



MEMORANDUM

TO: Chairman Durham and Planning Commissioners
FROM: Mike Craig, Senior Planner
DATE: June 16, 2022 for June 22 Planning Commission Meeting
RE: Capital Impacts Study –Policy Development

Issue

City Council has asked the Planning Commission to make recommendations on a potential policy regarding cash proffers and conditions for school and emergency services impacts of new development going through an entitlement process.

Recommendation

Recommend that the City Council adopt the Capital Impacts Study with amendments to the text outlined in appendix attached to this memo. Recommend that the City Council adopt the additional policy guidance developed by the Planning Commission for use in reviewing development applications.

Planning Commission Discussion at the June 8 Work Session

The Planning Commission held a work session on the Capital Impacts Study on June 8. The Planning Commission focused on two questions:

1. Should the “Maximum Capital Impact Amounts” from Figure 2 on page 4 of the Study be applied by the average amount per unit type or by the unit type and the size of the unit?

Discussion generated a general consensus to apply the “Maximum Capital Impact Amounts” by unit type and the size of the unit.

2. Should the Planning Commission recommend that the City Council adopt policy language in the resolution to provide additional guidance on how the Capital Impact Study should be applied? Four options were presented ranging from recommending that the Capital Impact Study not be adopted to the Capital Impact Study should be adopted with additional policy language regarding the values in the Comprehensive Plan that, when achieved by a development, may be considered suitable offsets during proffer negotiations. During the discussion, an additional item emerged – how often should the Capital Impacts Study policy be reviewed?

Discussion generated a general consensus that appropriate guidelines should be developed to accompany the adoption of the Capital Impact Study. The guidelines should follow the general form developed by the Capital Impacts Study Review Committee with some modifications: Consideration should be given to developments meeting the goals of Fredericksburg’s 2019 resolution stating a community-wide goal of powering the City with 100% renewable energy sources no later than 2050. Chairman Durham also proposed some modifications to the text.

Public Comment on Capital Impacts Study and Recommended Study Modifications

The City received some public comment from Charlie Payne of Hirschler Fleischer local land use attorneys after the meeting. The comments are attached to this memo. Here is a summary of the questions posed (bulleted items) with responses in *italics*:

- The Tischler Bise study does not address two requirements of the proffer statute. As cited below, Section C.2 of the proffer statute requires that proffers address a need for improvements in excess of existing capacity. Additionally, new development must receive a direct and material benefit from a voluntary and reasonable proffer.
- If an offsite proffer, it must address 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.
- The Tischler Bise study identifies a future middle school and additional capacity to the high school. No additional capacity for elementary schools is noted. If no additional capacity for elementary schools is proposed, it would not be possible to conclude the projects would receive a direct and material benefit from the portion of the proffer calculated to provide elementary school facilities.
- The Tischler Bise study notes that there is capacity in existing schools. It states that there is no capacity for fire and EMS facilities, but it does not document this in any way. Fire and EMS capacity is normally calculated based on time to get the property served and a maximum number of calls appropriate for the facility. There is no analysis to determine either of these factors for existing or future facilities.
- In order to meet the requirements of the proffer statute addressing existing capacity and direct benefit, it is necessary to evaluate the need for facilities specifically for each project. One project maybe located in a school attendance area where the school has excess capacity or a fire station may be able to adequately serve the new development. In this case, it would be necessary to take into consideration the excess capacity. It is also necessary to take into consideration whether future improvements will serve this new development to conclude the project will receive a direct and material benefit from the new improvements.

The Capital Impacts Study has a summary of Public School Capacity Needs on page 10. The City plans to build a new middle school that increases capacity from 880 (at the current facility) to 950 / 1100 (at the new site). By building the middle school, the City can then convert the existing middle school to an elementary school that will add 500 – 800 new seats. The study also identifies the costs associated with expanding the high school.

The City school system currently has two elementary school “zones” and one “zone” for the middle and high school. Page 24 of the study recommends that the city analyze a developments capital impact using a citywide collection and expenditure zone. The reason for this is that, “construction of new schools or additions will free up space at existing schools thus providing relief in other parts of the district. Adjustments to school district boundaries on an occasional basis maximize capacities at respective schools (as has been done by FCPS in recent years).”

The Capital Impacts Study summarizes the public safety capacity expansion needed to maintain current levels of service on page 27 - 29. The current level of service is established in the report based on the square footage of existing and proposed space, the proportional share of emergency response calls between residential and non-residential uses, and fleet increases.

