

**Stafford County**  
**Board of Supervisors Meeting**  
**Agenda Item Report**  
**Meeting Date: June 18, 2019**  
**NEW BUSINESS**

**Subject:**

PLANNING & ZONING; DISCUSS PROFFER LEGISLATION

Proposed Resolution R19-188

**BACKGROUND SUMMARY:** Discuss implementation of proffer legislation.

**Recommended Action:**

Consider adopting new policies for acceptance of proffers with zoning reclassification applications per Resolution R19-188.

**Committee/Commission Recommendation:**

N/A

**Fiscal Impact:**

N/A

**District:**

**Overview:**

House Bill (HB2342) passed the General Assembly and was signed into law with an effective date of July 1, 2019. This new legislation amends Virginia Code Section 15.2-2303.4 "Provisions applicable to certain conditional rezoning proffers." Staff will discuss the potential effects of this legislation with the Board. This legislation change may result in changes to current zoning reclassification policies and documents.

**Discussion/Analysis:**

When Virginia Code Section 15.2-2303.4 was enacted, it had the specific following effects:

- Specified what is an unreasonable proffer, which cannot be accepted or requested
- Limited "public facilities" for which proffers could be accepted to public transportation, safety, schools, or park facilities
- Limited impact consideration to the time of rezoning, not the time of the proposed project's development
- Limited mitigation to only impacts directly attributable to the development and in the

developments proportionate share

HB2342 amends Virginia Code Section 15.2-2303.4 to do the following:

- Allows an applicant to deem proffers reasonable and appropriate based on a signed proffer statement
- Allows the mitigation of additional impacts outside the limited “public facility” definition
- Allows developments to fully mitigate impacts by proffering complete facilities, as opposed to a portion
- Prohibits verbal discussions from being used as a basis for an unreasonable proffer being required
- Requires an applicant provide notice to the County if they feel a proposed proffer condition is unreasonable prior to Board action
- Allows pending reclassification applicants to amend their application to be considered under the legislation effective July 1, 2019

#### **Attachments:**

1. Attachment 1 - Proposed Resolution R19-188
2. Attachment 2 - HB2342
3. Attachment 3 - Resolution R16-170
4. Attachment 4 - Power Point

#### **Summary/Conclusion:**

Based on this new legislation, staff believes that changes to Board policy and County documents should be considered. When Virginia Code Section 15.2-2303.4 was created in 2016, the Board established a policy for filing zoning reclassification and proffer condition amendment applications pursuant to Resolution R16-170 (attached). An additional policy should now be considered for the processing of those applications pursuant to proposed Resolution R19-188.

Specifically, staff recommends a policy which provides for the following:

- Requiring applicants to declare which applicable state code provisions the application will be filed and processed under
- Applicants should also provide signed and executed copies of proffer statements earlier in the process and particularly before advertisements are published
- Any substantive changes to an application after it has been advertised for public hearing shall require the applicant to pay any additional advertisement costs.

HB2342 has highlighted the fact there are a number of applications that have been filed prior to July 1, 2016 and are still pending. A policy should be considered that would limit the time period for which zoning reclassification and proffer condition amendment applications can remain pending. Staff recommends that the application would expire if not approved or denied within 18 months of its filing date.

In addition to these policies, the Board may wish to consider adopting a development impact mitigation methodology in the future. Such guidelines would identify public facilities to be studied and specific capacity and cost information for applicants to consider as they prepare their applications and proffers with a goal of mitigating their developments impact on the County. The methodology would also be used by the County when evaluating mitigation measures offered by applicants and providing reports and recommendations to the Board.

Staff requests and recommends that the Board provide direction to staff on these and other suggested policy changes. No action is request or required at this meeting and staff can bring this matter back to the Board at its next meeting for action.

