

Date of Meeting: July 20, 2011

**LOUDOUN COUNTY BOARD OF SUPERVISORS
TRANSPORTATION AND LAND USE COMMITTEE
ACTION ITEM**

#7

SUBJECT: KIRKPATRICK FARMS PROFFER REIMBURSEMENT REQUEST FOR IMPROVEMENTS CONSTRUCTED TO ROUTE 659

ELECTION DISTRICT: Dulles (Former and New)

CRITICAL ACTION DATE: At the pleasure of the Board

**STAFF CONTACT: Susan Glass, Zoning Administration
Lou Mosurak, Office of Transportation Services**

RECOMMENDATION:

Staff: In order to provide the County with maximum flexibility to complete additional segments of the CTP road network in the area, Staff recommends that the Transportation and Land Use Committee deny the Kirkpatrick Farms reimbursement request and use the reimbursable funds for transportation improvements in the Dulles Planning Subarea.

BACKGROUND:

The Kirkpatrick Farms project, ZMAP 1995-0014, was approved by the Board of Supervisors in July 1997. The proffers of ZMAP 1995-0014 required the developer to construct improvements to Route 659 (Gum Spring Road) consisting of a half section of a four lane roadway from Route 620 (Braddock Road) to Route 50. The Kirkpatrick Farms proffers also provide that the developer will request reimbursement from the County of regional road contributions, or cash in lieu of construction contributions, issued by other applications along Route 659 (Gum Spring Road) or Route 620 (Braddock Road). The proffers also state that such reimbursement is at the discretion of the County.

Pursuant to their proffers, the developer of Kirkpatrick Farms, Greenvest, completed the construction of improvements to Route 659. There are separate Kirkpatrick Farms proffers for reimbursable segments of these roadway improvements (Attachment 1 is a vicinity map with the proffer segments of Route 659 identified; Attachment 2 contains the applicable proffer text highlighted for emphasis). Proffer II.B.2.b.1 provides for construction of two lanes of Route 659 from the northern boundary of Kirkpatrick Farms to the southern boundary of Stone Ridge. The letter of clarification added a paragraph to this proffer, which provides for the construction of two lanes of Route 659 from the Pebble Drive site entrance (now known as Destiny Drive) to Route 620, and states that the Applicant will request reimbursement from the County of up to 83% of the actual costs to construct this segment of the road improvements from the regional road contributions, or cash in lieu of construction funds, contributed to the County by the owners or developers of property having frontage either on Route 620 between the eastern boundary of the

Applicant's property and Route 659, or on Route 659 between Route 620 and the southern boundary of Stone Ridge. Accordingly, existing regional road contributions paid by Braddock Corner (ZMAP 2002-0020), Frontier Spring (ZMAP 2004-0008), and/or Masira (ZMAP 2003-0004) could be used to fund the reimbursement of Proffer II.B.2.b.1 segment.

Based on documentation provided by Greenvest, the total cost of construction for the reimbursable segment of Proffer II.B.2.b.1 is \$2,050,787. Pursuant to the proffer, they may be reimbursed for up to 83% of the total cost, which is \$1,702,153. There are adequate funds in the regional road contributions paid by the developers of Braddock Corner (\$1,196,363 from proffer sequence #99065511), Frontier Springs (\$314,313 from proffer sequence #99066647), and Masira (\$191,477 from proffer sequence #99066109) to reimburse the total of \$1,702,153.

The segment for Proffer II.B.2.b.2 extends from the southern boundary of Stone Ridge north to Tall Cedars Parkway, and the segment for Proffer II.B.2.b.3 is two lanes of the West Spine Road located north of Tall Cedars Parkway. Proffer II.E.3, as clarified, provides that should the Applicant construct any of said proffered improvements and/or provide said right-of-way in connection with off-site roadway construction on existing Route 659 from the southern boundary of Stone Ridge to Tall Cedars Parkway and from Tall Cedars Parkway north to Route 50 along the West Spine Road (Proffers II.B.2.b.2 and II.B.2.b.3), the Applicant shall request reimbursement for the actual cost to the Applicant of such construction and/or provision of right-of-way, from monies received by the County from the developers of Stone Ridge in ZMAP 1994-0017 in lieu of construction of such improvements or from regional roadway contributions. Pursuant to Proffer II.E.3, \$640,000 shall be subtracted from the maximum amount of the reimbursement for Proffer II.B.2.b.2 and Proffer II.B.2.b.3 road segments.

