

RICHMOND REGIONAL PLANNING DISTRICT COMMISSION
Minutes of Meeting
February 17, 2012

Members/Alternates Present

L. Ray Ashworth (M)City of Richmond
Richard Ayers (M).....County of Powhatan
James H. Burrell, Chairman (M) County of New Kent
Steve A. Elswick (M)County of Chesterfield
Even Fabricant (M)County of Hanover
Daniel A. Gecker (M).....County of Chesterfield
Richard W. Glover (M)County of Henrico
Kathy C. GrazianoCity of Richmond
Russell J. Gulley (M).....County of Chesterfield
James M. Holland (M).....County of Chesterfield
Dorothy Jaeckle (M).....County of Chesterfield
E. Martin Jewell (M)City of Richmond
David A. Kaechele (M)County of Henrico
Angela Kelly-Wiecek, Treasurer (M).....County of Hanover
Kelli Le Duc (A)..... County of New Kent
Floyd H. Miles (M) County of Charles City
John H. Mitchell (M).....County of Henrico
Tyrone E. Nelson (M)County of Henrico
Patricia S. O’Bannon (M).....County of Henrico
C. Harold Padgett (M)County of Hanover
W. Canova Peterson (M)County of Hanover
Ken Peterson, Secretary (M)County of Goochland
Edward W. Pollard (M) County of New Kent
Faye O. Prichard, Vice Chairman (M)Town of Ashland
Randall R. Silber (A).....County of Henrico
Carson Tucker (M)County of Powhatan
Arthur S. Warren (M)County of Chesterfield
David Williams (M)County of Powhatan

Members Absent

Thomas M. Branin (M)County of Henrico
Douglas G. Conner (M).....City of Richmond
James Crews (M).....County of Goochland
Lynn McAteer (M)City of Richmond
Charles R. Samuels (M)City of Richmond
Millard D. Stith (M)County of Chesterfield
Frank J. Thornton (M).....County of Henrico

Others Present

John Amos.....RRPDC Legal Council
Erin O’Donovan NRC
Michael Martz Richmond Times-Dispatch
Joan Sawyer..... NRC
Ed Via.....County of Hanover

Staff Present

Robert A. Crum Executive Director
Jo A. Evans.....Assistant Executive Director
Julie H. Fry Executive Secretary
Thomas Dunn Principal Planner
Jacob Epstein..... Intern
John Fogg Senior Planner
Sophie Guhl..... Intern
Barbara Jacocks Principal Planner
Daniel N. Lysy Director of Urban Transportation
Kathy Robins Senior Planner
Greta Ryan.....Data Analyst
Matt Smith..... Intern
Jackie S. Stewart.....Director of Planning
Sarah Stewart..... Senior Planner
Peter M. Sweetland..... Finance and Contracts Administrator
Tiffany Tran Senior Planner
Lee Yolton..... Principal Planner

Call to Order

Vice Chairman Prichard called the rescheduled February 17, 2012 RRPDC meeting to order at approximately 1:10 p.m. in the RRPDC board room. She then led members in the pledge of allegiance to the flag.

I. ADMINISTRATION

A. Certification by Commission Executive Director of Meeting Quorum

Mr. Crum certified that a quorum of members was present.

B. Appointment of Executive Committee and Election of RRPDC Officers

Vice Chairman Prichard introduced new members of the RRPDC Executive Committee:

Floyd Miles, Charles City County – replaces Tim Cotman

Ken Peterson, Goochland County – replaces Rudy Butler
Angela Kelly-Wiecek, Hanover County – replaces John Gordon
Dick Glover, Henrico County – replaces Jim Donati
Jimmy Burrell, New Kent County – replaces Stran Trout
David Williams, Powhatan County – replaces Bob Cosby

Vice Chairman Prichard presented the slate of RRPDC officers as recommended by the RRPDC Executive Committee. The following persons will serve in these positions for the remainder of FY 12, which ends on June 30, 2012:

Chairman	Jimmy Burrell, New Kent County
Treasurer	Angela Kelly-Wiecek, Hanover County
Secretary	Ken Peterson, Goochland County

Ms. Graziano made a motion that the RRPDC Commission elect the slate of officers as presented by Vice Chairman Prichard and recommended by the RRPDC Executive Committee. Mr. Gecker seconded the motion. There was no additional discussion and the motion was passed unanimously.

