

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 21, 2007

SUBJECT: Consideration of a Proposal to prepare an Adequate Public Facilities Ordinance (APFO) for Henderson County

ATTACHMENTS:

1. Staff Memo
2. White & Smith, LLC APFO Proposal
3. Draft Letter of Retainer

SUMMARY OF REQUEST:

In December of 2006, per the Board's approval, the County sent out a Request for Proposals (RFP) to solicit consultants to prepare an Adequate Public Facilities Ordinance (APFO) for Henderson County. The APFO will be a resource to aid the County in meeting school capacity as growth continues to occur, while directing growth and development to areas where adequate school facilities exist. The County received a proposal from White & Smith, LLC to prepare an APFO. A copy of the proposal has been provided to the Board (See Attachment 2).

As per the attached memo, Staff has reviewed the proposal from White & Smith, LLC and is recommending the Board accept the proposal and move forward with executing a contract for White & Smith, LLC to begin work immediately on the draft APFO to ensure that the project is completed by the end of the calendar year.

BOARD ACTION REQUESTED:

Action by the Board of Commissioners is needed to accept the proposal from White & Smith, LLC and approve the draft Letter of Retainer which is attached for the Board's consideration.

Suggested Motion: I move that the Board accept the attached proposal from White & Smith, LLC to prepare an Adequate Public Facilities Ordinance for Henderson County, and I move that the Board approve the attached Letter of Retainer to contract with White & Smith, LLC to prepare the APFO as per the terms specified in the RFP and the proposal for the APFO.



HENDERSON COUNTY
Planning Department

213 1st Avenue East • Hendersonville, NC 28792
Phone 828-697-4819 • Fax 828-697-4533

Memorandum

TO: Henderson County Board of Commissioners

CC: Steve Wyatt, County Manager; Selena Coffey, Assistant County Manager

FROM: Anthony Starr, Planning Director & Autumn Radcliff, Senior Planner

DATE: February 21, 2007

SUBJECT: Consideration of a Proposal from White & Smith, LLC to prepare an Adequate Public Facilities Ordinance (APFO) and Staff Recommendation

The Board of Commissioners has been considering the issue of implementing an Adequate Public Facilities Ordinance (APFO) for Henderson County. The APFO is a needed resource that will aid the County in meeting school capacity as growth continues to occur, while directing growth and development to areas where adequate school facilities exist. The Comprehensive Plan recommends implementation of an APFO and outlines the planning process to develop such an ordinance. The process includes the creation of an Adequate Public Facilities Task Force to steer the process and review the issues and ordinance.

On November 6, 2006, the Board approved a Request for Proposals (RFP) to solicit consultants for proposals to prepare an APFO and associated documents for Henderson County. The RFP deadline was January 15, 2007. The County has received a proposal submitted by White & Smith, LLC Planning Law Group.

White and Smith, LLC have worked with other jurisdictions nationwide and in North Carolina to develop Adequate Public Facilities programs, including Cabarrus County, Union County, Lincoln County, and the Town of Davidson. White & Smith has proposed to develop an APFO for Henderson County that will assess the County's and School System's ability to provide adequate school capacity as new residential growth occurs. This APFO will be consistent with County regulations, the proposed Capital Improvement Plan, the Strategic Plan, and the Comprehensive Plan. White & Smith, LLC will be working closely with the Adequate Public Facilities Task Force, which the Board approved the formation and charter for on January 17, 2007.

As per the RFP, White & Smith, LLC has proposed a methodology outline for completion of the project to be composed of two phases. The first phase will be analysis and technical documentation for the APFO which will include the collection of data, stakeholders meetings, initial determination of various impacts and assessments of the APFO, and policy issues. The second phase will be drafting the APFO and related code provisions, including administrative procedures and forms.

The Adequate Public Facilities Ordinance project is scheduled to begin February to mid-March, 2007, with a kick-off meeting with the AFPO Task Force and relevant stakeholders for mid March or April, and a final presentation by early-to mid-November 2007.

Staff is prepared to recommend that the Board consider accepting the proposal from White & Smith, LLC and execute a contract with this firm per the terms as specified in the RFP and the proposal prepared by White & Smith, LLC.

