

Date of Meeting: July 20, 2011

**BOARD OF SUPERVISORS  
TRANSPORTATION AND LAND USE COMMITTEE  
INFORMATION ITEM**

**#4**

**SUBJECT: Supervisor Burton's Board Member Initiative: Request to Initiate a Discussion of How to Better Implement Section VII(iii)(b) of the BOS Land Development Policies Regarding Proffer Negotiations**

**ELECTION DISTRICT: Countywide**

**CRITICAL ACTION DATE: At the Pleasure of the Board of Supervisors**

**STAFF CONTACT(S): Julie Pastor, Office of Planning Services  
Charles Yudd, County Administration**

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**BACKGROUND:**

On April 19, 2011, Supervisor Burton brought forward a Board member initiated item regarding the Board of Supervisor's Land Development Policies that deal with Proffer Negotiations. That item, which is included as Attachment 1, contained reference to Section VII(iii)(b) of the Policies states that proffer negotiations play a key role in this process and shall be conducted in the County Government Center with the appropriate County staff and in such a manner that the public could attend. For reference, the Land Development Guidelines are also included in Attachment 1.

The Board directed that this matter be discussed at the Transportation and Land Use Committee (7-0-2, Supervisors Buckley and Waters absent for the vote).

Supervisor Burton is expected to attend the Committee meeting on July 20<sup>th</sup> to address his concerns regarding public accessibility to proffer negotiations during the public review phase of the application process.

**ATTACHMENTS:**

Attachment 1: Item # 11 dated April 18, 2011 Board Business Meeting and Board of Supervisors Land Development Policies (adopted January 3, 2008 and revised through March 3, 2009)

Date of Meeting: April 18, 2011

**LOUDOUN COUNTY BOARD OF SUPERVISORS  
ACTION ITEM  
BOARD MEMBER INITIATIVE**

**#11.**

**SUBJECT:** A Request to Initiate a Discussion of How to Better Implement Section VII(iii)(b) of the BOS Land Development Policies Regarding Proffer Negotiations

**INITIATED BY:** Jim Burton

**ELECTION DISTRICT:** Countywide

**Staff Contact(s):** Mary Bathory Vidaver, Staff Aide to Supervisor Jim Burton, x0210

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**BACKGROUND:**

Section VII(iii)(b) of the Loudoun County Board of Supervisors Land Development Policies states, "Proffer negotiations play a key role in this process and shall be conducted in the County Government Center with the appropriate County staff and in such a manner that the public could attend." It is not clear that the latter portion of this policy, regarding public accessibility of such negotiations, is being followed during the land use process. A copy of the Land Development Policies is attached with the relevant language found on pages 6-7.

As the economy recovers and the number of applications subject to proffers builds, it seems timely to initiate a discussion as to how the County might better implement this policy, improve public transparency, and enhance land use decision-making. Section VII(iii) of the policies addresses the phases of the application process and the role of public officials and specifically discusses the public review phase. Based on the location of the policy and the language, it would appear that it is intended to apply to Planning Commissioners and Board members. Possible points for discussion could include placing proffer negotiations on the public meeting calendar, including County staff in the requirement, maintaining minutes of proffer negotiations and posting them on-line within the public record.

Possible venues for such a discussion would be the Transportation and Land Use Committee, the Finance / Government Services & Operations Committee, or a Committee of the Whole.

**DRAFT MOTION:**

I move that the Board of Supervisors forward this item for discussion and recommendation to the Transportation / Land Use Committee.

Or

I move that the Board of Supervisors forward this item for discussion and recommendation to the Finance / Government Services & Operations Committee.

Or

I move that the Board of Supervisors forward this item for discussion and recommendation to a Committee of the Whole during a future Board meeting.

Or

I move some other motion.

**ATTACHMENTS**

1. Loudoun County Board of Supervisors Land Development Policies

Adopted January 3, 2008  
Revised March 3, 2009



**Land Development Policies  
Board of Supervisors  
Loudoun County, Virginia**

**I. GOALS OF THE LAND DEVELOPMENT PROCESS**

1. Promotion of an adequate employment and tax base.
2. Protection and consideration of existing suburban neighborhoods and commercial properties in Eastern Loudoun County while protecting its market value.
3. Preservation of agricultural and scenic land in Western Loudoun County while protecting its market value.
4. Provision of the health, safety, and welfare of Loudoun's current and future citizens.
5. Provision of public facilities and services through revised service plans, Capital Improvement Plan, and Countywide Transportation Plan.
6. A predictable, timely, and quality land development review process, the costs of which are recovered by a fairly administered fee program. The process will include clear, well-founded standards and objectives, professional review that respects landowner's rights with regard to the General Plan, and appropriate public participation.

