**Albemarle County Planning Commission**
**FINAL Minutes May 14, 2019**

The Albemarle County Planning Commission held a public hearing on Tuesday, May 14, 2019, at 6:00 p.m., at the County Office Building, Room 241, Second Floor, 401 McIntire Road, Charlottesville, Virginia.

Members attending were Tim Keller, Chair; Daphne Spain; Pam Riley, Karen Firehock; and Jennie More.

Members absent: Julian Bivins, Bruce Dotson, and Luis Carrazana.

Other officials present were Rebecca Ragsdale, Rachel Falkenstein, David Hannah, Cameron Langille, Andrew Knuppel, Michaela Accardi, Lea Brumfield, Andy Herrick, David Benish, Carolyn Shaffer, and Sharon Taylor.

**Call to Order and Establish Quorum**

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

**ZMA201600013 Willow Glen Proffer Amendment**
Ms. Falkenstein reported that the applicant wished to amend the cash proffer analysis used to approve the rezoning and to receive by-right credit for 10 units on the property. She reported that the property is located on Dickerson Road, with three parcels totaling approximately 19.3 acres; the current zoning on the property is PRD, and the Comp Plan is Urban Density Residential.

Ms. Falkenstein said that the applicant was not proposing to change any physical features of the development, and Willow Glen was rezoned in 2007, with phase one and 32 units completed and the construction of Shannon Ground Fort, an access off of Town Center Boulevard. She stated that the remaining portion of the property proposed up to 141 units was recently approved for a special exception to reduce the originally approved maximum density of the property. She said the property also had an entrance proposed for the future phases off of Dickerson Road, and the development would be a mix of single-family units and townhomes organized a central area.

Ms. Falkenstein stated that the applicant was proposing the previously approved cash proffer amounts to the lesser amounts of $4,918 for a single family and $3,845 for a townhome. She said they were also proposing to change the annual adjustment start date from 2008 to 2018, and was requesting by-right credit for 10 units that could have been built prior to the rezoning of this property. She noted that it was zoned RA in 2007, and the applicant was asking for credit for the cash proffers and the 15% proffer for affordable housing not kicking in until the tenth unit is constructed in the next phase of development.

Ms. Falkenstein reported that unfavorable factors are that the cash proffers were deemed to be reasonable at the time they were offered and accepted by the Board, and in 2016, the Board denied two similar requests the applicants were asking. She said that one favorable factor was that the by-right credits had been granted recently, with a recently approved residential rezoning with by-right credit, which were required in 2016 when they still had a cash proffer policy – which was appealed in 2016.

Ms. Falkenstein presented staff's recommended motion of denial of the portions of the proffers that would reduce the cash proffers, and approve the portions of the proffers that would provide by-right credit.

Ms. Firehock asked if the applicant had reduced the number of units originally approved to 141.

Ms. Falkenstein responded that they were able to do that with a variation to their site plan, and had previously approved up to 234 and was now asking for fewer units – 175 total.

Ms. Firehock asked if the original amount of residential density was 10 units.

Ms. Falkenstein confirmed this.

Ms. Firehock noted that the net increase was 165 that they were able to build.

The Chair opened the public hearing and asked the applicant to come forward.

Ms. Valerie Long of Williams Mullen Law Firm addressed the Commission on behalf of Dickerson Ridge, LLC. She stated that George Ray, the principle owner and developer, was present, along with Steve Edwards of Edwards Design Studio.

Ms. Long stated that as part of phase one, the developer constructed a pedestrian connection. She referenced the by-right development plan that demonstrated they had 10 by-right lots that could have been built when the property was zoned RA. She noted the approved plan from the 2007 rezoning with 234 units, and she said that the main reason they modified the plan was because a large number of the units were condominium units. She said that at that time, the condo market was hot – but by the time they got it approved, the recession hit and the market dwindled.

Ms. Long presented photos of existing improvements, stating that there was a mixture of single-family detached homes, attached homes, and affordable units built in partnership with the Piedmont Housing Alliance (PHA). She said that since the developed portion of phase one, the remainder of the property has not moved forward, largely due to "the crushing burden of the cash proffers."

