

**GoTriangle Board of Trustees**

**Meeting Minutes**

**March 27, 2019**

Board Room, The Plaza, 4600 Emperor Blvd., Suite 100  
Durham, NC

**Board Members Present:**

Will Allen III

Sig Hutchinson

Wendy Jacobs

Vivian Jones

Valerie Jordan (arr. 12:03 p.m.)

Mark Marcoplos

Michael Parker

Ellen Reckhow, Chair

Jennifer Robinson (arr. 12:03 p.m.)

Steve Schewel (arr. 12:35 p.m.)

Russ Stephenson

**Board Members Absent:**

Andy Perkins

Nina Szlosberg-Landis (excused)

Chair Ellen Reckhow officially called the meeting to order at 12:02 p.m.

**I. Adoption of Agenda**

**Action:** On motion by Parker and second by Allen the agenda was adopted. The motion was carried unanimously.

**II. Recognition**

**A. Introduction of New Hires**

President and CEO Mann announced the hiring of Tammy Kearney, Service Attendant; Candice Moody, Paratransit Operator I; and Vincent Whitfield, Bus Operator I.

**B. Announcement of Promotions**

None.

**C. Presentation of Service Awards**

Christy Winstead presented 15 year service awards to James G. Hall and Irene J. Jones, Dispatcher/Operator.

Robinson and Jordan arrived.

**III. Public Hearing – Proposed Fare Change**

**Action:** Chair Reckhow opened the public hearing on the proposed fare change at 12:04 p.m.

- Enzo Niebuhr spoke in opposition to the proposed increase in regional bus fares.

- Martha Brock spoke in opposition to the proposed fare increase.
- Jayse Sessi spoke against the elimination of the 6:40 p.m. bus on the CRX route.

**Action:** There being no further comments the hearing was closed at 12:12 p.m.

#### IV. Public Comment

Chair Reckhow recognized the following speakers:

- Kevin Primus spoke in support of the light rail project and asked that the African American community be included in the decision regarding its future.
- Dick Hails spoke in support of the light rail project. His statement is attached and hereby made a part of these minutes.
- Waldo Fenner spoke against allowing Duke University to determine the fate of the light rail project.
- John Morris on behalf of the group, Affordable Transit for All, asked that the Board find the light rail project no longer viable and work toward a better alternative for the region. A letter from the group is attached and hereby made a part of these minutes.

#### V. Consent Agenda

**Action:** On motion by Parker and second by Hutchinson the consent agenda was approved. The motion was carried unanimously.

The following consent agenda items were approved:

- February 27, 2019 – Regular Session Minutes;
- February 27, 2019 – Closed Session A Minutes; and
- February 27, 2019 – Closed Session B Minutes; and
- Set a public hearing for a proposed fare change for April 24, 2019.

#### VI. General Business Agenda

##### A. Items Removed from Consent Agenda

None.

##### B. Regional Technology Integration Study

Saundra Freeman ask that the Board authorize the President/CEO to sign a contract with WSP for the regional technology study. She stated that the funds were approved in the FY19 budget.

**Action:** On motion by Jones and second by Robinson the Board authorized the President/CEO to sign a contract with the consultant, WSP, for a regional Technology Integration Study. The motion was carried unanimously.

## **VII. Other Business**

### **A. President & CEO's Report**

A list of contracts approved by the President and CEO is attached and hereby made a part of these minutes.

Mann provided an update on the light rail project.

- The draft risk assessment has been received and identifies additional funding of \$237 million to project budget. The breakdown is attached and hereby made a part of these minutes.
- An additional \$87 million is required to fund the deficit of the private fundraising effort.
- Interest rates are assumed to be lower than previously estimated, bringing the additional funding requirement to \$267 million.
- FTA is requiring the identification of up to 10% of total project costs for potential project cost overrun or shortfall, which is over \$500 million.
- A Supplemental Environmental Assessment will be required for the design changes for a tunnel and bridge through downtown Durham. They are requiring at least 30 days for a review period.
- We met with FTA's senior leadership team last week and they expressed significant concerns with our ability to reach an FFGA by Nov 30<sup>th</sup>.
- State funding, now at 7.7%, would be lost if an FFGA is not reached by November 30<sup>th</sup>.

Schewel arrived.

Board members asked for clarification about schedule impacts, lease fee requested by NCRR and the \$190 million in State funding.

