

**THE BOARD OF COUNTY COMMISSIONERS
DURHAM, NORTH CAROLINA**

Monday, August 3, 2009

9:00 A.M. Worksession

MINUTES

Place: Commissioners' Room, second floor, Durham County Government Administrative Complex, 200 E. Main Street, Durham, NC

Present: Chairman Michael D. Page, Vice-Chairman Ellen W. Reckhow, and Commissioners Becky M. Heron, Brenda A. Howerton, and Joe Bowser.

Absent: None

Presider: Chairman Page

Citizen Comments

Thelma White requested time on the agenda to speak to the Commissioners about turn signals at Fayetteville Street and Riddle Road, and at Highway 55 and Riddle Road. She also requested to speak to seek support for traffic signals at Riddle Road and Old Alston Avenue. However, Ms. White was not in attendance.

Chairman Page requested that the item be placed on the September 8 Worksession.

Environmental Affairs Board—Removal of Stephanie Combes as a Board Member due to Poor Attendance

Chairman Page introduced this item. He stated that on February 26, 2007, the Board of County Commissioners appointed Stephanie Combes to serve a full term on the Environmental Affairs Board (EAB). Based on information from the EAB Chair, Ms. Combes had failed to comply with the Policy and Procedures for Appointments to the County Boards, Commissions, Committees, or Authorities set forth by the County Commissioners. Section 1.(F) of the Policy states, "*If an appointee has absences (excused or unexcused) which constitute more than 50% of the meetings in any calendar year which he or she is required to attend pursuant to his or her appointment, he or she is obligated to resign.*"

The Clerk to the Board's office attempted to contact Ms. Combes via email, telephone, and courier mail requesting her resignation; no response was received.

Commissioner Howerton moved, seconded by Vice-Chairman Reckhow, to suspend the rules.

The motion carried unanimously.

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to remove Ms. Combes from the Environmental Affairs Board.

The motion carried unanimously.

Vice-Chairman Reckhow stressed that the Board needs to be notified of attendance issues in a timely manner.

Chairman Page suggested that training be administered as it relates to the expectations of the County boards and committees to inform the chairs as to what the Commissioners expect.

Review of June and July BOCC Directives

Laura Jensen introduced this item, stating that it was requested at each month's Worksession that the Board of County Commissioners have the opportunity to review the previous month's directives for staff and make comments as necessary. Since there was not a worksession in July, the review included the June and July directives.

Vice-Chairman Reckhow inquired about directives that are not being placed on the review chart. She requested that directives from the prior months be submitted to the Board in paper form.

Ms. Jensen addressed Vice-Chairman Reckhow's concerns. She explained that the initial process was to decrease the amount of paper that was being used; therefore, electronic versions of the completed items were forwarded to the Board. At that time, the decision was not to include the completed items on the paper chart. She informed the Board that the letter in question was submitted to the Congressional Delegation as well as the White House, and any additional names that were mentioned. She agreed that in the future, completed directives would be sent to the Board electronically and on the paper chart.

Commissioner Howerton expressed concerns as it relates to the amount of ink being used to print the directives. She commented that the printers were not economical and asked that the County Manager follow up with Information Technology Department regarding the issue. She inquired about conducting a survey with County departments regarding user friendliness.

Commissioner Heron complemented Ms. Jensen on her hard work, providing the directives to the Commissioners in a timely fashion and stating the directives status.

Directives

1. Include all previous month's directives in a printed version.
2. Analyze printers for Commissioners to ensure efficiency.

Falls Lake Nutrient Management Strategy (FLNMS) Rules Updates

Glen Whisler, P.E., County Engineer, introduced this item stating that the Board requested to receive an update on the status of the FLNMS Rules and Associated Legislative actions. Staff also requested that the Board consider the resolutions regarding water quality improvements at Falls Lake.

Mr. Whisler informed the Board that the North Carolina Department of Environment and Natural Resources (NCDENR) uses a process to create, review, and approve nutrient management strategy rules for water bodies that are listed as impaired per the NCDENR Section 303(d) list. The process began with a Stakeholder Group that advised NCDENR as to what criteria to use in creating a baseline model to determine the level at which the water body is impaired and develop a strategy to improve water quality. The Stakeholder Group is comprised of a cross-section of interested parties. NCDENR also involves the Stakeholder Group in developing the rules. Once NCDENR has drafted the rules, the rules are presented to the Environmental Management Commission (EMC) for review and approval. After a period of public comment and EMC approval, the rules review committee reviews and approves the rules, after which they are presented to the NC General Assembly.

