

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

Monday, November 8, 2010

7:00 P.M. Regular Session

**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

**Opening of Regular Session**—Pledge of Allegiance

**Agenda Adjustments** – There were no adjustments to the agenda.

**Announcements**

Chairman Page read the following announcements:

- Chairman Page announced that on Monday, November 1, 2010, the Board voted 3-2 to approve a \$1,000 onetime bonus for employees. He emphasized that the bonus was strictly for employees and not for the Board.
- “In Touch with Durham County,” the Durham County Television show, airs on Cable TV Channel 8 at 8:30 a.m. and 12 noon daily; 4:00 p.m. on Mondays; and 6:30 p.m. Tuesday-Sundays. Our County Commissioners’ meetings are also rebroadcast on Thursdays at 2:00 p.m., Saturdays at 9:00 p.m., and Sundays at 9:00 p.m.
- The FY2011-2012 Nonprofit Agency Funding process began on November 5, 2010 with the opening of the pre-application submission period. All Durham community nonprofits interested in applying for FY2012 nonprofit funding **MUST** first submit a Pre-Application Questionnaire and accompanying documents no later than 5:00pm on December 15, 2010. All nonprofits who meet the eligibility criteria outlined in the County’s nonprofit policy will then be invited to apply for FY2012 funding. The Pre-Application Questionnaire and the Nonprofit Agency Funding Program policy will be available on the County’s website from November 5, 2010 through December 15, 2010. Early submission of the Pre-Application Questionnaire is encouraged. For additional information, please contact Laura Jensen in the Budget and Management Services department at 560-7065.

- The Low Income Energy Assistance Program (LIEAP) is taking applications from now until November 12. The program provides families with a one -time cash payment to help pay their heating bills. Interested residents must visit and submit their application at Durham County Social Services, located at 300 North Duke Street, from 8:30 a.m. until 4:30 p.m. For more information, call (919) 560-8301.
- Vice Chair Reckhow distributed Bike & Hike maps to the Board that she received while attending an Energy Fair highlighted at the last meeting. She wanted to make citizens aware that the map is available on line at [www.BikewalkDurham.org](http://www.BikewalkDurham.org).

### **Minutes**

Vice Chair Reckhow moved, seconded by Commissioner Heron, to approve the October 25, 2010 Regular Session Minutes.

The motion carried unanimously.

### **Proclamation – Home Care and Hospice Month**

Chairman Page read the following Proclamation and expressed his appreciation to the recipient:

**WHEREAS**, in-home health, hospice and community based services provide for an individual's health and social needs across the continuum of life---compassionate care which serves expectant mothers, infants, children, adults, the disabled and elderly, and also provides love, comfort and support at the end of life; and

**WHEREAS**, in-home health, hospice and community based services enable Durham County citizens to access a wide variety of quality health and social services, including preventive care, acute care, sustainable long-term care and palliative care; and

**WHEREAS**, these services include care provided by home health agencies, licensed home care agencies, hospice agencies, adult day care and adult day health care facilities, and home medical equipment companies; and

**WHEREAS**, in-home health, hospice and community based services build upon a strong tradition of care and compassion, striving to keep families intact and responsible while preserving an individual's independence and dignity in the setting of their choice;

**WHEREAS**, Duke HomeCare & Hospice services has provided care to the terminally ill patients and their families for 31 years;

Now, Therefore, we, the Durham County Board of County Commissioners, do hereby proclaim November 2010, as

**“HOME CARE AND HOSPICE MONTH”**

in Durham County, and urge our citizens to celebrate all in-home and community based services.

This the 8th day of November, 2010.

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Michael Page, Chair  
Durham County Board of County Commissioners

Mr. Steve Odell accepted the Proclamation on behalf of Carol Mullis, Program Manager, Duke HomeCare and Hospice. He expressed appreciation for the recognition.

### **Consent Agenda**

Chairman Page asked the Commissioners if they desired to pull any items from the Consent agenda. Commissioners did not wish to pull any items. A citizen requested to pull item 6(c).

Commissioner Howerton moved, seconded by Vice Chair Reckhow, to approve the following consent agenda items:

- a. Approve the Resolution Authorizing a Public Auction Sale and authorize the County Manager or designee to follow the procedural steps above for removal and disposal of surplus furniture and equipment as related to the new Human Service Complex building;
- b. Authorize the amendment of the project management services contract with Phoenix Business Consulting for the ERP upgrade to SAP ERP 6.0, for the amount of \$138,000 for a not to exceed amount of \$403,600 to be paid from the Capital Project DC083, ERP (Enterprise Resource Planning) Upgrade project;
- d. Accept the Board of Adjustment Annual Report for Fiscal Year 2009;
- e. Approve the attached resolution and thereby approve the nominated Durham County members to the Piedmont Food and Agricultural Processing Center Steering Committee.

