

HBA GOVERNMENT AFFAIRS UPDATE

BY STEVE FELDMANN, DIRECTOR OF GOVERNMENT AFFAIRS

AUGUST, 2015

Partners for Progress Candidates Forum

The 2015 Southwest Ohio Candidates' Forum is set for September 10th (rescheduled from June 30th) at Cooper Creek from 6:00-7:30pm. The focus is on local candidates running in 2015 (township trustees and clerks, city council members and mayors, school board members, judges). The forum is a good opportunity for our members to meet and hear from candidates for local offices. The Partners for Progress coalition is composed of the HBA of Greater Cincinnati, the Cincinnati Area Board of Realtors, the Greater Cincinnati/Northern Kentucky Apartment Association, the Associated Builders & Contractors of the Miami Valley, and the Mortgage Bankers Association of Greater Cincinnati.

Upcoming Forums

September 18th – Building Officials Forum

September 22nd – HBA Coffee Series: New CFPB Mortgage Lending Disclosure Rules, featuring Dave Ackermann and Russell King of Wesbanco, and Steve Gatermann of Wells Fargo.

October 6th – OVDC Coffee Series: New Waters of the U.S. Regulations, featuring Vince Messerly of the Streams + Wetlands Foundation

Statehouse Update

HB77 (Contractor Registration)

No update. Ohio General Assembly is in recess and will reconvene on September 15th. It is unclear when the Commerce & Labor Committee will further consider the bill.

Type II Annexation

No bill has been introduced. Ohio General Assembly is in recess and will reconvene on September 15th. Senator Seitz is looking for

consensus among all interested parties. HBA is working on compromise language with Township Association.

Budget

The State approved its biennial budget for the cycle covering July 1, 2015 through June 30, 2017. There are a few highlights.

- 6.3% across-the-board income tax cut.
- 3% tax rate for business income over \$250,000.
- Phase-in over two years of a 100% deduction for the first \$250,000 of business income. It will go from current 50% deduction to 75% deduction in 2016 and then 100% deduction in 2017.
- The proposal to raise the commercial activity tax and sales tax were not part of the final bill.

Build-PAC Update

The 2015 Build-PAC fundraising campaign continues. The total amount raised to-date is \$10,885 from 56 donors.

Build-PAC approved several candidate requests for funding.

- Greg Hartmann, Hamilton County Commissioner - \$500
- Bill Blessing, State Representative - \$500
- Sponsored hole for SWOBOA (Building Officials) Golf Outing in July
- Co-sponsoring Hamilton County Republican State Legislators Golf Outing in September

Staff attended reception for David Mann, Cincinnati City Council

Build-PAC will hold a fundraising raffle this fall.

OVDC Update

OVDC's Summer Membership Meeting was held on July 7th. Darin Hall from the Hamilton County Land Reutilization Corporation and Mike McNamara from the Butler County Land Reutilization Corporation discussed the land banks in their respective counties and how these tools can be used to encourage residential development.

OVDC's Butler & Hamilton County Engineering Standards Committee met with the Butler County Engineer's Office and Planning Commission staff concerning a new proposed fee on developers who cannot obtain a subordination agreement with gas companies who have a gas transmission line easement in a new subdivision. The fee would provide funds for the County if they would have to repair a public improvement because of pipeline repairs undertaken by the gas companies. The subordination agreement was historically used and required the gas company to make the public improvement repairs. Gas companies are starting to refuse to enter into these agreements. The committee is attempting to work out an alternative.

Butler & Warren County Water & Sewer Committee met with the Warren County Engineer's Office for an update. Nothing much is going on concerning water and sewer. They do not plan any fee increases and will continue to pay reimbursement fees for oversized sewers. They are working on their master plan for water including treatment, pumping, and improvements.

