

**MINUTES
BOARD OF ADJUSTMENT
SPECIAL MEETING**

Wednesday, April 28, 2010
7:00 PM, Town Barn

MEMBERS: Chair Al Hartkopf, Vice Chair Tommy Sikes, Dave Remington, Eddie Sain, and Bill Whitmore.

ABSENT: Rod Jones and Carla Lunsford, absences excused.

STAFF: Senior Planner Tom King, Planning Director Margaret Hauth, Town Attorney Bob Hornik, Planner Stephanie Trueblood, Planner Aspen Price, and Lieutenant/Acting Police Chief Davis Trimmer.

PUBLIC: Deborah Joy, David Taylor, Ken Redfoot, Bryant Warren, Jeff Thompson, Judge Joe Buckner, Clerk of Court James Sanford, Judge Beverly Scarlett, Elizabeth Read, and Leigh Ann Brown.

ITEM #1: **Call meeting to order and confirm the presence of a quorum.**
Chair Al Hartkopf called the meeting to order at 7:04 p.m. and confirmed the presence of a quorum.

ITEM #2: **Consideration of additions to the agenda.**
There were no additions or adjustments to the agenda.

MOTION: Mr. Sain moved to adopt the agenda as submitted. Mr. Whitmore seconded.
VOTE: Unanimous.

ITEM #3: ***Continued Item - Case #BA-05-2010 – Appeal from an adverse decision of the Zoning Officer and request for the use of an alternate screen for the parking lot adjacent to East Margaret Lane at the Orange County Justice Facility project. The Appellant is Jeff Thompson acting on behalf of Orange County. The property is located at 106 East Margaret Lane (Orange County Tax Map Reference #4.36.D.1) and is zoned OI (Office/Institutional)/HD (Historic District) Overlay.***
Mr. Hornik reminded those present that those who had been sworn in at the previous hearing would remain sworn for purposes of tonight's hearing. Mr. King swore in Deborah Joy.

Mr. King provided some brief background information regarding the issue, noting it related to the screening requirement for parking areas adjacent to streets as contained in Section 7 of the Zoning Ordinance which required an evergreen screen at least 3 feet in height. He said that the appellant was stating that they could not install any shrubs or touch the subject area because it was in an archeological area of interest. Mr. King said at the April 14, 2010 hearing the

Board had requested that the appellant come back with a copy of the archeological report, but Orange County had indicated to him that the report could not be released to the public because it contained sensitive information. He said the Board had also requested information on the proposed Spirea plants, and in response, a memo had been prepared by David Swanson, the landscape architect for the project, and was labeled as Attachment 4 in the Board's information packet.

Mr. King stated that in regards to the archeological report, Deborah Joy was on the staff with Legacy Research Associates, Inc., the agency that prepared that report and Attachment 5 contained an email from her with comments regarding that report, as well as an email from Dolores Hall of the State Office of Archeology. He said those emails suggested that it may be possible to place about 2 feet of fill across the shrub bed planting area and then on top of that fill to construct raised planting beds that would contain the root systems of the plants, or that shrubs might be planted in large pots that would be placed on the surface of the ground.

Mr. King stated that Tina Moon who was with the Orange County Environment, Resource, and Conservation Department advised him informally that it was her opinion that the area should not be disturbed at all.

Mr. Hartkopf said that would not comply with the Ordinance. Mr. King said that Mr. Hartkopf correct.

Mr. Whitmore said if the area of interest was so important, why did the curb and gutter run right through it? Ms. Joy said prior to the construction they had performed some archeological documentation and the area was then covered with a filter fabric to protect it. She said the curb and gutter construction did not effect anything that was important to that site, adding that the area was now grassed and preserved.

Mr. Sikes stated that the map denoting the area of interest appeared to be inaccurate. Ms. Joy said the map was accurate, and pointed out the location of the preserved area.

David Taylor, having been previously sworn, stated that the reason the curb and gutter and the driveway was allowed to cut through the area was because there was no cut required for the driveway entrance. He said all of the archeologically sensitive items that were underneath the ground were still intact. Mr. Taylor said the reason the parking lot was modified and brought back about 30 feet was because it was all in cut and it would have destroyed the archeological items under the ground. He said the driveway happened to follow the existing grade and did not disturb those items.

Mr. Sikes asked how deep down were those items. Ms. Joy responded that it varied across the site, noting their test excavations did not expose everything on the property. She said there were some areas that had about 6 inches of soil sitting on top of deposits, but in other places it was 2 to 3 feet. Mr. Sikes asked if there was a map that indicated where on the site items were located.

Mr. King noted he had a copy of the archeological report, but had been told by Ms. Moon that it could not be released to the public as it could jeopardize the County in some way.

Mr. Hornik said he did not understand that, noting perhaps there was some exception to the public records law that he was unaware of. He said that if the report was prepared for the County then it was a public record unless the law allowed some exception, and he was not familiar with any exception that could be applied in this case.

The Board discussed with the Town Attorney whether or not the archeological report was public record, and Mr. Hornik reiterated he was unaware of any exemption that would protect that report from public exposure. He said the County may be asking the Town not to release the report, but cautioned that the Board's meeting was public so some element of the report had to be made public so that the Board's questions and concerns could be addressed.

Mr. Taylor offered to display a portion of the report that was of interest to the Board. Mr. Hornik stated that their interest was in seeing exactly where the sensitive materials were located in relation to where the landscape screening was supposed to be.

Mr. Sikes stated that it appeared there were two options for the screening that had been suggested, one being large pots and the other raised plant beds. He asked if either of those options met the requirements in the Ordinance. Mr. King replied that the ordinance did not offer any specificity in regards to those suggestions, noting it stated only that the screening had to be of evergreen shrubs at least 3 feet in height.

Mr. Hartkopf said there was language in the statement by the appellant that used a phrase that said the large area along East Margaret Lane was deemed to be off-limits to development, and in so many words it said that was why they could not comply with the ordinance. But, he said, the email the Board had received did not say that; it simply said that they could put 2 feet of dirt there and then plant. Ms. Joy said that was correct, noting that their concern was actually digging down into the soil and getting close to or impacting deposits. She said that those organic materials would attract plant roots and through time would disturb the integrity of the site. She said if you put a couple of feet of soil on top of that and then put in a planting bed, then the root systems would not likely have much if any impact.

Mr. Hartkopf said then Ms. Joy's email actually gave the County a way forward. Ms. Joy stated it was an option as long as there was no digging.

Mr. Sikes stated that the map really did not show where the items to be protected were located in the area of interest. Ms. Joy displayed a map and pointed out those areas, noting one area was an historically undocumented industry in early Hillsborough that likely made pottery or brick, noting the presence of a kiln, and that the well on the site was made with the same brick that was on the courthouse. She said another area contained the foundation of a house, noting a house in that location appeared on an earlier map from the mid 1700's and the home was occupied through time.

Mr. Hartkopf clarified that the area shown on that map matched information in the packet as "Trench A." Ms. Joy said that was correct. Mr. Hartkopf said then that was the site before the final cut was made for the parking lot.

Mr. Taylor pointed out the original location for the driveway which had been moved to the west in the revised plans. He pointed out the line of the curb and the driveway, noting the new curb and gutter and the driveway did cross the sensitive area. Mr. Taylor said once the archeological site had been documented they had covered up the area.

Mr. Hornik confirmed that the map being displayed dated March 28, 2007 was the correct map and was what had been built on the site. Mr. Taylor responded that was correct.

Mr. Whitmore asked if the items Ms. Joy had commented on were the only items they were trying to preserve. Ms. Joy said it was their intention to preserve the entire area of interest, and pointed out an area that had been filled, the location of the kiln, and the well. She also pointed out the location of the planting area.

Mr. Remington said the idea of fill had been expressed before, but that area was very close to a steep slope. He said putting another 2 feet of fill to plant in would seem to be creating an area that would be subject to eroding away.

Mr. Sain asked what about the idea of a planter box that would be installed on top of the ground and would prevent erosion. There was general consensus from the Board that that would be a better option.

Mr. Remington said that typically the root systems of plants would extend somewhat beyond the edge of the crown but not by much, and Spirea plants were only a few feet tall and not much more than a few feet wide at maturity, but he would accept the idea that the County did not want roots to damage the sensitive area. Ms. Joy asked if a planter box would comply with the ordinance.

Mr. Hartkopf said perhaps if it was done in a safe manner, but the question then became whether planter boxes would become a hazard to the driveway. Mr. King said he would assume a sight triangle would need to be left in that location.

Mr. Hartkopf said the plantings that were meant to screen the parking area and the two islands in the middle of the parking area made it appear that those plants should actually move to the west to allow for that sight triangle and to line up with the two parking islands. He said that would alleviate any concern with people not being able to see incoming traffic off of Margaret Lane. Mr. King stated that the planter box option would require Historic District Commission approval.

Ken Redfoot with Corley Redfoot Zack, the architects for the project, and after having been sworn, stated that he understood why they had to abide by the ordinance, but would like to say that the planters, although they might come close to fulfilling the requirements could become a problem in terms of long term maintenance and end up being an eyesore. He said the site looked very good at the present time, and made the plea that the site be left as is, and if somehow they worked around the issues without introducing another element into the equation such as planter boxes that would require long term maintenance.

MOTION: Mr. Remington moved to close the Public Hearing. Mr. Sain seconded.
VOTE: Unanimous.

Discussion:

Mr. Sain stated he believed the option of planter boxes was the best choice, noting it would take years before they would deteriorate to the point of having to be replaced.

Mr. Whitmore said he had visited the site and found a bush sitting among a pile of brick, and wondered if that brick was of some archeological significance. He said the area appeared to him to be unfinished and needed some work to make it appear to be finished from the standpoint of making the site appear appropriate.

Mr. Sikes stated that he agreed with Mr. Whitmore, noting that driving by the parking area the cars there were very evident because you were looking down onto the lot, noting the hill did not screen it. He said whether they used planters or fill dirt and shrubs was not the Board's decision, and he would lean towards upholding the Zoning Officer's determination.

Mr. Remington said a part of him thought that the slope going down to the parking lot was not ideal. He said they did not necessarily want to hide the entire parking lot, but the idea was to create a visual separation. Mr. Remington said that visual separation would be an improvement, but the question became was it enough of an improvement to build whatever it would take to make sure the dirt

could stay in place. He said he did not know that it was worth making a big deal over it.

Mr. Hartkopf said they were right back where they had started from, which was to uphold the ordinance if there was a way to do that. He said the ordinance required evergreen plantings at least 3 feet in height, and did not believe that planting pots in that area was appropriate. Mr. Hartkopf said that Mr. Redfoot's comments had merit, in that it was not a bad looking space, and if it were tidied up somewhat it would look really nice. He said he did believe that there was some sort of break that the ordinance indicated, and believed that the County did have a way to move forward.

Mr. Hartkopf said he did not know if staff had access to the two emails that outlined the two options when they made their recommendation. Mr. King stated they had not. Mr. Hartkopf said those emails seemed to be evidence that there was a way forward that was available that met the letter and spirit of the ordinance, and he was inclined to require raised planting beds of not less than 2 feet and defer the aesthetics to the Historic District Commission.

Mr. Remington asked if they needed to specify that some type of retaining structure be constructed or acknowledge that it might be required, and if so that it would need Historic District Commission approval. He said if there was a way that the shrubs did not need to be so close to the curb then it might be possible to do it without a retaining structure.

Mr. Hartkopf said that made sense, noting the thing he was concerned about was keeping whatever was done out of the archeologically significant area, and that may take some sort of structure.

Mr. Hornik said in looking at Section 7.9(c) and looking at Ms. Joy's proposal dated April 20, 2010 it appeared to him to be a reasonable interpretation that either one of the options would satisfy the requirements of that ordinance section. He said he did not believe the Board needed to choose one or the other, in that either one of those would satisfy the requirements so the appellant could decide which one to choose. Mr. Hornik said depending on which one they decided to go with, the appellant could contact staff to determine if Historic District Commission approval was required.

Mr. Remington said he was not persuaded by the alternative screening requirement, given that it could go both ways for this application and require higher buffers. He said given the distance from the parking lot and the greater height needed to get the same angle of screening, one could just as easily say that that would be a situation requiring more buffering and not less. Mr. Remington said he was not personally persuaded by that argument, but as well was not sure that this required going to any extremes.

Mr. Hartkopf said the question before the Board was to either uphold or overturn the Zoning Officer's decision.

MOTION: **Mr. Sikes** moved to affirm the Zoning Officer's adverse decision regarding the parking lot screening for the County Justice Facility. **Mr. Sain** seconded. Mr. Remington asked if they needed to include any language specifying the grounds for that motion. Mr. Hornik stated that the minutes would reflect the discussion, but the Board could elaborate if they felt it was necessary. Mr. Remington said with that being said the Board's discussion did reflect the reasons behind the motion.

Mr. Hartkopf called for the vote.

VOTE: Unanimous.