The motion carried unanimously.

### **Public Hearing – Durham County Industrial Facilities and Pollution Control Financing Authority issuance of Revenue Bonds**

Chairman Page introduced the public hearing and recognized Deputy County Attorney, Carol Hammett.

Ms. Hammett gave a brief overview of the request. The Board of Commissioners is requested to hold a public hearing concerning the issuance and sale by The Durham County Industrial Facilities and Pollution Control Financing Authority (“Authority”) of its Revenue Bonds in an amount not to exceed \$65,000,000, the proceeds of which will be loaned to Chesterfield Partners, LLC, a North Carolina limited liability company or affiliate or subsidiary thereof (“Borrower”), to be used to finance the acquisition, construction, renovation and equipping of a building to be renovated into a mixed use facility (office, retail and restaurant) (the “Project”). The Project consists of a total of approximately 360,000 square feet located on an approximately 1.484 acre

tract at 701 W Main Street, which is the corner of Duke Street and Main Street in Durham, Durham County, North Carolina. The Project will be owned and operated by the Company, or an affiliate or subsidiary of the Company. The Company expects the total cost of the Project to be financed with the Bonds to be approximately \$65,000,000. The Authority and the Company entered into an inducement agreement with respect to the Project and the Bonds on October 6, 2010.

Mary Nash-Rusher, Bond Counsel stated the bonds were recovery bonds. The governing body must approve in principle the bonds after the public hearing. She stated that the neither State nor county has any obligation for repayment of the bonds. Private parties use the bonds to invest in projects and seek financing at lower rates.

Justice Burley Mitchell, representing Chesterfield Partners, reiterated that there would be no liability to the County. The property is shovel ready. He added that the project would have a positive impact on Durham, would generate 200 jobs during construction, and provide 150-200 indirect jobs after completion.

Josh Parker, Managing Partner of Chesterfield outlined the plans for Chesterfield. He stated that 20 percent of the units will serve as workforce housing, and nonprofit rent will be below the market rate.

Chairman Page opened the public hearing.

Bill Kalkhof, Downtown Durham Inc. and John White, Chamber of Commerce spoke in favor of the project and encouraged the Board to support the resolution.

Chairman Page closed the public hearing.

The Commissioners commended Josh Parker and wished him much success.

Vice Chair Reckhow moved, seconded by Commissioner Heron to approve the Resolution of approval in principle for the issuance of the bonds to Chesterfield Partners, LLC for the acquisition, construction, renovation and equipping of the Chesterfield Building to be renovated into a mixed use facility.

The motion passed unanimously.

### **Continuation Public Hearing – Economic Development**

Chairman Page recognized Deputy County Manager, Carolyn Titus. Ms. Titus presented the following account regarding the request.

The Board is requested to hold a public hearing to consider allocating economic development investment funds to the Hill, LLC, a wholly opened subsidiary of Greenfire Development, LLC, for converting the historic ‘Hill’ and ‘Trust’ buildings, located on Main Street between Corcoran and Market Streets, to a 165-room boutique hotel and spa, also known as the “Spark Hotel

Project". The total project investment is approximately \$53.9 million, including \$25 million in Federal Economic Recovery Zone Facility Bonds (approved in principle by the Board of County Commissioners on July 26, 2010.) The Spark Hotel Project will consist of over 165,000 s.f. and include a LEED certified four star hotel, spa and restaurant. The project will have a significant impact to downtown Durham. The Project will result in at least 125 new permanent jobs in downtown Durham. The additional sleeping rooms in downtown are anticipated to increase the number of conferences and conventions booked at the City and County's Convention Center. The property is located directly in the center of the City and is key to the ongoing revitalization efforts taking place in downtown Durham. The occupancy tax revenue and associated visitor spending will have a strong economic impact beyond the property itself. Many restaurants and retail business are anticipated to locate in the area as a result of the Project.

Since 2003, Greenfire Development has been actively engaged in the revitalization of downtown Durham. Greenfire has completed over six redevelopments, including the conversion of the historic Baldwin and Kress buildings into "residential over retail," and the combined three historic buildings on Parrish Street, into a mixed use project named Rogers Alley. Greenfire has developed public/private partnerships with the City and County governments, and is aligned with community development goals and the Downtown Master Plan. Greenfire officials have stated that incentives from the local government are vital in its ability to complete this project.

