

CUMBERLAND COUNTY POLICY COMMITTEE
January 18, 2001
Minutes

Members Present: Commissioner Jeannette Council
Commissioner Talmage Baggett
Commissioner Breeden Blackwell
Other Staff: James Martin, County Manager
Juanita Pilgrim, Deputy County Manager
Cliff Spiller, Asst. County Manager
Doug Canders, Staff Attorney
Robert Stanger, County Engineer
George Autry, Cooperative Extension Service
Lisa Hodges, Cooperative Extension Service
Marsha Fogle, Clerk to the Board

INVOCATION: Commissioner Talmage Baggett

- 1. Selection of Chairman

The Committee appointed Commissioner Council, Chairman.

- 2. Selection of meeting date

The Committee selected the second Thursday of each month at 11:00AM as their regular monthly meeting date.

- 3. Report from Staff and consideration of a proposed policy addressing project funding upon approval of bond referendums

Management brought forth the following proposed policy for consideration:

Upon voter approval of General Obligation Bonds, the ad valorem tax rate should be adjusted at the next budget cycle to fund the **average** debt service payment and the projected annual increase in operating costs.

Committee members noted the importance of telling the public up front, prior to a bond referendum, all costs involved, to include debt service and operating expenses of the project.

MOTION: Commissioner Baggett moved to recommend adoption of the following debt policy to the Board of Commissioners:

“Upon voter and/or Board of Commissioners approval of any financing authorized by statute, not limited to GO Bonds, and to include COPS financing, the ad valorem tax rate be adjusted at the next budget cycle to fund the average debt service payment and the projected annual increase in operating costs for the project.”

SECOND: Commissioner Blackwell

VOTE: UNANIMOUS

4. Report from Staff regarding guidelines for chick farm operations

The County Attorney wrote a memo regarding regulations for large-scale chicken farms. Some pertinent points in the memo are:

- State law current regulates chicken farms with more than 3,000 birds that use a dry litter system;
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- A county basically has 2 possible approaches for regulating these farms, which would add to or duplicate state requirements.
- Board of Health regulations: A 1996 decision of the NC Court of Appeals appears to severely restrict a Board of Health's regulatory authority through health rules.;
- The Cumberland County Board of Health considered the regulation of these ILO (Intensive Livestock Operation) chicken farms at its November 21, 2000 meeting, but took no action. (A Board of Health rule would depend on the **demonstrated link** between public health and ILO impacts. Without such support, the rule would be legally vulnerable to court challenge);
- A Board of Commissioners could adopt an ordinance under its authority to protect the public health, safety and welfare (the "police power"). Two constraints apply to the authority. First the County's zoning authority does not apply to **bona fide farms**. Second, the "Right to Farm" law provides that "changed conditions" cannot make an agricultural operation a "nuisance" if it wasn't a nuisance originally and it has operated more than one year;
- An ordinance adopted under the police power, based on sustainable legislative findings and containing reasonable provisions to achieve articulated purposes, would more likely than not to be sustained;
- Setbacks are a major device that mitigate odor impacts on neighbors. The application of setbacks to existing operations would be problematical and would create non-conformities. Without applying setbacks to existing operations, the people currently raising concerns may not receive the relief they are seeking;

The County Attorney's memo concludes with the following statement: "In conclusion, the state presently regulates ILO chicken farms of over 3,000 birds to some extent. Those state regulations do little to address odor impacts. The Board of Health might adopt a health rule, but there are potential pitfalls if the Health Director and Board of Health cannot link odor to a public health problem. The Board of Commissioners is probably in a better position legally to enact an ordinance under its police power. Even that approach presents legal issues which have not definitively been resolved by our state courts but my best projection is that it would be more likely than not to be upheld. If no regulated entity were motivated to bring a legal challenge, such a concern would, of course, be moot. If any legal challenge were brought, it would **require a major effort to defend it.**"

MOTION: Commissioner Blackwell moved that the Committee direct legal staff to explore the issues involved in developing an ordinance and set out some parameters for review.

SECOND: Commissioner Baggett

DISCUSSION: George Autry, Cooperative Extension Service, suggested that an ad hoc committee be formed to work with the legal staff to come up with some regulations that the chicken farmers can agree with and live with. Mr. Autry said he would supply names of people who are involved in the chicken operations as well as others who could offer some insight into this issue.

AMENDED

MOTION: Commissioner Blackwell moved that an ad hoc committee be established to work with the Legal Department in drawing up some recommendations/regulations for ILO chicken farms. These recommendations will be brought back to the Policy Committee for review.

