

**Minutes**  
**BOARD OF ADJUSTMENT**  
Wednesday, May 12, 2010, 7:00 PM

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

**ABSENT:** Carla Lunsford and Rod Jones, absences excused.

**STAFF:** Senior Planner Tom King, Planning Director Margaret Hauth, Planner Stephanie Trueblood, Planner Aspen Price, Town Manager Eric Peterson, and Town Attorney Bob Hornik.

**PUBLIC:** Mayor Tom Stevens, Jeff Thompson, John Roberts, Mike Hammersley, Jim Parker, Libby Hough, Elizabeth Read, and Holly Reid.

**ITEM #1:** **Call meeting to order and confirm the presence of a quorum.**  
Chair Al Hartkopf called the meeting to order at 7:02 p.m. and confirmed the presence of a quorum.

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

**ITEM #3:** **Approval of the April 14, 2010 minutes.**  
Mr. Remington noted a minor comment he had forwarded to Mr. King via email, where he had clarified a comment he had made regarding the Planning Board report and special exception permits on page 13, 3<sup>rd</sup> paragraph. Mr. King noted that the change had been made to the version sent to the Board for review.

**MOTION:** **Mr. Remington** moved to adopt the minutes of the April 14, 2010 meeting as amended. **Mr. Sain** seconded.

**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 that those who had been previously sworn on this matter continued to be sworn, and those who wanted to offer testimony that had not been sworn would need to do so.

Mr. King swore in John Roberts, Mike Hammersley, and Mayor Tom Stevens.

Mr. King stated that the new plan contained all the same components as the April 28, 2010 plan and now offered to construct a 256-space gravel parking lot behind the Battle courtroom that would be south of the existing courthouse and east of South Churton Street. He said the County offered to construct that lot only after receiving proper approvals from the Town for its compliance with the Development Ordinance, that the CCO (Conditional Certificate of Occupancy) period yielded measured results requiring the real need for more parking, that the UDO (Unified Development Ordinance) was adopted and established a new standard for parking on the East Campus, and that the proposed site plan and additional conditions were approved by the Board of County Commissioners.

Mr. King said staff had proposed parking lot plan, and in regards to Item #1 there were concerns about stormwater compliance regarding volume and nitrogen loading, noting that there was potential that some of the parking area would most likely be in the 100-year floodplain, and that the Town's ordinance did not allow development or paving in the floodplain. He said also of concern was impact on stream buffers, the potential for increased traffic at the intersection of East Margaret Lane and South Churton Street and specifically signal left turns, impacts on documented archeological areas particularly areas identified along South Churton Street and behind the courtroom at the western half of the parking area, screening and landscaping requirements in regards to HDC (Historic District Commission) approval of tree removal, and impacts on the geothermal HVAC system levels to the impacted area.

Mr. King said as far as the CCO that would provide the Town the ability to collect data regarding parking at the Justice Facility when operating at full capacity, but staff believed that still would not give them the information to determine what the proper standard for the facility would be. He said, however, the information would be useful to establish a new parking standard in that the Town wanted to be confident that the adopted standards would establish an appropriate standard for additional parking for the facility.

Mr. King said in regards to Item#3 regarding the upcoming UDO and establishing a new parking standard for the East Campus, whatever the parking standards the Town determined were in its best interest needed to be the determining factor for the parking needed for this site. He said that any new UDO parking requirements would establish the standard for parking, not just a guideline; however, the current draft language still would not provide the amount of parking that would be needed at this time.

Mr. King said the applicant has indicated that the proposed site plan and additional conditions were approved by the Orange County Board of Commissioners. He said in regards to that, if additional parking was determined to be required during any CCO period, then staff believed they needed to set a compliance date so that at the end of that time the additional parking would have to be provided. Mr. King stated staff did not feel it would be appropriate for the

Board of Adjustment to approve the site plan subject to approval conditions by Orange County because that approval might be seen as an abdication by the Board of its authority to impose reasonable conditions necessary for plan compliance.

Jeff Thompson, having already been sworn and speaking for the County, stated that the guidance from the Board from the last meeting clearly was to bring back a modified plan that would increase the supply of off-street parking for the Justice Facility expansion project. He said Mr. Sikes had asked that they respond with a parking plan that would meet the current ordinance, and the last guidance was that they were to reject the full time equivalent calculation assumption on employment and to reject the useable square footage in favor of the gross square footage as definition of floor space.

Mr. Whitmore said the Board had also asked that Judge Buckner or other justice staff be included in the discussion with the County to make sure they had their full support. Mr. Thompson said that was correct and that did occur.

Mr. Thompson said the highlights of the plan were that they were prepared to build up to a 256-space parking lot on the land noted on the site plan. He said if that lot was built, they agreed that it would meet the current ordinance requirements for parking. Mr. Thompson said they would get the lot designed, permitted, and ready for construction, with that plan to be held in readiness should it be determined that it was necessary for construction at the end of the UDO rewrite process. He said that would also allow any changes to the UDO to be dovetailed into the parking requirements for this plan. Mr. Thompson said the site plan would be contingent on the approval of the Board of County Commissioners, noting they had reviewed the plan and the conditions and at this point had approved it being presented to the Board of Adjustment tonight.

Mr. Thompson said he wanted to respond to some frequently asked questions that needed to be expounded upon. He said Mr. Remington had asked why the Board was being pushed and why the plan was coming forward at the last minute. Mr. Thompson said he had submitted to Ms. Hauth parking process documents on May 12, 2007 and the Board had issued a Zoning Compliance Permit on May 21, 2007, with no conditions for parking. He said the County believed the issue was settled in terms of the issues that were presented at the November 8, 2006 meeting.

Mr. Thompson provided the following information to back that up and to respond to issues regarding background and planning.

- This particular site had been in planning since the mid 1990's and at its last meeting the Town Board had asked that the court activities not leave downtown Hillsborough.
- A summary packet was being provided to the Board that contained County Commissioner documents that involved the planning process from 2001 through 2005, which noted that the Town had been involved with that on

several levels. If you looked through those documents you would find that every stakeholder in Hillsborough had been involved in the planning throughout the process.

- In November of 2001 Freeman White was engaged and had plotted a six-deck parking facility along Cameron Street.
- In 2002 the County and the Town Board had received an update on the planning process.
- In 2004 Corley Redfoot Zack was selected as the architect, and for 2 years had participated in the planning that involved every stakeholder.
- In November of 2006 the Special Exemption Permit was requested and granted; the issuance of the Zoning Compliance Permit was in May of 2007; and, the assumptions in 2006 were in effect not adhering to the strictest reading of the Code. Both on-street parking and Durham Tech parking were rejected in March 2010.

Mr. Thompson said a recurring question was did the current revision to the conditions, the potential addition of 256 spaces, meet the current ordinance. He said the answer was absolutely, unequivocally no, because it did not exist today. However, he said, if they went through the process and if the Board instructed them to build up to 256 spaces and if they did so, it would meet the strictest reading of the ordinance today. Mr. Thompson said if that 256-space facility existed today it would meet the current ordinance and any future UDO rewrite because the requirement would be 255 spaces. He said if the UDO was adopted as drafted without the assembly standard, their plan for a 256-space lot would continue to meet the ordinance because only 100 would be required. Mr. Thompson said if they followed the UDO with the assembly standard, they met it again because only 220 would be required. So, he said, this plan as designed and if built would meet all of the parking issues discussed previously.

Mr. Thompson said another question was if the Eno River Parking Deck spaces could be counted toward the Justice Facility deficit under the current ordinance, and the answer was unequivocally no because they were all allocated to the West Campus. He said one question was if the County had discussed the potential of the Eno River Parking Deck spaces being utilized for the Justice Facility/East Campus parking, and the answer was yes and those discussions were ongoing. Mr. Thompson said the point here was the issue of the UDO freeing up spaces which was a real possibility, but again it did not meet the current ordinance.