Mr. Whisler acknowledged that the current state law, SL 2005-190, SL 2006-259, requires NCDENR to implement the FLNMS Rules by July 1, 2009. Proposed legislation, HB 1099, extended the deadline to January 15, 2011. SB 1020 requires the EMC to give credit for early implementation of the FLNMS. HB 1099 contains a requirement that would allow additional standards for land disturbance activities to become effective on December 1, 2009, before the NC General Assembly approves the permanent rules. In early 2009, NCDENR, Division of Water Quality (DWQ) submitted a request to the NC General Assembly to extend the deadline for EMC adoption of the FLNMS to November 2011.

Mr. Whisler updated the Board on recent legislative activities regarding water quality protection legislation for Falls Lake. He stated that the proposed Legislation had been evolving over the past weeks. He presented the most recent version of House Bill 1099.

Mr. Whisler gave the following presentation:

Falls Lake Nutrient Management Rules Update

Definitions

- NCDENR—North Carolina Department of Environment and Natural Resources
- DWQ—Division of Water Quality (Division of NCDENR)
- EMC—Environmental Management Commission
- SCC—Sediment Control Commission
- WQC—Water Quality Committee
- TAC—Technical Advisory Committee
- RRC—Rules Review Commission
- EEUDO—Environmental Enhancements to the Unified Development Ordinance

- Directed EMC to develop a nutrient management strategy for drinking water supply reservoirs by July 1, 2008 (Section 3c). This was later revised to July 1, 2009 (SL 2006-259).
- Requires EMC to adopt permanent rules to implement the nutrient strategies by July 1, 2008 and also requires reductions in nutrient loading from all sources to begin no later than five years after the rule becomes effective (Section 3e). This was later revised to July 1, 2009 (SL 2006-259).

Nutrient Management Strategy Rulemaking Process

- DWQ begins the rulemaking by first creating two groups:
 - Stakeholder Group (Interested Parties)
 - Technical Advisory Committee (Local Government Representatives, DWQ, TJCOG, NCDOT, Soil and Water Conservation District)
- The lake model is an idealized mathematical formulation that represents the response (impairment level) of a physical system (Falls Lake) to external stimuli (nutrient loading).
- The model is used to determine the future nutrient loading limits needed to improve water quality.
- DWQ then drafts the rules.
- DWQ submits them to the WQC prior to EMC review.
- EMC adopts draft rules that are published for public comment.
- After the public review period is complete, the EMC adopts final rules.
- The adopted rules are then sent to the RRC for approval.
- The rules are presented to the North Carolina General Assembly for approval if necessary.

Durham County River Basins Falls Lake Watershed

Falls Lake Impairment

- Per the DWQ 303d list of impaired bodies, Falls Lake is impaired by both Chlorophyll A and turbidity.
- Chlorophyll A is an indicator of high levels of nutrients (nitrogen and phosphorous).

Falls Lake Rules Status

- Seven out of 11 Stakeholders Meetings completed.
- Draft model published in June 2009.
- Stakeholders are now creating strategy recommendations.

Falls Lake Rules Status (Charts)

House Bill 1099

- Sponsored by: Representatives Allen, Gibson
- This bill amends SL 2005-190 and SL 2006-259.
- Amends the Nutrient Management Strategy development and adoption date from July 1, 2009 to January 15, 2011 (Sections 3c,3e, 3i)

What's in the Bill	Current Requirements	Proposed EEUDO
Limit mass grading to 20 acre areas. (Larger area may be approved by NCDENR or local S&E Programs)	There are no limitations on mass grading.	20 acre areas, no consensus of the EEUDO stakeholder group.
S&E measures must be designed to a 25 year storm event.	S&E measures must be designed to a 10-year storm event.	25 year storm event only in the UDO Watershed areas no consensus of the EEUDO stakeholder group
Sediment Trap/Basin Settling efficiency of 70% for the 40 micron size	Sediment Trap/Basin constructed per NCDENR Design Manual (Section 6.60) allows for a Settling efficiency of 75% for the 40 micron size	No change
All open channels (ditches) to be constructed with side slopes no greater than two inch horizontal to one inch vertical or steeper with a ditch liner	Per NCDENR Design manual (Section 6.30), maximum water velocities generally require a 2H:1V side slope	No change
Ground cover placed within seven days.	Ground cover placed within 21 days.	14 day requirement with the seven or 10-day slope limitation

- Requires the SCC to adopt erosion control rules similar to Section 3h statewide by December 31, 2011 (Section 3J)
- Requires Section 3h of this bill to become effective, December 1, 2009.

