

Agenda

Residential Development Impact Workgroup

May 15, 2017

10 – 11:30 a.m.

Room 241 – County Office Building /McIntire

1. Call to Order
2. Introductions – 5 minutes
3. Election of Chair – 5 minutes
4. Election of Vice-Chair – 5 minutes
5. Presentation and discussion of the Charge and Goals for the Workgroup – 15 minutes
6. Presentation and discussion of the County's use of proffers – 20 minutes
7. Presentation and discussion of the State law regarding proffers – 15 minutes
8. Discussion of goals for next meeting – 20 minutes
9. Establish meeting schedule – 5 minutes
10. Adjourn

Congratulations on your appointment to the Residential Development Impact Work Group and thank you for volunteering your time to work on this issue. The goals of this Work Group are to:

1. Understand the recent change in State law regarding proffers and what is now allowable
2. Identify and evaluate alternatives for aligning land use and growth management goals by means of by-right and re-zoned residential development
3. Develop a recommendation for how to best achieve alignment of goals and implementation strategies as indicated in Goal #2 above
4. Develop a recommendation for how best to address fiscal impacts associated with all future residential development.

It is hoped that the group will be able to meet at least monthly for 90 minutes.

Before our first meeting, I wanted to offer some background on what has been done in the past and where we are today.

The County started accepting cash proffers in the early 90s with each project being reviewed on a case-by-case basis. In 1998 the County starting using the Cost Revenue Impact Model (CRIM). This model attempted to account for revenues received from development and the costs associated with development. Attached is a memorandum from Steven Allshouse that provides more detail about CRIM and its use.

The County adopted a Cash Proffer Policy in 2007. This policy replaced the case-by-case analysis that had been done since 1998. This policy established maximum cash proffer amounts per residential unit based on impacts to identified public facilities and it was used during the rezoning process. The amounts established by the policy were calculated using the Capital Improvements Plan (CIP) and Capital Needs Assessment (CNA). The policy as originally developed included all facilities in CIP/CNA that served a development. As the amounts and projects in the CIP and CNA changed, the maximum amounts in the policy would have to be recalculated. Amendments to the Code of Virginia after the initial adoption of the Cash Proffer Policy require that the County only consider projects that expand capacity. In 2014, the Board of Supervisors directed the Fiscal Impact Advisory Committee (FIAC) and Planning Commission to recalculate the maximum per unit cash proffer amount and to provide recommendations regarding potential revisions to the credits available to applicants. As a result of work of FIAC a recommendation was made to amend the maximum per unit cash proffer amounts to:

- o SFD - \$4,918 (2014 value was \$20,987)
- o SFA/TH - \$3,845 (2014 value was \$14,271)
- o MF - \$5,262 (2014 value was \$14,871)

The new numbers were dramatically lower because the CIP/CNA had relatively few projects that expanded capacity. The CIP/CNA were primarily maintenance programs.

Before the Board of Supervisors had an opportunity to review the recommendation to amend the maximum cash proffer amounts the Code of Virginia was amended again. The most recent amendments further restrict the cash proffers that the County can accept. The County may now only consider impacts in four areas, transportation, schools, public safety and parks. Further, the County may only consider impacts that are specifically attributable to the development and create the need for improvement in excess of existing public facility capacity. The development must also receive a direct and material benefit from a proffer. These restrictions result in the need to analyze every application on a case-by-case basis. Attached is detailed guidance from the County Attorney on the proffer legislation, the language of the law, the charter for the work group and a list of the members.

