A G E N D A

JAMES CITY COUNTY BOARD OF SUPERVISORS

WORK SESSION

County Government Center Board Room

July 26, 2005

4:00 P.M.

A. CALL TO ORDER

B. ROLL CALL

C. BOARD DISCUSSION

1. School Cash Proffers

D. CLOSED SESSION

1. Consideration of a Personnel Matter Involving the Annual Performance Evaluation of the County Administrator, Pursuant to Section 2.2-3711(A)(1) of the Code of Virginia

E. BREAK

072605bsws.age

WORK SESSION

M E M O R A N D U M

DATE: July 26, 2005

TO: The Board of Supervisors

FROM: John T. P. Horne, Development Manager

SUBJECT: School Cash Proffer

Attached is the final report of the James City County Cash Proffer Steering Committee. The report was prepared by Paul Tischler of TischlerBise, who will be presenting the report at the Work Session. Attached to the report are three minority reports from David Jarman, PAHB by Robert Duckett and Mark Rinaldi, and WAAR by John Wilson. All Steering Committee members have been invited to attend and provide their comments and answer questions by the Board.

John TP Horne

John T. P. Horne

JTPH/gs
schproffer.mem

Attachment

DRAFT

FINAL REPORT

James City County Cash Proffer Steering Committee

Prepared for
James City County, Virginia

July 7, 2005

Prepared by
TischlerBise
Fiscal, Economic & Planning Consultants

CONTENTS

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I. INTRODUCTION

TischlerBise was retained by James City County to facilitate meetings of the Cash Proffer Steering Committee and to prepare the Steering Committee Report.

The major charges by the Board of Supervisors to the Steering Committee were: "Agree on numerical data and calculations . . . that would produce a potential maximum proffer amount for schools; reach a consensus on a defensible Cash Proffer Policy; and present a recommended defensible Cash Proffer Policy." It was agreed by the Committee that members would have the opportunity to present minority opinions/comments and/or relevant material from Committee members.

The members of the Cash Proffer Steering Committee are:

- John T.P. Horne, Manager of Development Management, James City County
- John E. McDonald, Manager of Financial and Management Services, James City County
- Michael Thornton, Assistant Superintendent for Finance and Administrative Services for the Williamsburg-James City County Schools
- Ingrid Blanton, James City County Planning Commission Member
- John Wilson, Representative of the Williamsburg Area Association of Realtors
- David Jarman, Citizen
- Ruth Larson, Representative for the PTA Council
- Mark Rinaldi, Citizen
- Robert Duckett, Representative of the Williamsburg Area Homebuilders Association

This report includes three parts. First, the maximum cash proffer amounts and policy recommendations of the Cash Proffer Steering Committee (based on majority votes of the Committee) are reported and discussed. Second, the James City County Cash Proffer methodology and calculations are included as Attachment 1. Lastly, the Appendix includes comments provided by member(s) of the Committee for which there were not majority votes and/or material provided that was not discussed by the Committee. The material in the Appendix is provided "as is" without editing. Other members may present material at the public hearing.

The first part of this report has been prepared by Paul Tischler of TischlerBise, a fiscal, economic and planning consulting firm. The text has been reviewed by Committee members and appropriate comments have been reflected. Mr. Tischler served as a facilitator of the five meetings held by the Cash Proffer Steering Committee, which were held between April 7 and May 25, 2005.[1]

II. DEFINITION AND FINANCIAL CONTEXT OF PROFFERS

A. Definition

The Virginia Commission on Local Government defines "cash proffer" as "any money voluntarily proffered in writing signed by the owner of the property subject to rezoning, submitted as a part of the rezoning application and accepted by locality" pursuant to the authority granted in Section 15.2-2298 of the Code of Virginia.

B. Financial Context

To provide some perspective on the relative cost to schools due to rezonings versus by–right development over the next 20 years, TischlerBise calculated the possible costs from growth, based on figures provided by the County. Over the next 20 years, a rough estimation is that slightly over one-third of all new housing units would be from rezoning and therefore could be potential candidates for offering proffers. However, in the near term, it is estimated that the percentage of rezonings would be much lower, perhaps about 10 percent and would not represent the majority of units until at least 10 to 15 years in the future. If the net proffer amount (which reflects credits) were $4,000 per single family detached unit, proffered units could generate about $1.6 million in the first five years and non-proffered units would represent $14.4 million in foregone revenues, or about 89 percent of the total. Over the next 20 years, the revenue potential could be approximately $23.2 million from proffered units, with $40.8 million representing foregone revenues from non-proffered new units, or about 64 percent of the total.

[1] The original scope included facilitation of four meetings of this Committee; facilitation was provided for one additional meeting for a total of five meetings.

III. PROFFER METHODOLOGY AND AMOUNT

The discussion pertaining to the proffer methodology and amount is based on the methodology and data provided by James City County Finance Director and Committee member, John McDonald. The cash proffer schedule unanimously approved by The Committee (7-0) is shown below in Section E: Proffer Maximum.

The cash proffer calculation, containing the methodology and step-by-step calculations, is provided as Attachment 1. The major assumptions reflected in the final methodology are discussed in turn. The methodology uses a "snapshot" approach, which reflects local data at the time of the methodology preparation. This data will be reevaluated at the time of the next proffer methodology review.

A. Demand Generators

Pupil generation rates for housing built in the last five years in the County are utilized as demand generators for the school cash proffer calculation. Pupil generation rates refer to the number of public school students per housing unit in James City County. The methodology uses three residential categories: (1) single family detached; (2) single-family attached (which includes townhouse units); and (3) multi-family. Age restricted developments are not reflected. The total public school students per housing unit are as follows:

1. Single-Family Detached: 0.45;
2. Single-Family Attached: 0.16; and
3. Multi-Family: 0.24.

See Attachment 1 for a further breakdown.

B. Service Levels

Cash proffer calculations use service levels to establish infrastructure requirements to support new development. The James City County school cash proffer calculation uses core design capacity as the basis for calculating the amount of space provided per student (expressed as square feet per student). (No administrative building space or school buses are reflected in the capital improvement program (CIP). These items as well as portable classrooms are not reflected in the core capacity figures.)

Land requirements for new school capacity are based on comprehensive plan standards. This level of service is expressed as acres per type of school site per student. The County estimates a current land cost of $25,000 per acre (see "Land Cost

Per Acre" in Attachment 1). The land cost component of the cash proffer calculation is based on the number of acres required per student and the current land cost per acre.

The building construction components of "Construction Cost," "Engineering/Planning" and "Other Project Costs" used in the cash proffer calculation are reflected in the current James City County Capital Improvement Plan (CIP) (which are partially based on the February 2005 School Capital Facility Needs Study).

The remaining building construction cost components of "Site Work" and "Off-Site Work" are based on information provided by Committee member Mark Rinaldi.

C. Gross Cost

Based on the above, the gross cost per dwelling unit is calculated by multiplying the student generation rate in the County for each type of housing unit by the calculated cost per student.

D. Credits

Credits are included in the cash proffer calculation to prevent a potential double payment situation. Because schools will be debt financed and property taxes will be utilized to pay debt service, a credit is needed to avoid double payment of both proffers and future property taxes.

The average assessed value of the last five years by type of house is used to calculate the credit. The credit is based on the portion of real property tax used for school debt service applied over 25 years (a typical bond term) and discounted by the (interest) rate of 4.2 percent for 25 years.

E. Proffer Maximum

Based on the above approach and the figures reflected in Attachment 1, the following are the cash proffer maximums:

Single Family Detached	$4.011
Single Family Attached	0
Multi-Family	$4,275

A single family attached unit does not have a cash proffer amount due to a lower pupil generation rate and a relatively high assessed value used in the credit calculations. (See Attachment 1 for detailed calculations.)

As noted, the above methodology and resulting amounts were approved by a vote of 7-0 in the motion "To accept the School Proffer Methodology Document for Purposes of Establishing Maximum School Proffer Amounts."

IV. POLICY RECOMMENDATIONS

The issues noted below are based on majority votes. Policies rejected by majority vote are not reflected in this section. See the Appendix for material regarding some of these policy issues as provided by Committee member(s).

A. In-Kind Contributions

An example of an in-kind contribution is land dedication. Motion voted on was: "In-kind contributions, accepted by the County, which exceed the school cash proffer amount, will be credited against the cash proffer amount and may be credited against other cash proffers and in-kind contributions." (Approved: 5-1-1)

B. Collection and Expenditure Zone

Motion voted on regarding collection and expenditure zones was: "There should be one countywide zone in which to collect and spend school proffer monies." (Approved: 5-2-1)

C. Timing of Implementation

Motion voted on regarding implementation was: "The proffer policy to guide Board of Supervisor action should take effect two months after the announcement." (Approved: 7-0-1)

D. Review and Adjustments

The Committee considered periodic review and adjustments of the cash proffer amounts. Motion voted on was: "There should be an annual review of the input data" and "The Board of Supervisors should consider a cap on the increase to be determined by the review." (Approved: 4-3)

E. Escalator Clause

There was unanimous agreement that the Marshall and Swift Building Cost Index be used instead of the Consumer Price Index to calculate the increase in proffer amounts from the time of the proffer until payment is tendered. (Approved: 7-0)

F. Affordable Housing

Motion was made regarding affordable housing as follows: "The Board should continue its current practice of recognizing affordable housing in its policy application of cash proffers." (Approved 4-1-2)

V. OTHER

As noted above, the main body of this report only notes those recommendations that were approved by the majority of the committee. For example, a motion to provide credits against the cash proffers for positive fiscal impacts was not approved (2-5-1) and is not further noted in the above section. Also, although there was some discussion during the last meeting regarding two topics raised by Committee member Mark Rinaldi (Philosophical/Equity Considerations and Unintended Consequences Considerations), there was consensus of the Committee not to pursue these topics.

