

# COMMONWEALTH OF VIRGINIA

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## VIRGINIA HOUSING COMMISSION

### Meeting Summary

#### **Receivership Sub-Work Group 6th Floor Speaker's Conference Room, General Assembly Building June 6, 2011, 10:00 A.M.**

Members present: Delegate Rosalyn Dance, Delegate John Cosgrove, Mark Flynn, Chip Dicks, David Freeman, Vaughn Poller, Bill Ernst, Jennifer Wicker, Kenny McLemore, Jon Baliles, Bonnie Ashley, Julie Seward, Lee Downey, Bob Newman, Nicholas Buccola, Ali Faruk, Lane Pearson, and Kally Harris Braxton

Staff present: Elizabeth Palen, Beth Jamerson

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

- Delegate Rosalyn Dance, *Chair*
  - The meeting was called to order at 10:03 AM.
  - Each member of the sub-work group introduced himself.

#### **II. SB 1312; Repair of Derelict Buildings (McEachin, 2011)**

- Jon Baliles, from the City of Richmond Planning and Development Review, began the meeting by summarizing the receivership process and why it is needed in Virginia. Receivership is a new tool for localities to rehabilitate vacant, residential buildings. It is used in other states, and has been especially successful in Baltimore, Maryland. The properties targeted by receivership are those that are visibly uninhabitable. Sometimes these homes are kept vacant for decades, have numerous Code violations, and create safety issues for other residents in the neighborhood. He distinguished receivership from spot blight and eminent domain in that receivership guarantees the house will become habitable before being sold. Receivership can be an especially effective tool for Richmond due to the high number of vacant properties in the city.
- Delegate Dance yielded to Delegate Cosgrove to hear his concerns regarding the bill and to hear from other members of the group.
- Delegate Cosgrove's concerns included the procedures by which a building will be taken over, the costs involved in doing so, and the bill's interference with private property rights. It is necessary, he believes, to keep property rights at the forefront of these discussions.

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

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

MARK K. FLYNN  
T.K. SOMONATH  
MELANIE S. THOMPSON

- Mark Flynn, of the Virginia Municipal League, expressed his support for the bill, citing the benefits to localities as well as property owners. Most often, derelict property has fallen to that condition due to financial trouble or problems with the title, and this process allows the owner to be a participant in rehabilitating the property. If the owner is able to pay off the receiver's lien at any point during the process, then he retains ownership of a newly habitable property. Otherwise, the house is sold and the owner receives more money than if the city had used its existing authority under spot blight statutes or eminent domain. He conceded that in some receivership cases there will be a taking. However, the property owner will receive more money using receivership than through an eminent domain taking. Furthermore, the receiver must answer to the court to show what costs will be incurred during the rehabilitation of the property. Those costs include the renovation expenses, taxes, any private liens that have attached to the property, and possibly an administrative fee to the city for managing the receivership program. In addition, the receiver should be paid a reasonable profit for bringing the property up to Code as this provides a service to the public.
- Jon Baliles added that the receiver must submit a plan to the court before repairs may take place. He estimated renovation costs at \$20,000–\$60,000 per housing unit. The total number of vacant residential buildings in Richmond is around 2000, but that number only includes houses that are habitable. He estimated the number of houses that are uninhabitable and therefore subject to this process at approximately 500–600.
- Delegate Dance expressed concern over a situation in which a house may have sentimental value to a family who cannot afford to make the necessary repairs, but would like to keep the house in the family.
- Jon Baliles reiterated that if the house was being lived in it would never go through the receivership process; receivership only applies to vacant homes.
- Lane Pearson, from the Better Housing Coalition, explained that each receivership case has case-specific issues the judge will need to weigh in deciding whether to allow the property to go through the process. The judge may decide to protect that house because of its sentimental value. However, the goal to rid the community of blighted and nuisance properties needs to be kept in mind when making these decisions. Although the property may be sentimental to a family, their neighbor may see this house as a fire hazard, and that is something the judge will need to consider.
- Mark Flynn emphasized that in addition to being vacant, the property must also be boarded up and have been disconnected from utilities for a period of six months to be eligible for receivership.
- Delegate Dance directed the group's attention to line 58 of the bill, which reads that the receiver may enforce the lien on the property through a sale at a public auction.
- Delegate Cosgrove noted that although the property owner can retain ownership by paying the receiver's lien at any time during the process, they are unlikely to be in a financial position to do so if they cannot afford to renovate the property in the first place.
- Delegate Dance expressed concern that one judge's decision will determine whether a house will go through the receivership process or not. She asked the group if

