

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

Monday, February 4, 2013

9:00 A.M. Worksession

MINUTES

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

Present: Chairman Fred Foster, Jr., Vice-Chair Brenda A. Howerton, and Commissioners Wendy Jacobs, Michael D. Page, and Ellen Reckhow

Absent: None

Presider: Chairman Fred Foster, Jr.

Citizen Comments

The Board of County Commissioners provided a 30-minute comment period to allow Durham County citizens an opportunity to speak. Citizens were requested to refrain from addressing issues related to personnel matters.

The Chair noted that no one signed up to speak.

Durham Tech Update on Implementation of Financial Assistance with ¼ Cent Sales Tax Proceeds

Dr. Bill Ingram, President, Durham Technical Community College, discussed Durham Challenge, Durham Tech's development and implementation of a needs-based financial assistance program, using proceeds from the ¼ cent sales tax. Durham Technical Community College will receive \$888,030 in the tax proceeds in Fiscal Year 2013-2013.

Dr. Ingram highlighted the work study program that would assist students with tuition. The average benefit is \$2500 per semester. Plans include expanding the work study program to allow paid interns to obtain work off campus.

Commissioner Page commented on an article about a food pantry at Durham Technical Community College. He commended Dr. Ingram on the initiative.

Dr. Ingram stressed that the focus would be to align dollars for students who have the greatest needs.

The Board emphasized the need to market the program and educate the public on the financial assistance efforts made possible by the Durham County Education tax.

Commissioner Jacobs inquired about the possibility of renaming the initiative from Durham's Challenge Grant to Durham Scholars grant. Dr. Ingram was open to look at other names, although Durham Scholars may be currently used.

Commissioner Reckhow stressed the need for accountability. She encouraged Dr. Ingram to work with County staff to make sure funds allocated for the scholarship program were used appropriately. She also expressed concern about the program addressing the number of low income students who feel that college is not an option because of their finances.

Dr. Ingram concurred with the concerns. He commented on the decreased level of support from the State. He explained that tuition does not remain with the College—it goes to Raleigh. \$8 million dollars in tuition goes to the State. Any new money has come by way of tuition increases, which places a larger burden on the students.

The Board discussed book fees and options available to students.

The Board thanked Dr. Ingram for his presentation.

2013 Durham County Legislative Agenda

Deborah Craig-Ray, Assistant County Manager, shared information on the 2013 Legislative Agenda. She reminded the Board about the Legislative Breakfast with the Durham Delegation to be held February 15, 2013. She also asked the Board to begin thinking about any Federal goals.

Ms. Craig-Ray presented the following 2013 Legislative Goals:

1) **Legislation to Amend Standards for Jail Dormitories**

Vice Chair Howerton expressed concern about the dormitories increasing to house more mental health inmates.

County Manager Ruffin responded that the County tries to keep one pod available to offer a separation from other populations.

2) **County of Durham Design Build Authorization for Sewer and Water Facility Construction**

There were no questions or comments.

3) **Seek Legislation to Allow Additional Deer Hunting in Durham County**

Chief Don Ladd, Durham Sheriff's Department, spoke about the number of investigations last year due to deer. The Sheriff's Department has installed grills on the fronts of their vehicles as a cost savings.

He spoke about dog hunting in Durham. Durham has become more urban and not conducive for dog hunting.

Attorney Siler recalled landowners complaining about dogs on their property when the County previously permitted deer hunting with dogs.

Chief Ladd offered other suggestions such as extending the deer hunting season.

Chairman Foster inquired whether bow hunting would cause fewer injuries than guns. Chief Ladd responded that there would most likely be fewer injuries with the bow.

Emily Leik, ICMA Fellow, shared results from research that indicated there was no evidence that extending the bow hunting season has decreased the deer population.

The Board discussed making sure that Durham County's language was consistent with the City's in addressing this item.

Attorney Siler suggested that the Board delay action on this item to allow more research and come back with a recommendation on Monday, February 11.

Commissioner Reckhow suggested looking at Duke Forest's approach to handling the deer population.