ATTACHMENT 1. JAMES CITY COUNTY CASH PROFFER CALCULATION

James City County Cash Proffers - Schools

There are five components involved in calculating what a new dwelling will cost the County to provide new schools.

May 25, 2005
DRAFT

(1) **Demand generators** - the weighted average current public school enrollment of single family and multi-family homes, based on the Sept 30 official school enrollment and the number of developed units in the two categories as determined in the latest land book.

Schools - previous September 30th official enrollment:

	Elementary	Middle	High	Total
Total City/County	4,171	2,246	2,988	9,405
	44.3%	23.9%	31.8%	
County only	3,812	2,050	2,752	8,614
	44.3%	23.8%	31.9%	

Source: Official Sept 30, 2004 enrollment report, WJCC Schools

COUNTY ONLY - Developed housing units - previous land book and actual enrollment count

	Units	Elementary	Middle	High	Total
Single Family - Detached	16,907	3,159	1,704	2,292	7,155
Single Fam - Attached	2,796	198	101	156	455
Multi Family	2,477	260	155	183	598
Mobile Homes	1,254	195	90	121	406
	23,434	3,812	2,050	2,752	8,614

Source: Units and numbers of units are those reported by category in the James City County land book, published as of July 1, 2004 and the number of mobile homes taken from the personal property book, Jan 1, 2004, as maintained by the Commissioner of Revenue.

EXCLUDED - the count of residential units above does not include any residential units or beds in six senior housing facilities - Williamsburg Landing, Chambrel, Patriots Colony, Tandem, Dominion or Manorhouse, also excluded are seven homes in Colonial Heritage, the only age-restricted single-family development in the County

Student enrollment comes from the list of County public age school students captured in the Sept 30, 2004 enrollment, sorted by address and then assigned to one of the four housing categories by address. All addresses are confirmed as legitimate County addresses to create the funding split in the School contract between the City and County.

STUDENTS PER UNIT	Elementary	Middle	High	Total
Single Family - Detached	0.20	0.10	0.15	0.45
Single Fam - Attached	0.07	0.04	0.06	0.16
Multi Family	0.10	0.06	0.07	0.24
Mobile Homes	0.16	0.07	0.10	0.32
	0.17	0.09	0.13	0.39

Source - calculated using landbook totals and WJCC School enrollment

ASSUMPTION: Used the actual student addresses against only those SF - detached units that were built in the last five years - there were 3,261 units, 1,467 students - 0.45 kids per unit. That is higher than the overall average of 0.42 - but the housing values are higher as well.
Actual counts of students in multi-family housing built in the last five years mirror those found in that group in total, but the actual count for single-family attached built over the past five years is only eight students per hundred units.

James City County Cash Proffers - Schools

(2) **Service levels** - existing service levels for each type of school for which a cash proffer will be accepted - based on estimates provided by Moseley Architects in its February, 2005 study of school capital facility needs. Design, SF and acreage standards adopted by the WJCC School Board as part of the CIP adopted on February 15, 2005.

	Elementary	Middle	High	
Design Capacity	600	800	1,250	WJCC CIP
Core Design	700	900	1,450	WJCC CIP
County Capacity	645	830	1,336	

ASSUMPTION: "County capacity" becomes the core capacity multiplied by the current split between County and City students (92.17%).

	Elementary	Middle	High	
Acres	25	35	50	Comp Plan
Land Cost Per Acre	$25,000	$25,000	$25,000	Estimated
Land Cost	$ 625,000	$ 875,000	$ 1,250,000	Calculated
Construction Cost	$ 12,717,390	$ 13,695,652	$ 44,244,444	WJCC CIP
Engineering / Planning	$ 1,017,390	$ 1,095,652	included	WJCC CIP
Other project Costs	$ 1,891,922	$ 2,020,145	included	WJCC CIP
Site Work	$ 1,925,000	$ 2,054,348	included	M Rinaldi
Off-site work	$ 153,000	$ 153,000	included	M Rinaldi
Gross Cost	$ 16,534,312	$ 17,770,145	$ 45,494,444	WJCC CIP
County Funding Share	90.37%	90.37%	90.37%	FY2006 Contract
County Cost	$ 14,942,058	$ 16,058,880	$ 41,113,329	Calculated
County Capacity (above)	645	830	1,336	
County Cost Per Student	$ 23,159	$ 19,359	$ 30,763	

ASSUMPTIONS: "County cost" becomes the total cost multiplied by the funding split between City and County. The current split has the County paying 90.37%. "Other project costs" taken directly from the WJCC School Capital Improvement Program - and are less than the 17.1% that was tentatively agreed to by the Committee.

(3) **Gross cost** of public facilities is then calculated per dwelling unit. The term "gross cost" is used because a credit is calculated for each dwelling unit based on future operating revenues.

	Elementary	Middle	High	
County Cost Per Student	$ 23,159	$ 19,359	$ 30,763	Calculated above

Students by grade by housing unit as was previously calculated above

	Elementary	Middle	High
Single Family - Detached	0.20	0.10	0.15
Single Fam - Attached	0.07	0.04	0.06
Multi Family	0.10	0.06	0.07
Mobile Homes	0.16	0.07	0.10

Costs per:	Elementary	Middle	High	TOTAL
Single Family - Detached	$ 4,632	$ 1,936	$ 4,614	$ 11,182
Single Fam - Attached	$ 1,640	$ 699	$ 1,716	$ 4,056
Multi Family	$ 2,431	$ 1,211	$ 2,273	$ 5,915
Mobile Homes	$ 3,601	$ 1,389	$ 2,968	$ 7,959

James City County Cash Proffers - Schools

(4) **Credits** - a credit will apply against the cost for each public school. The County has issued, and plans to issue, general obligation bonds for school construction. Residents of new developments will pay property taxes and a portion of these taxes will go to debt service. The credit is needed to avoid paying twice - through both a cash proffer and by real property taxes, for the same new schools.

SINGLE FAMILY DETACHED

Average Value - Built Last 5 Years $ 330,627

		Real Estate Tax Revenue	School Debt Service	Percent to Credit
Annual Tax Payments $0.825/$100 Tax Rate Tax Payment	FY2006	$ 61,082,995	$ 10,497,594	17.2%

Avg Value times tax rate	Tax Payment	$ 2,728	
	Credit	$ 469	(portion of real property tax for school debt service)
Net Present Value of Credit Discount Rate of 4.2% for 25 years		$ 7,171	

May 24, 2005 sale of $39,820,000 in County bonds had, as a low bid, an interest rate of 4.2%

(5) **Calculate a proposed proffer** - the cost per household minus the credit per household

SINGLE FAMILY DETACHED	Avg Value
Cost for each Single family detached unit	$ 11,182
CREDIT - calculated above	(7,171)
Proposed Proffer - single family detached	$ 4,011

REPEAT FOR SINGLE FAMILY ATTACHED AND MULTIFAMILY

		SF Attached	Multi Family
Average Value - Built Last 5 Years		$ 280,392	$ 75,543
Avg Value times tax rate	Tax Payment	$ 2,313	$ 623
	Credit	$ 398	$ 107
Net Present Value of Credit Discount Rate of 4.2% for 25 years		$ 6,086	$ 1,640

PROFFERS	Average SF Attached	Average Multi Family
Cost for each unit	$ 4,056	$ 5,915
CREDIT - calculated above	(6,086)	(1,640)
Proposed Proffer - single family detached	$ -	$ 4,275

APPENDIX. COMMENTS AND MATERIAL FROM STEERING COMMITTEE MEMBER(S)

Concurring Opinion
JCC Schools Cash Proffers

By David B. Jarman

In my view the Schools Cash Proffer Steering Committee saw as its principal responsibility the creation of a defensible maximum cash proffer amount. Most of the time of the Committee was spent in this pursuit. We were able to agree (vote: 7-0) on numerical data and calculations to arrive at a figure of $4,011 for a single family detached home and $4,275 for a multi-family home. It is noteworthy that these figures are substantially lower than those presented by staff at the start of this process. Key changes to the original staff assumptions lay in revising credits based on current assessment values of new homes constructed in the last five years, calculating pupil generation rates rates based on experience over the last five years, and refinement of capital costs estimated for new school construction. Much credit should go here to the work of John McDonald and Mark Rinaldi.