**Strategic Priorities:**

**Reviewed By:**

Rysheda McClendon, County Attorney (Legal Review Only)  
Thomas C. Foley, County Administrator

R19-188

PROPOSED

BOARD OF SUPERVISORS  
COUNTY OF STAFFORD  
STAFFORD, VIRGINIA

RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, George L. Gordon, Jr., Government Center, Stafford, Virginia, on the day of , 2019:

MEMBERS:

Gary F. Snellings, Chairman  
L. Mark Dudenhefer, Vice Chairman  
Meg Bohmke  
Jack R. Cavalier  
Thomas C. Coen  
Wendy E. Maurer  
Cindy C. Shelton

VOTE:

On motion of , seconded by , which carried by a vote of , the following was adopted:

A RESOLUTION ESTABLISHING POLICIES FOR THE  
PROCESSING OF ZONING RECLASSIFICATIONS  
(REZONING) AND PROFFER CONDITION AMENDMENTS  
(PROFFER AMENDMENTS) THAT HAVE BEEN FILED  
WITH THE COUNTY

WHEREAS, Stafford County Code Sec. 28-303 stipulates the submission requirements for rezoning and proffer amendment applications; and

WHEREAS, Resolution R16-170 established a policy for filing rezoning and proffer amendment applications with Stafford County; and

WHEREAS, although the Department of Planning and Zoning has administrative processes in place, the County does not have a written policy for the processing of rezoning and proffer amendment applications; and

WHEREAS, the Board desires to adopt this policy as to how a rezoning or proffer amendment application is to be processed; and

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the day of , 2019, that it be and hereby does establish the following policy for processing of rezoning and proffer amendment applications with Stafford County:

**STAFFORD COUNTY BOARD OF SUPERVISORS**

**POLICY FOR PROCESSING ZONING RECLASSIFICATION (REZONING)  
AND PROFFER CONDITION AMENDMENT (PROFFER AMENDMENT)  
APPLICATIONS**

A rezoning and proffer amendment application shall be processed by Stafford County in the following manner:

1. An applicant must identify which applicable provisions of the Code of Virginia will be applied to the processing of the application.
2. Staff shall acknowledge the identified code provisions in reports to the Board and Planning Commission.
3. Staff shall forward the application to all applicable county and state agencies for review and comment.
4. Any proffers proposed by an applicant must be submitted in writing and properly executed prior to advertisement of any public hearing.
5. It shall be the responsibility of the applicant to pay for any costs to re-advertise a public hearing necessitated by any substantial change to an application.
6. Consideration of any pending application exceeding one-year from the date of filing a complete application may be extended at the applicant's written request.
7. Any pending application exceeding 18 months from the date of filing a complete application shall be administratively closed unless a time extension was requested in writing by the applicant and granted by the Board.

TCF:JAH:

**CHAPTER 245**

*An Act to amend and reenact § 15.2-2303.4 of the Code of Virginia and to repeal the third enactment of Chapter 322 of the Acts of Assembly of 2016, relating to conditional rezoning proffers.*

[H 2342]

Approved March 5, 2019

**Be it enacted by the General Assembly of Virginia:**

**1. That § 15.2-2303.4 of the Code of Virginia is amended and reenacted as follows:**

**§ 15.2-2303.4. Provisions applicable to certain conditional rezoning proffers.**

A. For purposes of this section, unless the context requires a different meaning:

"New residential development" means any construction or building expansion on residentially zoned property, including a residential component of a mixed-use development, that results in either one or more additional residential dwelling units or, otherwise, fewer residential dwelling units, beyond what may be permitted by right under the then-existing zoning of the property, when such new residential development requires a rezoning or proffer condition amendment.

"New residential use" means any use of residentially zoned property that requires a rezoning or that requires a proffer condition amendment to allow for new residential development.

"Offsite proffer" means a proffer addressing an impact outside the boundaries of the property to be developed and shall include all cash proffers.

"Onsite proffer" means a proffer addressing an impact within the boundaries of the property to be developed and shall not include any cash proffers.

"Proffer condition amendment" means an amendment to an existing proffer statement applicable to a property or properties.

"Public facilities" means public transportation facilities, public safety facilities, public school facilities, or public parks.