Senate Bill 1020

- Sponsored by: Senator Stein
- Requires EMC to give local governments credit for adopting rules that reduce runoff and discharge of nutrients before the permanent rules are made into law (Section 1b).

Recommendations

- Consider a resolution supporting all or portions of HB 1099 and SB 1020.
- Direct the Planning Director to expedite an amendment to the Unified Development Ordinance to incorporate the additional standards for land disturbance activities

Mr. Whisler addressed the Board's concerns about natural occurrences with the forest. He informed the Board that the presentation reflects the current practices that take place in agriculture. He recommended that the Board direct the Planning Director to expedite an amendment to the Unified Development Ordinance, pursuant to Sections 3.20.5 and 3.20.5B.3a, and per the requirements of HB 1099, Section 3(h) and XX(c).

The following questions were posed by the Board:

- How recent are the figures in the presentation?
- When are the sedimentation erosion control measures being adopted?

- Is there a limitation on the development?
- Is the County enforcing the current requirements?
- Would a time limit be necessary as it relates to the project's completion date?
- What is being done to enforce the rule?
- What would be considered as ground cover?
- Does the UDO define ground cover?
- Has the County thought of requiring netting on steep slopes?
- How does the County receive credits for reducing pollutants for early action?
- What is the time frame given for remedial work?

Mr. Whisler addressed concerns raised by the Commissioners.

Commissioner Heron expressed concerns about property protection.

Deputy County Attorney Lowell Siler inquired about previous discussions regarding Falls Lake Nutrient Management Strategy

County Attorney Kitchen explained the permanent rules as well as the interim rules that are authorized by the legislation.

Sarah Bruce, Director of the Upper Neuse River Basin Association, responded to questions asked by the Board regarding the stakeholder's process. She submitted a technical amendment to the resolutions that was being considered. She stated that the UNRBA lead the formation of the stakeholder's process and facilitated an arrangement with local governments with the Upper Neuse Basin. She noted that the Upper Neuse Local Governments contributed and paid for the stakeholder's process. She clarified that turbidity is not a goal of the stakeholder's process or the nutrient management strategy.

The Board asked that staff provide guidance relative to version a, b, or c and provide a recommendation as to which version of the resolution should be adopted.

Mr. Whisler explained why three resolutions were presented and explained which one would be appropriate, given the current state of affairs.

Vice-Chairman Reckhow suggested that the effective date be January 1 as opposed to December 1. She asked if staff could discuss the consideration of using Jordan Lake rules as the interim rules.

Planning Director Steve Medlin spoke to the extension of the effective date of erosion control. He responded to the Board about the amount of time it would take to process a text amendment. He explained that the legal process has to be followed which is established in the UDO. He stated that the normal amount of time to process a text amendment is around six months from the time it is initiated, to the time it is presented to the governing bodies for consideration for adoption.

Mr. Whisler stated that the Jordan Lakes rules could not be applied since it is not based on the Falls Lake model.

The County Manager recommended that the Board suspend the discussion and allow staff to make a decision based on what has discussed and bring the decision back at the end of the meeting.

Commissioner Bowser expressed concerns about the rules being forced on the Western portion of the state. He asked the following:

- Is there anything being done to abate the matter?
- What other communities are being reviewed?
- What have other communities done to address the issues?

Directives

1. Place on August 10 consent agenda.
2. Send resolution to General Assembly.

Fitness Center Lease within Durham Convention Center

County Manager Mike Ruffin introduced this item. He stated that the Board requested to approve the lease and authorize the County Manager to execute it. The lease is for 250 square feet of space in the Durham Convention Center complex that would be used as a fitness center by guests of the Durham Marriot at the Convention Center. The space is jointly owned by the City and County but has not been used, nor is any productive use foreseen, for improved operation of the Convention Center itself.