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- Background:** Effective July 1, 2016, proffer authority in the Code of Virginia was amended to change the way that the impacts associated with residential rezonings are evaluated and how proffers may be accepted. In order to be in compliance with State law, Albemarle County's Cash Proffer Policy was repealed on June 8, 2016. The amendment also invalidates the use of the Cost Revenue Impact Model (CRIM) to determine impacts of residential development. To explore how to best achieve Albemarle County's land use and growth management goals in this new regulatory environment, a work group representing a cross-section of stakeholders is recommended.
- Charge:** The Residential Development Impact Work Group is formed by the Albemarle County Board of Supervisors to understand recent State Code amendments regarding proffers and to develop and analyze alternative means for determining and addressing the fiscal impact of residential development allowed either by-right or subsequent to a rezoning. The Work Group will also provide a recommendation on how to proceed with addressing fiscal impacts of residential development.
- General Timeframe:** The Residential Development Impact Work Group will present to the Board of Supervisors within 4 to 6 months of appointment to share final recommendations, including next steps.
- Goals:** The goals of this Work Group are to:
1. Understand the recent change in State law regarding proffers and what is now allowable
 2. Identify and evaluate alternatives for aligning land use and growth management goals by means of by-right and re-zoned residential development
 3. Develop a recommendation for how to best achieve alignment of goals and implementation strategies as indicated in Goal #2 above
 4. Develop a recommendation for how best to address fiscal impacts associated with all future residential development
- Membership:** The committee shall consist of approximately seven voting members appointed by the Board of Supervisors. Appointments will be based on Board and staff recommendations, nominations from community and business groups, and individual applications.
- The Work Group will be composed, at a minimum, of the following representatives:
- Chair of Fiscal Impact Advisory Committee
 - One rezoning applicant representative (professional planner strongly preferred)
 - One previous rezoning applicant involving residential development within last 3 years
 - One representative of the development community
 - Two representatives of Community Advisory Committees (residents)
 - Two representatives of the environmental community
- In addition, the Work Group will have liaisons from the Board of Supervisors, the Planning Commission, and County staff as outlined below.
- Two members of the Board of Supervisors
 - Two members of the Planning Commission
 - County Attorney
 - Director of Planning and/or designee
 - Director of Economic Development
 - The Superintendent of Schools or designee
- The Board of Supervisors will appoint members based on their qualifications and interest in serving on the Committee. An individual may be appointed to represent more than one of the

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above referenced groups. The Board will strive to appoint an overall membership that is diverse in age, abilities, experiences, professions, interests, etc.

Member qualifications include:

- Experience working within a consensus-driven decision-making process, and a commitment to such a process in fulfilling the Committee's responsibilities as outlined in the charge statement;
- Willingness to work within established County procedures and processes;
- Ability to be open-minded; to listen and be respectful of the values, views and opinions of other representatives;
- Ability to share information with, and receive information from the community at large;
- Ability to meet not less than monthly over the next 4 to 6 months; and
- Status as a resident of Albemarle County; preferred but not required

Liaison Role:

The role of the liaison is distinct from the appointed members. Liaisons should report back to their Board or Commission at their regular meetings with a synopsis of the Committee's meetings/activities, as appropriate. Liaisons may also identify agenda topics in order to receive feedback from the Committee on a pertinent topic or project. Liaisons should provide information or context during discussions as requested, but should allow appointed Committee members to lead and fully engage in conversations so they can fulfill their advisory role.

Work Group Organization:

The Work Group shall elect a Chair and Vice-Chair. County staff shall serve as technical representatives and will support the group by assembling and compiling all information and reports necessary for the Work Group's work to progress, including meeting notes.

Meetings will be held approximately once a month or more often as agreed to by the Committee. The date and time of Work Group meetings shall be established at the first meeting; additional meetings may be called by the Chair. All meetings will be open work sessions, where the general public is invited to attend, listen, and observe, unless public participation is deemed appropriate by the Chair.

No quorum shall be necessary to conduct business, but no vote will be taken unless a quorum is present. A majority of the voting members of the Committee shall constitute a quorum. Decisions shall be made, if possible, by an indication of general consensus among the Committee members present. Staff (other than appointed members) will not participate as decision makers. When this method does not serve to establish a clear direction, the Chair shall call for a roll-call vote. When an agreement cannot be achieved on an issue, business shall proceed and minority positions will be noted and presented for future Board of Supervisors' consideration.

