

OXFORD, NORTH CAROLINA
January 29, 2020

The Members of the Honorable Board of Commissioners of Granville County, North Carolina met in a continued meeting on Wednesday, January 29, 2020 at 4:00 p.m. in the Auditorium, Granville Expo and Convention Center, 4185 US Highway 15 South, Oxford. The purpose of the meeting was to render a decision on whether proposed lease terms are economically or practically feasible for Oxford Preparatory to lease the Joe Toler–Oak Hill Elementary School facility from Granville County Public Schools. The Board requested negotiations between Granville County Public Schools and Oxford Preparatory School at the January 6, 2020 meeting.

Present were:

Chairman: David T. Smith

Commissioners: Tony W. Cozart Sue Hinman
Zelodis Jay Timothy Karan
Edgar Smoak

Owen T. Roberts was absent.

County Manager: Michael S. Felts

County Attorney: James C. Wrenn, Jr
Assistant County Attorney: Gerald T. Koinis

News Reporters: Amanda Dixon – *Butner-Creedmoor News*
David Murray – *Oxford Public Ledger*
Miles Bates – *The Daily Dispatch*

MEETING CALLED TO ORDER

Chairman David T. Smith called the meeting to order at 4:17 p.m. and recognized Commissioner Tony W. Cozart for the invocation and the Pledge of Allegiance.

CONTINUED APPEAL REQUEST FROM OXFORD PREPARATORY

Chairman Smith recognized County Attorney Wrenn for direction on how to proceed with the meeting.

County Attorney Wrenn said he had met with the attorneys for Oxford Preparatory and Granville County Public Schools (GCPS). He then gave an overview of how the meeting would proceed. Board of Commissioners would be given about five minutes to review some documents including a letter from Oxford Prep dated today for review and a document from GCPS with a timeline regarding the Joe Toler-Oak Hill Elementary School property. After that, Oxford Preparatory’s attorney will describe the proposed lease and talk about the points

of agreement and disagreement. Then the school board's attorney will note any objections to the summary. Then the school board's attorney will give a presentation on why the Board of Education does not believe the proposed lease terms are not economically or practically feasible and then Oxford Preparatory will have a chance to rebut that evidence.

County Manager Felts passed out documents for review by the Board.

Chairman Smith reminded Board members that they should hold questions until the end.

At 4:21 p.m., the meeting paused for review of said documents, then a bathroom break at 4:41 p.m., and then the meeting continued at 4:46 p.m.

County Attorney Wrenn said he had four items that he would like to enter into the record and were agreed upon without further testimony:

- Letter dated January 25, 2020 from Eva DuBuisson, Attorney with Tharrington Smith, LLP for the Granville County Board of Education, on behalf of the Board and Superintendent to Andrew Swanner and David Hostetler of Oxford Preparatory School; Re: Request to Lease Joe Toler-Oak Hill Campus (Item #1)
- Letter dated January 29, 2020 from David R. Hostetler, Attorney for Oxford Preparatory to Michael Felts, Granville County Manager; Re: Status Report by Oxford Preparatory School Regarding lease Request to and Negotiations with the Granville County Public Schools (Item #2)
- Memorandum from Granville County Board of Education to Granville County Commissioners; Subject: Requested Lease of Joe Toler Oak Hill Elementary School; Note: Document has several attachments (Item #3)
- *Resolution of the Granville County Board of Education* dated January 28, 2020 (Item #4)

County Attorney said there is discussion in one document about the County providing a guarantee to a lease entered into by Oxford Prep in the event they were to reach a lease agreement. He instructed the Board that he did not believe that a County Board of Commissioners can appropriate money for that purpose as it is not listed as a statutory purpose that you can appropriate money for and he did not believe it is something the Board can legally do.

At this time, County Attorney Wrenn asked Attorney Hostetler to describe the proposed lease.

Attorney Hostetler (Oxford Preparatory) referred to the letter from him dated January 29, 2020. He said he was here for the second time, appearing before you previously on January 6th when it was determined that the Joe Toler-Oak Hill Elementary School property was available and negotiations were requested. He said there have been two meetings since then and there have been proposals and counter proposals going back and forth. He said he believes

they are close on most negotiating points except 2 – 3 areas – rent and guaranteed lease term. Oxford Preparatory has agreed to the lease amount of \$100,000 over 13 months. GCPS has not accepted that and offered 2 options. The one that would make sense to them would be to guarantee them 13 months, and GCPS wants \$179,000 for the lease. He said the other thing is guarantee, and they would want assurance they would be able to be there 13 months but they do not want to pay more for that as they have agreed to some other costs. There are other questions about repairs that Oxford Preparatory would be required to make. He said that Oxford Preparatory has backed off its position to split any costs to operate the school, but they are willing to absorb any costs necessary for general operation and preserving safety. He said they have not come to full agreement on that per GCPS's counsel. He said the process that started on September 13, 2019 when they requested to lease the Joe Toler–Oak Hill Elementary School property, noting they did not get a response until November 5, 2019 when GCPS decided to sell the property on November 4, 2019. He said with the points of disagreement, Oxford Preparatory is asking the Board of Commissioners to take certain actions. He then referred to the January 29, 2020 letter and noted that they have agreed on 18 points as outlined in the letter on page 2 and reviewed the list.