ITEM #4: ***Continued Item - Review of the parking plan for the Orange County Justice Facility. The Board conditionally approved this project on November 8, 2006. An approval condition required that the applicant present an acceptable plan for remote parking facilities including process documents covering their operation. The applicant intends to present an alternative plan to the Board for consideration.***

Mr. Hornik noted again that those previously sworn at earlier hearings would not need to be sworn. Mr. King swore in Ken Redfoot and Bryant Warren.

Mr. King noted an email had been received from Jim Parker that noted a misstatement at the April 14, 2010 meeting regarding the Eno River Parking Deck. He said he believed it was stated that the parking deck was designed for the general public, but that statement needed some clarification. Mr. King said when the parking deck was originally constructed it was to satisfy the parking requirements for the uses on that portion of the property.

Mr. Hartkopf said that was what they were now referring to as "West Campus." Mr. King said that was correct, so using the term "general public" could be misconstrued as being just for the public and not the uses on the property.

Mr. Hartkopf said according to the permit issued for the West Campus, how many spaces were required. Mr. Hornik stated all were dedicated, noting it was his recollection that the number was arrived at based on the calculation of the square footages and the employee numbers anticipated for the areas to be served by the parking deck.

Jeff Thompson, Value Engineer, speaking as a representative of Orange County and having already been sworn, remarked that officers of the court were present this evening to respond to questions if necessary. He displayed slides with information regarding the parking plan for the Justice Facility that included the guidance offered by the Board at its March 10, 2010 meeting. Mr. Thompson

said the guidance they had received since the March 10, 2010 and April 14, 2010 meetings was to not count on-street parking even though there were 55 spaces that were allowed to be counted in November of 2006 but had been withdrawn and eventually other entities were allowed to count those spaces. But, he reiterated, they were told in this case not to count on-street parking.

Mr. Thompson said they were also instructed to not double-count anything within the Eno River Parking Deck, and the Board stated continued support of public use of the parking deck. He said it was noted that their plan did not refer to the west side of Churton Street, so the West Campus was not included in their plan whatsoever. Mr. Thompson said the third point was the Board's dissatisfaction with the lack of mandate for employee parking at the Durham Technical Community College park and ride lot. He said fourth was the specific point about staying close to home within the current ordinance with the revised plan, and lastly was the proper enforcement of off-site lots, on-street parking, and County lots.

Mr. Thompson said they emphatically agreed that it was absolutely impossible to meet the strictest interpretation of the current Zoning Ordinance without adding physical spaces to the site controlled by Orange County or removing critical services from that site. He said they also agreed that the current parking ordinance was "heavy" as reported by Town staff, but they did not agree to what extent or how you defined "heavy;" in other words, how "heavy" was it.

Mr. Thompson said another issue was the availability of on-street parking having a priority for Hillsborough visitors and not employees. He said he did not believe that anyone favored that the court altered its schedule to move off-site, noting that currently the court was being held in Chapel Hill and frankly it could continue to be held in Chapel Hill in some manner. Mr. Thompson said in the packet of materials was an earlier resolution from the Town Board of Commissioners asking that the court stay in its current location.

Mr. Thompson said the next issue was more subjective, noting there had been quite a bit of discussion between asphalt and concrete (i.e., more surface parking versus the environmental pushback against that, versus the aesthetics of more asphalt or concrete within the Town's central business district). He said he believed that needed to be weighed. Mr. Thompson said the last issue was the public space, which in this case was primarily the courts, and was being counted but not all the on-street parking spaces which were also public spaces.

Mr. Thompson said that staff had spent much time on those three questions, and it was their hope they could reach agreement on them. He said the first question was directed by Mr. Hornik, which was could the County develop a plan that could be supported by all stakeholders within the current ordinance. Mr. Thompson said Mr. Hornik had stated emphatically that he would advise the Town to not support any plan that could not meet that requirement. He said the

second was how the plan could compliment the Town's current UDO (Unified Development Ordinance) process that was weighing whether or not to lower the parking requirements for the downtown. Mr. Thompson said the last issue was whether the plan was practical, reasonable, and enforceable. In other words, he said, was it reality.

Mr. Thompson said the plan footprint was for the "East Campus," which was east of South Churton Street, south of East Margaret Lane, and west of South Cameron Street, and included nothing of the West Campus. He said currently there were 251 spaces on that site which were controlled by the County and that included no on-street parking, and they would be adding 4 spaces to the bus pull-off. Mr. Thompson said 2 were handicap spaces and 2 would be on the drive aisle, for a total of 255 spaces.

Mr. Thompson said that about 40% of the employees, both State and County, would not be assigned to work on-site, such as Sheriff's patrol deputies who reported in and then were out on patrol. He said as well, there were 14 employees assigned to the DA's (District Attorney) office, but 4 were never in Hillsborough. So, he said the full-time employee count shown in one of the exhibits described roughly 106 full-time equivalents (FTEs) that were stationed on that campus.

Mr. Thompson said the second assumption was changing from gross square footage to useable square footage, the logic being that much of the space on that campus was double-counted. He said that Judge Buckner had multiple offices in that building and used only one, but his chambers could be counted in that square footage. Mr. Thompson said there were holding cells that were not typical to an office building as well as other such public spaces.

Mr. Thompson said with those two assumption changes, they had revised the parking deficit count to 53 spaces with no on-street spaces counted in that math. He said everything south of the assumptions was arithmetic, and the math was the math. Mr. Thompson said they also included that the Durham Tech park and ride lot existence be considered as a contributing component to the plan. He said they were not asking that all of those 125 spaces be counted; in fact, even if they were they would still be short of the strictest interpretation of the ordinance. But, he said, he believed it was reasonable to include them in the plan.

Mr. Thompson said it was their contention that they had too much parking, noting from his count they were running at about 60% vacancy even on a court day. He said even with the heavy court traffic returning they would still have dozens of spaces that were typically available on the East Campus.

Mr. Thompson then provided revised plan highlights:

- That they would not allow on-street parking for County and State employees. They would strongly encourage it, but they could not mandate that because it would be a "human resources" nightmare due to the

underlying premise that they had too much parking. The County Manager had agreed to strongly encourage employees to park mostly in the nearby and currently underutilized 94-space County lot which was about 400 yards from the center of South Churton Street and East Margaret Lane. That was still somewhat of a walk to the main campus, but there would be signage directing employees and the public to park there.

- State vehicles that were largely on East King Street such as Probation Officers were duty vehicles and were currently double parked, in that they drove their personal vehicle in and parked, and then switched into their State vehicle and reported to work. They were committed to parking those personal vehicles off-site so that only one vehicle was brought to the workplace.
- They were committed to removing limited reserved parking signs to the extent of law enforcement activities. There were typically about 21 employees in the Sheriff's Office daily, but many of the vehicles that were not used every day would be parked off-site.
- Curbs would be marked and signage erected to the extent allowed by the Town's signage regulations to deter illegal parking.
- The most significant management effort would be with the courts themselves. This facility had 4 courtrooms, with heavy court days identified as the 1st, 2nd, and 4th Wednesdays of the month from about 8:30 a.m. to 2 p.m. No court would be scheduled on Fridays. The 4 courts processing the docket were compared to the one court area that was processing the docket prior to construction. The Mural Courtroom would be a staging area, and it was estimated that would result in about 150 cars per hour going through that process. It was their submission that they had the capacity for that with those measures.
- Judge Buckner would allow the judges to issue a daily court administrative order that said, "If you are here, go outside and park your vehicles legally." Major Blackwood had indicated his support for that. The term "legally" was defined as street parking, surface parking, and the 209 spaces at the Eno River Parking Deck that were publicly available. That would be done every single day.
- Staggered appearance was also critical, in that rather than everyone showing up at 9 a.m. and forming a line, people would be given information that they needed to appear between 9 a.m. and 1 p.m. and report to the Mural Courtroom for processing.

Mr. Whitmore asked what assurances they had that there would be no court on Fridays. Judge Joe Buckner, the Chief District Court Judge, replied that there would be some limited court on Fridays, and he had control for that scheduling. He said that historically court in Hillsborough was driven by the fact that they had only one courtroom that they could guarantee programming in, whether it was traffic court, family court, or criminal sessions. Judge Buckner said for many reasons, Friday was not a preferable day for the DA's and public defenders because it provided no office time to meet with clients and witnesses to prepare.

He said they had been begging him operationally to give them one day when they would not be assigned to court. Judge Buckner said as well, street festivals were often held in Hillsborough on Fridays, so taking all of that into consideration caused them to take large volume courts off of the Friday schedule.

Judge Buckner said when he had said they may have some court on Fridays, he was referring to persons involved in private litigation which was largely family law matters in district court, and they had such a small number of people attending, typically 2 attorneys and 2 people, that it was not operationally significant.

Mr. Hornik said that Town staff and County staff had been trying to work through these issues, and one of the things they had come up with was 10 or 11 proposed conditions for the Board's consideration. He said one of those suggested conditions was that the schedule they talked about tonight would at the least run through the end of the CCO (Conditional Certificate of Occupancy), which was the end of 2010. Mr. Hornik said that had been suggested because during that period of time, the Town and the County would both be working to measure and gauge what the demand was and what the supply was. So, he said, he wanted to make sure that the court understood, and that the County understood, that if the Board chose to go ahead with the CCO that that would be one of the conditions. Mr. Hornik asked if Judge Buckner would be agreeable to that. Judge Buckner stated they would abide by whatever the Town and County provided. However, he said, he had no control over the customers that came into the site; in that he wrote no tickets or filed any divorces or arrested anyone. He said he did have the responsibility of scheduling all of the district courts, and although a lot of operations had been moved to Chapel Hill during construction the Legislature mandated that Hillsborough was the seat of court. Judge Buckner said the last thing they wanted to do was to overwhelm any site by making parking impossible and therefore making court operations impossible. Judge Buckner offered his pledge that they would change their schedules as necessary, because they did not want to be in a work environment where they overwhelmed their physical site.

Judge Buckner said he loved Hillsborough and would not want to see court moved away. He said he hoped that court visitors and employees would be good partners and consumers of services offered by retailers and food and beverage providers that were unrelated to the court operations.

Mr. Hornik said another condition was that the County would report back to the Board in August and in the meantime the Town would be continuing its parking study, and he wanted to be sure that those involved with the court were involved in the larger discussion. Mr. Hornik said it had not appeared that in the past that those people were involved in that discussion, and they wanted to make sure that everyone was talking to each other because he believed everyone recognized the value of having court in Hillsborough. But, he said, there was also a cost that went along with that, such as parking availability, and as the Town was trying to

come up with a viable parking plan that was at least satisfactory, they needed to have that feedback. Mr. Hornik said as feedback was received about what was good or bad, it was their hope that it would be brought back to the Town so that as they were putting their parking plan together that input could be included. In other words, he said, the County needed to be committed to an ongoing dialogue and the courts had to be a part of that dialogue in order to do the parking plan right.

Judge Buckner stated he agreed completely. He said that the County was mandated to provide the space to the courts, and the court was the tenant. Judge Buckner said there were two principles of court operation they were not going to be able to achieve because of the multiple courtrooms. He said the DA had more employees on site in Hillsborough than he could stage in Chapel Hill, so on traffic court days they would be able to shrink the population even quicker. Judge Buckner said the second issue was that instead of now having one judge on Mondays and Thursdays for criminal court, they were going to have two, which would mean quicker processing than in the past. He said his point was that they were committed to doing that operationally regardless; they just had not been able to achieve that with only one courtroom.

James Sanford, Clerk of Superior Court, stated that they had designed the building to process people quickly. He said for instance, his office was designed with a cashier's window into the atrium so they would not have to bring people into the lobby once they had completed their court business. Mr. Sanford said they had also designed the space for two cashiers which would make the process much faster than they had ever been able to achieve. He said it was also important to remember that they were going into this situation somewhat blind, because they had never had 4 courtrooms before so they were attempting to deal with the unknown just as the Town was in terms of exactly how everything would work. Mr. Sanford said it was clear the dialogue needed to go back and forth so that those unknowns could be addressed and perhaps things made to work better. He said they needed that flexibility and needed the Town to respond to that, adding that they would not know exactly what they had until court came back to Hillsborough. Mr. Sanford said they had never had court with that many people in 4 courtrooms, but the 3 clerks currently in Chapel Hill would be moved back to his office to help process those people coming through the court system.

Mr. Hartkopf complimented Judge Buckner as well as his staff for making what appeared to be efficient use of the space they had been given, and for making it more convenient for its clientele. He said that would imply that more staff would be needed, and asked had they budgeted for an increase in court staff. Judge Buckner said that the DA would have 2 lawyers currently working in Chapel Hill moving to Hillsborough, just as Mr. Sanford would have his 3 clerks coming as well. Mr. Hartkopf said then there were no "new heads." Judge Buckner said there was no new staff; they were only reassigning current staff.

Mr. Sanford agreed they were consolidating staff back to Hillsborough, and there was no expansion of staff planned.

Judge Buckner said because they now had the court space, he and Judge Scarlett would both be conducting criminal court and therefore processing cases much faster. He said they had already committed to that in the scheduling.

