

**APPLICATION FOR AMENDMENT OF PROFFERS
ZMA-2010-00014
HOLLYMEAD TOWN CENTER (AREA A-1)**

BACKGROUND

On September 12, 2007, ZMA-2005-00015 was approved for that portion of Hollymead Town Center containing Kohl's and proffers were approved as part of that rezoning submitted by a prior owner/developer. Beginning in 2010, after acquisition by Route 29, LLC, as Kohl's was seeking its certificate of occupancy, the Applicant requested that certain proffers be amended to facilitate the construction of Kohl's, and the proffers were amended at that time pursuant to ZMA-2010-00014. There was discussion as part of that proffer amendment regarding the amendment of Proffer #4, the Transit Proffer, and the Planning Commission recommended approval at that time of a reduction in the proffer to \$25,000 per year for 10 years. However, because the Planning Commission's recommended reduction in the proffer amount was inconsistent with the public notice, amendment of Proffer #4 was unable to be approved by the Board of Supervisors, and was withdrawn for proposal at a later date. The applicant now returns with this application seeking amendment of Proffer #4 consistent with the previous PC recommendation.

On December 17, 2018, Applicant held a pre-application meeting with County staff. Present were Amelia McCulley, David Benish, Bart Svoboda and Kevin McDermott. Applicant did not receive any checklist or formal, written comments from Staff resulting from the meeting. At the meeting, however, the County recommended Applicant engage in a traffic study. Applicant did retain Ramey Kemp to engage in said study, but as the details were being discussed with the County thereafter, County staff determined that the traffic study was really not necessary, so Ramey Kemp ceased further work.

Proffer #4 presently reads as follows:

Public Transit Operating Expenses – Within thirty days after demand by the County after public transportation service is provided to the Project, the Owner shall contribute \$50,000 cash to the County to be used for operating expenses relating to such service, and shall contribute \$50,000 cash to the County each year thereafter for a period of nine (9) additional years, such that the cash contributed to the County pursuant to this Proffer 4, shall total Five Hundred Thousand Dollars (\$500,000). The cash contribution in years two through ten shall be paid by the anniversary date of the first contribution.

There has been an ongoing dispute between the Applicant and the County related to the County's application of the existing proffer, purportedly triggered by the start of a JAUNT commuter bus which stops near the subject property. Applicant has disputed the application of the proffer under these circumstances on the grounds that there is insufficient nexus and rough proportionality between this proffer and any reasonably expected condition or impact caused by this project. In

other words, the commuter route does not actually address any impact caused by the subject development. This proffer amendment application is intended to resolve that ongoing dispute and to make some funds immediately available to the County without any additional triggering event or continued dispute over the existing triggering event.

Other factors favorable to this request include that significant transportation improvements in the area of the subject property have been implemented since the imposition of the original proffer which reduce transportation concerns, including the widening of Route 29, the construction of Town Center Drive and the extension of Berkmar Drive. It is additionally relevant that the proffer is connected to Area A-1, and that despite a permeating conventional wisdom in some circles that the proffer is intended to address all transportation/transit impacts of Hollymead Town Center, there is no such statement or agreement on record to indicate the proffer is intended to go beyond A-1, and Applicant, through conversations with the original proffering owner, and otherwise, has no knowledge of any intent ever existing to address impacts through these proffers for any other section of Hollymead Town Center.

PROPOSED PROFFER AMENDMENT

Based on the language of the other transportation proffers listed above, the Applicant hereby proposes that Proffer #4 be amended as follows:

4. Transit Funding. At the option of the County, the Owner shall pay to the County in support of public transit to the Project either (1) \$25,000 per year for 10 years with the first such payment due upon approval of this amended Proffer OR (2) a lump sum payment of \$200,000 payable within 14 days of the approval of this amended Proffer.

Please note that option (1) outlined above is consistent with that proposal recommended by the Planning Commission in 2011, and that was long before the significant transportation improvements mentioned above were completed, providing even more weight to the appropriateness of the proposed reduction.

ALTERNATIVE PROPOSAL: Applicant is willing to also propose the following resolution as an option if preferable to the County, but which would require companion and contingent rezoning applications related to ZMA 2016-001 and ZMA 2007-001:

1. ZMA 2010-0014: Proffer #4 is amended to read: The Owner shall pay to the County in support of public transit to the Project a lump sum of \$250,000, plus \$50,000 per year for the following five years.

2. ZMA 2016-001: Proffer #4 related to cash proffers is deleted.

3. Code of Development for ZMA 2007-001 (HTC Area A-2) is amended to reduce the maximum number of permitted units from 1222 to 800.

If the County prefers to pursue this Option, Applicant will amend its request hereunder consistent with Item #1, above, and will file the necessary additional, companion applications related to Items 2 and 3. These alternative proposed amendments would each be contingent on the others' approval.

CONSISTENCY WITH THE COMPREHENSIVE PLAN

The subject properties are currently used consistently with the Comprehensive Plan and no change in use is proposed. Therefore, the proposed proffer amendment would have no impact on the properties' consistency with the Comprehensive Plan.

IMPACTS ON PUBLIC FACILITIES AND PUBLIC INFRASTRUCTURE

The proposed proffer amendment has no impact on public facilities or infrastructure. As noted above, infrastructure improvements impacting the subject properties and improving transportation in the surrounding area have already been completed.

IMPACTS ON ENVIRONMENTAL FEATURE

The proposed proffer amendment has no impact on any environmental feature