Attorney DuBuisson, said there has been a lot of communication back and forth since the January 6, 2020 meeting. She summarized that since the hearing, representatives of the school system met with Oxford Preparatory and shared information and answered questions. The School Board held a special meeting and developed a written lease proposal and transmitted it to Oxford Preparatory representatives. She said they then met again with Oxford Preparatory's representatives and went through the lease and there were verbal concessions, but no written response from them. The School Board met again and made a second lease proposal with some of the concessions that they asked for after the special meeting. She noted that there has not been a response to the proposal since January 25, but they understand that they are at an impasse on rent, what happens if the building is sold, and what repairs Oxford Preparatory should commit to doing. She said as far as repairs, they believe there should be specific commitment to what they will be so that there is no misunderstanding. She noted they used Oxford Preparatory's inspection report that identifies certain things that need to be addressed. She said Oxford Preparatory they did not want to commit to specifics, but will decide what repairs are necessary for safety and will make those repairs and that is a problem

for the school system. With regard to rent and what happens if the building is sold, the school system's original proposal was a rent of \$9,180 a month starting immediately and Oxford Preparatory agreed to have the rent start in June so essentially the first three months would be free. She said as far as if the building was sold it would depend on the buyer, other than that Oxford Preparatory would need a significant amount of notice. She noted that Oxford Preparatory could not agree to that, but she said if they want a guarantee that GCPS would not sell the building during the time the rent should be higher to compensate. She said a minor point that Attorney Hostetler made was that they did not hear back for several months, and she noted that it was less than two months and the standard in the statute says 90 days. She said those are the clarifications that she had. She asked County Attorney Wrenn for clarification on the next step.

County Attorney Wrenn said they now need to tell why they feel the lease is not economically or practically feasible.

Attorney DuBuisson said they expressed their concerns at the January 6th meeting and emphasized that GCPS would like to sell the building. She said there has been a showing and there is an interested buyer for the property. She said they found out today that the interested person's bank will not support an offer with a possible lease on the building so they cannot make an offer until this issue is resolved. She said that GCPS does want to sell the building and noted there has been some good faith effort discussions. She said the School Board does not believe the lease is feasible or a good idea. She asked the Board of Commissioners to deny the appeal based on the School Board's good faiths efforts and information she would now share with the Board why the lease is not economically or practically feasible.

Attorney DuBuisson said they learned that Oxford Preparatory is looking to house 300 – 340 students, and noted that when Joe Toler Elementary School closed, they had only 180 students. She said there has not been over 220 students at the site in the last 10 years. At times, the well tank ran dry before the end of the week and water had to be trucked in as the water system did not support 200 students. She said they have concerns about the number of students, staff and parent traffic. She said there are other wells on the property, but are dry and the school is on a single septic system. She also said that the parking lot is deteriorating, noting that this is why repair and upkeep is important. She said as they have tried to negotiate on repairs, so that the building does not return to GCPS in worse condition than when it rented to

them. She said the response is they are not willing to commit as that Oxford Preparatory's goal is for safety for students for 13 months, but not to keep the building's value or to preserve the building for the community. She said this is not practically feasible for the School Board as a standard for maintaining that building. The proposal is to double the amount of people in the building day to day but with less upkeep and maintenance than the school system was doing. She mentioned that it is not about making about making money with the rent, but rather the real risks to the building with the use being proposed. She talked about concerns of the Board of Education if the boiler or septic system fail and the school system is left to deal with the issues. She also talked about the differences of what the School Board may think is economically or practically feasible versus what Oxford Preparatory representatives may think is. She said the School Board has spent a great deal of effort to find out what is feasible for the Joe Toler–Oak Hill property and talked about what they had done. As far as economically feasible, she said they Board of Education needs to sell the property and there is not any reason to think it will take two years. She said the amount of rent they were offered to give up the opportunity to sell the building is not enough as it is less than the property is worth, far less than it would cost for Oxford Preparatory to rent elsewhere, plus the potential damage to the building, and the cost to the School Board to give up the opportunity to sell the building. She noted that in comparing rents, Oxford Preparatory offered a flat \$100,000 and if you divide it over 16 months it equates to \$6,250 a month. She then reviewed a chart of comparable rental properties that was passed out and compared them to the rent Oxford Preparatory has proposed, noting that it is far less when compared to rental rates they checked for school use. She said that the costs outweigh the benefits for GCPS and does not make economic sense. She reminded the Board that in other situations where a school system declined to lease a property when they wanted to sell it instead, the decision was respected and left to stand. She said if a buyer made a bid, then Oxford Preparatory would have the option to make a higher bid and the rent would be credited toward the purchase price. She said she believed both parties should be able to commit to repairs and maintenance as the building is not equipped for 300 students at this time. She said for these reasons, the Board of Education is asking the Commissioners to recognize that they have acted in the process in good faith and made multiple offers to Oxford Preparatory. She said the Board of Education has proposed in great detail what they believe is

economically feasible and Oxford Preparatory has declined, therefore they believe the appeal should be denied.

