

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

AGENDA

Housing & Environmental Standards Work Group General Assembly Building, House Room C June 9, 2010, 10:00 A.M.

Members Present: Senator John Watkins (chair), Senator Mamie Locke, Delegate Glenn Oder, Delegate Daniel Marshall, Delegate David Bulova, Gary Garczynski, Mark K. Flynn, Jerry Wright, Shaun Pharr, Neal Rodgers, John Hastings, Ed Rhodes, Emory Rodgers, Ron Clements, Michael Toalson, Michael Congleton, Sean Farrell, Chip Dicks, John Jordan, Cal Whitehead, David Freeman

Staff Present: Elizabeth Palen, Jillian Malizio

I. Welcome and Call to Order

- **Senator John Watkins—Chair**
 - o Thank you and call to order at 10:07 A.M.
 - o Ask for comments from panel.
 - o **Mike Toalson**—*To put the issues we will discuss today in prospective, we built fewer homes this year in Virginia then we built since 1959—1959 is the year they started keeping housing statistics. I wish I could say things are getting better; Northern Virginia has improved slightly, but the rest of the state appears to be stagnant. What is unusual is that we currently have a record low interest rate market. Last time interest rates were this low, we built twice the number of homes than we did this year. Traditionally, one out of five houses sold are new homes, however in this economy one out of twenty is a new home. This is a result of many factors, but mostly because of costs that are lingering from past years.*
 - o **Gary Garczynski**—*Northern Virginia is creating jobs and that may be the key to why the area has more housing activity than the rest of the state. Prices are still flat, not much appreciation. Harvard is releasing a report on the state of the nations housing on Monday and for the most part foreclosures are starting to wane; but even though interest rates are down banks are not lending, they are sitting on a ton of liquidity. This is going to be a slow recovery for housing, normalcy may not return until 2013/2014.*

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

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

F. GARY GARCZYNSKI
T. K. SOMANATH
MELANIE S. THOMPSON

- **Senator Watkins**—*I sit on a bank board, and I know that Gary's comment is correct. Banks are sitting on liquidity they are willing to lend to the owner of the house only. There is no room for speculative risk taking.*
- **Mike Toalson**—*Many community banks have received the message that they have to many real estate assets and they need to diversify.*
- **Senator Watkins**—*I think we should schedule a presentation at the end of November or the beginning of December where we bring in home builders and realtors to focus on housing— new vs. existing, the existence of multi-family, and what's selling what's not selling. This information will be instructive going into the upcoming session.*
- **Delegate Marshall**—*Another big housing problem is inventory. There is so much inventory on the market and it is so inexpensive, why build? Regretfully, inventory is going to have go before building picks up again.*
- **Delegate Oder**—*I recall a presentation about jobs in Virginia. A bar graph showed the number of jobs lost in each industry—in the construction industry the bar graph actually went off the graph. Despite the job loss, the economist said this is the field of work that will come back the fastest, if we can find a way to start rebuilding.*

II. Residential Sprinkler Update

- **Shariar Amiri**, *Chief Building Official of Arlington County*
 - After many debates on residential sprinklers, a coalition was formed whose purpose of was to promote residential sprinklers, but mainly to educate the public in general. The coalition is made up of eight to nine members.
 - During the adoption of the international codes the coalition came together for discussions, there were many different opinions. At the end the coalition reached a consensus—to recommend to the Housing Board a sprinkler requirement mandatory in townhouses only. The coalition realizes there are tradeoffs when it comes to sprinklers, for example, there may be an increase in fire hydrant distances.
 - Currently in Virginia we do not require a sprinkler system as part of the Building Code for four story townhouses, only for three story townhouses. We recommend sprinklers in four story townhomes as well because it is about protection against a neighbor. A neighbors' actions are something you cannot totally control. The coalition chose to accept the tradeoffs. Also recommended that sprinkler in three story townhouses are optional. We didn't think at the time if you go from four to three story townhouse it would provide an economic hardship.
 - **Mike Toalson**—*Are you aware that the FBA just released the fact that in 2009 the totally of fire deaths in this nation was lower than other years?*
 - **Shariar Amiri**—*I'm not here to debate the merits of the fire sprinklers, I am here to report on the coalitions' activities. We have had the debate.*
 - **Gary Garczynski**—*In the process of formulating your position I know that safety and well-being is paramount and you hear the economic hardship case a lot; in the discussion was people choice considered? I had direct experience where Loudon County was on the pro-side of sprinklers in townhomes, when we offered it there we made it a choice decision by the buying public. Where does the people's choice come in?*
 - **Shariar Amiri**—*Obviously it does, we debated these issues at the national level for years. Looking at the makeup of the coalition it can be told that there were many*

