

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

MEETING SUMMARY

Neighborhood Transitions and Residential Land Use Work Group House Room D General Assembly Building May 3, 2011, 10:00 A.M.

Members Present: Delegate John Cosgrove, Delegate Rosalyn Dance, Delegate Glenn Oder, Mark Flynn, Barry Merchant, Brian Gordon, Chip Dicks, Michael Toalson, David Freeman, 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*
 - o The meeting was called to order at 10:10 A.M.

II. S.B. 1312; Repair of Derelict Buildings (McEachin, 2011)

- Jonathan Baliles; Exec. Staff Assistant, Planning & Development Review, City of Richmond
- James J. Kelly, Jr.; Visiting Professor of Law, Washington & Lee University School of Law
 - o Receivership is tool in which government has a marginal role, and instead involves the private sector. The process addresses issues of urban code enforcement, economic development, and public safety. It allows a judge to appoint a receiver to oversee the repair of vacant residential property with persistent and outstanding Code violations.
 - o Why is receivership needed?
 - Receivership combats blight using private money and resources.
 - Vacant property has the highest correlation to the incidence of crime.
 - Vacant houses cost the houses around it value.
 - It provides for more effective enforcement of the Virginia Code as current Code enforcement tools don't work.
 - Receivership targets visibly uninhabitable properties, not properties that have been foreclosed or are commercial properties. Visibly uninhabitable properties are homes with serial Code violations, those

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DELEGATE DANIEL W. MARSHALL, III
DELEGATE G. GLENN ODER

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

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that remain vacant for decades, and those that are the scene of illicit activities.

- Banks want to get rid of foreclosures and derelict buildings, and receivership turns derelict buildings into revenue producing parcels for local tax rolls.
- Of the 2,300 vacant properties (including commercial buildings and buildings lost through foreclosure) in Richmond, roughly 500-600 are visibly uninhabitable.
- Current regulations delay the process.

o What is receivership?

- Receivership allows private parties to take possession or permanent ownership of the blighted property, and does not require any government entity to be in the chain of title to begin the rehabilitation process.
- The receiver is a local non-profit organization or private developer that qualifies under the pre-established regulations. Those regulations include: demonstrated ability and experience needed to rehabilitate the property; submission of a rehabilitation plan to the court; and no existing Code violations on other vacant property.
- The receiver takes possession of the property if the property owner cannot demonstrate that he/she can complete rehabilitation in a reasonable time. The owner decides whether to comply and repair the property or not. The receiver does not hold the title to the property; the property owner retains ownership until the property is foreclosed.
- At any time during the receivership process (including foreclosure), the original property owner can reclaim possession by paying off the receiver's lien and/or demonstrating the ability to repair the house.
- The receiver incurs the cost of rehabilitation, but if no responsible party comes forward to pay the repairs, a nuisance lien can be filed that could result in foreclosure.

o How does it help?

- The receivership process only applies to uninhabited properties.
- It targets properties that can be repaired and made livable by a court-appointed receiver or sold to responsible buyer.
- Historic tax credits may be used for renovations.
- Receivership is not land banking or eminent domain.
- Under the receivership process, properties are fixed up immediately and properties are dealt with one at a time.
- Homes that have been neglected affect the surrounding neighbors as well as the community. For example, there was an abandoned house in Church Hill that had 63 Code violations over a ten-year period. The house caught fire last month, and neighbors' homes could have caught fire as well. Receivership would help prevent a situation like this from happening in the future.

o Receivership in practice:

- Only one out of every eight cases goes through the entire process (Baltimore).
 - Of the receivership cases, 85% end in voluntary rehabilitation.
 - The market dictates the pace and scope of renovations. Local developers and community developers can be receivers.
 - So-called “slumlord” Oliver Lawrence owned more than 150 properties in various states of disrepair. The bank refused to foreclose because the properties were in such poor condition. He was jailed for excessive upkeep-related Code violations. The case took thousands of man hours and two and a half years. When the properties finally went up for auction some sold for as little as \$7,000.
- **Delegate Oder**—Asked whether receivership in Virginia would be a new body of law.
- **Jonathan Baliles**—It is an extension of the Derelict Building Legislation, but essentially this would be a new body of law.
- **David Freeman**; City of Norfolk—Asked how the definition of visibly uninhabitable buildings relates to the definition of derelict buildings.
- **James Kelly**—A derelict building has to be vacant, boarded up, and separated from utility services for six months before it can be considered a derelict structure.
- **Connie Chamberlin**; Housing Opportunities Made Equal (HOME)—Asked who would be a receiver and what incentive there is to be one.
- **James Kelly**—A receiver is someone who acts on behalf of the court. For instance, in Baltimore they set up a non-profit organization to act as the receiver. The receiver provides a public service, and in addition to recouping the cost of repairs is paid for his services.
- **Connie Chamberlin**—Asked whether the receiver would have to be someone designated in advance or if it can be anyone who persuaded the court they could make the necessary repairs to the property.
- **James Kelly**—The receiver can be anyone the court feels is qualified to make the repairs.
- **Mike Toalson**, Home Builders Association of Virginia (HBAV)—The housing environment is different now than it was in 2000 and 2001. He asked what those in the public sector know about the demand for this type of housing that the private sector does not know about housing. The government is taking and selling someone else’s property.
- **James Kelly**—The key is that the sale can take place for any repairs that are being made. It puts the current owner to the test and forces them to comply with the law.
- **Mike Toalson**— Asked Mr. Kelly why he believed the government is more capable of making repairs to property than the private sector. He also asked whether the ability to borrow money and resources for this activity is coming from local government.
- **James Kelly**—The Code enforcement budget would be used for funding.
- **Jonathan Baliles**—It’s not unfeasible for the receiver to do the work and the owner to sell the property as long as the receiver lien is paid. Richmond has the largest

