EXHIBIT NO. 111
4-18-09

DOCKET ITEM # 7
GREEN BUILDING POLICY

Issue: Green Building Policy for Alexandria	Planning Commission Hearing:	April 7, 2009
	City Council Hearing:	April 18, 2009

Description:

Consideration of a request to adopt a Green Building Policy for the City of Alexandria

Staff: Department of Planning and Zoning, Office of Environmental Quality, Department of General Services, Building and Fire Code Administration and Department of Recreation, Parks and Cultural Activities

CITY COUNCIL ACTION:

PLANNING COMMISSION ACTION, APRIL 7, 2009: On a motion by Mr. Wagner, seconded by Ms. Fossum, the Planning Commission voted to **recommend approval** of the proposed green building policy, with staff's recommendations outlined in the staff report, and the following: (1) apply the policy to all applications that have not been approved by the Planning Commission and/or City Council by the approval date of the policy, recognizing that the Planning Director may apply flexibility where appropriate, (2) include staff's recommendation for enforcement, and consider a monetary penalty system for non-compliance with the money going to a dedicated fund for green building initiatives, and (3) revise the language of page 16 of the policy report to include "or other factors" with respect to the what the Planning Director may consider for an exemption to the policy. The motion carried on a vote of 7 to 0.

Reason: The Planning Commission agreed with the staff analysis and recommendations.

Speakers:

Greg Ruff, representative from the Northern Virginia Building Industry Association (NVBIA) and member of the Green Building Working Group, spoke in support of the overall policy but wanted to highlight the following issues and concerns: (1) the level of certification for residential should be LEED certified as currently recommended by the staff; (2) when considering the enforcement aspect the City should recognize that the delay in obtaining certification may be from the third party certifier and the developer should not be penalized for this; (3) NVBIA feels the policy should take effect 60 days after approval, rather than immediately; (4) the City should put less of an emphasis on LEED and encourage other green building programs; and (5) The City should recognize that this policy is a work in progress and needs to be continually reviewed by the Working Group.

Geoffrey Booth, consultant with ERM, spoke in support of the policy. He stated that the Working Group worked diligently to develop this policy which provides a good foundation for green building in the City.

William Cromley, local developer and member of the Green Building Working Group, spoke in support of the overall policy but emphasized that it should focus on the goal of attaining green buildings. He supports adding City incentives as well as phasing in the policy. He also added that the cost to do green building is higher than a non-green building. Finally, he suggested that if the City imposes fines for noncompliance they should go into a dedicated fund for smaller, green projects throughout the City.

Peter Pennington, member of the Environmental Policy Commission (EPC) and the Green Building Working Group, spoke in support of the policy and stated that the EPC endorses the policy. He stated that EPC had hoped to see LEED Silver for residential, but supports phasing this in at a later date. He summarized the process that has occurred and is underway for development of the City's Environmental Action Plan (EAP), and how this policy fits into this Plan. He added that there is an urgent need to reduce emissions and there should be no delay in approving the policy. Finally, he asked that the Work Group continue to meet to work on other green building issues, as recommended by staff.

GREEN BUILDING POLICY: ISSUES AND OPTIONS

The proposed Green Building policy, which is part of the attached Green Buildings in Alexandria/Policy recommendations report, and consistent with the City's Eco City efforts, is the product of 18 months of work by staff, outside environmental consultants and the Green Building and Sustainable Development Work Group, which includes citizens representing developers, environmentalists and building practitioners. Much of the proposed policy is based on consensus opinions of the work group. It is also firmly based in research regarding what other jurisdictions are doing, the latest work by LEED and other rating systems and the rapidly escalating dangers of carbon emissions and climate change.

Since the publication of the recommended policy, staff held a well attended Green Building Forum on January 28, 2009, where members of the work group discussed the proposed green building policy and the general public had an opportunity to raise questions and to comment about it. A work session with the Planning Commission on February 3rd allowed members of that group to discuss the proposed policy and to question staff about it. And on March 10, City Council met in a work session to discuss the recommended policy. Staff has reviewed the issues and suggestions raised at each of those sessions and lists the major, commonly-voiced issues below, with options where appropriate for refining the policy. City Council will consider adoption of the policy by resolution on April 18; the Planning Commission is being asked to review the policy so that Council has the benefit of its recommendation.

1. MINIMUM STANDARD: LEED SILVER OR CERTIFIED

The proposed policy recommends that all new nonresidential construction meet the LEED Silver standard, or its equivalent. Staff does not recommend changing that policy, even though some developers have argued that it is too onerous, especially in these economic times, and that it is a higher standard than is required by other jurisdictions in the region. Thus, according to this argument, Alexandria may lose what new development there is to neighboring jurisdictions where it is easier to develop.