Based on documentation provided by Greenvest, the total cost of construction for Proffers II.B.2.b.2 and II.B.2.b.3 is \$5,620,613. Pursuant to Kirkpatrick Farms proffer II.E.3, \$640,000 shall be subtracted from the maximum reimbursement amount; the resulting reimbursable amount is \$4,980,613. The current balance of regional road proffer contributions received from the developer of Stone Ridge is \$155,993 (proffer sequence #96075230). The County has not received any cash in lieu of construction contributions from the developer of Stone Ridge, nor is any such contribution expected. The original proffers for Stone Ridge provided for construction of a four lane West Spine Road between Tall Cedars Parkway and Route 50 and for construction of improvements to Route 659 to result in a four lane section between Tall Cedars Parkway and the southern property boundary of Stone Ridge. The Stone Ridge proffers were amended by ZCPA 2002-0004/ZMAP 2002-0013 to remove these proffers in exchange for Stone Ridge's construction of a third eastbound lane on Route 50 between the West Spine Road and Loudoun County Parkway; therefore, Stone Ridge is not obligated to provide in lieu of construction contributions for these West Spine Road and Route 659 improvements.

Staff notes that a separate item is anticipated for the September 2011 Transportation/Land Use Committee meeting that will provide information (e.g., preliminary alignment, design information, approximate amount of right-of-way required, etc.) about a proposed County project for Tall Cedars Parkway between the West Spine Road and Pinebrook Road. The Tall Cedars Parkway project is a transportation improvement in the Dulles Planning Subarea that could be funded with the proffer contributions identified for reimbursement to Kirkpatrick Farms' developer.

FISCAL IMPACT:

Since this request utilizes proffer funding, there is no impact to the General Fund. Assuming the maximum reimbursement from existing regional road cash proffers for all reimbursable road segments, the total fiscal impact from the proffer fund is \$1,858,146.

ALTERNATIVES:

1. Authorize reimbursement to the developer of Kirkpatrick Farms for all reimbursable Route 659 proffer segments (Proffers II.B.2.b.1, II.B.2.b.2 and II.B.2.b.3); the total amount reimbursement equals \$1,858,146.
2. Authorize reimbursement to the developer of Kirkpatrick Farms for the proffered reimbursable Route 659 segments in an amount to be decided by the Committee.

DRAFT MOTION(S):

1. I move that the Transportation and Land Use Committee recommend that the Board of Supervisors deny the Kirkpatrick Farms reimbursement request and direct the \$1,858,146 regional road contributions identified for reimbursement be used for transportation improvements in the Dulles Planning Subarea.

OR

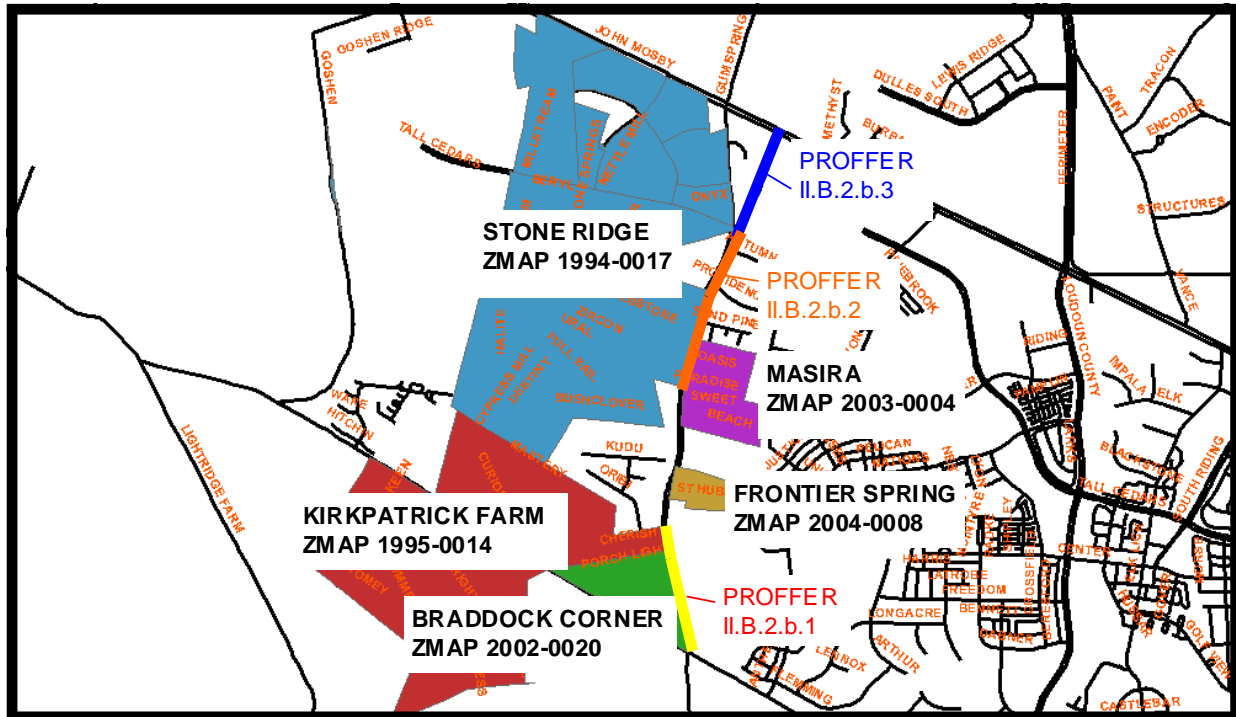
2. I move an alternate motion.

