

# Cash Proffers and Impact Fees

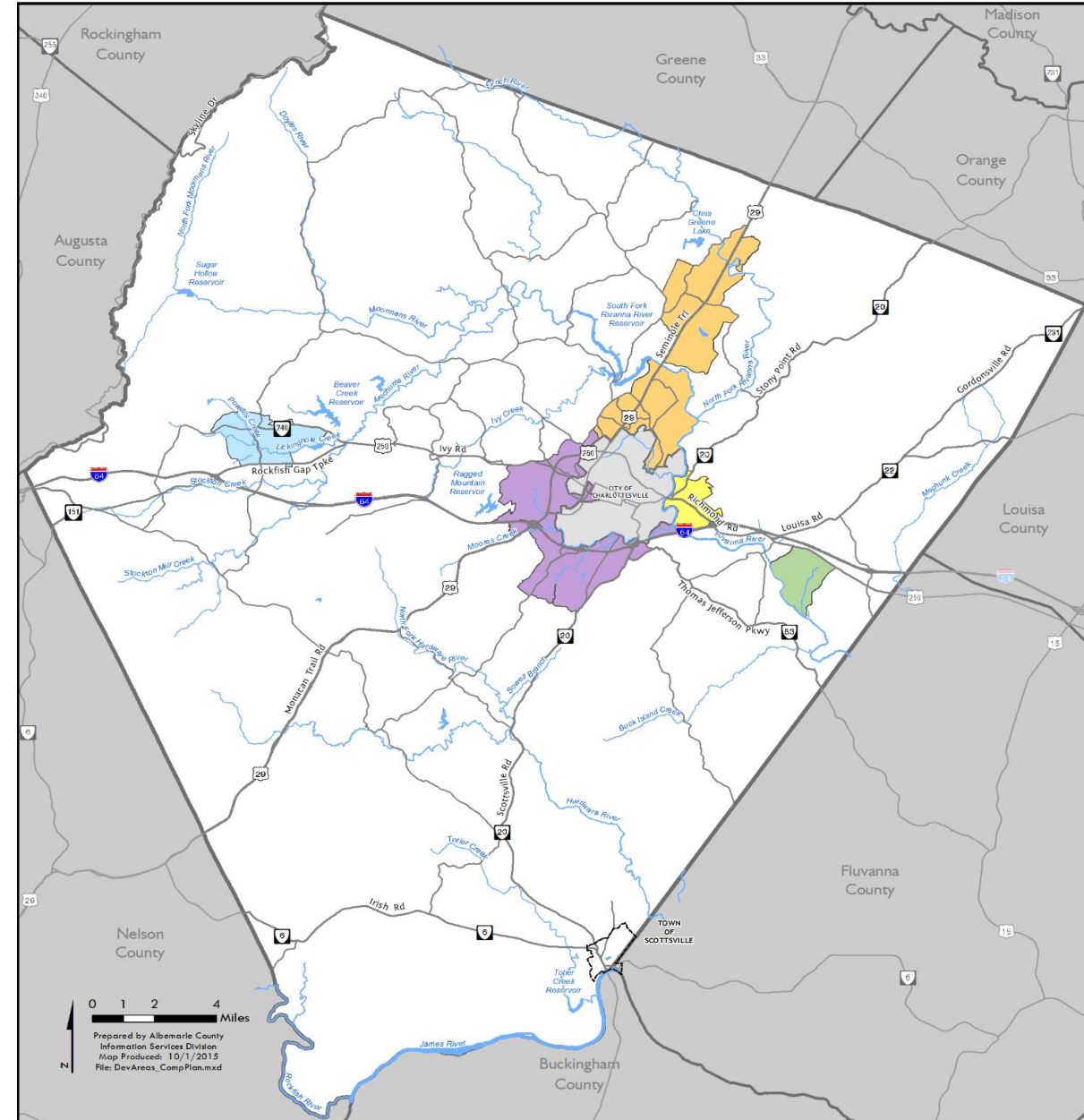
Greg Kamptner  
County Attorney  
County of Albemarle  
June 10, 2019 and  
December 11, 2019





