

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### Meeting Summary

#### **Neighborhood Transitions and Residential Land Use Work Group General Assembly Building, House Room D August 17, 2010, 10:00 A.M.**

**Members Present:** Delegate Rosalyn Dance (Chair), Delegate Glenn Oder, Delegate Daniel Marshall, Barry Merchant, Brian Gordon, Chip Dicks, Michael Toalson, Anthony Burfoot, David Freeman, Kelly Harris-Braxton, Mark K. Flynn, Bill Ernst, Neal Barber, Ted McCormack, A. Vaughn Poller, Tyler Craddock

**Staff Present:** Elizabeth Palen, Jillian Malizio

#### **I. Welcome and Call to Order**

- **Delegate Rosalyn Dance, Chair**
  - The meeting was called to order at 10:05.

#### **II. HB 232—Rental property; civil penalty imposed on certain property owners (Dance, 2010)**

- **Mark K. Flynn, Virginia Municipal League**
  - House Bill 282 affords localities the ability to hold landlords responsible for tenants who continually violate § 18.2-387, § 18.2-388, or § 18.2-415 of the Code of Virginia. The bill provides a locality the proper tools to ensure that indifferent landlords pay attention to what is going on with their tenants and take curative measures.
  - A question that was presented was, should a locality have to give notice to the landlord every time one of his tenants are convicted? This question has been addressed by the additions in line 15 and 16 of the draft, that require written notice be sent to the landlord every time a tenant is convicted of one of the enumerated violations. From the localities perspective, this requirement is cumbersome. The locality must also give written notice within 60 days after the tenants third violation to inform the landlord that court procedures have been initiated.
  - The bill applies only to rental properties that have four or fewer rental properties. Under subsection D, if the landlord initiates legal action against the tenant to remedy the problems, the localities action against the landlord is stayed. If the

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DELEGATE JOHN A. COSGROVE  
DELEGATE ROSALYN R. DANCE  
DELEGATE DAVID BULOVA  
DELEGATE DANIEL W. MARSHALL, III  
DELEGATE G. GLENN ODER

SENATOR MAMIE E. LOCKE  
SENATOR JOHN C. WATKINS  
SENATOR MARY MARGARET WHIPPLE

F. GARY GARCZYNSKI  
T. K. SOMANATH  
MELANIE S. THOMPSON

court says the renter cannot be convicted, the proceeding may not go forward against the landlord either. Each time a renter is convicted the locality must notify the landlord of the conviction and warn that upon the third conviction legal action will be taken against the landlord.

- **Delegate Dance**—*House Bill 232 was initiated by Delegate Bulova. At the time the bill was first discussed the stakeholders did not have an issue with the bill, but some legislators raised concerns during the legislative session.*
- **David Freeman**, American Society for Public Administration (APSA)—*Would the legislation cover a situation where a guest of the renter is convicted of a violation?*
- **Chip Dicks**, Virginia Association of Realtors—*No, the bill is limited to the violating tenant.*
- **Delegate Bulova**—*The notice requirements are a really good addition to the bill because the original intent of the bill was to make legal action a last resort, but at the same time give the localities a way to have some control over wayward landlords. One question about convictions vs. violations, I think it is a good idea that the renter must be convicted of a violation, but that raises a timing concern. Must all the violations—one, two and three—occur within in the twelve month period? Or, must all three convictions be within the twelve month period? Convictions can take longer than the twelve months.*
- **Chip Dicks**—*The bill is limited to criminal convictions. I don't know how many times this is actually going to be utilized. The bill will probably affect renters who violate three times in a two month period not three times over a twelve month period.*
- **Brian Gordon**, Apartment and Office Building Association—*If one renter gets three violations at one time does that trigger this authority?*
- **Chip Dicks**—*That's a good question. We can clarify that the violations must occur on different dates.*
- **Delegate Dance**—*Do we all agree that this bill should be sent to the full commission?*
  - **Yes. All agree.**

