

VIRGINIA HOUSING COMMISSION

2008 ANNUAL REPORT

2008 Virginia Housing Commission

Legislative Members:

Senator Mamie E. Locke - Chair, November 2008 – present

Delegate John A. Cosgrove - Vice Chair, November 2008 – present

Senator John Watkins - Vice Chair, January 2008 – October 2008

Senator Mary Margaret Whipple

Delegate Rosalyn R. Dance

Delegate Robert D. Hull

Delegate G. Glenn Oder

Delegate Terrie Suit - Chair (resigned House of Delegates October 2008)

Citizen Members:

F. Gary Garczynski

T.K. Somanath

Melanie S. Thompson

Legislative Services Support Staff:

Elizabeth Palen, Executive Director

Maggie Finnegan, Research Assistant

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Executive Summary

The Virginia Housing Commission (“VHC”), now in its fifth year since becoming a permanent legislative commission (HB1231, 2004), is housed within the Department of Legislative Services. Initially created by the 1970 General Assembly "to study the ways and means best designed to utilize existing resources and develop facilities that will provide the Commonwealth's growing population with adequate housing," the Commission is still working to promote that goal.

The Virginia Housing Commission is charged with studying and providing recommendations for legislation that will ensure all Virginians have safe, sound and affordable housing. Additionally, the Commission serves as a forum for new ideas relating to housing and community development and mortgage initiatives that allow for the development of statutory, regulatory and non-governmental housing related improvements.

The Commission is comprised of 11 members: three members of the Virginia Senate, five members of the House of Delegates, and three citizen members appointed by the Governor. During the 2008 interim, Delegate Terrie Suit began serving as Commission Chair, and upon her resignation from the House of Delegates, Senator Mamie Locke was elected the new Chair. Senator John Watkins then relinquished his position as Vice Chair, and the Commission designated as the new Vice Chair. During this interim, Senator Mary Margaret Whipple served as Chair for the Common Interest Communities work group, Senator John Watkins served as work group chair for Housing and the Environment Standards, Senator Mamie Locke served as Chair for the Derelict Structures work group, Delegate Danny Marshall served as Chair for the Mortgages work group, and Delegate John Cosgrove served as chair for the Affordable Housing and Real Estate work group. Each of these work groups, comprised of legislators and stakeholders with expertise in the subject matter, studied referred bills in addition to topics determined by the various work group chairs.

Full Commission meetings were devoted to understanding mortgage trends and becoming apprised of each work group’s progress. The summaries of these meetings as well as the individual work group reports are attached to this document and are also available online. The Commission maintains an up-to-date website (<http://dls.state.va.us/houscomm.htm>) available to all housing partners and the general public.

Five pieces of legislation were endorsed by the Commission for the 2008 legislative session; four bills were successful in becoming Virginia law. The bills included a derelict buildings bill which defined a derelict building and authorized owners' timely submission of plans for renovation or demolition. A simplification of tax lien provisions and blight provisions were included in the bill. In response to federal legislation, the Commission created a bill to provide for a licensure and educational requirement system for mortgage loan originators. A Common Interest Communities bill to add technical changes to the Common Interest Communities Board (created by a VHC endorsed bill in 2007) and its oversight was also passed, as was a bill determining assessment rates for affordable

housing. The Housing Trust Fund bill was not successful this year due to budgetary restraints; it continues to be a priority for the Commission.

The Commission in 2008 was a very viable working Commission which studied in depth a large spectrum of housing related issues and submitted strong legislation to the General Assembly, created through a consensus process during the interim.

Meeting Summary
April 22, 2008; 10 AM
House Room C, General Assembly Building
Richmond, Virginia

Members Present: Delegate Suit (chair), Senator Watkins, Senator Locke, Senator Whipple, Delegate Cosgrove, Delegate Hull, Delegate D. Marshall, Mr. Heatwole, Mr. Somanath.

Staff Present: Elizabeth Palen, Patrick Regan and Stephanie Kerns.

1. Welcome and Call to Order-Delegate Suit (chair)

- Meeting was called to order by Delegate Suit at 10:12 AM.
- Please see the 2008 Housing Commission Work Plan posted on the website.
- People interested in receiving appointments to a work group should submit the applications that are found online to Elizabeth Palen no later than today.
- Work group assignments will be determined tomorrow, April 23rd.
- **Senator Whipple**-*The Housing Trust Fund is something that the Housing Commission has worked on for several years now and it is important that a resolution be completed.*
- **Senator Whipple**-*The Housing Commission should take the lead on promoting energy efficient home design and Universal Design concepts.*

2. Bill Shelton, Director, Virginia Department of Housing and Community Development

- Please see the Power Point presentation posted online.
- **Delegate Marshall**-*Does VHCD adopt International Code Commission (ICC) recommendations automatically?*
- No, there are Virginia specific amendments that must be made to ICC Regulations and sections of the ICC Regulations are amended when adopted to reflect Virginia Regulations. This is all done through the administrative regulatory process.
- **Delegate Hull**-*Are there any new processes for building codes that are going to be coming down from the ICC?*
- One example is regulations dealing with sprinkler systems of single family residences. However, those may only be for attached homes, and the federal changes may be adopted or amended by Virginia.
- **T.K. Somanath**-*With the slow down in construction, there may be challenges in adding costs of sprinklers to home construction. Can those changes be postponed?*
- The costs of implementation are evaluated at the national level before they are voted on by the ICC. The same will be done at the state level and all interested parties will be consulted. Even if the regulations went through the ICC in 2009, they would not be implemented in Virginia until 2011.

- Many steps still need to be taken before we get there and there is no guarantee that they will go through at the federal level by 2009.
 - **Delegate Suit**-*Could VHCD give us an inventory of what tools are available for localities to address derelict structures? This is something that will be beneficial to the Derelict Structures Work Group.*
 - That inventory is already in the works and VHCD is happy to assist the work group.
 - The definition of derelict structures is not clear in the Code of Virginia and it needs to be addressed.
 - The Governors Foreclosure Prevention Task Force had three work groups. They are Foreclosure Impact-Bill Shelton (Chair); Education and Outreach-Susan Dewey (Chair); and Regulatory Reform-Jay DeBoer (Chair).
 - **Delegate Suit**-*It is also important to note that Delegate Marshall's work group will be looking into the credit side of the mortgage issue by looking at the accuracy of credit reports and credit scores.*
- 3. Susan Dewey, Executive Director, Virginia Housing Development Authority**
- Please see the Power Point presentation posted on the Housing Commission website.
- 4. John McClain, Deputy Director, and Lisa Fowler, PhD, George Mason University, School of Public Policy, Center for Regional Analysis**
- Please see the Power Point presentation posted on the Housing Commission website.
 - **John McClain**-*We can't know if we are in a recession because it is only determinable after there have been two consecutive quarters of negative growth. This can't be determined until it has already happened. We believe we will see when the data comes out that we are in a shallow recession and that there will be a long recovery period.*
- 5. Public Comment**
- There was none.
- 6. Vote on Leadership for 2008.**
- Nominations for Chair-Delegate Terrie Suit.
 - Nominations for Vice-Chair-Senator Mamie Locke.
 - Delegate Suit was elected Chair, Senator Locke was elected Vice-Chair.
- 7. The meeting was adjourned at 11:55 AM.**

Work Group #1- Housing Affordability, General Real Estate Law and Housing Subsidies

Chair: Delegate John A. Cosgrove

Policy Area: Housing Subsidies
Coordination of Housing and Community Services
Affordability

Corresponding House Committee: General Laws
Commerce and Labor
Appropriations

Corresponding Senate Committee: General Laws and Technology
Labor and Commerce
Finance

VHC Members:

Delegate John A. Cosgrove- Chair
Delegate Terrie L. Suit
Delegate Robert D. Hull
Senator Mary Margaret Whipple
T.K. Somanath

Citizen Members:

Ted McCormack
Deb Titus
Mark Flynn
Bill Ernst
Jim Naggles
Brian Gordon
Chip Dicks
Cal Whitehead
Connie Chamberlin
Bill Shelton
Kelly Harris-Braxton
Barry Merchant
Laura Lafayette
Theodore Koebel
Bob Adams
Mike Toalson

Housing Affordability Work Group Meeting
Virginia Housing Commission
June 26, 2008

Members Present:

Delegate John Cosgrove, Chair
Delegate Terrie Suit
Delegate Rosalyn Dance
Delegate Robert Hull
Senator Mary Margaret Whipple
T.K. Somanath
Ted McCormack
Heather Cawthron (for Mark Flynn)
Connie Chamberlin
Bill Shelton
Mike Toalson
Kelly Harris-Braxton
Bill Ernst
Barry Merchant
Jim Naggles
Brian Gordon
Theodore Koebel
Chip Dicks
Bob Adams
Cal Whitehead

Invited Guests:

Mark Singer
Lizbeth T. Hayes

Welcome and Call to Order

- **Delegate Hull** (standing in as chair for Delegate Cosgrove) called the meeting to order at 1:00 p.m.
- The order of the agenda was changed to accommodate the speakers.

The first speaker was **Mark Singer**, Virginia Association of Real Estate Inspectors (VAREI) to discuss HB 1483- Certified Home Inspection.

- This bill revises the definition of certified home inspections to include the efficiency of heating and cooling systems and duct work.
- What is “efficiency”? Whose definition are we using? What is included in “duct work”?
 - VAR is concerned about the use of these words.
- This legislation is requesting home inspectors to perform functions outside their scope and pay grade. Inspectors are not equipped to provide efficiency audits.
- What is this legislation trying to achieve, i.e., what is the desired outcome?

- To approach new construction with an overlay of energy efficiency standards.
- If this information is required with regard to existing homes, this will create several causes for concern, including:
 - Doubling, or perhaps tripling, the cost of home inspections.
 - Confusion as to the expectation of the homeowner after receiving the efficiency report. Will they be required to spend thousands of dollars on energy efficiency?
- This legislation better applies to new construction rather than existing construction.
- **Mike Toalson** noted that every new home has to meet energy code requirements, so he did not believe there is a need for this legislation.
- **Delegate Hull** commented that most homebuyers require a home inspection, and contracts are often contingent on these inspections, so the efficiency requirements would conceivably provide an “out” for potential purchasers.
 - **Delegate Suit** added that only within last year have contracts been contingent on passing home inspections; three years ago, sellers wouldn’t accept a contract contingent on inspections.
 - **Mr. Singer** pointed out that even if the contract is not contingent on passing inspections, if these new efficiency standards are put into the definition of “certified home inspection,” then sellers and realtors will have to be made aware of this, and will probably be required to make good-faith disclosures regarding the efficiency of the home’s heating and cooling system.
- **Mike Toalson** stated that he currently provide realtors and prospects with monthly cost of energy, because this is the first question asked of him as an owner; purchasers want to know what the utility costs are, and they want documentation of these costs.
- **Mr. Toalson** then stated that his concern with the legislation is the training that would be required of home inspectors for the system efficiency requirements- who would provide this?
- **Ted Koebel** asked what the normal standard operating procedure is for inspecting HVAC units.
 - **Mr. Singer** stated that there were two home inspectors present at the meeting who could speak on that question more effectively, but first two points:
 - Training situation- if the legislation is enacted, a determination must be made concerning where someone goes to become an energy auditor and how this accreditation is maintained.
 - The VAREI works hard to certify home inspectors and very important criteria are involved; when the additional burden of requiring the inspectors to conduct home efficiency audits is added, this will drive people away.
 - **Mr. Singer** introduced **John Craner**, a home inspector present at the meeting.

- **Mr. Craner** has been an inspector for 10 years, and has been involved with the National Association of Inspectors for six years. He currently chairs the Standards Committee, and is involved locally in inspection education.
 - **Mr. Craner** commented that home inspectors are not educated or equipped to conduct efficiency audits.
 - Inspectors can look for defects in HVAC equipment, but they do not evaluate the efficiency ratings of duct work. This is beyond the scope of any nationally recognized standard, including those that have been around for many years.
 - The standards now require that inspector report that the unit is near the end of its service life.
- **Delegate Hull** asked whether this issue has come up elsewhere in the country.
 - **Mr. Craner** responded that there has been some talk of efficiency audits in New Jersey, but the home inspectors are against it, because this will create liabilities for the inspectors.
 - In Virginia, if this goes into effect, many people will chose to drop out of the volunteer program because they do not want the additional liability.
- **T.K. Somanath** asked whether there is currently a continuing education requirement once the inspectors are certified.
 - **Mr. Craner** replied that there is no continuing education requirement, but inspectors must have a certain number of hours of classroom education and they must produce an affidavit proving that they have completed 100 inspections.
- **Delegate Hull** asked how long the certification lasts.
 - **Mr. Craner** replied that the certifications are renewable every two years.
- **T.K. Somanath** noted that perhaps bigger problems are the current standards and benchmarks required for third-party inspections, because there are holes in this process. When people buy existing homes, inspections are not complete and then the homeowners are left with enormous expenditures in terms updating fixtures, etc.
- **Delegate Hull** asked **Mr. Craner** whether there is a need to strengthen existing requirements.
 - **Mr. Craner** replied that he would be in favor of this, and of requiring continuing education for inspectors.
- **Barry Merchant** asked whether more disclosures are needed for the consumers, so that the public is aware that the inspections are only certifying the functioning of the HVAC systems, and not the efficiency level.
- **Delegate Suit** responded that a strong effort has been made to educate the public about the difference between certified and non-certified inspectors, and also about the disclosures section of the Code.

The next speaker was **Lizbeth T. Hayes**, from the Fair Housing Office, to discuss Fair Housing issues (HB 36 and 1085).

Note- HB 1085 adds “source of income” to the list of unlawful discriminatory housing practices and HB 36 adds discrimination based on sexual orientation as an unlawful discriminatory housing practice.

- **Ms. Hayes** first stated that the administration has no official position on either bill.
- **Delegate Cosgrove** asked whether source of income is the same as economic status discrimination.
 - **Ms. Hayes** responded that these are not the same.
- **Delegate Cosgrove** then asked whether other states were looking into these issues.
 - **Ms. Hayes** responded that several states already have source of income and sexual orientation listed as protected classes
- **Delegate Suit** asked **Ms. Hayes** to explain two things:
 - How fair housing works, in particular, how a case works from the complaint to the finding, and
 - What categories are currently protected, and what is the Fair Housing Office’s relationship with the federal government? What happens if the two are not in sync?
- **Ms. Hayes** explained that the Fair Housing Office has an agreement with HUD:
 - If a complaint is filed with HUD, and the complaint is located in Virginia, it is referred to the Fair Housing Office to investigate.
 - HUD will not come in to investigate unless the issue crosses state lines or involves hate crimes, etc.
 - Most complaints are deferred to the Fair Housing Office under cooperative agreement because Virginia law mirrors federal law (except Virginia includes elderliness in its list of unlawful discrimination practices, and the federal government does not).
- Many complaints also come directly to the Fair Housing Office.
 - The office will look at the complaint, and determine the jurisdiction and whether the issue is timely, meaning that it has been no more than a year since the last occurrence.
- **Delegate Cosgrove** asked whether the one year requirement meant one year from the actual act of discrimination or one year from the end of the lease.
 - **Ms. Hayes** responded that it is one year from the actual act, but there are instances of ongoing occurrences, such as sexual discrimination.
- The Fair Housing Office must determine whether it has jurisdiction over the respondent as well as the complainant, and must also ensure that the issue does not fall under any exemption.
- The case is then assigned to a field investigator (there are 4 within the state) or it can be handled administratively (bust most are handled in the field).
- Field investigators contact complainant and ask them to go through everything that transpired under oath.
 - Most complaints deal with rental offices; about 20-25% come from home sales, but most come from property management agencies.
- The field officer will collect all documents related to the allegations, such as the lease agreement, any correspondence, etc.

- The field officer then interviews the respondent, also under oath, about what transpired, and will often get documents from respondents.
- The Fair Housing Office is not an advocate for either side; only fact finders who will then report back to Fair Housing Board or the Real Estate Board.
- An investigative report is prepared, which includes all parties, all witnesses, all documents summarized that were collected, etc.
- This information will be sent to either the Real Estate Board or the Fair Housing Board.
 - The Real Estate Board has jurisdiction over all real estate licensees, etc.
 - All other parties go before the Fair Housing Board.
- The Board is provided with a case analysis worksheet (an internal document) which analyzes the facts, gives the evidence and positions for both sides, and then makes a recommendation to the Board.
- The parties can attend the Board meetings and speak but they may not present any new evidence not introduced during the investigation.
- If the Fair Housing Office does believe that discrimination did occur, then before going to board, it has to go through the Attorney General. The office has designated counsel to help it determine what other evidence is needed.
- If the Board determines that no discrimination took place, then case is closed and the parties are notified within 30 days.
- If the Board finds reasonable cause for the complaint, then the case goes to Alternative Dispute Resolution (ADR):
 - Under the law, the Fair Housing Office is required to mediate all of the cases while they are being investigated. The office is continually trying to resolve case through ADR while the investigation is in process.
 - After the Board's determination of reasonable case, the case is referred back to ADR for one last attempt at resolution.
- The complainant then has 30 days to file suit in a state civil case, but the Attorney General's Office will often try to settle before trial.
 - Most cases settle.
- **Delegate Suit** asked about the funding for the Fair Housing office; because this comes from HUD, what happens if Virginia law is tinkered with so much that it is not the same as (or does not meet the same standards) as the federal law?
 - **Ms. Hayes** explained that HUD comes in yearly and does an assessment of the office to determine that the federal standards are met.
 - The Fair Housing Office must make sure that the law and processes stay substantially equivalent to federal law (the Federal Fair Housing Act); if not, the federal funding can be cut off.
- **Delegate Suit** asked what percentage of funding actually comes from HUD.
 - **Ms. Hayes** replied that HUD pays \$2400 per case. It also provides training and outreach funds, but most money is tied to case processing
 - The Fair Housing Office must investigate 100 cases a year as part of agreement
 - HUD will also start deducting money if the cases last longer than 100 days.

- **Delegate Hull** asked for if **Ms. Hayes** could provide the work group with a breakdown of the different classes protected among the different states.
 - **Ms. Hayes** responded that she would gather this information for the work group.

(Delegate Cosgrove took over as active chair.)

The final speaker was **Chip Dicks**, from the Virginia Association of Realtors (VAR), to discuss disclosure requirements (Virginia Code section 55-519).

- There was a need for mandatory disclosures to act as “red flags” for homebuyers.
- The rationale behind this was that all sellers are consumers as well as buyers, and we do not want to impose upon sellers obligations which they cannot perform.
- Created categories of disclosures:
 - 1-structural- related to the condition of the property
 - 2-outside the four corners of the property- adjacent parcels
 - 3-historic district standards that may affect the property
 - 4-resource protection area
 - 5-sex offenders
 - 6-building code violations and zoning violations
- The disclosure statement makes purchasers aware of these categories, but the owner does not make any representations in regard to these (except with regard to building code and zoning violations), and purchasers are advised to exercise due diligence to look into these matters.
- There was confusion in law up until **Delegate Suit’s** bill. Homebuyers received a notice giving red-flag type disclosures, but in the form of a disclaimer, and the seller could sell the property “as is,” leaving no remedy to the buyer for misrepresentations.
 - **Chairman Suit’s** legislation did away with the disclosures and disclaimer as they currently existed, and simply create a disclosure law. A buyer cannot sue seller for misrepresentation if these red flag disclosures are included.
- **Delegate Hull** asked when the new form was finalized.
 - **Mr. Dicks** responded that it was finalized on January 1, 2008.
- **Delegate Hull** then pointed out that the new provisions suggested by the General Assembly (*HB 962, HB 1405, SB 454*) are premature because the new form has been in existence for less than a year.
 - **Mr. Dicks** agreed, and stated that the suggested additional disclosure requirements may be appropriate, but they should also be “red flags.” The owners should not be required to make any representations as to these additional disclosures, but the owner should be made aware of them.
- **Ted McCormack** asked whether there are any federal disclosures requirements.
 - **Mr. Dicks** responded that there are none.
- **Mr. McCormack** than asked about flood disclosures, are there no federal requirements for this?
 - Delegate Suit responded that any federally insured or federally backed loan must have a FEMA approved flood certification; if the property is

deemed to be in a flood zone, the lender would know and would mandate the placement of flood insurance. Property owners can still get an elevation survey, and if they can prove that they are not in a flood zone, then the homeowner can waive the flood insurance. However, this is only required for federally backed loans.

- **Mike Toalson** asked if the new disclosure form is available online.
 - Mr. Dicks responded that the form is available on the VAR website.
- **Delegate Cosgrove** asked that **Mr. Dicks** provide a copy of the form at the next meeting.
- **Delegate Cosgrove** asked about underground piping disclosures.
 - **Delegate Suit** replied that this would most likely be an easement through the property, which is still matter of record with deed, so a purchaser can read through the deed and title work.
 - Homeowners are no longer required to get a survey, most title insurance companies will find these easements, and it is the up to the buyer whether or not to get title insurance.
 - **Mr. Dicks** pointed out that the purchaser also will not know where the lines are until the utility provider comes to the property and shows them.
- **Mike Toalson** asked whether such piping is an exemption in title policies.
 - Delegate Suit responded that title insurance will address whether there are easements if there is a survey.

