



Home Builders Association of Virginia

ATTORNEY GENERAL OPINION VALIDATES PROFFER

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An HBAV Legislative priority for the 2010 Session of the Virginia General Assembly was legislation to temporarily require a delay in payment of Per-Lot Cash Proffers until after final inspection and prior to the issuance of a Certificate of Occupancy. The legislation passed the state legislature earlier this year and Governor McDonnell signed the legislation into law. The effective date was July 1, 2010 until July 1, 2014.

Upon passage of the legislation, a few local government attorneys or their boards of supervisors concluded the 2010 legislation DID NOT APPLY to Per-Lot Cash Proffers that were formed prior to the effective date of the legislation. HBAV General Counsel William G. Thomas provided HBAV an opinion that the legislation did apply to cash proffers which existed prior to the effective date (July 1, 2010).

HBAV is now pleased to report that Virginia Attorney General Ken Cuccinelli has issued an

Official Advisory Opinion on this important issue to the members of HBAV. He has concluded that based upon the plain language of the statute and its legislative history, General Cuccinelli opined that during the statute's period of effectiveness (July 1, 2010 through July 1, 2014), localities are prohibited from accepting or collecting the subject proffers at any time other than that period set forth in the statute irrespective of whether those agreements were formed prior to the statute's effective date. The Official Advisory Opinion was requested of the Attorney General by Hanover County Delegate Chris Peace.

In addition, the Attorney General opined that state and federal constitutional provisions barring state laws that impair the obligation of contracts (together, the "Contracts Clause") are not infringed by such an interpretation. Specifically, General Cuccinelli found that the Contracts Clause operates to protect *private parties* from the govern-

ment and should not be read to protect a *locality* from legislative action modifying or abrogating its interest under a contract. Thus, the Attorney General concluded, § 15.2-2303.1:1, a statute that may operate to modify a locality's interest in receiving an agreed-to cash proffer at a particular time, is not prohibited by the Contracts Clause.

The Attorney General's opinion confirms HBAV's reading of § 15.2-2303.1:1 and makes clear that contracts and agreements entered pursuant to authority derived from the Commonwealth – such as proffers – may be modified by the state without running afoul of the Contracts Clause.

While the Official Advisory Opinion of the Attorney General of Virginia "does not" carry the weight of law, local government attorneys usually give weight to and most often follow the guidance of such opinions.

Upcoming HBAV Events

October 12th

HBAV Legislative Committee Meeting
- Richmond

October 14

HBAV 7th Annual Golf Classic to Benefit NAHB Build –PAC
- Crozet

November 11

4th Quarter Meeting on the HBAV Board of Directors and Standing Committees
- Falls Church

EPA MANDATE ON NEW CHESAPEAKE BAY RULES MOVING FORWARD

"Hearing Scheduled on Virginia TMDL/WIP in Virginia"

For the past year, HBAV has been actively involved with the Department of Conservation and Recreation and the McDonnell Administration in their effort to deal with an expedited Federal EPA - TMDL Mandate for all the Bay states, including Virginia. The Mandate is a result of the settlement of a lawsuit brought against the Obama EPA by the Chesapeake Bay Founda-

tion. TMDL stands for Total Maximum Daily Load and represents the EPA's rules for how much phosphorus, nitrogen and sediment can be released into the Chesapeake Bay for each watershed of every Chesapeake Bay state. The EPA required each Bay state to submit a draft Watershed Implementation Plan (WIP) to them by September 1, 2010. The WIP is a document that Vir-

ginia has submitted that outlines how Virginia intends to comply with the TMDL limits on nitrogen, phosphorous and sediment in each of Virginia's five watersheds.

Virginia submitted its draft WIP to the EPA at the end of the first week of September. EPA will now consider Virginia's draft WIP and accept or amend it by September 24, 2010.

The accepted or amended EPA proposed WIP will then be the subject of a federal and a state comment period that will end November 8, 2010.

On September 24th, the EPA will also release their latest version of their proposed TMDL for each Bay state, including Virginia.

The new TMDL will be subject to the same 45 day comment period (September 24 to November 8) as the proposed WIP for Virginia.

