1970-1995

VIRGINIA HOUSING STUDY COMMISSION

25

ANNUAL REPORT TO THE GOVERNOR AND GENERAL ASSEMBLY OF VIRGINIA

VIRGINIA HOUSING STUDY COMMISSION

GENERAL ASSEMBLY OF VIRGINIA

The Honorable Alan A. Diamonstein, Chairman
Virginia House of Delegates
94th Legislative District
Newport News

The Honorable James F. Almand
Virginia House of Delegates
47th Legislative District
Arlington

The Honorable Robert L. Calhoun
Virginia State Senate
30th Legislative District
Alexandria

The Honorable Clinton Miller
Virginia House of Delegates
26th Legislative District
Woodstock

The Honorable William C. Mims
Virginia House of Delegates
32nd Legislative District
Leesburg

The Honorable Jackie T. Stump
Virginia House of Delegates
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The Honorable Charles L. Waddell
Virginia State Senate
33rd Legislative District
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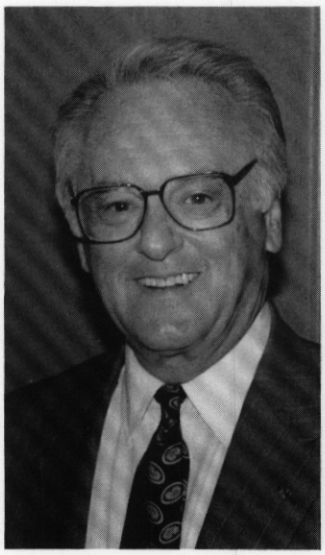
Twenty-five Years of Leadership

INTRODUCTION

BACKGROUND

Established by the 1970 Virginia General Assembly, the Virginia Housing Study Commission was originally mandated "to study the ways and means best designed to utilize existing resources and to develop facilities that will provide the Commonwealth's growing population with adequate housing." The Commission was further directed to determine if Virginia laws "are adequate to meet the present and future needs of all income levels" in Virginia, and to recommend appropriate legislation to ensure that such needs are met.



COMMISSION CHAIRMAN
ALAN A. DIAMONSTEIN

The Commission is comprised of eleven members, including five members of the Virginia House of Delegates, three members of the Virginia State Senate, and three gubernatorial appointees. Delegate Alan A. Diamonstein of Newport News has served as the Commission's Chairman since soon after its establishment.

The Commission has long been recognized as a forum for new ideas in Virginia housing, and as a focal point for helping to develop consensus for such ideas. Nationally, the Commission is the only such entity that works closely with the public and private sectors and nonprofit organizations to develop workable solutions to housing problems, and advocates within state government for their implementation.

1971-1987

From 1971 throughout the early 1980s, the Commission introduced numerous legislative initiatives, subsequently passed by the Virginia General Assembly, to further its goal of ensuring safe, decent affordable housing for every Virginian. Commission accomplishments during that time period include:

- establishment of a state office of housing, now the Virginia Department of Housing and Community Development
- establishment of the Virginia Housing Development Authority
- passage of the Uniform Statewide Building Code, and establishment of the State Technical Review Board and local boards of building appeals
- passage of the Virginia Residential Landlord and Tenant Act
- passage of the Virginia Mobile Home Lot Rental Act
- promulgation of design standards to ensure accessibility by disabled persons to public buildings
- passage of numerous legislative initiatives to foster effective operation, management, and creativity of Virginia redevelopment and housing authorities

- passage of the Virginia Condominium Act
- passage of the Virginia Real Estate Cooperative Act
- passage of the Virginia Timeshare Act
- passage of legislation coordinating fire safety programs in Virginia.

1987-PRESENT

Following a period of dormancy, the Housing Study Commission was reactivated in 1987. That year, the Commission proposed the creation and capitalization of the landmark Virginia Housing Partnership Fund. In 1988, at the Commission's recommendation, the General Assembly established the Fund and increased state allocations for housing programs from $400,000 to $47.5 million for the 1989-90 biennium. Other successful 1987-88 recommendations include the establishment of a Virginia income tax voluntary contribution program for housing programs, the Virginia Housing Foundation (now the Virginia Community Development Corporation), and the annual Governor's Conference on Housing.

Commission recommendations embraced by the 1989 General Assembly include: a state low-income housing tax credit program; state authorization of such flexible zoning techniques as planned unit developments, mixed unit developments, and density bonuses; and exemption of nonprofit housing organizations from tangible personal property tax on materials purchased for the development of affordable housing.

In 1990, the General Assembly approved additional Commission initiatives, including: creation and capitalization of the landmark Indoor Plumbing Program; a tax credit program for landlords providing rent discounts to low-income elderly or disabled tenants; a legislative mandate that localities study affordable housing in preparing their comprehensive plans; and legislation requiring localities to provide for the placement of double-wide manufactured housing in districts zoned primarily for agricultural purposes.

Commission recommendations passed by the 1991 General Assembly include: amendments to the Virginia Fair Housing law to ensure that Virginia law is substantially equivalent to federal law; amendments to the Virginia Residential Landlord and Tenant Act reducing the exemption for single family rental housing from ten to four units held by owners of such property (and thereby ensuring that some sixty percent of such rental units in the state are covered by the Act); and establishment of a Virginia Manufactured Housing Licensing and Transaction Recovery Fund.

The 1992 General Assembly approved the following Commission recommendations: comprehensive consumer protection language in the Virginia Mobile Home Lot Rental Act; a one-time right of redemption of tenancy prior to an action for eviction or

unlawful detainer; expansion of the Virginia tax credits program, fostering rent discounts to low-income elderly or disabled tenants, to include single family units; and restoration of the Virginia Housing Partnership Fund to the Virginia General Fund Budget.

In its 1993 Session, the General Assembly approved comprehensive Commission recommendations related to the operation and management of condominium, cooperative, and property owners' associations. The Assembly also approved the Commission's landmark legislation designed to assert the responsibility of localities to consider the affordable housing needs of a more broadly defined community, as well as its recommendations to extend the innovative state tax check-off for housing and rent reduction tax credit programs.

In 1994, the General Assembly approved these Commission recommendations in the area of homeless prevention: banning self-help evictions in the case of all residential leases, and allocating additional funding for the Virginia Homeless Intervention Program, originally a Commission initiative, to ensure service to additional households needing temporary assistance to prevent homelessness.

In the area of blighted housing, the Assembly approved Commission recommendations which authorize localities to: acquire and rehabilitate or clear individual properties which constitute "spot blight" in a community; require the issuance of certificates of compliance with current building regulations after inspections of residential buildings, located in conservation and rehabilitation districts, where rental tenancy changes or rental property is sold; and control the growth of grass and weeds on vacant property as well as property on which buildings are located.

The 1994 General Assembly also approved the following Commission recommendations: authorization for all Virginia localities to develop affordable dwelling unit (ADU) ordinances; authorization for VHDA to enter into such alternative bond financing methods as "swap agreements" whereby VHDA may issue adjustable rate mortgage loans; and legislation to ensure efficient and effective administration of the Manufactured Housing Licensing and Transaction Recovery Fund Law.

In its 1995 Session, the General Assembly approved two Commission recommendations relating to landlord-tenant law in Virginia. In response to requests by tenants seeking to make their neighborhoods more safe, the Commission moved to reduce to fifteen days the time period in which a landlord may initiate an eviction proceeding following service of process on a tenant who has committed a criminal or willful act which is not remediable and which poses a threat to the health or safety of other tenants. In response to requests to help prevent homelessness, the Commission initiated reform of Virginia

IN 1988, AT THE RECOMMENDATION OF THE COMMISSION, THE GENERAL ASSEMBLY CREATED AND CAPITALIZED THE VIRGINIA HOUSING PARTNERSHIP FUND, HELPING TO MOVE VIRGINIA INTO A POSITION OF NATIONAL LEADERSHIP IN THE HOUSING ARENA.

COMMISSION MEMBER
STANLEY C. WALKER

removal bonds. Formerly, tenants were mandated to pay rent up to twelve months in advance in order to remove an eviction case from general district to circuit court and thereby have the option of a jury trial. The Commission's initiative permits tenants in eviction cases which do not involve nonpayment of rent to remove their case to circuit court based on their agreement to pay their rent as it comes due prior to the hearing.

The 1995 General Assembly also approved the Commission's comprehensive package of legislation addressing blighted and deteriorated housing. Two such Commission bills relate to violations of the Virginia Uniform Statewide Building Code. One initiative mandates that the local building department enforce Volume II (Building Maintenance Code) of the USBC in cases where the department finds, following a complaint by a tenant of a residential rental unit which is the subject of such complaint, that there may be a violation of Section 105 (Unsafe Buildings Section) of Volume II. The other Commission initiative clarifies that every Virginia circuit court has jurisdiction to award injunctive relief in cases involving USBC violations. To help localities combat the growing problem of drug gang-related graffiti, the Commission also initiated legislation authorizing local governing bodies, at public expense, to remove or repair defacement of any public or private building, wall, fence, or other structure where such defacement is visible from any public right-of-way, and where the locality has sought written permission of the owner to remove the graffiti.

To address local concerns that owners of some blighted properties are impossible to identify and/or locate, the Commission initiated legislation which provides that the name and address of the owner of real property must be included in local land book records. Where such property is owned by more than one person, the land book must contain the name and address of at least one owner.

To address concerns of localities that, in some cases, owners of tax-delinquent property pay one year of delinquent taxes, thereby effectively precluding tax sale of such property which remains indefinitely tax-delinquent, the Commission initiated legislation to authorize localities to enter into a written agreement with the owner of tax-delinquent property, prior to the date of a tax sale of such property by the locality, in which such owner agrees to pay all delinquent taxes, penalties, interest, and costs on same. Such agreement constitutes a lien on the property.

To foster additional local revitalization efforts, the Commission initiated legislation which authorizes localities without redevelopment and housing authorities to engage in "experiments in housing," e.g., homesteading programs.

Also in the 1995 Session, all legislative members of the Virginia Housing Study Commission signed budget amendments to restore full funding for the Virginia Housing Partnership Fund Multifamily and Congregate Programs; Indoor Plumbing Program; Virginia Water Project operating costs and water and wastewater grants; and the state Emergency Home Repair Program. The 1995 General Assembly subsequently restored full funding to each of these housing programs.

THE 1995 GENERAL ASSEMBLY APPROVED THE COMMISSION'S COMPREHENSIVE PACKAGE OF LEGISLATION ADDRESSING BLIGHTED AND DETERIORATED HOUSING IN THE COMMONWEALTH.

1995 WORK PROGRAM

The Commission in 1995 focused on the following broad areas of study: expansive soils; community land trusts; and tenant organizations in public housing projects. After reviewing testimony from public hearings, issue papers, and Subcommittee recommendations, the Commission reached consensus on the recommendations published in this report.

