

**ALTERNATIVE  
CP-04-01  
MAY 27, 2004**

**RESOLUTION TO AMEND THE CHESAPEAKE COMPREHENSIVE PLAN, PLANNING AND LAND USE POLICY, TO REQUIRE THAT THE LEVEL OF SERVICE REVIEW INCLUDE CONSIDERATION OF THE IMPACT OF THE VACANT LOTS SHOWN ON APPROVED PRELIMINARY SITE AND SUBDIVISION PLANS; TO ADDRESS APPROPRIATE APPLICATION OF CASH PROFFERS; AND TO MAKE OTHER AMENDMENTS NECESSARY TO CLARIFY AND CARRY OUT THE INTENT AND PURPOSE OF THE POLICY.**

WHEREAS, on January 27, 2004, the Chesapeake City Council approved a resolution requesting the Planning Commission to consider and make recommendations concerning proposed amendments to the Chesapeake Comprehensive Plan, Planning and Land Use Policies, to modify level of service standards for roads and schools by requiring consideration of properties that have received preliminary site plan or preliminary subdivision plan approval and to otherwise adjust the level of service tests to more accurately reflect the impact of a proposed rezoning on public facilities and services; and

WHEREAS, the adoption of the following amendments to the Planning and Land Use Policies will serve to improve the level of service tests for roads, schools and sewer capacity by requiring consideration of all imminent development in the service areas in which the property is located; by allowing consideration of proffers to improve, or make monetary contributions toward the improvement of, public facilities impacted by the proposed rezoning; by allowing consideration of proffered

restrictions on the timing, nature and extent of the proposed development; and by allowing consideration of the cumulative impact of rezonings for five or fewer lots; and

WHEREAS, the adoption of the following amendments to the Planning and Land Use Policies will promote the purposes and objectives of the level of service tests by evaluating the adequacy of roads, schools and sewer facilities in relation to proposed development; to protect against undue density of population in relation to existing public facilities; to reduce or prevent congestion in public streets; to provide for adequate utilities; to meet the current and future requirements for schools; and to protect the public health, safety and welfare by encouraging the most appropriate use of land while addressing community needs.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Chesapeake that the Chesapeake Comprehensive Plan, Planning and Land Use Policies, be amended as follows:

### **PLANNING AND LAND USE POLICIES**

City Council has previously established a number of policies related to planning and land use. ~~This~~ These includes all of the policies formalized in the Basic Policies For the Comprehensive Plan (adopted in 1988), ~~the~~ Land Use Plan (adopted in 1988), ~~the~~ Master Road Plan (adopted in 1990), ~~amendments to the~~ Comprehensive Plan (adopted in 1990), ~~the~~ Zoning Overlay Districts (adopted in 1993), ~~and the Proffer Policy (adopted as amended in 1994).~~ Transportation Corridor Overlay Districts (adopted in 2000), and the Public Utilities Franchise Area Expansion Policy (adopted in 2001). The City Council, Planning Commission, and City staff rely

extensively on these policies in making decisions on all land use matters, including rezonings, conditional use permits, preliminary subdivision plans, preliminary site plans, and street closures.

Under Virginia law and the Chesapeake Zoning Ordinance, the existing zoning for a piece of property is presumed to be valid, and the burden is on the applicant to show that the existing zoning is unreasonable and should be changed. Section 16-106(b)(3) of the Zoning Ordinance (~~a copy of which is attached~~) sets out the factors which should be addressed in deciding whether a proposed rezoning of a piece of property land should be approved.

The first factor listed is whether the proposed rezoning is consistent with the Comprehensive Plan. Many applicants refer only to the Land Use Plan to argue that their proposed rezoning is consistent with the Comprehensive Plan. The Land Use Plan shows the anticipated ultimate development of the City when it is fully built out. With the exception of the Zoning Overlay Districts, the Land Use Map does not ~~It does not~~ provide policies or standards on whether the property should be rezoned. Those policies and standards are ~~provided~~ generally found in the text of the Comprehensive Plan.

The section of the Comprehensive Plan entitled "Growth and Change" sets out five of the key ~~Comprehensive Plan~~ policies used in evaluating the appropriateness of rezoning requests:

1. Require "that rezoning and use permit applications which would bring more intense uses to properties either demonstrate that existing services and

infrastructure would not be adversely affected by the new uses, or proffer improvements that would directly satisfy the service and infrastructure demands which the new uses would create."