Mr. Hartkopf said the concern had come up, in regards to the CCO, that there was a strong desire for court to return to Hillsborough by May 1, 2010. He asked would it be harder to move courts away from Town in December 2010 if the CCO expired and no resolution was reached. Mr. Hartkopf said that was a worst case scenario and he believed they would eventually reach a solution that worked, but wondered was it better to put off moving court back until that solution was found. Judge Buckner said there would be no impact on the judges; the impact would be to the officers and public reporting for court. He said the two types of global business they had were generated either on the criminal side or on the civil/social services sides. Judge Buckner said most of what was generated by the civil/social services side was either very small or would remain in Chapel Hill. He said the big "monster" was traffic cases and the number of agencies that cited the public, including Hillsborough, who were trying to increase public safety. Judge Buckner said getting the message out to the Highway Patrol, the Sheriff's Department, and the various police departments who were generating tickets would require some lead time, noting that was a large amount of officers to have to notify to change dates which were set in advance.

Judge Buckner said what they had scheduled now was just 3 days of the month, and in fact they had a policy where they would never continue from the 1st or 2nd Wednesday cases generated by Chapel Hill and the Highway Patrol, who were the big volume leaders. He said those cases would go to a 4th Wednesday so that they would have no "repeat" business. Judge Buckner said they would need some lead time to notify everyone that the court business was moving back to Chapel Hill, so that was a concern. He said the regular non-motor vehicle criminal cases, although a big number, he continued to believe could be managed.

Judge Buckner said his suggestion would be that if the County was granted the CCO that the court should be back in Hillsborough by August. He said if there were any problems they would surface fairly quickly, and at that time they could consider adjustments or even consider moving traffic court back to Chapel Hill starting in January.

Mr. Sanford agreed there was no question that traffic court would be the most difficult to change and they would need a lead time of about 6 to 8 weeks to alert everyone to show up at a different location.

Mr. Hartkopf said it was fair to say that it was enough of an issue for their clientele that they would want to make sure such a process worked smoothly

through December. Mr. Sanford said one consideration was that a good number of citations were issued to people traveling on interstates through the County, and those people did not generally come back to court. He said that the PayNCTicket program would be coming to the County on June 3, 2010 which would provide persons the ability to pay a traffic ticket on-line by putting the cost on a debit or credit card, and the person would never have to come to court. Mr. Sanford said they would expect that to have a significant effect on court volume.

Mr. Hornik said he believed a big question from the Board was if it was worse to inconvenience them now or to do it later on if things did not work out. Judge Buckner said from his perspective it would be worse now. He said the communication issue was a legitimate concern, noting he was likely as inaccessible as any court member because of his schedule as a public official, and that was his fault. Judge Buckner said he had not even known that parking was an issue until a month ago, and that was in no way disrespect for Hillsborough's authority in that matter.

Mr. Hornik said the fear, he believed, was if they allowed court to come back on May 1, 2010 and things were no good in December 2010, that it would be very difficult for everyone to have to make another change and they did not want anyone to be in that position. Judge Buckner suggested that his numbers, which were what he used to determine space needs, had not changed significantly since before construction began. He said so, they were not talking about doing more business than they had done prior to construction; they were talking about better and faster ways to deal with that same business.

Mr. Sanford stated that it would be a nightmare to delay now because they already had people scheduled to come to Hillsborough beginning in May. He said the cost of having to notify that many people of a schedule change would be significant. Mr. Sanford said another consideration was making those kinds of scheduling changes opened the door for errors that had people coming to the wrong place at the wrong time, and would result in the real possibility of arrest warrants being issued incorrectly. He said he believed they needed to begin holding court in Hillsborough then do an assessment, because no one really knew what they would have until they actually did that.

Mr. Hornik said one point needed to be made. He said after August and by December, they may come to a realization that the County had to provide more parking, otherwise the Town would close the building down. Mr. Hornik said that everyone needed to have their eyes open that come December 31, 2010 that may be a possibility, although that was a possibility they hoped they never had to face.

Mr. Hornik said realistically, if the Board granted the CCO, the idea was that they were studying the parking situation and trying to come up with a plan that would work. He said they believed that the downtown parking requirements would likely be reduced in the future, but was not sure that it would be reduced enough

to say that 255 parking spaces for the East Campus was enough. Mr. Hornik said the realistic likelihood was that come December 31, 2010 the County may have to come up with a plan to find 40 or 60 or even 100 parking spaces.

Judge Buckner said his question to the Board or to staff was what days were of concern, and if that was the traffic court on Wednesdays, then they could shift those back to Chapel Hill. He said that Chapel Hill merchants had been somewhat upset when they had discovered that traffic court was coming back to Hillsborough, and the Chapel Hill Town Council had been concerned that court visitors would no longer be parking in their parking decks. Judge Buckner said there was no problem with keeping traffic court in Chapel Hill, but if there were other days that were of concern then there may have to be a different solution.

Mr. Hornik said that was part of the dialogue they could have as they moved along.

Mr. Hartkopf added that he did not believe it would be through any ill will that they may end up in some predicament, but it had been clear in reading over the information in the packet that there would be over time more and more people coming to this geographical area as the County ramped up its services, so it was an “unknown” unknown and not a “known” unknown.

Judge Beverly Scarlett stated that an immediate change, that of not opening in May, would be devastating. She said she believed it was important to keep an open dialogue, noting that the court officials before them tonight knew how traffic court worked, and if they could process 2,000 people in 4 hours with one cashier, it would seem that they could do it twice as fast with two cashiers. Judge Scarlett stated if that was not working, then they would need to communicate to identify a different method. She said they were committed to making it work, and having as much of the court work in Hillsborough as possible was really serving the public and would result in not having to transfer very important files from one location to another.

Mr. Sanford said it was important to keep in mind that the way traffic court worked now would not require that 200 people sit in the courtroom from 9 a.m. to as late as 4 p.m. just to plead guilty and all the while taking up parking spaces for that entire time. He said they now took dockets of 300 to 500 people and processed that docket in a matter of about 1½ to 2 hours. Mr. Sanford said having traffic court did bring in a large number of people, but on the days they were not holding traffic court those people would not be there.

Mr. Sikes stated that they still needed to hear from the others present who wanted to speak. He said he appreciated all of the information offered by members of the court, but the ordinance dealt only with employees and square footage and had nothing to do with other people coming to the site or coming at particular times.

Mr. Sikes said although that was important to the court that was not where the numbers came from as far as the parking requirements.

Mr. Whitmore stated that the process added people to the site. Mr. Sanford disagreed, noting they were processing in 3 hours what they would have done in 5 days, noting it was the same number of people. He added that parking would turn over faster by having 5 DAs, 2 judges, 8 clerks, and 2 cashiers to process them in one day when that otherwise would have been stretched out over 5 days.

Mr. Sikes stated that those 3 hours was the concern, and Mr. Remington agreed.

Mr. Hartkopf said he had experienced the staggered system as used by Wake County, and they processed people very quickly in much the manner as had been described here. He said he believed the staggered approach worked remarkably well.

Judge Scarlett said she wanted to add that if some reason they were going back to a hold system where people had to wait all day, those people not only got anxious but all sorts of other things could happen. She said she wanted everyone to be cognizant of the ripple effect of that system. Judge Scarlett said coming into traffic court with a large number of people looked bad, but if you were out in 30 minutes then everyone left happy.

Mr. Sanford said if you were assigning parking spaces based on a square footage basis, he did not understand how staff had arrived at the number to be required. He said if they had been able to process 600 people in 3 hours and the courtroom was empty for the remainder of the day, he did not believe that square footage should be taken into account. Mr. Sanford said he believed the square footage of the atrium was included in the square footage count, but there were no seats in that area and no one occupied it unless it was traffic court day and people were lined up to pay their fines. He said on those days those people were being processed quickly and were only in the building for a few hours. Mr. Sanford said as well, the majority of his office space was storage, and storage should not equate to parking spaces.

Mr. Remington pointed out that if the parking spaces were calculated appropriately, he believed it recognized that every building had storage space. He said the idea was not to figure it at a maximum and then back off from that number, noting that anyone could make the same argument Mr. Sanford had made. Mr. Remington said they wanted to require the number that made sense for the use, and they wanted to make sure that if they granted the CCO that there was adequate parking for that use.

Mr. Thompson stated that he would envision a time certain somewhere in the August to October 2010 timeframe to direct what had to happen by December 31,

2010. He said that would give them the necessary lead time to reschedule court if that was deemed to be necessary.

Mr. Hartkopf said it would be the hope of the Board that they managed for success and that the CCO would be granted so that they would not get into that situation.

Mr. Hornik said the reason they had chosen the August 2010 date in the condition was it was thought it would provide 3 months or more of experience for Town staff, County staff, and court staff to review how things were working, and would allow 4 months moving forward from August to December to plan for any changes. He said that was also the timetable for the new UDO to be considered, and the knowledge gained during that 3-month period to work its way into the new UDO which likely would be adopted around December would hopefully give them a parking ordinance that was right for downtown. Mr. Hornik said that new UDO might indicate that the number was right or it may say it was wrong, but at least a formula would be established to give them the right number. He said the County was telling the Town that if that number turned out to be more than they could provide, that they understood they had to come up with a plan that got them to the right number. Mr. Hornik said the August date was used purposely to give them the time to study, experience, and then react to develop a revised plan.

Mr. Hartkopf said a question was put to him this morning by a citizen who noted that there was a temporary parking lot provided for construction parking and asked what the status of that lot was and who owned it. Planning Director Margaret Hauth, having been previously sworn, said it was privately owned and not properly zoned for permanent use as parking. Staff allowed the lot to be constructed for temporary use, and that the lot had since been removed and the site planted in grass.

Mr. Hartkopf asked was there anything the applicant wanted to add over and above what had already been presented. Mr. Thompson said he had several more points he would like to present.

- PayNCTicket had been test marketed in other counties and had been a success, and would be available in Orange County very soon. He said the reduction in on-site appearances was estimated at the 10 to 15% mark.
- A large component of the plan hinged on enforcement, both from Hillsborough and from the County. Both entities were committed to enforcing their particular areas, on-street parking for Hillsborough Police and the Sheriff's Office for the County's parking lots. That would involve making sure that vehicles were parked legally.
- Conditions for approval had been included in the packet were:
 - that the timeframe ran through December 31, 2010.
 - that they had no vested rights compromised during the conditional period.
 - that any violations established had a 30-day cure.

- that lack of compliance revoked the conditional status.
- that County employees were to park off-street and limited use vehicles were to be remotely parked outside of downtown Hillsborough.
- that there would be no public meeting room use during business days between the hours of 8 a.m. to 5 p.m. which was significant because much of their space was meeting space not available to the public.
- no change of scheduled used, especially the courts.
- no net increase in the Orange County full-time equivalent count during the conditional period or until the unconditional CO (Certificate of Occupancy) was awarded. No plans were underway to increase employees; in fact they were suffering the loss of employees through attrition or through unfilled positions being eliminated.
- The August 2010 interim report would have a status of compliance with a presentation of information suitable for the UDO process.
- Updated collaboration that would likely continue weekly throughout the process.
- The County felt that this was a significant plan featuring reasonable and practical approaches to the issue.
- The Town lost no vested rights in the process and had revocation authority.
- It allowed them to collaborate and adjust the plan between now and a time certain, enhancing the overall process.
- The plan could be supported within the framework of the current ordinance, in his opinion.

Mr. Remington said as he read through the material he sensed a dilemma, noting that they had discussed in the past about the park and ride spaces at Durham Tech but they were still at the point that people would somehow be encouraged to use those spaces. And, he said, they still had a 53-space deficit even with all possible creative accounting for dead wall space. Mr. Remington said he sensed that they had a “game of chicken” going on in the sense of what they were really going to need or not need. He asked was there any way that the County could make an enforceable requirement for employees or certain employees to use the park and ride spaces or perhaps to create some sort of incentive for employees who parked there. Mr. Remington asked if they had flexibility if that were to become necessary. Mr. Thompson responded that currently they were seeing about a 60% vacancy rate in the existing parking on that site, even during Superior Court days.

Mr. Remington said they did not yet have traffic court back in Town and that was the concern. Mr. Thompson said he understood that, but today they did have the significant vacancy rate. He said the human resources issues of mandating someone to park farther than their convenient place of work when there was available parking to the naked eye on a daily basis was problematic. Mr.

Thompson said also problematic was that they were not the only employer within that area, and it would be equitable for the County to require that of their employees if merchants and their employees were required to park off-street as well as Town employees. He said the incentive issue was, he believed, elegant in a way if enforcement worked, because employees that got tickets would have to pay a fine and that would incent them to move off onto the County property.

Mr. Remington said his concern was that employees would arrive first and people coming later to conduct business with the court would end up not having a place to park. Mr. Thompson said only about a half dozen employees arrived early and would likely utilize street parking. He said he believed a strong encouragement from the County Manager as delivered through the department heads would be fairly effective. Mr. Thompson said the distance to the Government Services annex lot was not a difficult walk for anyone who worked on that campus.

