

## **Orange County Justice Facility Parking Issue Timeline**

**November 2006** - Hillsborough Board of Adjustment granted Orange County's application for site plan approval for Justice Facility expansion project. The site plan approval included a condition, at Orange County's request, that the parking requirement established for the expanded facility by the existing Hillsborough Zoning Ordinance would be satisfied by, in part, the establishment of 125 parking spaces for use by County/Justice Center employees, those "remote" parking spaces being located at the Durham Tech campus then under construction in Waterstone, about 2 miles from downtown Hillsborough. The condition imposed by the Board of Adjustment in November 2006 required the County to submit documentation (referred to in the Board of Adjustment minutes as the "process document") of how the "satellite" parking facility would function. No specific timeframe or deadline for satisfying the condition of approval was assigned by the Board of Adjustment; Town Planning staff interpreted the condition to require satisfaction before the zoning permit for the Justice Center was issued.

**May 17, 2007** - The zoning permit for the project was issued after the submittal of a letter by Pam Jones, Orange County's Asset management and Purchasing Director, describing how Orange County would accommodate employee parking for employees displaced by the construction work during the construction period. Ms. Jones' letter was NOT the "process document" the Board of Adjustment required, did NOT address or satisfy the Board of Adjustment's condition of approval, and no Town or County representative ever claimed that it did satisfy the condition prior to Spring 2010. A conditional certificate of occupancy was issued to allow the Courts to occupy the new building (transferring existing functions from the "old" courthouse while it was renovated). The Justice Center construction got underway, and the new building was completed, without the "process document" being submitted.

**August 2009** - The Town undertook Phase One of the Parking Study to document downtown parking needs. Orange County still had not provided the "process documents", nor did the County provide a parking plan for the expanded Justice Center in time for that plan to be included in the Town's study.

**November 2009** - Town staff met with County staff to detail the needed "process documents", which would be required before the CO could be issued. The Town had been seeking the County's parking plan for the Justice Center for months, dating back to early 2009 so that the parking issue could be addressed well before the renovation work at the "old" courthouse was complete so as to avoid any "last minute" problems.

**March 2010** – The County submitted a proposed revised parking plan – one that does not provide for employee parking at Durham Tech with shuttle service, and therefore is NOT consistent with the terms of the site plan approval granted in 2006. Town Planning Staff could not issue a Certificate of Occupancy for the Justice Center – including the renovated "old" courthouse - because Orange County had not satisfied the parking condition of the 2006 site plan approval. Only the Board of Adjustment, which issued the conditional approval in 2006, has authority to modify the approval as requested by the County (i.e., to either deem the condition to be satisfied or to approve a modified parking plan). The Board of Adjustment is required by law to apply the Zoning Ordinance requirements equally to all applicants, including Orange County. The issue before the Board of Adjustment regarding Orange County's proposed modified parking plan for the Justice Center was whether the modified parking proposal satisfies

the requirements of the Zoning Ordinance. The Board of Adjustment is an independent body which must make its decision based on the facts presented to it in the record of proceedings before it, and based on the requirements of the Zoning Ordinance.

**March, April, and May 2010** - The Board of Adjustment met on 4 separate occasions (in March, twice in April, and on May 12th) to review and consider the County's proposals. The County did NOT present a plan that either (a) satisfied the condition of site plan approval (i.e., submit a "process document" describing how the remote parking lot at Durham Tech would function in a way that would help address the parking concern in the courthouse area) or (2) satisfied the existing Hillsborough Zoning Ordinance requirements for off-street parking.

**May 12, 2010** - The Board of Adjustment made the ONLY decision it could consistent with the law and existing zoning requirements – it denied the County's request that the Board approve its modified parking plan. Nothing in the Board of Adjustment's decision prevents the County from complying with the original condition of site plan approval by establishing a program, to be described in "process documents", for employee (and possibly others) remote parking at the Durham Tech campus with shuttle service to the Courthouse.

**May 14, 2010** - Chief Administrative Judge Joseph Buckner filed an Administrative Order that Court activities would resume at the "old" courthouse on May 17<sup>th</sup> even though no certificate of occupancy for the renovated "old" courthouse had been issued. Judge Buckner had been aware of the dispute between the Town and the County, and had participated in the Board of Adjustment's hearing in on the proposed modified site plan in April. Court activities have since resumed, and the Town has been advised that more activity should be expected when traffic court returns to the Courthouse beginning June 2, 2010.

**May and June 2010** - Town Planning Staff monitored parking in downtown Hillsborough as part of Phase Two of the Parking Study.

**May 26, 2010** - Town Zoning Officer issued a Notice of Violation to Orange County Manager Frank Clifton that stated that the renovated Orange County Courthouse located at 106 E. Margaret Lane is currently being occupied without a valid Certificate of Occupancy, in violation of the conditional site plan approval granted for the Orange County Justice Center in November 2006. The Notice of Violation also stated that the Town of Hillsborough will commence assessing a civil penalty in the amount of \$100.00 per day based on violation of the conditions of site plan approval and of the Town of Hillsborough Zoning Ordinance parking requirement, unless the County complies with the conditional site plan approval or with the parking requirements established by the Zoning Ordinance for the Justice Center.