While staff is keenly aware of the need for Alexandria to attract developers, it maintains its recommendation, for several reasons. First, Alexandria wants to be a *leader* in the region. The green building field and the policies of neighboring jurisdictions are evolving still and quickly: Washington D.C. will be requiring LEED silver in 2014; Arlington is working on an updated Green Building policy now. Staff also believes that other jurisdictions will increase their green building standards if Alexandria does. The result will be little if any disadvantage. In addition, staff notes that Alexandria developers are already meeting the next lower standard, LEED Certified, under the City's informal arrangement through the development review process, although without third party verification. Attached is a list of developments and their LEED score under the current informal policy with developers. The numbers are based on the current (soon to change) LEED scale under which 26 points represents a Certified level.

The City now requires itself to meet the LEED Silver standard on new public buildings. And any new federal office building or leased space must be built to the LEED Silver standard under General Services Administration requirements.

Finally, staff has reviewed the LEED points available for siting a project in Alexandria (transit access, site selection, and community connectivity) and, as shown on the attached maps, found that merely developing in much of the City is likely to give a developer at least 10 points which is the difference between Certified (40-49 points) and Silver (50-59 points) under the new LEED scoring system which is about to be implemented (LEED version 3).

Options:

1. Change the policy to require LEED Certified for new nonresidential construction.
2. Phase in the LEED Silver requirement over time.
3. Publish criteria amounting essentially to a “Green Zone” showing those locations where “Alex” points are available and require Silver there and Certified elsewhere.

Staff recommendation: Require LEED Silver for new commercial construction, but recognize under the flexibility element of the policy that being outside the “green zone” areas of the City may provide a justification for complying with the LEED Certified instead of the Silver standard.

2. LEED SILVER FOR RESIDENTIAL DEVELOPMENT

The Planning Commission questioned the rationale for requiring a lower standard (Certified) for residential than nonresidential development. The residential development under the proposed policy includes only new construction, and excludes single- and two-family buildings. Staff and the work group have proposed the LEED Certified, or equivalent, standard for residential development because of the practical difficulties involved in many types of residential development. The LEED system was originally created for nonresidential construction and, while it has evolved, changed and become more universal over time, it still shows some bias in favor of large scale nonresidential development. For example, nonresidential projects are typically larger than residential ones, and provide the construction type as well as the critical mass to more efficiently – from both energy and a cost standpoint – achieve LEED points. In addition, as an example, large, nonresidential development projects typically can achieve significant points through modern energy efficient heating and cooling systems with a single machine or system throughout a building. Much of residential construction is different, requiring smaller, sometimes individual, heating and cooling systems, decreasing efficiency and making the LEED points in this category more difficult to achieve.

There are exceptions to be sure. There are small residential projects where developers strive to achieve the highest green building standards. And there are large residential projects which may be able to achieve higher ratings. Finally, the LEED system, as well as the entire green building field, is changing and staff foresees the time when rating systems will present a more balanced system for both residential and nonresidential construction.

Options:

1. Change policy to require LEED Silver for residential.
2. Phase in LEED Silver for residential over time.

Staff recommendation: Maintain LEED Certified for residential. Increase the standard over time, as the rating systems become more sophisticated and recognize the variables associated with residential development.

3. WHEN SHOULD THE POLICY APPLY?

Members of the public asked this question at the Green Building Forum, and the Planning Commission also quizzed staff about the timing for implementing the policy. Staff sees no reason not to go ahead with the policy immediately, especially because the policy includes ample flexibility built in for special projects, uses and developments where achieving the stated standards may not be feasible. The policy as stated applies to all Site Plan and Development Special Use Permit cases. Some cases are now in the pipeline and there is a question about how to treat those.

Options:

1. Apply the policy immediately to all applications not yet approved by the Planning Commission (DSP) or City Council (DSUP).
2. Apply the policy to all DSP and DSUP applications where a preliminary plan has not been officially filed.
3. Apply the policy to all SP and DSUP applications not yet in formal concept review.
4. Apply the policy at a later date, such as July 1, 2009, or January 1, 2010.

Staff Recommendation: Apply the policy immediately to all applications not yet approved by Planning Commission or City Council.

4. ENFORCEMENT

One issue discussed at some length by the Work Group is how best to ensure that developers follow through with their LEED commitment after a building gets built? The City needs to be fair to developers who may not be able to complete paperwork consistent with LEED requirements, a large, expensive undertaking requiring final, detailed drawings, etc, until late in the development process. On the other hand, the City needs to be sure that a developer who promises a certain product is bound to its commitment. The policy now states that an applicant will have two years from the time of its first Certificate of Occupancy to file verification with the City that its green building commitment has been fulfilled.

