

APPROVED 10/01/2019

**MINUTES
BOARD OF COUNTY COMMISSIONERS
WORK SESSION
September 10, 2019
8:00 p.m.**

The Orange County Board of Commissioners met in special session on Tuesday, September 10, 2019 at 8:00 p.m. at the Southern Human Services Center in Chapel Hill, N.C.

COUNTY COMMISSIONERS PRESENT: Chair Penny Rich and Commissioners Jamezetta Bedford, Mark Dorosin, Sally Greene, Earl McKee, Mark Marcoplos, and Renee Price

COUNTY COMMISSIONERS ABSENT: None

COUNTY ATTORNEYS PRESENT: John Roberts

COUNTY STAFF PRESENT: County Manager Bonnie Hammersley, Deputy County Manager Travis Myren and Clerk to the Board Donna Baker (All other staff members will be identified appropriately below)

Chair Rich called the meeting to order at 7:39 p.m.

Chair Rich suggested moving up Item 2 before Item 1, and the Board agreed by consensus.

1. Discussion of Board of Commissioners Draft Meeting Schedule for Calendar Year 2020

PURPOSE: To discuss the draft meeting schedule for the Board of County Commissioners for calendar year 2020.

BACKGROUND: In accordance with 143.318.12 of the North Carolina General Statutes, a schedule of regular meetings shall be filed with the Clerk to the Board of County Commissioners. The schedule must show the date, time and place of each meeting. All meetings will begin at 7:00 p.m. unless otherwise noted.

During the budget process this past spring, Board members requested that the budget amendment process be addressed, specifically to allow for public comments on any amendments proposed after the Manager presented the Recommended Budget. Staff has addressed this opportunity in the proposed meeting calendar for 2020 by scheduling the two public hearings differently than in the past.

The first budget public hearing is proposed to occur on May 12, 2020 at the Whitted Center in Hillsborough - after the Manager's Recommended Budget presentation on May 5th. The second Budget public hearing is proposed to occur at the Southern Human Services Center in Chapel Hill three weeks later on June 4, 2020. As proposed, convening the second public hearing on June 4th would occur after the Board has conducted three budget work sessions and Board members have had the opportunity to propose potential amendments to the Recommended Budget. The June 4th second public hearing would provide the opportunity for public comment on any proposed amendments and any other parts of the budget in preparation for the Board's fourth and final budget work session on June 9, 2019 when the Board would make decisions on proposed amendments and the budget as a whole and also adopt its Resolution of Intent to Adopt the Budget.

Discussion of the 2020 proposed calendar will provide the opportunity for the Board to review the meeting schedule for the entire year as well as the proposed budget public hearing schedule and any other related issues. It should also be noted that after the Manager presents the Recommended Budget on May 5th, all proposed amendments from Board members and staff will be compiled, posted and updated on a continual basis on the County's website. This effort will inform the public on the proposed amendments and provide interested individuals and organizations sufficient time to prepare for making comments at the public hearings and/or share any comments with the Board via electronic or other means.

Commissioner Dorosin said he is concerned about the "bunching" up of meetings in the spring, and suggested moving a meeting back to March. He said 6 meetings in a month seems excessive. He said meeting in the fourth week of June is also an option, as the calendar looks excessively cramped in May and exceptionally light in February and March. He said having meetings so close together is overwhelming to the public.

Commissioner Price agreed with Commissioner Dorosin.

Commissioner Marcoplos said there is a pace and rhythm to the budget season, which is driven by how the staff can work most efficiently through the various components of the budget. He said this is the important part of the process.

David Hunt, Deputy Clerk, said the school meeting in April is a pre-budget related meeting, and moving this earlier may not work well.

Commissioner Greene said though it is great to have the budget signed off on earlier in June, she agreed with Commissioner Dorosin about spreading things out a bit more. She would like the public to have more time to digest the budget, and bring forward its comments.

Bonnie Hammersley said staff will defer to the will of the Board, just as long as the budget is adopted by the end of June.

Commissioner McKee said he has no problem with moving some of these meetings around, but he has served on the Board when it held 60 meetings a year, which he did not find oppressive. He said he would have a problem in reducing the number of meetings any further, and there is only one week in April that has more than 2 meetings.

Commissioner Price asked if the April 23 work session could be moved to March.

Bonnie Hammersley said staff would work on the schedule.

Donna Baker said the calendar must be completed by the end of the year, but she prefers to have it done no later than the second meeting in October.