2. Support "developments and improvements which strengthen and fill the major economic activity centers identified in the plan."
3. Discourage "untimely developments in outlying areas which tend to create a "leapfrogging" effect, an effect that strains both public infrastructure and services."
4. Evaluate and act upon rezoning and use permit applications "on the basis of their timeliness - that is, whether the uses proposed are compatible with the surrounding community as it now exists, even if the proposed uses are projected by the Plan as an ultimate development, and whether the introduction of the new uses at a particular time would cause deterioration of the surrounding community instead of strengthening the community in its transition to its ultimate projected character."

5. Discourage "rezonings to more intense uses which will increase demand on inadequate roads, unless the necessary improvements are within local or state improvement plans, or unless the developer provides improvements which directly meet the demands created by the development."

Although these adopted policy statements have been of great assistance in the past in evaluating rezoning and conditional use permit requests, there are several issues that have surfaced ~~in the past~~ that warrant further review and discussion. The following is a listing of outstanding planning/land use related issues and policies which will provide various approaches to address each issue.

**A. Timeliness of Development**

As noted, rezonings are often requested for parcels with the applicant using the argument that the adopted Land Use Plan shows the land use and densities being proposed by the applicant. The problem in many cases is that the necessary public facilities to service the proposed development are either not available or are inadequate. Since the Land Use Plan shows only the recommended "ultimate" use of properties and does not address the timing and coordination of development, many rezoning requests may be consistent with the Land Use Plan but still be premature and untimely, and therefore inappropriate.

**Adopted Policies**

1. The policies from the Comprehensive Plan, as listed above, will be followed to the maximum extent possible.
2. City staff has prepared City-wide Level of Service (LOS) standards for schools and roads for inclusion in the Comprehensive Plan. LOS standards for schools and roads were included in the adopted Western Branch Area Plan and the adopted South Norfolk Area Plan. Similar LOS standards are to be applied on a City-wide basis to all rezoning applications, including applications for planned unit developments. Basic supporting information for schools, roads, and sewer capacity is now available. The Chesapeake School Administration has up-to-date school enrollment and capacity data for all schools in the City; the City's Public Works Department has current information pertaining to traffic volumes and capacities of the various major roads and intersections throughout the City; and the City's Public Utilities Department and the Hampton Roads Sanitation District have current information concerning sewer capacities throughout the City. ~~Such~~ LOS standards are intended to provide an objective standard for determining whether public facilities are adequate to meet the demands created by a proposed rezoning, and this standard will be applied

consistently to all rezoning applications to determine their timeliness. The LOS standards for roads and schools are contained in Attachment "BA."

3. A policy similar to the sewer policy adopted by City Council in June, 1994 will be used in making rezoning decisions; that is, Council specifies as part of its zoning policy that a proposed residential rezoning, including residential portions of planned unit developments, will not be approved if there is no existing sewer capacity to service the property. Allowing an accumulation of approved residential rezonings without assured sewer capacity could result in a sudden surge in development once sewer became available that would be beyond the capacity of other City infrastructure and services to meet. In the case of non-residential rezonings, the requirement for existing sewer capacity may be waived or modified by City Council upon a finding that the rezoning will enhance economic development in Chesapeake, provide employment opportunities and increase public revenues. However, the applicant must establish that adequate sewer facilities, whether public or private, will be provided prior to the commencement of business activities, in accordance with City and state laws and policies. Adequate sewer capacity is

established either by showing that the property to be rezoned is located entirely within an existing HRSD force main service area, or by voluntary proffer to provide private sewer disposal facilities within a time certain.

4. City staff is directed to conduct an ongoing assessment of the existing inventory of undeveloped residentially zoned land in the City and the potential impact of the development of that land on existing infrastructure, ~~and on new residential rezoning.~~

## **B. Directing Growth**

Directing growth into appropriate locations creates a more cost effective and efficient land use pattern. "Leap-frog" development, as previously identified in Policy #3 from the Comprehensive Plan, causes an unnecessary, if not unacceptable, strain on City services and facilities.

### **Adopted policies**

1. The Comprehensive Plan and Land Use Plan will be followed as much as possible in making rezoning, conditional use permit, and capital improvement decisions.
2. The section of the Comprehensive Plan ~~related~~ relating to Public Utilities is hereby strengthened to indicate that major sewer line extensions will be directed into areas where the City would like to channel growth and will not be approved

for areas where the Plan discourages growth. Sewer lines, in particular, will be extended only into areas for which adequate services and facilities of all types can be provided for all future development that is expected to occur. Also, sewer service will not be extended into areas that do not have an appropriate land use designation on the City's Land Use Plan, such as the "Countryside" and "Rural" ~~areas~~. Overlay Districts. This objective is further implemented by the City's Public Utility Franchise Area Expansion Policy, adopted by City Council on September 18, 2001.