### III. HB 790—Removal of defacement from structures (Villanueva, 2010)

- **Andy Friedman**, Director, Virginia Beach Dept. of Housing & Neighborhood Preservation
  - He attended a meeting of possible changes to HB790 with representatives from different interest groups. The group talked about the original intent of the bill—concern about the burden placed on small business owners.
  - The intent is to limit the ability to charge owners only to a subsequent defacement and only when it cost over 1,000 dollars.
  - The result would be that very few small business owners and homeowners would be affected. It would be the very large scale buildings that would be reached by this change.
  - On the first occurrence no one would ever be charged. The work group would like to get language drafted and would like to get the stakeholders back together.
- **Elizabeth Palen**—*Work group member John Henry Jordon could not be here and he asked me to read his comments:*

- “Several of our Manufactured Housing Communities of Virginia (MHC of VA) members have expressed concern about some of the language in this bill as it relates to the penalty aspects. Given that MHC of VA represents land lease community owners, it is quite possible that the defacement in question could be on personal property that is not owned or controlled by the community owner, the owner of the real property. MHC of VA is requesting clarification language that specifies that the property owner, real or personal, is the party subject to the charges, fines and levies.”
- **Delegate Bulova**— *I have two questions, when you say two or more violations are you talking about two or more graffiti events that stay up or are you talking about one graffiti that’s covered up and then there’s a second graffiti?*
    - **Andy Friedman**—Yes sir, it would be when a second graffiti event occurs.
  - **Delegate Bulova**—*My concern with monetary limits is whether more flexibility is needed for the private property owner. When you get into the \$2,000-\$3,000 range, that is a lot of money that may be very difficult for a private property owner.*
    - **Andy Friedman**—That’s actually what we’re trying to ensure—that the locality has the prime responsibility to remove the graffiti. But the property owner must take all possible steps for deterrence. The localities can’t pay to clean up private property. The localities should do it for lower cost jobs—but at some point we can’t take public money to clean up private property.
  - **Chip Dicks**—*I expressed reservations about the original bill because basically the concept of the bill is that if I’m a victim of a crime, and someone comes and puts graffiti on my property, than the locality has the right to put a lien on my property. The compromise that the General Assembly had come to a few years ago, was to apply this to unoccupied property. Some of the reservations about applying it to occupied property, have to do with small businesses and homeowners. The bill basically says that if someone does damage to my house the locality will have the right to come after me. We felt a couple of years ago we had conceded on the unoccupied property. We feel that if a property owner is a victim of a crime, the criminal should pay for. There is also a cost differential were business people said they could get the job done for a couple of hundred dollars and the locality cost is much higher.*
    - **Andy Friedman**—The property owner receives a 15 day notice to remove defacement. In Virginia Beach we have a private contractor to remove abatement.
  - **Chip Dicks**— *The reservation a few years ago was that this legislation would give a locality the authority to go after individual homeowners. Even if the vandal is caught, the court process could take between six months and a year. Under this legislation, what could happen is the city would come out and remove the vandalism, but the criminal is still in the court process and no determination of restitution has been made. So the locality puts a lien on my property. This is a real timing issue that could occur from the scenario.*
  - **Tyler Craddock**, Virginia Chamber of Commerce—*If the locality feels that strongly about the policy choice in order to benefit the entire community, the entire community should bare the responsibility of paying for the cost, not the individual.*
  - **Delegate Oder**—*What is the punishment the locality has for the people they catch in the act? Can they make it more onerous for the people they catch?*

- **Andy Friedman**—I don't know about the punishment side. We think the occurrence of graffiti causes the perception of social disruption and blight.
- **Delegate Oder**—*There needs to be a different way to approach this situation. We need to keep cans of spray paint out of kids hands. Maybe make laws to keep it out of their hands. Increase penalties on people who carry spray paint after 11 o'clock at night. Make it similar to DUI. Attack this from a different way, because going after the property owner, who is a victim, is very difficult.*
- **Delegate Bulova**—*If you were to ban spray paint tomorrow it would still be in people's hands. The question I have is not about increasing punishment, it's about whether there is a mandatory abatement fee tacked onto anyone who has ever been caught or convicted of this crime? Have you ever thought of something like that?*
- **Kelly Braxton-Harris, Virginia First Cities**—*Graffiti is a real blighting influence on cities and is a real problem. I understand the legislators saying we need to come up with another solution. As you have seen in the pictures—some localities are having to remove the graffiti at their own cost because of the blighting influence on the neighborhoods. Localities need help because they are spending a lot of money, there needs to be a balance.*
- **Delegate Dance**—*Mr. Friedman, you began by saying this is still in a planning stage, you have had more information provided here. Know that all these questions have to be answered as well.*