Staff met with Blue Ash Planning Department concerning proposed regulations to require multi-family housing to have a retail/commercial use on the first floor if built in Blue Ash's Downtown district. Regulation is meant to be short-term until the city undertakes the update of its zoning regulations (planned for 2016). Staff discussed the economic difficulties in vertical multi-use development and how it would preclude quality and consumer preferred owner-occupied and apartment multi-family

developments. Planning Commission may consider in August.

Mark Burgess of Bayer Becker will represent OVDC on the Clermont County Middle East Fork Balanced Growth Project Advisory Committee.

OVDC submitted a letter of support to the amendments to the Hamilton County Subdivision Rules & Regulations. The changes were mostly technical in nature and otherwise were not adverse to the industry.

The third draft of Cincinnati's Land Development Code rewrite will not be ready until the end of the year. Zoning on specific properties is being changed throughout the drafting process without notice. Property owners should check the latest draft to confirm the zoning on their property. If it has been changed, contact Alex Peppers at the City to discuss.

Colerain Township will soon initiate the update to its Comprehensive Plan. OVDC will provide input on the update. Contact Steve Feldmann at the HBA to submit proposals for the update.

Delhi Township is reviewing ways to improve their residential development. They have conducted a Residential Marketing Analysis and has invited any interested developers/builders to meet with them regarding their plans. Contact Steve Feldmann at the HBA for a copy of the RMA.

Clermont County will soon initiate an update to its subdivision regulations. OVDC will provide input on the update. Contact Steve Feldmann at the HBA to submit proposals for the update.

OVDC will be meeting with City of Cincinnati officials regarding increasing delays with MSD approvals.

Tony Parrott has left MSD to head up the Louisville water and sewer operation. Gerald Checco, former Director of Public Services, is now interim head. HBA will seek to be on search committee for new director.

Warren County Planning & Zoning Committee met with Regional Planning Commission staff regarding the update of its subdivision regulations. Most of the changes are technical in nature or do not adversely impact the industry. Hearings will be held in August or September.

Other Local Issues

A group of builders met with Liberty Township concerning the need for a new approval process for cold weather driveway installation. Currently, Liberty Township wants a driveway installed irrespective of whether the weather is conducive to a quality installation. The builders are working on a compromise to ensure that the driveway is timely installed and that the builder can install a quality driveway.

NAHB Federal Updates *(from NAHB Sources)*

EPA Rule on Waters of the U.S.

This new rule is scheduled to go into effect August 28th. NAHB and many other industry groups and states (including Ohio) have filed lawsuits to prevent the implementation of the regulations.

The regulations are expansive in increasing the jurisdiction of the U.S. over waterways throughout the nation. The new rules could conceivably cover detention/retention basins, certain types of ditches, and other waterways that do not have a regular flow or are far removed from what was once considered a navigable waterway.

It is unclear how the U.S. Army Corp of Engineers will implement the rules. If land includes a "Water of the U.S.," the developer will be required to go through the federal 401 and/or 404 permit process. It has been reported that the Army Corps did not sign off on the expansion and their opposition was unheeded by the EPA. Our local district office (in Huntington, West Virginia) has not issued any guidance on how it's going to implement the rules.

The HBA will host a forum on October 7th for builders and developers to learn about the rules and obtain guidance on how to deal with them.

Vince Messerly from the Streams + Wetlands Foundation will present.

CFPB Mortgage Lending Disclosure Rules

On October 1st, major changes will go into effect concerning mortgage lending disclosures.

The Good Faith Estimate, the Truth in Lending, and HUD-1 Settlement Statements will be replaced by the CPBP's new integrated disclosure forms, the "Loan Estimate" and the "Closing Disclosure." Another of the big changes is that the Closing Disclosure must be provided to the consumer a full three days prior to closing, and if there are certain changes during that 72-hour period, the closing could be delayed. In addition, the Loan Estimate must be delivered to the prospective buyer no later than three business days after receiving an application.

The HBA will host a forum on September 22nd for builders to learn about the new rules and obtain guidance on how to comply with them. Dave Ackermann and Russell King from Wesbanco, and Steve Gattermann from Wells Fargo will present.

