

**PASQUOTANK COUNTY, NORTH CAROLINA
APRIL 29, 2019**

The Pasquotank County Board of Commissioners met today in a joint meeting with the City Council of Elizabeth City on Monday, April 29, 2019 in the Education Center at the Sentara Albemarle Medical.

MEMBERS PRESENT: Jeff Dixon, Chairman
Lloyd E. Griffin, III, Vice-Chairman
Cecil Perry
Frankie Meads
Charles Jordan
Barry Overman
Sean Lavin

MEMBERS ABSENT: None

OTHERS PRESENT: Sparty Hammett, County Manager
R. Michael Cox, County Attorney
Sheri Small, Finance Officer
Lynn Scott, Clerk to the Board

Also present were the Mayor and Council, the City Manager, the Assistant City Manager, the City Clerk, Deputy City Clerk, City Attorney, and City staff. The meeting was called to order at 6:00 PM by Chairman Jeff Dixon and Mayor Bettie Parker. Following the invocation, everyone recited the Pledge of Allegiance to the American Flag.

1. PRESENTATION – ASHLEY ANTERSON AND BOB JESSUP – ECONOMIC DEVELOPMENT INCENTIVES:

Ashley Anderson, Sanford Holshouser Economic Consulting, LLC, provided an overview of North Carolina Incentives. She explained that any time a municipality issues an incentive the issue of whether an unconstitutional gift has been made may arise. To avoid this perception of an unconstitutional gift, it is important that the municipality receives, in return for issuing the incentive, something proportional to that which it gave. Overall, the initiative must demonstrate that “the public advantages are not indirect, remote, or incidental; rather, they are directly aimed at furthering the general economic welfare of the people of the communities affected.

She asked, “How does one know if it’s a public purpose?” She answered that the North Carolina Supreme Court has expressly declined to “confine public purpose by judicial definition, leaving each case to be determined by its own peculiar circumstances from time to time as it arises.”

Generally, if an act will promote the welfare of a state or a local government and its citizens, it is for a public purpose. In *Maready*, the Court recognized a trend toward the broadening scope of what constitutes a valid public purpose that permits the expenditures of public revenues, stating that it would be anomalous to now hold that a government is proscribed from the prevention of economic stagnation.

Ms. Anderson said as an example, the Court has found that stimulation of the economy involves a public purpose. Stimulation of the economy is an essential public and governmental purpose and the manner in which this purpose is to be accomplished is, within constitutional limits, exclusively a legislative decision. Expenditures may be “made for such improvements and advantages as tend to directly provide for and promote general good, convenience and safety of the county or town making them, although the advantage derived may not reach every individual citizen or taxpayer”. She said, in order to be valid an incentive must have both constitutional authority and statutory authority.

She explained that Article V, Section 2(1) of the North Carolina Constitution provides that the power of taxation shall be exercised in a just and equitable manner for public purpose only. Furthermore, Article V, Section 2 (7) specifically allows direct appropriation to private entities or public purposes, providing that: “The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes

only.” Accordingly, a municipality has the authority to directly appropriate money to private entities, so long as it fulfills a public purpose.

She stated that there are three potential sources of statutory authority a municipality may use to promote economic development: (1) the counties statutes, (2) the cities and towns statutes, or (3) the economic development statutes. Alternatively, a municipality may establish commissions or advisory boards to promote economic development and assist with historic preservation.

As to the first two potential sources of statutory authority (county and city/town statutes), those are necessarily municipality specific, and must be analyzed on a case-by-case basis.

Ms. Anderson explained that a municipality may establish statutory authority under N.C.G.S. 158-7.1(a). This section states that in general each county and city in this State is authorized to make appropriations for economic development purposes. The municipality must determine that these appropriations will increase the populations, taxable property, agricultural industries, employment, industrial output, or business prospects.

The General Assembly has given direction to the elected governing bodies of cities and counties under N.C.G.S. 158-7.1(a) to determine when economic development will achieve these kinds of results. After making these determinations, it is at the municipalities’ discretion to decide whether to make an economic expenditure as well as the nature and amount thereof.

She said essentially, what defines economic development is inherently community specific. The Court stated in *Mitchell*, a slide-rule definition to determine public purpose for all time cannot be formulated; the concept expands with population, economy, scientific knowledge, and changing conditions, and the same can be said about economic development. The Court has found that each community has a distinct ambience, unique assets, and special needs best ascertained at the local level. Section 158-7.1(a) enables each entity to formulate its own definition of economic success and to draft a developmental plan leading to that goal. This aim is no less legitimate and no less for a public purpose than projects this Court has approved in the past.