there is a way to limit the judge's discretion over the determination that the house is eligible for receivership.

- Jon Baliles brought up the Oliver Lawrence cases. Those houses had repeated Code violations and a high incidence of criminal activity. In those instances a judge would easily be able to determine that the house is harming the community. A house that has sentimental value is a different situation, and most judges would probably determine it is not a problem property and would not be a case for receivership.
- Delegate Dance emphasized judges' latitude needs to be tightened so they do not have complete discretion in determining a case for receivership. She stressed that as lawmakers who represent the people who will be affected by this bill, they need to address concerns as to how each judge will handle a particular situation in regard to receivership.
- Mark Flynn suggested adding another requirement to what the petitioner must prove in subsection B(2) at line 21. That additional requirement could be a condition that negotiations with the owner have been attempted and proven unsuccessful, which would also allow the judge to hear the factual background behind the house rather than just hearing about the state of the house. Another way to obtain control over judges' discretion could be to restrict the types of repairs the court may authorize under subsection E, beginning at line 46. Restrictions could include a requirement that repairs remain consistent with the characteristics of the surrounding homes and neighborhood. Then if the receiver wants to add unnecessarily expensive features, such as granite countertops, the judge would be unable to authorize that type of repair and at the end of the process the owner would have a more reasonable chance to repay the lien and retain ownership of the property.
- Delegate Dance commented that in such an instance the property owner would participate in the development of the repair plan and be involved in ensuring the property was brought up to Code without incurring unnecessary expenses.
- Jon Baliles stressed that the property owner would be involved in every step of the process, because the title still belongs to the owner. Anytime there is a hearing in court regarding the property the owner will attend and be heard, unlike eminent domain.
- Mark Flynn commented that there has to be a finding by the court up front that the property is eligible for receivership, and the proposed bill provides for the owner's participation as a necessary party throughout the receivership process.
- Delegate Cosgrove voiced his concern regarding the affect this bill could have on military personnel. He pointed out that members of the military may be deployed for as long as three years at a time. In a situation where a house is inherited by a member of the military while overseas, it remains vacant, and the building becomes derelict, that military member could lose his family home.
- Chip Dicks, of FutureLaw, mentioned that the federal Servicemembers' Civil Relief Act, which protects military personnel from foreclosure, trumps any law at the state level. However, the act does not specifically reference receivership.
- Delegate Cosgrove stated it needs to be clear the bill is subject to the federal law. He also expressed concern regarding older homes. Some older residences may have wood burning stoves or lack other modern amenities. Those houses may already be

close to a decrepit state. To illustrate the potential problem, assume an older lady living alone in one of those houses has to be moved to a nursing home and the house becomes derelict in her absence. It would be nearly impossible for her to pay for the repairs at that point and keep the house. The group needs to consider what the requirements would be for repairing a building to a reasonable state. Does a reasonable state mean meeting the Building Code? Replacing the wood stove with gas heat? There are many older towns, such as Lovingston, in Virginia, and with the state of the economy many people living in older homes may find themselves unable to perform basic maintenance repairs on their houses. These are all issues this group needs to keep in mind when discussing receivership.