Vice Chairman Prichard handed the gavel to Chairman Burrell, who presided over the remainder of the meeting.

C. Requests for Additions or Changes to the Order of Business

Chairman Burrell asked if there were any additions or changes to be made to the agenda. There were no requests to change the agenda, and the agenda was accepted as presented.

D. Open Public Comment Period

Chairman Burrell asked if there was anyone from the public in attendance who wished to make a comment to members of the Commission. He reminded speakers that their time is limited to three minutes. As there were no requests from the public to address the Commission, the Chairman closed the public comment period.

[At this time, the recording equipment malfunctioned due to a power outage. Minutes from this point forward are written based on staff notes.]

E. Chairman's Report

Chairman Burrell indicated he is looking forward to working with everyone in his new role as RRPDC Chairman. He asked that everyone around the table introduce themselves.

Following introductions, Chairman Burrell reported that during today's RRPDC Executive Committee meeting, resolutions of appreciation were approved for the following outgoing RRPDC members:

Chris Archer, Henrico County Planning Commission
Willie Bennett, Henrico County Citizen Representative
Rodney Hathaway, Assistant New Kent County Administration and RRPDC
Alternate Voting member

Staff will forward the resolutions to the outgoing members on behalf of the RRPDC Board.

F. Executive Director's Report

Mr. Crum brought the members' attention to the monthly staff activity report, which is included in the agenda book under Tab 1, and details work being advanced by staff on behalf of the localities. He said staff will be happy to address any questions on what is included in the report.

Mr. Crum thanked all of the new members who had taken time from their busy schedules to attend orientation sessions which were held earlier in the month.

Staff has begun work on a Comprehensive Economic Development Strategy plan for the Region. A kick-off meeting was held on January 27 and was attended by the 37-member Strategy Committee. All of the local jurisdictions have representation on the committee.

Mr. Crum reported that staff is working with Henrico County and Richmond City staffs on the Route 5 Corridor Study. This study addresses the future growth in the Varina area. Several thousand new dwellings have been approved for construction which will impact the amount of traffic traveling into the City of Richmond from Henrico County along the Route 5 corridor. Mr. Crum and RRPDC staff attended a public hearing with Rev. Nelson this past Monday to receive public input. Another meeting will be held on February 21 with Henrico County and Richmond City elected officials and staffs.

Mr. Crum is participating on a steering committee for the GRTC Transfer Center. The committee will look at potential sites in the downtown area for the new Transfer Center.

Mr. Glover asked if the Transfer Center would be multimodal or used only for GRTC buses. Mr. Crum said the center will be multimodal. It is hoped that in addition to GRTC buses, the center can be used for electric vehicles, cabs, bicycles, and Segways. The center can also function as a site for potential business and retail opportunities.

II. CONSENT AGENDA

Chairman Burrell said the Executive Committee has recommended approval of the items listed on the Consent Agenda:

A. Approval of Minutes – December 8, 2011

B. Approval of November and December Financial Reports

Chairman Burrell asked if anyone wished to have any of these items pulled from the Consent Agenda for additional discussion.

As there were no requests for discussion on the items, on motion made by Ms. Prichard and seconded by Mr. Gecker, the Consent Agenda was approved unanimously as presented. New members abstained from the vote as they were not in attendance during the December meeting.

III. OLD BUSINESS

There was no old business to bring before the Commission members.

IV. NEW BUSINESS

A. Proposed State Constitutional Amendment: Eminent Domain

Chairman Burrell asked Mr. Crum to introduce the guest presenter. Mr. Crum said this discussion item will be on a proposed state constitutional amendment dealing with eminent domain. Staff had originally invited Sterling Rives to make the presentation but determined that it would be more appropriate for Mark Flynn with the Virginia Municipal League (VML) to review the background material related to the proposed amendment. As there are differences of opinion in the localities about the proposed amendment, Board members may not be able to take any action on the amendment during today's meeting. Mr. Crum said he will be asking Board members for feedback following Mr. Flynn's presentation.

Mr. Flynn thanked members of the Board for the opportunity to speak with them this afternoon. He said he will provide factual information on the proposed constitutional amendment, which was brought about by the 2005 court case (Kelo vs. New London) on eminent domain which was ultimately heard by the US Supreme Court. The Court held in a 5-4 decision that the general benefits a community enjoyed from economic growth qualified such redevelopment plans as a permissible "public use" under the Takings Clause of the Fifth Amendment.

