

MEMORANDUM

DATE: June 27, 2001

TO: The Board of Supervisors

FROM: John T. P. Horne, Development Manager

SUBJECT: Cash Proffers

INTRODUCTION

The subject of cash proffers has been discussed numerous times in the past by the Board of Supervisors. While James City County currently accepts cash proffers on a case-by-case basis, and has done so for many years, some other jurisdictions in Virginia have adopted a more systematic cash proffer system that is based on a relatively uniform expectation per dwelling unit.

The purpose of this memorandum is to place before this Board of Supervisors a number of issues related to systematic cash proffers as they may apply in James City County.

Voluntary proffers are tools that may be used by landowners and governing bodies only at the rezoning stage. State enabling legislation places several requirements on the localities if they wish to accept proffers. They are:

- Rezoning itself must give rise to the need for the conditions;
- Such conditions must have a reasonable relation to rezoning; and
- All such conditions must be in conformity with the Comprehensive Plan.

If the proffer involves dedication of real property or payment of cash:

- The property or cash shall not transfer until the facilities for which it is intended are included in the Capital Improvements Plan, if the facilities are normally included in the C. I. P.; and
- If the accepted proffer includes real estate of substantial value, or substantial cash payments or construction of substantial public improvements, the County cannot thereafter enact zoning changes that restrict the properties uses, floor area ratio, or density, except when there has been a mistake, fraud, or changes in circumstances substantially affecting the public health, safety, or welfare.

The most complete discussion of this issue in James City County took place in 1994. At that time, staff put forth a memorandum and proposal that included cost calculations, discussion of the time of collection of the cash proffers, and affordable housing impacts.

In September 1999, the Board held a discussion with representatives of Chesterfield and Hanover Counties, two jurisdictions which have well established systematic cash proffers systems. After that work session, the Board expressed continued interest in such a system for James City County. During 1999 and 2000, the General Assembly and various interest groups in the Commonwealth had substantial discussions related to cash proffers and a number of other growth management tools. No action was taken in the 2001 General Assembly, and a number of growth management related issues have been placed before a study commission by the General Assembly. The real estate and construction industries have opposed cash proffers and have stated significant concerns about their desire for substantial change in State enabling legislation.

In James City County, there is a well established set of practices related to proffers, including proffers involving real property and cash in limited cases. Substantial proffers have been accepted related to transportation improvements necessary for direct access to the property. Some cases have also involved substantial cash and real estate contributions for off-site transportation, the most notable of which has been Monticello Avenue. **Parks and Recreation** improvements and proffer expectations are formally stated in the Parks and Recreation Master Plan which has become part of the Comprehensive Plan. This has resulted in installation of significant recreation facilities on some sites, and contributions of cash towards the Capital Improvement Plan for Parks and Recreation where on-site facilities were not appropriate. There are other capital improvements related to **fire protection, traffic signalization, bikeways, and environmental protection** which are accepted in some cases. These proffers, however, are documented on a case-by-case basis and typically are not translated to a total per-unit proffer expectation as is typically done in systematic cash proffer programs. Coverage of capital costs is less complete under this case-by-case program than what a systematic process would probably achieve. A systematic cash proffer system could, in the long run, provide an important additional source of capital facility funding.

CURRENT ISSUES

Cost Calculations

Attached is a spreadsheet produced by the Department of Financial Management Services that estimates the per-unit capital costs associated with the public facility types included in the adopted C. I. P.

Two additional capital costs which are not included in this calculation, but very well may be appropriate for inclusion in the future are, **stormwater management** and **water supply**. The Board is aware of current efforts to both document and propose a financing strategy for stormwater management facilities in James City County. That effort should be complete within the next two years. At that time, it is probable that staff will be able to document a per-unit stormwater management cost in many watersheds in James City County. Water supply cost, particularly related to the desalinization facility, can now be translated to per-unit cost and may be appropriate for inclusion at this time based on direction of the Board of Supervisors. Those costs are included in the JCSA budget. Transportation improvements are not covered in this calculation. It is staff's opinion that these capital costs can be better identified and negotiated on a case-by-case basis.

