The Resurrection of West Broad Village

On October 17, 2011, the Weinberg Land Use Forum was pleased to host Bryan Kornblau, Chairman of Eagle Construction of Virginia, LLC, and Principal of Market | Eagle Partners, LLC as its featured speaker. Bryan presented the “Rise, Fall and Rise of West Broad Village.”

The history of West Broad Village is not unlike that of many grand visions significantly impacted by the recent real estate recession. West Broad Village is the site of the former Liesfeld Dairy Farm, a 115-acre parcel of land on West Broad Street just west of its intersection with Interstate 64. With 154,000 cars per day driving by its borders, it is powerfully situated. Unicorp, the original developer, paid a premium price at the height of the market for the opportunity to develop a mixed-use and density community. That goal was realized utilizing Henrico County’s UMU Zoning District Ordinance allowing vertical construction with a mix of uses not supported by traditional zoning districts. The result was the potential for 518,979 square feet of restaurants/retail, 648,809 square feet of office use and 884 residential units for a total development density of 3,709,080 square feet.

West Broad Village was begun at the leading edge of the recession and, in the fall of 2009, the project suffered from the collapse of the housing market and a slowing of national retail expansion. The project was burdened with an unsupportable debt load. Mechanics liens were legion and lenders were pressing, 23 families were stranded in the Aloft hotel unable to purchase their completed homes because of liens filed against the developer. Old Navy had pulled out, one residential builder declared bankruptcy and the original developer was sued by the hotel for non-performance. The future of West Broad Village was in serious doubt.

Enter Markel | Eagle Partners Fund I, a fund created to purchase, develop and manage projects having an abundance of potential. The Fund, represented by Hirschler Fleischer, raised over $32,000,000. On Christmas Eve, 2009, Markel | Eagle effectively took over West Broad Village after monumental negotiations. Liens were released, litigation settled, families moved from the Aloft hotel to their new homes, and a mountain of snow was removed from the site during the critical Christmas shopping period after a historic start to winter.

Infusion of capital with significant development experience and patience has resurrected West Broad Village while recreating an extremely positive market perception. West Broad Village was subsequently named “Community of the Year” by the Homebuilding Association of Richmond in 2010, and “Mixed-use Community of the Year” by Multi-family Pillar of the Industry. Residential sales are up 300% and an additional 150,000 square feet have been recently leased for retail tenants. Such businesses as the Aloft hotel, Whole Foods Grocery, REI, Bone Fish Grill, the Children’s Museum of Richmond and a host of others make West Broad Village a lively, urban destination that is finally living up to its potential.
The Commonwealth of Virginia continues its efforts to implement strategies to achieve the pollution “weight loss” mandated by the Environmental Protection Agency (“EPA”) for the Chesapeake Bay. During the past General Assembly session, several strategies were enacted to help the Commonwealth meet its pollution limitation under the EPA’s Total Maximum Daily Load for the Chesapeake Bay (the “Chesapeake Bay TMDL”). These strategies included eliminating the use of phosphorous in lawn fertilizer (with some exceptions) and expanding the availability of the Virginia’s offsite nutrient exchange program.

More recently, the Commonwealth implemented another component of its effort to meet the pollution “weight loss” mandated by the EPA’s Chesapeake Bay TMDL. On September 13, 2011, the long-debated stormwater regulations went into effect.

**Get Me Out of the Stormwater “Diet”**

The good news is that the new stormwater regulations grandfather certain projects. The new stormwater quality and quantity standards (discussed below) will not be imposed on these grandfathered projects.

To qualify for grandfathering under the new stormwater regulations, a project must fit into one of the following categories.

- A project that has a current VSMP General Permit and maintains VSMP General Permit coverage will be grandfathered until June 30, 2019.

- Prior to July 1, 2014, a project that does not have VSMP General Permit coverage, but receives certain local governmental approvals, including approval of a layout of the site, prior to July 1, 2012, will be grandfathered until June 30, 2019.

- The qualifying local governmental approvals are: proffered or conditional zoning plans, preliminary or final subdivision plats, preliminary or final site plans (or POD) or zoning with a plan of development or any document determined by the locality as being the equivalent of these. A site layout must have been included in what the local government approved in order to qualify.