Delegate Cosgrove asked for any final comments from the work group, and then from the public. There were no further comments. The meeting adjourned at 2:11 p.m.

Meeting Summary
Housing Affordability Work Group
General Assembly Building, House Room C
Richmond, Virginia
August, 21, 2008; 11:00 AM

Members Present: Delegate John Cosgrove, Delegate Bob Hull, Senator Mary Margaret Whipple, T. K. Somanath, Melanie Thompson, Ted McCormack, Mark Flynn, Connie Chamberlin, Bill Shelton, Kelly Harris-Braxton, Jim Naggles, Laura Lafayette, Brian Gordon, Ted Koebel, Chip Dicks, and Bob Adams.

I. Welcome and Call to Order-Delegate John Cosgrove, Chair

- a. The meeting was called to order by Delegate Cosgrove at 11:05 AM.

II. Federal Housing Trust Fund, Federal Housing and Economic Recovery Act of 2008

- a. *Bill Shelton, Director, Virginia Department of Housing and Community Development*
 - i. Please see the power point presentation available online.
 - ii. Congress adopted a federal Housing Trust which may be helpful in outlining a state housing trust fund.
 - iii. **Delegate Hull-***Is there a matching funds requirement from the states?*
 - iv. No, but the Department of Housing and Urban Development (HUD) does have the rulemaking authority to request matching funds.
 - v. **Delegate Hull-***This sounds more like a poverty program than a housing problem. Virginia has a lot of housing needs that this doesn't address.*
 - vi. **Senator Whipple-***We should look for ways to make this work with a state housing trust fund. The state and local governments have a difficult time since they don't have enough money. There may be compatibility here.*
 - vii. **T. K. Somanath-***Could we have the localities setting up their own trust funds, rather than the state?*
 - viii. I am sure that is possible. The legislation that was before us at the state level had that element in it.
 - ix. **Ted Koebel-***This would be critical in a lot of key deals, but too much regulation may make it impossible. It will make a difference even though it only addresses a small section.*

III. SB 299-Real estate taxes, affordable rental housing classification (Whipple, 2008)

- a. *Senator Mary Margaret Whipple*
- b. *Chip Dicks, Virginia Association of Realtors*

IV. HB 391-Rental Inspection Districts (Bulova, 2008)

a. *Andrew Wilson, Fire Marshall, City of Fairfax*

- i. The bill was requested by the city council to allow the city to draw a rental district that would encompass the entire city.
- ii. Inspections are required of houses that are used as rentals. It gives the owners and the tenants a level of comfort.
- iii. There was a legislation change that requires a city to inspect only in the rental inspection district, and to define those districts.
- iv. The problem is that by having defined districts you will have other areas that are carved out.
- v. **Delegate Cosgrove**-*How many cities would be included in this bill?*
- vi. The legislation would request 10 square miles. So all cities that fit that description.
- vii. **Delegate Hull**-*Why didn't the city council just amend its charter so as not to affect things statewide?*
- viii. I don't think they looked at it.
- ix. **Delegate Hull**-*Perhaps that is a better route. When you make a change that affects the entire state then you have every locality making amendments.*

b. *Chip Dicks, Virginia Association of Realtors*

- i. The original bill involved a two year battle over rental inspection districts.
- ii. In order for a rental inspection area to be adopted under the current law, it had to be shown that it was on the verge of blight and therefore required a rental inspection.
- iii. Historically, the Town of Blacksburg wanted every rental property in the city to be inspected, which thus required them to declare that the entire town was on the verge of blight. Mark Flynn and I drafted this bill with lots of input from others. The rental inspection district has value but it should only target where there is a material building code problem. Then localities should be able to go in and do a rental inspection.
- iv. Fairfax is asking to ignore that and have a city wide inspection which would require a fee and a schedule that is created at the city's discretion.
- v. The authority for specific property designations is permitted in this legislation so that certain areas don't have to be considered deteriorating.
- vi. This would undue the compromises that were worked out previously.
- vii. **Andrew Wilson**-*A proposed ordinance on this matter is being taken to the city council. It is not our intention to request any authority other than to have a locality wide inspection district. We*

believe we should be allowed to inspect all rental units. We are trying to simplify the process.

- viii. **Delegate Cosgrove**-*When are you bringing this to the city council?*
- ix. September 9th, 2008.
- x. **Delegate Cosgrove**-*Genuine concerns are raised, but vast applications across the Commonwealth are also a concern.*
- xi. **Delegate Hull**-*Are you trying to prevent fraternity houses because it seems this only comes up in college towns?*
- xii. No, it is aimed at all rental properties. The ones that are a problem are not leased by a management company and instead it is the individual owner who has not checked on their property.
- xiii. **Delegate Hull**-*If a person is charged and found guilty of these things they are fined and this provides a tremendous incentive.*
- xiv. Localities have to respond to tenant complaints. We have always had to deal with this.
- xv. **Senator Whipple**-*So, it is your belief that all this would do is create a locality wide inspection.*
- xvi. **T. K. Somanath**-*Don't you have the authority to handle spot blight abatement?*
- xvii. **Brian Gordon**-*The Apartment and Office Building Association was part of the discussion during the General Assembly session, and it seems to us that the jurisdiction has all of the authority that it needs to deal with this problem and we recommend that it not move forward.*
- xviii. **Chip Dicks**-*Let's wait and see how things work out with the city ordinance.*

V. Residential Disclosure Bills-*Chip Dicks, Virginia Association of Realtors*

- a. **HB 962-Residential Property Disclosure Act, disclosure of storm water detention facilities (Shannon, 2008)**
- b. **SB 454-Residential Property Disclosure Act, disclosure of storm water detention facilities (Petersen, 2008)**
 - i. The real estate disclosure act is still buyer beware, caveat emptor. The General Assembly tried to create an act where the seller would raise red flags about certain issues.
 - ii. There are several minimum mandatory disclosures that a seller must make to a prospective buyer.
 - iii. These bills tried to address a problem in the Town of Vienna.
 - iv. Properties are becoming more valuable than the house that is on them and the buyer is tearing down the house and building McMansions, but people don't know where the storm water management facility is located.
 - v. **Delegate Cosgrove**-*If no one knows where the facility is, how are sellers expected to disclose it?*

- vi. **Mark Flynn**-*Significant storm water facilities are identified by an easement and would show up in a chain of title. There is no need to disclose them.*
 - vii. We don't see a benefit in adding an additional disclosure because no one knows where they are located and it should be a town municipal problem. In the alternative, if they are known they would be subject to an easement and would appear in a title search.
 - viii. **Senator Whipple**-*What would a red flag disclosure say?*
 - ix. There is a form that was developed that discloses certain items that are in the statute that the seller must disclose. The only one that is affirmative is with respect to building code and zoning violations.
 - x. A suggested amendment was presented to the commission but the attorney for the Town of Vienna rejected these amendments.
 - xi. **Delegate Cosgrove**-*Would using this particular language in the amendment include ditches?*
 - xii. It would be storm water facilities as defined by the locality.
 - xiii. Under the old law, a latent defect was when someone sold the house "as is" and concealed a latent defect. There was no recourse against the seller. Now the buyer can sue the seller for concealing a latent defect. The question then becomes did the seller know of the storm water facility and did they conceal it?
 - xiv. **Mark Flynn**-*Perhaps at the end of line 55 language to the effect of, "which are known to the owner" could be added.*
 - xv. **Delegate Hull**-*When we changed the old law we were trying to stream line the disclosure laws. Is there something else that needs to be disclosed that are on the property? Is there anything beside the storm water facilities?*
 - xvi. Sanitation facilities.
 - xvii. **Delegate Cosgrove**-*If the Town of Vienna didn't like a reasonable compromise, because they aren't willing to add that language are we wasting our time? We need to check with Senator Petersen and see if he wants to go forward.*
- c. **HB 997-Residential Property Disclosure Act, condition of real property to include evidence of mold presence (Bell, 2008)**
- i. This bill has the same problems. It is picking up additional things which may create problems.
 - ii. **Delegate Hull**-*It is a Pandora's box when using the term "visible" for mold because mold is visible at different temperatures.*
 - iii. This stemmed from the landlord tenant mold bills. Conceptually we are only picking one item out of many that could be addressed. And if it is visible the home inspector would see it anyway.
 - iv. **Delegate Cosgrove**-*From a technical stand point, visible evidence is not specific and this would be difficult to define. With this particular language, I don't see any reason why this should be recommended.*

- d. **HB 1405-Residential Property Disclosure Act, disclosure of storage tanks (Hargrove, 2008)**
 - i. The bill was created because Delegate Hargrove had been told that in some areas the tanks were put in the ground and as the homes have been sold, later owners did not know of them. This then required the seller to spend money to find them.
 - ii. **Delegate Cosgrove**-*How hard can it be to disclose above ground storage tanks?*
 - iii. I would agree that it is superfluous. The real discussion was focused on underground tanks.
 - iv. **Mark Flynn**-*The language excludes home heating tanks, septic tanks, and farm and residential tanks less than a certain size. What are we trying to capture if all of these things are excluded?*
 - v. **Connie Chamberlin**-*I have had experienced with property owners not knowing of the tanks existence.*
 - vi. **Delegate Cosgrove**-*This may be in the same posture as the other disclosure bills.*

VI. Adjourn

- a. The meeting was adjourned at 1:12 PM.

Housing Affordability Work Group
October 16, 2008 House Room D
Meeting Summary

- I. Welcome and Call to Order-1:18 p.m.
 - a. Introduction of Delegate Glenn Oder and Melanie Thompson – new Commission members.

- II. Regional and Policy Update
 - a. **Rob Bradham-** Greater Richmond Chamber of Commerce
 - i. Presenting of survey that the Greater Richmond Chamber of Commerce commissioned last year about public perception of affordable housing.
 - ii. Appointed task force in 2006 during peak of the real estate market.
 - 1. Five years of increasing pricing for housing- leveled off in 2006, concern that it would negatively impact economic development and work force recruitment.
 - iii. Task force represented business leaders, local government, and nonprofits all working together.
 - iv. Survey interviewed 301 employees, 391 employers.
 - v. Seven key findings, some still relevant, some no longer valid given current economic state:
 - 1. Affordable housing is the correct description, not workforce housing, which people associate with low income housing.
 - 2. This is a second tier issue for employers and employees.
 - a. 3 factors
 - i. Regional planning
 - ii. Business location
 - iii. Recruiting employers
 - 3. Significant gap between expectation and performance:
 - a. In employers importance and performance ratings, affordable housing was near the bottom of this list – there is a gap between what employers expect and delivery of service.
 - b. Employees importance- middle of the pack- significant difference between expectation and performance
 - c. 59% gap with employers, 50% gap with employees- results would probably different today
 - 4. Employers feel that affordable housing is a concern today and will become an even greater concern in the future.
 - 5. Low-income employees are particularly concerned about affordable housing; expressed by concern over commute related challenges.

- a. Lower income employees significantly less satisfied with quality, availability, and location of affordable housing and significantly less likely to move closer to their place of work even if more available affording housing existed
 - 6. Lack of consensus on who should be responsible for affordable housing or solutions to affordable housing issues.
 - 7. Richmond employees are satisfied with their commute and believe that the region performs well on affordable housing issues.
 - a. This positively impacts the region, quality of life.
 - b. Satisfaction with affordable housing has a great impact on quality of life ratings.
- vi. Questions and Comments
 - 1. **Delegate Hull**- what is meant by “performance”?
 - a. **Rob Bradham**- results; whether or not you actually see what you expect with affordable housing, what is the quality.
 - 2. **Delegate Hull**- Commutes in NOVA are a problem, and affordable housing is a problem because of the increase in land values over the last decade- cops and firefighters live outside of the region, can’t get where they are needed in an emergency (9/11) due to increase in the value of housing itself, not so much the commute – Central Virginia has not had the huge increase in values that NOVA has had.
 - 3. **Rob Bradham**- Richmond has much better housing affordability.
 - 4. **Delegate Cosgrove** –A big part of the affordable housing problem is that cities are hesitant to approve affordable housing initiatives because they don’t pay for themselves- there is an impact on communities, costs for public safety and transportation. City councils are concerned about who will pay for the impact of affordable housing; cities like Chesapeake are worried about having a place for their children to live, with proper transportation. Is it up to the localities to implement these things and make them happen, have you talked about this issue?
 - 5. **Rob Bradham**- Local governments are asked to fund more and more infrastructure, impact fees and cash proffers increase the cost of housing. Chesapeake has an exception to proffers for affordable housing.
 - 6. **Delegate Hull**- If a developer wants to build moderately priced units, then assessments are lower, tax revenues are lower, but the cost to providing services is still great; if

there was a housing trust fund which a local government can use, or a shared equity basis each would serve to provide affordable housing for workers. The localities would still get the real estate tax revenue, but affordable housing providers would still be able to get in the door. This is an idea that has much support from affordable housing advocates.

7. **Rob Bradham**- The public doesn't understand the way that a trust fund would operate.

b. Earl Reynolds, Total Action Against Poverty (TAP)

- i. Roanoke Valley-Alleghany Region
- ii. Affordability is a big issue in this region, recently even bigger when the credit markets became affected by issues at the national and international level
- iii. Locally, there is a group that has been meeting for over 20 years, Roanoke Regional Housing Network; takes up many of these same issues, including infrastructure at the local level and the need to balance this out with the cost of providing support services.
- iv. In the western part of Virginia, and in the TAP service area, the majority of people live in rural areas.
 1. Roanoke, Roanoke County, Botetourt County, Lexington, Bath County, etc.
 2. Infrastructure becomes an issue- water, sewer, and roads – even now in 2008.
 3. Also issues with zoning and land use- ex: Clifton Forge- purchased five derelict structures adjacent to the downtown area and renovated them for first time home buyers; grappling with zoning issues, county and town zoning not in sync, but once this is worked through will be good for the next project.
- v. Affordable housing and mass transit issues- if an affordable community is built in a far region, where are these people employed and how do they get to and from work?
 1. Have to take these areas off the map, cannot provide housing affordably in these areas and make it work.
- vi. Many local officials are providing strong leadership in the area of affordable housing; stay informed and aggressively act on behalf of communities to create opportunities.
- vii. TAP is a community action agency founded in 1965.
 1. In 2004, TAP began to partner with the private sector to look at ways that we could build, encourage, facilitate, make sure that people could live in safe, decent, affordable housing.
 2. Since then, TAP has partnered with VHDA and others in obtaining funds to meet some of these needs.

3. Example projects-
 - a. In an established neighborhood southwest of the city of Roanoke, 225 unit apartment complex built 50 years ago; owners were an out of town investment group, the city wanted to tear them down. TAP was worried that this would take affordable housing units off the market, so it stepped in and purchased the units which are now being renovated and modernized into Terrace North and Terrace South. Terrace North is complete, and reconstruction on Terrace South this year; will have spent \$27 million by the time project is done on investment in this neighborhood- testament that can have affordable housing neighborhoods in more affluent neighborhoods
 - b. Peters Creek South Family Homes- Originally affordable housing for returning veterans, these became vacant, overgrown and problematic. TAP partnered with an out of town firm which deals with affordability issues with lease purchases as opposed to outright purchases. This is new concept to this area of the state. Roanoke city Council endorsed this project
 4. Project funding-Now in the process of working out financing- need support from DHCD, VHDA, Federal Home Loan Bank. Also hope that the credit market is more favorable soon.
- viii. Questions and Comments:
1. **Delegate Cosgrove-** will be financially secured in May 2009, this is soon, what have you seen in this credit market for this type of funding?
 - a. **Earl Reynolds-**VHDA is able to assist TAP because sell bonds, how will this be affected by what is going on today?
 2. **Delegate Cosgrove-** what are the size of lots that these houses are built on?
 - a. **Earl Reynolds-** Standard lots, 55 by 85.
 3. **Delegate Cosgrove-** For comparable lots on the regular market, what are the developed land prices for houses in this area?
 - a. **Earl Reynolds-**The asking price is around \$120k for a house on this size lot.
 4. **Delegate Hull-** Fairfax County just sold some bonds, got a great rate, AAA bond rating – so the municipal bond market not dead, even if there are some problems.

5. **Bill Shelton-** But people are not as interested in affordable housing bonds, until things free up nobody wants to buy these, which are different from municipal bonds.
 - a. HOME program- only fund 4 or 5 of the 12 applications they get.
 - b. Everyone “hunkered down” until can see what will happen with credit markets.
 - c. Probably be slow for awhile.
6. **Barry Merchant**
 - a. Issues –affordable housing bond- were always able to get favorable pricing relative to what FM and FM could issue- when these were taken over by government, cost of issuance fell to treasury rate, tax exempt bond rates and F/F rates are now upside down, makes it impossible for affordable housing bonds to compete; competitive basis for financing; don’t know how long F/F situation will last
7. **Delegate Oder** – It would be helpful to have a site plan [of the Peters Creek South project] which shows how this fits into the community with lots, and shows an individual 55 by 85 lot. This is less than a 5,000 square foot lot. Did the locality give any additional reductions and setbacks? These are tough to meet on a small lot like this. With these reduced lots, can you end up with community space?
 - a. **Reynolds-** We have this, and will be glad to distribute it to the Commission.
8. **Delegate Cosgrove-** There is a lot of potential for these ideas to be copied and regulated.

c. Andy Freidman, Virginia Beach Department of Housing and Neighborhood Preservation

- i. Currently existing guiding principles for state housing policy- has a lot of good direction, do not need to reinvent this; there are a lot of good ideas there.
- ii. 3 major understandings of what is going on today:
 1. Not looking for the state to come up with a new source of housing revenue, this not likely in the future, so what else can we do?
 2. There are a lot of things not controlled by state which affect the cost of housing, i.e., long term national economic trends, wages have not kept up with costs of most things, etc.
 - a. The local development patterns already created are not going to change overnight, deeply ingrained in culture.

- b. Loose lending standards contributed to more housing than was really possible to afford.
 - 3. Discussions about housing affordability are often circular and repetitive and can involve one-sided views of the problem.
- iii. Suggestions for policy and legislative actions that will have a long term impact on Virginia's housing situation:
 - 1. The State on an annual basis should try to address some goals based on the Guiding Principles document.
 - a. Local governments aren't doing what they should do, but it's not clear to anybody what should be done.
 - b. Should define work force in affordable housing- have a state goal to increase this type of housing, with certain quality characteristics; define that we want to achieve with regard to fair housing state-wide, and put this in writing to help further discussions at any level.
 - c. **Delegate Oder-** Aren't most comprehensive plans done by cities doing this already?
 - d. **Andy Friedman-** Yes, there are plan with goals and the state has guidance for them, but it should be more detailed and clearer. This way, localities do not have to worry about "going to far" and having too much affordable housing, because all of the localities would be subject to a more detailed definition.
 - e. **Delegate Cosgrove-** Don't you think this should be market driven? For a locality or state to say what affordable housing is will no work in all areas; this should come from market with cooperation from local governments.
 - f. **Andy Friedman-** Every locality needs its own solution, but there are some commonalities that the state can define; fundamental principles such as quality, preservation of affordability over time, mixed income neighborhoods as a way to increase affordability, etc.
 - 2. Produce an Annual Report on housing affordability in Virginia on key housing indicators that provide the foundation for the development of policy based on consistent facts.
 - 3. Strengthen planning guidelines for workforce and affordability housing, detail what the localities' should be doing to address housing affordability.

- a. **Delegate Cosgrove**- Are sales more difficult in mixed income neighborhoods, where you have a \$500,000 house right next to a condo community?
 - b. **Andy Friedman**-Fairfax County does this, but our vision is a more narrow range- from \$300,000 down to \$200,000.
 - c. **Delegate Cosgrove**- I do not think we should set a goal, but there would be a big advantage of having a report. Once this is delved into, it might stimulate people at local level to get more involved.
 - d. **Mark Flynn** – A state policy to accommodate affordable housing in rural areas really does help; counties do not want to take on responsibilities of affordable housing, do not want to deal with the infrastructure issues.
- 4. Define, Promote and Incentivize shared equity housing- This works for banks, it should also work for home ownership. Shared net appreciation; builder who builds work force housing, once sold to buyer, city will hold a second mortgage. The public helps a person get into it, but there is no windfall to the buyer.
 - a. Virginia Beach also has a shared net appreciation program, where the city gets an equity share of a new home, as well as a proportional share of the net appreciation.
- 5. Lead, Support, and/or participate in efforts to change the way we think about income and housing
 - a. This is the biggest obstacle of expanding affordable homes- people are worried about decreasing home values that result from being located next to a lower income house.
- iv. Two other points not in the written remarks [handout]:
 - 1. Regionalism
 - 2. The preservation of existing neighborhoods creates the biggest supply of future affordable housing, but this takes a huge investment; homes need modernization and a preservation plan.
- v. Questions and Comments:
 - 1. **Delegate Oder**- Is Virginia Beach already participating in a Shared-Equity program?
 - a. **Andy Friedman**-There is one in place, just waiting for a builder, but all documents and approvals are in place.
 - 2. **Delegate Oder**- Does this involve taxpayer money coming out of cities general fund?