The term of the lease was proposed for five years on July 20 but, due to BOCC concerns, has been rewritten with a one-year term. The amount of the lease is still \$1/year for the one-year lease, which would expire along with the current management agreement. The low amount of the lease is justified since the space was not deemed useful to the Convention Center and because of its ability to enhance the attractiveness of the hotel/Convention Center complex.

County Manager Ruffin asked the Board for an opportunity to meet with City Manager Tom Bonfield and the Chair of the Civic Center Authority to discuss the issues. He informed the Board that he would give Mr. Bonfield a chance to investigate the decision that was made to move forward with construction. He acknowledged the Board's request regarding a change in the agreement which would be revisited for consideration in a year.

Directive

1. Place on the August 10 Consent Agenda.
2. Staff to review the space after the first-year lease.
3. Consider increasing future lease payments.
4. Communicate with the Board about what is happening with the lease.

Discussion of Board and Commission Appointments

Chairman Page introduced this item, stating that at the May 11, 2009 BOCC Regular Session it was requested that the Commissioners have an opportunity at a future worksession to discuss how board and commission appointments are recommended and voted upon.

Commissioner Heron referred to the boards and commissions policy that discuss the rules and procedures for appointments.

Commissioner Bowser initiated this item because of certain organizations that provide recommendations to the Board. He voiced his concerns about recommendations being unfair for those who apply and are not recommended since that they are not known by others on the committees. He suggested that a fair process be implemented to allow all Durham citizens to be given equal consideration as other applicants. He inquired about a boards and commissions interview process.

Chairman Page clarified the reasons related to recommendations. He asked that the Board decide if recommendations would be essential in terms of board and commission appointments.

Vice-Chairman Reckhow referenced the “Your Community” section of The Herald-Sun that offers free advertisements for upcoming meeting as well as volunteer opportunities.

Commissioner Heron discussed the Library Board’s process as it relates to interviewing applicants and providing recommendations.

Commissioner Howerton offered a suggestion for the Board to review the board and commission rules and procedures. She questioned whether the applicants are communicating with the Commissioners as it relates to submitting their applications.

In regards to Commissioner Howerton comments, Chairman Page disagreed, citing that phone calls from each applicant would be overbearing for Commissioners and allow personal preference to be taken into account.

Commissioner Bowser suggested that a process be put in place that allows the Board to speak to the applicants to inquire about their interest in serving on the committees.

Chairman Page stressed that the Commissioners have the ultimate decision on whether or not to vote for the individual that is being recommended.

The Board continued discussions regarding board and commission recommendations.

Directives

1. Consider placing this item on the October 5 Worksession.
2. Staff to review best practices related to boards and commissions.
3. Survey the top ten counties for salary comparisons, and place this item on a future agenda.
4. Submit boards and commissions policy to the Board for review.

5. Consider ways the County can advertise to save money.

Closed Session

Commissioner Howerton moved, seconded by Commissioner Heron, to discuss matters relating to the location or expansion of business or industry pursuant to G. S. 143-318.11(a)(4) and to consider the initial appointment of a public officer or employee pursuant to G.S. § 143-318.11(a)(6).

The motion carried unanimously.

Reconvene to Open Session

Chairman Page announced that the Board met in closed session. He gave further comments before any action was taken. He reiterated that the County Attorney had initially submitted his resignation effective November 30; however, he announced the departure of the County Attorney Kitchen. He thanked County Attorney Kitchen for his many years of services with Durham County. He stated that over the next few months, County Attorney Kitchen has agreed to work closely with the Board as it relates to open cases as well as the necessary transition in the County Attorney's office. He stated that County Attorney Kitchen and Lowell Siler, Deputy County Attorney, have worked closely together for years and have a great working relationship; therefore, the Board anticipates a smooth transition.

Chairman Page explained that County Attorney Kitchen's early departure is necessary due to the conflict that evolved over the complaint which was filed by Southern Development Company. He stated that when the Board cannot be advised by the County Attorney regarding a lawsuit, it presents a unique situation. The Board respects County Attorney Kitchen and values his opinion and his absence would be missed. Nevertheless, the Board needs to have in place a County Attorney that could continuously advise the Board on any and all legal issues. The Board is grateful that County Attorney Kitchen has agreed to represent the County on two important matters of litigation and would allow Lowell Siler, Deputy County Attorney, to assume office immediately. He again thanked County Attorney Kitchen for his services to the County.