population of public housing between New York and Miami. For spot blight cases, the money for the property is put in escrow.

- **James Kelly**—Receivership is limited to derelict buildings with a long-term vacancy.
- **Jonathan Baliles**—There are some homes that have been vacant for over 30 years. It is not uncommon to see a house sitting empty in the city for that period of time.
- **Mike Toalson**—Asked why the government would believe there is value in a house that has been vacant in a neighborhood for that long.
- **James Kelly**—The title can cause trouble. The only way to clear the title is through litigation. People buy a shell and wait for everyone else to fix the neighborhood, and then sell it for more money. They invest as little as possible in the house.
- **Mark Flynn**; Citizen Member—The city wouldn't ultimately be making the decisions. These are private dollars that are stabilized by city funds.
- **James Kelly**—There is no way a receiver could accept the position unless they knew the house would be picked up at auction.
- **Mark Flynn**— Under the receiver process the private sector pays for the rehabilitation, in contrast to spot blight where the city has to put up the money.
- **James Kelly**—That's why the auction process is so important. Once the court is convinced that the owner isn't going to fix up the property, a receiver is appointed. The receiver completes basic improvements to stabilize properties and then sells them at auction.
- **A. Vaughn Poller**; Hampton Roads Housing Consortium—Asked if it is possible for the locality to be the receiver.
- **James Kelly**—That was the trend in Baltimore. The original set-up was for independent non-profit organizations; then the city got more involved in the rehabilitation process.
- **Neal Barber**; Community Futures—Asked if there are other communities or states that have enacted similar legislation.
- **James Kelly**—Cleveland, Ohio has used this process for many years. There is accountability to the court because the court has to be satisfied with the receiver's plan. Although, the process is limited by the fact that the bank lien will be paid first; that loan trumps the receiver's lien. It is also limited to residential property only. This process has been used repeatedly to clear title.
- **Jonathan Baliles**—The receivership process has also been enacted in Kansas City, Texas, Pennsylvania, and New Jersey.
- **Chip Dicks**; FutureLaw—Suggested the work group consider how this legislation would fit in with all the other legislation the group has passed, including criminal spot blight statutes and the spot blight authority civil remedy; they are not trying to surpass eminent domain. Derelict structure legislation deals with situations where the property is vacant, boarded up, and has chronic Code violations. When a building becomes derelict, the locality can either execute a plan to repair or a plan to demolish the structure. The plan must be developed in 90 days. If the owner fails to develop a plan, there is no penalty other than the declaration of the building as a nuisance. It allows the locality to take the property, and this is currently in the Code. This receivership legislation takes that legislation a step further than is the

law now. In circumstances where the property owner doesn't have the funds to rehabilitate the property themselves, a receiver is appointed and they put up the money for the renovations. That way, the developers recover their investment upon selling the house. The legislation would expressly provide that the property owner receives the surplus, although it doesn't completely solve the issue of who is the beneficiary of the property. This group has talked about derelict buildings before and has recognized that this process might be targeted at certain neighborhoods, which ties back to redevelopment or conservation areas. Also, this process allows the original property owner to pay the debt and reclaim the property. It's not clear whether the owner is still entitled to the real estate tax abatement. With this process there is some taking power as with eminent domain, but the compensation to the property owner is greater than it would be under eminent domain. Line 74 of Sen. McEachin's bill (SB 1312) reads "in lieu of the appointment of a receiver, the court may permit repair by an owner or a person with an interest in the property secured by a deed of trust properly recorded." This should read "shall" instead of "may." Giving the court the discretion to decide doesn't really help. There should be an intention to clean up the property, and if it's not cleaned up, a receiver who will put up the money to make the necessary repairs will be appointed by the court.

- **Delegate Oder**—It sounds like what Mr. Dicks is saying is the bill could be edited to create another tool for cities while providing some benefit to the owner as well.
- **Delegate Dance**—Suggested a separate work group be formed to edit SB 1312 (McEachin 2011) and address the receivership process to work toward a recommendation from the Commission. She asked Mr. Dicks, Mr. Flynn, Mr. Toalson, Mr. Puller, Mr. Freeman, and Ms. Chamberlin to set up a date before the next Neighborhood Transitions meeting to meet and work on the bill. She told the work group that if anyone else would like to add themselves to the list, they may add themselves to the group.
- **Delegate Oder**—Expressed concern about the negative perception of eminent domain and the similarities with the receivership process. He added himself to the receivership sub-group. He doesn't want this legislation to come before the General Assembly and not pass; it needs the support of all the members of the Commission.
- **Delegate Dance**—Delegates Dance and Oder will attend the sub-group meetings.

