



# County of Fairfax, Virginia

## MEMORANDUM

**TO:** Board of Supervisors

**SUBJECT:** Summary Notes from the **May 3, 2016** Development Process Committee Meeting

**DATE:** May 23, 2016

The following Board Members attended the meeting: Development Process Committee Chair Kathy L. Smith, Sully District; Chair of Board of Supervisors Sharon Bulova; Supervisor John C. Cook, Braddock District; Supervisor John W. Foust, Dranesville District; Supervisor Catherine M. Hudgins, Hunter Mill District; Supervisor Jeffrey C. McKay, Lee District; Supervisor Penny Gross, Mason District; Supervisor Daniel G. Storck, Mount Vernon District; Supervisor Linda Q. Smyth, Providence District; and Supervisor Pat Herrity, Springfield District.

The following is a summary of the highlights of the discussion at the May 3, 2016, meeting.

### **Telecommunications Legislation - House Bill 883:**

Elizabeth Teare, Deputy County Attorney, and Fred Selden, Director, DPZ, provided an overview of House Bill 883 which was adopted by the 2016 Virginia General Assembly with an effective date of July 1, 2016, and its impacts on Fairfax County. House Bill 883 pertains to the approval process for telecommunication towers and stipulates that when telecommunication towers are located in a zoning district where they are permitted, the telecommunications tower shall be deemed to be substantially in accord with the Comprehensive Plan, and Planning Commission approval under Sect. 15.2-2232 of the Code of Virginia (2232 Review) is not required. The new State Code provisions eliminate the 2232 Review process for monopoles and towers that are permitted by right in the Zoning Ordinance. Lorrie Kirst, Senior Deputy Zoning Administrator, provided an overview of the current zoning provisions which allow monopoles and towers up to 199 feet by right in certain zoning districts, and monopoles up to 199 feet by right in all zoning districts when located in a utility easement of at least 90 feet in width or on County owned and controlled properties, and when all applicable zoning regulations are met. Given that monopoles and towers can have adverse impacts on adjacent properties, particularly at a height of 199 feet, staff is recommending that the Board adopt a Zoning Ordinance amendment that would require special exception approval by the Board prior to the installation of all monopoles and towers. If the proposed amendment were to be adopted, all monopoles and towers would continue to require 2232 Reviews in addition to special exception approval. Staff noted that in the future it may be appropriate to consider allowing certain monopoles and towers by right in certain situations with a maximum height that is greatly reduced from 199 feet and/or with minimum setbacks from all property lines. Historically, staff has worked closely with both

the telecommunication facility industry as well as citizens in developing the mobile and land based telecommunication zoning and Comprehensive Plan provisions, and it is anticipated that staff will work closely with the Planning Commission and interested stakeholders in the development of any future by right provisions for telecommunication monopoles and towers.

It was noted that House Bill 883 originally excluded Planning District 8, which includes Fairfax County, and Planning District 8 was added to the Bill at the end of the legislative process. It was suggested that the County should work with the legislative delegation during the 2017 General Assembly to try to remove Planning District 8 from this legislation. It was noted that the proposed additional special exception process would add time and cost to the approval process for those monopoles and towers that are currently permitted by right, and it was suggested that staff should look at ways of expediting the review process, as well as considering reduced application fees for such applications. It was also suggested that the 199 foot tall height limitation may be too tall and consideration should be given to a shorter maximum allowable height. It was noted that a new Distributive Antenna System (DAS) is proposed to be installed on new poles in Tysons, and it was suggested that perhaps there should be specific provisions that address these DAS installations. Staff noted that under the Zoning Ordinance, the proposed DAS installations would be deemed to be monopoles and subject to the monopole regulations. There was general consensus that staff should proceed as quickly as possible with the proposed Zoning Ordinance amendment that would require all monopoles and towers to receive special exception approval and such installations would continue to require 2232 Reviews. Given that HB 883 goes into effect on July 1, 2016, staff was requested to adjust the proposed public hearing schedule so that the Board public hearing would occur prior to the July 1<sup>st</sup> effective date.

#### **Proffer Legislation – Senate Bill 549:**

Elizabeth Teare, Deputy County Attorney, and Chris Costa, Assistant County Attorney, provided an overview of Senate Bill 549 which was adopted by the 2016 Virginia General Assembly with an effective date of July 1, 2016, and its impacts on Fairfax County. Senate Bill 549 creates § 15.2-2303.4 of the Code of Virginia, with provisions applicable to proffers for certain new residential rezoning applications, or proffer condition amendments that allow for new residential development, filed on or after July 1, 2016. The new State Code provision stipulates that the locality may not request or accept any proffer that does not address an impact that is specifically attributable to the proposed new residential development or use. The provision further stipulates that any off-site proffer, including all cash proffers, must expand the existing capacity of a public facility (specifically limited to transportation, public safety, public school, or parks), and must provide a direct and material benefit to the proposed new residential development. The new Code does include provisions that exempt proposed new residential developments or uses located within certain small area comprehensive plans or a certain tax service district. There are currently 15 areas of the county that are exempt from the new provision. Also included in § 15.2-2303.4 are provisions for judicial review and remedies if the locality requires, requests or

suggests, or denies an application for the refusal or failure to submit, such a proffer that does not comply with this new law.

Discussion ensued regarding the magnitude and timing of these provisions and the implications to the review of such applications. The Committee raised questions related to the time during which an applicant may appeal, and the legal standards that would be applied by the court. The Committee expressed concerns with the provision restricting the locality from suggesting of an unreasonable proffer, considering the current process of working to improve the proposed development and solve issues through frequent meetings and negotiations with applicants, as well as the breadth of who could be considered a representative of the locality. The committee commented that, due to the critical timing of the effective date, the issues would have to be addressed as soon as possible, because discussions with applicants could already be occurring concerning applications that will not be filed until after July 1.

With the Committee's concurrence, staff will continue with the analysis of the implementation and impacts of SB 549 and provide information in response to the issues raised by the Board members.

**The Fairfax County Board of Supervisors' next Development Process Committee meeting will be on May 24, 2016, at 3:00 PM at the Fairfax County Government Center, Conference Rooms 9 & 10.**