50 Years of Service

DAAR Dulles Area Association of REALTORS®

2015 Legislative Positions

REALTOR®

REALTORS® Political Action Committee

PURPOSE

The 2015 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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Purpose 2

State Issues

Rising Tolls on the Dulles Greenway 4

Housing Discrimination 5

Affordable Housing Trust Fund 6

Local Issues

Watershed Implementation Plan/Total Maximum Daily Load 7

Regulation of Alternative On-Site Septic Systems 8

Proffer Reform 9

Overlay Districts 10

Affordable Workforce Housing 11

Silver Line Comprehensive Plan 12

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:

Condition #1: It must be reasonable to the user in relation to the benefit obtained.
Condition #2: It should not discourage the use of the roadway by the public and;
Condition #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 January 2013, the Virginia State Corporation Commission initiated an investigation into the toll rates on the Dulles Greenway. The investigation stems from a written complaint from Delegate David Ramadan (R-87) who requested an investigation into the current rate structure, and that the rates be decreased.

Delegate Ramadan is urging those who routinely avoid using the Greenway because of the high tolls to sign his on-line petition at http://www.lowergreenwaytolls.com/. The list of names compiled will be submitted to the SCC to help demonstrate the high number of drivers who avoid using the road on account of the high price tag.

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 per-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 efforts to study the use and applicability of distance-based pricing and the Commonwealth of Virginia purchasing the road using tax free bonds which would help

HOUSING DISCRIMINATION

ISSUE: All Virginians have the basic human right to live where they desire without regard to their sexual orientation or gender identity.

BACKGROUND/STATUS: Both federal and state Fair Housing laws define several "protected classes" of individuals who are protected from discrimination in housing transactions. Virginia's Fair Housing Law specifies that individuals cannot be treated differently because of race, color, religion, sex, national origin, elderliness, familial status or disability. The prohibition against discrimination applies to property managers, owners, landlords, real estate agents, banks, savings institutions, credit unions, insurance companies, mortgage lenders and appraisers.

In 20 states discrimination based on sexual orientation is already illegal. HUD also prohibits discrimination based on sexual orientation and gender identity in HUD funded housing. Since fair housing practices are already the norm, adding sexual orientation and gender identity to the list of protections would require little change in business practices. In fact, REALTORS® are already committed to providing equal professional service on the bases of sexual orientation and gender identity through the Code of Ethics. The Code of Ethics was revised in 2011 to prohibit discrimination or denial of services on the basis of sexual orientation; it was again revised in 2014 to include gender identity in that list of categories. REALTORS® incorporate the commitment to equal opportunity based on sexual orientation and gender identity into their existing fair housing practices, particularly when explaining their fair housing commitment to prospective clients and customers.

While REALTORS® are held to this higher standard of non-discrimination, Virginia's real estate licensees are not. This creates a situation where prospective home buyers and renters could be treated differently based upon the professional status of their agent or landlord.

There has been some reluctance to formally add sexual orientation and gender identify to the list of protected classes under Virginia's Fair Housing Laws due to the legal liability it would create for real estate licensees and other housing providers. Even false claims of Fair Housing violations can result in thousands of dollars in legal fees for licensees. For that reason, DAAR recommends consideration of additional protections allowing the award of attorney's fees from a prevailing party since this is not an automatic right under Virginia law and since sexual orientation may be interpreted as an inclusive term which could open up additional false claims.

Legislators from both parties introduced housing non-discrimination bills in the 2014 General Assembly. They include HB 418 (Simon), HB 815 (Lopez) and HB 883 (Yost), all of which were left in a House General Laws subcommittee.

POSITION: DAAR believes that all consumers should be treated equally in their housing transactions, which includes prohibiting discrimination based on sexual orientation and gender identity. DAAR will work with the Virginia Association of REALTORS® and other stakeholders to develop a proposal to hold all housing providers to an equal non-discrimination standard for sexual orientation and gender identity.

VIRGINIA AFFORDABLE HOUSING TRUST FUND

ISSUE: The Virginia Affordable Housing Trust Fund was assembled in 2012 to address the lack of affordable housing throughout the Commonwealth. Funds are geared toward affordable rental housing; down payment and closing cost assistance for homebuyers; and, short, medium and long term loans to reduce the cost of homeownership and rental housing for localities.

BACKGROUND: A lack of affordable housing remains a problem both in the Loudoun County and throughout the Commonwealth. According to an April 2014 report by the Virginia Housing Coalition, renters in Virginia need to earn $20.93 per hour in order to afford a basic apartment, but the typical renter in Virginia earns $15.97 per hour. This "Housing Wage" is the highest among all of the states in the Southeast and is the 10th least affordable state in the nation. Working at the minimum wage in Virginia, a family must have 2.9 wage earners working fulltime, or one full-time earner working 115 hours per week to afford a modest two-bedroom apartment.

