

Revised
(See Pages 3-5)

THE BOARD OF COUNTY COMMISSIONERS
DURHAM, NORTH CAROLINA

Thursday, March 5, 2009

9:30 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

Agenda Adjustments

Commissioner Heron requested to add a discussion to the agenda regarding Commissioners' travel and agenda revisions.

Commissioner Bowser requested that an agenda item be added to discuss the Jordan Lake watershed boundary issues.

Chairman Page asked that the Commissioners provide their availability to tour the schools and to view the farmlands in Durham.

Citizen Comments

Mr. Isham Barnes requested time on the agenda to speak to the Commissioners about attorney fees related to the collection of unpaid real estate taxes; however, he was not in attendance.

Greg Rowland, Chair, Urban Ministries Board of Directors, spoke to the Commissioners about Urban Ministries of Durham. He discussed the revenue shortfall and the need for increased funding. He requested that the County fund \$25,000 to allow the agency to qualify for a matching grant from the Stewards Fund.

County Manager Ruffin recommended that the Board discuss revenues in the County's contingency fund relating to Urban Ministries' request.

Commissioner Heron voiced her opinion regarding the request.

Directive

Place a budget amendment on the March 12 consent agenda to give additional funds to Urban Ministries.

Review of February BOCC Directives

County Manager Mike Ruffin introduced this item stating that it was requested that at each month's Worksession, the Board of County Commissioners review the previous month's directives for staff and make comments as necessary.

The Board discussed the directives.

Directive

Include a date in which the items would be completed.

Jordan Lake Watershed Boundaries

Commissioner Bowser requested that Jordan Lake watershed boundaries be placed on the agenda for clarity. He stated that prior to his returning to the Board, this item has been in discussion with the Department of Water Quality (DWQ) and the State of North Carolina. He provided further background pertaining to this matter. He expressed frustration with the issues surrounding public hearings. He referred to an editorial that was placed in The Herald-Sun.

Commissioner Bowser requested that the Board suspend the rules and make a motion to move forward based on the State's ruling.

Vice-Chairman Reckhow opposed suspending the rules. She stressed the importance of complying with the adopted ordinance. She asked that the County Attorney speak on the issue.

County Attorney Kitchen attempted to address Commissioner Bowser's concerns. He reiterated what has transpired with Jordan Lake boundaries. He stated that in November, the Board voted to move forward with DWQ's ruling to approve the change regarding the Jordan Lake pool elevation. At that time, no further action was necessary in order to establish that elevation. He continued by explaining what the Unified Development Ordinance (UDO) states as it relates to rezoning. He expressed that the UDO's provisions for changing the Comprehensive Plan has to go before the Planning Commission for a recommendation and to the County Commissioners for approval.

Chairman Page clarified Commissioner Bowser's concerns as it relates to placing the maps where they were initially.

Commissioner Bowser asked the Board to accept the State's ruling, accept the boundary lines, place the maps accordingly, and move forward.

Vice-Chairman Reckhow stressed that the Board has to conform to the laws that were adopted.

Vice-Chairman Reckhow stated that the first step was to ensure that the State agreed with the survey and that the Board follows the laws in the community.

County Attorney Kitchen responded to Commissioner Bowser's question regarding punitive action being taken against parties involved for violating the rules. He stated that there was no process in place that addressed those issues. He replied to Chairman Page's issue regarding the reason information was sent to DWQ. He stated that the State's regulation states that the Board cannot take action to change the line unless it is approved.

Chairman Page stated that he understood what the County Attorney had conveyed to the Board; however, that information was not communicated to the Board in November 2008. He expressed frustration about the Board being misled. He stated that at the time of the discussions, there were no indications that involved additional processes.

Commissioner Heron suggested that a special meeting be held to further discuss the issues surrounding the Jordan Lake watershed boundary lines.

County Attorney stated that his opinion has not changed regarding the issues. He expressed his concerns with the Board complying with the UDO.

Commissioner Bowser continued to state his uncertainties. He suggested that the Board vote to override the rules/laws.

