

Residential Development Impact Work Group: Conclusions and Recommendations

Albemarle County's Comprehensive Plan recognizes "the shared responsibility between the County and new development to pay for infrastructure and improvements to the Development Areas to address the impacts of new development."¹ The County has traditionally used proffers as its primary tool to obtain contributions of cash, land, and infrastructure from residential rezonings to help offset the impacts on public facilities. However, Virginia Code § 15.2-2303.4, which became effective in July 2016, places substantial new limits on localities' ability to accept, request, or even suggest proffers as mitigation for many types of impacts.

In light of this new law and the challenges it presents, the Board of Supervisors formed this work group and charged us with understanding the statute; analyzing alternative means for addressing the fiscal impact of new residential development; and providing a recommendation on how to proceed with addressing those fiscal impacts. This document summarizes our conclusions and recommendations.

Understanding the Effects of Va. Code § 15.2-2303.4, and Related Recommendations

During our evaluation of the new proffer statute, County staff pointed out that, as a result of the obstacles the new statute presents, no localities subject to the law are currently accepting cash or off-site proffers. Staff also advised the work group that they doubt a project review process can be developed that will safely allow for the acceptance of off-site or cash proffers. However, staff indicated that it *may* still be possible to accept proffers for some transportation and school impacts when it is clear an impact is specifically attributable to a new residential development proposal (*e.g.*, a turn lane into the new development), although this would need to be determined on a project-by-project basis.²

After assessing the new statute, the work group generally agrees with staff that it would be difficult to develop a process that would allow the County to negotiate and accept most types of off-site and cash proffers without fear of violating the statute—at least in amounts significant enough to warrant the time and resources that would be required to do so. However, it is important to point out that the statute's major limitations on proffers pertain to *off*-site impacts and cash contributions. The County may still negotiate and accept proffers to mitigate *on*-site impacts as long as the impact sought to be mitigated is "specifically attributable" to the proposed residential development. This means that proffers likely can still be accepted for things such as enhanced erosion and sediment control measures on sites with streams, design and layout features that help reduce demand for County services, and on-site transportation enhancements such as transit stops. As a result, even if staff determines that the County cannot accept off-site or cash proffers for a particular proposal, proffers can still be a valuable tool for mitigating many on-site impacts.

As part of our discussions, staff and work group members raised the concern that the new proffer statute is discouraging developers from seeking residential rezonings in the County (and

¹ Albemarle County Comprehensive Plan, Strategy 1.c in Growth Management Chapter (page 3-8).

² See document entitled *Analysis of the County's ability to accept proffers*, provided to RDIWG as part of 7/17/17 meeting materials.

in other localities). Developers who fear their rezoning proposals will be denied because of the new obstacles the County faces in accepting proffers may be choosing instead to develop parcels by-right in the Development Areas (and/or build in the Rural Areas), undercutting key components of the County's growth management policy.

In light of the potential negative consequences of a perceived moratorium on residential rezonings, the work group recommends that the Board make clear to the community that the County is still open to approving residential rezoning proposals and will carefully consider each proposal even if staff concludes that the County cannot safely accept any off-site or cash proffers for the development. A proposed residential rezoning's fiscal impact should certainly be an important factor in the County's assessment of the proposal, but it should not be the *only* factor. The work group recommends that the Board also consider whether a proposal meets or exceeds the Comprehensive Plan's expectations in other valuable ways, and whether any on-site proffers help mitigate key impacts of concern. If so, the Board could decide to approve it in spite of the additional fiscal burden it could place on the County.

The work group also discussed—but does not recommend—a widespread “comprehensive rezoning” in which the County would rezone Development Area parcels to match their Comprehensive Plan designation. Among other concerns with this approach, in areas where an upzoning would occur, it could eliminate the Board's ability to determine whether the timing is right for a more intensive scale of development on those parcels. It could also undercut other rezoning projects that have already been approved—with proffers—but have not yet been built. Further, it could limit the County's tools to prioritize development of certain core areas such as the Rio/29 intersection area. And it would take away the County's ability to obtain proffers to mitigate *on*-site impacts such as environmental impacts. That said, the work group feels that a much more limited, County-initiated rezoning of one or two small, priority areas within the Development Areas, perhaps coupled with a form-based zoning code to ensure new development in those priority areas is consistent with the County's design and functional objectives, may be worth considering.