Staff's recommendation is that the County participate in this economic development project by providing up to one million (\$1,000,000.00) in incentive funds after the project is completed and open for business. The incentive award would be subject to final approval by the Local Government Commission (LGC), and would be provided over a ten year period through an economic development incentive fund performance contract.

Chairman Page opened the public hearing.

Allan Lang recommended that Greenfire be required to adhere to all laws and keep its buildings in good condition;

Bill Kalkhof, DDI; John White, Chamber of Commerce; Chuck Watts, Parrish Street Advocacy; Larry Hester, Durham Business & Professional Chain; Starla Tanner, NCCU; Chris Mesecar, the Art Institute; and Teresa Anile, owner of Revolution restaurant, spoke in favor of the hotel project. They all echoed the need for more hotels downtown. Ms. Tanner and Mr. Mesecar spoke about the opportunities to partner the hospitality programs at NCCU and the culinary programs at the Art Institute and give students hands on experience in a luxury hotel in Durham. The proponents were excited about employment and growth opportunities in downtown Durham.

Shelly Green, Durham Convention and Visitors Bureau, was present to provide information and answer questions about the hotel market. She affirmed that there was a lack of hotel rooms in downtown Durham. Durham is 83 percent below the national benchmark in downtown hotels.

Charlotte Woods, representing Concerned Citizens for Accountable Government, expressed concern about other hotel owners not receiving notification. She was concerned about taxpayers having to pay for the hotel. In her opinion, there was not enough information provided.

Chairman Page clarified that the public hearing had been properly advertised on October 29.

Victoria Peterson would like to see the non profits and affordable rent options for young people in downtown Durham.

Stephen Mangano, representing Greenfire Development, reiterated the need for hotels downtown. He added that there is challenge to fund hotels right now. Starwood Hotels will create over 130 jobs on a long term basis.

Chairman Page closed the public hearing.

Commissioner Howerton questioned the salary range for the hotel. Mr. Mangano replied that he did not have detailed information; however, he assured the Board that salaries would be higher because of the boutique status. All salaries will be at least at the livable wage. Chairman Page requested more information on the types of jobs and salaries.

Chairman Page hoped that the commitments would be fulfilled and address some of the needs of the citizens in the community.

Vice Chair Reckhow reiterated that the payment would only be made after the hotel opens. That would reduce the risk for Durham County. She commented that the property is the tallest building in downtown Durham and would be a critical project.

Commissioner Bowser echoed the sentiments about the importance of the tallest building in downtown and wished the project well.

Commissioner Heron expressed concern about Green Fire having funding in place. Mr. Mangano responded that there is no risk on the County's behalf until the hotel is built. He stated that Green Fire continues to proceed on the financing course. The Board's approval was a key piece in the process.

Commissioner Bowser moved by Vice Chair Reckhow to approve entering into an economic development incentive contract between the County of Durham and the Hill, LLC, in the maximum amount of \$1,000,000.00. The incentive award would be subject to final approval by the Local Government Commission (LGC), and would be provided over a ten year period through an economic development incentive fund performance contract.

The motion passed unanimously.

### **Public Hearing – TC0900008 – Riparian Buffers**

Chairman Page recognized Aaron Cain, Acting Planning Supervisor. Mr. Cain introduced the item. He explained that revisions had been made since the original draft as a result of City

Council action taken on November 1 where Council made changes to the proposed draft. The revisions are Attachment (c).

The text amendment deals with three issues. One is a set of state mandated changes to the unified development ordinance to be in compliance with the Jordan Rules. The second is a set of changes recommended by the Environmental Enhancement for Unified Development Ordinance Committee; and the third is a set of staff recommended changes to make sure that the new Jordan Rules mesh well with the unified development ordinance.

Attachment A referenced a proposal to widen stream buffers from 50' to 100' in rural and suburban tiers, and the wetland buffers to 50'. City Council decided to not include those provisions in the draft they adopted, so those provisions are not being considered by the Board.

Mr. Cain recommended that the Board adopt the revised Attachment C as the City Council approved so there will be a unified ordinance.

Mr. Cain called attention to concerns on Attachment C, page 12, Section 8.5.4.D.1.c regarding signage. He also noted that the Board is required by State regulations to adopt the state mandated portions by November 9.

Commissioner Heron asked for a definition of "stream buffer." Mr. Cain defined "stream buffer as an area to either side of the bank beginning at the top of the bank and extending outward along the land to a certain width.

The State is setting a minimum of 50' for all perennial and intermittent streams in the Jordan Basin. Durham County has met the State requirements since 1999.

Vice Chair Reckhow clarified that the watershed protection areas have more stringent stream buffers. The critical areas have 150' and the basin buffers are 100'. Mr. Cain concurred and assured the Board that nothing in the proposal would diminish the existing buffer widths in the City or County.