The 2017 Fire Station Feasibility Study by Manitou Incorporated documented the City’s Class 3 ISO Public Protection Classification Program rating (where Class 1 represents exemplary fire protection). With respect to the “engine companies” component of the PPC rating, the City earned

76.8% of total credit available, in part because it was credited with outlying automatic aid companies from other jurisdictions. According to Manitou, “staffing a third 3-person engine company in one of the two current stations or opening a third station may strengthen the city’s credit.” Later in the report Manitou expands on this concept: “credit for the additional engine may be based on ISO’s liberty to allow for a conglomeration of partial credit derived from other resources, such as: engine companies that are part of an automatic aid agreement with Spotsylvania and/or Stafford counties; medic unit staffing that may be available to augment engine company staffing during structure fire operations; ladder company apparatus with engine capabilities; or similar creditable items under ISO’s survey guide, the Fire Suppression Rating Schedule.”

Manitou reported that the city earned only 54.2% of available credit for the rating component, “deployment of companies.” In rating this component, the ISO reviews the number and location of fire stations. “Reviews are based on the area served, along with severity and location of structure fire risks related to engine and ladder company response distance and time.” Manitou notes, “the level of credit deployment may be indicative of the need for an additional fire station to augment the current Fire Stations 1 and 2.”

One of Manitou’s “short term” recommendations was to “formally adopt a plan to construct Fire Station 3 on city property at the intersection of Fall Hill Avenue and Mahone Street and secure funds for its design.”

The City’s Capital Improvements Plan for FY23 includes the construction of a new fire station to replace one of the existing stations, at an estimated cost of \$14,000,000; and the renovation and expansion of Fire Station 1 at an estimated cost of \$4,650,000. The New Fire Station Project Description states that “Due to economic growth in development (i.e. baseball stadium, riverfront park, significant increase in residential construction) fire suppression services will be challenged to meet NFPA guidelines for response times which could negatively impact the City’s ISO rating without adding another fully staffed facility. . . . All of the above combined with the increase in call volume, the historic district, new construction materials which burn at a faster rate than older materials necessitate the need to focus on response time, personnel and equipment.”

This data is presented and calibrated to arrive at a cost for capacity increases to school and public safety facilities per new resident or new job.

- To the extent the Tischler Bise study is understood as a general framework and not a required proffer for every new residential development, I think it serves a useful purpose in providing information that may be used to estimate proffers. It is necessary, however, to understand that these calculations must be made specifically for each project. Typically, I provide with all projects a fiscal impact analysis that addresses not only operating costs but also public facility prorata analysis. Most residential projects today, with exceptions, satisfy applicable operating costs requirements (especially with assessments so high), but there is usually a need to contribute (prorata impact) towards public facilities, like schools and public safety buildings. However, mixed use projects, again depending on the residential and commercial uses, can generate annual revenues that cover both prorata capital costs and operating expenditures. There are also projects that may only be residential that are necessary to support commercial developments. There are also projects that provide in kind public improvements, like utility improvements or roads or dedications of real estate, that are beneficial to the city.

Virginia's proffer system relies on the negotiation of voluntary proffers to mitigate impacts created by new zoning entitlement. At the same time, the citizens of the City of Fredericksburg have adopted a multi-faceted vision for the future state of the City within the Comprehensive Plan. The vision includes a variety of goals and values, one of which is sustainable public facilities and services. Certain development applications may include creative design or investment that helps the City achieve different aspects of this vision. The Planning Commission is considering additional policy language for the City Council's consideration to provide more clarity to the development community on what appropriate offsets may be.

- I would raise a few questions about the Tischler Bise methodology whereby it concludes that a townhouse with three or more bedrooms will generate fewer students than a townhouse with two bedrooms. The population per unit data in the study shows that there will be more residents on average in townhouses with three or more bedrooms and two bedrooms. This raises the question regarding the estimate that there will be more students in townhomes with two or fewer bedrooms than three or more bedrooms. Surveys are expected to provide results that will vary around a mean. Accordingly, survey results should not be taken as absolute values. It is important to apply good judgement to the use of data from a survey. In this case, I believe better judgment would assume the same student generation factor for all townhomes.

Tischler Bise's methodology used student registration and Commissioner of the Revenue data from the latest school year in their calculations. The data presented reflects the situation on the ground in the City of Fredericksburg. There has been lots of interesting discussion about what would lead to this phenomenon in the City of Fredericksburg. One point raised is that the smaller more affordable townhomes in Area 10 Lafayette / South Route 1 or Area 2 Fall Hill of the City may house more families than the larger multi-bedroom townhomes in the historic core of Area 7 Downtown.

