



# 2016 Legislative Positions



## **PURPOSE**

The 2016 Legislative Package for the Dulles Area Association of REALTORS® is intended to be an outline for the government affairs efforts of the association throughout the year.

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## **RISING TOLLS ON THE DULLES GREENWAY**

**ISSUE** For thousands of residents and businesses who use the Dulles Greenway as a daily commuter route, the costs of using the road on a daily basis outweigh the benefits. Many elect to travel already congested alternate routes including neighborhood roads.

**BACKGROUND** The Dulles Greenway is one of the first highways of its kind in the United States and is the first private road in Virginia since 1816. It was built under the Virginia Highway Act of 1988 and opened in 1995. By law, the owner of the road, Toll Road Investors Partnership II, L.P. (TRIP II), is permitted to submit requests to the Virginia State Corporation Commission (SCC) to approve increases on the Dulles Greenway. According to the Virginia Highway Corporation Act, three conditions must be met in order for the SCC to allow TRIP II to raise the Greenway toll including: 1) It must be reasonable to the user in relation to the benefit obtained; 2) It should not discourage the use of the roadway by the public and; 3) It should provide the operator with a reasonable rate of return.

Since 1995, all SCC requests for toll rate increases have been granted despite opposition from public officials, residents and area businesses. In December of 2012, Delegate David Ramadan (R-87) filed a complaint with the SCC and in January of 2013 the SCC approved an investigation of the Greenway tolls. The complaint argued that the SCC should set tolls at a level “(1) which is reasonable to the user in relation to the benefit obtained; (2) which will not materially discourage use of the roadway by the public; and (3) which will provide the operator no more than a reasonable return as determined by the commission.” The Loudoun County Board of Supervisors (LCBOS) supports Ramadan's approach as a party to this legal action. The case initially went to a Hearing Examiner appointed by the SCC, who did not rule in favor. However, both the LCBOS and Delegate Ramadan filed legal briefs with the SCC in appeal of its Hearing Examiner's findings. Following the filing of the legal briefs on March 30<sup>th</sup>, 2015, the SCC is expected to hear the case in the coming months.

**POSITION:** Since the road's opening, public officials, residents and business have expressed concern over the road's rising tolls. Commuters who use the Dulles Greenway 50 weeks out of the year now pay \$2,950 annually for their weekday round trip making it the most expensive road in the country. Since the Dulles Greenway was built using conventional financing at market rates, the owners are paying more to finance the road and passing along that cost to users via rising tolls. In an effort to maximize the public benefit of road, improve mobility and relieve congestion off of public roads, DAAR supports legislation that would:

- Study the use and applicability of distance-based pricing so tolls wouldn't be based on a flat fee but rather on how far a motorist drove on the Greenway;
- Define the meaning of “reasonable” cost to the user based on economic factors including, but not limited to, area median income; and
- Allow the Commonwealth of Virginia to purchase the road using tax free bonds which would help lower the cost of the tolls.

## **REAL ESTATE EDUCATION STANDARDS AND PROFESSIONALISM**

**ISSUE:** As more and more individuals enter the real estate profession, DAAR feels strongly that professionalism needs to be a greater focus of pre and post-licensing education.

**DISCUSSION:** In the past decade, Realtors® have sought and obtained General Assembly approval on legislation addressing the core competency of real estate licensees, including additional pre- and post-licensing education requirements, written brokerage agreement requirements, increased broker oversight of firm licensees, and background checks for new licensees.

**POSITION:** DAAR supports a comprehensive study of Virginia's real estate education approach in an effort to enhance the knowledge and professionalism of Virginia's real estate licensees. Areas of improvement to review may include, but not be limited to:

**Strengthening Broker Accountability** Seek improvements to broker accountability standards that that will lead to greater supervision of agents. This may include adding a list of violations of agents under their supervision to their broker's license; requiring a minimum number of hours the broker is in the office and; requiring attendance at scheduled DPOR/VREB broker town hall meetings in an effort to improve communication between the VREB and the brokerage community.

