

## City of Alexandria, Virginia

## MEMORANDUM

DATE: JUNE 8, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 

SUBJECT: RECEIPT OF THE REPORT OF THE DEVELOPER HOUSING CONTRIBUTION POLICY WORK GROUP

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**ISSUE:** Developer Affordable Housing Contributions

**RECOMMENDATIONS:** That City Council:

- (1) Accept the *Report of the Developer Housing Contribution Policy Work Group* ("Report") (Attachment I); and
- (2) Request staff to prepare and process affordable housing amendments to the Zoning Ordinance that are needed with regard to bonus density.

**DISCUSSION:** The attached *Report of the Developer Housing Contribution Policy Work Group* (Attachment I) is the third in a series of docket items presented to Council over the past year on the subject of developer contributions to affordable housing. Following the release of the initial staff proposal in June 2004, staff received input on the proposal from the Affordable Housing Advisory Committee and from a public meeting held in late July. That meeting, attended by approximately 30 people, included a large contingent of persons from the development community who requested an opportunity to work with staff to refine the proposal. In response, the City Manager established the Developer Housing Contribution Policy Work Group (DHCPWG)<sup>1</sup>, which initially held six meetings from September through December 2004. Based on the work of that group, a second docket item was forwarded for Council's January 2005 meeting (January 25 docket item #18). For reasons described below, the group convened once

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<sup>1</sup>The Work Group was composed of three for-profit residential builders/developers (one of whom subsequently resigned); one for-profit commercial builder/developer; two private development attorneys; representatives from two development industry groups (the Apartment and Office Building Association and the Northern Virginia Apartment Association), one development lender (who later resigned due to other commitments), one representative of the Chamber of Commerce; one real estate appraiser; one non-profit housing developer; the Chair of the Affordable Housing Advisory Committee (who is that Committee's developer member), and two housing advocates selected by Housing Action. A list of members is attached to the Report.

again in May 2005 with the intent to discuss, edit and then adopt the current Report. The Report was adopted unanimously by the DHCPWG (with 9 of the 13 work group members present).

During the group's initial deliberations, both staff and the DHCPWG were aware of pending litigation between a developer and Arlington County concerning Arlington's recently enacted policy calling for housing contributions of 10 percent of gross floor area for development in Metrorail corridors and \$4.00 per square foot of gross floor area outside of such corridors. This litigation was decided in mid-December, after the Work Group process was concluded, with an Arlington Circuit Court ruling that the Arlington policy was invalid. Shortly thereafter, during the 2005 General Assembly Session, the proposed guidelines were impacted by the passage, in their respective houses, of amended versions of House Bill No. 2167 and Senate Bill No. 1206, which would have placed an 18-month moratorium on the ability of localities to receive developer contributions for affordable housing except pursuant to an ordinance granting bonus density in exchange for such contributions. Final passage of these bills, which appeared likely, would have made it impossible for the City to implement the recommendations as proposed, and further local action was tabled pending the outcome of the General Assembly legislative session. Both bills were subsequently withdrawn, based in part on certain representations made by the City of Alexandria, as well as by Arlington County. The City, in a letter from Mayor Euille (Attachment II), agreed that developer contributions for affordable housing would be accepted by the City only if they are voluntarily offered, except in instances where such contributions are provided in exchange for bonus density. The Virginia Housing Study Commission will study this matter in preparation for the 2006 General Assembly session, with the possible outcome being recommended State law changes.

Following the General Assembly session, representatives of the development and business community met with Mayor Euille, the City Manager, and City staff to discuss how best to address the developer contribution issue. Although representatives of the development community remained comfortable with keeping the same contribution dollar levels as contained in the January 2005 recommendations, they also considered it of primary importance that the City not adopt these levels as an official City policy, which could be interpreted as running counter to the concept of purely voluntary contributions. The agreement that staff and the DHCPWG reached was that the Report of the DHCPWG would come forward and that it would be recommended that Council accept the Report.

It should be noted that the recommended actions are consistent with the attached letter from Mayor Euille, in that all but the bonus density contribution would be voluntary. The fact is that if a developer chooses not to make a voluntary contribution, then that choice will have no bearing on the City's consideration of that developer's proposed project. When the bonus density ordinance is written it will be written so as to comply with state law (15.2-2304).

