



CITY OF DURHAM | DURHAM COUNTY  
NORTH CAROLINA



**Date:** October 31, 2013

**To:** Thomas J. Bonfield, City Manager  
**Through:** Keith Chadwell, Deputy City Manager  
Steven L. Medlin, AICP, Planning Director   
**From:** Patrick O. Young, AICP, Assistant Planning Director   
**Subject:** Request to Appear at Work Session- Dorothy Croom

**Summary.** Dorothy Croom has requested to appear before Council at its November 7, 2013 Work Session. Ms. Croom is a litigant in legal action against the City (and County) and a citizen who has complained about the scope of comments she was allowed to make before the Development Review Board (DRB). Ms. Croom and other concerned citizens were allowed to speak before DRB, but the DRB Chair appropriately limited comments to the technical findings that DRB was authorized to make.

**Recommendation.** Receive this report and comment from Ms. Croom.

**Background.** In the early 2000s, City Council and the Board of County Commissioners (BOCC) made the erection of wireless communication facilities (WCFs) (often referred to as "cell towers") approvable through an administrative process if they were designed to be concealed (e.g.: in a church steeple or as a tree), and with certain site development restrictions (such as tower height).

"Administrative process" means a) the cell tower application is reviewed and approved by staff, rather than an elected or appointed body, pursuant to requirements adopted by Council and the BOCC (through the UDO) and b) that if all requirements stated in the Durham Unified Development Ordinance (UDO) are met, the application must (legally) be approved.

The Development Review Board (DRB) approved the cell tower application and Ms. Croom and other opponents appealed that approval to the Board of Adjustment (BOA). The BOA found that the applicant met all UDO requirements for cell tower approval, except for some technical engineering certifications (found in Section 5.3.3 of the UDO). The BOA remanded the case back to the DRB to review these engineering certifications (ie: to ensure that they were provided).

The case was reheard by DRB last Friday (October 18<sup>th</sup>) to review these engineering certifications. The acting Chair of the DRB, Transportation Department Engineer Bill Judge, allowed public comment (even though DRB's review and approval is not conducted as a public hearing) and asked that:

- 1) Information provided by the public to DRB be limited to adequacy of the engineering certifications provided to the Planning Department pursuant to Section 5.3.3 of the UDO (ie: the sole basis of the BOA's remand of the case to the DRB); and
- 2) That comments be limited to 3 minutes per speaker.

Both of these requests are clearly within Mr. Judge's purview as DRB Chair and were vetted with legal counsel (Don O'Toole of the City Attorney's office). DRB does not legally require that any public comment be allowed.

When speakers (including Ms. Croom) violated the above conditions (eg: by talking about perceived safety concerns that did not pertain to UDO requirements), they were ruled out of order by the Chair.

Please also be advised that Ms. Croom is a party to two separate pending legal actions against the City on this matter (*Dolly Fehrenbacher et. al. v. City of Durham and Durham County*, 13 CVS 3573 and *Dolly Fehrenbacher et. al. v. City of Durham and Durham County*, 13 CVS 3680).

**Issues.** The City (and County) are in the process of considering modifications to the review and approval standards for WCFs. Planning staff is developing draft UDO revisions that reflect community input and input from the Joint City County Planning Committee (JCCPC) in this regard.

**Fiscal Impact.** No known fiscal impacts.

**SDBE Impact.** No known SDBE impacts.

#### **Attachments**

**Attachment 1,** Request to Appear Before The Durham City Council At the Work Session