Mr. Sain said he believed the Board had to look at all aspects, but they also wanted to try to make sure that parking was available for visitors to the downtown. He said it was hoped that business would increase with traffic court coming back to Hillsborough, so they wanted to make sure that in that process that spaces were available for patrons of those downtown businesses. Mr. Sain said it was important that they protected the merchants. Mr. Thompson said they had proffered no on-street parking for their employees, and they were not counting those 55 spaces in that area and were also not counting the additional spaces that would result from State employees only bringing one car onto the campus.

Mr. Hartkopf asked if the statement that there would be no public meeting room use during business hours also included the Link Building. Mr. Thompson said yes, that it included everything on that campus.

Mr. Hartkopf asked if anyone saw any incongruity with that, since it was public space and paid for with public dollars. Mr. Thompson said the space was designed for after-hours use. Mr. Hartkopf said then he wondered why that space was included in the square footage calculation to begin with. Mr. Thompson said because it was a part of the gross floor area, although it had been extracted from the net floor area.

Mr. Hartkopf asked if that was being considered in the new UDO; that is, to discount meeting room space. Mr. Hornik said what they were looking at now was not necessarily what would be adopted. He said the way that particular condition had come up was that it was obvious that there was a lot of meeting room space and the County had said they would not allow it to be used during business hours, but all that empty space was generating parking need. Mr. Hornik said representation was made to staff that if the space was not being used by the public during business hours then the square footage should not be calculated in regards to parking requirements.

Ms. Hauth said to clarify, during the day those meetings rooms were used by staff that was already on site, and would be continued to be used in that way. She said what the County was committing to was to not allow the public to use those rooms during business hours so that no additional public would be drawn to the site and therefore be in need of a parking space. Ms. Hauth said that included that the County Board of Commissioners would not hold a daytime public meeting that would draw additional public to that space that would not be coming there in the course of normal business.

Mr. Hartkopf asked had groups ever been allowed to use that space during the day. Ms. Hauth said the point was the County had not prohibited that in the past, but were now agreeing that it would not be allowed.

Mr. Hartkopf said he wanted to go back to the incentivization for employees to park off-site, and asked was there any plan as to what such a program would look like. Mr. Thompson said that as previously stated the incentive was a strong word from the County Manager with the reality of a financial penalty should they get ticketed.

Mr. Sikes said Mr. Thompson had mentioned it was impossible to meet the strictest interpretation of the current ordinance without adding physical parking areas or removing services. He asked what had been done as far as proposals to add physical parking. Mr. Thompson said they owned land where they could provide additional parking but it was unfortunately in the River Park area and it would be at the expense of the environment and at the expense of its proximity to the sacred Eno River. He said he did not believe that parking was something that land should bear.

Mr. Sikes said then there was no real proposal for adding physical parking. Mr. Thompson said he believed it was prudent during the conditional period that if they got to the point that they were dramatically wrong and needed a lot of parking then they would address it at that point in time. Mr. Sikes asked if the annex parking lot was a part of this site. Mr. Thompson said it was technically a part of this site, and had 94 parking spaces that were included in the 255 count. He said the lot south of that at the clinic was not a part of this site. Mr. Sikes said then even with the annex lot they were still facing a deficit. Mr. Thompson said that was correct, noting the FTE count was 106 and the square footage count was roughly 60,000, and in doing the math it yielded a deficit of 53 spaces. He reiterated that without the heavy court days they were showing a vacancy rate of 60% or more across the campus.

Mr. Whitmore said previously the County had committed to having vehicles park at the Durham Tech park and ride, and asked what had happened to the park and ride mandate. Mr. Thompson said they had not committed to a mandate and that was a point of contention. He said the record showed in 2006 that the County was considering it and the lot was available for park and ride, and in fact was where

State employees would park their personal vehicles and drive their State vehicles into the downtown area. Mr. Thompson said the point of mandating that in the face of a 60% vacancy rate next to a building you were working in became a human resources problem.

Mr. Hartkopf asked was it safe to conclude that the human resources problem might go away once the site was occupied. Mr. Thompson replied yes, noting he would bet that there would be available parking, although others would bet that there would not. He said the conditional period would allow them to determine that.

Elizabeth Read, having been previously sworn, stated she was with the Alliance for Historic Hillsborough and contracted with the Town to provide visitor services. She stated that last month it had been raised how they could become one of those communities that did have frequent towing in the downtown, and she had given the warning that they were already there. Ms. Read said as to this proposal, she requested that the Board not approve the CCO and allow the court to begin operations when it might have to be halted later on. She said that process would prove to be very difficult to practically manage and once the door was opened it would be hard to shut.

Ms. Read said in addition, the discussions should be considered now during the County's budget process and not 6 months from now when additional funding would be even more difficult to obtain. She said in reality the County's request became more like a variance request although what they were asking for was just a site plan amendment. Ms. Read said the County's alternative plan was much more complex than a typical site plan amendment and it should be held to the normal burden of proof required by a variance request and not a site plan amendment. She said all other applicants for parking had to meet the current ordinance, and to allow the County to have special treatment under this plan was not fair.

Ms. Read said the current application did require that the County put forth a solution to the problem and did not require the Town to enforce a possible "let's try it out" situation. She said forcing this back onto the Town required the Town to devote additional staff time to police this over the summer when every other applicant had to come up with a solution that met the ordinance.

Ms. Read said the parking requirements were based on gross floor area and already took into account that buildings had attics, storage spaces, closets and the like, and to say that their building was different because it had public space was not quite truthful in regards to how planners chose to base a parking ordinance. She said they needed to be careful if they allowed further exceptions based on perceived extra building space.

Ms. Read requested that the Board continue the case once again, and that the County return with a plan to provide more acquired spaces and not just shuffling through the existing spaces that were already on the ground. She suggested that perhaps the County should now open dialogue to use the non-leased spaces in the parking deck and ask that the allocation of those non-leased spaces be re-examined under the ordinance. Ms. Read said if there were 200 non-leased spaces in the deck then that conversation should happen.

Mr. Hartkopf said he had asked a question earlier about the allocation of parking requirements for what was considered the West Campus, that is west of South Churton Street, and he was given the number of 452. Ms. Read said that included the deck, the Weaver Street Market surface lot, and the spaces around the deck itself.

Mr. Thompson said that was not correct, noting that the deck contained 409 spaces and the balance was surface spaces not including Weaver Street Market.

Mr. Hartkopf said then that was the number of spaces required for the West Campus according to the ordinance. He asked where the 200 parking spaces were that had been mentioned. Ms. Read said that the County had leased 200 of those 452 spaces for employees on the West Campus, so there were currently 200 spaces in the deck that were not assigned to any specific use. She said she was asking that if the County was short on one campus, that they explore what it would take to use some of those remaining 200 spaces as allocated spaces. Mr. Hartkopf said wouldn't that bring about the issue heard about last month which was double counting. Ms. Read said that had referred to the County double-counting the spaces already leased, and she was suggesting they explore leasing additional spaces.

Mr. Hartkopf asked if all on-street parking was available to downtown merchants and if, in her opinion, was that sufficient. Ms. Read said as far as how they were currently marked, the answer was no. She said the parking study had talked about spaces being inadequately marked and hard to find, and that study did not take into account the courthouse/Justice Facility impact. Ms. Read said the parking study was in draft form and was waiting for that impact to be known before it was finalized. Mr. Hartkopf asked was it fair to say that her concern was that the additional parking by clients of the court and Justice Facility were going to consume parking that the downtown merchants required for its clients. Ms. Read said somewhat, noting what they were seeing now was a lot of County employees parking in the on-street parking spaces all day and that had created some level of frustration. She said in addition, there was some concern that when clients came to court that they be told to park in legal spaces, and there was a general sense that there was no advance notification of where those legal spaces were located. Ms. Read said many people did not know and were not notified that there was a deck available, and that impact would result in hundreds of people parking in the downtown even if it was for a short period of time.

Mr. Hartkopf said he continued to be concerned about the 452 spaces that included 200 leased spaces. He said if 452 spaces were what had been approved for the West Campus, then those spaces were appropriated and could not be counted otherwise. Mr. Hartkopf said what was happening was that although those 452 spaces were required for the square footage of the West Campus in use, users of that building were instead choosing to use some of the free spaces and impacting the downtown even further. Ms. Read said if the largest user of the downtown spaces was having the biggest impact, then a dialogue about using those appropriated spaces on a regular basis was necessary. Mr. Hartkopf said so it was her feeling that if 400 of those spaces were leased by the County then those would in effect become free to the employees which might encourage them to park there as opposed to other spaces. Ms. Read said she thought that conversation should at least take place.

Mr. Sikes said regarding the parking deck, he believed there was a certain amount of spaces that would remain as pay-to-park spaces, but those were also included to cover the square footage requirements. Ms. Read said that was correct.

Mr. Hornik said to remember that the central commercial parking requirements was one of the things that would be subject to review during the UDO rewrite process, so the allocation of those spaces may be different once that process was completed.

Mr. Hartkopf said he understood that some of the deck parking was not meant to be public access, but the fact was that it was public. He said if 400 of the 452 spaces were leased, wouldn't that in some way begin to cut into what the downtown merchants might consider available client parking. Ms. Read said as much as that deck was not in use it had been suggested during discussions with the downtown merchants that the Town construct another parking deck behind Bank of America or some other location in the downtown, but it was believed even with that, that parking would still be inadequate. She said a lot of that general fear came from what was expected to happen when traffic court returned to Hillsborough.

Mr. Remington asked why they were suggesting that public use spaces were not occupied. Ms. Read agreed, but believed they were in a situation of people paying versus not paying for parking.

Mr. Hartkopf said then if another parking area was provided that was free that would be a good thing, but if it was pay to park that would not be a good thing. Ms. Read said that was correct.

Mr. Hartkopf said the enforceability of the 2-hour parking on East Margaret Lane and East King Street had been an issue, and asked if enforcement could be addressed. Lieutenant/Acting Police Chief Davis Trimmer of the Town's Police Department said during the construction phase of the Justice Facility and the

resulting parking confusion, the Police were not enforcing on-street parking at all. He said if they were instructed by the Town Board to strictly enforce on-street parking in that area, that in order to make sure that it was done consistently, they would likely have to look at hiring a part-time traffic enforcement employee. Acting Chief Trimmer said they could assign officers to check the area occasionally but those officers may be called away at any time. But, he said, if they were consistently required to enforce that on-street parking, then they would have to request funds be approved to provide for a part-time traffic enforcement officer.

Mr. Hartkopf asked if there were any plans to up enforcement efforts with the planned May 1, 2010 opening of the facility. Acting Chief Trimmer said if they were directed to do on-street parking enforcement they would do whatever they could do with current personnel. Mr. Hartkopf asked had the Police been approached by the Alliance with regards to areas they wanted to have longer parking available for visitors or out-of-Town tourists. Acting Chief Trimmer replied that they had not, to his knowledge.

Ms. Read remarked that the draft parking study did address areas of Town where parking should be longer than just short-term parking, such as in the area around the Visitor's Center and South Cameron Street. Mr. Hartkopf said then she was saying there was a mechanism in place and there was actually an ongoing process to identify those areas.

Mr. Hornik said as part of the draft parking study staff had made suggestions to the Town Board where there would be time limitations on spaces in particular areas.

Planner Stephanie Trueblood, after having been sworn, stated that the draft parking study suggested that areas closest to the Visitor's Center have 3-hour parking limits. She said at present the Town had 15 minute, 1 hour, 2 hour, 3 hour, and all day parking areas, and the draft parking study suggested that all on-street parking would be 3-hour parking as a mechanism for easier enforcement.

Mr. Hartkopf asked was there a timeframe for finalizing that parking study. Ms. Hauth said that would not happen until after the Justice Facility was occupied and its impact determined which would likely not happen until the end of the year. She said the reason they had proposed a condition about parking was so that the Board of Adjustment could request that the Town Board direct the Police Department to do the enforcement, and in that direction they would clarify what they were asking the Police to do as far as time limits, enforcement in a particular area, or something else.

Bryant Warren, Chair of the Planning Board, having been sworn, stated that hopefully many of these issues would be settled with the UDO rewrite. He said the parking deck had 452 spaces for the West Campus, and asked why they had

only 200 of those leased. Mr. Warren said that deck was very close to the Justice Facility and some sort of crosswalk should be provided for pedestrian safety. He said he believed that if the County would lease the remaining 200 spaces and require County employees to park there that it would alleviate the on-street parking issues because the on-street spaces were where customers of downtown businesses as well as out-of-Town visitors expected to park.

Mr. Warren said another issue that should be taken into consideration was the issue of large trucks trying to access loading areas for downtown businesses, noting it was difficult to back up large trucks in heavy traffic so that needed to be kept in mind. He said he had recently driven through the area around Cameron Street, Margaret Lane and other nearby areas and found not one parking space available, and the Justice Facility was not even open yet. Mr. Warren said now that they were close to opening, there had to be measures taken to ensure that customers of the downtown and visitors had adequate parking. He said they had had that problem for years, and now was the time to correct it.