4) **Seek Legislative Authority to Defer Filing Fees for Civil Penalties**

Attorney Siler stated that no other counties have reached out to the County Commissioners' Association regarding the filing fees. He will discuss the matter at the County Attorneys' Conference before moving forward on the item.

5) **Seek Legislation Regarding Rent Control**

Commissioner Page stated that this item was submitted by a citizen, and he was acting on behalf of the citizen.

Attorney Siler noted that there are only two other states that have legislation on rent control. The NC Statutes prohibit rent control.

Commissioner Reckhow remarked that she was reluctant to put this item forward.

Commissioner Page expressed concern about the number of people being displaced because of increasing rents, and those people need some help.

Commissioner Reckhow commented that the County needs to work with the City to build more affordable low cost housing. She added that this item should be studied further. Commissioner Page concurred.

Commissioner Jacobs recommended working with the City, and looking at solutions we can achieve without having to go to the State Legislature.

Attorney Siler asked for direction in proceeding with a study. Chairman Foster was especially concerned about the elderly and low income. Commissioner Page added that renters have many rights, but landlords should act respectfully as well. It is important that we protect our citizens, especially the citizens.

Vice Chair Howerton wanted to make sure all impacted parties are a part of the conversation.

6) **Durham Crime Cabinet Items**

Ms. Craig-Ray indicated that the following items listed had been approved by the Crime Cabinet. Some of the items were also on the City's Legislative Agenda. She clarified a language change.

The language is attached.

Ms. Craig-Ray shared the NCACC's recommended items and asked for the Board's support.

Changes to the legislative items will be brought back before the Board on February 11 for official action.

Durham-based Community Development Impact Investment Fund Proposal

Mr. Henry McCoy shared a presentation to introduce the Board to a possible public-private partnership concept. The presentation entitled, "Project Snowball," focused on the challenges around communities and economic development.

Mr. McCoy defined and discussed impact investing. Impact Investing is the fastest growing investment space and one of the fastest growing emerging industry sectors (International Market).

He felt that Durham could be a hub for impact investment. In his opinion, Durham could benefit by receiving a significant amount of direct investment into the community (community development; affordable housing; small business; etc).

President Obama created the Office of Social Innovations which spreads money across the United States to help address social problems. There are investors across the country and the world that are looking becoming hubs for impact investing.

Two areas of potential funds that would be discussed in the early stages would be revitalization funds (Health, Education, Clean Energy, Technologies); and sustainable property funds (affordable housing). The target would be under-served areas.

Commissioner Page questioned whether this initiative would require staff time. Mr. McCoy responded that it would mean sitting down with staff based on the strategic plan to see what the fund vehicle would look like.

Commissioner Jacobs inquired about actual existing governments using this model. Mr. McCoy replied that there are no governments using the model at this time. Durham could be a pilot.

Manager Ruffin compared the concept to American Tobacco which was a joint public-private venture.

Vice Chair Howerton expressed her interest in exploring the idea of public/private partnerships.

Commissioner Reckhow would like to know more about the County's role in a partnership. She would like to see other models.

Manager Ruffin stated that he would be happy to meet with Mr. McCoy and come back to the Board with recommendations.

Durham County Courthouse Long-Term Financing

Mr. George Quick, Finance Director, updated the Board on long term financing for the Courthouse and refinancing of the South Deck at American Tobacco.

Mr. Quick explained that the parking has more than \$6 million outstanding at a rate of 4.415%. There is an opportunity to refund; however, the dollars are small so Mr. Quick spoke with the lender. Based on where the market is, he negotiated a reduced rate of 1.6%. The terms would remain the same. Mr. Quick explained that this is called is refunding and carries a prepayment penalty. He noted that the transaction would be a taxable transaction because of the use of the property.

Mr. Quick spoke on financing of the new courthouse. Mr. Quick recommended that the County take advantage of 30 year financing vs. 20 year financing for the construction of the courthouse. Financing for the courthouse renovation at 100 E Main Street would be \$125 million for 30 years. He felt the County should take advantage of the financing. Debt service would be reduced. The financing is scheduled to take place on March 28. Wells Fargo would be the lead finance banker, with other banks sharing in a portion of the financing. Once the projects are complete, if there is a surplus, Finance will come back to the Board for guidance on redirecting the funds.