"Public facility improvement" means an offsite public transportation facility improvement, a public safety facility improvement, a public school facility improvement, or an improvement to or construction of a public park. No public facility improvement shall include any operating expense of an existing public facility, such as ordinary maintenance or repair, or any capital improvement to an existing public facility, such as a renovation or technology upgrade, that does not expand the capacity of such facility. For purposes of this section, the term "public park" shall include playgrounds and other recreational facilities.

"Public safety facility improvement" means construction of new law-enforcement, fire, emergency medical, and rescue facilities or expansion of existing public safety facilities, to include all buildings, structures, parking, and other costs directly related thereto.

"Public school facility improvement" means construction of new primary and secondary public schools or expansion of existing primary and secondary public schools, to include all buildings, structures, parking, and other costs directly related thereto.

"Public transportation facility improvement" means (i) construction of new roads; (ii) improvement or expansion of existing roads and related appurtenances as required by applicable standards of the Virginia Department of Transportation, or the applicable standards of a locality; and (iii) construction, improvement, or expansion of buildings, structures, parking, and other facilities directly related to transit.

"Residentially zoned property" means property zoned or proposed to be zoned for either single-family or multifamily housing.

"Small area comprehensive plan" means that portion of a comprehensive plan adopted pursuant to § 15.2-2223 that is specifically applicable to a delineated area within a locality rather than the locality as a whole.

B. Notwithstanding any other provision of law, general or special, no ~~locality~~ *local governing body* shall (i) ~~request or accept~~ *require* any unreasonable proffer, as described in subsection C, in connection with a rezoning or a proffer condition amendment as a condition of approval of a new residential development or new residential use or (ii) deny any rezoning application or proffer condition amendment for a new residential development or new residential use where such denial is based in whole or in part on an applicant's failure or refusal to submit an unreasonable proffer or proffer condition amendment.

C. Notwithstanding any other provision of law, general or special, ~~(i)~~ as used in this chapter, a proffer, or proffer condition amendment, whether onsite or offsite, offered voluntarily pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1, shall be deemed unreasonable unless it:

1. *It* addresses an impact that is specifically attributable to a proposed new residential development or other new residential use applied for; and ~~(ii) an offsite proffer shall be deemed unreasonable pursuant to subdivision (i) unless~~

2. *If an offsite proffer, it addresses an impact to an offsite public facility, such that (a) (i) the new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity at the time of the rezoning or proffer condition amendment and (b) (ii) each such new residential development or new residential use applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvements. For the purposes of this section, a locality may base its assessment of public facility capacity on the projected impacts specifically attributable to the new residential development or new residential use.*

*D. Notwithstanding the provisions of subsection C:*

*1. An applicant or owner may, at the time of filing an application pursuant to this section or during the development review process, submit any onsite or offsite proffer that the owner and applicant deem reasonable and appropriate, as conclusively evidenced by the signed proffers.*

*2. Failure to submit proffers as set forth in subdivision 1 shall not be a basis for the denial of any rezoning or proffer condition amendment application.*

*E. Notwithstanding any other provision of law, general or special:*

*1. Actions brought to contest the action of a ~~locality~~ local governing body in violation of this section shall be brought only by the aggrieved applicant or the owner of the property subject to a rezoning or proffer condition amendment pursuant to subsection F of § 15.2-2285, provided that the applicant objected in writing to the governing body regarding a proposed condition prior to the governing body's grant or denial of the rezoning application.*

*2. In any action in which a ~~locality~~ local governing body has denied a rezoning or an amendment to an existing proffer and the aggrieved applicant proves by a preponderance of the evidence that it refused or failed to submit an unreasonable proffer or proffer condition amendment that ~~it has proven~~ was suggested, requested, or required in writing by the ~~locality~~ local governing body in violation of this section, the court shall presume, absent clear and convincing evidence to the contrary, that such refusal or failure was the controlling basis for the denial.*

