

MINUTES OF MECKLENBURG COUNTY BOARD OF COMMISSIONERS

MARCH 13, 2007

3:00 P.M.

NORTH CAROLINA MECKLENBURG COUNTY

The Board of Commissioners of Mecklenburg County, North Carolina, met in Budget/Public Policy Session in the Meeting Chamber of the Charlotte-Mecklenburg Government Center located at 600 East Fourth Street at 3:00 p.m. on Tuesday, March 13, 2007.

ATTENDANCE

Present: Chairman Jennifer Roberts and Commissioners
Karen Bentley, J. Daniel Bishop, Dumont Clarke
H. Parks Helms, Norman A. Mitchell, Sr.
Dan Ramirez and Valerie C. Woodard
County Manager Harry L. Jones, Sr.
County Attorney Marvin A. Bethune
Clerk to the Board Janice S. Paige

Absent: Commissioner Bill James

Commissioners Bishop, Ramirez, and Woodard were absent when the meeting was called to order and until noted in the minutes.

The meeting was called to order by Chairman Roberts. It was noted that the entire meeting would be a discussion of Spirit Square.

(1) SPIRIT SQUARE

Background: On June 20, 2006, the Board received a presentation regarding the impending expiration of the Spirit Square Lease and Operating Agreement (hereafter referred to as the "Agreement") and options for the future use of the Spirit Square property. The Agreement, by and between the City of Charlotte, Mecklenburg County, and the NC Blumenthal Performing Arts Center (NCBPAC), began on September 30, 1997 and will expire on June 30, 2007. After considering the options, the Board authorized staff to pursue the following options:

- 1. Negotiate with the City of Charlotte regarding ownership and potential land transactions;*
- 2. Determine the highest and best use of the Spirit Square property.*

This fiscal year (FY-2007), Mecklenburg County will pay \$1,441,277 to NCBPAC for Spirit Square. NCBPAC will give \$420,105 of those funds to ASC to be included in its annual grant to ArtsTeach. The remaining funds are used by the NCBPAC for Spirit Square's operational and maintenance expenses. NCBPAC pays \$1 per year to lease Spirit Square. Both the lease and operational funding commitments expire on June 30, 2007.

There has been some discussion about the linkage between a possible sale of the Spirit Square property and the land swap proposal, which would result in the land ownership necessary to build two urban parks, begin redevelopment in Second Ward, and allow construction of a baseball stadium in Third Ward. Last November, the Board authorized the County Manager to negotiate a land swap deal with \$7.8 million of proceeds from the sale of the Spirit Square property earmarked for infrastructure at the proposed baseball stadium site. Details of the land swap agreements are still being worked out.

Chairman Roberts introduced Lee Keesler, Arts & Science Council President/CEO to make a presentation regarding the needs and possible relocation options for the tenants of Spirit Square. Those tenants are ArtsTeach, Community School of the Arts, The Light Factory, Opera Carolina, North Carolina Blumenthal Performing Arts Center Offices, McGlohon and Duke Power Theaters.

Mr. Keesler was joined at the podium by Tom Gabbard, President of the North Carolina Blumenthal Performing Arts Center and Michael Smith, President of Charlotte Center City Partners.

Commissioner Ramirez entered the meeting.

Mr. Keesler noted before getting into his presentation that when Spirit Square was conceived thirty years ago it was a “great idea” and it’s still a “great idea” to have the mix of cultural activity and organizations and energy in “one place.”

Mr. Keesler covered the following in his presentation:

- The history of Spirit Square

Commissioner Woodard entered the meeting during the history presentation.

- Spirit Square Today
- Spirit Square & North Carolina Blumenthal Performing Arts Center Synergy (Tom Gabbard addressed this topic.)
- Mecklenburg County Arts Funding
- Tenant Transition Recap, which addressed the total square footage used by each tenant, re-location options, and impact on tenants

Commissioner Bishop entered the meeting during the Tenant Transition Recap presentation.

