

THE BOARD OF COUNTY COMMISSIONERS

DURHAM, NORTH CAROLINA

Monday, January 3, 2000

9:00 A.M. Worksession

AGENDA

1. Citizen Comment—Jack Steer

Mr. Jack Steer has requested time on the agenda to make comments to the Commissioners regarding challenges for the coming year.

2. Citizen Comment—Lois Murphy

Ms. Lois Murphy has requested time on the agenda regarding an update on whether the County has determined if water services will be extended to the community.

3. Durham County Inventory of Important Natural Areas, Plants, and Wildlife, January 2000

Hildegard Ryals, Chairman, Durham Inventory Review Committee, has requested the Durham County Inventory of Important Natural Areas, Plants, and Wildlife, Durham NC, January 2000 be placed on the agenda for the Commissioners to receive the Inventory of the Natural Areas and Rare Species of Durham County document.

This new document is a revised and integrated edition of the Inventory of the Natural Areas and Rare Species of Durham County, Robert D. Sutter, 1987 and the subsequent edition to Inventory of the Wildlife Habitats, Movement Corridors, and Rare Animal Population of Durham County, Stephen P. Hall, 1995. These documents represent years of work by City and County staff, scientists and technical experts, and private citizens of Durham. These inventory efforts have been paid for in part by City/County funds. The Durham Inventory Review Committee is pleased to present this new document officially received and made available for the use of government and the education of the general public.

Resource Person(s): Vice-Chairman Ellen W. Reckhow will be available for comments and to answer questions.

County Manager's Recommendation: Receive the document from the Durham Inventory Review Committee and take necessary action at the January 10, 2000 Regular Session.

4. Request From Churches for Action--Phoenix House

On December 14, 1990, Churches for Action entered into a loan agreement with the County of Durham to borrow \$65,000.00 of bond funds to renovate Phoenix House. These funds were generated by a 1990 County Housing Bond Issuance that has been administered by the City Housing Department. The first payment in the amount of \$4,145.00 on the bonds was due January 2, 1994. This included the principal on the bonds of \$3,820.00 together with the loan servicing fee. The first payment was made by Churches for Action, but no further payments have been made. Once the payments were not made, the interest rate which was 0% if the payments were made, became 15% per annum. The amount currently past due is approximately \$79,933.00 with a total amount due of approximately \$118,077.40. Negotiations have been unsuccessful in settling of this matter. Churches for Action has requested an opportunity to address the Board of Commissioners to ask the County to forgive a portion of the debt.

Resource Person(s): Chuck Kitchen, County Attorney

5. Firearms Litigation

Mayor Pro Tem Howard Clement, on September 1, 1999, presented information from the City of Durham regarding litigation filed by cities against gun manufacturers. In the material, the City Attorney's Office indicated that it would be appropriate to have joint or coordinated litigation by the City and County against the gun industry. Since Mr. Clement's appearance, courts in Cincinnati, Miami, and Bridgeport have dismissed the cases brought by the cities of Cincinnati and Bridgeport and by the County of Miami-Dade. Based on the reasoning in those cases and the limitations placed on governments in North Carolina by the North Carolina Constitution, the County Attorney does not believe a meritorious case is possible in North Carolina against the gun industry by a county.

As indicated in the opinions, several different grounds exist to bar a suit. Most notably, two of the grounds are the prohibition under common law of recovering for public services and the lack of standing to bring a suit for injuries to third parties. Additionally, it is not immediately apparent how in North Carolina a suit would lie against a manufacturer of a product which performs as it is intended when the use of the product is protected by the North Carolina Constitution.

It appears that the sole basis for bringing a suit in North Carolina, which could withstand a motion to dismiss, would be on the basis of *parens patriae*. This is the doctrine in law which allows the state to file a suit to protect the interests of its citizens. Counties in North Carolina cannot file a suit on the basis of *parens patriae*, and this authority is reserved to the State itself. It should also be noted that a bill has been passed by the North Carolina House and is pending in the Senate which would preclude any suit by a local government.

