

**THE BOARD OF COUNTY COMMISSIONERS
DURHAM, NORTH CAROLINA**

Monday, November 24, 2008

7:00 P.M. Regular Session

MINUTES

Place: Commissioners' Room, second floor, Durham County Government Administrative Complex, 200 E. Main Street, Durham, NC

Present: Chairman Ellen W. Reckhow, Vice-Chairman Michael D. Page, and Commissioners Lewis A. Cheek, Philip R. Cousin Jr., and Becky M. Heron

Absent: None

Presider: Chairman Page

Opening of Regular Session—Pledge of Allegiance

Agenda Adjustments

Chairman Reckhow noted that the agenda had been revised to delete Consent Agenda Item No. 8d; a copy was placed at each Commissioner's station. Additional agenda revisions were included in the Commissioners' mail on Friday.

Minutes

Chairman Reckhow referenced Page 20 of the October 27 minutes regarding a letter to Secretary of Commerce Jim Fain. She asked County Manager Mike Ruffin if the letter had been sent.

County Manager Ruffin stated that the letter would be sent subsequent to the close-out of the 2002 CDBG Scattered Site Housing Program Grant.

Commissioner Heron moved, seconded by Commissioner Cousin, to approve as corrected the October 27, 2008 Regular Session Minutes and as submitted the November 3, 2008 Worksession Minutes of the Board.

The motion carried unanimously.

Recognition of Kids Voting Durham's Efforts during Election Day 2008

Chairman Reckhow briefly commented on the positive efforts of Kids Voting Durham. She recognized Carolyn Kreuger, Coordinator, Kids Voting Durham, for a presentation.

County Manager Ruffin commented on his brief encounter with a child participating in Kids Voting.

Ms. Kreuger reported that the 2008 Election process yielded a record-breaking voter turnout. While approximately 78% of registered voters cast their ballots for President of the United States, nearly 4,500 Durham youth voted in the November 4 Kids Voting Durham elections. She defined Kids Voting Durham as a nonprofit, nonpartisan organization that helps youth understand and believe in the power they have as active citizens and informed voters. Ms. Kreuger stated that children and youth up to 17 voted in person with their parents at an adult precinct or online on the Kids Voting Durham website. More than 450 volunteers from organizations all across Durham assisted children in casting their votes at polling sites throughout Durham. Seventy-five percent of the precincts were run by youth from local youth groups such as Boy and Girl Scouts; local elementary, middle, and high schools; YO! Durham; and 4H Junior Leadership Durham.

To recognize winners of the Kids Voting Durham election, several participants presented certificates to Chairman Reckhow and Commissioners Page and Heron. They also presented a certificate to County Manager Ruffin for his assistance with Kids Voting Durham.

Chairman Reckhow read her certificate as follows:

Durham Kids' Choice Award
Ellen Reckhow
was elected by Durham's kids for
County Commissioner
Kids Voting Durham Elections
November 4, 2008

Per a request by Chairman Reckhow, the participants recapped their experiences with Kids Voting Durham.

Recognize Darnell Allen for Academic Achievement with the North Carolina Mappers' Association, and Recognize Kevin Locklear, Recipient of the 2008 NC Mappers' Association President's Pride Award

Kimberly H. Simpson, Tax Administrator, stated that the North Carolina Mappers' Association recognizes each year those who have completed the certification requirements of a Certified Mapper and have scored the highest test grade on a Mappers' Certification Exam. Darnell Allen, GIS Cartographer, received the Academic Achievement Award on October 2, 2008 at the Annual Mappers' Conference. He is the second employee within the Durham County Tax Department, GIS/Land Records Division, to receive this award. Ms. Simpson further stated that the North Carolina Mappers' Association President's Pride Award honors an individual within the NCPMA for dedication and service to the NCPMA and to the mapping community of the state. This year, Kevin Locklear, GIS Cartographer with Durham County, received the award at the Conference from President Southerland.

Ms. Simpson commended Mr. Allen and Mr. Locklear for their hard work and dedication to Durham County's Tax Department.

Mr. Allen and Mr. Locklear declined to comment.

Chairman Reckhow thanked Mr. Allen and Mr. Locklear for their contribution to the success of the Tax Department. She invited them to come forward and accept the plaques.

Tax Administration Awarded the Joseph E. Hunt Distinguished Jurisdiction Award

Chairman Reckhow praised Durham County Tax Administration for receiving the Joseph E. Hunt Distinguished Jurisdiction Award for the second consecutive year.

Kimberly H. Simpson, Tax Administrator, announced that the North Carolina Association of Assessing Officers recently awarded the Durham County Tax Department with the Joseph E. Hunt Distinguished Jurisdiction Award for its outstanding achievement in Tax Administration and Public Service. The award was the result of implementing the first tax payment kiosk system in the state.

Chairman Reckhow congratulated and presented Ms. Simpson with the Joseph E. Hunt Distinguished Jurisdiction Award.

Recognition of Outgoing County Commissioners Lewis Cheek and Philip Cousin

Outgoing County Commissioners Lewis A. Cheek and Philip R. Cousin Jr. asked for time to extend personal remembrances and good wishes as they prepare to leave the Board. Commissioner Lewis A. Cheek joined the Board in 2004; Commissioner Philip R. Cousin Jr. joined the Board in 2000.

Chairman Reckhow highlighted the following major accomplishments by the Durham County Board of Commissioners from December 2004 – November 2008:

- Achieved the highest tax collection rate in the County's history – 98.87% last year;
- Grew fund balance to \$95,112,980, exceeding our 15% target;
- Facilitated, through our economic development policy, the investment of \$1,295,000,000 and the creation of over 2,700 jobs;
- Gained approval of the largest bond package (\$207.1 million) in the County's history in Fall 2007;
- Opened the renovated Stanford L. Warren Library, the East and North Regional Libraries, the Senior Center, and the new EMS facility;
- Opened the Crisis Access Center in the former Oakleigh facility;
- Developed Adult System of Care to provide comprehensive services for patients with complex needs;
- Worked with the City and Durham Public Schools to redevelop Holton School as a vocational center, community center, and medical clinic to open in Summer 2009;
- Worked with the RBA Access to Care Committee along with the Duke Health System and the Durham Orange Medical Society to develop Project Access to provide specialty care for the uninsured;
- Worked with the City of Durham to adopt the first Greenhouse Gas Action Plan in the State and hire a Sustainability Coordinator;
- Preserved just over 2,000 acres of open space and farmland through purchase or easements (including projects completed and pending that are funded);

- Worked with the City to fund a comprehensive warrant control system;
- Negotiated an extension of the Durham Regional Hospital lease, which will increase support for Lincoln Community Health Center and EMS both in the short term and over time due to cost of living increases; and
- Developed a public private partnership for the Lowes Grove property to include the new South Branch Library, a new elementary school, and the State Employees' Credit Union.

Chairman Reckhow, along with the entire Board, thanked Commissioners Cheek and Cousin for their tremendous work on the aforementioned projects.

The Commissioners issued the following statements about Commissioners Cheek and Cousin:

“Both of them brought previous government experience to their roles as commissioners—Phil serving on the School Board and Lewis on City Council. I think their previous experiences helped facilitate better working relationships with both of those boards. We thank you for that contribution. Phil, I feel, is the anchor for our board, particularly in this last term. He was often the person I would call. I knew when to reach him—just after he had dropped off his youngest at school—to talk through some of the thorny issues that we have faced over the past four years. I really appreciate his wise counsel. Lewis brought his legal experience, and that was very beneficial as we negotiated economic agreements and worked through the Duke lease extension, and I appreciate that.”—Chairman Reckhow

“I am going to miss my partner over here (*referring to Commissioner Cousin*). We have a lot of fun talking over issues here on the side bar while the rest of them are doing their thing. We really settle them over here, but I'm going to miss this man; I really am. He has been a tremendous help to me to make some of my decisions with this board and with accomplishing some of things Ellen just talked about. Lewis, Chuck is going to miss you. It is more fun to watch these two lawyers get together in that back room. You just would not believe how much fun that is, to see who is going to outdo the other. It is a real show back there sometimes. We are going to miss that, Lewis. We just wish you well. I met a nice young lady coming into the building, and I understand she is having a great deal of influence on your life right now. So, I wish her well, and I wish you well. Lewis, we are really going to miss you. Thank you for all of the help you have given us on many of these major issues we have had. Thank you.” —Commissioner Heron

“Well, Lewis, I am not going to slight you. I have enjoyed working on this side of the table with you, talking and doing all kinds of other things. We do appreciate the service both of you have rendered to Durham County Government. It is really ironic, because when Phil left the School Board, I took his seat, I think. So, he asked me to continue following him, but I am not sure where he is headed in the next four years; we will keep a check on that. Both of you have really been wonderful team players and really good individuals to work with. I know that you both have been committed to the betterment of Durham County; I really appreciate that. I have learned a lot from both of you, and I

appreciate your support over these past few years. I wish you well.” —Vice-Chairman Page

Chairman Reckhow asked the Commissioners to join her in front to present plaques to Commissioners Cheek and Cousin for their outstanding service to the citizens of Durham County.