Vice-Chairman Reckhow interjected stating that the County could be challenged if the laws are overridden.

Attorney Bill **Brian**, Southern Durham Development Company, informed the Board that the UDO and the zoning ordinance was adopted in 1994; the watershed boundary was placed in that ordinance as being one mile from the 216msl normal pool of Jordan Lake. The problem is that the map, drawn at the time by the Planning Department to illustrate that distance, was drawn incorrectly; therefore, there was an error in the map in the beginning. The UDO gives the Planning Director substantial amount of authority in closing continuing duty to correct the maps when further information is discovered. In 2006, Mr. Neil Hunter provided information to the Planning Director and stated that the starting point was in the wrong place. After five months, Mr. Luck and other planning staff discovered the error and made the administrative changes to the map. Since the Comprehensive Plan is tagged to the boundary regarding the watershed, a change was made there, too. It was determined afterwards that it had not been properly approved by DWQ. A decision made in November to send the information to DWQ for approval. In reality, a change was not made, just a correction of an error in existing mapping, which is exactly what the ordinance states. This action by administration was taken by the Planning Director in accordance with forward authority

which was given by the Board of County Commissioners and the City Council in the UDO. Public hearings are held to take information; in this case, there was no information to be taken. It only involves the individuals that own the property in which the subject of the interpretation was made in 2006. It is a process that was designed for specific property owners to come forward and ask for delineation of where the line is on their property. It has nothing to do with the project or the property; it was an error that was made when it was originally adopted. There is no information to be taken during the public hearing process that would change the situation since it is not a discretionary, legislative decision just an administrative change. The property in question was never included in the watershed critical area because it was never measured properly on the original maps. The original maps were based on USGS maps that were done in the seventies before the lake was filled.

County Attorney Kitchen disagreed with Attorney **Brian's** comments regarding the maps being corrected in error. The process is set forth in the UDO, as well as the State Statute, which was referred by Attorney Bryant, that allows the administrative change when lines bisect a piece of property. Many properties that were discussed were not bisected at all. There was an error when the maps were adopted. Once the Board of County Commissioners adopted the maps, the Planning Administrator did not have the authority to overrule the Commissioners' decision.

Vice-Chairman Reckhow suggested that if further discussions were needed, the maps would have to be displayed, and the Planning Director would need to be present. She felt that it was inappropriate to spend additional time on this item.

Chairman Page did not deem it inappropriate due to the issues involved.

County Attorney Kitchen replied to Commissioner Bowser's inquiry, stating that he disagreed with Attorney Bryant since the State Statute requires action by the Board.

Chairman Page referred to Commissioner Heron's request to have a special session to have further discussions as it relates to the watershed boundary line.

County Attorney Kitchen reminded the Board that the rezoning discussions are obsolete. The issue is regarding DWQ's ruling and why the lines were not moved back.

Commissioner Bowser moved, seconded by Chairman Page, to suspend the rules in order to offer a motion to move forward with the ruling from DWQ.

The motion failed with the following vote:

Ayes: Bowser and Page

Noes: Heron, Howerton, and Reckhow

Vice-Chairman Reckhow offered a substitute motion.

Vice-Chairman Reckhow moved, seconded by Commissioner Heron to move forward with a special session to continue discussions regarding Jordan Lake watershed boundary lines

The motion carried with the following vote:

Ayes: Heron, Howerton, and Reckhow

Noes: Bowser and Page

Commissioner Heron stated that the reason for the special session is so the Board could understand the issues the County faces. She hoped that the Board would make its decisions based on what is discussed.

County Attorney Kitchen responded to Commissioner Howerton's question regarding the impact that public hearings have on what has already occurred. He stated that the reason for the public hearing is the Comprehensive Plan amendment. In Section 3.4.9 of the UDO, it states that before taking action on a plan amendment, the governing body shall consider the recommendations of the Planning Commission and shall conduct a public hearing. The practical matter is that the public hearing would not change anything on the Comprehensive Plan. The issue is a matter of process.