Resource Person(s): Chuck Kitchen, County Attorney

County Manager's Recommendation: Receive the report of the County Attorney for informational purposes. Based on the information provided by the County Attorney, I cannot recommend bringing forward litigation against the gun industry. This presentation by the County Attorney and Manager's recommendation is not to imply that the Durham County Board of Commissioners has endorsed this type of litigation in the past. The presentation is in response to a request for more information that the Board had made previously.

6. Deer Hunting with Dogs

There have been some concerns raised by residents of the Treyburn subdivision about the number of hunters throughout that community who are hunting deer with dogs. The citizens are concerned that an accident could occur as the citizens have indicated that some hunters apparently do not respect the posted "NO HUNTING" signs. Even without the signs, it is illegal to hunt deer with dogs inside Durham County unless the hunter has written permission of the land owner. Violation of the law is a Class 3 misdemeanor. Enforcement of the law has continued to be problematic. The Wildlife Commission has primary enforcement authority; additionally, the Sheriff may also enforce the law. In areas inside the City limits, such as Treyburn, the City Police may enforce the City's ordinance against any hunting. The Durham County Animal Control has, on occasion, picked up some hunting dogs and taken them to the shelter where their owners redeemed the dogs. However, Animal Control does not have the authority to enforce the law; Animal Control may only catch the dogs for running at large, a violation of the Animal Control Ordinance. As to the hunters who choose to violate the law, apparently they either do not know the law or they disregard the law while hunting. It should be noted that the State Wildlife Commission has included the local act in its publication on hunting laws in North Carolina.

Resource Person(s): Angela G. Geadelmann, Assistant County Attorney; Cindy Bailey, Director, Animal Control; Major Andrews, Sheriff's Department; and Captain Morris, Police Department.

County Manager's Recommendation: One of the main notes to make is that it is illegal to hunt deer with dogs in Durham County without the written permission of the landowner. In my opinion, the main question is whether or not eliminating hunting with dogs completely (as requested by some citizens) will improve enforcement. Staff will be requesting policy guidance on how to address this issue.

7. Update on Duncan Floyd and Shooting Activities Occurring on His Property

Receive information regarding Duncan Floyd's use of his property for commercial shooting activities.

In May of this year, the Durham Board of Adjustment heard an appeal by Duncan Floyd regarding the Planning Department's determination that he was operating illegal commercial activities (public shooting range and hunting preserve) on his property which is located on Carpenter Pond Road. The Board of Adjustment denied his appeal.

It appears that Mr. Floyd has resumed the use of his property for commercial activities. Upon receiving complaints from Mr. Floyd's neighbors regarding the use of his property, the County Attorney's Office determined that he had not been served with the Board of Adjustment's Order of Denial. Mr. Floyd did not sign for his certified mail copy of the Order. The Planning Department has delivered the Order to the Sheriff's Department for service upon Mr. Floyd. Before citations can be issued for a continuing violation, the Board of Adjustment's Order must be served on Mr. Floyd. The Planning Department has indicated that citations will be issued once service of the Order has been made. Zoning Enforcement Officers will monitor the site weekly for compliance. If compliance is not forthcoming, the case will be referred to the County Attorney's Office.

Resource Person(s): Dennis Doty, Zoning Enforcement Officer and Lowell Siler, Deputy County Attorney

County Manager's Recommendation: Board members have requested this update as they have been contacted by citizens on this issue. No action is required at this point in time.

8. Durham County Code of Ethics

From time to time, issues have arisen regarding the ability of Commissioners to vote on issues or take other actions in compliance with the adopted Code of Ethics. When the policy has been applied to certain situations, it has resulted in a conflict between the policy and the General Statutes. G.S. § 153A-44 allows a commissioner to be excused from voting "only upon questions involving his own financial interest or his official conduct." To the extent the Code of Ethics goes beyond this statutory pronouncement, it is unenforceable.

The current Code of Ethics should either be rewritten to comply with the State statutes, or a new Code of Ethics adopted. The Board is requested to consider adopting an aspirational code. An example of such a code is the code adopted by the North Carolina Association of County Commissioners. An aspirational code would have two advantages. First, it would allow a statement of the ethical values of the Board of Commissioners. Second, it would not be in conflict with State law causing confusion regarding questions of ethics and law.