ATTACHMENTS:

1. Vicinity Map with Reimbursable Segments of Route 659 Identified
2. Relevant Kirkpatrick Farms Proffers
3. Regional Road Cash Contribution Proffers for Stone Ridge, Masira, Frontier Spring, and Braddock Corner

ATTACHMENT 1 – VICINITY MAP WITH REIMBURSABLE SEGMENTS OF ROUTE 659 IDENTIFIED

NORTH



ATTACHMENT 2 – RELEVANT KIRKPATRICK FARMS PROFFERS

Kirkpatrick Farms, ZMAP 1995-0014, Proffer II.B.2.b.1 and the corresponding letter of clarification:

b. External, Non-Frontage Improvements.

1. Two additional lanes to existing Route 659 from the northern boundary of the Property approximately 2700 linear feet to the southern property line of Stone Ridge (Tax Map 100, Parcel 44) that abuts existing Route 659 (approximately 2700 linear feet). The existing two lanes shall become the northbound lanes of the four-lane divided facility and shall be improved to VDOT standards, with the Applicant dedicating right-of-way for and constructing an additional two lanes west of the existing lanes to become the ultimate southbound lanes. Location of two lane improvements may vary subject to final engineering and right-of-way acquisition, but must all lie on the same side of the Ultimate Center Line.

8. ROUTE 659 IMPROVEMENT SOUTH OF PROJECT ENTRANCE: Section II.B.2.b.1. (p. 12) of the Proffer Statement is hereby clarified and amended by adding the following new paragraph:

*“The construction and right-of-way dedication necessary for two additional lanes to existing Route 659 from Route 620 to the site entrance of Pebble Drive. The existing two lanes shall be improved to VDOT standards for a four-lane divided major collector facility. The Applicant projects that at full buildout of development on the Property, traffic generated by the Project will be seventeen percent (17%) of all the traffic on said link. **Therefore, the Applicant will, at anytime after the issuance of first zoning permit for first residential or retail development in Phase II, request that the County reimburse the Applicant from regional roadway contribution funds, or cash in lieu of construction funds, contributed to the County by the owners or developers of property having frontage either on Route 620 between the eastern boundary of the Applicant's property and Route 659 or on Route 659 between Route 620 and the southern boundary of Stone Ridge, provided the Applicant itself has improved the frontage of said property of others pursuant to the Applicant's off-site road construction proffers. Such reimbursement shall be at the discretion of the County. The sum total of such Applicant reimbursement shall not exceed eighty-three percent (83%) of the actual cost of the construction of such link or portion thereof.** The Applicant shall not be required to construct any portion of such link, or make any payment of cash in lieu of construction for any portion of said link, constructed by others prior to issuance of first zoning permit for development in Phase II.”*

Kirkpatrick Farms, ZMAP 1995-0014, Proffer II.B.2.b.2 and Proffer II.B.2.b.3 and the corresponding letter of clarification:

2. Two additional lanes to existing Route 659 from the southern property line of Stone Ridge (Tax Map 100, Parcel 44) to Tall Cedars Parkway (approximately 3200 linear feet). The existing two lanes shall become the northbound lanes of the four-lane divided facility and shall be improved to VDOT standards, with the Applicant utilizing night-of-way provided by the Stone Ridge Development per Proffers

in ZMAP 1994-0017, and constructing an additional two lanes west of the existing lanes to become the ultimate southbound lanes. Location of two lane improvements may vary subject to final engineering and right-of-way acquisition but must all lie on same side of Ultimate Center Line. Notwithstanding any other provision in this paragraph, the Applicant shall have no obligation to perform the proffers of this paragraph if they have been previously performed by others.