Jacobs asked if there is a way to save \$190 million in project costs to cover the State contribution. John Tallmadge responded yes, with a scope reduction, and added this is not uncommon for New Starts projects. Robinson asked for an example of the type of cuts. Tallmadge said the elimination of low ridership stations; reducing the number of cars purchased and starting with single car trains; eliminating or building smaller park-and-ride lots.

Jacobs asked what would cut the most cost. Tallmadge stated shortening the length of the system and eliminating the Alston Avenue station to NCCU at approximately \$60 million.

### **B. Chair's Report**

Chair Reckhow reminded the Board of a budget work session at 9 a.m. before next month's regular meeting.

**C. Board Member Reports**

**1. CAMPO Executive Board Representative**

Will Allen III stated the group approved the Raleigh Urbanized Area and Wake County Locally Coordinated Human Services Transportation Plan and guidelines for staff making LAPP decisions.

**2. DCHC MPO Board Representative**

Ellen Reckhow stated that NC Secretary of Transportation Jim Trogdon spoke at the meeting.

**3. Regional Transportation Alliance (RTA) Representative**

No report.

**VIII. Closed Session – D-O LRT Project**

Pursuant to NCGS §143-318.11.(3) to consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged; and NCGS §143-318.11.(5) to establish, or to instruct the public body's staff or negotiating agents concerning the position to be taken by or on behalf of the public body in negotiating (i) the price and other material terms of a contract or proposed contract for the acquisition of real property by purchase, option, exchange, or lease.

**Action:** On motion by Allen and second by Parker the Board entered into closed session at 12:57 p.m. pursuant to the General Statutes and purpose listed above. The motion was carried unanimously.

**IX. Next Steps for D-O LRT**

The Board returned to open session at 2:10 p.m.

Chair Reckhow recognized President and CEO Jeff Mann, who read this statement:

*The light-rail project has been considered the spine of Durham and Orange counties' transit plans since Durham voters in 2011 and Orange voters in 2012 approved a half-cent sales tax to invest in significant public transit improvements. As we've stated many times, the project would create and support tens of thousands of new jobs and infuse billions of dollars into our local and state economies. The final, approved light-rail alignment connects three of the top 10 employers in the state and three major hospitals as well as UNC, Duke and North Carolina Central University.*

*Over the years, the two counties have used this approved light-rail alignment as a basis for land-use, economic development and affordable housing plans to best accommodate the more than 7,000 people the counties are adding each year. Unfortunately, this project has recently faced a number of significant challenges,*

*most notably Duke University's refusal to sign necessary agreements with GoTriangle. Additionally, several changes to state law since 2016 brought the anticipated state contribution to the project from 25 percent to 10 percent and eventually down to no more than \$190 million, or about 7.7 percent.*

*In late 2018, the Durham County Board of Commissioners approved spending an additional \$57.6 million in voter-approved, transit-designated revenue from Durham County to close part of the gap created by the legislative change. The financial plan also anticipated that \$102.5 million in light-rail project funding would come from other public and private sources, including property donations through the GoTransit Partners' Capital Campaign. Unfortunately, the prolonged and ultimately unfruitful negotiations with Duke University halted those fundraising efforts.*

*The 2018 legislative change also required that all other nonfederal funds for the project be committed by April 30, 2019, and all federal funds no later than Nov. 30, 2019, for the light rail to receive any state funding for the project. Over the past six months, new challenges have made those deadlines increasingly difficult to meet and contributed to additional project costs.*

*For more than a decade, and more intensely over the past year, GoTriangle and local elected officials have worked closely with Duke to address the university's concerns, going as far as to include a \$90 million design change to elevate the light rail over Erwin Road at the university's request. As you know, Duke has refused to sign a cooperative agreement with GoTriangle and more recently denied our request to continue conversation through mediation. As of today, we also have not reached a final agreement with the state-owned North Carolina Railroad that is also necessary for the project to move forward. In December, Norfolk Southern expressed concerns regarding railroad operations, and stakeholders, including Duke University, expressed concerns over light-rail plans calling for a section of Blackwell Street to be closed to vehicles. As a result, the project team proposed a new tunnel option for the light rail in downtown Durham.*

*In part because of the proposed design changes in downtown Durham and the unresolved agreements, the FTA recently sent GoTriangle staff a draft risk assessment report stating that an additional \$237 million in project costs and contingency must be built into the project budget. The FTA also informed GoTriangle that the downtown Durham project change would require a significant amount of additional environmental study and review.*