In addition to legislative and conference activities, the Commission responded to hundreds of inquiries regarding housing issues, and its Executive Director met regularly with the boards and key staff of DHCD, VHDA, the Virginia Community Development Corporation, the Virginia Interagency Action Council for the Homeless, and the Virginia Housing Coalition, as well as housing advocates, government officials, and industry representatives around the Commonwealth.

In the twenty-five years since the establishment of the Virginia Housing Study Commission in 1970 — and particularly since its reactivation in 1987 — dramatic change has occurred in general in the Commonwealth. Dramatic accomplishments have been realized in housing. Yet, despite the fact that more Virginians are better housed than ever before, tens of thousands remain without such basic necessities as indoor plumbing or, worse yet, no shelter at all. The coming year and the coming decade will, however, present challenges in some ways more complex than those faced in housing during the past twenty-five years. The Virginia Housing Study Commission and its Executive Director urge housing advocates to renew their commitment, generate visionary solutions, celebrate their accomplishments, champion their vision, and, together with the Commission, hold fast to the dream and the goal of ensuring safe, decent, affordable housing for every Virginian.

EXECUTIVE SUMMARY

FOLLOWING IS A BRIEF SUMMARY OF VIRGINIA HOUSING STUDY COMMISSION RECOMMENDATIONS TO THE GOVERNOR AND 1996 GENERAL ASSEMBLY OF VIRGINIA.

THE COMMISSION IN 1995 FOCUSED ON THREE BROAD AREAS OF STUDY: SHRINK/SWELL SOIL; COMMUNITY LAND TRUSTS; AND TENANT ORGANIZATIONS IN PUBLIC HOUSING PROJECTS.

HOUSE JOINT RESOLUTION 570: SHRINK/SWELL SOIL

House Joint Resolution 570, patroned by Delegate George W. Grayson and Senator Thomas K. Norment, requests the Virginia Housing Study Commission to examine the phenomenon of shrink/swell soil and identify ways to eliminate its harmful effects on new homes constructed in the state. More specifically, the Commission is charged with meeting the challenges posed by expansive soils by recommending needed changes to various regulatory requirements and procedures affecting the application and administration of building regulations, contractor licensing, and the professions of architecture and engineering.

BACKGROUND

Shrink/swell clays are, in fact, only one of a number of problem soils that can damage structures and infrastructures, leading to the need for costly repairs and potential threats to health and safety. Other such problem soils include expansive, compressible, shifting, and hydraulic soils. The Commission thus expands its response to HJR 570 to include a variety of problem soils, generally referred to as "expansive soils."

Expansive soils are found in most regions of the Commonwealth, and include triassic clays near Richmond, marine clays in eastern Fairfax, and weathered coastal plain soils in the Peninsula. Structural damage caused by expansive soils has been well documented in several localities, including Chesterfield, Fairfax, Henrico, and James City counties, and the City of Williamsburg.

CHARACTERISTICS OF AND DAMAGES ASSOCIATED WITH EXPANSIVE SOILS

In general, the layered structure of certain clays causes them to expand significantly in the presence of sufficient water and exert pressure upward. However, subsequent desiccation can cause the soil to expand and contract — vertically and horizontally — by a similar factor, potentially leaving critical structural components inadequately supported or entirely unsupported and evidenced in such structural stresses as cracked walls and tipped chimneys.

The range of financial impacts on individual homes is broad. Some problems are relatively minor; others, which may pose a threat to health and safety, require remedial repairs costing tens of thousands of dollars. The Commission noted that, in many cases, damage from expansive soils is exacerbated by multiple contractor violations of the Uniform Statewide Building Code.

TESTING FOR AND COUNTERING EFFECTS OF EXPANSIVE SOILS

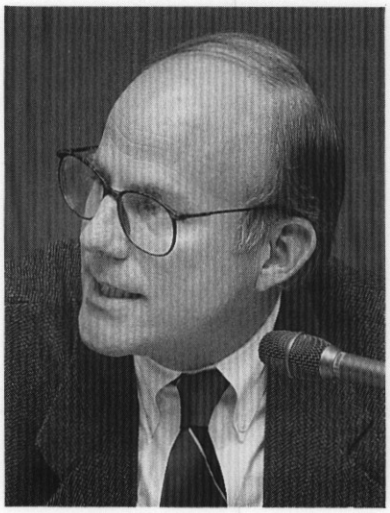
Currently available testing procedures can identify the expansive potential of soils, and general soil data maps are available for most urban/suburban areas of the state. However, while this data can alert responsible parties to the possible presence of problem soils, it cannot be relied upon for characterizing soils on individual sites. Field

observations or prior knowledge can also suggest the necessity for more detailed investigation of a building site.

Because of the great variability in the distribution of soil types, only site testing would approach 100 percent reliability in determining the presence of problem soils. Other critical testing issues are: the criteria used to determine whether or when a specific site should be tested; the number of test samples to be made for a given site; and the individual or entity responsible for interpreting and applying the results of such tests.

Testing procedures currently in use cost from $200-250 per homebuilding site for simple testing to $400-700 for testing and the preparation of recommended foundation design. Simple testing for subdivisions costs about $160 per site.

Construction techniques that counteract the effects of problem soils are available and permitted under current code provisions. Although estimates of the cost of alternative construction techniques required to counter problem soils vary, such enhanced construction could add approximately $2,000-3,000 to the cost of a dwelling. The challenge is not so much one of knowing what measures to take as it is knowing under what circumstances to take such measures.



COMMISSION MEMBER
JAMES F. ALMAND

STUDY ISSUES AND RECOMMENDATIONS

Following are the five issues specifically identified in HJR 570 for study and recommendations of the Commission.

STRENGTHENING THE UNIFORM STATEWIDE BUILDING CODE (USBC)

HJR 570 requests the Commission to study whether the USBC should be strengthened to protect the integrity of structures built where problem soils are present. The USBC currently gives the local building official authority to require testing of soils in areas "likely" to have expansive or other problem soils. Where such soils are identified, various methods for responding to them are permitted. Such methods include removal and replacement by other soils; stabilization by dewatering or other means; or the construction of special footings, foundations, or slabs.

In effect, the USBC provides for the use of appropriate construction techniques when needed, but does not directly prescribe when the need for such techniques should be determined.

The Commission unanimously recommends the following six-point initiative.

1) The Commission recommends amending the *Code of Virginia* to authorize localities to require from a developer information on potentially expansive soils at the point of the subdivision review process. Such amendment would not only ensure that the cost of initial testing is borne by the developer rather than by the home purchaser, but would also ensure that a building official has requisite soils information to require such modifications as may be appropriate for residential construction on the proposed site.

2) The Commission recommends that the Virginia Board of Housing and Community Development (HCD) include in the USBC a two-zone map of the Commonwealth, which map would be produced using U.S. Natural Resources Conservation Service (NRCS) data. Commentary to accompany the map would indicate the potential of

THE COMMISSION RECOMMENDS A BROAD-BASED PUBLIC AWARENESS CAMPAIGN TO EDUCATE THE GENERAL PUBLIC ON THE PRESENCE AND RAMIFICATIONS OF EXPANSIVE SOILS THROUGHOUT THE COMMONWEALTH.

expansive soils in Virginia and provide for appropriate action to be implemented by local governments pursuant to the level of expansive soils potential.

Included in Zone 1 would be localities in which the probability of soils with moderate-high expansive potential exists in more than 20 percent of jurisdictional land area. Such localities would be required to implement an expansive soils test policy, to be determined by the locality, but which would provide for minimum criteria to determine under what circumstances testing for expansive soils is required.

Included in Zone 2 would be localities in which the probability of soils with moderate-high expansive potential exists in less than 20 percent of jurisdictional land area. The DHCD would provide these localities a detailed soils map of the state, quantifying soils' expansive potential and compiled using U.S. NRCS data, and information encouraging the localities to adopt the soil test policy utilized in Zone 1 localities.

3) The Commission recommends mandatory education for Virginia building code officials on the issue of expansive soils; the presence of such soils throughout the Commonwealth; and the fact that building officials should be able to rely on the subdivision process as a guide to establish that the existing soils are suitable for such minimum construction criteria as is set forth in the Virginia USBC.

4) The Commission recommends education for Virginia homebuilders, designers, realtors, and other industry professionals on the issue of expansive soils; the presence of expansive soils throughout the Commonwealth; appropriate measures to implement to ensure the suitable construction of residential foundations located on expansive soils; and the above-referenced proposed *Code of Virginia* amendment.

5) The Commission recommends a broad-based public awareness campaign to educate the general public on the issue of expansive soils; the presence of expansive soils throughout the Commonwealth; and the potential effects of expansive soils on residential construction.

6) The Commission recommends restoration of state funding for the Virginia Tech Soil Survey, Characterization, and Interpretations Program. The Soil Survey Program, a part of the National Cooperative Soil Survey Program, is designed to obtain an inventory of Virginia's soil resources, record the location of soils, predict soil performance, facilitate the transfer of soil information, and contribute to the knowledge, understanding, and appropriate use of the state's land resources. Soils information as developed and disseminated by the Virginia Tech Program is critical to decision-making regarding economic development, agriculture, homebuilding, infrastructure construction, forestry, and environmental issues.

7) In addition to adopting the above-stated recommendations, Commission members noted that the implied warranty for new homes contains a provision extending its term to five years for the foundations of new dwellings. However, the statute of limitations for violations of the USBC is limited to two years following the date of discovery of a violation.

The term of discovery is limited to one year from the date the certificate of occupancy is issued or the dwelling is inhabited. The Commission Subcommittee studying

HJR 570 recommended by majority that the statute of limitations for issuance of notice of USBC violations relating to foundations of new dwellings be extended from two years to five years from the date of issuance of the certificate of occupancy. The Subcommittee further recommended that the pertinent section of the USBC referencing USBC violations be cross-referenced to the pertinent criminal procedure section of the *Code of Virginia* applicable to such USBC violations.

The Commission took no action on this recommendation. Instead, Delegate Diamonstein requested that the Subcommittee revisit the issue and make a unanimous recommendation to the Commission. Further discussion indicated no consensus among Subcommittee members on the issue of extending criminal liability pursuant to the stated matter.

STRENGTHENING CLASS A AND B CONTRACTOR LICENSING

HJR 570 requests the Commission to study whether Class A and Class B contractors should be subjected to more stringent licensing requirements relating to shrink/swell soils in order to assure that they respond properly to the structural problems that such soils engender. Current contractor licensing laws do not specifically address the issue of shrink/swell soils, or for that matter, the larger issue of structures. Licensure examinations for Class A or Class B contractors test knowledge of business practices but do not address structural or contracting issues, *per se*.

