

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

Monday, April 28, 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 Reckhow

**Opening of Regular Session**

Chairman Reckhow welcomed everyone to the Monday, April 28, 2008 Regular Session of the Board of County Commissioners. She requested that persons rise for the Pledge of Allegiance to the Flag.

**Agenda Adjustments**

Chairman Reckhow noted the revised agendas in the folders. The revisions include the deletion of item No. 11, Public Hearing—Street Closing—T.W. Alexander Drive (SC07-10), and the addition of item No. 13a, Acquisition of Lakewood YMCA Property. She asked if there were other changes to the agenda.

No one responded.

**Announcements**

Chairman Reckhow reiterated that One-Stop Early Voting is underway with a record-breaking turnout. She informed citizens of the following three One-Stop Early Voting sites:

- Board of Elections Office at 706 West Corporation Street;
- North Carolina Central University Campus: Parish Center at 1400 S. Alston Avenue (The former Holy Cross Catholic Church); and
- North Regional Library at 221 Milton Road.

Chairman Reckhow stated that voting hours are from 9:00 a.m. until 5:30 p.m. through Friday. On Saturday, May 3, One-Stop Voting ends at 1:00 p.m. The primary election is next Tuesday, May 6. The polls will be open from 6:30 a.m. to 7:30 p.m.

Commissioner Heron stated that earlier in the week she attended the Durham Careers in Construction, which is a class in construction skills and model houses. Student participation

ranged from elementary grades through high school. The Armory was full of model houses that the students constructed. The event was sponsored by men and women in construction in the area. Commissioner Heron encouraged everyone to attend the event when it occurs again. "You would be proud of what many of our kids in our schools are doing."

Vice-Chairman Page prefaced his remarks by calling attention to the extraordinary work accomplished by County employees who voluntarily participate in the community. He stated that this past Saturday he stopped by the Farmer's Market where the Department of Social Services staff joined with the North Carolina Social Services Association to provide hygiene items for middle school students. They did an exceptional job on this highly successful project. He thanked the employees, particularly Ronnie Butler from General Services, for taking their time on a Saturday to do this work.

Commissioner Cheek stated that at the Board's last regular meeting, Victoria Peterson asserted that the County was funding for-profit corporations—Downtown Durham Inc. and the Greater Durham Chamber of Commerce. Commissioner Cheek informed the public that her remarks were untrue; the County Attorney's office has confirmed that both Downtown Durham Inc. and the Greater Durham Chamber of Commerce are nonprofits and exempt entities under Internal Revenue Code 501(c)(6). As a personal comment, Commissioner Cheek stated that he does not mind criticism; however, it is totally unfair and inappropriate for citizens to attend meetings and make accusations (without a basis in truth) that are critical of a county staff and administration that work very hard to do the right thing. "Please feel free to criticize, but if you do, make sure there is truth attached."

### **Minutes**

Commissioner Heron moved, seconded by Commissioner Cheek, to approve as submitted the April 7, 2008 Worksession and the April 14, 2008 Regular Session Minutes of the Board.

The motion carried unanimously.

### **Foster Care Month Proclamation**

Chairman Reckhow requested that Vice-Chairman Page, who is a member of the Social Services Board, read the proclamation.

The proclamation read by Vice-Chairman Page follows:

#### PROCLAMATION

WHEREAS, the family, serving as the primary source of love, identity, self-esteem, and support, is the foundation of our communities and our State; and

WHEREAS, over 513,000 American children are in foster care because their own families are in crisis and unable to provide for their essential well-being; and

WHEREAS, in Durham County, there were 239 children and youth in foster care on April 1, 2008 being provided with a safe, secure, and stable home, along with the compassion and nurture of a foster family; and

WHEREAS, foster families, who open their homes and hearts and offer help to children whose families are in crisis, play a vital role helping children and families heal and reconnect and launching children into successful adulthood; and

WHEREAS, the growth in the foster care populations results in a greater need for more foster families; and

WHEREAS, the Durham County Department of Social Services is joined by numerous individuals and public and private organizations who work to increase public awareness of the needs of children in and leaving foster care, as well as the enduring and valuable contribution of foster parents, and the foster care “system” is only as good as those who choose to be part of it; and

WHEREAS, the Durham County foster care system depends on the active support and involvement of the Durham community:

NOW, THEREFORE, BE IT RESOLVED that I, Ellen W. Reckhow, Chairman of the Durham County Board of Commissioners, do hereby proclaim May 2008, as

#### FOSTER CARE MONTH.

I commend this observance to our community and urge all citizens to come forward and do something positive that will help *change a lifetime* for children and youth in foster care.

This the 28<sup>th</sup> day of April, 2008.

/s/ Ellen W. Reckhow, Chairman

---

Chairman Reckhow recognized Sammy Haithcock, Social Services Director.

