

**Albemarle County Planning Commission
February 23, 2016**

The Albemarle County Planning Commission held a regular meeting on Tuesday, February 23, 2016, at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

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

Other officials present were Rachel Falkenstein, Senior Planner; Mandy Burbage, Senior Planner; Megan Yaniglos, Principal Planner; Bill Fritz, Chief of Special Projects; Elaine Echols, Principal Planner; Amelia McCulley, Director of Zoning/Zoning Administrator; David Benish, Acting Director of Planning; Sharon Taylor, Clerk to Planning Commission and Greg Kamptner, Deputy County Attorney.

Call to Order and Establish Quorum:

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

Public Hearing Items

ZMA-2015-00009 Springhill Village – Proffer Amendment

MAGISTERIAL DISTRICT: Scottsville

TAX MAP/PARCEL: 09000000002800

LOCATION: 1776 Scottsville Road, Charlottesville

PROPOSAL: Reduce cash proffer amount from ZMA201300017

PETITION: Request to amend proffers on property zoned NMD Neighborhood Model District - residential (3 – 34 units/acre) mixed with commercial, service and industrial uses; Entrance Corridor Overlay

PROFFERS: Yes

COMPREHENSIVE PLAN: Community Mixed Use – residential (up to 34 units/acre), community scale retail, service and office uses, places of worship, schools, public and institutional uses
(Rachel Falkenstein)

Ms. Falkenstein presented a PowerPoint presentation to summarize ZMA-2015-09 Spring Hill Village Proffer Amendment. This is a public hearing for a request to change the previously approved cash proffer amounts. ZMA-2013-17 Spring Hill Village was approved in October 2014. It is a 12½ acre parcel zoned for Neighborhood Model. It is located between Avon Street and Route 20 and has frontage along both of those streets. The site is currently vacant and development has not started yet. The approved application plan for the development, as shown in the presentation, allows a range of between 80 - 100 dwelling units, a mix of townhouses and single family detached, between 10,000 – 60,000 square feet of non-residential, and the proposed commercial component along Route 20.

Specifics of the Proposal

The rezoning was approved in October, 2014. At the time of the rezoning the applicant proffered cash proffers for the residential units in the following amounts. These are consistent with the cash proffer policy for the maximum amounts listed within the cash proffer policy.

- \$20,460.57 for each single family detached unit, and
- \$13,913.18 for each single family attached or townhouse unit.

With this amendment, ZMA-2015-09, the applicant requests to change the cash proffer amounts as follows:

- \$4,918.00 for each single family detached unit, and
- \$3,845.00 for each single family attached or townhouse unit

These are consistent with the amounts recommended by our Fiscal Impact Advisory Committee (FIAC). It is also consistent with recent changes to State Code and the County's Capital Improvements Program

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(CIP) and Capital Needs Assessment) CNA. No other changes to the zoning are being proposed with this amendment.

The next three slides present information in tables based on questions received from members of the Commission. The first one deals with school capacity. Spring Hill Village development is in school districts of Cale Elementary, Walton Middle School and Monticello High School. These tables show information about current enrollment and building capacity. As you can see, Cale is currently at or over capacity while Walton and Monticello have excess capacity, which is based on September 30th enrollment data and it does include Pre-K Students.

The next slide talks about projected school enrollments for Spring Hill Village calculated from the 2015 Pupil Generation Factors, which is based on numbers from the initial site development plan that the applicant recently submitted showing 90 dwellings:

- 24 Single Family Detached (SFD)
- 66 Townhouses (TH)

Using pupil generation factors an estimated number of students was calculated that would be living in the development once it is built out showing an estimation of about 25 students, and then breaks it down per school type.

Lastly, the cash proffers that the county has collected to date are shown in the next table. The table shows developments that have currently proffered these amounts meaning that they have built these units and the county has collected the cash proffers in the amounts shown. The question was asked what developments in the area of Spring Hill Village have submitted cash proffers to the county at a higher amount. The one identified is Avinity, which shows they've proffered \$11,900 per unit for townhouse units. It is important to note this does not reflect all proffers we've accepted for in-kind donations or cash donations earmarked for specific projects. (See Table Entitled Cash Proffers Collected in staff report.)