The proposed amendment to the Virginia constitution will restrict the use of eminent domain. Mr. Flynn pointed out that the concern is that the language in the amendment will severely impact locality infrastructure projects and economic development.

There have been two cases in the state that contributed to the proposed amendment. One case in Hampton Roads involved blocking a road into a business park during the completion of road work and another case in Roanoke involved a hospital expansion.

The proposed amendment would provide that private property can be taken or damaged only for a public use with just compensation and only so much taken as is necessary for public use. Other provisions are:

- provides that just compensation must equal or exceed the value of the property taken, lost profits and lost access, and damages to the residue caused by the taking
- declares that a taking or damaging of private property is not for public use if the primary use is for private gain, private benefit, private enterprise, increasing jobs, increasing tax revenue, or economic development
- casts doubt on the General Assembly's authority to define what constitutes a public use
- declares that the condemnor bears the burden of proving that the use is public, without a presumption that it is

Other legislation includes HJ 3 and SJ 3 which contain the language of the constitutional amendment. HB 5 and SB 240 provide for a voter referendum during the November elections to approve or reject the constitutional amendment. HB 975 states that for the purposes of condemning land, local governments are "public service corporations" because the constitutional amendment permits public service corporations to condemn for utilities. It is felt this will likely be challenged in court. SB 653 states that local utilities are public utilities for condemning proceedings and declares water and sewer lines as "inherently public uses." This also will likely be challenged in court.

At this time, VML would support HB 1035 and SB 437, which attempt to better define the meaning of "lost profits" and "lost access" which are the new elements of "just compensation" that must be paid under the amendment.

Mr. Flynn reviewed concerns with the proposed amendment which include:

- hamper government's ability to exercise the power of eminent domain for the improvement and construction of roads and to install utilities such as water and sewer
- requirement to compensate for lost profits and lost access will increase the cost of projects
- fiscal impact will be borne by taxpayers or force developers and governments to abandon projects

Many organizations, such as homebuilders, realtors, architects, engineers, and contractors, are joining with local governments to oppose the amendment.

[The recording equipment failure was addressed by staff and minutes from this point forward are based on the meeting recording tapes and staff notes.]

Mr. Glover asked for the status of HB 1035 and SB 437. Mr. Flynn indicated both bills have passed their respective houses and are now being considered by the other houses. Efforts are also underway to improve HB 975 and SB 653. This effort is being led by the business community.

Mr. Glover asked how development of areas without existing infrastructure will be impacted if the amendment passes. He asked if commercial development would be able to bypass the amendment if residential development was included.

Mr. Flynn said more and more development is tending to be village centric with mixed uses. He said it will be these types of developments that will cause the most concern. Strictly residential development will not be impacted as much.

Mr. Williams asked who will make the decision regarding utilities that localities have included in their comprehensive plans. Mr. Flynn said local circuit courts will be the first to rule on such issues. Mr. Williams asked if localities will need to wait for court cases to be heard before any development can take place. Mr. Flynn said that would be a worst case scenario. He said localities will need to make the decision as to whether to commit funds to projects.

Mr. Canova Peterson asked about the Virginia Attorney General's opinion. He asked if the constitutional amendment would protect the citizens or the government.

Mr. Flynn said one of the examples used by the Attorney General was that of running water and sewer lines in an urban setting for improvements. He said this would probably be fine. The amendment begs the question as to whether such improvement projects are ultimately in the best interests of the public.

Mr. Kaechele asked about the lost access clause. Mr. Flynn said the bill states it must be direct access. He said localities will face access issues when roads are closed for improvement projects and the loss of access and profits impacts adjacent businesses.

Ms. Jaeckle asked about lost indirect access. Mr. Flynn said if the lost indirect access is based on police action, it would be considered a public safety issue and would be allowed under the amendment.

Ms. Kelly-Wiecek asked if the two bills that address the definition of lost access and lost profits could be eroded over time. Mr. Flynn said that is possible.

Mr. Silber asked if the lost access and lost profit definition bills would be carried over to the next General Assembly session. Mr. Flynn said the bills may be amended but he did not think they would be carried over.