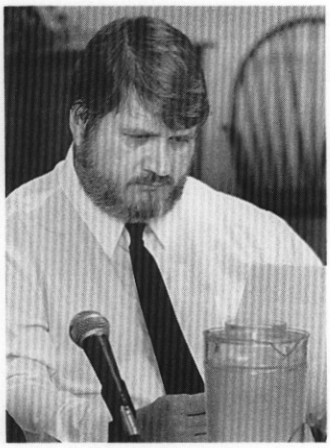
The Commission recommends that the Virginia Board for Contractors consider including in its licensure exams for Class A and B contractors a section designed to test technical knowledge relating to actual structures and construction of the same. The Commission also recommends that the Board for Contractors consider "revolving door" contractor licensing that currently permits incompetent and/or unscrupulous contractors to close a business and reopen effectively immediately thereafter using another business name.

ADVISING THE PUBLIC OF APPEALS DECISIONS

HJR 570 requests the Commission to study whether the public should be apprised of the results of appeals from the decisions of building officials respecting questions concerning the presence of, testing for, or measures to counteract the effects of expansive soils. Under the current provisions of the USBC, the owner of a building, the owner's agent, or other corporate or natural persons directly involved in the design or construction of a building may appeal certain decisions of a local building official to the local board of building appeals. The Commission unanimously recommends that the Board of Housing and Community Development consider amending § 112.2 of the USBC, Volume I (Notice of Violation) to reference § 116.5 of the USBC, Volume I (Application for Appeal) to clarify that any written decision of a building code official must indicate the opportunity for appeal from such decision.

PREVENTING THE BUILDING OFFICIAL FROM OVERRIDING REGULATORY AGENCY DECISIONS

HJR 570 requests the Commission to study whether local building officials should be prevented from overriding the findings of regulatory agencies "based upon proof provided by a licensed architect." The USBC does not grant local building officials the



COMMISSION MEMBER
JACKIE T. STUMP

authority to override decisions of regulatory agencies, but is intended to place the official in the role of an administrative agent. The regulatory process is, in fact, an adjudicative process with right of appeal to the circuit court with jurisdiction. Accordingly, the Commission took no action on the matter.

REQUIRING AN ARCHITECT'S SEAL

HJR 570 requests the Commission to study whether the seal of an architect or engineer should be required on building plans for structures projected to cost more than $200,000. The USBC currently does not require such seal on plans for one- and two-family residential structures of three or fewer stories. Noting that potential hazards to health and safety cannot be directly correlated with the prices of individual homes, and noting the practical difficulty of administering programs on such a basis, the Commission took no action on the matter.

HOUSE JOINT RESOLUTION 438: COMMUNITY LAND TRUSTS

BACKGROUND, CONCEPT, AND RATIONALE

House Joint Resolution 438 requests the Virginia Housing Study Commission to study the desirability of creating community land trusts (CLTs) in Virginia to increase the availability of affordable housing. The Resolution was patroned by Commission members Delegate William C. Mims and Senator Charles L. Waddell.

Generally speaking, a community land trust is a private nonprofit corporation established to acquire and hold land in trust for the benefit of a community. CLTs are designed to preserve the long-term affordability of housing and promote sound land use practices in the communities in which they are located. These goals tend to be realized through a system whereby the CLT retains ownership of the land on which homes and improvements are situated, and a long-term leaseholder owns the home and improvements. Distinctive feature of CLTS include:

- Commitment to local control of land
- Protection of long-term housing affordability utilizing long-term ground leases
- Dual property ownership between the CLT and the leaseholders
- Ongoing program development to address diverse community concerns
- Flexibility, in urban and rural areas, to develop single family homeownership opportunities as well as much-needed affordable rental housing, preserve farmland, or revitalize community businesses and social services.

Nationally, the more than 100 community land trusts located in every region and in thirty states have produced more than 3,500 affordable housing units. In addition, groups have developed commercial properties and preserved farms.

ESTABLISHMENT AND FINANCING OF COMMUNITY LAND TRUSTS

CLTs have been established in response to myriad situations by myriad groups — concerned citizens, local governments, community development corporations, neighborhood associations, religious coalitions, and others. Anyone should be eligible to join CLTs, which are generally chartered as tax exempt, nonprofit corporations. Although

each CLT develops its own membership criteria, most require i) a nominal annual membership fee and ii) member attendance at an orientation and annual membership meeting. Each CLT also develops its own leaseholder selection criteria.

As a nonprofit, tax-exempt organization, a CLT may buy or receive gifts of property (or receive other financial or in-kind contributions). Housing finance authorities, mortgage lenders, financial institutions, universities, localities, and federal and state agencies are on record as having financed CLT projects.

COMMUNITY LAND TRUST DISPUTES AND DISSOLUTION

There is little literature on the process and outcome of disputes among CLT leaseholders, or between a leaseholder and a CLT. Most CLTs acquire land with the intention of forever prohibiting its resale as a commodity. CLT by-laws are generally structured to require the consent of all affected leaseholders as well as a supermajority of the board and members for the organization to sell its land. Should a CLT dissolve, it is obligated as a nonprofit to distribute its assets to another nonprofit. In turn, the successor corporation is legally bound to honor the lease agreements between the CLT and its leaseholders.

RECOMMENDATIONS

The Virginia Housing Study Commission recommends the following initiatives in support of the establishment and activities of community land trusts in the Commonwealth.

- The Commission requests that the Department of Housing and Community Development Housing Training Center conduct training sessions focusing on CLT establishment and financing.
- The Commission requests that DHCD and the Virginia Housing Development Authority (VHDA) provide financing to CLT multifamily rental and homeownership developments, and to homeowners who would seek to purchase homes through CLTs. (The VHDA does not currently provide mortgage financing to homebuyers seeking to purchase co-ops.)
- The Commission encourages local governments, redevelopment and housing authorities, and nonprofit organizations to consider CLT models as part of their multifamily rental and homeownership development programs.

SENATE JOINT RESOLUTION 347: TENANT ORGANIZATIONS IN PUBLIC HOUSING PROJECTS

BACKGROUND

Senate Joint Resolution 347, patroned by Senator Yvonne B. Miller, requests the Virginia Housing Study Commission to review state and federal regulations governing the administration of tenant organizations in public housing projects, and to recommend solutions for creating incentives for tenant management, home ownership, and economic empowerment.

WHILE THERE ARE NOTABLE EXAMPLES OF SUCCESSFUL RESIDENT INITIATIVES PROGRAMS, IT IS NONETHELESS CLEAR THAT RESIDENT MANAGEMENT IS NOT IN ITSELF A PANACEA FOR THE CHALLENGES FACING BOTH MANAGEMENT AND RESIDENTS OF PUBLIC HOUSING.

STATE AND FEDERAL REGULATIONS

Virginia's Housing Authorities Law (Chapter 1, Title 36 of the *Code of Virginia*), which differs little from those of other states, empowers local governing bodies to establish housing and redevelopment authorities as political subdivisions. The law defines the general powers of authorities, enumerates permitted activities, and prescribes a general administrative framework. Like every other state in the nation, Virginia has passed no laws referencing tenant management activities.

Federal regulation of public housing has been widely criticized as too rigid, too ineffective, in other words: too much. The current trend federally is to devolve greater discretion and responsibility to the local public housing authorities (PHAs). In the meantime, the nation's public housing program remains a partnership between the U. S. Department of Housing and Urban Development (HUD) and the local authorities, with HUD granting funds to the PHAs and requiring, in return, adherence to complex operational regulations including rent structures and fund accounting procedures.

HISTORY AND FUTURE OF TENANT MANAGEMENT INITIATIVES

Tenant management programs were originally initiated in response to the virtual meltdown of housing authority management in St. Louis in 1969 and in Boston in 1971. In the mid-1980s, HUD initiated major policy and programs designed to promote tenant management as a means of addressing rising crime and deteriorating units in public housing. Increasingly, resident initiatives have evolved from a focus on project management to opportunities focusing on tenants themselves: self-esteem building, skill and job training, education, financial planning, and self-sufficiency.

In many instances, regulations are not backed by funding requisite for their implementation, and thus, programs simply do not happen. Factors cited as problematic for resident groups themselves include: lack of ongoing tenant leadership; lack of facilities and transportation; and poor record keeping and financial management controls. Factors cited as problematic in other areas relating to resident groups include: inadequate briefing of PHA residents by PHAs regarding opportunity programs; rental rate economic disincentives; and inadequate interagency cooperation.

While there are notable successful examples of resident initiatives programs, it is nonetheless clear that resident management is not in itself a panacea for the problems facing public housing—both management and tenants. The future of federal public housing resident initiatives programs is uncertain indeed. Budget cuts, welfare reform, consolidation of HUD programs, block granting, and changes in public housing regulations all will effect public housing programs nationally and in the Commonwealth.

A February 1995 Inspector General's audit of technical assistance grants issued in support of tenant management programs concluded that resident management programs were not making significant progress toward property management responsibilities and that funding was being spent on many areas other than the goal of property management. The audit recommended that program expansion be halted. Further, the HUD Secretary's "Blueprint" sought to eliminate separate funding for the Tenant Opportunity Program by FY96.

RECOMMENDATIONS

Nationally, public housing tenant organizations active in property management have tended to become so involved as a result of a crisis-type management situation in their local PHA. Virginia PHAs are widely considered to be well-run agencies. Several annually rank at the top of HUD scoring rosters, and there has been little interest on the part of Virginia PHA tenants to become involved in property management.

Federal budget decisions may well render moot any specific recommendations the Virginia Housing Study Commission would make regarding tenant management programs. Further, given the likelihood of HUD funding decreases in the neighborhood of 25 percent, Commission recommendations to PHAs could add insult to injury at a time when PHAs will almost certainly be facing historic challenges related to funding, properties, and residents to be served.

However, the Commission will monitor federal developments closely and be prepared to act decisively and responsively should the need be presented for additional statutory authority or other legislative, policy, or fiscal initiatives. In addition, the Commission expresses support, in principle, for:

- VHDA and DHCD financing initiatives that foster homeownership opportunities for public housing tenants as well as the development of affordable multifamily and congregate housing
- courses offered by the DHCD Housing Training Center focusing on the promotion of homeownership strategies for PHA residents.

The Commission also encourages PHAs to encourage appropriate tenant management and homeownership initiatives, including appointments of tenant representatives to such PHAs.

WATER AND SEWER CONNECTION FEES

Water and sewer connection fees set by some Virginia localities may not necessarily adequately relate to rates allowed under state law. Although local governments and authorities are authorized to fix, charge, and collect fees for water and sewer services, state laws governing these charges are vague and offer little guidance to local governments in establishing such fees and charges. The Virginia Housing Study Commission in 1994 opined that water and sewer connection fees established by any county, city, town, authority, or sanitary district must be fair and reasonable and bear a substantial relationship to the allowable costs of providing the individual service. Accordingly, the Commission recommended amending appropriate sections of Title 15.1 of the Virginia *Code* and *Code* §§ 21-118.4(e) and 21.118.5 to provide more direction in establishing rates, fees, and charges for connection services.