Our second major responsibility, in my view, was to agree on how to implement this cash proffer policy. On the six registered votes on these implementation issues there was less consensus, with usually 2 or 3 dissenters from the majority position. The dissenters were consistent and reflected their individual concerns with the advisability of recommending any cash proffers at all. Much of the discussion centered on timing of implementation. The unanimous conclusion to recommend a two month delay in the effective date is significant. The final recommendation on Affordable Housing reflected the general concern that implementation of a cash proffers policy would have an adverse effect on affordable housing. The Committee's concern suggests, in my opinion, a preference to offer financial incentives or waive this cash proffer requirement for affordable housing projects.

Finally, while the Committee elected not to pursue the equity considerations and potential economic consequences of introducing a Schools Cash Proffers Policy, there was active discussion of several issues during the final day. Here are some of my thoughts on these issues.

1. Equity Considerations: It is true that this policy recommendation is imperfect. It does not apply to commercial or "by-rights" developments. It

creates two classes of homeowners - those covered by school cash proffers and those not covered. Plus, the methodology captures only the capital cost of new schools and not the incremental operating costs for these schools. Nonetheless, these concerns do not invalidate the value of this approach. Consider that this is the "least bad" alternative available to us.

2. Potential Economic Consequences

a. Housing Affordability. Clearly, additional costs imposed at the front end will cause upward pressure on housing costs, as developers attempt to recover these costs in their pricing. In a rising market, this is likely to be successful. The adverse effect on affordable housing is more troublesome, but could be addressed by other financial incentives or waiver of the cash proffer requirement.

b. Housing Variety. It is claimed that this policy will cause developers to move further upscale I recognize this possibility but don't believe the evidence is conclusive

c. Land Rush for "By-Rights" Development. It is claimed that this policy will lead to a rapid expansion of 'by-rights' development, both inside and outside the PSA. This point is arguable. I personally expect that many of these supposedly "by-rights" developments will be restructured and be resubmitted as rezoning. I truly doubt a "land rush" will eventuate.

PHBA

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FINAL Report of Alternative Conclusions/Recommendations

James City County Schools Cash Proffer Steering Committee

July 14, 2005

The James City County Board of Supervisors established the Schools Cash Proffer Steering Committee in February 2005, with individual appointments made on March 8, 2005. The committee's charter was formalized on March 22, 2005, with the mission being described as: "Create and present to the Board of Supervisors a valid, broadly acceptable, explainable and defensible Cash Proffer Policy for financing School capital projects..."

The charter charged the committee with reviewing numerical data and calculations used to compile a maximum school proffer amount; reviewing policy considerations and potential issues related to cash proffers; presenting a recommended defensible Cash Proffer Policy, or if consensus has not been reached, presenting a minority report with proposed alternative financing; and, if cash proffers are not recommended, recommending financing alternatives to cash proffers.

The committee met five times: March 28, April 7, May 2, May 23 and May 25, 2005. Attendance varied: Committee members Jarman, McDonald and Rinaldi, and Facilitator Tischler, attended all meetings through their duration. Committee members Horne, Blanton, Duckett and Thornton were unable to attend at least one meeting. Committee member Larson was unable to attend three of the five meetings and had to leave early on one of the five meetings. Ex-Officio member Rogers attended all meetings. Rogers and Tischler had no voting authority, and while no official voting record was maintained, committee member Wilson was the only voting member who consistently abstained from voting.

There was no formal record keeping for the work of the committee and no meeting minutes were ever approved by the committee. Many committee members kept their own notes that were from time to time shared with other committee members and the Facilitator in an effort to re-construct a key discussion or decision. Overall, the work of the committee was congenial, and where disagreements arose, discussion was typically cordial.

On the pages that follow, this report will present and discuss alternative policy issues, conclusions and recommendations that were not advanced by the majority "opinion" of the committee. The alternative policy issues are organized into four broad categories, including:

- Philosophical/Equity Considerations
- Cash Proffer Computational Considerations
- Implementation Considerations
- Unintended Consequences Considerations

A. Philosophical/Equity Considerations

1. Throughout the history of James City County, new businesses, homes and the people who occupied them were welcomed into the community. They were seen as contributing to the maturation of our community. While any of us could argue the point at which a theoretical new home became a nuisance to those of us already living here, the premise of a schools cash proffer, based on fiscal considerations only, begs the simple question: At what point in the County's history did new housing become a fiscal negative...or has it yet become negative? Other related questions follow:

    a. Is all new housing a fiscal negative, or just some types or price ranges?
    b. Indeed, is it the growth of housing over time in JCC, or is it the disproportionately low growth of commerce in JCC, that has led us to deviate from the longstanding principle that a community should share the cost of capital improvements, which benefit all existing and future residents?
    c. Does the County's fiscal impact analysis methodology attribute any costs of new capital infrastructure (including schools) to commerce, or does it assign all costs of local government (including schools) to residences only?

Precious little time was devoted by the committee to discussing this matter. Until a more rigorous analysis of the costs of providing local government services to, and the revenues generated by, various categories of housing and business can be quantified, and therefore the net fiscal impact of various housing categories determined, a cash proffer policy runs the risk of assigning added burden on precisely those homes which disproportionately support the overall fiscal needs of the County at large.

2. The premise of a school cash proffer, as articulated by those who support it, is that new homes must pay their "fair share" of public schools infrastructure. How do we determine what constitutes a fair share?
    a. If some homes are assessed a unique "proffer tax" and others are not (that is, all homes constructed in the County to date and countless others to be built by-right in the future and will not be subject to the fee), is that a fair share?
    b. Can we properly evaluate what a "fair share" is without taking into consideration the fiscal impact of a given home (i.e. the difference between the tax revenues generated by a home versus the cost of government services required to support that home)? If a home generates more in revenue than it consumes in services, including its contribution to the debt service of new schools, is it fair to also assess a cash proffer tax against that home?
    c. Arguably, in the absence of a methodology that takes fully into account the fiscal impact of a class of homes (determined by actual assessed value, personal property tax payments, sales and use taxes, consumer utility taxes, etc.), a schools cash proffer policy inherently does not achieve fairness.
    d. How do we arrive at a fair share for those existing homes that convert from, for example, retired couples to families with children over time? Using the cash proffer logic, shouldn't these homes which generate a new demand in the eyes of the school system be required to contribute to increased costs? What about age-restricted housing? Estimates suggest that 30% to 60% of these units are occupied by existing County residents. When these residents move to age restricted housing, the older homes become available for new families, often with children.
    e. How fair is it for people moving from an existing home in the County to a new home to pay the proffer cost when they are adding no new children to the schools? Estimates suggest that 30% to 50% of new JCC homebuyers are existing residents, with or without school children. The committee discussed this matter and the majority felt that it was the "event"

of a new home being created which allowed some existing residents to move into the new home, thereby facilitating the "backfilling effect", wherein families with children could move in to the home vacated by the existing resident and thereby create greater demand for school facilities. In this scenario, the new home subject to the cash proffer may generate no children while the older home may generate a number of children but pay no cash proffer tax. This is neither fair nor equitable.

An alternative opinion to the majority opinion is that such a practice is inequitable and indefensible, and does not assign costs to those directly generating the demand for which public expenditures are required. A similar argument can be advanced that if cash proffers are to be adopted formally, even age restricted housing should contribute its fair share as there is a backfilling effect that occurs when existing County residents move to age restricted communities or continuing care retirement communities.

3. How are schools used today, and how will they be used in the future? Increasingly, schools are becoming off-hour community centers used by community and church groups and athletic facilities are used by many and various sectors of the population. Schools are used for a variety of job fairs, as polling places, and as meeting areas for the work of local government (such as Comprehensive Planning public participation events). The costs associated with business and vocational education uses at schools are being assigned exclusively to housing, whereas the benefits accrue to commerce and clearly support economic development efforts.

The committee did not discuss this issue. An alternative opinion to the majority opinion is that attributing all of the costs of future schools to new housing subject to rezoning is arbitrary and does not fairly distribute the burden among all future beneficiaries of the school facilities.

4. How does one explain to future irate citizens (like those who were asked to pay the Rte. 5 TID tax) that they were required to pay a disproportionate share of capital facilities which benefit all residents, existing and future alike? Is the County concerned with creating two classes of citizens, again? If the County is, then it should not further consider cash proffers. If the County is not, then the proffer tax should be made fully transparent to prospective affected homeowners – an adopted policy should require disclosure of the proffer tax in all home-closing documents subject to the cash proffer. Whether the adopted policy, if any, addresses this issue or not, the local development community likely will adopt the practices of development communities elsewhere in disclosing cash proffer costs to future homebuyers as a line-item cost at closing.