Mr. Pollard urged that any changes in eminent domain laws should be thought through very carefully to prevent future abuse.

Mr. Flynn said that VDOT does more acquisitional land efforts than any other agency. The lost access/lost profits clause deems higher outputs for commercial property. He said this will encourage VDOT to take more residential property instead. The amendment says that the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be taken or damaged except for public use; this relates back to the first article of the Bill of Rights.

Mr. Gates asked if members of the Commission would like to take any action to support HB 1035 and SB 437 which deal with definitions of lost access and lost profits. Neither of these two bills deal with the actual constitutional amendment.

Mr. Glover made a motion that the RRPDC Board support HB 1035 and SB 437 which define the terms lost access and lost profits in the Code of Virginia if the proposed constitutional amendment is approved by Virginia voters. Mr. Glover said Henrico County supports these two bills because they more precisely define the two terms than any of the other bills that have been introduced. Mr. Fabricant seconded the motion.

Chairman Burrell asked if there was any additional discussion. Mr. Crum noted that in the handout provided, under the section titled "Relevant legislation before the General Assembly," the bills that have been included in Mr. Glover's motion are summarized.

Mr. Williams asked if the bills will be amended in committee. Mr. Flynn said there is concern that the bills will be amended in committee to remove some of the protections currently included. He said that the proponents of the bills have negotiated with the large utility companies so that if the bills pass as they are written now, the utility companies will support the constitutional amendment. Mr. Williams said he could support Mr. Glover's motion as long as the Board would not be supporting any changes made to the two bills in committee.

Mr. Gates said when changes are made that alter the substance of the bill, RRPDC staff would seek guidance on the changes. If the changes are substantial, RRPDC would withdraw its support.

Mr. Glover said his motion deals with the definition of the two terms. If the definitions are removed, then the motion would not be valid.

Mr. Gulley asked if the Commission Board should take a position to oppose the constitutional amendment if there is uncertainty about how the bills will come out of committee.

Mr. Flynn said the constitutional amendment will pass General Assembly. He said his feeling is that it would be counterintuitive to oppose the constitutional amendment.

Ms. Graziano asked Mr. Glover if he would accept a friendly amendment to his motion that would add “or other change to these two bills which would adversely affect the localities.” Mr. Glover said he appreciates Ms. Graziano’s suggestion, but he would like for his motion to stand as is for a vote.

There was no additional discussion and the motion carried unanimously.

Mr. Flynn reported that with regard to HB 526 dealing with take off and landing of helicopters, this refers to landing sites as defined by the FAA.

B. Legislative Efforts to Reconfigure the Commonwealth Transportation Board

Mr. Gates provided a brief overview of the 2012 Legislative Agenda for the benefit of new members and the process for developing the agenda.

Mr. Gates indicated that the Commonwealth Transportation Board (CTB) allocates funds from the Transportation Trust Fund; establishes the administrative policies for Virginia’s transportation system; creates traffic regulations; and locates routes. The CTB is comprised of 14 voting members (9 district members and 5 at-large members) plus three non-voting members. All members are appointed by the governor. CTB districts were drawn in 1922.

Mr. Gates provided a map of the current urban and rural areas. He noted that since 1974, no at-large members of the CTB have been from the Richmond Region. The RRPDC Legislative Agenda identified a regional priority to update the archaic definitions of urban and rural as used for appointing at-large members to the CTB. Urban would be defined as including MPOs with populations over 200,000.

Del. Chris Peace introduced HB 262 to address the definition of rural and urban. The bill passed the House but has been carried over in the Senate Transportation Committee. However, the bill will be reconsidered on February 22 because there had been some confusion on what the bill was asking.

The second legislative priority was to add a third urban at-large seat to the CTB and then to ask the governor to fill this seat with a resident of the Richmond Region. This was included in HB 262. As discussions moved forward, it was determined that the language to create the third at-large seat would hinder the entire bill. The language to create the third at-large seat was pulled from HB 262 and the House Transportation Committee Chair agreed to send a letter to the Secretary of Transportation asking for a study to evaluate the role, responsibility, and composition of the CTB.

Mr. Gates said he indicated to Del. Peace that the RRPDC would support the removal of the language to create the third at-large seat and support the request for a study.

