

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

Monday, March 26, 2007

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 Becky M. Heron, and Commissioners Lewis A. Cheek, Philip R. Cousin Jr., and Michael D. Page

Absent: None

Presider: Chairman Reckhow

**Opening of Regular Session**

Chairman Reckhow welcomed everyone to the regular meeting of the Board of County Commissioners, Monday, March 26, 2007. She requested that persons stand for the recitation of the Pledge of Allegiance.

**Agenda Adjustments**

Chairman Reckhow asked if any Commissioner or staff member wished to make adjustments to the agenda.

No one responded.

Chairman Reckhow stated that the meeting would proceed with the revised agenda.

**Announcements**

Chairman Reckhow requested that announcements be presented.

No announcements were made.

**Minutes**

Commissioner Cheek moved, seconded by Commissioner Cousin, to approve as submitted the January 19, 2007 BOCC/Legislative Delegation, March 5, 2007 Worksession, and the March 12, 2007 Regular Session Minutes of the Board.

The motion carried unanimously.

**Proclamation for Ebonettes 35<sup>th</sup> Founders' Day Observance**

Chairman Reckhow read the following proclamation into the record:

PROCLAMATION

WHEREAS, Ebonettes Service Club Incorporated is a public service organization which was founded by four young African-American women on March 1972; and

WHEREAS, by creating the organization, Susanna M. Bell, Judy Byrd Dillard, Carolyn Jones Thomas, and Marjorie Lester Monroe Thorpe sought to:

- create more opportunities for the development of youth
- enhance Cultural awareness
- act as a catalyst for political action, particularly in issues affecting women
- provide compassionate care for senior citizens in the community; and

WHEREAS, since its inception, the Club has awarded scholarships to deserving high school seniors, provided numerous gifts to nursing home residents, served meals to senior citizens, led voter registration drives, provided school supplies and back packs for "Back to School" Youth Events, served as mentors to the Hillside High School "STAR" program and as sponsors and ambassadors for the Hillside Theatre Program, and served as volunteers for the newly opened Durham Senior Center; and

WHEREAS, Ebonettes Service Club members continue to make a positive impact on the lives of those in Durham County who are in need, and their selfless efforts are greatly appreciated; and

WHEREAS, the theme of this year's program is "Celebrating Thirty Five Years of Service in the Community"; and

WHEREAS, on Saturday, March 31, 2007, the Ebonettes will celebrate its 35<sup>th</sup> Founders' Day at the Durham Hilton by honoring civic and community individuals who "dare to make a difference" in the community:

NOW, THEREFORE, BE IT RESOLVED that I, Ellen W. Reckhow, Chairman of the Durham County Board of Commissioners, do hereby proclaim March 31, 2007 as

**"EBONETTES SERVICE CLUB INC. DAY"**

in Durham County in observance of the group's 35<sup>th</sup> Anniversary. I further call upon all citizens to celebrate the numerous and significant accomplishments that the Ebonettes Service Club members have made in improving the quality of life in Durham County and beyond.

This the 26<sup>th</sup> day of March, 2007.

/s/ Ellen W. Reckhow, Chairman

---

Cora Cole-McFadden, President, Durham Ebonettes Service Club, and Mayor Pro Tempore, made comments about the observance of the group's 35<sup>th</sup> Anniversary. On March 31, the annual Founders' Day Program will be held at the Durham Hilton Hotel and will feature a recognition of civic and community individuals who "dare to make a difference" in the Durham community.

Ms. Cole-McFadden accepted the proclamation on behalf of the Durham Ebonettes.

**Resolution for Alpha Kappa Alpha Sorority Inc. Centennial Observance**

Commissioner Cousin read the following resolution on behalf of the Board:

RESOLUTION

WHEREAS, Alpha Kappa Alpha Inc. was founded at Howard University in Washington, DC on January 15, 1908 as the nation's first Greek-letter organization established by African-American college women; and

WHEREAS, led by Barbara A. McKinzie, International President of Alpha Kappa Alpha Sorority Inc., members of Alpha Kappa Alpha provide "service to all mankind" through the sorority's programmatic theme – ESP: Extraordinary Service Program; and

WHEREAS, this theme has a four-prong platform – the non-traditional entrepreneur, economic keys to success, economic growth of the black family, and the undergraduate signature program: economic educational advancement through technology; and

