



# 2018 Legislative Positions



## **PURPOSE**

The 2018 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. DAAR will also submit this package to the Virginia REALTORS® for consideration into their Legislative Agenda for the 2018 General Assembly Session.

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## STATE ISSUES

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

**ISSUE:** For thousands of residents and business owners and employees who use the Dulles Greenway as a daily commuter route, the costs of using the road on a daily basis outweigh the benefits. Since the road's opening, public officials, residents and businesses have expressed concern over the road's rising tolls. With the March 2017 toll increase, drivers who use the Dulles Greenway now pay up to \$11 a day for a round trip commute, plus an additional \$2 if commuting onto the Toll Road. A driver commuting 50 weeks out of the year, may pay up to \$3,250 annually for their weekday round trip. This makes it the most expensive road in the country. Many elect to travel already congested alternate routes, including neighborhood roads.

**DISCUSSION:** 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 Corporation 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 materially discourage the use of the roadway by the public and; 3) It should provide the operator no more than a reasonable rate of return.

In 2008, the Virginia Highway Corporation Act was amended to require that the SCC approve annual requests for toll increases if the amount of the increase is: 1) equal to the increase in the Consumer Price Index, plus one percent; 2) equal to the increase in the Real Gross Domestic Product; or 3) 2.8 percent, whichever is greatest. This automatic annual increase is scheduled to expire on December 31, 2019.

Since 1995, all TRIP II requests for toll rate increases have been granted, including the March 2, 2017 increase, despite opposition from public officials, residents and area businesses. In December of 2012, former 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) supported 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 of Ramadan. Although the LCBOS and Delegate Ramadan filed legal briefs with the SCC in appeal of its Hearing Examiner's findings, the SCC upheld the ruling that the roadway's tolls are reasonable when weighed against the benefit it provides users.

Three bills were introduced in the 2017 Virginia General Assembly Session, two of which would have given the SCC flexibility to approve or reject toll increase requests. The third bill would have required distance-based pricing of tolls. During the 2017 Session, DAAR had additional support

for a legislative remedy from the Virginia REALTORS®, the Northern Virginia Association of REALTORS®, lobbyists for Loudoun County, and the Loudoun County Chamber of Commerce. Unfortunately, the Session ended without legislation being enacted to help lower the cost of the tolls.

**POSITION:** DAAR supports efforts to provide relief from rising tolls on the Dulles Greenway and opposes efforts that would extend the automatic toll increases past December 31, 2019. In an effort to maximize the public benefit of the road, improve mobility, and relieve congestion off of neighborhood roads, DAAR supports legislation that would:

- Require a study be conducted to review existing technology that is used to implement a distance-based pricing system, its applicability to use on the Dulles Greenway, and a reasonable pricing structure. Under a distance-based system, the toll fee depends on the distance traveled between each entrance and exit, as opposed to the current area-based pricing scheme where a flat fee is imposed.
- Allow the Commonwealth of Virginia to purchase the road using tax free bonds which would help lower the cost of the tolls.
- Define the meaning of “reasonable” cost to the user based on economic factors including, but not limited to area median income.
- Give the SCC flexibility to approve or reject a rate increase.

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

**ISSUE:** As more and more individuals enter the real estate profession, DAAR believes that strengthening pre-license and post-license education is critical to improving professionalism.

**DISCUSSION:** In the past decade, Realtors® have sought and obtained Virginia 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 approach to real estate education 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 Pre-License Requirements** In an effort to strengthen broker supervision, a *Broker-in-Charge* licensing category should be created. In addition to completing 180 hours of VREB-approved broker pre-license education courses, passing the state and national portions of the examination, and submitting verification of experience as required for a broker's license, a broker-in-charge would be required to have at least two years' full time supervisory real estate brokerage experience.

**Broker-In-Charge Course Requirement** Once a licensee serves in a supervisory position as a broker, he or she should be required to complete, in addition to required renewal hours, a three-hour course every two years to learn about the management tools needed to be successful in their roles, along with essential supervisory guidelines and regulatory updates from VREB.