Chairman Smith asked if Oxford Preparatory had any rebuttal.

Attorney Hostetler responded to points about feasibility. He said there are things in reports that need to be repaired in different stages. Those reports were not prepared with the idea of operating for a 13 month lease. He said it is reasonable to say to get experts in and nail it down to what has to be done. He said is it necessary to pave the driveway to operate for 13 months or can they do patching to make it safe and operable. He said he believes it is unreasonable to commit to the whole list of repairs. He said he believes it is reasonable to commit to what they need to do for safety and it is not correct to say that is all they will do. He said safety is first and foremost, but they are a charter school bound by legal obligations to operate efficiently and safely. He said that to say they are not going to do things reasonably is far-fetched and an overstatement. He said they will make all immediate repairs that are necessary for safety and general operation that includes roof repairs, repairs during occupancy that fit that, in addition to specific repairs that they are willing to do now with respect to heating, cooling, septic and water. Oxford Preparatory will do a pre-occupancy inspection when they know what their numbers will be. He said they want them to take full responsibility for safe and secure conditions at all times. He said they will do that and asked what more assurance do they need, as they will contractually obligate themselves for safe and secure conditions. He said the Board of Education does not have to worry or be responsible for anything as they are passing it on. He said Attorney DuBuisson has said it is not possible to have 300 students there but have not provided any proof that they can't and he does not know what more they can agree to do. He said they have agreed to detailed inspections and plan to turn it back over in substantially the same condition. He said in negotiations in the last meeting, it came out with respect to feasibility that it is about the ADM (average daily membership). He says there is nothing in the statute saying that a school system can deny a lease based on losing ADM. He said other points raised are concerns about building coming back as is, the number of students and failure of systems. He said they will only house the number of students that the facility is suitable for housing. He said their school officials have determined that the school will work and if it found to not be able to operate, they have agreed to not pay for that repair and will vacate. He noted they have agreed to repairs if they operate as a school and

return it. He said there are approximately \$50,000 in repairs and he feels it will be returned in better condition.

Attorney Hostetler then referred to page 3 of the letter he sent dated January 29, 2020 and referred to the statutory mandate “*shall lease any available land or building to the charter school unless the (GCPS) board demonstrates that the lease is not economically or practically feasible.*” He asked what counts as a demonstration – generalized arguments that the facility may not be able to handle the students, speculative analogies to industrial properties in different locations, or fair market considerations. He said he has been waiting for a cost benefit sheet that shows the line that the Board of Education shows what is feasible or not feasible. He urged the Board to approve their appeal because the Board of Education has not met their burden. He said the meaning of feasibility is not a high standard, but minimal one about what is reasonably possible. He suggested that feasibility is a similar kind of lower standard and gave synonyms for feasibility. He said the Board should do something that makes economic sense, something that is economically viable. He said the legislature intends for charter school leases to be easily feasible and affordable. He said there is also a legislative provision allowing a school system to lease property at “no charge.” He contended that there has been no demonstration of “non-feasible.” He said it is in the school system’s best interest to lease it and said the risks need to be weighed against the rewards. He said if the lease is not entered into and the property is not sold, then GCPS is going to be stuck with costs of maintenance and lost revenue as well as repairs that they would be making that are of value. He said the lost lease payments of \$100,000 and added upkeep cost of \$142,000 equal \$242,000 of total minimum lost revenues and added costs that is over one-half of the property’s appraised value of \$450,000. He said the GCPS lease comparisons to other available facilities are fundamentally flawed and noted that \$100,000 of the proposed offer in lease payment is more than fair, in addition to being “feasible.” He said a fifteen month delay or wait seems to be reasonable as you would still be able to sell the property. He said the last counter proposal came out Saturday and they have not responded to it. He noted that they have been asking for it sooner and had to wait a number of times, but it is not a big deal. He said to infer that they are dragging their feet in response to proposals is not fair. He said the proposal that came out Saturday included an attachment that references industrial properties and are trying to make comparisons to the Joe Toler property. He said that they are comparing apples and oranges

and it is not a strong argument for feasibility. He said the Joe Toler property is 13 miles outside of the city and probably served by municipal utilities and such. He asked if tenants had to come in and do repairs and such. He said it is not about what is a fair market value, but if it is feasible for perhaps 300 students without doing damage or harm to their own finances or position. He said he would like to bring forward two people and then introduced Andrew Swanner, Director of Oxford Preparatory, and Scott Smith, Real Estate Appraiser.