Options:

1. Require performance bond, as with landscaping.
2. Impose fines for failure to meet requirements.
3. Require LEED submissions to the City at critical junctures:
 - -first final site plan: submit evidence of LEED registration
 - -temporary CO: submit LEED Design Phase Review comments from the USGBC

- -six months after final CO: submit LEED Construction Phase Review comments from the USGBC
- -two years after first CO: submit a copy of LEED certification from the USGBC

Staff recommendation: Include a condition in the DSUP listing the above submission requirements and potentially a fine for noncompliance with agreed to level of green building.

5. HISTORIC BUILDINGS

Several people have commented on the need to include a statement in the policy about Alexandria's unique historic heritage as reflected in its historic districts and buildings. There is no question but that the City recognizes the benefits of historic preservation. In addition, in many cases, retention of existing buildings is a "greener" solution than redevelopment. With regard to green building practices, renovating historic buildings and upgrading their systems for heating, cooling, insulation and exterior finishes presents unique challenges for energy efficiency and reducing the overall carbon footprint. Nevertheless, architects knowledgeable about green building technology insist that it can be done. The recommended green building policy includes the fact that there is additional work to be done, and the report anticipates ongoing research and discussion about retrofitting existing buildings generally, including historic buildings as well as single and two family dwellings. That topic is not specifically covered in the current two page policy statement because of the strictures of existing building codes and the highly variable number of building types and circumstances to be covered.

Option/ Staff Recommendation: Revise the "Phased Approach" paragraph of proposed policy to specifically mention historic and existing buildings as part of the City's policy. Insert the following language: "Examples of future work include establishing best practices for retrofitting existing buildings including historic buildings...."

6. FUTURE WORK FOR THE WORK GROUP

As indicated in the Green Building Policy report, there is additional work to be done on green buildings. That work includes working with efforts to revise building codes; developing best practices for existing buildings, including historic structures; providing incentives for builders and developers to achieve the highest levels of green technology in their projects; articulating criteria for flexibility based on experience; and providing outreach and training for the community, with focus on the building and development industry. Staff notes that not all of the additional work can be accomplished in the first year, and that there may be staffing and budget issues, but the priorities should be:

- Standards for existing buildings
- Incentives for high levels of sustainability
- Outreach and education for the community
- Enforcement strategies

Option/Staff Recommendation: Continue the Green Building and Sustainable Development Work Group, so it can meet periodically to work on the above topics and to monitor and assess the City's experience after the implementation of the Green Building policy.

7. FLEXIBILITY AND ANNUAL ASSESSMENT

There has been discussion about the proposed "flexibility" portion of the proposed policy and concern expressed about the lack of specific criteria to guide applicants and staff when assessing a project's justification for its inability to reach the policy standard. On the other hand, there has been widespread support for the fact that the policy recognizes the wide range of applications that may be filed, including those that because of their proposed use, or size or type of building, do not easily fit the mold that most easily fits the City's green building standard. Staff proposes that, over time, based on the actual cases that come before it, it will be able to isolate those factors that repeatedly occur, sufficient to articulate criteria for waivers and exemptions in the future.

Staff Recommendation: Working with the Green Building and Sustainable Development Work Group, staff proposes to monitor the site plan and DSUP cases that it reviews under the policy, focusing on those projects that fail to meet the policy's standards, and to report to the Planning Commission and City Council at the end of the first year with the results. The first year under the policy will amount to a pilot program and staff hopes that it will have ample experience during that time to develop criteria to guide later application of the policy to the projects that claim an inability to meet the City's standard.

Staff:

Faroll Hamer, Director, Planning and Zoning
Jeffrey Farnier, Deputy Director, Planning and Zoning
Katie Parker, Urban Planner, Planning and Zoning
Bill Skrabak, Director, Office of Environmental Quality
Erica Bannerman, Senior Air Pollution Specialist, Office of Environmental Quality
Al Cox, City Architect, Code Enforcement
Jeremy McPike, Division Chief, General Services
Ron Kagawa, Acting Division Chief, Recreation, Parks and Cultural Activities

Attachments:

List of Alexandria approved developments with LEED scores
Map: Transit access
Map: Site Selection and Community Connectivity