Mr. Gates said that HB 262 was confused with bills that deal with how seats on the CTB are allocated. This is being addressed by HB 864, which would use congressional districts instead of construction districts. Mr. Gates provided information on how the number of seats on the CTB would change if seats were to be allocated based on congressional districts.

Reasons to support HB 864 include:

- reconfigures the CTB in a more democratic manner, commensurate with the population distribution
- significantly increases the likelihood of the Richmond Region having more than one seat on the CTB
- Richmond Region would be eligible for five seats based on three congressional districts and two urban at-large seats
- Richmond is the center of the urban crescent

Concerns with HB 864:

- Richmond Region is not guaranteed a seat
- significant power could be shifted to northern Virginia and Hampton Roads
- congressional boundaries were drawn with political motivations and to meet the requirement of the Voting Rights Act and not to meet the transportation needs of the state which may impact VDOT's ability to oversee the daily tasks of managing the transportation system

[The recording equipment again malfunctioned because of a power outage/surge and meeting minutes going forward are based on staff notes.]

Mr. Gates reported that HB 864 passed the House and has been carried over to the 2013 session in the Senate. He reported that many of the concerns may be addressed in the study called for as a result of HB 262. Mr. Gates noted that even if it is determined that seats will be allocated by congressional districts, the Richmond Region may benefit because any improvements to roads leading into Washington, DC and Hampton Roads will also benefit the Richmond Region.

C. General Legislative Update

Mr. Gates provided an update on legislation as it related to priorities in the 2012 RRPDC Legislative Agenda.

Watershed Improvement

- HB 1065 and SB 407 require that all counties and cities in Virginia manage their local stormwater programs; RRPDC does not support these bills as they are an unfunded mandate and would impact Goochland and Powhatan Counties especially; the costs to administer these programs would need to be subsidized from general fund revenues; both bills have passed their respective houses
- HB 1180 and SB 494 (supported by RRPDC) authorize the Virginia Public Building Authority to issue \$300 million in bonds for installing nutrient removal technology in eligible wastewater treatment facilities; provide dedicated and adequate state appropriations to the WQIF to make full and timely payments under point source upgrade contracts with local governments

Equal Taxation Authority

- HB 1157 to equalize city and county taxing authority was stricken in committee

Port Economic Development Zone

- SB 578 (supported by RRPDC) creates the Route 460 Corridor Interstate 85 Connector Economic Development Zone Grant Fund and Program; this includes the Port of Richmond; extends to 2017 the international trade facility tax credit, the barge and rail usage tax credit, and the Virginia port volume increase tax credit; has been referred to the House Appropriations Committee

Omnibus Transportation Reform

- HB 1248 and SB 639 (being monitored by RRPDC); funding relies heavily on state general fund dollars; only new source of funding would be naming rights for highways, bridges, interchanges, and other transportation facilities; any fees generated would go to highway maintenance; creates the Virginia Toll Road Authority; the Secretary of Transportation to develop a proposal for devolution (turn road maintenance over to the localities); requires local comprehensive plans and regional LRTPs to be consistent with Statewide Transportation Plan and SYIP; authorized reallocation of state funds as a penalty to a locality if the comprehensive plan is not consistent with state plans; authorizes the CTB to require reimbursement from a locality/localities that are part of an MPO that request alterations to a project resulting in cost increases exceeding 10 percent
- SB 639 – Senate removed all proposals to transfer any general fund revenues to transportation; removed provisions requiring VDOT to review local and regional plans for consistency with state transportation plans; removed devolution (these changes supported by RRPDC)

- HB1284 – House removed devolution language; removed toll road authority; Senate kept provisions requiring VDOT to review local and regional plans for consistency with state transportation plans (Senate change opposed by RRPDC)

Mr. Glover asked for clarification on funds relating to waste water treatment plants. Mr. Gates said the bonds would fund upgrades to treatment plants.

Mr. Crum thanked Mr. Gates for his presentation. He indicated to members of the Board that these are staff's interpretations of positions based on input from Board members. If there are any concerns with how staff is handling lobbying efforts, please let staff know.

V. OTHER BUSINESS

There was no other business to bring before members of the Board.

VI. ADJOURNMENT

Chairman Burrell adjourned the meeting at approximately 3:10 p.m.

Robert A. Crum, Jr.
Executive Director

James H. Burrell
Chairman