**Improving Real Estate School Standards** Strengthen the requirements for opening a proprietary real estate school to include an outline of courses to be offered in the first years of the school's approval, a list of proposed instructors, a detailed records management proposal, a statement that the school will comply with all related provisions of the Americans with Disabilities Act (ADA) and that the school will not discriminate in its fees, enrollment, or completion policies on the basis of race, color, sex, religion, national origin, familial status, or disability and a criminal record history check of the director that's no more than 60 days old.

**Strengthening the Approach to Education** Allow licensees to complete only 50% of their education via online or correspondence courses. The other 50% must be in a classroom.

**Bolstering Post License and Continuing Education Requirements** Improving curriculum to allow licensees to stay abreast of current issues and trends may involve allocating at least 6 of the 60 hours of current pre-licensing to cover practical topics such as buyer and listing paperwork and writing contracts; allowing more of the 30 hours of post-licensing education to be offered as electives; and adding a 1 or 2 hour finance requirement to the current post-licensing education.

## LOCAL ISSUES

### **AFFORDABLE WORKFORCE HOUSING**

**ISSUE** Affordable housing isn't only housing for low-income, homeless or unemployed—it's housing for vital service workers, such as teachers, nurses, police officers, and firefighters whose work is essential for a strong and vital community. In Loudoun County, the average home price climbed from \$280,696 in 2000 to \$420,000 in April 2015, according to the Metropolitan Regional Information Systems, edging out many individuals who do not make an above-average salary out of the market.

**DISCUSSION** Governments at all levels need to work together to address how to retain members of the workforce who are essential to the strength and health of the community. If working families cannot generate enough income to live in the county they serve, they will be forced to live elsewhere. Plagued by a strenuous commute and strain on family life, they may seek employment closer to home which may not only lead to worker shortages but a negative impact on the county's economy.

**POSITION** DAAR supports the availability of a wide-range of urban, suburban and rural housing choices at all price levels. DAAR is committed to the development and preservation of the area's housing stock and to preserving the dream of home ownership by helping working families find homes. On the local level, implementing development restriction policies without integrating provisions for affordable workforce housing does little to tackle this issue.

To that end, DAAR supports:

- Improving the marketing of the ADU program including allowing REALTORS® to represent sellers and buyers
- Creating a separate Housing and Community Development Department to increase the visibility, prioritization and effectiveness of Loudoun County's housing opportunity programs.
- Promoting an increase in public and/or private-sponsored down-payment assistance for workforce families.
- Promoting the use of county-owned land to be used for affordable housing and;
- Providing incentives for employer-provided and military housing assistance.

## **SILVER LINE COMPREHENSIVE PLAN AMENDMENT**

**ISSUE:** Loudoun County's implemented a tax district around the Silver Line Metro stations in Loudoun County. In an effort to maximize tax revenues on these parcels, the County initiated a Comprehensive Plan Amendment to determine the basic shape of development with respect to housing, commercial development and open space.

**DISCUSSION:** Being knowledgeable of land use rules is important in an effort to understand the use, value and marketability of property. REALTORS® need to be at the forefront of the public's understanding of these rules, and for good reason. Their business and the best interests of clients and communities are directly affected by any changes to the comprehensive plan and implementing zoning ordinance. The first and most significant value factor is the land use designation of the property in the county's comprehensive plan - this designation affects the value and use of property.

**POSITION:** DAAR believes that the Silver Line CPAM should serve as a guide to help meet the market's demand for commercial as well as residential opportunities. The plan must ensure that workers drawn to employment centers near the Metro Line can find affordable housing.

For that reason, DAAR supports the following objectives:

- Innovative policies that encourage mixed-use and pedestrian friendly developments.
- Comprehensive land-use planning that serves as a guide for identifying land available for residential, recreational, commercial, industrial and other uses.
- The ability to update the CPAM on a regular basis to accommodate changing demands for different types of residential units needed to support the local workforce.
- Streamline and improve certainty in the development approval process.