3. Infrastructure extensions by HRSD and other agencies will be reviewed by the Planning Commission for compliance with the Comprehensive Plan in accordance with state law. In addition, the City Council adopted the [HRSD] Service Area Expansion Policy on October 21, 1997, to allow Council to consider capacity and utility – related issues before approving the expansion of an HRSD Sewer Service Area.

4. Encourage "infill development" in areas of the City where adequate public facilities exist, rather than "leap-frog" development, to the maximum extent possible.

### **C. Rural Area Development**

City Council has previously discussed the issue of Rural Area Development during Council work sessions. The Zoning Ordinance discourages "major" developments (more than 5 residential lots) in the Rural Overlay District. The Zoning Ordinance also prohibits such developments in the A-1 Agricultural District. However, there are some that believe that this may be too stringent and that rural, large-lot residential development should not be discouraged, particularly if the applicant voluntarily agrees to pay the full capital cost impact amount through the proffer system.

**Adopted policy**

4. This issue will be addressed as part of the current ongoing review and update of the Comprehensive Plan.

**D. Effect of Policies**

Consideration of these Planning and Land Use Policies shall not bind City Council in its exercise of legislative discretion in deciding rezoning requests. City Council shall consider all criteria required by state law and local ordinances, regulations and policies. City Council shall not base any rezoning decision solely on the level of service tests set out in Attachment "A". Unless expressly repudiated by City Council, any denial of a rezoning made on the basis of the level of service tests or inadequate public facilities shall include an inherent finding that the applicant failed to overcome the presumption in Virginia law that the current zoning is reasonable and the presumption in Section 16-108 of the Zoning Ordinance that the current zoning of the property at issue is valid.

## ATTACHMENT "BA"

### A. ADEQUATE ROAD FACILITIES

1. All rezoning applications are ~~required~~ expected to pass the test for Adequate Road Facilities. A proposed rezoning will pass the test for Adequate Road Facilities if the nearest major road and/or existing signalized intersection, ~~which~~ that will carry the majority of traffic expected to be generated by the future development on the property proposed to be rezoned, has a Level of Service (LOS) of "D" or better. The LOS shall be determined by the Director of Public Works or designee based on current traffic studies, including but not limited to, the attached level of service descriptions prepared by the Department of Public Works, as may be amended from time to time to reflect best practices in traffic engineering; and other reliable traffic impact studies, including recent traffic counts and reports on signal optimization.

2. The determination of ~~the~~ which road and/or existing signalized intersection ~~which~~ will carry the "majority" of the traffic expected to be generated by the future development of the property ~~proposed to be rezoned~~ shall be made by the Director of Public Works or designee ~~In addition,~~ the designated "major road" for which the LOS determination will be made must be one of the roads shown on the City's adopted Master Road Plan. If the nearest

road ~~which~~ that will be most impacted by traffic from the future development is not shown on the Master Road Plan, then the Director of Public Works or designee shall determine which major road shown on the Master Road Plan will carry the majority of traffic expected to be generated from the property proposed to be rezoned, and the LOS test shall be used on that road even though that road may not be adjacent to the property under consideration for rezoning. This policy shall not preclude consideration of design or safety issues or the impact of the proposed development on other roads and intersections pursuant to Section 16-106.B.3. of the Chesapeake Zoning Ordinance.

3. If the nearest major road and/or signalized intersection ~~which would~~ that will serve the majority of traffic expected to be generated by the property proposed for rezoning, as determined ~~under Section A.1.~~ above, is currently LOS "E" or "F," the proposed rezoning does not pass the test for Adequate Road Facilities, and City staff will recommend denial of the rezoning application. In addition, the proposed rezoning will not pass the test for Adequate Road Facilities if such road and/or existing signalized intersection will operate at LOS "E" or "F" upon development of 1) the property proposed for rezoning, using for residential properties, the maximum number of lots into which the property could be subdivided under applicable zoning regulations and development criteria, and for

nonresidential properties, the most intense development permitted under the proposed zoning classification; ~~and~~ 2) all unimproved lots in the service area shown on preliminary subdivision plans, preliminary site plans and construction plans approved by the Department of Public Works City; and 3) all unimproved lots shown on minor subdivision plats (five lots or less) recorded in the Clerk's Office of the Chesapeake Circuit Court. In determining the impact from the property proposed for rezoning, the Director of Public Works or designee shall consider voluntary proffers by the applicant to limit the number of residential dwellings or lots, the type or intensity of proposed nonresidential uses, and the geographical extent of the proposed uses. Where the acceptance of a proffer is essential to meeting the LOS test for roads, or obtaining an exemption thereto, the Planning Director or designee shall so inform the Planning Commission and the City Council in the staff report for the rezoning or by other written means.