WHEREAS, all across the United States, West Africa, Germany, the Bahamas, the Caribbean, Korea, the U.S. Virgin Islands, and England, more than 150,000 members are initiating observances which will culminate with a major national observance on January 15, 2008; and

WHEREAS, on April 1, 2007, the Alpha Zeta Omega (Durham) Chapter of AKA led by Basileus Norma Martin will hold a "kickoff" event at the Durham County Library from 3:00 p.m. to 6:00 p.m. to highlight noteworthy local achievements by its members including former County Commissioners Elna B. Spaulding, MaryAnn Black, and Mary D. Jacobs, and to celebrate the organization's legacy of success:

NOW, THEREFORE, BE IT RESOLVED that we, the members of the Durham County Board of Commissioners, do honor

ALPHA KAPPA ALPHA INC.

on the occasion of its upcoming Centennial observance. We call upon all citizens to celebrate the numerous and significant achievements that have been made through the years by members of this organization to enhance the quality of life in the Durham community and beyond.

This the 26<sup>th</sup> day of March, 2007.

/s/ All Five Commissioners

---

Norma Martin, President, Alpha Zeta Omega (Durham) Chapter of AKA, spoke about the upcoming celebration. Special events will be held on Sunday, April 1, 3:00 p.m. at the Durham County Library and on Wednesday, April 4, 2007, 6:00 p.m. at Stanford L. Warren Library to “kick off” the observance which culminates on January 15, 2008.

Ms. Martin expressed gratitude to the Commissioners and accepted the resolution in honor of the Alpha Kappa Alpha Sorority.

**“Durham Take a Stand! – Alcohol Awareness Day”**

Chairman Reckhow read the following proclamation:

PROCLAMATION

WHEREAS, widespread health, social, and economic problems result from the misuse of alcohol; and

WHEREAS, alcohol misuse is a root cause of serious problems that adversely affect our quality of life, including homicide, suicide, traumatic injury, violent and property crimes, high-risk sex, fetal alcohol syndrome, alcohol poisoning, and the need for treatment for alcohol abuse and dependence; and

WHEREAS, substance use disorders and various unhealthy and dangerous behaviors among youth are deemed by the U.S. Substance Abuse and Mental Health Services Administration to be “part of a consistent pattern of circumstances that tend to occur together”; and

WHEREAS, research shows that children and teenagers are exposed to 30% more alcohol ads than the population in general, African-American youth 83% more, and Latino youth 63% more, resulting in a heightened likelihood of drinking alcohol; and

WHEREAS, teenagers who are not engaged in the family unit are 40% more likely to drink alcohol, use illegal drugs, and smoke cigarettes, compared to teens who are so engaged; and

WHEREAS, almost 75% of 7<sup>th</sup> graders who drink alcohol obtain it from their parents, with or without their knowledge; and

WHEREAS, Americans who began drinking before the age of 15 are four times more likely to develop alcohol dependence than those who wait until the age of 21; and

WHEREAS, there is growing evidence to suggest that alcohol use prior to age 21 impairs crucial aspects of youthful brain development; and

WHEREAS, weapons are the number one reason for violence in Durham Public Schools, and statistics show that 71% of youth who carry a weapon to school use liquor; and

WHEREAS, community, school, family, and peers are proven to have great influence on the substance use behaviors of youth:

NOW, THEREFORE, BE IT RESOLVED that I, Ellen W. Reckhow, Chairman of the Durham County Board of Commissioners, do hereby proclaim Saturday, April 14, 2007, as

“DURHAM TAKE A STAND!—ALCOHOL AWARENESS DAY”

in Durham County. We urge all citizens to recognize this worthy occasion.

This the 26<sup>th</sup> day of March, 2007.

/s/ Ellen W. Reckhow, Chairman

---

Wanda Boone, representative from Durham Together for Resilient Youth (DurhamTRY), stated that DurhamTRY is working with The Durham Center, Durham Youth Council, Alcohol and Drug Council of NC, YMCA, ALE, Durham Police Department, Partnership for a Healthy Durham, and others within the community to coordinate activities associated with “Durham Take a Stand! Alcohol Awareness Day” in Durham on April 14, 2007. The event is free for the entire family and full of fun and learning opportunities about alcohol use among Durham’s young people.

Ms. Boone thanked the Commissioners for the proclamation.