COUNTY OF ALBEMARLE



MEMORANDUM

TO: Albemarle County Board of Supervisors
Albemarle County Planning Commission
Albemarle County Architectural Review Board
Mark Graham, Director, Department of Community Development
Amelia McCulley, Zoning Administrator
David Benish, Acting Director of Planning

FROM: Greg Kamptner, County Attorney

DATE: September 15, 2016

RE: *Virginia Code § 15.2-2303.4; guidance on the new proffer legislation*

This memorandum is guidance to County representatives in how to comply with Virginia Code § 15.2-2303.4, which became effective July 1, 2016. Attached is a copy of the new law.

1. *Virginia Code § 15.2-2303.4 applies only to residential rezonings.* Virginia Code § 15.2-2303.4 applies only to rezonings for new residential development or a new residential use, including the residential portion of a mixed-use development.
2. *Virginia Code § 15.2-2303.4 applies only to applications filed on or after July 1, 2016.* Virginia Code § 15.2-2303.4 applies only to rezoning applications filed on or after July 1, 2016, and only to applications to amend existing proffers (referred to as *proffer condition amendments* in the statute) where the application for the original rezoning was filed on or after July 1, 2016 (collectively referred to in this guidance as a “rezoning”).
3. *Impacts that may be addressed by proffers are now limited to four issues.* Virginia Code § 15.2-2303.4 limits the scope of impacts that may be addressed by proffers to transportation, schools, public safety, and parks. Proffers pertaining to affordable housing, phasing development, stormwater management, and other issues are no longer allowed.
4. *Be careful about what you say to the applicant about proffers.* Virginia Code § 15.2-2303.4 prohibits a *locality* from *requesting* an *unreasonable proffer* (see section 6, below) in conjunction with a rezoning application. An applicant (the landowner) challenging the denial of its rezoning application may claim that the denial was based on the County’s mere *suggestion* that the applicant submit an unreasonable proffer which the applicant refused to do. If that claim is made by the applicant in a court challenge, the evidentiary burden and presumptions favor the applicant.
 - A. A *request* or *suggestion* may be made by any representative of the County such as a staff member, a member of the board of supervisors, the planning commission, or a citizen advisory committee, regardless of whether the request or suggestion is made to the applicant in a public meeting or in another situation.
 - B. The terms *request* and *suggest* are not defined, so assume that any verbal or written statement to an applicant about a proffer may qualify as such.
5. *It is appropriate to talk about specific proffers only after the impact studies are completed and analyzed.* County representatives

should discuss specific proffers with an applicant only after the impact studies are complete and the extent of the impacts are identified. Also, County representatives should require the applicant to first demonstrate how it will address the impacts from the rezoning through its proposed proffers, and then react to the applicant's proposed proffers in a measured response.

