Dare Housing Task Force

Dare County Administration Building, Manteo, NC

June 25th, 2024

Approved 8.20.24

Present:	*Chair Donna Creef, Vice-Chair Malcolm Fearing, Robert Outten, Bob Woodard, Sherry Wickstrom, Monica Thibodeau, John Windley, Elizabeth Morey, Matt Neal, Michael Siers, Andy Garman, Melissa Dickerson, Melody Clopton, Cameron Ray (For Ryan Lang), Jeff Schwartzenberg, Bob Peele, Caroline Basnight, Ron Payne, Duke Geraghty, Mitchell Bateman, Noah Gillam*
Absent:	*Craig Garriss, Drew Havens, Tess Judge, Carole Warnecki, Ronnie Sloan, Briggs McEwan, Anthony Fletcher*
Also Attending:	*Tyler Mulligan-UNC School of Government (virtual), Jim Joyce-UNC School of Government (virtual), Skyler Foley-Clerk, Stan Salvigsen, Scott Salvigsen, Josh Taylor, Susan Bothwell, Breylnn Bailey, Aida Havel, Betty Selby, Ron Tumolo, Kip Tabb*

Madam Chair called the meeting to order at 8:59 a.m. and led the Pledge of Allegiance to the flag. The Vice-Chairman led the meeting in a prayer.

ITEM 1 APPROVAL OF MINUTES
MOTION
Elizabeth Morey made a motion to approve the 05.28.24 Minutes.
Monica Thibodeau seconded the motion.
VOTE: AYES unanimous

ITEM 2 VIRTUAL PRESENTATIONS – TYLER MULLIGAN & JIM JOYCE FROM UNC CHAPEL HILL-SCHOOL OF GOVERNMENT
Mulligan clarified that the School of Government is intended to serve as a valuable resource that can be consulted in the future, emphasizing that they maintain a neutral stance on policy matters.

He elaborated on the importance of specificity in the realm of affordable housing, highlighting various terms that have been used to define it. Furthermore, he differentiated between two distinct categories of affordable housing from a local government law standpoint: housing that is restricted by income and housing that is not restricted by income. He provided a thorough explanation of the differences between these two classifications.

He proceeded to clarify that "affordable" refers to not being "cost burdened." He elaborated that the federal government defines "cost burdened" as a situation where an individual spends more than 30% of their gross income on housing, whereas spending over 50% is considered a severe burden. For renters, the 30% threshold includes both rent and utilities, while for homeowners, it encompasses mortgage payments, utilities, homeowner association (HOA) fees, insurance, and property taxes. Mulligan emphasized that another significant factor to consider, especially in Dare County where many workers commute over the bridge, is transportation costs.

He then addressed the question of, "who benefits from affordable housing?" He clarified that the Area Median Income (AMI) for Dare County is $59,381, indicating that half of the residents earn more than this amount while the other half earns less. The low-income housing tax credit (LIHTC) and the Home

Investment Partnership Program are designed to assist individuals whose incomes are at 60% of the AMI. Mulligan then explained that the size of a household is important when determining if someone qualifies as income-eligible for a specific housing unit. He discussed several scenarios involving households of one, two, three, or four people.

He referenced the North Carolina Constitution and highlighted the existence of an exclusive emolument's clause. This clause prohibits giving gifts or emoluments to any private entity, regardless of whether it is a for-profit or non-profit organization. Therefore, donations to developers are not permitted. Instead, any financial transactions must involve a contract in which the developer commits to providing a service in exchange for payment. Local governments can only establish contracts that serve public purposes and have legal approval. He pointed out that counties are authorized to pay developers in return for a commitment to create housing for low-income individuals. Furthermore, the Constitution states that the first duty of a Christian State is to care for the poor. The Supreme Court has expanded this concept indicating that supporting affordable housing or housing for low-income individuals is appropriate only when the planning, construction, and funding of adequate residential options cannot be fulfilled by private enterprises.

The Vice-Chair asked whether the initiative applies solely to low-income individuals or if it could also extend to moderate-income individuals. Mulligan clarified that, many years after the authorization of low-income housing, the Supreme Court was approached with a question about whether loans could also be available for moderate-income individuals to assist them in securing housing. The Court concluded that it is permissible to extend these resources beyond just low-income individuals, as long as the underlying goal remains the same: to assist those who are unable to find housing due to a lack of availability in the private market. Mulligan proceeded to discuss North Carolina Statutes, explaining that, according to state law, low income is defined as 60% of the Area Median Income (AMI). He also noted that this definition permits adjustments based on household size. Furthermore, he argued that there is a strong case to be made for defining moderate income as 80% of the Area Median Income.

He discussed the concept that a county's authority varies based on the specific populations being served. He outlined several scenarios to clarify the legal authority involved and whether a County Referendum is necessary or relevant. These scenarios included: 1. No units reserved for individuals with an Area Median Income (AMI) of 80% or below. 2. All units reserved for individuals with an AMI of 80% or below. 3. Some units reserved above 80% AMI, with fewer than 20% of units designated for individuals with an AMI of 60% or below. 4. Some units reserved above 80% AMI, with at least 20% of units designated for individuals with an AMI of 60% or below.

The Vice-Chair inquired whether the statement about there being no gifts to developers also applies to incentives such as tax abatements, impact fees, or land contributions. Mulligan replied that these incentives are indeed considered gifts. However, it is possible to establish a contract with developers under specific conditions that ensure any subsidies are directed to low- and moderate-income individuals, rather than directly providing them with incentives.