The Board thanked Mr. Quick for continuing to find innovative ways to save the County money.

Approval of Certain Economic Development Agreements

Ms. Marqueta Welton, Deputy County Manager, requested that the Board suspend the Rules and approve economic development incentive agreements with Sentinel NC-1, LLC dba Sentinel Data Center; Gentian Group, LLC dba Holland Hotel; and 21C Durham LLC dba 21 Museum and Hotel, which matters have already been through a public hearing and authorized by the Board. All of the terms in the respective agreements have been agreed to by the companies.

Commissioner Reckhow questioned the timing of paying the incentives. Ms. Welton clarified that the County has started incentives in the past prior to the project being complete. Manager Ruffin added that this action has been taken depending on the State's incentive grant requirements.

Ms. Welton reminded the Board that all incentive policies have claw back protection.

Vice Chair Howerton moved, seconded by Commissioner Jacobs to suspend the rules.

The motion carried unanimously.

Commissioner Reckhow moved, seconded by Commissioner Jacobs to approve economic development incentive agreements with Sentinel NC-1, LLC dba Sentinel Data Center; Gentian Group, LLC dba Holland Hotel; and 21C Durham LLC dba 21 Museum and Hotel.

The motion carried unanimously.

Request to Brief the Board on the Crime Cabinet's Recommendation to Fund Three Chemist Positions in the State Bureau of Investigation's Crime Lab

County Manager Ruffin clarified that he would not support the position requests if the City was not willing to have equal participation. The backlog problem is shared by the City and County. Administration felt the Board needed to hear the presentation.

Deputy County Manager Worsley, and Emily Leik, ICMA Fellow, presented recommendations from the Crime Cabinet. Ms. Leik shared results from her analysis. Some of the options for conducting forensic drug and blood analysis included partnering with Duke University Medical Center, partnering regionally, using a private center, hosting a crime lab here in Durham, or funding three positions at the State's Crime Lab. The Crime Cabinet's recommendation was to fund three Chemist positions.

Due to the increased caseload, the State Bureau of Investigations (SBI) is backed up. Therefore, a person may be incarcerated for six months while waiting for the results which cost approximately \$98 per day.

Private companies do not provide the type of analysis needed. Chatham and Iredell Counties are interested in partnering. Ms. Leik shared the advantages and disadvantages of such an arrangement.

If Durham opted to fund the three chemist positions, Durham would fund salaries but not equipment.

Chairman Foster asked if it was possible that Durham would lose control of the chemists if it ended the relationship with the State. Ms. Leik responded that the arrangement would need to be negotiated in a Memorandum of Understanding. There is a similar model in Baton Rouge. Mr. Worsley added that the agreement would explain that the three chemists would be used solely for our benefit.

Vice Chair Howerton raised questions about the advantages and managing time of the chemists. Mr. Worsley commented that there are not enough chemists to perform the work. The three proposed chemists would be able to get rid of the backlog and catch up in approximately two years. City partnership would mean sharing one-half the cost.

Manager Ruffin commented that the County is paying \$100/day for inmates, sometimes with jail duration lasting more than a year. Mr. Worsley added that there would be a reduced cost in the daily provisions we have to furnish inmates in the County jail.

The State is not doing what it needs to do to analyze cases in a timely manner; therefore, the County needs to put in money to expedite matters.

Ms. Leik stated that there may be additional costs incurred because of travel. Mr. Worsley reminded the Board that the numbers presented are estimates.

Mr. Ruffin pointed out that this would be a budget item if negotiations progressed.

Commissioner Page indicated that we need to look at this from a long term perspective. He asked that we weigh starting a crime lab in the long term vs. paying for the three chemists.

Commissioner Jacobs remarked that the accreditation process would be a timely process and not feasible while trying to catch up.

The Board discussed having two chemists vs. three. Mr. Worsley indicated that with two chemists, the backlog would grow each year.

Rules of Procedure

County Attorney Siler stated that he, the County Clerk, and Assistant County Attorney had been compiling a list of proposed items to be discussed regarding the Board's Rules of Procedures.