Also, when a municipality appropriates funds under N.C.G.S. 158-7.1, it must follow certain procedural requirements. For example, the “typical procedures” that a municipality must follow involve: (1) a “necessity determination,” (2) a written policy or guideline, (3) notice and hearing related to the appropriation, (4) that the incentive be paid as a reimbursement, and (5) that there is a written agreement between the parties.

She concluded by saying that the North Carolina Court of Appeals has said that it will uphold incentives that are parallel to those incentives approved by *Maready*. She said if an economic development expenditure were challenged today, the Court would likely analyze the administrative procedures in a similar way to determine that the procedure was “just and fair.” Similarly, the Court would look to make sure all of the statutory requirements were met.

Bob Jessup, Sanford Holshouser Economic Consulting, LLC, provided an overview on Opportunity Zones and Historic Tax Credits.

He explained that the Opportunity Zone is a program created under the 2016 Tax Cut and Jobs Act. It allows investors with capital gains to roll those into Opportunity Zone businesses and defer taxes on those gains.

States were allowed to designate up to half of their low-income census tracts to be Opportunity Zones, and so they did. That gives us 252 census tracts in North Carolina, at least one in each County. There are 8,763 across the United States. In many cases, tracts are adjacent to one another, so it’s not that many separate sites.

He said people were very excited about the program, but it has been very slow going so far. Some of that’s inherent in the program, but some is attributable to getting clear IRS rules. He noted that investors are not going to jump in until the rules are clear.

The rules process took a big step forward on April 17th when an IRS publication of proposed regulations came out. Most importantly, the rules clarified what kinds of businesses will qualify for investment, and he thinks the proposed rules are pretty favorable for the program. It states that a business will qualify if they pay more than 50% of hours worked or 50% of compensation

paid for work in the Zone. The rules are still subject to change, but should be final in mid-June. It's not a subsidized investment. Someone who's been making profitable investments is still going to want to make a profitable investment.

For an investor to get this benefit will be "self-executing". It will not require any local approvals, so the Board cannot impose any job requirements or living wage requirements. Local governments will still have its normal land use and construction type approvals, but you can do marketing, infrastructure, "site prep" like streetscapes and surrounding areas (code enforcement), co-location of public functions, and additional local incentives for businesses that locate in the Zone. Also, community "visioning" can be done to help guide the marketing to be consistent with community desires.

Mr. Jessup also provided an overview on Historic Tax Credits. He said under State and Federal tax law, the owner of a "certified historic property" can get a tax credit against expenditures made to rehabilitate the property in a way that maintains its historic character but opens it up for new use. Generally, it is viewed as one of the most successful tax credit programs ever in terms of using tax code to influence behavior that's both socially good and economically effective.

Certification is done by the National Parks Service after review by the State office. He said it is not a complicated process. It must be at least 50 years old, look substantially the way it did in the past, and have some indicator of significance. The new use can be anything that provides revenue to the owners, but can't be the owner's principal residence.

He explained that once the property has its designation, you get your plans for the rehab approved by State and Feds, which gives you a tentative award of credits. Then, you carry out the plan (24 month limit to get work done, or 60 months for a phased development). Once the work is done, then the credits are formally approved.

The Federal credit is 20% of your eligible rehab expenses; State credit is essentially 15% of the first \$10 million you spend and 10% of the next \$10 million, with a 5% bonus for properties in a Tier 1 or Tier 2 County or hit by a natural disaster. He stated that there is a State bill pending to extend the sunset (currently 2020) by 10 years, taking it to 2030, and raise the caps.

Owners usually sell the credits to generate equity for the property. You can calculate the amount of credits you expect to generate, and then sell them to an investor up front, at some discount, to put cash into the project.

He said the good news is that you don't have to play an active role for someone to get the credits. The bad news is that you don't have control over who in the community qualifies, and can only use your regular land use and construction oversight. Many counties have a program for property tax breaks (50% valuation) on locally designated historic or "landmark" properties that often will also apply to these projects. He said what the local governments can do is market eligible properties for rehabilitation.

Elizabeth City/Pasquotank County Economic Development Director Christian Lockamy explained that the City's census tracts include the MACU area, the downtown and Riverside areas, and the ECSU area. It would take into account any of the incoming producing properties in those areas. He said this is good for the community and the investor.

