

VESTED RIGHTS ADDITION PASSES HOUSE OF DELEGATES

On Thursday afternoon of this week, the House of Delegates approved **House Bill 1250, by Delegate Barry Knight of Virginia Beach**. The measure is an HBAV 2010 Legislative Priority. It was approved by the full 22-member House CC&T Committee on Monday evening of this week.

House Bill 1250 would add to the list of Significant Affirmative Governmental Acts (now 7 in total) the issuance of any written order, requirement, decision or determination made by the zoning administrator or other administrative officer regarding the permissibility of a specific use or density of the landowner's property, after the appeals period, to the Act.

In 1998, at the request of HBAV, the Virginia General Assembly codified a Vested Rights Statute. At the time, the Act was hailed by national land use attorney organizations as the most progressive property rights legislation that had been approved by a state legislature in over 20 years.

With little exception, the basis for the Act was a series of Supreme Court of Virginia decisions. The purpose of the bill in 1998 was to draw "brighter" lines for local governments and landowners on what actions by local governments and, what actions by landowners created vested rights in Virginia. Most agree that the passage of the Act has brought much clarity to the issue of vested rights in Virginia. It is now time for a small, but important update to the Virginia Vested Rights Act to be adopted. The 2010 amendment will create more certainty for property owners in Virginia.

In many cases, prior to beginning improvements or construction on property in Virginia, lenders require and property owners obtain, a "Determination" from a Zoning Administrator to insure the intended use or density intended for the property is allowed by the underlying zoning classification. In most localities, such a "Determination" is a formal process. This measure will simply protect the property rights and add a layer of certainty for landowners who have acquired a Zoning Determination from a local government.

House Bill 1250 will go to the State Senate for consideration and will likely be assigned to the committee on Local Government for review in the coming days.

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HOUSE OF DELEGATES COMMITTEE APPROVES STORMWATER SUSPENSION COMPROMISE

On Wednesday of this week, the House Committee on Agriculture, Chesapeake and Natural Resources approved **House Bill 1220, by Delegate Tim Hugo of Fairfax County**. The measure would suspend the controversial Stormwater regulation of the Department of Conservation and Recreation (DCR) until 280 days after the completion of the Virginia Total Maximum Daily Loads (TMDL) Implementation Plan for the Chesapeake Bay Nutrient and Sediment TMDL is approved by the United States Environmental Protection Agency, but no later than December 1, 2011. House Bill 1220 will be first considered by the 100-member House of Delegates later today and will likely be placed on final passage by the lower chamber on Monday of next week.

Last week HBAV announced that an HBAV led coalition of business organizations and local governments had reached a tentative Agreement with the Chesapeake Bay Foundation, the James River Association and the Nature Conservancy on a measure to “Temporarily” suspend the Kaine Administration and DCR proposed Stormwater regulation which would have significantly increased the cost of land development in every part of Virginia, and will do very little to improve the water quality of the Chesapeake Bay.

The EPA-TMDL is forecast to be completed by December, 2010. That will give Virginia’s Department of Conservation and Recreation nearly 12 months to adopt a new Stormwater regulation that will meet the allocations to be set out by the EPA-TMDL.

Its companion bill, **Senate Bill 395, by Senator Frank Wagner of Virginia Beach**, passed the 40-member State Senate last week.

The passage of the legislation to suspend the Stormwater Regulation in both houses of the State Legislature creates a “High Likelihood” of final passage of this important HBAV Legislative Priority for the 2010 Session of the State legislature.

The House of Delegates will likely consider Senate Bill 395 next week and the State Senate will likely take up House Bill 1220 the following week.

HBAV has consistently asserted that there was an attempt to rush the controversial Stormwater Regulation to the finish line by the Kaine Administration in their waning days, with their full knowledge that the current Stormwater Management Regulation, has brought Virginia very close to its current Phosphorous Goal, and the FACT, that the EPA is in the process of revising the current phosphorous loading limits for Virginia.

STATE SENATE APPROVES PROFFER PAYMENT DELAY LEGISLATION

A third priority of HBAV for the 2010 Session of the Virginia General Assembly passed the 40-member State Senate this week. **Senate Bill 632, by Senator Mark Obenshain of Harrisonburg** was approved by a vote of 38 to 2 on Wednesday of this week.