people were diehard sprinkler. But if you are doing the four story town-house, nothing material changes between four and three levels. We agreed on the debate that if four stories require it, then what's the big deal about making a three story townhouse require it?

- o **Emory Rodgers**—*Shariar mentioned that last year the board made the mandate optional; this past Monday, the board carried that over through the next regulatory cycle. The board also chose to mandate that in Virginia a particular type of fire extinguisher must be installed. These cost around thirty dollars at Home Depot or Lowes. Kitchen fires account for 15% of deaths.*
- o **Senator Watkins**—*What exactly is being carried over?*
 - **Emory Rodgers**—*The mandated option.*
- o **Mike Toalson**—*HBAB and the industry has opposed this mandate on single family homes. Only three fourths of the states have adopted the requirement.*
- o **Emory Rodgers**—*To my understanding there has been more than that and there have been challenges.*
- o **Mike Toalson**—*In Virginia it's a tradition that we don't legislate the building code. A uniform state wide building code is the best decision; it creates a floor of minimums in every home and ensures houses are built safely. Townhomes are the most affordable new homes we are delivering to the market place. Our industries position is against mandating sprinklers. I have yet to see evidence that people living in one, two, three story homes are more at a risk then the people living in detached homes are more likely to lose their lives. If you live in a new home with modern fire blocking, electrical, smoke alarms etc. you have 99.5% chance of surviving a fire in your home. For us, any cost that makes it easier to compete with existing housing would be better. Higher costs will drive people to older housing and fires mostly occur in older houses because they don't have the benefit of new systems. If you mandate the new expense you will force people into older housing, and put them in greater danger. There are three million existing homes in Virginia, this regulation would not impact any of those.*
- o **Ed Rhodes**—*Can you define an older house?*
 - **Mike Toalson**—*In New York, on average, a home where there was a death was built in 1932. I would say that there was the most risk in homes that weren't initially built with smoke detectors. My best guess would be 1980 and back from there .*
 - **Emory Rodgers**—*50% of fires started in homes built before 1970 and 84% in homes built before 1990.*
- o **Ed Rhodes**—*I'm not going to disagree with Mike that they build safe houses, it's not the construction it's what people put in their houses. Furniture, kerosene heaters, etc. When you have people over the age of sixty-five it takes more time for them to go out of the house. Small children don't even wake up when the smoke alarms go off. Smoke detectors and the sheet rock are part of the big picture. The fire department may not even be on the way. A lot of the house fires in the past ten months in Henrico were in houses less than 10 years old.*
- o **John Henry Jordan**—*We're talking about adding costs, what is the cost?*
 - **Mike Toalson**—*It's all over the board. One of the things I mentioned is that today if you're going to install a sprinkler it has to be installed by a sprinkler company, and that is more expensive. Another problem is that not all people in the state are*

on Virginia water, some are on the well systems. \$5,000 for the average home—could be more could be less.