Andrew Swanner, Executive Director of Oxford Preparatory, said the process started in September as outlined in the timeline that was agreed to. He said little communication took place until the Board took action in November. He said they were trying to be proactive to address facility solutions for their expanded charter and new student enrollment, he said they are at a point that they need to finalize the matter. He thanked the Board of Commissioners for their consideration and time and said he believed all parties are ready to resolve the matter. He said they were coming to the Commissioners looking for resolution that both parties can live with and that best fits the citizens of Granville County.

Attorney DuBuisson objected that Oxford Preparatory officials had a real estate person from Raleigh do something related to the property that they have just received during the hearing. She said she objected to it being entered into evidence when it was not part of the negotiations or part of the basis for either their offer or ours.

Chairman Smith asked the County Attorney for guidance on the matter.

County Attorney Wrenn said that the decision whether to accept the evidence is at the discretion of the Board.

Chairman Smith asked the Board if they were okay with hearing further evidence.

Commissioner Smoak said he did not believe something submitted on the last day right before negotiations should not be considered since the other information has been presented.

Other Board members agreed.

Attorney Hostetler said they did have the report that Mr. Smith submitted.

County Attorney Wrenn clarified that the report was not agreed upon to be submitted.

Attorney Hostetler said the report was compelled after a counter offer was received on Saturday with an attachment of fair market lease values so they felt compelled to respond. He said that is why Mr. Smith attended. He said he would like to enter the document as they were operating at the last minute because they got the report so late. He said they had to find

someone to do a report and it was just received this afternoon. He said he had mentioned he would be offering more information.

Chairman Smith asked if the Board of Education had received the information.

Attorney DuBuisson said they received the information during the hearing. She said she believes it is in response to a compilation that they made and sent to them Saturday of public listings of other properties in the area. She noted they did not hire any experts, but made of list of other properties in the area.

Chairman Smith recognized Attorney DuBuisson for rebuttal.

Attorney DuBuisson said there has been some questions about some of things she said and whether they are truthful or accurate. She called on Dr. Stan Winborne for sworn testimony to be included in the record.

Attorney DuBuisson asked about the numbers at Joe Toler when it closed and said she cited 180 before when it closed and no more than 220 and then asked if in a decade.

Dr. Winborne said in 11 years.

Attorney DuBuisson asked if that was accurate and Dr. Winborne stated "yes mam."

Attorney DuBuisson asked him to tell about the water system issues that he mentioned with regard to running out of water at Joe Toler.

Dr. Winborne said her explanation and characterization that she mentioned before were accurate. There have been occasions when the maintenance department had to hire water tankers, tractor trailer tankers full of water, to refill the water tank at the school – a 12,000 water tank because it could not keep up with the capacity. He said any malfunction or overuse could result in running out of water.

Attorney DuBuisson asked Dr. Winborne to state his title and responsibilities with the school system.

Dr. Winborne said he is the Assistant Superintendent of Operations and Human Resources and Public Information Officer.

Attorney DuBuisson said she made some statements about the school system having concerns about the capacity of the septic system at the building and asked him if it was accurate or if there was anything else he wanted to add.

Dr. Winborne said it was very accurate and added that the system is quite old and that even Oxford Preparatory's third party inspection cited some issues with parts of that system which currently need to be replaced and addressed or repaired.

Attorney DuBuisson asked if he arranged for a showing of the Toler property in the last couple of weeks.

Dr. Winborne answered "yes mam." He said that early last week he was contacted by someone in the community. He said they were very interested and asked a lot of questions and they called back and asked for a showing. He said he and the Director of Maintenance, Sam Clement, gave the individual a tour of the property on Friday. The person has a commercial interest in the property and that they walked through, gave him a copy of the appraisal, provided blue prints to him, and they were very candid with him in all of the issues as related to the property. He also communicated to the person the Board's real desire that this not be used for children as we strongly believe it is not suitable, certainly not in its current condition without significant investment to be used as a school. He said the person communicated to them in very clear terms that he intended to use it for commercial use.

Attorney DuBuisson asked him if the person contacted him this afternoon to withdraw the interest because until the lease issue is resolved his financiers were concerned about the possibility that the Commissioners could require it to be leased.

Dr. Winborne said "yes mam." He said as we were sitting here after this hearing, I checked my phone and got an email from him. He said at this time due to the uncertainty about what is happening with this request he would withdraw his interest until it was resolved. He indicated that he is still interested pending the outcome.

Attorney DuBuisson said she did not want to overstate, we have not received a written offer.

Dr. Winborne said "no mam."

Attorney DuBuisson said of course the property has only been for sale for two, three weeks.

Dr. Winborne said "yes." He said it has not even yet been listed. He said they have not found an appropriate real estate agent to list it for them, but they have placed ads in all the regional papers, Roxboro to Clarksville, Henderson, Butner, etc. So the word is out and there is a large sign in front of the school advertising it being for sale.

Attorney DuBuisson asked the Commissioners if they had any questions of Dr. Winborne as he is over facilities and handles these sort of things for the school system before he sits down.

Chairman Smith said they would come back as soon as Attorney DuBuisson finished.

Attorney Hostetler asked if he could cross examine.