Assistant County Attorney Kathy Everett-Perry shared the following abbreviated list of proposed additions/amendments to the Board's Rules of Procedure and Ethics Policy:

1. **Affirmative Vote:** All Board of Commissioner members have a statutory duty to vote. Any non-vote will be counted in the affirmative and will be assessed in favor of the pending motion. This is also applicable to any votes taken during the unexcused absence of any board member.
2. **Board Appointments:** During the first meeting in January the Board Chair shall appoint members to serve on numerous county/state created boards. Prior to doing so each Board member shall identify the boards upon which he/she would like to serve. The chair shall appoint the member to serve on at least one of the named boards of their choice.
3. **Board Terms:** Under no circumstance shall a board member serve more than 8 consecutive years on any board.

4. Attendance for Board Appointments: Attendance at county/state - created board meetings are required. Board members missing more than 50% of the meetings in a fiscal year must submit a statement to the BOCC explaining the reasons for all such absences.
5. Ethics/Disclosure Statement: The completion of the Ethics/Disclosure Statement is necessary for individuals serving on a number of boards as well as those serving in certain capacities with the county organization. All members serving on the [IDENTIFY BOARDS AND OTHER INDIVIDUALS REQUIRED TO COMPLETE DISCLOSURE] shall complete the form as outlined therein by February 1st of each year.
6. Proclamation Resource Personnel: The Clerk to the Board and the County's Public Relations/Information Personnel shall serve as Proclamation Resource Persons to the Board.
7. Texting During Meeting: All Board members are discouraged from texting during meetings.

Commissioner Reckhow referenced VII. Powers of the Chairperson, 8. of the Board's Rules. "After such an appointment has been made, the Chairman shall inform the other members of the Board at the next regular meeting of the Board who shall then ratify the appointments or take other appropriate action."

Commissioner Reckhow felt that "or take other appropriate action" may have given the Board some latitude to make changes to appointments between commissioners.

Attorney Siler read the portion of 8. "The Chairman shall have the Duty to decide upon and to assign those members of the Board as he or she sees fit to membership on any other board or commission which requires a county commissioner to serve *ex officio*." He opined that even if there is a switch, the Chair would have to consent to the switch. There was a proposed switch and for one of the positions, it was not an *ex officio* position. The Agenda Action form indicated that the Chair had agreed to go along with the switch. The Board had already made a decision on the Operation Breakthrough seat at the preceding meeting. He read the last sentence of the aforementioned Agenda Action form "Commissioner Reckhow was nominated by the Chairman and has agreed to allow Commissioner Page to serve in the appointment."

Commissioner Page asked for a clarification of *ex officio*. Manager Ruffin responded that it means serving in the capacity as a county commissioner. Attorney Siler stated that the TTA position was one that a citizen could serve in; however, historically, it was an elected official.

Commissioner Jacobs asked for clarification on the suspension of rules. After reading the Board's Rules, and rules from the School of Government, she felt that as a body, the Board was able to suspend rules by a majority vote. She referenced #11 of the Board's rules.

Vice Chair Howerton recalled that rules are usually suspended at Worksessions. Manager Ruffin indicated that rules had been suspended at regular meetings for time extensions. Attorney Siler did not recall suspending rules except to vote at Worksessions and for time and procedural changes.

Manager Ruffin stated that the Board needed clarity on whether the Board could suspend rules. Attorney Everett-Perry indicated that the Board uses Roberts Rules of Procedure when there is a question. She did not feel that the Board should suspend rules for substantive matters.

Chairman Foster stated his position that was to remove “or take other appropriate action” out of #8 of the Rules.

Commissioner Reckhow suggested expanding the language of #8. She added that because of the time needed to discuss the items, the matter could be put on a future agenda for further discussion.

Attorney Siler offered that it is a much better procedure to have conversations about amending rules.

Commissioner Reckhow recommended that the Board defer this item to a different meeting and have the Attorney’s Office review further. Commissioner Page concurred with the recommendation.

Manager Ruffin recommended that the matter come back at the April Worksession.

