

TENTATIVE AGENDA
AD HOC COMMITTEE MEETING
EBR LIBRARY BOARD OF CONTROL
SOUTH BRANCH DEVELOPMENT
BOARD ROOM, MAIN LIBRARY
7711 GOODWOOD BOULEVARD
NOVEMBER 6, 2009
9:30 A.M.

- I. CALL TO ORDER/ROLL CALL
- II. REPORTS ON RESEARCH TOPICS
 - A. AVAILABILITY OF BURBANK SITE
 - B. LEGAL OPTIONS WITH ROUZAN
 - C. DEMOGRAPHICS OF AREA, EITHER OR BOTH SITES
 - D. WETLANDS/FLOOD ZONE ISSUES FOR BURBANK
 - E. STATUS OF LITIGATION RE: ROUZAN SITE AND POSSIBLE EFFECT
ON DEVELOPMENT
 - F. STATUS OF LITIGATION RE: PERKINS ROWE AND POSSIBLE
EFFECT ON ROUZAN
 - G. BUDGET FACTORS AND VARIABLES FOR ALTERNATE BUILDING
PROGRAMS
 - H. OTHER
- III. GENERAL DISCUSSION AND EVALUATION OF REPORTS
- IV. IDENTIFY FURTHER INFORMATION NEEDED
- V. NEXT MEETING DATE
- VI. ADJOURN

ALL MEETINGS ARE OPEN TO THE PUBLIC

Revised Minutes of the Meeting of the Ad Hoc Committee of the
East Baton Rouge Parish Library Board of Control
for South Branch Development

November 6, 2009

The second meeting of the Ad Hoc Committee of the East Baton Rouge Parish Library Board of Control for South Branch Development was held in the Board Room of the Main Library on Friday, November 6, 2009. Mr. Stanford O. Bardwell, Jr., Chairman of the Ad Hoc Committee, called the meeting to order at 9:40 a.m. Members of the Committee present were Ms. Beth Tomlinson, Library Board member, Mr. Jermaine Watson, Governmental Affairs Associate with the Baton Rouge Area Chamber, and Mr. Tom DuBos, a member of the community. Also in attendance were Mr. Dan Reed, President of the Library Board; Mr. Jamie Griffin, Treasurer of the Library Board; Mr. David Farrar, Library Director; Ms. Mary Stein, Assistant Library Director of Administration; Ms. Rhonda Pinsonat, Assistant Library Business Manager; Ms. Liz Zozulin, Executive Assistant to the Library Director; and Ms. Nikki Essix of the Parish Attorney's Office. Also present were Mr. Tommy Spinosa of JTS Realty Services, LLC with seven members of his pre-construction team for the Rouzan Development; Mr. Alex St. Amant, attorney, for Dr. Bobby Welch and Mr. Daniel Hoover; Mr. Robert Cangelosi, of SJB Group, LLC; and Ms. Rachel DiResto, Vice President of the Center for Planning Excellence. Others present were, Mr. John Berry, Ms. Gayle Smith and Ms. Kathy Wascom, members of the community and Mr. Steve Ward, reporter with *The Advocate*.

Approval of Minutes of October 28, 2009 Ad Hoc Committee Meeting

Mr. Bardwell said that they need to amend the agenda to include the approval of the minutes of the Ad Hoc Committee meeting on October 28, 2009. Mr. DuBos made a motion to amend the agenda which was seconded by Ms. Tomlinson and unanimously approved by the committee. The minutes were approved with several corrections.

Reports Research Topics

Mr. Bardwell said that at the committee's first meeting they formulated a list of steps to gather information in order to make an informal decision on the two sites for a south branch library. At today's meeting they will listen to the information they have gathered and then decide what additional information is needed. He said he does not think the committee will be ready to vote today on their recommendation for a site for the south branch; but rather they will set another meeting to summarize their conclusions.