Chairman Reckhow presented a plaque to Commissioner Cousin which read as follows:

“Presented to Philip R. Cousin Jr. for significant contributions which greatly enhanced the quality of life in Durham County through dedicated service as a County Commissioner from 2000-2008.

From Fellow Commissioners Lewis A. Cheek, Becky M. Heron, Michael D. Page, and Ellen W. Reckhow

November 24, 2008”

Chairman Reckhow presented a plaque to Commissioner Cheek which read as follows:

“Presented to Lewis A. Cheek for significant contributions which greatly enhanced the quality of life in Durham County through dedicated service as a County Commissioner from 2004-2008.

From Fellow Commissioners Philip R. Cousin Jr., Becky M. Heron, Michael D. Page, and Ellen W. Reckhow

November 24, 2008”

Commissioner Cousin stated, “I just want to thank the citizens of Durham County for allowing me the honor and privilege of serving in this capacity for the last eight years; they have been very enjoyable years. I have been given the wonderful opportunity to walk behind the curtain and see how government runs. We have the finest staff, and this is the most excellent Board of Commissioners in the entire state of North Carolina. I know that I leave them the citizens of Durham; I leave you in good hands. These are some of the hardest working people you will ever find. I would hope that Mike Ruffin, Chuck Kitchen, Carolyn Titus, Wendell Davis, and Deborah know that I am not out of their hair. I will now be coming and appearing as a citizen, trying to negotiate my two minutes into three minutes.”

Commissioner Cheek stated, “Everybody has been very kind, and I appreciate it. Notwithstanding the broad smile, I have some seriously mixed emotions tonight. It has really been an honor to serve the place where I grew up to be a man. For eight of the last nine years, four on the City Council and the last four on this board, I have been privileged to participate in what I consider to be the rebirth of Durham. So much has happened, and so many lives have been made better over these past four years; I have had the good fortune to be able to be a part of that process. The last four years have been very challenging for me, both personally and professionally; most people understand what I mean when I say that. I want to thank my colleagues on the Board for all of their support and encouragement. You

have been tremendously kind and tremendously supportive. I want to thank my friends and family who stood by me, even in times when that was not the easiest thing to do. I would like to thank the Board's employees, Mike Ruffin, Chuck Kitchen, and Vonda Sessoms, for their professionalism, dedication, and exemplary conduct. They led by deeds as well as words. I want to thank each and every County employee for the hard work they have put in every single day. We do not say 'thanks' often enough. You make us, as Commissioners, look good; sometimes better than we should look, frankly. I want to thank the people of Durham for giving me the opportunity to serve. I have tried my best to serve in a way that would justify the faith and trust you have placed in me to act for you. There is a part of me that is sad to see this part of my life to come to an end. This is a transition for me. Not only will I be leaving the Board of County Commissioners, but I will also be moving my residence out of Durham County. Neither move is an easy one for me to make. I have always been proud to be from Durham and to call it my home and proud to be a member of the Durham County Board of Commissioners, but things change, times change, and it is time for me to go. I wish the new Board members well in all endeavors. Durham is a special place; it is full of special people. It will always occupy a special place in my heart. Thank you."—Commissioner Cheek

Consent Agenda

Commissioner Cheek moved, seconded by Vice-Chairman Page, to approve the following consent agenda items:

- a. Approve the Amendment to Tax Interlocal Agreement with City of Durham;
- *b. Property Tax Releases and Refunds for Fiscal Year 2008-2009 (accept the property tax release and refund report for October 2008 as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report);
- c. Approve Purchase of County Storage Network (authorize the Manager to enter into a contract to purchase the NetApp storage network appliance and installation services from ePlus Inc.);
- d. Removed prior to the meeting;
- *e. Budget Ordinance Amendment No. 09BCC000030—Public Health—Recognize Additional Funds in the amount of \$11,366 from the N.C. Department of Health And Human Services, Division of Public Health to Expand the Breast And Cervical Cancer Control Program (BCCCP);
- *f. Budget Ordinance Amendment No. 09BCC000031—Public Health—Recognize One-Time Funds from the March of Dimes in the Amount of \$3,000 for the Health Education Target Infant Mortality Program;
- *g. Budget Ordinance Amendment No. 09BCC000032—Social Services (recognize additional revenue in the amount of \$361,335 in additional funds for the Crisis Intervention Program);

- *j. Adopt the Resolution Determining Need for Additional Public Parking;
- *k. Adopt the Resolutions to Support Durham Public Schools Guaranteed Energy Savings Contracts; (***Chairman Reckhow asked for an update on such contracts with Durham County.***)
- *l. Offer to Purchase County Surplus Property (414 Salem Street);
- m. left blank intentionally;
- *o. Resolution Authorizing Private Sale (adopt the resolution which would authorize the private sale of the computers and printers currently being used by the Board of Commissioners upon the scheduled replacement of the computers; direct the required notice be published once in the newspaper).

The motion carried unanimously.

*Documents related to these items follow:

Consent Agenda Item No. b. Property Tax Releases and Refunds for Fiscal Year 2008-2009 (accept the property tax release and refund report for October 2008 as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report).

Due to property valuation adjustments for over assessments, listing discrepancies, duplicate listings, and clerical errors, etc., the report details releases and refunds for the month of October 2008.

Releases & Refunds for 2008 Taxes:

Real Estate	\$1,229,323.52
Personal	\$ 5,709.90
Motor Vehicles	\$ 27,992.56
Vehicle Fees	\$ 530.00
Solid Waste	<u>\$ 0</u>
Total for 2008 Taxes and Fees	\$1,263,555.98

Prior years' (2003-2007) releases and refunds for October 2008 are in the amount of \$28,753.03. The total current year and prior years' releases and refunds amount to \$1,292,309.01.

(Recorded in Appendix A in the Permanent Supplement of the November 24, 2008 Regular Session Minutes of the Board.)

Consent Agenda Item No. e. Budget Ordinance Amendment No. 09BCC000030—Public Health—Recognize Additional Funds in the amount of \$11,366 from the N.C. Department of Health And Human Services, Division of Public Health to Expand the Breast And Cervical Cancer Control Program (BCCCP).

DURHAM COUNTY, NORTH CAROLINA
FY 2008-09 Budget Ordinance
Amendment No. 09BCC000030

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2008-09 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$399,418,920	\$11,366	\$399,430,286

Expenditures:

<u>Function</u>			
<u>GENERAL FUND</u>			
Human Services	\$448,915,775	\$11,366	\$448,927,141

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 24th day of November, 2008.

Consent Agenda Item No. f. Budget Ordinance Amendment No. 09BCC000031—Public Health—Recognize One-Time Funds from the March of Dimes in the Amount of \$3,000 for the Health Education Target Infant Mortality Program.

DURHAM COUNTY, NORTH CAROLINA
FY 2008-09 Budget Ordinance
Amendment No. 09BCC000031

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2008-09 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$399,430,286	\$3,000	\$399,433,286

Expenditures:

<u>Function</u>			
<u>GENERAL FUND</u>			
Human Services	\$448,927,141	\$3,000	\$448,930,141

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 24th day of November, 2008.

Consent Agenda Item No. g. Budget Ordinance Amendment No. 09BCC000032—Social Services (recognize additional revenue in the amount of \$361,335 in additional funds for the Crisis Intervention Program).

DURHAM COUNTY, NORTH CAROLINA
FY 2008-09 Budget Ordinance
Amendment No. 09BCC000032

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2008-09 Budget Ordinance is hereby amended to reflect budget adjustments.

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$399,433,286	\$361,335	\$399,794,621

Expenditures:

<u>Function</u>			
<u>GENERAL FUND</u>			
Human Services	\$448,930,141	\$361,335	\$449,291,476

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 24th day of November, 2008.

Consent Agenda Item No. j. Adopt the Resolution Determining Need for Additional Public Parking.