- The Request, which consisted of the following
 - Pursue a sale leading to private mixed-use redevelopment of the site to include as many of the existing cultural spaces as feasible
 - Preserve a broad variety of cultural programs and activities at the site
 - Preserve the McGlohon and Duke Power theaters and retain the North Carolina Blumenthal Performing Arts Center to operate them throughout the redevelopment process and beyond
 - Achieve disposition via RFP with Arts & Science Council, Charlotte Center City Partners, North Carolina Blumenthal Performing Arts Center and the community consulted in the crafting of the RFP’s conditions for redevelopment
 - Minimize the length of time the facility must go “dark” in transition
 - Extend and amend current lease to provide six months notice from the point at which:
 - * Board of County Commissioners concludes deliberations on next steps in this process
 - * RFP is created with input from the community
 - * Property is sold
 - * New owner develops an approvable plan that satisfies conditions in the RFP
 - Maintain status quo funding until redevelopment begins
 - After sale of Spirit Square, work with the Arts & Science Council to redirect Spirit Square funding towards arts and cultural education activities that impact County focus areas

A copy of Mr. Keesler’s presentation is on file with the Clerk to the Board.

Comments

Commissioner Helms questioned the Tenant Transition information and the four bullet points listed, which he said seem inconsistent with respect to timing. *The response was that the assumption is that those four points are more or less linear in sequence. Further, what's being asked is that the County extends the lease and that there is notice given six months beyond the point at which all of those things have happened.*

Commissioner Helms for clarification purposes asked whether this would mean the tenants would have six months from the date that the new owner develops an approvable plan that satisfies the condition of the RFP, and that's the point at which tenants would get six months from that date. *The response was yes.*

Commissioner Helms suggested, in light of the concern for a loss of identity, that as part of the RFP, one of the conditions could or should be that any new facility that replaces the existing facility will be named Spirit Square.

Commissioner Ramirez said there were two distinct issues as it relates to Spirit Square, the historical nature and the educational nature of the building. He said the historical nature of the building was the part that has to be tackled more definitive because that's something that can't be changed. He said the educational component was something that the County could work on with various school entities and with the other facilities that are going to be built in the area, such as, the Wachovia Center and other different venues that are coming on-line or on-line already.

Commissioner Ramirez said the most important issue is the historical component and how can that be preserved. He said the other question is how that can be incorporated in the RFP in the redevelopment. He feels it can be done.

Commissioner Ramirez asked why would The Light Factory schedule events through January 2008, knowing that the lease would be expiring June of 2007. *The response from Marcie Kelso, Executive Director was that shows are scheduled two years in advance. Thus, the contracts were signed prior to June of last year.*

Commissioner Ramirez asked why hasn't Opera Carolina moved since they have a lease ready to be signed for space at another location. *The response was that the lease was still being reviewed by their attorneys. Also, Jim Meena, with Opera Carolina said the solution they've come up with was not ideal. He said they would only be moving their offices but their needs are greater. He said if they had more time, they would go back in the market place to find a more suitable facility for all of their needs.*

Commissioner Clarke made the following comments:

- It would be a tragedy for Spirit Square to go "dark" for any long period of time.
- One of the obstacles that have been identified for him with respect to maintaining the McGlohon Theatre space and the lobby and possibly the Duke Power Theatre is the lack of a separate HVAC system. It will take money to separate the systems but it can be done. If this were done, then the McGlohon Theatre and the Duke Power Theatre could continue to operate even while some transformative, public/private partnership, mixed use redevelopment was going on with the rest of the building.
- The Board did not do a good job of communicating to the public what its plans were with respect to Spirit Square.
- Spirit Square as it exist today is divided into three major parts, first there's "Spirit Square" the portion that was originally conceived and redeveloped in the 1970's as a performing arts venue and includes the McGlohon Theatre and the Duke Power Theatre. The second part is the addition that was put on and includes an expanded three story lobby, restrooms and classrooms, and gallery space. The third part is the surface parking lot.
- The Board never intended to sale the " Spirit Square" portion of the property, which includes everything that was the old First Baptist Church, the McGlohon Theatre and lobby outside the doors of the McGlohon Theatre, and the Duke Power Theatre.
- He would never vote to sale that portion of the property.