Mr. Remington said he believed Mr. Warren was saying that much of the solution would be addressed if the County leased additional spaces in the deck for its employees to park. Mr. Warren said he believed it would help eliminate some of the current problems. He said if the Board granted a temporary CCO, then that should be a condition of approval and they could then see what impact the Justice Facility had on parking over the next few months. Mr. Warren added that he would like to see the courts come back to Hillsborough and remain because of the boost to the Town's economy.

Mr. Hartkopf asked what the likelihood was that the County might pass along to the employee the cost of parking in a leased space in the deck. Mr. Thompson said there were no funds for that, noting they were experiencing probably the worst budget crises in recent memory. Mr. Hartkopf said then it was fairly certain that if you parked in the deck you would pay for it yourself. Mr. Thompson replied no, that there were 200 leased spaces for employees that were assigned to the West Campus, and of that they experienced about a 30% vacancy rate of those spaces. He said the balance of the 209 pay to park spaces were available for public use. Mr. Thompson reiterated that the administrative order to park legally would include telling the public that there were available parking spaces in the deck, and he did not understand why the developer of the deck would want to increase capacity in light of all of these issues. He said if they were looking at herds of people parking, why would they want to increase capacity and then dilute the availability of those spaces to be paid for.

Mr. Hartkopf said that issue was not before this Board. He said that the County was currently leasing 200 spaces, and his question was how those added up to 452 spaces. Mr. Thompson said the balance was in surface lots owned by the County. Mr. Hartkopf asked if the County charged employees a fee to park in those leased spaces. Mr. Thompson replied no. Mr. Hartkopf said if the County was required

by the Board to lease long term another 100 spaces, would that cost then be passed along to the employee. Mr. Thompson replied not to his knowledge, but remarked he was not sure this Board was in a position to require the County to lease spaces from a different entity. He reiterated that the County did own property that, if needed, could provide surface parking.

Mr. Whitmore asked other than the River Park area, where else did the County have land. Mr. Thompson said if the spirit and intent of the ordinance was convenient parking, that would be the ideal place, noting no other location would be near the downtown.

Mr. Hartkopf said it seemed that one of the County's positions was that the Durham Tech park and ride lot did not satisfy the ordinance, but it satisfied the ordinance when the Justice Facility was approved. Mr. Thompson said he did not believe it satisfied the strictest interpretation of the ordinance.

Mr. Hornik said the context of the approval in 2006 was that the County wanted to get moving with the project, and he believed it was Ken Redfoot who had asked the Board to condition the approval of the site plan on allowing the 125 spaces at Durham Tech to be counted. He said what the Board had said was that they would approve it on the condition that those spaces could be used but the County would have to provide the Board with a process document.

Mr. Hornik said just so the Board was aware, technically the parking deck probably did not satisfy the "convenient" requirement in any case because it was not within 400 feet of the front door.

Mr. Sain asked what about the parking available at the old Wal-Mart location. Mr. Thompson said all of that parking was allocated for the parking use of the Department of Social Sciences, and although there were extreme vacancies in reality those spaces were allocated. Mr. Sain said if he remembered correctly that lot had transit service. Mr. Thompson said the 420 bus served that lot.

Leigh Ann Brown, the attorney for Eno River Parking Deck, LLC and having been previously sworn, stated that Judge Buckner had clearly stated that the courts were not in a position to raise taxes and build facilities; that that fell to Orange County. She said the developer before the Board tonight was the County and not the court system. Ms. Brown said they were in the untenable position tonight that personnel from the court system were present to ask the Board to find a way to provide parking outside the concept of the ordinance, as opposed to the County providing adequate parking for the facility it had built.

Ms. Brown said they had reviewed the County's plan and if the Board decided to grant the CCO while the parking problem was addressed, her clients, as citizens of the Town, would encourage the Board to make sure there were teeth to those

conditions so that the problem would be truly addressed. Ms. Brown said if the Board decided to continue the hearing they would understand that choice as well.

Ms. Brown said any conditions imposed would have to have some measurable outcome, in that they had to have some way of knowing how the project was ultimately going to comply with the ordinance. She said if she had come forward representing a private developer and asked the Board to ignore the Town's ordinance in favor of her analysis of how cars were parking in Hillsborough, she frankly believed she would be laughed out of the room. Ms. Brown said when people developed property in the Town they were required to comply with the ordinance.

Ms. Brown said the Town was in the process now of reviewing its parking which she encouraged because it was well known that the parking requirement was "heavy" as had been said in the past. She said whether or not that requirement was heavy would not solve the issue of whether more parking was needed for the Justice Facility. Ms. Brown said, as had been pointed out, using every method possible, the best number the County had been able to come up with was that it would need 53 more spaces. She said they were requesting as citizens of the community that whether or not the CCO was granted that the ultimate final numbers be in respect of the ordinance parking requirements.

Ms. Brown said one of the speakers had said this was not a variance request and the Board was not really empowered to grant a variance and to ignore the parking requirements for this applicant when they would be unable to do that for others. She said she doubted the Board would want to set the precedent that they created parking requirements on an ad hoc basis based upon what some particular party came in and told the Board at any particular time. Ms. Brown said they would encourage the Board to stand strong.

Ms. Brown said there had been some mention tonight about the possibility that the deck could be used to satisfy the requirements. She said that she had submitted a letter dated April 12, 2010 for the April 14, 2010 Board meeting where they had talked about the double counting issue, and there was a chart provided that showed how they had gotten their numbers. Ms. Brown said she wanted to review that so that Mr. Hartkopf's question earlier this evening could be answered.

Ms. Brown said that in determining the number of spaces needed at the Gateway Center property and the West Campus, the first floor of the Gateway Center was the Weaver Street Market. She said based on the ordinance requirements, 63 spaces were allocated for Weaver Street Market and those 63 spaces were actually controlled by Weaver Street Market. Ms. Brown said the 2nd floor of that building was County offices, with 47 spaces allocated for that use that were 10 employee spaces plus 37 spaces determined using square footage calculations. She said the 3rd floor of that building required 46 spaces, 10 for employees and 36 to satisfy

the square footage calculations. Ms. Brown said the Orange County Office Building had 246 spaces, 90 of which were employee spaces and 156 that satisfied the square footage calculations. She said the Orange County Library had 98 spaces, 20 for employees and 78 to satisfy square footage calculations.

Ms. Brown said at the time the permit was sought, based on those calculations, 500 spaces were required on the West Campus and 522 were proposed and built. She said 437 of those 522 were square footage spaces and employee count spaces for the property used by Orange County. She said there was some variance in staff's recalculation of parking based on the property as-built and the ordinance requirements, but that was at least a good estimate.

Ms. Brown said there had been questions asked earlier as to how the County if it chose to do so and if the Board allowed them to, might work with the Eno River Parking Deck owners to identify spaces and why that might be important. She said she was not advocating that position, but wanted to explain to the Board how that would work. Ms. Brown said what would have to happen in the context of the parking study was that the Town would have to look at the number of spaces required in the CC (Central Commercial) zoning district which was across the street and in O&I (Office and Institutional) which was the zoning of the Justice Facility. She said if in fact in the new ordinance it were to appear as though there were extra spaces based on the square footage calculations, then if the parties all agreed it would be possible to come to the Board and ask that they modify the permit on the east side to allow some of those spaces to be freed up and put in the control of the County so that they could be counted for the west side. Ms. Brown said in reality that would be the practical way that that could come to be, and once the new ordinance was in place it would become clearer how many spaces that would be.

Ms. Brown said she believed speakers had expressed tonight that the reason that was an attractive possibility was that while they may not be able to encourage or force employees to park at Durham Tech they might be willing in an 8-hour day to have a designated space across the street which would free up spaces downtown for merchants, for visitors to the Justice Facility, and for attorneys who were visiting the Justice Facility for very short periods of time. She said that might prove to be a way to take some of the long term pressure off the parking.

Ms. Brown said her client remained willing to be in conversation about solutions to the problem that faced them tonight if asked to do so. She said she had reviewed the minutes from 2006 and it appeared that the Board had been placed in the same position each time the issue had come forward, in that there was not a plan in place that solved the issue. Ms. Brown said she hoped they would find a long term solution that was respectful not only of the court system but respectful of Hillsborough's ordinance and Hillsborough's determination about how cars were parked. She said she also hoped that there was not a peculiar situation created for just one developer who happened to be a government entity.

Mr. Hornik asked had the County and her clients had any substantive discussions about using additional parking spaces in the deck. Ms. Brown replied no. Mr. Hornik said it appeared that the deck was perhaps being underutilized and might be a solution to the problem. Ms. Brown said that Mr. Thompson had said earlier that the County was in a budgetary crisis, and because of that she believed the County felt it was not in a position to suggest a solution that would have some economic attachment to it. She said that may be the reason that discussions had not gone forward, noting that while she regretted that for the County there was no exception to the parking requirement allowed by the ordinance because someone ran out of money.

Mr. Thompson said that the County had had substantive conversations about a purchase agreement with Eno River Parking Deck, LLC.

Ms. Brown said she did not disagree that there had been contact and her client had expressed an interest in negotiating with the County, but when she was asked the question about substantive discussions she believed Mr. Hornik was asking if, when this was before the Board 6 weeks ago and the County was sent back to come up with solutions if someone suggested the parking deck as a solution, and the answer was no.

Mr. Hornik asked how about something short of a purchase. Ms. Brown said they had not been approached by the County to do that.

Mr. Hartkopf asked when the conversations about the purchase had taken place. Ms. Brown said she believed the conversation with the County predated the parking plan that the Board had received 6 weeks ago, noting it was likely in December or January. Mr. Hartkopf asked what the outcome had been. Ms. Brown said nothing had been discussed since then. Mr. Hartkopf said then those talks had concluded without an offer being made. Ms. Brown said their door was open for a conversation, noting her client had informed the County of what they believed a reasonable price would be if the County wanted to purchase the space, but no further discussion had taken place.

Mr. Hauth stated that the Board had before it a staff report that was a response to the applicant's plan, noting that the plan was likely within the Board's authority to interpret as meeting the ordinance or not meeting the ordinance, and exactly what conditions might be applied if the Board chose to grant a CCO. She said the main point she wanted to make was that the language they were currently considering for the draft UDO did not correct this particular situation. She said all the draft UDO was envisioning was no longer including employees in the parking calculation. Ms. Hauth said if the CCO was granted and the parking study found that a parking standard that was readily acknowledged in other jurisdictions for office or government use did not seem to apply in this circumstance then they could always consider something different. But, she said, with the knowledge base they now had, office space generally required parking at one space per 300

square feet. Ms. Hawth said that one space per 300 was gross floor area, so adopting that standard in the new UDO would not provide a solution to the current issue.

Ms. Hawth said in regards to the current plan before the Board, it was reasonable if the Board deemed it reasonable. She said it was a very careful way and considered way of looking at ordinances and making interpretations of the language that was in the ordinance, adding she did not believe the Town's ordinance was particularly vague and that it was actually fairly clear. Ms. Hawth said the ordinance based parking requirements on the building's gross square footage and per employee during shift of maximum employment, and if the Board chose to look at those through the lens being suggested by the County that was their right as the interpretive board for the ordinance. She noted there were a number of safety valves included in that that could be seen to accommodate the 53-space deficit, in that there was on-street parking, they had acknowledged that the Town's parking requirement was heavy, and that they had a supply of parking other places. Ms. Hawth said all of those things were the reasonable parts that Mr. Thompson had referred to, but the Board needed to keep in mind that this would be back before them in August and she did not believe they would have a solution in August. She said if they counted the numbers and it turned out wrong, she would be happy to be wrong and say they had plenty of parking, but she did not believe that was where they were and she did not want people to be overly optimistic. Ms. Hawth said she believed they needed some data that was not available at present.

Mr. Sikes said the fold-out sheet in the packet contained information that referred to a comparison ordinance and no assembly standard. Ms. Trueblood said that referred to the fact that the current ordinance allowed that if there was more than one use in a building to count the parking standards for gross floor area by the use of the building. She said it was common in various jurisdictions to consider courtrooms as an assembly room much as you would a church. Ms. Trueblood said what was presented in that spread sheet was the two ways you could look at the Justice Facility, one being looking at it as just one parking space per 300 feet of gross floor area plus the number of employees. She said the next column was looking at the proposed language the Planning Board had been discussing for the draft UDO, and within that UDO conversation were two perspectives with the assembly standards or without the assembly standards. Ms. Trueblood said depending on how you counted the spaces, either now or after the UDO was in place, the deficit remained between 100 and 379 spaces.

Ms. Hawth said, to be clear, the assembly was a calculation that they had done based on the gallery space in the courtrooms, so it was only the public seating in those courtrooms and not the entire capacity of the courtrooms such as a Fire Code counting could be. She said it excluded judges, attorneys, juries, clerks, or anyone sitting in front of the bar.

