

**ITEMS FOR CONSIDERATION**  
**IN PREPARATION OF THE FAIRFAX COUNTY LEGISLATIVE PROGRAM**  
**2019 VIRGINIA GENERAL ASSEMBLY**

**November 27, 2018**

**INDEX**

**ITEM FOR INITIAL CONSIDERATION**

Land Use – Proffers for Historic Preservation 2

**ITEM FOR FURTHER CONSIDERATION**

Transportation – Stormwater Facilities 4

## **LAND USE – PROFFERS FOR HISTORIC PRESERVATION**

### PROPOSAL:

Retain the legislative position on proffers and add language supporting the recognition and/or preservation of historic resources affected through the development process.

### SOURCE:

Fairfax County History Commission  
July 11, 2018

### BACKGROUND:

When a developer requests a rezoning from a locality (typically requesting more density than is currently allowed on that property), the developer may also voluntarily offer to have proffered “conditions” attached to that rezoning application. For a developer, such conditions may help mitigate the impacts of the rezoning on the locality (such as increased traffic, additional public school students and an increased need for public facilities in that area, among other items). For Fairfax County and the community, such proffers help ensure that new development or redevelopment can offset these new impacts on public services and facilities, rather than passing those costs onto all taxpayers. It is important to note that proffers are negotiated between the County and developers – the County cannot simply impose proffers on a particular rezoning. Each case is negotiated separately, because the impacts of each development proposal are different.

The 2016 General Assembly (GA) passed legislation making major changes to the proffer system in Virginia. **SB 549** significantly restricted proffer authority for residential development for all localities throughout the Commonwealth, including the residential components of mixed-use development. Unfortunately, these restrictions affected a system that, in Fairfax County, had generally been collaborative and cooperative for developers, residents and the entire community for decades.

The 2016 change substantially reduced the flexibility of both the County and the development community to address community impacts in a number of areas. One such area is historic preservation. Proffers have been used successfully for identification, preservation, and mitigation efforts, including documentation, interpretation, and funding interpretive markers for the purpose of preserving a site’s history. The new law has made this more difficult in certain circumstances.

Since land use authority is a fundamental local government responsibility, the 2016 changes were fiercely debated throughout most of the 2016 GA session. Localities across the Commonwealth raised serious concerns about numerous provisions in the bill, and have continued to do so as the new law has been implemented. Though the legislation was intended to narrow the authority of localities utilizing proffers, it also restricts the development community’s flexibility to satisfy community concerns about a

particular development through a wide variety of voluntary commitments, including historic preservation. As a result, the 2019 GA is likely to consider legislation addressing the ongoing challenges created by the law.

RECOMMENDATION:

Recommend retaining proffer position in the Legislative Program. Also, direct staff to consider the importance of historic preservation issues as potential changes to the state proffer law are discussed.

## **TRANSPORTATION – STORMWATER FACILITIES**

### **PROPOSAL:**

Evaluate initiatives to ensure that the Virginia Department of Transportation (VDOT) accepts and maintains innovative stormwater facilities for urban and redevelopment areas, particularly in Fairfax County.

### **SOURCE:**

Fairfax County Board of Supervisors  
October 2018

### **BACKGROUND:**

Enhancing opportunities for redevelopment and investment in older commercial areas has long been a Fairfax County priority. The County's commercial revitalization districts and areas were created to encourage the improved economic viability, appearance and function of these areas through quality new development, rehabilitation, and/or redevelopment, which often requires the use of innovative strategies.

Transportation projects are vital components of such redevelopment efforts, including improving traffic, enhancing transit options, and increasing pedestrian and bike facilities, in order to provide a variety of safe, reliable, effective, and interconnected transportation modes. Such projects also require significant attention to stormwater, as the drainage of stormwater away from travel lanes keeps roadways safe, helps protect investments in the transportation network, and provides substantial environmental and sustainability benefits. In Virginia, VDOT is responsible for road construction and maintenance, including the stormwater management facilities in most counties, including Fairfax County, and VDOT is required to implement a stormwater management (SWM) program that protects the quality and quantity of state waters from the potential harm of unmanaged stormwater runoff resulting from roadway projects.