- a. **Andy Friedman**- No. There is no cash involved- based on bonus density – if the developer sells 17% of total development at reduced cost to the buyer, 25% - this is what is captured with the second mortgage.
 - 3. **Delegate Oder**- Can the Commission get a copy of this initiative?
 - a. **Andy Friedman**- Yes, will send this to Elizabeth Palen.
 - 4. **Delegate Cosgrove** – With regard to the unwillingness of one group to live next to another group based on income, how accurate is this? Is it more of a matter of the home itself being worth more- I don't want my \$600,000 house next to a \$200,000 – or is it more about neighborhood aesthetics?
 - a. **Andy Friedman**- Think the perception will change when people see a successful program.
 - 5. **Delegate Hull** – When the house comes to fruition, should look at the “aging in place” concept, so that properties are built in a way so that people can stay in the home for extended period of time. Many home builders are getting into this, putting things in place for people to live in these houses as elderly – more accommodating to elderly with regard to heights of countertops, light switches, etc. When building the house in this way, costs are low, rather than going back retroactively and fixing the housing. The population of Virginia will age; this is something to keep in mind.
- III.** Mike Toalson, Home Builders Perspective, was unavailable to attend this meeting.
 - a. **Delegate Cosgrove**- We will reschedule Mr. Toalson to speak to the Commission.
- IV.** Other Issues:
 - a. Delegate Cosgrove-Received an email from Connie Chamberlin. HOME did a study on the ability of different people to get a place to live in the Hampton Roads area. The study revealed a disparity against African Americans in comparison to the way that white people were treated. Connie Chamberlin should come to next meeting to give an overview of the study. The Work Group needs to look at this, and needs to hear more about how the study was done. We need to see what we as the Housing Commission can suggest to keep this from happening in Virginia.
- V.** Public Comment-
 - a. **Karen Harwood, representing Fairfax County**-

- i. Comprehensive planning effort, all voluntary, addressed the need for work force housing, which is perceived to be people who have 80 to 120 percent of the average income of the area – for a family of four, this is around \$90,000 a year. People in this income range have difficulty finding affordable places to live in Fairfax County.
 - ii. There are metro stations in area, and hopefully we will have more. There is a plan for high rise development; high density in these areas; 90 units per acre- applicant basis.
 - 1. Set of criteria that applications must meet- to get the high density, either 12 or 20 percent of the units given would be committed for work force housing.
 - iii. The County is trying to put the density where infrastructure is and take advantage of metro system.
 - iv. Trying to get to the highest range of this level of density.
- b. **Delegate Hull-** Fairfax County has been lucky because of high assessments of property, it can designate one percent of the tax rate to go into a local housing trust fund; purchase apartment complexes with these and keep these as affordable housing.
 - i. **Karen Hardwood-** The Board has committed one penny on tax rate, might be less now, set this money aside, do have a housing authority, gives more flexibility to use this money for affordable housing.
- c. **Delegate Cosgrove** – The metros are already packed, if there are 90 units per acre close to these stations, won't they have to double the number of trains?
 - i. **Karen Hardwood** -Metro already has plan to get more trains or longer trains; this is expensive, but factoring this in; hopefully doing this on the Blue Line.
 - ii. **Delegate Hull** –Metro has a new director who is working to redesign some existing cars to take more people, take out bench seats for more standing room, etc. When the system was built, didn't anticipate this number of riders; hard to fix this now.

VI. Chip Dicks, VAR

- a. Update on SB 299 – assessment bill. We are in the process of trying to redraft this bill, working on this, and have made forward progress.

VII. Adjournment – 2:40 p.m.

Work Group #2- Housing and Environmental Standards
Chair: Senator John C. Watkins

Policy Area: Housing and Environmental Standards
Building Codes and Accessibility 2006

Corresponding House Committee: Counties, Cities and Towns
General Laws

Corresponding Senate Committee: Local Government
General Laws and Technology

VHC Members:

Senator John C. Watkins- Chair
Delegate Terrie L. Suit
Delegate Daniel W. Marshall, III
Delegate Robert D. Hull
Delegate Rosalyn R. Dance
Senator Mary Margaret Whipple
T.K. Somanath
Gary Garczynski

Citizen Members:

Ed Rhodes
Mark Flynn
Art Lipscomb
Shaun Pharr
Chip Dicks
Rick Witt
Bill Shelton
Emory Rodgers
Robert Hicks
John Hastings
Neal Rogers
Schaeffer Oglesby
John Catlett
Mike Congleton
Mike Toalson
James Dawson
Sandra Winfrey
Jim Messersmith
Mike Wray
Kelly Harris-Braxton
Ron Clements

HOUSING AND ENVIRONMENTAL STANDARDS
WORK GROUP MEETING SUMMARY
JUNE 25, 2008, 2:00 P.M.

I. Welcome and Call to Order - Senator Watkins, Work Group Chair

- This meeting is intended to be an organizational meeting, to layout some of the issues the work group will be looking into this year
- One of the issues the work group is studying is stormwater retention; how can we utilize and optimize this retention? The work group will take an empirical approach to determine how best to move into policies that will address the future of stormwater development.

II. Storm Water Retention

- **Basic Overview- Russell Baxter-Deputy Director, Department of Conservation and Recreation (DCR)**
 - There are several drivers that will move us into greater stormwater reuse over time.
 - DCR is not the only agency involved; the Department of Environmental Quality (DEQ) is examining the reuse of discharges on an industrial level. DCR looks more at reusing water that falls out of the sky, rooftops, etc.
 - DCR is designated in Code of Virginia to deal with non-point sources, with some overlap with DEQ.
 - DCR is responsible for implementing the Virginia Stormwater Act, operates general permits for discharges of stormwater from construction activities, and also is responsible for Municipal Separate Storm Sewer Systems (MS4s) permits.
 - DCR oversees local erosion and sediment control programs as well.
 - DCR has general authorities granted by the Code of Virginia, including:
 - Encouraging low impact development designs for controlling stormwater;
 - Senator Stewart's bill, effective July 1, 2008, further clarified DCR's responsibility and authority with regard to regulations relating to reuse of stormwater.
 - Happening currently with stormwater in Virginia:
 - DCR is undertaking a comprehensive rewrite of existing stormwater management regulations.
 - In order to encourage low impact development, water quality and water quantity issues must be addressed.
 - DCR is concerned with nitrogen and phosphorous in the water, and also with the rate and velocity in which the water is coming off of sites.

- **Delegate Hull** – What is the definition of “low impact development?”
- **Russell Baxter** -It deals with maintaining water when it falls from the sky and includes a variety of practices.
- **Delegate Hull** –Is it used by different groups of people?
- **Russell Baxter** - It does involve different groups at different levels.
- There is a technical advisory committee helping with regulations.
- DCR is dealing with two main issues when addressing stormwater quantity:
 - The protection of channels.
 - Promoting groundwater recharge, by keeping water on site and managing the volume of runoff that runs off a particular site.
- Having more stringent criteria will drive people to retain and reuse water:
- They are forced to deal with quantity and quality issues.
- They also know that if the water is stored, it must be reused because if it is not, then the site will run out of storage space. The questions then become:
 - How do we use this water?
 - What ability do we have to reuse it before the next rainfall?
- Examples of stormwater storage include:
 - A rain barrel placed at the bottom of gutter. This is a simple system, and can be used on individual homes.
 - A cistern, which is like a rain barrel, only larger, so it holds more water for storage and reuse.
 - A tank, which is even larger than a cistern, and is for collecting all the water coming off of a roof. The ability to use this large quantity of water must be taken into consideration.
- **Delegate Hull** – Would this water be used for human consumption or for other activities, such as irrigation, watering the lawn, etc?
- **Russell Baxter** - This water is not for potable uses, meaning that people will not drink it. It is used for irrigation and washing, flushing toilets, and other non-potable uses.
- There is a huge underground water storage tank under the Capital building. This type of tank keeps the runoff from flooding Main Street in downtown Richmond. It is not necessarily for reuse, but it could be used as such.
- **Delegate Marshall** – Do above-ground storage facilities create mosquitoes or other sitting water problems?
- **Eric Capps** (DCR) - This is generally not the case, as most of these above ground tanks are sealed.
- **Delegate Marshall** – How would homeowners treat and use the water in the rain barrels?

- **Russell Baxter** -This water is presumably used and not stored for a long period of time, because the homeowner is most likely collecting it for a purpose, such as watering a garden.
- **Delegate Marshall** – What about pervious asphalt and pavement?
- **Russell Baxter** - These are examples of low-impact practices that keep large amounts of water from coming off of a site.
- **Delegate Hull**- Could this water be used for drinking purposes, if the sediments and other debris in the water were to be separated from the water?
- **Russell Baxter**- DCR is not advocating for drinking water use, but rather more for other purposes.
- **Senator Watkins** - This issue comes to the work group from Senate Finance, because good, potable water is being used for irrigation. To help conserve potable water, we need to think about alternative systems for irrigation and other non-potable uses.
- *(Note: The Virginia Rainwater Harvesting Manual may be viewed online on the VHC website, under the 6-24 work group meeting.)*

(Note: Senator Watkins left the work group meeting at 2:25 to return to Senate Session. Delegate Daniel Marshall took over as acting chair.)

- **Health related issues -Dwayne Roadcap-Program Manager, VA**
Department of Health
 - VDH is given broad authority under Title 32.1 of the Code of Virginia to regulate private water systems and sewer systems that permeate into soil.
 - There are rainwater and gray water guidelines.
 - VDH is often asked how Virginia compares with other states in terms of water reuse.
 - Most states with programs in gray water and rainwater reuse are typically states that do not get a lot of rain.
 - For example, Arizona gets an average of less than 24 inches of rain annually. Compare this with 42 inches of average annual rainfall in Virginia.
 - There are many different terms:
 - Gray water is not kitchen or toilet waste. This waste is called blackwater.
 - Kitchen sink waste is not gray water because food particles and grease are often dumped down sinks.
 - Gray water includes water from showers, sinks, bathtubs, and washing machines.
 - This water does include pathogens.
 - Some other terms having different meanings under different regulations include:
 - Sewage

- Effluent
 - Wastewater
 - Non-potable water
 - Reclaimed water
 - Reuse water
- There is also overlapping complexity with the various agencies that are involved in dealing with water reuse:
 - Dependent upon the use of the water.
 - Within VDH, different offices might come into play, depending on whether this is a public water supply, a larger system, etc.
 - There is a continuum from zero to ten, with zero representing potable water and ten representing blackwater.
 - Along this continuum, some levels may be treatable to be reused for drinking purposes.
 - Rainwater will fall into this continuum depending on the quality of the water. The technology is available to treat rainwater and make it potable.
 - VDH is more concerned with gray water than rainwater.
 - Gray water contains fecal contamination, body fat, oils, soaps, and other pathogens that are more concerning than those present in rainwater.
 - However, there are concerns for rainwater:
 - Rainwater can have what is called the “black biomat,” where bugs and organisms can develop. The water can be treated to prevent this type of contamination, and to avoid septic issues.
 - VDH is also concerned with trenches or pipes used to disperse water. If gray water is dispersed in a trench, this creates an avenue for pathogens to move.
 - **Delegate Hull** – Will open trenches also cause mosquito problems?
 - **Dwayne Roadcap**- This is a problem, and therefore, these trenches require maintenance and open ditches are not allowed.
 - **Delegate Marshall** -Who is responsible for the inspection of the trenches and pipes used?
 - **Dwayne Roadcap** -The homeowner is expected to maintain the system if they chose to retain gray water. If a homeowner wants to reuse gray water, VDH will issue a permit and has a reporting requirement; however, VDH does not get many requests for these permits.
 - **Delegate Marshall** – What about neighborhood requirements, in particular, how would a neighbor deal with a trench or pipeline that is not properly maintained?

- **Dwayne Roadcap** -This is a major area of concern for VDH, because if gray water moves across a property line, neighbors could get sick from exposure to pathogens that they are not otherwise exposed to on a regular basis. If a homeowner wishes to reuse gray water, the rules require that the homeowner has a septic or sewage system for storage, and then when there is an opportunity to divert it, they can use the water.
 - **Delegate Hull** – Have these systems been approved in Virginia?
 - **Dwayne Roadcap** –Example: woman wanted to have this type of reuse system. VDH required that she have a professional engineer who would work with the family and ensure proper maintenance of the system.
 - **Delegate Hull** – Can developments have a joint, larger system for gray water reuse, and if so, what sort of engineering and maintenance must be involved?
 - **Dwayne Roadcap** - This type of infrastructure is possible, but it would be a high dollar investment for the development, and that part of the permitting requirement would be to maintain the system. However, even though this system would involve a higher quantity of water flow, it is less risky than a single homeowner system.
 - **Delegate Marshall** - This would probably be easier for new neighborhoods, but may be hard to implement in already existing developments?
 - **Dwayne Roadcap**- This is true, but it is not impossible for existing neighborhoods to implement a reuse system.
- **Building code requirements- Emory Rodgers- Deputy Director of Building & Fire Regulation, VA Department of Housing and Community Development**
 - In developing the 2009 statewide building code, DHCD will work with state agencies and officials to include a functional design section so that there is coordination at the state and local level regarding the design and scope of retention systems.
 - Building inspectors are usually more interested in looking at indoor water uses, and issues dealing with lawn irrigation, such as pipelines and trenches. These are usually handled more by VDH and their regulations.
 - In looking at DCR’s presentation and Appendix C of the *International Plumbing Code* (dealing with Gray Water Recycling Systems), there are different criteria on how much can water can be stored, so this may need to be looked into if it becomes a problem on the local level.

- Gray water was used even before Appendix C existed; it has been used successfully at a Northern Virginia country club for over thirty years, for example.
- **Delegate Hull** – What about runoff from gray water used for irrigation?
 - **Rick Link**, DEQ, Policy Coordinator - Pathogens and fertilizer cause water quality concerns, and this is typically dealt with using best management practices, such as riparian buffers, etc.
 - DCR is primarily responsible for working with localities to help implement best management practices.
 - **Russell Baxter** - On a small scale, with non-point sources, this can become an issue. There have been DEQ enforcement issues dealing with using sewage to irrigate, saturating the soils with too much irrigation, and run-off going into groundwater. The basic question is how much land is available to assimilate the application of irrigation.

III. Betterment Loans – Failing septic systems- Lindsay Trittipoe, President of NatLUST,

- natLUST (Leaking Underground Storage Tanks) is a 501(c)(3) organization which started in 2002 to keep cleaning up underground storage tank leakage issues when the petroleum fund became insolvent.
- In 2005, the nonprofit began examining leaking septic systems.
- In Virginia, at least 10 percent are failing in some form or fashion. This winds up in state water supply sources.
 - This problem is in the range of about \$1 billion dollars.
- How do we solve this problem without socializing the cost?
 - States have come up with creative financing programs.
 - States must create a “carrot” – a fund of unlimited money, at low-cost to taxpayers – to help VDH deal with failing septic systems.
- Other purposes for betterments financing could include cleaning up dry cleaning stores and regulated underground storage tank users.
- A betterment is an improvement made by state or local government to a private homeowner, where the improvement is repaid over time through charge assessed against the property.
 - Betterment loans are senior to mortgage debt; they are equivalent to a tax lien and would be repaid before all other debts.
 - In order for the loan to have this superior status, the state must determine that this is a compelling public interest.
- This legislature should enact a betterment statute that would allow a homeowner to qualify for and receive this type of loan.
 - This would allow financing to be made available to homeowners in Virginia.
 - Particularly now, with the mortgage crisis, this would be good because homeowners cannot get financing to make these repairs.

- The organization's legal counsel has come up with a strategy which will allow natLUST to provide tax-exempt bonds, but a statute is needed that would allow state agencies to qualify parties to receive the loans.
- **Delegate Hull** - Why does the state government need to be involved in such a program? Can't this be handled on a local level? Currently, in Fairfax County, there is a program in which the county fixes roads and gutter, etc., and then puts a lien on the property. When the property is sold, the county is reimbursed for the repairs. Also, a homeowner would mostly likely not be able to sell their home without first having a failing septic system replaced because upon inspection, a mortgage lender would not provide a mortgage to a buyer if the system was not working properly. However, a buyer could go in and get a loan that includes the cost of fixing the system, so this is already in place right now to handle the problems.
 - **Lindsay Trittipoe** - Fairfax has the resources to implement such a program, but other localities do not have the funds. Many localities also think that this is a state and not a local issue, because counties do not want to borrow money and put the county in debt. They also do not wish to foreclose on the homeowners.
 - Due to the mortgage crisis, homeowners now have limited ability to take out conventional sources of financing to repair their systems.
- **Delegate Hull** – Are these failing systems are in violation at the local level?
 - **Bob Hicks**, VDH – Yes, they are.
- **Mr. Trittipoe**- If VDH is able to qualify a homeowner for the betterment loan, then the local government must record it in land record books, but there would be no other county involvement.
- **Delegate Hull** – Where would the start up money come from to begin the revolving fund?
 - **Lindsay Trittipoe** - The fund would begin with private funding; NatLUST will contribute significantly.
- **Delegate Marshall** - Have any other states implemented this program?
 - **Lindsay Trittipoe** -No states have implemented such a program yet, but many states have been in correspondence with NatLUST regarding the program, including Connecticut, Rhode Island, and Kentucky.
- **Delegate Hull** - Why is a state agency needed to qualify a lender, why can't NatLUST offer a program now, without state involvement?
 - **Arthur Anderson**, McGuire Woods (counsel for NatLust) – Because the loans require the super lien status.
- **Delegate Marshall** – Do any other similar super liens like this currently exist?
 - **Arthur Anderson** -The assessment program that Delegate Hull mentioned earlier is similar.

- **Lindsay Trittipoe** - The state can make these loans directly, by putting VDH in charge administering the loans, but the state would most likely not wish to take on this role.

IV. Public Comment

V. Adjourn- 2:57 p.m.

Meeting Summary

Housing and Environmental Standards Work Group
General Assembly Building, House Room C
Richmond, Virginia
August, 19, 2008; 10:00 AM

Members Present: Senator John Watkins, Delegate Dan Marshall, Delegate Rosalyn Dance, Delegate Bob Hull, T.K. Somanath, Gary Garczynski, Melanie Thompson, Ed Rhodes, Art Lipscomb, Mark Flynn, Shaun Pharr, Chip Dicks, Neal Rogers, Rick Witt, Schaeffer Oglesby, Bill Shelton, John Catlett, Emory Rodgers, Mike Congleton, Bob Hicks, Mike Toalson, Sandra Winfrey, Jim Messersmith, and Mike Wray.

I. Welcome and Call to Order-Senator John Watkins, Chair

- a. The meeting was called to order at 10:00 AM by Senator Watkins.
- b. Introductions were made by each work group member.

II. SB 766-Demolition of historic structures, cemeteries and graves (Colgan, 2008)

- a. *Jan Cunard, Prince William County Historical Commission*
 - i. Please see power point presentation available online
- b. *Dana Fenton, Prince William County Legislative Liaison*
 - i. Prince William County supports the legislation.
 - ii. **Delegate Marshall-Would this legislation be statewide?**
 - iii. The first section would only be applicable to Prince William and Albemarle; County Executive forms of government under section 15.572.1. The last section of the code would add cemeteries to the list of things that could be protected. It would be a local initiative.
 - iv. **Delegate Hull-Can you now designate a cemetery as a historic site? And would legislation only create a fine if you destroyed a cemetery?**
 - v. They are not protected right now.
 - vi. *John Lassiter, Planner, Prince William County*-Protection is currently limited, but this legislation would enhance our efforts.
 - vii. **Delegate Hull-Referring to lines 15 and 38, building or structure or area. Area is too broad. What would that entail?**
 - viii. Dana Fenton-The term was put in there to apply to cemeteries.
 - ix. **Mike Toalson-His industry would have similar difficulties. If replaced the term "cemetery" for the term "area", then their concerns would go away. Are these cemeteries marked?**
 - x. **Senator Watkins-Asks that staff draws up the amendments and gets them out to the parties.**
 - xi. **Chip Dicks-The legislation seems to intent to apply to more of a willful and intentional act of developers. Could language to that effect be put in?**

- xii. Dana Fenton-We will take a look at that language.
- xiii. **Senator Watkins**-*It is not unusual to inadvertently come upon a cemetery while building.*
- xiv. **Chip Dicks**-*referring to line 15, who declares the historic districts?*
- xv. Dana Fenton-It is declared by the local governing body, done with the owner's knowledge.
- xvi. **Chip Dicks**-*referring to line 22, how is recovery of reasonable cost determined? And, most issues came up in rezoning requests, would a different body be able to create different zoning regulations?*
- xvii. Dana Fenton-We saw this legislation as extra protection as there are zoning laws that are available.
- xviii. **Chip Dicks**-*Some of these terms are broad and undefined, would be happy to offer some thoughts.*
- xix. **Shaun Pharr**-*Willful and intentional language is necessary. Do land records reflect if a designated area is historic?*
- xx. John Lassiter-Cemeteries are mapped and available to the public. Only 56 are currently mapped. Some are missing, but we are trying to get them all mapped.
- xxi. **Senator Watkins**-*The issues are with ones that aren't on the map and come up inadvertently during construction.*
- xxii. Dana Fenton-The purpose was a good idea, but work needs to be done on the language and possibly re-work the sections.
- xxiii. **Senator Watkins**-*There is no concern for land owners that get involved with knowledge. It is the people that you pick up inadvertently that are of concern.*
- xxiv. **Delegate Hull**-*What is the current federal law?*
- xxv. John Lassiter-Federal law has virtually no impact on this legislation.
- xxvi. **Chip Dicks**-*What is the cap of the cost for a violation?*
- xxvii. John Lassiter-There is no cap, only the cost of the recovery.
- xxviii. **Senator Watkins**-*Be aware that this would be a civil penalty on top of a zoning violation fine as well.*
- xxix. *We will keep this with the Housing Commission so that VHC can make a recommendation on this legislation before the next General Assembly session .*

III. SB 456-Uniform Statewide Building Code; grading limitations (Petersen, 2008)

- a. *Senator J. Chap Petersen (please see letter posted online)*
- b. *Mike Toalson, Home Builders Association of Virginia*
 - i. The bill was introduced by Delegates Shannon and Senator Petersen
 - ii. For over 20 years the legislature has refused to mandate the building code because of the many complexities for the creation of that code.