2. Presentation Regarding the Potential Regulation of the Discharge of Firearms in Areas of the County with High Residential Unit Density

John Roberts presented this item:

PURPOSE: To receive a presentation from the County Attorney and discuss options related to the potential regulation of firearms discharge in limited urbanized areas of the County.

BACKGROUND: This issue was briefly discussed by the County's Firearms Safety Committee at its meetings a few years ago. However, those discussions did not result in any substantive recommendations on this specific issue to the Board of Commissioners in the Committee's final recommendations. The Committee did recommend that the Orange County Code of Ordinances be amended to: a) prohibit the discharge of firearms while an individual is impaired; b) require discharged projectiles to remain on the property on which they were discharged; and c) require individuals discharging firearms to maintain adequate backstops. These recommendations were adopted by the Board of Commissioners.

The Board of Commissioners continues to receive complaints from residents related to the discharge of firearms near populated areas and directed the County Attorney to examine this issue and provide a presentation for Board discussion. North Carolina General Statute 153A-129 specifically authorizes counties to regulate the discharge of firearms (Attachment B). Other statutes limit the extent to which counties may regulate firearms in general and the discharge of firearms, particularly with respect to the discharge of firearms on “sport shooting ranges.”

In examining this issue, the County Attorney determined the only lawful means to regulate the discharge of firearms in urbanized areas in a manner by which the regulation would apply to discharge of firearms in general and on existing shooting ranges is to regulate the discharge of firearms within specified distances of high density urbanized areas. To show where such regulations could be implemented, Planning Department staff developed a county map showing areas of the County with residential housing densities of 10 or more residential units per 10 acres (Attachment A). **This map in the packet is for illustrative purposes only** and shows where an ordinance of this type could be applicable. Although each grid square is not visible, each red grid square represents a 10-acre tract within which there are at least 10 residential units. The enclosed green areas on the map are areas in which there are clusters of at least four red grid squares within approximately one mile of each other. Regulated areas could be established through reference to existing roads in the area or GPS coordinates with enforcement focused on discharges occurring within a designated distance from a residential unit located within one of the regulated areas. As is apparent from the map, focusing only on dense areas would create small islands of enforcement and, at least at the density selected for the example, would result in enforcement areas only in the southern portion of the County.

Durham County previously implemented an ordinance similar to this in which the ordinance only applied to the discharge of firearms within 600 feet of a residence within one of many high density areas. Durham also had a permit process for shooting ranges that existed in the regulated areas prior to the adoption of the ordinance (Attachment C). According to the Durham County Attorney, enforcement proved exceptionally difficult, and in December 2018, Durham County amended its ordinance to remove the references to high density areas and now restricts firearms discharge throughout the county if it occurs within 900 feet of the property lines of properties containing houses, schools, and churches (Attachment D).

The County Attorney consulted the Orange County Sheriff's Office on this issue and, as in prior discussions of this topic, the Sheriff's Office indicates enforcement would be difficult due to the nature of the regulated activities, that being generally short in duration and, unless visually observed by a deputy, difficult to precisely locate.

Pursuant to North Carolina law, any regulation such as that discussed in this presentation would not apply to the discharge of firearms for lawful hunting activities, when occurring in the defense of person or property, or pursuant to the lawful directions of law enforcement officers.

John Roberts said this presentation is not a recommendation, but rather some ideas for the Board to consider. He said a lot more work would need to be done, should the Board choose to pursue an ordinance.

John Roberts said residents voiced great concern about constitutional rights being infringed upon. He said that is not the case, and any of the rights in the Bill of Rights may be regulated, as long as the regulation is very narrowly tailored to accomplish a specific purpose. He said if regulation goes beyond a narrow focus, then it could become unconstitutional. He said if the Board chooses to proceed, staff would work to make sure the focus is very narrow.

John Roberts said he talked with Durham, and it previously regulated firearms in a manner similar to the ideas being presented tonight. He said Durham's original ordinance focused on housing density in approved subdivisions, but it was repealed due to the difficulty of enforcement. He said Durham changed to no shooting within 900 feet from government buildings, private residences, churches, and schools. He said this may work in Durham County, but he would suggest that it would not work for Orange County. He said Orange County still has significant areas that are rural in nature, and 900 feet would eat into a lot of private property. He said Durham is much more urbanized than Orange County, and it did not experience much opposition to the ordinance change in its public hearings.

John Roberts said Durham required a permit in order to shoot within 900 feet of one of these areas, and the permit process was convoluted, requiring a public hearing before the Board of County Commissioners (BOCC) prior to issuing a permit. He said he expects the 900-foot rule to be equally difficult to enforce.