Specifically, such legislation would mandate that connection fees include only the actual costs of installing the connection to the system, the allocable costs of administration for the installation, and the allocable capital costs of providing service to the new user. Further, local governments would be required to review water and sewer connection fees at least every three years and make adjustments, if necessary, to assure that fees to new users are fair and reasonable.

The Commission in 1995 reaffirms its commitment to such legislation.

HOUSE JOINT RESOLUTION 570: SHRINK/SWELL SOIL

EXPANSIVE SOILS ARE FOUND WORLDWIDE, AND IN MOST REGIONS OF THE COMMONWEALTH. IN GENERAL, THE LAYERED STRUCTURE OF SUCH SOILS CAUSES THEM TO EXPAND SIGNIFICANTLY IN THE PRESENCE OF SUFFICIENT WATER AND EXERT PRESSURE UPWARD OR DOWNWARD.

BACKGROUND

House Joint Resolution 570, patroned by Delegate George W. Grayson and Senator Thomas K. Norment, requests the Virginia Housing Study Commission to examine the phenomenon of shrink/swell soil and identify ways to eliminate its harmful effects on new homes constructed in the state. More specifically, the Commission is charged with meeting the challenges posed by expansive soils by recommending needed changes to various regulatory requirements and procedures affecting the application and administration of building regulations, contractor licensing, and the professions of architecture and engineering.

Shrink/swell soils are found worldwide, and one-fifth of the land in the United States has such soils. The largest proportion of soils with the highest shrink/swell potential may be found in the Great Plains and portions of the Southeast and Southwest; however, such soils can occur anywhere.

Expansive soils are found in most regions of the Commonwealth, and include triassic clays near Richmond, marine clays in eastern Fairfax, and weathered coastal plain soils in the Peninsula. The percentage of soils assessed as having high or very high expansive potential varies considerably among jurisdictions. In the Richmond-Petersburg MSA, the range is from as little as 2.3 percent to as much as 20.6 percent of an individual county's soils. Similar variations are encountered in other regions. Furthermore, soils with moderate expansive potential are also widely and unevenly distributed in the state. Structural damage caused by expansive soils has been documented in several localities, including Chesterfield, Fairfax, Henrico, and James City counties, and the City of Williamsburg. One survey in Chesterfield found more than a thousand residences with at least some signs of damage.

Problems arising from expansive soils have received considerable attention in recent years. Much of this attention has focused on issues relating to the compensation or indemnification of property owners experiencing problems ranging from minor to severe. However, HJR 570 is not directly concerned with such issues as the compensation of property owners for past problems; the study is prospective rather than retrospective. In other words, while recent experience was relevant to defining the problem and shaping responses, Commission recommendations focus on identifying practical and effective methods for preventing the recurrence of similar problems.

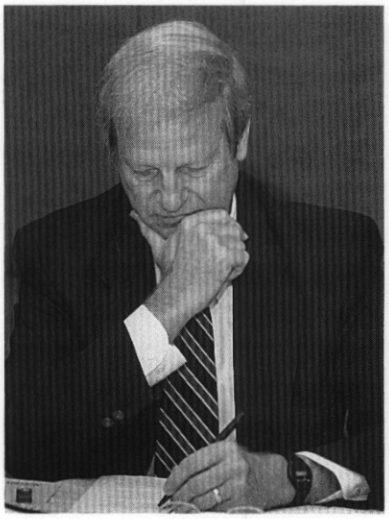
To undertake the complex study requested by the Virginia General Assembly, Commission Chairman Delegate Alan A. Diamonstein appointed a Subcommittee chaired by Commission member Delegate James F. Almand. The Subcommittee panel of experts included architects; attorneys; building officials; representatives of the banking, homebuilding, and building trade industries; and structural engineers and soil scientists.

DEFINITION

At its initial meeting, Subcommittee members focused on, among other issues, a generally accepted definition of shrink/swell soil. Several members indicated that a Plasticity Index (PI) greater than 15 is generally accepted as an indicator of potential

problems. [For a given soil the Plasticity Index = Liquid Limit-Plastic Limit for that soil.] The Council of American Building Officials (CABO) Commentary considers a PI of > 15 as a threshold for taking precautions against the effect of expansive soil. However, several members also noted that testing procedures are necessary to establish the precise PI of a given soil. Other members stated that while a PI of 15 has received recognition, there is no universal agreement on where to begin requiring special construction techniques. Furthermore, the Plasticity Index indicates the potential for problems, and not whether they will actually occur at a given site.

Subcommittee members also noted that shrink/swell clays are only one of a number of problem soils that can damage structures and infrastructures, leading to the need for costly repairs and potential threats to health and safety. Other such problem soils include expansive, compressible, shifting, and hydraulic soils. The CABO model code addresses problem soils as a class and is not limited to shrink/swell clays. In turn, the Subcommittee came to address the larger issue of "expansive soils" and to expand its response to incorporate a variety of problem soils.



COMMISSION MEMBER CLINTON MILLER

CHARACTERISTICS OF AND DAMAGES ASSOCIATED WITH EXPANSIVE SOILS

Members of the Subcommittee with professional knowledge of and experience with expansive soils discussed the characteristics of such soils and their response to changes in hydrology on sites. In general, the layered structure of certain clays causes them to expand significantly in the presence of sufficient water and exert pressure upward. However, subsequent desiccation can cause the soil to contract by a similar factor, potentially leaving critical structural components inadequately supported or entirely unsupported and evidenced in such structural stresses as cracked walls and tipped chimneys. Subcommittee members indicated that while problem soils expand and contract in both the horizontal and vertical dimensions, most damage is associated with their vertical motion—either expansive pressure upward, shifting footings and foundations, or downward contractions that lead to the partial or complete failure of critical structural elements.

Although serious economic distress is the most prevalent consequence of such damage, there is a potential threat to health and safety. Basement wall failures can be catastrophic. Homes with basements sited in the marine clays of northern Virginia have been susceptible to such threats prior to correction. Failures in crawl space or slab foundation structures are more likely to result in serious economic consequences rather than pose an immediate threat to health and safety.

However, the range of financial impacts on individual homes is broad. Some problems are relatively minor; others require remedial repairs costing tens of thousands of dollars. The Subcommittee also noted that, in many cases, damage from expansive soils is exacerbated by multiple contractor violations of the Uniform Statewide Building Code (USBC).

DETERMINING THE PRESENCE OF EXPANSIVE SOILS

Subcommittee members noted that available testing procedures can identify the expansive potential of soils. General soil data maps are available for most urban/suburban areas of the state. However, while this data can alert responsible parties to the possible presence of problem soils, it cannot be relied upon for characterizing soils on individual sites.

COMMISSION MEMBER
F. GARY GARCZYNSKI

Field observations or prior knowledge can also suggest the necessity for more detailed investigation of a building site. One commonly used test, Atterberg limits, measures the liquid and plastic limits of soils (and thus establishes the PI of the soil). This test gives a more accurate assessment of potential problems and is also relatively simple to perform. However, it is also somewhat subjective and may not provide precise enough information for engineering design. Other tests might be required to make more precise determinations.

Published soil surveys providing more detailed assessments at the county or city levels are available for most of state, and cover some 55 of Virginia's 135 major localities. Mapping or map updating for an additional 36 localities is either underway or complete and awaiting publication. Soil information is neither available nor anticipated in the reasonably near future for some eight (primarily western) counties and more than a dozen of Virginia's cities. Although county soil maps can alert all parties to the probability of encountering soils with various undesirable characteristics, the scale of such maps effectively prohibits their use as a basis for engineering or construction on an individual site. Further, because of the great variability in the distribution of soil types, no map would be likely to show every instance of a problem soil. Only site testing would approach 100 percent reliability.

Subcommittee members also noted that a number of other issues are as critical as the availability of reliable tests: (1) the criteria used to determine whether or when a specific site should be tested, (2) the number of test samples to be made for a given site, and (3) the individual or entity responsible for interpreting and applying the results of such tests. The existence of areas with low-moderate expansive potential further complicates efforts to determine when and where to test.

COSTS ASSOCIATED WITH SOIL TESTING AND CONSTRUCTION TECHNIQUES TO COUNTER EFFECTS OF PROBLEM SOILS

Subcommittee members noted that testing procedures currently in use cost from $200-250 per homebuilding site for simple testing to $400-700 for testing and the preparation of recommended foundation design. Simple testing for subdivisions costs about $160 per site.

Subcommittee members generally agreed that construction techniques that counteract the effects of expansive clays and other problem soils are available and permitted under current code provisions. The challenge is not so much one of knowing what measures to take as it is knowing under what circumstances to take such measures.

Although estimates of the cost of alternative construction techniques required to counter problem soils vary, one structural engineer serving on the Subcommittee estimated that such enhanced construction could add approximately $2,000-3,000 to the cost of a dwelling. Another Subcommittee member noted that the additional expense and value represented by the strengthened construction might not be acknowledged in an appraisal of the property.

STUDY ISSUES AND RECOMMENDATIONS

Following are the five issues specifically identified in HJR 570 for study and recommendations of the Commission.

STRENGTHENING THE UNIFORM STATEWIDE BUILDING CODE

HJR 570 requests the Commission to study whether the Uniform Statewide Building Code (USBC) should be strengthened to protect the integrity of structures built where problem soils are present.

The USBC currently gives the local building official authority to require testing of soils in areas "likely" to have expansive or other problem soils. Where such soils are identified, various methods for responding to them are permitted. Such methods include removal and replacement by other soils; stabilization by dewatering or other means; or the construction of special footings, foundations, or slabs.

The CABO Commentary provides guidance on the type of construction techniques to be employed where soils with high PIs are present, although the Commentary is not a regulation in the sense of the USBC. In effect, building codes provide for the use of appropriate construction techniques when needed, but do not directly prescribe when the need for such techniques should be determined.

The Subcommittee considered the adequacy of these permitted responses as well as the circumstances under which individual testing for the presence of problem soils may be undertaken. It also considered whether it is the substantive provisions of the USBC relevant to expansive soils or the administration and enforcement of current regulations that are the primary contributors to the problems associated with new home construction on such soils. The Subcommittee discussed at length the training currently required of building officials and key inspection staff. Some members noted that in the past inspectors had missed construction flaws that exacerbated soil-related problems. Others noted that the training and certification requirements for key USBC enforcement personnel are becoming more stringent, indicating increased professionalism. Other members noted that, while training of enforcement personnel, contractors, or tradesmen is helpful, developing a reliable set of criteria enabling the building official to decide whether to require soil testing is more important.