County Attorney Kitchen responded to Commissioner Bowser's question about whether the UDO states that ~~that~~ the Planning Commission ~~has have~~ to have a public hearing. He stated that before making a recommendation for the plan amendment, the Planning Commission shall consider any recommendations from the Planning Director or designee and shall conduct a public hearing. He recommended that the Board comply with the law. If the Board does not agree with the laws, the Ordinance would have to be changed first.

County Manager made a comment regarding the proceedings. He stated that the Board as a whole has the ultimate decision in the matter regarding what is valid.

Durham Public Schools—Acquisition of Real Property for New Elementary School “C” and Middle School “A”

Carl Harris, DPS Superintendent, introduced this item. He stated that on January 22, 2009, the Durham Public Schools Board of Education approved the purchase of multiple parcels in Southern Durham to provide a site for future schools Elementary “C” and/or Middle “A” as identified in Durham Public Schools Long Range Facilities Plan. Funding would be provided by 2003 Bond funds and two-thirds bonds previously designated for land acquisition. The purchase price is \$2,935,000 for six contiguous parcels totaling approximately 47 acres; the properties appraised for \$3,100,000.

Mr. Harris stated that the Board of Education has requested approval of the purchase price of these properties.

Hugh Osteen, Assistant Superintendent of Operational Services, DPS, gave the following presentation:

Acquisition of Real Property for New Middle A/Elementary C

Background:

- 2003 Bond Priority
- New Elementary "C" – 20 acres +/-
- New Middle "A" – 40 acres +/-
- Southern Durham Area

Search Areas

- Southern Durham – SW to SE
- Maps of Search Areas Were Published in 2003 Long Range Facilities Plan and Bond
- Approved as Parts of \$105.3 million Bond

Maps

- Proposed Elementary School Site "C"
- Proposed Middle School Site "A"
- Sharing Criteria with Officials (Elementary School "C")
- Scott King Road Site

Land Use Study

- Demographics Study January 2009
- Included a Land Use Study
- Confirms
 - The Scott King Road site is appropriate for new sites.
 - Multiple elementary sites are needed.

Due Diligence

- DPS Staff has inquired with local agencies to review the issues related to this site
 - City Engineering Division
 - Two access points; align with Lyon Tree Lane
 - Sewer in Scott King Road is County maintained; on-site life likely
 - Water flow accessible through pump for pressure may be needed
 - Annexation and extension agreement required

Stormwater Division

- A flood study will be required
- Address runoff and stream issues

DPS Staff has inquired with local agencies to review the issues related to this site.

- Inspections Department

- Utilize 2009 Building Code (depends on future changes)
- Address flood plain issues: Appears to be ample room for buildings
- City-County Planning Department
 - Review environmental issues
- Transportation Division
 - Off-setting turn lanes; sightlines need addressing Special Use Permit required
- DPS Staff has completed a Phase 1 Environmental Study.
- The parcel is within a site listed in Durham County’s Inventory of Important Natural Areas.
- It is 48 acres of an 830+/- acre area, of which 355 acres are within Durham County.
- It has been recently logged. The uplands provide adequate building sites away from sensitive wetlands and allow space for buffers and stormwater retention and treatment.
- A school campus can be built within impervious surface limitations and maintain greater undisturbed areas than previously planned, high-density, residential development plans.
- DPS would plan to provide a LEED certified campus, maximizing sensitivity to global and local environments

Cost Funding

Parcel	Acreage	Price/Acre	Estimated Cost
IUKA	36.90	\$57,000	\$2,103,300
Gallifinakis 1	7.50	\$57,000	\$427,500
Perimeter	0.81	\$86,420	\$70,000
Patterson	0.84	\$77,381	\$65,000
Gallifinakis 2	1.97	\$70,000	\$140,000
Totals	48.02	\$58,454	\$2,805,800

Funding Sources Available

- 2003 Bond New Middle “A” - \$1,300,000
- 2003 Bond New Elementary “C” - \$675,000
- Two-Thirds Bonds – Land - \$3,900,000
- Properties were appraised by Jarvis Martin, SRA of Martin & Company – Durham, North Carolina
- Appraised Value is \$3,100,000
- Purchase Price is \$2,805,800
- Difference is \$294,200
- Previous site considered would have cost \$2 Million more and had similar but more challenging features

Vice-Chairman Reckhow voiced her opinion about placing two schools on 47 acres. She expressed concerns regarding the environmental constraints surrounding the project. She asked for clarity as it relates to purchasing multiple parcels that provides a site for future schools Elementary “C” and/or Middle “A”.