John Roberts referred to a map on the screen, and in the Commissioners' packet, which the County GIS staff prepared. He said the map divides Orange County's rural area into red grid squares that are 10-acre parcels with at least ten houses in them. He said these parcels are linked by the green lines within one mile of each other. He said ten acres with ten houses on it is just an example, and is probably not equivalent to a suburban-type density. He said he recommends that GIS or the Planning Department determine what constitutes suburban type density, and figure out where those areas are in the County. He said this may be a higher number, 20 houses per 10-acre grid square, and thus the regulated areas would be substantially smaller.

Commissioner Dorosin asked if the red squares on this map would also include areas that are denser than 10 houses on a 10-acre parcel.

John Roberts said each red grid square represents an area where there are at least ten houses, and yes, it could be as many as 20 houses. He said this ordinance would also apply in the extraterritorial jurisdiction (ETJ) areas.

Commissioner Price asked if the green lines could be explained.

John Roberts said these are just boundary lines of where the areas are, and it is not a recommended line. He said if the Board wants to pursue this option, GIS or Planning will need to determine the actual boundaries. He said this could be based on roads, property lines, GIS coordinates, etc. He said these boundaries would need to be able to be located in order to enforce the ordinance.

Commissioner Greene asked if the areas within the green lines would have the ordinance enforced.

John Roberts said that would need to be determined. He said all of the clusters are within a mile of each other, and the question remains whether the Board would want to include all of the empty spaces. He said he would not think this would be necessary, and he would not recommend the 900-foot limit set by Durham, as Orange County has existing restrictions based on a 450-foot limit on hunting around schools or government buildings, etc.

Commissioner McKee said he would be interested in the red boxes having a name, so the affected areas are more easily identifiable. He said there are definitely areas where firearm use makes no sense, but there are other areas that are wide open and restriction seems unnecessary.

Commissioner Marcoplos said he would also like to have the road names on the map.

Commissioner Marcoplos asked if the work on the ETJ areas remains to be done.

John Roberts said absolutely. He said the ETJs have density in some areas, and the green lines may go away completely, and the ordinance could be based on subdivisions. He said this is all up to the Board.

Commissioner Marcoplos said the Board should discuss if the ETJs should be a no-shot zone by themselves, since these are areas where development is expected.

Commissioner Dorosin asked if an ordinance can be written that just applies to the ETJs. John Roberts said he would research this.

Commissioner Marcoplos said seeing the density in the ETJs would be helpful.

John Roberts said if the Board decides to pursue this ordinance, then it will have better data prior to making any decision. He said this information is just an idea to show what is possible.

Commissioner McKee said he would also like to know if regulating in the ETJs would require mutual agreement with any of the towns.

John Roberts said that is not necessary, and in the ETJs, the towns' land use ordinances are controlling, but the County's police power ordinances are in effect.

Commissioner Greene said she would guess that there are many properties in the ETJs that are on more than an acre of land, due to many not being connected to Orange Water and Sewer Authority (OWASA). She said she would like a lot more information, and you're not going to find many houses in this area that are ½ acre without water and sewer.

Commissioner Dorosin asked if enforcement would be possible on this type of ordinance.

John Roberts said the deputies go out and talk to people to find out what is going on. He said before any citation is written, the deputies will explain the ordinance to the resident, as well as how to comply.

Commissioner Dorosin said this type of regulation, based on density, would have some kind of prohibition within a zone, as opposed to it being too noisy, too late, etc. He said if one is within the designated area, one cannot shoot; but if one is outside the designated area, one would be not be affected by this ordinance, but rather by a noise ordinance, etc.

John Roberts said the ordinance would not apply outside of the established boundaries. He said if the Board adopts something with this theme, and how to regulate this, the General Assembly has defined a range as an area that is operated or maintained for target shooting. He said if the Board chooses to proceed, he will recommend that the Board adopt a simple permit process, where one can get a permit for a year to shoot, and will agree to only shoot between stated hours on designated days. He said for existing ranges that may be impacted, he would recommend some type of permitting process so that people are not deprived of something that they have been lawfully doing.

Commissioner Price said it seems that Durham is focused on distance and safety, and not noise. She asked if Orange County is more focused on safety or noise.

John Roberts said this would be written as a safety ordinance, and if the noise ordinance is amended, it would apply countywide, and would be even more difficult to enforce. He said shooting is going to occur, and hunting would not be impacted at all by this type of ordinance. He said the 450-foot limit would not apply to lawful hunting, self-defense, or lawful instructions of a law enforcement officer. He said state law prohibits the County from regulating these three things.