The only two State Senators to vote against the important measure to the members of HBAV were Senators Richard Stuart of Westmoreland and Senator Mary Margaret Whipple of Arlington.

The measure, which would “temporarily” delay collection or acceptance of a per lot cash proffer by a locality, until after final inspection and before the residential property has been issued a certificate of occupancy by said locality. The measure’s House companion, **House Bill 374, by Delegate John Cosgrove of Chesapeake**, was approved by the lower chamber last week. If approved by both houses of the state legislature, the measures would apply statewide and would be effective until July 1, 2014.

Senate Bill 632 and House Bill 374 have been vigorously opposed by Fairfax County, who has very few per lot cash proffers. The Virginia Association of Counties (VACO) and the Coalition of former High Growth Localities spoke against the bill, but with less vigor than Fairfax County. They seem to better understand than Fairfax County, that the 70% downturn in annual housing starts in Virginia, since 2005, is affecting local economies and local revenue gathering. Also speaking against both bills were Prince William County, Chesterfield County and the Piedmont Environmental Council.

SB 632 will likely be considered by the House CC&T Committee next Friday morning and HB 374 will likely be considered by the Senate Committee on Local Government this coming Tuesday afternoon.

Senate Bill 632 and House Bill 374 are designed to temporarily eliminate a major impediment to the recovery of the new housing industry in many markets. Such “UPFRONT” required cash payments to local governments, in the current building and banking environment, stifle job production by the housing industry. HBAV believes it is now appropriate to “temporarily” delay this costly upfront payment of cash proffers or impediment to the production of new housing in many areas of Virginia.

HBAV FIGHTING WITH BUSINESS PARTNERS TO BLOCK COURT FEE INCREASES

HBAV has joined a large business coalition to OPPOSE **Senate Bill 329**, by **Senator Richard Stuart**.

The measure would significantly increase District Court fees and Circuit Court fees. The measure is being backed by the Virginia Sheriffs and the Health Care industry, which are both facing major cuts in appropriations as a result of the budget shortfalls. The measure would significantly increase the business costs of the HBAV members who are multi-family property owners.

The Measure was approved by the Senate Committee on the Courts, after the Committee halved the proposed fee increases, and sent it the Senate Finance Committee for further review. The Senate Finance Committee restored the full fee increases and approved the measure on a 13 to 2 vote.

Senate Bill 329 is now before the full 40-member State Senate. HBAV and our business partners opposed the bill because:

- The proposed fee increase from \$27 to \$75 in district court represents a 177% increase. The Circuit Court fee increase from \$60-\$160 to \$500-\$1,000 represent a nearly 500% increase.
- Even though the increased fees are initially incurred by various creditors and law firms, fees are often passed on to the respondent by judges, resulting in high costs for individuals who are most likely experiencing financial difficulty anyway.
- Increased district court costs restrict access to “the people’s court” for lower income individuals.
- We are not “opposed to public safety” and we are sympathetic to the sheriff’s funding shortfalls. Our opposition is to the underlying policy question of whether court costs should be a break-even/marginally profitable funding source to the courts as opposed to a new major profit center designed to plug other budget shortfalls.
- **Additional argument, generally exclusive to clerks and health care industry:**
This bill is a “rob Peter to pay Paul” measure that pulls from one under-funded group and funds another.

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Senate Bill 329 is an example of a “Desperate Act”, as a result of the deteriorating state budget crisis.

HBAV SUPPORTS CHINESE DRYWALL POTENTIAL HELP

HBAV has been the only business supporter of two measures that “MAY” be a potential solution to the property owners of homes that have been identified to have been constructed with tainted Chinese Drywall. The product emits a noxious odor and corrodes copper and other metal surfaces, thereby damaging air conditioners, electrical wiring, plumbing, appliances and electronics.

Unfortunately, the Chinese government, who owned and operated the facilities that manufactured the tainted product, has failed to compensate those owners who have suffered damages from the tainted product.

