

LOCAL GOVERNMENT PERFORMANCE AGREEMENTS/CLARIFICATION

House Bill 2472 – by Delegate Charles Poindexter

For decades local governments have required landowners to execute Performance Agreements that require the construction of approved new public facilities and connections or additions to existing public facilities meet the localities construction standards. The Performance Agreements also require landowners to post a bond, letter of credit or cash escrow to guarantee the expansion or addition meets the local government standard of quality. In most localities, before a landowner or developer can begin his construction project, the local government requires that their Performance Agreement is executed and that the bond, letter of credit or cash escrow be posted with them.

The members of HBAV have always supported such Performance Guarantees. They assure localities that the additions and the expansions of public facilities (roads, sidewalks, water & sewer, etc.) meet the local government required construction standards.

However, recently some localities have begun including language in their Performance Agreements that require developers to not only guarantee the construction of the approved project, but inadequate public infrastructure that may be nearby or adjacent to the approved project. In other words, before a developer can be released from their Performance Guarantee, they are being required to make improvements to public facilities which are not a part of their local government approved project.

As a result, Delegate Charles Poindexter has introduced **HB 2472**, which will clarify that the terms, conditions and specifications contained in any agreement, contract, performance agreement or similar document to be limited to those items depicted or provided for in the approved plan, plat, permit application or similar document for which such performance guarantee is applicable.

Such a bright line for such Performance Agreements will clarify that localities do not have the unlimited ability to extend such Performance Agreements and their guarantees beyond approved projects. The clarification will also expedite the ability of the owners of land to terminate their Performance Guarantees, when the approved projects are completed to the standards mandated by the locality.

The Home Builders Association of Virginia would greatly appreciate your support for House Bill 2472.