Mr. Thompson said they had actually received data on the courts after instituting full loads on courts which began on May 3, 2010 with the exception of traffic court which would not begin until June, so they were not at full capacity at this time. However, he said, they did have some routes and data from May 3 through today. Mr. Thompson said another question was had the County enacted voluntarily any of the proposed conditions, and the answer was yes. He said the court management system was in place, the PayNCTicket.com website portal was operational and was expected to reduce traffic on site by 15% to 20%, and they

were working on parking directional signage highlighting the general availability of parking.

Mr. Thompson said the highest days in terms of docket counts were in the 400's to 500's which had happened on Monday, May 3 and Monday, May 10, with those people visiting the facility between 9 a.m. and 4 p.m. He said with that they were showing 80 spaces available in the Government Services lot and about the same number in the Eno River Parking Deck. So, he said, there was sufficient parking in and around the courthouse even on those heavy docket days not including traffic court.

Mike Hammersley, having already been sworn, with Corley Redfoot Zack and the civil engineer for the project who had designed the schematic parking plan now before the Board, stated that they had been asked to take a look at a piece of property owned by the County just south of the existing facility and determine what was possible in the way of any additional parking. He said that was a schematic plan at present since it had not yet been engineered, and described how the parking would fit on the site. Mr. Hammersley said not shown on the plan was compact spaces, noting they were allowed to have at least 25% of the spaces as compact spaces so adjustments might be made as they went through the process. He said if constructed it would be done outside of the floodplain and within the Town's guidelines and requirements, including those for stormwater management and landscaping.

Mr. King said that the Town's Flood Damage Prevention Ordinance regulated the 100-year floodplain, not the 500-year floodplain as shown on a staff prepared flood map.

Mr. Remington said that it appeared that some of the proposed parking encroached onto the floodplain on the east edge, as did the driveway. Mr. Hammersley said that the drive access to the parking would be through the lot in order to avoid the floodplain. Mr. Remington pointed out that that was not the correct map of the existing parking lot, in that it was modified two weeks ago and this version was the previous version of that map. He asked if Mr. Hammersley was saying that the south end corresponded to the new map. Mr. Hammersley said again it was a schematic used to show where the parking would be located. He pointed out on the map where the drive would be located from East Margaret Lane, noting if the 100-year floodplain came in too far they would adjust that drive to avoid it; perhaps losing 3 spaces that would have to be placed elsewhere. Mr. Hammersley emphasized that the schematic was meant only to show the potential for a parking lot.

Mr. Whitmore said they knew where the 100-year floodplain line was and the applicant was acknowledging that it would perhaps encroach into the eastern section of that floodplain. Mr. Hammersley said actually it did not cut the east off at all, noting it was on the very edge of the south side. He said once they placed

compact spaces in the construction documents they would pull the line up for both to avoid the floodplain. Mr. Hammersley said they would need to get the survey on the plans to determine physically where the spaces actually were so that there was no speculation as to any encroachment into the 100-year floodplain.

Mr. Remington said he would certainly disagree based on comparing the 100-year floodplain line and the east end of the parking lot was relative to the buildings there. He said the whole east bank of parking places were encroaching. Mr. Hammersley said the elevation was 507½ feet through that 100-year floodplain, and the parking was outside of that area. He reiterated that the schematic was for discussion purposes and there was an area where a parking lot could be built.

Mr. Sikes asked would the lot be a permanent parking lot. Mr. Hammersley replied yes, that it would be a gravel parking lot. Mr. Sikes asked how much grading would be necessary. Mr. Hammersley said they would have to cut down enough to create a subgrade and then put in stone work, they would need to build curb and islands to protect the landscaping, and then provide whatever stormwater management was necessary.

Mr. Remington asked what the estimated cost was. Mr. Hammersley said he had no idea because it had not yet been designed. Mr. Remington wondered if it was something the County could afford to do.

Mr. Sikes said he would be interested in seeing a cost comparison versus paying for a shuttle to the Durham Tech park and ride lot.

Mr. Thompson said their direction was to meet the current ordinance and that lot would meet the ordinance. He said the Durham Tech lot did not meet the ordinance.

Mr. Sain said he believed in 2006 there was discussion about a shuttle. Mr. Thompson that the record showed that that had been discussed but the County Commissioners had not committed to that.

Mr. Hartkopf said he was holding in his hand the minutes from the meeting of November 8, 2006, which included the discussion regarding the issue of a shuttle bus. He read an excerpt from those minutes: “Ms. Jones said the County Commissioners had already set aside funds to fund a shuttle service. She said this was not a concept, rather it was a grant provided to the Durham Tech campus and it had been their plan all along to utilize those spaces to get people to downtown Hillsborough.” Mr. Hartkopf said after that discussion he had made a motion which read, in part: “Mr. Hartkopf moved to grant Site Plan approval for the Courthouse expansion with the following contingencies: a. that presentation of acceptable remote parking facilities and process documents covering the operation thereof were received;...” He said that meant to him that the Board did have latitude that they exercised for the benefit of the Town, and they exercised

that latitude at that point in time to say that they were willing to let the County, on the County's word, use Durham Tech as a park and ride for their employees. Mr. Hartkopf said in fact, Orange County had had no problem with coming back to the Board 2 months ago and saying that the citizenry had to park at Durham Tech and ride downtown to pay their parking tickets. But, he said, the County seemed to have an "awful" problem telling its employees that they had to park at Durham Tech and ride the bus into downtown. Mr. Hartkopf said he had an awful problem with that.

Mr. Hartkopf said the Board had set a condition and it was to be met, noting verbiage that had been mentioned previously had no force of law. He said in fact, that individual had perpetrated a terminological inexactitude in saying that the County had already set aside funds for a shuttle service and it was not a concept. Mr. Hartkopf said that was the condition under which the site plan approval was granted. Mr. Thompson said that the transportation services that the County funded was now in existence, which was the TT (Triangle Transit) 420 line as reported in the Board's March 10, 2010 meeting. He said there was nothing in the record that talked about a dedicated shuttle for employees independent of the TT 420 line. Mr. Thompson displayed an exhibit dated November 16, 2006 that was delivered to Ms. Jones from Ms. Hauth, which was the summary received after that Board of Adjustment meeting. He said that sentence 5 stated that "a written plan for the remote off-site parking facility and its operations provided to staff before the zoning permit is issued for the project to demonstrate limitations provided for employees parking on the campus." He said that document was provided and the Zoning Compliance Permit was issued, and his point was it was reasonable for the County to think that it had an approval to follow on with a very expensive construction project with the parking plan in place. Mr. Thompson said a lot had been built, the TT 420 line was operating, and those were the commitments made by Ms. Jones in the set of minutes referred to.

Ms. Hauth stated that the Zoning Compliance Permit was contingent on a letter that staff received to address parking during the construction only. Mr. Thompson said that was not the instruction from the Board. Ms. Hauth agreed. Mr. Thompson said he was not saying it was not problematic but he was saying that that was what had happened. Ms. Hauth said once again that the Town was pressed to issue a permit when they had not received the information from the County. She said they had received a plan on an operational, temporary parking situation during construction that generated a temporary parking lot off of South Cameron Street, which included the use of First Baptist Church as well as the creation of a temporary gravel parking lot allowed by the Town contrary to the Zoning Ordinance in order to work with the County and allow them to move forward with their project.

Mr. Hartkopf asked was that gravel parking lot the one he had asked about the possibility of using. Ms. Hauth said that was correct, noting the permit for that lot

was clearly temporary and clearly required that it be eliminated as soon as possible and the County had complied with that.