### **Consent Agenda**

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

- \*a. Property Tax Releases and Refunds for Fiscal Year 2006-2007 (accept the property tax release and refund report for February 2007 as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report);
- \*b. Budget Ordinance Amendment No. 07BCC000054—Public Health—Recognize Grant Revenue of \$1,000 for

- the Partnership for a Healthy Durham from Quintiles Gives Back Fund of Triangle Community Foundation;
- \*c. Budget Ordinance Amendment No. 07BCC000055—Public Health—Recognize Grant Revenue for Syphilis Elimination in the Amount of \$14,000 from N.C. Department Health and Human Services for the Health Education Division;
  - \*d. Approve the Revisions to the Bylaws of the Durham County Library Board of Trustees;
    - e. Approve the Sale of County Surplus Property (approve the sale to Briscoe Enterprises of 312 East End Avenue for \$4,200, 811, Chalmers Street for \$3,500, and 2715 Marlin Drive for \$2,000);
    - f. Contract Amendment for NexGen Digital Document Solutions (authorize the Manager to amend the contract for a not-to-exceed amount of \$60,000); and
    - g. Execution of Architectural Design Service Contract with DTW Architects and Planners, Ltd., for the Renovation of the Second Floor of the Judicial Building (Project No.: DC072-48) (authorize the execution of an architectural design contract in the amount \$55,000 plus additional services and reimbursable expenses estimated at \$2,000 for a combined total of \$57,000).

The motion carried unanimously.

\*Documents related to these items follow:

Consent Agenda Item No. a. Property Tax Releases and Refunds for Fiscal Year 2006-2007 (accept the property tax release and refund report for February 2007 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 attached report details releases and refunds for the month of February 2007.

Releases & Refunds for 2007 Taxes:

Personal	\$ 86.71
Total for 2007 Taxes and Fees	\$ 86.71

Releases & Refunds for 2006 Taxes:

Real Estate	\$ 57,207.22
Personal	\$ 10,819.91
Registered Vehicles	\$ 36,046.26
Vehicle Fees	\$ 790.00
Solid Waste	\$ 160.00



Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u> Intergovernmental	\$321,641,342	\$14,000	\$321,655,342

Expenditures:

<u>Function</u>			
<u>GENERAL FUND</u> Human Services	\$396,429,166	\$14,000	\$396,443,166

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

This the 26<sup>th</sup> day of March, 2007.

---

Consent Agenda Item No. d. Approve the Revisions to the Bylaws of the Durham County Library Board of Trustees.

BYLAWS OF THE BOARD OF TRUSTEES OF THE  
DURHAM COUNTY LIBRARY

ARTICLE 1: MEMBERS

SECTION 1: In accordance with Article 14, Chapter 153A of the General Statutes of the State of North Carolina, the Board of Commissioners of Durham County does hereby appoint a Library Board of Trustees for the Durham County Library. Said Board of Trustees shall consist of nine persons. All terms shall be for three years.

SECTION II: In the event of a vacancy on the Board, the vacancy shall be filled by the County Commissioners for the unexpired term of the member creating the vacancy.

SECTION III: The position of a board member who has been absent from three consecutive regular meetings shall be considered vacant.

SECTION IV: The same person may not serve more than three consecutive terms. An appointment to fill an unexpired term of one year or more shall be considered one term and said appointee can be appointed for only two additional terms.

ARTICLE II: MEETINGS

SECTION I: The Library Board will hold its regular meeting on a monthly basis according to a calendar set at the annual meeting of the Board.

SECTION II: The annual meeting shall be held at the first regular meeting of each fiscal year in the Board Room of the Main Library.



SECTION III: Special meetings may be called by the Chairman, or upon written request of the four members of the Board, for the transaction of business stated in the request.

SECTION IV: Notices of all meetings including an agenda and documentation shall be made by the Library Director to all members at least three business days in advance.

SECTION V: A quorum for the transaction of business shall consist of a majority of members.

### ARTICLE III: OFFICERS

SECTION 1: The officers of the Board of Trustees shall be a chairman and vice chairman.

SECTION II: Officers shall be elected at the annual meeting of the Board and shall serve for one year.

The Chairman of the Board shall preside at all meetings and shall have the usual powers of a presiding officer. The Chairman of the Board shall notify the Chairman of the Board of County Commissioners of any vacancies on the Board.

The Vice Chairman of the Board shall act as chairman in the absence or disability of the Chairman

SECTION III: The Director of Libraries shall issue notices of all meetings of the Board and delegate a library staff member to take minutes. Minutes will be subject to final approval by vote of the Board and will be maintained with other Board records by the Director. The Director of Libraries shall be an ex officio member of the Board and shall not have a vote; nor will the staff member appointed to take minutes have a vote.