4. The service area for roads and existing signalized intersections is to be determined by the Director of Public Works, or designee, and should include all properties which are expected to utilize the road or existing signalized intersection under consideration as a primary means of transportation to or from the property. The Director of Public Works may, in her discretion, accept updated traffic counts and signal optimization studies from an applicant, provided that the Director or designee approves the

method and results as reliable and being in accord with the principles and practice of good traffic engineering.

5. Where a scheduled or proffered road improvement project is ~~scheduled to be completed within one year of the date that the City Council is expected to consider a rezoning request which will~~ expected to improve the LOS of the "major" road and/or intersection under consideration to LOS "A," "B," "C," or "D," giving full consideration to imminent ~~the~~ future impact as required herein, from ~~development of the property proposed for rezoning and all unimproved lots shown on approved construction plans and unimproved lots shown on recorded minor subdivision plats (five lots or less),~~ the proposed rezoning will pass the test for Adequate Road Facilities. The road improvement project may be a state or local project, or the rezoning applicant may ~~offer~~ voluntarily proffer to provide such improvements. The applicant may also proffer cash contributions commensurate to the impact of the proposed development for use in mitigating such impact. Acceptable proffered improvements may include, but are not limited to, road widening, additional through lanes, new turn lanes, and new or optimized traffic signals. To qualify for consideration, proffered improvements and cash contributions must be subject to deadlines for performance or completion in accordance with the timing or phasing of the proposed development, as determined by the Director of Public Works or designee. In addition, The Director of Public Works or designee, shall

determine whether ~~or not the road improvements will be completed~~ within one year of the date that City Council is scheduled to consider the subject rezoning application and whether the proffered road improvements or cash contributions will, in fact, increase the LOS to an acceptable level (A, B, C or D).

36. In certain instances, the City Council and Planning Commission may consider an existing road LOS of "E" to be acceptable for a proposed nonresidential rezoning request. ~~Such factors~~ such as the degree of fiscal impact to the City, potential employment, and the degree to which the proposal will achieve the City's economic development goals will be used in making this determination. Notwithstanding anything to the contrary in Paragraph 3 above, City staff may recommend that the Planning Commission approve a rezoning with a LOS "E" where findings are made that the proposed development will create jobs and bring about positive fiscal impact.

7. In narrow circumstances, the City Council and the Planning Commission may consider an LOS "F" to be acceptable for a non-residential rezoning request based on findings that the proposed development will bring about substantial economic benefit, and either will have minimal negative impact on the LOS or the negative impact will be sufficiently mitigated by proffered improvements or cash contributions to the City. Notwithstanding the discretion of the City Council and the

Planning Commission, City staff shall continue to recommend denial of all rezoning requests with an LOS “F.”

4.8. All residential rezoning requests ~~which would~~ that will not allow for the creation of more than five (5) lots for single-family dwellings, excluding all multi-family developments, are exempt from the LOS test for Adequate Road Facilities. The number of lots which can be created shall be determined on the basis of development criteria in the Chesapeake Zoning Ordinance, including without limitation, a proffered restriction on the number of lots. In addition, all nonresidential rezoning requests which will not result in an increase in traffic by more than fifty (50) vehicle trips a day, ~~as determined by the Director of Public Works or designee,~~ than could would be generated by development under the existing zoning, are exempt from the LOS test for Adequate Road Facilities. Current and potential vehicle trips will be determined on the basis of the most reasonably intense uses permitted under the current and proposed zoning, except that the Director of Public Works or designee shall also consider proffered limitations of use. Nothing herein shall preclude City Council from considering the cumulative impact of “five lot” subdivisions or from developments generating 50 or fewer vehicle trips per day.

59. All rezoning requests which will not result in an increase in the amount of traffic over the amount of traffic that would be generated by potential future development under existing zoning are exempt from the LOS test for

Adequate Road Facilities. Such determinations shall be made by the Director of Public Works or designee based on the most reasonably intense use of the property under current and proposed zoning classifications, except that proffered limitations on use shall also be considered.