- iii. This is not a building code issue, it is a zoning issue.
 - iv. This was designed to address existing neighborhoods where there were one story homes, and they are being taken down to build high structures.
 - v. The zoning ordinance requires measurement from the ground to the height of the house, but builders were grading so that the measuring point was higher, to allow for a taller house.
 - vi. The zoning language is under reconsideration now in northern Virginia, and it is not a building code issue.
 - vii. Changing grading limitations in just one locality will destroy continuity in Virginia building codes, but zoning changes can address this problem.
 - viii. **Gary Garczynski**-*Comments on northern Virginia actions-agrees legislation is not appropriate.*
 - ix. **Delegate Hull**-*Perhaps the commission should hold off and wait for a local response.*
 - x. **Karen Harwood**-*Fairfax County did not request this legislation. It was most likely requested by the town of Vienna itself.*
 - xi. **Mike Congleton**-*The town of Vienna has its own zoning ordinances, introduced on behalf of the town, not the county. This is a zoning issue and not a building code issue.*
 - xii. **Delegate Cosgrove**-*The letter from Senator Petersen clearly says this is a concern of the Town of Vienna. Doesn't creating a severe slope then creates a run off problem on other properties?*
 - xiii. **Mike Toalson**-It could create a runoff problem. He has never seen this problem anywhere else.
 - xiv. **Delegate Cosgrove**-*This is a large response to a small problem in a specific location.*
- c. *Chip Dicks, Virginia Association of Realtors*
- i. Many houses that were built in the 1950's and 1960's are being torn down and being replaced with McMansions. These redeveloped areas are not able to handle the new sewer and other requirements of the larger homes. Zoning is the best solution. The town attorney was looking at some of these solutions.
 - ii. **Senator Watkins**-*Staff will inform Senator Petersen that the group is not inclined to move this forward. Perhaps Senator Petersen can come to next meeting if he wants to discuss this matter further.*

IV. Storm Water Run off

- a. *Dave Crawford, President, The Cabell Brand Center*
 - i. Please see the power point presentation available online.
- b. The Virginia Rainwater Harvesting Manual is used nationwide by many engineering experts.
- c. Texas provides tax incentives and rebates for rainwater harvesting.

- d. Georgia is also moving in that direction. Oregon has also recently begun similar legislation.
- e. The price of water is going to go up every year and there is free water everyday which we are losing from rainwater that is not being stored.
- f. There is no sense in flushing toilets and washing cars with drinking water.
- g. **Senator Watkins**-*Local governments are recognizing this and controlling the rainwater for their use. Is there any use legislation that addresses this? Deeds are including statements for land owners to control and own storm and rain water from their property.*
- h. Dave Crawford-Colorado is the only state right now. They are feeding the river and selling it to Nevada and California. If the water is coming off of your roof and you catch it before it hits the ground it is not storm water and you own it. But once it hits the ground it becomes storm water and owned by the state.
- i. **Mike Toalson**-*The new thought about storm water is to slow it down and keep it on sight rather than transporting it to a retention facility. The biggest issue is that state governments don't have the authority to manage it because it is on private property.*
- j. **Delegate Cosgrove**-*This type of retention system would limit run off to our tributaries and streams. Does this have any potential for LEEDS credits?*
- k. Dave Crawford-Yes, it has LEEDS credits potential.
- l. Maintenance costs about \$20 a year, the system itself costs about \$5,000 and will last the life of the house.
- m. Potable water systems are available. The UV light system costs about \$150 a year for maintenance.
- n. Cross Connections are the big issue with the state and national plumbing codes.
- o. These systems will never cross-contaminate.
- p. There was a great National Geographic article about this in February.
- q. Senator Marye's bill from a few years ago also addressed this issue. It provided a tax credit for the installation of a rainwater system.

V. Senator Watkins mentioned that he would like a reporting on Virginia's riparian rights for the next meeting. He thanked all speakers and asked if there were any additional comments from the public; there were no comments.

VI. **The meeting was adjourned at 11:54 AM.**

HOUSING AND ENVIRONMENTAL STANDARDS
WORK GROUP MEETING SUMMARY
OCTOBER 14, 2008, 10:00 A.M.

VII. Welcome and Call to Order-Senator John Watkins, Chair -10:05 a.m.

VIII. Storm Water Run off – Legal Issues- Timothy Hayes, Hunton & Williams

- What are the laws in Virginia regarding reuse and ownership of storm water?
- Virginia is a riparian state – under the riparian system, any landowner may use a stream as long as the landowner does not diminish the water quality
 - Capture rule-property owner has a right to use runoff without any exclusion
 - Drainage easement typically only allowed
 - Runoff is not like a naturally flowing stream- no one has a right to it
- *Gary Garczynski* – What if the developer granted an easement but deeded it to the county?
 - *Timothy Hayes* – clarify the default position when water rights are not addressed in the easement.
 - An easement is dedicated to the homeowner’s association but the original developer still owns the fee.
- *Delegate Hull* – If an easement is agreed to, can the parties legally stipulate who has ownership in the water when it is in a retention pond?
- *Gary Garczynski* – Two developments in Fairfax and Loudoun counties, the counties want to control the stormwater retention ponds after the developers have created them. More developed counties want to control all of the storm water in the retention ponds; developers have to have different systems for irrigation of the lawns and entryways.
- *Senator Watkins* – How much control will the government have over the water?
- *Delegate Marshall* – Pervious pavement acts like a sponge so that rain water stays on the property, is this being used more often now with developers, to replace retention ponds?
 - *Tim Hayes* – Water goes into a cistern to water the grass, it is self-contained.
- *Delegate Marshall* – Does Virginia have to look at what other states are doing – Is Virginia behind in this regard?
- *Tim Hayes* – Water is just recently a concern. May just roll into the new development, there may be incentives from the local government.
- *Senator Watkins* – It would be mutually beneficial to set up a system; an environmental side to benefit Virginia development communities with stream restoration credits.
- *Delegate Hull* – Chesapeake Development – pervious pavement
- *Mike Toalson* –Chesterfield County has maintenance requirement of the stormwater as part of a proffer, but how do you enforce it?
- *Emory Rodgers* – Balancing the 2009 Building Code requirements rain water harvesting tipping scale how does that affect the public infrastructure for potable water, and gray water, and reclaimed water and irrigation?

- *Delegate Marshall* – What happens if my neighbor does not maintain his system?
 - *Tim Hayes* – There is an obligation to maintain the system after installation.
- *Senator Watkins* – Does the code address individual property owners?
 - *Emory Rodgers* – Yes.
- *Delegate Marshall* – Once developed, how does a citizen know if the tank in the yard has been maintained?
- *Senator Watkins* – The Commission Work Group will wait for the building code will take of concerns for individual basis, but dedication or requirement of an easement surrounding a retention pond who has the right for the water?
 - *Tim Hayes* – This is easily resolved by tweaking the language in the building code.
- *Mark Flynn* – There water issues are massive long term issues for the future of the Commonwealth, there is a host issues of long term significance. We have to do it in a careful way.

IX. SB 363, HB 333 -Automatic Sprinkler Systems- Ed Altizer, Virginia State Fire Marshal, and Mike Toalson, Home Builders Association of Virginia

- The legislation mirrors what has been done with motels, hotels, and dormitories.
- Would be corrected for assisted living facilities that do not have the systems.
- No date for regulations to be promulgated.
- During the latest round of hearings, the ICC did not do anything with sprinkler systems.
- *Delegate McClellan* – The fire in the Imperial Plaza, a senior assisted living building, is what brought interest into this issue; difference of life or death; the bill put in last year was a limited bill for assisted living for our most vulnerable citizens.
- *Ed Rhodes* – Cost the Imperial Plaza \$6 to \$7 a square foot to put in a sprinkler system that will hold the building in check until fire personnel can arrive
- *Delegate Hull* – We heard a presentation before on the Imperial Plaza, weren't there more problems than just the lack of sprinklers?
- *Senator Watkins* – New buildings all have to have sprinkler systems, and when the old buildings are renovated, the systems must be put in.
 - Maybe the effective date on the proposed bill needs to be 2020, to do nothing will create a dichotomy between the safe people and the unsafe people.
- *Emory Rodgers* – In 1985, the law changed; every new building needed a sprinkler system; there are 115 buildings statewide that are currently at issue.
- *Senator Watkins* – Many of these are 30 year old buildings right now that will eventually need to be renovated and brought up to code.
- *Emory* – 75 percent of these buildings are in three jurisdictions, including Alexandria and Arlington.

- *Representative of Hathaway Towers in Richmond, VA* – This will cost 15 to 20 dollars per square foot per unit owner, overlooking doing an intermediate steps.
- *Senator Watkins* – Not ignoring the intermediate steps, but ten years from now there may be a very different effect on the buildings that haven't been renovated.
- *Mark Flynn* – Fire folks have testified that the one thing that is shown to save lives is having sprinklers.
- *Ed Rhodes*- (Gave a history of a life of a fire and how the sprinkler system restricts the fire growth.)
- *Hatcher Crenshaw* – Building is the highest in Henrico County; it would cost two to three million dollars to sprinkle the building.
- *Senator Watkins* –The economic environment is not currently conducive to tax credits. The market place will demand that buildings be sprinkled eventually; lets not all forget that human safety is an important issue.
- *Gary Garczynski* – Proffering in the sprinklers is an option in Northern Virginia.
- *Delegate McClellan* – There won't be a public outcry again until someone else dies.
- *Delegate Marshall*- Are there any statistics of how sprinklers save lives?
- *Ed Altizer*- We do not have statistics, but there are no other suppression systems other than sprinklers that really offer a good fire protection system.
- *Delegate Marshall* - If you own a condo and you can't use a tax credit, can you sell the tax credit?
- *Senator Watkins* – Yes.

X. SB 167 – Use of Noncombustible Building Material-Jay Hall, Portland Cement Association –Former Virginia State Fire Marshal

- See presentation statistics.
- *Delegate Marshall* – Of steel studs and masonry, is one more effective than the other, is there a way of looking this up?
- *Delegate Hull* – Land records have this information.
- *Roger Clements*- Land use records are not accurate.
- *Harold Suiter*(President of his unit association) – This is government trying to legislative a regulatory matter.
- *Jim Messersmith* – (Discussion of how there should be the same construction requirements with nursing homes as for any housing that houses seniors.)
- *Senator Watkins* – The DHCD board should look at the construction materials to see whether it needs to go forward with any recommendations.

XI. Adjourn

**Work Group # 3- Common Interest Communities
Chair- Senator Mary Margaret Whipple**

Policy Area: Common Interest Communities and Time Shares

Corresponding House Committee: General Laws

Corresponding Senate Committee: General Laws and Technology

VHC Members:

Senator Mary Margaret Whipple- Chair

Delegate Terrie L. Suit

Delegate John A. Cosgrove

Citizen Members:

Mike Inman

Frank Eck

Chip Dicks

Ron Kirby

Janice Burgess

Jay DeBoer

Cynthia Schrier

Pia Trigiani

Dale Goodman

Sarah Broadwater

Chandler Scarborough

Common Interest Communities Work Group Meeting
Virginia Housing Commission
June 26th, 2008, 3 p.m.

Members Present:

Senator Mary Margaret Whipple-Chair
Delegate Terrie Suit
Delegate John Cosgrove
Mike Inman
Chip Dicks
Ron Kirby
Janice Burgess
Jay DeBoer
Cynthia Schrier
Pia Trigiani
Dale Goodman
Sarah Broadwater
Chandler Scarborough

Invited Guests:

Senator Jill Vogel

Welcome and Call to Order

- **Senator Whipple** called the meeting to order at 3:04 p.m.
 - The first issue on the agenda was Senate Bill 6016. This bill would not normally be introduced until January.
 - A question was presented whether or not it rises to the level of emergency that requires it be handled mid-year.
 - The work group should consider whether this rises to that level of emergency , and what recommendations should be made concerning the bill.

The first speaker was **Senator Vogel**, to speak about SB 6016.

- Given the unlikely meeting of the House General Laws Committee, and the practical constraints in terms of time, this bill will probably not be heard by House General Laws, but she feels it is worthy of being introduced in Special Session.
- This bill addresses a major area of concern in Virginia, and one that is not unique to the 27th district. There are 9,111 Property Owners Associations (POAs) in the Commonwealth of Virginia.
- The issue is that declarations are inconsistent, and there is a question of integrity of POAs under the Property Owners Association Act (POAA).
- What can we do this session?
 - There is ongoing litigation in the 27th district over a specific POA (*Lake Holiday*); the legislation should not be specific to this litigation, nor be retroactive or create discomfort among members.

- This bill presents the opportunity for a specific judicial cure. A POA can petition a judge to evaluate petitions.
- The bill also makes an effort to clarify the definition of “development” for judicial interpretation and application.

Senator Vogel asked the work group to consider the measures included in this legislation. Many parties have reviewed it and think it has enormous value.

Senator Whipple asked to hear from other people who wish to speak on SB 6016.

Howard Estes, an attorney from Woods Rogers, spoke on behalf of his client, who opposes the bill, both its language and the emergency clause.

- While **Senator Vogel** is trying not to draft legislation that will impact the current litigation, this bill will do more than just settle ambiguity in statutes. It will have an impact on individual property rights.
- The bill will cause an increase, not a decrease, in litigation.
 - This is a new type of taking, by creating a specific judicial remedy and allowing freer reign to litigate specific issues in deeds and impose the will of the majority of landowners against the will of minorities.
- Mildred Bemis, lead plaintiff (*in the Lake Holiday case*) is an elderly lady who bought in 1974. Her deed does not have restrictions that the POA now wants to impose.
- There are far-sweeping consequences of some of the provisions of the bill.
- Asking that the Housing Commission absorb, review, and get feedback on this legislation, specifically regarding the issues with deeds and amendments to deeds in future.
- **Senator Whipple** asked **Mr. Estes** how this bill impact current litigation.
 - **Mr. Estes** pointed to line 67 of the bill, which gives a judge authority to review individual declarations, and gives the court jurisdiction to reform any provision of a declaration.
 - The bill also changes the definition of “declaration” to include a series of declarations or deeds where the owners are of the same POA as a single declaration.

The next speaker was **Todd Sinkins**, an attorney from Rees Broome, PC, in favor of addressing this issue, although not necessarily the particular wording of SB 6016.

- There are many communities that have budgets to deal with obligations thrust upon the POAs by local governments.
- A modification of POAA is necessary to allow communities the rights and powers to effectively administer these obligations.
- The association (*Mr. Sinkin’s client in the Lake Holiday litigation*) developed the lots in periods, beginning in 1970. The local government intended to treat this as one community, phased over periods of time.
- There are differences in the deeds of the various sections. This has subjected the Association to much litigation; fourteen lawsuits over the last ten years.

- The POAA should be revisited to clarify these types of problems. The clarifications that need to be made are minor.
- The bill created creates a reformation section to make changes to clarify issues to the betterment of the community. It is not adding restrictive covenants, but rather clarifying issues or errors that occurred during the development process.
- **Delegate Suit** asked **Mr. Sinkins** whether this is an emergency that needs to be dealt with right now. Does this legislation rise to such a level of emergency, or can it be continued in the Commission with a recommendation to study it going forward? It seems that the nature of the emergency is the ongoing lawsuit, is this correct?
 - **Mr. Sinkins** replied that the bill will constitute a change in law after the litigation is over.
- **Delegate Suit** said there seems to be no time emergency so critical that the issues cannot be dealt with during the regular session of the General Assembly. This will allow more time for the legislation to be carefully crafted to properly address the issues.

Mike Inman spoke next.

- Mr. Inman stated that as a real estate attorney involved with community associations, he has examined many documents over the years, and at times there are conflicts in documents.
- The conflicts often arise from the fact that from time to time, attorneys borrow documents from each other, and they do not always tailor them to the particular lots.
- This occurs particularly in a phase development where different developers and attorneys draft supplemental declarations and additional documents.
- However, other than this present litigation, this does not seem to be a pressing issue
 - There may be cases or clients who are struggling with the interpretation of documents, so this legislation would be useful at some point in time.

Pia Trigiani echoed **Mr. Inman's** comments, stating that she has worked on the regulatory side with the Real Estate Board.

- There is merit in the proposal.
- The POAA has not served the industry as well as it should have, and the Housing Commission should examine the issue carefully, not “on the run,” as the emergency clause would indicate.
- This draft might not be quite right, and needs to be studied further.

Chandler Scarborough stated that his concern, as the president of a Home Owners Association, is not for the pending case but rather what impact the outcome of the litigation will have on other POA's.

Bob Diamond, an attorney with Reed Smith, whose client is Lake Holiday, LLC, an intervener in the pending litigation of Lake Holiday.

- Mr. Diamond wished to explain two things:
 - The issue of the Lake Holiday case is whether an association can use the POAA to collect assessments or does it have to file an action in General District Court?
 - There are three to make these legislative changes.
 - 1- As of July, 2008, HB 516 will take effect, which adds a definition of “common interest community.” This will lead to further complications.
 - 2- In the Lake Arrowhead and Dogwood cases, the Supreme Court interpreted the POAA. The legislature can make its own decision on whether or not this interpretation was correct. The result of these cases was not good for home owners associations.
 - 3- There is currently no method for reformation in the Commonwealth, and there needs to be a solution for issues where one property owner controls because he has enough votes.

Senator Whipple then stated that if there is no objection, the work group will look at this through the course of the year. Other interested parties should spend some time looking at it as well.

Delegate Suit suggested that a smaller work group form and devote specific attention to this issue in the future. **Senator Whipple** agreed.

Senator Vogel thanked the work group for listening and thanked those who came to speak on the proposed bill.

Next, **Jay DeBoer** from the Department of Professional and Occupational Regulations (DPOR) spoke on the legislation effective July 1, 2008.

- There are solicitations for two positions newly created at DPOR to comply with terms of legislation.
 - One is the ombudsman, who must be a lawyer in good standing. The application deadline for this position was June 30th, 2008. The salary range for this position is between \$55,000 and \$95,000. There are nine applications (*as of June 26th, the date of this meeting*).
 - The other is the common interest community analyst. The application deadline for this position was June 30th. The salary range is between \$40,000 and \$55,000. There were 37 applications for this position (*as of June 26th, the date of this meeting*).
- The Common Interest Communities Board constitution:
 - Many nominations have already been received.
 - The Governor has not made any appointments for the board (*as of June 26th, the date of this meeting*).
 - Each of the slots (except for the citizen members) must have specific qualifications.