- Does the City have the legal ability to create cash guidelines for special use permit application impacts?

§ 72-22.6.D(2)(d) and (f) Special Use Permit Review Criteria states that the City Council shall consider potentially adverse impacts of a proposed special use permit due to "undue density of population or intensity of use in relation to the community facilities existing or available" and "impact on school population and facilities". The Capital Impact Study identifies that as the residential population grows in the City additional capacity is needed at the school and public safety facilities. If a proposed special use permit does not mitigate its impact on these facilities, then it should not be recommended for approval. An applicant may voluntarily commit to conditions with their special use permit application that provide for a cash offset to the facilities impacted by their development, much like would be done with a proffer in a rezoning application.

Additional Policy Guidance Developed by The Planning Commission

The Planning Commission has been working on a policy statement to accompany the adoption of the Capital Impact Study. Here is a final draft of that statement for consideration. It has been modified based on the discussion at the June 8th work session and in response to the comments submitted by Mr. Payne. New and revised text is shown in blue:

"Private land use development is one of the major activities that result in the implementation of the City's established future vision. One core component of that vision is the provision of efficient and effective public

services, a high quality education system, and a safe and secure environment for those who live, work, and visit the City. Virginia's proffer system relies on the negotiation of voluntary offsets to mitigate impacts created by new zoning entitlement. Certain development applications may include creative design or investment that helps the City achieve different aspects of this vision. If this special value corresponds to concrete goals in the City's Comprehensive Plan, then they may factor into how Capital Impacts Study Maximum Capital Impact Amounts are applied to a proposed project. Specifically:

Chapter 3 Transportation:

Comprehensive Plan Chapter 3 and the Area Plans focus on City-wide transportation infrastructure. Their implementation is especially valuable when the facilities constructed meet the needs of both a particular development as well as a broader transportation goal. **Some offset to the Capital Impacts of projects that implement specific transportation improvements listed in this Chapter could be considered** due to the value they provide in achieving core components of the City's vision.

Chapter 5 Environmental Protection:

Comprehensive Plan Chapter 5 and the Area Plans focus on the redevelopment of aging shopping centers. Their redevelopment is especially valuable when large underutilized surface parking lots with little to no stormwater treatment are redeveloped or *when the development progresses the City towards its community-wide goal of powering the City with 100% renewable energy sources no later than 2050*. **Some offset to the Capital Impacts of projects that achieve these goals could be considered** due to the value they provide in achieving core components of the City's vision.

Comprehensive Plan Chapter 5 and the Area 6 and 7 Area Plans focus on limiting the impact of new development within environmentally sensitive areas of the City, especially the Floodway. Much of the Floodway adjacent to Downtown is designated as an "Intensely Developed Area" under the Chesapeake Bay Preservation Act, which are not required to provide a 100-foot vegetative buffer between a designated resource (i.e. the River or other perennial stream, etc.) and new development. **Some offset to the Capital Impacts of projects that provide or restore a buffer could be considered** due to the value they provide in enhancing the quality of the unique waterways within the City.

Chapter 7 Residential Neighborhoods and Housing:

The market demand for residential is so strong in the City that there is little current incentive to develop "affordable" housing. **A proportional offset to the Capital Impacts of projects that provide "affordable" housing as a component in a development could be considered** due to the value generated in permitting inclusive housing in close proximity to existing workplaces, City services, and multi-modal transportation infrastructure.

Chapter 8 Historic Preservation:

Comprehensive Plan Chapter 8 and the Area 6 and Area 7 Area Plans provide a diverse policy toolkit to ensure that historic buildings and character structures (as defined in the Area Plans) are preserved throughout the community. The nature and age of these structures create inherent fiscal challenges their rehabilitation and reuse. **A proportional offset to the Capital Impacts of projects that include the rehabilitation and reuse of "Historic Buildings" or "Character Structures" could be considered** due to the value created by successful rehabilitation and reuse of these structures, which cannot be created by new development.

Chapter 11 Planning Areas:

*Comprehensive Plan Chapters 5, 6, 7, and 8 and the Area 6 and Area 7 Area Plans focus in part on the value infill development provides in achieving the City's desired future state of environmental and economic sustainability, the provision of efficient public services and infrastructure, and quality of life. **Some offset to the Capital Impacts of the first 20 units of infill projects within the Commercial Downtown or Creative Maker District could be considered.** Due to their geographic location, projects in these districts are typically going to be limited in overall size and intensity, but will have a value multiplier, which has the triple benefit of providing niche "missing middle" housing types, stabilizing (and growing) the vibrancy of commercial activity in the Downtown and the Maker Districts, while being located in close proximity to existing parks and trails as well as being within existing service boundaries for public services (i.e. public safety response and public school transportation).*

The Capital Impacts Study and policy guidelines should be reviewed annually.