2. UPDATE – SENIOR CENTER:

City Manager Rich Olson stated that the City of Elizabeth City continues to make positive progress towards the purchase of The Daily Advance building. The agreement executed by the City of Elizabeth City and Cooke Communications NC, LLC. requires that the purchase of the property occur on or before August 1, 2019, or within 30 days of the Local Government Commission's approval of financing. Exhibit B of the agreement includes three special provisions, which include: 1) The purchase of the Financing terms must be approved by the Elizabeth City Council and the County Commissioners of Pasquotank County; 2) The financing of the purchase must be approved by the North Carolina LGC; and 3) The City of Elizabeth City and Pasquotank County must approve an Interlocal Agreement regarding the issuance of debt related to the purchase and operation/management of the property.

He said during the March 4, 2019 Joint City/County meeting, the City and the County approved the purchase of The Daily Advance building from Cooke Communications NC, LLC. An

Interlocal Agreement for the operation of the Senior Center was approved by both governing bodies and executed on April 16, 2019. He noted that the document includes the very important pre-audit certification.

Mr. Olson stated that city staff prepared the application to be submitted to the LGC for their approval. On April 18, 2019, city staff met with representatives of the LGC to discuss their FY 2018-19 audit findings and their pending application submission to the LGC. He said this meeting is a fairly new requirement for LGC. The City's application will be submitted on April 26, 2019. This will allow the City's application to be heard at the June 2, 2019 LGC meeting. At the request of the LGC staff, he will attend the hearing.

The Elizabeth City Council has approved a bid from BB&T for the financing of the Senior Citizens Center. BB&T bid 2.97% financing with an origination fee of \$5,900. Total payment with fees will be \$1,741,502. The City and County will pay \$241,502 in interest, over a 10-year period. Yearly debt payment will be \$174,150, of which the City and County will each pay \$87,075 annually. The City has engaged John Farkas of JKF Architecture services to provide a cost estimate to be submitted with the LGC application. Mr. Farkas is to provide a cost estimate to remodel the building by May 3, 2019, to the City. A contract will be executed by the Elizabeth City Council for him to provide construction drawings and bid documents in the latter part of May. By August 1, 2019, staff hopes to have a contract awarded for the actual work and completion of work by December 31, 2019. In addition, to address the concerns of some County Commissioners relating to pedestrian cross walks, the City Council approved an AARP Grant of \$20,000 to address the issue. The City Council is in the process of reviewing the proposed budget for FY 2019-20; included in this amount is the \$1,500,000 cost to purchase and remodel the building. The anticipated operating budget for the Senior Citizens Center will be \$523,251.

When asked if programs will be cut at the new facility, he said no programs will be lost. In fact, many will be added. He explained that some of the activities will remain at the current facility due to the nature of the activities and the space required. Staff reported that currently there are approximately 1,000 members and over 100 individuals attend the facility per day.

3. UPDATE – FORMER ELIZABETH CITY MIDDLE SCHOOL:

County Manager Sparty Hammett provided an update on the former Elizabeth City Middle School.

He explained that the former Elizabeth City Middle School Gym was damaged from flooding related to Hurricane Matthew. The County received \$500,000 in insurance funds, and replaced the gym floor, made electrical repairs and completed other remediation to get the gym operational.

He said the Gym Annex is structurally damaged and needs to be demolished, which would require façade improvements along the front of the gym. The potential of incorporating the facility as an Elizabeth City-Pasquotank County Parks & Recreation asset was discussed at the October 29, 2018 Joint City-County meeting. The consensus of the Board of Commissioners and the City Council at the meeting was to move forward to retain an Architectural Firm to design the façade improvements and develop construction cost estimates, with costs to be split equally between the City and the County.

Mr. Hammett stated that a Request for Qualifications was issued, and we received one response from JKF Architecture, located in Greenville. He and the City Manager met with JKF on April 10th to discuss the Senior Center & Gym Annex, and JKF is preparing a cost proposal, which we should receive this week.

4. UPDATE – HOMELESS SHELTER:

Assistant City Manager Angela Cole stated that one of the problems facing Elizabeth City and Pasquotank County is how to address homelessness. Due to the nature of the issue, trying to determine the extent of the problem can be difficult. Periodically, Pasquotank County conducts a Point-in-Time Count. In 2009, it was estimated that there were 38 homeless individuals. Based on the most current data (2015), the number of homeless individuals in the County is 26. This number has decreased by half since its peak in 2010 of 51. Any data on the homeless is inconclusive and hard to validate. Through the Police Department, the City of Elizabeth city has identified 16 homeless individuals. Many of these individuals suffer from mental health issues, and some have been incarcerated on several occasions. A local daily meal program was

developed to assist with feeding the homeless. The program is supported by Pasquotank County by allowing the use of the former middle school building. However, most of the participants of the program are the working poor who have homes and are utility customers of the City. Moreover, she said the program only addresses one facet of homelessness – hunger. Another local program facilitated by several of our local churches is the Room in the Inn. This collaboration is limited to the winter season only, during evening and overnight hours. She said again, only one element of the homeless condition is being addressed. Counseling, job readiness, skills training and other needs remain unaddressed.