- Projects for which governmental bonding or public debt financing has been issued prior to July 1, 2012, will be grandfathered until June 30, 2019.

- Local, state and federal projects for which funds have been obligated prior to July 1, 2012, or for which a stormwater management plan was approved prior to July 1, 2012, will be grandfathered until June 30, 2019.

- Projects that obtain VSMP General Permit coverage prior to the incorporation of the new stormwater quality and quantity standards into the VSMP General Permit.

Developers that want to avoid the new quality and quantity standards for stormwater should review their governmental approvals to see if a layout was included in the approval. Alternatively, developers should analyze the costs of either (i) obtaining a qualifying local governmental approval prior to July 1, 2012, or (ii) obtaining VSMP General Permit coverage prior to the incorporation of the new standards into the permit, against the cost of developing a project under the new quality and quantity standards discussed below.

**Virginia’s New “Diet” Plan for Stormwater**

The recently enacted stormwater regulations impose new quality and quantity standards for stormwater runoff. The new quality standard for new development projects limits the phosphorous content to .41 pounds per year. For redevelopment projects, a 20% reduction in current phosphorous loads, but not beyond .41 pounds per year, must be achieved (however, some sites may qualify for only a 10% reduction). The new quality standard requires retaining the equivalent of at least 1" of rainfall on site. Previously, the quality and quantity standards were .48 pounds per year of phosphorous and a .5" rainfall, respectively. One glimmer of good news from the enacted stormwater regulations - the new .41 pounds per year of phosphorous in run-off is better than the .28 that was originally proposed.

A project must meet the new quantity requirement on-site. However, the new quality requirement may be met on-site, off-site or a combination of both. On-site
In its 2011 session, the General Assembly passed several amendments to the Virginia Code that will impact appeals of real estate tax assessments for the 2012 tax year and beyond. The amendments address the taxpayer’s burden of proof in an appeal and offer some additional rights and remedies to certain residential owners seeking to contest their assessments. Additionally, the City of Richmond has implemented a significant change in its cycle for appeals to the Assessor’s Office and Board of Review.

Under 58.1-3379(B) of the Code, assessments of real estate enjoy a statutory presumption of correctness where an appeal is made to a board of equalization. While this presumption is not a new development in the law, a 2011 amendment to the provision further develops statutory language pertaining to this presumption. The statute now defines a taxpayer’s burden in relation to the presumption, stating as follows:

The burden of proof on appeal to the board shall be on the taxpayer to rebut the presumption and show by a preponderance of the evidence that the property in question is valued at more than its fair market value or that the assessment is not uniform in its application and that it was not arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law relating to valuation.

Similarly, a 2011 amendment to Virginia Code Section 58.1-3984(D) now codifies the presumption for circuit court appeals, stating that the assessment is entitled to a presumption of correctness. The statute also delineates a taxpayer’s burden in rebutting this presumption—a burden identical to that described above regarding appeals to a board of equalization.

Notably, the changes reduce the taxpayer’s burden of proof from the “clear preponderance” standard articulated in case law to a simple preponderance of the evidence, but add evidentiary requirements regarding the assessment being contrary to generally accepted appraisal standards and applicable law relating to valuation.

Virginia Code Section 58.1-3331 deals with taxpayer access to assessment records. Among other things, it allows for the inspection of property appraisal cards or sheets, the work papers relied on by the assessor in arriving at the assessment, and “information regarding the methodology employed in the calculation of a property’s assessed value, to include the capitalization rate used to determine the property’s value, a list of comparable properties or sales figures considered in the valuation, and any other market surveys, formulas, matrices, or other factors considered in determining the value of the

The Biggest Loser – Chesapeake Bay Edition

options include the use of traditional best management practices, such as retention basins, albeit larger, or the application of low impact development techniques, environmental site design, and traditional best management practices. Off-site options include participating in a locality’s or region’s comprehensive watershed stormwater management plan, paying a pro-rata fee to a locality where permitted by a locality (e.g. Henrico County), buying offset credits from a nutrient bank created under Virginia’s Non-point Nutrient Offset program, a developer creating his or her own onsite nutrient facility on neighboring land owned by the developer, or participating in any other state program created in the future. However, the availability of these off-site options are limited to projects that are less than 5 acres disturbed, to projects that only require less than 10 pounds of phosphorous per year to be removed, or when used to satisfy the last 25% of any project’s phosphorous reduction requirement.