Senate Bill 523, by Senator Tommy Norment of Williamsburg would authorize funds from the Virginia Disaster Response Fund to be disbursed to political subdivisions for the removal of hazardous materials from, and subsequent repair of, dwelling units.

House Bill 46, by Delegate Glenn Oder of Newport News would also authorize funds to political subdivisions for costs incurred for the removal of hazardous materials, as defined in [§ 44-146.34](#), from, and subsequent repair of, dwelling units. In order to qualify for disbursements from the fund pursuant to this subdivision, the existence of the hazard in the dwelling unit shall be certified by the political subdivision, and application for the funds shall be made by the political subdivision on behalf of the owner of the dwelling unit. Any moneys disbursed from the fund shall be paid directly to the political subdivision, and the political subdivision shall decide how and by whom the removal of the hazardous materials and repairs shall be completed.

While the balance in the Virginia Disaster Relief Fund is inadequate to help the victims of the tainted Chinese Drywall at this time, Senator Norment and Delegate Oder are optimistic that with the change in authority for the Virginia Disaster Relief Fund, there is a POTENTIAL for funds from the Federal Emergency Management Agency.

Senate Bill 523 has passed the State Senate and **House Bill 46** has been approved by the House Committee on Militia, Police and Public Safety Committee.

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IN OTHER ACTION THIS WEEK, THE STATE LEGISLATURE...

Killed House Bill 336, by Delegate Bob Marshall. HB 336 would have broadened a locality's ability to use cash proffers for capital projects other than those for which the cash was originally proffered under certain circumstances. HBAV spoke against the measure.

Killed Senate Bill 609, by Delegate John Edwards would have authorized any locality to enact an ordinance requiring the installation of carbon monoxide alarms in (i) any building containing one or more dwelling units; (ii) any hotel or motel regularly used, offered for, or intended to be used to provide overnight sleeping accommodations; and (iii) any rooming house regularly used, offered for, or intended to be used to provide overnight sleeping accommodations, provided such buildings contain dwelling units that have an attached garage or carport or are serviced by fuel-fired appliances.
HBAV spoke against the measure.

HBAV FOR HAITI ORPHANS "PLEASE CONTRIBUTE TODAY"

For the past ten (10) years, HBAV Past President Bob Flynn of the Roanoke Regional Home Builders Association has used his annual personal vacation days to travel to Haiti to help make improvements to the "Quality of Life" for "The Home of the Daughters of God" Orphanage in Port-au-Prince. The orphanage provides food, clothing, shelter and education for 70 Haitian orphan girls.

On Wednesday, January 13th, Bob was due to fly into Haiti for a 7 day work-visit to the girl's orphanage/home. The earthquake hit on Tuesday, January 12th.

The orphanage is located in Port-au-Prince. It is a maze of connecting buildings, some as high as 3 stories. The orphanage was severely damaged during the quake, and is now uninhabitable. The 70 girls that use to call the orphanage home, are now living in the street in front of the orphanage in tents donated to them by UNICEF. Three of the girls and the orphanage's cook's wife and his 3 children lost their lives on that Tuesday.

HBAV PRESIDENT MIKE NEWSOME AND HBAV PAST PRESIDENT BOB FLYNN URGES ALL HBAV MEMBERS TO MAKE A CONTRIBUTION TO THE ORPHANAGE AND THE GIRLS. PAST PRESIDENT FLYNN HAS ASSURED US THAT 100% OF ALL MONIES CONTRIBUTED WILL GO DIRECTLY TO THE ORPHANAGE!!!! As of this date, no decent food, water or medical supplies have reached the girls.

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The surviving girls are in need now, more than ever!!! Please consider making a Donation. Every dollar will help the girls through this tragedy. Please contribute \$25.00, \$50.00, \$100.00 or more.

PLEASE MAKE YOU PERSONAL OR BUSINESS CHECK PAYABLE TO RESURRECTION CATHOLIC CHURCH, and mail it to HBAV, 707 East Franklin Street, Richmond, Virginia 23219. HBAV will bundle all Donations and deliver them directly to Past President Flynn in Roanoke. All contributions are 100% tax deductible.

Please send your personal or business contribution today. **As President Newsome said when approving this request, "Yes, this is about humanity"!!!!**