**Improving Real Estate School Standards** To improve real estate school standards, only an accredited college or university, a public or private vocational school, a real estate board, a real estate office, or a real estate-related professional society or organization should provide continuing education courses.

**Strengthening Post License and Continuing Education** Require licensees to complete 50% of their renewal hours in-class. All mandatory renewal classes should be completed in-class while electives may be completed on-line or via correspondence. While on-line classes are a great supplement to learning, classroom examples and interaction cannot be replaced by reading a computer screen. Exemptions should be provided to military.

**Bolstering Pre-Licensing Education Requirements** Improve pre-licensing curriculum to add three hours of contracts as well as allocating five of the existing sixty hours to cover practical topics such as buyer and listing paperwork and writing contracts.

**Improving Regulatory Enforcement** To improve enforcement of VREB regulations, there should be consideration of bolstering VREB resources.

## USE OF TEAMS IN REAL ESTATE

**ISSUE:** Real estate teams are a growing force in the marketing of real property. “Team” means two or more persons, one of whom must be an associate real estate broker or real estate salesperson, associated with the same real estate brokerage, who holds themselves out to operate as a team.

**DISCUSSION:** A group of licensees associated with a single broker may choose to operate as a team but the team, when it advertises, must comply with all advertising requirements, including having the brokerage name and address or phone number appear in the advertisement. Although requirements exist, it may be beneficial to strengthen advertising requirements and clarify operating standards in an effort to avoid the perception that teams are operating as separate licensed entities.

**POSITION:** In an effort to clearly identify teams, DAAR recommends the following:

**Team Leaders** All team leaders must be a real estate licensee. All team leaders must complete a three-hour course every two years to learn about the management tools needed to be successful in their roles, along with essential supervisory guidelines and regulatory updates from VREB. This course must be obtained within three months of assuming a supervisory position.

**Team Names** All team advertising must contain the full name of the brokerage displayed in accordance with VREB regulations. The team name in the advertisement should be directly connected to the name of the brokerage such as “The ABC Team of XYX Brokerage.” The name of the team should not contain the terms “Real Estate,” “Real Estate Brokerage,” or “Realty” or any other term that would lead the public to believe that the team is offering real estate brokerage services independent of the broker.

**Unlicensed Individuals as Part of Team** If any unlicensed individuals are named in advertising for a team, the advertisement must clearly and conspicuously state which individuals are real estate licensees and which ones are not.

**Separate Offices** The broker must supervise the operations of any team office. The team office must be approved by the principal brokerage firm.

## LOCAL ISSUES

### **HOUSING THAT IS AFFORDABLE**

**ISSUE:** The most recent U.S. Census indicates that the median household income for Loudoun County residents was \$123,453 (in 2015 dollars). A family at this income level could afford to purchase a home priced up to three (3) times their income level - \$370,359. In Loudoun County, the average home price climbed from \$280,696 in 2000 to \$423,250 in February, 2017, according to George Mason University's Center for Regional Analysis. DAAR believes that this increase edges out of the market many individuals who do not make an above-average salary.

**DISCUSSION:** Housing affordability is often measured in terms of cost burden – households that spend 30 percent or more of their income on housing. According to the 2017 Housing Needs Assessment (HNA) conducted by George Mason University Center for Regional Analysis and Lisa Sturtevant & Associates, LLC, 29.6% of all households in Loudoun County are cost burdened. Additionally, the HNA concluded that the demand for new housing units in Loudoun County will exceed the number of housing units planned to be developed in the future. This will result in a potential gap of 18,300 housing units, primarily single-family detached and single-family attached units. While home ownership rates are low, there is a potential need for 3,400 additional home ownership units annually, including 1,400 affordable to households with incomes below 100% of AMI (\$108,600 for a family of four in 2016).

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. Burdened by a strenuous commute and strain on family life, they may seek employment closer to home, which may lead to worker shortages and have 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 for those who wish to purchase or rent property in Loudoun County. DAAR is focused on supporting housing for those who earn less than the median household income. 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:

- Creating a separate Housing and Community Development Department to increase the visibility, prioritization and effectiveness of Loudoun County's home ownership and rental 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;
- Providing incentives for employer-provided and military housing assistance; and
- Regular assessments and studies to determine housing needs of underserved markets.