5. The current methodology bases the cash proffer on the capital cost of the school facility. The County has been lauded for its financial management (much to the credit of Mr. McDonald) by the three bond rating agencies precisely because the County understands the fiscal advantages of prudent borrowing. The cost to the citizens in any given year and over the years is the cost of debt service, not the capital cost per se. Might the methodology, then, use the annual debt service, distributed over the number of households (subject to cash proffers) projected to be constructed in that year? In this way, there is a clearer relationship between the impact, the proffer, the public improvement and the retirement of debt service (i.e. paying the actual costs). A draft methodology has been crafted to address this approach, which includes credits for real estate tax revenue contributions to schools debt service.

The committee began its business by immediately working to calculate a maximum cash proffer amount using the methodology previously established by County Staff, over the objections of some committee members. By proceeding in this way, broader policy issues and considerations were not discussed at the outset which, in the opinion of a minority of committee members, would properly set the stage for future discussion of a cash proffer amount. As a result, other ways of looking at the issue were not entertained. Only when the effort to determine a maximum proffer amount was essentially complete did the committee begin to consider broader policy issues. An alternative proffer amount methodology was advanced to the membership and facilitator well before the first meeting of the committee devoted to discussing policy issues; however, the majority of the committee elected not to discuss, review or consider alternative approaches at that time or at any subsequent time.

B. Cash Proffer Computational Considerations

1. Alternative methodologies were not considered nor discussed. See discussion in A. 5 above.

2. Speaking strictly about the methodology advanced by Staff and refined by the committee, there remains a significant internal logic inconsistency in the credit computation, which warrants further consideration here (refer to D. 4 below). The methodology requires the computation of a credit to avoid double payment, so that the proportion of real estate taxes paid to the General Fund by new homes subject to the schools cash proffer and which is assigned to covering schools debt service, is credited against any cash proffer payment. This is appropriate. Two means of deriving the credit were considered:

    a. A per pupil credit, which was not recommended by the committee.

    b. The assessed value approach, which is the approach used by Staff and supported by the committee, determines the proportion of real estate taxes paid by a home, which go to cover schools debt service. In our case, 17.2 % of general fund real estate revenues pay for schools debt service. The computation identifies a dollar amount which is equal to a home's annual real estate taxes multiplied by 17.2%. This figure is then multiplied by the term of the average school bond (in our case 25 years) and the resulting figure is then converted to present value using a reasonable discount rate (in our case, 4.2%) to arrive at a credit amount.

The selection of the assessed value approach was a conscious decision to reflect that monetary contributions by new homes (specifically, real estate taxes) to pay for essential government services and facilities are directly related to assessed value. Historically, the assessed value of homes in James City Co. increase significantly each year, by perhaps 5-6% annually (average, Countywide) over the past decade and by perhaps 8-9% annually (average) over the past two years. The methodology advanced by the majority report of the committee does not permit the credit computation to allow for an escalation of home assessed value (the assessed value of a home in Year 1 of a 25-year bond term is the same as the assumed assessed value of the same home in Year 25 of a 25-year bond term).

Since the credit methodology recognizes the importance of assessed value, and since homes undeniably are increasing in assessed value annually, failing to allow for increased assessed valuation for homes subject to the cash proffer artificially minimizes the credit to be computed to avoid double payment. Today, homes are increasing in value annually, and recognizing this in the methodology is consistent with the "snapshot" approach that was

used to determine all key variables. ***See supplemental discussion entitled "Cash Proffer Methodology – Completing the Credit Computation Logic Loop".***

C. Implementation Considerations

Authority (premise) for acceptance of cash proffers:

"...the rezoning itself gives rise to the need for the conditions; (ii) the conditions have a reasonable relation to the rezoning; and (iii) all conditions are in conformity with the comprehensive plan..." In the event proffered conditions include the dedication of real property or payment of cash, the property shall not transfer and the payment of cash shall not be made until the facilities for which the property is dedicated or cash is tendered are included in the capital improvement program, provided that nothing herein shall prevent a locality from accepting proffered conditions which are not normally included in a capital improvement program. If proffered conditions include the dedication of real property or the payment of cash, the proffered conditions shall provide for the disposition of the property or cash payment in the event the property or cash payment is not used for the purpose for which proffered.
§ 15.2-2298, Code of Virginia

1. Given the premise above, a schools cash proffer should only be applicable to those residential units proposed in a rezoning that are above the by-right development potential of a property (as is the case in the Loudoun Co. proffer policy). A non-voting member of the committee made the argument for not considering this approach. The notion was that if a property owner wishes to develop at the by-right density, and thereby avoid the many and various issues associated with a rezoning, they should do so. But if they choose to rezone to achieve a higher density, then the entire project should be subject to whatever fees and costs are assessed through the rezoning process.

If the County wishes to encourage a less efficient, sprawling development pattern of lower density, disconnected development with little or no regard for unique site-specific cultural features throughout the County, then such a philosophy should continue. Should the County wish to encourage more thoughtful and efficient community design, achieved through the many and various policies that only come about through rezoning (or special use permit), then it might consider exempting the by-right portion of future rezoning development potential from cash proffers as an incentive for property owners/developers to come to the table.

2. In order to ensure that money proffered by an applicant is used to fund the public facilities necessitated by the development, geographic service areas or districts must be drawn across the County (as is the case in Chesterfield Co. and Fauquier Co.). See this provision from Chesterfield's cash proffer policy:

> *To determine how and where a proffer will be spent, the County is divided into geographic or service districts. For roads and schools, the proffer will be spent within service districts...*

In James City County, appropriate service districts could be drawn to match existing school attendance zones, existing magisterial districts, or other physical or cultural boundaries that bear a reasonable relationship to the development project under consideration.

Though committee discussion of this matter was sparse, a minority opinion holds that if the County elects to assign a disproportionate burden of paying for future schools facilities on a

select few homes, those homes should be reasonably assured that their extraordinary contributions directly benefit them. The majority opinion holds, for example, that new homes in Stonehouse District could be assessed the proffer tax to pay for a new school in Roberts District, though the students from the new homes in Stonehouse District would never attend the Roberts District facility. <u>By endorsing collection and expenditure zones (either based on middle or high school zones), the County will have added control over funding of new schools from cash proffer proceeds, fostering greater accountability by Williamsburg-James City Schools as they address schools needs throughout the County.</u>

3. Accordingly, specific schools capital improvements within designated service districts must be included in the capital improvements plan before cash proffers can be accepted from projects within a given service district. If there are no capital improvements proposed within a specific service district, cash proffers may not be accepted from applicants in that district.

4. To address equity in cash proffers for schools, the proffer policy should provide for retroactive credits, in addition to those included in the methodology for debt service paid from general funds. For example, every home, which generates more in taxes than it consumes in local government services, is paying more than its fair share towards government operations, including schools. For every dollar of tax revenue above break-even, that home generates income that can be spent by JCC on myriad projects, including schools. In multi-phase residential projects, average assessed values of homes in earlier phases are often known (or can be calculated based on prior building permit applications) before building permits in subsequent phases are issued. Where prior phases exceed break-even, subsequent phases can be credited an amount approximating the incremental tax revenue between the average assessed value used in the methodology and the average assessed value of the prior phase.

This concept is merely an extension of the logic of the Staff's computation methodology. The final model presented by the committee found that the average single family home ($330,627) generated real estate revenues dedicated to schools debt service that would equate to a credit of over $7,000 against a computed per home schools cost of over $11,000. Similarly, a single family home assessed at $450,000 would generate a credit of over $9,750, reducing the cash proffer amount per home to $1400. Using the <u>current</u> methodology, each new home having an assessed value of approximately $515,000 would generate a credit equal to the schools cost, resulting in no cash proffer.

5. The cash proffer policy should also address credits for other non-cash, perhaps non-school proffers by developers which contribute to efforts, policies or programs deemed desirable by County, thereby offsetting those costs and freeing up County funds for the cash proffer items then under discussion. For instance, Fauquier Co.'s cash proffer policy recognizes that:

> *"In some instances, a rezoning applicant may wish to diminish the development's calculated impact on public facilities by dedicating property, doing in-kind improvements or dedicating conservation easements limiting development on other properties within the rezoning impact area, in lieu of all or a portion of the cash proffer."*

Since conservation and purchase of development rights are specific policies of the County, developers who preserve off-site property as part of a development project proposal subsidize the County's efforts in this regard and at the same time may limit future development, and accordingly should receive credit for doing so (unless other credits, such

as density transfers, are a part of the conservation strategy), both as an incentive and for equity purposes.

6. Credits for cash or land dedication previously proffered and already accepted by the County within identified service districts should also be given to rezoning applicants to avoid double payment. For instance, a major project currently in deferral include the dedication of 50 acres of net developable land to accommodate a future elementary and middle school complex. If the project proposal is approved, the land cost associated with this dedication represents a significant cost savings for the two schools that will be constructed there. As such, future developments within that service district cannot be fairly charged for the land costs contained within the committee's current methodology as those costs would previously have been "captured" by prior development.

Only when future schools beyond the next elementary and middle school (in the Stonehouse collection and expenditure zone), for example, are placed on the CIP for that service district can the land cost of future schools be fairly assessed against future homes through the cash proffer methodology.

