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## Closing the Proffer Loophole?

Hyland to call for review of levying impact fees on developers.

By Michael Lee Pope

Thursday, May 05, 2011

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The next time a line of cars snarls traffic on Richmond Highway, consider the humble impact fee. It's a way that the Fairfax County Board of Supervisors could have forced Wal-Mart to pay for a left turn lane that would have eased the massive gridlock that's developed at King's Crossing since the big-box store opened last year.

But that's not what happened.

Since 1989, the county has had the authority to levy impact fees, but the Board of Supervisors never took advantage of that power. Yet when the board considered whether or not to adopt such a system, the elected officials determined that they wanted to go with the current proffer system rather than try to create a hybrid system with both. In other words, supervisors agreed, the county would use either a proffer system or impact fees.

Not both.

"I think if we tried to do both, we would have ended up with a classic battle with our development community," said Mount Vernon District Supervisor Gerry Hyland (D).

**NOW, THE GRIDLOCK** created at the new Kings Crossing Wal-Mart has reopened the Board of Supervisor's long-standing decision against seeking impact fees. Because the scope of the development was under the threshold for requiring a rezoning or a special exception, Wal-Mart was able to proceed with construction as a "by-right" development. That meant that no demands could have been placed on the developer under the proffer system. And supervisors didn't consider issuing an impact fee to force Wal-Mart to pay for a left turn lane in the southbound lane.

"I would like to see a little more flexibility," said Robert Reynolds, co-chairman of the Mount Vernon Council of Citizens' Associations. "I think that would be an advantage to the county."

Last month, the council passed a resolution urging the Board of Supervisors to impose impact fees on any development needing a building permit. The resolution suggests that once the fee-system has been created, county officials should use the new revenue to pay for "building reasonable transportation infrastructure to benefit the development." Supporters say the impact fees could be used to pick up the slack in cases where the proffer system does not apply — the Kings Crossing Wal-Mart being the most prominent example.

"It's obvious that there's a gap in the system," said David Plummer, president of the Woodley Hills Community Association. "This would close the loophole."

**IF FAIRFAX COUNTY** decides to craft a hybrid approach — allowing a proffer system and impact fees — it would not be alone. Back in 2003, Stafford County added impact fees to its existing proffer system as way to make sure the cost of transportation infrastructure was paid by developers.

Later this month, Hyland will be formally asking staff to examine Stafford County's experience with the bifurcated system and analyze how such a combination might work in Fairfax.

"This is not an easy question," said Hyland. "We came to the conclusion many years ago that we would get more out of a proffer system, which is why we decided to go that route."

Hyland said he's not sure that an impact-fee system would have solved the problem at the Kings Crossing Wal-Mart. The site plan was approved by the Fairfax County Department of Transportation and the Virginia Department of Transportation, neither of which raised concerns about the need for a longer left turn lane along southbound Richmond Highway. Furthermore, Hyland says he fears that the development community might interpret the creation of impact fees as an opportunity to lobby the General Assembly to weaken the county's proffer system.

"Our proffer system has been very successful, and it could have a legislative challenge," he said. "So there are lots of competing interests we are going to have to look at with this issue."



Louise Krafft/Gazette Packet  
Back-ups on the left-turn lane at the Wal-Mart at Kings Crossing clogs southbound Route One traffic.

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