A. Availability of Burbank Site

Mr. Bardwell asked Mr. Dan Reed to report on the availability of the Burbank site. Mr. Reed said he spoke to Dr. Kirk Patrick, one of the donors of the property on Burbank Drive. Dr. Patrick said he did not see a problem for the donors with the Library beginning construction after the date of December 16, 2009, the date stipulated in the donation document as the deadline for the commencing of the branch construction. Dr. Patrick also said if the Library needed an extension of the deadline, there might be some conditions placed on this extension of time if building construction did not occur in the near future. Mr. DuBos asked what extension of time would be acceptable to the donors. Mr. Reed said he believes that if the Library agreed to commit to construction within six months to a year, no conditions would be necessary. He added that the donation has tax consequences for the donors, so he does not think they are interested in terminating the donation. He added that the donors would like to sell some of the property adjacent to the donated land, and that they would need a road from Burbank Drive. So the construction of a road could be one of the conditions placed on the Library. Mr. Bardwell noted that the donation document states construction by December 16, 2009 which Mr. Bardwell said seems to imply a building and not just a road. Mr. DuBos asked if they need to produce a good faith letter for the donors. Mr. Reed replied that Ms. Essix and the other Parish Attorneys with expertise on land donations and purchases for the City-Parish could advise about what type of agreement would be acceptable.

B. Legal Options with Rouzan

Mr. Bardwell asked what their options are to legally withdraw from the Rouzan development. Ms. Essix said that she cannot advise them of their legal options with the Rouzan site. Mr. Watson asked if the Committee could go into executive session with Ms. Essix to discuss the legal issues with the Rouzan development. Ms. Essix replied that they could do that, but that only the two members of the Library Board could be present. Mr. DuBos said that both sites have been proposed for branch libraries. Their charge is to decide on constructing at both sites or at one of the sites. Ms. Essix said she has spoken to Mr. Reed. She stated that this is not what he has asked them to do. Mr. DuBos then added that they now have an answer regarding the Burbank site donation deadline, so now they need to look at the two Rouzan lawsuits.

Mr. Bardwell asked Mr. Spinosa what would happen if the Library withdrew from constructing a branch library in the Rouzan development. Mr. Spinosa said that the answer to that question would need to be provided by his attorneys. He did say that JTS Realty Services has done all that they were required to do. He noted that on Monday, November 9th, the City-Parish Planning and Zoning Commission will vote on the final site plan approval for Phase 1B of the Rouzan development. Phase 1B includes the land on which the library branch would be built. Mr. Bardwell asked about Phase 2 to which Mr. Spinosa said that phase was not relevant to the Library.

Mr. Bardwell said that some Library Board members have just become aware that there are commercial entities located at the back of the library building. He asked if these

entities are separately owned. Mr. Mike Sullivan, architect with Looney, Ricks, Kiss Architects, LLC who has designed the branch library at Rouzan, said the Library will have a fee simple ownership of the building.

Mr. John Berry, a member of the community, asked if the City-Parish requires some type of separation between City-Parish property and commercial entities. Ms. Essix said she could not answer that question. Mr. Sullivan noted that there is a firewall separating the structures with an air space between them. Mr. Alex St. Amant, attorney for Mr. Bobby Welch and Mr. Daniel Hoover, said the filing for Phase 1B of the Rouzan development specifies one building. So if this filing is approved on Monday, his clients will litigate.

C. Demographics of Area, Either or Both Sites

Ms. Stein distributed four demographics maps that she created. These maps illustrated the following areas:

1. The original area for a south branch library as discussed in December 2004,
2. The Rouzan site attendance zone as of November 2009,
3. The Burbank site attendance zone as of November 2009 and,
4. The overlay of the Burbank and Rouzan sites as of November 2009.

Mr. Bardwell asked Ms. Stein to explain these maps. She commented that they had asked the City-Parish Planning Commission to produce some demographic maps, but the boundaries by the Planning Commission were incorrect, so they were not reproduced for this meeting. Ms. Stein said that Ms. Lydia Acosta, former Library Director, and other Library staff members created the boundaries for the Burbank site as shown on map one. It was discovered that patrons who live south of Interstate 10 would most likely travel south to a branch. However, a road does not necessarily mean an exact boundary. Traffic patterns and the time of day also affect the location frequented.

Ms. Stein said she was asked to show the attendance zone for the Rouzan site which is shown on map 2. Map 3 outlines the Burbank attendance zone and map 4 is a combination of both sites showing the overlay of the attendance zones. Ms. Stein gave mileage estimates between various locations; Rouzan to Burbank-2.27 miles, Rouzan to the Main Library-4 miles, and Burbank to the Bluebonnet Regional Branch Library-4.8 miles. Ms. Tomlinson asked what the distance is from the Burbank site to the Middleton Library at Louisiana State University to which Ms. Stein replied approximately 2 ½ miles. However, Ms. Stein said that the general population would not be allowed to use the library at the university. Mr. Bardwell commented that at the time of the 2005 library tax renewal campaign these demographics were mentioned.