- Until there is a board, DPOR cannot undertake the creation of initial regulations, rules and procedures.
 - However, the staff does have some models prepared.
- **Delegate Suit** asked whether the work group should send a letter to the governor expressing urgency of these appointments.
 - Mr. DeBoer answered that this was not necessary as the governor was working on the appointments that afternoon (*of June 26th*).
- Both the Board and the Ombudsman will have staff.
- The primary task of the board is to create a hierarchy of regulation, beginning with management firms which must be licensed, a certification for managing supervisors and those in front offices, and voluntary certification for non-supervisory and other positions not otherwise required to hold certification.
- Any person providing management services must hold a license by the Board.
 - Management services means exercising control over an association, there are several defining factors.
- The Real Estate Board will need to adopt a regulatory scheme adopted by the Common Interest Community board.
- The Common Interest Community management recovery fund may be used to pay costs and fees of court appointed receivers. This is financed by assessments through managers.
 - Each association covered pays a one time \$25 assessment fee.
 - The Common Interest Community board may also impose special assessments.
- The Ombudsman will assist individuals and take an advocacy position to help them understand deeds, restrictions, and covenants.
 - He or she will take in complaints; receive notice of adverse decisions of governing bodies, etc.
 - This is not specifically tailored to an arbitration or mediation setting, but the position does allow for alternative dispute resolution as an alternative.
- **Mike Inman** asked whether the ombudsman will have direct, personal meetings with parties who choose to come to Richmond.
 - **Mr. DeBoer** replied that his depends on the volume of complaints, which will need to be monitored carefully.
 - If something this is something that the ombudsman or staff can do, this is something that might be available depending on the volume.
- **Mr. Inman** asked whether the Ombudsman would meet with one party, or whether he or she will insist that both parties be present.
 - Mr. DeBeor replied that DPOR reads this statutory creation as being an advocate for members and not so much for the associations. The ombudsman will be stressing the rights of members and establishing a complaint process.
- **Pia Trigliani** asked how the ombudsman will interact with the Board.
 - **Mr. DeBoer** responded that how closely they will be related is yet to be determined, but that DPOR is expecting that the ombudsman will not be isolated from the Board, but that he will also not be answerable to the Board.

- The reporting hierarchy dictates that the Board report directly to the Deputy Director of Licensing and Regulation. The ombudsman will also report to the Deputy Director of Licensing and Regulation, but separately.
- The ombudsman will receive first notice of things that constitute violations. This is more of an investigator position.
- **Sarah Broadwater** asked whether there was a way that individuals, and not just property managers, can get information regarding the new legislation and the new process.
 - **Mr. DeBoer** replied that there is an FAQ available on DPOR’s website.
 - **Senator Whipple** agreed that this was a valid point, and that perhaps there should be a link from DPOR’s home page that would direct an interested person by topic.
- Senator Whipple closed the issue by stating that the DPOR and the work group members should track this in the course of the year, and should bring to the attention of the work group anything during the year that is problematic with the implementation of the legislation.
- **Mr. DeBoer** stated that he hoped to have the newly appointed Executive Director of the Board, and the Ombudsman, attend the next work group meeting.

Chandler Scarborough stated that he hoped the work group could visit some issues neglected by HB 516, including providing guidance for leaders of community associations. The work group should keep in mind that the associations are run by homeowners, and not the proverbial “big brother.”

- **Senator Whipple** asked **Mr. Scarborough** to provide the work group with a list of those issues affecting the associations.

The meeting adjourned at 4:16.

Virginia Housing Commission
Common Interest Communities Work Group Meeting
10/21/08
Called to order 1:15 PM

I. Welcome and call to order- Senator Mary Margaret Whipple, Chair

II. Overview

- **Trisha Henshaw**- Executive director of the Common Interest Communities Board
 - Update on the CIC Board – *see PowerPoint presentation.*
 - Transferring regulations and development of new regulations.
 - Public participation guidelines- effective 11/13/2008.
 - Time share regulations- effective 11/27/2008.
 - Condominium regulations- emergency process, not exempt action. Horizontal property stays with condominium, everything else comes over to new regulations- effective 11/13/2008.
 - Emergency Manager Regulations- emergency process; includes requirements for provisional licenses- effective 11/13/2008.
 - Permanent CIC Manager Regulations- requirements for certified individuals. Expand on emergency regulations- criteria for training programs, review standards, etc.
 - Regulatory Review committee- will develop recommendations for wording of draft regulations.
 - Upcoming Actions:
 - Process for association to resolve written complaints.
 - Property owner's association registration regulations.
 - Assessments- .02% will not be enough to break even; need to re-evaluate; funding is a big concern.
 - Front line managers need to be certified.

- **Heather Gillespie**- Ombudsperson- Compliance and Investigatory Division
 - Overview of duties of the office of the Ombudsman –*see PowerPoint presentation.*
 - Called upon to respond to complaints but do not have regulations to use yet.
 - Overview of complaint process:
 - Currently two levels- general inquiry and then specific concerns regarding mismanagement.
 - Future three-pronged system- 1) general inquiry, 2) complaints to member's associations, and 3) complaints filed with the board.
 - Do not want to mediate or arbitrate, want to educate members.
 - Office decisions are non-binding.

III. Comments from Association Representatives

- **Kathleen Snyder**
 - Concerns with legislation:
 - Education process for smaller Home Owners Associations.
 - Complaint process- certain things are not covered by insurance.
 - Defense costs.
 - Cost implications- limited to how much you can increase dues and funding.
 - Liability is a big issue

- **Kala Quintana**
 - CICB legislation has unintended consequences.
 - All CIC and HOA's are grouped into the Koger group.
 - Concerns:
 - Ombudsman shouldn't take over local control (leave it to the court system, HOA's should not be penalized twice).
 - Individuals can be singled out.
 - What further recourse does the board have if fined.
 - Eliminate unfunded liabilities.

- **Carter Miller**
 - Concerns with fines on volunteers.
 - Agree with education for the managers.

- **Clarence Kunstmann**
 - Similar concerns.

IV. Adjourn - 3:10 pm

Work Group # 4- Derelict Structures
Chair: Senator Mamie E. Locke

Policy Area: Land Use

Corresponding House Committee: Counties, Cities and Towns

Corresponding Senate Committee: Local Government

VHC Members:

Senator Mamie E. Locke- Chair
Delegate Terrie L. Suit
Delegate John A. Cosgrove
Delegate Daniel W. Marshall, III
Delegate Rosalyn R. Dance

Citizen Members:

Ted McCormack
Dana Fenton
Mark Flynn
Bill Ernst
David Freeman
Chip Dicks
Cal Whitehead
Rick Witt
Bill Shelton
Emory Rodgers
Mike Hawkins
Joseph Schilling
Joe Waldo
Linda McMinney
Sherri Neal
Eugene White
Martha Creecy
Anthony Burfoot
Vaughn Poller
Tim Wise
Art Berkley

Derelict Structures Work Group Meeting
9:00 House Room D
June 24, 2008

Members Present:

Senator Mamie Locke- Chair
Delegate Terrie Suit
Delegate Rosalyn Dance
Mark Flynn
Ted McCormack
Emory Rodgers
Chip Dicks
Bill Ernst
Martha Ann Creecy
Dana Fenton
David Freeman
Joseph Schilling
Rick Witt
Bill Shelton

Invited Guests:

Delegate Jennifer McClellan
Rachel Flynn, Director of Community Development, City of Richmond

- **Senator Locke** called the meeting to order at 9:03 a.m. She commented that the issue of derelict structures is an important one in many Virginia communities, and thanked the work group members for their participation.
- The first speaker was **Joseph Schilling**, of the Metropolitan Institute, Virginia Tech.
 - **Mr. Schilling** is a founding member of National Vacant Properties Campaign (NVPC).
 - Vacant properties create challenges in Virginia and across the country.
 - Some insights have been learned over last 5 years:
 - The foreclosure problems have had a large impact on vacant properties.
 - This is an emergency management issue, because blight and abandonment is contagious. We want to contain it, but in some communities this is not possible.
 - NVPC was launched in 2003 with the help of Fannie Mae, EPA, Ford and Surdna Foundations. The executive committee is made up of Smart

Growth America, Local Initiative Support Corporation, Virginia Tech's Metropolitan Institute, and the Genesee Institute in Flint, Michigan.

- The campaign has been holding forums to talk about the issue of abandoned properties.
- A national forum on reclaiming vacant properties was held in 2007, and over 600 people attended this forum.
- NVPC provides technical assistance by going into the field and working with localities to draft strategies and tools for local governments.
- The campaign has worked in Richmond, Portsmouth, and Petersburg.
- There is a wide continuum of abandonment, from substandard housing to an unoccupied, vacant lot. Along this continuum are increased levels of owner neglect and market weakness.
- Vacant lots are not just a city issue, but a rural issue as well. It is a regional issue and a nationwide challenge.
- Vacant properties cause trash and blight.
- How many vacant properties are there?
 - There exists no sufficient and reliable data to really track this, but a Brookings 2004 study estimates about 15% of urban city land is vacant.
 - The post office began keeping data on non-deliverable addresses.
 - A few cities have created real property information systems, such as Philadelphia and Minneapolis.
- The “roots of abandonment” are important.
 - Behind every vacant property there is a story, and the challenge is to find out what this story is.
 - Is the property vacant as a result of regional growth, sprawl, foreclosure, predatory lending, or the driving out of neighborhoods because of racial discrimination or the quality of schools?
 - There are a variety of issues that are at the roots of the vacant properties
- Costs:
 - The state of Ohio loses 60 million each year because of vacant properties.
 - There are costs related to personal health and property values, etc.
- Some observations:
 - No one owns this issue.
 - A variety of local and state levels must deal with derelict structures.
 - The issue is complex; because no one owns it, no one understands where to start.
 - The problem is not victimless, because there is a cost to communities and individuals.
- There are benefits of vacant property reclamation, which include greater housing choices, crime reduction, and rebuilding and redevelopment.

- Under current practice, the issue is governed by state and local levels, but these levels will most likely soon be turning to the Federal government for assistance.
 - There is a lack of strategy and coordination, but there are some innovators, such as Baltimore and Philadelphia organizations.
 - Local governments cannot handle these issues alone, partnerships are critical, such as community development corporations (CDC's) and Community Based Organizations (CBO's).
- The key is to have different tools at the prevention stage; some neighborhoods might need stronger measures than others.
- A Federal agenda has recently emerged.
 - There is pending legislation, such as the Neighborhood Stabilization Acts, the Hope VI Improvement and Reauthorization Act, and Brownfields reauthorization.
- NVPC's future agenda includes:
 - technical assistance efforts
 - foreclosure workshops
 - a national conference
 - a focus on the connection between local government strategy and tools, and state policies.
- **Senator Locke** asked if there were any questions for **Mr. Schilling**.
 - **Chip Dicks** asked whether there is a definite definition of a derelict structure. Is it a vacant property, and if so, at what point does a property become vacant?
 - **Mr. Schilling** responded that the definitions vary depending upon the type of property and the tool used to handle the situation.
 - In some cases, the property may only be vacant for 60-90 days. This would require registration.
 - By contrast, an abandoned property is a public nuisance and has a different definition from a vacant property. Abandoned properties allow for spot blight or nuisance abatement.
 - **Mr. Dicks** asked if Mr. Schilling could provide the work group with samples of the various definitions from other areas, noting that the General Assembly has dealt with blight over the past ten years but still struggles with the definitions, and that there is often a different view of what remedies should be included.
 - **Mr. Schilling** responded that he will provide the work group with some examples of definitions.
 - **David Freeman** noted that in Norfolk, there are major corridors of houses that are vacant and get boarded up, and that these homes could be rehabilitated. These properties that are boarded up lead to graffiti, trash, crime, etc. Is there any classification for these types of units?
 - **Mr. Schilling** responded that this is a classic example of a vacant property that has become a derelict structure, a property that has become a public nuisance. Even if the property is boarded and maintained to some degree, it becomes attractive for transients and criminal activity.

- **Mr. Freeman** then asked if this would be defined as a derelict structure.
 - **Mr. Schilling** responded that although there is not really one definition, but rather a continuum, this example is probably considered a derelict structure because it is a public nuisance.
 - **Senator Locke** noted that part of the work group’s responsibility is to determine these definitions along the continuum
 - **Martha Ann Creecy** noted that there are too many definitions; regardless, these buildings are a tax burden and detrimental to neighborhoods.
- The next speaker was **Bill Ernst, VHCD**, who discussed current techniques available to local governments for dealing with these issues.
 - **Mr. Ernst** first noted that VHCD created a summary chart outlining the different definitions and techniques currently used, and how they relate to one another. (*Note: This chart is currently available on the Virginia Housing Commission website, along with the other materials from the work group meeting.*)
 - DHCD is in the process of identifying tools that local governments need to combat derelict structures effectively.
 - The organization is seeking joint resolutions, which will give special attention to vacant properties in dense urban settings while still considering property owners’ rights.
 - This is not just an issue for cities. With increasing foreclosures, there are more properties that are vacant, tax delinquent, and which might cause blight.
 - Many of these properties are “orphans,” caught in limbo of various stages of foreclosure.
 - The neighbors of these properties have many concerns, including unkempt lawns and peeling of paint, declining member fees, crime, environmental hazards, theft (of wires and other supplies), and stagnant pools causing mosquitoes.
 - Title 15.2 currently grants authority to local governments to abate nuisances.
 - These include judicial and administrative steps to address weeds, structural problems, substances or conditions found on property that present threat to life, property, public health and safety.
 - Localities can recover the cost of taking remedial action, and may apply liens against property.
 - Localities have grants of authority to respond to special types of blight.
 - These remedies deal with a specific property problem, such as a threat to health, drug related activities on the property, or alcohol related nuisances (which may also involve the ABC).
 - There are certain notice provisions, and there must be an opportunity to charge the owner, or place liens on the property.
 - There are also procedures for tax delinquent properties.
 - If these properties are vacant and in poor repair, it represents a cost to the locality.
 - These structures shrink the very resources needed to respond to their presence.

- **Delegate Suit** asked whether a locality can foreclose on a property if taxes and liens go unpaid.
- **Mr. Ernst** responded that this presents a problem often encountered in local governments, because the cost of going through the foreclosure process exceeds the accumulation of unpaid funds.
- **Mark Flynn** added that local governments have to wait for three years of accumulation of unpaid taxes, and then there is a process to allow forgiveness of tax liens, so it can be done but, having it derive enough money to make it work, is a problem.
- **Delegate Suit** then asked if local governments can foreclose in the form of a tax sale.
- **Mr. Ernst** replied in the affirmative.
- Vacant property registration authority exists in some form for local governments.
 - This is available only to cities and part of town of Pulaski.
 - Cities can levy a registration fee of up to \$25.
 - Cities can levy fines up to \$250 for noncompliance of the registration ordinance.
 - More localities might be interested in identifying properties that are vacant for more than a year.
- There are also spot blight procedures, enacted by the General Assembly in 1994.
 - These provide localities, with or without redevelopment authorities, with the power to respond to individual properties.
 - The procedures allow for acquisition and demolition of such properties, and take a proactive stance with critical properties to eliminate future blight in a community that is on the edge.
 - There are extensive notice provisions and review processes that must be followed, and the acquisition of occupied properties is prohibited.
- Local housing and redevelopment authorities may establish redevelopment areas and conservation areas.
 - These authorities retain power to acquire blighted properties, subject to some procedural reforms of 2006.
 - However, because of the recent eminent domain statutes, the ability of authorities will be limited; they will no longer be allowed to acquire individual properties through condemnation. They will still have spot blight authority to deal with these properties.
- There is also a derelict structures fund.
 - The fund was set up in 1999, and provides grants to localities, but this represents a small amount of funding (only about \$500,000 a year).
 - The funds are for removing or repairing derelict structures.
- Part 3 of Uniform Statewide Building Code provides an optional set of regulations involved in overall building.

- This is a set of regulations to ensure building remains safe, and facilitates the reuse of properties,
 - The building code contains provisions for operation of rental inspection programs, determining the safety of the building, etc.
 - However, some health and safety standards are different than the building code, so other aspects of property may still be perceived as blighted even if in compliance with the building code.
 - To summarize:
 - There is no single “magic bullet,” no uniform set of tools available to everyone to deal with these issues.
 - All of the terms interrelate in the statutes; the blighted definition in the eminent domain statute, for example, is more restrictive than it is in the redevelopment statute.
 - The work group should pay specific attention to the definitions in the statutes. Title 36 provides a definition of derelict structure but it is not a specific definition.
- The next speaker was **Rachel Flynn**, Community Development, City of Richmond.
 - **Ms. Flynn** emphasized two points:
 - The definition of blight was changed, and the new definition makes it more difficult to go to court or deal with local legislative body. Either the word “dilapidated” or “deteriorated” should be put back in the definition to better identify these properties.
 - The amount of liens for the registration of vacant properties should be increased from \$25 to at least \$100 per house or unit, with more charged each year so there is a disincentive to owning these properties.
- The fourth speaker was **Delegate Jennifer McClellan**, to discuss HB 331, HB 332, and HB 1008.
 - **Delegate McClellan** introduced Richmond City Councilman **Chris Hilbert**, who represents the north side of the city of Richmond.
 - **Mr. Hilbert** emphasized that there are over 3000 vacant buildings in city of Richmond.
 - The government needs to help citizens, not give incentives for them to keep the properties.
 - The cities need legislative authority to get rid of properties, and the process should be shortened, because it currently takes months.
 - Cities are dealing with the willful neglect of properties by individuals who do not live in state, such as out of town absentee landlords.
 - **Delegate McClellan** next introduced Richmond City Councilwoman **Kathy Graziano**.
 - **Ms. Graziano** noted that the blighted problem is not just in inner cities.

- It ruins a neighborhood, because people can't sell their houses, so they rent them out, and this creates a domino effect; in 5 years, a neighborhood goes in the wrong direction.
 - This issue also raises the problem of income. When a structure is derelict, the city has to assess it at face value, so there is no tax money coming from these buildings and no incentive for owners to do something about them. The city wants to be able to assess the buildings at what they would be worth if they were in good shape.
 - **Delegate McClellan** then noted the following:
 - HB 332 would shorten the time it takes to abate blighted property.
 - HB 331 would prohibit property owner from benefiting from the properties by providing an alternative procedure for dealing with blighted properties when the owner fails to respond within 30 days (of the determination that the property is blighted) with a spot blight abatement plan.
 - HB 1008 would create a special tax on these structures.
 - She wants to give localities more tools to deal with blight, she is willing to talk to any stakeholder; the goal is to fight the problem.
- **Senator Locke** asked whether there were any other issues or questions.
 - **Delegate Suit** commented that the toughest job is to make policy that is balanced and considers all intended as well as unintended consequences. We need to create tools, but we also need to take the time to see how it will affect someone who does not intend for their property to go abandoned. If the legislation is not balanced, it won't make it through the General Assembly.
 - The work group should consider all alternatives and figure the most balanced approach.
- **Senator Locke** asked whether there were any further comments or questions from audience.
 - **Rachel Flynn** noted that seven blocks from the capital, there is blighted property but the city cannot use spot blight tools because of the change in the definition.
- **Senator Locke** closed by saying that the work group will continue to meet this summer and in the fall. As issues come forward, they should be sent to the work group for further discussion. The goal of the work group is to come up with balanced and reasoned approaches to address the issues.
- The meeting adjourned at 9:58 a.m.

Meeting Summary
Derelict Structures Work Group
General Assembly Building, House Room C
Richmond, Virginia
August, 21, 2008; 9:00 AM

Members Present: Senator Mamie Locke, Delegate Daniel Marshall, Melanie Thompson, Mark Flynn, Bill Shelton, Emory Rodgers, Rick Witt, Chip Dicks, Ted McCormack, Bill Ernst, Timothy Wise, Anthony Burfoot, Art Lipscomb, Mike Hawkins, Art Berkeley, W. Eugene White, Sherri Neil, David Freeman, Martha Ann Creecy, Dana Fenton, Linda McMinimy, John Jordan, and Kelly Harris-Braxton.

I. Welcome and Call to Order-Senator Mamie Locke, Chair

- a. The meeting was called to order by Senator Locke at 9:00 AM and work group members were introduced.