RESOLUTION DETERMINING NEED FOR ADDITIONAL PUBLIC PARKING

WHEREAS, the Board of Commissioners at its November 10, 2008 meeting held a public hearing to determine if there is a need for additional public parking in the Government Services District of Downtown Durham, which public hearing had been duly advertised; and

WHEREAS, the Board of Commissioners has determined that there is a need for additional public parking; and

WHEREAS, the Board of Commissioners further has determined that the provision of a structured parking facility would be in the public interest.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DO TH RESOLVE:

1. Following the public hearing in this matter and considering the testimony offered by the public, the Board finds the following facts to be true:

- a. There are currently 5,226 parking spaces in downtown.
 - b. Downtown Durham, Inc. (DDI) projects 1.5 million new square feet of office/retail space, 2,000 new residential units, and 800 new hotel rooms will be located in downtown Durham in the foreseeable future.
 - c. Over 8,000 new parking spaces will be needed to accommodate this projected growth.
2. It is not possible to expand on-street parking to provide for the public parking needs described above.
 3. There is, therefore, currently a need for additional off-street public parking facilities in and around the Government Services District of Downtown Durham.
 4. The convenience and necessity of the County require and there is a legitimate public purpose in providing additional off-street parking facilities, including a structured parking deck on the property located at the intersection of Parrish and Church Streets, for the use of the public in the described areas.
 5. The described areas constitute a part of a public-private project (as such term is defined in Session Law 2005-172 of the North Carolina General Assembly) and the County will significantly benefit from participating with one or more private persons in the development of such public-private project by acquiring, constructing, owning and operating or participating in the acquisition, construction, ownership and operation of the new parking deck mentioned above within such public-private project.
 6. The administrative staff of the County is directed to negotiate and prepare the necessary agreements in order to provide the structured parking facility and assist and bring the agreements back to the Board of Commissioners for approval.

This the 24th day of November, 2008.

Consent Agenda Item No. k. Adopt the Resolutions to Support Durham Public Schools Guaranteed Energy Savings Contracts.

RESOLUTION ACKNOWLEDGING THE EXECUTION AND DELIVERY BY THE
DURHAM COUNTY BOARD OF EDUCATION OF A GUARANTEED ENERGY
SAVINGS CONTRACT

BE IT RESOLVED by the Board of County Commissioners (the "Board") of the
County of Durham, North Carolina (the "County") as follows:

1. The Board hereby finds, determines and acknowledges that:
 - (a) the Durham Public Schools Board of Education (the "School Board") plans to enter into a \$5,128,917 guaranteed energy savings contract pursuant to G.S. 143-64.17 et. seq. for the purpose of providing certain energy conservation measures authorized thereby (the "Project") so as to reduce energy consumption and/or energy-related operating costs;
 - (b) the School Board intends to finance the Project by entering into an installment contract (the "Contract") pursuant to G.S. 143-64.17C and G.S. 160A-20, as amended;

(c) the energy savings resulting from the Project are guaranteed to equal or exceed the total costs payable under the Contract as shown in an evaluation performed by Heery International on behalf of the School Board;

(d) the payments under the Contract are not expected to require any additional appropriations to be made to the School Board nor any increase in taxes; and

(e) the Board does not intend to reduce appropriations to the School Board based upon a reduction of energy costs in a manner that would inhibit the ability of the School Board to make the payments under the Contract, provided that the County is not bound in any manner to appropriate funds to the School Board in amount sufficient for the School Board to make such payments.

2. This resolution shall take effect upon its passage.

/s/ Ellen W. Reckhow

Chairman

Board of Commissioners of the County of Durham

RESOLUTION ACKNOWLEDGING THE EXECUTION AND DELIVERY BY THE
DURHAM COUNTY BOARD OF EDUCATION OF A GUARANTEED ENERGY
SAVINGS CONTRACT

BE IT RESOLVED by the Board of County Commissioners (the "Board") of the County of Durham, North Carolina (the "County") as follows:

1. The Board hereby finds, determines, and acknowledges that:

(a) the Durham Public Schools Board of Education (the "School Board") plans to enter into a \$4,645,552 guaranteed energy savings contract pursuant to G.S. 143-64.17 et. seq. for the purpose of providing certain energy conservation measures authorized thereby (the "Project") so as to reduce energy consumption and/or energy-related operating costs;

(b) the School Board intends to finance the Project by entering into an installment contract (the "Contract") pursuant to G.S. 143-64.17C and G.S. 160A-20, as amended;

(c) the energy savings resulting from the Project are guaranteed to equal or exceed the total costs payable under the Contract as shown in an evaluation performed by Heery International on behalf of the School Board;

(d) the payments under the Contract are not expected to require any additional appropriations to be made to the School Board nor any increase in taxes; and

(e) the Board does not intend to reduce appropriations to the School Board based upon a reduction of energy costs in a manner that would inhibit the ability of the School Board to make the payments under the Contract, provided that the County is not bound

in any manner to appropriate funds to the School Board in amount sufficient for the School Board to make such payments.

2. This resolution shall take effect upon its passage.

/s/ Ellen W. Reckhow

Chairman

Board of Commissioners of the County of Durham

Consent Agenda Item No. 1. Offer to Purchase County Surplus Property (414 Salem Street).

RESOLUTION

WHEREAS, Durham County owns a certain parcel of real property situated in Durham County, North Carolina and properly described as follows:

414 Salem Street
PIN #0831-19-61-1985
Parcel ID #112184

WHEREAS, Rondell McKoy has made an offer to the County to purchase the above property for \$1,000 and has made a bid deposit in the amount of \$50, which is not less than 5 percent of the bid; and

WHEREAS, G.S. 160A-269 provides for an "Upset Bid Method" for sale which provides for publication of the notice of upset sale including a description of the property, the amount of the offer, requirements for submission of an upset bid, and other details of the sale; and

WHEREAS, the Durham County procedure for sale of the parcel is as follows:

1. Publication of the Notice of Sale in The Herald-Sun newspaper.
2. Upset bids must be received within 10 days after the date the Notice is published.
3. Upset bids must raise the current bid by at least 10 percent of the first \$1,000.00 and 5 percent of the remainder.
4. Upset bids shall be made to the Real Estate Manager or the Clerk to the Board if the Real Estate Manager is not available, together with a 5 percent bid deposit by certified check or money order to the County of Durham, or cash;
5. When the original bid has been successfully raised (upset), the upset bid becomes the current bid. Interested bidders are encouraged to contact the Real Estate Manager before making a bid to confirm the amount of the current bid.
6. The highest bid received during the 10-day period is deemed the current bid rather than the first which meets the minimum upset bid requirements.
7. This procedure shall be repeated until no further qualifying County Commissioners who may accept the offer and sell the property to the highest bidder.
8. Should the Board of County Commissioners accept the qualifying high bid, a non-warranty deed will be prepared for the Chairman of the Board's signature, and a time for closing will be scheduled.

9. The Board of County Commissioners may at anytime reject any and all bids.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Durham County that a Notice of Sale be published and that the upset bid procedure for this sale take place as set forth in this resolution and as authorized by G.S. 160A-269.

Upon motion properly made and seconded, adopted by the Board at its meeting on November 24, 2008.

/s/ Vonda Sessoms
Clerk, Board of Commissioners

Consent Agenda Item No. o. Resolution Authorizing Private Sale (adopt the resolution which would authorize the private sale of the computers and printers currently being used by the Board of Commissioners upon the scheduled replacement of the computers; direct the required notice be published once in the newspaper).

RESOLUTION AUTHORIZING PRIVATE SALE

WHEREAS, the County, in its normal process, replaces computers on a regular schedule; and

WHEREAS, the computers for the Board of Commissioners members are currently being replaced; and

WHEREAS, one or more members may desire to purchase their current computer and/or printer; and

WHEREAS, the Durham County IT Department has determined that the value of the Gateway 400vtx computer is \$175 and the value of the Lexmark E232 printer is \$25; and

WHEREAS, N.C.G.S. § 160A-267 authorizes the private sale of these computers and printers:

NOW THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DO TH RESOLVE:

1. The County Manager is hereby authorized to dispose of the above-referenced computers and printers at private sale at a minimum price of \$175 for the computers and \$25 for the printers.
2. The Clerk shall publish a notice of the adoption of this resolution after its adoption.

This the 24th day of November, 2008.

Consent Agenda Items Removed for Discussion

Consent Agenda Item No. h. Nominations to the Duke University Health System (DUHS) Board of Directors (approve the following nominations: County Manager Mike Ruffin, Dr. Ira Smith, and Rev. Kenneth Hammond).

Commissioner Cheek asked to pull this item to request that the Board voice support to DUHS for County Manager Ruffin to be appointed to its Board of Directors. He commented that Dr. Smith and Rev. Hammond are good candidates; however, appointing County Manager Ruffin would provide County representation.

