

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

Monday, March 2, 2015

9:00 A.M. Worksession

MINUTES

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

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

Presider: Chairman Michael D. Page

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.

James Chavis asked about the project directory for the 27 story building coming downtown, all the incentives being paid, and to be ensured that jobs would be available.

Chad Meadows discussed how unsafe it was to walk his son to Forest View Elementary School without sidewalks.

Gwen Silver asked the County to move forward with listing contract jobs & government employment on the County website.

Charles Irons discussed the need for sidewalks and a crosswalk to safely walk his kids to school at Forest View Elementary School.

Discussion Items:

15-277 Discussion of Draft Public-Private-Partnership (PPP) Agreement Related to Whitted School Redevelopment

Lee Worsley, Deputy County Manager, shared updated information on the draft PPP Agreement created by staff along with Durham Public Schools (DPS), Durham City and Integral Group. Mary Nash Rusher, Attorney with Hunton and Williams, added that one key player, the tax credit investor, was not at the table, however, it was unlikely to have an effect.

Chairman Page asked who controlled the cafeteria and gym. Ms. Rusher answered both were exclusively controlled by DPS. Deputy County Manager Worsley added there had been

conversations trying to work with Durham City, YMCA, or another entity for public use. Chairman Page expressed concern about having clarity in the contract regarding the use of the buildings. Vice Chair Howerton echoed his concern. Ms. Rusher responded that the full control language was written to say that Integral Group and the Senior Housing side had no control over the gym. She added the language could be worked out between DPS and the County.

Commissioner Reckow asked for an explanation of the non-profit language. Ms. Rusher replied the partnership that owned Whitted School had to be a for-profit entity. She added unless the owner was a tax paying entity, the owner would not get the tax credit. She commented the County had the power to create a non-profit corporation whose mission was aligned with the County's mission. Ms. Rusher mentioned the non-profit would carry out the County's purposes and would be able to make an investment into another entity the County controlled. She commented it would be a tax paying entity. She added the taxing paying entity could make investments into the partnership. Commissioner Reckow asked if there was a precedent for a governmental entity who had gone through this process before. Ms. Rusher answered Durham Housing Authority.

Commissioner Foster asked if there was any liability to the Board as a governmental body or individually. Ms. Rusher replied no. Commissioner Foster asked who was actually creating the for-profit company. Ms. Rusher answered once the non-profit was formed, then an attorney would create the Articles of Incorporation and file them with the Secretary of State. Vice Chair Howerton asked who was accountable for the for-profit. Ms. Rusher answered the Board of County Commissioners would appoint a Board of Directors for the for-profit. Commissioner Reckow suggested that the Institute of Government be contacted to make sure they were comfortable with the arrangement. Ms. Rusher replied that she would contact the Institute of Government.

Commissioner Reckow asked for clarity regarding the property tax grants referenced on page 5 of the agreement. Deputy County Manager Worsley answered the term of the loan for the project was 40 years. He stated the County was not going to grant back more than \$210,000 because that was the amount needed to make the project work. He added in order to make the financing work, it would be termed out over 40 years. Commissioner Reckow asked about lease and operation of pre-school space on page 5 where it stated DPS was expected to have nominal based rent. She added given the huge investment by the County and School District in this project, she hoped to have definitive language, such as that the DPS lease would have a base rent of \$1 year or \$10 a year. Ms. Rusher responded that the language could be changed. She recommended the language read the DPS lease would have a base rent of \$1 year or \$10 a year for the use of the space. She added DPS would be responsible for utilities and maintenance. Ms. Rusher stated the partnership that owned the building could write checks to cover utilities and maintenance costs. The partnership could pass the costs to DPS and call it rent. Commissioner Reckow mentioned on page 6, it stated the parties acknowledged the source of funding for the operating cost for public pre-k space were still being evaluated and determined by the County and DPS. She asked the County Manager when the language could be tied down. County Manager Davis responded the Chair and Vice Chair would meet with the DPS Board in the Leadership meeting.

County Attorney Lowell Siler commented the County was attempting to execute an agreement that was not a normal everyday kind of deal, but more complex. Ms. Rusher responded she would pull together some examples of other projects with government bodies that were similar in creating tax credits. Commissioner Reckhow asked whether the developer had a commitment for the housing subsidy from the Durham Housing Authority. Ms. Rusher responded yes. Commissioner Reckhow asked what the rental cost would be for the non-subsided units. Ms. Rusher replied all the units would be affordable, but she would have to find out the exact amount.

Commissioner Jacobs mentioned contributions on page 4 where it stated the Durham Whitted Corporation would make a capital contribution to the owner in the amount of \$5.8 million. She asked where the \$5.8 million would come from. Deputy County Manager Worsley responded that it was the School's portion. He added it was \$2 million of Article 46 quarter cent sale tax money and \$3.8 million bond money.