Mr. Hartkopf asked Mr. Hornik to elaborate on the force of law behind the conditions set forth in the minutes by the Board, and were they held by any other standard or any other process other than those conditions set forth when they had granted the conditional site plan approval. Mr. Hornik said the conditions set out on November 8, 2006 went unappealed and were attached to the site plan approval. He said in his estimation what the County was asking for at this point was modification of the site plan approval to amend that condition, essentially, because their plan no longer called for the use of the satellite parking at Durham Tech and the shuttle service to accommodate the parking requirements for the Justice Facility. Mr. Hornik said the way he understood the application the County acknowledged that that condition was not being utilized, that they acknowledged that they did not meet the parking standard, and they were asking the Board to allow for the issuance of a CCO while they and the Town tried to come up with something different to satisfy the parking standard for the Justice Facility. He said right now, that conditional approval was the law.

Mr. Thompson reiterated it was their contention that the conditions had been met, in that the lot existed, the bus existed and at that time on-street parking was counted. He said today, this Board had rejected that the on-street parking be counted. Mr. Thompson said the number of spaces in the Durham Tech lot was 125, and the on-street spaces was 55, so they were over the 168 that were discussed in 2006. He said in moving forward and looking at the plan, if you were to hold to the 125 spaces that were discussed at length and agreed upon in 2006, and you were to allow the on-street parking as was allowed in 2006, this additional parking would not be up 256 but would be 125, and would meet the intent of the 2006 meeting.

Mr. Sikes asked if they had any process documents that showed that. Mr. Thompson said it was in the packet and was dated May 12, 2007 from Ms. Jones to Ms. Hauth. Mr. Sikes asked did they have one specific to that condition.

Ms. Hauth said that letter spoke only to the use of a gravel lot for employee parking during construction, and she had never received a document that spoke to any kind of shuttle service.

Mr. Hornik said according to the condition, that process document was supposed to address the open question that the Board still had in November 2006 about how people would get from Durham Tech to the Justice Facility. He said while the Zoning Ordinance allowed remote parking, it did not contemplate remote parking 2 miles away, noting the limit under the Zoning Ordinance was 400 feet. Mr. Hornik said under the circumstances presented to the Board in November of 2006 and reflected by the minutes, there were or would be 125 spaces and the County

was committing to provide some process documents to the Board to show how that remote parking would work for the Justice Facility.

Mr. Hartkopf added they were also to show how they would ensure that an employee who was assigned to park there would in fact park there and not park elsewhere. He said the word “shuttle” was used and not the TT route or something else. Mr. Hartkopf said the Board was told the money was set aside for a shuttle, and the question was how the County would ensure that employees would park in a specific place and not some other place. He said that was a tall order for the County to come up with; however, that was the burden the County accepted in 2006 as reflected in the record, and the Board had been assured that the County would work that out.

Mr. Whitmore said actually the record said the County was proposing to offset that. Mr. Thompson said the County had built the lot and was providing the TT 420 transportation, and that was real.

Mr. Sikes said that did not have anything to do with the site, and it was very clear what the conditions of approval were. Mr. Thompson said there were years of discussion about putting parking at the Durham Tech site, and the chronology of planning from 2001 to 2007 reflected that. He said there was the reality that the Eno River Parking Deck did not exist in 2006 and was not contemplated in 2006, and the conversation had gone from 125 with on-street parking to no on-street parking and they should utilize the parking deck. Mr. Thompson said he was attempting to put on the record the conversation as he understood it from 2006, noting he believed the County’s current plan was a practical and reasonable approach given where they were today.

Mr. Hornik said he wanted to also make sure the record reflected that had the Board received the process documents that showed how the County planned to transport people from the Durham Tech lot to the Justice Facility, they would not be here today, because that would have satisfied the condition and an unconditional CO (Certificate of Occupancy) could be issued. But, he said, that was not the County’s plan and that was why they were here.

Mr. Thompson said that was correct, that the County was not providing that plan and from what Mr. Hornik had said if he was providing a process document where employees were going to be forced to park offsite, and the Board approved that, then they would be moving on but he was not prepared to do that.

Mr. Sain said he was understanding that the County was proposing to provide the gravel parking lot but only if the County deemed it needed. Mr. Thompson said as he understood the conversation at the previous meeting, it had gone along the lines that they understood the conditions and they appreciated the conditions, but what happened if nothing worked; that is, what was the plan or the back stop then? He said the plan they were presenting now served as that back stop.

Mr. Sain said then again, if they did not build it because they did not believe they needed it then the plan would continue to not meet the requirements of the ordinance. Mr. Thompson agreed, noting it did not meet the ordinance because it was not yet built. He said he was proffering a condition that said that this Board had the authority, and with no loss of vested rights, to require that the lot be built at a time certain after they understood what their true capacity and true demands were. He said the only difference was they had a back stop to build something that satisfied the current ordinance. Mr. Sain said they did not have a guarantee that they could build that lot, noting they had to get approval from the Historic District Commission for tree removal. Mr. Thompson said that was correct, and they acknowledged that they would have to go through those processes but they were reasonable because the processes had to follow the law.

Mr. Sikes said for the Board to issue a temporary CO, then they were basically throwing responsibility to people who were not on this Board. Mr. Thompson said that was the normal process, noting they would then get information back from those people not on this Board which said whether or not the plan met the law, and then they could make the ruling.

Mr. Sikes said usually the condition was did it meet the ordinance, or did it not, not did it have the potential to meet the ordinance if the lot was ever built. He said that was an important distinction. Mr. Thompson said he believed they all understood the parking requirement was heavy in Hillsborough as had been stated on the record multiple times. He said he did not believe anyone in the room believed they needed 256 spaces to satisfy what would probably happen with the rewrite of the UDO going forward. Mr. Thompson said he believed they all understood there was available parking in Town, and he believed this was a reasonable plan to satisfy the 256-space requirement and it could be engineered to show that within the reasonable confines of the engineering process.

Mr. Sikes said he appreciated that, but engineering it and having it were two different things. Mr. Thompson agreed, but said to build that lot with the current environmental and engineering constraints was not a reach in that it was not an unreasonable schematic plan.

Mr. Hartkopf said he believed there were issues to address, referring to items 1a thru h, and 2, 3, and 4 with Town staff to get a feel where they were coming from.

Mr. Thompson provided a summary, as follows:

- They understood the proposed plan, if approved, yielded a conditional approval and the Board would lose no vested rights or power.
- They understood completely that the plan did not currently satisfy the ordinance because the lot was not yet build, but they believed it was a reasonable plan to move forward concurrently with the conditions proposed on April 28, 2010.

- They were prepared to design, seek approval, permit and construct that parking lot alternative, and that once directed by the Board or the Town would be in compliance with the current ordinance. They believed that proposal satisfied the Board's request for a back stop requested on April 28, 2010.
- They requested that the Board approve or deny tonight, as a continuance had the effect of a denial without the County having any recourse.

Mr. Hartkopf said he believed the plan had yet to go before the Board of County Commissioners, but also believed he had heard that it already had. Mr. Thompson said the County Commissioners would have to approve the final site plan once it was engineered and once the approval process had been satisfied. He said the County Board had given him the authority to speak to that schematic plan and were in support of him speaking about that plan to this Board.

Mr. Hartkopf said then the County Commissioners were aware of that schematic. Mr. Thompson replied yes. Mr. Hartkopf asked when had the County Board become aware of this process as far as coming back to get the CO. Mr. Thompson said they were aware of the plan at that time. Mr. Hartkopf said then it was safe to say that the County Commissioners understood that the County was going to ask citizens to park at Durham Tech rather than employees. Mr. Thompson said the County Commissioner understood that there was a lot provided and transportation provided.