For more information on how to qualify for grandfathering under the Commonwealth’s new stormwater regulations or the new stormwater requirements, please feel free to contact Jeff Geiger at (804) 771-9557 or jgeiger@hf-law.com.
property.” If the taxpayer requests such information and it is not provided at least five days prior to the date of the board of equalization or circuit court appeal, then the locality is barred from introducing the information or using it in any manner at the hearing.

In 2011, the General Assembly added a provision to Section 58.1-3331 requiring assessment officers to provide, at least 45 days prior to the appeal hearing, proper notice of the foregoing rights to taxpayers appealing assessments of residential property containing less than four units to a circuit court or board of equalization. For board of equalization appeals, the statute allows the notice to be included with the taxpayer’s hearing notice.

In a related measure, Virginia Code 58.1-3379 was amended to provide that if the assessment officer fails to provide the notice discussed above or fails to provide the taxpayer with the requested assessment records within 15 days of receiving a written request, the assessing officer will be required to present a variety of evidence at the board of equalization hearing, including:

- (i) copies of the assessment records maintained by the assessing officer under § 58.1-3331,
- (ii) testimony that explains the methodologies employed by the assessing officer to determine the assessed value of the property, and
- (iii) testimony that states that the assessed value was arrived at in accordance with generally accepted appraisal practices, procedures, rules, and standards as prescribed by nationally recognized professional appraisal organizations such as the International Association of Assessing Officers (IAAO) and applicable Virginia law regarding the valuation of property.

Upon the presentation of this evidence, the taxpayer has the burden of proof by preponderance of the evidence to rebut the evidence presented by the assessor.

Similarly, a new amendment to Section 58.1-3984(B) of the Code requires the assessor to present the same evidence discussed above in a circuit court appeal regarding residential property of less than four units if the assessment officer fails to provide the requisite notice or fails to provide the applicable assessment records within 15 days of receiving a written request. It is important to note, however, that the written request for assessment records must be made no later than 45 days prior to trial.

As has probably been evident to Richmond property owners from notices received from the City over the summer, effective beginning the 2012 tax year, the City of Richmond has adjusted the timing for assessments of real property and review of assessments. Amendments to the City Code Section 98-48 provide that tax assessments will now be completed no later than December 31 of the year preceding the tax year to which the assessment applies, and that the assessment becomes effective on January 1 of the following year. Accordingly, all assessments for the 2012 tax year were performed and notices issued in 2011.

As a result of the change in City’s timeline for conducting assessments, the cycle for seeking administrative review of an assessment has also shifted. There are still two forms of administrative appeal: (a) an office review by the City Assessor’s Office and (b) a review by the City’s Board of Review. Historically, office reviews were performed in February or March of the tax year to which the assessment applied, and the Board of Review heard appeals beginning in June. The City of Richmond has now frontloaded the review process so that all informal reviews take place in the year prior to the January 1 effective date of the assessment. Thus, the deadline for seeking an office review of a tax assessment is now July 31.

The deadline for Board of Review appeals is August 31. Board of Review hearings are then held during the balance of the year. The foregoing deadlines are subject to change, so property owners should be careful to note the appeal deadlines stated on their assessment notices.

In sum, property owners who question their assessments should not hesitate to invoke their right to request that the locality provide information regarding its basis for the valuation. Doing so not only will assist property owners in evaluating whether they have been over-assessed, but also will provide vital information needed to attack the methodology employed by the assessor and to prove the case by a preponderance of the evidence. If the locality fails to provide the owner with the requested information, that failure can also be used in the appeal. Richmond property owners should remain mindful of the shift in the City’s approach to the administrative review process so they do not inadvertently miss the deadlines for seeking such review.
The City of Richmond

Jeff Geiger and Jim Theobald are representing Hope Equity, LLC in rezoning approximately ten acres at Forest Hill Avenue and Bliley Road to a R-6 designation for the development of a townhouse community.

The County of Spotsylvania

Charlie Payne continues to assist Motorola Solutions with its rezoning application to construct a new Walgreens pharmacy in Stafford County, VA.