#### IV. HB 960—Local housing trust fund (Ingram, 2010)

- **Neil Barber, Virginia Housing Coalition**
  - The intent of the bill was to provide localities the authority to establish a housing trust fund. Three issues have been raised: 1) The provision in paragraph B, that would allow for appropriations of various money to trust fund. Here, the concern is the provision that would allow cash proffers into the fund. 2) The second concern was from the homebuilders and their concern was the effect of the bill would be that local governments would be in a competitive position with local banks. 3) The third concern was that there may be restrictions on existing funds that have already been established.
  - I have floated several alternatives by those who had reservations. To solve the first concern, I proposed to eliminate paragraph B. To address the second issue I offered to amend the bill to include language in current law which provides the opportunity for local financial institutions to carry out loans as well. The third item change was to amend paragraph D to strike local ordinance, so that if a local fund was already established, it would be considered to be grandfathered in to the program.
  - I would suggest further amending the language to strike “for purpose of rehabilitating...” In addition, Arlington County requests that the first sentence be amended to add that a locality may establish a housing fund by resolution as well as by ordinance.
- **Brian Gordon**—*What prohibits a locality from doing this already?*
  - **Neal Barber**—§15.29.8 of the Code of Virginia is just a general authority with conditions or limitations. It does not cover the full range of housing needs. The language we put in is more encompassing and liberal as to the type of needs.

- **Connie Chamberlin**, *Housing Opportunities Made Equal of Virginia (HOME)*—  
*What does it mean that the lending institutions would have an opportunity to participate?*
  - **Neal Barber**—Typically private institutions cannot provide the type of financing the public sector can provide. In practice, I don't see it having any effect on the administration of the program
- **Mike Toalson**—*Builders are concerned that this bill could become another item on the proffer list. I don't think that in an economic climate like the one we are currently in, local government should be entering into and competing with, the private sector. Even though I know the fund is intended for people who can't afford housing—should the government be competing with the private sector?*
- **Neal Barber**—*A lot of local government programs are structured so that the benefits will go to the people they are intended for, that should not be an issue.*
- **Delegate Dance**—*We are trying to bring various stakeholders together and it seems at this juncture that everybody is not in agreement on this bill. Another approach is needed if this draft is to go forward otherwise this will not be recommended to the full Commission.*
- **HB 1280—Virginia Fair Housing Law; unlawful discriminatory housing practices (McClellan, 2010)**
- **Chip Dicks**, *Virginia Association of Realtors*
  - The purpose of this proposed legislation is to include affordable housing among the named reasons for which a locality cannot solely reject allowance of affordable housing
  - Developer wants more flexibility and the localities want quality assurance. I don't believe that this language in any way affects those circumstances.
- **Mike Toalson**—*A questions for Connie, wasn't this bill initially designed to be include single family housing?*
- **Connie Chamberlin**—*The intention was to make sure that merely the fact that who was going to live in the housing wasn't the basis approval of the building.*
- **Mark K. Flynn**—*One issue is that if part of the project is affordable housing and the developer and the locality get into a fight about something else, the developer can use it to threaten the locality to have to accept the project.*
- **Chip Dicks**—*Wouldn't you agree, Mark, that that potential threat exists in the fair housing law today?*
- **Mark K. Flynn**—*Yes, this is just an example of a possible issue.*
- **Delegate Bulova**—*I think there are circumstances where you have a very explicit area of discrimination, if it is to be explicit it would be somehow written or verbal. My question is, would it be useful to include explicit language here, so you don't have someone say, I think, I feel, or it appeared to me?*
- **Connie Chamberlin**—*I feel that the way it's written today is the best way to strike the appropriate balance. I think once you start requiring that something be in the written record the purpose of the bill is undermined because those discussions are not going to be in the record.*
- **Delegate Dance**—*Is this a bill we can refer to the full Housing Commission from the subcommittee. All those in favor?*

- **Yes, all agree.**

**V. Adjourn**

The meeting was adjourned at 11:30 A.M.