- o **Senator Watkins**—Emory what was the cost you came to a consensus on with the board?
 - **Emory Rodgers**—There was no consensus on cost.
- o **Senator Watkins**—I think it is helpful for the work group to know that there are some changes to be made as to what kind of sprinklers have to be put in homes.
- o **Ed Rhodes**—We have been talking about this for quite awhile and I think we can continue to sit at the table and discuss this further. Incentives and further discussion will alleviate the problem.
- o **Senator Watkins**—It's good to see this issue being discussed, the only disconcerting thing is that there doesn't seem to be anyone that is willing to reach outside the box in terms of alternatives to water systems.
- o **Mike Toalson**—Why hasn't anybody thought about just recommending the fire extinguisher?
- o **Delegate Oder**—I believe there are still other options available. Recently I was in two multi-million dollar homes that were both built in the last several years and neither of the owners chose to put a sprinkler system in their home. The belief is that the benefits don't justify the cost. What problem are we trying to fix? Mandating sprinklers is going to increase costs; the builder can put it in as an extra, but market place is not asking for it right now. If we start putting the possibility of this in the Code, I think that for the next two years people will be coming to me and telling me that their builder won't let them build without installing a sprinkler system.
- o **Emory Rodgers**—Delegate Oder points out an issue that would be allowed on appeal. In terms of thinking outside the box several things discussed. For example, a canister put over the stove and an electrical device that turns off the HVAC system so there isn't the circulation of air. Staff will certainly continue to put in outside the box ideas.
- o **Delegate Bulova**—I've heard a lot about personal choice which I agree with regarding single family homes, my major concern is multi family and townhouses where somebody's personal choice affects their neighbor. Eighty-eight fire deaths this year show we need to take this seriously. The cost of installing a sprinkler versus the cost in property damage to neighbors who didn't have a say in personal decision is significant.
- o **Mike Toalson**—There are other provisions in the code that are related to that issue, such as fire walls. I think NEHB has said that for every life saved the additional cost to the industry was 38 million dollars, but I don't want to put a price on someone's head.
- o **Delegate Bulova**—I'm not arguing that, the question is if you started a fire in your home there is a 99% chance you will survive, and I understand townhomes are designed to prevent the spread of fire. It's a question about the cost of property damage to neighbors—is the cumulative cost of property damage more or less than installing sprinklers?
- o **Senator Watkins**—Ask Elizabeth to check into cost/benefit and damages (not fatalities).
- o **Delegate Marshall**—If we could also find out information of where the fires originated. Is it HVAC room or the kitchen, etc.?

III. Carbon Monoxide Detectors Update

- **Emory Rodgers**, *Department of Housing and Community Development (DHCD)*
 - o The Board of Housing code and standards committee has already approved the international residential code for the requirement for carbon monoxide (CO) alarms in one or two family homes. Many of the alarms operate off of batteries. It requires CO alarms are installed in the immediate vicinity of bedrooms. If you have an attached garage would a CO alarm at the entry door to the dwelling unit. These requirements apply to new construction only, they are not retroactive.
 - o July 26th the board is posed to mandate CO alarms for all buildings—constitutes hotels, apartment buildings, dormitories, and small licensed group homes.
 - o Staff is working on technical issues that require consensus; a code change that would mandate this so the building official, designer, and owner would have to do to get their plans approved.
 - o Building code will have CO alarms mandated for all R occupancies.
 - o **Senator Watkins**—*What is the anticipated date?*
 - **Emory Rodgers**—October of this year. We need to finish the APA process, need the Attorney General to approve the language and then put the regulations in the Virginia Register. If everything goes smoothly, it will be done by the fall of this year, certainly by the beginning of 2011.
 - o **Mike Toalson**—*I would comment that builders will probably end up installing combination devices rather than having multiple devices. Hard-wired combination smoke alarm/CO monitors.*
 - o **Chip Dicks**—*You mentioned there was no retroactive requirement, but if I want to install a CO detector anyway will the Code tell me how to do that?*
 - **Emory Rodgers**—Yes.
 - o **Chip Dicks**—*As far as the smoke alarm CO alarm combo, what is the industry standard for the location of these devices? Smoke rises but CO doesn't, is there any concern about the combining the two?*
 - **Emory Rodgers**—Reflective in the fact that at the ICC level there are standards in place, some of the technological issues that were common—now technology has improved, my answer is that it is felt they are dependable enough they can accomplish their objective to alert people
 - o **Chip Dicks**—*The legal community usually recommended not to install CO detectors because there wasn't a standard upon which the installation could occur, there needs to be a building code standard to reduce risk of liability*
 - o **Senator Watkins**—*I don't know if the technology is good enough yet to have a standard.*
 - o **Mike Toalson**—*The problem is, where do you put them? CO alarms could be put any place, the national standard is to install them on the ceiling.*
 - o **Chip Dicks**—*As a plaintiff's lawyer, I know the reluctance of the industry has been the fear of liability. Resolution of the issue is important for the safety of the tenants and occupants but also for liability for landlords etc.*
 - o **John Henry Jordan**—*There was a case where the fire department responded to a call that a CO detector was going off in a multi-family home. The detector produced readings that were twice what the gas company produced. The CO detector was tested, and it was determined that the actual CO levels were below the trigger level.*