Mr. Osteen answered Commissioner Howerton's question about the resources to buy and build. He stated that the funds would be coming from the 2003 bonds as well as the two-thirds bonds.

Helen Youngblood, Senior Planner, City-County Planning Department, discussed the environmental issues and the value of preserving these properties.

George Quick, Finance Director, responded to questions asked by the Board; however, his response was inaudible.

The Board asked the following:

- Have the County sold the remaining bonds?
- Has the County completed payment on the 2003 bonds?
- When was the money incurred?
- What has been paid for the acreage?
- Has DPS considered eminent domain?
- What is the rationale for purchasing the land?
- What are DPS's concerns with the environmental issues?
- What would happen to the property if the plan is not approved?

Mr. Harris provided clarification pertaining to the draft school site and acreage form.

Hank Hurd, Associate Superintendent, Chief Operating Officer, DPS, addressed the Board's issues regarding demographics.

Commissioner Heron stated that she would not be in support of the purchasing the acres.

Directive

1. Defer the Board's decision to a future meeting to allow DPS time to do more research and make negotiations for the site.
2. Durham Public School to schedule a meeting with Helen Youngblood.
3. Provide clarification regarding the projected growth.
4. Review the inventory of all schools that the County has supported that was not included in the plan.

Durham Public Schools—Acquisition of Real Property for Hamlin Road Central Services Facility

Hugh Osteen, Assistant Superintendent of Operational Services, DPS, introduced this item stating that on January 22, 2009, the Durham Public Schools Board of Education approved the purchase of Hamlin Road, a property comprised of 3.3 acres and a home. The property is adjacent to Durham Public Schools Hamlin Road Central Services facility and provides a rare opportunity to obtain space for future needs.

Mr. Osteen informed the Board that funding would be provided by local capital outlay funds; the purchase price is \$130,000. He stated that the Board of Education requests approval of the purchase price of this property.

Directive

Move to the March 12 Regular Session

Cultural Master Plan Mid-Year Update and Project Funding Proposals

Josh Parker, Chair, Cultural Master Plan Advisory Board, introduced this item. He stated that the Interlocal Agreement to extend the Cultural Master Plan Advisory Board and provide City and County funding through June 30, 2009 was signed November 3, 2008. The Agreement requires a mid-year report to the Board of County Commissioners as well as approval by the Commissioners of spending proposals before any payment from County-provided implementation funds can be made.

Mr. Parker stated that the Cultural Master Plan Advisory Board recommends approval of grant funds for the following initiatives that was presented at the February 9, Commissioners meeting:

- **Arts and Business Council Project (\$18,000)** – To contract with the Durham Arts Council, for a joint project with the Chamber of Commerce, to affiliate with the national Arts and Business Council program. This replaces an earlier authorization for a \$40,000 project producing cost savings of \$22,000.
- **Museum Without Walls Project Phase Two (\$2,700)** – To fund a second phase project to create a Durham History Museum website to be administered by the Museum of Durham History Inc. It would use \$2,700 of the funds remaining from the first phase project, which was completed for \$6,400 less than budgeted.

The Board of County Commissioners will have the opportunity to vote on the initiatives at the March 12 Regular Session.

Mr. Parker continued his discussion stating that the Cultural Master Plan Advisory Board recommends that the Board of County Commissioners receive the following three reports that was presented at the February 9, 2009 Board of County Commissioners meeting:

- **Durham History Museum Report** –The Durham History Museum Feasibility Study prepared by Riggs Ward Design.
- **Public Art Consultant's Report** - Summary Recommendations: Public Art Planning and Implementation report prepared by Janet Kagan of the Percent for Art Collaborative LLC.