Mr. DuBos asked what the purpose was of collecting the demographic information. Ms. Stein said that the data would enable them to see which areas have a greater population or need of a branch library. Ms. Tomlinson said that Mr. Griffin is getting updated demographic information for the Committee to review. Mr. Spinosa said that he has updated demographic information for the Rouzan and Burbank areas and a map citing the

private and public schools within a 3-mile radius of both sites. This above information was distributed to those in attendance along with the Library Population Projections (dated November 17, 2005) and the Proposed South Baton Rouge Area Library (dated December 6, 2004) provided by Ms. Stein. Ms. Tomlinson suggested they study the information distributed.

Mr. Watson asked for data about the number of elementary and high schools and the number of students enrolled in the schools within the radius of both sites. It was noted that high schools are larger than elementary schools and have more students. Ms. Stein said the Library staff will contact the East Baton Rouge Parish School Board to obtain the statistics for the public schools.

D. Wetlands/Flood Zone Issues for Burbank

Ms. Tomlinson said she has conducted a great deal of research regarding the Burbank site, and the more information she obtains, the more concerned she becomes. She noted that she has spoken to Mr. Robert Cangelosi, of SJB Group, LLC regarding the documents that his firm produced for the Library Board. She said the information in these documents was obtained pre-Katrina. Since then much has changed and will continue to change even more. Ms. Tomlinson then quoted from her research. This research is appended to these minutes.

In addition to her written notes, Ms. Tomlinson added that the Library Board has agreed to construct a Leadership in Energy and Environmental Design (LEED) certified new Main Library which illustrates their concern for the environment, yet they are still pursuing the construction of a branch library on the Burbank site. Ms. Tomlinson said that there is also concern about the possibility of oil contamination on the Burbank site. She added that the Audubon Society also has issues with the site.

Mr. DuBos complimented Ms. Tomlinson for her research. However, he said that some of her conclusions sounded like her own opinions and that the Committee should separate the factual information from the opinions. Ms. Tomlinson responded that the conclusions she has drawn are not hers, but that of State agencies. She noted that just because mistakes were made in the past, does not mean they will be allowed now.

Ms. Tomlinson then said that Ms. Kathy Wascom and Ms. Rachel DiResto had comments to make about the Burbank site. Ms. Wascom, a liaison for the Louisiana Environmental Action Network (LEAN) read from a statement that she said will be forwarded to all of the Library Board members. The statement from the Executive Director of LEAN, a member of the Lower Mississippi Riverkeeper (LMK), the Chair of the Delta Chapter of the Sierra Club and a member of the Atchafalaya Basinkeeper said that they have serious concerns regarding the construction of a public library in and around one of the last large stands of bottomland hardwood forest and wetlands in East Baton Rouge Parish. They asked the Library Board to consider the impacts of wetland development to the watershed, including flood control, drainage, sewage, water pollution and habitat loss.

They said they hope that the City-Parish government will protect one of the last large areas of forested wetlands.

Next Ms. Rachel DiResto, an urban planner and Vice President of the Center for Planning Excellence, spoke to the Committee. She said that it is poor policy for a public institution to build in the wetlands and to use public money to build in a floodplain. She said that the Library Board should obtain expert advice regarding the decision to build a branch library on Burbank Drive. She concluded her remarks by saying that it is more advisable to build in a population growth area and within walking distance of a facility.

Mr. Bardwell then asked Mr. Cangelosi from SJB Group, LLC to address these issues. Mr. Cangelosi said that Ms. Tomlinson gave a good summary of the issues involved in the Burbank site. He said one of the questions that needs to be answered is whether they would be able to get a permit for the site. The request for the permit would be given to the US Army Corps of Engineers who employ a legal team to advise them. It would also require a water quality certification. Currently a water quality certification does not consider watershed issues, but that could change in the future.

Mr. Cangelosi said that floodplain and surface drainage issues are regulated by the City-Parish government. There are numerous measures that are required by those wishing to build in a floodplain including surface drainage considerations.

