Ripley • Heatwole
COMPANY, INC.

September 19, 2007

John A. Cosgrove
Commonwealth of Virginia
Virginia Housing Commission
General Assembly Building
910 Capitol Street, Second Floor
Richmond, VA 23219

Re: HB 2010 and SB 955

Dear Delegate Cosgrove:

I have a great deal of concern when the prospect of "cash options" is introduced to the mix. I do not think language referencing a Housing Trust Fund should be included this part of the code. I believe it will become another "Voluntary Proffer" where you don't get the zoning unless you pony up the money.

Also, from a philosophical point I do not believe that new "for sale" or "rental" housing should be charged with "funding" a Housing Trust Fund. In most cases patterns of density and development have been dictated by local land use policies that have increased the cost of all types of housing and exacerbated the affordability problem. To let local governments off the hook by allowing them to charge rezoning applicants, subdivision approvals or new construction a fee that goes to a Housing Trust Fund or some other place, is simply wrong. This is particularly true when funds could only be distributed to "Non-Profits". There is certainly nothing wrong with NPs but the fact is that the "For Profit" housing community has probably provided 90% plus of the affordable housing over the past 15 years.

However, the worst part of this proposal is that local political powers will suggest they have actually done something about affordable housing when in fact they have done nothing but drive up the price and assessment on all housing by requiring another **"voluntary"** proffer (See Attachment A). Housing will simply increase in cost or reach a price point that precludes new housing, in the market.

As an example Chesapeake now has voluntary proffers of approximately $15,000 depending on the type of residential use, you are requesting. Perhaps this would add $5,000 or $10,000 for an "affordable buy out", "buy in", "density bonus" or whatever you might call it. This "voluntary proffer" package would increase the cost of housing in Chesapeake by $20,000 to $25,000 per unit (not counting interest carry). If the median home price was say $300,000 prior to the voluntary fees you will have added approximately 8% to the price of the house and the buyer is not getting any more house. Additionally, you would exacerbate assessments on previously purchased homes.

As far as market rate rental product is concerned this would probably exclude it from the city. The $25,000 would require an additional $171 in rent per month to amortize the cost over 30 years at an interest rate of 7.3%. Given current development and construction costs you could not add an additional $171 in rent per unit and expect to have adequate occupancy to sustain your debt service and other expenses. The other alternative is of course additional equity.

100 units would require $2,500,000; 150 units $3,750,000 and 200 units $5,000,000, in additional equity. Trust me when I tell you that your return on equity would probably not reach the level of passbook savings account. This of course assumes that you could actually get something rezoned to multi-family.

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I believe the result would be more McMansions, on smaller lots, at a higher sales price. Consequently, more people will have to "drive to affordability" to purchase, which of course will be a greater distance from employment nodes, which will increase the need for more highway funds.

Perhaps if localities allowed greater density without "voluntary" proffers and "affordable buyout" requirements the land and development cost could be amortized over more dwellings, the price of housing and assessments may actually moderate. I understand that the logic of this approach is so overwhelming that it will not meet general acceptance but why don't we give it a try.

The alternative to purchasing a home is of course rental. However, existing rents and new rents will continue to increase because there will be more demand and less or no new rental product available, to satisfy the need.

Another point that must be considered is whether localities currently have or should have the right to make an ADU ordinance mandatory. If you believe that localities have the right, at this time or will under the proposed legislation to put in place "**mandatory** inclusionary zoning" then we really have a problem. I do not believe they currently have this right and I do not think the current bill gives them the right for a mandatory ordinance. However, I understand that many ADU advocates and at least some of the locality's think otherwise. One could perhaps reach their conclusion by reading only "B" of this Section, with no regard for what is stated in "A".

Within the body of A is a sentence that reads, "Such program shall address housing needs, promote a full range of housing choices, and encourage the construction and continued existence of moderately priced housing by providing for **optional increases in density** in order to reduce land costs for such moderately priced housing." (Emphasis added) It is clear to me that the applicant has the "option" but certainly not the requirement to request "increases in density".

Additionally, if the locality does have the right to adopt a mandatory ordinance and they were to adopt the requirements under either "E. 2 or 3" I believe there would be a "takings" issue. I do not think that a locality can require under "E.2" that someone give an "...exclusive right to purchase up to one-third of the for-sale affordable housing dwelling units..." to the "...local housing authority, the local governing body or its designee..." or to any other third party. This right would also be allowed under "E.3" for some "specified percentage of the rental affordable dwelling units...within a controlled period...".