Commissioner Price said she would also like a more detailed map, if this discussion is going to continue.

John Roberts said the former Sheriff called him several years ago about an individual, who had laid out bait below a tree and was shooting straight down from the tree above, on a 1/3-acre lot. He said this was, and is still not, a violation of any law.

Commissioner Price asked if shooting ranges, commercial and semi-commercial, would be regulated.

John Roberts said yes they would be, but he does not believe there are any commercial ranges (outdoor) within any of the areas. He said if the Board elected to regulate by subdivision, there would not be any within the area, but there may be a private sport range within 450-feet outside the area/subdivision.

Commissioner Price asked if the County can regulate the types of firearms that are used.

John Roberts said he does not believe so, but he would research this.

Commissioner Greene asked if there is any legal impediment to regulating subdivisions where houses are on a 10-acre property each.

John Roberts said regulating 10-acre lots would not be consistent with suburban type density. He said for this ordinance to be lawful, there must be designated criteria to which the County can refer as the reasoning behind the adoption of the ordinance. He said there would not be a legal impediment, if this were the criterion that is adopted.

Commissioner Greene said there are homes that look like a subdivision, but the lots are very large.

John Roberts said if the Board pursues the designated subdivision option, he would recommend that there be a density requirement.

Commissioner Dorosin asked if there are reasons why these types of ordinances are so hard to enforce.

Sheriff Blackwood said this whole topic needs to be carved into 4 sections: noise, safety, hunting, and other regulated matters. He said the problem with noise is that it occurs, and then it is over instantaneously. He said prolonged noise gives the Sheriff an idea of where he is going. He said it is difficult to enforce, as deputies find themselves walking onto a property, with no lawful authority, to ask a resident if he/she is conducting a lawful practice. He said if one is conducting a lawful practice, the deputy is now on someone's land that is breaking no laws, and has a weapon in their hands. He said if a situation escalates, there is a risk for great peril. He said these types of exchanges are often very cordial, but it is risky to wander someone's property looking for the source of noise. He said enforcing noise ordinances, with respect to a firearm, is problematic for Sheriff Departments across the entire state.

Sheriff Blackwood said his department has taken measures to address safety, and he feels this has been well handled in Orange County. He said there are no outdoor commercial gun ranges in Orange County, and those ranges that do exist in the County have proven to be very safe. He said, of course, that does not mean injury cannot occur. He said he talked with the former Durham County Sheriff about this ordinance, and its efforts were to reduce the noise created by ranges. He said problems arose when shooters lived within appropriate distance to shoot lawfully, but neighbors across the street did not.

Sheriff Blackwood said he will not speak to this ordinance until it is written into law. He said he will offer advice, but that is the limit to what he can offer. He said John Roberts has worked tirelessly to make shooting safe in Orange County, but that does not affect the noise.

Sheriff Blackwood said it is also important to point out that ordinance is not about gun violence, and will not remove guns from people.

John Roberts said what he has proposed tonight is only an example, and this would need more work from GIS and Planning and the Sheriff's office. He said it is a waste of time for the Board to adopt something that cannot be enforced. He said staff will need direction from the Board.

Commissioner Dorosin referred to the sport shooting range, and asked if there is a clear definition of what this is; is it a formal location or is it people shooting in their back yards.

John Roberts said there is no court interpretation of sport shooting range that he has found, and it is defined as an area designed and operated for the use of rifles, shotguns, pistols, silhouette skeet trap black power, or similar sport shooting. He said that does not include someone putting a target on a tree and shooting at it. He said this would likely include some type of safety barrier, shooting lanes, etc., but the definition is fairly broad.

Commissioner McKee said he and former Commissioner Jacobs sat on a Firearms Safety Committee a few years back, which included people from both extremes of the gun debate. He said this group worked for several months, and was able to make changes to safety. He said no changes could be made to address noise. He said noise could not even be defined. He said he shoots occasionally on his own property, and he is very concerned about shooting occurring in densely populated areas, but he sees this example tonight as totally unenforceable. He said he

would like to see some regulations that are enforceable and reasonable, and nothing that he has heard tonight or seen in the packet will address noise.

Chair Rich said she is hearing consensus on wanting the following:

- Definitions
- Suburban density
- ETJ follow up
- Safety vs. noise ordinance
- How to search for sound
- Overall enforceability
- Additional maps that include names of sub-divisions and road names

She asked if there was anything else.

