

## **WEEK “TWO” OF THE STATE LEGISLATURE SEES ACTION ACCELERATE**

The pace of the State Legislature picked up this week with many of the Standing Committees of the House of Delegates and State Senate, and their Subcommittees meeting for the first time. The 2012 edition of the State Legislature convened last Wednesday and will continue until March 10<sup>th</sup>.

Subcommittee work can begin as early as 7:00 a.m. each morning and end after 8:00 p.m. most evenings. For example, the Housing Subcommittee of the House General Laws Committee meets at 5:00 p.m. every Wednesday and Subcommittee Number 2 of the House Counties, Cities and Towns Committee meets at 7:00 a.m. on Thursday mornings. Both subcommittees require the attendance of the HBAV lobbying team, since both consider many issues that impact the home building industry at most every meeting.

The House of Delegates has 14 Standing Committees and 51 Subcommittees. The Senate of Virginia has 11 Standing Committees and 19 Subcommittees.

Their meeting agendas create tremendous BUZZ in and around the General Assembly Building (GAB) and State Capitol, located just one-block from the HBAV home office, The Stewart-Lee House. The GAB houses the offices of the House of Delegates and State Senators, and also has many committee and subcommittee meeting rooms. The State Capitol hosts the daily sessions of the House of Delegates and State Senate and also has several meeting rooms.

It is exciting to be downtown in the Capitol City when the annual sessions of the Virginia General Assembly are convened!

## **HBAV LAUNCHES 2012 LEGISLATIVE AGENDA**

The Home Builders Association of Virginia (HBAV) launched its 2012 Legislative Agenda this week. Nestled among the more than 1,500 House Bills and 600 Senate Bills are six (6) bills introduced by state legislators at the request of HBAV. Each measure was recommended by one or more of the HBAV-affiliated local associations to the HBAV Legislative Committee, who researched and prioritized each bill. John Napolitano of the Tidewater Builders Association is the 2012 Chairman of the HBAV Legislative Committee.

Following is a brief Summary of each measure:

**PROFFER AMENDMENT APPLICATION CLARIFICATION**  
**House Bills 326, by Delegate Massie and 903, by Delegate Minchew**  
**Senate Bills 36, by Senator Black and 237, by Senator Herring**

In 2011, a Loudoun County Circuit Court ruled that all property owners subject to a proffered condition had to be co-applicants of a proffer amendment application before a locality could consider such an application. This ruling was a departure from established Virginia practice and presented an unreasonable standard to achieve in many circumstances. Coupled with the continuing and unprecedented downturn in Virginia's residential and commercial real estate industry, this problematic court ruling makes it clear that now is the time for the state legislature to establish a clear process governing amendments to proffered conditions.

**House Bills 326 and 903 and Senate Bills 36 and 237** will make clear that any landowner subject to a proffered condition may apply for an amendment to that condition so long as sufficient notice is provided to other landowners subject to the proffer. Moreover, the locality will also be required to conduct a public hearing for all applications for proffer amendments related to density and use on the subject property. Finally, the legislation clarifies that no landowner shall possess any vested right in a proffered condition; as such rights exist in the underlying zoning.

STATUS: Assigned to House CC&T Committee and Senate Committee on Local Government

**PROFFERED CONDITIONS – ADMINISTRATION/ENFORCEMENT APPEALS**  
**House Bill 170, by Delegate Cosgrove**

Local Zoning Administrators are authorized to administer and enforce conditions attached to a rezoning or an amendment to a zoning map. Any person who is aggrieved by a decision of a local zoning administrator may petition the local governing body to review the decision of the zoning administrator. Today, it is unclear whether or not the decision of the local governing body can be appealed to a circuit court.

**House Bill 170** will make it clear that an aggrieved party may petition a circuit court for review of the decision of the governing body to ensure fairness with the administration and enforcement of proffered conditions.

STATUS: Approved by House CC&T Committee on Friday, January 20, 2012

**ZONING ADMINISTRATOR - 60-DAY TIME LIMIT FOR REVERSAL OF SUCH DECISIONS**  
**House Bill 166, by Delegate Cosgrove**

The Code of Virginia allows a Zoning Administrator or other administrative officer to change, modify or reverse a Zoning Administrator's decision within 60 days. After 60 days, such a decision cannot be changed, modified or reversed unless it was either obtained through

malfeasance or fraud or it is tarnished by a clerical or other “non-discretionary” error. Unfortunately, some Zoning Administrators in Virginia are using the vague “non-discretionary error” exception to routinely reverse decisions after 60 days. HBAV believes landowners should be able to rely on decisions of local government administrative officers after a 60 day period, with few valid exceptions.

**House Bill 166** will remove the ability of a Zoning Administrator or other administrative officer to reverse a decision of the Zoning Administrator after 60 days based on a “non-discretionary” error.

STATUS: Approved by House CC&T Committee on Friday, January 20, 2012

### **EXTENSION OF THE VALIDITY OF APPROVED LAND USE PLANS, BOND ADMINISTRATIVE FEE REDUCTION AND LATER PAYMENT OF PER-LOT CASH PROFFERS**

**House Bill 571 by Delegate Danny Marshall**

In the 2009 Session of the State Legislature, legislation was enacted to extend the validity of approved and valid local development plans and associated plans until July 1, 2014. Legislation was also enacted in 2009 to reduce the administrative fees associated with performance bonds from 25% of the anticipated construction costs of the new facilities to 10%. In 2011, the State Legislature enacted legislation to prohibit the payment of per-lot cash proffers to localities until after final inspection by a local building official and before they issued the Certificate of Occupancy. The package of legislation outlined above was designed to help the struggling home building industry through an historic downturn in new home construction in Virginia.