Chairman Reckhow stated that she would work with staff to draft a letter of support.

Commissioner Cheek moved, seconded by Commissioner Heron, to approve Consent Agenda Item No. h.

The motion carried unanimously.

Consent Agenda Item No. i. Lease Renewal for the Parkwood Branch Library (authorize the Manager to sign the lease agreement with Mr. James Hawkins for 5122 Revere Road for the Parkwood Branch Library for a term that runs until August 31, 2010).

Chairman Reckhow inquired about reimbursement for emergency Library repairs made by County staff.

Jane Korest, Real Estate and Open Space Manager, responded that amounts paid for repairs were deducted from rent paid.

Commissioner Heron moved, seconded Commissioner Cheek, to approve Consent Agenda Item No. i.

The motion carried unanimously.

Consent Agenda Item No. n. Capital Project Amendment No. 09CPA000011—Durham Public Schools General Obligation Bond Project Budget Adjustments moving \$300,815 from five completed 2001 GO Bond funded DPS capital projects and \$199,185 from the 2003 GO Bond “Project Management” capital project, for a total of \$500,000, to the C.C. Spaulding Elementary School project, increasing that project budget to \$9,117,964, and moving \$445,000 from the 2003 GO Bond “Project Management” capital project to the Spring Valley Elementary School (New “B”) project, increasing that project budget to \$15,431,700.

Hugh Osteen, Assistant Superintendent of Operational Services, Durham Public Schools (DPS), responded to Commissioner Heron’s inquiry regarding funds remaining from the 2003 GO Bond.

Commissioner Heron expressed appreciation for receiving reports that indicate DPS' spending within its budget.

Commissioner Cheek moved, seconded Commissioner Cousin,
to approve Consent Agenda Item No. n.

The motion carried unanimously.

DURHAM COUNTY, NORTH CAROLINA
FY 2008-09 Capital Project Ordinance
Amendment No. 09CPA000011

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the
FY 2008-09 Capital Project Ordinance is hereby amended to reflect budget adjustments for
the following projects:

	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>			
Carrington Middle School Project (SH058)	\$8,408,998	(\$16,153)	\$8,392,845
Neal Middle School Project (SH061)	\$350,000	(\$171,594)	\$178,406
Rogers-Herr Middle School Project (SH062)	\$11,909,283	(\$109,335)	\$11,799,948
DSA – Gym Roof & Windows Project (SH098)	\$500,000	(\$3,672)	\$496,328
Northern High School Project (SH100)	\$177,830	(\$61)	\$177,769
Bond Management Project (SH093)	\$2,567,894	(\$644,185)	\$1,923,709
C.C. Spaulding Elementary Project (SH079)	\$8,617,964	\$500,000	\$9,117,964
New “B” Elementary Project (SH103)	\$14,986,700	\$445,000	\$15,431,700

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 24th of November, 2008.

**Public Hearing to Consider Providing Economic Development Incentives to Greenfire
Real Estate Holdings, LLC for Greenfire Phase II Development**

Carolyn P. Titus, Deputy County Manager, requested that the Board of Commissioners hold a public hearing to receive comments on a proposed expenditure of funds for economic development in the form of the provision of structured parking for Greenfire Real Estate Holdings LLC for Greenfire Phase II Development through a parking lease. She stated that the County would construct 210 parking spaces in a 320-space parking structure that would cost approximately \$7.54 million. The County would receive rental revenues for the spaces from Greenfire at fair market value. The structured parking would be located at the corner of

Church and Parrish Streets. Consideration of this incentive to Greenfire Development would be the construction or redevelopment of properties in downtown Durham with an approximate private investment amount of \$98 million. The funds would be paid from the General Fund of the County of Durham.

The entire Phase II project will represent a minimum private investment by Greenfire of \$295 million. The project will also create approximately 1,300 jobs at full build out and provide 430 new housing units to downtown Durham. Upon completion in 2019, Phase II will result in approximately one million square feet of space, estimated to produce \$307.4 million in new property tax value. The County anticipates receiving approximately \$15.993 million in accumulated tax revenues over the next ten years as a result of Phase II.

Ms. Titus recommended that the County participate in this economic development project by entering into a public-private partnership to provide parking needed for both government offices and downtown re-development. After reviewing the request for incentives and evaluating it in conjunction with the parking needs of the public utilizing county office buildings, the administration determined that a public-private partnership to provide for both parking needs was cost efficient as well as beneficial to both parties.

On November 10, 2008, the Board of County Commissioners received a presentation from Greenfire Development requesting incentives for Phase II through the provision of public parking. A set of proposed deal points was presented by County administration for the Board's consideration. Those draft deal points have been fashioned into the Development Agreement.

Chairman Reckhow opened the public hearing that was properly advertised on Friday, November 14, 2008, as required by NC Statutes. She called the following signed speakers forward for comments:

Bill Kalkhof, representing Downtown Durham Inc. (DDI), 115 Market Street, Suite 213, Durham 27701, thanked Commissioners Cheek and Cousin for their service to Durham County and their support for DDI. He stated that DDI supports and recommends that the Board 1) approve the provision of economic development incentives proposed in its public-private partnership with Greenfire Development; and 2) as a second action, approve the Development Agreement with Greenfire Development.

Wink Swain, Chair, DDI Board of Directors, 423 Morris Street, Durham 27701, supported the Development Agreement; however, he recommended that the structure include a privately built wrapper of three to four sides of mixed use commercial development.

Chuck Watts, 962 Ninth Street, Suite 553, Durham 27705, requested that the Board approve the Development Agreement.

Ted Conner, representing the Durham Chamber of Commerce, 300 West Morgan Street, Suite 1400, Durham 27701, requested approval of the Development Agreement.

Victoria Peterson, representing Triangle Citizens Rebuilding Communities, PO Box 101, Durham 27702, supported the Development Agreement.

Dr. E. Lavonia Allison, representing Durham Citizens for the Affairs of Black People, 1315 McLaurin Avenue, Durham 27707, expressed concerns regarding "fair market value" and the 1,300 jobs to be created.

Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Ms. Titus responded to Dr. Allison's concerns. She stated that fair market value for the parking spaces would be based upon other parking facilities owned by the County; those spaces would be leased to Greenfire at the same rate, which is determined by the County's parking ordinance. Ms. Titus also stated that the 1,300-job figure was provided by Greenfire. The jobs would be created as a result of construction to occur during Phase II Development.

Commissioner Cheek expressed support of the Greenfire Phase II Development Agreement and made a motion to approve the Development Agreement between the County of Durham and Greenfire Development for the provision of economic development incentives through a parking lease for 210 parking spaces.

Vice-Chairman Page seconded the motion.

Chairman Reckhow commented that providing economic development incentives to Greenfire is an excellent investment for the County.

Commissioner Cousin voiced his support for the Development Agreement.

Commissioner Heron commended staff for their work with Greenfire and echoed support for the Agreement.

Chairman Reckhow thanked Michael Lemanski and Carl Webb of Greenfire Real Estate Holdings LLC for their cooperation and stated that the Board looks forward to a "fruitful" partnership.

The motion carried unanimously.

Public Hearing on Acquisition of the Lakewood YMCA for School Purposes—Capital Project Amendment No. 09CPA000010—Appropriation of \$8,250,000 for the DPS/Lakewood YMCA Purchase and Renovation Capital Project (SH153) and Approval of Lakewood YMCA Purchase, Development Agreement, and Two Lease Agreements

Drew Cummings, Assistant County Manager, introduced this item. He requested, pursuant to N.C.G.S. § 153A-158.1, that the Board of Commissioners hold a public hearing regarding the acquisition of the Lakewood YMCA property located at 2119 Chapel Hill Street, which would be used for school purposes following the renovation of the building. The purchase price of the property is \$250,000. Notice of this public hearing was duly published in The Herald-Sun on Friday, November 14, 2008.

Mr. Cummings gave the following presentation:

Lakewood YMCA Deal

The Property

- 2119 Chapel Hill Rd.
- 7.4 acres with 57,350 s.f. of space
- Appraised at \$2.8m
- Proposed purchase price: \$250,000

Lease Back To YMCA (\$1/yr)

- Lease 1 (pre-renovation): YMCA has full use
- Lease 2 (post-renovation):
 - DPS uses 40,000 s.f. for middle school
 - Remaining 18,000 s.f. for YMCA use
- Total of 2 leases not to exceed 17 years

Renovation

- County spends up to \$8m on basic wide range of renovations
- YMCA spends up to \$850,000 to further upfit its portion

Durham Public Schools' Role

- Act as County's agent through renovation
- New secondary school to open Fall 2011
- County conveys property to DPS after renovations complete OR after refinancing

County Manager Ruffin replied to a question posed by Vice-Chairman Page, stating that Durham Public Schools (DPS) would control the use of the property once it is conveyed.