Mr. Sikes said the issue came down to peak parking, not just average parking. He said you could almost argue that for certain parts of the facility that you used restaurant standards or retail standards which was even more stringent at one per 200 square feet. Mr. Sikes asked had they run any numbers on that. Ms. Hauth replied they had not, but had looked at whether other jurisdictions had a courthouse standard, and in a previous report they had indicated that Durham and one other jurisdiction they had identified had a courthouse standard, but it was fairly uncommon to have a different standard. She added it was not dramatically different from the ones they were talking about.

Ms. Trueblood said because the West Campus was not included in the parking discussion tonight, she wanted to clarify that the UDO language being considered by the Planning Board included a different standard for the CC district that would include the parking deck and the West Campus. She said the Justice Facility was in the O&I district, so the new standards would be different in the new UDO if the proposed language was accepted. Ms. Trueblood said the new language being considered for the CC district did free up, depending on how it was crafted somewhere between 123 and 247 spaces on the West Campus, not including the Weaver Street Market spaces. She said she did not yet know what final language might be adopted for the UDO, but it may show where those extra spaces in the deck might come from. Ms. Hauth said as to what had been said about not fixing the problem, it was when you reapplied the new standard being considered for the O&I district on the Justice Facility site that there was still quite a deficit, but there was no deficit on the CC district site.

Ms. Hauth said part of the reason why all the spaces in the West Campus were not leased was because the Board of Adjustment had determined that, as long as the parking spaces were available, the ordinance did not specify that the parking had to be free, and the fact that it was a pay to park deck was adequate to meet the ordinance requirements at the time the site plan was approved. She said while those spaces were allocated to the West Campus, there was no one checking to make sure that people parking went into one of the doors on the West Campus.

Mr. Remington said that had answered both of his questions, which was to clarify the assembly standard and what could be freed up on the West Campus that was now allocated. He asked how the range of 123 to 247 had been derived. Ms. Trueblood said there were two standards that had been put in front of the Planning Board, and one of those was offered by the UDO consultant who had submitted that the new standard for the CC district would be one space per 500 square feet of gross floor area. She said the second standard had been put forth by staff which was to ratchet that back somewhat, and was based on looking at best industry standards found in the book 21st Century Land Development Code (American Planning Association, 2008) for new development which was one space per 300 square feet of gross floor area. Mr. Remington asked which was which. Ms. Trueblood replied that the 123 was derived from the 21st Century Land Development Code and the 247 came from taking the one space per 500

square feet of gross floor and retroactively applying that to the site plan. She said that at the time the site plan was approved it was required to have 452 spaces, so those standards would not automatically be applied to that site.

Mr. Hornik said the Town Board would have to specify how that might be done when adopting the new UDO. He said it was doable but would require an extra step.

Mr. Remington, who also serves on the Town's Planning Board, said the attempts to develop new standards for the UDO was their best attempt to go from ones that they generally agreed required too much parking to standards that were viewed as more reasonable. He said he saw what Ms. Trueblood had described as their best take on what they were looking at and what might ultimately be adopted. Mr. Remington said it was his understanding that the standards in the 21st Century Land Development Code were the best industry standards and based on experience over a broad set of conditions.

Recess:

Mr. Hartkopf called for a 10 minute recess. There was no objection from the Board.

After the 10 minute recess, Mr. Hartkopf called the meeting back to order. He noted for the record that the public hearing remained opened, and asked if the Board had completed its questioning of staff. The Board indicated there were no additional questions for staff at this time.

MOTION: **Mr. Remington** moved to close the Public Hearing. **Mr. Sain** seconded.

Discussion:

Mr. Sikes asked about the possibility of continuing the public hearing to the Board's next regular meeting to allow certain parties time to hold some discussions that appeared not to have happened as yet and might offer some possible solutions.

Mr. Hartkopf said that point of discussion had merit. He said under the current interpretation of the ordinance the parking was at a deficit and a denial would close certain doors. He said a continuance may provide a hardship, but that hardship would not be as great a hardship as a denial of the CCO.

Mr. Sikes said he wanted to make sure that all avenues had been investigated, noting they had not seen any proposal relative to adding more physical parking which had been mentioned as a possibility. He said regardless of other issues, the ordinance requirements had to be met and he would like to give the parties additional time to find a solution.

Mr. Remington said his logic was that only by closing the public hearing and making a decision would the Board have any chance of granting the CCO in time for the County to occupy the facilities and for court to open. He said if the public hearing was closed they could always reopen it if necessary.

Mr. Hornik stated that the Board would need to achieve a 4-1 vote to issue the CCO. He said were the Board to vote no on the CCO at this time then the applicant would have to come back into compliance or present another plan that would comply. Mr. Hornik said if the public hearing were continued with suggestions or instructions for what the Board wanted the party or parties to come back with, then that might be helpful. He said you would need to weigh that against some expression of inconvenience to the court and how important that might be, and weight that against inconvenience now versus inconvenience later.

Mr. Sikes said there had been some testimony given tonight by a member of the court that there would not be additional business for the court but would just be moving business for the court from Chapel Hill back to Hillsborough. He said he would much rather have the Board delay any CO of any type and provide some time for what had been talked about tonight to be considered and responded to. Mr. Sikes said to him a CCO was like a temporary tax, in that "it ain't no such thing." He said the applicant had made comments about the human resources issues related to the parking, and he saw that as also being a big public relations issue in December if they came back to say things were not working.

Mr. Remington said on the other hand was the situation of having to get word out to a wide variety of people who were planning to come to court beginning very soon that they were not to come. He said he had gotten the impression from the judges that that would be more of a hardship now than it would be to change it back again with a little more notice. Mr. Remington said he was not saying that that would ultimately affect how he would vote on the CCO, but it was a consideration. He said if the Board did vote no on the CCO, then would that require a waiting period before the County could come back with another plan. Mr. Hornik replied no.

Mr. Hartkopf said it was fact that this Board had closed and reopened hearings in the past, so it was not unheard of. He called for the vote.

VOTE: The vote was 3-2, with **Mr. Hartkopf, Mr. Remington,** and **Mr. Whitmore** voting Aye, and **Mr. Sain** and **Mr. Sikes** voting no. The Public Hearing was closed.

Discussion on granting or denying the CCO:

Mr. Remington said he saw two things that indicated the CCO should be granted. He said the first was that the basis could not be the proposed new UDO standards that might be enacted, so they were left with applying creative reasoning to say that they could make the numbers work. Mr. Remington said if they did that it

would have to be with the clear understanding that none of this was precedent setting since he did not expect any new ordinance language would allow the discounting of space for other things and anything they did should not be looked at as a precedent for how things might be treated in the future under the new UDO.

Mr. Remington said the second thing was where they thought they would be sometime between August and December, and their best guess on that was also their best guess as to what the new language would be. He said there were 4 scenarios they could look at this with in terms of parking space requirements on the East Campus and what could be freed up on the West Campus to offset that, and if that would even be allowed to happen. Mr. Remington said he felt more comfortable when looking at the 21st Century Land Development Code numbers which were more conservative than that suggested by the UDO consultant.

Mr. Remington said if they did not use the assembly standard then they had a deficit of about 96 spaces, in that 355 were required and 251 being provided. He said if the numbers really determined that 123 spaces from the West Campus could be applied to the East Campus, then that would be an overage that would imply that it could be reasonably assumed there were spaces people could use. He said he believed they were hearing that the assembly standards were likely the more reasonable standards to use with large spaces.

Mr. Remington said he believed that for the Board to discount the Durham Tech park and ride spaces would require some sort of additional provision in the language that would allow the Board to require the County to ensure in some way that their employees would use that lot on busy court days. He said for him to vote to approve the CCO would require assumption of all of those things.

Mr. Whitmore said at the end of the day they wanted to move forward and grant the CCO and they were trying to figure a way to make that happen. He said the Board was charged with upholding the ordinance and it was as simple as that, and he was inclined to have a test ride over the next 6 months to see what data they could collect. Mr. Whitmore said if the Board was to grant the CCO, he believed a condition would be that the County find a way to make the park and ride work or negotiate some other way to provide 53 additional parking spaces.

Mr. Whitmore said it was not clear that the County did not have the money; he knew they had the money but believed that they had just not made this a priority to be accomplished. He said perhaps with a conditional approval it would be the County turning it down and not the Board.

Mr. Hornik pointed out that the point he was trying to make when he had written the second proposed condition was that, if the Board granted the conditional CO, that the County was expressly recognizing that it may be required to provide additional parking for the East Campus in order to receive an unconditional CO

for the Orange County Justice Facility. He said that language was used precisely because Town staff had foreseen that at the end of this process there may be the scenario that in order to meet the ordinance that eventually got adopted, the County may have to provide more parking spaces. Mr. Hornik said if the County did not do that, then the courts would unfortunately have to move out. He said that language was built in to specifically recognize and make clear on the record that the County understood that it may have to provide more parking when everything was said and done.

Mr. Sain said as well, they may have to do less, which was the trick of this as he saw it. But, he said, they did not know that yet and in the interim the County needed to step up and cover the 53-space deficit in some manner. Mr. Sain said he believed that was a very reasonable expectation for the Town to place on the County. He said they needed to look at how the ordinance read now and not what might be coming later, and right now there was a deficit in parking and the County had to address that deficit in a timely manner.

Ms. Hauth said she had understood Mr. Sain to say that the parking spaces had to be provided in a timely manner, but she believed Mr. Whitmore was just saying the spaces had to be provided. She said she understood that Mr. Remington was saying that the spaces had to be provided before the Board granted the CCO. So, she said, they all needed to be very specific about how they believed the 53-space deficit needed to be resolved.

Mr. Sain said he would prefer to have those spaces identified before the CCO was issued.

Mr. Remington said they had also been told that it was difficult to make somebody park at the Durham Tech park and ride or someplace distant when they saw vacant spaces close by. He said perhaps as long as people continued to see empty spaces there was no need, but there needed to be some way to put something into place very fast and not waiting until December or even August if they saw there was a problem.

Mr. Hartkopf said the fact that the County had to come back before the Board in August was a safety valve. He said he had dealt with this issue in 2007 and would continue to deal with it this summer, and it had become clear to him that some of the criteria that the Board made its decisions on might well apply in this case, such as public safety and the needs of Hillsborough. Mr. Hartkopf said when applying the strict meaning of the ordinance then the Board would have to vote the whole thing down. He said with that having been said, he believed the applicant had made a good faith effort to allow the time for conditions to be known so that they knew exactly what would be necessary.

Mr. Hartkopf said the Board had the responsibility of providing for the safety and welfare of the citizens, and in trying to decipher the unknowns a conditional CO

made a certain amount of sense from that perspective. He said as he saw it by granting the CCO they were not going strictly against the ordinance because at this point it was not like there would be a grand opening and everyone would show up tomorrow. Mr. Hartkopf said it was clear that use would begin as a trickle that would then become more of a steady stream and hopefully at some point later in the year they would reach a point where they would know if they had a problem. He said they would then have the opportunity to make adjustments if necessary.

Mr. Hartkopf said while he fully appreciated the internal process change that Judge Buckner and his staff had proposed and believed those were excellent suggestions, he also wanted to say he rejected outright the change in the way the space was counted. He said he believed Ms. Read was right when she said that the standard set out in the ordinance assumed wall space, meeting space, and the like, and to start carving them out did violence to the ordinance. Mr. Hartkopf said he wanted to be on record saying that, and also wanted to be on record saying that having the court in Chapel Hill was depriving the Town of revenue that it would like to have. He said they had it within their control to strongly suggest to the Town Board that they strongly suggest to the Police Department to manage on-street parking and to allocate the foot power to accomplish that.

Mr. Hartkopf said he believed the conditions to be applied had been well thought out, along with the condition that on-street parking be limited to either 2 or 3 hour parking. He said with what Judge Buckner had stated, he believed 2 hours would allow someone to park and conduct their business with the court. Mr. Hartkopf said at this point in time he saw the parking deck as a safety valve, noting he had discerned from the exchange between Ms. Brown and Mr. Thompson that there was some negotiations that had been discussed but those negotiations may need to be reentered at some point.

Mr. Hartkopf said again, the Board needed something else to say that the required parking for West Campus was no longer a complete number of what was actually available. Mr. Hornik said in order to make anything on the West Campus a part of the solution for the East Campus, there would have to be something else. Mr. Hartkopf said there would likely have to be a change in the ordinance, and did not believe the Board was empowered to say anything other than the applicant had to abide by the ordinance. Mr. Hornik said if it provided the Board some ease, the Board could have the County come back at the June or July meeting, noting they did not have to wait until August in order to see if there were any immediate problems. Mr. Hornik said he had not suggested that because from what was said at a previous meeting it was likely going to be at least 60 to 90 days before the full complement of staff would arrive on the East Campus.

Mr. Thompson said they had a full complement of staff now, and one of the conditions was that that number did not increase.

Mr. Hartkopf said Mr. Thompson needed to keep in mind that he had tossed Mr. Thompson's accounting of FTE's out. Mr. Hornik said it would only take a few 1st, 2nd, and 4th Wednesdays of the month to get some flavor of what was happening. He said that was why he had suggested that the August date could be moved forward if the Board felt it was beneficial.