**May 28, 2010** - Orange County filed a Complaint for Declaratory Judgment with a Motion for a Temporary Restraining Order and Preliminary Injunction aimed at restraining Defendants Town of Hillsborough and the Hillsborough Board of Adjustment from assessing civil penalties, preventing or restraining the use or occupancy of the Justice Center building, and enforcing the Town of Hillsborough Zoning Ordinance parking requirement.

**June 1, 2010** - After a brief hearing and discussion in judge's chambers concerning the County's Motion for Temporary Restraining Order, etc., Orange County agreed to withdraw the motion for Temporary Restraining Order and Preliminary Injunction. The Complaint for Declaratory

Judgment which essentially asks the court to determine if the Town of Hillsborough has the authority to regulate parking on County property, remained.

**June 8, 2010** - Town of Hillsborough filed an Answer to the Complaint for Declaratory Judgment which responded to the specific allegations in the Complaint and raised various defenses based upon which the Town believes the lawsuit should be dismissed.

**June 10, 2010** – The Town filed a Motion for Judgment on the Pleadings or, in the alternative, to Dismiss the Complaint based on various legal grounds. The Motion was scheduled to be heard later in June.

**June 16, 2010** - Orange County Planning and Inspections issued a conditional Certificate of Occupancy for the “old” courthouse (including the Gordon Battle Courtroom and Mural Courtroom) without seeking or obtaining Town of Hillsborough Zoning Approval for the renovated Justice Facility, as is the usual practice (i.e., this is the only exception to such practice according to Susan Mellott, the Chief Building Inspector for Orange County, according to her sworn testimony at the Board of Adjustment’s August 11, 2010 hearing).

**June 17, 2010** - Orange County filed a First Amended Complaint for Declaratory Judgment which essentially repeated the claims from the original Complaint, but sought to add Margaret Hauth, as Zoning Officer, as a defendant and sought to modify in very minor respects the allegations contained in the Complaint.

**June 24, 2010** - Orange County filed an Appeal of the Issuance of Notice of Violation and Alleged Violation which argued that the staff interpretation of zoning compliance was inaccurate, and that the Town has no authority under law to regulate parking at the Justice Center.

**June 28, 2010** - Orange County filed a Petition for Review in the Nature of Certiorari challenging the Board of Adjustment’s May 2010 (formal Board of Adjustment Order adopted June 2010) denial of its alternative parking plan.

**July 1, 2010** - Orange County formally asked that the appeal be heard at the August 11, 2010 Board of Adjustment meeting rather than the July 14, 2010 meeting. Town of Hillsborough planning staff granted approval for the scheduling change.

**July 1, 2010** - A hearing was to be held in Orange County Superior Court on the Town’s Motion for Judgment on the Pleadings, etc. After a brief discussion with Judge Baddour the scheduled hearing was cut short because Judge Baddour indicated that he would grant the County’s motion to amend the Complaint, and by rule of procedure the Town’s Motion for Judgment on the Pleadings, etc., would be technically procedurally premature until the Town filed an Answer to the Amended Complaint.

**July 2, 2010** - Town of Hillsborough filed an Answer to the First Amended Complaint which essentially repeated what the Town’s Answer to the original Complaint had said.

**July 2, 2010** – Orange County Superior Court issues a routine Writ of Certiorari directing the Town to file the certified record of proceedings from the Board of Adjustment’s hearings in

March, April and May 2010 which preceded the Board of Adjustment's denial of the County's request for approval of a modified parking plan for the Justice Center.

**July 6, 2010** - Town of Hillsborough filed a Motion to have Judge Baddour permanently assigned to the case.

**July 27, 2010** – Town files a Motion for Summary Judgment seeking to have the County's Amended Complaint dismissed. No hearing date is scheduled yet because the Town and the County are waiting to hear if their motion to have Judge Baddour assigned to hear the case will be granted.

**August 11, 2010** - Board of Adjustment denied the Appeal of the Issuance of Notice of Violation and Alleged Violation by Orange County.

**September 3, 2010** – The Motions for Summary Judgment and Petition for Writ of Certiorari were heard by Judge Baddour of the Orange County Civil Superior Court.

**November 12, 2010** – Orange County's Motion for Summary Judgment was denied, and the court ruled that the Town of Hillsborough does have the authority to regulate parking associated with the county's courthouse expansion. With regards to the Petition for Writ of Certiorari, the court determined that Orange County had satisfied the conditions of the Board of Adjustment's 2006 site plan approval, but did not rule on whether or not Orange County is currently in compliance with the site plan approval.

**On Going** – The town has the option to appeal the November 12<sup>th</sup> decision to the Court of Appeals. Orange County's appeal of the Hillsborough Board of Adjustment's decision to uphold the May 26<sup>th</sup> Notice of Violation has not yet been heard in court.