Commissioner Heron expressed concern about the impact to buffers in the event of major storms. Mr. Cain stated that the buffer is established at normal flow of the bank. If the bank moves, the buffer moves with the bank.

The Manager posed questions about the advertising. Attorney Siler confirmed that he was comfortable with the advertising compliance.

Commissioner Howerton questioned the concerns made about Section 8.5.4.D.1 of Attachment C. Mr. Cain explained that there was concern about the words "at least" on the first line to ensure that signs were not erected that would be aesthetically unpleasing. He indicated that staff had no problem with removing the wording. The statement would read "the signs shall be 4 inches x 6 inches in size."

Vice Chair Reckhow clarified that the first page referred to compliance of the Jordan Rules. The ordinance includes the whole county including the Neuse Basin. She noted that the County has very stringent buffers in the County's watershed regulations. She stated that the committee who studied this issue recommended that stream buffers be increased in general (except for downtown and urban areas). Mr. Cain interjected that the Planning staff has been directed by City Council to further study the increased buffers. She expressed a concern that the City and County would not get any credit under Falls Lake Rules for the increased buffer. She suggested having experts from North Carolina State University provide technical guidance in writing so the Board can negotiate with the State on this matter.

Vice Chair Reckhow recommended approving Attachment C and then getting technical guidance together. She felt it was a good idea to be proactive in looking at wider stream buffers. She concurred with the sign recommendation.

Mr. Cain stated that Planning had worked with NC State University previously and would be happy to request guidance on this matter. He commented that the signs would only be required on redevelopment or new development. Existing homes would not require signage in the Riparian buffer.

Chairman Page asked for clarification on what City Council tabled. Mr. Cain responded that Council tabled raising the width of stream buffers from 50' to 100' in the suburban and rural tier, and increasing wetland buffers from 25' to 50'.

Chairman Page opened the public hearing.

The following citizens signed up to speak: Tina Motley-Pearson, Dan Jewel, and Will Wilson.

Ms. Motley-Pearson spoke about the importance of Riparian buffers. She spoke about the different soil types in Durham.

Mr. Jewel affirmed that he and Frank Thomas met with Planning staff prior to the meeting. He and the Homebuilders' Association recommended that the Board adopt Attachment C.

Mr. Will Wilson urged the Board to consider wider stream buffers. He commented that Durham needs to restore streams. He presented charts showing the stream flow of urban and rural streams. Mr. Wilson suggested adopting 200' buffers.

Chairman Page closed the public hearing.

Vice Chairman Reckhow moved, seconded by Commissioner Heron to approve Attachment C and go on record as the City Council that staff get more scientific information, meet with stakeholders involved, and come to a resolution related to the outstanding issues that have been deleted.

Commissioner Heron questioned the timeframe. Mr. Cain replied that it will depend on how things move in Raleigh the Jordan Lake Rules and trying to get wider buffers incorporated into



the process. He hoped the matter would go back in a few months to the Joint City/County Planning Committee in February or March.

The motion passed unanimously.

### **Item Pulled from Consent Agenda**

Citizen Victoria Peterson requested that the item below be pulled from the Consent Agenda:

(c) Authorize the County Manager to execute a License Agreement with the City of Durham for the County's Fiber Optic Network Infrastructure within the City's Rights of Way;

Chairman Page recognized Ms. Peterson.

Ms. Peterson asked the County to slow up on the project. She expressed concern that citizens have not been brought to the table. She asked how citizens and businesses could benefit from the project.

She also expressed concern about the County being involved with the project. She indicated that State government says only City municipalities can lay down fiber optics and cable.

Manager Ruffin explained that the license agreement is asking the City to lay the fiber optic in the City's right of way so the County can connect to properties owned by the County. The Manager indicated that the City and County are exploring expanding fiber optic possibilities.

Vice Chair Reckhow moved, seconded by Commissioner Howerton to approve item 6(c).

The motion carried unanimously.

### **Reconsideration of Action on Item 9**

Vice Chair Reckhow moved, seconded by Commissioner Bowser to reconsider action on Item 9.

The motion carried unanimously.

Vice Chair Reckhow moved, seconded by Commissioner Bowser to adopt Attachment C with one minor amendment that the words "at least" be deleted at from D.2.d at the bottom of page 12 and that we move ahead with the review of the outstanding issues with the stakeholders.

The motion carried unanimously.

### **Adjournment**

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There being no further business, Chairman Page adjourned the meeting at 8:55 p.m.

Respectfully submitted,

V. Michelle Parker-Evans  
Clerk to the Board