** noted that House Joint Resolution 152, passed during the 2004 legislative session, directed the Commission to develop a housing policy for the state. She stated that the Commission would use, as important background material for developing the housing policy, the Housing Needs Assessment for the Commonwealth, completed by the Virginia Housing Development Authority and the Department of Housing and Community Development in 2001.

IV. Panel Discussion – Critical Housing Challenges Development of Work Groups

In an effort to update the Housing Needs Assessment and ensure that the most critical housing challenges now facing the state were identified, the Commission established a panel discussion consisting of the eight housing policy leaders. **Becky Clay Christensen** of Christensen & Associates facilitated the panel discussion. The panel consisted of:

- Susan F. Dewey, Executive Director, Virginia Housing Development Authority
- William C. Shelton, Director, Department of Housing and Community Development
- Dr. C. Theodore Koebel, Director, Virginia Center for Housing Research, Virginia Polytechnic Institute and State University
- Constance Chamberlin, Director, Housing Opportunities Made Equal
- Andrew Friedman, Department of Housing and Neighborhood Preservation, City of Virginia Beach
- John R. Broadway, Virginia Association of Realtors
- Mark S. Ingao, Apartment and Office Building Association
- Michael Toalson, Home Builders Association of Virginia

After a brief introduction, each panelist provided the Commission with key issues that he felt should be included in the housing policy study.

At the completion of the panel discussion, **Ms. Christensen** opened the discussion to Commission members with the objective of identifying i) housing production and availability challenges, ii) housing policy work groups, and iii) the housing policy mission statement.

Ms Christensen assisted the Commission in developing the possible work group areas based on the issues raised by panel discussion. The areas were:

1. Local government ordinances, comprehensive plans and zoning as applied to housing production, and the elimination of housing barriers to the availability and affordability of housing;
2. Regional approaches to developing housing policies;
3. Local Revitalization and blight programs and the implication that such programs have on state housing policies;
4. Financial issues related to housing production, and
5. Housing needs of special populations.

Mr. Garczynski stated that there were several housing policy documents that have already developed affordable housing policies after comprehensive study, some including several years of data. He suggested that the Commission obtain summaries of those documents to assist in developing its direction. The reports consisted of i) Report of the Secretary of Commerce and Trade on the Regulatory Barriers to Housing Affordability (1995); ii) Meeting Our Nation's Housing Challenges, the Millennial Housing Commissions (2002); iii) Rethinking Local Affordable Housing Strategies, Brookings Institution and the Urban Institute (2003); and iv) Comments from a coalition of housing groups on the Housing and Urban Development's Initiative on Removal of Regulatory Barriers.

In addition, the consensus of the Commission was also to have **Ms. Christensen** return to the next meeting of the Commission to assist in the completion of the housing policy work group designations and the study mission.

V. Overview of Legislative Initiatives

Delegate Drake provided an overview of the Commission's 2004 legislative initiatives and the study agenda for the interim. In terms of legislation, **Delegate Drake** noted that House Bill 824, relating to the issue of mold in residential rental dwelling units and House Bill 829, pertaining to elevator safety, were passed by the General Assembly and signed into law by the Governor. **Delegate Drake** stated that in addition to House Joint Resolution 152, which passed both houses of the legislature unanimously and set forth the housing policy study requirement of the Commission, Senate Joint Resolution 95, patroned by Senator Louis Luca, requested the Commission to include in its statewide housing policy study the impact of blighted properties in older urban communities.

Delegate Drake then informed the Commission that two other bills relating to eminent domain, House Bill 822 and Senate Bill 301, had also been referred to the Commission and that they would be addressed by an eminent domain work group.

Delegate Drake also noted the passage of House Bill 1231, which established the Commission as a standing legislative commission by amending the Code of Virginia to add an enabling statute for the Commission.

The meeting ended with an overview of the work schedule for the 2004 interim. **Delegate Drake** indicated that the work of the Commission must be completed in time for its final meeting scheduled for November 15, 2004, at the Norfolk Waterside Marriott immediately prior to the Governor's Conference on Housing. The next meeting was scheduled for July 6, 2004.

The meeting adjourned at 3:20 p.m.

MEETING SUMMARY

July 6, 2004, General Assembly Building, House Room C, Richmond, Virginia

Members in Attendance:

Delegate Thelma Drake, Chair
Delegate Jackie Stump, Vice Chair
Senator William C. Mims
Delegate Terrie L. Suit
Senator Marry Margaret Whipple
Delegate Bradley P. Marrs
Delegate Melanie Rapp
Senator Mamie Locke
F. Gary Garczynski
F. Andrew Heatwole
T.K. Somanath
Staff: Amigo Wade, Lisa Gilmer

I. Establishment of Work Groups

Delegate Drake called the meeting to order at 1:00 p.m. **Becky Clay Christensen** began with a continuation of the discussion regarding the establishment of work groups for the housing policy study. **Ms. Christensen** presented a compilation of the discussion from the last meeting that included over 22 issues and 9 major themes. **Ms. Christensen** stated that the issues and themes appeared to coalesce around three key areas:

1. Local Government- (eliminating barriers)
 - Comprehensive Plans
 - Zoning
 - Fees
2. Local Revitalization and Blight Removal
 - Including issues on poverty and homelessness
3. Special Populations
 - Disabled
 - Homeless
 - Fair Housing
 - Immigrant Housing

The Commission then accepted Ms. Christensen's report.

II. Overview of Selected Housing Policy Documents

Amigo Wade, Senior Attorney with the Division of Legislative Services, provided the Commission with an overview of selected housing policy documents: i) Report of the Secretary of Commerce and Trade on the Regulatory Barriers to Housing Affordability (1995), ii) Meeting Our Nation's Housing Challenges, the Millennial Housing Commissions (2002), iii) Rethinking Local Affordable Housing Strategies, Brookings Institution and the Urban Institute (2003), and iv) Comments from a coalition of housing groups on the Housing and Urban Development's Initiative on Removal of Regulatory Barriers. **Mr. Wade** stated that while the documents all pertained to affordable housing and the establishment of effective housing policies, each took a different approach and scope. Even with the different approaches and scopes, the documents generally agreed on four concepts:

1. There should be more flexibility in the administration of housing programs to allow more timely response to local market conditions and greater efficiency in operation;
2. Sufficient financial incentives are needed to increase private participation in affordable housing programs;
3. Alternative or innovative funding mechanisms to increase production of affordable housing and should be pursued; and
4. Poor implementation and administration of housing programs produce harmful and unintended outcomes.

Mr. Wade stated that other issues discussed by two or more of the documents included the need for better understanding of the connection between land use policies and the production of affordable housing, the need to take a more regional approach toward affordable housing strategies, the lack of employment or sufficient income as the principal barrier to housing affordability, and the examination and removal of program limitations that have outlived their purpose. **Mr. Wade** then provided a brief overview of each of the housing policy documents.

III. Mission Statement- Housing Policy Study

After receiving the review of the housing policy documents, the Commission moved to a brief discussion the draft of the housing policy mission statement that had been previously provided to the members. **Mr. Garczynsky** expressed concern that the draft statement was too long. He suggested that it be shortened. After brief discussion among the membership, the following mission for the housing policy study was adopted by consensus:

The mission of the Virginia Housing Commission Statewide Housing Policy Study is to identify, analyze, and develop recommendations that provide for housing sufficient to meet the current and future needs of Virginians of all income levels.

IV. Designation of Work Groups

The Commission then moved to the designation of the work group components of the state housing policy study. At the request of **Delegate Drake, Mr. Wade** presented three suggested work group designations and charges based on the work sessions facilitated by Ms. Christensen:

Work Group #1 – Regulatory and Financial Issues

Review and recommend policies aimed at identifying and alleviating regulatory and financial obstacles to the production and maintenance of affordable housing, develop incentives for local government to eliminate regulatory barriers, and review the impact of economic development on affordable housing.

Work Group #2 – Local Revitalization and Blight Removal

Identify community revitalization trends, issues and opportunities at local, regional and state levels; review existing statutory provisions dealing with blight removal and the enforcement of the Uniform Statewide Building Code and other relevant regulatory provisions to determine which statutes and enforcement provisions are successful and which are not successful.

Work Group #3 – Special Populations

Review and recommend policies to improve housing affordability and availability of housing for special populations including, but not limited to, the disabled, recent immigrants, and the homeless. In addition, the work group shall review and make recommendations, if needed, to improve the state fair housing policies.

The suggested charges were unanimously accepted. It was the consensus of the Commission that the Regulatory and Financial Issues and Local Revitalization and Blight Removal Work Groups begin their work during the 2004 interim, provide a status report to the Commission at the November 15, 2004, meeting, and submit a final report at the end of the 2005 interim. The Commission further agreed that the Special Populations work group would begin its work at the beginning of the 2005 interim.

Delegate Drake stated that an Eminent Domain work group would be established to deal with the eminent domain legislation that had been referred to the Commission.

The meeting adjourned at 2:55 p.m.

MEETING SUMMARY

November 15, 2004, Hampton Room 3, Waterside Marriot, Norfolk, Virginia

Members in Attendance:

Delegate Jackie Stump, Vice Chair

Delegate Terrie L. Suit

Senator Mary Margaret Whipple

Senator Mamie Locke

F. Andrew Heatwole

T.K. Somanath

Staff: Amigo R. Wade, Elizabeth Palen, Lisa Gilmer

Members Absent:

Delegate Thelma Drake, Chair

Senator William C. Mims

Delegate Bradley P. Marrs

Delegate Melanie Rapp

F. Gary Garczynski

Delegate Stump called the meeting to order at 3:20 p.m. **Basil Gooden** welcomed the Commission to the 2004 Governor's Housing Conference and gave highlights of conference events.