**II. OBJECTIVE AND APPLICABILITY OF THE GUIDELINES**

The objective of the policies is to set clearly stated, broad parameters (that respect the rights of the general public) for appropriate interaction when reviewing and discussing land development applications and amendments to the Revised General Plan. The policies apply to staff, applicant, Board of Supervisors, Planning Commissioners, public, and any Board-appointed entity acting as public officials during the process.

**III. INTENT OF THE POLICIES**

1. Recognize that the chief function of local government at all times is to serve the best interest of the public.
2. Encourage the highest ideals of honor and integrity to be exercised within the land development process.
3. Promote the highest standards of personal integrity, truthfulness, and impartiality in all official and public activities.

#### **IV. LEVELS OF REVIEW BY PUBLIC OFFICIALS IN THE LEGISLATIVE LAND DEVELOPMENT APPLICATION PROCESS**

In order to ensure the integrity of the land use application process, Loudoun County interfaces three distinctively different bodies of public officials and levels of review to conduct an exhaustive and impartial review and determination of findings. They are as follows:

##### **First Level of Review: Loudoun County Staff:**

1. The first level of public official review is County staff, who represents a diverse range of professional and technical disciplines. They provide information to and receive input from the applicant, public officials, and the general public. A project planner is assigned to each application.
2. The project planner draws upon the expertise of various public officials, both within and outside the county, to obtain comments and recommendations to ascertain protection of the health, safety, and welfare of the general public and compliance with the county's general plans, policies, and ordinances. The project planner assesses all comments and formulates an overall recommendation for action.
3. The staff maintains an ongoing dialogue with the applicant, public officials, and the general public throughout the life of the application process. Changes to the application and new information or comments are assessed and provided to the appropriate officials. Supervisors may comment at Development Review Committee (DRC) meetings scheduled by staff.
4. In order to achieve an impartial review and formulation of recommendations for further action, this level of public officials and the review process must remain insulated from bias or interference in the performance of these duties except as noted above.

##### **Second Level of Review: Planning Commission:**

1. Each member of the Board of Supervisors nominates one Planning Commissioner who, until the Planning Commission forwards an application, serves as the principal point of contact for informational purposes only (avoiding any commitments) on behalf of his/her respective Supervisor, the applicant within his/her election district, and the County as a whole.
2. The Planning Commission reviews the assemblage of documents, comments, and recommendations; receives input from both the public and private sectors; attempts to resolve outstanding issues; and forwards the application to the Board of Supervisors for final action with a recommendation, when appropriate.

3. A Planning Commissioner must also follow the conflict of interest laws. He/she may have to recuse himself/herself from participation, including conversations related to a land use application under review. Recusal by a Planning Commissioner precludes any involvement (throughout the process) with other public officials involved with the land use application under review. In such a case, it is imperative that the Planning Commissioner has ensured that his/her constituents are represented by the Chairman of the Planning Commission and/or another Planning Commissioner who can participate in the review process.

**Third Level of Review: Board of Supervisors:**

1. The third level of review rests with the Board of Supervisors, who are also responsible for the determination of findings. Board members are elected at the pleasure of the general public, regardless of possible conflict of interest considerations. Since a Supervisor is not screened for conflict of interest, he/she may have to recuse himself/herself from participation, including conversations related to a land use application under review. Recusal by a Board member precludes any involvement (throughout the process) with other public officials involved with the land use application under review. In such a case, it is imperative that the Supervisor has ensured that his/her constituents are represented by the Chairman of the Board of Supervisors and/or another Supervisor who can participate in the review process.
2. The Board reviews Planning Commission referrals and receives comments from the applicant, staff, other public officials, and the general public. Staff and/or the applicant may be requested to provide additional information (either directly to the Supervisor or for the Board Committee use) where an attempt will be made to resolve any remaining issues, or the Board may return the application to the Planning Commission for further study. The Board, after a careful review, makes a determination of findings.