Commissioner Jacobs asked that the Attorney look at options for #8 to allow commissioners to have input.

Attorney Everett-Perry asked for guidance on the Ethics question. County Attorney Siler will discuss the matter with Manager Ruffin.

Appointment to Raleigh-Durham Airport Authority

Chairman Foster asked for a motion to suspend the rules to take action on the Raleigh-Durham Airport Authority appointments.

Vice Chair Howerton moved, seconded by Commissioner Jacobs to suspend the rules.

The motion carried unanimously.

Michelle Parker-Evans, Clerk to the Board, distributed ballots for the Raleigh-Durham Airport Authority appointment.

Manager Ruffin made an observation that this item was deferred from the January 28, 2013 meeting because the Clerk did not put the name of an individual on the ballot since the individual was ineligible based on the current Citizen Appointment policy.

Commissioner Reckhow requested to have a discussion about #8 of the Citizen Appointment policy which reads:

“The Board of Commissioners recognizes the need to have a representative sample of the citizens of Durham County serve on boards, commissions, committees, and authorities. No citizen may serve more than eight (8) years in any one position, unless otherwise stated by statute. This policy may be waived by the Board of County Commissioners only if there are no other applicants who meet the eligibility requirements.”

Chairman Foster indicated that the Board would be violating its rules to take any other action. Commissioner Reckhow stated that she felt the policy would be a problem regarding the Airport Authority because of the cycle and succession plan they use in leadership positions. She felt that we would never have a Chair from Durham County if we used the current policy.

Commissioner Reckhow referred to an “escape clause” that existed before that would allow the Board to waive the policy, especially when there is a leadership position in question on a Board. She questioned whether the Board wanted to expand the “escape clause” when someone had the opportunity to serve in a leadership capacity.

Commissioner Jacobs interpreted the policy to say a person’s eligibility is based on the fact that they can become Chair. She would like to see the Board appoint the applicant in question for two years to allow them to serve as Chair.

Vice Chair Howerton opined that the Board would be opening up an “exception” precedence.

Commissioner Page commented that the Board could not continue to make frequent changes to the rules, and echoed the concern about making exceptions.

Commissioner Jacobs asked that the Board revisit the rules in the future. She expressed concern about not having Durham County leadership on regional boards.

After a tie vote between Larry Jenkins and Clay Wheeler, the Board appointed the following individuals to the Airport Authority:

Tommy Hunt – Jacobs, Howerton, Page, Reckhow
Clay Wheeler – Jacobs, Howerton, Page

Review of BOCC Directives

Ellen Whelan-Wuest, Assistant to the County Manager presented Board directives covering November and December, 2012, and January, 2013.

Commissioner Reckhow shared concerns about the level of communication between the Board and DPS. She suggested that Manager Ruffin intervene when Ms. Whelan-Wuest does not receive information in a timely manner.

Manager Ruffin responded that he will write Dr. Becoats, however, he cannot require DPS to respond.

Commissioner Page suggested that the communications item be discussed at an upcoming leadership meeting.

Manager Ruffin will follow up with Steve Medlin, City-County Planning Director, regarding zoning changes.

Items to be removed: Ellen Bateman sent the Board an email; and former Chair Page and the County Manager met with the ABC Board.

Closed Session

The Board was requested to adjourn to Closed Session pursuant to the following:

- 1) G. S. 143-318.11 (3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged;
- 2) G.S. 143-318.11(a)(3) to consult with an attorney in order to preserve the attorney-client privilege and to discuss the case in the matter of Geraldine Robinson v. Joe Bowser et al.

Vice Chair Howerton moved, seconded by Commissioner Jacobs that the Board move into Closed Session pursuant to the aforementioned Statutes.

The motion carried unanimously.

Reconvene from Closed Session

Chairman Foster reconvened the meeting. He announced that the Board met in Closed Session, and directions were given to staff. No action was taken.

Adjournment

Commissioner Reckhow moved, seconded by Vice Chair Howerton that the meeting be adjourned.

The motion carried unanimously.

Respectfully Submitted,



Michelle Parker-Evans
Clerk to the Board