

**FAUQUIER COUNTY  
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**MEMORANDUM**

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**TO:** The Fauquier County Board of Supervisors

**FROM:** Andrew Hopewell, Assistant Chief of Planning

**DATE:** September 8, 2016

**SUBJECT:** Comprehensive Plan Chapter 6 – Service Districts Update

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The Virginia State Legislature changed the State Code as it relates to localities ability to negotiate and accept proffers effective July 1, 2016. The new language is far more restrictive in how localities are able to engage with the developers to ensure that new development mitigates its impact on County public facilities. Localities are now only able to accept “off-site” proffers, which include cash proffers, for improvements which increase the capacity of schools, public safety, parks and transportation infrastructure in an amount that can be directly attributable to the new development above any existing excess capacity which may exist. Contributions to mitigate impacts on any other public facilities represent “unreasonable proffers”, and may not be accepted by a locality.

A second aspect of the new language is a presumption that any request for an “unreasonable proffer”, whether it is for a contribution to a public facility outside of the four listed above, or for a contribution above that which is directly attributable to the new development’s impact above the existing capacity, could be grounds for a legal challenge against the County. For this reason, the Board of Supervisors has already repealed its Proffer Policy as that was an attempt to estimate the average impact of a new residential development unit rather than the specific impact of each new development. Additionally, the Board has instituted a policy limiting contact between residential rezoning applicants and elected and appointed officials as well as staff so as to ensure that there are no requests for “unreasonable proffers” made during the process.

The updates to Chapter 6 of the Comprehensive Plan represent another step in ensuring that there is not a case for a challenge of an “unreasonable proffer” as existing language within the chapter references potential proffers that are no longer acceptable. Staff has removed these references, but also taken this opportunity to make some small updates to the chapter to reflect changes that have

occurred in other chapters of the Plan since the adoption of this chapter. The majority of the changes are in the introduction to the chapter, but Staff is also recommending minor changes in the New Baltimore and Marshall Service District Plans to remove any possible conflicts with the new legislation.

The Fauquier County Planning Commission held a public hearing on this matter on August 18, 2016 and unanimously recommended approval of the changes.