Procedures Manual Update

Draft updates to the Procedures Manual have been developed to incorporate the adoption of the Capital Impact Study into the review process for development projects. Those updates are attached to this memo to be transmitted to the Planning Commission. No action is required by the Planning Commission.

Conclusion

The Planning Commission held a public hearing and discussion on the Capital Impact Study at their April 13 and May 25 meetings. The Planning Commission has reviewed public comment and worked towards the refinement of the Capital Impact Study and an associated policy guideline for negotiating proffers and voluntary conditions. The Planning Commission should recommend adoption of the Capital Impacts Study and the associated policy guideline to the City Council.

Attachment

1. June 14 Public Comment
2. Appendix 1: Proposed Changes to the Capital Impact Study in response to Public Comment
3. Draft Procedures Manual Update

Appendix 1: Proposed Changes to the Capital Impact Study in response to Public Comment

6/14/2022

The draft Capital Impacts Study asserts a right to impose a cash contribution to capital facilities in just a few places. Hirschler contends that this authority does not exist, and its contentions merit further study. These assertions should be deleted from the final version of the Study:

Executive Summary page 1:

... to analyze capital impacts and potential funding through cash proffers ~~and/or special use conditions~~ to meet the demands for public facilities generated by new development in the City.

Capital impact contributions may take the form of a cash proffer contribution ~~or special use condition~~.

- 1. The Tischler Bise study does not address two requirements of the proffer statute. As cited below, Section C.2 of the proffer statute requires that proffers address a need for improvements in excess of existing capacity. Additionally, new development must receive a direct and material benefit from a voluntary and reasonable proffer.**

Page 1: Funds can only be used for capital improvements that provide additional capacity, not operations or maintenance. ... ~~Capital impact amounts cannot be used to correct existing deficiencies and are calculated as such.~~ ...

Page 2: "First, to justify a capital impact for public facilities, it must be demonstrated that new development/rezonings will create a need *or an identifiable portion of a need*, for capital improvements *in excess of existing public facility capacity at the time of the rezoning or proffer condition amendment*.

Second, development paying a capital impact contribution ~~should~~ *must* derive a *direct and material* benefit from the payment of the capital impact contribution (i.e. in the form of public facilities constructed within a reasonable time frame.)"

Third, the capital impact amount to be paid by a particular type of development (land use) should not exceed its proportional share of the capital cost for system improvements. The use of household sizes and jobs per 1,000 square feet ensures this requirement is met.

- 2. If an offsite proffer, it must address 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.**

See comments above – suggested edits on pages 1 and 2.

- 3. The Tischler Bise study notes that there is capacity in existing schools. It states that there is no capacity for fire and EMS facilities, but it does not document this in any way. Fire and EMS capacity is normally calculated based on time to get the property served and a maximum**

number of calls appropriate for the facility. There is no analysis to determine either of these factors for existing or future facilities.

Page 27:

The City currently has two fire stations serving existing development with no excess capacity in the current stations. . . . The City plans to build a new station within the next five to ten years to serve growth. It is anticipated that the new station will replace and expand Station 2, resulting in two stations serving the City. *The 2017 Fire Station Feasibility Study by Manitou Incorporated documented the City's Class 3 ISO Public Protection Classification Program rating (where Class 1 represents exemplary fire protection). With respect to the "engine companies" component of the PPC rating, the City earned 76.8% of total credit available, in part because it was credited with outlying automatic aid companies from other jurisdictions. According to Manitou, "staffing a third 3-person engine company in one of the two current stations or opening a third station may strengthen the city's credit." Later in the report Manitou expands on this concept: "credit for the additional engine may be based on ISO's liberty to allow for a conglomeration of partial credit derived from other resources, such as: engine companies that are part of an automatic aid agreement with Spotsylvania and/or Stafford counties; medic unit staffing that may be available to augment engine company staffing during structure fire operations; ladder company apparatus with engine capabilities; or similar creditable items under ISO's survey guide, the Fire Suppression Rating Schedule."*

Manitou reported that the city earned only 54.2% of available credit for the rating component, "deployment of companies." In rating this component, the ISO reviews the number and location of fire stations. "Reviews are based on the area served, along with severity and location of structure fire risks related to engine and ladder company response distance and time." Manitou notes, "the level of credit deployment may be indicative of the need for an additional fire station to augment the current Fire Stations 1 and 2."