Attorney DuBuisson asked if it would be about the topics Dr. Winborne testified about.

Attorney Wrenn said it should be cross examination.

Attorney Hostetler asked Dr. Winborne, with respect to that property, what definitive information he had that indicates that it would not serve approximately 300 students. Is there anything that says it is just not feasible?

Dr. Winborne said he would base it on the expert opinion and long experience of their maintenance staff along with some of the engineered reports they have about the property over the past few years.

Attorney Hostetler asked if they specifically concluded it would not serve that without adjustments.

Dr. Winborne said they have serious concerns.

Attorney Hostetler asked if they had a document that expresses that it is not feasible to serve that many students or any kind of plan or is it just a generalized concern.

Dr. Winborne said again it is based on the strong expertise and long experience of their maintenance staff who have a history and intimate knowledge of that building from working on it.

Attorney Hostetler said, and they said it is not possible.

Dr. Winborne said they have serious concerns about that building holding that capacity.

Attorney Hostetler said but they haven't said it is not possible.

Attorney DuBuisson said she objected.

Attorney Hostetler said he just wanted to be clear.

Attorney DuBuisson and Dr. Winborne said they had answered the question.

Attorney Hostetler asked if there was a rating from DPI (Department of Public Instruction) as to how many students the facility could hold.

Dr. Winborne said no there is not a rating. There is a calculation sheet that can be used to determine calculate absolute capacity of buildings based on the number of classrooms in a building.

Attorney Hostetler asked if he had a figure.

Dr. Winborne said the absolute capacity is 350 students according to the last time he did the calculation, but it is based only on the number of classrooms in the building and does not take into account anything else. He said in other words it uses state mandated class size divided into the number of classrooms and it gives you that number.

Attorney Hostetler asked if there was anything that says any official opinion, finding that says that building is not suitable for educational purposes.

Dr. Winborne answered “no.”

Attorney DuBuisson noted that there is an official resolution from the Board of Education based on their knowledge that says it is not suitable.

Dr. Winborne said that is true.

Attorney Hostetler said he just got that in the midst of this hearing. He said you mentioned bringing water in because at times when it was operating you needed to come up with alternative means.

Dr. Winborne said “correct.”

Attorney Hostetler said I believe we discussed that previously as a solution. He said I believe Oxford Prep appreciated the information indicated and will examine those solutions you have used in the past as a way to meet the needs that might task that facility.

Dr. Winborne said he recalled that conversation about trucking water up.

Attorney Hostetler asked if he ever communicated in negotiations that it could not happen.

Dr. Winborne asked what could not be done.

Attorney Hostetler said that they could not address the water needs or septic needs.

Dr. Winborne said he was not sure he understood the question.

Attorney Hostetler asked if he communicated in the negotiations that it is not possible.

Dr. Winborne said we certainly never said it was not possible, we said it could be a significant contributor to not being able to do it. He said that a significant investment would need to be made, repairs to the septic system, upgrades to the water system and all those would

need to be addressed. He said in my view that is something that prior to a lease agreement would need to be established by an expert third party so that going into it we would have a clear understanding of what that risk might be to the district or additional cost.

Attorney Hostetler asked if he would agree that one reasonable approach would be to do a detailed inspection to determine what the capacity is and what other supplemental . . .

Dr. Winborne said he believed that was included in their last proposal.

Attorney DuBuisson asked regard to roofing . . .

Dr. Winborne said with regard to major systems, but he said he could be misspeaking but that was his understanding.

Attorney DuBuisson said with regard to roofing, Oxford Preparatory did an inspection so that is what they were relying on.

Attorney Hostetler said with respect to the person that showed interest or you gave a tour, he asked was he correct that there was no discussion of an offer.

Dr. Winborne said they did not indicate to him an offer, they wanted to know what the appraised value was and the square footage of the building, of the campus, of the facilities.

Attorney Hostetler said he had no further questions.

Attorney DuBuisson said she wanted to address specifically the repairs and maintenance to the building and why that is so important to the Board of Education and why that directly related to whether Oxford Preparatory's proposal is feasible to them. She said they feel there needs to be a specific agreement as to what will be repaired and replaced. She explained that Oxford Preparatory was allowed to enter and inspect the Joe Toler facility. She said the Board of Education used that report to put in the lease agreement what the inspector said needs to be done immediately and then reviewed the list. She said Oxford Preparatory has not said they will do what the inspector said, but what they deem necessary and that is not a reasonable standard for any landlord to accept. She said she did not think the School Board should accept that as she did not believe the Commissioners would accept that on one of their buildings. As far as feasibility, there have been discussions that the Board of Education will lose all this money if the property sits vacant. She said the statute is designed to address school properties sitting vacant with school boards having no use for them. She said that is not the case here as they would like to see it sold. She said they have an interested buyer and Oxford Preparatory has suggested they may submit a bid, noting they have no desire for the building