Mr. Whitmore asked for an update on conversations with Eno River Parking Deck, LLC and Judge Buckner's progress. Mr. Thompson said he had not attended those meetings so he could not speak to that, but he understood that the County Manager had met with the Eno River Parking Deck representatives but he did not know the content of those conversations. He said Judge Buckner had provided to him today several photos of the vacant parking lots during heavy court days.

Mr. Sikes asked who had created the presentation in the packet. Mr. Thompson replied Freeman White Architects who were engaged by the County to do the Master Plan. Mr. Sikes said then that was presented to the County Commissioners. Mr. Thompson replied yes.

Mr. Sikes noted that the presentation talked about a free-standing multi-level parking structure possibly being constructed as part of the construction, and it also spoke to 500+ vehicle capacity, that traffic was the primary challenge, and that one of the biggest concerns was how to preserve the vista from East Margaret Lane. Mr. Thompson said that was correct, noting he had mentioned in the April 28, 2010 meeting that there had always been a rub between aesthetics, the environment and the capacity for vehicles. Mr. Sikes asked was Pam Jones still with the County. Mr. Thompson replied yes.

Mr. King swore in Jim Parker.

Mr. Hartkopf said he understood that Mr. Parker had had discussions with the County over some period of time about the possible use of the Eno River Parking Deck as adjunct or primary parking for the Justice Facility, and hastened to add that the details of those conversations were his business and the business of the County. He said until the County allowed those conversations to become public record he was not really required to respond to anything unless he chose to do so. But, he said, he would like to get some clarification for the Board with regards to the conversation around the use of the parking deck or potential use of that deck for the Justice Facility. Mr. Parker said since early March when this was to come back before the Board of Adjustment, they really had not known that there was a problem with the deficiency in parking. He said there had been some conversation in late December 2009 in regards to availability of parking for the library, but other than that they were not aware there was a parking deficit for the Justice Facility until early March 2010. Mr. Parker said since that time, there had been no conversations or meetings with the County until just recently.

Mr. Parker said after the March 10 meeting and then the subsequent meetings, there had been a lot of discussion about how the empty spaces in the deck could be utilized. He said it seemed from the emails they were receiving and seeing was that it was unclear to the County of how to try to address the issue by using the parking deck. Mr. Parker said the County Manager had sent them an email about 2 weeks ago indicating that he did not understand how the deck spaces could be counted that were empty and subsequently he had asked Ms. Hauth to provide them an overall picture of how that might happen and she had done so. He said he had then forwarded that back to the County, and at the same time their attorney had provided the same kind of response back to the County just to make sure it was clear. Mr. Parker said once that was done, they heard nothing else from the County.

Mr. Parker said Wednesday or Thursday of last week, whenever the packet had gone out to this Board that contained the site plan, they had then seen the site plan of the parking lot behind the Justice Facility and had thought it was very large. He said their thought was surely there was still not confusion that the deck could be used in some way, and they had taken it upon themselves to call the County Manager and asked for a meeting regarding that. Mr. Parker said they had met with the County Manager on Thursday afternoon last week and discussed how the County might have the ability to use the deck spaces. He said the County Manager seemed to understand their explanations, and at that point they had never talked about specific numbers as far as leasing or purchasing spaces in the deck, but they had advised him that they were willing to work with the County to solve the problem and thought that that was the solution and that that was understood. Mr. Parker said once the meeting had ended, they had heard nothing.

Mr. Hartkopf said as it stood right now, the general public that had business in the Justice Facility could use available spaces in the deck. Mr. Parker said yes, on a fee basis. Mr. Hartkopf said 200 spaces were already leased by the County. Mr. Parker said 200 exactly. Mr. Hartkopf said that left 209 spaces for public use. Mr. Parker said that was correct. Mr. Hartkopf said what they were seeing the deck right now was not anywhere near being fully utilized. Mr. Parker said that was correct, noting about 1% was being utilized.

Mr. Hartkopf said he was not directing his comment to Mr. Parker but there seemed to be some conversation going back and forth about whether or not the deck could be used. He said the Board could write a condition that said the County could use the Durham Tech parking lot.

Mr. Hornik stated there was an important difference between the Durham Tech lot and the parking deck, which was that the County owned or controlled the Durham Tech lot, but the Eno River Parking Deck was owned and controlled by an entity in which the County had no interest, and with which the County had no contract or lease or any other arrangement that would give the County the right to speak for those available parking spaces. He said it was important to remember that there were available parking spaces in that deck because the uses that were already on the West Campus based on employee counts and square footage required that number of parking spaces. Mr. Hornik said in effect those parking spaces were spoken for even though half were empty. He said in order for East Campus uses to be able to count the West Campus spaces there needed to be several things that happened. Mr. Hornik said there needed to be an agreement between the County and the owners of those spaces that would give the County the right to use those spaces; there would have to be some kind of zoning text amendment that would allow those spaces to be freed up from what chained them to West Campus use; and there would probably have to be some modification to the permits for the West Campus uses that right now said they had to have a certain number of parking spaces. Mr. Hornik said those last two steps would be tied together somewhat.

Mr. Hartkopf said the timeline to allow all of that to happen might be extensive. Mr. Hornik said theoretically it could be done in a 2-month period if all the processes worked perfectly.

Mr. Sikes asked if the lease was the document Mr. Hornik had referred to. Mr. Hornik said if they said to the County that it was okay to count those available parking spaces, one might say the Town was infringing on the rights of the owners of the Eno River Parking Deck and putting their permit at risk because they were overloaded with parking as currently required by the ordinance.

Mr. Hartkopf said even if Orange County were to come to some agreement with Eno River Parking Deck, LLC the Board was saying that there was still the matter of the ordinance that they would be infringing upon.

Mr. Sikes said true, because technically those spaces were not available.

Planner Stephanie Trueblood, having previously been sworn, stated that they had been talking about the reallocation process being tied to the UDO rewrite process which they all understood would likely take until the end of the year to complete. However, she said, the text amendment that Mr. Hornik referred to would not necessarily have to be a part of the rewrite and could be pursued at the quarterly public hearing in July 2010.

Mr. Hartkopf asked if he understood that. Mr. Parker stated he understood 90% of it. He said they had wanted only to sit down with the County Manager and make sure there was no misunderstanding where the owners of the parking deck stood. Mr. Hartkopf said, to clarify, they had held recent conversations with the County about the parking issue. Mr. Parker said only the meeting with the County Manager and no others.

Mr. Remington said there was something in the parking ordinance that did allow double counting that tangentially could be seen as having some relevance here even if it did not literally apply. He said the ordinance said that spaces assigned to one use may not be assigned to another use at the same time or any other time except that one half of the parking spaces as required for uses such as, but not limited to, churches, theaters and assembly halls whose peak attendance may be at night can be assigned to another use which would experience peak usage during the day. Mr. Remington said it went on to say that the Zoning Officer would make the determination relative to peak usages. He said if they went one step beyond the literal language and talked about plans like what they had seen from the courts in regards to scheduling provisions to spread out parking needs, he wondered if somewhere in that process there was some wiggle room based on that ordinance language.

Mr. Hornik said the idea of that language was if you had a use that primarily would require parking at night or on weekends, and another use that would basically be 8 a.m. to 5 p.n. on weekdays, that half of the parking spaces could be counted for both uses because their peak times would not be competing with each other.

Mr. Sikes said with the new UDO and the new requirement and text amendment, would they be able to allocate all of those 209 additional spaces. Ms. Trueblood said it depended on the standard selected, noting that the Planning Board was currently reviewing two possible standards for the Central Commercial zoning district which would be their new downtown parking standard. She said the Eno River Parking Deck was in that district, so it would fall under that standard. Ms. Trueblood said the 2 standards being considered were either 123 or 247; however, the Planning Board was in very early stages in their discussions and they did not know what direction those discussions would take. She said they may accept one

of those standards, or choose something in the middle or something totally different.