At that time, the home building industry and many highly regarded economists anticipated the housing industry leading the nation’s economy out of the near depression of that period, and certainly before 2014. That has not happened. In 2011, new home production rests near the 59- year low level of production that occurred in 2009.

Unfortunately, before there will be a demand for valid land developments to be improved with water and sewer, roads and sidewalks, dry utilities such as electricity, cable and stormwater facilities to be constructed, the demand for new homes will have to accelerate significantly. Most economist are now forecasting that turn around for the home building industry is another 2 or 3 years from now.

**House Bill 571** will extend the “package of help” for the home building industry in Virginia until July 1, 2017.

The home building industry is crucial to the economy of Virginia. Over 55 local companies are involved in the acquisition, financing and construction of every new home in Virginia. These “main street” companies in every community in the Commonwealth employ thousands of hard-working Virginians. And once the new homes are sold, new buyers spend thousands more furnishing, decorating and landscaping their purchase, further employing Virginians and broadening the tax base of the Commonwealth.

## **CONDOMINIUM ACT AMENDMENT**

### **House Bill 902, by Delegate Minchew**

The Virginia Condominium Act limits the ability of condominium developers to convert additional land into the project to 7 years. The thought behind the 7-year limit was to provide to unit purchasers some certainty to the final scale of the project. The 7-year limit has not been a problem for project planners until now, 5 years after the collapse of the home building industry in Virginia. Now, because of slow sales, project owners are faced with not being allowed to convert owned land into their existing projects because of the 7-year limit.

Some condominium developers fear the current real estate economy may be the “new normal”, meaning large planned condominium projects will not be completed within 7 years.

**House Bill 902** would extend the current 7-year limit to convert land into project to 10 years. The increase in time will allow future planned condominium projects to be fully developed in the today’s real estate economy. The legislation will be prospective.

## **PARTIAL RELEASED STREET PERFORMANCE BONDS TO BE PROHIBITED**

### **“Williams Mullen Law Firm Supports Anti-Housing Proposal”**

On Tuesday afternoon of this week, the HBAV lobbying team (Toalson, Thomas and Mullen) were in a battle before the Senate Committee on Local Government on Senate Bill 177, by Senator Richard Stuart. **Shockingly, representing Stafford County and supporting the Stafford County anti-housing legislation before the Senate Committee were two lobbyists with the Williams Mullen law firm.** In the past, that firm has represented builder and developer members of HBAV in matters before localities.

**Senate Bill 177** would allow localities to retain full performance guarantees until streets in a new development are accepted into the state system or by the local government. Currently, localities are required to partially release new street performance guarantees following a thorough inspection of the street construction improvements that on are the ground.

**Senate Bill 177** also provides that if a developer or any of a developer’s partners are in default with regard to street completions in another development within a locality, even if under a different corporation or partnership, the locality may withhold acceptance of securities or plat approvals. Furthermore, a locality may withhold building permits or occupancy permits within a development until all completed or partially completed streets have been taken into the state system or local system.

HBAV vigorously fought the legislation before the Senate Committee. After more than 30 minutes of debate on the controversial measure between Senator Stuart, Committee members, the HBAV lobbyist and Williams Mullen lobbyists, Senator Blevins of Chesapeake requested that further consideration of the legislation be delayed until Tuesday, January 24<sup>th</sup>, so the committee could move on to other business.

## **FRESHMAN DELEGATE INTRODUCES ANTI-HOME BUILDING PACKAGE OF HOUSE BILLS**

Shortly after the 2012 convened, HBAV discovered that the first-year Delegate from Stafford County, Mark Dudenhefer, had introduced a series of house bills that would negatively impact the struggling home building industry in Virginia. **New homes in Virginia are being constructed at the same pace new homes were being built in 1964. In other words, the level of new home constructed in Virginia in 2011 equaled a 48-year low for the Commonwealth of Virginia.** Prior to being elected to the House of Delegates, Delegate Dudenhefer served as chairman of the board of Stafford County.

**House Bill 728** would allow the amount of road impact fees to be determined at any time prior to the issuance of a building permit. Under current law, the amount of the road impact fee must be determined before or at the time of site plan or subdivision approval. Can you imagine a homeowner or building purchasing a lot is a subdivision, only to discover when they applied for a building permit that the locality had imposed a \$15,000 or \$25,000 road impact on the lot owner?

**House Bill 731** is identical to Senate Bill 177. It would allow localities to retain full performance guarantees until streets in a new development are accepted by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility.

The bill also provides that if a developer is in default with regard to street completions in another development within a locality, the locality may withhold acceptance of securities or plat approvals. Furthermore, a locality may withhold building permits or occupancy permits within a development until streets in a new development are accepted by the state agency, local government department or agency, or other public authority that is responsible for maintaining and operating such public facility.

**House Bill 1150** would remove the provision in the Code of Virginia allowing a court to award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in an action successfully challenging an ordinance, administrative or other action as being in conflict with that section of the statute which prohibited localities from accepting per-lot cash proffers until after final inspection and before the issuance of a certificate of occupancy.

The bill provides that the cash proffer per-lot payment delay legislation would only apply to proffer agreements made after July 1, 2010.

**House Bill 728, 731 and 1150 have been assigned to the House Counties, Cities and Towns Committee, and HBAV will vehemently oppose all 3 bills before the committee. They threaten the fragile home building industry in Virginia!**