- The Board in April of last year contemplated looking at a private sale process or sale process working with someone, to explore options for this property that would involve a creative redevelopment, adaptive re-use of the additional part of Spirit Square as he referenced and the surface parking lot.
- The Board has not made any decisions with respect to Spirit Square behind “closed doors” as some have implied. It’s all been at open meetings.
- When he made the decision last April to direct staff to go in this direction, he did not have funding for the baseball stadium infrastructure improvements on his mind.
- The first time the possible sale of the addition and the surface parking lot and the redevelopment of those and the use of some of the proceeds to pay for infrastructure in connection with the baseball stadium came to his attention, was when the County Manager proposed it in November of 2006, when he identified a portion of the proceeds of sale of the addition and surface parking lot as a potential source for funding the improvements around the stadium along with the land swap proposal.
- The land swap proposal does have some tremendous public benefit.
- He acknowledged that in recent weeks he has met and behind “closed doors” with several representatives of The Light Factory and their architect regarding a proposal they have to accommodate their needs.
- The County should work with The Light Factory and nurture that process, but The Light Factory still needs to look at the numbers and do some economic analysis so the Board could make a well informed judgment about the project before the Board could embrace it.
- The best course of action would be to extend the lease, which would give the tenants more time to make relocation arrangements. It would also give the County more time to solicit, receive, and consider public input on the adaptive re-use for a public/private redevelopment of the addition and the surface parking lot.
- Consideration should be given to appointing a joint City Council/County Commission elected officials committee to work with the Arts & Science Council, the Blumenthal Performing Arts Center, Charlotte Center City Partners, citizens in the community who are interested in this process, with tenants, with City and County staff, and others, on the proposal for the adaptive re-use of this property.

Commissioner Bishop said what he recalled was that the rationale for the sale of the saleable parts of Spirit Square was that it was deemed not to be in the County’s “core” business. He asked staff to elaborate on that rationale.

County Manager Jones said what he recalled was that in the Spring of 2006 staff came to the Board and indicated that the lease was due to terminate in September 2007, but the actual language in the lease agreement was that it expired June 2007. He said staff in June 2006 presented three options to the Board.

He said it was staff’s thinking at that time that the County was a partner in the ownership of a building where staff did not believe, at the time this was presented to the Board, that it was yielding the highest and best use on that site.

General Manager Bobbie Shields said staff also at that time, reflected some about the core mission of the County. Also, negotiations were going on with respect to the County’s role with the Wachovia project. He said there was a lot of discussion, at that time, about the City’s responsibilities and interests vs. the County’s.

Commissioner Bishop asked was it correct to say that there was a kind of “substitutional idea that the new arts and cultural facilities were somehow in a sense of a highest and best use of those dollars that were otherwise devoted to Spirit Square.”

General Manager Shields said Spirit Square was never included in the concept of the new Wachovia campus. He said the discussion was centered on the City’s historical role with arts projects vs. the County’s role.

Commissioner Bishop referenced the City’s private sale authority.

Attorney Bethune said the City of Charlotte does have private sale authority and that the County has requested this same authority in its legislative agenda package.

Attorney Bethune said in the draft Interlocal agreement that's being worked on with the City that the County has asked that the City share its authority to do private sale with the County.

Commissioner Bishop said if the City of Charlotte owns 67% of the property then why doesn't the City simply sale the property using its private sale authority.

County Manager Jones said the arrangement that the County has been pursuing with the City with respect to the land swap, the idea has been to clean up what has been defined as "a messy" ownership arrangement.

County Manager Jones said if staff can get the land swap consummated and gotten under the hands of one entity, i.e., the County, it would lead to a cleaner process for the redevelopment of the facility. County Manager Jones said if you just turned it over to the City, the County still has a one-third ownership in the facility and that it would still be complicated. He said the whole idea was to get it under one entity's control for better control of the process.