Charlie Payne is assisting American Life League with its mixed use rezoning to develop 51 single family units and approximately 700,000 SF of commercial space at and near the intersection of I-95 and Courthouse Road in Stafford County. The commercial space will consist of potentially two hotels, and upscale office, retail and restaurants.

Charlie Payne is assisting Walgreens Co. with its rezoning application to construct a new Walgreens pharmacy in Stafford County, VA.

Zoning Cases

And Development Projects

Recently, Charlie Payne successfully assisted Vulcan Materials and property owner Black Marsh Farm with an approved sand and gravel project along the Rappahannock River. This project will create new jobs for Caroline County and generate over $100,000 annually in new tax revenues for the county. It is also a new prototype project whereby the applicants were able to ensure both conservation and economic development priorities.

Charlie Payne continues to assist Motorola Solutions with a public safety communications procurement project in Caroline County.

Jim Theobald has filed a rezoning request to enable the re-development of the Family Dollar site at Spring Rock Green (the former Beaufont Mall) for a Restaurant Depot, which sells wholesale items to the food service industry. This proposal is part of the beginning of significant redevelopment in the area and will bring much-needed economic opportunity to the area and Chesterfield County.

Charlie Payne successfully assisted English Construction with its PPEA bid and award to construct a new, $35 million plus courthouse in the City of Fredericksburg. English’s Team (aka “First Choice Public-Private Partners”) on this project includes Moseley Architects and Glavé & Holmes Architecture and was awarded the contract this past November 2011.

Jim Theobald continues to represent Highwoods Properties in its request to rezone approximately 188 acres within Innsbrook to an Urban Mixed Use designation. The County amended its Land Use Plan in 2010 to designate the greater Innsbrook area for UMU development.

Jim Theobald is representing Atack Properties in its request to rezone approximately 70 acres on the north side of West Broad Street at the county line for a mixed-use development.

Jim Theobald is representing A & F I, LLC in extending its Conditional Use Permit for a borrow pit at Charles City and Beulah Roads.

Jeff Geiger and Jim Theobald are representing Hope Equity, LLC in rezoning approximately ten acres at Forest Hill Avenue and Bliley Road to a R-6 designation for the development of a townhouse community.

Charlie Payne continues to assist Motorola Solutions with a new public safety procurement project in Spotsylvania County.

Charlie Payne successfully assisted Fox Chase Apts, LLC (November 2011) with its rezoning and proffer amendment application to construct 99 townhouses in Stafford County along Jefferson Davis Highway.

Charlie Payne continues to assist Lane Construction and Kimley Horn with its PPTA proposal to construct new roads in Stafford County. The team of Lane and Kimley Horn is one of three finalists for the competitive PPTA.

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After over a year of study and public input, the Chesterfield County Board of Supervisors has referred the draft of the Countywide Comprehensive Plan back to the Planning Commission for significant revisions. The Plan has potentially far-reaching impacts on future development and property rights in the County. An acceptable Plan is expected by the end of 2012.

The Planning Commission has recommended to the Board of Supervisors substantial revisions to the Urban Mixed Use ordinance. A work session was recently held, another is scheduled for February 28th, and a public hearing is expected on March 27.

Jim Theobald provided significant input into the draft changes based upon his prior experience with UMU’s, and has been asked to participate in upcoming zoning and subdivision ordinance amendments.

The City of Richmond made two important hires last year. First, Lee Downey was hired as the City’s new Director for the Department of Economic & Community Development. Previously, Mr. Downey was the Vice President for Business Development with McKinney & Company. Mr. Downey comes to the City with twenty-plus years of experience in urban planning and economic development spanning both the public and private sector. The second important hire was a new planning director. Mark Olinger has been hired as the City’s new Director of Planning and Development Review. Mr. Olinger comes to the City of Richmond from Madison, Wisconsin where he served as the Director of Planning and Community and Economic Development for Madison, Wisconsin. Mr. Olinger’s planning experience includes urban design, affordable housing, neighborhood and commercial district repositioning and revitalization. The City has several land use initiatives underway, including, a recently commenced Richmond Riverfront Plan, the on-going Shockoe Bottom Revitalization Strategy, and the implementation of the East End Transformation Initiative.