7. Should a developer elect to guarantee, by Proffer, that minimum home prices will exceed the average home price used in the methodology, and thereby increase the credit for real property tax contribution to schools debt service, then the calculation to determine the applicable proffer amount should be adjusted accordingly for that zoning case.

This is again an extension of the cash proffer model logic which concludes that houses of greater value contribute more significantly to schools debt service through real estate taxes paid into the general fund. Procedural details over how to ensure that such a proffer is met and therefore the lower cash proffer should apply can easily be addressed, or a procedure for rebating the difference between the maximum cash proffer and the proffer amount that would result from the higher assessment can also be addressed.

8. Frequency of Update to Methodology/Inputs: The majority opinion of the committee (by a 4-3 vote) was that the cash proffer methodology should be reviewed annually to reflect changing real estate tax rates, debt service ratios, pupil per dwelling unit ratios, schools capital costs and other methodology inputs, and that the Board should consider placing a cap on the increase of the cash proffer amount that can occur in any subsequent year.

To provide a minimal degree of certainty and predictability in an already long, complicated and uncertain development process (including identifying suitable land, determining a willing seller, negotiating a land value and the terms of a option/purchase contract, pursuing due diligence feasibility and planning, securing necessary entitlements, and closing on the property), the minority opinion is that the maximum proffer amount should not be reviewed any more than every 3-5 years. There are provisions in state code that allow for established cash Proffers to escalate over time at rates determined by relevant indices, thereby ensuring that schools construction costs and cash proffer contributions remain in relative parity. Regardless, <u>all changes to methodology and/or inputs should be coordinated through a broad-based stakeholder committee to ensure consistency with this initial effort.</u>

9. Applicability of Schools Cash Proffers: There was limited though spirited discussion about which projects would be subject to the schools cash proffer. This is related to timing of implementation, but has other equity issues involved.

A minority opinion holds that previously rezoned properties that wish to seek a rezoning modification (such as restated and amended proffers) or a master plan amendment refinement, but which do not increase the number of housing units proposed on the original tract of land, should not be subjected to the schools cash proffer. In many instances, the changes are requested to address market requirements or to "modernize" developments which may have been approved years or perhaps even decades ago. Generally, the community can be well served by developer efforts to modify a project consistent with a contemporary context, and the threat of significant cash proffers in any rezoning should not be viewed as a disincentive to doing so. If a cash proffer policy is to be adopted, the Board should consider a cash proffer policy provision that reads much like the current language found in the <u>Adequate Public School Facilities Test Policy</u>, which reads:

> *"The following proposals would be exempt from the Adequate Public Schools Facilities test: "*
> *" - amendments to previously approved rezonings, special use permits and master plans that only shift densities or internal uses that do not increase the number of previously approved units or gross densities and that do not change the zoning district of land."*

10. Tax Rate Off-sets: Though never discussed or considered by the committee, some would suggest that in fairness to the citizens of the County, and as a means of checking unfettered local government spending, the County's real estate tax rate should be adjusted to reflect the revenue generated by cash proffers, if implemented.

D. Unintended Consequences Considerations

Careful consideration must be given to the many and various consequences of any action to move forward with a formalized cash proffer policy. Chief among the potential adverse outcomes are:

1. Impacts to Housing Affordability, particularly the lower priced homes.
   a. Cash proffers are inflationary and tend to raise the cost of all housing
   b. Efforts to waive or reduce proffer costs for affordable housing projects runs counter to notion that all who benefit from public facilities should pay their share.
   c. Efforts to waive or reduce proffer costs for affordable housing projects are an overt recognition that proffers will increase the cost of housing.
   d. National and regional estimates range from 50% to 130% of the cash proffer being translated into higher housing costs because a developer must pay the fee up front and carry that added burden until settlement, which carry cost includes interest.
   e. Moreover, the compounding effect of financing these costs over a 30-year mortgage can result in costs to the homeowner of 2 to 3 times the proffer amount.
   f. Increasing overall housing prices tends to discourage a wide range of economic development opportunities since site selection professionals and corporate executives are sensitive to high housing prices that may be out of reach for the employees of future prospects.

2. Impacts to Housing Variety
   a. Bond rating agencies recognized as a positive the range of housing choices and the value that housing contributes to the fiscal stability of the county.
   b. Increased development costs are often absorbed by individual builders by changing their products to higher cost housing.
   c. With the recommendation of no cash proffer for single-family attached housing, it is likely that more of this housing type will be developed in the county, perhaps over time becoming a disproportionate share of the overall housing stock.

3. Impacts to assessed value
    a. **As cash proffers raise the cost of some housing, all other housing both new and resale will rise to meet the new "ceiling" established in the marketplace. The assessed values of existing homes will therefore rise faster than without cash proffers.**
    b. For undeveloped land, depending on the elasticity of the market, cash proffers can also lower property values.
    c. As the taxable real estate base falls, there is a gradual shifting of the tax burden to all developed property.
    d. Fees will reduce raw land values but stimulate more growth in developed tax value, meaning existing residents' assessments can be expected to rise (this is the inflationary effect).

4. Increase the supply of buildable land
    a. Contrary to what many allege, there have been no studies supporting the contention that cash proffers drive development to adjacent communities.
    b. The regional experience is that there has been no decline, and indeed, cash proffers have tended to encourage growth generally, and growth in higher income housing specifically.
    c. The introduction of added development costs associated with rezonings will accelerate the by-right development of properties, both inside and outside the PSA.
    d. **County efforts to address the "land rush" for by-right development, particularly outside the PSA, could include dilution of property rights for rural property owners and/or the creation of added bureaucratic overhead to manage a more complicated development review process.**

5. Long-term negative effects on ability to fund schools
    a. Even with proffers, the majority of schools funding will continue to be through broad-based bonding of debt, because proffers will not generate sufficient funds themselves.
    b. Evidence suggests that households subject to the tax are often less willing to support future bond referendums.
    c. In this way, over time as more homes become subject to the proffer (yet with the relative contribution to overall debt service remaining small compared to the contribution of more broad-based financing), the overall ability to finance school debt can be jeopardized.

Cash Proffer Methodology – Completing the Credit Computation Logic Loop

The methodology advanced by County Staff on several occasions over the years, and ultimately accepted by the Schools Cash Proffer Steering Committee, includes computations involving demand generators, service levels gross costs later apportioned by housing type and credits to arrive at a maximum proffer amount.

This discussion focuses on the credit computation component, that element of the methodology which seeks to ensure that homes subject to the proffer tax do not double pay for schools. The opportunity exists for such homes to double pay when they pay both a schools cash proffer and when a portion of their annual real estate taxes, personal property taxes and all other taxes which go to the general fund are used by County government to pay debt service for schools capital costs. Today, approximately 17% of general fund revenues are allocated to paying for schools debt service.

Simply, the methodology "predicts" the amount of real estate taxes (only) from a cash proffer home which will be allocated for schools debt service over the period of the borrowing (currently, 25 years), and applies that as a credit against the calculated cash proffer amount. There are five key factors used in the computation: the assessed value of a home, the real estate tax rate, the portion of general fund revenues allocated to schools debt service (expressed as a percentage), the term of the bond period and a discount rate.

The committee concluded its work with general agreement over this methodology and the key inputs into the formula for calculating credits. One critical area of disagreement (not reflected in the Final Report) remains: should the assessed value of the theoretical home used in the model remain flat over the 25 years or grow to reflect appreciation. The majority held that it should remain flat; a minority believed it should grow to reflect historical appreciation of real estate values. The theoretical support for this approach is as follows:

Growing communities see appreciation in real estate values (on an average basis, countywide) as the marketplace seeks to determine equilibrium between a relatively restricted supply and a healthy demand. James City County has seen average annual appreciation in residential real estate values over the past 10 years or more of about 5%. The past two years have witnessed average annual appreciation in the range of 7-9%. Critics of the approach that would grow the assessed value in the methodology argue that such appreciation rates are very difficult to predict 10 and 25 years into the future and that bonded indebtedness for schools (and consequent % of general fund revenues allocated for schools debt service) is similarly difficult to predict. This is true, but the model is premised on a snapshot approach, where the conditions existing today are used as inputs into an admittedly imperfect model. Today, homes are increasing in value annually, and recognizing this in the methodology is consistent with the snapshot approach.

So today (looking back at the same 5-year period used to compute average home values), homes are appreciating. What conditions would result in depreciation of home values overall in James City Co.? A sudden and significant reduction in demand for housing in James City Co. is the most likely force that would lead to depreciation. Even during the past two significant recessions, demand for housing locally remained strong and housing values continued to rise. In the event of a significant reduction in demand for housing, and with the trend already in place and continuing of an aging of the population (either through in-migration of older persons as the Census has shown or intuitively through a stationary resident population growing older with time), the growth in school age population would drop, and if the episode were to last long enough, an actual decline in enrollment would occur. In this scenario, new schools would not be needed and a cash proffer for schools would similarly become unnecessary.