I. Overview of Activities

Amigo R. Wade provided the Commission with an overview of its activities over the course of the interim. The highlights included relocated staffing and administrative support to the Division of Legislative Services, establishing three work groups consisting of stakeholders and interested parties to assist in the development of a statewide housing policy, establishing an eminent domain work group to review and provide recommendations on legislation referred to the Commission, and establishing a website to serve as an information resource.

Mr. Wade then provided the Commission with an overview of the status reports from three work groups that met over the interim:

Eminent Domain Work Group

- Held four meetings over the course of the interim (July 14, September 23, October 28 and November 15).
- Performed an overall review of the eminent domain statutes.
- Reviewed use of eminent domain by the Virginia Department of Transportation and Housing Authorities.

- Developed recommendations for Senate Bill 301 pertaining to the repurchase of land conveyed pursuant to the exercise of eminent domain but not used by the condemning agency within a specified time.
- Received draft legislation limiting the circumstances under which real property may be acquired and subsequently transferred to a private entity.
- Received public comment pertaining to the eminent domain reform.

Regulatory and Financial Issues Work Group

- Held two meetings over the course of the interim (August 9 and October 21).
- Conducted an extensive review of the status of recommendations made in the 1995 Report of the Secretary of Commerce and Trade on Regulatory Barriers to Housing Affordability (House Document No. 54, 1995)
- Reviewed the planning review cycles and processes used by local planning commissions.
- Developed issues relating to the regulatory barriers that are particular to nonprofit housing providers.

Local Revitalization and Blight Removal

- Held two meetings over the course of the interim (September 23 and October 28).
- Reviewed statutory provisions pertaining to blight removal.
- Obtained perspective on local revitalization efforts as such efforts pertain to older, traditional cities.
- Included the study of the impact of blighted or deteriorated properties in older urban communities as required by Senate Joint Resolution 95 (2004).
- Received presentations and information concerning:
 - i) developer's perspective of blight removal process,
 - ii) status of brownfields efforts,
 - iii) successful redevelopment projects, and
 - iv) cooperative efforts between traditional cities and surrounding

localities.

II. Update on the Status of Visitability Initiative

At the conclusion of the work group status update, **Louise Ware**, Director of the Department of Professional and Occupational Regulation (DPOR) provided the Commission with an update on the status of the efforts that have been made on improving housing visitability. She stated that DPOR and the American Institute of Architects and the Home Builders Association had worked together to increase the emphasis on housing visitability in the state. **Ms. Ware** Provided the Commission with copies of and pamphlet that was mailed to architects around the state to increase the visitability awareness. In addition, **Ms Ware** discussed an initiative with schools of architecture in the state to provided visitability information in the course work. **Mr. Heatwole** asked if the visitability outreach efforts included civil engineers. **Ms. Ware** responded that the intention was to include many design professional and that engineers were the next target group.

Delegate Suit asked **Ms. Ware** if she was aware of any localities that had enacted ordinances to prohibit slab construction. **Ms. Ware** responded that she was not aware of any. **Mark Flynn** stated that, to his recollection, Suffolk was the only locality that had enacted such an ordinance and that it was done because of water problems with houses that are built at grade. He further noted that zoning ordinances may not override the Uniform Statewide Building Code.

Delegate Suit then asked **Ms. Ware** for an update on funding for the Fair Housing Board, which is housed at DPOR. **Ms. Ware** stated that the board was still being funded by the Real Estate Board and that the agency was making efforts to increase participation in the voluntary certification program. **Ms. Ware** noted that the fair housing training was going very well with administrative law judges providing much of the training.

Delegate Suit then suggested that the agency look into including Common Interest Communities in the fair housing training. **Senator Whipple**, who chaired the Commission's Visitability Work Group, thanked **Ms. Ware**.

III. Rental Assistance Proposal

Carolyn D. McPherson, Executive Director of the Samaritan House Safe Harbor, provided the Commission with information in support of a Virginia Rental Assistance Program. **Ms. McPherson** noted that Virginia is one of the least affordable states in the nation for renters and that a rental assistance program was much needed. She provided a handout detailing the need for the program and proposing a budget amendment in the amount of \$2.3 million sought by the Virginia coalition for the Homeless and Social Action Linked Together (SALT) to fund a pilot rental assistance program for working poor families.

Senator Whipple stated that the rental assistance program could be included in the Commission's housing policy study. She further stated that the review should also

include rental assistance for families coming off of the Temporary Assistance for Needy Families (TANF) Program because those individuals do not receive any assistance. **Senator Whipple** asserted that the state should look at funding a relatively low cost program to help make the transition from welfare to work. Such a program would be more cost effective. **Delegate Stump** stated that the Commission could look into the rental assistance and funding issue over the next interim. **Senator Locke** stated that a pilot program would be very beneficial. **Mr. Somanath** added that the need for rental assistance will be even more critical as federal programs are in danger of being dismantled and this would be problematic for low-income families, families moving from welfare to work, and seniors. He stated that he would like to see the issue studied more thoroughly.

Mr. Heatwole asked how the pilot program would be administered. **Ms. McPherson** stated that it would likely be administered at the state level by the Department of Housing and Community Development. **Mr. Heatwole** then stated that it was his understanding the some areas were having problems with landlords accepting vouchers. He stated that the program would have to find a way to increase landlord participation.

Delegate Suit asked if a state rental assistance program would be duplicative of the federal Section 8 (housing voucher) program. **Senator Whipple** stated that it was her understanding that many localities involved with the program had extensive waiting lists that were several years behind. The state rental assistance program would be temporary. **Senator Whipple** noted that often elderly residents who come to her county (Arlington County) get rental assistance because rents for those individuals are in some instances slightly higher than Section 8 income requirements.

Senator Whipple then asked if it would be appropriate for the Commission to establish a rental assistance work group or if the issue could be included in the Regulatory and Financial Issues Work Group. **Mr. Wade** indicated that the charge of that work group was sufficient to include the study of a pilot rental assistance program. **Mr. Andrew Friedman**, of the Virginia Beach Housing Authority, added that in his locality the waiting list was so extensive that no additions were being accepted and that the wait was several years long. **Delegate Suit** asked if the income of all household members was taken into consideration when determining eligibility. **Mr. Friedman** stated that the income of adults in the household was included and that eligibility requirements were enforced.

IV. Other Business

Senator Whipple stated that in the past, the Commission has endorsed the idea of funding for the Virginia Housing Partnership Fund. In keeping with that support, **Senator Whipple** moved that the Virginia Housing Commission formally support funding in the state budget for a Virginia Housing Partnership Fund. **Mr. Somanath** seconded the motion and it passed unanimously.

Delegate Stump informed the Commission that he had spoken with **Nancy Ambler** and that she was unable to attend the meeting because she had a prior commitment.

Mr. Frank Ottofaro requested the opportunity to speak. **Delegate Stump** noted that the Eminent Domain Work Group had met four times and that **Mr. Ottofaro** and other concerned citizens had been given the opportunity to provide public comment at two of the meetings. **Delegate Stump** further noted that, since the Eminent Domain Work Group had determined not to take action, it would not be appropriate to entertain further comment.

The meeting adjourned at 4:15 p.m.

Regulatory and Financial Issues Work Group

REGULATORY AND FINANCIAL ISSUES WORK GROUP

Delegate Thelma Drake, Chair

STATUS REPORT - 2004 INTERIM

WORK GROUP CHARGE

Review and recommend policies aimed at identifying and alleviating regulatory and financial obstacles to the production and maintenance of affordable housing; develop incentives for local government to eliminate regulatory barriers; and review the impact of economic development on affordable housing. The work group shall provide an interim report to the full Commission by November 15, 2004, and a final report to the full Commission by November 15, 2005.

SUMMARY

- Held two meetings over the course of the interim (August 9 and October 21).
- Conducted an extensive review of the status of recommendations made in the 1995 Report of the Secretary of Commerce and Trade on Regulatory Barriers to Housing Affordability (House Document No. 54, 1995).
- Reviewed the planning review cycles and processes used by local planning commissions.
- Developed issues relating to the regulatory barriers that are particular to nonprofit housing providers.
- Developed issues for consideration for 2005 interim with the aim of recommending specific policies for alleviating unnecessary regulatory barriers.

MEETING SUMMARY

August 9, 2004, House Room C, General Assembly Building, Richmond, Virginia

Work Group Members Attending:

Delegate Thelma Drake (Commission Member)
Senator Mary Margaret Whipple (Commission Member)
Gary Garczynski (Commission Member)
Janet Dingle Brown (Virginia Poverty Law Center)
Connie Chamberlin (Housing Opportunities Made Equal)
Mark Flynn (Virginia Municipal League)
Andrew Friedman (VA Beach Dept. of Housing and Neighborhood Preservation)
Barbara Favola (Arlington County Board of Supervisors)
Ted Keobel (Virginia Tech)
Mike Toalson (Home Builders Association of Virginia)
Staff: Amigo Wade, Lisa Gilmer

Work Group Members Absent:

Senator William C. Mims (Commission Member)
Robert Adams (Virginia Housing Coalition)
Anne Davis (U.S. Department of Housing and Urban Development)
William Ernst (Department of Housing and Community Development)
Dana Fenton (Prince William County)
Dawn Hester (City of Norfolk)
Robert Hynes (Arlington County Disability Advisory Commission)
Mark Ingrao (Apartment and Office Building Association)
David Kovacs (Virginia Conservation Network)
Patrick McCloud (Richmond Apartment Management Association)
Kurt Negaard (Virginia Association of Realtors)
Michele Watson (Virginia Housing Development Authority)

The meeting was called to order at 1:05 p.m. **Delegate Drake** reviewed the charge for the work group and the specific objectives for the meeting. Members of the work group were then asked to introduce themselves.

Agenda Items

1. Review of Status of recommendations; Regulatory Barriers to Housing Affordability (House Document 54, 1995)

Amigo Wade provided a review of the status of HJR 192 (1994) recommendations. After the presentation, several work group participants commented on the status of the recommendations and possible actions that may be taken by the work group.