Ms. Long reported that in 2013, the state legislature and governor amended the state code and changed the rules as to how cash proffers could be used. She said that in essence they said that they can only be used for CIP projects that expand capacity and can no longer be used for renovations, technology upgrades, or maintenance. She explained that as a result of that, the County reinitiated its Fiscal Impact Committee and asked them what the new proffer amount should be – stripping out all the CIP projects that were not expansion projects.

Ms. Long stated that with single-family detached units, the proffered amounts in 2007 were $17,500; after the committee and Board policy stripped out the CIP maintenance projects, the per-unit price was reduced to just over $5,000 – with a difference of $12,500, the amount of the original proffer attributable to maintenance or renovation projects. She reiterated that the state code now says you cannot use any amount of the proffered funds for maintenance projects, only expansion projects. She noted that the portion of the proffers attributable to expansion CIP projects is only 28%, with 72% of the proffered amount being dedicated to maintenance and renovation projects.

Ms. Long explained that the committee originally established a laundry list of all the CIP projects in the County, including those for maintenance, and put them all together. She said that the state came back and said they could only use proffer funding for expansion, so the County reassembled the committee and stripped out all the maintenance projects and just left expansion projects, reducing the price per unit by 72%. She said that the state code said they could no longer use funds for maintenance projects, and the County's response thus far has been that they are not used for maintenance but only for expansion.

Ms. Long stated that with the formula and the $17,500, 72% of that figure was allocated towards maintenance expenses, so the applicant contends that it was equitable and legally required for the County to reduce the proffers. She said that they cannot use cash proffers allocated for maintenance for something else, and the whole point of a proffer is to mitigate the impacts. She stated that under the new formula, it would be an excessive contribution on a per-unit basis to use those funds for expansion.

Ms. Long emphasized that the Fiscal Impact Committee and policy say that each unit generates a certain amount of impact that needs to be mitigated, and it's just under $5,000 for single-family units, not $17,500; for attached units, it was just under $4,000. She said that the applicant is asking that the Commission reduced the proffers to be consistent with state law, the County's own committee, and the County's policy at the time fiscal impact was enacted.

Ms. Long added that the County had essentially been taking 72% of the funds allocated to maintenance and reassigning them – but state code says you can't do that and can't charge an applicant for the impact their project creates. She noted that the impact didn't get created until a unit has been built and a CO was issued, which was why the state code said that's when they collected the proffer. She said that the development did not create any impacts in phase two, and as a result, the proffers should be equal to what it says the impact is related to – 28% of what currently is being charged.

The Chair opened the public hearing.

Mr. Sean Tubbs of the Piedmont Environmental Council (PEC) addressed the Commission and stated that the PEC urges them to deny the request, only because there is still a conversation needing to be had about how the County will pay for the implementation of the Comp Plan – and for now, cash proffers are part of that equation. Mr. Tubbs said that the proffer report for FY18 that was sent to the Board of Supervisors in January showed that the County collected $1 million cash proffers from 15 projects, and that money went to affordable housing projects and the CIP. He noted that one of those projects was for Out of Bounds, which came before the Commission and the Board of Supervisors for a similar request of reduction but went forward.

Mr. Tubbs said that in that same time, the County spent $1.5 million in previous funds from cash proffers – transit projects, sidewalks, the Pantops public safety station, etc. He stated that as the County continued to urbanize, residents depended on these kinds of revenues to pay for part of the cost of infrastructure in Albemarle to help offset the cost of a growing community. He said that he understood the applicant's argument and was sympathetic, as the cash proffer system as they knew it was not coming back – but the proffer reform was ongoing, including legislation in this year's General Assembly that changed the proffer laws slightly. He added that he wasn't sure how the conversation would go on impact fees, but he was eager to see how it proceeded as communities across Virginia that were rapidly growing tried to figure out ways to pay for the cost of development.

Mr. Tubbs said that he would like to know if it was possible to reconvene the Fiscal Impact Committee, as it had been since 2016 since that committee last met. He said that how they would pay for growth was one of the most important questions of their time, and the Board of Supervisors held a meeting on May 9 and had several scenarios regarding potential tax increases to pay for growth – and everyone had to pay their fair share. He said that in this case, there was a contract signed and possibly that could be changed in the future, but they should have a broader conversation before revisiting these decisions.

