

JASON CAPELLE, DISTRICT 1
GEORGE YANCEY, DISTRICT 2
DONALD BROOKS, DISTRICT 3
JULIE ZEJLMAKER, DISTRICT 4
JIM HUTCHISON, DISTRICT 5



MAILING ADDRESS:
128 WEST MAIN STREET
ORANGE, VIRGINIA 22960

PLANNING SERVICES:
OFFICE: (540) 672-4347
FAX: (540) 672-0164
orangecountyva.gov

SANDRA THORNTON
PLANNING SERVICES MANAGER

Orange County Planning Commission Agenda
Thursday, March 18, 2021 – 6:00 p.m.

This meeting is being held electronically pursuant to and in compliance with the Continuity of Government Ordinance (or “An Ordinance to Effectuate Changes in Certain Deadlines and to Modify Public Meeting and Public Hearing Practices and Procedures to Address Continuity of Operations Associated with the COVID-19 Pandemic”), adopted April 28, 2020 by the Orange County Board of Supervisors in accordance with Virginia Code § 15.2-1413. The meeting is accessible by:

https://www.youtube.com/channel/UCnL_EM-lgrXYdfKcPI8-jOQ

This meeting will be conducted remotely and there will be no physical public access. During this meeting, there will be no opportunity for public comment.

1. Call to Order and Determination of Quorum
2. Approval of Agenda
3. Approval of Minutes
 - a. March 4, 2021 regular meeting
4. New Business - None
5. Public Hearings
 - a. **Continuation of SUP 20-04:** Mountain View Community Church has applied for a special use permit to construct and operate a residential drug and alcohol addiction treatment center on their property identified as Tax Map Parcel 7-16A located at 23540 Raccoon Ford Rd. The property contains 8.029 acres, is zoned Agricultural, and is situated in the Agricultural-1 Recommended Future Land Use category as described in the Orange County Comprehensive Plan.

-Discussion of potential conditions
 - a. **Continuation of SUP 20-05:** Redfish Solar Partners, LLC, has applied for a special use permit to construct and operate a solar energy generation facility on vacant property located on Catharpin Road in Locust Grove/Mine Run. The property is zoned Agricultural and is identified as Tax Map Parcels 50-4, containing 48.29 acres, and 50-4A, containing 48.29 acres. The property is situated in the Agricultural-2 Recommended Future Land Use category as described in the Orange County Comprehensive Plan.

-Discussion of potential conditions – Staff memo dated February 26, 2021, and attachment
6. Worksession – Solar facility considerations
7. Old Business – none

8. Reports
 - a. Board of Supervisors report – Mark Johnson
 - b. Planning Services report – Sandra Thornton
9. Commissioner Comments
10. Next meeting date – April 1, 2021
11. Adjourn

Unless otherwise indicated, agenda items will be taken in the order in which they appear above. The planning Commission reserves upon itself the right to amend a meeting agenda at any point and with any frequency prior to adoption of said agenda, pursuant to any required public notice. Time limits may be imposed by the Chairman for speakers addressing the Commission.



**Orange County Planning Commission
Regular Meeting
March 18, 2021**

Agenda Item 3a

**Orange County Planning Commission
Regular Meeting
Thursday, March 4, 2021
Meeting Held Electronically via Zoom video conference**

Present: Donald Brooks (Chairman), Jason Capelle (Vice Chairman); George Yancey; Jim Hutchison, Julie Zeijlmaker, Mark Johnson (Board of Supervisors Liaison)

Absent:

Staff Present: Sandra Thornton, Planning Services Manager; Eric Lansing, Assistant County Attorney; Tracey Newman, Planning Services Associate

Due to Covid-19 concerns, this meeting was conducted virtually and live-streamed on YouTube. The meeting was held in compliance with the Orange County Continuity of Government Ordinance ("Ordinance to Effectuate Temporary Changes in Certain Deadlines and to Modify Public Meeting and Public Hearing Practices and Procedures to Address Continuity of Operations Associated with the COVID-19 Pandemic") adopted by the Board of Supervisors on April 28, 2020 pursuant to Virginia Code § 15.2-1413.