II. HB 511-Vacant Building Registration, increase annual fee (Dance, 2008)

- a. *David Canada, City Manager for the City of Petersburg*
 - i. The bill seeks to increase the registration fee for derelict structures from \$25 to \$50, and the penalty for failure to register from \$50 to \$75.
 - ii. There are approximately 500 vacant buildings in Petersburg.
 - iii. The City is currently in the process of revitalizing the oldest sections of the city.
 - iv. With these actions we need additional tools to assist with the process.
 - v. If the vacant building registration would pay for itself it would make these tasks easier.
 - vi. It is estimated that it would cost \$50,000 to implement this program.
 - vii. This bill would make this cost effective and enable revitalization.
 - viii. Since the city's annexation, it has experienced a substantial increase in its population.
 - ix. Much of that is being housed in three categories-apartments, new single family growth on outer sections of city, and revitalization of historic districts in older districts.
 - x. There are still problems in older areas that are not in historic districts.
 - xi. The bill would increase fees and penalties which would assist in redevelopment.
 - xii. **Delegate Marshall-Why do we need to register these buildings, don't we already know where they are located?**
 - xiii. In most instances we do have the names of the owners. 452 houses are considered red tagged buildings that we already know of. The owner of the property has been notified, but we have not been

- successful in getting the owner to revitalize the building or to sell it.
- xiv. **Delegate Marshall**-*Does this bill refer to both commercial and residential buildings?*
 - xv. We are only speaking to residential. It is only concerned with free standing residential structures.
 - xvi. **Delegate Marshall**- *Fifteen percent of the houses in Danville are vacant. Many people are moving out. Many of these building owners can't find people to rent the houses. Tacking this fee on to them is just adding to their problems.*
 - xvii. **Chip Dicks**-*The current statute just talks about the building being vacant for 12 months. Instead of trying to register buildings through this statute which is particularly broad, perhaps the better way to do it is through the derelict structures conversation. Where there is truly a safety issue, not just an empty building.*
 - xviii. **Ted McCormack**-*Will this registration fee also address other issues such as lawn maintenance and trash?*
 - xix. Once the building becomes vacant it is inevitable that it will acquire these other problems as well.
 - xx. **Linda McMinimy**-*Have you had a lot of complaints about this fee?*
 - xxi. No because we have not been able to implement it because it is not yet self funding. We want to get the program into a position where we feel it could pay for itself.
 - xxii. **Martha Ann Creecy**-*We also have a registration problem because the fee does not pay for the registration.*
 - xxiii. **Senator Locke**-*Are most of the owners local or absentee?*
 - xxiv. Most are absentee owners. They don't reside in Petersburg, but it is difficult to know that for sure because different addresses are given by the owners.
 - xxv. **Senator Locke**-*Thank you for speaking to the work group. We will continue to address this issue as we move forward with our meetings.*

III. Visual Derelict Structure Presentation

- a. *Michael R. Packer, Chesterfield County School Board Attorney (Former Petersburg City Attorney)*
 - i. Please see the power point presentation available online.
 - ii. Most of these are enabling documents. Every city does not have to do this, but it gives each locality many places to go in the state law to address their housing issues. We are seeking to make the tool box larger.
 - iii. **Timothy Wise**-*How many additional layers of regulations are added by the houses being in the historic district?*
 - iv. Just the opposite, those people are protected by the historic zoning. There is a connection between the housing maintenance code and

- historic preservation that prevents residents from destroying the historic look.
- v. We have saved many structures that otherwise would have been demolished.
 - vi. **Delegate Marshall**-*Are most of the problems in historic districts?*
 - vii. No, the problems are city wide.
 - viii. **David Freeman**-*Are these structures coming up overnight or over time?*
 - ix. Both, but with fires and natural disasters they appear more rapidly. But deterioration does happen over time as well.
 - x. **Anthony Burfoot**-*Could you speak to the social issues that plague Petersburg as a result of the derelict structures. A lot of these cities are dealing with these same issues and the same socio-economic issues arise from these rows of board up houses.*
 - xi. The good news in Petersburg is that housing is so affordable that people that are financially well off are living in neighborhoods with people that are not as well off and they have reasonable housing. The problem is that some people that can now afford these homes are bringing problems with them into the neighborhoods. And these problems aren't necessarily the residents themselves.

IV. Discussion of Legislative Concepts

- a. *A presentation was given by Mark Flynn of the Virginia Municipal League and Chip Dicks on behalf of the Virginia Association of Realtors.*
 - i. There are a lot of tools available to solve the derelict structures issue at this point, but that doesn't mean we are completed what work is needed for legislation.
 - ii. One of the biggest issues for a city is having the money to restore these buildings.
 - iii. Many times the localities never recover the costs of the repairs and maintenance.
 - iv. Professor Schilling from Virginia Tech touched on a lot of these issues, and he is a big advocate of the vacant building registration. Perhaps a follow up with him would be beneficial for the group.
 - v. The Virginia Municipal League has brought together a group of local attorneys and building officials from around the state to try to come up with additional tools that would be useful for cities to solve the issue.
 - vi. Two criteria must be present for these ideas. They must be useful and be something that has a likelihood of being passed.
 - vii. There is already authority where you have a nuisance property to take steps regarding that building.
 - viii. Perhaps a definition of what a derelict structure would be helpful.

- ix. A proposed definition of derelict is a vacant building that has not had utility service for 12 months, and taking into account some proximity to the property lines.
- x. This would serve as a useful provision that would not harm people's rights.
- xi. **Delegate Marshall**-*So the goal would be a bill to define what a derelict structure is? And is this only addressing residential buildings?*
- xii. It would be a trigger and it is not the only definition of a derelict structure. Commercial buildings are more difficult to define because the owners of commercial buildings tend to keep utilities on even though they are vacant for investment purposes for things such as fire suppression.
- xiii. **David Freeman**-*How does that follow with a structure where the utilities are kept on to avoid this definition, but then it becomes an attractive nuisance for squatters?*
- xiv. **Delegate Marshall**-*How would utility be defined?*
- xv. We are looking at water, gas, and electric.
- xvi. The concept of having a finite test is to avoid discretionary action or terms that are open to interpretation. We will have a discussion after your comments to redraft the definition. We don't want to get into the foreclosure vacant property issue.
- xvii. **Delegate Marshall**-*We need to make sure we make exceptions for scenarios such as deployed service members that close up their homes.*
- xviii. The concept would be to incentivize the property owners to either demolition or renovate within 15 years.
- xix. All they have to do is to register and declare whether they are going to demolish or renovate.
- xx. It streamlines the process part and incentivizes the owners to do something with the property.
- xxi. Making the penalty a felony would not be effective because many of these owners are absentee and the VA courts could not bring them under their jurisdiction.
- xxii. The law was changed some years ago to exempt zoning complaints from disclosure requirements. Localities don't have to turn over information.
- xxiii. **Anthony Burfoot**-*Will you give the locality the right to set the abatement standard? Is 15 years recommended or can they come up with their own time frame? Norfolk has a 7 year abatement period.*
- xxiv. The concept was that it was a significant enough incentive, but we want a minimum period of time. At least 7 years would work. We want to make sure the property owners have a significant carrot to do this.
- xxv. **Anthony Burfoot**-*Who will put the standards in place?*

- xxvi. The intent would be for the locality to determine those standards. The legislation would simply have a minimum year period for the tax abatement. It would be included in the general laws which they would be permitted to do. The goal would be to provide enabling authority, not specific requirements.
- xxvii. **Kelly Harris-Braxton**-*The issue in Richmond has been that the program is being used in areas that aren't suffering.*
- xxviii. The intent is to only apply the tax abatement to derelict structures.
- xxix. **Delegate Marshall**-*Would this apply to counties, cities and towns?*
- xxx. In our view yes.
- xxxi. **Delegate Marshall**-*Is this a "may" or "shall" bill?*
- xxxii. This would be a minimum requirement standards bill, so a "shall".
- xxxiii. This would be one bill and we would then try to stream line the other sections that address this topic. The goal would be to come back with a draft before the next meeting.

V. SB 162-Vacant Building Registration (Lucas, 2008); SB 163-Derelict Structures, fee on record owner (Lucas, 2008); HB 1119-Derelict Structures, fee on record owner (P. Miller, 2008)

- a. *Sherri Neil, Senior Legislative and Management Analyst, City of Portsmouth*
 - i. Please see Ms. Neil's remarks which are available online.
- b. *Ronald Williams, Jr., Director of Intergovernmental Affairs, Norfolk*
 - i. Delegate Miller apologizes for not being here.
 - ii. These bills were prompted by the City of Norfolk but they were not exactly what is needed.
 - iii. The City of Norfolk already has a registration program, but the impetus for this bill was from looking at other areas of the country. Specifically the Conference of Mayors report.
 - iv. As a comparison, San Diego uses a bright line test. They don't register all vacant properties, instead they require a statement of intent of what the owner is going to do with the property once it has been declared vacant or derelict.
 - v. A registration for boarded structures would be beneficial and would be benefitted from the owner having to submit a statement of intent.
 - vi. It would also state the expected period of vacancy, a plan for maintenance, and a plan for reoccupation or demolition.
 - vii. It also has incentives for occupancy and rehabilitation. Such as marketing for selling the property, grants or tax benefits.
 - viii. That is our legislative intent. The derelict structure route does not get to what we are particularly looking at.
- c. *Martha Ann Creecy, Neighborhood Quality Task Force, Portsmouth, Virginia*
 - i. Please see the power point presentation available online.

- ii. **Delegate Marshall**-*I agree with your problem, but I don't think this legislation is going to solve it.*
- iii. The national vacant properties campaign has looked at other cities where this has been implemented and the registration was the first step that was made in those cities.
- iv. **Timothy Wise**-*Of those eight houses that were on woman's block in the presentation, has there been any interest by a developer to buy this block?*
- v. No, right now six of those properties are up for sale right now though.
- vi. **Senator Locke**-*Thank you very much. There is a lot to work from this meeting and we can start to finalize these ideas for the next meetings.*

VI. The meeting adjourned at 10:50 AM.

AGENDA

Derelict Structures Work Group

General Assembly Building, Senate Room B

Richmond, Virginia

October 14, 2008, 1:00 P.M.

- I. Welcome and Call to Order** –Delegate Danny Marshall (acting Chair)

- II. Draft Work Session** – Directed by:
Chip Dicks, Future Law
Mark Flynn, Virginia Municipal League

- III. Public Comment**

- IV. Adjourn**

Derelict Structures Sub Work Group
General Assembly Building
Richmond, Virginia
November 3, 2008

In attendance:

Chip Dicks
Mark Flynn
Karen Hardwick
Mike Thacker
Delegate Rosalyn Dance
Kelly Harris Braxton
Dan Webb
Tom Carr
Erica McKula
Brian Pennington
David Freeman
Cindy Hall
Anthony Burfoot
Rick Witt
Bill Ernst
Cal Whitehead
Ron Plymouth

The Virginia Housing Commission Derelict Structures Sub Work Group met to discuss H.B. 1671 (S.B. 1094). The discussion was facilitated by Mark Flynn (Virginia Municipal League) and Chip Dicks (Virginia Association of Realtors). Interested local government representatives attended the meeting and actively participated in a dialogue regarding the proposed legislation.

Meeting Notes
Derelict Structures Sub Group Meeting- 11-3-08

Chip Dicks:

- Goals:
 - Streamline process, balance with private property rights.
 - Walk through a number of different proposals and try to reach a consensus.

Mark Flynn:

- The next stop for this document is the November 12th Full Housing Commission meeting.
- See in which areas we have a consensus; what we do not agree on will have to be removed from the bill.

Chip Dicks:

- For example, if we do not agree on building registration, we will pull this out and then let the localities go forward with what they have.
 - Included in the draft was a building registration feature for derelict structures. This is something different that has not been previously killed by the House or Committee.
- Try to get as good as piece of legislation to the Full Housing Commission, and get them to adopt it en masse.

Elizabeth Palen:

- The full meeting on November 12th is not the final Full Commission meeting.
- The final meeting is in December; can bring any new developments or changes in the proposed legislation to the attention of the Commission at that point as well.

Cindy Hall: Were these changes generated by a request from a locality?

- *Chip Dicks:* The goal was to make all the processes the same, so we tried to take the processes that dealt with tax liens and embed them into these sections; five or six processes that localities had to follow, depending on what statute it was under, so we tried to make everything an ordinance process and treat everything like a tax lien so that you would only have to follow one process.

Cindy Hall: Not satisfied with the tax lien language; can you explain this further?

- *Mark Flynn:* With the tax lien, the way the law works today, if the locality is cutting grass, tearing down a building, etc., it operates as a lien and has the same dignity as a tax lien. They get recorded in the City treasurer's office, so you do not have to go to circuit court in order to reward a lien. This is a quick process, and in my experience, these processes never created a burden for private individuals buying property because they are required to assess whether there are any liens as a matter of due diligence.

Cindy Hall: Look at the existing §15.2-906 language – there is a provision for it constituting a lien, and this language has the same comparison to a tax lien, so this is already covered in the existing Virginia Code. If we want to make the process clear, suggest taking this language out of §15.2-906 and put it into §15.2-900; would like standardized language, but want it to read the way it reads in § 15.2-906 so that as soon as work is done by a locality, the line automatically attaches. This is already noted in the City treasurer's records, but having to record it in circuit court is burdensome, and time lapse may result in a problem; we like the process we have in place now, would like to keep it in place, at least from Norfolk's perspective.

Chip Dicks: Fine to go back to the language of paragraph four in § 15.2-906.

Cindy Hall: Do not agree with the changes to § 15.2-900 definition of “public nuisance”- deletion of “immediate threat...” Now requires the city to maintain an action by ordinance. We do not have time for this, we used the immediate threat provision to respond and cover costs. We ask that no changes be made to the definition of nuisance or the process that we follow; we use this section a lot to handle situations that require a quick response.

Karen Hardwick: Agree with Cindy’s comments; don’t have to advertise an ordinance to use this section; have to hit localities public meeting schedule, which is down to one meeting a month; the new proposed language is narrowing of what a nuisance could be; look at case law and research on nuisances; hard to come up with a definition, when a set of conditions presents itself, have to do something about it; the nuisance section does this

Chip Dicks: With no ordinance, you can declare property a nuisance- can you tear it down at this point? What is the standard of proof?

Cindy Hall: According to the current language, if it is not an immediate and imminent threat (high standard), then we have to maintain an action to compel the abatement of the nuisance; we would have to produce evidence.

Mark Flynn: So if there is no immediate and imminent threat, then go to circuit court.

Chip Dicks: Okay take this language out; move to § 15.2-906?

Mark Flynn: Depending on what we do with § 15.2-1127.

Cindy Hall: If we can agree to changes to § 15.2-1127, then we will not need changes to § 15.2-906.

Chip Dicks: We still have the problem with vacant building statement of intent, where the property is compliant with state building codes and just happens to be vacant. For example, if a property owner boards up his windows to keep someone from breaking in and all of sudden this requires registration, the General Assembly is going to have a problem with this. Look at § 15.2- 906 and see what changes need to be made to this.

Cindy Hall: If we cannot worry about the italicized language until later on, Norfolk has a problem with some of the other changes; we want it to stay as it is with no changes.

Chip Dicks: Do you like the notice provision?

Cindy Hall: We would rather it just be mailed to address shown on tax assessment records.

Chip Dicks: Why don't you want to do the notice change using the uniform statewide building notice changes? This seems to be more streamlined, which is my goal, and not to complicate it. Because of changes to § 15.2-900, I can see why you do not want changes to § 15.2-906 or § 15.2-902, *except* with the notice provisions.

Cindy Hall: I think we can streamline this without have to refer to the statewide building code.

Mike Packer: We use § 15.2-906 often in Petersburg; the notice requirements as they exist now are valuable because of the due process requirements for lien holders. We have to give notice under federal Constitutional requirements for lien holders in order to be able to destroy the value of the surety on the loan they have made, and it is difficult for us to find out who they are. We have to do a full title search to find each person who might have some interest. This language says that you have to write to the main person and put an add in the newspaper; we take the position that the ad was notice to the rest of the world. We can put the add in the paper and feel secure that we were meeting the due process requirements.

Chip Dicks: Consensus is then to leave § 15.2-906 alone? (*Sub group response:* Yes.)

Mark Flynn: We still have the italicized language to deal with: "...and is boarded up or structurally unsound" should be added to this language. With foreclosures the way they are, large inventory of vacant structures that are in good shape, and these are not the target;

Chip Dicks: If we deal with this under the derelict structures section, do we need to deal with it in § 15.2-906?

Mark Flynn: No

Chip Dicks: Then lets just take it out § 15.2-906 all together.

Cindy Hall: We use § 15.2-907 and we like it as it is.

Chip Dicks: We will leave it as is.

Cindy Hall: We do not like § 15.2 907.1 in certain respects.

Chip Dicks: Breakdown:

- Talking about the different classifications of nuisance, blight, and the blight got severely clipped with eminent domain legislation. We decided not to attempt to redefine blight, to further restrict eminent domain. The idea was to create some other category, which we called a derelict building – in paragraph A1.
- If it meets the definition, under A2, there is an ordinance that implements the enabling statute. This requires the derelict building to be registered and the owner to pay a fee not to exceed \$50. We can use a building registration feature in

which the owner has 90 days, the localities develop the form and tell the owners what they need to file, and send the notice using U.S. post certificate of mailing. This is the best way to prove that the locality gave notice and avoid issues of it not being signed for, etc.

- Paragraph A3 says that when locality delivers the notice, and owner does not file, there are remedies.
- Paragraph A4 gives the building owner something in return for registration fee; it allows them to be notified if there is a public safety incident.
- Paragraph A5 explains that once registered, the owner must submit a plan to demolish or renovate the building, and will address items of public health and safety issues in this plan. This will encourage property owners to take action with respect to their property, instead of locality having to come in using the nuisance authority.
- Paragraph A6 provides resources to homeowners.
- Paragraph A7 says expedite and incentive me to demolish property, complete demolition within a certain amount of time.
- Paragraph A8 – If an owner is going to renovate, this is something to expedite the process (if do not have to rezone).
- Paragraph A9- Prior to demolition or renovation, assessor says what it is worth now and what it will be worth after renovation. Get a real estate tax abatement, and incentivize property owner to go in and either renovate or demolish. There is a program in Richmond that works like this, and it has been very successful.
- Paragraph A10 allows the locality to proceed to make repairs or abate or remove public nuisance, or may exercise other remedies.

Anthony Burfoot: This legislation puts the proper steps in place, and gives the community the opportunity to get rid of the derelict properties.

Cindy Hall: We just have specific issues with language in some of the paragraphs, but we agree with the concepts.

Chip Dicks: The definition is more specific, not as restrictive.

Cindy Hall: Paragraph three is this redundant with paragraph ten– can these be merged into paragraph 10?

Chip Dicks: What I was trying to make clear is, as a building owner, when you send me a declaration that my property is derelict, if I don't register within 90 days, then under A3 can go straight to the end- Cindy- can just add this language to paragraph 10- "or fails to register" –

Mark Flynn: What if take what is in ten and make it as a separate paragraph in three?

Cindy Hall, Karen Hardwick: Think it is good to put remedies in the end.

Karen Hardwick: In paragraph A1, the second line, “has been declared as a derelict building under such ordinance”- don’t want to have an ordinance for each property, and way it is written now might be confusing – change the language-

Chip Dicks: strike it all together- avoid scenario where have to adopt ordinance for each property

Karen Hardwick: In paragraph A2, the last sentence: delivered by first class mail – change to “written notice sent by first class mail with the locality obtaining a US Postal COM shall constitute delivery pursuant to this section.”

Cindy Hall: In paragraph A4 – it is too hard to notify the owner, to know when there is an incident; this will be burdensome to have to notify the owner every time; no parameters, so can we notify them once a month, once a year?

Mike Packer: This is a creation of duty that if we fail to meet, we are liable.

Cindy Hall: This shouldn’t be a required section; we do notify owners when we talk to them about things going on with their property, but to have to notify them will be way too burdensome.

Mark Flynn: What is the goal of the section?

Chip Dicks: If we don’t have this section, then there is a fee but the building owner gets nothing in return; also, the owner should be notified. From a political standpoint, in order for registration to pass, have to have something in return here.

Cindy Hall: Then we should add some more parameters to the language.

Chip Dicks: You can provide for this in your ordinance, and if think it creates potential liability, work it out; not sure how any county could sue for any liability anyway?

Anthony Burfoot- The chances are that these buildings do not have any insurance on them; add a component where the owners have to show insurance on these properties; people losing their lives and the city cannot be responsible for that.

Cindy Hall: If language is amended with more specificity, this may cause more problems.

David Freeman: Should add “on the property” to public safety incident?

Mike Packer: Suggestion- The ordinance “shall” contain provisions for the owner when something happens; then add one more sentence that says “failure to do so shall not create additional liability upon the city or locality.” This gives each locality the ability to define the type of notice they are going to give, but it has to be real.

Chip Dicks: If there is a major fire, or police incident, or if the second floor falls out, then really saying to the owner, there is a major problem with your building and you need to address it; something needs to be done to address a condition on the property.

Cindy Hall: This is the purpose of having the registration requirement, to have the contact information.

Chip Dicks: Tailor this language to say “in the event of fire, police or any other incident that affects the safety of the structure” the city will notify the property owner so that he can address the problem.

David Freeman: We should make sure that we are not tripping over a legal notice requirement.

Kelly Harris Braxton: Concerned about incidents that are not known by the locality.

Chip Dicks: Limit it to police or fire incidents, because if it is a structural issue, the building code officials will go after it.

Cindy Hall: Paragraph A5 – Time parameter for submitting the plan, “within a time specified the locality” – will vary depending on how many parcels, etc; should give the discretion to the official responsible.

Cindy Hall: Paragraph A6- Change “resource” to “information.”

Mark Flynn: Paragraph A7- needs a cross reference to historic district provisions, does not necessarily trump these- “shall not limit any ordinance adopted pursuant to section 15.2-2306”

Karen Hardwick: Paragraph A7- change “waived” to “refunded.”

Mike Packer- Concerned about those people who are not meeting the definition of “derelict structure” but who want to demolish the building, etc; they are not getting the same treatment as someone who may be neglecting their building. There is also an issue with the tax abatement.

Chip Dicks: Figure out how not to have people let their property get run down to get the program; don’t want to incentivize this.

Anthony Burfoot- Also don’t want people to do the bare minimum, piecemeal work, and still get the tax abatement.

