

RESOLUTION

A RESOLUTION TO REPEAL THE COUNTY PROFFER POLICY AND TO ESTABLISH A PROCEDURE FOR RESIDENTIAL REZONINGS FILED ON OR AFTER JULY 1, 2016

WHEREAS, the during its last term the Virginia General Assembly adopted Section 15.2-2303.4 of the Code of Virginia; and

WHEREAS, Section 15.2-2303.4 imposes numerous restrictions on the ability of local governments to accept proffers as a part of residential rezonings filed after July 1, 2016; and

WHEREAS, the restrictions preclude the acceptance of any “unreasonable proffer” as defined within the Code Section; and

WHEREAS, the statutory definition of “unreasonable proffer” is so broad and subjective that it creates an unacceptable risk to the County; and

WHEREAS, Section 15.2-2303.4 has the potential to shift the burden of proof in the event of a challenge to a rezoning based upon an alleged “unreasonable proffer” and to permit the assessment of a plaintiff’s attorney’s fees against the County; and

WHEREAS, it is necessary to repeal the County proffer policy in order to avoid any claim that the policy, in its current form, constitutes a suggestion, request, or demand of a proffer; and

WHEREAS, it is further necessary to adopt a procedure which governs the processing of residential rezonings; now, therefore be it

RESOLVED by the Fauquier County Board of Supervisors this 9th day of June, 2016 That the County Proffer Policy be and is hereby repealed; and be it further

RESOLVED, that any suggestion, request or demand of a proffer from any person, department or agency in residential rezoning applications is *ultra vires* and made without the authority of the governing body; and be it finally

RESOLVED, That for any residential rezoning filed on or after July 1, 2016, the following procedure shall apply:

**Procedure for Residential Rezoning Applications
In Response to *Code of Virginia* § 15.2-2303.4**

Effective immediately upon adoption of these procedural rules and until either a subsequent amendment to the Virginia Code or Virginia Courts have provided guidance regarding the interpretation of *Code of Virginia* § 15.2-2303.4, Fauquier County will strictly limit all

Amended 6/1/16

communications with property owners or applicants regarding potential or actual residential rezoning projects in the County.

1. Only the Director of Community Development and his/her designee shall meet or otherwise discuss with property owners or applicants any matter related to the intake or review of residential rezoning projects.
2. No residential rezoning shall be discussed with the Director of Community Development or designee until a fee has been paid and an application has been filed that contains clear acknowledgment language regarding the rezoning process and its limitations.
3. No County staff member, Commissioner, Supervisor or officer shall negotiate, suggest, request, demand or require any proffer in residential rezoning applications.
4. All County Departments and agencies that review and comment on residential rezoning applications shall be limited to pointing out impacts that are specifically attributable to the proposed residential development and are prohibited from negotiating, suggesting, requesting or demanding any proffer to address those impacts.
5. All documents and staff reports shall contain a notice that outside agency comments are not a request, suggestion or demand for a proffer from the County.