The DHCPWG reconvened on May 31 and discussed, edited and adopted the attached Report (Attachment I). The conclusions presented in the DHCPWG Report contain the exact same contribution values as in the January docket item (Attachment II). *The primary difference is that*

*with the exception of contributions in exchange for bonus density (Residential Tier 3), all other contributions are voluntary.* Previously, it had been recommended that the contributions in Residential Tier 2 be established in the Zoning Ordinance as mandatory. Tier 2 would now be voluntary.

The DHCPWG's conclusions are summarized in table form on pages 7 and 8. As noted in the table (Note 7, page 8), it is the intention of this Report to provide the clarity and certainty desired by the development community with regard to affordable housing contribution levels for a minimum three-year period, subject to action by the General Assembly. The participating representatives of the development community have agreed to recommend full compliance with the Report to all other members of the development community. City staff have indicated that they will act in good faith to comply with the conclusions of this Report.

As also noted in the Report, the DHCPWG acknowledges that the Virginia Housing Study Commission is addressing the issue of developer contributions for affordable housing in preparation for the 2006 General Assembly session, and that the City and/or the DHCPWG may find it appropriate to revisit these issues in light of the outcome of that process.

The Planning and Zoning staff notes that the provision of density bonuses as part of the special use permit process is not appropriate in many areas of the City because of the existing scale, density, open space and character of each neighborhood. However, where a density bonus is appropriate, the DHCPWG Report envisions the City, under Tier 3, having the flexibility of requiring that the affordable units be provided on-site or off-site. This approach will require an amendment to the Zoning Ordinance which currently requires that the affordable units be located on-site when density and height bonuses that exceed the zoning provisions are granted. The zoning text amendment will require subsequent review by the Planning Commission and approval by City Council. As part of the future zoning text amendment, staff will address criteria and standards to more clearly define the appropriateness of mass and scale for density/height bonuses.

Therefore, staff recommends that Council, in addition to accepting the DHCPWG Report, request staff to prepare and process amendments to the Zoning Ordinance that are needed with regard to bonus density.

**FISCAL IMPACT:** It is not known what the fiscal impact will be, in that all contributions, except for the bonus density situation, would be voluntary. However, based upon the discussions to date with the development community, it appears that voluntary contributions will continue to occur, but it remains to be seen if they will occur at the same level as before General Assembly action.

**ATTACHMENTS:**

Attachment I. *Report of the Developer Housing Contribution Policy Work Group*

Attachment II. February 15, 2005, Letter from the Mayor to Senator Mims and Delegate Reese

**STAFF:**

Mildrilyn Stephens Davis, Director, Office of Housing

Mark Jinks, Assistant City Manager

**REPORT OF THE DEVELOPER HOUSING  
CONTRIBUTION POLICY WORK GROUP**

**Background**

The Developer Housing Contribution Policy Work Group (DHCPWG) was established in the summer of 2004 as a public-private collaborative response to the expressed desire of the development community to work with the City to refine a staff proposal on developer contributions that was released for public comment in June 2004. A public meeting held in July 2004 to obtain input on the City staff proposal was attended by approximately 30 people, including a large contingent from the development community who requested an opportunity to work with staff on this matter.

The DHCPWG was composed of three for-profit residential builders/developers; one for-profit commercial builder/developer; two private development attorneys; representatives from two development industry groups (the Apartment and Office Building Association and the Northern Virginia Apartment Association), one development lender (who later resigned due to other commitments), one representative of the Chamber of Commerce; one real estate appraiser; one non-profit housing developer; the Chair of the Affordable Housing Advisory Committee (who is that Committee's developer member), and two housing advocates selected by Housing Action.

The DHCPWG held six meetings from September through December 2004, and the result of its deliberations was forwarded to Council in January 2005 with the expectation of a public hearing in February. However, in light of bills introduced during the 2005 General Assembly session that would have made it impossible for the City to implement the recommendations as proposed, further local action was tabled pending the outcome of the state legislative session.

Amended versions of both bills (HB 2167 and SB1206) passed their respective houses but were subsequently withdrawn, based in part on certain representations made by the City of Alexandria. The City, in a letter from Mayor Euille, agreed that developer contributions for affordable housing will be accepted only if they are voluntarily offered, except in instances where such contributions are provided in exchange for bonus density.

