



COMMONWEALTH of VIRGINIA

Office of the Governor

Aubrey L. Layne, Jr.
Secretary of Transportation

September 8, 2017

The Honorable S. Chris Jones
Chairman, House Appropriations Committee
P.O. Box 5059
Suffolk, Virginia 23435-0059

The Honorable Thomas K. Norment, Jr.
Co-Chairman, Senate Finance Committee
P.O. Box 6205
Williamsburg, VA 23188

The Honorable Emmett W. Hanger, Jr.
Co-Chairman, Senate Finance Committee
P.O. Box 2
Mount Solon, VA 22843-0002

The Honorable Ronald A. Villanueva
Chairman, House Transportation Committee
P.O. Box 61005
Virginia Beach, VA 23466

The Honorable Charles W. Carrico, Sr.
Chairman, Senate Transportation Committee
P.O. Box 1100
Galax, VA 24333

Dear Gentlemen:

On behalf of the Commonwealth Transportation Board, I offer the following report in accord with Item 436.P. of Chapter 780 of the 2016 Acts of the Assembly, which provides:

“[t]he Commonwealth Transportation Board is hereby directed to enter into discussions with Arlington and Fairfax Counties regarding use of air rights over Interstate 66 in their respective jurisdictions no later than October 1, 2016. A report on the progress and outcome of such discussions shall be submitted to the

Chairmen of the House Appropriations and Transportation Committees and the Senate Finance and Transportation Committees no later than July 15, 2017.”

Background

Prior to enactment of Item 436. P., the Office of Public-Private Partnerships (VDOT’s P3 Office) had initiated discussions with Arlington and Fairfax County board members and staff in the 2012/2013 timeframe to discuss potential public-private partnership (P3) Air Rights opportunities. In parallel, VDOT’s P3 Office engaged the private sector through a Request for Information (RFI) seeking input on ways to maximize the value of existing public assets by making selected Air Rights available for development in and around transportation facilities in the Commonwealth. Discussions with both jurisdictions progressed. However, it was determined that advancement of the P3 initiative related to air rights above I-66 was not feasible at that time.¹

Following the enactment of Item 436.P, the Virginia Department of Transportation (VDOT) undertook to pursue and report back to the CTB the discussions contemplated by this budget item. The Legislative Study Work Plan developed in support of the legislative initiative included the following Study Work Group Participants, as needed:

- Virginia Department of Transportation (VDOT)
 - Northern Virginia (NOVA) District
 - Policy (now Governance and Legislative Affairs) Division
 - Financial Planning Division
 - Office of Public Private Partnerships (VDOT’s P3 Office)
- Federal Highway Administration (FHWA)
- Arlington County Board Members and Planning Departments
- Fairfax County Board of Supervisors and Planning and Transportation Departments

In accordance with the Legislative Study Work Plan, VDOT/NOVA District staff was to confirm Arlington’s position on development of Air Rights, and to continue discussions with Fairfax County Supervisors and staff, in order to gauge interest in potential Air Rights development(s), particularly along portions of I-66. Additionally, VDOT’s P3 Office staff was to be consulted in the event P3 opportunities presented themselves as a result of the discussions.

Arlington County

¹ Virginia Code, § 33.2-226, grants the Commissioner of Highways the authority to lease or sell and convey Air Rights or Airspace over highways of the Commonwealth under VDOT jurisdiction, subject to the approval by the locality of the proposed use and provided the locality has taken steps to regulate the use by zoning or other land use methods. However, at the time these earlier discussions had transpired, the statute prescribed a very specific process for conveyance or lease of air rights and restricted the feasibility of a P3 initiative relating to air rights development. The statute was amended in the 2017 Session of the General Assembly to afford more flexibility in the process that could be used to lease or convey air rights. See Chapter 278 of the 2017 Acts of Assembly (SB 1148).

VDOT/NOVA District staff engaged Arlington County staff and elected officials in the latter half of 2016 and early 2017 in order to confirm Arlington's position on Air Rights. Arlington County Board Members and staff indicated an openness to VDOT pursuing private development of air rights in Rosslyn. However, the County could only participate in any discussions with developers if formally brought forward by VDOT or the development community through either of the County's established development review mechanisms and associated public processes: a site plan review or small area plan process.

At the direction of the Arlington County Board, staff expressed an interest in discussing the potential use of Air Rights for public purposes. Arlington County provided graphics showing two locations of interest for public use: 1) Adjacent to the East Falls Church Metro Station, between 25th Street N., Lee Highway and Washington Boulevard, and 2) Adjacent to the Buck Property, between N. Quincy and N. Lincoln Streets, Washington and Lee High School, and Arlington Science Focus School (see attachment).

In addition to helping bridge the physical separation between communities created by the construction of I-66, the infrastructure added over I-66 would also provide for a variety of public uses, including active recreation and active/passive uses for local and regional transit service. The use of Air Rights is one of a variety of options that could potentially be used to accomplish these purposes. As discussions between VDOT and Arlington continued and it was determined that decking over I-66 for public use was financially infeasible, representatives of Arlington expressed interest in using a pedestrian bridge or bridges and rehabilitation of existing bridges through future associated capital projects (example: the west entrance to the East Falls Church Metrorail Station on the Washington Blvd flyover) to restore some of the lost multimodal connectivity between sections of the County separated by I-66. As of March 2017, VDOT and Arlington resolved to continue discussions on this subject.

Fairfax County

VDOT/NOVA District staff also engaged certain Fairfax County Board Members and staff in discussions conducted during 2016. In response to the General Assembly's legislative initiative to begin discussions on this issue, Fairfax County staff had already briefed the Board of Supervisors and determined that the County's existing development process for all land use cases is appropriate for Air Rights development within the right-of-way; however, the representatives of the County engaged in these discussions also indicated that the current market situation suggests that Air Rights leases are unlikely in the near future, based on the following factors,:

- A 2010 Metropolitan Washington Airports Authority (MWAA) study of air rights in Reston found:
 - Development of Air Rights in Reston would likely require an unusually dense 7.0 floor area ratio to achieve private sector internal rates of return, particularly due to the width of the roadway;
 - The cost of building a platform (i.e. creating 'new' developable land) was estimated at twice the average cost of traditional land sales in nearby transit-oriented development areas;

- Providing vehicle access to the Air Rights development would be challenging and would have impacts on the surrounding road network.
- Currently in Fairfax County there is no density allocated to right-of-way; therefore, development proposals for Air Rights would likely include comprehensive plan amendments as well as rezoning applications.

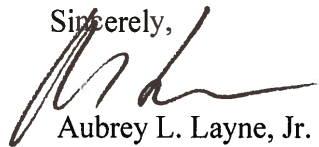
Fairfax County has indicated that the County's existing development process, which applies to all types of development within the County, remains an appropriate approach for development of future air rights areas within the rights-of-way.

Conclusion

Based on the discussions with representatives of both Arlington and Fairfax Counties, VDOT staff does not foresee P3 opportunities with respect to Air Rights in the near-term. VDOT indicated that it will continue to work with Arlington regarding its interest in community/pedestrian connectivity across I-66 and/or public use of Air Rights.

If you have any questions or need additional information, please contact me.

Sincerely,



Aubrey L. Layne, Jr.