3. Two lanes of an urban, divided major collector from Tall Cedars Parkway to U.S. Route 50 along a proposed new alignment of the West Spine Road between said points of terminus. Such construction shall include the following turn lane improvements at the intersection of the West Spine Road/ and U.S. Route 50:

- a right turn lane northbound on the West Spine Road; and*
- an eastbound acceleration lane on Route 50.*
- a westbound left turn lane on Route 50.*

The Applicant shall submit conceptual roadway plans for the West Spine Road for VDOT review of traffic calculation prior to final design of the West Spine Road between Route 50 and Tall Cedars Parkway. Notwithstanding any other provision in this paragraph, the Applicant shall have no obligation to perform the proffers of this subsection 3. if they have been previously performed by others, provided that if the proffers of this paragraph have been previously performed by others, the Applicant shall, in lieu thereof, construct an additional two lanes, for a total of four lanes, of a four-lane divided major collector on Route 620 across the frontage of that portion of its Property which has double frontage on Route 620, a distance of approximately 2550 linear feet, prior to commencement of Phase III of the project.

10. LOWER DENSITY SCENARIO DOUBLE FRONTAGE: Section II.B.2.b.3. (pages 13 and 14) of the Proffer Statement is hereby clarified and amended by adding the following language.

“In the event the County amends its Zoning Ordinance so as no longer to require the building of affordable dwelling units under Article VII of the Zoning Ordinance of Loudoun County prior to approval of first record plat for any building lots on the Property so that the Applicant's density is reduced as provided in paragraph 3 of this letter of clarification, subsection II.B.2.b.3. shall be amended by striking the following language from the last sentence thereof: ‘...provided that if the proffers of this paragraph have been previously performed by others, the Applicant shall, in lieu thereof, construct an additional two lanes, for a total of four lanes, of a four-lane divided major collector on Route 620 across the frontage of that portion of its Property which has double frontage on Route 620, a distance of approximately 2550 linear feet, prior to commencement of Phase III of the Project.’”

Note: The County did not revise amend its Zoning Ordinance so as no longer to require the building of affordable dwelling units under Article VII of the Zoning Ordinance. Therefore, provision 10 from the Letter of Clarification is not applicable.

Kirkpatrick Farms, ZMAP 1995-0014, Proffer II.E.3 and the corresponding letter of clarification:

3. ***Notwithstanding any other provision of this Proffer Statement, should the Applicant construct any of said proffered improvements and/or provide said right-of-way in connection with off-site roadway construction on existing Route 659 from the southern boundary of Stone Ridge to Tall Cedars Parkway and from Tall Cedars Parkway north to Route 50 along a new alignment of the West Spine Road (Proffers II. B. 2. b. 2. and II. B. 2. b. 3. above), the Applicant shall request the disbursement to the Applicant by the County, at the discretion of the County, of sums equal to the actual cost to the Applicant of such construction and/or provision of right-of-way, including, the cost of the associated turn lanes, relocation of median crossing, and traffic signal, but only from monies received by the County from the developers of Stone Ridge in ZMAP 1994-0017 in lieu of construction of such improvements or from other regional roadway contribution funds proffered, by Stone Ridge in ZMAP 1994-0017, and only as such funds are paid to the County. The maximum amount of said disbursement shall be the actual cost of such construction less the estimated value - SIX HUNDRED FORTY THOUSAND AND NO/100 DOLLARS (\$640,000.00) - of the additional two lane improvements to Route 620 across the twenty-five hundred and fifty feet (2550') of double frontage of Kirkpatrick Farms on Route 620.***

11. LOWER DENSITY SCENARIO - REIMBURSEMENT FOR ROADWAY IMPROVEMENTS PROFFERED BY STONE RIDGE: Section II.E.3. of the Proffer Statement (Pages 21 and 22) is hereby clarified and amended by adding the following language:

"In the event the County amends its Zoning Ordinance so as no longer to require the building of affordable dwelling units under Article VII of the Zoning Ordinance of Loudoun County prior to approval of first record plat for any building lots on the Property so that the Applicant's density is reduced as provided in paragraph 3 of this letter of clarification, then, notwithstanding any other provision of this Proffer Statement, should the Applicant construct any of said proffered improvements and/or provide said right-of-way in connection with a) off-site roadway construction on existing Route 659 from the southern boundary of Stone Ridge to Tall Cedars Parkway and, b) from Tall Cedars Parkway north to Route 50 along a new alignment of the West Spine Road (Proffers II.B.2.b.2. and II.B.2.b.3. above), the Applicant shall request the disbursement to the Applicant by the County, at the discretion of the County, of sums equal to the actual cost to the Applicant of such construction and provision of right-of-way, including the cost of the associated turn lanes, relocation of median crossing, and traffic signal. Such reimbursement shall, however, come only from proffer monies received by the County from the developers of Stone Ridge (ZMAP 1994-0017) in lieu of construction of such improvements or from other regional roadway contribution funds proffered by Stone Ridge in ZMAP 1994-0017, or from the owners or developers of property having frontage either on Route 620 between the eastern boundary of the Applicant's property and Route 659 or on Route 659 between Route 620 and the southern boundary of Stone Ridge, provided the Applicant itself has, prior to such Proffer payment, improved the frontage of said property of others pursuant to the Applicant's off-site road construction proffers. "

Note: The County did not revise amend its Zoning Ordinance so as no longer to require the building of affordable dwelling units under Article VII of the Zoning Ordinance. Therefore, provision 11 from the Letter of Clarification is not applicable.

**ATTACHMENT 3 – REGIONAL ROAD CASH CONTRIBUTION
PROFFERS FOR BRADDOCK CORNER, FRONTIER SPRING, MASIRA,
AND STONE RIDGE**

BRADDOCK CORNER, ZMAP 2002-0020, PROFFER 10 (as clarified)

10. CASH CONTRIBUTIONS FOR REGIONAL ROAD IMPROVEMENTS

The Applicant shall make a cash contribution to the County, in the amount of \$1,010,978.00 - - to be used at the County's discretion for regional road improvements within the Dulles South Community Planning Area, as defined by the Revised General Plan. This contribution will be paid in two payments as follows:

Payment 1: First \$505,489.00 (50 percent) paid at County approval of first Record Plat; and

Payment 2: Second \$505,489.00 (100 percent) paid at County approval of 81st Zoning Permit.

This contribution shall escalate beginning one year after zoning approval and be adjusted effective January 1st of each year thereafter, based on the CPI as published by the Bureau of Labor Statistics, U.S. Department of Labor, for the Washington-Baltimore, MD-VA-DC-WV Consolidated Metropolitan Statistical Area

FRONTIER SPRINGS, ZMAP 2004-0008, PROFFER IV.11

11. CASH CONTRIBUTIONS FOR REGIONAL ROAD IMPROVEMENTS

The Applicant shall make a cash contribution to the County Board of Supervisors, prior to the issuance of the Zoning Permit for each residential dwelling unit, in the amount of \$3,500.00, to be used at the County's discretion for regional road improvements within the Dulles South Community Planning Area, as defined by the Revised General Plan. This contribution shall escalate beginning one year after zoning approval and be adjusted effective January 1st of each year thereafter, based on the CPI as published by the Bureau of Labor Statistics, U.S. Department of Labor, for the Washington-Baltimore, MD-VA-DC-WV Consolidated Metropolitan Statistical Area.

MASIRA, ZMAP-2003-0004, PROFFER III.C.1, as clarified

1. Cash Contribution Toward Regional Roads. The Owner shall pay the County a cash contribution in the amount of Three Thousand Two Hundred Seventy-Two Dollars (\$3,272.00) for each residential unit constructed on the Property. Such contribution shall be paid prior to the issuance of zoning permit for each residential unit. Such funds shall be used for the construction of regional road improvements or signalization in the Dulles Community Planning Subarea. The per unit cash contributions proffered in this paragraph shall be adjusted annually in accordance with the Consumer Price Index ("CPI") published by the Bureau of Labor Statistics, U.S. Department of Labor, beginning one year from the approval date of the rezoning of the Property, with 2004 as the base year.

STONE RIDGE, ZMAP 1994-0017, PROFFER II.I, as clarified

I. CASH CONTRIBUTION FOR REGIONAL ROAD IMPROVEMENTS

In addition to the foregoing proffers to construct certain regional road improvements, the Developer shall contribute to the County the sum of Fifty Cents (\$0.50) per gross square foot of the allowed 2,927,450 gross square feet of improvements in the areas zoned industrial (PD-IP and PD-GI), office (PD-OP), and retail commercial (PD-CC (SC)) within the Property. Such contributions, which shall be adjusted annually in accordance with increases in the Consumer Price Index, shall be made to the County at the time of issuance of each zoning permit for building improvements in these areas. The proceeds of these contributions shall be applied toward regional road improvements in the Dulles South Planning Area in the vicinity of the Property, including Route 659 Relocated but excluding the Western Bypass.