Mr. Sikes said if the requirement happened to turn out to be 123, then the 125 at the Durham Tech lot would meet that. Mr. Sikes asked why the Durham Tech lot was off the table. Mr. Thompson replied that was a question for the County Commissioners. Mr. Sikes said that needed to be addressed, because just to say they would never ask their employees to park remotely was frustrating. Mr. Thompson said if the UDO was completed and 123 spaces were freed up, then obviously the County and the Eno River Parking Deck owners needed to have a discussion. He said his point was that under the current ordinance they had to go through the process, and that was why proffering the conditional period to do that as well as to engineer the 256-space lot.

Mr. Hartkopf asked why no one was parking in the deck. Ms. Trueblood said based on the parking study they had conducted in the fall of 2009, the daily count was somewhere about 150 to 170 spaces available, but she did not have counts of the parking deck since the County offices and library had opened. She said the owners of the deck might have a better perspective on why there were so many available spaces.

Mr. Thompson said he believed there were between 150 and 190 public paid spaces available daily between 8 a.m. and 5 p.m. He said they also experienced some vacancy with the paid spaces as well.

Mr. Whitmore asked where the leased spaces were located. Mr. Thompson stated that there were 120 leased spaces on the top of the deck behind the gate and below were 41 free spaces for County customer parking, and the balance of the leased spaces were for County vehicles and County employees. He said the spaces in between the two and bottom levels of the deck were the 209 spaces not leased by the County.

Mr. Whitmore asked what has changed since the last meeting. Mr. Thompson said some employees had already begun working, with the most significant change being that 2 of the 4 courtrooms were now in use with two cashiers available. He said they were moving people through the court process quickly, very much as had been represented by Mr. Stanford and Judge Buckner at the special meeting on April 28, 2010. Mr. Thompson said they were going to be putting up plexi-glass dividers so that more cashier capacity would be created as well as considering putting up more parking signs to let people know that as they weaved through the lot they could come back out, travel another 150 yards, and park in the Government Services Annex lot that contained 94 spaces. He said about 80% of that lot was empty and available for use, even when court had been in full session on May 3 and May 10, 2010. Mr. Thompson said on those days the street parking along South Cameron was empty, but it was fairly full on East

Margaret Lane and people were parking illegally on the grass south of the Market House.

Mr. Whitmore said if they were a fully operational facility compared to today's vehicle count, would there be an overflow of parking. Mr. Thompson said he felt strongly that if they could direct people to that lot, then that lot would stay full. He said he felt strongly that the parking deck would see more paying customers because it was available. Mr. Thompson said he personally did not believe they would have an overflow of parking even on the heaviest of traffic court days based on what they had seen so far and based on the measures that were being put into place.

Mr. Sikes asked when the County Commissioners would next meet. Mr. Thompson responded there was a work session scheduled for tomorrow night, but it was not open for public comment. Mr. Sikes asked when would be the first opportunity for public comment. Mr. Thompson responded at the County Commissioners June 1, 2010 meeting.

Mr. Hornik asked when the next stage was of court changes. Mr. Thompson responded Wednesday, June 2, 2010 was the first day of traffic administration. Mr. Hornik asked what that session would be like. Mr. Thompson said that traffic citations would instruct people to appear at staggered times between 8:30 a.m. and noon, so they would not all show up at the same time. He said upon arriving those people would report to the Mural Courtroom assuming it was available to them and would then be escorted to either courtrooms 3, 4, or the vault depending on their case. Mr. Thompson said the first, second, and fourth Wednesdays of the month was when all of that would happen. He said the third Wednesdays of the month were reserved for attorneys representing clients, so the numbers of people would be dramatically fewer. Mr. Thompson said once arriving at the Mural Courtroom the judge would issue an administrative order for those persons to be parked legally, and would include a handout that would indicate where public parking was available including at the Eno River Parking Deck. He said he would then issue instructions for people to go and park legally. Mr. Thompson said at the same time signage would help to direct people to those facilities with available parking. He said since those people would be in three different process areas and had staggered arrival times the cycle time was about one hour according to the Clerk of Court, Mr. Sanford. Mr. Thompson said after the noon hour, parking became even more available. He reiterated he was talking about those three Wednesdays each month.

Mr. Hornik said it was his understanding that the court was coming whether the CCO was issued or not, and that Judge Buckner and the courts would have to do that without that space available. He said in other words, the traffic was coming regardless.

Mr. Hartkopf asked then what the point was. Mr. Thompson said they just would not use the Mural Courtroom

Mr. Sikes said if the Board never approved it they would never use the Mural Courtroom.

Mayor Stevens said he was bringing a message from the Town Board of Commissioners, and read a statement summarized as follows: The Town Board appreciated the complexity, the significance, and the burden of responsibility that this current issue placed upon the Board of Adjustment, and they knew that their job was not easy. They imagined that from where they sat it would be easy to second-guess or wonder whether there was something specific that the Town Board would like to see happen, so he would like to be explicit about that. They recognized that only the Board of Adjustment had the authority to decide the issues before them on the Justice Facility application, and the Town Board did not want to steer or pressure them to any particular outcome other than the outcome that whatever action the Board took had followed appropriate review and due process as required by the Zoning Ordinance. They fully expected the Board of Adjustment to execute its charge and conduct due process with thoroughness, with thoughtfulness, fairness, and integrity, and they commended their track record of doing that and thanked them for their service.

Libby Hough, after having been sworn, noted she was speaking on behalf of the Chamber of Commerce. She said the Chamber wanted to register its opposition to the alternative parking plan, noting that the plan would allow the County to wait and see if a parking issue really existed, to what extent it existed, and if need be to build a gravel lot behind the Justice Facility. Ms. Hough said they opposed that plan because parking was already an issue, towing already occurred, and both of those situations already negatively impacted their downtown merchants.

Ms. Hough said that River Park was park land and as such added value to the community in the way a parking lot would not. She said the identified interim and long term solutions did not address the already significant traffic issues on East Margaret Lane. Ms. Hough said several years ago the possible parking lot was deemed by an archeological study as space with archeological, cultural, and historical significance. She said the potential parking area was also in a floodplain, and would therefore not yield as many spaces as proposed. Ms. Hough said the identified space was along the entry corridor to the historic Hillsborough business district, and a gravel lot was not an attractive welcome mat for visitors.

Ms. Hough said the County generated plan originally approved by the Town 4 years ago included provision for remote parking at Durham Tech, and that plan was sound as it would provide safe, convenient transportation to courthouse patrons while reducing traffic in Town. She said if that was no longer an option they believed there were other options equally viable, including the negotiating

for additional spaces at the parking deck. Ms. Hough said there may be other options that did not include destruction of the land along the Eno River.

Ms. Hough said it was their understanding that the Town was open to discussing alternatives for the parking issue, and they encouraged those discussions to continue until a different, mutually agreeable solution was identified. She said the Chamber was dedicated to promoting economic development in the region, and knew that solid relationships between governing bodies and relationships between governments and business communities were critical to achieving that goal. Ms. Hough offered the Chamber's assistance in those discussions if needed.

Elizabeth Read, having been previously sworn, said that when the County talked about spreading out their operations among multiple courtrooms to process people faster, that within that same process they actually removed parking because the new addition took some of the previously existing spaces. She said if the CCO was granted, she believed additional conditions needed to be included, noting there were not real guidelines for the Town as to what would constitute a problem and that was being left up to Town staff to determine. Ms. Read said there were no metrics or measurements in place that would allow Town staff to make that determination, and that she believed the County would need to agree on those measurements or metrics ahead of time so that they could not dispute the findings later on.