The DHCPWG reconvened in May 2005 to refine its position in light of the outcome of the 2005 General Assembly session. This report presents the conclusions of the DHCPWG regarding these matters. At several stages in the policy development process, the DHCPWG development community members convened a larger group of development and business community members for the purpose of assessing whether the proposal would have broad support among the development community. The DHCPWG Housing Action members also shared these conclusions with their organization, which also expressed support.

## **DHCPWG Report**

The work group's report, summarized in table form on pages 4 and 5, is described below. This is consistent with commitments previously made by the City during the 2005 General Assembly Session with regard to the voluntary nature of housing contributions. However, it is the conclusion of the DHCPWG, supported by a broad coalition of the development and business community, that it would be reasonable for developers who wish to do so to offer voluntary contributions in the amounts described below:

### **A. Voluntary Contributions for Commercial Development**

For new commercial development of 3,000 square feet or more (the minimum size subject to a site plan as well as the minimum size subject to the current Affordable Housing Policy), a voluntary contribution of \$1.50 per square foot of gross floor area (GFA) is considered reasonable. For commercial construction, no distinction is made regarding whether the project's density/FAR is allowed "by right," with an SUP, or with bonus density.

### **B. Voluntary Contributions for Residential Development (Tiers 1 and 2)**

For new residential development, the DHCPWG concludes that a reasonable voluntary contribution for all square footage representing density/FAR and height within "by right" levels (referred to as Tier 1) is \$1.50 per square foot of GFA for rental units and \$2.00 per square foot of GFA for sales units.

For any additional square footage that is authorized by a Special Use Permit, rezoning, or Master Plan amendment but is not bonus density or height under Section 7-700 of the City's Zoning Ordinance (Tier 2), an additional contribution of \$4.00 per square foot of GFA is considered reasonable.

### **C. Required Contributions for Bonus Density and Height (Tier 3)**

Section 7-700 of the City's Zoning Ordinance provides for additional density (above levels otherwise allowed by the ordinance) in exchange for affordable housing, but does not specify the amount of affordable housing necessary to achieve any particular increment of additional density. The same section provides for increases in maximum height in exchange for affordable housing, again without specifying the relationship between the amount of affordable housing and the amount of additional height.

The DHCPWG considers it reasonable that one-third of any residential units resulting from increased square footage allowed under the bonus density or height provisions be provided as affordable units. It is further considered reasonable that the City have the discretion to allow the developer to provide (i.e., build or purchase) an equivalent number of units off-site as opposed to on-site.

It is the intention of the DHCPWG that the provision of affordable housing under the bonus density and height provisions of Section 7-700 (Tier 3) to be in addition to the reasonable voluntary contributions offered in association with “by right” (Tier 1) or SUP (Tier 2) square footage.

**Interim Status**

The DHCPWG acknowledges that the Virginia Housing Study Commission is addressing the issue of developer contributions for affordable housing in preparation for the 2006 General Assembly session, and that the City and/or the DHCPWG may find it appropriate to revisit these issues in light of the outcome of that process.

**SUMMARY OF DEVELOPER HOUSING CONTRIBUTION WORK GROUP REPORT**

<p><b>COMMERCIAL PROJECTS</b></p>	<p>Voluntary contribution of \$1.50 per square foot of gross floor area (GFA)</p>		
<p><b>RESIDENTIAL PROJECTS</b></p>	<p align="center"><u>Tier 1</u></p> <p><b>Density/FAR/Height at Base (“By Right”) Level Allowed by Zoning Code/Master Plan</b></p> <p><u>Multifamily Rental</u>: Voluntary contribution of \$1.50 per square foot of gross floor area (GFA)</p> <p><u>Condominium/Townhouse/Single-Family</u>: Voluntary contribution of \$2.00 per square foot of GFA</p>	<p align="center"><u>Tier 2</u></p> <p><b>Density/FAR/Height Increase Allowed by Special Use Permit, Rezoning, or Master Plan Amendment</b></p> <p>Voluntary contributions as follows:</p> <p>1) Contribution on base (“by right”) square footage at Tier 1 level</p> <p align="center"><u>PLUS</u></p> <p>2) \$4.00 per additional square foot of GFA above base (“by right”) square footage allowed by SUP, rezoning, or Master Plan amendment</p> <p><b>NOTE:</b> In the case of                  (i) a rezoning where the old zone does not permit the residential use “by right,”                  (ii) an SUP where the current zone does not permit the residential use “by right,”                  or                  (iii) a preliminary development plan SUP in a Coordinated Development District where the current zone does not permit the residential use “by right”,                  the base Tier 1 GFA shall be based on the smaller of:                  (a) the permitted “by right” commercial GFA in the old or current zone or                  (b) the permitted “by right” residential GFA in the new zone.</p>	<p align="center"><u>Tier 3</u></p> <p><b>Density/FAR/Height Increase Allowed by Affordable Housing Bonus Provisions</b></p> <p>1) Voluntary contributions as follows:</p> <p>a) Contribution on base (“by right”) square footage at Tier 1 level</p> <p align="center"><u>PLUS</u></p> <p>b) Tier 2 contribution, if applicable</p> <p align="center"><u>PLUS</u></p> <p>2) Zoning Ordinance will be amended to require affordable housing units equal to one-third the number of units made possible by affordable housing bonus.  <b><i>By mutual agreement between the developer and the City, the affordable units may be located off-site.</i></b></p>