Factors for Consideration:

Factors Favorable:

1. The applicant's requested cash proffer amounts satisfy the requirement that proffers be reasonable in light of the current Capital Improvements Program (CIP) and Capital Needs Assessment (CNA) and are consistent with the amounts recommended by the Fiscal Impact Advisory Committee (FIAC) and recent changes to the State Code.
2. Acceptance of the proffered amounts is consistent with the County's Cash Proffer Policy which currently sets a maximum amount but no minimum amount.

Factors Unfavorable:

1. The Planning Commission has not completed its review of the Cash Proffer Policy and the amounts recommended by FIAC. That has not been recommended yet or adopted.

Staff Recommendation – ZMA-2015-09 Spring Hill Village Proffer Amendment

In light of the reevaluation of the maximum cash proffer amount by FIAC, which is based on the current CIP and CNA and recent State code changes, and in consultation with the County Attorney, staff recommends approval of this rezoning amendment ZMA-2015-09 Spring Hill Village Proffer Amendment, with the revised proffers submitted by the applicant.

Mr. Keller invited questions for staff.

Mr. Lafferty asked does our acceptance of this in any way set a precedent about what the cash proffers will be in the future.

Ms. Falkenstein referred the question to Mr. Kamptner.

Mr. Kamptner replied that each rezoning is different. The facts and impacts will be different. The maximum amount that FIAC has recommended, though, is based upon the current Capital Improvement Program and Capital Needs Assessment, which is the fundamental underpinning for the cash proffer amount. It was the driving factor in the current maximum amount in what FIAC has recommended after the committee work.

Mr. Lafferty said it was his understanding in the past where every residence would be built that we actually lost money when we had to do the fire department, police department, rescue squad and the road improvements and stuff like that. He realized the new state law states it has to be capacity building before we can get proffers on that. We are in debt now and will continue to go in debt if we pursue this policy.

Mr. Kamptner agreed as he assumed that everyone on the Commission is aware that there are bills in each of the General Assembly's houses right now that will further change proffers and the ability of localities to ensure that impacts from new rezonings are addressed in proffers. The current cash proffer policy did not capture all of the impacts, but based on the modeling available and just the political considerations it was an attempt to address them to the extent that the Board decided.

Mr. Lafferty said if we pass this we are saying hey we have a fire sale going on and if you hurry in you might be able to get your cash proffers lowered. How many of these do you think will come back and say we want the same type treatment as we are giving them

Mr. Kamptner said he thinks about a dozen projects.

Mr. Fritz pointed out it was about eight projects.

Mr. Kamptner said there were eight projects total. The Board adopted the Cash Proffer Policy right before the recession hit. Up until then there were a couple of projects that were already proffering as though the policy had been adopted. However, most of the rezonings came in before the policy was adopted in the economic boom time and the per unit cash proffer amounts were even below the amount that the Fiscal Impact Advisory Committee (FIAC) has recommended here actually by quite a bit.

Mr. Lafferty noted that, of course, inflation is in there, too.

Mr. Fritz noted that most of the proffers actually had an automatic acceleration to them.

Mr. Kamptner agreed certainly the ones since the cash proffer policy was adopted in 2007.

Mr. Lafferty said since we really don't have a policy right now, just guidelines, that he had a concern that they might be asked to make a decision that sets us up down the road for further debt.

Mr. Kamptner noted that with new projects, the ability to ensure that impacts are addressed will be a factor in the Commission's recommendation and the Board's action. That will be an ongoing issue.

Ms. More pointed out she had a similar comment and would guess it was addressed in the unfavorable factors that we have not completed the review of the cash proffer policy. She thought it was getting at the same point as Commissioner Lafferty, but wondering would these numbers be reflected or changed or relooked at as part of what we ask to have to come back to us for review. The Commission specifically went through FIAC's recommendations and did not act on it at that time asking for more information.

Mr. Kamptner replied that it was hard to tell given the legislation that is pending. Assuming that one of these bills is enacted the cash proffer policy as it currently exists will have to go away. If any policy is adopted it will be based on the new legislation and it will have a completely different look because the scope and extent of the cash proffer amounts will be dramatically changed and the basis on which they are calculated will really require a very exacting case by case analysis. The current policy uses averages

and for the most part will no longer be legal under the new law if it is adopted.

Mr. Riley thanked Ms. Falkenstein for producing the numbers on very short notice and asked staff to go over it again explaining a little bit more about the capacity conflicts specifically with the elementary school.

