

## **Government Affairs Update**

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### **Larimer County**

**Broadband Feasibility Study Kicks Off This Summer:** In November 2016 voters passed an exemption to Senate Bill 05-152 which prohibited Larimer County from engaging in the provision of telecommunication services such as broadband internet access. Now the County has begun exploring options for broadband in its rural areas. The first step is a feasibility study of current conditions, which will be followed by an evaluation of viable options, and a recommendation on how to proceed. A consultant has been selected, and contract negotiations are underway. It is anticipated work will begin this summer.

Funding for the broadband feasibility study is projected to be a combination of county general fund dollars and grant resources, with grants seeking efforts actively underway. Funding needs for longer-term broadband projects will largely depend on recommendations from the study. Meanwhile, the County is researching opportunities for a range of possibilities, including infrastructure project planning, implementation and use.

### **Loveland**

**Council Discusses Metro District Policy:** Metropolitan and Special Districts are authorized by Article-1 of Title-32 of the Colorado state statutes. Such districts are defined as units of local government. A special district provides public improvements and services to its property owners and residents. A metropolitan district one type of special district that provides two or more types of improvements and services, for example parks and recreation, sewer, street improvements, water or fire protection.

At a study session on July 11 the City Council heard from a panel of speakers including LBAR's Chair, David Powell. The Council intends to create its own municipal metro district policy to help it review future development proposals. Originally intended to provide urban-like services to developments outside municipal limits, they have evolved to be a preferred technique to provide financing for public improvements inside city limits. Developers in Loveland began using metro districts in the early 2000s. Currently there are 20 metro districts in the City, including eight in Centerra alone. The Foundry, Loveland's newest metro district, was established in September 2016.

Larimer County has 106 metro districts and Weld County has 231, according to the State's Department of Local Affairs (DOLA). As David Powell told the Council, LBAR's

primary concern is the need for disclosure. Buyers must be educated about the role, function and regulatory powers of metro districts. Metro districts finance improvements and services by issuing municipal bonds, which are redeemed by special property taxes. The additional property tax varies district to district, but the implications to a homeowner can be substantial. For example, property owners in Thompson Crossing (Johnstown) pay an additional 81 mills in property tax.

Colorado statute does not require a specific disclosure for metro districts. REALTORS® need to be able to determine if a property is in a metro district (and the property tax implications) early on so potential buyers aren't blindsided at the closing table. LBAR would like to see the creation of a recorded document for metro district properties that would be easily discoverable during a title search. IRES listings are not uniform. Not all brokers indicate that a property is included in a metro district but that information is available in public records.

Metro districts are required to file various documents with DOLA, including a service plan, annual audits and an annual budget. For more information concerning what a prospective buyer should know about metro districts, DOLA published *Special Districts: A Brief Guide for Prospective Homeowners* in 2009. Access the guide here:

[https://www.colorado.gov/pacific/sites/default/files/Special%20Districts%20A%20Brief%20Review%20For%20Prospective%20Homeowners\\_1.pdf](https://www.colorado.gov/pacific/sites/default/files/Special%20Districts%20A%20Brief%20Review%20For%20Prospective%20Homeowners_1.pdf)

**No Broadband Vote This Fall:** Unlike Fort Collins, Loveland voters will not have a high-speed internet ballot question to consider in November. The Broadband Task Force was ready to move forward but most of the City Council was not. Staff, consultants and the Task Force will continue working on the project and, when the Council feels it has all the information it requires, will call a special election next year.

The topic came up at the end of a five-hour meeting when the Council was tired and tempers flared. Councilor Steve Olson said City Manager Steve Adams was biased saying he had tainted the process and asked him to step away from the process, to which Adams replied, "I will not."

Councilor Don Overcash asked for the risk analysis he'd asked for at the last meeting and said there's no overwhelming citizen demand to do something quickly. Dave Clark said the City was still in planning mode. "We are setting this up for failure if we put this on the ballot in a rush," he said. He said it made more sense to wait and hold a special election after the City has done its due diligence. Leah Johnson said she agreed with Clark and Overcash but asked other Councilors to let the process play out and stop playing politics. Troy Krenning said he is opposed to having the City run its own broadband utility but agreed the question needs to be put to the voters. Mayor Gutierrez agreed the Task Force hasn't finished its work and said he needs more information. Mayor Pro-tem John Fogle was the only member of Council who seemed ready to move ahead but he was clearly outnumbered.