*Last week I traveled to Washington, D.C., to meet with representatives of the Federal Transit Administration and had some very frank conversations. FTA let us know that because of the continued uncertainty with Duke and the North Carolina Railroad and the additional environmental assessment needed for the downtown Durham changes, it is no longer practical to anticipate that Durham and Orange counties' light-rail project will receive a Full Funding Grant Agreement by November 2019. That means this project would not be able to meet the Nov. 30*

*deadline set by the legislature and therefore would no longer be eligible for any state funding.*

*At this point, the counties would have to identify a path to cover the loss of the state's \$190 million, the additional \$237 million in project costs and contingency, and the approximately \$87 million shortfall in fundraising efforts. That doesn't include an FTA requirement to identify a source for up to 10 percent of the project costs to cover potential cost overruns or revenue shortfalls, the cost of borrowing or possible costs associated with pursuing eminent domain to secure the remaining land needed.*

*Based on all of those factors and our most recent meeting with the FTA, I am asking today that the Board recommend that the cost-sharing partners from Durham and Orange counties and the Durham – Chapel Hill – Carrboro Metropolitan Planning Organization (DCHC MPO) discontinue the light-rail project. It pains me to make this recommendation.*

*We remain committed to improving transit in the Triangle and will work with our county partners to determine what elements of the existing community investment can be repurposed as we move forward.*

Chair Reckhow asked General Counsel Shelley Blake to report on the issue of eminent domain discussed in closed session. Blake stated that GoTriangle has eminent domain power under NCGS §40A, which has a provision that limits a public condemner (GoTriangle) from condemning against a private condemner (Duke University), removing the quick take authority. Title is not obtained until a final court ruling. She stated that a Superior Court ruling could be appealed, but this process has uncertain time delays and financial impact of legal fees.

Jacobs asked about NCRR's requirement of 65% design plans. Mann stated that NCRR has asked that the tunnel and bridge section within NCRR's right-of-way in downtown Durham be at 65% or final design. He noted that this design change from at-grade was made to accommodate railroad concerns late last year and there are provisions in the proposed lease agreement giving NCRR the authority to approve 30%, 60%, 90% and final designs. Mann said 65% design is not anticipated until July or August, leaving very little time for FTA to process our application.

Robinson commented that the current situation involves more than just Duke not working with GoTriangle. The project has been challenged with cost overruns, need for more revenue, and relationships with Duke, NCRR and Norfolk Southern. She said it is unfortunate to have gotten to a place where the hurdles are now insurmountable, particularly the additional costs. She added that there is enthusiasm for increasing mobility through transit and the governing bodies should stand by this corridor and continue to pursue it.

Marcoplos noted that immense study determined this corridor really needed transit and if this project is discontinued there is bigger challenge because the issues will have to be addressed with lesser modes that carry less people less efficiently. He encouraged everyone to remain cooperative regionally and keep the regional vision alive. He added that probably the biggest blow to the project was the Legislative action.

Hutchinson applauded the leadership of the members from Durham and Orange counties and encouraged everyone to keep going. He said transit is a critical part of the regional vision for the future and there are opportunities for this corridor. Hutchinson also noted the work of staff. He added he is concerned that a big component of transit has to be rail and NCR and Norfolk Southern have to be willing partners who are in good faith working with us to make transit work in the region.

Stephenson agreed that transit is key to the sustainable and equitable growth and prosperity of the region. He said although unfortunate to get to this late date, we will come out with a renewed, and maybe stronger, commitment to make transit work for our community.

Jacobs asked how much money had been spent to address the different concerns raised by Duke and the railroads throughout the course of the project. Tallmadge responded approximately \$7 million for Duke and \$4 million for the railroads.

Jacobs commented that although high risk, this project has such high benefits and so much work has been done related to land use planning, job training and affordable housing. She also pointed out the projected economic development benefits including 20,000 jobs, millions of dollars' worth of yearly revenue and the \$1.2 billion Federal money. She said the Federal government shutdown hurt, but this discussion would not be happening today if there was a cooperative agreement with Duke University. She agreed that the region requires transit and mobility options but said a lot of things need to change - we have to have good faith partners and more funding at the State and Federal levels. Jacobs also acknowledged staff and their dedication to this project.

Parker said this is a very disappointing decision. He thanked the staff and turning over every stone, looking at every possibility, over the past few weeks. He thanked Board members and the Chair for her leadership. He echoed the commitment to transit regionally and locally.