- **Cultural Master Plan Initiatives Report** - The report recommends 12 new initiatives, totaling \$74,900, from County-provided funds. It proposes using \$25,700 in funds remaining from the original funding provided by the County for the Arts and Business Council project and Museum Without Walls project and \$49,200 from the County funds in the 2008 - 2009 fiscal year budget.

Mr. Parker concluded his comments by stating that the Cultural Master Plan Advisory Board (CMPAB) presented a recommendation for funding of projects in response to the Hispanic Cultural Initiative RFP. The CMPAB met on February 26.

The Board commended Peter Coyle, Cultural Master Plan Project Manager, and Mr. Parker on the excellent presentation.

Directive

Move to March 12 consent agenda

GoPass for County Employees

Tobin L. Freid, Sustainability Manager, introduced this item, stating that the Board is requested to receive the report on the proposed GoPass bus pass program and to provide direction to staff.

Ms. Freid provided background, stating that in the fall of 2008, the BOCC authorized \$25,000 for sustainability initiatives including bus passes for employees. The funding has been used to create a pilot program offering monthly DATA passes. Due to the popularity of this program, the Sustainability Manager has negotiated a deal with Triangle Transit to be able to offer the GoPasses to County employees.

The GoPass is a monthly pass that is good for all local and regional bus services (DATA, Triangle Transit, CTRAN, and CAT). The pass would be subsidized by the County as a benefit to employees and an incentive to help reach our greenhouse gas emissions reduction goals and requirements under the Durham County Trip Reduction Ordinance. Employees would also pay part of the cost of the passes. The following options can be implemented based on available funding:

- Option 1) Employees get the GoPasses for free and Durham County pays the entire cost.
- Option 2) Employee to pay \$10/month pre-tax for the GoPass and Durham County pays the difference, up to \$20,000.
- Option 3) Durham County does not offer the GoPass but allows employees to buy bus passes with pre-tax dollars.

Vice-Chairman Reckhow asked that the Board move forward with the County Manager's recommendation to implement Option 2.

Ms. Freid responded to Commissioner Heron's question about the monitoring and identification needed to ensure that bus passes are not being misused. She stated that bus systems lack the capacity to monitor those that would utilize the passes. Employees would have to sign a policy form understanding that disciplinary action would be enforced if the passes are misused.

Commissioner Bowser asked if the funds allocated for the GoPass program would be paid to the City or be paid according to how many people utilize the service.

Ms. Freid responded stating that funds are invoiced on a monthly basis according to usage. The contract with the City would not exceed the amount that has been presented.

The Board thanked Ms. Freid for the information.

Notice of Residual Petroleum

County Attorney Chuck Kitchen presented this item. He stated that the County acquired 528 E. Main Street from Canaday Cab Company on December 27, 2006, to be included in the 500 E. Main Street block for the Human Services complex parking lot. A Phase II Environmental Site Assessment was completed by Trigon Engineering in August 2006. Due to an underground storage tank found, a Limited Site Assessment (LSA) was completed by Trigon to determine what, if any, contaminants were present on this parcel. As a result of the LSA and as required by N.C.G.S. 143B-279.9 and 143B-279.11, a Notice of Residual Petroleum is required to be recorded with the Durham County Register of Deeds Office indicating that petroleum constituents remain on the site but are not a danger to public health and the environment, provided that the restrictions described on the Notice are complied with.

County Attorney Kitchen acknowledged that Trigon has already requested a No Further Action letter from DENR contingent upon the recording of the Notice. Approval by the Board is necessary because the Notice restricts the property from having water wells being installed or operated on the site and is necessary to obtain a No Further Action letter from DENR.

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

Vice-Chairman Reckhow moved, seconded by Commissioner Bowser, to approve the recordation of the Notice of Residual Petroleum.

The motion carried unanimously.

Recess

There being no further business, Chairman Page recessed the Worksession until Thursday, March 12, at 3:30p.m.

Respectfully Submitted,

Angela M. Pinnix
Clerk to the Board's office