Mr. Garczynski cited four key issues related to the focus of the state's housing policy:

1. The need to focus on delivery systems of housing- how to produce housing as quickly as possible
2. The relationship that the choice/type and price of housing -> how is it working for or against production of affordable housing.
3. Infrastructure funding and revenue- "proffer bag" and "transfer taxes."
4. Financing of homes on an individual basis.

Ms. Chamberlin cited the need to encourage regional cooperation.

Mr. Flynn stated that the threshold issue is dealing with affordable housing: we have a definition for affordable housing as it relates to buying a house, but need to look at it in terms of buying or renting. There is a need to define more clearly what affordable housing is: i.e., should we worry about making a \$750,000 house cost \$650,000? Also, there is a need to determine i) the driving factors in housing costs, and ii) the rules that deal with quality of housing.

Senator Whipple stated that the work group should look to Arlington County, which has successfully created more housing by creating bonus density points. **Senator Whipple** also cited the success in getting people to live downtown and stated that the ability to create housing relates to the locality's commitment to building housing along its infrastructure- i.e. smart growth

Mr. Koebel expressed concern that the work group should exercise caution not to separate affordable housing from other housing. He stated that unless you are producing enough housing (meaning enough land for development 15 years into the future) then you will be forcing up the price of housing anyway.

Mr. Toalson then provided the following as critical points for consideration:

- The demand for new housing is far exceeding the ability of homebuilders to produce it.
- The problem is the inefficiency of the process, which starts with the rezoning process and stretches out for months or years. What are some solutions?
- The need to look at the proffer system and its increasing impact on the production of affordable housing.

Mr. Toalson also stated that the work group would benefit from following the work of the Commission on Growth, which is currently looking at the impact of the proffer system.

Senator Whipple stated that strategies for producing housing and affordable housing are needed.

Mr. Garczynski stated that the issue is the delivery system and that if a house can be put in an owner's hands in 6 months, everyone would be a winner.

2. Work Plan Discussion

The meeting then centered on a general discussion regarding the work plan. The following statements were made as part of this discussion.

Several members commented on the issues that should be addressed by the work group in future meetings.

Ms. Chamberlin stated that there was a need to get information from nonprofits regarding the particular issues that they experienced. **Mr. Bob Adams** and Commission Member **T.K Somanath** were suggested as possible sources.

There was also discussion of VHDA's nonprofit organization task force and the beneficial role that it could play in the work group's deliberations.

Senator Whipple suggested that the work group look more at the role that the VA Housing Partnership Fund has played and the role that it may play in the future. She stated that it would be helpful to review what the experience of the Fund has been (even though funds have been depleted). **Mr. Bill Shelton** noted that DHCD has done a report on the use of the Fund and that it would be provided to the work group.

Ms. Brown expressed concern that the work plan be flexible to allow inclusion of additional items for consideration that may come up over the course of the work group's work. Specifically, she cited possible changes in the HUD Section 8 program that may provide for block grants of the funds and if that occurred there would be a need for some review of the implications that would have on housing affordability.

Mr. Friedman suggested that it would be helpful to invite some of the biggest planning review commissions to tell the work group of some of their problems and to discuss the review cycles and the processes that they use in reviewing plats and site plans.

Ms. Favola suggested that the work group not just look at what the agencies were doing and their processes but also the completeness of the planning documents that are submitted by developers. She stressed the need to look at both sides of the review issue; the review cycle as well as the planning documents that are submitted.

Mr. Garczynski stated that it would be beneficial to have high profile planning directors to come in and talk to the work group.

Ms. Chamberlin continued to stress that affordability need to be looked upon as a regional issue.

The meeting adjourned at 2:35 p.m.

MEETING SUMMARY

October 21, 2004, House Room C, General Assembly Building, Richmond, Virginia

Work Group Members Attending:

Senator Mary Margaret Whipple (Commission Member)
Senator William C. Mims
Robert Adams (VA Housing Coalition)
Janet Dingle Brown (VA Poverty Law Center)
Anne Davis (US Dept. of Housing and Urban Development)
William Ernst (Dept. of Housing and Community Development)
Dana Fenton (Prince William County)
Mark Flynn (Virginia Municipal League)
Andrew Friedman (VA Beach Dept. of Housing and Neighborhood Preservation)
Mark Ingrao (Apartment and Office building Association)
David Kovacs (Virginia Conservation Network)
Mike Toalson (Home Builders Association of Virginia)
Staff: Amigo Wade, Elizabeth Palen, Lisa Gilmer

Work Group Members Absent:

Delegate Thelma Drake (Commission Member)
Gary Garczynski (Commission Member)
Anne Davis (U.S. Department of Housing and Urban Development)
Dawn Hester (City of Norfolk)
Barbara Favola (Arlington County Board of Supervisors)
Robert Hynes (Arlington County Disability Advisory Commission)
Patrick McCloud (Richmond Apartment Management Association)
Kurt Negaard (Virginia Association of Realtors)
Michele Watson (Virginia Housing Development Authority)

The meeting was called to order at 1:10 p.m. by **Senator Whipple**, who served as acting chair of the work group.

Agenda Items

1. Presentation: Planning Review Cycles and Processes

Mr. Jeffrey Harvey, Stafford County Director of Planning & Community Development, discussed the planning review cycles and processes that are used by local planning and zoning agencies.

Mr. Harvey discussed in detail the process used for major and minor subdivisions, which are geared more toward the construction of individual homes, and site plans, which are more geared more toward commercial uses. Several members of the work group offered questions during Mr. Harvey's presentation.

Mr. Kovacs asked if site plans were required to be reviewed by the planning commission. **Mr. Harvey** responded that some planning commissions do review site plans; however, in Stafford County the review of site plans is deemed an administrative function.

Mr. Friedman asked if high growth contributed to a delay in reviewing in some areas. **Mr. Harvey** responded that over the last two years in Stafford County there has been some staff turnover and that in the Fredericksburg areas there is a general shortage of engineers. Both contributed to produce some delays.

Ms. Brown asked if the time from the initial proposal to the actual breaking of ground was about 2 years and **Mr. Harvey** stated that in his county the time was approximately 1 to 1 1/2 years. **Ms. Brown** then asked if there were any practices that differentiated in terms of fees and bonds for affordable housing projects. **Mr. Harvey** responded that in Stafford County there was no differentiation, and that as far as bonds were concerned the County would want to have at least a 100% bond to protect the county (It was noted that the Code of Virginia provides that a locality may require up to a 125% bond).

Regarding the review process, **Mr. Toalson** stated he was aware of many situations involving developers who have resubmitted plans with corrections that were requested by the locality pursuant to initial review, only to find additional deficiencies cited. This situation, stated **Mr. Toalson**, is unfair and costly to the developer and leads to further unnecessary delay. Reference was made to the process used by the Uniform Statewide Building Code wherein the building official is authorized to make changes to plans. The issue was raised regarding whether it was advisable to allow engineers to make changes to plans.

Mr. Toalson further stated that the Department of Environmental Quality uses a chart to track its permit process from the beginning to the end and that is accessible to participants in the process. He stated that this allows the participant to see where the permit is in the process at all times and results in less frustration.

Mr. Kovacs stated that there was need to know how resubmitting plans delayed the process and what required the resubmittals: i.e., what percentage was resubmitted for missed items? For new items not previously cited? For items not addressed at all?

Senator Mims stated that he represents several engineers in the Northern Virginia area and that this issue had caused some concern. He cited as a potential problem the belief by some in the field that some fast growing areas had a practice of merely reviewing plans until they get to the first deficiency, then sending them back for that correction rather than reviewing the entire set of plans and noting all deficiencies before sending them back for correction. **Senator Mims** asked generally what the General Assembly could do legislatively to make it clear that the desired policy is to have the plans thoroughly reviewed in the first instance. As possible options, **Senator Mims** offered that either the legislature could provide that (i) after the first review of plans a locality could only subsequently reject the same plans for deficiencies caused by the second

submission or (ii) the reviewing locality would only get one opportunity to perform a review.

Mr. Flynn pointed out that currently § 15.2-2259 includes language clearly providing that a good faith effort be made by the reviewing locality to perform a thorough review. **Mr. Toalson** countered that despite that language, the situation has not improved. **Mr. Harvey** stated that the issue of proper review was in reality an issue of professionalism. He asserted that if the situations that were being offered were true then they were the result of individuals not doing the job that they are paid to do.

Mr. Flynn noted that one option available to a developer was to seek a writ of mandamus on an expedited basis as provided by the statute. **Mr. Toalson** stated that the option was not used very often because of the costs that are involved. **Mr. Friedman** stated that he could not support legislation that penalized the neighborhood that surrounded a project for a mistake. **Mr. Fenton** agreed that legislation would be premature.

Mr. Kovacs suggested that a peer review process be instituted by legislation. Such a process would approach the problem from the standpoint of professionalism and education.

Mr. Ernst commented that the more sunshine you have in the process the more successful the compliance will be. He supported the use of an automatic tracking system that the public could access.

Mr. Fenton stated that Prince William County had established a commercial developer task force that has assisted in cutting the review time.

Ms. Lynn Robinson of Henrico County stated that use of a training program for the building community to review issues associated with the process has been very successful in her county. In addition, she stated that inspectors had been supplied with “notebooks” that allowed them to electronically enter inspection data. **Mr. Toalson** noted that the technology was expensive. He recommended that HUD be asked to allow localities to use federal money to upgrade or install tracking systems for the development process.

Ms. Watson of the Affordable Communities Initiative asserted that incentive points for communities to reduce regulatory barriers should be pursued. **Ms. Brown** added that there was a need for state incentives for inclusionary zoning. She requested staff to get information on what incentives are available in Virginia as well as what exists in other states.

Mr. Friedman stated that the number one barrier was public awareness, that the issue many times was that no change is good.

