

(11)

MEMORANDUM

TO: W. Calvin Horton, Town Manager

FROM: Ralph D. Karpinos, Town Attorney

SUBJECT: UNC Faculty-Staff Recreation Association Application for Special Use Permit: Removal of Condition Related to Taxes

DATE: December 14, 2005

On December 6, 2004, at the reconvened hearing on the UNC Faculty-Staff Recreation Association Special Use Permit Application, a representative for the applicant objected to the proposal to include a stipulation in the special use permit for this project related to ad valorem property taxes. This stipulation was proposed because the records indicate that neither the land nor the improvements constructed by the Association on this property are now being subjected to ad valorem property taxes and because of the language contained in a lease agreement between the Association and the State of North Carolina, referred to in the Manager's Dec. 6 memorandum to the Town Council. Town staff became aware of the information regarding the Association's lease and property taxes issues in the course of its review of the Association's development proposal. On December 6, 2004, the Council recessed the special use permit hearing to allow Town staff an opportunity to consider issues raised by the applicant that evening objecting to the proposed stipulation.

As stated in your memorandum of December 6, 2004, the Town staff has a duty and legal responsibility to seek to collect all taxes to which the Town is legally entitled. As mentioned at the hearing on December 6, Town property taxes in Durham County are collected by Durham County under an inter-local agreement. Following the postponement of the hearing, on December 9, 2004, I sent the attached letter to the Durham County Attorney formally notifying them of this matter. The letter requests that the County proceed with "whatever steps are appropriate under applicable law to collect whatever taxes may be legally owed on this property and any improvements thereon."

With the record of the December 6, Council proceedings and the letter to Durham County, I believe that the Town has now taken sufficient steps in this case to establish that it has taken no action that could be construed as releasing, refunding or compromising any portion of the taxes on this property and improvements that might be lawfully owed. Accordingly, I believe that the proposed condition related to payment of ad valorem property taxes can be eliminated from the proposed resolution approving this special use permit application.