Accordingly, Delegate Almand appointed a special Task Force to review alternatives and develop an evaluation plan that can be used by local building officials where there is reasonable doubt as to the presence of expansive soils. Subcommittee members appointed to the Task Force were: Messrs. Michael A. Matthews, Task Force Chairman, Jay F. Conta, Charles R. Covert, Jr., William D. Dupler, and Ralph L. Mendenhall. The Task Force held two four-hour meetings, both of which were attended by all members, as well as by the Commission Executive Director.

At its initial meeting, members noted that every location in the Commonwealth has soils with some degree of expansive potential. Although soil mapping is not complete for all jurisdictions in the Commonwealth, it is complete for those jurisdictions in which some 90 percent of Virginia's population resides. It was further noted that local building officials need assistance, in the form of evaluation guidelines, in their enforcement of current USBC provisions pursuant to expansive soils.

The Task Force initially discussed the option of recommending mandatory soil testing for every residential building site. (Commercial sites were not discussed.) Arguments against such mandate include: i) $500 average cost for individual sites, although multiple lot testing could average under $160 per lot; ii) soils with low-moderate probability of expansive potential in many areas of the state; iii) economic burden of soil test cost placed

PRIOR TO INSTALLATION OF SEWER SYSTEMS, THE GENERAL PUBLIC WAS INDIRECTLY PROVIDED PROTECTION BY SOIL PERK TESTS, WHICH, IN EFFECT, FUNCTIONED AS SOIL TESTS.

on home purchaser rather than property developer; and iv) difficulty of enforcement of such mandate given one-person building code offices in some localities.

The primary argument favoring mandatory soil testing was that, prior to installation of sewer systems, the general public was indirectly provided protection by perk tests, which, in effect, functioned as soil tests. Properties failing perk tests were excluded as building sites pending installation of sewer systems. However, with the advent of sewer systems extending into outlying areas, the information provided by a perk test is no longer provided where sewer systems are installed.

The Task Force recommended to the Subcommittee the following six-point initiative, which the Subcommittee in turn unanimously recommended as amended for the consideration of the Commission. The Commission adopted the Subcommittee recommendations, as follows:

1) The Commission recommends amending the *Code of Virginia* to authorize localities to require from a developer information on potentially expansive soils at the point of the subdivision review process. Proposed *Code* language follows:

> 15.1-466. PROVISIONS OF SUBDIVISION ORDINANCE
>
> A subdivision ordinance shall include reasonable regulations and provisions that apply to or provide:
>
> ...3. For adequate provisions for drainage and flood control and other public purposes, ~~and~~ for light and air, and to identify soil characteristics.

Such amended language would ensure that the cost of initial testing is borne by the developer rather than by the home purchaser. Such language would also ensure that a building official has soils information which may, in turn, enable such official to require such modifications as may be appropriate for residential construction on the proposed site.

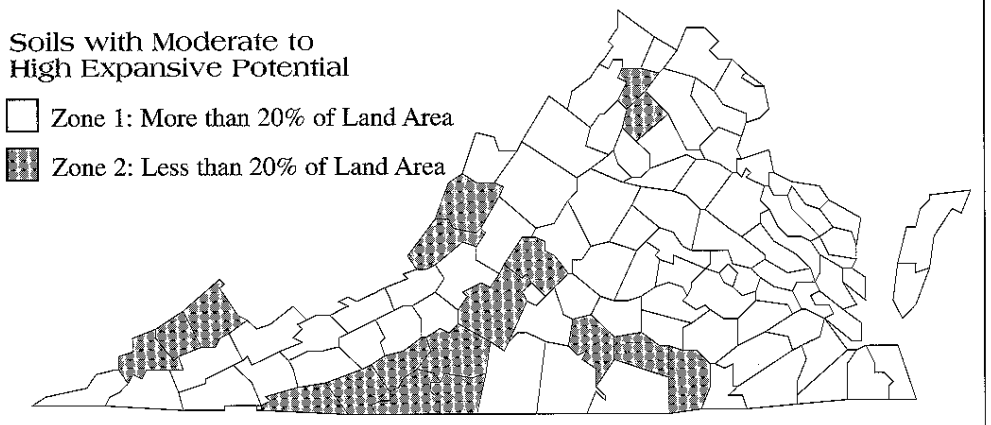
2) The Commission recommends that the Virginia Board of Housing and Community Development (HCD) include in the Virginia Uniform Statewide Building Code (USBC) a two-zone map of the Commonwealth, which map would be produced using U.S. Natural Resources Conservation Service (NRCS) data. Commentary to accompany the map would indicate the potential of expansive soils in Virginia and provide for appropriate action to be implemented by local governments pursuant to the level of expansive soils potential.

The two-zone map of Virginia to be included in the USBC could be identical or similar to the map in Figure One, and would be accompanied by this information:

> Zone 1 (Probability of soils with moderate-high expansive potential in more than 20 percent of jurisdictional land area) - Localities in this Zone shall implement an expansive soils test policy. Such policy, which may be determined by the locality, shall provide for minimum criteria to determine under what circumstances testing for expansive soils is required. Model language for such minimum criteria shall be drafted by HCD and disseminated to localities in Zone 1. In addition, HCD shall, acting in the role of an information conduit, provide to Zone 1 localities a detailed soils map of the state, quantifying soils' expansive potential and compiled

FIGURE ONE

EXPANSIVE SOILS IN THE COMMONWEALTH OF VIRGINIA



using U.S. NRCS data, together with applicable U.S. NRCS soils data. Each locality in Zone 1 shall also obtain and retain as a reference guide a copy of the applicable jurisdictional soil survey, produced using U.S. NRCS data, where such survey is available.

Zone 2 - (Probability of soils with moderate-high expansive potential in less than 20 percent of jurisdictional land area) - The Department of HCD shall, acting in the role of an information conduit, provide localities in this Zone a detailed soils map of the state, quantifying soils' expansive potential and compiled using U.S. NRCS data, and this statement, to be included in the legend of the above-referenced map:

> The Commonwealth of Virginia has localized areas of expansive soil throughout its jurisdictional boundaries. Therefore, it may be appropriate to require performance of site-specific soil testing in localized areas of your jurisdiction prior to issuance of a building permit. Localities in Zone 2 are encouraged to adopt the soil testing policy utilized in Zone 1 localities.

Each locality in Zone 2 shall also obtain and retain as a reference guide a copy of the applicable jurisdictional soil survey, produced using U.S. NRCS data, where such survey is available.

3) The Commission recommends mandatory education for Virginia building code officials on the issue of expansive soils; the presence of such soils throughout the Commonwealth; and the fact that building officials should be able to rely on the subdivision process as a guide to establish that the existing soils are suitable for such minimum construction criteria as is set forth in the Virginia USBC. Such education for building officials, which would also include the above-referenced proposed *Code of Virginia* amendment pursuant to expansive soils, would be contained in the curriculum of the Building Officials Code Academy convened several times annually by the Department of Housing and Community Development.

4) The Commission recommends education for Virginia homebuilders, designers, realtors, and other industry professionals on the issue of expansive soils; the presence of expansive soils throughout the Commonwealth; appropriate measures to implement

to ensure the suitable construction of residential foundations located on expansive soils; and the above-referenced proposed *Code of Virginia* amendment.

5) The Commission recommends a broad-based public awareness campaign to educate the general public on the issue of expansive soils; the presence of expansive soils throughout the Commonwealth; and the potential effects of expansive soils on residential construction. Such information, already available, may be disseminated through lenders, the Virginia Tech Extension Service, building officials/local governments, statewide and regional homebuilders associations, and other avenues.

   In addition, the Commission suggests that, at initial training and through continuing education courses, realtors statewide be apprised of the nature and potential effects of expansive soils. Further, the Commission suggests that the Virginia Association of Realtors consider the inclusion of language in its standard contract forms, which language is currently utilized by some realtors in the Commonwealth, and states, for example:

   > Certain soils in our market area have been identified as having moderate-high concentrations of certain marine clays. These soils are commonly referred to as "shrink/swell" or "expansive" soils, and can cause foundation and structural damage. It is recommended that Purchaser investigate these matters with local building officials or other experts to determine whether the subject property is adversely affected by these or related conditions.

   The Commission also suggests that local health department officials be advised of concerns regarding expansive soils, and that, in conjunction with their responsibilities relating to septic system permitting, they advise local building officials of results of such soil tests as they may undertake in the permitting process.

6) The Commission recommends restoration of state funding for the Virginia Tech Soil Survey, Characterization, and Interpretations Program. The Soil Survey Program, a part of the National Cooperative Soil Survey Program, is designed to obtain an inventory of Virginia's soil resources, record the location of soils, predict soil performance, facilitate the transfer of soil information, and contribute to the knowledge, understanding, and appropriate use of the state's land resources. Soils information as developed and disseminated by the Virginia Tech Program is critical to decision-making regarding economic development, agriculture, homebuilding, infrastructure construction, forestry, and environmental issues.

   Currently available soil maps have aided in preliminary assessments of the probability of encountering problem soils. Data for some localities remains unpublished. In others, older surveys need to be updated and revised. Refined soil mapping processes could show when testing would be prudent, reducing the likelihood of adding unnecessary costs to residential development. If soil maps are to be a component of a proposed response to the presence of problem soils, then continued funding for the completion or revision of soil surveys for all jurisdictions is necessary.

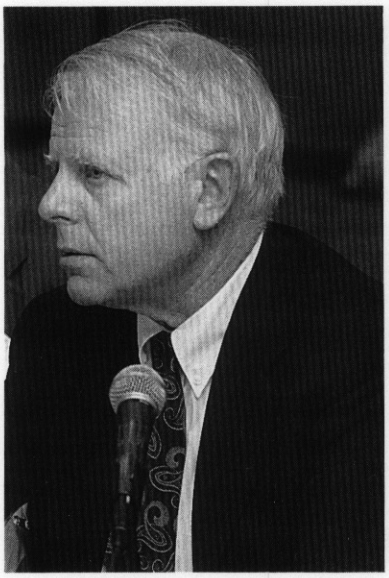
   As previously noted in this issue paper, about 80 percent of Virginia's land area has been mapped. Eighteen counties are currently in the mapping process; eight are in the initial mapping stages or have not yet had any mapping work commence. (A roster of Virginia counties not yet mapped is provided in Figure Two.) From the early 1980s until FY 1994, the Soil Survey Program received annual state allocations of

about $550,000. The current state allocation is about $150,000. Correspondingly, the number of Program field soil scientists has decreased from eleven to four; the number of laboratory positions has decreased from four to 1.5.

Decreases in state funding for the Soil Survey Program have been compounded by decreases in federal government program funding. It is also of note that, under the reorganization of the U.S. NRCS currently in process, federal mapping decisions regarding Virginia soils will be addressed not in the Commonwealth, but in Raleigh, North Carolina, and Morgantown, West Virginia.

