

On October 9, 2008, the joint subcommittee studying development and land use tools in Virginia's localities (House Joint Resolution 178/Senate Joint Resolution 70 - 2008) held its second meeting at 10:00 am in House Room C of the General Assembly Building in Richmond, VA.

According to House Joint Resolution 178 and Senate Joint Resolution 70, the joint subcommittee is charged with examining and monitoring "the transition to channeling development into Urban Development Areas, and" determining "if additional legislation is needed to help localities as they transition to Urban Development Areas." Moreover, the aforementioned resolutions require the joint subcommittee to "make a comprehensive evaluation of all existing land use planning tools and infrastructure financing options and make any recommendations deemed appropriate." The relevant statutory provision of the Code of Virginia governing urban development is § 15.2-2223; also, the tenth enactment of Chapter 896 (2007)/House Bill 3202, as reenrolled, prescribes a deadline by which counties must adopt urban development areas.

Legislative members of the joint subcommittee in attendance were Delegates Athey, Oder, Miller, and Toscano and Senator Herring. Members who serve ex officio in attendance were Pierce Homer, Secretary of Transportation, and Alleyn Harned, Assistant Secretary of Commerce and Trade and designee for the Secretary of Commerce.

#### Work Group # 1

Delegate Glenn Oder, Chair of Work Group # 1, reported the workings of Work Group # 1, which met at 8:30 am in the 5th Floor East Conference room on October 9, 2008. Delegate Oder chaired the work group meeting and others in attendance included the Hon. Pierce Homer, Mary Ann Curtin, Bill Ernst, Douglas R. Fahl, Brian M. Gordon, George H. Homewood, Ted McCormack, Stuart Mendelsohn, Chris Miller, Trip Pollard, Randall R. Silber and Mike Toalson.

Work Group # 1 is tasked with answering the following questions:

- A. Can, and how, cash proffers/impact fees be utilized within an Urban Development Area (UDA) to encourage development near water/sewer/other infrastructure and discourage development that is not near water/sewer/other infrastructure?
- B. Can, and how, cash proffers/impact fees be used to enhance local infrastructure financing, promote higher density inside UDAs, protect farmland/forests/open space?
- C. Do either the statutes for cash proffers/impact fees or Urban Development Areas need to be amended to further the legislative goals in the UDA law?
- D. What is this group's role in relation to the Speaker's group negotiating SB768 from the 2008 session?
- E. What is the appropriate relationship between the financing tools (cash proffers/impact fees) and the land use tool (UDA)?
- F. What is this group's role in shaping future state policy?

Work Group # 1 discussed each of these questions and reported to the subcommittee that there was consensus on incentivizing increased density in urban development areas but no consensus on discouraging development in other areas of a locality through increased fees. There was also agreement among work group members that cash proffers and impact fees should not be considered a reliable source of local government funding due to their unpredictability and their nature as a one-time fee. It was also determined that issues related to the cash proffer system and impact fees were better left at this time to the group that has been asked to negotiate those issues during the 2008 interim. Finally, the work group agreed that the use of community development authorities (CDAs) for purposes of local infrastructure development warranted further investigation by the work group and that a future presentation on CDAs may be appropriate.

### Work Group # 2

Lisa Guthrie, Vice-Chair of Work Group # 2, reported the workings of Work Group #2, which met at 8:30 am in the 5th West Floor Conference Room on October 9, 2008. Vice-Chair Lisa Guthrie chaired the meeting; ex-officio members of Work Group #2 in attendance were Nicholas Donohue (designee of Secretary of Transportation) and Alleyn Harnard (designee of Secretary of Commerce and Trade). Other members of Work Group # 2 in attendance were Tyler Craddock, Michael Edwards, M. Barrett Hardiman, Martin Johnson, Terri Pace, Sue Rowland, Sterling Rivers, Michele Satterlund, Stewart Schwartz, Roger Wiley, and Susan Bass Williams.

Work group 2 is tasked with answering the following question and parts thereto:

What is necessary legislatively to better promote cooperation between a locality establishing an urban development area and those public and private entities necessary to the establishment of a successful urban development area (e.g., state agencies, utility companies serving that locality, redevelopment and housing authorities, incorporated towns within or neighboring the locality)?

- A. Should the duties of the Commission on Local Government be expanded to better promote a locality's establishment of an urban development area?
- B. What is the appropriate role of the state in establishing and furthering urban development areas?
- C. Can state regulations that prevent the successful development of urban development areas be amended to avoid such prevention?
- D. What role can regional planning district commissions play in helping establishing the locations of urban development areas?
- E. How can counties and incorporated towns within such counties be encouraged to designate the incorporated towns as urban development areas?
- F. What role do boundary adjustments play in furthering development near municipal water and sewer lines?
- G. Can the transfer of development rights statute be amended to promote counties establishing urban development areas in towns?