III. H.B. 2045; Blighted Property (Ebbin, 2011)

- Delegate Adam Ebbin
- **John Catlett**; Director, Department of Code Administration, City of Alexandria
 - o From 2007–2010, we had a problem where an owner demolished his property in the middle of a neighborhood. There was standing water on the property. The community became very concerned when the owner began construction on an eight-foot basement; he basically created a swimming pool. There was two feet of water that became stagnant, which attracted mosquitoes. It was not safe. The city did not have the tools to rectify the situation. The Building Code gives some authority to correct this type of situation, but the owner was out of state. A misdemeanor warrant was issued for the owner but it was too difficult to serve on the owner. HB 2425 placed the provisions under a blight statute.

- o HB 2045 would allow the local government to take action on incomplete construction that is left for a substantial amount of time and becomes unsafe because of conditions such as lack of site maintenance, lack of site security, and accumulating water. The bill expands the definition of blighted property to include residential structures. The bill is not eminent domain, nor is it intended to target every unfinished construction. It is intended to be an additional tool for localities to make property safe when they cannot make contact with the property owner.
- o We are currently working on provisions that would make this fall under §15.2.
- **Delegate Ebbin**—The difference between the original bill and HB 2045 is that it takes away the locality's ability to take title of the building.
- **Chip Dicks**—Expressed concern over the expanded definition of blighted property. There are a number of people who have started the building phases of a development, either single-family attached or mixed use developments. Builders have started to build again, but the market demand has not caught up yet with the supply. He wants to make sure that the unfinished building definition doesn't allow a locality to require the builder to finish the remaining building phases.
- **John Catlett**—Suggested they redefine what determines spot blight. The bill it is not intended to apply to that type of situation.
- **Chip Dicks**—Asked whether the problem they identified is with residential or commercial buildings.
- **John Catlett**—Personal experience has been that the problem is with residential structures.
- **Chip Dicks**—Suggested that if legislation were refined to focus on unfinished single-family houses, that would achieve the bill's goals. He asked whether this should be in the Building Code as well as the Code of Virginia.
- **John Catlett**—It needs to be in the local government codes. Currently the law has limited enforcement ability for issues outside of the building code itself, including water and trash accumulation, grass and weed control, failed erosion and sediment control, and rodent infestation. None of those issues are addressed through any of the Virginia Building or Maintenance Codes.
- **David Freeman**—The intent is for the bill to apply to new construction. He asked if a structure with an unfinished addition is included in the definition of unfinished buildings.
- **John Catlett**—It could include additions where there is no certificate of occupancy.
- **David Freeman**—Suggested language be included that make clear this legislation does not apply to buildings that have a certificate of occupancy.
- **Delegate Cosgrove**—Expressed concern that making changes like this may impact areas of the state where there isn't a problem. More rural areas may have houses miles apart.
- **Delegate Ebbin**—Suggested the bill be made more specific to include certain population brackets.
- **Bill Ernst**; Department of Housing and Community Development (DHCD)—The right way to incorporate this is through the Virginia Code. The definition needs to be very tight to make sure it only applies to situations where it is intended to apply to the very specific situations the group has been discussing.

- **John Catlett**—It could be a local option; however, he believes there are other communities that want similar legislation.
- **Mark Flynn**—Asked, as an example, if there was a building that was back in the middle of a field whether Mr. Catlett thought there could be a finding that it endangers the public health. He asked if a building out in the country ever qualify as blighted property under this bill.
- **John Catlett**—That would be highly unlikely to occur under this bill.
- **Delegate Oder**—This is a property rights issue. He wondered at what point people feel the government needs to step in to correct the issue. He suggested they raise the standard, perhaps to “clear and present” danger. Each issue needs to be addressed at a public hearing, and there should be a posting or advertising for that public hearing. There must be some type of due process for the landowner.
- **Mike Toalson**—Asked why a building permit might be revoked.
- **John Catlett**—There are limited situations, such as inaccurate information on the permit. The only other time is when there is no substantial work demonstrated in a six-month period; this can be triggered by inspection. Substantial construction extends the six-month period. The only way a permit would be revoked is if no work is being done on a residential structure.
- **Mike Toalson**—Expressed concern that 30 days is not enough time for adequate notice due to the increase of slow builds due to finances.
- **Delegate Dance**—Asked Delegate Ebbin to use these comments and feedback to revise his proposal and send it to Elizabeth Palen, who will distribute it to members so further discussion can take place at future meetings.

IV. Public Comment

- There was no public comment.

V. Adjourn

- The meeting was adjourned at 11:35.