## **SILVER LINE COMPREHENSIVE PLAN AMENDMENT AND ZONING ORDINANCE CHANGES**

**ISSUE:** In 2013, Loudoun County created the Metrorail Service Districts to help fund the Metrorail Silver Line extension to the county. The special tax districts, which are located in the areas surrounding the three planned metro stations – Dulles Airport, Ashburn (Route 606) and Loudoun Gateway (Route 772), have been designed to help pay for the construction of the Silver Line to the area and for ongoing costs of providing the Metrorail service at those stations.

In an effort to maximize tax revenues on parcels within the district, the County initiated a Comprehensive Plan Amendment (CPAM) to determine the basic shape of development with respect to housing, commercial development and open space.

**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 and the County's zoning ordinances should be established to fulfill the goals of the Silver Line CPAM. Additionally, alternative ways to encourage the use of the Silver Line should be developed.

The plan should:

- Ensure that workers drawn to employment centers near the Metro Line can find affordable housing;
- Include innovative and flexible policies that result in mixed-use and pedestrian-friendly developments that are financially viable to support Metrorail;
- Consider development plans that incorporate a mix of rental housing units that are affordable for the workforce to support retail and commercial employment centers; and
- Determine the viability of integrating a toll-free exit/entrance from the Greenway to provide direct access to the Silver Line Metrorail at the Loudoun Gateway Station (Route 606).

## **COMPREHENSIVE PLAN AMENDMENT AND ZONING ORDINANCE CHANGES**

**ISSUE:** Loudoun County's comprehensive plan is the blueprint or vision for community development in the county. Comprehensive plans set the basic shape of community development, addressing such issues as housing, economic development, land use, urban growth areas around towns and cities, agricultural lands and a host of other specialty issues surrounding growth and development. The comprehensive plan's implementing zoning ordinance regulates and controls the character and use of property by establishing the type and amount of development that is permissible in specific zoning districts. The county's Planning Commission is empowered by state law to prepare and recommend a comprehensive plan and a zoning map for the physical development of the land in the county every five years.

**POSITION:** Comprehensive Plans should be fluid documents, frequently updated, that serve as a guide for the provision of an adequate supply of developable land to meet the market's demand for housing opportunities. Economic development efforts and comprehensive planning efforts must work in tandem to ensure that workers can find affordable housing in close proximity to their places of employment. The County's zoning ordinances should be established to fulfill the goals of the Comprehensive Plan.

To that end, DAAR supports the following objectives:

- Comprehensive planning that serves as a guide for identifying land to be made available for residential, recreational, commercial, industrial, and other uses;
- Development clustering and innovative land-use policies that encourage mixed-use and pedestrian friendly developments;
- A comprehensive approach to transportation, linking communities together, and creating a safe and efficient multi-modal transportation network;
- Redevelopment of existing urban centers in an effort to revitalize communities and reduce the consumption of land for new development; and
- At least every five years, conduct a review of the comprehensive plan, in accordance with Virginia Code, Article 3, § 15.2-223. At that time, the comprehensive plan may be updated to accommodate different types of residential and commercial needs that support the county's economic vision.

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

**ISSUE:** DAAR was successful in advocating against a property-stigmatizing ordinance in Loudoun placing a ban on alternative on-site septic systems (AOSS) 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 Loudoun County 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 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 County 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 to provide services, such as "Wireless Internet Service Providers" (WISP);
- Examine whether existing franchise agreements can help improve services;
- 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: 1) are implemented to fix an actual problem; 2) property owners are notified directly; 3) are understandable to property owners; 4) do not diminish the value of the properties; and 5) do 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. Therefore, DAAR 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 consider the least onerous but effective alternatives to protect 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 and gather the necessary information that allows a thorough examination of the impact the overlay district regulations will have on property owners. County should also share the costs and benefits of their proposed actions with the public.

**Direct Notice** 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.