The Virginia Tech Soil Survey Program is integrated into the Tech educational program in environmental soil science. Virginia Tech is one of a relatively few institutions nationwide that offers a degree program in soil science, and the only such institution in Virginia. Its soil science and mapping courses are highly subscribed, and the soils laboratory provides additional resource opportunities for the students. According to Dr. James C. Baker, Virginia Tech Professor of Soil Science and Coordinator of the Soil Survey and Characterization program, Tech's level of field experience in soil mapping, characterization, and interpretations is "unparalleled."

Restoration of full funding for the Virginia Tech Program in the amount of about $550,000 per year would ensure completion of soil mapping of the Commonwealth in ten years. Annual appropriations of about $194,000 would ensure full operation of the Virginia Tech Soil Survey Characterization Laboratory that provides critical information on the chemical, physical, and mineralogical properties of soils.



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7) In addition to adopting the above-stated recommendations of its Task Force, Subcommittee members noted that the implied warranty for new homes contains a provision extending its term to five years for the foundations of new dwellings. However, the statute of limitations for violations of the USBC is limited to two years following the date of discovery of a violation. The term of discovery is limited to one year from the date the certificate of occupancy is issued or the dwelling is inhabited. Members focused on whether the terms of the two should be concurrent, and, with two negative votes, recommended by majority that the statute of limitations for issuance of notice of USBC violations relating to foundations of new dwellings be extended from two years to five years from the date of issuance of the certificate of occupancy. The Subcommittee further recommended that the pertinent section of the USBC referencing USBC violations be cross-referenced to the pertinent criminal procedure section of the *Code of Virginia* applicable to such USBC violations.

   The Commission took no action on this recommendation. Instead, Delegate Diamonstein requested that the Subcommittee revisit the issue and make a unanimous recommendation to the Commission. Further discussion indicated no consensus among Subcommittee members on the issue of extending criminal liability pursuant to the stated matter.

STRENGTHENING CLASS A AND B CONTRACTOR LICENSING

HJR 570 requests the Commission to study whether Class A and Class B contractors should be subjected to more stringent licensing requirements relating to shrink/swell soils in order to assure that they respond properly to the structural problems that such soils engender.

FIGURE TWO

Soil mapping is complete for all Virginia counties with the exception of the following:

ALLEGHANY
AMHERST
ARLINGTON
BATH
BLAND
BRUNSWICK
BUCHANAN
BUCKINGHAM
CAROLINE
CRAIG
CUMBERLAND
DICKENSON
FLOYD
FRANKLIN
GRAYSON
HALIFAX
HIGHLAND
LEE
PATRICK
RUSSELL
SOUTHAMPTON
SUSSEX
WISE

The current contractor licensing laws do not specifically address the issue of shrink/swell soils, or for that matter, the larger issue of structures. Licensure as a Class A or Class B contractor is predicated upon the provision of required information, the past performance of the applicant including compliance with Virginia law and contractual obligations, and the possession of relevant knowledge as demonstrated through examination of a designated employee. The examination tests knowledge of business practices but does not address structural or contracting issues, *per se*.

The Subcommittee considered various methods for increasing contractors' knowledge and awareness of and responsiveness to shrink/swell soil problems. For instance, individuals seeking classification as building contractors could be called upon to demonstrate knowledge of shrink/swell soil problems and their mitigation as part of their qualifications for licensure. The subcommittee also considered how other aspects of contractor licensing, including the opportunity for a business to hold multiple licenses, could affect the effort to assure that new construction adequately responds to the potential presence of expansive soils.

The Commission adopted the Subcommittee's unanimous recommendation that the Virginia Board for Contractors consider including in its licensure exams for Class A and B contractors a section designed to test technical knowledge relating to actual structures and construction of the same. Such exam questions could determine the competency of prospective Class A and B contractors to address USBC requirements relating, for example, to foundations, foundation walls, framing, and wetproofing.

The Commission also adopted the Subcommittee's unanimous recommendation that the Board for Contractors be asked to consider "revolving door" contractor licensing that permits incompetent and/or unscrupulous contractors to close a business and reopen effectively immediately thereafter using another business name. The Commission recommends that, at a minimum, the Board for Contractors' computer roster of contractors include the names of licenses held by and companies in which all current contractors were previously owners.

The Subcommittee and subsequently the Commission noted that while recent state licensing reforms may help to resolve concerns of revolving door licensing, too little time has passed since implementation of such reforms to evaluate their effectiveness. The Subcommittee and the Commission further noted legislation to be proposed by the Board for Contractors in 1996. In sum, such legislation would:

- amend *Code of Virginia* § 54.1-1123 (Contractor Recovery Fund) to increase from $20,000 to $40,000 the maximum payable amount where multiple claims are filed
- amend *Code of Virginia* § 54.1-1120 (Contractor Recovery Fund) to increase from six to twelve months the time period for completing the process and perfecting any recoveries
- amend *Code of Virginia* § 54.1-1119 (Contractor Recovery Fund) to permit the Director of the Board for Contractors to collect assessments as part of the licensure renewal process.

ADVISING THE PUBLIC OF APPEALS DECISIONS

HJR 570 requests the Commission to study whether the public should be apprised of the results of appeals from the decisions of building officials respecting questions concerning

the presence of, testing for, or measures to counteract the effects of expansive soils.

Under the current provisions of the USBC, the owner of a building, the owner's agent, or other corporate or natural persons directly involved in the design or construction of a building may appeal certain decisions of a local building official to the local board of building appeals. Actions to which an appeal may be taken include the refusal to grant a modification complying with the intent of the USBC, incorrect interpretation of the intent of the USBC, cases where the provisions of the USBC do not fully apply, or where a form of construction equal or superior to that specified in the USBC has been denied. Hearings by the local board are to be public and conducted in accordance with the applicable provisions of the USBC.

Parties to local appeals who are aggrieved by the decision of the local board relating to the application of the USBC may appeal to the State Building Code Technical Review Board (TRB), which is bound to the applicable procedures set forth in the Administrative Process Act. Further appeals from decisions of the TRB may be made to the appropriate circuit court with original jurisdiction.

The Subcommittee considered whether the public hearing provisions applicable to local boards and the TRB should be enhanced to provide additional public awareness of decisions involving the application of the USBC to shrink/swell soil cases. Although local building officials and many in the building design community are regularly alerted to interpretations of the TRB through periodic publications of the Department of Housing and Community Development (DHCD), the general public may be less aware of such decisions. Accordingly, Subcommittee members unanimously recommended — and the Commission unanimously adopted such recommendation — that the Board of Housing and Community Development consider amending § 112.2 of the USBC, Volume I (Notice of Violation) to reference § 116.5 of the USBC, Volume I (Application for Appeal) to clarify that any written decision of a building code official must indicate the opportunity for appeal from such decision.

PREVENTING THE BUILDING OFFICIAL FROM OVERRIDING REGULATORY AGENCY DECISIONS

HJR 570 requests the Commission to study whether local building officials should be prevented from overriding the findings of regulatory agencies "based upon proof provided by a licensed architect."

The primary role assigned to the local building official is enforcement of the provisions of the USBC both as it is written and as it is interpreted by the TRB. The local official may: grant modifications, require an engineer's or architect's seal, or require and consider statements from design professionals relating to a proposed modification. Enforcement is carried out through the issuance of permits, the conduct of inspections during construction, the issuance of certificates of occupancy, and through notices of violation. In the case of the latter action, the local official must notify the responsible party and direct the correction or abatement of the violation. In the event that violations are not corrected, legal proceedings may be taken against the responsible party by the enforcing authority.

The USBC does not grant local building officials the authority to override decisions of regulatory agencies, but is intended to place the official in the role of an administrative agent. Subcommittee members, noting that the regulatory process is, in fact, an adjudicative process with right of appeal to the circuit court with jurisdiction, unanimously

FIGURE THREE

Under the recommendations of the Virginia Housing Study Commission the following would be classified as Zone 2 counties:

ALLEGHANY
AMHERST
BATH
BEDFORD
BRUNSWICK
BUCHANAN
CARROLL
CHARLOTTE
DICKINSON
FLOYD
FRANKLIN
GRAYSON
HENRY
LUNENBURG
PATRICK
RAPPAHANNOCK
WARREN
WISE

All other Virginia counties would be classified as Zone 1 localities, with more than twenty percent of their jurisdictional land area having moderate to high expansive potential.

concluded that a recommendation on this issue is unnecessary. Accordingly, the Commission took no action on the matter.

REQUIRING AN ARCHITECT'S SEAL

HJR 570 requests the Commission to study whether the seal of an architect or engineer should be required on building plans for structures projected to cost more than $200,000.

The USBC currently requires an architect's or engineer's seal on plans for numerous categories of structures. The current requirement is predicated upon several variables including: (1) the use group of the structure, (2) the size of the structure as indicated by square footage or the number of stories, and (3) by the presence of certain electrical or mechanical systems. In a more general sese, the requirement for a seal is correlated with the degree of health and safety hazards associated with a structure. It has not been associated with the actual or proposed cost of building projects. All one- and two-family residential structures of three or fewer stories have been excluded from the requirement.

The Subcommittee considered the potential effectiveness of such a requirement in combatting the effects of shrink/swell soils, what costs might be imposed by such a requirement, whether the seal would relate only to footings and foundations, and whether projected cost is an appropriate triggering mechanism. Members unanimously concluded that the Commonwealth's responses to challenges posed by expansive soils should not be limited to properties above a specified cost threshold. In arriving at this conclusion, members cited both the practical difficulty of administering programs on such a basis as well as the belief that potential hazards to health and safety cannot be directly correlated with the prices of individual homes. Accordingly, the Commission took no action on the matter.[1]

[1]The Commission and its Executive Director express sincere appreciation to the following for assisting the Commission in its study pursuant to HJR 570: the Commission Subcommittee, who are named individually at the conclusion of this Report; Mrs. Anne Demarest, who permitted the Executive Director to inspect expansive soil-related damage at her home and who provided the Commission and the Subcommittee first-hand information on such problems; Mr. Frederick M. Garst, Geographic Information Systems Specialist, U. S. Natural Resources Conservation Service, for providing mapping data and creating maps, including the map from which Figure One was derived, of the extent and location of expansive soils in the Commonwealth; and Dr. William J. Ernst, DHCD Policy Analyst, for drafting initial issue papers and summaries for the Subcommittee.

HOUSE JOINT RESOLUTION 438: COMMUNITY LAND TRUSTS

BACKGROUND

House Joint Resolution 438 requests the Virginia Housing Study Commission to study the desirability of creating community land trusts (CLTs) in Virginia to increase the availability of affordable housing. The Resolution was patroned by Commission members Delegate William C. Mims and Senator Charles L. Waddell.