However, to address stormwater as part of a transportation project, VDOT often relies on traditional facilities (such as large, fenced retention ponds) that can be unsightly, particularly in revitalization areas that are being redesigned as more urban, welcoming, and bustling communities. Fortunately, as stormwater management has evolved, so too have stormwater facilities, often yielding higher quality water treatment in a facility that is more visually appealing. When VDOT is managing a transportation project, they occasionally utilize such innovative stormwater facilities if other options are not available. However, if the County is managing the transportation project, VDOT will not accept these same facilities for maintenance, preferring to construct fewer different types of facilities throughout the Commonwealth, regardless of visual impact to a particular community.

Exacerbating the potential unsightliness of placing such a facility in a redevelopment area is the fact that VDOT does not provide substantial maintenance to traditional retention ponds and other approved facilities. This is also the case for VDOT maintenance across the board – from pavement conditions on secondary roads to infrequent grass cutting. In Northern Virginia, the challenge is even greater, as VDOT's Northern Virginia transportation district does not generally receive an adequate level of funding from the Highway Maintenance and Operations Fund, which can result in substandard road conditions and other deficiencies that discourage the use of all available transportation components (including sidewalks and bike trails). In addition, the lack of regular maintenance leads to unsightly stormwater management facilities that results in the entire corridor appearing distressed.

The 2010 General Assembly (GA) acknowledged that an urban area like Fairfax County often necessitates different transportation design standards when it passed **HB 222** (Watts), which directed VDOT to work with the County and the Department of Rail and Public Transportation (DRPT) to develop new secondary road design standards for urban development areas. The County then successfully collaborated with the Commonwealth to create urban street standards for Tysons, which have now been incorporated as options for other parts of the County and the Commonwealth. A similar approach could be used for the creation of more flexible urban stormwater facility design and maintenance techniques, particularly because VDOT is already required (when practicable) to meet a locality's criteria for stormwater treatment if that locality has adopted more stringent SWM technical criteria than what is required by state regulations. The County currently has several areas undergoing development or redevelopment, including Embark Richmond Highway, which could benefit substantially from such an approach.

Update for November 27, 2018, Legislative Committee

In passing **HB 222** (Watts), the 2010 GA required VDOT to work with DRPT and the County to review new design standards for state secondary highway system components for urban and urban development areas. The bill required that the standards:

- Be based on the American Association of State Highway and Transportation Officials' (AASHTO) "A Policy on Geometric Design of Highways and Streets" and other publications applicable to urban areas;
- Set forth a design methodology that should be used in the affected urban and urban development areas;
- Allow for the efficient movement of transit and other vehicles through these areas;
- Accommodate safe pedestrian and bicyclist movement;
- Accommodate high density urban development;
- Encourage user-friendly access to transit;
- *Include stormwater management guidelines, consistent with state and local laws and regulations; and,*
- Respect the character of urban areas.

Such design standards and methodologies are intended to facilitate approval of roadway and transportation system improvement plans in urban areas that comply with the

standards. In 2011, the Fairfax County Board of Supervisors adopted Transportation Design Standards and a Memorandum of Agreement (MOA) with VDOT for the Tysons Corner Urban Center. Subsequently, the Commonwealth created new Multimodal System Design Guidelines for designated mixed-use centers throughout the Commonwealth, which established a statewide framework methodology for implementing urban transportation design standards. Though additional changes have been made since these standards were enacted (including a new Appendix B(2) to the road design manual, establishing a statewide process to implement multimodal design standards for mixed-use urban centers), VDOT has the authority to make such changes. Because **HB 222** specifically included stormwater management as part of urban design standards, VDOT could amend the current standards to include the creation of more flexible urban stormwater facility design and maintenance techniques.

