

Proffers

Greg Kamptner, County Attorney
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Virginia Code § 15.2-2303.4

- ▶ What does Virginia Code § 15.2-2303.4 do?
 - Prohibits the County from **requesting** or **accepting** an **unreasonable** proffer
 - Limits the scope of proffers to transportation, schools, public safety, and parks
 - Proffered plans, affordable housing, phased development, enhanced erosion and sediment control and stormwater management, and other types of proffers historically offered and accepted are no longer allowed
- ▶ Applies only to residential rezonings
 - New residential development, new residential uses, residential portion of mixed use
- ▶ Applies only to rezoning applications filed on or after July 1, 2016
 - New rezoning applications and applications to amend existing proffers where the original rezoning application was filed on or after July 1, 2016

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- ▶ Be careful about what you say to an applicant about proffers because there are significant consequences
 - The County is prohibited from requesting or accepting an **unreasonable** proffer
 - An applicant **challenging the denial of its rezoning application** may claim the denial was based on the **request or suggestion** by any person at any level of the County that the applicant submit an unreasonable proffer, which the applicant refused to do; in a challenge, the presumptions and evidentiary burdens strongly favor the applicant
 - An applicant **challenging the validity of an unreasonable proffer accepted** by the County may have the unreasonable proffer stricken
- ▶ The criteria that make a proffer reasonable or unreasonable:
 - A proffer is **unreasonable unless** it is **specifically attributable** to an impact and, for proffers addressing impacts to off-site public facilities, including cash proffers, the rezoning creates a need, or an identifiable portion of a need, for one or more public facility improvements **in excess of existing public facility capacity** at the time of the rezoning, and the “new residential development or new residential use applied for **receives a direct and material benefit from a proffer** made with respect to any such public facility improvements.”

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- ▶ It is appropriate to talk about specific proffers only after the impact studies are completed and analyzed
- ▶ What a CAC should discuss with an applicant:
 - This is what the master plan says
 - This is what is in the master plan that is important to us
- ▶ The County's Cash Proffer Policy was repealed by the Board
 - Scope of cash proffer policy and the impacts addressed were inconsistent with new law
 - The new law requires levels of specificity and certitude that the cash proffer policy did not provide
 - The impacts of rezonings under the new law will be evaluated on a case-by-case basis