Mike Packer: State constitution issue- will have to fit this under one of the sub classifications of exempt property, Article X, subsection 6; looks like section h under 10.6 – “by virtue of age and use.” If want to do this and meet the constitutional requirements, do not tie it to the fact that it is derelict, tie it to its age in a particular

district and the fact that it was going to be rehabilitated; tie the requirements of your registration law to a requirement that a locality have a program in that particular area when doing the registration in order for it to qualify; this way, do not discriminate; every jurisdiction that has problems with derelict structures probably already has a program to do this.

Karen Hardwick: So to be able to have this ordinance, as a condition, have to have a tax abatement program that is consistent with Article X, section 6(h) for renovation of older structures.

Mike Packer: Without a tax abatement in place, would not be able to use this particular piece of enabling legislation.

Meeting adjourned.

Work Group # 5- Mortgage Finance Regulatory Issues
Chair: Delegate Daniel W. Marshall, III

Policy Area: Mortgage Financing

Corresponding House Committee: General Laws - Housing
Commerce and Labor
Appropriations

Corresponding Senate Committee: General Laws and Technology
Labor and Commerce
Finance

VHC Members:

Delegate Daniel W. Marshall, III- Chair
Delegate Terrie L. Suit
Delegate John A. Cosgrove
Delegate Robert D. Hull
Gary Garczynski

Citizen Members:

Ted McCormack
J.G. Carter
Susan Hancock
Joe Face
Dana Fenton
Jim Naggles
Brian Gordon
Chip Dicks
Bob Bradshaw
Connie Chamberlin
Michael Cheatwood
Shea Hollifield
Bill Shelton
Emory Rodgers
Jay Spruill
Michele Watson
Judson McKellar
John Powell
Claudia Cotton
Mike Toalson
Fay Silverman
Travis Hill
Steve Baugher
Marc Cheatham
Alexander Macaulay
John-Garret Kemper

Meeting Summary
Mortgage Finance Regulatory Issues Work Group
General Assembly Building, House Room D
Richmond, Virginia
June 23, 2008; 9:00 AM

Members Present:

Delegate Daniel W. Marshall, III- Chair
Delegate Terrie L. Suit
Gary Garczynski
Ted McCormack
Chip Dicks
Dana Fenton
Connie Chamberlin
J.G. Carter
Michele Watson
Susan Hancock
Joe Face
Robert Bradshaw
Travis Hill
Marc Cheatham
J.G. Kemper
Judson McKellar, Jr.
Jay Spruill
Shea Hollifield
Steve Baugher
Alexander Macauley
Jim Naggles

Invited guests:

Steve Sanderford, Federal Reserve Bank of Richmond
Barrett Hardiman, Home Builders Association

Delegate Daniel Marshall called the meeting to order at 9:00 A.M.

The first speaker was **Susan Hancock**, Deputy Commissioner of Consumer Finance, of the State Corporation Commission (SCC).

- The first topic of discussion was HB 1487, which becomes effective July 1, 2008.
 - The bill includes several key changes:
 - There is a change the definition of mortgage loan- “owner occupied” stricken
 - The scope is expanded to include more types of loans and lenders.
 - A criminal background checks required for members, senior officers, directors, and principals of an applicant of mortgage license

- Background checks are also required for new employees of a mortgage licensee
 - The new legislation also requires that licensee trains their staff.
 - Failure to pay appraisal fees will result in revocation of a license.
 - Licensees can be fined for any violation of law and regulation applicable to the business- RESPA, TILA(Truth in Lending Act), ECOA(Equal Credit Opportunity Act), etc. This is to address issues of loan steering.
 - The bill also requires VHC to review new federal legislation to see if changes need to be made at the state level.
- The second topic of discussion was the proposed regulations relating to Mortgage Lenders and Brokers (10VAC5-160)
 - The SCC amended regulations pertaining to mortgage lenders and brokers to address certain provisions of the new legislation.
 - The comment period for the regulations ended today, June 23, 2008.
 - The new regulations were mailed out to mortgage licensees and other interested parties, so that they could review and make comments.
 - A hearing will be held on July 1, 2008 for oral comments.
 - Many definitions have been changed or added (SCC handout for a complete list).
 - The new regulations include criminal records checks for employees, including which employees require a criminal background check.
 - If the licensee wants to hire someone who has a criminal record, it must petition the SCC and state specific reasons, i.e. criteria for exemptions.
 - Training is required for “covered employee” as defined in the regulations.
 - Initial training programs are required, as well as continuing education.
 - The regulations define the scope of education required, including the number of hours required for employees and what types of courses, such as Truth In Lending. Employees must be trained with regard to certain laws and regulations.
 - Twenty-two training hours are required, broken down between federal and state regulations, and hours for mortgage fraud prevention.
 - Eleven hours of continuing education are required, broken down between federal and state regulations, and hours for mortgage fraud prevention
 - Training manuals required to be kept and provided to the SCC, as evidence that each employee completed the required training.
 - A reciprocity clause in the regulations allows the SCC to accept other state requirements in Virginia, for training related to federal laws, but the employee will still need to be complete required training for Virginia laws and regulations.
 - More information is available on the website, www.scc.virgini.gov/bfi

- **Bob Bradshaw** asked a question concerning fines for violations, do these apply to state licensees or are they expanded to federal licensees?
 - Ms. Hancock replied that the regulations only cover state licensees and there are a number of exemptions, such as credit unions, insurance companies, etc. Fines are imposed on those required to be licensed under the MLBA.
- **Delegate Terrie Suit** inquired if the regulations broadly interpret who is required to have the background check: will they apply only to those people who have access to Social Security numbers and other sensitive material, or will they be required for all employees, including those who do ministerial work?
 - Ms. Hancock replied that the background checks would be required for those employees who have access to sensitive data.

The second speaker was **Steve Sanderford**, Federal Reserve Bank of Richmond.

- Mr. Sanderford spoke on the state and national industry trends, giving statistics at both levels.
- In Virginia:
 - Virginia's foreclosure national ranking has jumped significantly, moving up to 12th place.
 - By the end of 2007, 35% of subprime mortgages had interest rates resets.
 - By the end of 2008, 62% of subprime mortgages were cash out refinances
 - The Federal Reserve conducts research, in order to provide detailed analyses to help troubled borrowers in communities
- National picture, how did we get here?
 - Nevada, California, Florida, Arizona, Colorado, Illinois, Michigan, and Georgia hardest hit by foreclosures.
 - Virginia has a moderate foreclosure rate compared to these states
 - National delinquency rates are the worst in subprime ARMs and subprime FRMs
 - Subprime are the poor performers, 13% of mortgages providing 50% of foreclosures.
 - In 2004, there was a major industry switch from FRMs to ARMs, creating higher volumes of lower-priced loans. From 2004 to 2007, there are clear shifts in default rates.
 - Rate resets are not drivers of foreclosures, there other factors:
 - Underwriters
 - clear shift in documentation standards
 - Loan-to-value (LTV) climbing
 - Housing prices
 - Across the nation, 10 years of house price increases with declines in recent periods.

- The Federal Reserve's fifth district, and particularly Virginia, is doing better than the national picture.
 - Looking into the Virginia zip codes, the problems are clearly in pockets of metropolitan areas across the state.
 - The Virginia picture is similar to the national picture; subprime ARMs show the poorest performance, subprime FRMs are also performing worse than the national average.
 - The inventory of mortgages in foreclosure is increasing. In Prince William County, 62% of properties for sale are bankrupt. The volume of houses for sale related to foreclosures is increasing across the state.
 - Statistically in Virginia:
 - Most subprime loans in foreclosure are in the Arlington and Alexandria areas.
 - Most of the owner-occupied homes with subprime mortgages are in Virginia Beach and the Northern Virginia regions.
 - Most owner-occupied homes with subprime mortgages, that are 90 days passed due, are concentrated around the metropolitan areas of Virginia.
 - **Delegate Marshall** inquired about the date these statistics were created and when the data was compiled?
 - **Mr. Sanderford** responded that the material is current as of February, 2008. He said if the material went back to 2007, we would see rising statistics for past-dues mortgages.
 - **Delegate Marshall** then asked how often the statistics are updated and if the VHC could receive this information as it is updated.
 - **Mr. Sanderford** responded that it is updated quarterly and that the VHC can receive it through an information request form, which he would leave with **Elizabeth Palen**, Director of VHC.
 - Most ALT- A loans, which have reduced documentation requirements, are in Northern Virginia and Virginia Beach. However, this is a new phenomenon, and there is not a lot of data related to these loans.
 - Virginia House Prices:
 - Virginia is above the national average in house price growth, with statistics based on rapid price increases and subsequent price decreases. The Northern Virginia region shows the most growth and then the greatest decline.
- There is ongoing work and questions:
 - What will happen with home prices and sales?
 - Are Alt-A loans the next wave?
 - Will small investors come back into the market?
 - How do we deal with fraud—it is hard to get data in this area.
 - Servicing issues- servicers drive all collections of business.

- What are the broker/lender impacts? The brokers from two years ago are gone, who fills this void?
- What are the spillover effects- mixed retail projects, commercial real estate lending.
- Will there be increasing HELOC delinquencies?
- **Delegate Marshall** asked if there were any questions for **Mr. Sanderford**.
 - **Gary Garcynzki** asked if the Federal Reserve was keeping track of inability to pay versus walkaway because of upside down purchases?
 - **Mr. Sanderford** replied that this is hard data to get, like fraud, but in talking with borrowers and realtors, it seems clear that dollar increases are not the main driver.
 - **Delegate Terrie Suit** noted that the index used for resets has declined significantly, and asked whether resets are really going up or are the rates staying flat?
 - **Mr. Sanderford** replied that the differences in mortgages are significant, and there were some initial rates (teaser rates) where there were significant resets. There are also option ARMs and negative amortizing loans. However, usually a life event occurs, etc.
 - **Connie Chamberlin** asked about underwriting practices.
 - **Mr. Sanderford** replied that documentation standards and LTV were a driving factor for loan defaults and that most banks do not hold mortgages anymore. Rather, mortgage originators who are not traditional bankers hold mortgages and are producing products in a different business. There are poor underwriting practices, but no pure hard statistics exist, other than increasing LTV's, and documentation standards that clearly declining.
 - **Delegate Terrie Suit** asked if the market would supply corrections or if policy changes need to be made on federal and state level to correct the problems.
 - **Mr. Sanderford** responded that significant changes were made with regard to HOEPA, which will be effective in July. The mortgage market is clearly self-policed at this point, but going forward, this may change, starting with the Federal changes to HOEPA.
 - **John-Garret Kemper** asked whether credit tightening a market cure to the main drivers mentioned (underwriting and home prices).
 - **Mr. Sanderford** responded that tightened standards are emerging.

The third speaker was **Michele Watson, VHDA**, who gave a quick update on the challenges faced at the VHDA.

- The role of housing finance agency is two-fold:
 - To create affordable housing for first-time homebuyers in partnership with private sector.
 - To service loans and use loss-mitigation tools that the private sector cannot because of high volumes.

- There are two challenges that are present:
 - An impact on loan programs- There are many loan requests, and no financial resources to support demands.
 - A threat to VHDA loans- When there are too many foreclosures in a neighborhood it makes it hard for people to sell their property.
- The demand for VHDA funds is 50% to 100% higher than VHDA is able to service.
 - Retrenchment- creates a pressure on housing finance agencies as a source of credit for first-time homebuyers.
 - The entire mortgage product has shifted to restrict first-time home buyers.
 - It is difficult to sell tax exempt bonds in the market place, investors are risk-averse, the rates used to be below market, now they are equal to market or only 15 basis points below market rate.
- VHDA has had to curtail several lending programs-
 - Had to restrict number of mortgage lenders.
 - Had to tighten up loan program guidelines, and to suspend certain loan programs in order to balance supply with demand.
 - Had to remove the stand- alone taxable bond program.
 - **Delegate Marshall** asked a question relating to the bond market.
 - **Judson McClellor** of VHDA said he has never seen this effect on the bond market before, and with the interest rates going up, it is a very unique situation one he has not seen in his 30 years of tenure with VHDA.
- VHDA expects to use \$850 million in bond funds to make loans to first-time homebuyers, but this is a significant reduction from 2007.
- Rising foreclosures are a result of unrestricted use of credit. Borrowers purchased homes that they cannot afford, they did not understand the loan products, and now they owe more on their property than it is actually worth. They are walking away from property because they do not want to pay on it.
- **Delegate Suit** asked whether there is a cultural mentality shift--because of the media about foreclosures, has it become okay to let your house go into foreclosure?
 - **Ms. Watson** replied yes, numbers of people are coming to clinics, many were not in trouble with their loans, they just wanted to walk away. Because there are so many people in default, there is no longer the stigma of foreclosure.
- Concerning foreclosures, 58% of mortgages are subprime, 27% are ARM.
- Forty-seven percent of African Americans and 38% of Hispanics have subprime loans, these households are impacted greatest. VHDA does not have the resources necessary to deal with these issues.
- VHDA is a co-leader on Governor Kaine's Foreclosure Task Force and has trained VHDA members as staff for the Neighborworks program.
- A network of non-profits exists to assist, but most don't know about loss-mitigation in foreclosure.
- VHDA has conducted five foreclosure prevention clinics that close to 700 people attended. There is a public outreach plan and website to help people avoid foreclosure.

- Federal legislation will increase the bond cap that is shared in Virginia, but this is a temporary solution, because the bond cap has short time line for effectiveness.

The final speaker was **Barrett Hardiman**, Vice President of HBAV

- The market looks bleak for the residential construction industry.
- According to the National Association of Home Builders, statewide home production will fall from a record high in 2005, to a reduction of almost 60% in 2008.
- There has been a reduction in construction of new single family homes each year since 2005.
- The metro areas have experienced the largest drops in new construction.
- Lower home production is a major contributor to reduction in sales tax revenue collection by the state.
 - New homeowners spend 15% on new fixtures, furniture, etc.
 - Approximately 50% of the cost of every new home is the cost of building materials after the lot cost.
- There is some good news- new homes are selling but with builder discounts.
 - Before new homes can be constructed, the existing inventory must be sold.
 - Keys for recovery:
 - continued job growth in Virginia
 - a continuation of salary and wage increases
 - a low interest rate environment
 - a favorable regulatory environment in Virginia.
- Hoping for recovery by spring of 2009.

There was no public comment and the meeting adjourned at 10:05 A.M.

Meeting Summary
Mortgage Finance Regulatory Issues Work Group
General Assembly Building, House Room C
Richmond, Virginia
August, 19, 2008; 1:00 PM

Members Present: Delegate Daniel Marshall, Delegate Terrie Suit, Delegate Bob Hull, Gary Garczynski, Melanie Thompson, Ted McCormack, Dana Fenton, Brian Gordon, Chip Dicks, Connie Chamberlin, Steve Baugher, Bill Shelton, Shea Hollifield, Mike Toalson, Michelle Watson, Fay Silverman, Joe Face, John Powell, Travis Hill and Marc Cheatham.

I. Welcome and Call to Order-Delegate D. Marshall, Chair

- a. Delegate Marshall called the meeting to order at 1:00pm and had all members of the workgroup introduce themselves.

II. Federal Housing and Economic Recovery Act, Safe Mortgage Licensing Act of 2008

a. *Federal Reserve Bank of Richmond-Joan T. Garton, Assistant Vice President*

- i. Please see power point presentation available online.
- ii. The data from mortgage foreclosures from April 2008 is just now available. It is available online on the VHC website.
- iii. The new rules set up a new category of loans which will also encompass the sub-prime market. This is in addition to the protections that are already in place. These new rules apply to higher cost mortgages.
- iv. **Delegate Suit-***Is there a difference between the conforming and non-conforming loans? There are already others out there past the 1.5% limit.*
- v. No there does not seem to be a differentiation.
- vi. The new rules only cover consumer home purchases secured by the consumer's primary household.
- vii. It would not include home equity loans and reverse mortgages.
- viii. Creditors are prohibited from lending based on collateral without taking into account the borrower's ability to repay.
- ix. With regard to Yield Spread Premiums, there is more that needs to be done to prevent abuse.
- x. Advertising provisions have also been amended.
- xi. **Delegate Hull-***Is there a requirement that the borrower be able to repay the loan within a certain term?*
- xii. There is an exception involving balloon payments.
- xiii. They determine whether consumer can pay at the highest rate with their current income and the percentage rate at that time within a set time period.

- xiv. **Mike Toalson**-*Has the Federal Reserve Bank done any research to determine what percentage of the loans were due to unscrupulous practices?*
 - xv. No.
 - xvi. **Mike Toalson**-*It is fascinating that where the highest foreclosure rates are is also where the most wealth is located. Significantly higher priced houses are the ones being foreclosed on even without an unscrupulous lender.*
 - xvii. **Connie Chamberlin**-*Who is going to enforce these rules?*
 - xviii. The SCC will address these issues.
 - xix. **Delegate Suit**-*As a result of HB 1487, any regulation that existed at a Federal level will be addresses by the Housing Commission.*
 - xx. **Gary Garczynski**-*How many banks in the past two years are under the watch list?*
 - xxi. The number has grown.
- b. *State Corporation Commission-E. Joseph Face, Jr., Commissioner, Bureau of Financial Institutions*
- i. Please see the power point presentation available online.
 - ii. The most important information is highlighted in red on the power point.
 - iii. The new regulations set minimum standards. The states can do more, but if they do not meet the minimum in one year, HUD will come in and take over.
 - iv. Virginia needs to determine the definition of "control" because there are federal regulations that will require employees of lenders to do something because they fall under Reg Z but the institution itself is not under the state rules.
 - v. Several aspects of Virginia law meet the minimum standards but others do not, including the fact that there is no written test requirement in Virginia.
 - vi. **Delegate Marshall**-*What is the federal government going to do if the states don't meet this set of minimum requirements? HUD doesn't have the resources to run all of this.*
 - vii. **Delegate Suit**-*Some of this was already anticipated in HB 1487. The Housing Commission would review all the legislation and determine how to respond. The SCC is the better place to house these regulations.*
 - viii. **Joe Face**-*Title 5 is directed toward mortgage loan originators only.*
 - ix. **Mike Toalson**-*How long do the individual originators have to meet those requirements?*
 - x. No timeline has been set yet.
 - xi. **Delegate Suit**-*The legislation says a good faith effort must be made within the year to avoid HUD involvement, not necessarily a complete legislation package.*

- xii. VHDA is not exempt; their agents must now be licensed.
- xiii. The HUD Secretary may extend the time period to no more than 24 months if a good faith effort is made.
- xiv. Legislation sets forth the minimum standards, we don't have to meet those standards, but HUD will do it if Virginia does not. We can also go above and beyond the minimum standards.
- xv. **Michele Watson**-*Has there been any discussion about testing to meet other state's standards?*
- xvi. Mr. Ryan can speak to that.

c. *Conference of State Bank Supervisors-John W. Ryan, Executive Vice President*

- i. Mortgage lending industry has moved from a bank-loan officer to a variety of channels for a broker to secure a loan.
- ii. A loan can be inside or outside the banking system and then sold to Wall Street.
- iii. The states have adapted to this better than the federal government has so far.
- iv. Virginia was one of the first to adapt to this new business model.
- v. Congress looked at the big picture from Wall Street to the originators and tried to encompass it all in this legislation.
- vi. There is going to be more legislation coming and we are only half way through this cycle.
- vii. Every state is going to have to legislate in the next year to meet these standards.
- viii. HUD is going to Congress for appropriations to work from. HUD is willing to work with us because they don't want to this.
- ix. This will be self-funded through fees.
- x. **Delegate Hull**-*Will model legislation for the states be created?*
- xi. Yes, a working group of states will be creating model legislation to meet HUD standards. We are trying to get some consensus and approval from HUD.
- xii. **Delegate Hull**-*Is there any aspect of the current legislation that deals with providing knowledge to the borrowers?*
- xiii. No, not in this legislation. Those are the sorts of things that we are going to see in the next Congress.
- xiv. **Mike Toalson**-*Will this apply to every person that originates mortgage loans?*
- xv. Yes, everyone is going to have to be registered.
- xvi. Registration will apply to bank employees, licensing will not be required.
- xvii. State licensing will not apply to bank employees.
- xviii. Registration is a one time deal per employer
- xix. **Gary Garczynski**-*Who brought this about?*
- xx. In the House of Representatives it was Representative Spencer Backus.

- xxi. It became incorporated in the bill proposed by Representative Barney Frank.
- xxii. **Delegate Hull**-*What is your thinking on availability of mortgage loans based on these regulations? Will it lead to availability going down?*
- xxiii. There shouldn't be any direct impact with regards to licensing.
- xxiv. This market reaction is going to go on for a long, long time.
- xxv. The rulemaking is not going to tighten, the market will do that on its own.
- xxvi. A majority of states have loan originator licensing, but most don't meet these minimum standards.
- xxvii. **Mike Toalson**-*What might the registration and licensing costs might be?*
- xxviii. Registration is unknown. It will be worked out among the banking agencies.
- xxix. Licensing costs will adjust, but currently \$35-\$100 based on a fee schedule.
- xxx. **Delegate Suit**-*Do you envision this will be eventually like the blue sky laws for securities where it will apply across the country?*
- xxxi. Yes, we want it to be uniform across the country, but there may be additional state components. We do not see it in the near term, but it is possible in the future.
- xxxii. **Connie Chamberlin**-*Where do we go from here? There seem to be three issues: regulatory and licensing issues; mortgage brokers; and who is going to be in charge of enforcing the new regulations?*
- xxxiii. **Delegate Suit**-*This particular work group will focus on the licensing piece, working directly with the SCC. The SCC is already hard at work on developing the model .*
- xxxiv. **Fay Silverman**-*The SCC recently announced new requirements for education that become effective May 1st, so we will have to be conscious of those requirements as well.*
- xxxv. Delegate Hull-Thanked the Chair, Delegate Marshall for setting this up and thanked the presenter for their help.