Ms. Falkenstein said the table on the bottom shows the projections in future years; but, she can't speak to how they were calculated because she got them from the school. However, you can see they are projecting that Cale Elementary will remain under capacity for the next five years since they currently have two trailers there to deal with the capacity issues that they are experiencing.

Ms. Riley asked are these numbers taking into the account the rest of the development that is going on in the area and the additional numbers of students that will be coming from Avon Park, too, and the other developments that are on line.

Mr. Fritz pointed out staff works with the schools each year to give them an idea of projects that are going to come forward in near-term, short-term and long-term so they can do these projections. They talk about projects that have actually been approved and just not built yet, projects that are likely to be approved in a few years and then be built, and projects that are in the early planning stages so they can do these kind of long term projections. Then the school takes the information that we give them and uses their own expertise and information they get from actual enrollment to develop this kind of information.

Ms. Riley said he was saying it is including Avon Park II and other approved projects. However, these are not necessarily questions for the staff, but as we go forward and if we are looking at the changes that the State Code will require of us in terms of any future cash proffer policy it seems that they are going to need to be tied more specifically to the immediate area surrounding the development. So she thinks school capacity is one infrastructure area to look at. She thinks there are a number of other infrastructure areas all along the corridor of Avon Street Extended and in that general area that would have to be considered before any change in the cash proffer policy in this particular case or any rezoning. However, she thinks that Spring Hill Village could certainly be corrected by the staff or Mr. Cetta. Spring Hill Village is about a quarter to an eighth of a mile from Cale Elementary School. One of the issues that we have been woefully behind in this area is basic pedestrian and bike pathways for multi-modal transportation. So with a development like this we would need to be looking at all of the transportation impacts as well, and not just the increase in traffic and the traffic calming issues, but the need for multi-modal and mass transit. In this case it would include sidewalks from this project to Cale Elementary School. We have had several years in a row of the local coalition, The Safe Route to School Coalition, who has been extraordinarily frustrated that there is no infrastructure for families in the area to walk or bike to school. This is the kind of example that she personally gets very concerned about lowering cash proffers when we can't even keep up with the needs that we have right now. She wanted to point out that is an example in the master plan for our area as well as in the Jefferson Madison Regional Library Five-Year Master Plan there is a call for a new southern urban library in the area, which is a real need and is going to be very expensive to the taxpayers. So this is another example of an impact in a local infrastructure need that we are going to need to be considering on a case by case basis hopefully, but in a cash proffer policy as we go forward.

Ms. Firehock asked to tag onto that she would guess the challenge is that we are to use the figures that are in the current CIP. So all of these projects that Ms. Riely has mentioned, including the dream of the wonderful library that she definitely supports, are not currently in the Capital Improvements Program (CIP). So when you run the calculations for how much we can set the maximum for we just don't have those numbers to work with. That is one of the concerns that Commissioner Dotson raised earlier in that a lot of new and ambitious goals have been put in the comprehensive plan and they have not yet had time to translate into the CIP. So it is hypothetically possible that in the future those numbers that are driving what we say are proffers out of the CIP would be higher. However, then this could all go away because of what is going on currently in the House and Senate, which might do away with our ability to take care of this entirely. She was saving most of her comments for the discussion after we have heard the presentation.

Mr. Dotson thanked staff for digging out this information. He had two questions for staff. First, he asked if the number of trailers as shown in the slide refer to the last year, the 2025/26.

Ms. Falkenstein replied that she thinks it is the current. However, she did not get that clarification from the schools.

Mr. Dotson asked whether the cost of trailers is included in the CIP or the CNA and what the answer was from the school system.

Ms. Falkenstein replied the answer was typically no since the only time they might include the cost of relocating a trailer is if there is an addition in the CIP and that part of the bid is to move the trailer.

Mr. Dotson said he thinks that is an issue that needs to be surfaced and looked at. He did not know how many dollars are involved. However, he looked county wide and did not have current figures, but all he could find on the web was from the fall of 2014. Apparently there are 27 trailers county wide and that would add up to a substantial cost to keep up with new growth and development that may not be the way we do it currently as reflected in the figures. That was his first question. The second question was in regards to the first table since if he reads this right the proffers are actually paid at the time that the building permit is issued. He asked is that correct.