Commissioner Bowser moved, seconded by Vice-Chairman Reckhow, to suspend the rules for the purpose of an agreement to continue handling the two cases and be an advisor to the new County Attorney

The motion carried unanimously.

Commissioner Bowser moved, seconded by Commissioner Howerton, to accept the agreement and between County Attorney Kitchen and the Board of County Commissioners.

The motion carried unanimously.

Commissioner Bowser moved, seconded by Commissioner Howerton, to suspend the rules in order to appoint a new County Attorney.

Ayes: Bowser, Howerton, and Page
Noes: Heron and Reckhow

Commissioner Bowser moved, seconded by Commissioner Howerton, to appoint Lowell Siler as the permanent County Attorney for Durham County.

Ayes: Bowser, Howerton, and Page
Noes: Heron and Reckhow

Vice-Chairman Reckhow spoke to the possibility of Mr. Siler becoming Interim County Attorney. She felt as though the Commissioners should follow the process as it relates to high-level positions within the County.

Commissioner Heron concurred with Vice-Chairman Reckhow's comments. She voiced her opinion about the decision being made without a contract or preparation. She felt as though it was a breach of the County's policy.

Chairman Page thanked fellow Commissioners for their comments. He stated that since the County Attorney works at the pleasure of the Board, the Board could appoint a County Attorney as it is deemed necessary. He stressed that those in support of the new attorney wants to ensure that Durham County continues to have the kind of leadership that continues to provide cohesiveness.

Commissioner Howerton stated that since she has become a County Commissioner, she has greatly appreciated Mr. Kitchen's services. She congratulated County Attorney Siler on his appointment and looked forward to working with him in the future.

Commissioner Bowser expressed gratitude in working with former County Attorney Kitchen and wished him well with his endeavors.

Vice-Chairman Reckhow thanked Mr. Kitchen for his strong service as the County Attorney for Durham County.

Commissioner Heron acknowledged some of the accomplishments made by the former County Attorney during his service with the County.

County Attorney Lowell Siler thanked the Board for the opportunity to serve Durham County in this capacity. He expressed gratitude to Mr. Kitchen for his many years of dedicated service and hard work. He spoke for the County Attorney staff in attendance who expressed the exact

sediments. He informed the Board that the County Attorney's office consists of strong attorneys who are dedicated public servants.

Continuation of Falls Lake Nutrient Management Strategy (FLNMS) Rules Updates

Chairman Page announced the continuation of discussions regarding the Falls Lake Nutrient Management Strategy.

Mr. Roberts distributed copies of the amended resolution to the Board.

Mr. Whisler discussed the resolution amendments.

Vice-Chairman Reckhow moved, seconded by Commissioner Bowser, to suspend the rules.

The motion carried unanimously.

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to approve the resolution.

The motion carried unanimously.

Directive

Place the Unified Development Ordinance amendments on the August 10 consent agenda.

Clerk to the Board Position Recruitment Process

Marqueta Welton, Human Resources Director, introduced this item. She stated that Vonda Sessoms, Clerk to the Board, would retire on September 1. The position vacancy had been advertised and the application deadline expired on July 31, 2009 at 5.30 p.m. She asked that the Board provide direction it desires to employ.

Chairman Page requested that the Board consider the process regarding moving forward with the recruitment process.

Vice-Chairman Reckhow suggested that the Board meet in a special session to determine a timeline for reviewing the candidates in order to select an applicant by the desired date.

Ms. Welton provided clarification for Chairman Page regarding the deadline for receipt of applications.

Chairman Page announced that Deputy Clerk Yvonne Jones would resume leadership of the Clerk's office until a clerk is appointed.

Directives

1. Place on the August 10 Regular Session agenda for discussion.

2. Ms. Welton to provide an outline to the Board of the suggested process.
3. Consider discussing applications in closed session at the August 24 Regular Session.

Adjournment

There being no further business, Chairman Page adjourned the meeting at 1:37 p.m.

Respectfully Submitted,

Angela M. Pinnix
Clerk to the Board's office