The **mandatory** requirement would be particularly egregious when you consider that the same entities that have the right to "purchase" or "lease" are also granted the right under "E.4" and "E.5" to establish "...jurisdiction-wide affordable dwelling unit sales prices..." and "...unit rental prices...". If someone wanted to negotiate this kind of arrangement that is fine but to have it as a requirement is a real problem. Even if the applicant is insulated from "economic loss" I think there may be a "just compensation" question. If I am only allowed to break even and an unfettered sale would have allowed me to realize a profit have I received "just compensation"?

I would also mention that in regard to rental units I do not think the requirement to lease to the above mentioned entities would be allowed under the affordable rental programs that are currently available, for new construction. The two programs are the Housing Tax Credit (HTC) under Section 42 of the Internal Revenue Code (IRC) and Multifamily Housing Bonds which are tax exempt exempt-facility bonds (TEB) issued under Section 142(s) of the Code. The HTC can be used in conjunction with TEBs but it is not a requirement.

Each program has generally the same minimum percentage requirements for "affordable" dwellings. They must have either 20% of the units at 50% (20/50) of the area median income (AMI) or 40% of the units at 60% (40/60) of the AMI. From a practical standpoint the economics do not work when you try to do the minimum affordability requirement and make up the difference with higher rents for the market rate dwellings. In most cases you see 100% of the units as affordable. The dwellings may be detached, row

houses, garden or high-rise buildings. They can also be located on scattered sites. Regardless, of the income mix you may want to request the "optional" ADU bonus densities.

The problem is that in each program the "affordable" units must be leased to families or individuals that are "income qualified" on a **unit by unit** basis. You can not lease a block of units to a "local housing authority, the local government or its designee". The units are already set aside for a certain economic band and you must qualify the prospective residents based on the income of the family that will occupy the unit. Even if the "local housing authority,…", promised to lease only to "qualified" residents and it were allowed the owner would lose control of the process. The owner would still be liable to the IRS and his equity investors for compliance with the requirements of the program. Additionally, there are some "held open for rental" rules that would conflict with the above stipulations. Consequently, no one could use the HTC or TEB program if there is a requirement to lease units to a third party. Why would we want an ADU ordinance that would not be able to utilize the two major programs that are available for affordable rental housing?

Also, I am afraid that "Local Support Letters" as part of the HTC program, might be predicated on "leasing" units to the locality. I have seen instances where the position of the LHA or locality is ok we support the housing but "what's in it for us". I believe this could increase that leverage.

I am not as familiar with Single Family Housing Bonds. I understand they may be used to finance individual mortgages or to purchase loans made by private lenders to "qualified borrowers" that purchase "eligible residences". However, there may be problems using these bonds, as well. The loans are to be made to borrowers within certain income bands and the purchase price of the home can be no greater than some percentage of the average homes purchase price. While more options may be available to structure compliance in this case, I simply do not know. I think the "takings" issue would be a problem with this program as well..

Regards,

F. Andrew Heatwole

Chesapeake VIRGINIA

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CHESAPEAKE PLANNING DEPARTMENT

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FAX TRANSMISSION

TO: R.J. Nutter II
FROM: Bill McKay, AICP, Senior Planner
DATE: April 12, 2007
FAX#: 687-7510

# of PAGES: 14
RE: R(C)-07-12, Tintern Apartments

COMMENTS:
Here are the departmental comments. You will need to submit a revised preliminary site plan to address the following:

- Provide a second access to the property. Suggest connecting to access road along northern edge of pond that will serve the proposed Chesapeake Gateway Condominium project.
- Indicate maximum height of buildings in Site Data Table. If they will exceed 35 feet, a conditional use permit is required. See section 6-1702.A.5. of the zoning ordinance.

The preliminary proffer statement is unacceptable. Your preliminary proffer statement must be submitted on the form given in the rezoning application with all required signatures, initials and dates. The current statement contains unnecessary/irrelevant information and does not contain the language suggested by the City's proffer policy. At a minimum, it should include a limit on the number of units, architectural and design requirements and cash proffers in the amount and language suggested by the proffer policy. We can provide you with sample proffer statements that have been approved for other projects.