Accordingly, for the methodology to be intellectually honest, there must be a recognition that housing values rise over time, and that each new home therefore contributes increasingly towards schools capital costs. And since schools typically do not come on-line every year, the incremental "surplus" of real estate tax revenues that would be generated as the prior bond issuance debt declines relative to the overall tax revenue stream can be used as a hedge or debt service reserve fund that can be used to reduce the future general fund revenues needed to support a future debt service.

What is the impact on the calculated cash proffer maximum arising from differing assumptions as to rate of increase in average home values? Using the single-family detached home example, with a **calculated pre-credit proffer amount of $11,182**, the following credits against double payment would result from no appreciation, 2% annual appreciation and 5% annual appreciation:

ASSUMPTIONS	
2004 Avg. Assessed Value:	$ 330,627
Growth in Assessment Value:	**NONE**
Tax Rate:	$0.825/$100
Debt % to Credit:	17.20%
Discount Rate:	4.20%

469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	7037 Total for 15 years
469.16	5144 NPV for 15 years
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
469.16	
	11729 Total for 25 years
	7177 NPV for 25 years

ASSUMPTIONS	
2004 Avg. Assessed Value:	$ 330,627
Growth in Assessment Value:	**2% per Year**
Tax Rate:	$0.825/$100
Debt % to Credit:	17.20%
Discount Rate:	4.20%

469.16	
478.54	
488.11	
497.88	
507.83	
517.99	
528.35	
538.92	
549.70	
560.69	
571.90	
583.34	
595.01	
606.91	
619.05	
631.43	8113 Total for 15 years
644.06	5841 NPV for 15 years
656.94	
670.08	
683.48	
697.15	
711.09	
725.31	
739.82	
754.61	
	15027 Total for 25 years
	8817 NPV for 25 years

ASSUMPTIONS		
2004 Avg. Assessed Value:		$ 330,627
Growth in Assessment Value:		**5% per Year**
Tax Rate:		$0.825/$100
Debt % to Credit:		17.20%
Discount Rate:		4.20%
	469.16	
	492.62	
	517.25	
	543.11	
	570.27	
	598.78	
	628.72	
	660.16	
	693.16	
	727.82	
	764.21	
	802.42	
	842.54	
	884.67	
	928.90	
	975.35	10124 Total for 15 years
	1024.12	7129 NPV for 15 years
	1075.32	
	1129.09	
	1185.54	
	1244.82	
	1307.06	
	1372.42	
	1441.04	
	1513.09	
		22392 Total for 25 years
		12357 NPV for 25 years

The above illustration shows that all other inputs being equal, if the assessed value of the average single-family home used in the cash proffer computation remains constant over 25 years, the maximum cash proffer would be $4005. If the assessed value of the same home were to appreciate by 2% every year over 25 years, the maximum cash proffer would be $2,365.

And if the assessed value of the same home were to appreciate by **5% every year** over 25 years, the **credit of $12,357** would exceed the calculated per unit school capital costs of $11,182 by $1,175, which is a clear acknowledgement that the "average single-family home" more than pays its fair share of schools capital construction costs.

Williamsburg Area
ASSOCIATION OF REAL

49 Years

"The Voice for Real Estate"
in Williamsburg, Virginia

1956 - 2005

MEMO: Members of the James City County Citizens Committee on Cash Proffers

FROM: The Williamsburg Area Association of REALTORS®

DATE: May 25, 2005

RE: Proposed Cash Proffer Policy

The Williamsburg Area Association of REALTORS®, as part of the NATIONAL ASSOCIATION OF REALTORS®, strives to be the collective force influencing and shaping the real estate industry in the Historic Triangle region. It seeks to be the leading advocate of the right to own, use, and transfer real property; the acknowledged leader in developing standards for efficient, effective, and ethical real estate business practices; and valued by highly skilled real estate professionals and viewed by them as crucial to their success.

Working on behalf of America's property owners, the Association provides a facility for professional development, research and exchange of information among its members and to the public and government for the purpose of preserving the free enterprise system and the right to own, use, and transfer real property.

In striving to achieve our goal of protecting private property rights, the Association at all levels becomes involved in issues which directly impact real property and the ability of consumers to purchase real property. It is to this end that the Association has expressed concern, not only to members of the Board of Supervisors but also to all of you through our representative on this Committee, REALTOR® John Wilson, over the proposed cash proffer system currently under consideration. We have appreciated the opportunity to work with each of you in exchanging meaningful dialogue on the proposed policy; our members and the customers they serve are stakeholders in the issue, and the role undertaken by Mr. Wilson has not been taken lightly. Thus, we wish to express our thanks to you for your willingness to listen, to exchange ideas and to move the process forward in a constructive manner.

However, while the Association is grateful for being a part of the process, we must express concerns over the proposal and feel we furthermore must OPPOSE the proffer as proposed based on our mission and goals. Within this memorandum, you will find the rationale for our opposition, as well as areas of discussion which we believe must be placed "on the table" before any policy can be sent to the Board of Supervisors.

BACKGROUND

Education is usually the largest single expense in state and local budgets, and usually is funded from property taxes. REALTORS® recognize the impact that quality education makes in every aspect of society. The future of business and industry, the real estate market and homeownership, our communities, and our nation depends on well-educated citizens and a well-educated workforce. In fact, if you ask any REALTOR® what questions arise from homebuyers during a property tour, odds are that the answer they give will be ,"Are the schools good?" It is from this that REALTORS® say they do not just sell homes, they sell entire communities! To that end, the Association supports programs and policies that promote quality education by efficiently financing capital construction, maintenance, and operations of our public school systems. We believe that public education is a state and local issue, and a state and local funding responsibility.

Community, family, and parental involvement in schools support such quality education. Thus we encourage all members of the REALTOR® family to actively involve themselves with local education issues and institutions, both individually and within their REALTOR® organizations.

We further encourage state legislatures, local governments, school systems and private enterprise to explore all avenues that will increase efficiency through better allocation of resources to the classroom by developing creative solutions and promoting community and corporate involvement, rather than looking predominantly to the overburdened taxpayer.

At a time of severe budget problems at the state and local level, many jurisdictions are finding it increasingly difficult to provide schools and other infrastructure needed to accommodate a growing population. Additionally, as citizens demand a broader range of services from their local governments, and as the costs of maintaining and expanding infrastructure rise, governments are looking for ways to satisfy competing demands. Driven by crisis, many state and local governments now seek regressive and otherwise negative alternatives to traditional ways of financing and managing infrastructure. These mechanisms would include cash proffers and impact fees, both of which are paid by only a segment of the population.

In contrast, the Association supports innovative financing mechanisms, such as tax increment financing (TIFs), state bond banks, tax-exempt municipal lease-finance, bonds and special purpose corporations. Other approaches, such as design-build strategies, public-private partnerships and small-scale water and wastewater systems, offer new ways to get infrastructure built. Still other innovations - asset sales, privatization, and competitive contracting of operations - focus on the long-term management of infrastructure. These approaches, particularly when coupled with a broad-based approach, are much fairer to the citizens of a community, all of whom benefit from the infrastructure which will be built with the financing.

The examples given above are much preferred over proffers and impact fees. Given the political climate today, governing bodies find it much easier to raise a fee or implement a program such as that under consideration here in James City County rather than make the politically difficult decision to raise taxes. The County clearly finds itself in this predicament, given that the Board recently reduced the real property tax rate, and now is seeking to impose a cash proffer system for new schools and other needs, including the treatment of brackish groundwater.

Thus, to clarify again, the Association opposes the proposed proffer system and would prefer to see a more broad-based approach taken to fund school infrastructure, or an approach that would involve an innovative approach that would be fairer to the citizens. Taking the proffer route will impact hosing affordability, increase sprawl and harm the overall quality of life in the County. We offer an explanation below.

IMPACT ON HOUSING AFFORDABILITY

Part of the role of the Association of REALTORS® is to provide increased opportunities for homeownership, promote community development and expand access to decent affordable housing. Increasingly, REALTORS® across the country are seeing that many of the constraints to providing affordable housing and to developing sustainable communities lie within those communities and their regions in the form of regulatory barriers.

According to the Advisory Commission on Regulatory Barriers to Affordable Housing, a creation of the U. S. Department of Housing And Urban Development, exclusionary, discriminatory or unnecessary regulations continue to reduce the availability of affordable housing. The message that well-designed, attractive affordable housing can be an economic and social asset to a community is falling on deaf ears. And the biggest fallout from this issue? Those hard-working and dedicated people – teachers, police officers, firefighters, nurses and other public service employees – cannot afford to live in the communities they serve. If the proposed cash proffer system is used for the intended purpose of increasing school infrastructure, presumably there will be an increase in the number of teachers working in the Williamsburg-James City County School Division. The question next becomes, if more teachers are hired, where do they live? Will they be able to afford to purchase a home in James City County, in the community where they work? Shouldn't they be given that opportunity?