## STATE

**Supreme Court Ruling May Stimulate Condo Market:** On June 5th, the Colorado Supreme Court upheld the right of condominium developers to require disputes go to binding arbitration, essentially putting into state law a provision that construction defects reform advocates said was the key to reviving a largely defunct condo market. The decision to uphold a lower-court ruling in *Vallagio at Inverness Residential Condominium Association v. Metro Homes Inc.* is likely to have wide-ranging effects, especially after Gov. John Hickenlooper last month signed into law a separate bill concerning defects reform.

The Vallagio decision, handed down by a 5-2 vote of the State's highest court, clears out what may be the biggest impediment to reinvigorating what has been a largely dead market for the past 10 years. The majority opinion of the court affirmed the ruling of the Colorado Court of Appeals that developers can retain a right to consent to any homeowners association's proposed amendments on contracted declaration regarding arbitration for construction-defects claims, and rejected the Vallagio association's claim that the Colorado Consumer Protection Act (CCPA) precludes this right to consent.

To reach their decision, justices looked at the language and legislative intent of both the CCPA and the Colorado Common Interest Ownership Act (CCIOA), which governs rules between developers and property owners in communities with shared walls. The Court found that while CCIOA bars developers from requiring thresholds higher than 67 percent of residents to make changes to contracted declarations, it found that nothing in either law prohibited a developer from including a provision requiring it give its consent for particular amendments in perpetuity, because such a clause was not considered when establishing a voting threshold for other parts of the declaration.

Along with House Bill 1279, which was passed by the legislature this year, this ruling could provide developers with the confidence to build more affordable condo products. HB-1279 requires a majority of condo owners to approve any legal action against developers. Advocates, such as CAR, have long argued that binding arbitration and requiring a majority in a HOA to approve construction defect lawsuits are key revisions needed to protect builders and homeowners from frivolous lawsuits. Time will tell if these revisions make a difference in the stagnant condo market.

**No Transportation Ballot Question in November:** The Independence Institute has decided not to pursue a citizen initiative to fund transportation this fall. Annoyed by the legislature's lack of decision during the 2017 legislative session, the Institute had considered its own ballot initiative titled "Fix Our Damn Roads," but decided it didn't have time to gather all the signatures it needed to put its \$3.5 million bonding proposal on the ballot this year but promises to bring the measure back in 2018.

## NATION

**HUD Regulatory Review:** On June 14, 2017, NAR submitted a letter in response to the Department of Housing and Urban Development's (HUD) request for comment regarding

HUD's effort to evaluate and identify regulations that merit repeal, replacement or modification in accordance with the directives under Executive Order 13777, "Reducing Regulation and Controlling Regulatory Costs."

In its letter, NAR urges HUD focus on removing the requirement that FHA borrowers with less than a 10 percent down payment pay annual mortgage insurance premiums for the life of the loan. In addition, annual mortgage insurance premiums should be reduced. NAR also suggests that Federal Housing Administration (FHA) condominium approval regulations should be revised to remove restraints on owner-occupancy, FHA concentration, and commercial space limits. FHA should also allow for the return of spot loan approval and reduce the burden of re-certification on condominium projects.

Read the letter here: <https://tinyurl.com/y77wvb43>

**Congress Facing Flood Insurance Expiration:** The National Flood Insurance Program (NFIP) is set to expire on September 30th without Congressional action. The NFIP is \$25 billion in debt due to major losses from Katrina, Sandy and other flooding events (including flooding in Colorado). Congress wants to move some of the risk to the private market versus requiring taxpayers to fund all flood insurance.

During the past month, there has been a lot of activity on Capitol Hill surrounding the reauthorization of the NFIP. NAR has been actively engaged in trying to shape various pieces of legislation. In general, NAR supports a strong NFIP plus a strong private market so consumers can get affordable flood insurance.

The House Financial Services Committee (HFSC) has passed seven different bills each one addressing a different component of the NFIP. While this "package" includes a five-year authorization and private market reforms, it ends grandfathering (properties allowed to keep mapping in existence at the time they are built) and increased/new fees would make assessing the impact to consumers difficult. In addition, there are concerns that the flood mapping reforms are inadequate. Therefore, NAR opposes the House package. The HFSC is expected to combine the seven bills into a complete package for possible consideration by the full House sometime in July.

On the Senate side, two bills have been introduced and another bill is in draft form. NAR has not taken a position on any of the bills and continues to work with the sponsors of both bills to provide feedback on various provisions. NAR expects the Senate Banking Committee will combine the bills into one final bill that won't be considered until late July.