Mr. Fritz replied that cash proffers are paid prior to the issuance of the certificate of occupancy. Mr. Dotson noted it was after the building permit but before the dwelling can be occupied. So if he reads this right by taking a couple of examples going down to Avinity that ultimately if it fully builds out would be 1.4 million, and thus far it has been .8 million that has been collected. If we jump down to Willow Glen 3.4 million and .4 million has been collected thus far. Just to use one more Leake 2.1 million and .17 million has been collected. So that just raises in my mind the significance if we were to begin altering the proffers what some of the leakage development would be on not collecting those proffer fees if we were to make consistent changes down to what had already been paid. He did not know exactly what the Board would do because it seems that we don't, at this point, have a policy about the kinds of questions being put before the Commission tonight.

Mr. Lafferty asked just out of curiosity does adding trailers add capacity, and Ms. Falkenstein replied yes.

Mr. Lafferty said if they just had trailers parked out at schools then they would have plenty of capacity.

Ms. Falkenstein pointed out she thought the idea is that it is a short term solution.

Mr. Lafferty noted with the number of trailers out there that does not seem too short term.

Ms. Firehock said there are lots of school districts that have trailers going on multiple decades now that were supposed to be temporary, and she would hate to see Albemarle County reduce the quality of our infrastructure in that way.

Mr. Lafferty agreed and asked if they can consider temporary capacity issues.

Ms. Falkenstein replied she did not think the capacity takes into consideration the trailers; however, she did not know for sure. If Cale Elementary is currently 7 students over capacity and they have 2 trailers she was assuming that was their solution to the capacity issue at the moment.

Mr. Keller invited further questions.

There being no further questions, Mr. Keller opened the public hearing for comment from the applicant and the public. He invited the applicant to address the Commission.

said the principle is Mr. Vito Cetta who is here this evening along with his daughter Bevin Cetta. She thinks the staff report covered the basic facts of the issue very well. The Commissioners obviously have a very strong handle on the basic issues, particularly those who served on the Commission last year when there were several work sessions and hearings on this issue. She also attended the public hearing earlier this year on the comprehensive plan amendment for the proffer policy and tried to follow along with the Commission's discussions and analysis.

First, she said they are obviously very sympathetic to the challenges the county is facing with regard to school enrollment and capacity, the funding all of the capital improvement programs and future needs. As a resident herself, she said we all clamor for more infrastructure and the challenges of trying to find a way to do that in a way that complies with State Code and hopefully does not balance those needs entirely on the backs of the residential property owners in our community. That being said, she just wanted to point out a couple of things. One, the state legislation that was discussed in the prior work session is very close to being enacted and actually ready to be signed by the governor. However, it expressly provides that it does not apply to any project that has been submitted prior to July 1 of this year. So assuming that the current version of the legislation is enacted, this application would not be subject to that new legislation. So certainly for anything that is submitted after July 1 there will be challenges to determine how you handle proffers for those projects. However, with regard to any projects that have already been submitted we contend there is no impact in any way of the State Code for the pending legislation.

However, as the staff report points out the legislation that was enacted in 2013 makes it very clear what county proffer policies are allowed to consider. As you all know you can only consider into the formula those projects which expand capacity. So the proffers that the applicant has proposed are exactly the same as those that were done 2 years ago. The only difference is the reduction in the cash proffer amounts to the exact figures that were recommended by the county's Fiscal Impact Analysis Committee.

As the staff report notes the proposed proffer amounts are consistent entirely with those recommendations and those are the best benchmark for determining whether the proffer amounts are reasonable. The question at the heart of any rezoning application is, are the proffers that are proposed and offered by the applicant reasonable. The test for that is there an essential nexus between the proffer and the impacts that are proposed to be mitigated by those impacts. There may be disagreement as to whether those proffer amounts are sufficient to address some of the needs like school capacity based on the county's cash proffer policy that is still in effect. The only provisions of the policy that have been called into question by the State Code is the amount of those cash proffers and the maximum amount. As the staff report clearly points out there is no minimum amount provided. So what the applicant has proposed is the maximum amount that is allowed under State Code using the county's formula. Therefore, we think that is a strong argument that this proffer amendment application is reasonable and should be accepted by the Planning Commission, and we ask you to do that.