During this 45 day comment period, the EPA has scheduled a series of regional Public Meetings throughout the Bay Watershed on the TMDL and the WIP, including one in Harrisonburg, Northern Virginia, Richmond and Hampton Roads. The Harrisonburg Public Hearing will be held on October 4 from 6 to 8 p.m. in the Grafton Theatre on the JMU Campus located at 281 Warren Service Drive. The Northern Virginia Public Hearing will be on October 5 from 6 to 8 p.m. in Annandale at the Northern Virginia Community College, Annandale Campus, Ernst Community Cultural

Center, and 8333 Little River Turnpike. A third such meeting is scheduled for Richmond on October 6 from 6 to 8 p.m. at Robins Pavilion Jepson Alumni Center, University of Richmond, and 28 Westhampton Way. A final Virginia public hearing is scheduled for Hampton Roads in Hampton on October 7 from 6 to 8 p.m. at Crowne Plaza Hampton Marina Hotel, 700 Settlers Landing Road.

Each of these Public Hearings will be an opportunity to learn with some detail the real implications and components of the Virginia TMDL that is being forced upon the state by EPA. **There is no doubt that this will impact all new development and redevelopment in Virginia.** It will be our first chance to put comments on the record on the draft TMDL and the WIP.

The NAHB staff will be assisting HBAV to develop our comments on the Virginia TMDL.

This opportunity for comment will be followed by the opportunity to submit written comments to both the EPA and Virginia by November 8.

HBAV will provide suggested comments and contact information to allow all members and every local association to submit written comments to EPA and Virginia, after we see the September 24 proposed TMDL and Virginia WIP after EPA input. In the interim, **please hold one of the above dates on your calendar** as an opportunity to hear from the EPA about these major new requirements as well as to provide comments on this onerous new federal mandate. More details on the EPA TMDL program, the scheduled EPA public meetings and the draft WIP submitted by Virginia can be found at the following EPA website: <http://www.epa.gov/chesapeakebaytmdl>.

HBAV BENEFITS GROUP TO PARTNER WITH PREMIER INSURANCE AGENCY

HBAV Insurance Agency Board Chairman Bob Flynn announced some exciting news about the Agency to the HBAV Board of Directors at their September 16th board meeting in Lynchburg. Flynn announced that with the departure of HBAV Benefits Group Managing Officer Jim Bonnell to join a family business, the Agency has decided to PARTNER with the Premier Insurance Agency in Midlothian, Virginia to market competitively priced and high quality insurance coverage to our members.

With the announcement, Flynn reminded the HBAV Board of Directors that the HBAV Insurance Agency operation and the resources are very important to their state association. While making the best effort to serve the members of HBAV in 2009, the Agency also contributed more than \$180,000 to the coffers of HBAV in 2009.

Flynn went on to say that upon Jim's resignation from the Agency, CEO Mike Toalson and HBAV Insurance Agency Board, which also includes Past Presidents Rich Napier and Anthony Clatterbuck, met and set out on a course to continue the Agency's track record of excellent

service and outstanding contribution to the HBAV bottom line.

Premier has been a member of HBAR and the HBA of Southside for many years. During that time they have marketed many insurance products to the home building industry including ALL the business insurance products we all need, as well as life insurance, health insurance, personal insurance and bonds.

In the future, HBAV will vigorously promote the HBAV Benefits Group/ Premier Insurance Agency, and Premier will sell, underwrite and service the builder and associate businesses in this partnership. At the same time, HBAV Administrative Assistant Rhonda Allison will acquire her insurance license to support Premier. We are hopeful this will be a WIN- WIN partnership for both HBAV and Premier! The Agreement became effective on September 2, 2010.

HBAV would urge every member of the association to consider "Doing Business with a Member" and contact either Chris Hobbs, the Premier Insurance Agency President about all of your business and personal insur-

ance needs, or Brandy Masingo about your commercial lines needs or Alison Eckis, about your individual or company health insurance needs. All three can be reached at 804-794-8000 or a chobbs@yourpremierins.com bmasingo@yourpremierins.com aeckis@yourpremierins.com.

Members may also visit the HBAV website, www.hbav.com for more information on the Premier Insurance Agency.

Chris Hobbs



Brandy Masingo



HBAV BOARD APPROVES MAJOR HBAV BYLAWS CHANGES

Also during the 3rd Quarter HBAV Board of Directors meeting, the board approved significant changes to the HBAV Bylaws. The update to the HBAV Bylaws was recommended as a major Action Step of the 2009 HBAV Strategic Plan Update.