Schewel said he cannot overstate his disappointment at arriving at this place. He said the stakes are so high for this project and represent a systems change - transformative. He echoed the praise for project staff and GoTriangle leadership. He added that as expensive as it is, locally we could have made the lift but Duke's non-cooperation has been an absolute body blow with no good option. He agreed that until the attitude and essential hostility towards public transit changes in the State Legislature, North Carolina will not be

the State we want to be, and certainly not the cities we want to be. He said our Legislature needs to fund transit and that was a devastating blow to our project. He added thanks to NC Secretary of Transportation Trogdon, Governor Cooper, Representatives Butterfield and Price, and his Durham and Orange County colleagues.

Jacobs thanked other partners on this project: the people of Durham, the Coalition for Affordable Housing and Transit in Durham, members of the Duke community (students, faculty and staff), Durham CAN, NCCU, UNC Medical Center and the Durham VA Health Care System. She reiterated the critical nexus between transit, housing and jobs that has to be the guiding foundation for prosperity in the region.

Reckhow read a prepared statement:

*First, I want to thank the very dedicated and hard-working GoTriangle staff. You've tried to move this project forward against many odds, particularly over the last few months. I want to applaud the huge work ethic of our staff in turning things around quickly – just doing an amazing job. As I was thinking about the staff work, I thought of The Little Engine That Could, because they continued to move forward even as additional hurdles were thrown in our path. They showed a true commitment and grit, so I want to thank particularly the light rail project team for your valiant efforts.*

*I want you to think about the fact that it is not just one thing that is causing us to abort.*

*First, the North Carolina General Assembly reduced our funding significantly and that was after we restored it from zero. We started with an assumption of 25% going to 10% and now down to 7.7%. What that reduction has done is reduced our resiliency and our flexibility to respond to new project needs and requirements by the FTA, such as the latest requirements coming out of the risk assessment and the flexibility of time because of the time deadlines to deal with the environmental assessment that we now know we have to do. It is very important to emphasize that we are so constrained financially because of the General Assembly's actions.*

*Second, Duke, our most important community partner, backed out after we worked so hard to respond to all their concerns, including spending millions of dollars to design a bridge along Erwin Road to satisfy their concerns.*

*Third, the railroads made onerous requests, despite the fact that we moved the light rail out to the edge of their right-of-way where thousands of cars*



*travel daily in a roadway. Still we were hit with numerous very difficult requirements.*

*Fourth, the Federal shutdown contributed to our learning the results of the risk assessment and the need for an environmental assessment for the downtown grade separations just a few weeks ago which is delaying our project submittal by several months and putting us up against this General Assembly-imposed deadline.*

*Since we received the letters in February from Duke and the railroads, we have done extensive due diligence to determine whether we still had a viable path forward. I really want to commend our staff, particularly Jeff and Shelley, but all of our staff for looking at what we could do legally with the railroads and unfortunately we were not able to find a path forward. That is the bottom line. That is why we are sitting here today.*

*I do feel that while this is a huge setback, this Board is not going to be deterred. We are committed to providing excellent public transit service that will connect our rapidly growing region. The issues still remain and we still have to remain committed to moving forward. I commit to working with all of our community partners to repurpose what we have done, salvage as much of the investment that we have made in planning and engineering, and try to move forward on a new path.*

**Action:** On motion by Marcoplos and second by Schewel the Board voted to recommend that the cost-sharing partners from Durham and Orange counties and the DCHC MPO Board discontinue the light rail project as we work together to determine what elements of the project can be repurposed to improve transit in our region. The motion was carried unanimously.

**Action:** On Parker and second by Robinson the Board amended the agenda, removing items A and C under D-O LRT project next steps. The motion was carried unanimously.

**A. Design Change Approval: Modification of the Pettigrew Street Alignment**  
Removed.

**B. D-O LRT Project Reimbursement Agreement for City of Durham Plan Review**

**Action:** On motion by Robinson and second by Jones the Board approved the agreement with the City of Durham, as recommended by the O&F Committee, for reimbursement of final design plan review, with a total dollar amount not to exceed \$500,000 and authorized the President/CEO to execute the agreement. The motion was carried unanimously.

**C. Professional Services Contract Amendment – GEC Phase 3B**  
Removed.

**X. Adjournment**

**Action:** Chair Reckhow the meeting was adjourned the meeting at 3:11 p.m.



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Ellen Reckhow, Chair

Attest:



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Michelle C. Dawson, CMC  
Clerk to the Board