To comment on Ms. Riley's comment about the need for pedestrian access to Cale Elementary School, again, Mr. Cetta is very sympathetic and as you may have noted on the application plan the project provides for sidewalks along the entire frontage of both sides of the project along both Route 20 and Avon Street in addition to the internal pedestrian connections. Obviously, that does not solve the problem. However, it certainly is a step in the right direction and at least addresses that need specifically with regard to this project. Anything beyond that, of course, would be an off-site proffer that is not permitted. She asked to reiterate the comment that Ms. Firehock made. Again, it was an excellent comment that whatever the desires may be for additional facilities, until those projects are included in the CIP we are not able to factor those into the cash proffers that are offered under the policy. So we ask that you recommend approval of this application and would be happy to answer any questions from the Commission at the end of the public hearing.

Mr. Keller opened the public hearing and invited public comment.

Morgan Butler, with the Southern Environmental Law Center, thanked the Commission for the chance to speak tonight. For a request as important in precedent setting as this one, he said we are a bit surprised

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there was not more analysis of options laid out in the staff report. The reason for that may be that the answers are still being flushed out as part of the ongoing work that is being done now to determine next steps on the overall cash proffer policy. However, if this proposal tonight or any other request to amend proffers for an individual rezoning proceeds to a decision prior to a decision being made about next steps on the cash proffer policy there seems to be some pretty important questions that the Board would want to know the answers to before it decides how to act. He would state two of those questions tonight.

One, is if the county reopens the proffers for any individual development to address the cash proffer amount, as it is being requested tonight, could it also use that opportunity to explore mitigation for other impacts that may have arisen or become clearer since the original rezoning may not have been foreseen at the time of the rezoning. So, he asked, are we basically stuck in this box of just looking at the cash proffer amount or could we consider new impacts that have come to light since that time since the proffers are being reopened at the applicant's request. Second, regarding the cash proffer amount, if the county is essentially bound to approve the lower amount because that is what the current cash proffer policy deems is reasonable based on the CIP and the CNA, would the county be on a better foot to renegotiate a more significant contribution if it were to repeal the existing policy and return to a case by case impact assessment? In other words, under our current policy, the reasonableness is tethered to the CIP and the CNA. If we were to adopt a different cash proffer policy or simply repeal the current policy and remove that tethering to the CIP and CNA, would the county be on a better foot and therefore no longer have to accept the amount that has come forward from the Fiscal Impact Advisory Committee work. We hope the Commission can give those questions some discussion tonight or at least flag them for the Board of Supervisors to consider as it deliberates on this topic.

Neil Williamson, with the Free Enterprise Forum, said he had spent the last six months telling the County that their current cash proffer policy is illegal. The answer that he has heard back from the county law office is that we have not impacted anyone so it is not an illegal policy as it exists. We have no position on this particular application. However, we do have a very strong position on cash proffers; we believe cash proffers should be eliminated. When you discuss trailers, school capacity, and classroom size, he believed that the school board would be a better place to be discussing it in how they are spending their monies rather than the planning commission. The planning commission has a lot on their plate and hopes we can focus on what the planning commission works on rather than what the school board works on.

There being no further public comment, Mr. Keller invited applicant rebuttal.

Valerie Long said the only final comment she would make is just to note that to the extent that consideration is to delay this application until the policy can be amended, as I know you all know, we would just say Mr. Cetta has been patient. The original rezoning was approved in 2014. We waited quite a while for the planning commission, the fiscal impact advisory committee and others to spend time evaluating it. The state legislation changed in 2013; and, we frankly can't wait any longer. The current proffer amounts not only violate the state law enacted in 2013; but, they are just absolutely cost prohibitive and the property will sit vacant. Maybe some would say that is a good thing; but, we think it would be much better to provide a well-designed quality development. It was heavily supported at the time it was approved in 2014 with proffered amounts that are consistent with the Fiscal Impact Committee's recommendations, the County Attorney's recommendations, and with the planning staff's recommendations. So we ask for your support with that; and again she would be happy to answer any questions.

Mr. Keller invited questions for Ms. Long.

Ms. Spain said she had a point of information. She was confused about how the \$20,000 could be offered in 2014 and then less than \$5,000 offered currently. What has changed so significantly about the cost of the development in that time?

Ms. Long replied that she may let Mr. Cetta answer that question. However, the reality is that at the time the proffers were approved that is what was required under the proffer policy, and the expectation has

always been that your application will not be approved if it does not proffer the maximum amounts. She thinks Mr. Cetta has tried to make the project work in the meantime. However, after working through it, and Mr. Cetta works on a number of developments in the area at the price points of those homes or the estimated sale price of those homes, the site work costs along with everything else just frankly do not provide any profit in the project once the \$20,000 per unit proffer is made.