Ms. Cole said in an effort to address homelessness, the City of Elizabeth City permitted the opening of three homeless shelters, two were women's shelters and the third was a men-only shelter. All were operated by non-profit charitable organizations. All have since ceased operations. The longest-operating shelter operated from the late 1990's, through the early 2000's. The most-recent operating shelter was located at 709 Herrington Road. The property is owned by the City, and the shelter was independently operated by (a now defunct) non-profit charitable organization. This shelter was limited to seven homeless individuals and a resident manager. The shelter remained full while in operation. Due to building-related issues, the City closed the shelter in August 2018. In addition, a change in fire codes decreases the number of individuals that can be housed at this shelter location.

She stated that the City Council continues to advocate for a solution assisting the local homelessness population. City staff has been instructed by the City Council to identify another location for the shelter. One or two viable location options are being investigated. She said staff has not placed a dollar amount on the cost to meet the needs of a homeless shelter; however, staff estimates the cost to modify this building would be \$100,000. She said at a minimum, a homeless shelter will require the following: kitchen, showers, laundry, office/counseling space, data and technology connections, surveillance and security monitoring systems, on-site parking, sleeping accommodations, and common area(s).

Apart from 709 Herrington Road, the City is in the process of evaluating two additional residential structures; 209 E. Burgess Street and 207 E. Cypress Street. The City hired general contractors to determine the cost to up-fit all three homes. Cost estimates range from \$75,000 to \$110,000. In March, the County provided an option of utilizing the former County Health Department. However, the terms included in the lease were too restrictive and the City had to withdraw from the negotiation. The County has since received an offer from a third party to purchase the former Health Department building and is presently going through an upset bid process. Since homelessness is a community issue and the delivery of social services is a function of the County, the City requests that part of the proceeds from the sale of the former Health Department be earmarked to address homelessness in the County.

Ms. Cole stated that the City has facilitated several efforts through the years for the independent non-government operation of temporary housing for the homeless within the City. At the Council's directive, the City continues their quest to identify shelter options. However, without support from the County Commission, directing staff talent, financial resources and/or advocacy towards this same aim, the City's unilateral effort will remain splintered and ineffective. She said County support is needed to derive a plan of action, amass their collective resources, and effectively respond to the homelessness challenge affecting our community. She said during our local Legislative Day with State Senator Steinburg and Representative Hunter, County and City officials received a clear response from our delegates. We were told that State support, specifically financial support, has historically not been apportioned, would remain unlikely despite our proposed earmark House Bill, and that local efforts would yield a better return if we advocated and encouraged community civic and religious organizations to holistically take up the cause of homelessness. She said the City requests a comprehensive conversation with the County about the issue and a decision as to how we will contend with it (or not).

After lengthy discussion;

The two Boards agreed to form a small, working committee. The County Board appointed Commissioners Cecil Perry and Barry Overman, and the City Council appointed Councilman Darius Horton and Councilwoman Jeannie Young. The committee was tasked with meeting and bringing back recommendations to the full Boards to address homelessness.

Chairman Dixon noted that he does not want this item to become a line item in the County's budget. He said when and if the County sells the old Health Department, the County will consider making a one-time contribution.

5. **CLOSED SESSION PER NCGS 143-318.11(A)(4) – MATTER RELATING TO THE EXPANSION OF INDUSTRY:**

Motion was made by Sean Lavin, seconded by Frankie Meads to enter Closed Session per [NCGS 143-318.11(a)(4)] to discuss matter relating to the expansion of industry. The motion carried unanimously.

At the end of Closed Session;

Motion was made by Barry Overman, seconded by Sean Lavin to return to regular session. The motion carried unanimously.

Chairman Dixon asked if there was any further business to come before the Board. There being no further business;

Motion was made by Cecil Perry, seconded by Sean Lavin to adjourn the meeting. The motion carried and the meeting was adjourned at 8:00 PM.

CHAIRMAN

CLERK TO THE BOARD