



June 11, 2021

Response to Technical Memorandum Prepared by:

TischlerBise

May 24, 2021

For the City of Manassas

Relating to the Van Metre Homes at Manassas, LLC Project

Impact Analysis, LLC  
T/A Virginia Proffer Solutions  
120 Ruffed Grouse Ct.  
Lake Frederick, VA 22630  
703-732-7243

## **Introduction**

Virginia Proffer Solutions, a division of Impact Analysis, LLC, has prepared the following response to the TischlerBise Technical Memorandum which reviewed the land use impact analysis prepared by Virginia Proffer Solutions for the Van Metre Project in Manassas, VA.

### **Summary of Differences**

Generally, TischlerBise agrees with the impact analysis prepared by Virginia Proffer Solutions. As to schools, TischlerBise agrees that the students generated by the proposed project will not exceed capacity (Page 8). However, the Technical Memorandum goes on to calculate a proffer amount notwithstanding the fact there is available capacity. As to Police, unlike the Virginia Proffer Solutions analysis, the Technical Memorandum does not allocate any costs to Commercial Development. The stated rationale is that “the difference [in the calculation of proffer amounts] is due to the Impact Studies allocation to residential development. While this is standard practice and reasonable, it is not specified in the City’s Level of Service Standards” (Page 13). Both companies agree that adequate capacity exists at the animal shelter and no proffer is appropriate. The Technical Memorandum calculates the proffer for Fire and Rescue at \$799/unit based on the cost of new Fire Station 21. Virginia Proffer Solutions did not find any proffer was appropriate for Fire and Rescue as Station 21 is currently open and operating and provides adequate capacity for the impacts created by the project.

With regard to the impact on Parks and Recreation, the companies agree that the analysis should be based upon the current Levels of Service and that the development requires 2.02 additional acres of parkland to maintain the current LOS. The difference between the companies’ calculations results from the failure of the Technical Memorandum to include any credit for the parkland that will be dedicated by the applicant.

### **Response**

#### **Schools and Fire and Rescue**

Virginia Proffer Solutions disagrees with the TischlerBise calculations for school proffers and Fire and Rescue because there is adequate existing capacity at the schools and as a result of the opening of Fire Station 21. Under these circumstances, Virginia Proffer Solutions believes no proffer is appropriate given the express language of the City’s Comprehensive Plan and Virginia Proffer Solutions’ understanding of the applicable law.<sup>1</sup> The proffer system is based upon the concept of Levels of Service. In that context, proffers are to mitigate impacts that exceed the

---

<sup>1</sup> Virginia Proffer Solutions does not offer legal advice. The applicant and the City should consult with their respective legal counsel to determine the legality of proffers where adequate capacity exists.

applicable Levels of Service and cannot be used to correct existing deficiencies. The Manassas Comprehensive Plan acknowledges this construct. For example, on page 103, the Plan states “Ensure planning for all new development and redevelopment provides for education facilities that meet or exceed adopted Levels of Service Standards” (emphasis added). Thus, the required threshold is that the applicant provide mitigation only if the applicable Levels of Service are not met as a result of its impacts. This language is also included for Public Safety (Page 104), and Parks (Page 131). Even more significantly, under the Level of Service heading in the Plan (Page 109), the language states “to ensure that Level of Service is addressed, all new developments shall assess impacts specifically attributable to the development and in excess of existing permanent facilities. Sufficient mitigation shall be provided to offset such impacts” (emphasis added).

This language appears to be based upon the statutory requirements that the rezoning must give rise to the need for the proffer and that proffers must have a reasonable relationship to the rezoning. This language also appears to be based upon the United States and Virginia Supreme Court Rulings relating to Land Use. These cases require that any exactions, such as proffers, must be proportional to the impact. If adequate capacity exists to serve the development, the development is not triggering the need for expenditure of additional public funds. An expectation of proffers, when no additional funds are needed to provide service for the development would therefore violate the constitutional proportionality requirement as well as the language of the Comprehensive Plan. As a result, Virginia Proffer Solutions continues to conclude that no proffers in this case are appropriate for Schools, the Animal Shelter<sup>2</sup> or Fire and Rescue.

### Police

As to proffers for the new police station that is under construction, both companies agree that it is standard practice and reasonable to allocate part of the need for police facilities to the Commercial Sector. However, the TischlerBice Memorandum says this credit is not specified in the City’s Level of Service Standards and therefore does not apply any credit. We respectfully disagree. As noted above, the Plan specifies that proffers are for the mitigation of impacts “specifically attributable” to the Project (Page 109). If no credit is provided for the police services required by the Commercial Sector, then this standard is violated. In addition, failure to provide the credit would violate the proportionality requirement of the applicable law since the result is to overstate the impact of the project and the proposed mitigation.

---

<sup>2</sup> TischlerBice acknowledges as to the Animal Shelter that no proffer is appropriate because there is adequate capacity. However, it calculates proffers for Schools and Fire and Rescue, even though adequate capacity exists in those areas.

## Parks

Both companies agree that the necessary mitigation for parks is 2.02 acres based up on the current Level of Service of 4.74 acres per 1,000 population. However, Virginia Proffer Solutions disagrees with the TischlerBice proffer calculation for two reasons. First, that calculation provides no credit whatsoever for the 1.67 acres of parkland that will be dedicated to the City by the developer. The Technical Memorandum justifies this by stating that the use of the dedicated land is not specifically proffered for a community or regional park and says “This may not mitigate the development impacts at the City’s current levels of service for community parks and recreation.” However, there are no standards in the Comprehensive Plan that allocates parkland among the various types of parks (Page 132) and the TischlerBice calculation utilizes all parkland. Accordingly, Virginia Proffer Solutions believes that the total parkland, including that dedicated to the City and provided onsite should be credited against the required 2.02 acres of land. In addition, the TischlerBice cost calculation states it is based upon a review of the CIP. While no information is provided in the Technical Memorandum as to that calculation, the cost may be overstated if it includes the entire CIP number for Parks and Recreation. This is because the majority of the CIP funds for Parks and Recreation are for maintenance/renewal (e.g. E.G. Smith) of existing facilities and do not provide additional capacity. Further, the TischlerBice analysis ignores the adopted Level of Service standards for specific park facilities on p. 132 of the Comprehensive Plan, and makes no attempt to explain how the calculated proffer based on CIP projects addresses level of service deficiencies for park facilities.

## Conclusion

While the TisclerBice Memorandum largely agrees with Virginia Proffers’ calculation of impacts, it does not address the question of whether proffers are permissible in this case. The summary comparison chart set forth on Page 22 of the Technical Memorandum identifies amounts that it concludes might be proffered but acknowledges that “acceptance is based on City policy and legal considerations.”

For the reasons set forth in the Virginia Proffer Solutions Phase II Analysis and this Response Memorandum, Virginia Proffer Solutions believes that a request for the proffers proposed by TischlerBice are contrary to the applicable law. However, as neither firm can provide legal advice, resolution of this basic issue is up to the applicant, the City and the respective legal counsel after consideration of the applicable United States and Virginia constitutional law and the applicable Virginia statutes .

Respectfully submitted,  
Virginia Proffer Solutions