Attachment #1
Green Building Requirements for Approved Alexandria Developments

Project	Case Number	Date Approved	LEED Points required by condition*	Registered or certified?	City Project
Marriott Mill Road	DSUP 2005-0011	Jun-06	20	No	
7-11/Brandt	DSP 2005-0024	Sep-06	No points specified	No	
PY Landbay H	DSUP 2004-0048	Oct-06	20	No	
Charles Houston	DSUP 2005-0022	Oct-06	26	Registered	Yes
Windows	DSP 2005-0018	Oct-06	No points specified	No	
Carlyle Center	DSUP 2006-0012	Dec-06	20	No	
Mt. Vernon Commons	DSUP 2005-0041	Dec-06	20	No	
Payne Street Condos	DSUP 2005-0014	Feb-07	Earthcraft certification	No	
PY Firestation	DSUP 2006-0026	Feb-07	26	Registered	Yes
PY Firestation (residential)	DSUP 2006-0026	Feb-07	Earthcraft certification	Registered	Yes
DSF Long/King St Hotel	DSUP 2006-0036	Apr-07	20	No	
Edmundson Plaza	DSUP 2006-0023	Jun-07	23 **	No	
Block P	SUP 2007-0094	Oct-07	26	Registered	
ARHA W. Glebe	DSUP 2006-0030	Oct-07	Earthcraft certification	No	
ARHA Old Dominion	DSUP 2006-0031	Oct-07	Earthcraft certification	No	
2312 Mt. Vernon	DSUP 2006-0019	Dec-07	26	No	
Madison	DSUP 2007-0005	Jan-08	26	No	
Animal Hospital	DSUP 2004-0033	Mar-08	26	No	
Braddock Gateway	CDD 2007-0002	Mar-08	26	No	
DASH Bus Facility	DSUP 2006-0025	May-08	33	Registered	Yes
Police Facility	DSUP 2007-0037	Jun-08	39	Registered	Yes
Payne Street Condos	DSUP 2008-0008	Sep-08	26	No	
Episcopal HS Gym addition	DSUP 2007-0033	Sep-08	26	No	
PNC Bank	DSUP 2007-0031	Sep-08	26	No	
James Bland	DSUP 2008-0013	Oct-08	Earthcraft certification	No	
Alexandria Country Day	DSUP 2007-0013	Nov-08	26	No	
Marriott Springhill Suites	DSUP 2007-0025	Nov-08	26	No	
McDonalds - Duke St	DSUP 2007-0006	Nov-08	15-20	No	
2903 Mt. Vernon	DSUP 2007-0035	Dec-08	26	Registered	
St. Anthony's Day School	DSUP 2008-0016	Dec-08	26	No	
Landmark Gateway	DSUP 2006-0021	Jan-09	26	No	
PY Landbay G	DSUP 2007-0022	Jan-09	23 **	No	
PY Landbay I&J	DSUP 2006-0018	Feb-09	45 ***	No	

* Based on the LEED for New Construction (NC) v2.2 rating system unless otherwise noted. Minimum points is 26. Silver - 33 and Gold - 39.

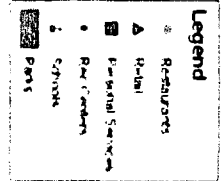
** LEED for Core and Shell (CS). Minimum points is 23 points.

***LEED for Homes. Minimum points is 45.

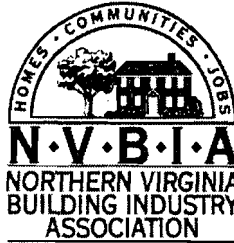
Legend
Aerial Photo with Quarter Mile Bus Routes and Half Mile Metro Stations

Quarter Mile Bus Routes and Half Mile Metro Stations





Development Density and Community Connectivity



April 7, 2009

Chairman and Members of the Planning Commission
c/o Department of Planning and Zoning
301 King Street, Suite 2100
Alexandria, VA 22314

RE: Docket Item #7: Green Building Policy

Dear Chairman and Members of the Planning Commission:

I write to you today on behalf of the Northern Virginia Building Industry Association (“NVBIA”) in regard to the City’s Green Building Policy being considered on the April 7, 2009 Planning Commission Docket. We had a representative from the NVBIA on the Green Building work group set up to discuss this policy and appreciate the opportunity to have been a part of the process. However, some of the concerns that we raised during the process have not yet been addressed in the policy and therefore, we wanted to make you aware of these matters that greatly affect our industry.

The NVBIA supports the ANSI approved ICC-700-2008 National Green Building Standard for single and multi-family homes and encourages its members to make every effort to achieve these standards in their building. The draft Alexandria Green Building Policy allows for the use of this standard and we commend the City for this as well as for allowing other 3rd party green certification programs under the “Equivalency Acceptable” section. As in any other industry, competition in the green building industry is essential in order to foster new ideas and innovation and to ensure that the best quality of service is provided to consumers at the lowest cost possible. It is only through competition that green building will be able to reach its fullest potential. Unfortunately, there has been a trend nationally of local governments legislating out this much-needed competition by mandating LEED as the only acceptable third party certification program. We feel this is a serious mistake and we are glad to see that the City is taking steps to ensure that competition will occur within its green building program. We would, however, ask that the Planning Commission consider revisions to the policy to make it clear throughout the document that alternative equivalent green building/certification programs are permitted and encouraged. As currently written, the policy is very LEED-focused.