Analysis and recommendations for addressing the fiscal impact of new residential development³

With the County's ability to use proffers to offset the fiscal impacts of new development significantly curtailed by the new law, the work group analyzed a number of other potential tools for doing so, including:

- Drainage districts
- Service Districts
- Road Impact Fees
- General Impact Fees

³ For more information on potential options available to the County to fund services and infrastructure, the Board may wish to review the final report and recommendations generated by the Albemarle County Citizen Resource Advisory Committee in 2015, available at <https://albemarle.legistar.com/View.ashx?M=F&ID=4115623&GUID=718E963D-9930-4839-A033-FA890B1F120E>.

- Using special use permits (SUPs) for increased residential density, and then mitigating impacts through SUP conditions.

Unfortunately, the work group concludes that none of the options we assessed seems likely to provide enough revenue (either as an individual tool or collectively) to meaningfully offset the fiscal impacts of new residential development in the County, at least in the form in which these tools are currently enabled by the General Assembly.

However, the work group strongly recommends that the County form a coalition with other local governments, developers, smart growth advocates, and other stakeholders to advocate for reenacting and expanding Virginia’s current enabling authority for general impact fees (codified in Va. Code §§ 15.2-2328 and 15.2-2329).⁴ General impact fees offer a noteworthy advantage over proffers in that they could potentially be made applicable to by-right development as well as development approved pursuant to a rezoning. This would expand the potential universe of new residential units contributing cash to help offset the fiscal impacts of growth and better capture the full range of new residential development that generates impacts.

General impact fees set at a reasonable level could also help the County align its land use patterns with its growth management goals, which is another issue the work group explored.⁵ For example, because they apply to by-right development (unlike cash proffers, which only come into play with proposed rezonings, and typically only in the County’s Development Areas), impact fees would help address the financial disincentive that cash proffers can create for developers seeking to rezone Development Area parcels. Further, as part of improving the impact fee enabling authority, consideration could be given to allowing localities to charge a lower impact fee for development proposed in a locality’s designated growth areas, based on the lower cost per unit of providing infrastructure and services in such areas. Structured properly, impact fees could also help improve access to housing.

These are the types of changes a coalition could identify and advocate, and in light of the frustration that many local governments and developers alike are feeling with the new limitations on proffers, this could be a good time to refocus on general impact fees.

Finally, service districts—specific geographic areas created by local ordinance within which a fixed tax or real property tax is assessed to generate revenues for government services within that geographic area—offer some limited potential as currently enabled and are worth mentioning. Two noteworthy limitations are that the current state enabling authority prohibits

⁴ The *general* impact fee enabling authority referenced here is different from the *road* impact fee enabling authority set out in Va. Code §§ 15.2-2317 through 15.2-2327.

⁵ Although one of the work group’s *goals* (as distinguished from our *charge*) was to “identify and evaluate alternatives for aligning land use and growth management goals by means of by-right and re-zoned residential development,” we did not spend as much time on this issue. This is because several of the tools available to localities for doing so are already in use in Albemarle (*e.g.*, overlay districts). Further, the County is exploring others that may offer some potential in this regard (*e.g.*, form-based zoning in the core Rio+29 small area), and the work group concluded that it makes sense to allow those efforts to play out and to then assess their success in achieving the stated goal. Those that prove successful in aligning land use with the County’s growth management goals could then be expanded or implemented in other areas as appropriate.

their use for schools, police, and most general government services, and it places some landowner-approval requirements on using them to construct and maintain streets and roads.⁶ Unless and until these restrictions are removed in the enabling authority, trying to tailor service districts to new rezonings or larger geographic areas in which multiple rezonings are anticipated seems unlikely to provide significant revenue for key fiscal impacts of new residential development. This is another tool the work group recommends the County advocate for expanding at the General Assembly, although impact fees should be the higher priority.

Summary of Conclusions and Recommendations:

- We urge the Board of Supervisors to make clear to the community that the County is still open to approving residential rezoning proposals and will carefully consider each proposal even if staff concludes that the County cannot safely accept any off-site or cash proffers for the development. Although we agree that a proposed residential rezoning's fiscal impact is an important factor in the decision whether to approve a rezoning, we do not believe it should be the only factor.
- We have a number of concerns with, and recommend against, a widespread "comprehensive rezoning" in which the County would proactively rezone Development Area parcels to match their Comprehensive Plan designation. However, a much more limited County-initiated rezoning of one or two small priority areas within the Development Areas, perhaps coupled with a form-based zoning code for those priority areas, could be worth considering.
- The County should form a coalition with other local governments, developers, smart growth advocates, and other stakeholders to advocate expanding Virginia's current enabling authority for general impact fees.
- The County should also explore and advocate expansion of the enabling authority for establishing service districts.

⁶ Va. Code §15.2-2403. For additional information on service districts, please see Deputy County Attorney Blair's memo to the work group dated January 10, 2018 and appended to this report.