**B. ADEQUATE SCHOOL FACILITIES**

1. All residential rezoning applications are ~~required~~ expected to pass the test for Adequate School Facilities. A proposed residential rezoning will pass the test for Adequate School Facilities if all public primary, intermediate, middle and high schools which would serve the future development on the property proposed for residential rezoning currently have adequate capacity to accommodate ~~each of the additional students to be generated by the proposed rezoning.~~ existing student populations The Chesapeake Schools Administration (“Schools”) shall be responsible for determining 1) the current enrollment for each school; 2) the rated capacity of each school; and 3) the anticipated impact of the proposed development based on the maximum number and type of residential dwelling units or lots, including proffers for limited or delayed development.
2. If any of the applicable public schools which would serve the future residential development on the subject property exceed 120% of rated capacity at the time of the review of the subject rezoning request, the proposed rezoning does not pass the test for Adequate School Facilities, and City staff will recommend denial of the residential

rezoning request. In addition, the proposed rezoning will not pass the test for Adequate School Facilities if the ~~rated capacity of~~ anticipated enrollment at any school to serve the subject rezoning will exceed 120% of rated capacity upon development of 1) the property proposed for rezoning, using the maximum number of lots into which the property could be subdivided under applicable zoning regulations and development criteria; or as proffered; ~~and~~ 2) all unimproved-residential lots in the service area shown on approved preliminary site plans, preliminary subdivision plans and construction plans; ~~approved by the Department of Public Works~~ and 3) vacant lots shown on minor subdivision plats (five lots or less) recorded in the Clerk's Office of the Chesapeake Circuit Court. The service area for each school will be determined by the Chesapeake School Administration based on the then current school planning districts.

3. Where the rated capacity of any public school in the service area is determined to exceed 120% under the conditions described above, and where such ~~public~~ school is expected to be improved to less than 120% of rated capacity within one year of the date that City Council is scheduled to consider the subject rezoning request, the residential rezoning will pass the test for Adequate School Facilities. The anticipated improvements must reduce the rated capacity of the schools to 120% or less based on enrollments and other conditions which will result from the development of the property proposed for rezoning, all unimproved residential lots in the service area

shown on approved preliminary subdivision plans, preliminary site plans and construction plans and unimproved residential lots shown on recorded minor subdivision plats. The Chesapeake School Administration shall make the determination of ~~the rated capacity for all of the applicable public schools and shall also make the determination~~ of whether or not anythe anticipated capital school construction project would will, in fact, improve the rated capacity of any of the applicable affected schools to less than 120%, of rated capacity. giving consideration to both current conditions and impact from potential development, including impact from the property proposed for rezoning and all unimproved residential lots shown on approved construction plans, and on recorded minor subdivision plats (five lots or less), within one year of the rezoning request

4. In addition to public capital improvement projects, the applicant may voluntarily proffer cash contributions toward capital school projects in an amount commensurate to the impact of the proposed rezoning. The amount of monetary impact shall be calculated by Schools based on 1) the number of students expected to be generated by the rezoning, and 2) the estimated value of capital improvements needed to accommodate these students. Notwithstanding the legislative discretion that can be exercised by City Council in accepting proffers, the Planning Department will not recommend approval of a rezoning

request based solely on an offer of cash proffers if any school in the impacted service area is over 120% rated capacity.

25. All residential rezoning requests which would not result in an increase in the number of students expected to be generated from the future residential development, as determined by ~~Chesapeake Schools Administration~~, or which would not allow for the creation of more than five (5) single-family lots, as determined based on development criteria in the Chesapeake Zoning Ordinance, or on the basis of a voluntary proffer limiting the total number of lots to no more than five, are exempt from the Adequate School Facility test. However, nothing herein shall preclude City Council from considering the cumulative impact of “five lot” subdivisions in each service area. ~~Also, Residential rezonings which include proffers for multifamily projects for adult communities that will not generate school-aged children, such as housing for the elderly, are exempt from the Adequate School Facility test.~~

6. Where the acceptance of a proffer is essential to meeting the LOS test for schools, or to obtaining an exemption there from, the Planning Director or designee shall so inform the Planning Commission and the City Council in the staff report for the rezoning or by other written means.

These amendments shall be effective thirty (30) days after the date of adoption;  
except that those provisions in Attachment "A" requiring consideration of  
approved preliminary site plans and preliminary subdivision plans  
shall become effective on January 1, 2005.

ADOPTED by the Council of the City of Chesapeake, Virginia this \_\_\_\_ day  
of \_\_\_\_\_, 2004.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Clerk of the Council