### ARTICLE IV: COMMITTEES

The Chairman shall appoint any committee deemed necessary.

The Chairman may decide upon the number of persons to be appointed to a committee and designate the purpose of the committee. The committee may be dissolved upon the completion of its task or at the pleasure of the Board. Vacancies on committees may be filled by the Chairman at any time.

### ARTICLE V: DUTIES AND RESPONSIBILITIES OF TRUSTEES

The duties and responsibilities of the Trustees shall consist of conscientiously carrying out the powers herein given them:

1. To formulate and adopt library programs and regulations for the government of the Library,
2. To make recommendations to the Board of County Commissioners concerning the construction and improvement of buildings and other structures for the library system;

3. To advise the County Manager regarding the appointment of the Director of Libraries;
4. To participate in preparing the annual budget of the library system;
  5. To recommend to the Board of County Commissioners a schedule of fines and charges for late return of, failure to return, damage to, and loss of library materials, and to take other measures to protect and regulate the use of such materials;
6. To otherwise advise the Board of Commissioners on Library matters. The Board shall make an annual report on the operations of the library to the governing body and shall make an annual report to the Department of Cultural Resources as required by G.S. 125-5.

#### ARTICLE VI: LIBRARY DIRECTOR

The Director of Libraries shall be the executive officer of the library system and shall have general supervision and responsibility of the libraries under the direction of the Board of Commissioners through the County Manager and reviewed by the Board of Trustees.

The Director of Libraries with the advice and counsel of the Board of Trustees shall be responsible for the physical plants and equipment, for the employment and direction of the staff for the library service to the public, and for the operation of the libraries under the financial conditions set forth in the library budget.

The Director of Libraries shall attend all board meetings.

#### ARTICLE VII: ORDER OF BUSINESS

Robert's Rules of Order Newly Revised shall govern the proceedings of the Board.

The order of business at the regular meetings shall be as follows:

1. Roll call
2. Approval of minutes of previous meeting
3. Communications
4. Financial report
5. Report of committees
6. Old business
7. New business
8. Directors report
9. Election of officers when necessary
10. Adjournment

#### ARTICLE VIII: AMENDMENTS

These bylaws may be amended at any regular or special meeting of the Board with a quorum present, by the majority vote of the members present, provided a copy of the proposed amendments shall have been sent to each member at least two weeks before the meeting at

which they are to be considered for adoption or submitted in writing and read at the Board meeting preceding the one at which the amendment is to be considered for adoption.

Subsequent to the acceptance by the Board of any modification, addition, or deletion from the bylaws, formal approval of said action must be obtained from the Board of County Commissioners of Durham County prior to its being entered into such bylaws.

Bylaws adopted July 21, 1975; amended November 4, 1982, April 28, 1986, November 26, 1990, June 8, 1998, September 14, 1998, May 13, 2002, and March 26, 2007 by the Durham County Board of Commissioners.

### **Public Hearing—Plan Amendment, Page Road Suburban Transit Area (A06-21)**

Frank M. Duke, AICP, City-County Planning Director, acknowledged for the record that he has the required certifications that notice was provided for the plan amendment as required by North Carolina law. This plan amendment emerged out of an analysis done by the Planning Department in conjunction with the Chamber of Commerce and the City Office of Economic and Workforce Development to look at areas of Durham County where industrial land could either be located based on locational criteria or whether the actual site imposed some constraints for the property with a current industrial designation. The analysis indicated that the property is well suited for industrial development even though the Comprehensive Plan designated the property for a mix of retail and residential uses. The location is west of Page Road, north of Chin Page Road, adjacent to the Raleigh City limits (southwest Durham County). The area totals 232 acres. Because of its location and topography, it is well suited for industrial uses. Many of the other uses in the area are already industrial. Based on that information, the Board of Commissioners initiated the plan amendment last fall. Staff has done a more complete analysis and continues to believe that this site meets all the criteria for a plan amendment as established by the Board of Commissioners in the Comprehensive Plan of the Unified Development Ordinance. Therefore, staff recommended approval of this plan amendment based on the justification and meeting the four criteria for plan amendments. The Planning Commission recommended approval on January 9, 2007 (12-0), based on the staff recommendation and request from the Board of Commissioners.