A primary issue of concern for the NVBIA is the level of certification required for residential construction. While the draft policy currently recommends basic certification as the required level and staff’s latest “Issues and Options” memo reaffirms this, there has been discussion at recent meetings about possibly increasing this to the Silver level. We hope the Planning Commission and Council will follow staff’s recommendation and

make basic certification the requirement. Planning staff has indicated in its presentation before the Planning Commission and Council that achieving basic green building certification adds essentially no cost to a project and achieving Silver level certification would add only 1.5% to the cost of a project to (staff's source on this is the USGBC, which created and administers the LEED program). Our estimates on this are much higher. According to a study conducted by the National Association of Homebuilders (NAHB) entitled "Green Home Building Rating Systems, a Sample Comparison" dated March, 2008, building and certifying a project at the basic green level could add as much as 5.6 % to the total project costs, and building and certifying a project at the Silver level could add as much as 7.4 % to the project costs. With housing affordability already a very real problem in Alexandria, we urge the Planning Commission and Council to consider these extra costs and avoid raising the bar too high too soon.

The draft policy includes a requirement that the applicant secure its third party green certification within a period of time after receiving a Certificate of Occupancy. There has been further discussion about imposing fines if this time requirement is not met. While the NVBIA agrees with the need for some type of compliance mechanism, we are concerned that imposing stiff penalties on developers for not securing certification within established deadlines may not be fair in every case, since the cause for delay could sometimes be the third party certifying organization. NVBIA urges the Planning Commission to consider adding as part of any enforcement mechanism a waiver that might be obtained if the delay in securing certification is caused by someone other than the developer.

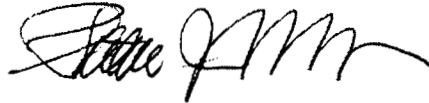
Another concern for the NVBIA has to do with the lack of grandfathering provisions. The draft green building policy contains no grandfathering provisions for development applications that are in the process prior to the date of adoption by Council. We are concerned that developers who have already started the process have budgets that do not account for this new policy. Similarly, we are concerned that developers who are preparing to start the DSP or DSUP process and have already made significant investments of time and capital on a project or property also may have budgets that do not account for this policy. Adding new, costly requirements to these projects or properties may render them no longer economically viable, particularly in these difficult financial times. For these reasons, we would ask that the Planning Commission consider making the effective date of this policy sixty (60) days after its adoption by Council. We would also encourage the Planning Commission and Council to consider expanding the "Flexibility" section of the policy to include properties purchased prior to the effective date of the policy which might be rendered undevelopable by the new policy.

Finally, in the meetings of the Green Building work group it has been discussed and agreed that this policy should be considered a "work in progress", subject to review and re-evaluation on an ongoing basis with all stakeholders, including the building industry. Staff's "Issues and Options" memo suggests this and we agree that this is essential to the long-term strength and success of the green building program. We would ask that the Planning Commission add some acknowledgement in the policy of the need for this periodic review and feedback from stakeholders, including the building industry.

Again, we appreciate having been included in the work group that put so much time and effort into drafting this green building policy. We are hopeful that this is the first step in an iterative process that will continue as green technologies advance and we learn more about how we can build greener and more sustainable communities.

Thank you for your consideration of our concerns. Please do not hesitate to contact me, Joanna Frizzell with McGuireWoods LLP, President of the Urban Chapter of NVBIA, or Greg Ruff with Winchester Homes who is our representative on the Green Building workgroup.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick J. Rhodes". The signature is fluid and cursive, with a large initial "P" and "R".

Patrick J. Rhodes
President

cc: Mayor William D. Euille and City Council
Faroll Hamer, Director, Planning and Zoning
Barbara Ross, Planning and Zoning

11
4-18-09



Lisa May <lmay@nvar.com>

04/16/2009 06:07 PM

Please respond to
Lisa May <lmay@nvar.com>

To william.euille@alexandriava.gov,
timothy.lovain@alexandriava.gov, councilmangaines@aol.com,
council@krupicka.com, delpepper@aol.com,

cc

bcc

Subject COA Contact Us: Alexandria Green Building Policy

Time: [Thu Apr 16, 2009 18:07:20] IP Address: [74.8.133.66]

Issue Type: Mayor, Vice Mayor, and Council Members

First Name: Lisa

Last Name: May

Street Address: 8403 Arlington Blvd

City: Fairfax

State: Virginia

Zip: 22031

Phone: 703-207-3201

Email Address: lmay@nvar.com

Subject: Alexandria Green Building Policy
Mayor Euille and members of the Alexandria City Council,
Please find
attached a letter from the Northern Virginia Association of Realtors.
regarding the Green Building Policy under consideration at the April 18
City Council meeting. We appreciate your consideration of this issue.