## **PROFFER REFORM**

**ISSUE** Increasingly, Virginia’s localities are looking for ways to raise additional revenue from real estate transactions to help ease the financial burdens in growing communities. Proffers, voluntary contributions given to counties by developers to help offset the costs of future roads, schools, parks and other public facilities, have been escalating in Loudoun County over the past decade. These fees, which are as high as \$59,470 per new unit, have a direct effect on the cost of housing. It’s interesting to note that according to the November 2014 Virginia Commission on Local Government *Report on Proffered Cash Payments and Expenditures By Virginia’s Counties, Cities and Towns*, Loudoun's collections account for 44% of all cash proffers in Virginia (Total in Virginia \$84,242,200; total collected in Loudoun: \$37,896,506)

**DISCUSSION** Increasing proffers to higher levels increases overall development costs which increases the costs of housing. Home builders may also account for an increase in proffers by moving to a “higher end” housing product that better allows the cost of the fee to be passed along to the purchaser. Where the housing market will not permit developers to turn to higher priced product, and they also are not able to pass increased costs to the homebuyer, developers will see the fees cut into profit margins, and may cut back on housing quality in an effort to offset this effect.

**POSITION** DAAR opposes an increase in proffer levels by Loudoun County because it:

- Creates a disproportionate increase in the cost of new construction;
- Leads to higher costs for new construction which, in turn, results in upward pressure on the cost of existing properties;
- Reduces the quality and/or quantity of new construction units; Disadvantages lower income households;
- Reduces housing opportunity across the income spectrum;
- Negatively impacts the county’s commercial tax base by discouraging the relocation of key businesses factoring in the cost of housing for employees;
- Makes it difficult to attract county school teachers, paid firefighters and sheriff deputies necessary to provide adequate public services.
- Makes by-right development more attractive since these fees are not required leading to sprawl and increased infrastructure and public service costs.

For these reasons, DAAR supports comprehensive proffer reform to decrease housing costs while promoting fairness and certainty in the development process. Key aspects of reform include, but are not limited to, the substitution of fixed impact fees while still allowing in-kind, on-site contributions such as parcels of land on residential and commercial development and the development of statewide standards for capital construction for public facilities to reduce costs.

DAAR also supports the ability of the county to apply surplus proffer funds from finished projects to other infrastructure needs.

## **REGULATION OF ALTERNATIVE ON-SITE SEPTIC SYSTEMS**

**ISSUE** DAAR helped raise public awareness to oppose an ordinance placing a ban on alternative on-site septic systems (AOSS) approved by the Loudoun County Board of Supervisors (LCBOS) in November 2008. Over the past several years, localities, including Fauquier and Loudoun, have considered additional oversight measures and requirements related to AOSS above and beyond what the state of Virginia allows.

**DISCUSSION** During the 2009 General Assembly session, DAAR, in concert with the Virginia Association of REALTORS®, worked to reverse the AOSS ban imposed by the LCBOS by supporting legislation to clarify that the Code of Virginia allows local governments to regulate and impose maintenance requirements on AOSS but does not give them authority to ban them. The approved legislation (SB 1276/HB 1788) nullified the 2008 AOSS ban.

**POSITION/STATUS** DAAR supports the approved regulations requiring annual maintenance of AOSS. DAAR opposes efforts by localities to undermine the legislative intent of SB 1276/HB 1788 including efforts to impose additional regulations outside state statute.

In 2010, the Fauquier County Board of Supervisors approved and later withdrew a requirement that all new home sites with a non-conventional septic system must have a \$15,000 maintenance surety bond, letter of credit or cash escrow to provide for the maintenance, repair or replacement of the system. The requirement was imposed by the health department as a condition of the Virginia Department of Health issuance of an operating permit for any AOSS authorized.

