

Housing & Environmental Standards
General Assembly Building; House Room C
October 23, 2009 1:00 P.M.
Richmond, Virginia

Members Present: Senator Watkins (Chair), Delegate Hull, Delegate D. Marshall, Joy Lerch, Jerry Wright, R. Schaefer Oglesby, Shaun Pharr, Neal Rodgers, John Hastings, Ed Rhodes, Emory Rodgers, Brian Buniva, Michael Congleton, Barrett hardiman, Sean Farrell, Art Lipscomb, James Dawson, Chip Dicks

Staff Present: Elizabeth Palen and Diana Pharao

Speakers: Emory Rodgers, David Dowling

1. Welcome and Call to Order

- Meeting was called to order by Senator Watkins at 1:05 P.M.

2. Emory Rodgers, Department of Housing and Community Development (DHCD)

- Discussed update on building codes.
 - o Mandated sprinklers have been adopted by the Uniform Residential Code at a National level.
 - In March, DHCD established a workgroup to handle, among other things, the sprinkler issue in Virginia. The workgroup also met on September 9, and another meeting will be held on December 3, where the proposed regulations should be adopted. On January 25, 2010, a second public hearing will be heard.
 - The agreement to date among stakeholders is that the code will not change to mandate sprinklers in manufactured housing.
 - Whether the mandated sprinklers apply to townhomes in addition to single family homes is an issue actively being reviewed.
 - The Board of Housing is scheduled to approve final regulations in July 2010; anticipating an effective date of August or September 2010.
 - o Energy Provisions
 - **Delegate D. Marshall**—*Have you been working on a cost-benefit analysis to determine the impact of energy star appliances?*
 - Generally, under the model codes, energy star appliances add 1-3 percent in addition to construction costs. The set of codes currently being reviewed will probably lean more toward the 3 percent rather than the typical 1 percent. The paybacks for energy star systems implemented in 2009 are approximately 5-7 percent; this percentage will be refined over time.
 - **Delegate Hull**—*Do all modifications to the code apply prospectively, i.e. to new construction only?*
 - o To new construction only at this point in time
 - o Carbon Monoxide Detector Provisions

- The Code has also mandated carbon monoxide detectors be placed in every single family home; this will be addressed in DHCD's next workgroup meeting.
- **Senator Watkins**—*Are carbon monoxide detectors mandated in new construction only? Will the new provision apply retroactively?*
 - Currently, the board is only reviewing new construction.
- **Delegate Hull**—*Are these alarms hard-wired or battery-operated?*
 - Battery-operated.
- Overall, there are 125 issues currently being reviewed. DHCD will work through each one and attempt to gain a consensus; those issues that do not receive consensus must be decided by the Board of Housing.
- Discussion regarding gray water ensued.
 - Emphasized the importance of ensuring that the building code does not impede a builder's use of gray water, where appropriate; need to see how this might work in relation to the health department and the DEQ.
 - **Delegate Hull**—*We need to ensure that the building codes do not become an impediment to innovation. There will be an increase in innovative energy products and use of gray water within the next decade. The building codes cannot become too tied up in its procedure as opposed to its goal. If it gets too specific, it will inhibit innovation.*
 - **Senator Watkins**—*Are there any considerations regarding rainwater catching systems?*
 - Yes, we are looking at rainwater harvesting, and we will ensure that any building regulations are compatible with state law.

3. **David Dowling, Policy, Planning and Budget Director, Department of Conservation and Recreation (DCR)**

- Provided an overview of stormwater regulatory actions that DCR has been working on for the past four years (see handout).
 - These regulations will help Virginia further protect water quality, avoid future costs, and maintain a viable economy.
- **Delegate Hull**—*If a developer pays money to the department, are those funds used for the improvements in that developer's locality or anywhere?*
 - When the DCR receives funds, it will track where the funds came from; regulations ensure that a developer's payment will be used in the developer's locality.
- Discussion ensued regarding bonds
 - **Senator Watkins**—*Virginia has bonds; if these regulations become a requirement of construction, then you have undermined the ability of the bonds to pay these projects.*
 - We need to take a closer look at that; 98 percent of road construction projects are completed within two years after they are started, and only a handful of projects extend to five years. DCR has provided a ten year period.
 - The EPA has put DCR in a tight box; EPA does not want to see any projects extend past 2014.