**Notes:**

- I. Phase-in applicability for projects in the pipe line – the conclusions of this report apply to any project filing formal application for preliminary site plan, special use permit, rezoning or master plan amendment after December 1, 2004
- II. For all projects (commercial and residential) for which voluntary or required bonus density contributions are pledged, contributions are to be made on a pro-rata basis at the time of initial occupancy for each unit/space, as evidenced by a certificate of occupancy for finished unit/space, with the exception that the contribution attributable to for sale units may be made upon sale of each unit to the end user.
- III. On-site affordable housing units may be provided pursuant to an affordable housing plan equivalent to the value of the monetary contribution otherwise required, when mutually agreed to by the City and the developer.
- IV. For purposes of calculating the affordable housing contribution, all GFA of a project would be used except the GFA attributable to parking, except, as is currently the case, that garages attached to, or on the same lot with, individual residences and designed for use by a single household shall be included in the calculation of GFA.
- (5) For a mixed use project, the voluntary contribution would be based on the combination of commercial and residential GFA calculated independently according to the above table.
- (6) In the case of (i) a residential project following a rezoning where the old zone does not permit the residential use “by right,” (ii) an SUP for a residential project where the current zone does not permit the residential use “by right,” and (iii) a preliminary development plan SUP for a residential project in a Coordinated Development District where the current zone does not permit the residential use “by right”, the base Tier 1 GFA would be based on the smaller of (a) the permitted “by right” commercial GFA in the old or current zone or (b) the permitted “by right” residential GFA in the new zone.
- (7) It is the intention of this report to provide the clarity and certainty desired by the development community with regard to affordable housing contribution levels for a minimum three-year period, subject to action by the General Assembly, for which purpose representatives of the development community have agreed to recommend full compliance with the report to all members of the development community. City staff have indicated that they will act in good faith to comply with the conclusions of this report.
- (8) All exemptions in the City’s current Affordable Housing Policy shall apply to the conclusions of this report.



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*William D. Euille*  
*Mayor*

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February 15, 2005

Senator Bill Mims  
Senate of Virginia  
P.O. Box 396  
Richmond, VA 23218

Delegate Gary Reese  
General Assembly Building  
P.O. Box 406  
Richmond, Virginia 23218

Dear Senator Mims & Delegate Reese:

The City of Alexandria understands that you are considering the withdrawal of your bills (Senate Bill 1206 and House Bill 2167) that would restrict affordable housing contributions in Alexandria and several other localities, and have asked about the City's intent with regard to its affordable housing policies if these bills are withdrawn.

In establishing and implementing its affordable housing policies, the City would comply with Virginia law, as interpreted recently by the Arlington Circuit Court decision in *Kansas-Lincoln, LC v. County Board of Arlington, Virginia, et al.* Thus, except for cases in which bonus density (above that permitted by right or by special use permit under the applicable zone) has been requested under §15.2-2304 and the corresponding provisions of the Alexandria Zoning Ordinance, the City will not require developers to make affordable housing contributions, but will only accept them if they are *voluntarily* offered.

The City also understands that the Virginia Housing Commission will be reviewing the State's affordable housing laws prior to the 2006 Session. The City will participate in this study and work with other participants hopefully to reach a consensus on any modifications that should be made to improve these laws.

Sincerely,

  
William D. Euille

cc: The Honorable Members of City Council  
The Honorable Members of the Alexandria Legislative Delegation  
*"Home Town of George Washington and Robert E. Lee"*