Vice-Chairman Page inquired about usage of the property by community organizations.

Hugh Osteen, Assistant Superintendent of Operational Services, Durham Public Schools (DPS), responded that DPS would have priority for using the facility. Once that priority is met, other policies for usage of a County facility would then take effect.

Chairman Reckhow opened the public hearing that was properly advertised and called the following signed speakers forward for comments:

Victoria Peterson, representing Triangle Citizens Rebuilding Communities, PO Box 101, Durham 27702, cautioned the County about "bailing out" local entities. She opined that the County should have control of the facility as it would be investing \$8 million. Ms. Peterson requested that a section of the building be used as a vocational facility, if the County obtains control.

Dr. E. Lavonia Allison, representing Durham Citizens for the Affairs of Black People, 1315 McLaurin Avenue, Durham 27707, inquired about student capacity and cost for after-school program.

Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Commissioner Cheek addressed Ms. Peterson's comments. He stated that the building would either have to be completely gutted or demolished in order to convert Lakewood YMCA into a vocational site. Commissioner Cheek briefly discussed the County's privileges as lease holder of the property. He commented that using the property as a secondary school would be remarkable for the facility as well as the community.

Commissioner Cheek moved, seconded by Commissioner Heron, to approve appropriation of \$8,250,000 to the DPS/Lakewood YMCA project, the Development Agreement, and two lease agreements for the Lakewood YMCA, subject to non-substantive changes made by the County Attorney, as well as approve the inter-fund loan for the acquisition of the property and authorize the Manager to execute the Development Agreements, leases and closing documents.

Chairman Reckhow echoed Commissioner Cheek's comments regarding the remarkable usage of the facility as a secondary school.

Vice-Chairman Page expressed desire for the Board and Durham Public Schools to explore the need of vocational centers in Durham County.

Commissioner Heron advised the public to research vocational program available within Durham Public Schools.

Chairman Reckhow thanked County Manager Ruffin and staff for their diligent work with the project.

DURHAM COUNTY, NORTH CAROLINA
FY 2008-09 Capital Project Ordinance
Amendment No. 09CPA000010

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2008-09 Capital Project Ordinance is hereby amended to reflect budget adjustments for the following projects:

	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>Expenditures</u>			
DPS/Lakewood YMCA Project	\$0	\$8,250,000	\$8,250,000

All ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 24th of November, 2008.

Public Hearing—Zoning Map Change—1521 Mineral Springs Road (Z0800002)

Steven L. Medlin, AICP, City-County Planning Director, requested that the Board approve a request for a zoning map change for a 4.14-acre site located on the east side of South Mineral Springs Road, south of Delmar Drive. Request: RR and RS-20; F/J-B to PDR 4.000; F/J-B.

He stated that this item was continued from the October 27, 2008 Commissioner meeting to allow the applicant to address internal configuration concerns raised at the public hearing.

Mr. Medlin noted that the Planning staff recommended approved, based on consistency with the *Comprehensive Plan* and considering the information provided in the report. The Durham Planning Commission recommended and voted 11-2 for approval (with additional committed elements) on September 9, 2008. The Commission found that the ordinance request is consistent with the adopted *Comprehensive Plan*. The Commission believed the request is reasonable and in the public interest and recommends approval based on the information in the staff report, comments received during the public hearing, and additional committed elements proffered by the applicant at the meeting.

Chairman Reckhow opened the public hearing that was properly advertised. She called signed speaker Bob Zumwalt, representing The John R. McAdams Company, 2905 Meridian Parkway, Durham 27713, forward to comment.

Mr. Zumwalt indicated that additional committed elements were made and that the plan had been modified as follows:

- Reduced number of units to 13
- Increased the capacity of buffers
- Modifications created a “nice-sized” open space adjacent to Mineral Springs Road.

Chairman Reckhow commended Mr. Zumwalt for making the plan “exceptional”.

Commissioner Heron thanked Mr. Zumwalt for meeting with her and Chairman Reckhow to resolve issues with the plan.

Chairman Reckhow called signed speaker Dr. E. Lavonia Allison, PO Box 428, Durham 27702, forward for comments.

Dr. Allison inquired about the formula used to determine school capacity.

Mr. Medlin addressed Dr. Allison’s question regarding the notification list. He stated that the notification list is composed of organizations that request to be notified by the Planning Department of any project within 1,000 feet of a boundary. To be added to the list, one must contact Wade Griffin in the Planning Department.

In response to Dr. Allison’s question regarding the school capacity formula, Chairman Reckhow stated that the *Comprehensive Plan* indicates that the 110% would be the new capacity number, beginning February 2009; 120% is the number currently being used in the school capacity formula.

Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Commissioner Heron moved, seconded by Commissioner Cheek, to approve Zoning Map Change—1521 Mineral Springs Road (Z0800002).

The motion carried unanimously.

Public Hearing—Zoning Map Change—Page Corporate Center (Z07-42)

Planning Director Steve Medlin requested that the Board approve a request for a zoning map change for a 34.48-acre site located on the north side of Page Road, west of Comstock Road and east of I-40. Request: Planned Development Residential (PDR 7.900) to Office and Institutional with a development plan (OI[D]).

Mr. Medlin noted that the Planning staff recommended approved, based on consistency with the *Comprehensive Plan* and considering the information provided in the report. The Durham Planning Commission recommended and voted 11-0 for approval on October 14, 2008. The Commission found that the ordinance request is consistent with the adopted *Comprehensive Plan*. The Commission believed the request is reasonable and in the public interest and recommended approval based on the information in the staff report, comments received during the public hearing, and additional committed elements proffered by the applicant at the meeting.

Commissioner Heron asked if the site could be used for residential purposes.

Mr. Medlin responded in the affirmative; however, with the types of committed elements submitted by the developer, converting a site from Office and Institutional to Residential use would require a rezoning; such a conversion is considered a “change of use” category.

Chairman Reckhow opened the public hearing that was properly advertised. She called the following signed speakers forward for comments:

Dr. E. Lavonia Allison, PO Box 428, Durham 27702, expressed concern that questions she asked in the previous agenda item were not answered.

Commissioner Cheek called for a point of order as Dr. Allison’s comments were not pertaining to this item.

Dr. Allison restated her questions regarding the 120% number used in the school capacity formula and the process for neighborhood organizations to be added to the notification list for projects.

Chairman Reckhow clarified Mr. Medlin’s previous response to Dr. Allison’s question regarding the notification list. She stated that any neighborhood organization may request to be added to the list. Chairman Reckhow encouraged Dr. Allison to speak with Mr. Medlin at a later time to receive additional information.

Chairman Reckhow recognized Bob Zumwalt, representing The John R. McAdams Company, 2905 Meridian Parkway, Durham 27713, to come forward to comment.

Mr. Zumwalt elaborated on the development plan and the following revised and additional committed elements:

- In the event a transit route is established along Page Road during the build-out of this project, the developer agrees to construct one bus shelter for transit stop adjacent to the site in a location determined by the City Transportation, DATA, and Triangle Transit Authority prior to the last Certificate of Occupancy.
- The developer commits to not ever build any more than what is currently allowed under the residential zoning at the site. If that were to occur, the school proffer would be increased to \$500 per unit.
- Any employer within the project that has 50 or more employees will participate in the Durham County commute trip reduction program.

Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Commissioner Cheek moved, seconded by Commissioner Heron, to approve Zoning Map Change—Page Corporate Center (Z07-42) with the additional committed elements.

Mr. Medlin responded to Chairman Reckhow that Mr. Zumwalt forwarded to him the additional committed elements via email.

The motion carried unanimously.

Public Hearing—Unified Development Ordinance (UDO) Text Change—Conservation Subdivisions (TC07-19)

Senior Planner Helen Youngblood, AICP, Durham City-County Planning Department, requested that the Board receive public comments on Text Change—Conservation Subdivisions (TC07-19) and adopt an ordinance amending the Unified Development Ordinance, incorporating revisions to Article 3, Applications and Permits, Article 6, District Intensity Standards, Article 7, Design Standards, and Article 8, Environmental Protection.

Chairman Reckhow asked Ms. Youngblood if concerns from the development community had been resolved.

Ms. Youngblood responded in the affirmative.

Chairman Reckhow opened the public hearing that was properly advertised.

Commissioner Heron inquired about “X²” for “Lot Area Conservation Subdivision” in the chart on Page 3 of the Ordinance to Amend Provisions of the Unified Development Ordinance Regulating Conservation Subdivisions (TC07-19).