- **Delegate Hull**—*The rail to Dulles Airport, for example, will take an estimate fifteen years to complete. Districts are paying money into a fund to help finance this project.*
 - DCR is aware of the bonding issue and tried to approach the issue in the best way possible.
- **Senator Watkins**—*There are state, UDA, municipal, and private bonds that are all based on performance; they are tied with construction, densities, and ability to return on investments. These bonds undermine the financial system that would make these proposed regulations work.*
 - That is not DCR's intent; perhaps DCR needs to consider this issue further.
- **Chip Dicks**—*If there is a grandfather provision that included an exception for projects covered by bonds, i.e. an exception for bond covenant type provisions, then the EPA should at least recognize that they cannot undermine this.*
 - We may bring this to the EPA's attention.
 - If a project falls under the grandfathering requirements, they are given additional relief for another five years.
- Discussion ensued regarding fees
 - **Delegate Hull**—*I am concerned with these fees; in areas like Fairfax County, for example, the fees will be higher than in a rural area because their costs are so much higher. How much are the fees currently?*
 - Fees are based on an acreage perspective: under five acres, the fee is 300 dollars; over five acres, the fee is 500 dollars. These are the fees that perpetuated from the DEQ.
 - **Delegate Hull**—*If the locality does not develop a program, DCR will administer the program. Does this mean that DCR will charge a fee, then go to the locality and develop a program?*
 - Yes. If the locality does not want to administer its own program, DCR will take care of it; it is up to the discretion of the locality.
- General Questions/Comments
 - **Delegate Marshall**—(Referencing Slide 2) *The DCR is ultimately trying to clean up the Chesapeake Bay, but my part of the state does not extent to the Bay—hasn't DCR excluded us?*
 - No, these are statewide regulations. Your localities can execute their own regulations in their area. The only difference between your part of the state and areas like Fairfax is that your part is not required to execute regulations, and Fairfax is required.
 - **Chip Dicks**—*Assume an example of a shopping center and an apartment community. Could you comment on the cost differential between the developer and correspondingly to the tenants/homeowners?*
 - DCR cannot give a definite figure; when looking a multi-billion dollar impacts in terms of improvements to the Bay, there is a minimal cost differential. DCR intends to review this issue again based on the final regulations.

- o **Delegate Hull**—*There are some soils that are naturally high in phosphorus, but depending on the soil, the phosphorus might never be realized—the phosphorus is trapped by clay in clay soils and cannot be released. Does DCR test the soils?*
 - Yes, a characterization of the locality's soil is figured into the computations.
- o **Delegate Hull**—*Generally, existing soil is excavated, and a fill soil is used. The fill soil may have a different composition than the existing soil. How will DCR handle this?*
 - This can be taken under consideration. If developers show DCR that they used a fill soil, then DCR is going to ask what type of soil, and what amendments will the developer add to it
 - The developer will need to identify the soil, i.e. where it came from, how much was used, etc.; identification is required in order to get a permit
- o **Brian Buniva**—(Referencing Slide 7) *What is the relationship between maintaining buffers in which states have designated areas of protection for the Chesapeake Bay watershed?*
 - There is no direct connection; it depends on the location of the development site. If your area has Chesapeake Bay buffers in place, I suspect you would get some crediting, because the buffer cannot be removed.
- o Series of questions/comments posed by **Senator Watkins**
 - (Referencing Slide 6) *Expressed disappointment that DCR did not address reuse more adequately. Believes DCR should be more specific with how to incorporate reuse into the regulations because if left as an afterthought, it will never be accurately considered in the formula how to calculate phosphate runoff.*
 - *Has Department of Planning and Budget (DPB) retracted their earlier statement that these proposals were not cost-efficient?*
 - Although unauthorized to speak on behalf of DPB, there is reason to believe that DPB would change their previous answer.
 - *If an individual developer or landowner in a MS4 locality has cause to take someone to court, they will suing the localities and not DCR, is that correct?*
 - Yes.
 - *Does DCR have its own definition of UDA (Urban Development Area)?*
 - Yes, the definition is in DCR's regulations, and it is the same definition used in the Virginia Code.
 - *How do you expect us to deal with the adequate treatment of stormwater on a regional basis?*
 - We have provided a wide variety of BMP's available to address stormwater controls; there are regional strategies that

can be utilized other than in-stream treatment; maintenance is each locality's responsibility.

- *Expressed concerns regarding the effects of implementing these regulations, specifically because of the current economic recovery Virginia desperately needs.*
 - DCR is aware of the current economic hardships, and it tried to address the economic concerns. These regulations will not be implemented immediately, but rather over the next three years. DCR has tried to be responsive and understanding to the issues.

4. Public comment

- May Fox distributed a flyer from the Chesapeake Bay Foundation.

5. Meeting was adjourned at 3:15.