Commissioner Jacobs questioned the estimated 85% ownership in the for-profit. Ms. Rusher responded the raw ownership would be based on the dollars. The County would get residual ownership. The County would own 99.9% of the partnership once the tax investors were gone. Commissioner Jacobs asked what happened to any revenues, after 15 years, when the County owned the entire facility. Ms. Rusher replied an option would be to refinance out of the whole structure and finance it a different way. Commissioner Jacobs mentioned on page 4, part c: putting all the money into a fund. She asked how much money would be in the FHA loan. Ms. Rusher answered all the dollars that were coming into the deal would be in a single pot to be drawn from construction and would be used pro rata from different sources. Commissioner Jacobs asked if there was any creative way to invest the money and earn interest. Deputy County Manager Worsley answered that it would have to be looked into. Commissioner Jacobs referenced page 5, part d: if we do get state historic tax credits, it becomes extra money. She stated it should replace contributions and not used for over-runs. Ms. Rusher replied the language could be taken out, but if the project became more expensive than the fixed contract, the scope would be reduced. Deputy County Manager Worsley stated the next step would be contact other partners and plan to makes changes, then bring back to the Board on March 9th meeting.

Vice Chair Howerton suggested that a Commissioner serve on an advisory committee so the Board would be aware of what took place at the building. Commissioner Jacobs volunteered to represent the Board.

15-278 Durham-Orange Light Rail Transit Update

Patrick McDonough, Manager of Planning and Transit Oriented Development, Triangle Transit, shared a presentation on *Durham-Orange Light Rail Transit Project*. The presentation highlighted: Build or No Build, Duke/VA Station Location Choice, Rail Operation and Maintenance Facility (ROMF) Site, New Hope Creek Crossing, Little Creek Crossing. The presentation focused on the environmental impacts of the project.

Duke University and the VA Hospital preferred the Trent/Flowers site for a station. Mr. McDonough pointed out five other potential sites for maintenance stations. Recent guidance

suggested it may be wise to move the Alston Avenue station to the west side of Alston Avenue between Grant Street and the bridge over Alston Avenue.

Mr. McDonough addressed property acquisitions and pointed out that Alston Avenue would have the greatest number of displacements. Farrington Road would be the next highest.

Mr. McDonough agreed to research the stream going through the Cornwallis site, and possibly being in the Riparian Zone, and come back to the Board with an answer.

Mr. McDonough clarified that Alston Avenue would have a station, but did not have to be the site of the rail yard which would cause the highest number of displacements. Mr. McDonough stated that the Board would have an opportunity to give input in November or December. Mr. McDonough explained the process for recommending the site would go through the Board's MPO representative.

Public meetings had been scheduled for citizens in March. The next presentation was planned for the Board in May.

15-279 Request from Parkwood Volunteer Fire Department for Durham County to Assume Operations of the Fire Department

County Manager Worsley announced Fire Marshal Batten was retiring, so this would be his last worksession.

Fire Marshal Batten shared a presentation with background information about the Parkwood Volunteer Fire Department. He thanked the Board for their support over the years.

Chairman Page thanked Fire Marshal Batten for his work and level of integrity. He asked if the Parkwood Board would be dissolved if the County took over the department. Fire Marshal Batten responded the Parkwood Board would be dissolved with a transitional period. He added the entire operation, assets, and equipment would be deeded over to the County.

Commissioner Reckhow asked about the proposed staffing plan which included more than 15 employees. Fire Marshall Batten responded the staffing plan included the Bethesda district. Commissioner Reckhow asked what would happen to the Parkwood Fire Department's active volunteers. Fire Marshal Batten answered the active volunteers who could meet the standards of training and put in their required hours would continue to be able to serve. Commissioner Reckhow asked about the possibility of establishing an Advisory Committee that would allow for input from various areas that the County was taking over. Fire Marshal Batten answered the Parkwood Board could reorganize as a non-profit that would serve the fire department.

Commissioner Jacobs asked with the consolidation, if the department be able to meet the needs of the RTP expansion. Fire Marshal Batten responded with the consolidation and request for additional positions, the department would be positioned to do what needed to be done. Deputy County Manager Worsley added the RTP Foundation was very supportive and working together would provide adequate service. Commissioner Jacobs asked if the three different fire stations would remain the same. Fire Marshal Batten responded yes. Commissioner Jacobs asked would

there be consideration in the future for partnership with the City about some of the residential coverage. Fire Marshal Batten answered if there was a City-County consolidation for the fire service, the conversation would have to take place in the future. Commissioner Howerton asked if the budget would be managed under the County or by Parkwood Fire Department. Fire Marshal Batten replied once the transition was complete, then the budget would be managed by the County. He added for now it would be a partnership.

County Manager Davis thanked Fire Marshal Batten for his service to the County. County Attorney Siler thanked Fire Marshal Batten for service and his professionalism.

Commissioner Reckhow asked if the County would have higher benefit costs than the Parkwood Fire Department. Deputy County Manager Worsley answered an analysis could be done to provide cost comparisons. Commissioner Reckhow asked about the administrative position that money had already been appropriated for. Deputy County Manager Worsley answered that was the Division Chief position. He added the Division Chief position was going to be incorporated into the Assistant Chief Position with the consolidation.