1. Call to order and determination of quorum:

Chairman Brooks called the meeting to order at 6:00 pm and live streaming began on YouTube. A quorum was established.

2. Approval of agenda:

Mr. Hutchison made a motion to approve the agenda which was seconded by Mr. Capelle. The motion carried with a vote of 5-0.

3. Approval of minutes:

a. March 4, 2021 regular meeting:

On the motion of Mr. Yancey, with a second by Mr. Hutchison, the minutes were approved as presented on a vote of 5-0.

4. New Business: none

5. Public hearings:

- a. Continuation of SUP 20-05:** Redfish Solar Partners, LLC, has applied for a special use permit to construct and operate a solar energy generation facility on vacant property located on Catharpin Road in Locust Grove/Mine Run. The property is zoned Agricultural and is identified as Tax Map Parcels 50-4, containing 48.29 acres, and 50-4A, containing 48.29 acres. The property is situated in the Agricultural-2 Recommended Future Land Use category as described in the Orange County Comprehensive Plan.

This matter was continued to April 1, 2021, to allow for the conduct of a public hearing on the substantial conformance review required by VA Code § 15.2-2232. That public hearing will be advertised for April 1, 2021, with public comments being accepted through March 23, 2021.

- b. **Continuation of SUP 20-04:** Mountain View Community Church has applied for a special use permit to construct and operate a residential drug and alcohol addiction treatment center on their property identified as Tax Map Parcel 7-16A located at 23540 Raccoon Ford Rd. The property contains 8.029 acres, is zoned Agricultural, and is situated in the Agricultural-1 Recommended Future Land Use category as described in the Orange County Comprehensive Plan.

Following discussion of additional information, including public comments received, with the applicants, the Planning Commission voted unanimously to defer this matter to a meeting on March 18, 2021, to allow for the drafting and review of additional conditions for a potential recommendation for approval of this SUP on April 1, 2021.

- c. **REZ 21-01:** Hop On Enterprises LLC has applied to rezone property at 12731 Gordon Avenue, Gordonsville, VA, from the General Residential District (R-2) to the Agricultural District (A) in order to cultivate crops for a pick-your-own operation in addition to a craft brewery, farm winery, and recreational space. The property is identified as Tax Map Parcels 68A1-2-1-17, 18, 19, 20, 21, 22, 39, 40, 41; 68A1-2-2-23, 42, 43, 44, 45; and 68A1-2-3-46. The property contains approximately 6 acres and is situated in the Town/Suburban Recommended Future Land Use category as described in the Orange County Comprehensive Plan.

Concern was expressed that this matter was being processed differently than other applications have been under the remote meeting practices and procedures pursuant to the County's Continuity of Government Ordinance associated with the COVID-19 Pandemic, in that the public comment period closed prior to the opening of the public hearing. It was noted that no public comment had been received other than those associated with or included in Application Review Committee comments. Upon motion by Mr. Capelle with second from Mr. Hutchison, the Commission voted unanimously to recommend approval of the rezoning with conditions proffered by the applicant.

It should be noted that the opening of the Commission's public hearing on this rezoning had been scheduled for February 18, 2021, and that meeting was cancelled due to weather conditions. The Commission's expected action on the matter on March 4, 2021, had been referenced in the published legal ad.

- d. **SUP 21-01:** William Renaud has applied for a special use permit to operate a livestock slaughtering and processing facility on property owned by Knight Cattle Corporation located at 15415 James Madison Highway. The property is zoned General Industrial (I-2), is identified as Tax Map Parcel 57-34, and contains 25.73 acres. The property is situated in the Economic Development Recommended Future Land Use category as described in the Orange County Comprehensive Plan.

Following presentations from staff and the applicant, his public hearing was continued to April 1, 2021, to allow for receipt of public comments by March 23, 2021.