III. The meeting adjourned at 2:48 PM.

Mortgage Finance Regulatory Issues Sub Work Group
General Assembly Building
Richmond, Virginia
October 3, 2008

In attendance:

Delegate Daniel Marshall, III – Chair
Delegate Robert D. Hull
Senator John Watkins
Joe Face
Larry Heckner
Steve Baugher
Judson McKellar
Travis Hill
Connie Chamberlin
Alexandar McCauley
Jeff Smith
Jonathan Orne

The Virginia Housing Commission Mortgage Finance Regulatory Issues Sub Work Group met to discuss implementing the Federal SAFE Act into Virginia legislation for the 2009 session.

Mortgage Finance Regulatory Issues Sub Work Group
General Assembly Building
Richmond, Virginia
October 21, 2008

In attendance:

Delegate Daniel Marshall, III – Chair
Delegate Robert D. Hull
Senator John Watkins
Larry Heckner
Judson McKellar
Joe Face
Travis Hill

The Virginia Housing Commission Mortgage Finance Regulatory Issues Sub Work Group met to discuss implementing the Federal SAFE Act into Virginia legislation for the 2009 session.

Full Commission Meeting November 12, 2008

- I. Welcome and Call to Order – Vice Chair Senator Mamie Locke**
- II. Introduction of New Members**
 - a. Delegate G. Glenn Oder
 - b. Melanie Thompson
- III. Election of Commission Chair**
 - a. Election of Commission Chair- Senator Mamie Locke
 - b. Election of Commission Vice Chair- Delegate John Cosgrove
- IV. Housing Affordability – Delegate John Cosgrove, Work Group Chair**
 - a. **Delegate Cosgrove-** Fair Housing Bill, Housing Trust Fund Bill, Home Inspection Bill –
 - i. The work group took no positive or negative action on the bills, as it was worried about the financial impact.
 - b. **Senator Whipple-** Discussion of the merits of adopting Housing Trust Fund legislation without a source of revenue:
 - i. The Housing Commission has been on record as being in favor of the Housing Trust Fund, is there value in adopting legislation in a policy basis?
 - ii. **Delegate Hull-** Impact of Federal government currently controlling Freddie Mac and Fannie Mae: Virginia is not going to get any Housing Trust Fund money.
 - iii. **Delegate Marshall-** The value of housing has fallen so much that people who could not have afforded housing two years ago are in a much better position.
 - iv. **Delegate Cosgrove-** The chances are low that this type of legislation would get passed through the House.
 - v. **Delegate Oder –** I cannot support the bill as it is currently written; need to come back with new legislation, too many changes need to be made for this year.
 - vi. **T.K. Somanath-** There is a need to establish some policy at a state level, with a housing trust fund as part of this.
 - vii. **Senator Locke-** There is a scheduled December 3rd final meeting. If the Commission wants to address the Housing Trust Fund from a policy perspective we should be at a point then where we can do this.
- V. Derelict Structures – Senator Mamie Locke, Work Group Chair**
 - a. The group received information regarding several House and Senate bills
 - b. The group received a good presentation on visual derelict structures, specifically in Petersburg, which showed the impact that derelict structures are having on communities in Virginia.
 - c. Review of proposed legislation- **Mark Flynn and Chip Dicks:**

- i. Collaborative drafting effort with many localities and municipalities represented:
 - 1. Incentives in the legislation to motivate property owners to do something about the derelict structure;
 - 2. Registration and plan requirements;
 - 3. Defines “derelict structure;”
 - 4. Attempts to streamline the tax sale process;
 - 5. Streamline spot blight, create a simultaneous process for nuisance, spot light, derelict structures – locality would adopt this process and move through it;
 - 6. Building inspectors cannot get into nonresidential buildings when they need to for public safety- this legislation would amend the language as it currently is to allow for entry of nonresidential buildings;
 - 7. The legislation will not usually cover properties in foreclosure, because these typically remain connected to utilities, etc.
- ii. **Senator Locke-** Encourage the Commission members to read every line of the legislation, and if there are any issues or suggestions, contact Elizabeth Palen, so that the Commission may have a finalized version by the December 3rd final Commission meeting.
- iii. **Delegate Marshall-** There is going to be an issue with the registration requirement; the legislation will be harder to pass with this requirement.
- iv. **Chip Dicks-** The legislation will work without the registration piece; we can go back and retool this if need be.

VI. Mortgages – Delegate Daniel Marshall, Work Group Chair

- a. Response to the federal SAFE Act- A bill has to be adopted in Virginia, or HUD will be managing our mortgage brokerage activities.
- b. Review of proposed legislation- **Joe Face:**
 - i. Result of the SAFE Act (passed in July); requires the individual licensing and registration of mortgage loan originators in the United States.
 - ii. 1987 Virginia Mortgage Lender and Broker Act- requires licensing of mortgage lenders and brokers in VA.
 - iii. This is new for Virginia; now require individual licensing of mortgage loan originators.
 - iv. Bill sets forth minimum requirements necessary to meet SAFE act which allows us to maintain licensing requirements within the state.
 - v. HUD has yet to opine on a number of different items, but each day HUD hands out more opinions, so this is a work in process over the next few months.

- vi. Requires background checks- This is a nation-wide background check, HUD will not allow the Virginia State Police to do the checks. The database registry will perform all if not most of the work, which would include criminal background checks.
- vii. Provisional licensing will be granted during periods of delay, when many applications are received; if someone applies for a job, that person will get a provisional license while they are waiting to be approved.
- c. **Delegate Marshall-** Thanks to the SCC and the industry people for coming together and working on this; we are trying to make sure that we are complying with the minimum standards of what was asked of us by the Federal government.

VII. Common Interest Communities – Senator Mary Margaret Whipple, Chair

- a. Somewhat different task this year – monitoring the implementation of legislation passed last session that set up CIC Board. This is extensive legislation, and the group wanted to keep abreast of all happening in setting up the CIC Board, staffing the board, setting up ombudsman person, etc.
- b. **Mark Courtney, DPOR-** (handout):
 - i. Adopted public participation guidelines;
 - ii. CIC regulation fund management;
 - iii. Condominium regulations- emergency regulations process- effective Nov 13;
 - iv. Emergency CIC manager regulation;
 - v. Regulatory review committee- created by the Board to come up with regulations – CIC members, public members, one member from the Real Estate Board; emergency regulations being used as the foundation for more permanent regulations.
 - vi. **Delegate Cosgrove-** The original bill language called for 1,000 dollars or 2 percent in annual fees, but somehow when the bill was signed, it was \$1,000 or .02 percent – the .02% is not right.
 - vii. **Senator Whipple-**This is not enough money to support the programs; this is an error that will have to be corrected.
 - viii. **Mark Courtney-** The money is necessary for a recovery fund (minimum balance of \$150,000), and the Board must also be self-supporting.
 - ix. **Senator Whipple-** The recovery fund is to protect people whose money is lost through malfeasance on the part of the manager; this came about because of embezzlement of escrow accounts in associations.
- c. **Heather Gillespie, CIC Ombudsperson -** (handout):
 - i. This position comes under the Compliance and Investigations division of DPOR.
 - ii. We provide to members and citizens information upon request.

- iii. We are in the process of updating the website, so that people know that this is now the office of the ombudsperson.
- iv. Receiving of notices of complaints filed by members through their association:
 - 1. Members must go through their association board before they can file a complaint.
 - 2. Complaints only come to the compliance office after they have gone through the CIC Board and the member has received a final adverse decision, but how do we determine what a final adverse decision is? This is something we have to work on.
- v. Submission of complaint with \$25.
- vi. The complaint process:
 - 1. General inquiry process or a complaint process;
 - 2. Not sure when the complaint process regulations will be in place;
 - 3. We currently provide customer service to the citizens and members calling in;
 - 4. All members must file a complaint with their association board first.
- d. **Senator Whipple** – This is a helpful viewpoint for associations to better understand what their duties are, and it gives them proper consultation and advice that will be helpful. I think it will be helpful to give something out to every member of the General Assembly with the ombudsperson contact information, because a lot of members are going to get a lot of complaints.
- e. A lot of associations came to the Commission CIC Work Group asking for exemptions. This legislation may need some tweaking, but exemptions should be avoided.
 - i. The intent was not to make individual directors liable, so this needs to be addressed.
 - ii. Rather than exempt people, we need to make whatever changes necessary to the legislation in order to make it work for everyone.

VIII. Housing and Environmental Standards – Senator John Watkins, Work Group Chair

- a. Elizabeth Palen, Executive Director of the Commission, speaking for the Work Group Chair.
- b. The group had three meetings, and much legislation was discussed, including issues with noncombustible materials and sprinklers.
- c. We are not moving forward with any of the legislation at this time.
- d. The work group was also presented with a comprehensive study on stormwater run-off and its uses, and a decision was made to continue these discussions.

IX. Other Issues

- a. Possible housing policy statement in Virginia; the Commission will take this up at the December 3rd meeting.

X. Adjourn

FINAL COMMISSION MEETING
GAB HOUSE ROOM D
December 3, 2008, 10 A.M.

I. Welcome and Call to Order- *Senator Mamie Locke*

II. Mortgages Work Group- Proposed Legislation

- a. *Delegate Daniel Marshall, Work Group Chair* –
 - i. The legislation is still a work in progress; thanks to those who have put effort to get this bill before us.
 - ii. Ask Joe Face to walk through changes made since last time it was presented in Hampton.
- b. *Joe Face, SCC* –
 - i. The federal SAFE Act passed last July, requires licensing registration of all mortgage loan originators (anyone who takes a mortgage loan application). Allows states to pass enabling legislation to accomplish the registering and licensing of the originators; otherwise, HUD will take the responsibility on the federal side.
 - ii. This is the enabling legislation, allow department to license and register mortgage loan originators; national registry database, state developed, run, and managed.
- c. *Susan Hancock- Deputy Commissioner*- changes to the legislation since the full Housing Commission meeting in Hampton:
 - i. Reinserting “taking an application for” in definition of mortgage loan originator.
 - ii. Line 34 – license requirements do not include any individual who only performs administrative or clerical tasks.
 - iii. Loan modification language- not in this bill, but want to talk to HUD about this.
 1. *Travis Hill*- Issues with servicing and loss mitigation, these people should not have to be licensed.
 2. *Senator Whipple*- Why?
 3. *Travis Hill*- These people are trying to figure out how to reduce payments, extend payment plan; this is a much larger group of people who will have to go through the licensing.
 4. *Delegate Marshall*- Twenty thousand to thirty thousand people would fall under this; should industry err on the side of trying to get as many people in the location registered as opposed to not?
 5. *Senator Watkins* - Unless there is some reason to change this, we need to go by the guidance of SCC, stick with what we have.

6. *Joe Face*- HUD is charged with interpretation of the SAFE act, this is an issue that HUD is looking at and will hopefully render a decision on this.
 7. *Delegate Marshall*- We won't get this all correct the first time; we will probably have to tweak this legislation again in the coming years.
- iv. Language in line 73- keeps everyone from applying at one time; some additional discussion on this issue:
 1. *Delegate Marshall*- Applicants will have to have training before application, but this training has not been established yet- this is part of the issue.
 2. *Delegate Hull* -Additional enactment clause; waive educational requirements pending approval of the courses- not part of the statute but has the effect of law.
 3. *Senator Locke*- What are the timelines for the Federal Government?
 4. *Sue Hancock*- The law passed in July, states have a year to pass an enabling statute; we were given these dates by HUD: July 1, 2009 for law to be in place, and another year to allow people to get licensed (2010).
 5. *Joe Face*- Starting August 1, 2009, any person who takes an application must be licensed and registered as mortgage loan originators; HUD has indicated that they understand this will take awhile, so can transition after this date.
 - v. Line 88- application fee- "or a lesser amount"- language changed- caps the application fee, which is what the industry wanted; sets the fee at \$150 or a lesser amount; commission can lower the fee if don't think they need the full \$150.
 - vi. Line 90- the application fee is not the only fee; let them know about other fees so not surprised when hit with them.
 - vii. Line 118- changed language –background checks, fingerprints submission- "or any federal or state governmental agency" – to show that does not have to be submitted to a federal agency.
 - viii. Line 146- qualifications section- new language takes out "reputation and experience" but keeps in "general fitness."
 1. *Senator Watkins*- General fitness is defined with the SCC- used for all licensing?
 2. *Joe Face*- Delegate Oder raised the question of this term; it is found in other acts; it is a term used widely in the code, and also used in the federal SAFE Act.
 - ix. Line 242- 246- previously required that the license for the originator be prominently posted, this is probably not feasible. It is more important that consumer know where to call to check about an individual; now require that they post the number, make this

available to the consumer to determine that individual properly licensed.

1. *Delegate Hull*- Will each licensed individual get some kind of identifier card?
2. *Sue Hancock*- Each will get some form of license.
- x. Line 263- license changes - “Chapter 16” mortgage lender and broker act, reference this instead of the title.
- xi. Line 292- License term was previously six months, kept at six months.
 1. *Delegate Marshall* – Why did we not go to 12 months?
 2. *Travis Hill* –The industry wanted 12; worried about the licensing process taking too long, because of the criminal background checks, etc.
 3. *Delegate Marshall*- Change it back to 12 months.
- xii. Line 293- loss of rights-new language- took out wording “suspend the rights of” and use more consistent language as is in Mortgage Lender and Broker act, and changed “this title” to “Chapter 16.”
- xiii. Line 312- filled in the fee- set it at \$100, but if it is determined that the cost is more (or less) than anticipated, than the Commissioner can increase or decrease this through the regulatory process.
- xiv. Effective date was moved to the body of the bill.
- d. *Delegate Marshall* – Any other questions or comments?
 - i. *Delegate Hull* – Lines 384-385 - Change this to the federal statute section instead of the name of the act – in case there are amendments to the law.
 - ii. *Senator Watkins* – Enactment clause- do something about the lapse between licensing and education piece, until it is approved and running.
 1. Travis Hill and Duke deHaas SCC are working on this.
 - iii. *Travis Hill* – Other things still up in the air:
 1. 6.1-431.5- Bonding – Discussion of surety bond- would this be done by code or regulation? The industry would like it to be done by code, but waiting to hear from HUD on what the tier structure would be.
 2. 6.1-431.16- Annual fees- individual responsible for investigation costs; working on language that would exempt individuals who work for licensed lenders to not be liable for these costs.
- e. (*Motion to endorse, moved and seconded, voted that the bill as changed should be endorsed and moved forward by the Commission.*)

III. Derelict Structures Work Group – Proposed Legislation

- a. *Senator Mamie Locke, Chair*
- b. *Mark Flynn, VML, Chip Dicks, VAR:*
 - i. Changes have been made to the bill; have a consensus between property organizations and local government community.

- ii. *Delegate Hull*- This version is a good compromise, works well, and does more than the original legislation.
- iii. *Senator Watkins*- Were the property rights people involved in this bill?
- iv. *Chip Dicks*- Various real property organizations were all involved.
- v. *Senator Watkins*- Worried more about the individuals who don't like property seized; everyone needs to understand, will have to be adopted by local government before it can be implemented.
- vi. *Chips Dicks*- The legislation creates no new power to condemn property; it is trying to balance concerns knowing the overall perspective of the General Assembly with respect to blight, etc.; just streamlined the processes.
- vii. *Senator Watkins*- With regard to prioritization liens, if local government has to tear a building down and make changes, this is like a tax lien?
- viii. *Chip Dicks*- The language is consistent so everything is treated like a tax lien; these get recorded at circuit court clerk's office and become priority; streamlining this process.

c. *(Motion to endorse, moved and seconded, voted that the bill as changed should be endorsed and moved forward by the Commission.)*

IV. Common Interest Communities/Affordable Housing- Proposed Legislation

- a. *Senator Mary Margaret Whipple*
 - i. Do not have a draft of the legislation yet, but know of two substantive issues:
 - 1. Changes the amount the CIC boards pay on their annual fees from .02 percent to a greater percentage, otherwise office will not have sufficient funding.
 - ii. Other non-substantive changes that will also be made.
 - iii. Suggest that we endorse this new bill in concept and then when draft is ready will circulate to members.
- b. *(Motion to endorse on principal, moved and seconded, voted to endorse.)*

V. Senate Bill 299

- a. *Chip Dicks*
 - i. Proposed amendment to §58.1-3295.
 - ii. Assessments at highest and best use, not current use.
 - iii. If property is operated as affordable housing, even if could be used for something else, will be assessed at its use and not its potential use.
 - iv. Bill language:
 - 1. If owner owns property and using it as affordable housing, than owner can make an application and ask for it to be assessed as affordable housing; but if have building code

violations at time they apply, then would not be eligible-
safety net to keep slum lords from getting this benefit.

- b. *Delegate Hull*- Can only be assessed at highest and best use within zoning cap; no discretion, have to be approved if meet requirements?
 - i. *Chip Dicks*- Yes.
- c. (*Motion to endorse, moved and seconded, voted that the bill should be endorsed and moved forward by the Commission.*)

**VI. Virginia Housing Policy Trends- *Barry Merchant, VHDA*- report-
Accommodating the Housing Needs of Generation Y (power point
presentation)**

- a. Purpose: To determine how different housing needs will look as move out of the economic downturn into new stage of recovery.
- b. Generational shift in housing needs with significant changes in housing finance; needs of young households.
- c. Housing needs change with age:
 - i. young
 - ii. middle age
 - iii. empty nesters/early retirees
 - iv. older seniors
- d. New market- young households and early retirees will dominate.
- e. Current economic conditions may reshape baby boomer choices.
- f. Today's housing stock is not adequate to meet emerging needs.
 - i. Large supply of trade-up homes.
- g. Affordable rental housing will be especially needed.
- h. Generation Y may have more difficulty achieving homeownership- high levels of debt, student loans and credit cards- may mean a postponement of home ownership.

**VII. Tidewater Housing Study- *Connie Chamberlin, HOME President* (power
point presentation)**

- a. Study recently concluded in Tidewater.
- b. Controlled match pair testing- snapshot of housing market, not a statistical study:
 - i. Sixty-six percent of the time African Americans received worse treatment than the white comparison when seeking housing.
 - ii. Specific examples in slides.
 - iii. *Delegate Marshall*- What type of apartment complexes did you look at?
 - 1. *Connie Chamberlin*- Almost all types – rents ranging from \$600 to \$2500. Most were complexes, some were single-family, and some were professionally managed.
 - iv. *Delegate Marshall*- Regarding those professionally managed, was this at the ground level or corporate level?

1. *Connie Chamberlin*- This is the ground level; people going in and asking about rentals.
- c. Single contact testing:
 - i. based on policies;
 - ii. design and construction requirements- accessibility;
 - iii. results show that at least 84 percent were non-compliant in at least one area .
- d. Reasonable modifications:
 - i. Would housing provider allow installation of grab bars in bathroom?
 1. Eighty percent agreed that this was okay.
 - ii. Service animal allowed?
 1. Seventy-six percent rejected, discouraged, or imposed illegal fees.
- e. Families with children:
 - i. Fifteen percent discouraged families with children.
 - ii. Eighty-five percent willing to accept families with children at general occupancy standard.
- f. Housing choice vouchers – selected housing that met income reasonableness requirements but who did not mention the vouchers in their advertisements:
 - i. Eighty-five percent discouraged or rejected.
- g. Requesting that housing commission take up the issue of housing discrimination in its charge for next year.
- h. *Delegate Marshall*- suggest that the Commission look into this.

VIII. Senator Whipple- Housing Trust Fund-

- a. Top priority for Virginia Housing Coalition; would be a good idea to try to go forward with it this year
- b. Start by introducing the bill to the Senate, make some progress with it this year.
- c. Best source of funding:
 - i. Ten percent of year-end balance- only receive significant money in a year in which there is a good economy, significant balance that allows the 10 percent to amount to something.
- d. Old Virginia Housing Partnership Trust Fund exists currently in the code.
- e. *Delegate Hull*- Once set up, there might be an opportunity to get private funds or federal funds.
- f. *Delegate Marshall*- Rural folks will see this as an urban issue; what are the advantages of this fund for them?
- g. *Senator Whipple*- The housing funding problems are statewide; in rural areas, tends to be the state of the housing rather than the actual cost of the housing. A group that would improve the physical structures of housing could qualify for the funds.

IX. Adjourn