Chairman Reckhow called the following signed speakers forward for comments:

Melissa Rooney, Chair of the Fairfield Neighborhood Community Awareness Committee, 301 Spring Garden Drive, Durham 27713, expressed appreciation to Ms. Youngblood, Planning Director Steve Medlin, Planner Julia Mullen, and the City-County Planning Department staff for their careful attention to the conservation subdivision amendments to the UDO. Ms. Rooney urged the Board to approve this item and to consider changing the

UDO to require that the most environmentally sensitive areas be developed as conservation subdivisions.

Bill Ripley, representing Tony M. Tate Landscaping & Architecture, 5011 Southpark Drive, Durham 27713, thanked Commissioners Cheek and Cousin for their service to Durham County. He discussed the importance of amending the conservation subdivision section of the UDO.

As no one else signed up to speak, Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Chairman Reckhow asked Ms. Youngblood to address the delay in reviewing this issue. She recapped that the Board requested the review a year ago and issued a directive for development community members to be involved.

Ms. Youngblood explained that during the review period, staff addressed several concerns raised by the development community by amending other sections of the UDO that focus on environmental issues.

Chairman Reckhow expressed interest in monitoring the conservation subdivision section of the UDO closely during the first year, if it is adopted. She requested biannual reports with feedback on whether the section is being used.

Commissioner Cheek referenced the following statement in the November 24, 2008 memorandum from Mr. Medlin: “The Planning Commission held a public hearing on this proposed text amendment on October 14, 2008 and recommended approval by a vote of 11-0 with the modification that any conservation subdivision application submitted on or before October 14, 2008 be subject to the current ordinance.” Commissioner Cheek asked if the modification had been incorporated in the ordinance revision.

Ms. Youngblood responded in the negative; however, it may be inserted per the Board’s request.

County Attorney Chuck Kitchen asked if the current policy allows for projects submitted prior to a UDO change to proceed under the pre-revised UDO.

Mr. Medlin stated that the UDO does not include such a provision; however, staff would support allowing the project that was submitted prior to October 14, 2008 to be completed under the old UDO if this item is approved.

Commissioner Cheek moved, seconded by Commissioner Heron, to approve Unified Development Ordinance (UDO) Text Change—Conservation Subdivisions (TC07-19), with the modification that any conservation subdivision application submitted on or before October 14, 2008 be subject to the current ordinance.

The motion carried unanimously.

Commissioner Heron opined that the conservation subdivision section of the UDO would be “attractive and senseful” to developers.

Chairman Reckhow asked the County Manager to follow up on the usage of the section and to consider the marketing approach.

Public Hearing—Unified Development Ordinance (UDO) Text Change—IL/Compact Height (TC0800001)

Steven L. Medlin, AICP, City-County Planning Director, requested that the Board receive public comments on Text Change—IL/Compact Height (TC0800001) and adopt an ordinance amending the Unified Development Ordinance, incorporating revisions to Article 6, District Intensity Standards.

Chairman Reckhow opened the public hearing that was properly advertised. As no one signed up to speak, she closed the public hearing and referred the matter back to the Board.

Commissioner Cousin moved, seconded by Vice-Chairman Page, to approve Unified Development Ordinance (UDO) Text Change—IL/Compact Height (TC0800001).

The motion carried unanimously.

Public Hearing—Unified Development Ordinance (UDO) Text Change—Carnival Hours (TC0800003)

Steven L. Medlin, AICP, City-County Planning Director, stated that proper notification had been given in accordance with the General Statute and UDO requirements. He requested that the Board receive public comments on Text Change—Carnival Hours (TC0800003) and adopt an ordinance amending the Unified Development Ordinance, incorporating revisions to Article 5, Use Regulations.

Commissioner Page inquired about the current hours of operation and noise complaints relative to the annual carnival at the Durham County Stadium.

Mr. Medlin responded that carnivals may operate up to 11:00 p.m. on Friday and Saturday nights. He noted that the UDO has a provision that allows for the Planning Director to revoke the temporary special use permit or to force the closure of the facility earlier than 11:00 p.m. if the condition is deemed to be adverse.

Commissioner Heron stated that she is a member of the Memorial Stadium Authority and that it has received no complaints regarding carnivals.

Chairman Reckhow opened the public hearing that was properly advertised. As no one signed up to speak, she closed the public hearing and referred the matter back to the Board.

Commissioner Heron moved, seconded by Vice-Chairman Page, to approve Unified Development Ordinance (UDO) Text Change—Carnival Hours (TC0800003).

The motion carried unanimously.

Public Hearing—Unified Development Ordinance (UDO) Text Change—Public Notice (TC0800008)

Planning Director Steve Medlin reported that proper notification had been given in accordance with the General Statute and UDO requirements. He requested that the Board receive public comments on Text Change—Public Notice (TC0800008) and adopt an ordinance amending the Unified Development Ordinance, incorporating revisions to Article 3, Applications and Permits.

Chairman Reckhow inquired about the flexibility of the \$50 fee per two-year period; an organization or individual may not want to receive notifications for two years.

Mr. Medlin responded that costs related to text amendments had increased. He explained that lowering the notice fee would result in additional money being spent out of the departmental budget.

Chairman Reckhow asked how many neighborhood organizations receive notices via postal mail.

Mr. Medlin replied that approximately 80% of the organizations opted to receive notices via email.

Chairman Reckhow opened the public hearing that was properly advertised. She called signed speaker Melissa Rooney, 301 Spring Garden Drive, Durham 27713, forward for comments.

Ms. Rooney spoke in support of organizations receiving notices via email to save postage costs for the City and County.

As no one else signed up to speak, Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Commissioner Cheek moved, seconded by Commissioner Cousin, to approve Unified Development Ordinance (UDO) Text Change—Public Notice (TC0800008).

The motion carried unanimously.

First Extension of Sublease by and Among Durham County, Durham County Hospital Corporation, and Duke University Health System, Inc. and First Extension of Operating Agreement by and Among Durham County, Durham County Hospital Corporation, and Duke University Health System, Inc.—Second Amendment to Sublease by and Among Durham County, Durham County Hospital Corporation, and Duke University Health System, Inc. and First Amendment to Operating Agreement by and Among Durham County, Durham County Hospital Corporation, and Duke University Health System, Inc.—Amendment to Lease

County Manager Mike Ruffin requested that the Board approve the above-referenced documents. The purpose of the amendments to the documents follows: 1) Duke University Health Systems is exercising its authority under the Operating Agreement for Durham Regional Hospital to extend the lease and Operating Agreement until September 30, 2031; 2) the Lease and Operating Agreement are being amended to change the annual rent as reflected in Section 2 of the Second Amendment to the Sublease; a chart has been prepared illustrating the increased payments assuming a 3.5% increase in the consumer price index; 3) the term is extended to provide for an automatic renewal of the lease on a yearly basis; additionally, the lease is extended to 40 years for the initial term; these two provisions thus provide for a 40-year “rolling term”; 4) the Operating Agreement is amended to allow for a transfer of programs and services to another facility without approval of the Durham County Hospital Corporation Board of Trustees.; with such a transfer, the programs and services would remain under the retained responsibilities of the Durham County Hospital Corporation Board of Trustees; and 5) certain provisions are added to restrict the County’s liability for bonded indebtedness if at any point the County decides not to renew the lease.

County Manager gave the following presentation:

Durham Regional Hospital Lease Amendment

Why revise the lease between Duke University Health System and Durham County for Durham Regional Hospital?

- Mutual interests
 - Protect the long-term access and sustainability of Durham Regional Hospital for the citizens of Durham County and the surrounding service area
- County interests:
 - Increase support for Lincoln Community Health Center
 - Increase support for its Emergency Management Services (EMS)
 - Remove structural impediments that will increasingly constrain Duke University Health System’s ability to continue to make major capital investments in the facility
- DUHS’s interests:
 - Higher capacity is needed to facilitate long-term growth
 - Services provided by Lincoln Community Health Center and Emergency Medical Services are important to Duke University Health System
 - Duke University Health System would like to have the structural impediments to further capital investment removed

Original Transaction Summary

- Lease of Durham Regional acquired on July 1, 1998, with a term of 20 years
- Durham County Hospital Corporation conveyed to Duke University Health System ownership of all personal property of Durham Regional Hospital. The ambulatory surgery center known as “AHS/DASC” was conveyed via transfer of sole membership interest to Duke University Health System.
- Original lease terms:
 - Parties may terminate early by mutual agreement, or in response to a default
 - Duke University Health System has option to extend the lease at the end of the first term for 13 years upon terms to be negotiated, or at the initial rent (\$7.1M) inflated by the CPI
 - Duke University Health System agreed to annual “Rent” as follows (total \$7.1M):
 - \$3.5M to Durham County; however, the first 10 years, \$23.5M, were prepaid
 - \$1.5M to support EMS
 - \$2.1M to support Lincoln Community Health Center
 - Duke University Health System agreed to provide support services to Lincoln Community Health Center costing Durham Regional Hospital approximately \$3.1M per year. This amount increases along with other expenses due to inflation as well as with Lincoln Community Health Center growth.
 - Effective with the transfer back to the County in 2007 of the Oakleigh facility, the rent payment to County was reduced to \$3.2 million/year. At that time, Duke University Health System committed to pay \$1.5 to the County for mental health and substance abuse treatment for the Durham citizens.