6. **Work session:** None

7. **Old business:** None

8. Reports:

a. Board of Supervisors Report – Mark Johnson

Mr. Johnson advised the Board of Supervisors' current practice under COVID procedures is to accept written comments on public hearing matters following the opening of a hearing until the next meeting two (2) weeks later.

b. Planning Services Report – Sandra Thornton

Mrs. Thornton introduced Director of Planning and Development Services Josh Gillespie and confirmed he would be starting March 8, 2021. She also advised Signature Station has submitted amended application materials and will be included on the April 1, 2021 agenda.

9. Commissioner comments:

Mr. Yancey recommended the Planning Commissioners research solar as more applications are anticipated.

Mr. Hutchison advised the Wilderness Crossing application will be coming in three (3) months.

10. Next meeting date – April 1, 2021

11. Adjourn

On the motion of Mr. Hutchison, seconded by Mr. Capelle, which carried by a vote of 5-0, the meeting adjourned at 9:01 p.m.

Donald Brooks, Chairman

Planning Commission Secretary

The events of this meeting were captured via digital audio recording. These written minutes shall serve as the official record of actions taken during the meeting.



**Orange County Planning Commission
Regular Meeting
March 18, 2021**

Agenda Item 5a

ORANGE COUNTY

PLANNING SERVICES

COMMUNITY DEVELOPMENT
128 WEST MAIN STREET
ORANGE, VIRGINIA 22960



OFFICE: (540) 672-4347
FAX: (540) 672-0164
orangecountyva.gov

MEMORANDUM

TO: Orange County Planning Commission

FROM: Sandra B. Thornton, Planning Services Manager

SUBJECT: Proposed Conditions SUP 20-04

DATE: March 11, 2021

The following conditions proposed by commissioners do not include those which Eric Lansing, Assistant County Attorney, has advised would not be acceptable, and this list does not duplicate the conditions proposed in the staff report dated February 3, 2021. The list below includes some revisions to commissioner recommendations based on Mr. Lansing's counsel:

- Applicant agrees to comply with all applicable current and future federal, state, and local laws and regulations. (NOTE: Noncompliance would be a violation of the conditions of zoning approval.)
- No student shall be a convicted sex offender. For the purposes of this special use permit, "convicted sex offender" means a person convicted of any of the crimes listed in § 9.1-902 of the Code of Virginia, or its successor statute.
- No student shall be a person convicted of a violent felony as that term is defined in § 17.1-805 (C) of the Code of Virginia, or its successor statute.
- The applicant will have policies and procedures in place to provide neighbors with the responsible staff person's contact information upon request and that require the responsible staff person to respond to neighbors' concerns. (NOTE: these are NARR/VARR standards)
- The applicant will implement policies to ensure that the property is well-maintained. (NOTE: this is a NARR/VARR standard)

Concerning a gender-based condition, Mr. Lansing has indicated, based on his research, that while the facility operator (CARS) may discriminate on the basis of sex in compliance with Fair Housing Act provisions and exemptions as defined therein, the local government may not use its zoning powers to impose such discrimination.

Josh Gillespie, Director of Planning & Development Services, is pursuing the possibility of a time-limited condition. The county legal staff has determined that it is not appropriate to restrict approval of the SUP to only this applicant such that it would not run with the land.



**Orange County Planning Commission
Regular Meeting
March 18, 2021**

Agenda Item 5b

COMMUNITY DEVELOPMENT
128 WEST MAIN STREET
ORANGE, VIRGINIA 22960



OFFICE: (540) 672-4347
FAX: (540) 672-0164
orangecountyva.gov

MEMORANDUM

TO: Orange County Planning Commission

FROM: Sandra B. Thornton, Planning Services Manager

DATE: February 26, 2021

SUBJECT: SUP 20-05 Redfish Solar – Proposed Conditions and VA Code §15.2-2232 Considerations