Mr. Fenton asked **Mr. Harvey** if he was aware of situations where plans had to be reviewed a second or third time and he replied that he was. **Mr. Fenton** then asked if those situations involved some common elements that seemed to go on beyond the

second or third review and **Mr. Harvey** replied that he was not aware of the things that routinely came up as deficient.

2. Presentation: Barriers to Affordable Housing- Virginia Nonprofit Housing Industry.

Robert Adams, Vice President of the Virginia Housing Coalition, discussed the particular problems that nonprofit housing providers experience with regulatory and financial barriers.

Mr. Adams stated that although there are over 100 nonprofit housing providers, they all share some common elements. For instance, he stated, they all are mission-based and have volunteer boards. Other points made by Mr. Adams about nonprofit housing providers included:

- Uneven distribution throughout the state (organizations are less strong in Hampton Roads and Southside);
- Diverse in terms of structure and missions;
- Faith-based organizations as a growing part of the nonprofit housing universe (such as Habitat for Humanity);
- Usually pursue projects that are smaller in size and targeted for individuals with lower incomes;
- Support of neighborhood development projects in addition to houses (i.e. new higher quality housing in depressed areas);
- Financing is usually extremely complicated; and
- Most nonprofits operate in either urban or rural areas; few operate in suburban areas.

Mr. Adams noted that nonprofits generally have a better track record in dealing with the neighborhoods that surrounded their projects. He attributed this success to the time that nonprofits are willing to put into building relationships and the fact that many have ties to the neighborhoods and communities.

Mr. Adams stated that financing is the biggest barrier that most nonprofits face as they are not very well capitalized. He suggested the following ways to ease this barrier

- Creation of a Housing Trust Fund;
- Coordination of federal, state and local resources;
- Establishment of an online system for grants and loans.

Mr. Adams also stated that other barriers are the market and public policy: i.e. land costs and exclusionary zoning.

Ms. Brown asked if impact fees and proffers were also barriers. **Mr. Adams** responded that they were but because the projects were of smaller scale, impact fees and proffers were not as big an issue.

Mr. Ingrao stated that many local developer-funded trust funds have been created but most do not know how to use the funds. **Mr. Ingrao** then asked **Mr. Adams** for a definition of affordable housing. **Mr. Adams** stated that the workable definition was 120% of median but that the federal level was 80% of the median.

Mr. Toalson asked if exclusionary zoning (i.e. requiring smaller lots) serves as a barrier. **Mr. Adams** stated that some states had attempted to develop incentives to localities for inclusive zoning, but that they have not been very successful. **Mr. Flynn** asserted that it was effective to require a developer to pay into a fund or dedicate units for affordable housing. **Mr. Toalson** responded that it was wrong to require a private owner to subsidize the housing needs of a locality. **Mr. Ingrao** added that any incentive needed to be fair and predictable.

The consensus among the membership was that other programs aimed at reducing regulatory barriers or increasing the supply of housing should be reviewed by the work group, including:

- Reviewing successful programs used by Northern Virginia localities,
- Bonus density provisions (pros and cons), and
- Reviewing with the Virginia Housing Development Authority the status of its mixed income/mixed use projects.

The meeting was adjourned at 3:05 p.m.

PRESENTATIONS AND REPORTS*

1. Review of Status of Recommendations of the HJR 192 Report, Amigo R. Wade, Senior Attorney, Division of Legislative Services, August 9, 2004.
2. Planning Review Cycles and Processes, Jeff Harvey, Director, Department of Planning and Community Development, Stafford County, October 21, 2004.
3. "Barriers to Affordable Housing - Virginia's Nonprofit Housing Industry," Robert Adams, Virginia Housing Coalition, October 21, 2004.

**Full copies of presentations made to the work group may be retrieved from the Commission's website: <http://dls.state.va.us/houscomm.htm>*

Local Revitalization and Blight Removal Work Group

LOCAL REVITALIZATION AND BLIGHT REMOVAL WORK GROUP

Delegate Terri Suit, Chair

STATUS REPORT - 2004 INTERIM

WORK GROUP CHARGE

Identify community revitalization trends, issues and opportunities at local, regional and state levels; review existing statutory provisions dealing with blight removal and the enforcement of the Uniform Statewide Building Code and other relevant regulatory provisions to determine which statutes and enforcement provisions are successful and which are not successful.

SUMMARY OF ACTIVITIES

- Held two meetings over the course of the interim (September 23 and October 28).
- Reviewed statutory provisions pertaining to blight removal.
- Obtained perspective on local revitalization efforts as such efforts pertain to older, traditional cities.
- Included the study of the impact of blighted or deteriorated properties in older urban communities as required by Senate Joint Resolution 95 (2004).
- Received presentations and information concerning:
 - i) developer's perspective on blight removal process,
 - ii) status of brownfields efforts,
 - iii) successful redevelopment projects, and
 - iv) cooperative efforts between traditional cities and surrounding localities.

- Established commitment to the development of specific recommendations for policies aimed at alleviation of blight and increased support of local revitalization efforts.

MEETING SUMMARY

***September 23, 2004, General Assembly Building, House Room D,
Richmond, Virginia***

Work Group Members in Attendance

Delegate Terrie Suit (Commission Member)
Senator Mamie Locke (Commission Member)
T. K. Somanath (Commission Member)
Steve Shapiro (Director of Code Compliance, Hampton)
Robin Herbert (Community Planning and Development Program Administrator,
Portsmouth)
Rochelle Small-Toney (Assistant City Manager, Charlottesville)
Rhet Tignor (Hampton City Council)
Ron Jackson (Deputy Director, Chesapeake Redevelopment & Housing Authority)
Eric Olson (State Board for Contractors)
Mark Ingrao (Apartment and Office Building Association)
John Broadway (Virginia Association of Realtors)
Staff: Amigo Wade, Lisa Gilmer

Work Group Members Absent

Delegate Melanie Rapp (Commission Member)
Wayne McBride (City of Norfolk)
Emory Rodgers (Department of Housing and Community Development)
Steve Kopalchick (U.S. Department of Housing and Urban Development)
Mike Cheatwood
Linda Lunquist
John English (Old Dominion University)

Delegate Suit called the meeting to order at 10:00 a.m. by reviewing the group's charge and the meeting goals. After allowing the members of the work group to introduce themselves, the chair turned to the scheduled presentations as indicated on the agenda.

Agenda Items

1. Presentation: Dealing with Blighted Properties

Walter C. Erwin, III, Lynchburg City Attorney, provided the work group with an overview of the blight removal provisions contained in the Code of Virginia. **Mr. Erwin** noted that over ten years ago a report prepared by the Department of Housing and Community Development recognized the existence of blighted and deteriorated buildings erodes the quality of life in many of Virginia's neighborhoods. Those problems include

- Blighted and deteriorated properties create potential nuisances and can become a convenient haven for criminal activities;

- The presence of blighted and neglected properties impair or arrest growth and development of a neighborhood and often lead to an exodus of current businesses and residents, threatening the spread of blight to other properties and neighborhoods;
- Vandalism of a single property or structure can have significant negative economic and environmental impact on an entire neighborhood; and
- Empowering localities to deal with blighted and deteriorated properties benefits the public by providing a more attractive community environment for citizens of the locality and increasing potential economic development prospects.

Mr. Erwin noted that localities are well aware of the connection between blighted and deteriorated properties, and that prompt efforts to deal with such properties are essential.

Mr. Erwin stated that property maintenance provisions of the Uniform State Building Code (USBC) also serve as valuable tools for local governments in their efforts to deal with blighted and deteriorated properties. These provisions empower officials to order the owner of a structure that is not being maintained in accordance with the property maintenance provisions of the USBC to repair the structure in a timely manner. If the owner refuses or fails to make the necessary repairs, a building official has the authority to secure, repair, vacate, condemn and even demolish properties that are unsafe or unfit for human occupancy.

Mr. Erwin also asserted that while the USBC is a valuable tool to assist local governments in dealing with blighted properties, it is often necessary to use authority provided by other provisions of the Code of Virginia, including:

- Abatement of Nuisance Properties (§§ 15.2-900, 15.2-901, 15.2-906 and 15.2-1115);
- Drug Blighted Properties (§ 15.2-907);
- Bawdy Places, Prostitution (§§ 15.2-908.1 and 48-7);
- Drug Activity Properties (§ 18.2-258);
- Alcohol Violations (§ 4.1-317);
- Registration of Vacant Properties (§ 15.2-1127);
- Spot Blight (§§ 36-49.1 and 36-19.5);
- Use of Grand Juries to Investigate Nuisances (§§ 48-1 through 48-6); and
- Delinquent Real Estate Taxes (§§ 58.1-3965, 58.1-3970.1, and 58.1-3975).

The presentation concluded with a listing by **Mr. Erwin** of additional statutory powers that would help localities deal with blighted and deteriorated properties. These include: i) strengthen language in the USBC pertaining to a locality's ability to recover costs when it has to demolish or repair a blighted or deteriorating property by authorizing a lien against the property; ii) strengthen the authority of localities to deal with "eyesore" properties such as the current provisions for dealing with unsafe, dangerous or unsanitary properties; iii) revisit the 2004 amendments to the Sections 15.2-904 and 15.2-905 which weakened the authority of localities to deal with inoperable vehicles; iv) develop additional authority to enable localities to acquire title to neglected properties in a timely and cost-effective manner before they deteriorate to the point where they cannot be restored; and v) make additional funding available to localities to deal with blighted or deteriorated properties.

2. Presentation: Overview of Current city Conditions and Strategies for Urban Revitalization

Linda McMinimy, of the First Cities Coalition, provided the work group with an overview of conditions faced by older cities and recommended strategies for urban revitalization. The First Cities Coalition is composed of 15 Virginia cities located throughout the state. **Ms. McMinimy** stated that blight is a major problem because it destroys communities, breeds crime, and causes disinvestments. Over the course of her presentation, **Ms. McMinimy** discussed several factors influencing the conditions of Virginia's core cities, including concentrations of poor and working poor, lower cost housing, high rental rates, and heavier reliance on health and welfare services and public transportation. In addition, while state aid is provided for education, local budget needs such as law enforcement, health and welfare, and infrastructure, all of which consume significant resources, receive very little state assistance.