OSHA Confined Spaces

Enforcement of the new Confined Spaces in Construction Standard, issued by the Occupational Health and Safety Administration (OSHA) on May 4th, will be postponed until October 2nd. Extension requests indicated that employers needed more time for training and acquiring the equipment necessary to comply with the standard.

Though the ruling will still become effective August 3rd, OSHA will not issue citations to an employer that is making good-faith efforts to fulfill training requirements and comply with the standard. The agency will consider the following factors when evaluating these efforts:

- Has the employer trained its employees as required under the new standard, or at least scheduled such training?
- Does the employer have the equipment necessary for compliance, including personal protective equipment?

- Has the employer ordered or arranged to obtain the equipment required for compliance, or taking alternative measures to protect employees from confined space hazards?
- Has the employer engaged in additional efforts to educate and protect workers when it comes to confined space hazards?

In general, the new rule requires employers to:

- Evaluate the jobsite to identify confined spaces
- Develop a written program and permitting system for permit-required confined spaces
- Control physical hazards and conduct monitoring for atmospheric hazards in confined spaces that are permit required
- Provide training for confined space entrants, attendants, supervisors and emergency duties.

The NAHB has filed a Petition for Review challenging the new rules

Department of Labor Overtime Threshold

The U.S. Department of Labor released a draft regulation on June 30th that proposes updating the salary level at which certain “white collar” workers would be exempt from minimum wage and overtime pay from the current \$23,660 to \$50,440.

NAHB economists have released a state-by-state breakdown showing in total, more than 110,000 construction supervisors would no longer be eligible for the exemption, and may be overtime-eligible under this new rule.

Under current law, workers who earn less than \$23,660 a year are considered non-exempt employees by the Department of Labor and employers must pay them time-and-a-half for any hours they work over a traditional 40-hour work week.

The Fair Labor Standard Act’s white collar exemptions exclude certain executive, administrative, and professional employees from federal minimum wage and overtime

requirements. Certain computer professionals and outside sales employees are also excluded from these requirements.

The new proposed overtime regulations would take effect on Jan. 1, 2016.

NAHB is concerned that changes to the current overtime standard will reduce job-advancement opportunities and the hours of full-time construction supervisors, leading to construction delays, increased costs and less affordable housing options for consumers.

With the Department of Labor acting to more than double this overtime threshold to over \$50,000, NAHB and others in the business community argue that such a dramatic surge is unlikely to result in an increase in workers’ take-home pay. Rather, it would force business owners to structure their workforce to compensate by scaling back on pay and benefits, as well as cutting hours to avoid the overtime requirements.

NAHB, along with our broad-based coalition of business organizations known as the Partnership to Protect Workplace Opportunity, met with the White House last month to express our concern about the impending rule.

There is currently a 60-day comment period that closes on September 4th and NAHB will be submitting a written statement detailing our concerns and opposition to the rule. On July 14th, NAHB filed a request for a 90-day extension to the comment period. In addition, NAHB will continue to work with our trade and business coalition partners to seek changes to the rule, and we will also focus on a congressional strategy that will seek to blunt the rule through the appropriations process.

Disparate Impact Housing Claims- Part I

In a 5 to 4 decision, the U.S. Supreme Court ruled that Fair Housing Act liability can be proven without the need to show intentional discrimination.

The narrow issue in the case of *Texas Department of Housing and Community Affairs*

v. The Inclusive Communities Project, Inc. was whether a person can bring a lawsuit under the Fair Housing Act based on a “disparate impact.”

The court said “yes.”

Disparate impact is a legal doctrine under the nation’s anti-discrimination laws that allows a court to consider a policy or practice discriminatory if it has a disproportionate “adverse impact” against any group based on race, national origin, color, religion, sex, familial status, or disability. Today’s ruling means that housing discrimination need not be intentional in order to be illegal.

However, the court also clearly recognized the problems disparate impact claims could have with respect to where builders locate their projects.