6. *Understand the criteria that make a proffer reasonable or unreasonable.* Virginia Code § 15.2-2303.4 provides that 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.”
 - A. The phrase *specifically attributable* is not defined and requires a level of certitude that may not be achievable in studies. Proffers in which the applicant proffers to do or provide any more, even 1% more, than necessary to address the impact from the rezoning may jeopardize the validity of the proffer. Put another way, the validity of any proffer that may provide *any* benefit to the public that lives outside of the development is jeopardized.
 - B. The phrase *in excess of existing public facility capacity* prohibits the County from addressing the incremental impacts of development if there is any existing capacity. For example, if the impact studies show that a rezoning will generate 100 elementary school-age children, and the elementary school that would serve the development has capacity for 99 children, the applicant need only address the impact from that 100th child. Existing capacity in schools may be the easiest to quantify of the four areas for which proffers may be accepted (the others being transportation, public safety, and parks). This phrase may also expose the County to applications to amend proffers as capacity changes over time, such as when schools are redistricted.
 - C. The phrase *direct and material benefit* is not defined and, like the phrase *strictly attributable*, requires a level of certitude that may not be achievable in practical application. This requirement also fails to acknowledge the lag time between the payment of a cash proffer and when the public facility for which the cash was contributed is constructed, thereby exposing the County to a challenge to the validity of the proffer if, at some point in time after the development begins to be occupied, that occupant is not receiving a direct and material benefit.
7. *Virginia Code § 15.2-2303.4 is new for everyone, complex, and not every question can be answered now.* Every applicant for a rezoning and every locality that accepts proffers will be dealing with the new law and, over time, the development community and the localities will find a reasonable approach that allows rezonings to continue to be approved with assurances that the impacts from those rezonings will be reasonably addressed to the extent allowed under the law. Virginia Code § 15.2-2303.4 is also complex. We anticipate that Virginia Code § 15.2-2303.4 will generate some lawsuits that will clarify some of the provisions of the law. The examples provided in Section 6 above may appear to be worst-case scenarios to some, but they also are real possibilities under the language in Virginia Code § 15.2-2303.4.
8. *Virginia Code § 15.2-2303.4 was not universally supported or reviled.* Understand that Virginia Code § 15.2-2303.4 was not supported by every member of the development community, and was not opposed by every Virginia locality.
9. *Final points.* This guidance may be subject to revision as County representatives, the development community, and the public gain experience applying the requirements of Virginia Code § 15.2-2303.4. For now, this guidance takes a conservative approach. County representatives should be restrained in their discussions with rezoning applicants and should refrain from discussing proffers with applicants until after the impact studies are completed and analyzed, the extent of those impacts are identified, and the applicant has made its first offer to address the impacts.

§ 15.2-2303.4. Provisions applicable to certain conditional rezoning proffers

A. For purposes of this section, unless the context requires a different meaning:

"New residential development" means any construction or building expansion on residentially zoned property, including a residential component of a mixed-use development, that results in either one or more additional residential dwelling units or, otherwise, fewer residential dwelling units, beyond what may be permitted by right under the then-existing zoning of the property, when such new residential development requires a rezoning or proffer condition amendment.

"New residential use" means any use of residentially zoned property that requires a rezoning or that requires a proffer condition amendment to allow for new residential development.

"Offsite proffer" means a proffer addressing an impact outside the boundaries of the property to be developed and shall include all cash proffers.

"Onsite proffer" means a proffer addressing an impact within the boundaries of the property to be developed and shall not include any cash proffers.

"Proffer condition amendment" means an amendment to an existing proffer statement applicable to a property or properties.

"Public facilities" means public transportation facilities, public safety facilities, public school facilities, or public parks.

"Public facility improvement" means an offsite public transportation facility improvement, a public safety facility improvement, a public school facility improvement, or an improvement to or construction of a public park. No public facility improvement shall include any operating expense of an existing public facility, such as ordinary maintenance or repair, or any capital improvement to an existing public facility, such as a renovation or technology upgrade, that does not expand the capacity of such facility. For purposes of this section, the term "public park" shall include playgrounds and other recreational facilities.

"Public safety facility improvement" means construction of new law-enforcement, fire, emergency medical, and rescue facilities or expansion of existing public safety facilities, to include all buildings, structures, parking, and other costs directly related thereto.

"Public school facility improvement" means construction of new primary and secondary public schools or expansion of existing primary and secondary public schools, to include all buildings, structures, parking, and other costs directly related thereto.

"Public transportation facility improvement" means (i) construction of new roads; (ii) improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality; and (iii) construction, improvement, or expansion of buildings, structures, parking, and other facilities directly related to transit.

"Residentially zoned property" means property zoned or proposed to be zoned for either single-family or multifamily housing.

"Small area comprehensive plan" means that portion of a comprehensive plan adopted pursuant to § 15.2-2223 that is specifically applicable to a delineated area within a locality rather than the locality as a whole.

B. Notwithstanding any other provision of law, general or special, no locality shall (i) request or accept any unreasonable proffer, as described in subsection C, in connection with a rezoning or a proffer condition amendment as a condition of approval of a new residential development or new residential use or (ii) deny any rezoning application or proffer condition amendment for a new residential development or new residential use where such denial is based in whole or in part on an applicant's failure or refusal to submit an unreasonable proffer or proffer condition amendment.