Ms. Spain asked if there would have been in 2014.

Ms. Long replied that she did not know that there would of. However, the hope was that maybe the market would come back and prices might rise and it could be an economically viable project. But, at this time it is not.

Mr. Kamptner asked to expand on what changed. The original cash proffer policy was based on the 2007 CIP CNA and they came up with a per-unit cash proffer amount that was around \$12,000 to \$13,000. Over the years there has been an inflation adjustor each year which brought us up to approximately \$20,000 per unit for a single-family detached unit. The study that FIAC did last year was the first time to extensively go back in and reevaluate the projects that were in the CIP and the CNA because in the recession those two documents had evolved into what is referred to more as a maintenance level CIP and CNA. However, the change in the law in 2013, which required that cash proffers could be used only for public facilities that increase capacity if it is an existing facility or for new facilities, changed the way in which the county could spend the cash proffers. So since that law became effective the expenditure of the cash proffers that have been received were limited to new facilities or existing facilities where capacity was expanded.

Ms. Spain agreed that she understands the change in the policy. However, she was just confused about how the first proffer could have been that in 2014; but, now it has been reduced by three-quarters almost. She would also ask instead of making it exactly what the policy stipulates perhaps the applicant could have gone in the middle somewhere and do a little horse trading instead of going for the very minimum. Again, if it could have been profitable earlier at the \$20,000 mark why couldn't it be profitable now at a \$10,000 mark, for example, rather than at \$5,000?

Ms. Long suggested that Mr. Cetta may be able to provide a better answer to Ms. Spain's question.

Mr. Vito Cetta said it is important to remember several things. One is cash proffers started about 15 or 17 years ago, and before that nobody paid cash proffers. So he thinks a great majority of our homes in the county never paid cash proffers. If he were to do this project again he would not have bought the land. The dilemma we have is we are competing with by right projects or projects that are approved with old cash proffers of \$3,000. There is just no way he can sell a house and add \$21,000 for a single-family dwelling for a proffer where the guy down the street doesn't have to pay anything. Pantops and Crozet are filled with land that can be developed by right, and he just can't compete.

Mr. Cetta said, to answer Ms. Spain's question, we got the project approved in 2014 and we did not do anything in 2015. We put our costs together and figured there is no way we can afford it. If he doesn't get the proffers reduced he just simply will not be able to build and have to wait and maybe get it rezoned or do something else with it. But, that is just frankly the answer. He has built 12 projects in this county, which he is very proud of, and almost all of them required a rezoning. The projects are a big contribution to the county. However, this particular project just can't be built. It is just that simple, and wished that it could be. When he bought the land he figured we could probably get it to work; but, construction costs and site improvement costs are enormous. He said they have to run an off-site sewer that is going to cost a ½ million dollars. He said what they do, and almost every developer does, is buy the land, design the land, do all the engineering, get all the approvals and then sell it to someone who knows how to build homes like Craig Builders, Ryan Homes or somebody else. They are only going to pay a certain amount. If they need \$21,000 more for a single-family unit they will say I am going to go down the street and buy from someone else since the units are \$20,000 less. That is unfortunate, but that is the story.

Ms. Riley thanked Mr. Cetta since she appreciates his explanation of what has changed in terms of why it

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is not cost effective or profitable now to build. She would just ask Mr. Cetta to consider the same viewpoint for the county and the tax payers and whether it is financially feasible for us to have development occur where we are not actually able to cover the cost of the impacts. That is also a business consideration for the county.

Mr. Cetta said he very much appreciates that. Again, prior to 1997 nobody ever paid cash proffers and that was just part of the county's budget to be absorbed. He certainly can see the county's dilemma and understands that. Also, again just as a reminder cash proffers started in 1996 at \$800 and went to \$1,200, \$1,500, 2,100 and \$4,200. In 2007, we would come in and get approvals and that was just a cost of doing business that we would absorb and it was not an issue. Then all of a sudden it went from \$4,200 to \$20,000 in 2007. In 2008, the market went down and it still has not recovered. The first home they built in Wickham Pond was in 2006 and it sold for \$500,000. It recently sold for \$450,000 and the buyers were thrilled with that. However, it was the nature of the market. The market was very strong from 2005 to 2007, and then it took an incredible dip.