to be sitting vacant. There is no evidence to suggest the building would not sell in a reasonable time period. She said as far as the history and legislative debate over the bill of leasing to a charter school, the discussion was if a school board has a vacant property they have not use for, a charter school ought to be able to lease it on reasonable terms. That is not the case for this building as they do not want it to sit vacant, but want to sell it as soon as possible. She said they would not be able to sell it if the lease is granted on the terms they propose. She said the last thing as far as the public listings to show reasonable rental rates, Oxford Preparatory representatives said that they don't know if the owners of those properties require tenants to make repairs. She referred to the list and noted that terms are triple net lease – tenant pays property taxes, insurance, and maintenance. She noted that the warehouse properties do not have ceilings or walls so these would be rates for a tenant who would be expected to do a significant amount of work to enter. She said they are not going for fair market value as they proposed less than that, but she does not think that the statute requires that the Board of Education accept the minimum possible rent for an asset it owns. She said overall there are serious concerns about the proposed lease, risks that are hard to quantify including the risk with the number of people in the building will over task the systems and lead to damage. She said they mentioned they would repair or vacate if one of the systems fail, but they said repair or vacate and not give them the money to repair as this is the risk they are talking about. She said overall, the Board of Education has done what the Board of Commissioners has asked in good faith and come to a proposal and do not believe it is sufficient to offset their risks. She asked the Board of Commissioners decline the appeal that is an order, ordering the School Board to lease Joe Toler facility to Oxford Preparatory on the terms that they propose. She asked the Board to listen to David Richardson, Chairman of the Board of Education, and noted he would not add evidence, but would provide a statement. Since he was not presenting evidence, he was allowed to speak.

David Richardson, Chairman of the Board of Education, Granville County Public Schools, 101 Delacroix Street, Oxford, NC, was sworn in by the Clerk to the Board.

Mr. Richardson thanked the Board for the opportunity to speak to give an update of the negotiation process. He said that Granville County Public Schools is committed that every student reach his or her potential preparing them to thrive in a changing world. He said because of the commitment they are tasked with implementing policy and financial decisions

to make that possible. He said as the Board of Commissioners know, there are infinite needs and wants that often come with finite resources to make them possible. He said the Board of Commissioners is faced with the same reality as they are and that the Board of Commissioners has encouraged Granville County Public Schools to be fiscally responsible with dollars entrusted to them to educate students. He said the Board of Education has taken great care to weigh options available to them and had to make decisions that were hard and unpopular to consolidate their footprint and tightening their belts financially. He said their staff delivered a memo today outlining the process they took in the negotiations with Oxford Preparatory. He said at the meetings and prep work, their goal was to evaluate if the transaction was practically and economically feasible for Granville County Public Schools in light of current economic situations, student needs, and encouragement from the Board of Commissioners to be prudent in use of resources entrusted. The potential offer is being put on hold until the Board of Commissioners render a decision and the appeal is being followed by others as this will set a precedent. He said with the information presented and the resolution that was passed, the Board of Education is asking the Board of Commissioners to deny the appeal based on the fact that leasing the Joe Toler facility is not in the mission of what was asked of them to be make financial and prudent decisions. He said they wanted to go on record as the Board of Education that they are committed to being fiscally responsible that is one of the goals to implement policy decisions that have been in the works for several months and years and not just in the last weeks. He respectfully asked the Board of Commissioners to deny the appeal.

Attorney Hostetler said as a point of clarification, was there a ruling on the admission of the appraisal information and testimony of the expert.

Attorney Wrenn said the Board of Commissioners was not going to rely on this information at this time, as they believe it was not necessary.

Attorney Hostetler asked about the report being submitted into evidence.

Attorney Wrenn said they ruled that the report would not be submitted as evidence either.

Attorney Hostetler said he was made aware of two documents, just before the hearing or perhaps right after the hearing started that he had not seen before that were submitted. He said he was not told there would be an objection to his expert. He informed counsel and gave them a copy of the report before the hearing started as they had just received the report early

this afternoon. He said he did not know of any rules that preclude relevant evidence and that in fact counsel just questioned a witness presumably with knowledge of the situation and he had no knowledge that she was going to do that. He urged reconsideration since he said it is relevant information, noting they sought the information on Saturday after they saw what the committee was being put forth. He said he did not hear a decision to deny it and that he would have objected and will object both to that if he could not get it reconsidered or at least get it into the record. He said he believed it would be a short presentation.

County Attorney Wrenn said the decision is up to the Board if they want to hear the testimony as this is not a formal court of law.

Chairman Smith asked the Board if they wanted to hear the testimony. The Board agreed to hear the evidence and the opportunity for Attorney DuBuisson to respond.

At 6:20 p.m. the Board took a break.

Matthew Scott Smith, 8382 Six Forks Road, Raleigh, NC, (State Certified General Real Estate Appraiser), was sworn in by the Clerk to the Board.