Proposed Conditions Follow-up

Pursuant to discussion at your February 4, 2021, meeting, staff met with the applicant to review the conditions recommended in the February 3, 2021, staff report on this matter. Following is a summary of that discussion:

Buffering / Environmental

- There shall be no land disturbance or construction within 100 feet of any wetland or perennial waterway, or within 50 feet of any waterbody or intermittent waterway. If any of these buffer areas adjacent to the solar panel arrays lack existing vegetation, native tree species shall be planted in order to establish a riparian buffer. Adequacy of this buffer shall be approved by the Zoning Administrator as part of the site plan review and approval.
 - *This is to help protect the health of the water features and watershed, particularly from stormwater runoff from the facility. Retained woodlands and planted trees are the best method for achieving this.*

The applicant objects to the requirement to plant additional trees since such vegetation could impede full restoration of the property to agricultural use in the future. They noted that the landowner had done some clearing, and they understood that Department of Forestry Best Management Practices had been employed when that clearing was done. The applicant suggested that natural vegetation be allowed to reestablish over time. Staff agrees that this is a reasonable approach; however, staff recommends retention of the language that adequacy of buffers shall be approved by the Zoning Administrator as part of site plan review and approval.

- A buffer at least 100 feet in width shall be maintained around the perimeter of the property. No clearing, tree removal, or other disturbance shall occur within this buffer area except as

necessary to construct the electrical lines needed for connection to the nearby transmission line at the southwestern point of the property.

➤ *This is to help ensure adequate buffering of neighboring properties.*

The applicant objects to the 100-foot width specification, on the basis that this requirement would significantly reduce the area available for installation of the facility. In addition, it was suggested that the shading impact of additional trees could impair functionality of the panels. We discussed the efficacy of a narrower buffer to achieve a desirable level of visual screening, as well as noise attenuation. Staff will do some research prior to March 4, 2021, to formulate a specific revised recommendation.

- Grading associated with construction of the facility shall retain the natural topographical contours to the maximum extent practicable, except where grading can smooth excessive existing grades (i.e. 15% or greater) in order to control or prevent erosion.
 - *This helps ensure the natural character of the land is not excessively altered.*
- Existing mature forestland shall be cleared only as necessary for installation of the facility and a 35-foot setback from the tree line shall be observed. Clearing not associated with the facility is prohibited.
 - *This helps provide additional buffering for the facility, protect the existing ecosystem, and avoid additional unnecessary environmental degradation.*
- Woody vegetation on slopes greater than 5% shall be preserved downhill from the solar arrays.
 - *This helps to reduce erosion and is less likely to shade the structures.*
- Solar panel arrays shall be arranged and constructed in order to encourage vegetation growth between and underneath the arrays and to minimize concentration of runoff. Gravel Diaphragm trenches are to be applied at the drip line of solar arrays running parallel to slopes.
 - *This is an erosion control measure and a partial stormwater management measure. This also helps provide areas for pollinator habitat growth or livestock grazing, if desired.*

The applicant objects to this condition because the panels are not fixed but are on trackers, so they would not be expected to create a drip line. The applicant also suggested that the application of gravel would impact hydrology on the site.

- Top soil that is removed shall be stockpiled on site for use in restoration of the site at the time of decommissioning.
 - *This is to facilitate restoration of the arable land suitable for agricultural purposes.*

Uses / Setbacks

- Construction of the facility shall not preclude any existing uses of the property, including agriculture from continuing. However, the facility, once constructed, shall be considered the principal use of each parcel of the subject property.
- Should any subdivision of the subject property occur after the facility is constructed, approval of this SUP shall be void for the newly-created parcels.