In September 2012, the Loudoun County Board of Supervisors forwarded an item to the Transportation and Land Use Committee requesting information on additional oversight measures for AOSS. A reminder of the November 9, 2012 Attorney General opinion that a Virginia locality cannot adopt requirements and standards for AOSS that are in addition to or more stringent than those enacted by the Board of Health was included in the item's staff report.

The report also indicated that authority for an ordinance to prohibit AOSS where conventional systems may be found would have to be sought through an amendment to the state code 15.25-2157.

DAAR will continue to raise awareness about the 2012 AG opinion prohibiting localities from imposing AOSS requirements that exceed local authority.

## **BROADBAND IN THE WEST**

**ISSUE** Although up to 70 percent of the world's internet traffic flows through the data centers in eastern Loudoun each day, many in the western part of the county struggle to get an internet connection.

**DISCUSSION** The FCC's National Broadband Plan states that no matter where you live or how much money you make, every American, every school, every library, every business, every health care institution and every public safety facility needs to have access to affordable broadband services.

Technological communications ability has become the foundation of the American economy and the platform required for innovation and opportunity. It is a tool every child needs if they are to learn and compete in the global economy. Access to affordable communications infrastructure is required to ensure that businesses, large and small, are created here, move here, and stay in our community.

Technology is constantly advancing, and our community infrastructure supporting technology uses and tools needs to advance at a pace that is slightly ahead so that we are always in a position to leverage advanced technologies. We are a community of technology innovators, and our local infrastructure needs to enable innovation at the home and business locations.

**POSITION** For the County to continue to thrive and prosper with its unique character, for current residents to remain in the County and for prospective residents and businesses to locate to Loudoun County, expanded broadband is necessary so that there is less reliance upon dial-up access to the Internet.

For that reason, DAAR recommends that the County:

- Bolster communications infrastructure by working with alternate providers, such as "Wireless Internet Service Providers" (WISP) to provide services;
- Examine whether existing franchise agreements can help improve services; and
- Create a County liaison in an effort to link potential customers with Internet service providers; and
- Explore the creation of a special broadband tax district to offset the infrastructure costs of bringing in the service for users.

## OVERLAY DISTRICTS

**ISSUE:** Creating an overlay district is a process by which local governments create specific land uses within established boundaries or criteria. Over the years there have been a number of overlay districts established upon lands in Loudoun County to help meet specific goals related to airport noise, quarries, historic preservation and mountain erosion. For example, a "Limestone" overlay district was approved in 2010 which creates specific requirements for property owners who have lands sensitive to so-called karst features. Overlays often are created for environmental purposes to protect a water or land resource from further development.

**POSITION:** DAAR believes overlay districts can be beneficial if used in either a market or environmental protection purpose, so long as the associated regulations are implemented to fix an actual problem, property owners are noticed directly, regulations are understandable to property owners, does not diminish the value of the properties and does not have an adverse financial impact on existing property owners. Property owners must be aware that if overlay districts are used to regulate land use without their notice or agreement, their private property rights and ability to use their land as they see fit may be compromised.

Although DAAR supports efforts to protect certain sensitive land and water resources in the region, any proposed regulations associated with overlay districts must be made in proportion to the need or the effect on these resources and recommends consideration of the following:

**Examine Protection Alternatives** Given the significant impact overlay district regulations measures may have on property owners, businesses and the local economy, it's critical to weigh the least onerous but effective alternatives to protection certain land and water resources.

**Weigh Costs and Benefits to County** Consideration of the most cost-effective methods and practices to overlay district regulations should be made. Due to the potential financial impact on existing property owners, the County should proceed with caution, gather the necessary information that allows a thorough examination of the impact overlay district regulations will have on property owners as well as the costs and benefits and to share that information.

In an effort to raise awareness about proposed overlay districts, DAAR encourages localities to provide direct proper notice to property owners, raise awareness about the potential impact and specific costs of implementing overlay district regulations on property owners and provide an open forum opportunity for property owners to understand the impact.