- Delegate Dance asked Mr. Dicks for recommendations concerning the bill.
- Chip Dicks had several comments and suggestions.
  - He first noted that he shared Delegate Cosgrove's concerns.
  - Under the Uniform Statewide Building Code, repairs need to be done consistently with the current Building Code. When a building reaches the point of being boarded up, the basic elements of the unit, such as HVAC systems, have deteriorated significantly, which triggers the new standards under the current Code. Localities will make renovations that may be more extensive and costly than the owner is able or willing to do himself for the property.
  - The derelict structures legislation provides for tax abatement, and that should be cross referenced in this bill to incentivize the property owner to make repairs to the building. The tax abatement is not statewide; therefore this bill needs to contain language that allows the tax abatement under local ordinances in conservation or rehabilitation areas.
  - All of those provisions should be included as a pre-condition before going to court so that the property owner has been given every opportunity to make repairs to the building. Receivership is a last measure, because someone is ultimately losing property rights.
  - This group previously discussed making language changes at line 74, specifically that "may" should be changed to "shall." Another concern with the same paragraph is with lines 79 and 80, which read the posting of a bond is sufficient to secure performance of the repairs. The problem with requiring a bond is that the bank has to approve letter of credit language acceptable to the locality, and this is an extremely difficult process. In the end, the receiver would need to put up the bond himself, which requires 100 cents on the dollar in cash. If a letter of credit or bond has to be collateralized with cash, and then the receiver has to pay cash to repair the property, he has to produce enough cash for twice the cost of repairs up front, which is too great an encumbrance for the owner.
  - The real controversy regarding this bill is that the receiver can take title of the property, which is found in lines 58-68. Divesting an owner of his property rights is a highly sensitive political subject, and the Commission found it became an issue with the derelict structures legislation even though that bill had nothing to do with eminent domain. Even if this group manages to draft acceptable language addressing the other concerns, the

question will ultimately turn to the taking of legal title. People will lose property rights as a result of this bill, which is bordering on eminent domain. The Commission's response to that concern is that in many ways this legislation creates a better outcome for the owner than would result under eminent domain and tax sales. There is no right to surpluses under a tax sale, and although this bill provides a better process than what the taxpayer currently faces, the fact remains that this bill is enabling legislation to take away property rights. He asked if there is a way around actually taking title or if doing so would defeat the purpose of the bill.

- Jon Baliles confirmed removing the provision allowing the taking of title would render the bill pointless. The rights of property owners who live in the area surrounding the dilapidated house also need to be kept in mind. A tax sale can occur, but if the house is sold at auction in its current state it adds to the neighborhood's comps and depresses property value. If the house is taken through receivership, it sells for more than it would have at a tax sale, which helps prevent the comps from going down. The map of crime areas shows a high correlation between vacant buildings and crime density. While there is a property rights issue, at some point the safety and well-being of the surrounding neighborhood has to be taken into consideration. There was a house fire at a vacant residence in Church Hill that could have burned the entire block to the ground. The state forces people to have their cars inspected every year or it will impound their vehicles. If the owner makes the necessary repairs, he can reclaim his vehicle. This is a taking by the state enforced to protect the safety of other drivers.
- Chip Dicks mentioned that the concern with the derelict structures legislation was that it divests property rights, although there is no eminent domain or takings power in any form in that bill. He wondered if a receiver's lien became tantamount to a tax lien, would the locality then have tax lien authority to take the property.
- Bonnie Ashley, with the City of Richmond, answered that ultimately, yes, the locality would have the authority to take the property. In amending this proposed legislation it is important to keep in mind the benefits to the property owner, including the necessity of the owner's participation and his sharing in the surplus from the sale of the property. Receivership is more favorable compared to the other tools that already exist, and provide the locality with an option besides eminent domain or a tax sale. This bill is a way of providing a solution that benefits the property owner as well as those who live in the vicinity of the property.
- Delegate Dance advised that there be some flexibility with the bill, and warned drafting the language too narrowly will likely prevent the bill from getting as far as the full Housing Commission. She noted that it is often easier to amend or modify existing legislation, and wondered if there is a way to do that in this situation.
- Jon Baliles responded that the city is open to amending the language and agreed with all of Mr. Dicks' suggestions, but unless there can be a taking there is no incentive for the property owner to repair the building. Oliver Lawrence is a perfect example of someone who worked the existing system for years without consequence.
- Delegate Dance replied Oliver Lawrence is only one person, and legislation needs to deal with the majority.