Mr. Keller thanked Mr. Cetta and invited further questions. There being none, the public hearing was closed to bring the matter back to the Planning Commission for discussion and action.

Mr. Lafferty said he was concerned because in his 7 years of being on the planning commission we have never been asked to make an evaluation of a proffer. It has always been there is a proffer in it or there isn't and the amount was not really discussed. Therefore, it is sort of uncomfortable to have this tossed back in our laps saying you have to make a policy decision about proffers. He thinks in our current policy the \$20,000 is the maximum and they could negotiate below the \$20,000; and, therefore he was having a hard time seeing how that would be in violation of any law in that it is not saying that you have to pay this \$20,000.

Mr. Kamptner agreed that was correct.

Mr. Lafferty said he was sympathetic with the applicant coming back and wanting the better deal since he would do the same thing. However, given the position that we are in we are trying to protect the county, too. When we get somebody coming back who is offering much less what it means is we are distributing that cost among the taxpayers, and we have seen what happens when they want to raise the tax rate a quarter of a cent or one penny and what the outcome would be to the public. So he was really uncomfortable trying to make a policy decision on something we have not been really involved in except in public hearings at this time.

Mr. Dotson said when this property was initially acquired it was zoned R1 and then rezoned to the Neighborhood Model District and so value was added to that property. At R1 it could develop 12 dwelling units. So by virtue of the rezoning it could build up to 100 units and the current proposal apparently is 90. In addition, it can now include 10,000 to 60,000 square foot of office or nonresidential and so the act of the rezoning conferred considerable value to that property in my interpretation. So if the rational is that it is hard to compete with those who are not rezoning and who are developing under the existing zoning this property is not developing under the existing zoning; it has been substantially benefited. He thinks stepping back from the perspectives that the days of the average cost model may be gone. The CRIM Model that the county has used is an average cost model. He thinks what they are being told, and maybe logic supports it, is that a case by case analysis is in fact the fairest thing.

Mr. Dotson pointed out there are going to be places where there is adequate school capacity and other places where there is not. However, he suggested that maybe a system that addresses those differences should be taken into account. In defense of an average approach that if we think about property taxes my wife and I no longer have children at home. Part of our taxes goes to support the schools. Commissioner More has children at home and she should pay more in taxes because of the children she has. But, what we do instead is average it so that over our lifetime, the lifetime of our property, we all contribute. He thinks in another way that is the fairest thing and that is what the model we have been using up until now does. But, he thinks we are being told, and he too has been tracking the legislation, this may no longer be permissible. He thinks it was today that the House approved the Senate bill, and so unless the governor

vetoes it we are going to be in a new era. So looking at this particular project he thinks probably some reduction is necessary. But, we don't really have an analysis to tell us by how much and counter to that could be that we had the Fiscal Impact Assessment Committee's analysis.

Mr. Dotson noted that the Commission has not yet had the additional information provided that was requested, and takes issue with the staff report that says the additional information was provided because the Commission did not get new information. He also takes issue when it says that the Planning Commission referred the item in deferring it to the Fiscal Impact Committee because we did not. The Commission deferred it so that we could ask of staff in a rapid turnaround, not sending it back to a committee, to provide certain information and we have not had that. So he thinks the report distorts that a little bit. So he is not prepared to go forward with the Fiscal Impact Committee recommendation as it stood some time ago and they should base some amount on a full analysis and provide that to the developer and then he can decide what he wants to do with it. However, he thinks the Board of Supervisors needs to go ahead and receive this and the Commission should not hold it up tonight and send it to the Board with our concerns expressed. They need to think of this in policy terms including the possibility of the new legislation. Therefore, he will not be able to vote in favor of this and will vote no in order to send that motion to the Board of Supervisors.

Mr. Keller invited further discussion.

Mr. Bill Palmer pointed out he was new to this board and the county's way of doing things; but, thinks it is easy to get really narrow on this idea of what this proffer number is. He thinks the other thing they need to keep in mind is that this development was presumably approved because it met other goals of the county such as providing affordable housing and creating a denser development within the urban ring. So there is also that side of what is that worth to hold this up versus not holding it up and his point would be that is also a factor in this yet these numbers are going to be difficult to come to. He agrees that Mr. Dotson is right about continuing the negotiation.