Mr. Haithcock introduced Jovetta Whitfield, Foster Care Program Manager. Social Services efforts are to try to prevent children from having to go into foster care; however, Durham County is lucky to have people who are willing to take the responsibility of the children.

On behalf of the Durham County Department of Social Services and foster parents, Ms. Whitfield thanked the Commissioners for recognizing foster parents and for the proclamation. During the month of May, foster parents will be recognized for their efforts. “Anyone interested in becoming a foster parent or in supporting a foster parent, please call 560-8092; someone will gladly help you.”

Foster parents Mercedes Shepherd and Johnnie Palmer (new President of the Foster Parents Association) introduced themselves and made a few comments.

Chairman Reckhow asked for a round of applause from the audience for foster parents.

Mr. Whitfield accepted the proclamation.

**Proclamation of May as Mental Health Month in Durham County**

Chairman Reckhow announced that the next proclamation is to declare May as Mental Health Month in Durham County. She invited Doug Fuller from The Durham Center to say a few words after the reading of the proclamation.

Chairman Reckhow read the following proclamation into the record:

PROCLAMATION

WHEREAS, mental health is essential to everyone's overall physical health and emotional well-being; and

WHEREAS, mental illness will strike one in five adults and children in a given year regardless of age, gender, race, ethnicity, religion, or economic status; and

WHEREAS, an estimated two-thirds of adults and young people who have mental health disorders are not receiving the help they need; and

WHEREAS, the cost of untreated and mistreated mental illnesses to American businesses, governments, and families has grown to over \$100 billion annually; and

WHEREAS, community-based services, incorporating a System of Care approach, that respond to individual and family needs have proven cost-effective and beneficial to consumers and the community; and

WHEREAS, the mental health advocacy groups locally and nationwide observe Mental Health Month each May to raise awareness and understanding of mental health and illness:

NOW, THEREFORE, BE IT RESOLVED that I, Ellen W. Reckhow, Chairman of the Durham County Board of Commissioners, do hereby proclaim the month of May 2008 as

“MENTAL HEALTH MONTH”

in Durham County. I call upon the citizens, government agencies, public and private institutions, businesses, and schools in Durham County to recommit our community to increasing awareness and understanding of mental illness and to provide for appropriate and accessible services for all people who have mental illnesses.

This the 28<sup>th</sup> day of April, 2008.

/s/ Ellen W. Reckhow, Chairman

---

Mr. Fuller thanked Chairman Reckhow. He stated that Ellen Holliman, Area Director, The Durham Center, sends her regrets about not being able to attend the meeting. Ms. Holliman asked Mr. Fuller to express to the Commissioners and to the Manager and his staff great appreciation for ongoing support for the work of The Durham Center.

Mr. Fuller accepted Proclamation declaring May 2008 as Mental Health Month in Durham.

### **Older Americans Month Proclamation**

Chairman Reckhow stated that the last proclamation is Older Americans Month Proclamation. She requested that Commissioner Heron read the following proclamation:

#### PROCLAMATION

WHEREAS, Durham County is home to more than 23,640 residents who are 60 years of age or older; and

WHEREAS, the older residents of Durham County represent a dramatic trend in our nation's demographic make up; and

WHEREAS, older persons are diverse, respected citizens who continue to contribute to our nation's social and economic well-being; and

WHEREAS, a growing number of baby boomers are rapidly joining the population of older residents, and the number of individuals providing care to family members and friends is expanding significantly; and

WHEREAS, the Department of Social Services provides in-home services for more than 600 older residents to allow them to remain independent at home and prevent institutional placements; and

WHEREAS, more than 850 older Durham residents live in 34 adult care homes that are monitored for safety by the Department of Social Services; and

WHEREAS, more than 370 referrals are made to the Department of Social Services annually for evaluation of abuse, neglect, or exploitation of adults; and

WHEREAS, the opportunities and challenges that lie ahead require the Durham County community to think differently about health and long-term care, and work together to rebalance and modernize our current systems so that we may adequately plan for and address the needs of current and future generations; and

WHEREAS, older persons are entitled to lives of dignity and independence through:

- Streamlined access to information and community services;
- Information about cost-effective prevention practices and activities that will improve health and quality of life; and
- Innovative, affordable option for care and support that will provide an array of choice about how and where to live:

NOW, THEREFORE, BE IT RESOLVED that I, Ellen W. Reckhow, Chairman of the Durham County Board of Commissioners, do hereby proclaim May 2008 as

“OLDER AMERICANS MONTH”.

I commend this observance to our residents and urge all citizens, community agencies, faith groups, medical facilities, and businesses to join with the Department of Social Services, Council for Senior Citizens, and Durham’s Senior Adult Results Based Accountability Committee to honor older adults, and those who care for them, during May and throughout the year. I urge all to promote and participate in activities that contribute to helping older Americans make choices for a healthy and rewarding future.

This the 28<sup>th</sup> day of April, 2008.