Ms. Read said she also had a problem with the discussion earlier in that this was an option in place that had not received approval yet. She said additionally, she believed that, as the proposal was currently written, she disagreed with the statement that in a 6 month process it allowed the County to pursue other options. Ms. Read said her reading of the current proposal left only the option of the gravel parking lot and did not allow the County to pursue conversations with the Eno River Parking Deck owners or acquisition of other available parking in Town. She said that needed to be an explicit condition of approval.

Holly Reid, after having been sworn, stated she was representing the Eno River Association and agreed with Ms. Hough's comments. She said the proposal was uncharacteristic of Orange County, and was dismayed by the process and by the lack of a progressive solution. Ms. Reid said they did not make parking lots of their assets, and the assets at River Park should be preserved. She said the geothermal systems there were very expensive, they had the planned Mountains to the Sea Trail, and they had a stream restoration project on site. Ms. Reid said what irony it would be to have a stream restoration project where they were trying to show how to slow down the runoff in one area and prevent it from flowing into the Eno and ending up in Falls Lake and adding to the impairment to the watershed, and yet they might be willing to put a parking lot right next to that. She said that was a ridiculous suggestion in her opinion. Ms. Reid reiterated that this plan was uncharacteristic of the County and believed they could come up with a much better solution by working together.

Mr. Hartkopf said he would like the Board to hear the staff's reaction to the revised plan that had been proposed and get some feedback with regards to the items noted on the list of concerns from staff. He said the question in his mind at this point was not whether this would be built or whether this would be approved, but was it possible. He asked should the Board be inclined to approve such a proposal, and did they have any footing on which to do so. Mr. Hartkopf asked Ms. Hauth to go down the list of concerns and speak to each of the issues from the staff's perspective.

Mr. Hartkopf said with regards to the stormwater compliance, there was some confusion in his mind whether they considered gravel to be impervious surface or not. Ms. Hauth said gravel was considered an impervious surface. Mr. Hartkopf asked would that not totally overload the site's impervious surface. Ms. Hauth said it could, noting she would couch all of her comments by acknowledging that it was a schematic plan with no engineering and the drawing was not to a scale where they could check measurements, so it did not include impervious surface. She said she would say that the site was required to be no more than 60% impervious, and it was likely very close to that, but could not say it was clearly over.

Ms. Hauth said in the time that had passed since they had looked at the Justice Facility addition and other things downtown, the Town was mandated to be a Phase 2 community which meant they had a higher standard for stormwater control mandated by the State. She said they now had to look at nitrogen loading as well as volume, and models could predict the loading of nitrogen from stormwater that came off of paved and impervious surfaces which impaired streams, so that was a calculation that could be done in the review of stormwater plans.

Mr. Hartkopf said then the sources of nitrogen that might come from this particular use would be what. Ms. Hauth said predominately the parking areas, noting it was the deposit from the cars on the gravel and the pavement that washed off. She said the vegetative buffer between the parking areas and the water surface was one of the best mechanisms for removing nitrogen, but that was designed to correct the impairment that already existed and not to address additional impairment that was added.

Mr. Hartkopf said in Item #1b, they had the word "development" in quotes, and asked what the significance was of that. Ms. Hauth said the Town's floodplain ordinance did not allow development within the floodplain. She said they exempted park facilities and things like a perpendicular crossing for a road or a utility, and a parking lot was considered "development" under the floodplain ordinance. Ms. Hauth said they had talked tonight about conducting some surveying to determine exactly where the floodplain was, and that would be necessary.

Mr. Hartkopf said he believed the impact on stream buffers was self-explanatory. Ms. Hauth said they were uncertain whether there might be another stream on the site with a drainage area, and whether or not it would qualify as a stream under the Town's ordinance and therefore require buffers. She said again that it was a schematic plan and there was a lot of engineering to be done.

Mr. Hartkopf asked if any of that from an engineering standpoint had been reviewed as far as the geothermal. Ms. Hauth said it was glossed over during the Justice Facility addition but because they were not proposing any work within the immediate vicinity, so it was not looked at in detail. But, she said, she did not know about the geothermal. Ms. Hauth said there was apparently a traffic impact analysis done during some of the early design work for the early iterations of what build out on the campus might look like, but that was not something that was submitted to this Board or went through any kind of plan process because it was conceptual while the County was doing its planning of what could be placed there. So, she said, that site did not have a traffic impact analysis when the Justice Facility was built, but going on personal observations many times during the day the left turn queue was very short and there was not dedicated left turn signals for traffic on East Margaret Lane to turn southbound on South Churton Street. Ms. Hauth said there was difficulty with traffic northbound to make the right hand turn at certain times of the day, and it was a lot more traffic than a 33-foot right-of-way was intended to handle.

Mr. Hartkopf asked was it safe to say that if there was traffic proceeding east on West Margaret Lane approaching South Churton Street and traffic was trying to turn left that was proceeding west on East Margaret Lane, that naturally the eastbound right turning traffic had the right-of-way over the westbound left turning traffic. Ms. Hauth said that was her understanding of how traffic law worked, noting that the left turn was always last. Mr. Hartkopf said and now they were talking about a lot more cars in that intersection. Ms. Hauth replied yes, and they did not have the provision of placing an arrow at that signal.

Mr. Hartkopf said at minimum the light would have to be retuned. Ms. Hauth said yes, and that would impact all traffic. She said they all knew how delicate the flow of traffic was on Churton Street now and the one second difference in the light cycle was huge. Ms. Hauth said getting that out of sync would be huge, so trying to introduce additional green time on Margaret Lane would have significant repercussions. Mr. Hartkopf said it would ripple up the entire length of Churton Street. Ms. Hauth agreed.

Ms. Hauth said the impact on documented archeological areas had been discussed at the previous meeting, noting that the identified parking area had been identified as a designated area that had resources in it. She said as they had learned at the last meeting, sometimes the best thing to do with archeological resources was to cover them to protect them and allow them to remain. Ms. Hauth said they did not know how much grading would be necessary to put that parking lot in, noting

if it was fill from an archeological standpoint that was better than a cut. But, she said, they just did not know.

Mr. Hartkopf said it was his understanding that the installation of that parking area would require some excavation and subsoil removal and the addition of fill and stone. He asked if any archeological artifacts had been identified in the area. Ms. Trueblood said the study area as outlined in the archeological report was the western square of that parking lot. She said there were over 30 wells dug in that area that produced significant artifacts.

Ms. Hauth stated the wells Ms. Trueblood was referring to were a series of borings.

Mr. Hammersley said they would not be doing a lot of digging in the area, explaining that they would scrape off 3 to 4 inches of topsoil and compact the subgrade. He said that area was relatively at a good grade for parking so not a lot of cut would be required because they would follow the terrain.

Ms. Hauth said as to screening and landscaping, they would have screening and landscaping requirements for the visibility of the parking lot from South Churton Street and requirements for shade within the parking lot. She said she was not saying the lot would need it, but that they had not done the calculations to determine that.

Ms. Hauth said regarding Historic District Commission approval of tree removal, the Commission had the ability as part of the Certificate of Appropriateness and in looking at the gravel lot for its appropriateness to also look at the appropriateness of removing a number of the trees. She said on the drawings you could actually start to see the number of trees proposed for removal from the site.

Ms. Trueblood said the Historic District Commission had similar standards to follow similar to what was in the Zoning Ordinance. She said the Commission was charged with following the Historic District Design Guidelines and quoted the guidelines that would pertain to this plan if it were approved. Ms. Trueblood said under "Site Features and Plantings," the requirement was to retain and preserve the historic site features and plantings that related to buildings and their settings such as topography, mature trees, hedges, paths and circulation, and foundation plantings where appropriate. She said it went on to say to protect significant site features including mature trees and known archeological resources from damage or as a result of construction.