In 2012, the General Assembly created the Virginia Affordable Housing Trust Fund to address the lack of affordable housing throughout the Commonwealth. The General Assembly provided approximately $8 million in initial revenues to the fund, which was a small percentage of the money the Commonwealth received from the national legal settlements resulting from the housing crisis. In just its first year of operation, the Affordable Housing Trust Fund received numerous funding requests that far exceeded the capacity of the Fund.

As a result, many continue to advocate for a dedicated source of funding. Additional funding would not only keep the Fund whole but also build the fund to address Virginia's growing housing needs. One possible solution is to dedicate certain tax revenues collected in excess of a pre-defined "floor" for that revenue source. This was the premise of a 2006 piece of legislation, supported by REALTORS®, in which 50% of excess recordation tax revenues would be transferred into the then-named Virginia Housing Partnership Trust Fund. DAAR would continue to support this approach in the future and is open to considering other funding solutions that would be acceptable to affected stakeholders.

STATUS: HB 1132 (Lopez), a measure to dedicate 2% of any general fund surplus to the Affordable Housing Trust Fund, was left in the House Appropriations Committee. The Senate included $4 million for the fund in their 2014 budget bill while the House budget did not include an appropriation for the Fund. Both of these budget proposals removed the $8 million in funding that outgoing Gov. Bob McDonnell had recommended for the Fund.

POSITION: DAAR supports legislation to provide a reliable stream of annual funds for the Virginia Affordable Housing Trust Fund.

LOCAL ISSUES

CHESAPEAKE BAY WATERSHED IMPLEMENTATION PLAN (WIP)/TOTAL MAXIMUM DAILY LOAD (TMDL)

ISSUE After three years of debate, the Loudoun County Board of Supervisors (LCBOS) voted to suspend discussions on a proposed and controversial Chesapeake Bay Preservation Act Ordinance (CBPO) that included "no-build" protection areas on existing parcels, arbitrary structure exemptions and development restrictions on key commercial growth areas. The decision to halt work stems from looming federal regulations mandating localities to reduce pollution into the Bay.

As background, President Obama issued Executive Order 13509 on May 12th, 2009 requiring the Environmental Protection Agency (EPA) to coordinate efforts with several federal departments and work with state governments to reduce pollutants flowing into the Chesapeake Bay as part of a "pollution diet" or Total Maximum Daily Load (TMDL). The order provides EPA with enforcement authority if states miss established goals. In December 2010, the EPA approved Phase I of Virginia's Watershed Implementation Plan (WIP) for the cleanup of the Chesapeake Bay. The plan was developed to meet EPA requirements for the reduction of capping nitrogen, phosphorus and sediment loads into the Bay and its tidal tributaries.

In 2013, the county completed the Phase II WIP Community Outreach Work Plan. The goal of the Work Plan was to determine the most reasonable and cost effective strategies for meeting the requirements of the WIP. The county is currently working on implementing several recommendations outlined by the Work Plan Stakeholder Committee.

POSITION Although DAAR supports efforts to protect valuable water resources in the region, any proposed regulations must be made in proportion to the need or the effect on Loudoun's water quality and recommends consideration of the following:

-Examine Water Quality Protection Alternatives Given the significant impact water quality protection measures may have on property owners, businesses and the local economy, it's critical to weigh the least onerous but effective alternatives to improving water quality and meeting TMDL requirements.

-Weigh Costs and Benefits to County Consideration of the most cost-effective methods and practices to implement TMDL requirements should be made. Due to budgetary constraints, the County should proceed with caution, gather the necessary information that allows a thorough examination of the impact TMDL requirements will have on property owners as well as the costs and benefits and to share that information with all of us who live and work in Loudoun County.

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 that 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.

PROFFER REFORM

ISSUE The Virginia General Assembly granted authority to local governments in Virginia to accept voluntary proffers from developers in exchange for zoning changes or map amendments. Proffers are voluntary contributions given to counties by developers to help offset the costs of future capital facility development, such as roads, schools, parks, storm water treatment, libraries, mental health housing, animal control facilities, and public safety facilities due to land rezoning.

In order to determine appropriate proffer contributions to Loudoun County, the Capital Intensity Factor (CIF) is reviewed to set the costs of rezoning and provides a guideline to county planners during proffer negotiations. In 2009, the Board of Supervisors increased the CIF from $47,846 to $59,470 for a single family home and $30,575 to $40,385 for a single family attached home to secure development approvals and re-zonings in certain planning areas.

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.

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.

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 $423,690 in May 2014, 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.
-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.