/s/ Ellen W. Reckhow, Chairman

---

Director of Social Services Sammy Haithcock spoke about the community partners that share in trying to ensure that older adults’ needs are met. He thanked all of the partners, as well as the County Commissioners, for recognizing Older Americans’ Month.

On behalf of the Senior Results Based Accountability (RBA) group, Gail Harris (Assistant Public Health Director) thanked the Commissioners for elevating them to the status of a RBA group. The goal is to make the lives of Durham’s seniors better by leveraging the resources, time, and talent of all of the partners in the community.

Commissioner Heron personally thanked Ms. Harris for her work.

### **Introduction of the Durham City-County Sustainability Manager**

Chairman Reckhow announced the introduction of the new City-County Sustainability Manager Tobin Freid who began work on April 7, 2008. She then recognized Glen Whisler, County Engineer, to say a few words about Ms. Freid.

Mr. Whisler introduced Ms. Freid as the first City-County Sustainability Manager. Durham County and the City of Durham were the first local governments in North Carolina to adopt a Greenhouse Gas Reduction Plan in September 2007. The sustainability manager position was established as a joint City-County position to coordinate the implementation of the

Greenhouse Gas Reduction Plan. The Plan has ambitious goals calling for a 50% reduction for City and County governments and a 30% reduction for the community from the 2005 levels by 2030. Ms. Freid comes to the County from Triangle J Council of Governments where she worked for six years on transportation and energy issues. Prior to that, she was employed by the Environmental Management Office of the US Department of Energy. She holds Masters Degrees in Environmental Management from Duke University and Environmental Policy from Tufts University. Initially, Ms. Freid will be working on both City and County Government initiatives to set a good example for the community. Both organizations are working diligently to encourage sustainability, but with Ms. Freid's leadership, more can be accomplished.

Ms. Freid thanked Mr. Whisler for the comments. She then thanked the County Commissioners for passing the Greenhouse Gas Reduction Plan and other environmental initiatives. Ms. Freid expressed that her goal is to have Durham become synonymous with sustainability so when people think "Durham", they think "green".

### **Consent Agenda**

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

- a. Receive the 2007 Annual Report of the Development Review Board;
- \*b. Budget Ordinance Amendment No. 08BCC000069— Social Services—Recognize Additional Smart Start Subsidy Revenue with a total increase of \$49,088;
- \*c. Budget Ordinance Amendment No. 08BCC000070— Public Health—Recognize Revenue in the Amount of \$19,241 from the Department of Health and Human Services to supplement technological improvements for the Environmental Health Division;
- d. Approve the FY 2008-2009 Annual Action Plan for the use of CDBG, HOME, ADDI, and ESG funds for submission to the U.S. Department of Housing and Urban Development;  
*Chairman Reckhow thanked the staff for listening to the comments of the Board at the last meeting and for recommending the restoration of the funds for the Criminal Justice Resource Center program. She requested that Department of Community Development staff apprise the County Manager as to the City Council's action on the recommendation.*
- e. Ambulance Service Franchise Renewal (approve the three-year renewal request for Bahama, Bethesda, Parkwood, and Redwood Volunteer Fire Departments, and

- Duke LifeFlight; this is the second of two required approvals);
- \*f. Property Tax Releases and Refunds for Fiscal Year 2007-2008 (accept the property tax release and refund report for March 2008 as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report);
  - \*g. Resolution to Encourage North Carolina State University to Maintain Public Recreational Use of NCSU Hill Forest (approve the resolution, a copy of which will be forwarded to the Department of Forestry at North Carolina State University);  
*Chairman Reckhow requested that the resolution also be sent to the President of the Friends of Hill Forest who brought the issue forward.*
  - h. Civic Center Lease—Office Space Relocation for S&H Contracting Services Inc. (approve and allow staff to make changes to the lease provided such changes do not materially affect the intent and purpose of the lease); and
  - i. Vehicles and Equipment Replacement Loan (accept the Sun Trust bid Option 1 for 2.675% with a 103% of par pre-payment penalty).

\*Documents related to these items follow:

Consent Agenda Item No. b. Budget Ordinance Amendment No. 08BCC000069—Social Services—Recognize Additional Smart Start Subsidy Revenue with a total increase of \$49,088.

DURHAM COUNTY, NORTH CAROLINA  
 FY 2007-08 Budget Ordinance  
 Amendment No. 08BCC000069

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2007-08 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	\$364,611,854	\$49,088	\$364,660,942

Expenditures:

<u>Function</u>			
<u>GENERAL FUND</u>			
Human Services	\$419,022,038	\$49,088	\$419,071,126

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



This the 28<sup>th</sup> day of April, 2008.

---

Consent Agenda Item No. c. Budget Ordinance Amendment No. 08BCC000070—Public Health—Recognize Revenue in the Amount of \$19,241 from the Department of Health and Human Services to supplement technological improvements for the Environmental Health Division.