*3. In any successful action brought pursuant to this section contesting an action of a ~~locality~~ local governing body in violation of this section, the applicant may be entitled to an award of reasonable attorney fees and costs and to an order remanding the matter to the governing body with a direction to approve the rezoning or proffer condition amendment without the inclusion of any unreasonable proffer or to amend the proffer to bring it into compliance with this section. If the ~~locality~~ local governing body fails or refuses to approve the rezoning or proffer condition amendment, or fails or refuses to amend the proffer to bring it into compliance with this section, within a reasonable time not to exceed 90 days from the date of the court's order to do so, the court shall enjoin the ~~locality~~ local governing body from interfering with the use of the property as applied for without the unreasonable proffer. Upon remand to the local governing body pursuant to this subsection, the requirements of § 15.2-2204 shall not apply.*

*F. The provisions of this section shall not apply to any new residential development or new residential use occurring within any of the following areas: (i) an approved small area comprehensive plan in which the delineated area is designated as a revitalization area, encompasses mass transit as defined in § 33.2-100, includes mixed use development, and allows a density of at least 3.0 floor area ratio in a portion thereof; (ii) an approved small area comprehensive plan that encompasses an existing or planned Metrorail station, or is adjacent to a Metrorail station located in a neighboring locality, and allows additional density within the vicinity of such existing or planned station; or (iii) an approved service district created pursuant to § 15.2-2400 that encompasses an existing or planned Metrorail station.*

*G. This section shall be construed as supplementary to any existing provisions limiting or curtailing proffers or proffer condition amendments for new residential development or new residential use that are consistent with its terms and shall be construed to supersede any existing statutory provision with respect to proffers or proffer condition amendments for new residential development or new residential use that are inconsistent with its terms.*

*H. Notwithstanding any provision in this section to the contrary, nothing contained herein shall be deemed or interpreted to prohibit or to require communications between an applicant or owner and the locality. The applicant, owner, and locality may engage in pre-filing and post-filing discussions regarding the potential impacts of a proposed new residential development or new residential use on public facilities as defined in subsection A and on other public facilities of the locality, and potential voluntary onsite or offsite proffers, permitted under subsections C and D, that might address those impacts. Such verbal discussions shall not be used as the basis that an unreasonable proffer or proffer condition amendment was required by the locality. Furthermore, notwithstanding any provision in this section to the contrary, nothing contained herein shall be deemed or interpreted to prohibit or to require presentation, analysis, or discussion of the potential impacts of new residential development or new residential use on the locality's public facilities.*

**2. That the third enactment of Chapter 322 of the Acts of Assembly of 2016 is repealed.**

**3. That this act shall be effective as to any application for a rezoning filed on or after July 1, 2019, or for a proffer condition amendment amending a rezoning that was filed on or after July 1,**

2019, or to any then-pending rezoning application in which the applicant elects to proceed hereunder, by amendment of that pending application.

4. That an applicant with a pending application for a rezoning or proffer condition amendment that was filed prior to July 1, 2016, may continue to proceed under the law as it existed prior to that date, and an applicant with a pending rezoning application filed on or after July 1, 2016, but before July 1, 2019, or proffer condition amendment application amending a rezoning for which the application was filed on or after July 1, 2016, but before July 1, 2019, may continue to proceed under the law as it existed during that period.



R16-170

BOARD OF SUPERVISORS  
COUNTY OF STAFFORD  
STAFFORD, VIRGINIA

RESOLUTION

At a regular meeting of the Stafford County Board of Supervisors (the Board) held in the Board Chambers, George L. Gordon, Jr., Government Center, Stafford, Virginia, on the 7<sup>th</sup> day of June, 2016:

<u>MEMBERS:</u>	<u>VOTE:</u>
Robert "Bob" Thomas, Jr., Chairman	Yes
Laura A. Sellers, Vice Chairman	Yes
Meg Bohmke	Yes
Jack R. Cavalier	Yes
Wendy E. Maurer	Yes
Paul V. Milde, III	Yes
Gary F. Snellings	Absent

On motion of Mrs. Maurer, seconded by Ms. Sellers, which carried by a vote of 6 to 0, the following was adopted:

A RESOLUTION ESTABLISHING WHEN APPLICATIONS FOR ZONING RECLASSIFICATIONS (REZONINGS) AND PROFFER CONDITION AMENDMENTS (PROFFER AMENDMENTS) HAVE BEEN FILED WITH THE COUNTY