Mr. Smith said he received a call Monday morning and was given a basic outline of the lease negotiations taking place. He was given an appraisal of the Joe Toler facility from May 2019 of \$450,000 and a property conditions report that was prepared January 2020 that outlines several issues with the facility. He noted one of the pertinent things was the schedule that showed an estimated \$10 million of items that need to be fixed over a 10 year schedule. He said he was provided two letters, one from Tharrington-Smith and one from Cross and Currin, and a well inspection report that said the well was not contaminated. He was initially asked to prepare an appraisal of the property with a market rent determination. He said that given the constraints of time, and the age of the facility and possible no available comps, he would look at this the way investors look at a build-to-suit investment or ground leasing a property. He said his firm has appraised over 150 schools in the last 10 years and has pretty good data for build to suit school properties that are coincidentally all in North Carolina.

- Letter dated January 29, 2020 from M. Scott Smith, MAI, State Certified General Real Estate Appraiser to Andrew Swanner; Re: Market Value Appraisal, Elementary School, 8176 NC-96, Oxford, NC (Item #5)

Mr. Smith then referred to his document (and the chart on page 4) that identified eight school properties that were constructed since 2012. He noted these buildings were built for a school tenant so it shows the investment of the landlord and the rental agreement for the school.

He said the rent as a percentage of total investment, it ranges from 5.69 – 9% and the average and median were 7.25%. He said he wanted to take it outside because in real estate he has always heard that when there is not a perfect comparable to do a typical comp-based market rent analysis based on 7-9% range based on the fee simple value. Years ago they started compiling information on build-to-suit properties to see if the range is in fact accurate. He referred to page 5 and the variety of property types with mostly retail properties and the range of 6.49% and 9.21% with an average of 7.8% and a median of 8.0%. He then referred to a chart on ground lease properties since this school is nearing the end of its useful life. The ground lease comps and the ratios were high with 7.38% to 9.4%. He said the take away is that generally 7-9% is still the range and based on the fee simple opinion of \$450,000 and the current offer to date, it represented about 20.5% return on the market value which is substantially higher than what other investors and landlords are agreeing to in the market. He said he did not come up with a market rank for the property, but for a test of reasonableness what \$92,307 annual rent for a 12-month term compare to the \$450,000 market value. He said the percentage is higher than what they typically see. He said that was all he had and thanked the Board for their time.

Attorney DuBuisson referred to page 4 of the report of the comparable of school leases for the analysis and said the length of the leases is not mentioned.

Mr. Smith said he could get that information.

Attorney DuBuisson asked if it is fair to assume that the leases are all longer than one year.

Mr. Smith said it is.

Attorney DuBuisson asked if some are for more than 10 years.

Mr. Smith said it's very possible.

Attorney DuBuisson asked if some were for more than 20 years.

Mr. Smith said he could get the lease documents.

Attorney DuBuisson said when the landlord is looking at the return on their lease they are looking at the horizon in that lease, which is more than one and possibly more than 10 or 20 years. She said to Mr. Smith, you note that these are all properties built-to-suit for a school. She said you use as your estimate of market value, the total investment made to build those

buildings, but you didn't use that as the market value for Toler right, you used the market appraisal that the school system had done.

Mr. Smith said that based on the same logic you are following, C.B. Richard Ellis Appraisal did a depreciated cost approach to value and came up with \$850,000 in reconciled to the sales comparison approach which suggests that there is applied obsolescence there. If you still take reasonable ratio on \$850,000, you are still landing well below the \$92,300 for the first year.

Attorney DuBuisson said that here approach is the total investment in these buildings that are new buildings, so you are using a cost of building them and outfitting them for a school. She asked if he had information on the total investment for them.

Mr. Smith said they have a 5-year useful life.

Attorney DuBuisson said there is one way that the buildings are more comparable is that they are all built as schools. She said looking at the chart on page 4, with the exception of Orange Charter School, is it reasonable to say that most of the charter schools are paying between \$900,000 and \$1.7M to rent a building that is actually built as a school.

Mr. Smith said as a brand new school, yes.

Attorney DuBuisson thanked Mr. Smith and said she did not have any more questions. She then addressed the Board of Commissioners and said in regard to a comparable rent, it is not very central to this analysis. She said to compare new buildings built for charter schools that may have a 10 or 20 year lease, we are being told that we are comparing apples to oranges but here are some grapes. She said Oxford Preparatory is asking in the letter sent today, to order the School Board to lease to them on their terms that they dictated without guaranteed repairs. She said you can see from discussions today, the Board of Education feels this is risky and any dispute over what is necessary and safe will entail lawyers and arguments. We are asking – who bears this risk? That is why the School Board suggests that if the Commissioners are inclined to allow the lease, you will sign on to assist if the School Board is in dispute after dispute about what repairs need to be made to return the building in the same condition, as it is clear we do not have the same idea about what that is. She said their concerns are in leasing the building and not having guaranteed repairs, and an old building get even older with more wear on it, then who is left holding the bag – it is still the school system. She said all we want to do is sell the building and we are asking that you allow us to do that and move on.

Attorney Hostetler asked to make a closing statement.