Goals for Renegotiating Lease

- Eliminate limitations on capital investments resulting from decreasing fixed-lease term and to provide for future extension of lease
- Keep payments approximately equal on a present value basis over initial term and first extension term (through 2031)
- Retain other provisions regarding governance

Amended Terms

- Replace current term and extension provisions with a 40-year term commencing on January 1, 2009
- Extend new term automatically each year for one additional year, keeping a 40-year horizon in place
- Duke University Health System to increase aggregate payments by \$2.2 million
 - County rent increases \$750K to \$3.95 million through 2018. Not indexed for inflation. Payment drops to \$1.25 million between 2019 and 2031. County payment goes to \$0 thereafter.
 - Lincoln Community Health Center and EMS payments to be increased by \$1.45 million, \$750,000, and \$700,000, respectively. Indexed for inflation thereafter.
- Parties agree that as the market changes there may be the need to move programs and services from the current setting to other care settings.

- These services and programs shall be subject to the retained responsibilities of the Board of Trustees
- Movement will not require approval of Durham County Hospital Corporation Board of Trustees unless the new setting is on the campus of Duke University Hospital
- County responsible for paying or defeasing outstanding debt for future expansions, renovations and additions to Durham Regional Hospital on the effective termination date of the lease
- County liable for outstanding debt obligations issued without the County's approval, with two exceptions
 - County not liable for outstanding debt obligations it has not approved if the debt is issued after notice of termination has been given
 - County only liable for outstanding debt it has approved if the debt is structured with level debt service, interest is paid currently, and principal is fully amortized over the useful life of the financed assets

Next Steps

- Approval required by three boards
 - Durham County Hospital Corporation (Approved on November 19)
 - Durham County Board of Commissioners (To be approved on November 24)
 - Duke University Health System (To be signed upon approval by BOCC)
- Communicate with key stakeholders

Chairman Reckhow called signed speaker Victoria Peterson, representing Triangle Citizens Rebuilding Communities, PO Box 101, Durham 27702, forward to comment.

To address Ms. Peterson's inquiry, County Manager Ruffin, Chairman Reckhow, and County Attorney Kitchen explained the lease payment amounts and schedule.

Commissioner Cheek informed Ms. Peterson that plans are in place to enhance operations of Durham Regional Hospital. He stated that the lease is structured to allow for Hospital maintenance and improvements.

Commissioner Heron emphasized that Duke University Health System is responsible for maintaining Durham Regional Hospital.

Commissioner Cheek stressed the utmost importance for the County to obtain additional funding for Lincoln Community Health Center (LCHC).

Chairman Reckhow concurred with Commissioner Cheek. She noted that the LCHC leadership is pleased with the terms.

Commissioner Cheek moved, seconded by Commissioner Heron, to approve the First Extension of Sublease by and Among Durham County, Durham County Hospital Corporation, and Duke University Health System Inc. and First Extension of Operating Agreement by and Among Durham County, Durham County Hospital Corporation, and Duke

University Health System, Inc.; Second Amendment to Sublease by and Among Durham County, Durham County Hospital Corporation, and Duke University Health System Inc., and First Amendment to Operating Agreement by and Among Durham County, Durham County Hospital Corporation, and Duke University Health System Inc.; and Amendment to Lease.

The motion carried unanimously.

Chairman Reckhow thanked County Attorney Kitchen, County Manager Ruffin, and Commissioner Cheek for their extensive work. She asked that thanks be conveyed to the DUHS.

Commissioner Heron thanked Chairman Reckhow for her work with the negotiations.

Budget Ordinance Amendment No. 09BCC000034—Appropriation of \$95,000 for the Jordan Lake Surveying Project and Execution of the Surveying Services Agreement with ESP Associates, P.A., for the Survey of the Normal Pool Elevation (NPE) Boundary of the Durham County Portion of Jordan

County Engineer Glen Whisler requested that the Board authorize him to enter into a contract with ESP Associates P.A., Cary, NC, to provide surveying services for the survey of the NPE Boundary of the Durham County portion of Jordan Lake in the amount not to exceed \$83,870 plus a reimbursable amount of \$2,000, thus totaling \$85,870; and to execute any other related contracts or contract amendments, if necessary, not to exceed the estimated budget of \$95,000. The estimated NPE Boundary length to be surveyed as part of this contract is 30,000 linear feet. Additional boundary will be surveyed at a unit cost of \$1.87 per linear foot. This project is to locate the 216.0' Mean Sea Level NPE Boundary of Jordan Lake within Durham County and to map the associated Critical and Protected watershed boundaries as defined by local and state watershed protection regulations.

A request for qualifications (RFQ) for surveying services for this project was advertised on October 26, 2008, and ten responses were received on November 11, 2008. A selection committee comprised of staff from County Engineering, City-County Planning, and the County Manager's Office met to review and select a firm. The firm identified as most qualified for the Jordan Lake project was interviewed on November 13, 2008. A fee proposal was submitted on November 17, 2008, which was refined during negotiations for a total of \$83,870, plus a reimbursable amount of \$2,000. The services to be rendered under this contract include a boundary survey and mapping of the Durham County portion of Jordan Lake, associated Critical and Protected watersheds, associated property lines, and property owner's information as required for submittal to the Division of Water Quality for consideration.

Mr. Whisler reported that the Engineering Department had reviewed the proposal with the City-County Planning Department, the County Manager's Office, and the County Purchasing Department and recommended that the County proceed with the work described in ESP Associates P.A. Proposal, dated November 18, 2008, and award a contract to ESP Associates

P.A. Funding for this contract would be appropriated in the Engineering Department's budget and would come from Commissioner Contingency funds. The anticipated schedule for completing the project is estimated to be ten weeks from the Notice to Proceed date. Additional time may be required depending on weather conditions and lake levels. There is no M/WBE participation at this time because ESP Associates proposes to self-perform the project. Should the opportunity arise, M/WBE participation will be encouraged and considered.

Chairman Reckhow and Commissioner Heron discussed a previous similar situation with Ellerbee Creek.

Vice-Chairman Page inquired about the recent map revision. He expressed concern that the process had not been handled fairly.

Planning Director Steve Medlin apologized for inadvertently failing to notify the Board of the changes. Staff had been working on revising the zoning atlas sheet to reflect the predetermined condition of the watershed boundaries, based upon communications with the City and County Attorneys' Offices and communications received from the Division of Water Quality (DWQ) as related to the 2006 determination that the County exceeded its legal authority when making the decision to bring back the watershed boundaries.

Chairman Reckhow asked Mr. Medlin to elaborate on the 2006 determination of the watershed boundaries.

Mr. Medlin recapped, "In early 2006, a property owner in southern Durham County, immediately adjacent to NC-751, submitted documentation to the Planning Department under the Ordinance provision that are still in place at this point that gives the Planning Director some discretionary authority to determine the watershed boundaries as it relates to parcels that have been bisected by the watershed boundaries; that information was vetted by the Planning staff. The Planning Director at that time evaluated that and made the decision that the information that had been presented to the staff was in fact better information than what the staff had prior to that time. Prior to that time, the watershed boundaries had been delineated on 1974 USGS quads, which basically showed 10-foot graduation of elevations. The survey that was presented to the staff back in 2005, which ultimately was the basis of the determination in 2006, was a survey prepared by a registered surveyor who identified eight points out in the field to establish what 216 normal pull elevations were. The Planning Director made that determination believing he was doing so in keeping with the Ordinance; however, it was subsequent to that we were made aware of the fact that the County had not followed the State rules as related to watershed determination. The County received a notice from the Division of Water Quality earlier this year that let us know that we had exceeded our authority under their rules and that we needed to submit the information to them for ratification before the actual boundaries were modified officially. As you are aware, the Board has met and has decided to submit the information as submitted to the Planning Department; that information was submitted immediately following your last public meeting two weeks ago. As a matter of fact, the State has received that information. As of today, they have sent us notice that they are requesting additional information related to that, which we are working to try to provide to them. While this was going on, we have met, as indicated, with the City and County Attorneys' Offices to seek legal advice as to what the

options are, what we need to do, and I think the consensus opinion was obvious until such time, and certainly, the County Attorney can address this as well if he feels differently. Until such time, there is determination from the Division of Water Quality as related to the information that has been submitted. In fact, there has been no change to those watershed boundaries.”