Ms. McMinimy further stated that since cities cannot grow in area, the only way to increase the tax base is through revitalization. She organized her presentation around four realities faced by coalition cities that adversely affected the cities' ability to address blight:

A. Costly demographics

- Between 1990 and 2000, coalition cities lost 1.5% of their population while other localities in the state gained 18.6%
- 17% of the population is poor (versus 8% in other localities)
- 53% of students receive free or reduced lunch (27% of students in other localities of the state use these programs)
- A violent crime rate that is 80% higher than other localities
- Physical infrastructure that is older and more costly to maintain

B. Lagging economic growth

- Between 1990 and 2000 9,600 jobs gained (versus 583,000 in the rest of the state)
- Median family income of \$32,000 (versus a state median of \$46,700)

C. Physical barriers to Growth

- Lack of land suitable for development land
- Blighted land and structures
- The gap between development costs and market value
- Limited funding for redevelopment

D. Limited Fiscal Capacity

- Tax base that is heavily dependent on real estate tax
- Severely limited by the State in terms of revenue sources
- Aid provided by the state for urban revitalization, health and human services, infrastructure, and public safety are very limited relative to need.

Ms. McMinimy concluded her presentation by offering three strategies for the General Assembly to support that will move urban revitalization forward. First, policies should recognize that the vitality of cities is critical to the health of major metropolitan regions, should encourage reinvestment in cities, and should support regional approaches to problems. Second, increase efforts to improve economic competitiveness of cities by i) adopting the recommendations of the Urban Policy Task Force, ii) increasing funding for existing programs for blighted commercial or industrial properties, and iii) increasing assistance with key infrastructure needs. Third, hold property owners accountable for their properties.

The meeting adjourned at 11:42 a.m.

MEETING SUMMARY

October 28, 2004, Conference Room 1, Virginia Housing Development Authority Building, 601 Belvidere Street, Richmond, Virginia

Work Group Members in Attendance

Delegate Terrie Suit (Commission Member)
Senator Mamie Locke (Commission Member)
T. K. Somanath (Commission Member)
Steve Shapiro (Director of Code Compliance, Hampton)
Robin Herbert (Community Planning and Development Program Administrator,
Portsmouth)
Rochelle Small-Toney (Assistant City Manager, Charlottesville)
Rhet Tignor (Hampton City Council)
Ron Jackson (Deputy Director, Chesapeake Redevelopment & Housing Authority)
Eric Olson (State Board for Contractors)
Mark Ingrao (Apartment and Office Building Association)
John Broadway (Virginia Association of Realtors)
Staff: Amigo Wade, Elizabeth Palen, Lisa Gilmer

Work Group Members Absent

Delegate Melanie Rapp (Commission Member)
Wayne McBride (City of Norfolk)
Emory Rodgers (Department of Housing and Community Development)
Steve Kopalchick (U.S. Department of Housing and Urban Development)
Mike Cheatwood
Linda Lunquist
John English (Old Dominion University)

Delegate Suit called the meeting to order at 10:00 a.m. and introduced the speakers who were: Earl M. Ferguson, Artcraft Development, L.C.; Robin Miller, owner of Miller and Associates, Chris Evans and Kathy Framme, Department of Environmental Quality; Lee Householder, Richmond Redevelopment and Housing Authority; and Jack Berry, President and CEO of the Richmond Metropolitan Convention & Visitors Bureau.

Agenda Items

1. Presentation: Developer's Perspective on the Blight Removal Process.

The work group received a presentation from **Earl Ferguson**, President of Artcraft Development L.C. on developing blighted properties and the process for doing so. **Mr. Ferguson** spoke of the increased public benefit in acquiring blighted communities and rehabilitating them. Some common hurdles he experienced included site development problems, such as conflicting laws regarding who is deemed elderly for elderly housing, and building permit issues. Other issues that were discussed by **Mr. Ferguson** were the time needed to re-zone the property, the length of the building process when you include the existing neighborhood into the design process, and unique problems such as the need for electric fencing to help alleviate a gang problem.

There was general discussion among the membership and **Mr. Ferguson** regarding whether time could be saved by simultaneous submissions under the Uniform Statewide Building Code for site concerns. Mr. Ferguson stated that simultaneous submission could save time.

2. Presentation: Residential Developer's Perspective

Robin Miller of Miller & Associates then spoke about adaptive use of historic buildings to create market-rate housing. He relies primarily on federal historic tax credits, state historic tax credits and the City of Richmond tax abatement program as funding tools. His company also focuses on adaptive reuse, urban revitalization, historic preservation and mixed-use development. **Mr. Miller** briefly discussed with the work group several construction projects of his company in the Richmond area in various neighborhoods that involved refurbishing older structures: Oregon Hill, the Museum district, The Fan District, Shockoe Bottom, and Old Manchester.

Mr. Somanath asked if blight was confined to cities. **Mr. Miller** stated that blight was spreading to suburbs. **Mr. Ingrao** asked Mr. Miller to review with the work group the process that resulted in his company purchasing and renovating the Robert E. Lee school. **Mr. Miller** stated that the Richmond School Board gave the school to the City of Richmond, which then issued invitations for bids on the project. He further stated that his company was successful because it had the support of the neighborhood association. He noted that his company changed its bid to accommodate the association such as changing the total units from 55 to 40.

Mr. Ingrao asked if federal tax credits were available for the types of projects Miller and Associates did. Mr. Miller responded that the tax credit was for urban renewal and that apartments were not considered covered. He further stated that Virginia had set up a tax credit to save historic buildings. That tax credit could conceivably be used with affordable housing in mind.

The consensus of the group was that legislation is needed to speed up the process of acquiring blighted property.

3. Presentation: Brownfields Redevelopment

Chris Evans and **Kathy Frahm** of the Department of Environmental Quality provided the work group an overview on the status of brownfields redevelopment. **Mr. Evans** explained that a "brownfield" is an abandoned, idled or underutilized industrial or commercial property where expansion or redevelopment is complicated by real or perceived environmental contamination. Typical concerns of prospective participants in the program include unknown liability, costs and regulatory processes, the possibility of additional or undiscovered contamination, difficulty in getting a loan, and the possibility of civil action being taken by neighboring property owners. **Mr. Evans** and **Ms. Frahm** the discussed the key components of the state's brownfield program:

- Limitations on liability for individuals not responsible for the contamination;
- Amnesty from civil penalties for self disclosure;
- Voluntary remediation program;
- Site assessment assistance;
- Federal grants to localities for redevelopment projects;
- Low-interest loans for remediation costs; and
- Tax incentives.

Ms. Frahm stated that the goal of the program is to mitigate concerns about Brownfields and speed up the process that leads to development. Brownfields can be in blighted areas and knowing rules and having certainty in the process of acquiring the property is important to developers. **Mr. Evans** reviewed the community and economic benefits to the state as a result of the 122 sites that have been successfully cleaned up and the 40 projects that were currently underway. The estimated economic benefits are: over \$700 million in capital reinvestment; more than 700 full time jobs created and 500 jobs saved; over 2,500 part time jobs created; and 1,700 acres cleaned up. Community benefits include a cleaner environment, restoration of abandoned sites, reduced pressure for open spaces, and increased tax base.

Ms. Frahm and **Mr. Evans** also discussed real estate transactions with environmental components. Federal Brownfields grants and amnesty from civil penalties for self-disclosure were also discussed briefly.

Mr. Heatwole asked if DEQ had established a Memorandum of Understanding with the Environmental Protection Agency. **Ms. Frahm** replied that the MOA was completed two years ago and that it served to provide assurance from the federal government that it would not intervene or interfere in a brownfield cleanup operation conducted in Virginia pursuant to the program. **Ms. Frahm** also stated that the federal enforcement bar added additional assurance to participants by putting in place a bar on prosecution by the EPA.

Mr. Heatwole then asked if there was a federal tax credit for brownfield cleanup. **Mr. Evans** replied that there was such a tax credit and that, although it was originally scheduled to sunset in 2002, it is now permanent. **Mr. Evans** stated that he would provide additional information on the specifics of how the tax credit worked.

Delegate Suit asked if there was an inventory of brownfield sites and **Ms. Frahm** answered that a site inventory had not been done yet. She further stated that part of the problem is that some owners may be afraid to have property designated as a brownfield.

4. Presentation: Successful Projects of the Richmond Redevelopment and Housing Authority

Lee Householder then spoke to the work group about the Richmond Redevelopment and Housing Authority's (RRHA) revitalization and blight removal efforts. **Mr. Householder** stated that the RRHA was currently working in 19 redevelopment and conservation areas located throughout the City. An overview of the activities over the last year was cited as follows:

- 81 properties acquired at a cost of \$2,500,000
- 44 properties demolished at a cost of \$353,000
- 30 families relocated at a cost of \$313,000
- 15 families receiving rehabilitation grants totaling \$530,000

These activities came to a total of \$3,696,000 in public investment. The total amount of private investment in these projects amounted to \$20,000,000. **Mr. Householder** also informed the work group that 110 homes had been newly constructed with an average price of \$150,000. **Delegate Suit** asked how many projects required eminent domain action and **Mr. Householder** replied that approximately 5% require eminent domain and most of those are done to resolve title issues and not because of an unwilling seller.

Mr. Householder then proceeded to provide an overview of typical blight removal and subsequent revitalization via the establishment of an Authority-approved development area.

1. City Manager requests the RRHA to conduct a blight study.
2. City Council approves funding for the study and redevelopment plan.
3. RRHA procures a consultant.
4. Public meetings are held involving affected property owners and neighborhood organizations, with the objective of achieving consensus for a draft plan.
5. Final redevelopment plan is prepared and approved by the RRHA.
6. City Council reviews and adopts the plan.
7. RRHA proceeds with the funding and implementation of the plan.