Mr. Cangelosi said that the acreage located in the front of the property closest to Burbank Drive is wetlands. This is where the road into the site would need to be located. In order to build on any of the wetlands acreage, mitigation would be required. In the process for permitting wetlands disturbance, the expensive part is the cost for mitigation. The typical ratio for mitigation is 2 to 1, or 2 acres of mitigation for every acre lost. Mitigation banking costs run between \$30,000 to \$40,000 per acre. An employee of Benchmark Engineering Group, LLC who is part of Mr. Spinosa's construction team said he believes the Library Board would be looking at about \$70,000 per acre for mitigation. Ms. Tomlinson said since they already know this property is in a sensitive area, if they build there anyway, they run the risk of being sued if flooding and drainage issues occur. They need to think about this possibility.

Mr. Farrar said that Ms. Pinsonat spoke with the City-Parish Finance Department this morning. She was told that only one branch can be built in the southern portion of the parish. Mr. Farrar read from the 2010 Annual Operating Budget document under Capital Outlay for the Library, the following statement:

“Funding for Burbank site not approved.”

Mr. Farrar then read the following from the 2010 Budget Message from the Mayor-President:

“The \$6 million requested for a potential branch in the Burbank area is not included in the proposed 2010 budget. Previous budgets included funding

of \$6,035,580 for a branch in south Baton Rouge. Negotiations have been underway for a developer to provide land for a library to be built in a mixed-use development off of Perkins Road near College Drive. In accordance with previous statements made by Director David Farrar, the library system is financially unable to build two branches in the south.”

Ms. Tomlinson asked if in light of the Mayor-President’s message, they could dismiss the option of building two branches in the south. Mr. Dubos replied that he felt that it would be premature to do so today. Mr. Bardwell said he thought Ms. Tomlinson had made a motion. Therefore, Mr. Watson seconded Ms. Tomlinson’s motion. Upon voting a tie resulted with Ms. Tomlinson and Mr. Watson voting to dismiss the option of two branches and Mr. Bardwell and Mr. DuBos voting against dismissing the option of two branches.

E. Status of Litigation regarding Rouzan Site and Possible Effect on Development

The land on which the Rouzan development is to be built was owned by Mrs. Mary Bordelon Ford. At the time of her death in 2003 her property contained approximately 124 acres at the corner of Perkins Road and Glasgow Avenue. By the terms of her will, Mrs. Ford left Dr. Bobby Welch and Mr. Daniel Hoover about five acres of land located within the 124-acre property. Mrs. Ford also bequeathed to these men a servitude to Glasgow Avenue which crosses a portion of the remaining 119 acres to provide access to and from their property. Mrs. Ford’s heirs sold the 119 acres to 2590 Associates, LLC.

Mr. Bardwell asked Mr. Alex St. Amant, attorney for Dr. Welch and Mr. Hoover, to summarize the two lawsuits that have been filed. Mr. St. Amant said that the first lawsuit involves the succession of Mrs. Ford’s estate. The executors of Mrs. Ford’s will had not delivered the lots to Dr. Welch and Mr. Hoover hoping the servitude left to them by Mrs. Ford could be revoked. Mr. St. Amant added that the court has granted a judgment of possession to his clients. However, the transfer of the title to their property has yet to be completed.

Mr. St. Amant said the second lawsuit is against the City-Parish Metropolitan Council. 2590 Associates obtained approval of the City-Parish Metropolitan Council to rezone the 119 acres from A-1 residential to a Traditional Neighborhood Development (TND). By definition of a TND, residents must be within a ¼ mile of commercial, civic and open spaces in order to meet the required “walkability” provision. Most residents of Rouzan would not meet this provision. Mr. St. Amant said the Metropolitan Council amended the mileage requirement so that Rouzan would meet the mileage requirement.

He also noted that any property in the TND must be owned by the TND. However, his clients’ property is in the middle of the TND. Dr. Welch and Mr. Hoover do not own the TND. Therefore, they would have to consent to the zoning change. Mr. St. Amant added that the required financial statement has not been submitted by 2590 Associates, LLC.

He said that they will appear before Judge Wilson Fields on Thursday, November 12th. He hopes that Judge Fields will declare the TND to be illegal.