# About Albemarle County

- Current population is approximately 108,000
- Area is approximately 720 square miles
- 35 square miles are planned and generally zoned for development (the “Development Areas”)
- 685 square miles are planned and generally zoned for agricultural, forestry, and related uses, including low density residential (the “Rural Area”)



# The County's Comprehensive Plan

## Growth Management Policy:

Direct “development into **specific, identified areas** while **conserving the remainder of the County for rural uses**, such as agriculture, forestry, resource protection, and others that rely on these uses.”  
*Comprehensive Plan, page 3.3.*





# The County's Comprehensive Plan

## Goal for the County's Development Areas:

They are to be “**vibrant active places with attractive neighborhoods**, high quality, mixed-use areas, **thriving business and industry**, all supported by services, infrastructure, and multimodal transportation networks.”  
*Comprehensive Plan, page 8.1.*



## **The County's experience with rezonings before Virginia Code § 15.2-2303.4: the process generally**

- The County has sought compact mixed-use development in its Development Areas in a new urbanism form of development for about 20 years
- Rezoning applications were sought and processed so that the decision to rezone was consistent (at least as much as possible) with the County Comprehensive Plan's Growth Management Policy, Land Use Plan and, since around 2000, its Neighborhood Model (new urbanism) policies
  - Most, if not all, rezoning applications were approved by the Board of Supervisors
  - The process could sometimes be lengthy for a variety of reasons
  - The process could sometimes be contentious for a variety of reasons, but the amount of cash proffers was seldom the cause

## The County's experience with rezonings before Virginia Code § 15.2-2303.4: cash proffers in Albemarle County

- Before 2007, the County accepted cash proffers for residential development
  - Amount per unit varied from **no cash contribution to up (one rezoning) to \$3000 per dwelling unit**; most were below \$1000 per unit, if at all
- In 2007, the Board of Supervisors adopted a **cash proffer policy** that established an expected cash contribution of \$17,500 per single family detached dwelling, with other amounts for other types of dwellings
  - Annual inflation adjustment
  - Based on County-wide studies
  - Contribution based only on capital facilities for roads, public safety, education, libraries, and parks and recreation
  - Credit for by-right units allowed under pre-existing zoning
- The development community said that it liked the **certainty** the cash proffer policy brought to the process



## How the current cash proffer system is working

- It is a **mixed bag**; the Great Recession squelched rezoning applications for years; backlog of residential capacity
- **Frustration** by the development community about the **time it takes to go through rezoning process** (though many delays self-caused)
- **Frustration** by those who went through the rezoning process before 2016 about the **competitive disadvantage** (time and expense) they felt they faced by trying to follow the comprehensive plan





## How the current cash proffer system is working

- Since Virginia Code § 15.2-2303.4 took effect, **very few applications for residential rezonings have been filed**
- **Frustration** with the General Assembly for adopting such a **draconian piece of legislation** in Virginia Code § 15.2-2303.4
  - “Specifically attributable” and “direct and material benefit” are extremely high standards that **require a level of precision** based on project specific studies
  - Punishing localities for “**suggesting**” or “**accepting**” “unreasonable” proffers stifled the rezoning process
- Recognition that the 2019 amendments to Virginia Code § 15.2-2303.4 should **improve, but not fix, the situation**





## How the current cash proffer system is working

- **Frustration** that the General Assembly has created an **inordinately complicated statutory framework** for proffers:
  - Virginia Code § 15.2-2297 localities/rezonings
  - Virginia Code § 15.2-2298 localities/rezonings
  - Virginia Code § 15.2-2303 localities/rezonings
  - Virginia Code § 15.2-2303.4 (2016 version) rezonings
  - Virginia Code § 15.2-2303.4 (2019 version) rezonings

**AMENDED AND RESTATED**  
**PROFFER STATEMENTS**  
- REZONING APPLICATION: #ZMA-2000-009, NP, LLC  
REZONING APPLICATION: #ZMA 201300014  
**PERTAINING TO TAX MAP AND PARCEL NUMBER 32-22K**  
**January 17, 2014** **current date**