Ms. Trueblood said under the "Archeological Features" guidelines, it said to retain and preserve known archeological features that were significant to the site or Historic District, to maintain and protect known archeological features from damage during or as a result of construction or site work, that it was not appropriate to use heavy equipment or machinery on District sites containing

significant archeological resources, and to minimize grading site disturbances and other changes in terrain within the Historic District to reduce the potential damage to known or unknown archeological resources.

Ms. Trueblood said those were the types of guidelines that the Historic District Commission would have to apply to any plan, once engineered, to prove that the plan was meeting the guidelines in order to be able to grant a Certificate of Appropriateness. She said any removal of a tree 12 inches or more in diameter had to have a Certificate of Appropriateness, and she believed there was something like 40 trees that would have to be removed which would be a significant portion of the Commission's deliberations.

Ms. Hauth said the last issue was the impact to the geothermal HVAC system, which they were not specifically knowledgeable about how that exactly operated. But, she said, it had not struck them that it would normally be located under a parking lot. So, she said, they would want to make certain that that could continue to function if the lot was built as proposed.

Mr. Hammersley said they had designed other geothermal well systems where they were indeed under a parking lot because it was a good use of the land. He said that would not be an issue and they would not look to disturb that system as a part of putting the parking lot in place. Mr. Hammersley said they would do the minimal amount of disturbance possible in that area, and would not look at cutting that area down because of the wells and the archeological resources. He said if they were not allowed to remove as many trees as they had noted, then they would get as many spaces out of the area as possible within those limitations.

Mr. Hartkopf said it appeared the position of staff was that they did not have near enough information to indicate whether the parking lot could ever be made to be appropriate, noting there appeared to be some really hard stops in the list. Ms. Hauth said she believed there was certainly some number of parking spaces that could be constructed, and would not say that the entire area was a no build area. She said but, she would not hazard a guess as to how many spaces could be constructed.

Mr. Hornik said under the Zoning Ordinance the applicant would have the right to have parking on the site but it would be subject to satisfying all of those other requirements, for example stormwater, floodplain, Historic District Commission approval and the like. He said all of those considerations would go into the site plan review process to determine where, how much, and under what conditions parking could be provided on that site.

Mr. Hartkopf said he had a question about language on page 11 of the handout provided by the County, where it said to please approve the proposal in some form or deny, as a continuance had the effect of a denial without allowing the County recourse. Mr. Hornik said the idea was that if the issue was continued,

then it essentially had the same effect as a denial. He said the County's preference would be that some decision be made tonight so that they could then pursue whatever options they might want to pursue. Mr. Hornik said if it was a denial they could choose to appeal, and if it was an approval with conditions they could determine whether or not those conditions were acceptable.

Mr. Whitmore said he did not know what the real shortfall argument was, in that he had no clear picture. He wondered if staff could provide some understanding of what that shortfall was at present. Ms. Hauth asked if he wanted the number under the ordinance or the number that staff thought was their best guess. Mr. Whitmore said he would like to know both.

Ms. Trueblood said, based on the current ordinance and employee counts, and gross floor area provided by the County, if you were looking at just the Justice Facility and the DA buildings only, the deficit was 219 spaces. She said if you expanded that to East Campus, which was proposed at some point by the County, then the deficit was 259. She said the second part of the question was a little more difficult because she did not believe there was anyone present who could say what the deficit was in reality. Ms. Trueblood said the courts had not been operating at full capacity, the Link Building was not necessarily operating at full capacity, and the Government Services Annex was not necessarily operating at full capacity. She said because there was vacant space in those buildings, the reality of the parking was an unknown number. Ms. Trueblood said that conducting the downtown parking study had never been aimed at establishing what the deficit might be at the Justice Facility, noting the intent of the study was to get a handle on whether or not they were providing sufficient and adequate parking in the downtown area.

Ms. Trueblood said that Phase 1 of that study showed that they were not in the "red" currently, but that study was done before the County offices were occupied. She said in Phase 2 they would obviously look at the impact of the court system and impact of the County facilities on the west side by looking at such measures as turnover rates and vacancy rates of parking. She said there were numbers and measures that tended to put the vacancy rate at 85% to 90% which did include the parking deck. But, she said, no one knew what the real deficiency number was for the Justice Facility. Ms. Trueblood said if you looked at what had been proposed in the draft UDO, the number was somewhere between 100 and 220 spaces, which was a very wide range. She said she would be uncomfortable narrowing that range in any way without being able to see what the effect would be when full court was in session in June. Ms. Trueblood said at the same time, she did not know what the parking needs would be 2 to 5 years or even 10 years from now at that site, and she would not be able to determine that over the course of the summer because there was office space not filled.

Mr. Whitmore said there was certainly more work to be done as far as parking studies. Ms. Trueblood said that would be done regardless of the Board's decision on this application.

Mr. Sain said he was not sold on the gravel parking lot, noting it would be an eyesore coming into Town. He said as well, he did not like the idea that constructing it depended on the perceived need for it. Mr. Sain said the plan did not meet current requirements and that lot may never be built.

Mr. Remington said one of Mr. Sikes' expectations was that the applicant was to come back with a "creative solution" to the parking issue, and believed the Board had concurred on that. He said he was not counting on the "nuclear option" being a creative solution, and the believed that was what they had gotten. Mr. Remington said it was not a back stop or at least one that would stop a very fast pitch. He said given all the concerns about whether or not the parking lot could be built and, if so, whether the number of spaces would be adequate to satisfy the current ordinance requirements, he saw that as a lose/lose situation all around. Mr. Remington said he had made the comment at the last meeting that he certainly would not want to see things going that direction as far as taking that area and placing a parking lot there. He said it may not be the intent but if felt like they were getting their noses rubbed in their own ordinance and in their attempts to find ways to follow it.

Mr. Remington said what they had said about the Durham Tech lot was being misconstrued, noting he did not believe any of the Board's directions were that that lot was off the table. He said what the Board had said was it was off the table as far as directing the public to park there and ride the bus to the downtown. Mr. Remington said what had originally been proposed was that it would be employee parking, and he believed it really had been proposed, and they had provided a lot of room to accommodate that. He said the bus system coupled with some sort of voucher or reimbursement system so that employees would not have to pay to park was a viable option. Mr. Remington said such a system might be needed only a few times a month, and that appeared to be relatively less expensive compared to the cost of planning and construction of a parking lot. He said he did not believe the Board had gotten what it asked for, and to his mind they were getting farther apart, not closer together.

Mr. Hartkopf said he agreed with Mr. Remington's comments, noting he believed they were being handed a nuclear option. He said the problem he had with that was that then they would live under the threat of mutually assured destruction, noting no one wanted to see a parking lot on the river. Mr. Hartkopf said he honestly did not believe the County wanted to see that, either. He said he believed there were other areas that could be used as a park and ride for County employees, and believed the process could be creative to encourage, to voucher, to assure a positive parking place with shelter form the elements at any of those

places for a lot less money, time, and trouble than the parking lot plan put forward.

Mr. Hartkopf said he had learned recently that the parent company of Lowe's Foods had decided not to renew its lease located next to the new Orange County Social Services location. He said as of October at the latest, that entire parking lot would become available as well. Mr. Hartkopf said that was an unfortunate business closing but another opportunity. He said the fact that the County Commissioners approved a plan that said the citizens had to park at Durham Tech and ride a bus downtown to pay a fine or whatever else they had to do was fine, but the County employees having to ride on a short bus ride was wholly unacceptable was something that really needed to be discussed with the County Commissioners in earnest. Mr. Hartkopf said if the County thought so little of the people who elected them, then he believed they needed to be called on that.

