



Prince William County Government
Board of County Supervisors



Potential Proffer Legislation for the 2018 GA Session

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2016 Proffer Legislation



- SB 549 (2016) added significant constraints on the acceptance of cash proffers
- §15.2-2303.4 frames the acceptance of cash proffers as “unreasonable” unless:
 - ◆ The proffer addresses impacts in excess of existing public facility capacity
 - ◆ The proffer provides a “direct and material” benefit to the new residential development
 - ◆ The impact being mitigated is “specifically attributable” to the new residential development



2016 Proffer Legislation



- §15.2-2303.4 changes assumptions by the court:
 - ◆ Proffers are now assumed to be unreasonable
 - Localities can be sued for an official “suggesting” or “requesting” unreasonable proffers
 - An application’s denial is presumed to be due to a “refusal or failure” to include an unreasonable proffer if an applicant demonstrates that an unreasonable proffer was “suggested” or “requested”



2016 Proffer Legislation



- §15.2-2303.4 includes a ‘small area plan’ exemption, however, the qualifying conditions for an exemption may be difficult to achieve.
 - ◆ Small area plans qualifying for exemption must:
 - Be designated as a revitalization area;
 - Allow for a density of 3.0 floor area ratio in a portion thereof;
 - Include mixed-use development; and
 - Encompass mass transit.



Implementation



- In response to the legislation, the Board BOCS took the following actions:
 - ◆ Repealed the cash proffer policy
 - ◆ Directed staff to close out all CPA applications that did not have a companion rezoning as of the effective date
 - ◆ Amended rezoning application criteria to include statement of impacts and mitigation measures
- **The Planning Office has received one rezoning application since July 1, 2016, comprising of six new dwelling units.**



Potential Proffer Legislation to Consider



- Full repeal of the statute
- Exemption for Planning District 8 (Northern Virginia)
- Suspension of statute with a study
- Amendments to the statute
- Study



Concepts for Amending the Statute



■ “Unreasonable” Framing

- ◆ Allow the calculation of proffers based on impacts that are “attributable” to the new development
- ◆ Allow the calculations of proffers to consider system-wide capital facilities, such as schools and parks, by removing the requirement that the new development receives a “direct and material” benefit from the proffers
- ◆ Allow the calculation of proffers to address impacts to existing public facilities by removing the restriction that proffers shall only mitigate impacts in excess of existing capacity



Concepts for Amending the Statute



■ Judicial Relief

- ◆ Eliminate potential for lawsuit based on difficult to prove “suggestions” or “requests” from a County official
 - ◆ Eliminate the presumption that the refusal or failure to include an unreasonable proffer is the controlling basis for the denial
 - ◆ Add a provision for applicants to waive their rights to challenge a denial on these grounds
 - ◆ Reverse the presumption that proffers are unreasonable for applications in which a waiver has been submitted
- These changes would open up discussion more between the County and applicants in order to mitigate impacts to the community



Concepts for Amending the Statute



■ Exemptions

- ◆ Eliminate the requirement that a small area plan must be designated as a revitalization zone
 - ◆ Lower the 3.0 floor area ratio (FAR) density requirement for exemption to 2.0 FAR, and clarify that the FAR includes non-residential development
- These changes would increase the likelihood that small area plans could be a viable tool to address residential development impacts in Prince William County in a way that is already available to abutting jurisdictions such as Fairfax County.



Next Steps



- Board direction on legislative options:
 - ◆ Full repeal
 - ◆ Exemption for Planning District 8
 - ◆ Temporary repeal with a study
 - ◆ Amendments
 - ◆ Study
- Board prioritization of potential amendments to §15.2-2303.4



Next Steps



- Staff and legislative team recruit patrons and support from the Delegation and other members of the General Assembly
- Staff and legislative team coordinate with allied localities, associations and others