Commissioner Dorosin said to pull up the County GIS during next discussion and zoom in on any location. He said the only consensus he heard was around higher density subdivisions, as well as looking at ETJs.

Chair Rich asked if there is a process for the Board to continue the conversation.

John Roberts said he has not heard any firm direction to bring this back for a vote, so it would be a work session item. He said he does not know how long it would take GIS staff to have to blow up maps of all of these subdivisions. He said this would be a lot of maps.

Commissioner Marcoplos said, in the interest of time, perhaps the Board could look at 3 or 4 prominent, dense areas, and discuss in principle what is learned.

John Roberts said it would be a good idea for Planning to define suburban density, and then pull up some subdivisions that meet the criteria.

Commissioner Price said some newer subdivisions are well defined, while other older subdivisions are not. She would like to include some of these older subdivisions in the samples for discussion.

Commissioner Bedford asked if the state statute says that any existing ranges (regardless of any changes that are made) are exempt. She said any changes would be prospective, unless there is a major change in the activities of the range.

John Roberts said that is exactly what is says for noise and nuisance ordinances. He said a public safety ordinance would not fit within a noise or nuisance ordinance.

Commissioner Marcoplos said he is not comfortable with the subdivision density idea, without knowing what it is. He said one house per acre is dense enough to be considered for this issue, but he agrees with 10 houses or greater.

John Roberts said he will speak with staff, and will leave 10 or greater in place, as well as other options for suburban density definitions.

Commissioner Price clarified that state law protects the sports shooting range.

John Roberts said yes, from noise and nuisance regulation. He said a noise ordinance can be enforced going forward from the date of the ordinance being adopted, and would not impact existing shooting ranges.

Commissioner Price clarified that noise is not being considered here.

John Roberts said no, because it is has been discussed many times, but never pursued.

Commissioner Bedford asked if the new Board members could see a copy of the gun safety committee report.

Commissioner McKee said there are 20-25 members of the public in attendance tonight, and last Tuesday he asked to set some time aside, at the end of this work session, to allow for public comment, despite public comment not typically being allowed at a work session. He said he made a motion to this effect, which failed.

Commissioner McKee respectfully asked if the Board would set aside the policy, and allow the public to speak at this work session. He said there may be some excellent ideas contained in the public comments.

Commissioner Marcoplos said the Board should not make rules on the fly, and he does not support this. He said the Board will conclude this issue at some point, and the public will have ample time to speak on something specific.

Commissioner Greene agreed with Commissioner Marcoplos, as long as there is ample opportunity for the public to speak on any proposals prior to the Board taking any votes. She said she recommends have two public hearings.

Commissioner Marcoplos said there should be a wider discussion on public comment, and the Board should not change the rules in mid-stream.

Commissioner Dorosin said he would not support having public comment at this time, as people emailed about this meeting and were told there would not be public comment.

Commissioner Greene said she disagrees with Commissioner Marcoplos, and sometimes there are topics that warrant greater public discourse than others. She said the Board is made up of sensible people, and can be responsive to the community.

Commissioner Price agreed with Commissioner Greene, and said the Board can change when it needs to change. She said she is open to speaking with the public individually, and welcomes emails.

Chair Rich said it sounds like the topic of public comment should be a topic for an upcoming work session.

Chair Rich said she does not think the lack of public comment at a work session is equal to the Board silencing the public. She said it is just a policy, which can be reviewed and changed, if necessary.

Commissioner Dorosin said he would like to have a broader conversation about whether the towns have any future annexation or growth plans. He said some of these high-density places are right on the borders of existing limits. He said some of these fringe areas will experience suburbanization, and general regulations will need to be considered.

Commissioner McKee said he has chastised Commissioner Dorosin for making changes on the fly in the past, which he does not regret. He said every meeting belongs to the BOCC and it is able to make any changes it so chooses. He said he sees the rest of the Board does not agree with him about allowing public comment at this time.

Chair Rich said it sounds like staff will have a lot of work to do prior to being able to have another work session on this topic.

John Roberts said at least a month.

Chair Rich said probably 2-3 months, given that work session agendas are set in advance.

Commissioner Greene said she thought the permit idea is a good one.

3. Adjournment

A motion was made by Commissioner Dorosin, seconded by Commissioner McKee to adjourn the meeting at 8:57 p.m.

VOTE: UNANIMOUS

Penny Rich, Chair

Donna Baker
Clerk to the Board