WHEREAS, Stafford County Code Sec. 28-203 stipulates the submission requirements for rezoning and proffer amendment applications; and

WHEREAS, Stafford County Code Sec. 28-203 requires the submittal of applicable impact analysis, although such analysis is not required when an application is submitted; and

WHEREAS, although the Department of Planning and Zoning (Department) has an administrative process in place, the County does not currently have a written policy stating when a rezoning or proffer amendment application is considered filed; and

WHEREAS, the Board desires to confirm the process already followed by the Department and adopt this policy as to when a rezoning or proffer amendment application is considered filed with the County;

R16-170  
Page 2

NOW, THEREFORE, BE IT RESOLVED by the Stafford County Board of Supervisors on this the 7<sup>th</sup> day of June, 2016, that it be and hereby does establish the following policy for filing of rezoning and proffer amendment applications with Stafford County:


**STAFFORD COUNTY BOARD OF SUPERVISORS**

**POLICY FOR FILING ZONING RECLASSIFICATION (REZONING) AND  
PROFFER CONDITION AMENDMENT (PROFFER AMENDMENT)  
APPLICATIONS**

A rezoning and proffer amendment application shall be **filed** with Stafford County when the following criteria are met:

1. Completed applications, to include all applicable checklists, on forms supplied by the Department of Planning and Zoning (Department), have been submitted to the Department.
2. All applicable application review fees have been processed and paid in full.
3. All required information pursuant to Stafford County Code Sec. 28-203, including applicable impact statements, has been provided.
4. All applicable supplementary forms have been provided.
5. Pursuant to Stafford County Code Sec. 28-203, verification that real estate taxes are paid in full is required. If real estate taxes are no longer considered paid in full or become delinquent, the application shall become incomplete and not considered filed until such time as all real estate taxes due are paid in full.

A Copy, teste:

  
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Anthony J. Romanello, ICMA-CM  
County Administrator

AJR:JAH:dfk



# Stafford County Board of Supervisors

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Discuss Proffer Legislation

June 18, 2019

# 2019 Proffer Legislation

- HB2342 passed the General Assembly and was signed into law
- Amends Va. Code § 15.2-2303.4 to allow additional opportunities for proffers to mitigate impacts of development
- Becomes effective **July 1, 2019**

# Background

- Overtime, the County has used Va. Code § § 15.2-2297, 2298, and 2303 *et seq.* as authority for conditional rezonings, which may include proffers offered by a developer as part of the zoning reclassification or proffer condition amendment request
- Generally, provided broad authority to negotiate reasonable contributions to offset and mitigate the impacts of development

## **Va. Code § 15.2-2303.4**

- Effective July 1, 2016
- Specified what is an unreasonable proffer, which cannot be accepted or requested
  - Limited “public facilities” for which proffers could be accepted
  - Limited impact consideration to the time of rezoning, not time of development
  - Limited mitigation to only impacts directly attributable to the development in its proportionate share

# 2019 Proffer Legislation

- An applicant being able to deem proffers reasonable and appropriate based on signed proffer statements allows:
  - The mitigation of additional impacts outside the limited “public facility” definition
  - Developments to fully mitigate impacts by proffering complete facilities, as opposed to a portion
- Prohibits verbal discussions from being used as a basis for an unreasonable proffer being required
- Requires notice be provided by an applicant if they feel a proposed condition is unreasonable prior to Board action

# Consequence of Multiple Legislation Changes

- Rezoning applications and associated proffer condition amendments can be reviewed under different requirements depending on when filed:
  - Prior to July 1, 2016
  - On or after July 1, 2016 and before July 1, 2019
  - On or after July 1, 2019
- Pending rezoning applications can be amended at the applicant's request to be considered filed on or after July 1, 2019



# Actions

- Application forms are being modified to reflect the new code allowances and requirements
- Establish a policy for processing applications (proposed Resolution R19-88) to address:
  - Declaration of applicable legislative review
  - Signed proffers required earlier in the process
  - Applicants pay for re-advertisements, if necessary
  - Time limits for processing applications
- Future actions include developing a policy to address evaluating impact mitigation measures



# Questions?

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