In this case, the Inclusive Communities Project (ICP) claimed that the Texas Department of Housing and Community Affairs was discriminating because it had allowed *more* tax credits in lower income neighborhoods than in higher income neighborhoods. This, according to ICP, furthers segregation.

The court, however, explained, “it seems difficult to say . . . that a decision to build low-income housing in a blighted inner-city neighborhood instead of a suburb is discriminatory.” Similarly, it noted that “[i]t would be paradoxical to construe the FHA to impose onerous costs on actors who encourage revitalizing dilapidated housing in our Nation’s cities merely because some other priority might seem preferable.”

Therefore, the Supreme Court provided that it would not be easy to prove discrimination based on where a builder locates his or her project.

Disparate Impact Housing Claims- Part II

New regulations announced by HUD on July 8th are intended to ensure that practices and policies of local governments do not promote racial segregation.

In a press statement, HUD said the final rule “clarifies and simplifies existing fair housing obligations and creates a streamlined Assessment of Fair Housing planning process, which will help communities analyze challenges to fair housing choice and establish their own goals and priorities to address the fair housing barriers in their community.”

Though NAHB supports the goals of the Fair Housing Act, it originally filed comments with HUD urging the agency to withdraw the rule in favor of reworking it with more input from the development community and other interested stakeholders.

Now that the rule is finalized, NAHB will work with HUD to implement it so that it is workable for developers and enables builders to provide a wide range of housing types to meet the needs for all Americans in all communities. NAHB is currently working to set up a meeting with HUD officials to get more clarification and to help us plot a strategy moving forward so that the rule will have a minimal impact on our members.

Despite the sheer size of the 377-page regulation, the rule is still yet to be defined. In essence, it serves as a “template” of process. The rule requires states, localities and public housing agencies to measure where they stand in terms of complying with fair housing obligations and to file a plan to ensure they are fostering policies that will combat segregation.

Because state and local municipalities will have wide latitude in how they achieve these aims, NAHB strongly encourages our members to get involved and be at the table as their states and local jurisdictions respond to the rule. NAHB is prepared to assist in providing workable recommendations and information to help members oppose adverse proposals.

The final rule will be phased in over time. It comes about two weeks after the Supreme Court ruled that Fair Housing Act liability can be proven without the need to show intentional discrimination.

NAHB is thoroughly reviewing the rule and will provide further analysis to our members as soon as possible.

Department of Labor Guidance on Independent Contractors

The U.S. Department of Labor today issued guidance to assess whether a worker is properly classified as an independent contractor. The guidance also helps to determine who is an employee under the Fair Labor Standards Act, which determines overtime, unemployment insurance and other obligations. Independent contractors are not covered under the act.

The guidance was issued with no opportunity for notice and comment from the public. NAHB is analyzing the rule to ensure it does not place undue burdens on our members to show that subcontractors that they hire are independent contractors and not employees.

The purpose of the new guidance, according to the DOL, is to educate members and help them comply with the law so that they can clearly determine whether their workers are employees or independent contractors. NAHB plans to urge Congress to use its oversight authority to ensure DOL hasn't overstepped its boundaries.

The law permits home builders, remodelers and other businesses the use of independent

contractors, provided such workers are not "employees" under existing tax, employee benefit, labor and employment laws.

Employer misclassification occurs when an employer incorrectly defines a worker as an independent contractor rather than an employee.

Responding to mounting evidence that many employers nationwide have classified some of their employees as independent contractors as a cost-savings measure, there has been increased federal and state focus on whether workers are properly designated as independent contractors or if they instead should be considered company employees.

The federal guidance outlines tests commonly used to determine worker status for purposes of unemployment insurance, workers' compensation, and revenue, or taxation.

NAHB also has a new guide to help you understand the law in your state — and any other state where you may do business. The state-by-state guide examines the laws that determine whether a worker is an independent contractor or employee.

To access the guide for Ohio, go to the "Builders Resources" page of cincybuilders.com.