With respect to the property described in rezoning application #ZMA-2000-009, and North Pointe Charlottesville, LLC is the contract purchaser of Tax Map 32, Parcels 23A, 20A1, 20A2, 20A3 and 29J (the "North Pointe Property"), and Violet Hill Associates, LLC is the fee simple owner of Tax Map 32, Parcel 22K (the "Violet Hill Property") and the Edward R. Jackson Trust is the fee simple owner of Tax Map 32, Parcel 22K (the "Jackson Trust Property"). The parcels 22H and 22K have been combined into a single parcel 22K (the "Neighborhood Investments Property"). Unless otherwise noted, the respective parties are individually and collectively referred to herein as the "Owner", which term include any successors in interest. The term Owner shall refer to the specific owner of the respective properties collectively whenever a proffered condition relates to properties subject to this zoning map application. The North Pointe Property, the Violet Hill Property, the Virginia Land Trust Property and the Jackson Trust Neighborhood Investments Property are referred to collectively as the "Property," unless otherwise noted.

Pursuant to Section 33.3 of the Albemarle County Zoning Ordinance, the Owner hereby voluntarily proffers the conditions listed in this Amended and Restated Proffer Statement, which shall be applied to the North Pointe Property if this ZMA is approved by the Albemarle County Board of Supervisors. These conditions are proffered as part of the ZMA and it is agreed that the rezoning requested.

Amended and Restated Proffer Statement shall relate to the North Pointe Community, prepared by Keeney & Associates, Inc. hereto as Exhibit A (the "Application") to the Albemarle County Board of Supervisors as the "Application".

## How the current cash proffer system is working

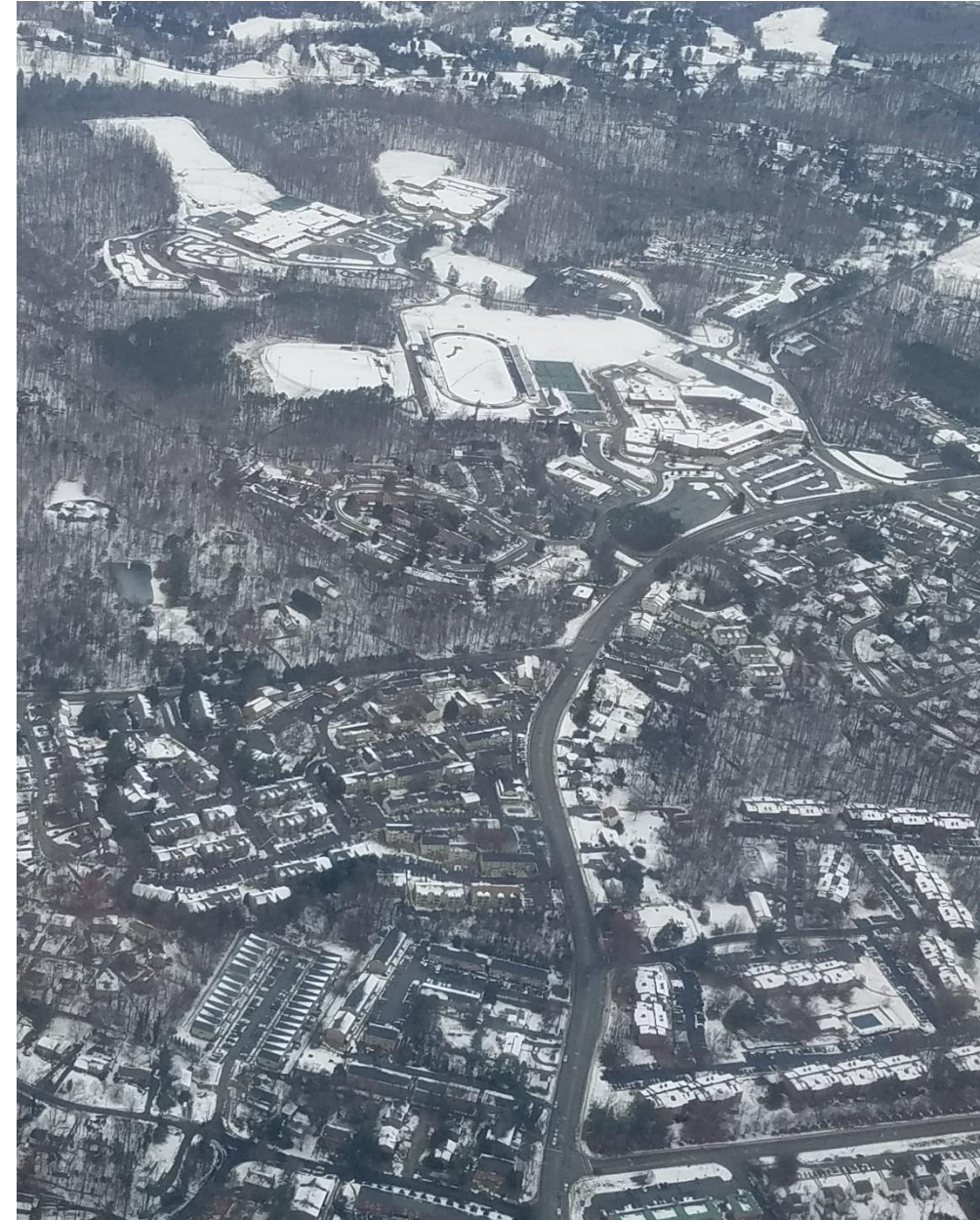
- The inordinately complicated statutory framework will require localities to be mindful of the **different statutory requirements**, including what they may say verbally and in writing to:
  - Applicants for residential rezonings under Virginia Code § 15.2-2303.4 (2016 version)
  - Applicants for residential rezonings under Virginia Code § 15.2-2303.4 (2019 version)
  - Applicants for non-residential rezonings