DURHAM COUNTY, NORTH CAROLINA  
FY 2007-08 Budget Ordinance  
Amendment No. 08BCC000070

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2007-08 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	\$364,660,942	\$19,241	\$364,680,183

Expenditures:

<u>Function</u>			
<u>GENERAL FUND</u>			
Human Services	\$419,071,126	\$19,241	\$419,090,367

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

This the 28<sup>th</sup> day of April, 2008.

---

Consent Agenda Item No. f. Property Tax Releases and Refunds for Fiscal Year 2007-2008 (accept the property tax release and refund report for March 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 March 2008.

Releases & Refunds for 2008 Taxes:

Real Estate	\$ 1,279.49
Personal	<u>\$ 6,424.59</u>
Total for 2008 Taxes and Fees	\$ 7,704.08

Releases & Refunds for 2007 Taxes:

Real Estate	\$36,473.69
Personal	\$ 3,184.24

Registered Vehicles	\$27,463.50
Vehicle Fees	<u>\$ 660.00</u>
Total for 2007 Taxes and Fees	\$67,781.43

Prior years' (2002-2006) releases and refunds for March 2008 are in the amount of \$11,181.06. The total current year and prior years' releases and refunds amount to \$86,666.57.

(Recorded in Appendix A in the Permanent Supplement of the April 28, 2008 Minutes of the Board.)

---

Consent Agenda Item No. g. Resolution to Encourage North Carolina State University to Maintain Public Recreational Use of NCSU Hill Forest (approve the resolution, a copy of which will be forwarded to the Department of Forestry at North Carolina State University).

**RESOLUTION TO ENCOURAGE NORTH CAROLINA STATE UNIVERSITY  
TO MAINTAIN PUBLIC RECREATIONAL USE OF NCSU HILL FOREST**

WHEREAS, the 2,450-acre Hill Demonstration Forest located in northern Durham County is a teaching forest held by North Carolina State University (NCSU) for the main purpose of educating students of forestry within the College of Natural Resources; and

WHEREAS, Hill Forest has also accommodated general recreation uses for over 70 years and is a cherished resource for the northern Durham community at large that is loved and enjoyed by hikers, mountain bikers, dog walkers, kayakers, hunters, birders, and equestrians; and

WHEREAS, NCSU is considering measures to restrict recreational uses that could include closing the Forest entirely to the public recreational community; and

WHEREAS, Friends of Hill Forest is a non-profit organization formed by the community to work with NCSU to address their concerns with recreational use of the forest, while supporting NCSU's objectives; and

WHEREAS, the Friends of Hill Forest has as its mission to support recreational use of Hill Forest, including equestrians, kayakers, mountain bikers, hikers, birders, dog walkers, hunters, fishermen, and general users wishing to enjoy the Hill Demonstration Forest:

NOW, THEREFORE, BE IT RESOLVED that we, the Durham Board of County Commissioners, find that NCSU Hill Forest is a vital part of the Durham County quality of life.

BE IT FURTHER RESOLVED that we hereby urge the NCSU Department of Forestry to work with the community and Friends of Hill Forest to find solutions that address trail and water quality issues while accommodating continued responsible recreational use of the

forest by the general public.

This the 28<sup>th</sup> day of April, 2008.

/s/ All Five Commissioners

**Public Hearing—Zoning Map Change—Angier Haven (Z05-45)**

Scott Whiteman, Planning Supervisor, City-County Planning Department, certified for the record that all notifications for this item have been carried out per Ordinance requirements and that the affidavits are on file for review. Mr. Whiteman stated that the Board is requested to approve a zoning map change for a 33.5-acre site located on the east side of Angier Avenue, west of Ruritan Road, and south of Glover Road with the effective date of the amendment delayed until the ordinance is approved by both Governing Bodies. Request: RS-20 (Residential Suburban-20) and CG (Commercial General); F/J-B (partial) to RS-M(D) (Residential Suburban Multifamily); F/J-B (partial) The proposed use is 120 single-family lots. A development plan was submitted with this request. The committed elements follow:

1. Maximum number of units is 120.
2. Dedicate 10 feet of additional right-of-way on Angier Avenue.
3. Southbound left-turn lane on Angier Avenue at Ruritan Road.
4. Southbound left-turn land on Angier Avenue at Street A.
5. Install one half of 32 foot back to back road section on Ruritan Road.
6. Dedicate 100 foot greenway, 50 foot each side of creek as shown on sheet D-2.
7. Tree save areas shall be provided as shown on sheet D-2.
8. Provide a 25-foot undisturbed vegetated buffer along Angier Avenue and supplement to achieve 0.2 opacity. This buffer shall be completed prior to the first certificate of occupancy.

Mr. Whiteman stated that the action is consistent with the policies of the *Comprehensive Plan*, as well as the Future Land Use Map, which designates this site for Low-Medium Residential. Staff recommends approval of this request, as does the Planning Commission which held a public hearing on March 11, 2008 and recommended approval by a vote of 8 to 3.