One of Manitou's "short term" recommendations was to "formally adopt a plan to construct Fire Station 3 on city property at the intersection of Fall Hill Avenue and Mahone Street and secure funds for its design."

The City's Capital Improvements Plan for FY23 includes the construction of a new fire station to replace one of the existing stations, at an estimated cost of \$14,000,000; and the renovation and expansion of Fire Station 1 at an estimated cost of \$4,650,000. The New Fire Station Project Description states that "Due to economic growth in development (i.e. baseball stadium, riverfront park, significant increase in residential construction) fire suppression services will be challenged to meet NFPA guidelines for response times which could negatively impact the City's ISO rating without adding another fully staffed facility. . . . All of the above combined with the increase in call volume, the historic district, new construction materials which burn at a faster rate than older materials necessitate the need to focus on response time, personnel and equipment."

- 4. In order to meet the requirements of the proffer statute addressing existing capacity and direct benefit, it is necessary to evaluate the need for facilities specifically for each project. One project may be located in a school attendance area where the school has excess capacity**

or a fire station may be able to adequately serve the new development. In this case, it would be necessary to take into consideration the excess capacity. It is also necessary to take into consideration whether future improvements will serve this new development to conclude the project will receive a direct and material benefit from the new improvements.

Page 24: TischlerBise recommends a citywide collection and expenditure zone. Construction of new schools or additions will free up space at existing schools thus providing relief in other parts of the district. Adjustments to school district boundaries on an occasional basis maximize capacities at respective schools (as has been done by FCPS in recent years.)

Page 33: The City of Fredericksburg Fire Department operates as a citywide integrated system with multiple responders per call as well as future capacity improvements being needed at all stations. Therefore, it is recommended that a citywide service area be used. *The Manitou Study reports that each of the current two fire stations is assigned a primary area, or district, for first due response, but both fire stations provide services throughout the 10 square miles of the city.*

- 5. To the extent the Tischler Bise study is understood as a general framework and not a required proffer for every new residential development, I think it serves a useful purpose in providing information that may be used to estimate proffers. It is necessary, however, to understand that these calculations must be made specifically for each project.**

Page 2: “The capital impact amounts should not be interpreted as conveying a suggestion or recommendation as to the value any particular capital impact amount ought to be set should the City Council choose to establish and adopt a policy guiding the acceptance of capital impact contributions. Rather, the actual costs included in the study provide a starting point for potential capital impact contribution amounts.” (No change suggested.)

- 6. I would raise a few questions about the Tischler Bise methodology whereby it concludes that a townhouse with three or more bedrooms will generate fewer students than a townhouse with two bedrooms. The population per unit data in the study shows that there will be more residents on average in townhouses with three or more bedrooms and two bedrooms. This raises the question regarding the estimate that there will be more students in townhomes with two or fewer bedrooms than three or more bedrooms. Surveys are expected to provide results that will vary around a mean. Accordingly, survey results should not be taken as absolute values. It is important to apply good judgement to the use of data from a survey. In this case, I believe better judgment would assume the same student generation factor for all townhomes.**

No change in the report recommended: TischlerBise conclusions are based on actual data and not on “survey results” or its “judgment.” The data established that a Fredericksburg townhouse with three or more bedrooms does in fact generate fewer students than a Fredericksburg townhouse with two bedrooms. This may be attributable to factors such as the socio-economic status of purchasers of three bedroom townhouses vs. two bedroom townhouses, or the relative age or market prices of these houses. It may be attributable to the use of a room that qualifies as a “bedroom” due to its physical

characteristics for other uses, such as office uses. In any event, this is the conclusion established by existing data specific to Fredericksburg.

- 7. The Tischler Bise study identifies a future middle school and additional capacity to the high school. No additional capacity for elementary schools is noted. If no additional capacity for elementary schools is proposed, it would not be possible to conclude the projects would receive a direct and material benefit from the portion of the proffer calculated to provide elementary school facilities.**

Page 24:

Fredericksburg City Public Schools (FCPS) has identified a need for future capacity at all school levels over the next nine years. The anticipated capital improvement plan is as follows:

- Build a new middle school to address capacity issues, which will add and shift capacity for both elementary and middle school levels.
- *Convert the existing Walker Grant Middle school into a third elementary school to address capacity needs at the elementary school level.*
- Expand capacity at the high school level.