#### RECOMMENDATION:

Direct staff to prepare a letter for the Chairman's signature to the Secretary of Transportation, requesting that VDOT amend existing urban street standards to ensure that innovative and visually attractive stormwater facilities are constructed and maintained when practicable. Also, direct staff to add language on increased maintenance funding to the Transportation Funding position in the Legislative Program (see yellow highlighting below for draft language). Finally, direct staff to prepare a Board Item requesting that VDOT utilize the County's stricter stormwater standards for any VDOT transportation project in Fairfax County when practicable.

#### 2.) Transportation Funding

**The Commonwealth should build upon the successful enactment of significant transportation revenues by the 2013 General Assembly (GA) to ensure sufficient funding for transportation needs.**

Statewide and regional funding generated by HB 2313 provided substantial new resources needed to begin addressing the transportation needs of Northern Virginia and the Commonwealth. While HB 2313 has moved the Commonwealth in the right direction, transportation funding challenges remain.

- **Washington Metropolitan Area Transit Authority (WMATA) and Regional Transportation Funding** – WMATA is vital to the transportation networks and economic growth of Northern Virginia and the Commonwealth. The 2018 GA took a major step forward by providing funding and governance reforms to address WMATA's efforts to enhance the safety, security, and efficiency of the system and its riders. The County and the region are working to implement the governance reforms. However, the legislation that was enacted addressed WMATA funding needs at the expense of other significant projects throughout the region by diverting existing funding from the Northern Virginia Transportation Authority (NVTA) to WMATA, reducing funding available for other critical transportation projects in Northern Virginia by \$102 million per year (approximately one-third of NVTA's revenues). Though numerous stakeholders agreed that utilizing some existing NVTA funds for WMATA, in addition to generating additional revenues through other sources, would be a part of compromise legislation, the immense reallocation of funds from NVTA annually is simply too great. As a result, the County will be unable to fund any additional transportation projects in the foreseeable future, and regional transportation funding included in NVTA's recently adopted Six Year Program provides approximately \$300 million less than anticipated for a region that remains one of the most congested in the nation. Several County projects that received partial or no funding in NVTA's program, but may have received funds had this revenue been available, include: Route 28 Widening from Route 29 to the Prince William County line, Route 28 Widening northbound from Route 50 to McLearn Road, Rock Hill Road Bridge, Shirley Gate Road

FURTHER CONSIDERATION  
November 27, 2018

Extension, Soapstone Drive Extension, and Frontier Drive Extension. Similar impacts will continue in future years if the funding diversion remains in place. The County strongly supports efforts to mitigate such impacts to ensure that transportation projects continue to move forward in Northern Virginia after decades of state underfunding. (*Regional position.*)