## How the current cash proffer system is working

- It undermines localities' ability to fully and fairly implement paramount State purposes
- “This chapter is intended to encourage localities to . . . **plan for the future development** of communities to the end that transportation systems be **carefully planned**; that new community centers be developed with **adequate highway, utility, health, educational, and recreational facilities.**” *Virginia Code § 15.2-2200.*
- “The comprehensive plan shall be made with the purpose of guiding and accomplishing a **coordinated, adjusted and harmonious development** of the territory . . .” *Virginia Code § 15.2-2223(A)*





## How the current cash proffer system is working

- It causes the locality's comprehensive plan to be implemented haphazardly and **reactively, rather than proactively**
- It **disincentivizes localities from proactively upzoning land** to implement their comprehensive plan because there would be no proffers to address impacts
- It **may incentivize landowners to pursue by-right development**, which may be based on old zoning that is inconsistent with the locality's comprehensive plan





## How the current cash proffer system is working

- It results in a **significant mismatch between a comprehensive plan's policies, goals, and strategies and the existing, likely old, zoning** on these existing and emerging issues:
  - Affordable housing
  - Transportation and transit issues
  - The evolution of retail and its effect on the built environment
  - Effects of climate change



## How the current cash proffer system is working – an economic development perspective

- Communities **must have a vision** for the future, must **develop a sense of place**, and **must have high expectations in the development** that considers it. *Christopher Lloyd, McGuireWoods Consulting, January 30, 2014*
- One of the many responsibilities of the local elected official is to **guide and direct** a locality's economic development efforts. *Virginia Economic Development Partnership 2017-2018 Guidebook for Local Elected Officials, page 1*
- **One role of a locality is to ensure there is adequate infrastructure.** *Virginia Economic Development Partnership 2017-2018 Guidebook for Local Elected Officials, page 13.*
- “Quality urban development . . . **wants no part of an unstable, unplanned, uncontrolled environment** as they know it is not a place to make a long-term investment.” *Planning America's Communities: Paradise Found? Paradise Lost? Herbert Smith (1991)*



## What Albemarle County would want in an impact fee program

- Impact fees would be **imposed on all residential development**, not only those that have gone through the rezoning process
- Localities would have the ability to determine the **range of capital facilities** to be supported by impact fees
- Impact fees would be supported by one or more **economic studies** that meet reasonable minimum standards, be adopted by the locality's governing body following a public hearing, and be subject to periodic review and adjustments
- Localities would have the flexibility to establish and implement the impact fee **program the community desires** to meet its planning and infrastructure needs
- The enabling authority would not be so prescriptive that it is impossible or undesirable (as is the case with the enabling authority for cluster developments, volunteer affordable housing programs, and transfer of development rights programs) for any locality to adopt a program and implement it