Mr. Whiteman answered a question by Chairman Reckhow that there is no minimum lot size commitment. The minimum in the RSM District is 3,500 square feet. He explained to Chairman Reckhow that RSM stands for Residential Suburban Multifamily. The change is requested because when the project was submitted under the Zoning Ordinance in 2005, there was a different method of density calculation. In order to meet the minimum density for the Comprehensive Plan, which is four units per acre, RSM District was needed; it was the only one consistent with the four to eight dwelling units per acre.

Commissioner Heron spoke about several intermittent streams and one perennial stream running through the middle of the site, as well as two wetland areas.

Mr. Whiteman informed Commissioner Heron that a stream buffer is required between 50 feet and 150 feet along the intermittent and perennial streams. Since the wetland areas are less than one acre, they are not regulated and do not need to be buffered. Mr. Whiteman stated that the RSM is being requested, but the proposal is for Single-Family Residential.

Commissioner Heron voiced her opinion that she needed more information than the staff report contains about minimum lot size, the stormwater ponds, tree preservation, mass grading, etc.

Mr. Whiteman stated that the primary concern of the Planning Commission was that the rural road may not be able to handle the additional traffic generated by the development. Another concern of the Planning Commission was that the applicant declined to provide a committed element stating a minimum of four feet of additional asphalt for a bicycle lane.

Chairman Reckhow opened the public hearing that was properly advertised.

Tony Tate, 5011 Southpark Drive, Durham, NC 27713, landscape architect and land planner, represented R. D. Construction on this matter. He provided a brief synopsis of the project's history. Mr. Tate stated that this property is owned by R. D. Construction. The project has been before the Board in the past for a Comprehensive Plan change. The density is low-medium, which is greater than four units per acre. R. D. Construction is proposing less than four units to the acre, which is basically low density. The decision was made to request RS-M zoning to stay within the Comprehensive Plan. The minimum lot size shown is 5,000 square feet, but has not been added as a committed element. The wetlands are contained within the buffers, so there will be no development on them. This neighborhood is in need of quality development and deserves a nice project. Fourteen-foot outside lanes are being proposed for the entire width of the turn lanes, which extends well beyond each side of the development on each side of the road. This will provide adequate bicycle travel on that section of Angier Avenue. Durham Open Space and Trails Commission (DOST) has requested three tree-save areas; two of the three requests will be honored. A tot-lot is shown on the site plan and will be offered as a committed element.

Per a request by Commissioner Cheek, Mr. Tate pointed to the tree save areas on the plat. He stated that the interior portion would be mass graded.

Commissioner Cheek voiced concern about the mass grading.

Chairman Reckhow requested that Mr. Tate respond point by point on the DOST letter as follows:

- Applicant has shown only a typical lot pattern on the plan. With Little Lick Creek and the requirement for numerous detention ponds indicated, we would prefer to see the open space and tree coverage areas indicated as committed elements prior to any approvals.

*Mr. Tate replied that the developer would commit to the open space and tree coverage areas.*

- Dedicate a 100' greenway easement along the creek.

*Done.*

- Recommended that the detention ponds be developed and managed in a bio retention method.

*A detention basin is shown on the plan, which is water quantity control. Bio retention basins are very costly, must be bonded in perpetuity, be maintained, and redone every four years. This is a very expensive ticket item for a homeowner's association.*

- In addition, several areas with large hardwoods are noted. These areas should be considered for retention as part of the open space tree coverage adjacent to stream buffers as example: street H, street D near proposed pond, and street G near the cul-de-sac.

*Mr. Tate informed the Commissioners that the street letters are not part of the current plan; they go back to a previous plan. Two of the tree save areas requested will be provided.*

- No means of access for the designated useable open space area is provided. We request attention to this oversight.

*Done.*

The Commissioners aired their concerns about the lack of a lot-size commitment (5,000 square feet too small for the area), the two-foot bike lane as opposed to a four-foot lane, and the approach of mass grading (neighborhoods looking like a moonscape).

Chairman Reckhow suggested deferring the item for two agenda cycles in order for more work to be done.

Commissioner Cheek agreed with Chairman Reckhow about giving the developer an opportunity to reassess the plan and bring back a revised plan.

Chairman Reckhow summarized that the Board desires the committed elements as follows:

- developing on a lot-by-lot basis to preserve the mature vegetation as much as possible (this would enhance the property value of the lots; larger trees do not need watering like new vegetation);
- the minimum lot size to be as large as possible;
- open space and tree save areas; and
- tot-lot.

County Attorney Chuck Kitchen stated for the record that satisfying the request of the Board would not commit the Board to voting in a particular manner.

Commissioner Heron continued to voice her major concern which involved the detention ponds.

County Manager Mike Ruffin stated for the record that the Board would not meet on Monday, May 26, but on Tuesday, May 27, due to the Memorial Day Holiday.