Mr. Householder then discussed the work of the RRHA in the Randolph, Carver, Southern Barton Heights, West Cary Street, and Blackwell neighborhoods. Six other neighborhoods the Housing Authority targets are the Neighborhoods in Bloom initiative areas for which blight removal is a component.

Several questions of the work group concerned the lengthy amount of time it takes for the Housing Authority to acquire property and whether developers could expedite the process. The group also discussed what the state could do to assist cities and housing authorities to do more.

Mr. Somanath asserted that the state should look into the possibility of allowing a developer to use his own resources, thereby using private money instead of appropriations. **Mr. Householder** responded that, to his knowledge, the property would have to be condemned by a public entity and that the statute would not allow the property to be subsequently given to a private developer.

Mr. Shapiro asked how the RRHA funded the projects. **Mr. Householder** stated that funding came from \$2.5 million in Community Development Authority bonds. In addition, 20% came from other sources including some funds from Housing Opportunities Made Equal, Inc. (HOME). **Delegate Suit** asked if RRHA provided down payment assistance in the instances of housing purchased. **Mr. Householder** stated that while the City did not provide such assistance, some was provided by HOME.

5. Presentation: Cooperation Between Traditional Cities and Surrounding Localities.

Jack Berry, President and CEO of the Richmond Metropolitan Convention & Visitors Bureau, then spoke regarding how the City of Richmond and the surrounding Counties of Henrico, Chesterfield and Hanover used regional cooperation to help eliminate blight in downtown Richmond. **Mr. Berry** indicated that fifty-seven parcels were acquired downtown by eminent domain. Approximately \$454 million has been invested downtown because it will have an overall effect of benefiting the entire region. He then discussed at length the largest regional partnership to date involving Richmond and surrounding counties: the Greater Richmond Convention Center. The funding commitments were shared among the localities in the following manner: Richmond 50%, Henrico 35%, Chesterfield 13%, and Hanover 2%.

Delegate Suit concluded the meeting by the work group will begin its work in the 2005 interim by exploring what can be done legislatively to foster blight removal and revitalization and to develop policy locally and statewide.

The meeting adjourned at 11:50 a.m.

PRESENTATIONS AND REPORTS*

1. Dealing with Blighted Properties, Walter C. Erwin, Lynchburg City Attorney, September 23, 2004.
2. Overview of Current City Conditions and Strategies for Urban Revitalization, Linda McMinimy, Virginia First Cities Coalition, September 23, 2004.
3. Developer's Perspective on the Blight Removal Process, Earl M. Ferguson, President Artcraft Development L.C., October 28, 2004.
4. Residential Developer's Perspective, Robin Miller, Miller & Associates, October 28, 2004.
5. Brownfields Redevelopment, Department of Environmental Quality, October 28, 2004.
6. Successful Projects of the Richmond Redevelopment and Housing Authority, Lee Householder, Richmond Redevelopment and Housing Authority, October 28, 2004.
7. Cooperation Between Traditional Cities and Surrounding Localities, John F. Berry, President and CEO, Richmond Metropolitan Convention & Visitors Bureau, October 28, 2004.

**Full copies of presentations made to the work group may be retrieved from the Commission's website: <http://dls.state.va.us/houscomm.htm>*

Eminent Domain Work Group

EMINENT DOMAIN WORK GROUP

Delegate Thelma Drake, Chair

STATUS REPORT - 2004 INTERIM

WORK GROUP CHARGE

Review the current eminent domain laws, policies and practices and how such laws, policies and practices are implemented across the state; develop a definition or criteria for the determination of public use; review eminent domain legislation referred to the Commission and provide recommendations for action.

SUMMARY OF ACTIVITIES

- Held four meetings over the course of the interim (July 14, September 23, October 28 and November 15).
- Performed an overall review of the eminent domain statutes.
- Reviewed use of eminent domain by the Virginia Department of Transportation and Housing Authorities.
- Developed recommendations for Senate Bill 301 pertaining to the repurchase of land conveyed pursuant to the exercise of eminent domain but not used by the condemning agency within a specified time.
- Received draft legislation limiting the circumstances under which real property may be acquired and subsequently transferred it to a private entity.
- Received public comment pertaining to eminent domain reform.

MEETING SUMMARY

July 14, 2004, General Assembly Building, House Room C, Richmond, Virginia

Work Group Members in Attendance

Delegate Thelma Drake (Commission Member)
Andrew Heatwole (Commission Member)
Timothy Coyle (Crenshaw, Ware and Martin)
John Dicks (FutureLaw)
Phyllis Errico (Virginia Association of Counties)
Les Griggs (Virginia Department of Transportation)
Sandra Ferebee (GSH Real Estate)
Mark Ingrao (Apartment and Office Building Association)
James Kibler (LeClair Ryan)
Jim Lawson (City of Virginia Beach)
Steve Micas (Virginia Municipal League)
Susan Rubin (Virginia Farm Bureau)
Jose Simon (Virginia Natural Gas)
James Stutts (Dominion Resources)
Paul Terpak (Blankenship and Keith)
Joseph Waldo (Waldo and Lyle)
Stuart Waymack (Virginia Department of Transportation)
Karen Wilds (Newport News Redevelopment Housing Authority)
Staff: Amigo Wade, Lisa Gilmer

Work Group Members Absent

Delegate Jackie Stump (Commission Member)
Delegate Bradley Marrs (Commission Members)
Nancy McCord (Virginians for Private Property Rights)

Delegate Drake called the meeting to order at 1:11 p.m. by reviewing the work group's charge and the meeting goals. The chair then turned to the scheduled presentations as indicated on the agenda.

Agenda Items

1. Recent Eminent Domain Developments

Frank Munyan, Senior Attorney with the Divisions of Legislative Services, provided the work group with an overview of recent eminent domain developments. He began his presentation by reviewing the provisions of Article I, Section 11 of the Virginia Constitution and the recodification of Title 25, which lays out the state's condemnation procedures.

Mr. Munyan then provided an overview of the work of the SJR 271/HJR 491 Joint Subcommittee established by the 1999 session of the General Assembly to study the

means and adequacy of compensation to citizens whose properties are taken through the exercise of eminent domain. The major issues address by the study included:

- Litigation Expenses
- Business Losses
- Condemnation of Outdoor Advertising Signs
- Commissioner System
- Condemnations by Virginia's Electric Utilities
- Fear of Transmission Lines as an Element Of Damages
- Compensation for Devaluation of Adjacent Property
- Virginia Department of Transportation Condemnations

The study was continued for a second year pursuant to SJR 37 to deal with the unresolved issues focusing on payment of condemnee's litigation expenses, compensating the condemnee for the cost of an independent appraisal, allowing a city or town to condemn property outside of its boundaries if the property is in a contiguous locality, and alternative dispute resolution options.

Mr. Munyan then reviewed legislation introduced in the 2001 Session as a result of the joint subcommittee's work. **Mr. Munyan** concluded his presentation with a discussion of two recent cases, Ottofaro, et al. v. Hampton, 265 Va. 26 (2003), and Lamar v. Commonwealth Transportation Commissioner, 262 Va. 375 (2001).

2. Review of Referred Legislation

The work group then turned to a discussion of referred legislation consisting of Senate Bill 301, which would require that property be put to the public use for which it was condemned within 10 years or be offered for sale to the person who owned it at the time of condemnation, and House Bill 826, which strengthens the "Landowner's Bill of Rights."

Some confusion arose concerning the correct version of the bill that was referred to the Commission. **Delegate Drake** resolved the issue by asserting that the work group would not be precluded from reviewing other versions of the substitute in an effort to reach some agreement on a recommendation to the full Commission and the House Courts Committee.

A general discussion ensued concerning House Bill 826 and House Bill 822. **Delegate Drake** stated there was a need to define public purpose for any projects. She indicated that it would be helpful to provide copies of the relevant caselaw wherein the Virginia Supreme Court has looked at eminent domain issues.

The work group then approved a work plan to direct its work for the interim.

The meeting was adjourned at 2:56 p.m.

MEETING SUMMARY

***September 23, 2004, General Assembly Building, House Room D,
Richmond, Virginia***

Work Group Members in Attendance

Delegate Thelma Drake (Commission Member)
Delegate Terrie Suit (Commission Member)
Delegate Jackie Stump (Commission Member)
Delegate Bradley Marrs (Commission Member)
Andrew Heatwole (Commission Member)
Timothy Coyle (Crenshaw, Ware and Martin)
John Dicks (FutureLaw, L.L.C.)
Phyllis Errico (Virginia Association of Counties)
Sandra Ferebee (GSH Real Estate)
Les Griggs (Virginia Department of Transportation)
Mark Ingrao (Apartment and Office Building Association)
James Kibler (LeClair Ryan)
Jim Lawson (City of Virginia Beach)
Steve Micas (Virginia Municipal League)
Susan Rubin (Virginia Farm Bureau)
Jose Simon (Virginia Natural Gas)
James Stutts (Dominion Resources)
Paul Terpak (Blankenship and Keith)
Joseph Waldo (Waldo and Lyle)
Stuart Waymack (Virginia Department of Transportation)
Karen Wilds (Newport News Redevelopment Housing Authority)
Staff: Amigo Wade, Lisa Gilmer

Work Group Members Absent

Nancy McCord (Virginians for Private Property Rights)

Delegate Drake called the meeting to order at 1:05 p.m. by reviewing the work group's charge and the meeting goals. The chair then turned to the scheduled presentations as indicated on the agenda.

Agenda Items

1. Presentation of Stuart Waymack

Stuart Waymack, State Right of Way and Utilities Director, Virginia Department of Transportation, provided the work group with an overview of the eminent domain powers used by the Department. Over the course of his presentation, Mr. Waymack made the following observations:

- The Department is required to make a diligent effort to contact each affected landowner and explain verbally in plain terms the process that will be used.