Chairman Reckhow opened the public hearing that was properly advertised.

Cameron Shearon, 4325 Galax Drive, Raleigh 27612, spoke about the impact of the proposed zoning of the property. He expressed his opinion that the current zoning remain.

In response to a question by Vice-Chairman Heron, Mr. Shearon stated that he received notification of the public hearing.

Chairman Reckhow explained to Mr. Shearon that the plan amendment will not affect his use in any way until the property is rezoned. Mr. Shearon would have to concur to any specific rezoning proposal that the Board receives. "Our plan goes through 2030, so we are trying to plan for what might happen 20 years from now." Chairman Reckhow thanked Mr. Shearon for his concern. "The kind of industry that we will be attracting will probably

be something that you will find desirable. I appreciate your comments and we will give it serious consideration.”

Patrick Byker, representing Crosland, 2614 Stuart Drive, Durham 27707, made the following comments:

“Good evening Chairman Reckhow and members of the Board of County Commissioners. My name is Patrick Byker and I am an attorney with Kennedy Covington. I am here tonight representing Crosland regarding the proposed Land Use Plan Amendment for several parcels on the west side of Page Road, just south of the Globe Road intersection.

Crosland is the owner of a large assemblage directly adjacent to the parcels that Durham County is proposing to change from the current residential and commercial designations to industrial. We trust the Board remembers that on February 26, 2007, the Board voted unanimously to approve the Plan Amendment for Crosland in case number A06-15. Your vote indicated to us your preliminary support for our proposed 400-acre, master planned, mixed-use development right next door to the parcels we are discussing tonight. We expect that our proposed mixed-use development, to be known as Bethpage, will compete well with Brier Creek which is located less than a mile to the east in Wake County. Our current site layout places some of our high-end residences close to the property the County now seeks to re-designate as industrial.

Accordingly, while we support the Plan Amendment before the Board tonight in general, we would be remiss if we did not state on the record our opposition to heavy industrial uses on any of the parcels. We fear that noxious fumes, vibrations, and industrial noise would interfere with the quiet use and enjoyment of the high-end residential development we propose, thereby rendering homes in Bethpage second rate to the homes in Brier Creek. We especially do not want to see a warehouse/distribution park built on these parcels under consideration tonight. However, we do support compatible uses on these parcels, such as a research or an office use. Therefore, we ask that the Board keep a keen eye on how these parcels develop, and keep in mind the need for these parcels to be good neighbors to the Bethpage project we are working on currently. We ask you to have these comments reflected in the record regarding the need for compatible uses next to Crosland’s 400-acre master planned development.

Thank you for your time, and we are respectfully submitting a written copy of these comments to the clerk to be included in the minutes of this public hearing.”

James Connell, 2331 Lake Drive, Raleigh 27609, concurred with the statements of Mr. Byker.

As no one else requested to speak on the agenda item, Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Commissioner Cheek noted that this is a plan amendment; this is not a rezoning. When a request for rezoning is presented, the Board will have plenty of time to consider the best use of this property. The Board of County Commissioners requested the plan amendment as a result of a study initiated by the concern that very few properties exist in Durham County that are suitable for industrial uses. If patterns develop in another way, the County can always do a different plan amendment and a different kind of rezoning. This is the appropriate measure to take at the current time given all the considerations which the Board has discussed.

Chairman Reckhow asked questions of Mr. Duke.

Questions and answers follow:

Question: If we approve the plan amendment, any rezoning to industrial, would that require a development plan? *A development plan is not required in heavy industrial or light industrial. It is required for an industrial park. In the analysis of any request for zoning to either heavy industrial or light industrial in the absence of a development plan, it would have to be analyzed as a worse case scenario. While I would agree with what several of the citizens have said, some heavy industrial uses would be completely inappropriate for this site. That would be a factor that would have to be considered at the time of the rezoning. I have every confidence that the Board of Commissioners would not approve those more obnoxious uses, just as staff would not recommend approval.*

Question: Would we be able, at this point, given the way it has been advertised, to designate this Industrial Park? *Industrial Park is a zoning designation, not a land use designation.*

Question: Could we, for example, when a use came in, deny it and say we want Industrial Park zoning? *You have every right, at the time a zoning request comes in, to indicate a concern based upon the residential uses that are being developed in proximity to this site, that a development plan is important in order to ensure compatibility between those uses. So the Board of Commissioners would retain all of those rights.*

Question: And we could convey to you the sentiment of our Board--that we would expect a development plan given the neighboring uses? *I believe that I understand from what has been said by members of the Board today that I would recommend to a developer seeking industrial zoning in this area that they really ought to be looking at a development plan because of the mix of uses that is happening here.*

Commissioner Cheek moved, seconded by Vice-Chairman Heron, to approve Plan Amendment, Page Road Suburban Transit Area (A06-21).