Next, he addressed Strategic Approaches and Tools for Local Governments, focusing on wealth building, ongoing affordability, housing preservation, and housing production. Regarding wealth building, local governments can implement rehabilitation programs for eligible homeowners or new affordable homeownership units. For ongoing affordability, it's important to invest in the rehabilitation of affordable rental properties and to create new affordable rental units. He then emphasized the importance of preservation, highlighting the need to identify existing affordable housing and acquire it and then transfer it to an entity dedicated to maintaining its affordability indefinitely. Additionally, it's important to monitor the community for expiring low-income housing tax credit projects and to establish contracts for acquiring those properties once their compliance periods conclude. For low-income homeowners, he suggested exploring options such as rehabilitation and repair loans, emergency mortgage assistance, and owner education wills. In terms of production tools, it was advised to support Low-Income Housing Tax Credit (LIHTC) development, reserve publicly-owned land for affordable multi-family rental zoning, acquire and lease land with perpetual use restrictions, and enhance public transportation access. It's also beneficial to establish subsidy contracts to further support these initiatives.

Outten inquired if Dare County could utilize its funds to construct housing in Tyrrell County. Mulligan confirmed that this is permissible, but emphasized that an interlocal agreement would be necessary. It was also clarified that the Area Median Income (AMI) of Tyrrell County would have to be used.

The Vice-Chair asked if there are special rules for government to provide housing for their employees. He referenced the Dare Education Foundation, which supplies housing, and questioned if a similar initiative could be implemented for municipalities. Mulligan explained that Dare County has a local statute that allows it to be involved in teacher housing projects. He noted that local governments throughout the state generally lack the authority to develop housing for public employees. However, they do have the ability to create housing that discriminates against those with higher incomes.

Mulligan indicated that a county does have the authority to utilize eminent domain for the purpose of public housing. Therefore, if the situation is critical, the county could potentially acquire property to develop low-income housing. However, he noted that this action is highly unpopular politically and could lead to unpredictable consequences. Additionally, he mentioned that one alternative, which may not be feasible politically in Dare County, would be to zone an entire area to prohibit short-term rentals entirely. Implementing such a decision would also likely result in significant political backlash. Outten further clarified that the definition of short-term rentals is determined by the county's ordinance. It was confirmed that while this is indeed the case, the county must consider potential repercussions when defining what constitutes a short-term rental. Joyce also touched upon recent legislation regarding landlord-tenant laws, which established a definition for what is referred to as transient occupancy.

Mulligan went on to explain that even non-profits have income limits. The IRS safe harbor for charitable entities is that their housing developments comply with 75% of the units being reserved for 80% AMI or less and must be affordable for those tenants. If you want to take advantage, which nonprofits do, they would have to reserve either 20% of the units for 50% AMI or less, or 40% of the units for 60% AMI or less in order to use private activity bonds as their source of financing. When a county contracts with a non-profit, the county rules apply. A non-profit cannot take money from the county and do something the county could not do.

Mulligan stated that a Development Agreement or a Conditional Zoning Agreement under 160D involves negotiating how the developer will handle affordable housing. He also mentioned that this type of negotiation is most effective when a county owns property within a conditional zoning district.

Madam Chair inquired about the following scenario. If a private developer were to engage with a local government for a housing project, and the local government covers the costs for water lines and roads, would that constitute a subsidy triggering the AMI or does it fall under the development agreement categorized as infrastructure. In response, Mulligan clarified that when the local government covers the expenses for publicly owned assets, it does not qualify as a subsidy to the developer. Additionally, the provision of roads, water, and sewer infrastructure falls under a reimbursement agreement, which doesn't involve a referendum and is within the county's authority.

The Vice-Chair inquired about the possibility of a government entity constructing a residential development and then selling it to the private market with certain restrictions. In response, Mulligan referred to 160D-1316 and acknowledged the possibility of selling property to low-income individuals and selling property for development, he expressed uncertainty regarding the sale of a fully developed property.

Monica Thibodeau asked about administering, calculating, and confirming if individuals are in a specific AMI. Mulligan explained that affordable housing organizations typically oversee these processes and frequently review tax information. Additionally, HUD provides guidelines on conducting income eligibility screenings.

ITEM 3 SUB-COMMITTEE REPORTS

Madam Chair distributed a Subcommittee Organizational Chart and mentioned that some subcommittees have already had meetings and have more scheduled. She informed the Task Force that additional speakers will be attending subcommittees meetings and that additional subcommittees may be needed in the future.

ITEM 4 CHAIRMAN AND MEMBER COMMENTS

Madam Chair announced that professors from East Carolina University will be conducting a NIMBY (Not in My Backyard) study and are interested in using Dare County as part of their study. She stated that she had invited Anthony Fledger to join the Housing Task Force and he will be participating in future meetings. She plans to reach out to the Town Managers soon in order to gather their zoning regulations and she concluded by discussing the Towns working to drop the lawsuit against the state in reference to HB259.

Public Comments:

Aida Havel asked if the subcommittee meetings are open to the public, Madam Chair responded that they are indeed open to the public, but there is not an exact schedule but she can provide an idea of when they are.

There being no further business, the meeting ended at 10:34 a.m.