**V. DISCLOSURE – STATE CODE PROVISIONS**

The Code of Virginia requires official disclosure as identified in Section 2.2-3112. A public official must adhere to the following requirements:

1. Disclose (must be in the public record) if the official is disqualified from participating because of personal interest in a transaction.
2. Disclose (verbal or written) if the official can participate even though a member of an affected group. If must disclose pursuant to this section, then one must state for each transaction (Section 2.2-3114 F or G or 2.2-3115 G or H):
  - a. The nature of personal interest
  - b. The business, profession, or occupation of affected group

- c. That participation in the transaction can be fair, objective, and in the public interest.
3. Annual (written) disclosure (Board of Supervisors) of file form required by Section 2.2-3117 (Section 2.2-3115).
4. Annual (written) disclosure (Planning Commission/Board of Zoning Appeals) (Section 2.2-3115 F)
  - a. All interest in real estate located in the County
  - b. Any business in which members own an interest or from which income is derived, if the purpose of the business is to own, develop, or derive compensation through the sale, exchange, or development of real estate in the County

## **VI. DISCLOSURE – COUNTY POLICIES**

Public officials' face-to-face meetings (where the primary purpose is to discuss a current land use application) with applicants, the applicants' representatives empowered to act for them, or any organization or individual taking a position should be held in a public place whenever possible, and preferably a County government facility. Full oral and written disclosure (including a general description of the nature of the discussion) of any such meeting that is not open to the public (regardless of whether it occurred in a public or private place) shall be made in the following manner:

1. Planning Commissioner(s) or member(s) of the Board of Supervisors shall disclose respectively at the next Planning Commission or Board of Supervisors business meeting or public hearing, whichever comes first.
2. Documentation on any communication, either verbal or written, from the applicant, or his representatives relative to his/her active land use application shall be kept on file for Board members or citizens to see upon request within the Department of Planning public file.
3. When participation might be perceived as giving the appearance of a conflict of interest, a Board Member should seek the opinion of the County Attorney on whether participation would be appropriate. Such determination should be made public.
4. Disclosure must occur (as opposed to leaving the meeting and being recorded as absent) when recusing oneself or being disqualified from participating because of a conflict of interest.
5. If it is deemed that a public official cannot participate fairly or objectively in the process due to conflict of interest, a public disclosure will be made. Private and public discussions by the recused with other public officials pertaining to the application, as well as voting rights, are not permitted except where provided in the State Code.

6. Members of the Board of Supervisors shall not accept campaign contributions from persons, groups, associations, partnerships, corporations, or other such entities that have submitted an application or applications for Rezoning, Special Exception, Proffer Amendment, Concept Plan Amendment, Zoning Appeals and other Appeals before the Board of Supervisors, Comprehensive Plan Amendments, or Requests for Early Removal from Agricultural and Forestal Districts during the period of time such matter is submitted to the County to six months following final action on the matter by the Board of Supervisors or when the matter is withdrawn. If a donation has been accepted, the Board member has the option of recusing themselves from the matter or returning the donation. Members of the Board of Supervisors must abide by all campaign finance laws and disclose all campaign contributions as required by state law.
7. Board members should also disclose in writing as described above all other meetings regarding a land development applications, be they with citizens, HOAs, or other special interest groups. These records will be kept in the Board member's files and available to colleagues and citizen upon request.

The Loudoun County Zoning Ordinance, as authorized by the Code of Virginia, requires legislative land use applicants to fill out a "Disclosure of Real Parties in Interest" form. This form is submitted with an application's first submission, is updated as necessary, and is "reaffirmed" prior to the Board's Public Hearing. To assist the Board and Commission in attaining this information as soon as it is received, the Planning Department has established a web page on the County servers to hold all of these forms electronically. Board members and Commissioners are encouraged to visit this site prior to any corporate meeting (hearings, worksessions, etc.) or private meeting held with an applicant to ensure that no conflict exists between the Board member/Commissioner and the applicant/agents. This information is provided at: [www.loudoun.gov/disclosures](http://www.loudoun.gov/disclosures)

## **VII. PHASES OF THE APPLICATION PROCESS AND THE ROLE OF PUBLIC OFFICIALS**

### **i. Pre-application Phase:**

Pre-application meetings, as defined in Article 6 of the Zoning Ordinance, are required, non-binding information and issue-raising sessions between the County and potential applicants. A Board member, Planning Commissioner, or other public official may attend a pre-application meeting at the invitation of the applicant for information purposes. Each member of the Board of Supervisors and Planning Commission will be notified (on a bi-monthly basis) of all pre-application meetings that have been conducted.