Commissioner Cheek moved, seconded by Commissioner Heron, to continue the public hearing until the May 27 Regular Session.

The motion carried unanimously.

### **County of Durham v. Lynn E. Graham**

County Manager Mike Ruffin introduced this item by stating that the Board is convening in a quasi-judicial format. Attorneys for both sides are present. In the past, the attorneys have not been allowed to speak; however, the statute permits them to speak at the Board's discretion. The Board was asked to consider whether to adopt Administrative Law Judge Beecher R. Gray's Order entering judgment in favor of Lynn Graham. Judge Gray ruled that "the matter has been fully resolved by prior litigation and the Doctrine of Res Judicata should apply." This request for Board action is made pursuant to N.C.G.S. section 150B-36 entitled Final decision, which provides in pertinent part within subsection (d):

For any decision by the administrative law judge granting judgment on the pleadings or summary judgment that disposes of all issues in the contested case, the agency shall make a final decision. If the agency does not adopt the administrative law judge's decision, it shall set forth the basis for failing to adopt the decision and shall remand the case to the administrative law judge for hearing. The party aggrieved by the agency's decision shall be entitled to immediate judicial review of the decision under Article 4 of this Chapter.

County Manager Mike Ruffin stated that he seriously struggled with his recommendation to reject Judge Gray's decision, as the decision does not address the time in violation that was not considered by the Court in the first action, and the decision in the first action did not constitute a final binding judgment under the doctrine of res judicata (which means that the case has been adjudicated and cannot be re-litigated).

Commissioner Heron's primary concern was that the property owner did not address the violation of the Sedimentation and Erosion Control Ordinance within a reasonable time period. Retribution should be made for violating Durham County law. She reiterated this concern numerous times during the discussion.

Commissioner Cheek suggested that the attorneys be allowed to speak.

Chairman Reckhow agreed to give the attorneys five minutes to present their arguments.

The attorneys for each side made their presentations to the Board expressing their positions.

Sam Roberti, Attorney for Lynn Graham, made a presentation expressing his client's position. He submitted that the facts are not in dispute and that the case has been fully heard. Any remedy must take place in a higher court.

Marie Inserra, Assistant County Attorney, disagreed with several points made by Mr. Roberti. Her contention was that the Board is only to consider Judge Gray's decision of Res Judicata, which requires a final judgment on the merits. The County's argument is that a hearing has not been held on the merits of the case during a particular time period; therefore, the first prong of Res Judicata is not satisfied.

Attorney Inserra responded to questions by Chairman Reckhow as to why the case was not heard for the entire time span. She explained that the notice of violation and the notice of civil penalty assessment (which mimicked the statute) failed to specify a defined time period (with an end date) and a clear monetary amount. The judges had concerns about the way the notice was written, which is the law of the case because it was not pursued on appeal.

Attorney Inserra clarified for Vice-Chairman Page that Judge Hobgood and Judge Stephens ruled that the notice of violation was deficient because it failed to specify a defined time period. She stated that this case is an anomaly because most people respond to violations rather quickly as opposed to Mr. Graham's lack of compliance. Due to the impact of this particular ruling, clear end dates are being defined. In addition, the attorney's office is moving immediately for injunctive relief.

Attorney Inserra answered questions posed by Commissioner Cheek. She replied that the property is no longer owned by Mr. Graham; the property is owned by U.S. Capital Partners, which was issued a violation of noncompliance in December since no plan has been filed. Action is currently taking place to make it in compliance with the UDO. However, the property is stabilized in such that no risk is posed. There is no evidence that any damage has been caused by the conditions on the property.

Attorney Robert informed the Board that Mr. Graham totally complied with Judge Jones' preliminary injunction. The property was completely stabilized under difficult circumstances.

Commissioner Cheek stated that this case is a "tangled web, a mess that will get no cleaner as we go along". He stated that in the final analysis, the property is moving toward compliance with the Sedimentation and Erosion Control Ordinance. Commissioner Cheek suggested that the County adopt the findings of the administrative law judge, not because the County agrees with the findings, but because this issue should be brought to an end.

Commissioner Heron agreed with Commissioner Cheek in that the notices and procedures should be more precise. She suggested that some type of mediation occur (with a penalty) so that a precedent is not set.

County Manager Mike Ruffin stated that the best place to decide the case is in the court system, not in the County Commissioners' Chambers. He upheld his original recommendation.

Following several additional questions from Chairman Reckhow and Commissioner Heron, Attorney Inserra stated that signed decisions must be presented by Friday unless the decision is made to adopt Judge Gray's decision.

Attorney Inserra informed Chairman Reckhow that the County has a "good argument" that the time period was not heard.

Vice-Chairman Page expressed that he was inclined to agree with Commissioner Cheek that this case should be brought to an end. He asked additional questions for clarity.