F. Status of Litigation regarding Perkins Rowe and Possible Effect on Rouzan

Mr. Bardwell asked Mr. Spinosa to discuss the litigation regarding Perkins Rowe and the possible effect on the Rouzan development. Mr. Spinosa said that none of the investors in Rouzan are involved in Perkins Rowe. He said that the primary owner of Rouzan is 2590 Associates. He also said that 5615 Associates is an investment group and the sole member of 2590 Associates. Mr. Spinosa said he would not reveal who his private investors are. He also said that in the last 45 days five permits have been granted for Rouzan. They are for land clearing, and site work, an environmental permit, a permit from the Department of Wildlife and Fisheries, and a storm water discharge permit from the State Department of Environmental Quality. He added that funding is now being released for the project.

Mr. DuBos asked about whose financial stability they are questioning; 2590 Associates or Mr. Spinosa? Mr. Spinosa said the \$42 million loan for Rouzan will be given to Rouzan Associates making them a partner and the borrowing entity for the project.

Mr. Griffin asked Mr. St. Amant how long it would take to resolve the issues of his clients to which Mr. St. Amant replied six months to one year. Mr. Jay O'Brien, an attorney with Mr. Spinosa, disagreed with the legal issues. Mr. Spinosa then said if Mr. St. Amant's assumptions were correct, then there would be nothing to stop him from making the donation to build the library branch on the property because it would be zoned A-1.

Mr. Griffin said that at the last Library Board meeting, Mr. Spinosa mentioned getting a performance bond so that the construction of the library could begin. Mr. Bardwell explained that under a construction contract the work is done by subcontractors with a construction bond in place. The Library would be an additional insured and have some protection. Mr. Griffin also asked if the Library could be insured to complete the construction of the building if Mr. Spinosa could not finish the work. Ms. Tomlinson said that the two lawsuits should not affect the building of the library branch. Mr. Griffin added that there would be concern about the types of construction that might be built near the library if it were not in a TND.

G. Budget Factors and Variables for Alternate Building Programs

Mr. Farrar distributed an updated projection of \$806,260.00 for expenditures for a south branch library in 2012. The projection included personnel costs, supplies and contractual services. Mr. Griffin said that they need to remember that they must operate within that projected amount. Mr. Farrar again distributed a document comparing the cost to construct a branch library of 5,000, 10,000 and 15,000 square feet. Mr. Bardwell asked Mr. Farrar to report on any updates regarding Mr. Spinosa's finances. Mr. Farrar stated

that there were no updates at this time. However, he then read from the minutes of the September 17th Library Board meeting regarding the financial solvency of Mr. Spinosa.

H. Other

Mr. Watson asked if they could ask for a mediator or arbitrator to help steer them in presenting a direction to the Library Board. Mr. Bardwell said they could explore that, but he did not think it would help in a small group like theirs. Mr. Bardwell said they would not be able to give a hard recommendation to the Board, but simply make two minority reports. Mr. Watson made a motion to have a mediator or arbitrator present at the next meeting. Ms. Tomlinson seconded the motion. However, Ms. Essix said that a mediator would not be appropriate for this situation, so Mr. Watson withdrew his motion.

General Discussion and Evaluation of Reports

Mr. DuBos said that they should list the pluses and minuses of the Burbank site and the pluses and minuses of the Rouzan site. Mr. Watson said he is able to make a decision about the Burbank site in light of the wetlands issues. Mr. Bardwell commented that Rouzan also has negatives. Ms. Tomlinson asked how they could discuss the lawsuits involving Rouzan as that is for the courts to decide. Mr. DuBos then said if the library were built at the corner of Glasgow Avenue and Perkins Road, it would not be involved with the rest of the conflict over Rouzan. Mr. Spinosa replied that Rouzan is going forward. Mr. DuBos wondered how much longer the discussions would go on before the taxpayers' money was actually used to build a branch library. Mr. DuBos said that the information about the Burbank site was enlightening.

Mr. David Fazekas, a professional land surveyor with Benchmark Group, LLC working with Mr. Spinosa said they could build a road for the library regardless of the lawsuits involved in the TND.

Mr. Watson said he is concerned with the process the committee is using to form a conclusion. He said he doesn't think the committee is looking at the information objectively to determine the facts. He said he thinks they are unwilling to move beyond their opinions and are therefore, doing the public a disservice. Ms. Tomlinson agreed and said that she doesn't think anyone believes building a branch library on the Burbank site is okay. She added that the real issue is that some people just don't like Mr. Spinosa and the Rouzan development.

A discussion began about the commercial entities adjacent to the branch library in the Rouzan development. Mr. St. Amant said that there is one building designated for the library project. If the Library builds a branch on the Rouzan property and the Rouzan development does not materialize, the Library could be required to purchase the commercial entities which are part of the building. Mr. Sullivan replied and emphasized that there is a double firewall and a zero property line between the entities. He said they are three separate structures.