Mr. Sikes said this site plan had been approved in 2007, and the ordinance was very simple and very clear that the requirement was one space per employee and one space per 300 square feet of gross floor area. He said there was no other language in the ordinance and no exceptions. Mr. Sikes said he would disagree with the assessment that the County had made a good faith effort, in that he had seen only a little massaging of the numbers and some talk about rescheduling the court, which had nothing to do with the ordinance. He said the other issue was that they were basically saying with the August date was that if there was no problem, then they would intentionally allow the County to not meet the requirements of the ordinance.

Mr. Sikes said to say that the Board would look the other way was "horrible." He said that was not a good process and was a flagrant violation of the ordinance. Mr. Sikes said they had already had the discussion that even with the new UDO that this plan would still not meet the ordinance requirements. So, he said, even if they got to August, unless there was something on paper that showed the County could meet the terms of the ordinance he saw no way the Board could grant a CCO. Mr. Sikes said that was why he wanted to see the case continued so that the County could show him a plan to meet the requirements. He said he did not want to say they would do it for now and then later on they would check back in, because that made him feel like he was abdicating his responsibilities as a Board member.

Mr. Hartkopf said he did not disagree, noting one clear part he agreed with was he did not see a way to get there from here, not within the time spans they had to deal with. He said they were 4 years into this, and he did not see a parking deck growing out of a piece of property in 6 months, and he did not see the ordinance changing in such a way as to allow the parking deck to help satisfy the requirements for parking on the East Campus. Mr. Hartkopf said there was some potential nexus there, but he did not see the numbers lining up even with the new proposed parking standards.

Mr. Sikes said with regards to the May 1 date and the courts opening, again that was not something the Board could consider just as they could not consider it if it were a retail store trying to open with insufficient parking. He said this was not just 3 or 4 spaces but was a huge deficit, and there was nothing in the proposal that came even close to what was needed to satisfy the requirement. Mr. Sikes said he understood the difficulties, but as a Board member he did not feel comfortable brushing the problem under the rug and sweeping it back out in 6 months to take another look.

Mr. Hartkopf asked what the deficit was and Mr. Sikes replied 219.

Mr. Remington said where he disagreed with Mr. Sikes was he believed they all knew the ordinance requirements as they stood were sensitive, and to say that because it was right now and not 6 months from now that the only thing that was acceptable was to come up with a plan that provided 510 spaces was not really what they wanted. He said he did not believe the Board wanted the County to produce a parking lot along the Eno River, and as a citizen he would not want that. Mr. Remington said if there was no way to be somewhat creative or find some way to make it work so that the Board could temporarily approve something under the current ordinance and then see what happened, and then come back when there were new standards to apply to it, then he believed the whole thing needed to wait until those new standards could be applied. He said he would not like to say that what the Board had to ask for was that the County show them where they had 510 spaces when those spaces were not there.

Mr. Sain said this project was constructed under the current standards, not the new standards, and those current standards should be what was applied and not what might be enacted in the future.

Mr. Remington said he understood that it had to be applied to the current standards, but there was precedent for creative solutions being done in the past. He said he understood he was arguing for doing it on that basis, and he was also arguing for saying that this should not be a further precedent, so perhaps he was arguing something untenable. Mr. Remington said but, he would really hate to require the 510 spaces without being virtually certain that the number needed was something less than that. He said he understood that was the requirement, but believed he could be somewhat flexible on creativity with the FTE numbers, which was 106 rather than the 155 if it reflected where people were really working.

Mr. Remington said he agreed that the net floor space should be how the need was calculated, but he did not know how to get there to make an argument to get something temporary. He said requiring remote parking, whether there was public transportation or something else, could be an option since there was adequate space in the park and ride lot. Mr. Remington said the Wal-Mart lot might be another possibility.

Mr. Hartkopf said they still had to face what was before them today, and this Board had been creative in finding solutions before and being very careful not to set precedent. He said he had made it clear as had others that he rejected the premise behind the math, and he had the feeling the Board was being pushed up against the wall. Mr. Hartkopf said they had the opportunity to allow the tenant to be creative in their parking use, so he guessed he was making an argument to allow that creativity to happen. He said there was a chance they would have to

snatch that back if problems come up, but he did not believe it was fair for the Board to have been put in the situation they found themselves in.

Mr. Remington said he hoped the applicants realized that this should have been taken care of years ago, and there was no excuse coming down to the very end of the process with no satisfactory plan. He said that was the real issue, in that if this had been dealt with when it should have then they would not be here now and within sight of new standards. And, he said, perhaps back then it would have triggered a need to work on the parking requirements before now. Mr. Remington said now they were at the point that the Board was under the gun and the County was under the gun to get something approved because the County had put it off, and it was very hard now to find a way legally to be creative.

Ms. Hauth said that since the court had a significant number of people already stationed in Hillsborough, was there some other mechanism to allow those people who were scheduled here to appear and have some other mechanism to start notifying new people that they needed to be somewhere else to provide some time to see what the impact would be when court came back to Hillsborough. She said could there be some automatic revocation sooner or that the court could go on notice now that changes were to be made. Ms. Hauth said she believed people were struggling with what would happen next Wednesday when there was supposed to be traffic court, and that there was barely a week to notify who knew how many people that the location had changed.

Mr. Remington said he would maintain that that was not the Board's problem at this point. He said they were asked specifically if they would reschedule the meeting on this date to give time, and if that was not enough time and the Board said no, then that was that. Mr. Remington said he would really like to find a way to say yes for practical reasons as much as anything, noting he did not believe that much parking was necessary. But, he said, they needed some sort of legal justification under the current ordinance.

Judge Buckner said that Ms. Hauth had gotten one factual piece wrong and it was significant. He said they had literally hundreds of cases that were scheduled to come into Hillsborough with hundreds of civilian witnesses, and all of those people would have to be notified and rescheduled. Judge Buckner said the law enforcement piece of that was the easier piece, but it was notifying the hundreds of civilians that would be difficult if not impossible.

Judge Buckner said they had wanted to stage the return of traffic court that had not actually scheduled to come back until June. He said the totals for each Wednesday was roughly about 500 citations of which they generally saw between 200 and 300 bodies coming to court for a short period of time. Judge Buckner suggested that if the CCO was not granted then he would have to move all criminal operations to Chapel Hill or risk overwhelming his courtrooms in Hillsborough. He said he could not make changes within a 4 to 6 week period,

noting they had been planning the move for months. Judge Buckner said although he had not talked to the other judges or the DA, they would not consider moving court operations back to Hillsborough for over a year because it was just too voluminous and complicated. On the other hand, he said, they could move it out with about 2 to 3 months notice and the August date would give them time to schedule traffic court back to Chapel Hill.

Mr. Sikes asked what the status was of the park and ride lot. Ms. Hauth said the issue was that there was no dedicated shuttle service.

Mr. Hornik said the spaces were there and the 420 bus operated on a limited schedule, but when the discussion had first come up there was going to be a shuttle that would run County employees from that parking lot up to the East Campus. But, he said, that had not happened because funding had dried up.

Ms. Hauth said sometime before the end of the year additional transit service would be servicing that lot.

Mr. Sikes asked if the County Commissioners could issue some kind of stop gap funding for a shuttle service. Mr. Hornik said it was within their authority to do that, but whether they would consider doing that was anyone's guess.

Mr. Hartkopf asked if the schedule of the 420 bus even approach being adequate as a shuttle option. Ms. Hauth said it ran 8 times a day.

Ms. Trueblood said that was true, but it also cost \$2 to ride it.

Ms. Hauth said the new transit service that would begin sometime before the end of the year would be an in-Town circulator running 8 times a day, but it would be fare free and owned and operated by Orange County.

Mr. Sikes reiterated that that was not this Board's concern and they should not be the think tank that thought up solutions for the applicant. He said he still believed this case should be continued for at least one more meeting, noting the Board was not the reason they were at this point and he would like to see some legitimate effort to identify a creative solution by the applicant. Mr. Sikes said it would mean talking with the County Commissioners, TTA (Triangle Transit Authority), Eno River Parking Deck, LLC and whoever else might be necessary.

Mr. Remington said he believed they had eliminated using the Eno River Parking Deck under the current ordinance because of the double counting issue. But, he said, if the application was denied then they could go back to the County Commissioners and report that it had been denied because the County was not funding the shuttle for the park and ride or whatever.

Mr. Sikes said again they needed to think creatively for some temporary solution.

Mr. Hartkopf said his concern with that was the general mayhem that would resume in a few days, although he understood that that was the letter of the law.

Mr. Hornik said what if they added a proposed condition that said by some date sooner than August, perhaps June 1, 2010 that the County had to come back to the Board with proof of exploration of alternatives including good faith contact with Eno River Parking Deck, LLC to provide additional spaces.

Mr. Hartkopf said he would want something a lot firmer than that with documented results of exploration and implementation or some observed results. Mr. Hornik said they could not make them agree and they could make them discuss.

Mr. Sikes said, but they could make them follow the ordinance.

Ms. Hauth said they could go back to the condition from 2006 which was 125 parking spaces at Durham Tech that were counted. She said she was not suggesting that was right or wrong, but 253 was a big number.

Mr. Hartkopf asked was there any solace at all that when court was in session in Hillsborough that the pressure would definitely be on the County. He said someone had described it as a "game of chicken," or who was going to blink first. Mr. Hartkopf said he found it very disconcerting that Orange County was willing to force the hand so that the Town was the one that had to blink, and that the Town actually held the court system in higher esteem than the County did. He said he believed that was a sad statement, and he was not willing to have mayhem in the courts because the County mistreated their tenant. Mr. Hartkopf said that was a mighty humbling logic but it was the truth, and he held the courts in higher regard than that.

Mr. Remington said in looking at the numbers, if they were to say that the 155 employees was the wrong number and 106 FTEs might be more appropriate, that took the deficit from 259 to 210 under the current ordinance. He said he believed that was the range they were really looking at. Mr. Remington said if they were to say they would grant a CCO, then how they would do that under the current ordinance when the parking requirement had not been satisfied was the question. He said would it be appropriate to set a time limit, such as by the June meeting, that the County would have to come back with a plan that identified exactly where those 210 spaces were or would be located. But, he said, that would mean granting a CCO for something that really did not meet the current ordinance.

Mr. Hartkopf said that was why he had said he rejected outright the way that the spaces were being counted or massaged and to simply recognize that there was a greater public stake in play.

Mr. Whitmore said even if they said the numbers were okay, they would still have a deficit that they would need to find a solution for, and if they could not find a solution then they certainly could not find a solution for 200 or more.

Mr. Hartkopt said his difficulty with that was that somewhere in the future a "legal eagle" would cull through the information and find that statement and then hang them with it.

Ms. Hauth said one more math iteration that had not been taken into consideration was that the County chose under this plan to expand the site to be everything that was now the East Campus. She said the approved site plan was only attached to the drawing area which was the new Sheriff's Office, the former Sheriff's Office, the Justice Facility and the courthouse. Ms. Hauth said it was a much smaller square footage and it left the Link Building and the Government Services Annex as they were. She said that reduced the square footage and as well the parking required. But, she said, that might give them a slightly different number and they should know what the number was.

Ms. Trueblood called the Board's attention to the staff calculation sheet, noting that at the bottom of the page where it read "JF and DA Parking Deficit," the deficit was 219 based on the current ordinance and employee numbers as provided by the County last week. She said if you were to accept the FTE reduction of 68% for employees that would reduce the deficit to 160 spaces without including any reduction in gross floor area. However, Ms. Trueblood said, if a shorter amount of time was provided, then she would like to hear Mr. Hornik's response because the burden of proof would be on the staff to determine that that 160 was a correct number. She said that would be very difficult for Planning staff to determine in that short amount of time, and if they could not then it would mean automatic revocation.

Mr. Hornik asked what she meant by automatic revocation, and asked in what context she was speaking. Ms. Trueblood said if the CCO was granted based on the 560 spaces that were required now, but they only gave the County to the beginning of June before they saw what the permanent plan might be, that having between now and June to determine what the appropriate number was would be a shot in the dark. Mr. Hornik said he could not imagine that the court would move in if there was a chance of automatic revocation in June, based on what Judge Buckner had said.

Mr. Hartkopf said the problem with that was that he still did not buy the FTE calculation as stated by Mr. Thompson. Mr. Hornik said he believed they would all have to acknowledge that the County just did not meet the ordinance. Mr. Hornik said he was concerned that they would cloud the ordinance to a point where there was some debate later on. He said he believed their better position was to stand by the accounting until such time as they decided not to, and that would not be tonight. He said there was a hard and fast number out there, and

granted that may change, but it would be changed by the governmental agency that had the authority to make that change, and that was not this Board. Mr. Hornik asked the question then, because if they did that, where that put them as far as approval. Mr. Hartkopf said they would be recognizing the greater benefit to the Town and respect for the judiciary. He said if the County's plan was short, then it did not matter whether they were 219 short or 160 or whatever. Mr. Hartkopf said he did not want to see them arguing over those spaces, noting they had an ordinance before them and that was what had to be satisfied.