- **Transit Capital Funding Bond Expiration** – During the 2015 session, the GA began to address the significant reduction in state transit capital funding expected to occur in upcoming years, due to the depletion of state transportation bonds. The Transit Capital Project Revenue Advisory Board, created through HB 1359 (2016), identified an average revenue gap of \$130 million annually over the next ten years (not including the updated capital plan for WMATA, which was released after the study's analysis was conducted). The report concluded that sustainable and dedicated bond replacement funding must be enacted, and that failure to do so would leave the transit capital program unable to maintain a state of good repair for existing assets. While the depletion of statewide funds is no longer expected to occur as quickly and suddenly as previously projected, solutions to address the shortfall must be achieved before the crisis arrives. Implementation of changes to the transit allocation process are ongoing, but such changes must be accompanied by sufficient state funding. The County supports efforts to fully address this impending deficit, to ensure that transit systems continue to receive the state resources needed to provide critical services to residents and travelers throughout the Commonwealth. (*Regional position.*)
- **Allocation of Statewide Revenues** –
  - It is critical that Northern Virginia continue to receive its fair share of statewide revenues, as required by HB 2313, particularly in light of the Smart Scale process for prioritizing projects and continued changes to transit capital funding. Further, the new transportation funding created by HB 2313 should continue to only be used for transportation purposes.
  - Significant changes were made to the transportation funding formulas and processes during the 2014 and 2015 GA sessions. It is important that the continued implementation of Smart Scale (2014) and HB 1887 (2015) be closely monitored, especially during the initial years, to determine whether changes and improvements are necessary. Simplifying the implementation of Smart Scale, in particular, would ensure greater transparency and understanding of the processes while improving efficiency.
  - The Virginia Department of Transportation's (VDOT) Northern Virginia District is only expected to receive 6.39 percent of the State of Good Repair funds in FY 2019. While 86 percent of all roads in Fairfax County are in Fair or Better Condition, only 39 percent of secondary roads meet this goal. This is a substantial improvement from the 2015 level (18 percent); however, more must be done as the County's secondary roads remain far below both the Commonwealth's average of 60 percent in Fair or Better Condition and the statewide target of 65 percent. Millions of people drive these roads every day, and the deteriorated pavements will only get worse unless additional funding is identified, or a greater portion of current funding is allocated to Northern Virginia.
  - The County remains concerned about the current level of funding for the Revenue Sharing program. This program significantly leverages state transportation funds by encouraging local governments to spend their own money on transportation projects, and has been essential in helping fund some of Fairfax County's major road and transit projects. Additional funding should be provided to the Revenue Sharing program, to ensure that vital projects across the Commonwealth continue to move forward.
  - The County remains opposed to the Department of Rail and Public Transportation's (DRPT) policy of allocating state funds for capital costs based on the total cost of a project, rather than the non-federal share. As the Fairfax Connector and several other Northern Virginia systems do not receive federal funds, this policy change increased the local share Northern Virginia systems must pay for their projects, while reducing the share required for other local governments in the Commonwealth – in FY 2019, localities in Northern Virginia will provide over 19 percent in local revenues for transit capital purchases, while localities outside Northern Virginia will provide less than five percent.
  - **The County supports adequate funding to ensure appropriate state road maintenance, including funding to provide for improved repaving, snow removal, mowing in the right-of-way, and stormwater management.**

## FURTHER CONSIDERATION

November 27, 2018

- **Transportation and Economic Success** – The Commonwealth should provide funding assistance for the transportation needs of major employment centers to lay the groundwork for continued economic success. Fairfax County contains several major employment centers that generate public benefit for the County and the Commonwealth. For these centers, such as Springfield, Seven Corners, and Reston, to remain successful and accommodate predicted growth, they must transform into sustainable, transit-oriented, and walkable communities. This transformation has already begun in Tysons, where significant improvements in transit access have been made, but additional resources are needed to ensure that pedestrian, bicycle, and transit modes thrive and roadway congestion is addressed. The County's Six-Year Transportation Priorities Plan (TPP) assumes significant local funding, as well as funding from regional and statewide sources. The projects in the TPP focus on making investments to strengthen the County's major employment/activity centers, and it is important that the state and federal governments similarly recognize their importance by providing the funding needed to complete the transportation projects that have been identified in these areas. It is also vital that the capacity needs across the Potomac River be addressed, including at the American Legion Bridge and Rosslyn Tunnel, to alleviate the existing congestion and ensure the movement of people and goods throughout this economically vibrant region. Such action is essential to the economic success of Fairfax County and the Commonwealth.
- **Virginia Railway Express (VRE)** – The successful creation of the Commuter Rail Operating and Capital (CROC) fund and annual \$15 million allocation of regional gas tax revenue by the 2018 GA was a clear acknowledgement of the critical role VRE plays in the regional transportation system. It is also an important first step in securing long-term, dependable funding to maintain and increase commuter rail service. VRE is currently conducting an in-depth financial analysis to establish how much additional funding is needed to ensure VRE's financial security, as well as determining which capital projects are best suited for CROC funding in VRE's Capital Improvement Program.

A modern, efficient, multimodal transportation system is essential to the Commonwealth, and is intrinsically tied to continued economic development and the ability to compete in a global economy. Fairfax County, along with localities throughout the state, continues to provide millions of dollars in local funds for transportation each year, and the County and the Commonwealth must continue to work together to ensure that infrastructure needs are met, maximizing the benefits to the transportation system. (*Updates and reaffirms previous position.*)