Comments:
If
you need additional information or if you have questions, please contact
Mary Beth Coya, 703-207-3250, mbcoya@nvar.com or Lisa May, 703-207-3201,
lmay@nvar.com at any time.

Attachment: bed63b1feca7864cd7f133bbc8fe6b0a.doc



bed63b1feca7864cd7f133bbc8fe6b0a.doc



April 16, 2009

The Honorable Bill Euille
Mayor, City of Alexandria
301 King St., Room 2300
Alexandria, VA 22314

Dear Mayor Euille,

On behalf of the Northern Virginia Association of Realtors[®], an organization representing 11,000 area professionals, I am writing to you regarding the City of Alexandria's Green Building Policy.

NVAR is pleased to see the City maintain flexibility in the policy by accepting various green building ratings and assigning standards according to development type. This flexibility is especially important for projects that may struggle to achieve a particular green rating but advance other City policy goals, such as reducing stormwater outfalls, preserving historic structures or providing affordable housing.

However, NVAR urges the City to provide development incentives to achieve green construction standards, particularly for those developers willing to commit to the policy in its early stages.

The price of green building materials still remain above that of traditional materials and increase the cost of development. Particularly in today's challenging credit market, the initial outlay for green materials can affect project viability, even if those costs are eventually recovered through decreased energy usage. Developer incentives, including expedited permitting, water and sewer connection fee reductions, real estate property tax rebates or bonus building density, could help offset these increased costs and achieve the City's goal of encouraging eco-friendly development.

NVAR thanks you for your consideration of this issue. We look forward to working with the City as Phase II of the Green Building Policy for existing residential buildings is developed.

Sincerely,

A handwritten signature in black ink, which appears to read "Susan Mekenney". The signature is written in a cursive style and is positioned below the word "Sincerely,".

Susan Mekenney, ABR, CRS, GRI, ePro
Chairman of the Board

cc: Alexandria City Council



"Frizzell, Joanna C."
<jfrizzell@mcguirewoods.com>
04/07/2009 02:38 PM

To <jackie.henderson@alexandriava.gov>
cc
bcc
Subject FW: Green Building Policy, Docket item #7

11

4-18-09

Hello Jackie: could you please distribute the attached letter to the Mayor and City Council members for their meeting on April 18? We submitted this to the planning staff for the Planning Commission's meeting this evening.

Thanks!

Joanna

Joanna C. Frizzell

McGuireWoods LLP
1750 Tysons Boulevard
Suite 1800
McLean, VA 22102-4215
703.712.5349 (Direct Line)
703.712.5217 (Direct FAX)
jfrizzell@mcguirewoods.com

This e-mail may contain confidential or privileged information. If you are not the intended recipient, please advise by return e-mail and delete immediately without reading or forwarding to others.

From: Frizzell, Joanna C.
Sent: Tuesday, April 07, 2009 2:32 PM
To: 'barbara727@comcast.net'; 'Kendra.Jacobs@alexandriava.gov'; Faroll.Hamer@alexandriava.gov
Cc: 'Ruff, Greg'; Patrick Rhodes; Kathy Renaud
Subject: Green Building Policy, Docket item #7

Please find attached a letter to the Planning Commission from the NVBIA regarding the proposed Green Building policy being considered on tonight's Planning Commission docket. I appreciate your assistance in delivering this letter to the commissioners for their consideration. Please let me know if you need any further information.

Joanna

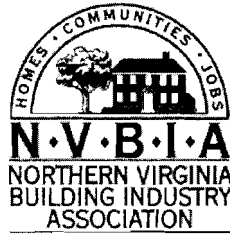
Joanna C. Frizzell

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signature.gif NVBIA Green Building Letter.pdf



April 7, 2009

Chairman and Members of the Planning Commission
c/o Department of Planning and Zoning
301 King Street, Suite 2100
Alexandria, VA 22314

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The NVBIA supports the ANSI approved ICC-700-2008 National Green Building Standard for single and multi-family homes and encourages its members to make every effort to achieve these standards in their building. The draft Alexandria Green Building Policy allows for the use of this standard and we commend the City for this as well as for allowing other 3rd party green certification programs under the “Equivalency Acceptable” section. As in any other industry, competition in the green building industry is essential in order to foster new ideas and innovation and to ensure that the best quality of service is provided to consumers at the lowest cost possible. It is only through competition that green building will be able to reach its fullest potential. Unfortunately, there has been a trend nationally of local governments legislating out this much-needed competition by mandating LEED as the only acceptable third party certification program. We feel this is a serious mistake and we are glad to see that the City is taking steps to ensure that competition will occur within its green building program. We would, however, ask that the Planning Commission consider revisions to the policy to make it clear throughout the document that alternative equivalent green building/certification programs are permitted and encouraged. As currently written, the policy is very LEED-focused.

