



## ATTACHMENT D:

### PLANNING COMMISSION COMMENTS AUGUST 11, 2020

#### Case TC200003 (Development Agreements)

The Planning Commission recommended denial with a vote of 4-10. The Planning Commission determined that the Ordinance request is not consistent with the adopted *Comprehensive Plan* and that the request is not reasonable and in the public interest.

**AMANDOLIA** - I urge the elected officials to vote **NO** on this proposed UDO amendment. My primary concern is a matter of process. This amendment was explicitly brought forward because a specific developer wants to use a development agreement. Because of this, the process has been rushed through the Planning Commission with little community input. We first saw this amendment July 21<sup>st</sup>. It was continued until August 11<sup>th</sup>. The few community members who have been able to engage in this process expressed confusion about the policy and its implications.

I recognize that sometimes developments are proposed that illuminate gaps in our UDO that we need to change. However, this was not portrayed as an amendment to solve a problem in the UDO. This was portrayed as an amendment to solve a problem for a developer. Yes, the developer is offering affordable housing or land for the City. We need more affordable housing. Yet I would caution setting the precedent of making UDO amendments to make allowances for developers.

I also have substantive concerns with this amendment. First, there is no specific scope for when development agreements will and will not be used. Currently, they can be used for anything. This policy would be improved if it specified when development agreements could be used. For example, it could be written to state that the governing bodies will only use development agreements to capture more affordable housing, better environmental impacts, and other proffers in line with the values of Durham. This change alone would have changed my vote to a yes.

Second, I have a concern that development agreements will make the public engagement process simply a formality. In the case of a development agreement, the elected officials both help form the development agreement and ultimately vote on it. While we currently have progressive elected officials, policies like this have to be thought of in longer terms. What happens if a future governing body executed an agreement with a developer that is unpopular? Will the public engagement be enough to sway the agreement, or will it pass anyways because the elected officials already agreed to it?

I see the potential of development agreements. However, under this policy, that potential has not been reached. I urge the elected bodies to delay this amendment until equitable community engagement can be held. Currently, this amendment is being made on a developer's timeline, rather than by clear, transparent communication with Durham citizens. Approving this amendment may have short term benefits, but it is currently unclear what the long-term impacts are.

**BAKER** - Statutory development agreements are a potentially useful tool for securing affordable housing or land for affordable housing during the rezoning stage or otherwise early in a development review process. That is most likely the scope that the tool should be limited to for planning and zoning purposes in Durham. Like all regulatory tools, it can be used well and it can

be used poorly. I believe that present and justified anxieties within the Durham community are why the proposal of this tool has created such consternation among members of the public. But overall, it is simply a new tool in the policy toolbox and in the long age of neoliberalism and federal austerity, we need as many local policy tools as we can get.

**DURKIN** – I voted in favor of this text amendment because it provides the City and the County with a tool to require and enforce zoning related matters that do not fit squarely into the confines of a development plan submitted for consideration in a rezoning. A statutory development agreement provides a contractual venue in which to negotiate more nuanced and innovative requirements of an applicant that is seeking a City or County rezoning. This tool could be especially useful in developing affordable housing, as very few developers have taken advantage of the affordable housing density bonus already provided for in the UDO, but they may be willing and able to commit to the creation of affordable housing units in a method outside of Section 6.6 of the UDO. As clearly set forth in the proposed amendment, these development agreements are not a way around the rezoning process, public input or planning commission review – all of which required by the UDO, as amended by this new Section 1.12.

**MILLER** - The City Council and the Board of Commissioners should reject this text amendment.

The statutory authority for local governments to enter into development agreements was in place when Durham adopted its UDO. In the UDO Durham declared that such agreements would not be allowed. Not here. This was a deliberate decision based in ideas of simple fairness and openness in government. The UDO is one set of rules for everybody. Durham does not do business in back rooms or behind closed doors. In 2016 we removed the declaration against development agreements from the UDO and today, with this text change, we propose to expressly allow them. We have got along without special favors to the already specially favored for nearly fifteen years. We do not need to change the rules now.

Development Agreements - allowing special deals and special treatment for favored developers - are anti-democratic. How can we promote such a thing when we are at the same time struggling to make the whole development review and approval process more transparent, accessible, and equitable? Our UDO applies equally to everybody. The UDO belongs to everybody. The developer may own his land but zoning is public property. The very idea of development agreements runs against this idea - a separate deal between the government and a developer that takes the developer's property out of the general regulatory scheme and provides the developer with an exclusive set of rules which he will own for a set period of time. Zoning the developer can rely on. What about zoning everyone else can rely on?

The legislative trend over the last few years has definitely been one of opening doors for developer interests and closing them for everyone else. First the General Assembly eliminated the protest petition right for neighbors of proposed rezonings. Then just last year they took away the right of average citizens to ask for rezonings. That right now belongs to land owners. Now Durham, the "for all" city, wants to activate the development agreement method of land use regulation. More for the developer, less for everyone else. Public input has been reduced from real due process to a box to be checked at the end of the process. With development agreements, due process will occur only after the city and county elected officials, staff, and the developer have hammered out all the particulars of their deal. Potential stakeholders in the community will not be consulted. They won't even know what's going on. That's the point, isn't it? By the time case is rolled out and the notices are sent, it will be too late for the public to back up the momentum of the agreement or alter its course. Review by the

Planning Commission and even the hearing before city or county officials will be window dressing. The case will have been agreed to and decided before it even started.

It's already happened in getting this proposal this far. The only reason this text amendment is being considered is that it is necessary to bring about a backroom deal between the city administration and a developer near Farrington Road. Planning Commission members only found this out when staff objected to a possible delay to study the item more. "Oh no! You can't delay this. A delay will mess up a deal we have with a developer of a project on Farrington Road!" We have not yet been briefed on the Farrington Road project. It is obvious from what we have been told, however, that city officials have committed themselves to the project before opening it up to public scrutiny. We were told again at our meeting on August 11 that if we delayed our consideration of the development agreement ordinance that it would "sink" the Farrington Road project. I wish I could make people realize that this behind-the-scenes deal making – even to the point of agreeing to change the zoning code to formalize the deal – is contrary to sincere public engagement and injurious to public trust. There can be no equity in city planning if cases are decided before the public knows they have started and public involvement is reduced to a box to be checked.

We must vote this idea down. Staff says this is just another tool. Imagine calling special treatment just another tool! Whatever we might get from this tool isn't worth having – not at this cost.

**MORGAN** – I voted "no" on this amendment due to public response since text amendment didn't have enough public input. I would have rather delayed voting on this item, but it also seemed there was a case that could benefit from these text amendment changes. Such text amendments shouldn't be tied to a single zoning case, but rather be used as a tool to guide the commission and governing bodies.

A potential negative implication from these suggested amendments could preclude early neighborhood involvement and can create concerns by the community affected. However, the existing process should include more community involvement and not less.

**WILLIAMS** - I vote NO against this proposed text commitment. It doesn't do enough to engage the residents of Durham. I am also against it because this opens the door for developers behind the sense when it is not in the best interest of the communities that many of these officials are set to serve and represent. This is in bad taste and regardless of how well intended the staff is with this I believe they are able to find a better tool that works if they are willing to receive input from residents in an effort to find something that means more to the community and the people than the potential of dollars to the developer and not the community nor its interest.