Mr. Remington said he would like to have someone help them understand if there was some legitimate justification for doing that. He asked was there anything in the ordinance that gave the Board the authority to waive the parking requirement. Mr. Hornik said the Board had no authority to do that and they had known that all along. Mr. Remington said then why was it before them.

Ms. Hauth said because staff could not say no to something this size. She said the Board approved the site plan contingent on the parking plan, and this was the parking plan that the applicant had chosen to submit. Ms. Hauth said they had to bring it to the Board even though it did not meet the requirements of the ordinance.

Mr. Sain asked if they could grant the temporary CCO and give the County a date certain that they had to come back with a rock solid plan that met the letter of the ordinance.

Mr. Hartkopf said he believed that had been staff's suggestion. Mr. Hornik asked if the Board wanted to make the County come up with 520 spaces when they knew that 8 months from now they would not need 520 spaces. Mr. Hartkopf said he believed in July they would know how many the County would need. Mr. Hornik said he was not sure they would know that by July.

Ms. Hauth said they would know if the parking they had was adequate, but they would not be able to really judge how many parking spaces they needed.

Mr. Hornik said what the County needed in the real world and what they needed according to the ordinance may not be the same thing.

Mr. Sikes said he would argue that as a quasi-judicial board the job and purpose of the members on the Board of Adjustment was to interpret the ordinance, and he would leave it to the Town Board to write that ordinance. He said they could be creative and had done so before, but this was not creative to him. Mr. Sikes said to him they were just turning a blind eye, and it still appeared that there was no way to get there from here. He said they could argue about numbers, but 10 years from now he did not want to look back and regret what had been done because they had not followed the ordinance. Mr. Sikes said if there was too much parking, he would not regret that.

Mr. Whitmore said the FTE count was an issue, and they likely had to acknowledge that from an economic standpoint they were at a low ebb and were likely at a low ebb in terms of the number of employees at the County facility. He said five years from now when that building might have “x” percent more employees, how would what they decide now play into that.

Mr. Hartkopf said he believed the answer to that was that growth was built into the ordinance requirements. Ms. Hauth said to be clear, the County could modify the interior space and change the employee count, but the Town would have no way to know that because the footprint would not change.

Mr. Hornik said one of the current proposed conditions on a traditional CO was that the applicant could not add any full time employees on the East Campus during the period of the CCO.

Mr. Whitmore said but ostensibly they could double the count three days later. Mr. Hornik said, but at that point the theory was that there would be a different requirement in place that would not include the employee count on a square foot basis.

Mr. Sikes said from a legal standpoint, since the site plan was initially approved in 2006 and they would issue the CCO through the end of December and there was a new UDO in place at that time, was it even possible since that site plan was approved in 2006 legally to place this site plan under the new ordinance. Mr. Hornik said there was a method to achieve that although it was not common. But, he said, it could be done.

Mr. Sikes said the question had come up before that denial of this site plan would likely be appealed to Superior Court, and asked would that be heard in this facility. Mr. Hornik replied it would be in the old courthouse but it would be in Orange County Superior Court.

Mr. Remington made a hypothetical motion, and asked if any of the Board members would support it: “to grant the Conditional CO with the conditions as stated, with the justification that the Board had received competent testimony that the parking requirements in the Zoning Ordinance were in fact excessive; that there was a procedure in place to evaluate what was a legitimate requirement; that the Board did not find it to be in the Town’s interest to build more parking and create more impervious space than necessary; that new parking standards were under consideration that were uncertain at the present time but would almost certainly be less; and, that due to these extraordinary circumstances the Board was granting the CCO.”

Mr. Hartkopf said he would want to augment that motion to add that the Board asked for plans and internal processes to address the parking situation, noting that some of that information had been provided but it was incomplete.

Mr. Remington said then they would add a condition #12 that by the Board's June meeting that a specific plan would be provided as to how the County would provide 219 spaces should those spaces turn out to be necessary.

Mr. Sikes said he would not support such a motion, but would make a hypothetical motion to continue this case to the May meeting. He said they should not forget that it was only a week ago that this meeting was continued to this special meeting tonight barely by a 3-2 vote after much discussion, and it could very easily have turned out that tonight's meeting would not have happened regardless of the May 1 deadline.

Mr. Sikes said there were still people in the room that had not had a serious discussion about the testimony that could possibly have a direct effect in aiding the County in coming closer to meeting the ordinance or helping with some of the conditional CO issues. He said he did not believe the County had explored all options; that the date set for next week was out of the Board's hands, and they had not made the assumption that the court would be opened. Mr. Sikes said he had all respect for the judiciary, but he could not support the proposed motion.

Mr. Whitmore said he would likely support Mr. Remington's motion, but the conditions would have to be very specific and very hard with dates attached that would carry some teeth and consequences were they not met.

Mr. Remington asked what he would suggest including. Mr. Whitmore responded a specific set of meeting dates to discuss how well the County was fitting into the Town with their plans and whether those plans needed to be trimmed in some way, and to have some metrics in place so that the staff could monitor those on a weekly basis after the initial 60 or 90 days of installation of staff into that facility. Mr. Whitmore said he did not know what those metrics would be, but there would have to be close cooperation with the County in measuring those metrics.

Mr. Sain said he could not support Mr. Remington's hypothetical motion.

Mr. Remington said that was two votes against, so his proposed motion would not pass to grant the Conditional CO since a supermajority approval was required.

Mr. Sain said the County had had ample time to resolve all of the issues including the parking deficit before this time, and it appeared that they were trying to convince the Board that they needed to hurry and get it done. He said the bottom line was the parking plan did not satisfy the ordinance.

Mr. Remington said it was obvious they were not going to be able to grant the CCO tonight unless someone came up with a motion that 4 of them could support. He wondered if they needed to move forward with Mr. Sikes' motion to continue the case.

Mr. Hartkopf said he believed the involvement of the Judges and their staff was recent, and if the information he had was accurate they had not had a lot of movement on this until the judges were involved. He said his thinking was that now that the Judges and staff were involved, this may now move along at a pace that was more agreeable to everyone. Mr. Hartkopf said he was going to propose that they actually require that there be a 3-person committee charged with moving this issue forward and that one of the judges' staff be one of the members, with the Town and the County being the other. He said that might enable them to achieve the results that Mr. Sikes had so rightly pointed out were required. Mr. Hartkopf said he did not know if that would solve anything, but he was genuinely concerned about what would happen when all those court functions returned to Hillsborough.

Mr. Hartkopf asked Judge Buckner if he would be willing to agree to such a committee. Judge Buckner responded they would help in any way they could and would be happy to appoint someone. Mr. Hartkopf said his concern was that this issue had been an issue for about 4 years now and never moved forward until the judiciary was made aware of what was occurring and entered into the discussion. Judge Buckner said he had known nothing about this issue until very recently. Mr. Hartkopf said now that they did know, some progress had finally been made. He said it occurred to him that without the judiciary's continued involvement little progress would be made for another 4 years. So, he said, he was proposing to form a 3-person committee to try to reach some closure with the force of Judge Buckner's office behind them. Mr. Hartkopf said he did not know if that would be useful or even if the Board would be amenable to that.

Mr. Hornik asked if Mr. Hartkopf was proposing that that be made a condition of continuance.

Mr. Hartkopf said they had no power under a condition of continuance, only a condition of acceptance. Mr. Hornik said that was correct.

Judge Buckner said he really had two choices as the programmer for the court's schedule. He said he could continue to program court in Hillsborough for the courtrooms he had now, noting as he understood it this issue was holding up occupancy for the courtroom and the offices surrounding it. Judge Buckner said they had been working out of closets for 2½ years, but all this would mean was that they would not have access to the new courtrooms. He said that practical effect, he feared, would mean that cases would be settled more slowly, the courtrooms would be more crowded, and as a result would be more dangerous. Judge Buckner said the alternative was rather than putting people in mortal combat with each other in family violence cases in close contact, he would just move the operation to Chapel Hill because he had an adequate facility there to do all his criminal high end cases and then consider moving back to Hillsborough in a couple of years. He said he could keep his small social services and trial litigation in the courtrooms they had access to now, but he believed that would

have a material effect on Hillsborough Police officers because they would have to travel to Chapel Hill for court and stay for longer periods.

Judge Buckner said it was his charge as quickly as possible to allow victims and defendants to have their day in court, so if this CCO was denied he would likely move traffic court back to Chapel Hill and schedule court there 5 days a week.

Mr. Remington said if this case was continued for a couple of weeks or worst case until June to allow time to work out how the parking arrangements would be dealt with, or at least something that 4 members of the Board could support, would that be too much to bear to hope that the issue would be resolved by then and go ahead and move back to Hillsborough. Judge Buckner said that uncertainty for the number of law enforcement agencies and all the others involved with the courts, and directing them to notify thousands of people just could not be changed that quickly. He said they were normally looking at 6 to 8 month windows with large margins for error. Judge Buckner said what would concern him was that he had access to the 4 courtrooms now, and as he understood it he would have access to the Mural Courtroom which was where they would like to stage large court days. He said his operational plan might just be to leave that plan in place but not use the Mural Courtroom. But, he said, he had not yet had time to think through that yet.

Judge Buckner said the second piece of that, and one of the reasons they had moved traffic court to Chapel Hill during construction, was partially parking but they had not wanted to put people at risk to the weather or that that had geriatric or mobility issues. He said so, they had a comfortable set-up in Chapel Hill and he would have to make his decision based on keeping as many people comfortable as possible. Judge Buckner said he wanted to make sure the Town and this Board understood that they had his absolute and full cooperation.

Judge Buckner said in response to a comment Mr. Sikes had made earlier, when he had said they did not have more work he was referring to the concentration of judges and court officers in one place that would help them get their work done quicker and more efficiently. He said the difficult part was telling people where to go for subsequent court dates, which was the logistical issue that he faced.

Mr. Sikes said it sounded as if they may have to test the worst case scenario in any case.

Mr. Whitmore said to make sure he understood, if they did not grant the CCO the court could still operate in the existing courthouse. Mr. Hornik said yes, just as they were operating now. Mr. Whitmore said they just could not spill over into the new space. Ms. Hauth said they were now occupying the renovated new part, it was the old part they could not occupy.

Ms. Trueblood added that they were in the new part under a conditional CO already and they did not have permanent access to that, nor did the DA or the Sheriff because all of that was wrapped up in the original site plan approval. So, she said, they were conditionally in all of the new and most of the old part of the building, plus the DA's office, and that was all a condition that Orange County Building Inspections was holding up until the zoning approval was granted. Ms. Trueblood said they did not have final approval for anything.

Mr. Hartkopf said then the only influx of people expected would be when traffic court came back to Town.

Mr. Sikes said in addition they would not have the dedicated courtroom. Mr. Hornik said but as Judge Buckner said, they might do that anyway.

MOTION: **Mr. Sikes** moved to continue the review of the parking plan for the Orange County Justice Facility to May 12, 2010 to allow the applicant time to consider modifications or solutions that might be made to satisfy the requirements of the Zoning Ordinance. **Mr. Sain** seconded.

Mr. Remington said that would not be his first choice but it may be the only way to deal with it at this point.

Mr. Sikes said he did not want to deny the application at this point because he believed there were some possible avenues. He said whether they could get there or not remained to be seen.

Mr. Remington said he was skeptical that there was anything that could be done that would meet the current ordinance if they did not do something creatively. He said it was something like a "Hail Mary" to ask the County to come up with something that would work, because basically it would have to be off-site parking combined with an equitable way of making sure people could get to the facility.

Mr. Whitmore said the Town might very well be losing leverage.

Mr. Remington said he did not know that they were losing leverage, noting the County was obviously in a bind but something had to be solved.

Mr. Sain said it was his feeling that the County should not have waited until the last minute and now they were all paying the price of their failure to resolve the parking issue.

Mr. Hartkopf said he wanted to let the Board know he was going to vote against the motion to continue, noting that if a motion had been made to deny he would have voted for it. He said it had been his policy for several years that they tell an applicant what they expected and then give the applicant the opportunity to come back to the Board. Mr. Hartkopf said that was a policy that this Board had an

unwritten agreement about, and they had let this applicant know exactly what they needed to do and they had not done it. So, he said, he would be voting no.

Mr. Remington said then Mr. Hartkopf was saying the applicant had not come back with what the Board had asked for. Mr. Hartkopf said that was exactly right.

Mr. Hartkopf called for the vote.

VOTE: The vote was 4-1, with **Mr. Remington, Mr. Sain, Mr. Sikes** and **Mr. Whitmore** voting Aye, and **Mr. Hartkopf** voting no. The hearing was continued to May 12, 2010.

ITEM #5: Adjourn.

Mr. Remington moved to adjourn the meeting at 11:35 p.m. **Mr. Whitmore** seconded. The motion was adopted unanimously.

Approved:

Tom King, AICP, CZO
Senior Planner
Secretary to the Board