If the Board should establish a systematic cash proffer system, the calculation would be the maximum expected amount per-unit. Actual proffers would need to be considered during each rezoning depending on the specific attributes of the proposed development. Certain types of development may need to be exempted from certain capital facilities when the developer can demonstrate that certain capital facilities will not be impacted. For example, developments which are restricted by legal instruments to serve as retirement type communities, with no children, would need to be exempt from education costs under a proffering system.

Housing Costs

The Board of Supervisors is aware that housing costs in James City County are high compared to both statewide and regional averages. In 1999, the average cost for new single-family residential unit in James City County was \$147,000 (see attached chart).

The potential impact of a cash proffer system on housing costs was discussed in the 1994 memorandum. At that time, staff proposed a sliding scale which would start with a 0 percent proffer at the affordable housing price utilized by James City County Community Services in their programs and in certain provisions of the Zoning Ordinances (\$95,100 for 2001). The percentage of the total proffer paid would increase on a percentage basis reaching 100 percent of the proffer at the average price home. This example is based on new single-family homes. If the Board endorses this concept, staff would develop similar reduction

procedures for multifamily (including rental) units. When the issue of affordable housing was discussed with Chesterfield and Hanover representatives, they both stated that for various reasons this issue was not significant in their jurisdictions. Chesterfield County felt the issue was adequately addressed by County investment in older neighborhoods. Hanover County stated that price competition from adjacent jurisdictions was holding house prices consistent among the jurisdictions. The additional costs associated with the proffers were being absorbed in the initial land sale price paid by the developer to the original landowner.

The effect of a cash proffer system on housing costs in James City County is a significant staff concern. Staff does not believe that there is significant competitive price pressure on James City County housing from our nearest neighbors, York County or Williamsburg. Since 1994, prices of homes have increased very rapidly. A cash proffer system may place the most pressure on home prices at or below the average in James City County. It is housing in this price range that appears to be under the most pressure at this time. While a sliding scale system could mitigate this issue somewhat, staff suggests the Board consider this issue carefully in any decision as to whether to proceed with a cash proffer system in James City County.

Development Management Issues

Most new housing in James City County is constructed within the Primary Service Area (PSA), as encouraged by the Comprehensive Plan and utility policies. An issue to be considered by the Board of Supervisors is the potential effect on pressure to either increase the size of the PSA or to build housing at low density in rural areas, if the cost of housing rises more rapidly within the primary service area. The James City County community has expectations of high quality development; has expressed limited support for higher density; is experiencing the concentration of infrastructure impacts; and is increasingly recognizing the environmental impact of suburban development. All these factors are quite legitimate and need to be addressed as development in the PSA proceeds, but may contribute to additional costs for development of housing within the PSA. Collection of cash proffers could partially mitigate some costs of providing important public infrastructure within the County. Staff does, however, suggest that the Board should consider these broader potential impacts on the overall development management strategies in James City County.

Board of Supervisors Discretion

Virginia law affords the Board of Supervisors broad discretion and defers to reasonable Board judgments when considering a rezoning. It is the point during the land development process where the most discretion can be exercised by the governing body. Capital facility impacts are one of many factors that can and should be considered by the Board of Supervisors during rezoning. Current proffer practices in James City County are relatively robust compared to many other jurisdictions. A systematic proffer system would not limit the legal discretion afforded to the Board of Supervisors during rezoning, but staff recommends the Board of Supervisors consider the possible effect of a systematic proffer system on the practical discretion of an elected Board of Supervisors during the rezoning process.

Cost Recovery

It is very difficult to project the actual cost recovery that can be expected from a cash proffer system in James City County. Chesterfield County pointed out that actual collection of proffered funds was limited for several years after the establishment of their proffer system. This was due to a large backlog of previously approved units. Hanover County collected funds more quickly due to a smaller backlog. Attached is the most current staff estimate of development potential in the County. Cost recovery in James City County may be limited until previously approved units are developed. Once the backlog has been partially utilized, systematic cash proffers could provide an additional source of funding for needed public facilities.

RECOMMENDATION:

Staff expects that many capital facility impacts of future rezonings would be addressed with the current proffer practices in James City County. A systematic cash proffer program would probably recover more costs, particularly for educational facilities. Such a program may, however, have other disadvantages as previously noted in this report.

Staff requests Board guidance prior to proceeding to draft a Board resolution to adopt a cash proffer program.

JTPH/gs
cash.proffers.mem

Attachments