Mr. Keller said he would jump in at this point because he was on the Fiscal Impact Advisory Committee and the lower figures are attributed to them. The FIAC committee worked very hard over a long period of time with staff and those figures actually were the result of rerunning the CRIM Model as accurately as could be done in light of the legislative requirements that built in the capacity building. So that was a significant portion of the reduction right there. The other point was the change in the economic climate, which he thinks they need to acknowledge, because it was something that was frustrating to many persons on that committee. There are other ways the development community is working, such as in storm water improvements that are associated with a number of these projects. That dollar amount somehow does not get reflected in a column like the proffer amounts get reflected. There are transportation improvements that are often there as well. He agreed with Mr. Dotson in this case that they have not received the information in a timely manner from staff that would allow us to speak specifically to these dollar amounts. Therefore, he is going to have to vote against this in the hopes that movement to the Board of Supervisors and the decision coming through from the state on where we are going to be with proffers will allow us to get back in the business of thinking about how we are going to assess impacts. He asked if there are others or they ready to call this.

Mr. Kamptner asked to pitch in a couple of ideas. One is at least right now the information that we have pertaining to the reasonableness of the proffers is the amount that is in the FIAC Study. He recognized that the Commission wants additional information and would recommend the Commission make it clear they believe that it needs additional information regarding the impacts from the project, and it can be up to the board to decide whether it wishes to remand it back to the Commission because we are up against the 90 day time period by which the Commission has to make a recommendation. The Commission may also want to include in its recommendation whether or not given the conclusions of the FIAC Committee and where we are right now particularly with the state legislation to be clear that this pending legislation will not affect this project. But, maybe it is time for the Board to consider repealing the implementation of the cash proffer policy when it considers zoning map amendments at least until everything is settled.

Mr. Keller asked if anyone would like to make the motion.

Mr. Lafferty said the projects that Mr. Cetta has done in the past have been very nice and beneficial to the community and he would hate for this to throw a wrench in it. But, he is caught with the notion that every residence that we build we lose money on and now we stand to lose a lot more money on. So it is a dilemma and thinks they can't sit here and negotiate with Mr. Cetta because that is not the Commission's duty and has not been done in the past. However, he would hate to hold up the project because Mr. Cetta already has a lot invested in it and suggested the Commission needs to toss it back to the Board of Supervisors.

Mr. Keller said that was his understanding as well. So either decision up or down it moves the application to the Board of Supervisors and the Planning Commission is not holding up the process if we do that. In addition, only the applicant is in the position to ask for a deferral and not the Commission. Therefore, the Commission needs to keep this moving.

Mr. Lafferty noted in the past the Commission has asked if the applicant wants to defer; however, he was not saying that was an objective here since it is certainly going to delay it to take it back to the Board and then probably come back to the Commission.

Mr. Dotson said as a preamble he would like to echo some of the sentiments that Commissioner Lafferty has said that Mr. Vito Cetta has done some very good and beneficial projects in the county; has always been a strong supporter of the Neighborhood Model and has tried to work hand in hand with the Commission on many occasions. However, it is not really about that; it is a bigger issue.

Motion: Mr. Dotson moved and Mr. Lafferty seconded to recommend denial of ZMA-2015-09 Spring Hill Village Proffer Amendment with the following reasoning and thoughts behind it.

1. Some reduction based on looking at the school enrollments and capacities may be in order; but, we don't know at this point what that would be.
2. The recommendation of the Fiscal Impact Advisory Committee (FIAC) of this reduced amount has not yet been fully analyzed by the Planning Commission or the Board of Supervisors; and, the additional information is still needed that was requested a number of weeks ago.
3. A full analysis should be conducted of the actual costs to the county of going forward with this development.
4. The Board of Supervisors should set a policy, not use this project to set a precedent, and possibly want to consider repealing the current proffer policy while that is undertaken.

Mr. Keller invited discussion. There being no further discussion he asked Mr. Kamptner if the motion fits his framework for giving enough information, and Mr. Kamptner replied that it did.

Mr. Keller asked for a roll call.

The motion carried by a vote of 7:0.

Mr. Keller noted that a recommendation for denial of ZMA-2015-09, Spring Hill Village Proffer Amendment will be forwarded to the Board of Supervisors along with the Planning Commission's reasons and thoughts behind it.

The Planning Commission recessed at 7:27 p.m. and the meeting reconvened at 7:33 p.m.

(Recorded and transcribed by Sharon C. Taylor, Clerk to Planning Commission & Planning Boards)