HUD's Advisory Commission has found that various regulatory barriers – public processes and requirements that significantly impede housing affordability – directly raise development costs in some communities by as much as 35 percent. This leads to a significant negative impact on the locality's ability to meet its housing needs – single-family, multi-family, manufactured or site-built. Even rental housing ultimately is affected. To the extent that regulatory barriers prevent development in communities, they force some households to live far from job opportunities. In turn, this home-to-work distance can make it difficult by lengthening the commute and lowering the overall quality of life.

Cash proffers are becoming widespread throughout the nation according to the HUD Commission. Using local power to regulate land use, municipal governments are asking developers to bear a larger share of the front-end burden of supplying new infrastructure – which in this case applies to schools – as a means of paying for continued growth. The higher costs of building new homes in a rezoning are passed on to the buyers, and pose the greatest barrier when they are regressive or disproportionate to the actual development costs. Unlike property taxes, which are based on a home's value, proffers can be regressive if they are assessed on a per unit basis, as is the case in James City County. In such cases, a home built for $80,000 is subject to the same fees as a $300,000 home. This then present an insurmountable barrier to affordable housing.

Access to affordable housing is not just a matter of equity. Increasing the supply of affordable housing will create jobs, stimulate economic growth, and sustain the long-term economic health of our localities. Regulatory barriers such as cash proffers will fall only when we do not dismiss the term "affordable housing" with "not in my back yard," but when we respond with an affirmative "why not in our community?"

INCREASED SPRAWL/QUALITY OF LIFE ISSUES

Millions of Americans are being priced out of buying the kind of housing they otherwise could afford were it not for a web of government regulation. Middle-income workers, such as teachers, nurses, police officers, firefighters and other vital public service employees, often live miles from the communities they serve – because they cannot find affordable housing there.

Workers who are forced to live far from their jobs commute long distances by car, which clogs roads and highways, contributes to air pollution, and results in significant losses in productivity. These are the people who are caught in the affordability squeeze, and yet they are some of the most important people in our community – important that they teach our children, maintain order, care for us when we are sick, and protect us from the devastations of crisis. We do not want this to be the end result of the proposed proffer system, but it clearly has the potential to bring on this unintended consequence of increased sprawl and a reduction in the quality of life of these local employees. And in addition, what does it do for the quality of life for current residents of the County if a first responder, who cannot afford to live in the County, resides outside of the jurisdiction? What kind of response could a firefighter in New Kent give to a James City County resident of they needed to respond to a serious and devastating crisis?

ISSUES TO CONSIDER

We suggest that a number of issues on the proffer proposal have not been adequately discussed to this point, yet nonetheless warrant attention. These include: (a) the proposal's policies regarding cash proffers in their capacity to increase the cost of new housing and decrease the supply and affordability of new housing in the County; (b) the

Staff Memo and supporting information use questionable methods to arrive at the proposed per-unit maximum cash proffer amounts for school costs, including, among other things, an insufficiently comprehensive credit methodology and too few housing type categories; and (c) there are several drafting and text-related issues in the Proposed Resolution which require more explanation, deletion or better drafting, especially with regard to whether the affordability of the sales price of a housing unit to be subject to the maximum proffer amount must be considered by the Board, the annual adjustment factor in costs and the circumstances under which refunds must be granted to landowners who have paid proffers for to fund the construction of certain facilities which were not built within some reasonable time frame.

According to the Staff Memo, the purpose of the Proposed Resolution appears to be to provide the County with a written policy to guide the Board's decision-making with regard to the consideration of cash proffers to mitigate increased school costs from developments requiring rezoning. The Proposed Resolution effectively consists of six parts, as follows:

Background and Findings. The Proposed Resolution sets forth six "Whereas" clauses summarizing the state and local statutory authority for the Proposed Resolution, the capital improvements planning framework for the County and the need for both a written policy and "particularized evaluation" of individual projects seeking rezoning with regard to proffers. Although, as noted above, the Staff Memo claims that the purpose of the Proposed Resolution is to provide a written policy for proffers mitigating increased school costs, the Proposed Resolution is not structured in that way. Instead, it is structured as a general capital improvements proffer policy. The policy is limited only to the extent that specific maximum cash proffer amounts are proposed for school costs but not others.

Section I – Applicability. All rezoning applications are subject to the Proposed Resolution's new policy. This section also sets out "circumstances and factors" to be considered by the Board in addition to the defined proffer amounts, including on-site facilities which reduce the need for new off-site facilities to serve proposed development, economic benefits of industrial and commercial development and the scale of the proposed development and its incremental impact on community facilities.

- **Section II – Methodology.** Subsection A lists "General Considerations" to be taken into account by the Board. Commercial and industrial development is to be treated "liberally" in terms of proffers "in order to promote desirable economic development." Subsection B describes the basis for the school cost proffer policy as "documents prepared by the Department of Financial and Management Services, titled 'James City County Cash Proffers – Schools' dated February 2005." This subsection also indicates that an inflationary adjustment factor should be applied to the policy amounts annually. Subsection C states a $4.00 per gallon "brackish groundwater treatment" cost developed by the James City Service Authority (the "JCSA") which is to "be multiplied by the estimated water usage of a proposed residential or nonresidential development to calculate the drinking water capital costs of that development." Finally, Subsection D provides for a percentage reduction in the maximum proffer amount for schools based on how a particular residential unit is priced in relation to the median sales price for all homes in the Williamsburg area as well as the sales price which would qualify a unit for treatment as an "affordable housing" unit under the County Code.

- **Section III – Analysis of the Financial Benefits of Development.** Credits are to be allowed to offset the maximum proffer amount for (A) the contribution of a development all capital facilities through general property taxes "based on the percentage of the tax rate attributable to debt service over the 20-year period of a general obligation bond;" and (B) in-kind donations, such as land or facilities.

- **Section IV – Administration.** In Subsection A, proffer payments are to be paid at the time of building permit approval. In Subsection B, the cash proffer policy is to be reviewed and updated with the Capital Improvement Plan review and adoption. In Subsection C, the County Department of Financial and Management Services is charged with administering the policy. In Subsection D, cash proffers already paid may be refunded upon the payor's request if the development (or increment thereof) is not actually built.

- **Section V – Capital Improvement Program.** The County's three-year Capital Improvements Plan (currently effective for FY 2006-2009), upon which the proffer policy is purportedly based, is described as being part of the FY 2005-2006 County Budget.

Issue: **The Proposed Resolution's policies regarding cash proffers will tend to increase the cost of new housing and decrease the supply and affordability of new housing in the County.**

The Proposed Resolution's proffer policies – establishing a new maximum cash proffer amount for school costs and specifying a per gallon proffer amount for the treatment of brackish groundwater – will almost certainly have an impact on house prices in the Williamsburg area. We note as a starting point that in a strong housing market the developer is likely to pass those added costs directly on to the customer – particularly if every other developer in an area is subject to the same pressures to proffer. Thus, proffers are likely to increase house prices in these new developments by an amount that could approximate the cash proffer itself.

It is sometimes argued that proffers force landowners to internalize the public cost of future development of their land by lowering their asking price, but this lowering of prices is difficult to demonstrate. To the extent that the developer cannot pass the costs of proffers on to their suppliers (landowners) or to their customers (homebuyers), the increased proffers are likely to change the economics of the development project itself. If already tight profit margins are further reduced by the expectation of high proffers, some developers may simply choose not to produce housing. Artificial increases in the cost of housing production, therefore, may have the effect of reducing the amount of housing built in the County. Housing would therefore become less plentiful and more costly. Finally, linking the amount that the developer must proffer to obtain approval to the number of units, without any calibration for such characteristics as square footage or number of bedrooms, changes the incentives for the developer. The tendency with per-unit proffer amounts is for a builder to build a smaller number of very expensive and large houses, rather than a larger number of inexpensive and small houses because the proffer costs can be better absorbed by wealthier households. Therefore, increases in proffer amounts may encourage the developer to produce less housing that would be affordable to a broad range of County residents.

Both the Staff Memo and the Proposed Resolution reflect a realization among County planning staff that the proffer policy could have significant impacts on housing supply and affordability in the County. However, the Proposed Resolution's ultimate response is merely to allow (not require) the Board to consider a reduction in the proffer based on a sliding scale which would allocate 100% of the proffer amount for homes priced at or above the median sales price for all homes in the Williamsburg area and 0% of the proffer amount for homes priced at an "affordable" level as defined by the County Zoning Ordinance. Although the possibility for reduction in the proffer amount helps in the income ranges described above, it still does not address the issue of added cost in a comprehensive way. Sales prices will still increase overall pursuant to the proffer policy.

FOR CONSIDERATION:

Has the County thoroughly considered the likely impact of the Proposed Resolution on housing supply and affordability in the County? The Association requests that the Proposed Resolution require (as opposed to just "allow") that the sliding scale reduction in the maximum proffer amount be based on the sale price of the residential unit to which it is to be applied, although this is little more than a band-aid on the larger problem of increased cost which the proffer policy will impose upon almost all housing in the County.

