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CUMBERLAND COUNTY POLICY COMMITTEE
NEW COURTHOUSE, 117 DICK STREET, 5TH FLOOR, ROOM 564
SEPTEMBER 3, 2009 – 9:30 AM
MNUTES

MEMBERS PRESENT: Commissioner Marshall Faircloth
Commissioner Kenneth Edge
OTHERS PRESENT: James Martin, County Manager
Amy Cannon, Assistant County Manager
Harvey Raynor, Interim County Attorney
Bob Stanger, County Engineer
Tom Cooney, Public Utilities Director
Tom Lloyd, Planning and Inspections Director
Sally Shutt, Communications Manager
Candice H. White, Deputy Clerk
Members of Inverness Homeowners Association
Press

ABSENT: Commissioner Billy R. King, Chairman

Commissioner Faircloth, Acting Chairman, called the meeting to order.

1. Approval of Minutes: August 6, 2009 Meeting

MOTION: Commissioner Edge moved to approve.
SECOND: Commissioner Faircloth
VOTE: UNANIMOUS

2. Consider Request of the Inverness Homeowners Association for a Loan and Assessment of Homeowners for the Cost of Repairs to Retention Ponds

James Martin, County Manager, advised the Inverness Homeowners Association's (HOA) request was for a loan to cover the cost of repairs to three retention ponds within the subdivision and for the County to assess the property owners for the loan amount of approximately \$42,000. Mr. Martin stated he and Interim County Attorney Harvey Raynor visited the subdivision and spoke with the President of the Inverness HOA Terry Samperton regarding the retention ponds. Mr. Martin advised a subsequent meeting was held with county planning, engineering and utilities representatives.

Mr. Martin explained the subdivision's retention ponds were not designed for flood control but were designed to help protect water quality as part of a greater watershed for the City of Fayetteville. Bob Stanger, County Engineer, advised the Inverness subdivision contained what were technically referred to as wet detention basins.

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Commissioner Faircloth inquired regarding the differences between retention and detention ponds. Mr. Stanger stated detention basins do not have a permanent pool of water and are designed to catch water for release onto dry conditions when a storm event is over. Mr. Stanger explained retention basins are designed to have a permanent pool of water with a minimum of three feet of water for water quality purposes. Mr. Stanger stated the retention ponds provide a settlement basin that allows pollutants to be captured with runoff, settle in the pond and be trapped in the bottom sediment of the pond. Mr. Stanger stated the retention basins are also designed to provide storage for the first inch of runoff; however, the first inch of runoff has to be released from the pond within the first three to five days. Mr. Stanger explained the retention basins have a control structure that allows water to run out of them.

Commissioner Edge inquired whether the state or the county set the requirements for the ponds. Mr. Stanger stated the requirements were set by the state and were adopted by the county. Mr. Martin explained the County is charged with inspecting and maintaining the basins. Mr. Stanger advised the reason the basins were installed when the subdivision was developed was because the amount of impervious area exceeded 24% and under County ordinance, the developer had the option to develop for higher density and install the stormwater controls as required.

Tom Lloyd, Planning and Inspections Director, advised the Inverness subdivision had been granted an additional extension up to November 14, 2009 and the Inspections Department would continue to work with them as long as there were signs of improvement. Mr. Martin stated there was evidence that the HOA had put good work and money into bringing things back into full compliance, which served as an encouragement for the county to continue to work with the HOA. Mr. Martin explained the HOA's issue was it did not have funds available at the present time to complete the work. Mr. Martin further advised the HOA had issued an assessment to the property owners in the subdivision; however, the question before the HOA was how quickly the assessments would be collected and how quickly the additional money would be available for the work to be contracted and completed. Mr. Martin stated some of the work already completed by the HOA may be above the minimum requirements called for under the citation.

Commissioner Edge asked how the incompliance came about and what the minimum requirements were for the HOA to come back into compliance. Mr. Martin stated an adjacent property owner had complained about runoff and the Inspections Department investigated the complaint. Mr. Lloyd stated the inspection revealed that overgrowth within the ponds and other debris near the ponds needed to be cleared and that sediment in the bottom of the ponds needed to be cleaned-out.

Commissioner Edge recognized Terry Samperton, President of the Inverness HOA. Mr. Samperton stated the HOA had hired a certified engineer who provided a report on each of the ponds and a scope of work. Mr. Samperton further stated the HOA wanted to hire a company from Wilmington, NC reputed to be the best in the state to bring the ponds back into compliance, but lacked the money to do so.

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A brief discussion followed regarding the original design of the ponds and the HOA's contentions therein. Mr. Lloyd and Mr. Stanger provided information on requirements for retention ponds versus requirements for detention ponds. Mr. Stanger stated retention ponds have to receive periodic maintenance in order to clean them out, remove the sediment and restore the original invert to the bottom of the basins.

Commissioner Faircloth asked whether this issue paralleled past projects associated with dams. Harvey Raynor, Interim County Attorney, explained the past projects were authorized by statute and did not parallel the request by the HOA for a loan. Mr. Raynor advised local governments derive their powers from the legislature and without specific statutory authority can not take action. Here there is no statutory authority for local governments to loan money to HOAs. Mr. Raynor advised for the county to loan money to one person/organization without loaning to all persons/organizations without a statutory basis would amount to a private emolument, which was prohibited under the NC Constitution. Mr. Raynor stated in his opinion, there was no legal basis for the County Commissioners to act on the request.

Commissioner Edge inquired whether the HOA had looked into securing a bank loan. Mrs. Samperton was recognized and stated the bottom line was that the HOA would not be able to collect the assessments even if the properties were used as security for a loan.. Mr. Samperton explained some of the property owners believed the assessment was created by the board and did not realize the validity or seriousness of the situation. Mr. Samperton opined a letter from the county would carry more weight than a letter from the HOA. Mr. Raynor advised that the county had sent a notice of violation stating the county could fine up to \$500 per day and stated he did not feel the County Attorney's office should send letters to the private property owners. Following a brief discussion, an alternative was for the County Attorney to send a letter to the HOA for their dissemination to the individual property owners.

Commissioner Faircloth stated because the Commissioners had no statutory authority to act on the request, he and Commissioner Edge would by consensus ask that staff make the commissioners aware of anything in the future that might be of assistance. Commissioner Edge expressed the Commissioners' empathy for the situation and his appreciation for the efforts of the HOA.

3. Other Matters of Concern

There were no other matters of business.

MEETING ADJOURNED: 10:15 AM.