In 1988, Commission Executive Director Nancy M. Ambler invited the founder and then-Executive Director of the Institute for Community Economics (ICE) to address attendees at the first Governor's Conference on Housing on the subject of CLTs. ICE, a nonprofit headquartered in Springfield, Massachusetts, developed the CLT model in the mid-1960s and is generally regarded as the national leader in providing policy, technical, and financial assistance to such groups.

ICE has assisted over eighty start-up CLTs across the country, and its revolving loan fund has allocated over $18 million to community-based organizations. ICE serves as a clearinghouse for information on CLTS, offers publications and training on the subject, and is an advocate for the land trust movement.[1]

More than sixty Virginia housing advocates attended the 1988 Conference session focusing on CLTs, and the ICE Executive Director responded to numerous questions on the concept of and ways to initiate land trusts in Virginia. To date, however, only one CLT has been established in the Commonwealth. That organization, the Loudoun Community Land Reserve, was created in 1993 in Loudoun County.

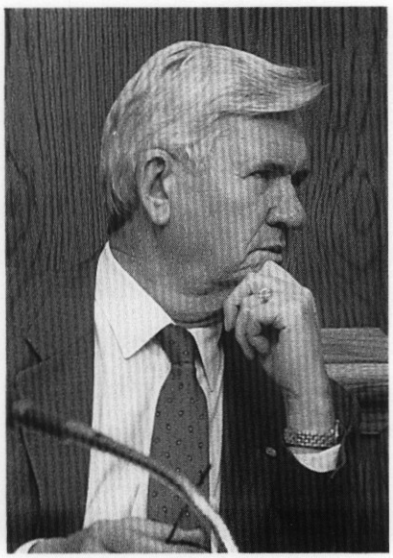
GENERALLY SPEAKING, A COMMUNITY LAND TRUST IS A PRIVATE NONPROFIT CORPORATION ESTABLISHED TO ACQUIRE AND HOLD LAND IN TRUST FOR THE BENEFIT OF A COMMUNITY.

CONCEPT AND RATIONALE

Generally speaking, a community land trust is a private nonprofit corporation established to acquire and hold land in trust for the benefit of a community. CLTs are designed to preserve the long-term affordability of housing and promote sound land use practices in the communities in which they are located. ICE cites five distinctive features of CLTs:

- Commitment to Local Control. CLTs are membership organizations whose members are drawn from land trust leaseholders and the broader local community (whether that community is defined as a neighborhood, a locality, or a region). CLT members may elect a governing board that includes the interests of leaseholders as well as those of the broader community.
- Protection of Long-Term Housing Affordability. CLTs protect future housing affordability by controlling the sale of buildings and other improvements on CLT land. The CLT retains the first option to repurchase such improvements — should leaseholders choose to sell — at a price calculated according to formulaic guidelines set forth in the leaseholder agreements. These limited appreciation formulas (also known as limited

[1]Much of the information included in this issue paper was generously provided by Ms. Julie Orvis, Affiliate Program Coordinator for ICE, to whom the Commission and its Executive Director express sincere appreciation.



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CHARLES L. WADDELL

equity formulas) for calculating the resale price are designed to ensure that leaseholders receive equitable compensation for their investment. The price typically does not include value from market appreciation of the CLT's investment in land or buildings.

- Dual Ownership. CLTs ensure long-term affordability of their properties by continuing to own the land while conveying to leaseholders long-term use of such land. Leaseholders own their homes and improvements, while the CLT owns the land on which such homes and improvements are situated. Leaseholders benefit from the security and quality of life that comes with affordable housing, full rights of privacy, and the right to transfer their lease to their heirs.
- Ongoing Program Development. CLTs tend to be committed to ongoing acquisition and development programs that, in turn, can serve to revitalize communities. In other words, they tend not to be driven by a single project; rather, they strive to address diverse community concerns.
- Flexibility. Across the nation, CLTs are at work in urban and rural areas, developing single family homeownership opportunities as well as much-needed affordable rental housing. They can also serve as a focus for such community-wide efforts as the appropriate development of land, preservation of farmland, and revitalization of community businesses and social services.

COMMUNITY LAND TRUSTS NATIONWIDE

Nationally, according to ICE, there are more than 100 community land trusts located in every region and in thirty states. Of these organizations, 84 own at least one property and 29 have formed a working group but as yet own no property. Some 39 percent of such groups are located in towns and small cities (population 10,00-100,000); 35 percent are located in urban areas (population over 100,000); and 25 percent are located in rural areas (population under 10,000).

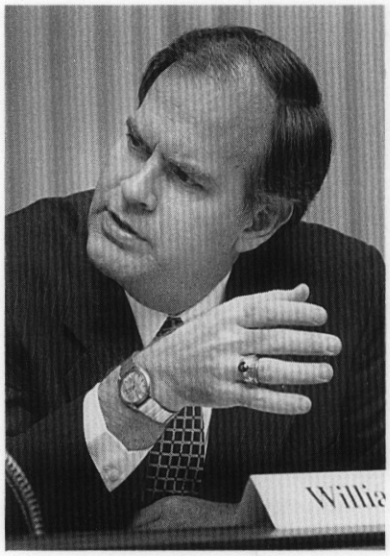
CLTs nationwide have produced more than 3,500 affordable housing units. In addition, nine groups have developed commercial properties and six have preserved farms. Of the housing units developed, mobile homes and single room occupancy (SRO) projects each account for seven percent; two-three unit projects account for fourteen percent; single family projects account for 26 percent; and multifamily (four or more units) account for 44 percent.

A (nearly) annual conference convened by ICE brings together representatives of these groups as well as other interested parties. The 1996 conference, to be held March 15, will be hosted by the New Columbia Land Trust in Washington, DC.

In addition to the New Columbia Land Trust, CLTs located in relative proximity to the Commonwealth can be found in eastern Tennessee (the Woodlands Community Land Trust was established in Clairfield, Tennessee, in the 1970s) and in Durham, North Carolina. The Durham model, the North Carolina Community Land Trust (NCCLT), may provide inspiration for possible future Virginia CLTs.

The NCCLT was organized in 1987 by residents of Durham's West End neighborhood, a racially mixed, low-income community adjacent to the Duke University campus. The NCCLT initially relied on project financing available through the ICE Revolving Loan Fund, but more recently has assembled an array of financing sources. For example,

Atlanta's Federal Home Loan Bank contributed nearly $200,000 at four percent interest; Durham voters approved a $15 million bond issue for NCCLT partially deferred loans; and Duke University invested $1.2 million for affordable housing. Perhaps Virginia's localities and post-secondary institutions could be so inclined to revitalize their own neighborhoods.



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ESTABLISHMENT OF COMMUNITY LAND TRUSTS

CLTs have been established in response to myriad situations by myriad groups — concerned citizens, local governments, community development corporations, neighborhood associations, religious coalitions, and others. Anyone should be eligible to join CLTs, which are generally chartered as tax exempt, nonprofit corporations. Although each CLT develops its own membership criteria, most require i) a nominal annual membership fee and ii) member attendance at an orientation and annual membership meeting. Each CLT also develops its own leaseholder selection criteria.

CLTs differ from typical housing cooperatives in several ways.

- The membership of a housing co-op is limited to those living in (or owning) the co-op housing units. In a CLT, membership — as previously noted — is not limited to leaseholders, but is open to residents of the larger community.
- Members of a co-op jointly own and control their housing and, often, the land on which it is situated. CLT leaseholders, as noted, own and control their housing, but the land on which it is situated is controlled by the CLT membership.
- Co-ops typically do not set limits on the equity appreciation that may accrue to members selling their units. CLTs, on the other hand, set strict limits as set forth in the leaseholders' limited equity formula, described previously.

FINANCING COMMUNITY LAND TRUSTS

As a nonprofit, tax-exempt organization, a CLT may buy or receive gifts of property (or receive other financial or in-kind contributions). To purchase or improve property, CLTs have utilized various financing mechanisms. The ICE Revolving Loan Fund provides an option for financing acquisition and construction. Housing finance authorities, mortgage lenders, and financial institutions are also on record as having financed CLT projects.

In the public sector, according to ICE, municipalities have allocated federal Community Development Block Grants (CDBG) and HOME funds, as well as other resources such as bond sale proceeds and city-owned land to CLTs. Generally speaking, CLTs should also qualify for federal Community Housing Development Organization (CHDO) funding. ICE reports that, increasingly, CLTs are working in cooperation with local governments to address present and anticipated affordable housing needs. Several state legislatures, as well, have appropriate special funds for CLT-related activities.

COMMUNITY LAND TRUST DISPUTES AND DISSOLUTION

There is little literature on the process and outcome of disputes among CLT leaseholders, or between a leaseholder and a CLT. ICE reports that in such circumstances negotiation should precede litigation. Lease agreements signed by all leaseholders may establish a (possibly binding) arbitration procedure.

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TRACEY S. DeBOISSIERE

Most CLTs acquire land with the intention of forever prohibiting its resale as a commodity. CLT by-laws are generally structured to require the consent of all affected leaseholders as well as a supermajority of the board and members for the organization to sell its land. Should a CLT dissolve, it is obligated as a nonprofit to distribute its assets to another nonprofit. In turn, the successor corporation is legally bound to honor the lease agreements between the CLT and its leaseholders.

RECOMMENDATIONS

The Virginia Housing Study Commission recommends the following initiatives insupport of the establishment and activities of community land trusts in the Commonwealth.

- The Commission requests that the Department of Housing and Community Development Housing Training Center conduct training sessions focusing on CLT establishment and financing.
- The Commission requests that DHCD and the Virginia Housing Development Authority (VHDA) provide financing to CLT multifamily rental and homeownership developments, and to homeowners who would seek to purchase homes through CLTs. (The VHDA does not currently provide mortgage financing to homebuyers seeking to purchase co-ops.)
- The Commission encourages local governments, redevelopment and housing authorities, and nonprofit organizations to consider CLT models as part of their multifamily rental and homeownership development programs.

SENATE JOINT RESOLUTION 347: TENANT ORGANIZATIONS IN PUBLIC HOUSING PROJECTS

BACKGROUND

Senate Joint Resolution 347, patroned by Senator Yvonne B. Miller, requests the Virginia Housing Study Commission to review state and federal regulations governing the administration of tenant organizations in public housing projects, and to recommend solutions for creating incentives for tenant management, home ownership, and economic empowerment. In turn, the Commission requested that the Virginia Department of Housing and Community Development and the Virginia Center for Housing Research review the literature on the subject, interview public housing managers and tenants in the Commonwealth, and draft issue papers summarizing their findings. Following is a summary of the issue papers, each with a different focus, which were provided the Commission by the two agencies and which are available, on request, from the Commission.