ii. Staff Review Phase:

a. Checklist and Acceptance:

Checklist review and acceptance of the application is a process with the applicant that establishes compliance with minimum criteria. Upon official acceptance of an application, staff will notify the district Board member and Planning Commissioner.

b. Staff Review and Analysis – Referral:

This is the portion of the land development process when the County, with assistance from affected jurisdictions and agencies, provides a full and appropriate review of the merits of the application. A project manager is assigned and serves as the lead person on behalf of the County. Questions and comments of an informational and technical nature should be directed to the project manager. The importance of a professional, unbiased, and non-political analysis is recognized and, therefore, communication with staff performing the review for the purpose of influencing the review is inappropriate. Supervisors invited by staff to participate in DRC meetings may identify potential issues that merit consideration.

c. Staff Report:

The staff report is the document the Board and the public rely on to provide a clear description of the application, associated issues, solutions and recommendations. It is important that the report be available in sufficient time for Supervisors and the public to review the material in time to make informed comments at the public hearing. To ensure adequate review, the staff report should be based on material submitted to staff no less than 35 days prior to the Board public hearing. Other material should be presented at the public hearing as new information. This deadline shall not apply to applications approved for double advertising.

New material presented at a business meeting or hearing should be evaluated to determine if the application should be delayed for further review based on the nature, magnitude and public awareness of the change.

iii. Public Review Phase:

- a. Upon completion of the staff review and preparation of the staff report, it is the intent of the governing body to have a process open to the public which involves and respects the rights of all citizens to ensure that the ultimate land use decision is in the public's best interest. Public forums, to include formal and ad hoc Board and Commission committee meetings, are encouraged for the discussion and resolution of issues. Community meetings, involving the

public, the applicant, staff, Board members, and Planning Commissioners, are an integral part of involving the public at large in the land development process.

- b. Proffer negotiations play a key role in this process and shall be conducted in the County Government Center with the appropriate County staff and in such a manner that the public could attend.
- c. The Board will provide an opportunity for staff to provide a briefing of upcoming applications during a public meeting prior to the Board public hearing in order to identify issues and questions to be addressed at the hearing.
- d. It is the staff's responsibility to keep the applicant abreast of information regarding the respective application. It is also the staff's responsibility to notify the landowner of any future Planning Commission and/or Board of Supervisors activity with respect to approved proffers prior to official conveyance to Loudoun County.
- e. The flow of information pertaining to a land use application is critical to ensuring an optimum decision-making process. Any new information provided to individual public officials is to be conveyed to all members and appropriate staff and included as part of the public record.

#### **VIII. SITE VISITS**

Good analysis and decisions on land use application often require site observations. In instances where public officials and staff deem it is in the public's best interest for staff and/or public officials to visit either proposed sites and/or comparable developments, these visits are to be at public sector's expense.

#### **IX. GIFTS AND GRATUITIES**

The State Code limits the acceptance of gifts and gratuities. This is defined as any gratuity, favor, discount, entertainment, hospitality, loan forbearance, or other item having monetary value including services, transportation, local travel, lodgings, and meals whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. No officer or employee of a local government shall accept any gift that reasonably tends to influence the performance of official duties.

#### **X. MONITORING**

Adherence to the provisions of the Code of Virginia and these policies requires the discipline and commitment of individual public officials. It is the primary responsibility of the respective officials, corporate bodies and, ultimately, the Board of Supervisors to adhere to the provisions of the Code of Virginia and these policies.

## BOARD MEMBER MEETING FORM

(In accordance with the Land Development Policies)

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Board Member's Name

Land Development Project Name

Project Title (SPEX, ZMAP, CPAM,  
etc.)\*

Date of Meeting

Time of Meeting

Place of Meeting

Persons attending meeting (including staff, applicant,  
and other interested parties)

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**Meeting Summary:**

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Check Applicable Boxes:

Board Staff to Arrange Meeting       Board Member to Arrange Meeting

For Staff to Fill In:

\_\_\_\_\_  
Staff Person Processing

Distributed to Planning Staff  
for Public File

\_\_\_\_\_  
Date

Copies Distributed to Board  
Members for Disclosure

\*Information needed to place in proper Department of Planning public file