

Albemarle County Planning Commission
May 10, 2016

The Albemarle County Planning Commission held a regular meeting on Tuesday, May 10, 2016, at 6:00 p.m., at the County Office Building, Auditorium, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Karen Firehock, Vice Chair; Mac Lafferty, Jennie More, Daphne Spain, Pam Riley, Bruce Dotson and Tim Keller, Chair. Bill Palmer, UVA representative, was present.

Other officials present were Megan Yaniglos, Principal Planner; Rebecca Ragsdale, Senior Planner; Elaine Echols, Acting Chief of Planning; Bill Fritz, Manager of Special Projects; David Benish, Acting Director of Planning; Sharon Taylor, Clerk to Planning Commission, Mark Graham, Director of Community Development and Greg Kamptner, Deputy County Attorney.

Joel DeNunzio, Charlottesville Residency Administrator with the Virginia Department of Transportation (VDOT), was present.

Call to Order and Establish Quorum:

Mr. Keller, Chair, called the meeting to order at 6:00 p.m. and established a quorum.

CPA-2016-00001 Comprehensive Plan – Cash Proffer Policy

The Planning Commission held a public hearing to receive comments on its intent to recommend repealing the cash proffer policy, which is part of Appendix 3, Growth Management, of the Albemarle County Comprehensive Plan. The cash proffer policy established a maximum cash contribution per residential unit to address impacts to certain public facilities resulting from a zoning map amendment. Copies of the full text of the cash proffer policy proposed to be repealed are on file in the office of the Clerk of the Board of Supervisors and in the Department of Community Development, County Office Building, 401 McIntire Road, Charlottesville, Virginia and may be viewed at the County's website at www.albemarle.org. (Bill Fritz)

Mr. Fritz summarized the executive summary for CPA-2016-00001 Comprehensive Plan – Cash Proffer Policy. The Cash Proffer Policy for Public Facilities was originally adopted in 2007. This year the General Assembly passed and the Governor ultimately signed Senate Bill 549 (SB549). The language of the bill is attached to the staff report. This new legislation becomes effective on July 1, 2016. The legislation requires that proffers address impacts that are “specifically attributable” to the new development and the proffers must provide a “direct and material benefit” to the development. The new legislation also limits proffers to addressing public safety, transportation, schools, and parks and recreation. The existing cash proffer policy includes these types of facilities; but, also includes libraries.

The current cash proffer policy is not consistent with the new legislation because the current policy uses county wide averages to determine impacts. It includes impacts to libraries that are not eligible for impact consideration for projects submitted after July 1st. It is important to note that the new legislation does not prevent the county from accepting cash proffers. It is just that the cash proffers will have to be evaluated on a case by case basis to determine what impacts are “specifically attributable” to the development and to insure that proffers provide a direct and material benefit to the proposed development. This case by case analysis will not be unlike the process used by the county to accept cash proffers prior to the time that we adopted the Cash Proffer Policy.

Therefore, staff recommends that the Planning Commission forward to the Board of Supervisors a recommendation to repeal the Cash Proffer Policy. The Board is scheduled to hear this CPA on June 8th so that the Cash Proffer Policy will not be in effect on July 1, 2016 when the new legislation becomes effective.

Mr. Keller invited questions for staff.

Mr. Dodson asked does SB549 since it sets out public safety, transportation, schools, parks and recreation have a limiting effect also on our ability to receive affordable housing proffers.

Mr. Kamptner replied yes it does through proffers, and we will probably be presenting to staff some ideas of some things we need to do in light of this bill. One will be looking at providing, allowing for and encouraging affordable housing through incentive zoning. We have a very old provision in our zoning districts now that allows a bonus density factor that primarily has been used a couple of times for rental housing subject to an agreement. However, we will explore other ways in which to incentivize affordable housing.

Mr. Dotson noted the proposal tonight is to repeal the Cash Proffer Policy and asked do we need a parallel proposal to repeal the Affordable Housing Policy?

Mr. Kamptner replied that he thinks the affordable housing policy merely seeks 15% with rezoning, and we can look at that and may need to come back. But, with the effective repealing of the Cash Proffer Policy in SB549 we will not be seeking affordable housing proffers.

Mr. Dotson thanked Mr. Kamptner.

There being no further questions for staff, Mr. Keller opened the public hearing and invited public comment.

Vito Cetta noted as stated before he thinks the county is very fortunate to have a wonderful comp plan. It represents only 5% of our county. However, as we well know you drive south on Route 20; you drive west on Route 250; you drive west on Barracks Road and it looks like it did 50 years ago because of the comp plan. We stack our density mainly close into town and Crozet. It is very successful and the residents should be very proud of that. The dilemma is that we have processed 12 projects through the Neighborhood Model, almost all built, and the penalty is that we do have affordable housing, open space and cash proffers, and, the by right does not have any of those. The cash proffer single-family home is now \$20,000, and you just simply cannot compete with that; it is just too much money. You should also look at your records and you will find in very few projects that have been paying that \$20,000 that they can't afford it. What happened? We said this before when we first started processing projects through no cash proffers. Then about 1999 it went up to \$800, \$1,200, \$1,500 and ended up \$4,200. It was 2007 when the market was red hot and nobody was complaining because it was just the cost of doing business for developers just like sewer taps. The thing went from \$4,000 to \$20,000 and the market collapsed the next year. As a result very few people have been paying those kinds of proffers. We will not build Spring Hill Village with those because we just can't afford it. That is my only criticism of our development process. Thank you.