- The Department attempts in the first instance to have a contract with every affected landowner pursuant to an appraisal performed by a licensed appraiser who assists in determining the fair market value of the property.
- In some instances, however, the land owner is not looking for fair market value but, instead looking for something more. "Market value" is skewed in most instances involving eminent domain. This is because a willing buyer decides what the property is worth without the road going through it.
- Interstate and primary roads in the state are built pursuant to a six-year plan that is adjusted every year. Local boards plan secondary roads. In his career with the Department he could only recall two instances where the planned road was never built.
- The Department must use the property within 20 years or the homeowner can request that it be conveyed back at the original price. He stated that it is rare that the Department has had to return property. There have been instances where the Department will lease the property if the landowner does not buy it back from the Department at the end of the twenty-year period. The landowner has 30 days to make a written offer.

During his discussion of the eminent domain process used by the Department, **Mr. Waymack** referred to two documents that he provided to the work group. The first document was titled "Right of Way and Utilities, A Guide for Property Owners and Tenants." The second document was titled "Project Development Flow Chart."

At the conclusion of his presentation, there was a short period of questioning by the work group. **Delegate Drake** asked how often the Department had to sell land back to the original owner i) before the twenty-year period ended, and ii) after the 20-year period. **Mr. Waymack** responded that the Department frequently sold back property within the twenty-year period, but he did not know the frequency after the twenty-year period.

Mr. Heatwole asked what happened if the Department did not secure proper title to a parcel and it got stuck with a piece of land that it could not use. **Mr. Waymack** responded that the Department uses licensed appraisers, and conducts a thorough title search. The Department has over 240 employees who negotiate with landowners and each of them is trained to understand that the landowners are citizens. **Mr. Waymack** further noted that of all land purchases that are need for a given project, approximately 20% go to litigation. He also noted that for businesses that are required to relocate, the Department is required to assist in finding a suitable site or a replacement facility.

Mr. Terpak noted that it is usually the tenant that is moved. In such situations the resident may receive a resident payment of up to \$4,500. There are approximately 100 such cases annually.

Delegate Stump noted that costs increase and the situation gets more complicated when lawyers get involved.

At the conclusion of the questioning, the work group moved to a discussion of the substitute for Senate Bill 301

2. Substitutes for Senate Bill 301.

Senator O'Brien, the patron of the bill, gave a brief overview of the substitute and stated that it was an attempt to anchor the process in property rights. He stated that the legislation was needed because it will prevent misuse of eminent domain authority. He cited three examples of such misuse in the past.

Delegate Suit expressed concern that the substitute provided for the owner to repurchase the property from the condemning agency at a higher price. She maintained that if the land appreciated in value over the ten-year period that it was held by the condemning agency, the owner should get the benefit.

Delegate Marrs noted that rights that were given in the first three sections of the substitute were effectively taken away in the last three sections.

Mr. Terpak further commented that the work group should consider adding some notice requirement by the condemning agency because it is unclear how the homeowner would know who to make contact to make the offer.

Delegate Drake stated that she would appoint a task force to look at the substitute and work out some additional language. Delegate Drake appointed Delegate Marrs, Mr. Dicks, Ms. Errico, Mr. Lawson, Mr. Ingrao, and Ms. Wilds

3. Presentation: Redevelopment and Blight Removal in the Commonwealth of Virginia.

Mr. George Martin gave a presentation to the work group on behalf of the state's Redevelopment and Housing Authorities.

The presentation included:

- Background on Housing Authorities
- Brief overview of eminent domain law in Virginia
- Brief overview of House Bill 822
- Discussion of recent Michigan Supreme Court Case -Wayne County v. Hathcock, 471 Mich 445 (2004)
- A detailed discussion of eminent domain law as applied to Housing Authorities
- Discussion of problems created for Housing Authorities by House Bill 822
- Reasons for not hampering the Housing Authorities with House Bill 822
- Suggestions for alternate approaches

At the conclusion of the presentation, **Mr. Martin** suggested that, rather than pursuing action on the legislation, the work group consider i) waiting for recent amendments made by the General Assembly to take effect, ii) revisiting legislation regarding redevelopment plans, iii) considering proposals to help make blight removal permanent, iv) providing Housing Authorities with additional funding, or v) balancing the fairness scale.

Delegate Drake remarked that the criteria for eminent domain should be laid out in the plan clearly. Where is the authority when blight removal becomes something different? It is not clear when blight removal becomes economic or something else.

Mr. Heatwole noted the example of the Hope 6 project in Alexandria, which involved tearing down 100 public housing units to build 150 townhouses- 50 of which were affordable homes.

Delegate Drake stated that it is important for the law to include some certification that the affected community agrees with the plan

4. Public Comment

Approximately 33 citizens appeared at the meeting in support of eminent domain reform. Individuals speaking in support of reform included: i) Edd Jennings, a farmer from Max Meadow, ii) Ron Meadows of the Blue Ridge Coalition in Patrick County, iii) Dr. Buster Woodruff, iv) Frank Ottofaro, and v) Brenda Stewart.

The meeting adjourned at 4:35 p.m.

MEETING SUMMARY

October 28, 2004, Conference Room 1, Virginia Housing Development Authority Building, 601 Belvidere Street Richmond, Virginia

Work Group Members in Attendance

Delegate Terrie Suit (Commission Member)
Delegate Bradley Marrs (Commission Member)
Andrew Heatwole (Commission Member)
Timothy Coyle (Crenshaw, Ware and Martin)
Phyllis Errico (Virginia Association of Counties)
Mark Ingrao (Apartment and Office Building Association)
James Kibler (LeClair Ryan)
Jim Lawson (City of Virginia Beach)
Susan Rubin (Virginia Farm Bureau)
Jose Simon (Virginia Natural Gas)
James Stutts (Dominion Resources)
Paul Terpak (Blankenship and Keith)
Joseph Waldo (Waldo and Lyle)
Stuart Waymack (Virginia Department of Transportation)
Karen Wilds (Newport News Redevelopment Housing Authority)
Staff: Amigo Wade, Elizabeth Palen, Lisa Gilmer

Work Group Members Absent

Delegate Thelma Drake (Commission Member)
Delegate Jackie Stump (Commission Member)
John Dicks (FutureLaw, L.L.C.)
Sandra Ferebee (GSH Real Estate)
Steve Micas (Chesterfield County)
Nancy McCord (Virginians for Private Property Rights)

The meeting was called to order at by **Delegate Suit**, acting chair of the work group, at 1:00 p.m.

Agenda Items

1. SB 301 Task Force

The task force appointed by Delegate Drake presented a substitute for review by the work group. The substitute offered by the task force included the following provisions:

- Providing that when an condemnor has acquired property by eminent domain and subsequently determines within 15 years of being vested with the title that the property is be deemed surplus or is otherwise not needed, then the condemnor must offer to sell such property to the former owner, unless the former owner had waived his right to the offer of repurchase.

- Requiring the offer of repurchase to be made by the condemnor at the price the condemnor paid the former owner plus interest at the annual rate of six percent. (This is the legal rate of interest provided by Section 6.1-330.53).
- Providing that the offer to repurchase must be sent by certified mail to (i) the last known address of the former owner and (ii) the address of last owner of record as it appears in the tax records of the local treasurer.
- Exempting property acquired by VDOT under Title 33.1.
- Including a second enactment clause specifying that the provisions of the act shall apply to property acquired on or after July 1, 2005.

Delegate Suit directed the Task Force to continue to work on the bill and provide a final product for the next meeting of the work group.

2. Legislative Draft 4111

The work group received LD 4111, which proposed to limit the circumstances under which a housing authority may acquire real property and subsequently transfer it to a private entity. In addition the measure would codify the concept that the acquisition of private property is not for a public use if it: (i) is made with the intent of making the property available for ownership or use by a private entity unless any benefits that will accrue to the private entity as a result of its ownership or use of the property are merely incidental when compared to the benefits that will accrue to the public from the abatement of the slums, conditions of blight, or other public use for which a housing authority is expressly authorized by this chapter to acquire property, or (ii) is otherwise predominantly for a private purpose.

Delegate Suit encouraged all participants to thoroughly review the draft and provide comments to staff by November 5, 2004. Another meeting will be scheduled for the morning of November 15th with the objective of reviewing the comments received and providing a recommendation to the full Commission, which meets on the same day at 3:00 p.m.

Ms. Wilds stated that the draft contained intended and unintended outcomes and that the three-week time frame was too short a period. **Delegate Suit** indicated that it was the wish of **Delegate Drake** to follow the procedure that was just outlined.

The work group then proceeded to received public comment on eminent domain reform.

3. Public Comment

The following is a synopsis of major points made by individuals providing public comment.

Dan Lacy, Halifax, Virginia

- Landowners have few rights.
- Electric transmission line and gas line companies have lowered the value of his property.
- He is a farmer and uncertain how to prepare the affected land for the coming year because of lack of prompt response from the utility companies.
- He asks for a more level playing field.

Gloria Jones, Dinwiddie County

- She is concerned with a 40 ft by 370 ft easement on her property.
- In 1993 she received threatening letters from Virginia State Corporation Commission regarding a right-of-way under her property.
- Don Lauter, a historian, found her property had historical significance from the civil war era.
- She implored the legislature to pay strict attention to the appeal of citizens.

Joe Rector, Smith County

- He is a farmer with four gas lines running across his property.
- Farmers find it difficult to go to court because of the time and money involved.
- He is concerned that farmers are not fairly compensated when their land is taken.

Hollis Robertson, City of Virginia Beach

- He is a retired naval officer who purchased beachfront rental property.
- The Redevelopment and Housing Authority condemned his land that housed rental cottages on the eastern portion of Virginia Beach.
- They offered him less money than the value of his mortgage of 11 years earlier, and lower than the assessed value.
- His property was condemned so the land could be sold to a developer who then put million dollar homes on the property.
- He wanted it noted that the Redevelopment and Housing Authority tends to condemn beachfront areas not parcels that are inland.
- He stated that he was treated rudely and unfairly by the Housing Authority.