Confidence in the device is waning when two local/state authorities say their reading was below the trigger point. In my investigations on the device it does not say where in the home to mount. A local fire official told us to not install because of the liability, even if you do follow manufacturers instructions.

IV. Green Building Code (HB1264—Hope, 2010) (SB109—Peterson, 2010) (SB290—Deeds, 2010)

- J.R. Tolbert—*Environment Virginia*
 - o Working with people in Charlottesville on this issue, I will convey their thoughts.
 - o Senator Deeds Bill—(SB 290, 2010)
 - Asked for a Green Building Code so that municipalities have the option of opting-in to the Code.
 - Used California as an example—by working with stake holders they developed a series of tiers in which people can opt-in to the Code.
 - The building code is a floor; Charlottesville wants to require that with regards to new construction within their community, builders will be required to use greener material.
 - Biggest consumer savings on energy efficiency is at the time of design. Consumers save more at the end because they can pay off costs in a quicker time frame.
 - Tackling building process is one of the critical ways to accomplish these goals. Within the next thirty-five years expect 70% of building stock to be majorly renovated.
 - o **Mike Toalson**—*Are you aware of the Earth Craft house program?*
 - **J.R. Tolbert**—Yes, they have grown quite about both here and in Charlottesville. There are concerted efforts in both communities to grow the Earth Craft program
 - o **Mike Toalson**—*In 2006 HBAV was pleased the governor announced the development of the first statewide green building in the nation—which is now the most successful green building in the nation. The buildings are 30% more efficient than the Building Code now requires. Constructors know their clients want efficient housing. In 2012 they are talking about increasing minimum standards anywhere from 15-30% the trend is that we don't need a mandate, builders get it and homebuyers get it. The green building movement has served this nation and our building well.*
 - **J.R. Tolbert**—I would not disagree that there has been a sufficient movement towards green building. This is about the city to be able to say we want all of our homes to meet certain standards. The city wants to get out in front of the trends. I agree that consumers, builders, and the state have done a good job about being out in front of the issue.
 - o **Emory Rodgers**—*The International Green Construction Code is in the developmental process. Over 2,000 comments have been made to the document. If it passes it will be available for public entities to adopt as many states go through their 2012 regulatory cycle. Our board will be taking a look at that if it passes. Another bill, the climate bill that has a 50% bill, hasn't been passed at the congressional level. The Board has looked at the scoping requirements.*
 - o **Ron Clements**—*I heard a statement that we're trying to raise the ceiling. Right now the building doesn't prevent you from going green. It's a bad idea to give the locality to the power to mandate these issues.*