Directive: Deputy County Manager Worsley to provide an analysis on benefit cost comparisons.

15-249 Discussion of Sidewalks in the County

County Manager Davis discussed with the Board the need to decide whether or not the County desired to get into the sidewalk business, specifically the maintenance of sidewalks. Drew Cummings, Assistant County Manager gave a presentation on *Sidewalks in the County*. The presentation highlighted: Background, Erwin Road at Randolph, Herndon-Barbee-Massey Chapel, Trade-offs, and Policy Options.

Chairman Page asked if the Erwin Road at Randolph site was the only community to come to the Board to ask about sidewalks. Assistant County Manager Cummings answered yes. Commissioner Jacobs asked who maintained the sidewalks at the Herndon, Barbee, Massey Chapel intersection. Mr. Cummings replied nobody and noted it was probably one of the orphan sidewalks. He added he asked the Department of Transportation (DOT) what they would do if the County decided not to maintain the sidewalks. He commented DOT said they would probably still build the sidewalks. Chairman Page asked who would maintain the sidewalks, if needed, in 50 years. Mr. Cummings replied he didn't know.

Commissioner Howerton asked what kind cost projections were there for 20 or 30 years. Mr. Cummings answered it could be no cost or there could be some repair since sidewalks were projected to last for 50 years. Commissioner Howerton commented that three school principals contacted her over the weekend to say their schools needed sidewalks too. Mr. Cummings replied some schools were inside of city limits, some schools were outside of city limits. He added there was school and property that the County owned.

County Attorney Siler commented that counties in North Carolina generally did not get in the sidewalk business. He added Durham was more urbanized. He stated that assuming liabilities was also part of the sidewalk business. Mark Ahrendsen, Director of the Department of

Transportation, discussed the difference between constructing sidewalks, maintaining sidewalks constructed by someone else, and the liability involved. Mr. Cummings commented about a legislative change that now allowed counties the authority to build sidewalks, but very few counties did. Commissioner Howerton asked about accepting liability if someone else built the sidewalk. Mr. Ahrendsen replied DOT moving forward as a condition of the encroachment, would make sure someone accepted the responsibility of maintenance and liability so there would be no orphan sidewalks outside the city, generally it would be the responsibility of a public agency as a County or City.

Commissioner Jacobs asked who maintained the sidewalks built in front of county buildings. Mr. Cummings answered he would find out. Commissioner Jacobs asked who maintained sidewalks built around county schools. Mr. Cummings replied they were the schools' responsibility. Commissioner Jacobs asked how time sensitive the projects were. Mr. Cummings answered he didn't think either project was urgent. Commissioner Jacobs commented it would be great to really look at policy, find out what other schools fit the criteria and look at other sources of long term maintenance with the help of the Planning staff.

Commissioner Reckow commented that it would be good to refer the sidewalk matter to some of the advisory boards. She mentioned the Public Health Board, Joint City-County Planning, Bicycle and Pedestrian Commission. Commissioner Jacobs added the Durham Public Schools. Chairman Page asked County Manager Davis to take what had been shared and ask the mentioned advisory boards to respond to the Board. He added the matter was still before the Board and would be brought back to the Board at a later date. County Manager Davis mentioned the Commissioners' focus was primarily looking at public school space. He added a big part would be looking at inventory to understand precisely what did or didn't exist.

County Manager Davis asked Mr. Ahrendsen if the State did any recent orphan sidewalks. Mr. Ahrendsen replied some orphan sidewalks occurred when the State built roadway projects outside the city and there was not a maintenance agreement. He added some orphan sidewalks occurred with new development. County Manager Davis asked was it reasonable of the County to ask the State to go ahead with construction at Erwin and Randolph. Deputy County Manager Cummings answered he could ask the State. Commissioner Reckow asked the staff to investigate a payment in lieu provision related to sidewalks outside city limits so a fund could be established. Chairman Page asked Drew to bring the sidewalk matter back to the Board in a timely manner. Commissioner Jacobs mentioned getting information about sidewalks on all Durham County Schools that were outside of city limits.

Directives: Refer the side sidewalk matter to some of the advisory boards: Public Health Board, Joint City-County Planning, Bicycle and Pedestrian Commission and Durham Public Schools.

- **Investigate a payment in lieu provision related to sidewalks outside city limits so a fund could be established.**
- **Get information about sidewalks on all Durham County Schools what were outside of city limits.**

Commissioner Foster asked to suspend the rules to excuse him from Monday's meetings on March 9th.

Commissioner Reckhow moved, seconded by Commissioner Howerton to suspend the rules for the sake of excusing Commissioner Foster from Monday, March 9, 2015 meeting.

The motion carried unanimously.

Commissioner Reckhow moved, seconded by Commissioner Howerton to excuse Commissioner Foster from the March 9, 2015 meeting.

The motion carried unanimously.

Adjournment

Commissioner Reckhow moved, seconded by Commissioner Jacobs that the meeting be adjourned.

The motion carried unanimously.

Respectfully Submitted,

Macio Carlton
Senior Administrative Assistant