- There shall be no commercial signage associated with the facility visible from Catharpin Road or from the air.
- For the purpose of determining minimum setback and yard distances from internal property lines, individual solar panel arrays shall be considered “main” structures per the Agricultural zoning district regulations of the Zoning Ordinance.
 - *The above conditions facilitate administration of zoning regulations for the subject property, particularly for situations which are anticipated to be unclear upon approval of this SUP.*
- All exterior lighting associated with the facility shall be Dark Sky compliant.
 - *This helps avoid light pollution and glare associated with exterior lighting.*
- To the maximum extent practicable, all electrical lines, except for those installed on the racking infrastructure and those associated with the interconnection route, shall be installed underground.
 - *This is to facilitate safety as well as to help limit potential visual impacts.*
- Before the final inspection for the facility may be passed by the Building Official, the applicant shall supply the County with a performance bond to cover costs associated with decommissioning the facility and restoring the site to its pre-development condition. Decommissioning includes removal of the solar systems, buildings, cabling, electrical components, roads, foundations, pilings, and fencing to a depth of 36 inches, as well as restoration of the site to tillable soil suitable for agricultural use, forestry, ponds and/or wetlands. The applicant shall engage a third party to produce a cost estimate to complete this work, minus anticipated revenue from salvaging materials, plus a 10% contingency. This bond shall be maintained for as long as the facility is in existence. The owner shall supply bond riders or replacement bonds, upon request by the County, to account for inflation and changes in anticipated costs. The County may request these adjustments at 5-year intervals.
 - *In the event the facility is ever abandoned, this ensures its complete removal.*

We discussed some questions pertaining to this condition, and staff indicated that the plans and bond estimate should be sealed by an engineer. It was confirmed that the cost estimate would be the basis for the bond amount.

Since the last meeting, staff received some additional recommended conditions from a commissioner; these have been discussed with the applicant, as follows:

- 1) Redfish Solar will be required to provide the County of Orange with a bank letter of credit or an acceptable bond instrument of \$1,000,000 initially, to be amended every three-year period in dollar amount, linked to the Consumer Price Index or another external index acceptable to the County.

The applicant questioned the amount, asserting that \$20-30,000 per MW is currently considered the average cost of decommissioning and in view of the fact that this would be a \$6,000,000 project.

- 2) Upon decommissioning of solar farm operation, Redfish Solar will restore the property to its original usable, tillable agricultural use.

- 3) Redfish Solar agrees not to oppose the assessment in the media or litigate to block a Solar Tax enactment by the County of Orange in the future.
- 4) Redfish Solar agrees not to transfer, sell, or change the legal ownership of the SUP applicant, without written authorization by the County of Orange. In addition, the approved SUP is exclusively for Redfish Solar Partners, LLC. The County of Orange may require reapplication for the SUP by any new owner(s).
- 5) Construction traffic must use East Orange Plan Road through Spotsylvania County to access the project site on Catharpin Road.

County Administration has expressed support for consideration of the following comments submitted by the Piedmont Environmental Council:

- Compression mats should be used during construction, in order to reduce topsoil compaction.
- If any grading is required, it should not result in the loss of agricultural soils (topsoil) and should be completed in phases to reduce erosion and sedimentation from the site.
- Where grading is required, topsoil should be removed from the area prior to grading. That soil should be stored on site and replaced after the grading is completed. *[Note: see staff recommendation above pertaining top soil stockpiling.]*
- A battery energy storage system is required and rated storage capacity shall be specified.

Finally, with respect to potential conditions, the Board of Supervisors received a presentation from the County Attorney on February 23, 2021, on the topic of proffers; a copy of Mr. Lacheney's memo is attached for your information. The memo includes reference to newly-adopted provisions in the Code of Virginia with respect to solar facilities. The Commission may wish to consider that information as it considers recommendations for the Board of Supervisors on this SUP application. During the Board discussion interest was expressed in potential revenues from siting agreements as well as in cash proffers.

Comprehensive Plan Considerations

The staff report, as is customary, includes a section on the proposed project's comprehensive plan consistency. It must also be noted that Virginia Code §15.2-2232 requires a specific finding that the location of a public utility facility is substantially in accord with the adopted comprehensive plan, and it has now come to staff's attention that §15.2-2232.H. contemplates that in the absence of other determinants set forth in that paragraph, the substantial accord review for solar facilities would be advertised. Accordingly, it will be necessary to defer action on the pending SUP until the substantial accord review is advertised for public hearing, following which concurrent action may be taken on both aspects of the process.