- o **Delegate Bulova**—*Virginia set up a PACE program where the locality could provide the upfront cost and then pay back over time. I was wondering in your experience have other states come up with creative financing mechanisms.*
- o **Mike Toalson**—*This is a big issue we have to grapple with; as more and more power is vested to localities to finance projects they are denying private development and doing it themselves.*
- o **Delegate Marshall**—*It seems that this is the new proffer for the 21st century.*
- o **Mike Toalson**—*Developers are seeing that entire developments are going to be Earth Craft homes.*

V. Chinese Drywall (HB 44—Oder, 2010) (HB 45—Oder, 2010)

- **Delegate Glenn Oder**—It takes an enormous effort to get people in the press to pay attention to the Chinese Drywall issue. Why is this? Why is that nobody cares, there are 300-350 homes affected, yet this is an issue that people have decided is too difficult to handle.
- (HB 45—Oder, 2010)—The bill is designed to say that no insurance company may cancel homeowners insurance for having Chinese drywall. They also cannot refuse to renew insurance on homes with Chinese drywall. The bill died in both the House and the Senate.
- (HB 44—Oder, 2010)—Targets exclusions in a homeowner's policy were it says the insurance company does not insure against defective materials. If the bill had passed it would have said that insurers cannot say the Chinese drywall is a defective product, because the federal government has yet to make that determination. Homeowner's insurance policies must pay to insure Chinese drywall in a person's home.
- o Also included in the bill, is that an insurance policy could not drop a homeowner if his house was vacant for sixty or more days as a result of Chinese drywall damage. This timeline was put in because some people have immediate reactions to the drywall and could not live in their homes. For example, people who are allergic to sulfur based drugs, react immediately; others it takes longer for the effects to become apparent. Symptoms from the tainted drywall include sore throat, headaches, nosebleeds, and rashes; children are highly affected by the drywall. The only remedy for people is to leave their homes. It has been noted that as soon as they leave the premises, the symptoms diminish. We still don't know what the long term affects are, it took forty years before the affects of asbestos were known to the medical community. This is an illness for which the health aspects are still not understood.
- o Insurance policies throughout my district are being dropped because the residents are not occupying their home
- o **Mark K. Flynn**—*What happens then with the mortgage?*
- o If your home is not insured, they drive you into bankruptcy. One woman I spoke with couldn't live in her house because of the drywall, so she lost her insurance, she then was forced into bankruptcy but the bank did not accept the mortgage back. Now the County called and said she had to have her grass mowed; she now has to return to a home she cannot live in to mow the lawn.
- o The focus of the State Chinese Drywall taskforce is to define the universe, how many homes in Virginia have Chinese drywall? We made a request to the Attorney General that he get the supplier's records in order to find out how many sheets of drywall were delivered to people in Virginia.

