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New proffer era has begun for Virginia localities

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Greg Kamptner (left) and Bill Fritz (right) brief the Fiscal Impact Advisory Committee

Legislation signed this week by Gov. Terry McAuliffe will change the way **Albemarle County** and other Virginia localities negotiate with developers during the rezoning process.

"It effectively renders our cash proffer policy [invalid]," said **Bill Fritz**, Albemarle's chief of special projects.

Fritz made his comments at a meeting Thursday of the **Fiscal Impact Advisory Committee**, a group created to advise the Board of Supervisors on how development affects the county's operating and capital budgets.

The committee was briefed Thursday on the impacts the new law would have on a county whose population has increased from 68,040 in 1990 to an estimated 105,000 in 2015.

The **Weldon Cooper Center** at the **University of Virginia** projects that number could climb to more than 150,000 by 2040.

To help cover the costs generated by population growth, the county developed a policy over time that evaluated the impact each rezoning would have on school population, area roads and other government services.

However, the county formalized a cash policy proffer in October 2007 that established specific amounts all developers would pay per unit to help offset Albemarle's need for increased real estate tax revenue.

"The methodology used was more of a broad approach where [staff] would calculate all the costs of impacts and come up with an average," said Bill Letteri, deputy county executive. "That approach won't work at all [anymore]."

The formula adopted then would require developers to pay $20,987 for each single-family detached unit, $14,271 for each attached unit and $14,871 for each unit in an apartment complex.

The fiscal impact committee already has recommended drastically lowering those amounts in response to legislation passed in 2013, but the new law calls those figures into question.

“The new legislation requires such a degree of certitude in identifying impacts [of new development] that the averages that we use in the cash proffer policy won’t work,” said Greg Kamptner, deputy county attorney.

Kamptner said the new law requires that any cash collected in a rezoning can only be spent on infrastructure that directly addresses the impacts of that new development. Localities will have to demonstrate that connection and possibly defend it in court.

Fritz said the county likely will move back to evaluating each rezoning application on a case-by-case basis.

“What used to happen [before 2007] is that the model would generate a number and then there would be negotiations about that number,” Fritz said. “With this legislation, we’ll have to be much more careful about what that initial number is.”

The new law, which goes into effect July 1, does not apply only to cash proffers. Developers have proffered other conditions in previous rezoning, such as land for libraries, courts or schools.

"The new standard is that for any on-site proffer, such as a dedication of a school site, they now have to be specifically attributable," Kamptner said, but added that there's no strict definition yet for what that means.

"If we have a project that dedicates a school site for an area large enough to handle 400 children, but it turns out the project will only serve 200 children from that project, that school site is now larger than what was specifically attributable to that project," Kamptner said.

"That proffer is then in complete jeopardy," he said.

Kamptner said informal meetings between community planners and developers to discuss proffers might not be held now because suggestions made by planners may be deemed unreasonable.

"If the project is ultimately denied, there's now a statutory presumption that the basis for the disapproval was the applicant's decision to decline [a proffer]," Kamptner said.

Planning Commission Chairman Tim Keller said the new law may ignite previous conversations to comprehensively rezone the county to reflect the Comprehensive Plan.

"One of the major downsides [prior to the new law] was that there might not be an ability to get proffers," Keller said. "It seems to me that what comes out of all of this are going to be things that will be great to have the [fiscal committee] continue to deliberate."

Another committee member said he wants to work to create a new system.

“It really brings forward the need for a new dynamic model that takes into account all of the costs of new development and all financial benefits of new development,” said Charlie Armstrong of Southern Development.

The new law only applies to rezoning applications submitted after July 1. Previous proffers are still valid but at least two developers with projects approved after 2007 have asked the county to amend their rezonings to pay the lower amount.

In February, the Planning Commission recommended denial of developer Vito Cetta’s request to lower the amounts for Spring Hill Village.

The Planning Commission will be presented with a resolution Tuesday that would begin the process of repealing the current cash proffer policy and a second resolution to begin work to establish a new one that is consistent with the new law.

“We’ll deal with this legislation and find a way to make it work,” Kamptner said.

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