Commissioner Cheek stated the complexities of this specific case. "No good can come out of the County pursuing this case."

Per a question by Vice-Chairman Page, County Manager Ruffin responded that this is the first case since his becoming County Manager that the judge did not find in favor of the County.

Commissioner Heron moved to accept the County Manager's recommendation and adopt Judge Gray's decision.

The motion died for lack of a second.

Commissioner Cheek moved, seconded by Vice-Chairman Page, to adopt Judge Gray's decision ("simply in order to put an end to this").

Vice-Chairman Page stated that he was supporting Commissioner Cheek's motion because he feels that Mr. Graham has "dearly" paid for his mistake. The Board should always deal with cases on a case-by-case basis. Too much of a risk is being taken if the County moves forward.

The motion carried with the following vote:

Ayes: Cheek, Cousin, and Page  
Noes: Heron and Reckhow  
Absent: None



Chairman Reckhow requested a memo from staff regarding steps that are being taken to ensure that this type of thing does not happen again.

County Attorney Kitchen stated that after the ruling, staff looked at the interpretation of the statute. The County should go forward in next year's long session of the General Assembly to request an amendment of the statute to allow the assessment of a civil penalty until compliance, then give the violator another notice of the total amount. Otherwise the violator has no clue as to the amount of the civil penalty. The problem with this case is that the violator would not agree to comply with the Ordinance.

Chairman Reckhow stated that further discussion of this item may take place at a future worksession.

### **Acquisition of Lakewood YMCA Property**

The Board was requested to consider and approve the deal points related to the acquisition and renovation of the Lakewood YMCA property located at 2119 Chapel Hill Road, owned by the Young Men's Christian Association of the Triangle Area Inc. (YMCA), and authorize the Manager to enter into a contract to purchase the property.

In May 2007, YMCA officials announced that they were considering closing the Lakewood facility. Since then, members and residents in the surrounding neighborhoods have mobilized to try to protect and preserve the facility as a stable and valuable community activity center. Due to the facilities extensive renovation needs, the YMCA sought a partner to purchase all or a portion of the Lakewood facility and lease back the portion of the facility needed to operate a successful YMCA. Recognizing the significant benefit to the community and the potential to address additional educational needs of Durham residents, the County and the YMCA agree that the County will significantly benefit from its participation in a public-private redevelopment of the Lakewood facility as a local YMCA and a Montessori Middle School.

Pursuant to Session Law 205-172, the County may participate in the development of a public-private project. The proposed development includes the County purchasing the entire YMCA property, which includes several buildings, totaling approximately 57,350 square feet on approximately 7.4 acres, and leasing back to the YMCA approximately 18,000 square feet of the facility needed to operate a successful YMCA. Both the County and the YMCA will be responsible for making certain investments and improvements to the property. Additionally, the County, pursuant to the existing Interlocal Agreement with Durham Public Schools, will construct a Montessori Middle School on the site on behalf of DPS. Once completed, the entire site will be conveyed to the Schools, subject to the lease to the YMCA.

The proposed Business Deal Points have been approved by the YMCA of the Triangle and the School Superintendent. The School Board will consider the business deal points at its May 22 meeting. Based on the deal points, a development agreement will be drafted and brought back for the Commissioner approval.

A contract to purchase the property for \$250,000, with a lease back to the YMCA for a portion of the facility for 15 years, has been drawn up. The lease has a present value of \$1,893,003 and is contingent upon the parties successfully negotiating a development agreement and lease to the YMCA. The sale of the property will take place no later than December 31, 2008.

County Manager Mike Ruffin outlined the Business Deal Points related to the acquisition of the Lakewood YMCA property. The property of 7.4 acres would be purchased with the 57,000+ square-foot facility in the amount of \$250,000. The County would agree to a 15-year lease back to the YMCA of approximately 18,000 square feet and would perform improvements (code violations [HVAC, electrical improvements, plumbing improvements]) of up to \$8 million. A portion of the property would be used for a Montessori Middle School. The YMCA would spend up to \$850,000 making interior improvements to the facility to ready it for use as a YMCA. The School System has asked that the deal points be extended until the 2011 school year, if need be, and that the deal points reflect a secondary school as opposed to a Montessori Middle School. This public-private partnership has a “triple” win for the community and is in keeping with the many-year philosophy of the school board and the Commissioners to use properties jointly.

Chairman Reckhow noted the provision in the deal points for the YMCA to have an after school program and summer day camp, utilizing the gym and the cafeteria in the secondary school.

Chairman Reckhow stated that the school would provide additional school capacity in southwest Durham, which is rapidly growing.

Commissioner Cheek commended the County Manager on his efforts in this partnership. He attended a number of “Save the Y” meetings where tremendous concern was expressed by the community about what would happen to the YMCA. “This is a wonderful and winning situation.”

Commissioner Heron concurred with Commissioner Cheek’s comments.