Mr. Neil Williamson of the Free Enterprise Forum addressed the Commission and stated that in terms of everyone paying their fair share, developers were being punished for doing the most difficult thing and the thing that the community wanted and needed. He said the proffer reforms were moving forward, but if they looked at the CIP, there was well over $1 million over the next four years for schools – but it was based on existing residents and not much growth. He emphasized that most people were already here, and proffers were not the answer.

Ms. Long stated that in phase one, there was $415,000 in proffers just for phase one, with four units still left to be built. She said they were not looking to get out of paying their fair share, but are asking that the loophole be closed and they provide the opportunity to pay the same amount other owners and developers were paying, as consistent with state law. She emphasized that if the County were to continue to charge the full amount, it was overcharging each unit for the impact they were creating. She said that the impact of a detached unit was just under $5,000, and she pointed out that some projects that were approved paid no proffers, and most of the projects that paid into the system paid at a lower amount.

There being no further public comment, the Chair closed the public hearing and the matter was placed before the Commission.

Mr. Keller commented that he served on both committees and feels that the points Ms. Long made are accurate and to the point, and he wondered if someone agreed to a contract and the second party came in and asked to have the contract changed after the agreement whether that first party would still be arguing as to what was agreed upon originally. He said that there was a break-even point in terms of taxes for a residential unit, and when the built units below the $600K range, they weren't going to carry the costs now. He said that the point is that there are impacts for development and they need to come to grips with how they were going to support the infrastructure of that development, including schools and transportation.

Ms. Firehock asked Mr. Herrick for clarification Ms. Long's citing of state code.

Mr. Herrick responded that Page 4 of the staff report cites state law that applies here – Virginia Code Section 15.2-2303.2, Subparagraph D, "…no cash payment proffer pursuant to state laws shall be for any capital improvement to an existing facility, such as renovation of a technology upgrade, that does not expand the capacity at such facility, or for any operating expense at any existing facility, such as ordinary maintenance or repair."

Mr. Herrick stated that this question had arisen with the Springhill Village and the Out of Bounds application, in which the Commission voted not to change the policy on similar applications. He noted that at the time, Mr. Kamptner had indicated to the Board of Supervisors that since the date of the proffer legislation, staff had not used proffers received for the purposes other than what were stipulated and confirmed that they were following the new rules.

Ms. Firehock said that one of the challenges they had in going back in time and reconsidering something that had already been approved was that they had to imagine the reasoning of the Planning Commission and Board of Supervisors at the time they approved this development. She said that in approving the expansion of density, which is a considerable financial benefit to the applicant, they also do that with the knowledge that they would have a certain amount of cash proffers coming in to offset the costs of the additional expansion.

Ms. Firehock commented that she found the state's decision that proffer funds couldn't be used for maintenance projects was unfortunate, as it continued to tie the hands of growing counties in being able to pay for the cost of development. She stated that they were not allowed to assign impact fees, and if they expand facilities, they would eventually need maintenance – so the growth that caused a facility to expand also generated additional impacts. She noted that a home had to be valued at more than $600K in order for its real estate tax to cover the costs of schools, roads, and other infrastructure.

Ms. Firehock stated that given these factors, she would vote as she had in the past and deny the request for proffer reduction, as she could not go back in time and determine that the Board would have approved the same density with a lower cash proffer amount. She noted that she had been on the Commission since the proffer fees were reduced and would be consistent with her previous positions.

Ms. Riley said that she agreed with her rationale and would support staff's recommendation for denial.

Ms. More also expressed her agreement.

Mr. Herrick stated that staff's recommendation was to support some aspects of the proposal but denial of the request regarding proffers.

Ms. Firehock **moved** that the Commission recommend denial of the proposed amendment to Section 2 (A)(i), 2(A)(ii), and 2(B) of the Proffer Statement in ZMA201600013 (Willow Glen Amendment #1) and the affected Tax Map and Parcel Numbers; and that the Planning Commission recommend approval of all other proposed amendments to the Proffer Statement in ZMA201600013 (Willow Glen Amendment #1) as to Parcels 32-49F, 32-49I, and 32-49J. Ms. More **seconded** the motion, which passed 5:0.