C. Notwithstanding any other provision of law, general or special, (i) as used in this chapter, a proffer, or proffer condition amendment, whether onsite or offsite, offered voluntarily pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1, shall be deemed unreasonable unless it addresses an impact that is specifically attributable to a proposed new residential development or other new residential use applied for and (ii) an offsite proffer shall be deemed unreasonable pursuant to subdivision (i) unless it addresses an impact to an offsite public facility, such that (a) the new residential development or new residential use 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 or proffer condition amendment and (b) each such 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. For the purposes of this section, a locality may base its assessment of public facility capacity on the projected impacts specifically attributable to the new residential development or new residential use.

D. Notwithstanding any other provision of law, general or special:

1. Actions brought to contest the action of a locality in violation of this section shall be brought only by the aggrieved applicant or the owner of the property subject to a rezoning or proffer condition amendment pursuant to subsection F of § 15.2-2285.

2. In any action in which a locality has denied a rezoning or an amendment to an existing proffer and the aggrieved applicant proves by a preponderance of the evidence that it refused or failed to submit an unreasonable proffer or proffer condition amendment that it has proven was suggested, requested, or required by the locality, the court shall presume, absent clear and convincing evidence to the contrary, that such refusal or failure was the controlling basis for the denial.

3. In any successful action brought pursuant to this section contesting an action of a locality in violation of this section, the applicant may be entitled to an award of reasonable attorney fees and costs and to an order remanding the matter to the governing body with a direction to approve the rezoning or proffer condition amendment without the inclusion of any unreasonable proffer. If the locality fails or refuses to approve the rezoning or proffer condition amendment within a reasonable time not to exceed 90 days from the date of the court's order to do so, the court shall enjoin the locality from interfering with the use of the property as applied for without the unreasonable proffer. Upon remand to the local governing body pursuant to this subsection,

the requirements of § 15.2-2204 shall not apply.

E. The provisions of this section shall not apply to any new residential development or new residential use occurring within any of the following areas: (i) an approved small area comprehensive plan in which the delineated area is designated as a revitalization area, encompasses mass transit as defined in § 33.2-100, includes mixed use development, and allows a density of at least 3.0 floor area ratio in a portion thereof; (ii) an approved small area comprehensive plan that encompasses an existing or planned Metrorail station, or is adjacent to a Metrorail station located in a neighboring locality, and allows additional density within the vicinity of such existing or planned station; or (iii) an approved service district created pursuant to § 15.2-2400 that encompasses an existing or planned Metrorail station.

F. This section shall be construed as supplementary to any existing provisions limiting or curtailing proffers or proffer condition amendments for new residential development or new residential use that are consistent with its terms and shall be construed to supersede any existing statutory provision with respect to proffers or proffer condition amendments for new residential development or new residential use that are inconsistent with its terms.

2016, c. 322.

RESIDENTIAL DEVELOPMENT FISCAL IMPACT WORKGROUP

NAMES AND ADDRESSES	APPOINTED	TERM EXPIRES	CITY/COUNTY
Johanna O'Loughlin 6727 Welbourne Lane Crozet, VA 22932 434-249-2930 joolcrz@gmail.com	02-01-2017	09-30-2017	Fiscal Advisory Committee
Louis Lopez 2138 Sundown Place Charlottesville, VA 22911 434-245-5803 llopez@milestonepartners.co	01-18-2017	09-30-2017	Rezoning Applicant Representative
Vito Cetta 2635 South Bennington Road Charlottesville, VA 22901 434-531-2192 vitocetta@mac.com	01-18-2017	09-30-2017	Previous Rezoning Applicant
Charlie Armstrong 1509 Maymont Ct Charlottesville, VA 22902 434-242-7543 charlesa@southern-development.com	01-18-2017	09-30-2017	Development Community
Jason Inofuentes 2103 Aspen Drive Charlottesville, VA 22911 434-825-4615 jason.inofuentes@gmail.com	01-18-2017	09-30-2017	Community Advisory Committee
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