- o In some cases builders found out about the drywall, but instead of repairing the home, the builder then decides to rent. There is no disclosure requirement forcing the builder to warn renters. So people rent and then start getting sick.
- o I attended a congressional hearing in Washington D.C. where a presentation was made by the Consumer Product Safety Corporation. They came up with a protocol to repair Chinese drywall, but it doesn't appear to go far enough, it's only a temporary protocol.
- o There have been two law suits involving Virginia residents. The court awarded a 2.6 million dollar judgment in favor of homeowners against the company in China. However, the Chinese company is not acknowledging the cases and was not present at trial. We are now being told that the company no longer exists.
- o Congressman Whitman and I will host town hall meeting in Newport News. We are going to invite federal agencies to come and present the protocol and discuss health issues with the homeowners. We are also inviting every elected official on the federal, state, and local levels, as well as building code officials. Time will be set aside for citizens to speak.
- o The Federal Emergency Management Agency (FEMA) just awarded Virginia 6.4 million dollars for snow removal from the December storm and will award more for the February storm. Virginia senators asked for FEMA to send money to help with the Chinese drywall disaster, but FEMA said that they only responsible for natural disasters, not man made disasters. We need some sort of stimulus money from the federal government.
- o **Senator Watkins**—*Is the task force intending to make recommendations?*
 - At this time, I have not yet heard it come up with recommendations. It is being mired in the problems of this being a federal issue
- o **Delegate Marshall**—*What is the protocol on how to fix the drywall?*
 - They're saying you have to remove all the drywall but are not calling for the removal of the insulation and are only calling for limited removal of electrical system.
- o **Delegate Marshall**—*After you remove the drywall what are you supposed to do with it?*
 - That is another problem, complaints are coming from landfills because the Chinese drywall disposed of there is creating a terrible smell.
- o **Delegate Marshall**—*Are any other states doing something we should be looking at, for example, Florida or Louisiana?*
 - It's going to take free money to repair the house. Loans will not work, nobody will spend that much more money on a home. I don't know where it will come from—we can't spend weatherization money.
- o **Delegate Marshall**—*These houses were sold at height of building boom, so now houses are even valued at a lesser amount.*
 - The other problem I have, is even if you fix the problem,—does anyone want to go buy that home?
- o **Chip Dicks**—*There is no protocol that is established for someone to be able to say I no longer have a stigmatized property. Plaintiff's lawyers have gone out and started suing people, but it's an issue of third party liability. There are no bonding requirements so there is no source of money to access. The insurance company says the drywall is not insured, so we come back to where you need to almost create a public fund. Plaintiff's*

lawyers are not going to be able to get any money from this, and they are not going to take these cases. We should try and create a fund that would go back and help pay for renovations.

- o **Senator Watkins**—*It would seem to me understanding the total universe in terms of the entire country is important. I would then say our congressional representatives should pursue a tariff structure on materials coming out of China that would be set aside to pay for properties that have demonstrated they would be eligible. If the Chinese government has something to say about it, tell them they need to do a better job doing inspecting the products coming out of the country.*
- o **Delegate Marshall**—*As far as home inspection, what do inspectors do to look at to make sure there is no Chinese drywall?*
 - *I'm not sure what the inspectors do individually, but if you go into a home look in attic and go into eve, pull the insulation away from drywall and make sure it says ASDisum. Also, go to the light socket and see if the copper is bright shiny or if is dull and black.*
- o **Delegate Marshall**—*Do we regulate what homeowners inspect?*
 - **Eric Olson, DPOR**—*The inspector program is not mandatory and there is nothing that mandates what they have to inspect. Inspectors look for obvious stuff, a good home inspectors will go into the attic and pull back the insulation.*
- o **Delegate Marshall**—*In order to protect the consumer, maybe we can think about how we can help inspector make sure they inspect all of these things.*
- o **Mike Toalson**—*In Virginia, the path chosen was that if you want to certify here is what you have to do and here are the standards.*
- o **Chip Dicks**—*VAR proposed legislation for certification of home inspectors. As part of our standard forms we advice our realtors to use a certified home inspector. There are no standards however. The other problem with the current system is that the contract says their liability is limited to their fee.*
 - **Delegate Oder**—*I will coordinate with Eric Olsson to write a letter to find out what the standards are and do any of the standards address Chinese drywall?*
- o **Mike Toalson**—*Our industry feels like victims as well. We import a lot of products from China and this one plant decided that decided to include sulfur, would not even acknowledge the damage. There is no requirement in this country that foreign exporters have an agent you can serve with process.*

VI. Public Comment

- **Senator Watkins**—*I had the opportunity to go to Turkey, on a cultural visit. It gave me a unique opportunity to look at another country with a completely different perspective on housing/financing. There is no zoning in the country—mansions built next to industrial facilities. We think we have a problem with traffic and housing, it is minuscule by comparison. Istanbul has a population of 16 million people, grown from two million in 1980. The population explosion put so much pressure on the city. Earthquakes are also a frequent problem. This will give each of us perspective while moving forward on this Work Group's issues.*

VII. Adjourn

- Meeting adjourned at 12:21.