- Mark Flynn expanded on Chip's recommendations and suggested rather than include a sale provision in the bill, make repair costs equivalent to a tax lien. Doing does not preclude a right of sale, and would allow the locality to recover the costs of the repairs, but it could take as long as two years to recover the costs. He suggested renting the property during those two years as a possible way to recover costs sooner.
- Chip Dicks noted that the concept of a locality spending revenue to make repairs that constitutes a lien on the property already exists in the general lien provision of the Virginia Code. Creating the ability to take the house through a receivership lien on parity with a tax lien gives localities the authority they need without this bill; it creates the process of receivership without adding any additional taking authority.
- Mark Flynn mentioned that under §15.2-906, if a locality secures a building, the costs in doing so may be collected by the locality as taxes are collected. Again, the problem with this approach is the two-year recovery time frame, which is not a viable option without a revenue stream.
- Jon Baliles remarked that if the receiver had to wait two years before the possibility of recovering his investment, the incentive to make the repairs is lessened.
- Delegate Dance suggested by making the repairs, the receiver will build goodwill with the community, and perhaps that will be enough of an incentive to do the work. Repairing those structures provides a benefit to the city, and in two years the building will be sold.
- Chip Dicks emphasized that instead of the local government supplying the money for the repairs, a private investor is providing the funding. Under the proposed legislation, the locality will be able to take property that was repaired by a private investor. This all goes back to the discussion involving *Kelo v. City of New London* that has been ongoing in the General Assembly since 2006. This is the most controversial part of the proposal. The locality needs to provide some of the capital for the repairs, perhaps through a derelict structures fund, because otherwise the process involves a private party paying for the rehabilitation expenses and the government taking title of the property.
- Mark Flynn reiterated that the authority to take a private structure already exists with spot blight statutes, but the locality has to provide all the funding throughout the process. The value of receivership is that it protects property rights and expectations of surrounding neighbors, it only applies to properties that are subject to repair, and private money is used to fund the process.
- Lane Pearson mentioned that in Maryland there is a post-sale right of redemption, and suggested expanding foreclosure powers. He wondered if a post sale-right of redemption might appease those who are concerned with eminent domain.
- Chip Dicks responded that he did not think a post-sale would assuage eminent domain concerns. He advised the group not to get involved with foreclosure issues at the moment. Lenders would be concerned about a post-sale since that might translate into their world.
- Delegate Dance acknowledged that although there is no housing fund for the entire state, there are localities that have housing funds.
- Chip Dicks noted Arlington is one of the localities with a housing fund.

- Jon Baliles answered that although Richmond has a housing trust fund there is currently no money in the account. He suggested using receivership as a trial program and limiting its applicability to cities.
- Mark Flynn suggested limiting the applicability by requiring a certain population density. Ultimately, though, limiting the process to cities does not resolve the concerns over this bill.
- Jon Baliles disagreed because receivership is a tool to solve an urban problem. The bill is not intended to target property in more rural areas. He suggested limiting the bill by somehow tying it to the state poverty average.
- David Freeman, with the City of Norfolk, agreed that density might limit the bill appropriately.
- Jon Baliles reiterated that receivership is needed in cities.
- David Freeman agreed that the presence of vacant buildings is an urban problem, as the greatest number of both vacant buildings and crime are found in the northeastern quadrant of Richmond.
- Kelly Harris Braxton, from Virginia First Cities Coalition, commented that many cities have expressed an interest in receivership, but the biggest concern is the property rights issue. The concern with limiting receivership to cities is that it is a slippery slope and could easily spread throughout the state.
- Jon Baliles mentioned when a receivership bill was first proposed in Maryland, it wouldn't pass statewide so it was limited to Baltimore. Now other cities, including Frederick, are asking that the bill apply to them as well. Limiting the bill to one city is a focused way to try the process on a trial basis.
- Delegate Cosgrove explained a bill limited in such a way is what is referred to as setting up the proverbial Christmas tree, adding an ornament every year. There are numerous instances where the General Assembly limits a bill and year by year it is amended to broaden the limitation. He revealed that he is wary of bills that do this, and he would not support a bill tailored to one locality. He asked about the genesis of the bill.
- Delegate Dance answered that it came from the city of Richmond. She expressed her doubt that the bill, as proposed, would even be heard before the full Commission. She suggested amending an existing bill instead as a way to ease into the process.
- Mark Flynn suggested incorporating a requirement that the locality has made a declaration of spot blight before the property could be eligible for receivership. Once spot blight has been declared, the building is going to be torn down or repaired. Adding a requirement of spot blight would prevent this bill from being used on a farmhouse or similar structure, because it wouldn't be a hazard or a nuisance, and probably would not be close to anyone else's property. This requirement would limit the properties the bill could apply to, plus the building would already be about to change ownership.
- Lane Pearson asked if this would be a finding at the beginning of the process.
- Mark Flynn answered he is not sure what the necessary steps are in the spot blight process, but they would want to look at the proposal and harmonize it with spot blight.