Commissioner Bishop said since the idea has surfaced to perhaps go through an RFP process, does that call into question the way the land swap has been worked out, so that the property should be put in the City's hands rather than the County's.

Attorney Bethune said the Interlocal agreement pursuant to which the City would convey the property to the County would also give the County the authority to do the private sale. Attorney Bethune said there would not be a contemplation of the County starting any kind of sale until it acquired ownership.

Commissioner Bishop said if there's an Interlocal agreement for this process to happen, then the City, which owns about 70% of it, can sell it and the proceeds could then be placed in the County's hands to then be invested in baseball infrastructure.

Attorney Bethune said the Interlocal agreement is structured such that the City would transfer its ownership in all of the Spirit Square property to the County. The agreement pursuant to which that would be accomplished would transfer also to the County the authority to do the private sale. The sale would not occur until after the transfer. Once the sale occurred then some of the proceeds were to be set aside for baseball under the arrangement the County Manager shared with the Board some months ago and the remaining money would be, some of which would be paid back to the City using the percentages of ownership of that which had been sold.

Commissioner Bishop asked if the County has a private sale process, an RFP type process, would staff anticipate that it would produce less revenue than a sale by bid.

County Manager Jones said staff was unable to answer that question at this time because it doesn't have enough detail on what the components of the disposition would be.

Commissioner Bishop said his guess is that it's unlikely, but what if it falls substantially short of the estimates for what the sale would produce, how would the County pay for the infrastructure for baseball.

County Manager Jones said there would be a couple of options to consider, pay-go funds, the use of fund balance, and the issuance of Certificates of Participation to pay for any additional portion that the County might need that it doesn't derive from the sale of the property.

Commissioner Bishop asked would it be fair to say that all of those options are funded ultimately through general property tax revenue. *The response was yes.*

Commissioner Bishop asked what other redevelopment proposals have been heard other than the David Furman proposal.

County Manager Jones said he has not had any conversations with anyone regarding any proposals. He said the Tryon/Trade Street discussion he has heard “walking down the street” is that there were developers who would be interested in the property, but he has not met with anyone who has presented to him any concepts or ideas about the development of the property.

Commissioner Bishop asked what has been the plan until the last couple of weeks, when there’s been a significant expression of public interest in leading the County to this process. What has been the default plan? Was it just that the County would have, after the lease terminates, a public bid sale process?

General Manager Shields said staff did not rule out any options and is currently pursuing the opportunity to use the City’s private sale authority.

Commissioner Bishop asked whether it was an objective of staff, prior to recent weeks, to not have the facility go dark for any long period of time.

General Manager Shields said the original approach that staff was taking really was not to incorporate a large variety of arts components as part of a development initiative. He’s hearing now that this is a need. General Manager Shields said this is good information to have. He said there’s nothing that would preclude that type of operation from occurring.

General Manager Shields noted with respect to conversations with developers, that early on he did meet with David Furman. He saw one of his earlier proposals and at that time there was a clear partnership between The Light Factory and what David Furman was proposing. He thinks there was some talk maybe about some limited space for some other arts functions but nothing very extensive to incorporate all of the entities that are currently at Spirit Square.

Commissioner Bishop asked how long ago was that being discussed and was there any update about what the current thinking of Mr. Furman is or with any other potential developer.

General Manager Shields said he met with Mr. Furman about six months ago and that he read of Mr. Furman’s current plan in the Charlotte Observer. He said there were some modifications but it was essentially the same proposal.

Commissioner Bishop said he believes that to the extent government will fund art that it “first and foremost” should be art education for the young and for the broadest number of people and that the art institutions that the County supports should be the most democratic of all.

He said he has lived in Charlotte his entire life and has a special regard for Spirit Square.

Commissioner Bishop said he doesn’t think the County had an “extremely elaborate” rationale for adopting a decision to terminate leases and move forward on some indefinite course to sell Spirit Square when the Board made those decisions last year.

Commissioner Bishop said he thinks on second thought, particularly considering the alternatives that are effectively being proposed for the same dollars, that it was a “poor decision.” He said to the extent Spirit Square is perhaps not in the core business of the County, neither is a baseball stadium.