A primary issue of concern for the NVBIA is the level of certification required for residential construction. While the draft policy currently recommends basic certification as the required level and staff’s latest “Issues and Options” memo reaffirms this, there has been discussion at recent meetings about possibly increasing this to the Silver level. We hope the Planning Commission and Council will follow staff’s recommendation and

make basic certification the requirement. Planning staff has indicated in its presentation before the Planning Commission and Council that achieving basic green building certification adds essentially no cost to a project and achieving Silver level certification would add only 1.5% to the cost of a project to (staff's source on this is the USGBC, which created and administers the LEED program). Our estimates on this are much higher. According to a study conducted by the National Association of Homebuilders (NAHB) entitled "Green Home Building Rating Systems, a Sample Comparison" dated March, 2008, building and certifying a project at the basic green level could add as much as 5.6 % to the total project costs, and building and certifying a project at the Silver level could add as much as 7.4 % to the project costs. With housing affordability already a very real problem in Alexandria, we urge the Planning Commission and Council to consider these extra costs and avoid raising the bar too high too soon.

The draft policy includes a requirement that the applicant secure its third party green certification within a period of time after receiving a Certificate of Occupancy. There has been further discussion about imposing fines if this time requirement is not met. While the NVBIA agrees with the need for some type of compliance mechanism, we are concerned that imposing stiff penalties on developers for not securing certification within established deadlines may not be fair in every case, since the cause for delay could sometimes be the third party certifying organization. NVBIA urges the Planning Commission to consider adding as part of any enforcement mechanism a waiver that might be obtained if the delay in securing certification is caused by someone other than the developer.

Another concern for the NVBIA has to do with the lack of grandfathering provisions. The draft green building policy contains no grandfathering provisions for development applications that are in the process prior to the date of adoption by Council. We are concerned that developers who have already started the process have budgets that do not account for this new policy. Similarly, we are concerned that developers who are preparing to start the DSP or DSUP process and have already made significant investments of time and capital on a project or property also may have budgets that do not account for this policy. Adding new, costly requirements to these projects or properties may render them no longer economically viable, particularly in these difficult financial times. For these reasons, we would ask that the Planning Commission consider making the effective date of this policy sixty (60) days after its adoption by Council. We would also encourage the Planning Commission and Council to consider expanding the "Flexibility" section of the policy to include properties purchased prior to the effective date of the policy which might be rendered undevelopable by the new policy.

Finally, in the meetings of the Green Building work group it has been discussed and agreed that this policy should be considered a "work in progress", subject to review and re-evaluation on an ongoing basis with all stakeholders, including the building industry. Staff's "Issues and Options" memo suggests this and we agree that this is essential to the long-term strength and success of the green building program. We would ask that the Planning Commission add some acknowledgement in the policy of the need for this periodic review and feedback from stakeholders, including the building industry.

Again, we appreciate having been included in the work group that put so much time and effort into drafting this green building policy. We are hopeful that this is the first step in an iterative process that will continue as green technologies advance and we learn more about how we can build greener and more sustainable communities.

Thank you for your consideration of our concerns. Please do not hesitate to contact me, Joanna Frizzell with McGuireWoods LLP, President of the Urban Chapter of NVBIA, or Greg Ruff with Winchester Homes who is our representative on the Green Building workgroup.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick J. Rhodes". The signature is fluid and cursive, with the first name "Patrick" being more legible than the last name "Rhodes".

Patrick J. Rhodes
President

cc: Mayor William D. Euille and City Council
Faroll Hamer, Director, Planning and Zoning
Barbara Ross, Planning and Zoning

11
4-18-09



Michele Evans/Alex
04/15/2009 05:11 PM

To Nancy Coats/Alex@Alex
cc Mark Jinks/Alex@Alex, Jackie.Henderson@alexandriava.gov,
Valerie Brown/Alex
bcc
Subject Re: Fw: Letter re: Green Building Policy attached

Saturday docket item
Nancy Coats/Alex

Nancy Coats/Alex
04/15/2009 04:42 PM

To Mark Jinks/Alex@Alex, Michele Evans/Alex@Alex
cc
Subject Fw: Letter re: Green Building Policy attached

fyi

----- Forwarded by Nancy Coats/Alex on 04/15/2009 04:42 PM -----



"Warren, Cynthia M."
<cmwarren@vorys.com>
04/15/2009 04:11 PM

To "william.euille@alexandriava.gov"
<william.euille@alexandriava.gov>, "delpepper@aol.com"
<delpepper@aol.com>, "ludwig@gainwithgaines.com"
<ludwig@gainwithgaines.com>, "rob@krupicka.com"
<rob@krupicka.com>, "timothylovain@aol.com"
<timothylovain@aol.com>, "paulcsmedberg@aol.com"
<paulcsmedberg@aol.com>, "Justin@justin.net"
<Justin@justin.net>
cc "jim.hartmann@alexandriava.gov"
<jim.hartmann@alexandriava.gov>, 'Catharine Puskar'
<cpuskar@arl.thelandlawyers.com>, "Charlie Banta
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(eric.r.wagner@medstar.net)" <eric.r.wagner@medstar.net>,
"lmay@nvar.com" <lmay@nvar.com>, "Palmieri, Andrew F."
<afpalmieri@vorys.com>
Subject Letter re: Green Building Policy attached