ORANGE COUNTY, VIRGINIA

OFFICE OF THE COUNTY ATTORNEY

THOMAS E. LACHENEY
DEAL & LACHENEY P.C.
COUNTY ATTORNEY

TLacheney@OrangeCountyVa.net
PHONE: (888) 456-1547
FAX: (877) 457-1231



MAILING ADDRESS:
PO BOX 111
ORANGE, VA 22960

PHYSICAL ADDRESS:
112 WEST MAIN STREET
ORANGE, VA 22960

February 11, 2021

TO: Orange County Board of Supervisors

FROM: Thomas E. Lacheney, County Attorney

RE: Proffers

CC: Theodore Voorhees, County Administrator

As a general rule, we cannot place conditions on rezoning requests. The exception to this rule is contained in Virginia Code §15.2-2286(A)(1)(3) which allows conditions called "Special Exceptions." Most localities call these Special Exceptions either a "Conditional "Use Permit" or a "Special Use Permit." The courts have ruled that certain types of development may warrant stricter scrutiny and justify conditions as part of the SUP/CUP process.

On a regular rezoning we cannot attach any conditions nor require any concessions by the applicant. However, state law was adopted "to provide a more flexible and adaptable zoning method to cope with situations found in such zones through conditional zoning, whereby a zoning reclassification may be allowed subject to certain **conditions proffered by the zoning applicant** for the protection of the community that are not generally applicable to land similarly zoned." *Va. Code §15.2-2296* (emphasis added).

In other words, the applicant can voluntarily "proffer" conditions for a rezoning application. We cannot require the proffers, but we can sometimes "suggest" them to the applicant. State law indicates that our county code should indicate which kind of proffers we accept.

The first type of proffer centers on limitations or restrictions the applicant is willing to make on the rezoning request. For example, the county code may establish a 50' setback but the applicant may proffer a 100' setback. Similarly, the proposed zoning

classification may have 30 “by-right” uses but the applicant may proffer that the rezoned property may only be used for one (1) specific use, or shall not be used for some of the otherwise permitted uses.

A second type of proffer would be a “design” proffer where the applicant proffers certain design or layout features of the proposed development on the rezoned parcel. For example, the applicant could proffer that all buildings will be brick, or painted white, or built in a “Victorian Style.” The applicant could also proffer that the development (as built) will be similar or substantially similar to the proposed development plan shown to the Board during the rezoning process. Some localities use proffers to lay out virtually every detail of a proposed development as part of the rezoning process so that they know in advance exactly what the development will look like.

The third type of proffer is where the applicant proffers either cash or services to the county as part of the application process. Our county code states:

Sec. 70-193. – Conditional zoning.

(a) Authority to accept proffers. The board of supervisors is authorized to accept proffers in conjunction with an owner-initiated zoning map amendment pursuant to § 15.2-2296 – 2303 of the Code of Virginia.

(b) Purpose. Proffers (i.e. voluntary conditions submitted by the applicant) are intended to provide for the orderly development of land in situations where a more flexible and adaptable regulatory mechanism is needed to adequately address impacts to the community and locality arising from a proposed zoning map amendment. Such conditions are generally intended to be unique to the property while supplementing the underlying zoning district regulations, and carry the same applicability and enforceability as such.

(c) Form. All proffers to be volunteered shall be in writing and shall be signed by the applicant. Such proffered conditions shall be made on a standard form approved by the county attorney.

(d) Submittal. Proffers may be submitted in conjunction with an application for a zoning map amendment at any time prior to the public hearing by the board of supervisors. The applicant may amend said proffers as so desired during that timeframe. The board may, at its sole discretion, accept proffer amendments once the public hearing has begun, provided the changes do not materially affect the proposal.