Commissioner Bishop said when you’re making decisions about funds that you have to spend in government that you set priorities. He said there are three choices here:

1. You can either preserve Spirit Square and all that it has meant to the County, to the community over many years;
2. You can develop a minor league baseball stadium for professional sports entertainment business Uptown;
3. If you want to do both, you can increase the tax burden.

Commissioner Bishop said he was not in favor of the latter and that to the extent that the County has been giving folks the impression that it can do all these things, the County is coming to

realize “late in the game” that it can’t. He said he thinks it’s important that the County steps back and think very carefully about what Spirit Square has meant to the community and see to it that it provides for that first. Also, see to it that taxpayers are protected with respect to the going forward with a minor league baseball stadium.

Commissioner Ramirez suggested developing an Interlocal agreement with the City so that they can obtain Spirit Square and issue an RFP. He said the City is more accustomed with infrastructure matters than the County. He said he’s suggesting this since the City owns the majority interest in Spirit Square and since the County doesn’t have private sale authority, and since the proceeds from the sale are going to be used for infrastructure in and around the baseball stadium. He said the “core” business of the County is not infrastructure, but that it is something the City does.

Chairman Roberts noted that the County would have private sale authority through the Interlocal agreement that is being negotiated and once executed.

Commissioner Woodard said she was concerned about the impact on school students and their curriculum once the Spirit of Square lease expires.

Commissioner Woodard also asked if there was any connectivity between David Furman’s project and Charlotte Center City Partners.

Michael Smith, **CEO** of Charlotte Center City Partners said Mr. Furman serves on their Board of Directors, but that this was something he has done independent of Charlotte Center City Partners as a developer.

Chairman Roberts noted that David Furman’s proposal is an idea that shows some imagination of what could happen. She said it doesn’t necessarily have any “higher footing” or “lower footing” than any other idea that’s out there because the County would have to go through a process.

Commissioner Helms made the following comments:

- The proposal related to Spirit Square and its reconfiguration, its change of ownership is “absolutely not” tied to, dependent upon or even related to baseball. He asked the public not to make that mistake.
- He’s willing to say to the County Manager, “find us an alternative way” to put in the infrastructure for baseball. He said this would make it very clear that the Board is not going to use this money.
- “It’s inevitable that what we now know as Spirit Square is going to be reconfigured. It’s going to be changed and it’s going to be changed because it needs to be upgraded if it’s going to continue in existence. It’s going to have to be in many respects modernized.”
- “We have an opportunity to create an environment that would not only be culturally sound, that will be economically sound, and that will be attractive and desirable.”
- “Let this Board and the City Council, and our staffs continue this process in collaboration with the Blumenthal, the Arts & Science Council and let us structure a process that is inclusive and open, imaginative, and one that will bring about the kind of energy that will drive this community throughout the days to come.”

Chairman Roberts made the following comments in summarizing the remarks that were made:

- An RFP process is desired.
- The historic church should be treated separately and to look at that historic preservation and how important that it is.
- It was never envisioned in the Board’s discussions that the historic church would be impacted in anyway other than being upfitted to be even better than it is, but to certainly retain those theaters.
- It needs to be kept in mind that there are other infrastructure needs for Uptown. She said there are more things going on besides baseball.

- Consideration needs to be given as to how to constitute the community committee that is going to review the RFP. That not only does Charlotte Center City Partners, the Arts & Science Council, and the Blumenthal Performing Arts Center need to be represented on the committee but also City Council, the County Commission and/or staff; perhaps Fourth Ward neighbors, and others. She said the meetings would be open for anyone to come and listen.
- Consideration may need to be given to what's going on in other parts of the land swap to see if there is any other latitude in the private sector of funds that have not been identified, of granting opportunities, of partnerships to help stretch the dollars more.
- Consideration needs to be given to what's a "reasonable" amount of time for the lease to be extended, so that the County doesn't cripple the Arts organizations or the functions of the theater, but we also allow some latitude to what we need to do in looking at an RFP process.
- Consideration needs to be given to whether it's possible to avoid going dark. If it's not, then do you stagger performances or do you slowly wind down operations and then slowly start them up. She asked those that have theater operations to provide feedback on this.