NAR estimates that past lapses of the NFIP have delayed or canceled 1,400 transactions a day. Five million homes rely on flood insurance across the U.S. Federally backed loans require flood insurance for homes in the 100-year flood plain.

**CFPB Final Rule Clear on Ability to Share Closing Disclosures:** On July 7, the Consumer Financial Protection Bureau (CFPB) released the final rule amending the

“Know Before You Owe” (KBYO or TRID) mortgage disclosure rule. As advocated for by NAR, the final rule clarifies the ability to share the Closing Disclosure (CD) with third parties - a victory for real estate professionals nationwide.

As outlined in the 2016 proposed rule, the final rule highlights an existing exception within the Gramm-Leach-Bliley Act (GLBA) and implementing Regulation P that allows lenders to share the CD with third parties (sections 502(e)(1) and 509(7)(A)). The CFPB recognizes the CD as a “record of the transaction,” which is “informative to real estate agents and others representing both the consumer credit and real estate portions of residential real estate sales transactions.” The CFPB notes that CD sharing is permissible to the extent it is consistent with GLBA and Regulation P and is not barred by applicable State law. The final rule will be effective 60 days from publication in the Federal Register. Stay tuned for further analysis on the final rule.

**NAR Submits Statement on Housing Finance Reform:** On June 29, the U.S. Senate Committee on Banking, Housing & Urban Affairs held its first of several hearings of the year on housing finance reform. The hearing, entitled “Principles of Housing Finance Reform”, consisted of three witness panelists from the Mortgage Bankers Association, Housing Policy Counsel of the Financial Services Roundtable and Center for Responsible Lending.

NAR submitted a statement highlighting that any new housing finance system must ensure that in all markets mortgage capital will always remain available for creditworthy Americans. Second, NAR stated that taxpayer dollars should be protected.

Furthermore, to shield taxpayers and ensure a steady flow of capital into the mortgage market in both good times and bad, NAR urged lawmakers to convert the Enterprises into government-chartered, non-shareholder owned authorities that are subject to tighter regulations on products, profitability, and minimal retained portfolio practices in a way that ensures the protection of taxpayer monies.

**NAR Comments on GSE Capital Reserves:** On June 27, 2017, NAR submitted letters to the U.S. Federal Housing Finance Agency (FHFA) Director, U.S. Treasury Secretary, members of the U.S. Senate Committee on Banking, Housing & Urban Affairs and U.S. House Committee on Financial Services, expressing concern related to the scheduled elimination of capital reserves held by Fannie Mae and Freddie Mac (Enterprises).

Specifically, NAR letters state to Congress and the banking agencies that in the absence of comprehensive housing finance reform, policymakers need to address the declining capital reserves at the Enterprises. One way to address this issue would be to create a Mortgage Market Liquidity Fund (MMLF) through legislation or under existing regulatory authority. A portion of the Enterprises’ profits could be deposited into the fund, controlled by the FHFA Director, which would cover future

losses due to market fluctuation as described above. The FHFA Director could release funds from this account to buffer against further U.S. Treasury involvement. As a result, some capital will be in place to avoid significant market disruptions and to continue to ensure that Americans have access to affordable mortgages. Under the terms of their agreements with the U.S. Treasury, the Enterprises' capital reserves will decline to zero by January 1, 2018.

**NAR Joins Coalition to Preserve Net Neutrality:** NAR has joined a coalition of businesses and public interest groups working to preserve Open Internet rules—also known as network neutrality. NAR together with tech companies like Facebook, Microsoft and Amazon and main street companies like Walmart have joined together to advocate for preserving net neutrality. The coalition will work at the Federal Communications Commission (FCC), in the courts and on Capitol Hill to ensure that internet remains an open and level playing field, an issue critical to our business success.

Net neutrality is shorthand for the concept that Internet users should be in control of what content they view and what applications they use on the Internet. More specifically, net neutrality requires that broadband networks be free of restrictions on content, sites, or platforms. Networks should not restrict the equipment that may be attached to them, nor the modes of communication allowed on them. Finally, networks should ensure that communication is not unreasonably degraded by other communication streams.

Net neutrality is important to small, main street businesses like REALTORS® who depend on open internet access every day to run their businesses and serve their customers. NAR supports net neutrality and urges Congress to oppose legislation that would threaten the current FCC Open Internet Rule and rollback the important protections put in place by the FCC in 2015.