After clarification, both parties were allowed to make a closing statement.

Attorney Hostetler said he wanted to correct a mischaracterization of their position on proposal. He said a couple of times it was said that we are asking the Board of Commissioners to order that you accept our proposal. He said that is not correct, in fact the lease would be more of their proposal than our proposal because of the long list of concessions and agreements that they have made. He said we are asking you to deal with the three remaining disputed items, because it is feasible for all the reasons I gave you. He said the Board of Education has not demonstrated that it is not feasible, economically or practically feasible. He asked the Board of Commissioners to order that the parties accordingly execute a lease at the earliest possible time that includes a rent payment for 13 months of \$100,000 and includes all the non-disputed terms that were laid out and agreed upon. He ask that a detailed inspection be done to determine what is necessary to repair immediately and during the term of the lease for safe and reasonable operation that would enable them to return the facility in the same general condition it was in at a minimum when they end the lease. He thanked the Board of Commissioners for their patience and hard work on this matter.

Attorney DuBuisson said the School Board is simply asking that the Board of Commissioners recognize that they have done what was asked of them to do. They have made good faith efforts in negotiations, but not come to an agreement. She said that being that the School Board has explained, in their perspective and with evidence to support it, the reasons why this lease is not a good idea. She asked the Board of Commissioners simply to decline to get involved any further, decline to dictate the terms of any lease, and decline the appeal. She thanked the Board of Commissioners.

Chairman Smith asked the Board if they had any questions or if they needed further information.

At this time discussion ensued. Board members expressed that they were glad that the two parties had engaged in discussions. They talked about the well situation, roof repairs that are needed, repairs to the chiller if needed (noted building is advertised as sold as is), potential buyer, upkeep during sale of the property, and the upset bid process.

Oxford Preparatory was asked if they willing to make a bid on the property. Mr. Swanner said that seven days ago, there was no offer on the property per conversations with

the School System. He said the statement was made that likely no one from the community was willing to buy the property and only potential would be from an outside investor. He said their school has made arrangements to be a bidder on the property even though they do not have a long term vision, as they have been notified by USDA that they will be receiving funding to build a permanent school building that will not be ready until the 2021 school year. He said that is why they sought the lease that they thought would be favorable to both parties. He said by the statute of the upset bid, the School Board would have an out to not sell to any high bidder so they have concerns about potential motivations and potential impacts of their enrollment on Granville County Public Schools' enrollment. He said as a result they are not comfortable with this going to an upset bid because after 10 days they are not obligated to sell to them.

BOARD DENIED APPEAL FROM OXFORD PREPARATORY TO LEASE THE JOE TOLER-OAK HILL ELEMENTARY SCHOOL FACILITY

County Attorney Wrenn said the matter before the Board of Commissioners is pursuant to an appeal under North Carolina General Statute 115C-281.35. The statute states: *If a charter school has requested to lease available buildings or land and is unable to reach an agreement with the local board of education, the charter school shall have the right to appeal to the board of county commissioners in which the building or land is located. The board of county commissioners shall have the final decision-making authority on the leasing of the available building or land.* He said as stated earlier tonight, *at the request of the charter school, the local board of education of the local school administrative unit in which the charter school will be located shall lease any available building or land to the charter school unless the board demonstrates that the lease is not economically or practically feasible.* He said the question before you tonight is whether the lease as proposed is economically or practically feasible. He said that the final decision making authority lies with this Board and in his opinion does not mean that you have to get into actually deciding lease terms. He said you could simply determine that the lease is not economically or practically feasible or in the alternative you could say exactly what you believe is economically or practically feasible or finally decide the lease as there is a range of options before you.

Chairman Smith asked if there were any questions of the County Attorney and there were none. He then said he would entertain a motion based on the appeal submitted by Oxford Preparatory School to lease the Joe Toler School property.

Commissioner Cozart said that he appreciated all the information supplied and the process for Oxford Preparatory and the School System to engage in meaningful conversation. He noted that the School Board has been responsive to address short and long term budgetary challenges and have decided to sell the Joe Toler School property. He said as a Commissioner that he would hate to upset the process they have in place to sell the building, noting that he is happy to hear of potential interest. He said he would offer a motion that would not eliminate Oxford Preparatory from being able to bid on the property.

Commissioner Tony W. Cozart made a motion to deny the appeal from Oxford Preparatory School to lease the Joe Toler-Oak Hill Elementary School facility as it is not economically or practically feasible, and to allow the Board of Education to continue the process to sell the property. Commissioner Edgar Smoak seconded the motion. When Chairman Smith called for a vote on the matter, the vote was of 4-2 as follows:

Ayes: Commissioners Cozart, Hinman, Smoak and Smith

Nays: Commissioners Jay and Karan

COMMISSIONERS ADJOURN

Upon a motion by Commissioner Edgar Smoak, seconded by Commissioner Sue Hinman, and unanimously carried, the Board adjourned at 7:02 p.m.

Respectfully submitted,
Debra A. Weary
Clerk to the Board