- Chip Dicks pointed out the importance of limiting the authority to the restrictions on condemnation contained in Title 1. By subjecting this process to the condemnation provisions, the concern is that property rights advocates may argue that every time the bill is amended any progress is eroded. By subjecting spot blight to a more global provision, Va. Code § 1-219.1, nothing changes the language of § 1-219.1 which makes clear this is not eminent domain. However, the political reality is a bill that give a new legal right to take property will not get out of committee. Delegates Cosgrove and Dance agreed with Chip on this point.
- Chip Dicks suggested an approach that looks to the existing powers in Title 36 or § 1-219.1, otherwise receivership is vulnerable because it bypasses the protections that were built into eminent domain.
- Delegate Dance again expressed doubt that a receivership bill could pass the General Assembly. She suggested making amendments to existing legislation that would begin working toward the receivership process being incorporated. She suggested a place to start would be through cultivating relationships with developers who work with the city and building good faith with them. She suggested that Mark and Chip work with Jon on a proposal to bring before the work group at the next meeting.
- Delegate Cosgrove mentioned that in Chesapeake localities are extremely concerned about property being taken for public use. In Chesapeake two gas stations were going to be taken to build a CarMax, and Norfolk has had problems with the Coke plant. Subsequently that area of the state is particularly concerned with any ability to take property.
- Chip Dicks wondered if the locality is prevented from changing the zoning if the property is taken through receivership and sold at auction. He agreed that taking a house to use for a convenience store is a concern.
- Jon Baliles commented that a few years ago the city allowed for increases in fines on owners of vacant property. The fines are only approximately \$50–\$250, with the fines increasing the longer the property is vacant. That approach was not successful because it led to situations where a house could be vacant for ten years and the owner would only have to pay \$200 in fines, so there was no incentive to repair the property.
- Chip Dicks explained concerns with regard to increasing fines for vacant property. There are localities such as Danville, which has a growing vacant building population, but there is nothing the city can do to solve the problem because it has been devastated. There was reluctance on the part of the General Assembly to increase fines because many owners of vacant property are victims of the economy. A vacant building registry could become punitive. Often times, the owners are not at fault.
- Delegate Cosgrove commented that if the owner of a building pays taxes and keeps the property in reasonable repair it's his prerogative to keep the property vacant. He likened owning a vacant building to owning a classic car.
- Jon Baliles agreed that if the property is kept in reasonable repair and it is up to Code and secured, the owner can keep it vacant for as long as he would like. The concern is with those who do not stay within the bounds of the state Code.
- Delegate Cosgrove asked if there is a civil remedy.



- Jon Baliles mentioned spot blight and tax sales, but waiting two years before costs are recovered is too long a time period.
- Delegate Dance asked Jon, Mark, and Chip to prepare a proposal for the next meeting to move this issue forward.

### **III. Public Comment**

- There was no public comment.

### **IV. Adjourn**

- The meeting was adjourned at 11:29 AM.