Work Group # 2 discussed, in detail, (1) the appropriate role of the commonwealth in establishing and furthering urban development areas and (2) regulations that prevent the successful development of urban development areas. First, and respectively, the group discussed the advantages and disadvantages of the Commission on Local Government, a commission within the Department of Housing and Community Development, providing technical assistance to localities in planning urban development areas; noting staff limitations, the group discussed the role of regional planning commissions with respect to planning urban development areas. Second, several members of the Work Group # 2 discussed the impact that recently promulgated regulations relating to nutrient caps, sewer capacity, etc, would have on intensifying development in counties that whose existing dense development relies on private water wells and septic systems, as opposed to sewer lines and waterlines.

### Work Group # 3

Matthew Bolster, AICP, Senior Policy Analyst, Commission on Local Government. Virginia Department of Housing and Community Development, reported the workings of Work Group # 3, which met at 10 am on October 2, 2008 in Richmond, VA. Vice-Chair Chip Dicks chaired the meeting; legislative members who participated in the meeting, via electronic means, were Senator Vogel, Chair of Work Group # 3, and Delegates Athey and Paula Miller.

Work group 3 is tasked with answering the following question and parts thereto.

How can the statute governing urban development areas be enforceable and less prone to differing interpretations?

- A. How can the mandate that localities adopt urban development areas in the comprehensive plans be enforced? Should localities be required to adopt urban development areas, but not as a part of the comprehensive plan?
- B. What is necessary legislatively to promote urban development areas as areas for redevelopment in cities?
- C. Should the law be different for zoning and subdividing land in urban development areas?
- D. Should there be a deadline by which municipalities must adopt an urban development area?
- E. What is necessary legislatively to better promote the direction of state and local transportation dollars for housing, economic development, and transportation to urban development areas?
- F. Can the minimum density requirement for urban development areas be averaged out throughout the urban development area?

Work Group # 3 discussed, in detail, (1) whether the law should provide a means by which an individual can seek enforcement of the urban development statute other than a mandamus action (2) whether municipalities should enjoy the same deadline counties currently enjoy with respect to the adoption of urban development areas; (3) whether the minimum density requirement for urban development areas be averaged out throughout the urban development area; and (4) if state agencies, such as the Virginia Resources Authority, could leverage its money to ensure or

promote urban development areas. First, the members of Work Group # 3 did not reach a consensus as to whether the law should provide a means by which an individual can seek enforcement of the urban development statute other than a mandamus action or as to whether the minimum density requirement for urban development areas can/should be averaged out throughout the urban development area. Second, the members of Work Group # 3 recommended legislation that would confer upon municipalities the same deadline enjoyed by counties with respect to the adoption of urban development areas. Lastly, Work Group # 3 decided to further discuss the whether state agencies could and should leverage its money to ensure or promote urban development areas.

Michael L. Toalson  
Executive Vice-President  
Home Builders Association of Virginia

Mr. Toalson delivered a presentation to the joint subcommittee on behalf of the Home Builders Association of Virginia. He first began his presentation by quantifying the housing economy (e.g., "new homeowner spends an additional 15% of the home's value on furnishings and other items for the home"). Next, Mr. Toalson explained how old land use planning promoted urban sprawl and how current market factors promote development of mixed-use properties. After discussing state constitutional guarantees relating to property, Mr. Toalson stated that, despite the movement to new urbanism, consumers should still retain choice in housing types. He then noted the means authorized under the Code of Virginia by which Virginia localities can conduct land use planning (e.g., the collection of impact fees and proffers, the creation of urban development areas). Finally, Mr. Toalson shared the reaction of the Home Builders Association of Virginia to the legislative prescription of urban development areas, suggested amendments to section 15.2-2223.1, and listed principles relating to conditional zoning (proffers) that the Home Builders Association of Virginia believe should guide infrastructure financing.

Peter M. Stephenson  
Town Manager  
Town of Smithfield

Mr. Stephenson delivered a presentation to the joint subcommittee. He first explained the goals of House Bill 3202 (2007), as they relate to land use planning. The presentation centered on a discussion of conditional zoning and impact fees. First, Mr. Stephenson, quantitatively, how cash proffers help furnish capital improvements undertaken by localities. He, however, stated that a properly enacted impact fee system, which would not include artificial limits on the fee amounts, could promote more intense development near urban centers with a lower or no impact fee in the area encompassing such development, as opposed to a higher fee outside of such area. Mr. Stephenson also highlighted the use of cash proffers by localities that do not collect them, e.g., an incorporated town that collects cash proffers using such cash, in conjunction with the surrounding county that does not collect cash proffers, to build a school for students residing in or near the incorporated town.

The next meeting of the joint subcommittee has not been determined.