If the Board wishes to pursue such a code change, a new draft code will be prepared and brought back to a future worksession. Otherwise, the current code will be rewritten to comply with applicable statutes.

Resource Person(s): Chuck Kitchen, County Attorney

County Manager's Recommendation: Decide if an aspirational code will satisfy the expectations of the Board, and if so, direct that a draft of a new code be brought back for discussion.

9. Briefing on Transportation Demand Management Plan

Commission Vice-Chairman Ellen Reckhow, Chairman of a Durham TDM Committee that has been formulating a draft Transportation Demand Management Plan, has requested that an overview be presented to the County Commission at this worksession. This draft plan will also include action strategies for its implementation.

The goal of this briefing is for the Board of County Commissioners to be exposed in depth to the concept of transportation demand management planning, to understand why it is important, and to be brought up to date on the progress that has been made by the TDM Committee. The Durham TDM Committee is finalizing the draft TDM Plan and Action Strategy to be presented to the Commissioners at the February worksession.

Resource Person(s): Mary Clayton, Parsons Brinckerhoff; Mark Ahrendsen, City of Durham Transportation Department; Mark Gorman, Nortel Networks; and Ellen Reckhow, Vice Chairman.

County Manager's Recommendation: The information provided by Vice-Chairman Reckhow outlines the advantages of transportation demand management planning. No action is required at this point in time.

10. Consideration of a Policy Regarding When It Is Acceptable to Interchange Office Land Use Designations and Multi-family Land Use Designations in Staff Recommendations

Office development and multi-family development are often accepted as substitutable uses in rezoning staff reports. In other words, land designated for office uses in future land use plans has been recommended for rezoning to multi-family and vice versa. This policy should be reconsidered. There is growing concern that the absorption of potential office property for multi-family uses may have negative consequences. On the other hand, the conversion of multi-family property to an office designation does not pose as serious a problem. The Durham City Council adopted a policy on this matter in August. Citizens within the boundaries of the Southeast Small Area Plan asked that the Board of County Commissioners adopt the same policy.

Resource Person(s): Bonnie Estes, Keith Luck and Norm Standerfer will be at the meeting to present the agenda item.

Recommendation: Staff recommends adoption of the policy regarding when the interchange of office and multi-family uses is acceptable.

11. Consideration of a Proposal by the Joint City-County Planning Committee (JCCPC) for Consultant Assistance to Prepare Design Criteria for Durham's Southpoint Subarea of the 54/I-40

In response to a request by the Joint City-County Planning Committee (JCCPC), which was supported by the City Council, a scope of services for urban design assistance for a rapidly developing subarea of the 54/I-50 corridor was developed. It was noted at the JCCPC meeting in December that recent rezoning proposals in the corridor created a need to accelerate the schedule for the 54/I-40 Plan. The Board of Commissioners and City Council desire access to more planning information to better evaluate upcoming development requests. Consultant assistance and the division of the study area into sub-districts were judged to be the best ways to expedite the process.

Resource Person(s): Bonnie Estes and Norm Standerfer will be at the meeting to present the agenda item.

Recommendation: Adoption of the general scope of services to provide design and land use guidelines in the Southpoint subarea.

12. **Board Worksession Date Selection to discuss the CIP Review Criteria**

At the Board's December 6 Worksession, Budget Director Claudia Odom discussed the timeline and framework for the upcoming Capital Improvement Plan (CIP) process. The board discussed the need to have a worksession to discuss the review criteria process. Potential dates are listed below for this meeting. Staff requests Board direction on a meeting date.

January 12 9:00 – 12:00

January 14 9:00 – 12:00

January 20 9:00 – 12:00

January 26 9:00 – 12:00

January 27 9:00 – 12:00

January 28 9:00 – 12:00

Resource Person(s): Claudia Odom, Budget and Management Services Director

County Manager's Recommendation: Direct staff on the date for the CIP review criteria process worksession.