THE CURRENT TREND FEDERALLY IS TO DEVOLVE GREATER DISCRETION AND RESPONSIBILITY TO LOCAL PUBLIC HOUSING AUTHORITIES.

STATE REGULATIONS

Virginia's Housing Authorities Law (Chapter 1, Title 36 of the *Code of Virginia*), which differs little from those of other states, empowers local governing bodies to establish housing and redevelopment authorities as political subdivisions. The law defines the general powers of authorities, enumerates permitted activities, and prescribes a general administrative framework. Like every other state in the nation, Virginia has passed no laws referencing tenant management activities.

FEDERAL REGULATIONS

Federal regulation of public housing has been widely criticized as too rigid, too ineffective, in other words: too much. The current trend federally is to devolve greater discretion and responsibility to the local public housing authorities (PHAs). In the meantime, the nation's public housing program remains a partnership between the U. S. Department of Housing and Urban Development (HUD) and the local authorities, with HUD granting funds to the PHAs and requiring, in return, adherence to complex operational regulations including rent structures and fund accounting procedures.

During the past decade, HUD has established several programs designed to promote active involvement of tenants in all aspects of PHA missions and operations through the recognition of resident councils; encourage the creation of PHA resident management corporations; and create economic opportunities for PHA tenants. These programs include:

- Tenant Participation and Management in Public Housing Projects (24 CFR 964), which establishes a framework for resident management by providing for PHAs to contract out one or more management services to a qualified resident corporation.
- Public Housing Family Self-Sufficiency Program or FSS (24 CFR 962), which seeks to promote economic independence and self-sufficiency

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among tenants by diminishing the disincentives to individual achievement that result from the income-linked rent structure of public housing. (Currently, tenants pay thirty percent of their income in PHA rents. As a tenant's income increases, so does the rent.)

- The Section 5(h) Homeownership Program for Public Housing (24 CFR 906) permits PHAs to sell all or part of a development to eligible tenants and requires PHAs to negotiate in good faith with resident management corporations regarding possible ownership terms.
- Section 3 of the Housing Act allows PHAs to bypass ordinary procurement procedures to contract directly with resident-owned businesses for various services (e.g., exterior painting, rehabilitation of units, landscaping), thereby creating opportunities for entrepreneurship within the tenant community.

STRENGTHS AND WEAKNESSES OF FEDERAL REGULATIONS

Recent federal legislation, then, has provided PHAs with new opportunities and new responsibilities vis-a-vis resident management initiatives. However, such legislation has its own strengths and weaknesses, which, ultimately, impact the potential success of the initiatives it is designed to encourage.

Regulations governing resident management can help to provide structure and guide such initiatives as they seek to improve the quality of life in PHAs themselves and in surrounding neighborhoods. Increasingly, resident initiatives have evolved from a focus on project management to opportunities focusing on tenants themselves: self-esteem building, skill and job training, education, financial planning, and self-sufficiency. Regulations also require that PHAs cooperate with resident groups, and, in an adversarial PHA/resident group situation, such requirement is, in effect, essential.

In many instances, however, regulations are not backed by funding requisite for their implementation, and thus, programs simply do not happen. Although lack of federal funding to offset regulations is perhaps the major weakness in federal initiatives for resident opportunities, another drawback may be the discretionary language found in such regulations. Again, where adversarial management/tenant relationships are found, discretionary language will not typically be effective in the fostering of programs.

Factors cited as problematic for resident groups themselves include: lack of ongoing tenant leadership; lack of facilities and transportation; and poor record keeping and financial management controls. Factors cited as problematic in other areas relating to resident groups include: inadequate briefing of PHA residents by PHAs regarding opportunity programs; rental rate economic disincentives; and inadequate interagency cooperation.

RESIDENT INITIATIVES SUCCESS STORIES

Success stories stemming from resident initiatives programs can be found nationwide and across the Commonwealth, as well. One such story—or, more precisely, several such stories—can be found within the housing developments of the Cumberland Plateau Regional RHA in southwest Virginia. A resident council of the RHA has received national attention for its model resident adult education program initiated in cooperation with the RHA and Clinch Valley College, and the RHA management places high priority on resident comments and recommendations.

HISTORY AND FUTURE OF TENANT MANAGEMENT INITIATIVES

Tenant management programs were originally initiated in response to the virtual meltdown of housing authority management in St. Louis and Boston. In 1969, Bertha Gilkey and other frustrated tenants organized the nation's first public housing rent strike. In 1971, tenants created the nation's first resident management corporation for the Bromley-Heath housing development in Boston. Soon thereafter, Ford Foundation funding fostered the establishment of two tenant management corporations operating in St. Louis Housing Authority developments.

In the mid-1980s, HUD initiated major policy and programs designed to promote tenant management as a means of addressing rising crime and deteriorating units in public housing. The concept of tenant management also shifted at this time from "management" *per se* to broader concepts of tenant "initiatives." While there are notable successful examples of resident initiatives programs, it is nonetheless clear that resident management is not in itself a panacea for the problems facing public housing—both management and tenants.

The future of public housing resident initiatives programs is uncertain indeed. As this Commission Annual Report goes to press, Congress and the President are negotiating budgetary matters that will have a dramatic effect on national housing and community development policy and programs. Budget cuts, welfare reform, consolidation of HUD programs, block granting, and changes in public housing regulations all will effect public housing programs nationally and in the Commonwealth.

A February 1995 Inspector General's audit of technical assistance grants issued in support of tenant management programs concluded that resident management programs were not making significant progress toward property management responsibilities and that funding was being spent on many areas other than the goal of property management. The audit recommended that program expansion be halted. Further, the HUD Secretary's "Blueprint" sought to eliminate separate funding for the Tenant Opportunity Program by FY96.

VIRGINIA PHAS ARE WIDELY CONSIDERED TO BE WELL-RUN AGENCIES, AND SEVERAL ANNUALLY RANK AT THE TOP OF HUD SCORING ROSTERS.

RECOMMENDATIONS

Nationally, public housing tenant organizations active in property management have tended to become so involved as a result of a crisis-type management situation in their local PHA. Virginia PHAs are widely considered to be well-run agencies, and several annually rank at the top of HUD scoring rosters. No Virginia PHAs are listed on HUD's "troubled authorities" roster, and there has been little interest on the part of Virginia PHA tenants to become involved in property management. For the 1988-94 time period, 31 Virginia PHA resident organizations received HUD grants which were used to fund programs focusing on such issues as self-sufficiency, crime prevention, and leadership training. In addition to HUD grant-related programs, Virginia PHAs and their resident associations have worked in partnership to initiate and implement myriad other programs designed to enhance the lives of residents, and to foster a closer working relationship between management and residents.

Given the potential dramatic changes facing PHAs in Virginia and across the nation, it would appear to be premature for the Virginia Housing Study Commission to make recommendations to PHAs regarding tenant management programs. Congressional and Presidential budget approvals may well render moot any specific recommendations the Commission would make regarding such programs. Further, given the likelihood of

COMMISSION EXECUTIVE DIRECTOR NANCY M. AMBLER

HUD funding decreases in the neighborhood of 25 percent, Commission recommendations to PHAs could add insult to injury at a time when PHAs will almost certainly be facing historic challenges related to funding, properties, and residents to be served.

However, the Commission remains mindful of changes in federal policy as they affect housing and community development issues, policy, and funding in the Commonwealth. Localities, PHAs, and state government itself all likely will be operating with new rules from Washington, and the Commission will monitor federal developments closely and be prepared to act decisively and responsively should the need be presented for additional statutory authority or other legislative, policy, or fiscal initiatives.

In addition, the Commission expresses support, in principle, for:

- VHDA and DHCD financing initiatives that foster homeownership opportunities for public housing tenants as well as the development of affordable multifamilly and congregate housing
- courses offered by the DHCD Housing Training Center focusing on the promotion of homeownership strategies for PHA residents.

The Commission also encourages PHAs to encourage appropriate tenant management and homeownership initiatives, including appointments of tenant representatives to such PHAs.[1]

[1]The Commission and its Executive Director express sincere appreciation to Dr. C. Theodore Koebel, Director, Virginia Center for Housing Research, and to Mr. David L. Caprara, former Director of the Department of Housing and Community Development, for assisting the Commission in its study pursuant to SJR 347.

WATER AND SEWER CONNECTION FEES

COMMISSION STAFF MEMBER NANCY D. BLANCHARD AND URBAN PARTNERSHIP DIRECTOR NEAL J. BARBER

Independent 1994 studies by the Homebuilders Association of Virginia, and by the Virginia Department of Housing and Community Development at the request of the Housing Study Commission, pursuant to local water and sewer connection fees in the Commonwealth reached the same conclusion: that the *Code of Virginia* offers little specific guidance as to rates, fees, and charges to localities or authorities providing water and sewer facilities.

Although local governments and authorities are authorized to fix, charge, and collect fees for water and sewer services, the laws governing these charges are vague and offer little guidance to local governments in establishing such fees and charges. Section 15.1-1260 of the *Code* provides localities the authority to fix and impose charges for water and sewer services. These charges are meant to provide funds to pay the cost of maintaining, repairing, and operating the system; pay the principle and interest on revenue bonds; and provide a margin of safety to make such payments. According to this *Code* section, rates, fees, and charges must be "just and equitable." *Code* §15.1-1261 specifies that a locality may fix and establish a connection fee "in a reasonable amount."

No guidance is offered in existing statutes as to the determination of a "reasonable amount." And, according to a recent Draper Aden Associates report, while the average water connection fee statewide is nearly $1,600 and the average sewer connection fee statewide about $2,500, some Virginia counties charge as much as $7,000 for the two connection services. Such wide discrepancy has led critics to charge that certain counties are "abusing" such fees, and inflating them for other uses.

In its 1994 Annual Report, the Commission opined that water and sewer connection fees established by any county, city, town, authority, or sanitary district must be fair and reasonable and bear a substantial relationship to the allowable costs of providing the individual service. Accordingly, the Commission recommended legislation that would amend appropriate sections of Title 15.1 of the *Code* and *Code* §§ 21-118.4(e) and 21.118.5 to provide more direction in establishing rates, fees, and charges for connection services.

Specifically, such legislation would mandate that connection fees include only the actual costs of installing the connection to the system, the allocable costs of administration for the installation, and the allocable capital costs of providing service to the new user. Further, local governments would be required to review water and sewer connection fees at least every three years and make adjustments, if necessary, to assure that fees to new users are fair and reasonable. In the event that existing water and sewer bond agreements provide for a specific method of determining the amount of connection fees which is in conflict with the proposed legislation, the bond documents would control, and existing contracts would not be affected by the proposed legislation.

The Commission in 1995 reaffirms its commitment to such legislation.

VIRGINIA HOUSING STUDY COMMISSION
1995 SUBCOMMITTEE ON HJR 570: SHRINK-SWELL SOIL

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