Mr. Sikes said the original condition of the site plan approval was straightforward, in that it required the presentation of acceptable remote parking facilities and process documents covering the operation thereof be received. He said that condition as of today had not been met, and since the hearing had been continued there had been no substantive attempt, as far as he knew, to meet that condition. Mr. Sikes said, as the Town Attorney had noted earlier, simply providing those documents would have made this a moot point. He said the County had simply not meet the condition of the site plan approval.

Mr. Whitmore said the proposed parking plan was a Trojan horse, in that it was not legitimate and was not good government on the part of the County to have put that out there. He said he believed they knew they had an uproar from the citizenry, and if they had done more homework on the floodplain they would have know the plan would not work. Mr. Whitmore said he believed they also knew the plan would not be acceptable to the Historic District Commission due to the number of trees to be removed, and they were not going have the required number of parking spaces. So, he said, the plan did not solve any of the problems.

Mr. Whitmore said of the 4 points that were proffered, the only one that seemed reasonable to him was that the current draft UDO be codified so that they would understand where they were going. He said they were charged with making decisions on what is and not what might be, but from the County standpoint it made sense to try to develop a plan that would work for the Town and its citizens and made certain that they were not caught in a quagmire of traffic. Mr. Whitmore said they were working to figure that out through the parking studies and with the new UDO guidelines, whatever they turned out to be, but for them to make a decision when they knew they were making changes and that the ordinance was parking heavy seemed unreasonable in his opinion. He said the proposed site plan with the gravel parking lot being approved by the County Commissioners was a very slippery slope, noting they could not find money for a shuttle service and they could not find money or the motivation to go to the

obvious place of the Eno River Parking Deck owners months and months ago to negotiate a contract. Mr. Whitmore said the likelihood of the County funding any of that was very slim in his opinion. He said in his opinion he did not feel the plan was a genuine offer.

Mr. Sain said he concurred with Mr. Whitmore's remarks.

John Roberts, having been sworn, indicated that the Board of County Commissioners would be meeting on May 18, 2010 and public comment would be taken.

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

**Discussion:**

Mr. Sikes asked if this was an appeal. Mr. Hornik said he believed it was really an application to modify the condition of the site plan approval. He said if the Board denied it, the previous approval remained intact. Mr. Sikes said if the County were to comply with that previous approval, then the CO could be issued for the Justice Facility.

Mr. Sain said if they granted the CCO, they would end up in the same situation they found themselves in now.

Mr. Sikes said if they denied the change to the previous conditionally approved site plan, was there any timeframe involved for the County. He said right now, that site had not technically been approved. Mr. Sikes said it had been approved conditionally, but if that condition was not met then it was not approved. Mr. Hornik said the County had not satisfied the condition of the site plan. He said right now the County had a conditional CO for what they were occupying, but not the old facility.

Mr. Hartkopf said he believed Mr. Sikes' question was when the County could come back before the Board.

Mr. Sikes said that was correct, and asked could that be the next meeting if they brought process documents showing the remote parking plan and that all conditions had been met. Mr. Hornik said there was no prohibition on them coming back with process documents that were acceptable, or some other proposal.

The Board briefly discussed the approval of the original site plan and what the process would be if the County came back with process documents or some other proposal. Also discussed was the conditional CO still in effect that was planned to be closed out when the construction was completed, noting that CCO was still in effect and was somewhat open-ended.

Ms. Hauth said it was within the discretion of the Board to give direction to staff without the existing CCO for the new part of the building, if they choose to do so. Or, she said, to extend it.

Mr. Hartkopf asked if the CCO had an expiration date. Ms. Hauth replied no, but the longer they lingered the more problematic it would become.

Ms. Trueblood remarked that such CCO's were generally issued for 30, 60, or 90 days, and this one had been operating for over a year. Ms. Hauth said that was because it was tied to completing the renovations.

Mr. Hartkopf said then it would raise staff's comfort level if some time limit was placed on that. Ms. Hauth said she only wanted to make sure the Board was aware of that conditional issue.

Mr. Hartkopf said after reviewing items 1a-h and 2, 3, and 4, he had significant reservations about any sort of approval. He said some aspects of the plan were simply not knowable at this point, and some of it would have to be under very intricate conditions which could not be formulated now. Mr. Hartkopf said some of it was kicking the can so far down the street that it would abdicate this Board's responsibility.

Mr. Remington said basically the Board was saying that they had grave doubts about whether the parking lot as proposed or any of the other provisions met the need of the current ordinance due to questions about whether the parking could ever meet all the requirements. And, he said, whether it met their best perception of what the needs for parking were.

Mr. Hornik said that he believed when a motion was made, the Board needed to provide direction as to why they had made the decision, but it did not have to be as detailed as findings of fact.

**MOTION:** Mr. Remington moved to deny the CCO based on the alternative parking plan that had been provide due to the Board's conclusion that the proposed parking lot can not be constructed with the adequate number of spaces and that the plan did not address the parking needs for the facility. **Mr. Whitmore** seconded.

Mr. Hartkopf offered a friendly amendment to include that the Board also believed that the plan could not meet the Town's environmental requirements and the Neuse River watershed requirements; and, that the plan abdicated the Board's responsibilities to deal with known findings of fact.

Mr. Remington added an amendment to his motion to include that there would likely be adverse impacts to documented archeological resources as well.

Mr. Hartkopf asked if the Board wanted to take that up with the County Commissioners, or was that possible. Mr. Hornik responded that once the Board made its decision there was nothing that prohibited them from addressing the County Board about the process either individually or through a spokesperson for the Board if the Board was of a single mind.

**VOTE:** The vote on the motion to deny as amended was adopted unanimously.

**ITEM #5:** **Review of Final Order for Orange County Justice Facility parking lot screening appeal. This case was decided at the April 28, 2010 Board meeting.** Mr. Hartkopf stated that as no motion was made to reconsider, he would sign the Final Order for the Orange County Justice Facility parking lot screening appeal.

**ITEM #6:** **Committee and Staff reports.**

**Planning Board:**

Mr. Remington stated the Planning Board had held a work session to discuss the UDO rewrite, and mostly discussed buffer requirements and the tree ordinance.

**Other:**

Mr. Hartkopf noted as he had mentioned earlier the Lowe's Foods store would be closing their store in south Hillsborough in October. He said the owner, Alex Lee, desired to have a store that concentrated more on fresh fruit and other fresh foods, and to have a larger store for that purpose.

Mr. King noted that with new members having recently been appointed to the Board, a training session for all was not likely in order. He said that since there will most likely be a June 9, 2010 Board meeting, another meeting may need to be scheduled for training.

Mr. Hartkopf offered his appreciation and congratulations to the Board, noting they had had to deal with some tough issues and the Board had stepped in and done a good job. He said the fact that they were treading into new water that they did not know the depth of was disconcerting, but the Board was holding up quite well.

Mr. Remington said the next Planning Board meeting was next week and he believed one of the agenda items would be the appointments of liaisons to other boards. He said his appointment would be coming to an end in a couple of months so the Planning Board would need to choose a liaison to the Board of Adjustment.

Mr. Hartkopf said that he could only hope that they would be able to get someone with Mr. Remington's botanical knowledge and level head to fill that seat, noting he had been a constant fountain of knowledge surrounding areas that they needed to be cognizant of, such as the environment and the indigenous plant life, in that

as people who hashed through ordinances they were not typically well versed in that. Mr. Hartkopf said he appreciated Mr. Remington sharing that knowledge with them as well as his very distinct way of looking at issues.

Mr. Remington said it had been a real pleasure to serve on the Board, noting they were people who came from all sorts of different outlooks and occupations and it had been a wonderful example of how people with different perspectives could meld and be reasonable about things to make the Board stronger and do a better job.

**ITEM #7: Adjourn.**

**Mr. Sikes** moved to adjourn the meeting at 9:39 p.m. **Mr. Sain** seconded. The motion was adopted unanimously.

Approved:

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