Mr. Bardwell said that at the next meeting they will decide what they will report to the Library Board at the regular November meeting.

Identify Further Information Needed

Mr. Griffin said he will get polygon demographics as this would provide a greater degree of accuracy over demographics based on a radius. He said the polygon demographics are based on real estate authority.

Next Meeting Date

The next meeting of the ad hoc committee of the Library Board for the south branch development will be held on Wednesday, November 18, 2009 at 9:00 a.m. in the Board Room of the Main Library.

There being no further business, the meeting was adjourned at 12:25 p.m. on a motion by Ms. Tomlinson, seconded by Mr. DuBos.

Stanford O. Bardwell, Jr.,
Chairman of Ad Hoc Committee

David Farrar
Library Director

BURBANK - ENVIRONMENTAL REPORT

A lot has changed since 2004 and 2005 when these reports and studies were done - I spoke to the board twice over the summer informing of changes coming down from federal and state agencies. Give you background and relate it to the Burbank site.

Environmental, ecological, and sustainability aspects:

Told the board about attending some international and national conferences. Attended Association of State Flood Plain Managers annual international conference:

Four themes throughout the 4 conferences: LID; NAI; preserving and restoring the natural and beneficial functions of floodplains and wetlands; and legal liability of local governments permitting in marginal areas.

People talking about this - P&Z, Public Works, water resources, conservation, economic and community development, and our GOHSEP office, but also Federal - DNR, FEMA, US Army COE, NOAA, USGS, US EPA, NFIP, DOT, USDA (natural resource conservation services), US Fish and Wildlife, DEQ, etc.

The main thrust of what all the federal agencies were talking about (as well as state and local gov't.) was that we need not just floodplain management, but comprehensive watershed management and that this is a multi-agency and multi-disciplinary effort.

Some examples of what's happening: The U.S. House Transportation Committee is working on a National Sustainable Watershed Planning Act right now. FEMA is working on federal regulations that declare no build areas in floodplains. Section 438 of the Energy Independence and Security Act of 2007 mandates all federal development must be LID.

EPA embraces Smart Growth for protecting water resources - The current mode is to build inland - do infill development - as opposed to sprawl which building a library here would encourage - why is that important to us? We will need a 401 water quality certification (DEQ).

EPA - Development activities typically increase pollution loadings - sediment, pathogens, household chemicals, metals, fertilizers, pesticides, oil and grease. These increases in pollutant concentrations may impair surface and ground waters

Will explain again what we are dealing with on the Burbank site - is in a floodplain (designated AE by FEMA - Special Flood Hazard Area) and is at least 50% wetlands - will have to traverse wetlands to reach floodplain if we try to build there as has been suggested

- lowest land in area
- basically a bowl
- excess rainwater from the area flows to this property

- property acts as a wetland reservoir
 - stores and filters water impurities and pollutants
 - slows velocity of any flooding
 - provides habitat
 - recharges our groundwater, etc.

What happens when we build in an area like this

- development means more impervious surfaces
- also would mean bringing in fill
 - both mean the area can no longer absorb and store rainwater - can no longer serve its function as a wetland reservoir
 - will cause flooding in surrounding areas
 - will increase the velocity and volume of flooding and cause more flash flooding in surrounding areas (rainwater runs off hard surfaces more rapidly and in greater volume)
 - increase heat island effect.

(Bruce Julien of the Natural Resources Conservation Service of the USDA) Recovery Act Funding is being used for watershed rehabilitation; buying easements and removing structures from the flood plain; restoring floodplains back to pre-construction state or as close as possible - so if federal money is being spent on restoring floodplains and wetlands back to pre-construction state - it is nonsensical of us to build there in the first place.

Mitigation does not solve the cumulative effect of development on the watershed.

We are under a consent decree from EPA - LA DEQ just completed the TMDL (total maximum daily load) for pollution impairment (the Burbank site is part of Bayou Manchac watershed). Report shows there is already too much pollution load going into Bayou Manchac and says there should be no more discharge of non-point source pollution and storm water drainage.

After TMDL (EPA approval expected in a month) DEQ must prepare a watershed plan for the whole area which will take a couple of years, but they already have some criteria in place now -this and the TMDL will affect our ability to obtain the 401 water quality certification that we need to get.