SECOND: Commissioner Baggett

VOTE: UNANIMOUS

5. Report from Staff and consideration of the Roses Lake Project

Mr. Stanger, County Engineer, told the committee a petition has been submitted to the County from the Roses Lake Homeowners Association requesting the County to assist with the repair of Roses Lake Dam. County Manager James Martin told the Committee the Lake is in the city limits of Fayetteville.

North Carolina Dam Safety has been working with the homeowners association since 1989 in an attempt to effect a repair of the dam or to permanently breach the dam. The homeowners association is under a written order from the State to repair the dam or drain the lake. Roses Lake Dam is considered a Small High Hazard Dam by the State, and as such must comply with the most stringent requirements of the NC Dam Safety Regulations. A High Hazard Dam must be able to pass the 1/3 Probably Maximum Precipitation storm which dictates a rather large outlet structure for the dam. The existing primary spillway of Roses Lake consists of a concrete drop box and pipe through the dam which is inadequate. The State will probably require a new primary spillway or larger capacity and a concrete or other suitable armored emergency spillway similar to what was constructed at McFayden Lake. The cost to repair Roses Lake Dam to comply with the Dam Safety Regulations could approach \$850,000, according to an estimate from Moorman, Kizer, & Reitzel, Inc. (dated October 2, 2000).

The City Council considered the Association's request for help and turned it down because it did not get 100% of the property owners to sign the petition. (Note: the City requires a petition signed by 100% of property owners before they will undertake a special assessment project). The Homeowners Association only secured 18 signatures on the petition or 50% of the property owners in the proposed assessed area. The area is comprised of several large undeveloped tracts, one of which is owned by the City of Fayetteville, 31 single family residential lots, and 3 lots with apartment complexes.

Using the land value method and assuming a cost of \$850,000, the assessments would range from \$2,269 to \$376,414. Using the acreage method the assessments would range

from \$935 to \$173,287. In the acreage method the City of Fayetteville could be assessed. The single family residential lots would be assessed about 7% of the total project cost. Another method to be considered is "footage along the lake".

Mr. Stanger suggested that careful consideration should be given prior to undertaking this type of project as there are numerous lakes throughout the County that may be in some disrepair and we are likely to receive requests for assistance.

Should the project move forward, a determination would need to be made on how to fund it. A Preliminary Special Assessment Resolution would be prepared for consideration by the Board of Commissioners. A public hearing would then be held to receive input from the affected property owners.

Mr. Charles Matthews who lives on Roses Lakes, and a member of the Association, said he has figures which are much lower than the County Engineer's estimate to fix the dam. (He did not have the information with him at this meeting, however, he said he could supply it).

It was noted the lion's share of the cost to fix the dam would be borne by the Riddles (undeveloped land) and the owners of the apartment complexes.

MOTION: Commissioner Blackwell moved that Mr. Matthews share with the County Engineer any information/documentation he may have relative to this project and lower project cost estimates, and that the Engineer and Mr. Matthews report back to the committee.

SECOND: Commissioner Baggett

VOTE: UNANIMOUS

6. Discussion of policy regarding special funding requests (specifically funding for the Town of Spring Lake's 50th anniversary).

Spring Lake will hold its 50th anniversary celebration in May, 2001. The total budget for the celebration is \$75,000. Spring Lake will contribute \$25,000 and it has received private contributions in the amount of \$40,000. It is asking the Board of Commissioners to fund the celebration in the amount of \$10,000.

The County Manager offered the following suggestions as criteria that could be established to fund these kinds of requests:

- The organization must have a formal structure (not for profit, membership organization) that is affiliated with or sanctioned by a public entity;
- The organization must have open nondiscriminatory membership;
- The organization must represent recreation or the arts;
- The activity/event for which funding is requested must be an extraordinary event bring distinction to Cumberland County;
- The activity/event cannot be a regular budgeted expense for the organization;
- The organization must secure funding from multiple sources including public and private contributors;
- The organization must submit a proposed budget showing objects of expenditures and sources of revenue for the activity/event;

- The organization must submit a post activity/event actual expenditure and revenue recap;
- In the event the special funding request is from a municipality, within Cumberland County, for the purpose of celebrating the 50th anniversary or 50 year increments thereof, the County's contribution may not exceed \$1,000.

MOTION: Commissioner Blackwell moved to recommend approval of the above criteria to the Board of Commissioners.

SECOND: Commissioner Baggett

VOTE: UNANIMOUS

Note: It was suggested that perhaps money for these types of celebrations could come from the County's Economic Development Fund.

MEETING ADJOURNED.