

ADEQUATE PUBLIC FACILITY (APF) AUTHORITY **“Neither New - Nor Innovative”**

The concept of requiring public facilities (public schools, public roads, fire and rescue, public libraries, public water and sewer, etc.) to be in place prior to residential or commercial development is a flawed concept. It's biggest fallacy is that it completely ignores the reality of growth and development. In the natural order of development, the construction of public facilities follows residential and commercial growth. Localities neither have the vision nor the resources to build schools for children that do not exist or roads to nowhere.

APF is not a new or innovative approach to planning. The planning concept has been applied in various areas of the nation, and in almost every case the cost of new and existing housing has increased dramatically because the supply of new housing has significantly declined.

The concept of granting localities the authority to delay or deny the construction of new housing based on the inadequacy of public facilities in a locality is not new to the Virginia General Assembly. In the past 20 years, numerous legislative and citizen-involved study committees have considered the concept, and on every occasion, the studies have unanimously or nearly unanimously rejected the concept. In addition, in recent years, both the House Counties, Cities and Towns Committee and the Senate Local Government Committee have overwhelmingly rejected the such measures.

And those studies are continuing. From 2002 to 2005, House Joint Resolution 170, the Commission Growth and Economic Development studied this specific issue. And, while that commission was unable to reach consensus on a proposed bill, more interim studies continued on the issue, and are still ongoing. The 2008 and 2009 Study (HJR 178, by Athey) will also incorporate a review of recent Urban Development Area legislation.

Among our many concerns about the use of APF as a planning tool is that it has only resulted in the exportation of unwanted housing to neighboring more rural jurisdictions, creating more sprawl. In the Richmond metropolitan area, for example, it is forecast that there will be a demand for approximately 5,500 new residential units in each of the next 10 years, based on corresponding population growth and job growth forecast. Should the 3 large suburban counties in the Richmond area, where most of the new jobs are being created, be granted the authority, through an APF, to “just say no” to new housing, 5,500 new residential units are still going to be built in the area. They simply won't be built close to the new job centers, which is a component of Smart Growth. They will be built in outlying more rural areas creating sprawl and further congesting more rural roads. Remember, homes are where the jobs go to spend the night.

Under current law, localities have the authority to regulate the “who”, “what”, “where”, “why” and “how” new homes and new commercial buildings are to be built through their comprehensive planning authority, zoning ordinances and subdivision ordinances. The only aspect of housing and commercial growth left to the market place has been “when” they are to be built, and we strongly believe that component should be left to the free enterprise system.

The granting of the authority to delay or deny the construction of new housing and new commercial growth will have a significant impact on the property rights of many landowners in the Commonwealth. Many landowners in Virginia have acquired, in good faith, private property based on their reliance on previous local government actions affecting use and density. Those rights will be vacated by the granting of APF authority to localities.

By granting localities the ability to delay or deny the construction of new homes and new commercial buildings base on their determination that there is a lack of public facilities, you will be rewarding bad behavior or irresponsibility. Among the basic responsibilities of local government is provide public facilities with a portion of their state and local resources. Their failure to dedicate an appropriate level of resources to their capital improvement program and capital improvement budget (when they know their population is growing) should not be rewarded through this legislation. What is needed in many localities is adequate public funding, not adequate public facilities.

Granting APF authority to localities will seriously impact the ability of landowners to attract capital to the housing industry. Can you imagine a bank granting a landowner a loan to develop his property when the primary repayment source in his accompanying business plan, the selling of improved lots, could be delayed or denied at any point in the development process because a locality could determine that there was a lack of public facilities?

The adoption of any APF measure could cripple the economy of the state. State income taxes and state sales taxes generated from the construction, furnishing and decorating of new housing units account for a significant portion of state revenues. It is inappropriate for the Commonwealth to hand-off such an important and needed revenue stream to decision-makers at the local level. Virginia should strive to create jobs in its effort to balance the state budget, not consciously create a statutory impediment to job growth.

Shelter, like food and clothing, is a fundamental necessity of every human being. For decades, this nation and state have placed a high priority on the notion of safe, decent and affordable housing for all Virginians. Given the known impact of the granting of APF authority to localities on the cost of new and existing housing alone, this legislation should be rejected.

This measure creates no reliable funding source for the future construction of public facilities by localities or the state. As John DeGrove, former Secretary of the Florida Department of Community Affairs and the man considered by many to be the father of

growth management in Florida, noted during a debate by lawmakers over the Florida APF bill in 1985, “If you are not going to fund it, don’t do this. The success of this unique experiment depends largely on the availability of one ingredient...money.” APF should only be considered for use in conjunction with a fully funded capital improvement plan to which developers must have ongoing input. Otherwise, according to DeGrove, “APF will drive development into the very areas where, according to the growth management law, it is supposed to be discouraged.”

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