Lillian Daughtry-Holland, Henry County

- Noted that HB 826 dealing with Eminent Domain has long lasting impacts.
- Landowners are not getting just compensation.
- Utilities should not be allowed to propose a lower offer in court than previously offered. This is done to intimidate others to accept the utilities' initial offer.
- The landowner should be awarded all reasonable costs including attorneys' fees because families have more to lose going to court than the utilities do.

Darryl Holland, Henry County

- Condemnation cases should have special priority on civil dockets.
- He is an owner of a 500-acre beef farm but also has to work outside of the farm to meet expenses.
- He shouldn't have to pay costly legal fees to be compensated for his own land.
- He has yet to receive compensation from the gas company.
- Agencies should not be allowed to put forth a lower offer at trial; instead it should not be lower than the previous offer.

Davis Dudley, Henry County

- Utilities threatened to take away his property.
- Constitution of the United States doesn't allow this action.
- He cautioned that the work group should remember that government works for the people.

Thomas Bartlett, Fredericksburg

- His property was cut in half by a 60ft pipe used to build a reservoir.
- Only \$600 compensation was offered, which he thought was unfair and inadequate compensation.

Harvey Woodruff, Yorktown

- He feels he was unjustly treated by VDOT.
- He is a physician who had to move his practice because of a VDOT taking and consequentially he lost 60% of his medical practice.
- He feels there should be a limitation on the amount of time that may elapse before compensation is paid. He has spent 15 months going to court and is still waiting to be paid.

Juanita Hudgins, Chesterfield County

- A telecommunications company took her property without any advance notice.

Don Lauter, Prince George County

- A gas line was proposed on his land through historical earthworks and places of civil war action.
- The system in Virginia is against landowner and the State Corporation Commission looks the other way.
- The Federal Energy Regulatory Commission stopped the eminent domain action using the 1966 Federal Preservation Act.
- He stated that Virginia should have state laws to preserve historical sites.
- He also asserted that the eminent domain process should be reviewed by federal authorities.

Betty Hunter-Clapp, Midlothian

- A thorough review of the entire taking process is needed.
- The Code of Virginia says greater good for the greater number of people, but many decisions do not follow this concept.
- There may be very real reasons for eminent domain but there is a difference in taking for the health and safety of people instead of for common greed.

Linda McMinimy, Virginia First Cities Coalition

- She represents 15 of the older Virginia cities.
- Cities cannot grow outward so good use needs to be made of the land.
- Localities need to look carefully and be fair with respect to property rights.
- Make sure the Commission looks at all possibilities contained in LD 4111 before legitimate redevelopment purposes are hindered
- SB 301 has a VDOT exemption, but what about Arlington and Henrico who own their own roads?
- Are counties road works exempt?

William Taber, Tidewater Libertarian Party

- In life, liberty and pursuit of happiness, pursuit of happiness is actually a euphemism for owning own private property.
- There may be legitimate reasons for government seizing land.
- Latitude given to the Housing Authority needs to be taken away.
- The Housing Authority is seizing property to build more expensive housing.
- When your house appreciates in price you are robbed of the gain through having a developer snatch it away.

Stephen Merrill, Virginia Beach Taxpayer Association

- Owning and maintaining property is a basic right.
- A public purpose now equals any purpose.
- You should not be able to take property from one citizen and give it to another.
- SB 826 expands the rights of property owners.
- Attorneys' fees ought to be granted to citizens who sue for compensation.

Ed Jennings, Wythe County

- USA is now an industrialized nation and does not have to cede power to large corporations as we once did to accomplish such feats as the building of the railroads.

Diana Parker, Falls of the James River Sierra Club

- She urges change in procedures.
- She thinks the amount of time that elapses before cases go to trial is unreasonable.
- Litigation is too expensive and the use of lower appraisals in court should be disallowed.

- The system should work to provide rights of the landowner.
- Columbia Gas pipeline project was able to move to an alternate route through the help of Don Lauter.
- In Oregon Hill, Richmond, VA Dominion Power wanted to deny Oregon Hill citizens their right to the view of the river and the pathway to reach the river.
- Patriot Gas and Level II Communications have been other corporations that presented situations where Sierra Club has become involved to help citizens.

Brenda Stewart, Woodpecker Road Landowner

- She supports the changes others have mentioned.
- Frequently legal expenses exceed the cost of land.
- Legal expenses should not be a deterrent.
- She believes individuals should be reimbursed for their legal fees.
- A person should be able to join their case with others with the same issue.
- Virginia needs a definition of Public Use.

Jeremy Hopkins, Attorney

- He represents mostly elderly clients who have been offered 1/2 to 2/3 of actual property value for property taken for sewer lines.
- Property owners should be made whole by just compensation.
- He believes it would not slow the process nor increase litigation to reimburse attorneys' fees.
- A more level playing field would be established if the court granted legal fees to the attorney for the property owner.
- For a variety of reasons attorneys' fees should be reimbursable.

At the conclusion of the public comment period, the meeting was adjourned at 3:26 p.m.

MEETING SUMMARY

November 15, 2004, Sheraton Norfolk Waterside, Merrimac Room, 777 Waterside Drive, Norfolk, Virginia

Work Group Members in Attendance

Delegate Terrie Suit (Commission Member)
Andrew Heatwole (Commission Member)
Timothy Coyle (Crenshaw, Ware and Martin)
Phyllis Errico (Virginia Association of Counties)
Sandra Ferebee (GSH Real Estate)
Les Griggs (Virginia Department of Transportation)
Mark Ingrao (Apartment and Office Building Association)
James Kibler (LeClair Ryan)
Susan Rubin (Virginia Farm Bureau)
Jose Simon (Virginia Natural Gas)
James Stutts (Dominion Resources)
Karen Wilds (Newport News Redevelopment Housing Authority)
Staff: Amigo Wade, Elizabeth Palen, Lisa Gilmer

Work Group Members Absent

Delegate Thelma Drake (Commission Member)
Delegate Jackie Stump (Commission Member)
Delegate Bradley Marrs (Commission Member)
John G. Dicks (FutureLaw, L.L.C.)
Jim Lawson (City of Virginia Beach)
Steve Micas (Chesterfield County)
Paul Terpak (Blankenship and Keith)
Joseph Waldo (Waldo and Lyle)
Stuart Waymack (Virginia Department of Transportation)

The meeting was called to order by **Delegate Suit**, acting chair of the work group, at 10:10 a.m.

Agenda Items

1. Status Report

The work group began the meeting by reviewing a status report of its activities over the course of the 2004 interim. It was the consensus of the work group to approve the status report for presentation to the full Commission.

2. Senate Bill 301

The work group received the report of the SB 301 Task Force appointed by **Delegate Drake**. **Amigo Wade** of the Division of Legislative Services, provided an overview of the substitute highlighting the changes that had been made since the previous draft was submitted to the work group at the October 28, 2004, meeting:

- Provides that when a condemnor has acquired a fee simple interest in property by eminent domain and subsequently declares within 15 years of being vested with the title that the property is to be deemed surplus or is otherwise not needed, then the condemnor must offer to sell such property to the former owner or his heirs, or other successors or assigns of record, unless the former owner had waived his right to the offer of repurchase.
- Requires the offer of repurchase to be made by the condemnor at the price the condemnor paid the former owner plus interest at the annual rate of six percent. (This is the legal rate of interest provided by Section 6.1-330.53).
- Allows the former owner 90 days to respond to the offer of repurchase.
- Provides that the offer to repurchase must be sent by certified mail to (i) the last known address of the former owner and (ii) the address of the last owner of record as it appears in the tax records of the local treasurer.
- Exempts property acquired by VDOT under Title 33.1.
- Includes a second enactment clause specifying that the provisions of the act shall apply to property acquired on or after July 1, 2005.

After the review, **Delegate Suit** informed the work group that the House Committee on Courts of Justice (House Courts Committee) would also be meeting later that day at 1:00 p.m. to take up bills that had been carried over in committee, including SB 301. Since the meeting would take place before the meeting of the full Commission, the House Courts Committee would not have the benefit of the Commission's recommendation. She also stated that **Senator O'Brien**, the patron of the bill, had indicated that it was his intention to proceed with the version of the substitute that had been offered by the SB 301 Task Force. **Delegate Suit** further stated that, depending on the action taken by the House Courts Committee, **Senator O'Brien** may determine to introduce a similar bill during the 2005 legislative session. **Mr. Heatwole** asked if the 6% interest used in the substitute referred to compound or simple interest. **Ms. Wilds** stated that the 6% figure was a compromise that moved from the starting point of fair market value. It was resolved that the type of interest intended by the task force was the same type provide by provided by Section 6.1-330.53 of the Code of Virginia. The work group agreed by consensus that no action be taken on the substitute.

3. LD 4111

Delegate Suit informed the work group that **Delegate Drake** has requested that any action on the draft be deferred until next year to allow a study effort supported by the Urban Land Institute to go forward. It was the consensus of the work group to defer action on the legislative draft until next year.

The meeting adjourned at 10:45 a.m.

PRESENTATIONS AND REPORTS*

1. Recent Eminent Domain Developments, Frank Munyan, Senior Attorney, Division of Legislative Services, July 14, 2004.
2. Right of Way and Utilities, A Guide for Property Owners and Tenants, Virginia Department of Transportation.
3. Redevelopment and Blight Removal in the Commonwealth of Virginia, George Martin, Esq. on behalf of Redevelopment and Housing Authorities, September 23, 2004.
4. Overview and Substitute for Senate Bill 301 (2004).
5. Legislative Draft 4111 (including overview).

**Full copies of presentations made to the work group may be retrieved from the Commission's website: <http://dls.state.va.us/houscomm.htm>*