Vice-Chairman Page expressed disappointment that he was not informed that the map would be changed. He stated that due to the undermining of the process, he would not be voting in favor of authorizing the surveying contracts.

Chairman Reckhow mentioned that she also was not informed of the recent map change until this morning via an email from a citizen.

Vice-Chairman Page reiterated his disappointment that the Chair of the Board of County Commissioners was not timely informed of the change.

Chairman Reckhow and Vice-Chairman Page held a discussion regarding the County Attorney and Mr. Medlin’s input during Closed Sessions about the previous Planning Director’s actions.

County Attorney Kitchen stated his opinion that the previous Planning Director Frank Duke violated § 15ANCAC02B.0104, which is part of the NC Administrative Code; his action was “improper and illegal”. The particular provision is Paragraph O, which requires all revisions to the watershed area, the boundaries, must be submitted to the division and approved by the Environmental Management Commission prior to local government revision.

Per Vice-Chairman Page’s request, Mr. Medlin elaborated on the decision to change the map. He explained that the zoning map was converted to its original state—prior to the change made by Mr. Duke. In addition, the map was changed as citizens and staff rely on it to make land, purchasing, and financing decisions. He felt that he had an obligation to provide accurate information.

Commissioner Cheek commented that the urgent issue had been addressed by submitting the present surveys to DWQ, which are currently being reviewed. He expressed concern with agreeing to appropriate \$95,000 to conduct a new survey while the current surveys are under review. Commissioner Cheek made a motion to defer action to allow the issue to be considered by the new Board of Commissioners.

Chairman Reckhow deemed Commissioner Cheek’s motion to be inappropriate as two citizens had signed up to speak.

Chairman Reckhow justified her decision to vote against forwarding the survey, submitted by the private property owner, to DWQ. A surveyor contracted by the County would be reliable and highly thorough. She disagreed with Commissioner Cheek’s motion to leaving this matter for the new Board to undertake. “This is a situation that the current Board has dealt with for the past several months.”

Vice-Chairman Page emphasized that his point was to receive an answer as to why the map was changed within the past two weeks; Mr. Medlin provided that answer. Vice-Chairman Page concurred with Commissioner Cheek's recommendation for the new Board to have input on this matter, considering the County's economic status.

Chairman Reckhow called Melissa Rooney, Chair of the Fairfield Neighborhood Community Awareness Committee, 301 Spring Garden Drive, Durham 27713, forward for comments.

Ms. Rooney expressed disappointment in staff for not informing citizens of the map changes.

Vice-Chairman Page reminded Ms. Rooney that the email she forwarded to the Board indicated that she was aware of the changes.

Ms. Rooney denied Vice-Chairman Page's comments.

Commissioner Cheek called for a point of order.

Chairman Reckhow proceeded with public comments and called Stephen Thomson, 8321 Fayetteville Road, Durham 27713, to the podium.

Mr. Thomson supported approval of the survey contract with ESP Associates.

Commissioner Heron stated her support for approving the surveying contract.

Commissioner Cheek commented that no urgency exists for a survey to be done. Spending \$95,000 on a non-urgent survey would not be wise considering the County's economic issues.

Commissioner Cheek made a motion to defer action until the new Board decides to take further action.

Vice-Chairman Page seconded the motion.

Commissioner Heron inquired about the property owner conducting two surveys.

Chairman Reckhow responded that the first survey did not indicate the normal pool elevation of Falls Lake when the survey was conducted, which is what the State requires.

Commissioner Heron read a letter she received from a concerned citizen.

Commissioner Cousin stated that the County had acted "in good faith" on this matter. He asked the County Attorney what would happen if the survey is rejected by the State.

County Attorney Kitchen replied that the County could 1) elect to submit additional information or a new survey; or 2) contest the case action, which could take an extended period of time.

Commissioner Cousin asked, "Has the Board done anything wrong".

County Attorney Kitchen responded in the negative.

Chairman Reckhow reiterated her disagreement with deferring this item.

Commissioner Cheek restated his motion to defer action until the new Board decides to take further action.

Chairman Reckhow called for a substitute motion.

Commissioner Heron made a motion to approve the County Manager's recommendation—to approve Budget Ordinance Amendment No. 09BCC000034 appropriating \$95,000 to the Engineering Department from Commissioner Contingency funds and authorizing the execution of a surveying contract with ESP Associates, P.A., in the amount not to exceed \$83,870 plus a reimbursable amount of \$2,000, thus totaling \$85,870, and to execute any other related contracts or contract amendments, if necessary, not to exceed the estimated budget of \$95,000.

Chairman Reckhow seconded the motion.

Per Chairman Reckhow's request, County Manager Ruffin expounded on his reason for the recommendation.

Vice-Chairman Page reiterated his concern with investing \$95,000 of taxpayer dollars when creditable surveys have already been submitted.

Commissioner Cousin moved, seconded by Commissioner Heron, to extend the meeting to 11:30 p.m.

The motion carried unanimously.

Chairman Reckhow called for a vote on the substitute motion.

The motion failed with the following vote:

Ayes: Heron and Reckhow
Noes: Cheek, Cousin, and Page

Chairman Reckhow called for a vote on the original motion to defer the item.

The motion carried with the following vote:

Ayes: Cheek, Cousin, and Page
Noes: Heron and Reckhow

Establish the Lowes Grove Public-Private Project and Authorize the Sale of Property to Durham Public Schools and the State Employees Credit Union

County Manager Mike Ruffin requested that the Board establish the Lowes Grove public-private project under SL 2005-172 and authorize the sale of portions of the former Lowes Grove School property to Durham Public Schools (DPS) and the State Employees Credit Union (SECU). He recapped that on May 14, 2004, Durham County purchased the 16.062-acre Lowes Grove School property from Durham Public Schools for \$1,000,000 for development of the South Regional Library. The property is located on the northeast corner of NC-54 and South Alston Avenue. The County desires to participate in a public-private project on this property with the SECU for construction of a credit union and with DPS for construction of an elementary school. The project would include shared roads and a shared stormwater facility. The library will occupy a 4.69-acre tract adjacent to South Alston Avenue shown as Lot 1 on the plat. The SECU would occupy an approximate 2-acre lot in the southeast corner, and DPS would occupy the remainder. A conceptual development plan shows the library, as well as the school and SECU.

County Manager Ruffin noted that the County had received an offer to purchase Lot 4 from SECU for \$1,200,000. The tract is 2.044 acres and would require easements for ingress and egress along the proposed roads running through the property, as well as necessary easements to access the stormwater facility. The County had also received an offer to purchase Lots 2, 3, and 5, a total 8.982 acres, at a cost of \$62,258.75 per acre from DPS for a total price of \$559,208.09, less the demolition credit estimated to be \$100,000 for a purchase price of \$459,208.09. The offers are both contingent upon subdivision of the parcels and execution of a three-party development agreement to address issues such as construction and maintenance of a shared stormwater facility; construction; and maintenance of the shared internal driveways, access easements, shared parking arrangements, site lighting and landscaping, signage, and other issues of shared interest.

Commissioner Cheek moved, seconded by Vice-Chairman Page, to authorize the sale of the properties contingent upon subdivision of the property and negotiation of a three-party development agreement; authorize the County Manager to execute the development agreement and complete the sale of the property.

Chairman Reckhow commented that a great reuse had been created for the site, which preserves its history.

The motion carried unanimously.

Board and Commission Appointments

Vonda Sessoms, Clerk to the Board, distributed ballots to the Board to make appointments to boards and commissions.

The following appointments were made:

Animal Control Advisory Committee

Frances Foster

Board of Adjustment

Angie Elkins (Alternate; recommended by JCCPC)

Durham County Hospital Corporation

James P. Weaver

Durham-Wake Service District Advisory Committee

Frances Neary (primary recommendation)

William Parker (primary recommendation)

David Gouveia (primary recommendation)

Donna Marcotte (primary recommendation)

Chris Long (primary recommendation)

EMS Council

Presley Creery (Consumer)

Adjournment

There being no further business, Chairman Reckhow adjourned the meeting at 11:05 p.m.

Respectfully Submitted,

Yvonne R. Gordon
Deputy Clerk to the Board