Dear Mr. Euille,

On behalf of the Alexandria Chamber of Commerce, Andrew Palmieri has asked that I submit the attached letter regarding the adoption of a Green Building Policy to you. Please let Andrew know if you have any questions.

Cindy

Cynthia M. Warren
Assistant to Andrew F. Palmieri and Kara D. Lehman
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From the law offices of Vorys, Sater, Seymour and Pease LLP.

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ACC Letter.PDF



ALEXANDRIA CHAMBER OF COMMERCE

April 15, 2009

VIA EMAIL

Mayor William Eulle
Members of City Council
301 King Street, Suite 2300
Alexandria, VA 22314

Re: Green Building Policy

Dear Mayor Eulle and Council Members:

As the City Council deliberates the adoption of a Green Building Policy (the "Policy") for the City of Alexandria, the Alexandria Chamber of Commerce (the "Chamber") respectfully raises several issues for consideration that we maintain would improve the proposed Policy.

As you may recall from the Chamber's 2009 Legislative Agenda, the Chamber generally supports the adoption of green building initiatives provided that they do not unreasonably burden developers and property owners. In adopting this position, the Chamber recommended the creation of local policies, including tax credits, to encourage and provide incentives for developers and owners of existing properties to utilize energy-efficient and environmentally friendly building technologies, materials, and conservation measures.

Further, the Chamber recommended that any such policy should contain an educational component aimed at promoting "sustainable" practices and should provide substantive rewards for voluntary compliance with stipulated sustainable building or energy efficiency standards or certification of compliance with a nationally recognized standard. Any such policy should further be administered in such a manner as to make implementation of "sustainable" practices and programs cost-effective for both the local government and the participating business, developer or property owner.

With respect to the pending Policy, the Chamber shares many of the same concerns raised by the Northern Virginia Building Industry Association in its April 7, 2009 letter to the Planning Commission. Specifically,

- There are a growing number of sustainable building certification programs. While the US Green Building Council has been an industry leader in branding its certification system, other certification programs that meet national industry standards should be permitted. Further, the policy should contemplate industry changes to certification standards and provide greater flexibility for these changes, as

well as providing recognition of other aspects of development that may not fall within the four corners of a national certification program but nonetheless benefit the environment.

- Given that sustainable building practices are an emerging factor in the construction industry, there remains great unpredictability regarding the cost factors involved in achieving various levels of certification. The Chamber recommends mandatory compliance with the most basic level of sustainable construction methods, with encouragement for developers and building owners to achieve higher certification levels through corresponding tax credits, expedited permitting, fee rebates, density bonuses and similar incentives.
- The lack of “grandfathering” of certain development projects is a serious omission in the Policy. As you know, developers acquire projects based on pro forma projections for the cost of development and the value of rental or sales revenue generated upon the completion of the project. In these uncertain times relating to property values and availability of financing from capital markets, imposing sustainable building requirements on existing projects would be unduly burdensome and may, in fact, jeopardize the viability of certain projects. The Chamber recommends grandfathering for all projects currently in the DSP and DSUP process and for all projects filed within a period of sixty (60) days following the effective date of the Policy.
- Sustainable development is still an emerging industry and the Policy will need to evolve with advances. The Chamber recommends that the Policy contain a periodic evaluation mechanism that will enable the City and the business community to evaluate the merits and defects of the Policy at pre-determined intervals.

The Chamber commends the City Staff for its efforts on this important initiative. With some minor, but important, modifications, the Policy will become more achievable, less monopolistic and less burdensome. As a consequence, it will receive greater support and higher success rates in bringing Alexandria closer to achieving the goals of the Eco-City Charter.

In the event that you have any questions, regarding this matter, please do not hesitate to contact me.

ALEXANDRIA CHAMBER OF COMMERCE



Andrew F. Palmieri

Chair, Government Relations Committee

cc: James Hartmann, City Manager
Farroll Hamer, Director of Planning and Zoning
Eric Wagner, Chair of Planning Commission
M. Catherine Puskar, Chair of Alexandria Chamber of Commerce
Joseph Shumard, Acting President of Alexandria Chamber of Commerce