<u>Issue</u>: **The Staff Memo and supporting data use questionable methods to arrive at the proposed per-unit maximum cash proffer amounts for school costs.**

In the context of development exactions, the courts have held that an "essential nexus" must exist between a development exaction and the legitimate government interest supposedly served by the imposition of the exaction. In other words, there must be a reasonable relation to the rezoning before the proffer system may be implemented, or a relationship between the impacts of a rezoning and the nature and amount of the proffer must be identified. A close look at the planning basis offered by the County for the maximum cash proffer amount for school costs indicates the following inconsistencies or areas requiring further clarification from the County:

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- **Page 1, Last Bullet Point**. This bullet point restates the requirement that, once a development proponent has paid a cash proffer for the construction of substantial public improvements, the County cannot subsequently enact zoning changes restriction that development's uses, floor area ratio or density, except under unusual circumstances. However, neither the County Code nor the Proposed Resolution include this provision. This should be made explicit in local regulations so that the County and developers are put on notice regarding this limitation on the County's ability to interfere with development once a cash proffer has been paid.

- **Page 2, Current Issues/School Data**. The school cost proffer data from other jurisdictions presented here in a bulleted list do not provide enough information to make a worthwhile comparison possible. Presumably, the amounts shown here are on a per residential unit basis, but that is not stated, nor is there any indication of what is behind the ranges. There is also an indication that age-restricted communities should be treated differently with regard to setting a maximum cash proffer amount for school costs because such communities would at least conceptually have no school-age children, but neither the analysis nor the Proposed Resolution make any specific accommodation for these communities.

- **Page 2, Housing Costs**. As noted above, the discussion here and the inclusion in the Proposed Resolution of a "sliding-scale" provision which allows the Board to consider whether to reduce the maximum cash proffer amount based on the sales price of the home are better than nothing, but the "research" referenced here is inadequate to provide sufficient background to the Board in determining (a) the true impact on housing supply and availability at all income levels and housing types of the new proffer policy, and (b) whether and to what extent the proposed "sliding-scale" approach mitigates that impact. Referring to discussions which are now over six years in the past with just two counties seems too inadequate on which to base such a critically important public policy.

- **Pages 2 and 3, Development Management Issues**. The issue of the effect of the Proposed Resolution on the pattern of development in the County and the potential that development will be encouraged to move outside of the primary service area to avoid the new school-related proffer costs is correctly identified but then, as with the housing affordability issue, left without any worthwhile analysis of the extent of the anticipated impact and how the County and the Board should deal with that impact.

- **Page 3, Cost Recovery**. The reason for having a cash proffer system is to link the cost of providing new education facilities and services to new development by having that new development pay its way. If it is "very difficult" to determine the actual cost recovery of the new proffer system, how does the County then propose a specific dollar amount per unit for the maximum cash proffers for school costs? It is one thing to admit that budgeting is an inexact science and that budgets should be revisited on a regular basis and adjusted as appropriate. It is another to claim that there is no way of knowing the amount of revenue that will be generated. This is where the Capital Improvements Plan needs to be more specifically addressed. If the maximum cash proffer amount results in the collection of more money than is actually needed to fund the applicable school capital costs, there should be a refund to those paid the unused cash proffers within a specific timeframe. To avoid these refunds, the County needs to have some idea of what the proffer-related revenue generated will be.

February 14, 2005, Analysis Summary re James City County Cash Proffers – Schools

Lack of Stated Relation to the Adopted Capital Improvements Plan. Completely absent from this entire analysis summary is a discussion of what the County actually plans to construct in terms of schools and related facilities. Presumably this information can be found in the Capital Improvements Plan adopted as part of the FY 2005-2006 County budget, but that is not actually discussed here – and should be clarified.

Page 1, Limited Variation in Housing Types. Much more could be done in the analysis in terms of differentiating between different housing types and the additional school capital costs they typically engender. Only four types are discussed – single family-detached, single-family attached, multi-family and mobile homes – and it is not clear what accounts for the huge disparity in school age children between single-family detached and single-family attached. More could be discovered if this data were broken down a bit further, based perhaps on house square footage or number of bedrooms. This initial decision regarding the categories of housing types has an impact throughout the entire analysis.

Page 1, Service Levels. The costs in this portion of the summary are said to be based on estimates "provided by Moseley Architects in its February, 2005 study of school capital facility needs." The Association would like to review this information so as to ascertain the basis for such figures as "Land Cost Per Acre" and "Other project Costs" (as opposed to "Capital Cost per SF").

- **Page 2, Credits.** The logic employed here is correct: credit needs to be given for bond costs borne by new development through the property tax system, but there are still a few issues here. First, the net present value calculation shows only 15 years, while the Proposed Resolution, at Section III(A) refers to a 20-year general obligation bond repayment period. Second, this entire net present value calculation should be double-checked once it has been so corrected. Third, the Association would like to submit input as to whether the 7% real growth rate is reasonable in this current housing market and, in addition, whether the 7% discount rate used is appropriate. Fourth, the July 2004 assessed values are presumably median or average value figures, with no accommodation for greater credits for residential units with assessed values which are higher than these median or average figures. This tends to unfairly burden higher value homes. Finally, there is no accounting made for the real property taxes paid and used to offset capital costs for school facilities in the County by land to be developed and subject to the proffer policy. This may not be a huge credit because the assessed value of such property has likely been lower than it would be for residential use, but it should still be considered and accounted for.

- **Page2, Net Cost or Maximum Proffer**. Strangely, after carrying mobile homes as a residential type through the entire analysis, no net cost per mobile home unit is calculated here and none is recommended in the Proposed Resolution. The County should articulate the policy reason for this exclusion.

FOR CONSIDERATION

The Association requests clarification and more information as appropriate on the matters outlined above. The validity of the County's analysis methodology is critical to the validity of the entire Proposed Resolution and the proposed proffer policy in general. Unless the problems with the analysis are corrected, the Proposed Resolution should not be brought forward for formal consideration by the Board.

<u>Issue</u>: **There are several drafting and text-related issues in the Proposed Resolution which require more explanation, deletion or better drafting.**

In the same way that the County's analysis methodology is questionable and requires further explanation and potentially modification, the proposal is not carefully drafted and needs further consideration and a more thorough approach before it should be brought forward, as follows:

- **Not Just School Costs.** Rather than just providing a proffer policy for the Board on school costs, which is the way that we understand this effort has been proposed, the Proposed Resolution is actually structured to provide the framework for maximum proffer amounts for any and all development-related impact areas – parks, open space, water and sewer as well as schools and roads. This should be made clearer to everyone involved and to the public. Precise estimates of these costs also should be provided.

  Section II(A), "Case-by-Case Basis." The first sentence of this section states that the Board will review impacts on a base-by-case basis, yet the resolution is devoted to establishing one kind of benchmark for the Board to use in reviewing those impacts. Either the Board wants to have a policy it will follow and that will provide developers and landowners with some consistent notice as to what they can expect in the rezoning process, or the Board wants to continue having essentially unfettered discretion.

- **Section II (A), "Liberal" Interpretation for Commercial and Industrial Rezoning**. The last sentence of the third paragraph of this section indicates that the "County's policy with respect to cash proffers in commercial and industrial rezoning shall be *interpreted liberally* in order to promote desirable economic development." What this means is anyone's guess, which leads one to conclude that such a statement is effectively meaningless and shouldn't appear in the enactment of a policy which will have the force of law.

- **Section II(B), Annual Adjustment**. The two sentences regarding annual adjustment contradict each other. In the first sentence, the inflationary factor is to be based on a "reliable government or other independent organization." In the second sentence, the County is to determine the factor based on "the rate of annual inflation of capital construction costs in the County." It seems most appropriate to use a reliable independent organization as the source for the factor, rather than just the County's own estimate.

- **Section II(C), Brackish Groundwater Treatment**. In this section, the figure of $4.00 per gallon for treatment of brackish groundwater appears high, and further there is no indication of how this cost will be "multiplied by the estimated water usage of a proposed residential or nonresidential development" to arrive at a water capital cost figure. The ultimate maximum cash proffer amount should be based not on the per gallon cost (which should simply be reflected in the water charge for each customer using this service on an ongoing basis) of providing the service but on the proportionate cost for constructing the treatment plant attributable to the development.

- **Section II (D), Affordable Housing Adjustment**. This issue has been referenced above, but the consideration of reducing the proffer amount based on home's sale price should be required of the Board, not left up to the Board to decide on its own without any limit to its discretion. In addition, it appears that the median sales price to be used for establishing the 100% amount is the one "for all homes." The standard for the median price for homes in the County should be broken down by housing type (single-family detached, single-family detached, multi-family, etc.).

FOR CONSIDERATION:
It is the opinion of the Association that the proposed policy is not ready to be brought forward to the Board in its current state, and we respectfully request delaying this step until ALL of the foregoing issues are discussed at a minimum, and hopefully, favorably resolved.

In its present form, based on the concerns expressed throughout this memorandum, we cannot support the proposed proffer policy.