Commissioner Cheek moved, seconded by Commissioner Heron, to approve the Business Deal Points related to the acquisition of the Lakewood YMCA property, authorize the Manager to enter into a Contract to Purchase said property in the amount of \$250,000 with a 15-year lease back to the YMCA, and authorize staff to draft the necessary legal documents for Board approval for the lease and renovation of the facility.

The motion carried unanimously.

### **Durham County Legislative Agenda**

Deborah Craig-Ray, Assistant County Manager, stated that the Board is requested to approve the Durham County Legislative Agenda for 2008. The agenda is the result of two previous meetings with the Board in which various items were discussed, and staff was instructed to finalize in time for the scheduled meeting with the Durham Legislative Delegation on April 30 at 8:00 a.m. in the County Commissioners' Chambers. (The North Carolina General Assembly will convene the Short Session at Noon on May 13 in Raleigh. According to the adjournment resolution, Budget Bills must be submitted no later than 4:00 p.m. on Friday, May 16 to bill drafting. Local Bills must be submitted to bill drafting by 4:00 p.m. on Wednesday, May 21, and filed in the House or Senate by May 28.

Chairman Reckhow noted the new item "Seek Legislation to Impose an Impact Fee to Fund School Construction".

Ms. Craig-Ray reviewed the legislative agenda.

Per a request by Vice-Chairman Page, Chairman Reckhow replied that an occupancy tax increase was discussed briefly at the Joint City-County Committee meeting; however, the consensus was that legislation should be sought for a prepared food tax, since the occupancy tax does not raise as much revenue.

Discussion ensued regarding an occupancy tax increase.

County Manager Mike Ruffin commented that great opposition would be expressed toward an occupancy tax.

Vice-Chairman Page voiced his reservations regarding the prepared food tax and how it will impact the "every day" citizens. He explained his qualms with the tax.

County Attorney Chuck Kitchen explained the problem with asking for both the prepared food tax and an increase in the occupancy tax.

Commissioner Cheek informed Vice-Chairman Page that the prepared food tax would be on the November ballot as a referendum. The citizens of Durham will have an opportunity to vote on the tax.

A brief discussion followed about seeking legislation to impose an impact fee to fund school construction. Commissioner Cheek expressed his opinion that the legislation will not pass; therefore, he did not want it to be an impediment to a tax that has a chance of passing, i.e. the prepared food tax.

The Commissioners decided to solicit feedback from the Legislators at Wednesday's meeting regarding impact fees.

The Board instructed Ms. Craig-Ray to make certain changes to the wording and order of the legislative agenda.

Chairman Reckhow directed Ms. Craig-Ray to email the revised agenda to the Legislators and to the Commissioners.

Chairman Reckhow reminded the Board of the Legislative Breakfast on Wednesday.

Commissioner Cheek moved, seconded by Commissioner Cousin, to approve the legislative agenda with the changes.

The motion carried unanimously.

The legislative agenda items follow:

1. Seek legislation to allow boards of education to obtain refunds of sales and use taxes.
2. Seek a prepared food tax.
3. County transportation legislation. S 1513
4. Payment of filing fees.
5. Telephone system in the courthouse.
6. Seek legislation to raise compulsory school attendance age.
7. Seek legislation for increases to Durham County's court expenses to assist in the following areas:
  - Management audit and funding to address problems identified in the Office of Probation to ensure proper staffing, training, supervision, and better use of technology to assure adequate monitoring of probationers.
  - Funds to prepare evidence for presentation in court (charts, diagrams, maps, PowerPoints, etc.)
  - Funds for witness protection and accommodation during trials (lodging, meals, transportation, etc.)
  - Additional court personnel to include: one district judge; six clerks; five ADAs; four magistrates; three victim witness liaisons, along with funds for state's probation office.
8. Support legislation to build a comprehensive, high-quality, early childhood system.
9. Support continuation of funding for CJPP.
10. Support continuation funding for JCPC.
11. Make clarifying technical corrections to the new Circuit Breaker exclusion HB 1499—Property Tax and PUV Changes and Studies.
12. Support for possible state legislation regarding conservation and facilities of regional partnerships.
13. Seek legislation to impose an impact fee to fund school construction.
14. Oppose SB1180 limiting local government authority to charge development related fees.
15. Oppose changes to Mental Health System.

**Closed Session**

Commissioner Cheek moved, seconded by Commissioner Heron, that the Board adjourn to Closed Session to discuss matters relating to the location or expansion of a business or industry and to consult with an attorney and to preserve the attorney-client privilege pursuant to G.S. § 143-318.11(a)(3) & (4).

The motion carried unanimously.

**Reconvene to Open Session**

Chairman Reckhow announced that the Board met in closed session; direction was given to staff; no action was taken.

**Adjournment**

There being no further business, Commissioner Reckhow adjourned the meeting at 9:36 p.m.

Respectfully submitted,

Vonda Sessoms, CMC  
Clerk to the Board