(e) Acceptance and effect. The board may accept proffers in their entirety, only accept certain proffers, and/or accept portions thereof. Once accepted in

conjunction with an approved zoning map amendment, the proffers shall remain in full force and effect unless a subsequent amendment to said proffers is approved or the zoning classification is changed.

(f) Amendments to accepted proffers. Once accepted by the board in conjunction with an approved zoning map amendment, proffers may only be further amended via a subsequent owner-initiated zoning map amendment. An application to amend proffers shall be subject to procedural requirements under Sec. 70-194. However, no further recommendation by the planning commission shall be required unless the board refers the proposed proffer amendment to the commission for a public hearing and recommendation. In consideration of an application to amend proffers, the board may, at its sole discretion, waive the public hearing requirement if it determines the proposed amendments do not materially affect conditions relating to allowable uses or density.

Our ordinance does not expressly indicate whether cash proffers will be accepted, but by incorporating the various state law references, I think we can accept them if we so choose. There are some limitations on residential cash proffers which have been adopted in the past few years. In Va. Code §15.2-2304 the General Assembly determined that:

*B. Notwithstanding any other provision of law, general or special, no local governing body shall (i) require any **unreasonable proffer**, as described in subsection C, in connection with a rezoning or a proffer condition amendment as a condition of approval of a new residential development or new residential use or (ii) deny any rezoning application or proffer condition amendment for a new residential development or new residential use where such denial is based in whole or in part on an applicant's failure or refusal to submit an unreasonable proffer or proffer condition amendment.*

*C. Notwithstanding any other provision of law, general or special, as used in this chapter, a proffer, or proffer condition amendment, whether onsite or offsite, offered voluntarily pursuant to § 15.2-2297, 15.2-2298, 15.2-2303, or 15.2-2303.1, **shall be deemed unreasonable** unless:*

*1. It addresses an **impact that is specifically attributable to a proposed new residential development** or other new residential use applied for; and*

*2. If an offsite proffer, it addresses an impact to an offsite public facility, such that (i) the **new residential development or new residential use creates a need, or an identifiable portion of a need, for one or more public facility improvements in excess of existing public facility capacity** at the time of the rezoning or proffer condition amendment and (ii) each such new residential*

development or new residential use applied for receives a direct and material benefit from a proffer made with respect to any such public facility improvements. A locality may base its assessment of public facility capacity on the projected impacts specifically attributable to the new residential development or new residential use. (emphasis added)

These limitations made it quite difficult to accept proffers on residential development because it is very hard to meet the “specifically attributable” requirements of the state law. For all practical purposes this language eliminated cash proffers on residential development. In 2019 the General Assembly added a new paragraph which gives some new flexibility in receiving cash proffers:

D. Notwithstanding the provisions of subsection C:

1. An applicant or owner may, at the time of filing an application pursuant to this section or during the development review process, submit any onsite or offsite proffer that the owner and applicant deem reasonable and appropriate, as conclusively evidenced by the signed proffers.

This language seems to indicate that the applicant and the county can “agree” on what is a reasonable proffer. I think that it is critical that the applicant is the one that proposes any such proffer, and that the county does not request them. One important point to keep in mind here in Orange is that we have two (2) acre by right divisions in the agricultural zoning districts. As such, it is unlikely that we will see many residential rezoning requests that would trigger potential proffers.

With respect to commercial development, the standard for proffers is much less strict and only requires that any proffers be reasonable and the tight restrictions of §15.2-2304 do not apply.

Finally, in 2020 the General Assembly added a provision with respect to proposed solar farms:

B. The governing body of such locality may grant a condition that includes (i) dedication of real property of substantial value or (ii) substantial cash payments for or construction of substantial public improvements, the need for which is not generated solely by the granting of a conditional use permit, so long as such conditions are reasonably related to the project. - Va. Code §15.2-2288.8

This new code section grants us great flexibility in receiving proffers on solar farms.