Mr. Kyle Redinger, developer for Adelaide, said on the proffer issue it is important to note that the impact that proffers pay for is relatively small in the county budget. He would reiterate what Vito Cetta said that proffers make projects unattainable and he thinks certainly you can attribute a lot of by right development to the cost of those cash proffers. He encourages the committee and other leadership in the county to understand that budget shortfalls are not necessarily

directly attributed to new homes that don't pay \$20,000 a unit but more importantly to a broader set of issues related to economic development, designated growth areas and making land relatively straight forward and easy to develop. Those are the ways that to address the impacts in better ways going forward.

Mr. Keller thanked Mr. Redinger and invited further public comment.

Justin Shimp said he would share some experiences he actually had in other localities. One of the things he finds interesting in doing work in other counties around here is their dream in rezonings is not how to make housing affordable; but, how to make it more expensive because they are looking at the fiscal impact. They say well if we have a \$500,000 home in a neighborhood that pays more taxes per unit, then that covers schools and things like that. Relating to what Mr. Cetta said earlier he agreed that is what we have seen in the county's current policy, which will be gone. He hoped the county in the new policies will take that into account so the proffer does not end up being like a tax on the lower price housing and basically a disincentive to build it. He did not think that is anyone's intention. However, the market forces this sort of to work if you apply a \$15,000 proffer on a unit building that house at \$300,000 becomes uneconomical. He did not know what the solution is to that because he was not here to say that; however, he just knows from experience elsewhere that this comes up in every locality. He encouraged the Commission to think about the new rules and how that affects each spectrum of the housing market so the county does not end up with growth where all \$600,000 and \$800,000 houses are in one community. That is all I wanted to share and really appreciate your time tonight.

Neil Williamson, with the Free Enterprise Forum, noted the Free Enterprise Forum has been adamantly calling for the repeal of cash proffers since before the county enacted cash proffers. We firmly believe cash proffers are a welcome stranger tax. Generally speaking we believe that it is applied to folks that have already been paying their way in the community or folks that are moving across town. We know that this is a phase one of a two-step process to reconsider how to calculate cash proffers. We actually think it is a great final phase. There are communities throughout the state that operate without cash proffers. He asked the county to consider what cash proffers bring in real revenue and how that is being impacted in your rezoning.

Mr. Williamson noted that he had provided each Commissioner a copy of the "Unintended Consequences Report", which outlined three specific case studies where cash proffers clearly change the methodology of moving forward with the development and made it so that your comprehensive plan did not get actualized and instead you got by right development. In speaking with developers cash proffers at \$20,000 a unit had a big part of that. We saw a rezoning split a neighborhood with one-half in the city with no cash proffers that got rezoned, and the other one-half in the county got developed by-right. Cash proffers had a huge element to that. He applauds the county for following state code this time and moving forward to repeal cash proffers.

Mr. Keller asked if there was anyone else present to speak on this matter. There being no further public comment, the public hearing was closed to bring the matter back to the Planning Commission for discussion and action. He invited discussion.

Ms. Firehock said she had a comment that was more of a philosophical statement and not a comment on the cash proffer repeal at the moment. As the proffers are now very thorny as the law has changed in what we will have to look at in the future in terms of clauses such as things that need to be directly attributable it is going to be very difficult to actually work out proffers and for people to figure out even how to offer them. In meeting recently with some smaller scaled

developers their feeling was that the new proffer policy was pushed by larger developers and that this hurts the smaller developers because it is going to make it more difficult for them to seek rezonings. At some point soon she thinks the county needs to consider comprehensively rezoning the county. We've got a comprehensive plan that many years of work was put into. We have this guidance before us and rather than have 40 discussions like we just had with this rezoning in Crozet she wished the county would go ahead and bite the bullet and just rezone the land to put the development that we want where we want it and put in any other stipulations in that zoning. However, the way that we are going about it now is somewhat painful and with the repeal of the Cash Proffer Policy, which was really intended to offset the impacts of development, we are not going to be able to do that anymore in that way.

Ms. Firehock noted while on the Charlottesville Planning Commission she spent several years rezoning the city, and going through that process she knows it takes a lot of work. But, ultimately she thinks we should just tell people what we want, what we expect; where we want it and just go ahead and do that. Not running for supervisor this is way above my pay grade. However, this is something that Chairwoman Palmer and she have discussed as something that the county is going to may be need to start looking at. She does not have a position on that, and I am not speaking for her; but, just think that is the direction that Albemarle County needs to take. It addresses developers, such as Mr. Cetta's comments, that why don't we just level the playing field so that everybody has to play by the same rules and not just the people who want to rezone something; but, frankly meets what we already said we want in our comprehensive plan.

Mr. Lafferty agreed with Ms. Firehock; but, more specifically to the proposal in front of us do we have any choice.

Mr. Kamptner replied no, certainly not as of July 1st because the standards in the new law are inconsistent with the Cash Proffer Policy.

Motion: Mr. Lafferty moved and Ms. Firehock seconded to repeal the present Cash Proffer Policy.

Mr. Keller invited discussion. There being no further discussion he asked for a roll call.

The motion carried by a vote of 7:0.

The meeting moved to the next item.

(Recorded and transcribed by Sharon Taylor, Clerk to Planning Commission)