The most significant changes to the HBAV Bylaws include a change in the HBAV Calendar Year from January 1 to December 31 to July 1 to June 30 of the following year. The terms of the Board of Directors, the Executive Committee and all HBAV Committees and Councils will be the same. The rationale is to allow the state association to have the calendar year of its elected leadership and governing bodies and appointed committees to be more directly linked to its primary responsibility...matters of the state legislature.

The name of the HBAV Executive Committee has changed to the Executive Board to parallel a recent NAHB change. Notice of meetings may now be delivered and confirmed by email.

The HBAV Annual Meeting will be held in June, rather than in November. As a result the annual HBAV Installation of Officers will be held in conjunction with the Annual Convention of HBAV. The number of annual board meetings (including the annual meeting) will be reduced from 4 to 3.

The number of Regional Vice Presidents will be changed from 6 to 6 or more. As now allowed, the Board of Directors will continue to set the exact number of Regional VP's. In November, the Board will be asked to approve an increase in the number of Regional Vice President from 6 to 8, meaning each Regional VP will only represent 2 local associations. Currently 1 each Regional VP represents 3 local associations.

The Board also approved a title change for the Executive Vice President to Chief Executive Officer. The duties will remain the same, yet the title change will more accurately reflect the responsibilities of the staff position, and provide the CEO more standing among the many HBAV publics, including state legislators and regulators.

The terms of all committee chairmen and members begin on or about July 1 and end on June 30 of the following year. This change will allow each HBAV president to name his or her leadership team for the next 12 months and to allow all terms of all committees and councils to be consistent with the terms of the Board of Directors and Executive Board.

**KEEP UP TO
DATE
WITH THE
HBAV eVOICE!!**

7th ANNUAL HBAV GOLF CLASSIC

As a member of HBAV, we would like to invite you to serve as a participant or sponsor for the 7th Annual HBAV "PAC" Golf Classic, to be held on Thursday, October 14, 2010 at the Old Trail Golf Club in Crozet, Virginia (just west of Charlottesville). For more information on the Old Trail Golf Club, visit their website at www.oldtrailgolf.com. The 6th Annual HBAV "PAC" Golf Classic generated \$25,000 for the NAHB Build-PAC, and places Virginia among the leading contributors to our national PAC coffers.

The registration/luncheon for the 4-person flighted, Scramble Format/Shotgun Start, golf tournament will begin at 11:00 a.m., and the shotgun start will be at 12:00 noon. A brief awards ceremony and buffet dinner will follow at the Old Trail Club House.

Individuals and sponsored 2-person or 4-person teams may register to participate in the 7th Annual HBAV "PAC" Golf Classic. The individual

entry fee is \$200; 2-person sponsored teams may participate for \$400; and the entry fee for a 4-person sponsored team is \$800. Individual players and 2-person teams will be teamed with other participating players to form a 4-person team. All HBAV builder and associate members are welcome to participate in the golf tournament.

Golf tournament participants will receive a quality attendance gift, golf balls (and other great golf goodies), lunch, spirits, dinner and will be eligible for outstanding door prizes. Awards will also be given to the first, second, and third place teams of each flight, longest drive, closest to the pin, and putting contest winners. This will be another first-class HBAV/NAHB event - a Golf Classic.

To participate please complete and return the Registration Form, along with the appropriate entry fee to the HBAV office. Sponsored teams will also receive program and on-course signage recognition.

If you wish to support NAHB Build-PAC without participating in the golf tournament, individuals or members firms may sponsor a hole (\$150); a beverage cart (\$500); the luncheon (\$1,000), closest to the pin (\$1,000), longest drive (1,000); dinner (\$2,000); or tournament prizes (\$2,500). To support NAHB Build-PAC in this method, please complete and return the Sponsorship Form, along with the appropriate contribution.

To support the event or for more information on the 7th Annual HBAV Golf Classic,

visit <http://www.hbav.com/calendar.shtml> or simply click on [Registration Form](#) or [sponsor the Golf Classic](#) for downloadable forms that you can complete and fax to HBAV at 804-780-2482.