Attorney Bethune clarified that it takes action by both the County Commission and City Council to sale Spirit Square and to extend the lease. He said the City and County are the landlords and that N.C. Performing Arts Center at Charlotte Foundation is the tenant. He said there is no extension of the lease that by its terms it will expire June 30, 2007.

He said if the Board wants to accomplish all that has been requested by Mr. Keesler that City Council will need to be brought into the picture in terms of the extension.

General Manager Shields said staff was still working towards the land swap and that a report would be provided to the Board on March 20, 2007. He said if the County is successful in making the swap then the County would be the sole owner of Spirit Square. In light of this, he said staff needs to know if the Board is asking staff to change that course. He said if staff can conclude those negotiations and the County becomes the sole owner, then the Board can make those decisions. The Board would also be responsible for the operation and maintenance costs for the future of Spirit Square.

Commissioner Helms asked about the Interlocal agreement between the City and County and whether it includes the right to use the City's RFP process for the sale under the Interlocal agreement.

General Manager Shields said what staff is working on with the City does allow that possibility. He said also that one condition at this point and time with the City of Charlotte is that unless baseball happens then there's no land swap arrangement. He said staff can still work to try to work through that based on what's been heard at today's meeting and that staff will do that.

He said he wanted to make it clear that staff is working on a "package deal" through the Interlocal agreement process.

County Attorney Bethune said because of the timing of some of those pieces coming together, it's possible that as of July 1, 2007, there would still be divided ownership between the City and County, which is why the Board needs to get City Council involved if it wants to consider extending the lease sooner than later.

Commissioner Helms commented on General Manager Shields' statement that unless baseball happens then there's no land swap arrangement.

Commissioner Helms said that swap was not necessary for baseball to happen, if the County is going to get the funding for the infrastructure from some other source.

General Manager Shields said that was correct, if the County can find another source for the \$7.8 million in infrastructure.

Commissioner Bishop asked with respect to the Interlocal agreement as it is currently envisioned, whether the County was committing to fund the roughly \$8 million in Infrastructure for baseball without knowing if it'll have funds from Spirit Square to do so.

Attorney Bethune said it was not exactly a commitment. He said it would simply mean there would not be an exchange of properties until a number of things happen, one of which would require that the County have the funds. He said the County is not committing to the funds, but having the funds available becomes a pre-condition to the land swap.

Commissioner Bishop asked if this meant that the County could enter into the Interlocal agreement as envisioned and then it could turn out that as a result of the RFP process the County, for example, gets less than what it anticipated; is staff saying that the County could then look over into the prospect of "sticking the taxpayers" for the difference and decide it doesn't want to do that. Does that mean the County doesn't do any of it?

Attorney Bethune said what he's suggesting is that the City says it will not do the swap until a number of things have happened, one of which is to make sure that baseball would occur.

Commissioner Bishop said he feels that unless the County knows how it's paying for the baseball infrastructure, he would rather not commit to doing it until the County has everything worked out.

Commissioner Ramirez suggested the County use the Economic Development Committees of the City and County, along with representatives from Charlotte Center City Partners, the Arts & Science Council and form a commission to move forward with looking into this and getting the matter resolved.

This concluded the discussion of this matter. There was no action taken or required at this time.

Chairman Roberts thanked everyone for attending.

Note: The above is not inclusive of every comment or question, but is a summary.

ADJOURNMENT

Motion was made by Commissioner Helms, seconded by Commissioner Clarke and unanimously carried with Commissioners Bentley, Bishop, Clarke, Helms, Mitchell, Ramirez, Roberts, and Woodard voting yes, that there being no further business to come before the Board that the meeting be adjourned at 5:00 p.m.

Janice S. Paige, Clerk

Jennifer Roberts, Chairman