DEQ has also been working closely with the Planning Commission developing BMPs for non-point source pollution and new codes regarding watershed development - if we say we will try to hold the water on site there are a lot of BMPs we'd have to follow and implement (potentially more time and money). This Burbank site is one of the last large, intact wetlands in the parish - because of this, it is doubtful we would receive planning commission approval. (This is a conclusion rendered by many people in state agencies and organizations who deal with this all the time and it is based on their experience.)

In addition, the whole storm water permit process expires at the end of December - so this whole process will be changing.

LEED ND has a prerequisite of no development in floodplains - we're building a LEED certified library on the one hand using millions of dollars of the taxpayer's money and then suggesting we build in a non-sustainable way in which we fail to even qualify to try for LEED on the other. What is the message we are sending to the public - we're spending your money just for show?

Changes in the Corps perspective:

Major General Riley, US Army Deputy Commanding General and Deputy Chief of Engineers, US Army COE told us that the Corps has a new focus and has had a major shift in the paradigm of how they think and operate. They are now going to use a Sustainable Integrated Watershed approach in their decisions of which one of the major tenets is to preserve and enhance the natural and beneficial functions of our floodplains and wetlands. The Corps has rewritten their principles and standards for water resource management and this is going through legislation on the hill right now.

"It is costing us more and more energy each year to maintain the changes we have made to our environment in trying to control nature - we need to stop spending money on things that are not sustainable."

Steven Stockton, Director of Civil Works for the Corp also talked about this new direction. He talked about looking at systems, not individual projects. That this is an intergovernmental movement; that our zoning, building codes, and planning need to change; that we need stronger land use regulation over mitigation - mitigation is not the solution.

"We will pay decades from now for the decisions we make today. We need to be smarter about how and where we build our homes, businesses, and infrastructure."

We will need a Section 404 permit - 30 day advertising; 2 months for public comment. 404 permit likely to take longer than 3 month estimation - at the least 6 months but probably more.

Corps probably won't approve the permit because an Alternative Site Analysis will need to be done and will show a viable site already with Rouzan. In addition, with Bluebonnet Regional so close, it is unlikely they will see the need to interfere with wetlands when viable sites are present. Their purpose is to find the least damaging alternative. (This is a conclusion rendered by many people in state agencies and organizations who deal with this all the time and it is based on their experience.)

Financial aspects of building at Burbank:

\$700,000 - 1 million more to build at Burbank than at Rouzan

If have to buy mitigation credits - pay fee to wetlands mitigation bank \$30,000 - \$40,000 per acre - but this is not one to one (not acre for acre) depends on the functionality of the wetlands you are impacting - must be equal or better (source: Robby Cangelosi from SJB Group and various people in state agencies).

Legal aspects of building in an environmentally sensitive area:

Most flood losses are the result of improper and non-sustainable development - development in the wrong places. The cause can be farther away than anyone might think. Development changes how water moves thru the environment. The more development, subsidence, fill that happens in the wrong places, the more flooding events we have in places that never flooded before. The key is to let the natural and beneficial functions of our floodplains and wetlands act as they should - which means no development there.

Fatal flaw - Currently permits allow building in marginal areas with engineering and mitigation - but permits are distributed on an individual project basis - no one is looking at the cumulative impacts of each permit. That is why comprehensive watershed management is the direction being taken. In a list of examples of projects communities can be sued for improperly permitting -No. 1 is development interfering with natural processes.

Used to be you couldn't prove causation and you couldn't successfully sue local governments. That is no longer true. Forensic hydrologists can use current technology for hydrologic, hydraulic, and geologic studies that can prove which development caused flooding.

From a paper written by Ed Thomas, an attorney who deals with this stuff all the time and who has done exhaustive studies that have revealed how the courts interpretations of local gov't. liability is changing had this to say:

"Communities should be aware that if a governing body approves a project or activity that causes damages to other properties, the affected property owners can sue the permitting authority, claiming that agency or board was negligent in its duties when it permitted the action that caused the damage. Courts regularly favor the plaintiffs in these cases." - based on Louisiana case law: if we know an area is marginal, but we build anyway and flood neighboring properties, we become liable and can be sued, as can the local gov't. who permitted it.

This is info. I have, but I am still waiting on more info. The more research I do, the more site problems I run into for Burbank.