**WHITE &
SMITH, LLC**
PLANNING AND
LAW GROUP

February 9, 2007

KANSAS CITY OFFICE:

S. MARK WHITE, AICP
Admitted in Missouri and North Carolina

E. TYSON SMITH, AICP
Admitted in Florida

BALTIMORE/

WASHINGTON, DC OFFICE:

HEATHER P. SMITH
Admitted in Maryland

Mr. William Moyer, Chairman
Henderson County Board of County Commissioners
100 N. King Street
Henderson, North Carolina 28792

Subj: Engagement of White & Smith, LLC for Planning Consultation Services
related to an Adequate Public Facilities Ordinance for Public Schools

Dear Mr. Moyer:

I have prepared this Retainer Agreement for services to be provided to
Henderson County (the "County").

Subject to your supervision and control, White & Smith, LLC (the "Firm") will assist you in connection with matters related to the County's Adequate Public Facilities Ordinance (APFO) for Public Schools. The Firm's work will include only the tasks described in the Methodology Outline set forth in the Proposal dated January 11, 2007 (the "Project"). This Retainer Agreement does not include litigation services. Timely coordination with members of the County will be central to the Firm's ability to perform tasks agreed to.

The cost of performing the Project will not exceed \$79,880 and the Firm's professional services will be billed based on a monthly basis. These costs will include, in addition to hourly fees, customary out-of-pocket expenses. Such expenses include, but are not limited to, postage, Federal Express or other special delivery services, travel expenses (mileage, tolls, air fares, lodging, meals, parking, etc.), photocopying, map development and generation, if needed, computerized research, and telephone conference charges.

The Firm will bill the County with monthly statements, which itemize all work performed and expenses incurred by the Firm and the subconsultants listed in the Project. The County hereby agrees to pay the Firm for professional services based upon the monthly invoice submitted by the Firm and the performance by the Firm and its subconsultants of work described therein. Statements must be paid within thirty (30) days of receipt of the statement.

We will communicate with you and other County staff by traditional means, including email. However, email may not be a secure means of communication and should not be relied upon when matters are urgent. For purposes of this Project, we will communicate with County staff, on behalf of the County Commissioners, on all matters related to the Project, unless otherwise advised by staff or the County Commissioners. As provided in the Project, we will rely on the County's designated Project Manager and other staff to keep the Firm's Project Manager informed of information related to the Project, particularly those effecting applicable timeframes and changes to local laws and legislation. Although we check email regularly, our work requires that we travel often. If a matter is urgent, please contact us at (816) 221-8700.

230 SW MAIN STREET
SUITE 209

LEE'S SUMMIT, MO 64063

TEL 816-221-8700

FAX 816-221-8702

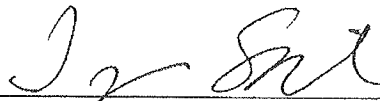
The Firm is responsible for performing only those tasks specifically set forth in the Project. Any other tasks or work products not specifically described therein may be performed only pursuant to a separate agreement and the parties acknowledge that the Firm is not acting as general counsel or as a general consultant to the County, but only with respect to the tasks specifically set forth in the Project. Also, the Firm makes no representation as to the outcome or the result of the Project.

Because timely payment of the Firm's expenses depends upon prompt payment of statements, your assurance that the Firm will receive payment in full within thirty (30) days of your receipt of the statement is essential for the Firm to undertake and continue work on the County's behalf. It is agreed that the Firm may withdraw from representing the County if the County does not meet its payment obligations to the Firm on a timely basis. This agreement may be terminated by either party, without cause, upon written notice to the non-terminating party. The County will be responsible for any fees and expenses incurred prior to receipt by the Firm's Project Manager of any notice of termination.

Please indicate your acceptance of the foregoing understanding and agreement as to the services to be rendered by having an authorized agent of the County sign, date, and return an original of this letter to us. The signature of an authorized representative will give this letter the binding effect of a contract with respect to the Project. Any disputes arising out of or related to this agreement shall be subject to the jurisdiction of the courts of North Carolina.

Please do not hesitate to contact me should you have any questions or need more information before signing this agreement. We look forward to working with you on this matter.

Sincerely,



Tyson Smith, AICP
for WHITE & SMITH, LLC

I AM AUTHORIZED BY THE HENDERSON COUNTY BOARD OF COUNTY COMMISSIONERS TO ACT ON BEHALF OF THE COUNTY WITH RESPECT TO THIS BINDING AGREEMENT AND, BY MY SIGNATURE, THE COUNTY HEREBY AGREES TO THE TERMS AND CONDITIONS SET FORTH ABOVE.

By: _____
William Moyer, Chairman
Henderson County Board of County Commissioners

Date