The motion carried unanimously.

Vice-Chairman Heron assured Mr. Shearon that he would be privy to the site plans that come to the Board.

Chairman Reckhow stated that because Mr. Shearon is a property owner in the area, he has the ultimate say in what happens with the property. For now, all things are the same. A zone change may not occur for 10 to 15 years; this is simply a long-range plan amendment.

**Public Hearing—Plan Amendment, US 70 Industrial (A06-22)**

Chairman Reckhow stated that this item is a reverse of the previous agenda item—a recommendation to move away from Industrial. She recognized Mr. Frank Duke.

Frank M. Duke, AICP, City-County Planning Director, acknowledged for the record that he has the required certifications that notice was provided for the plan amendment as required by North Carolina law. This plan amendment emerged out of an analysis done by the Planning Department in conjunction with the Chamber of Commerce and the City Office of Economic and Workforce Development to look at areas of Durham County where industrial land could either be located based on locational criteria or whether the actual site imposed some constraints for the property with a current industrial designation. The area totals 232 acres located on the north side of US 70 between Mineral Springs Road and Leesville Road. In this case, because of topography and site constraints dealing with access, the determination from the analysis is that the site is not well suited for industrial use but is better suited for development in the residential uses—low density, low-medium, and commercial that corresponds to the surrounding uses. Therefore, staff recommends approval, based on the request being justified and meeting the four criteria for plan amendments. The Planning Commission recommended approval on January 9, 2007 (11-1), based on the recommendation and request from the Greater Durham Chamber of Commerce.

Chairman Reckhow opened the public hearing that was properly advertised. As no one requested to speak on the agenda item, Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Commissioner Cheek moved, seconded by Vice-Chairman Heron, to approve Plan Amendment, US 70 Industrial (A06-22).

The motion carried unanimously.

**Public Hearing—Plan Amendment, I-85/Glenn School Road North (A05-18)**

Although this item had been removed from the agenda prior to the meeting, Vice-Chairman Heron wished to comment. She asked City-County Planning Director Frank Duke when notification was given to the neighborhood that this item had been removed from the agenda.

Mr. Duke responded that the Planning Department received the notice on Thursday of last week, so a great deal of notice was not provided by word of mouth. No formal notice was given. The developer withdrew the plan because upgrades to I-85 would be too costly.

Vice-Chairman Heron expressed concern that adequate notification is not given to citizens when items are removed from the agenda.

Mr. Duke stated that provisions are in place for zoning cases, but no restrictions for a plan amendment.

In response to Chairman Reckhow, Mr. Duke replied that notice would have been posted on the Planning Department's website.

Chairman Reckhow advised that citizens be informed in a timely manner to the extent possible.

**Public Hearing to Consider Allocating Economic Development Investment Funds to Capitol Broadcasting Corporation or its Subsidiaries**

Chairman Reckhow called on County Manager Mike Ruffin for remarks.

County Manager Ruffin commented that tonight culminates the final step of a 7½-year process for American Tobacco to become a reality. When the Deal Points were approved in 2003, "I thought the project would literally transfer Durham into the point of destination in the Triangle Area. Frankly, I think it has done just that. American Tobacco has ignited interest in the downtown area. It is helped to change the face. It was the first major project that begin to change the face. I am certainly very proud of the fact that our County has helped make that happen. I applaud all of you for the vision you have seen in supporting this project."

Carolyn P. Titus, Deputy County Manager, stated that the Board is requested to hold a public hearing to consider allocating Economic Development Investment Funds to Capitol Broadcasting Corporation (CBC) or its subsidiaries, for its expansion at the American Tobacco Campus. Entering into a reimbursement contract for economic development investment funds would complete the original commitment made by the Durham County Board of Commissioners almost seven years ago. In May of 2000, the County Commissioners voted unanimously to support the American Tobacco District and its development in downtown Durham by providing approximately 1,870 parking spaces in public parking decks at a cost of approximately \$19.5 million. A public hearing was conducted by the Board which determined a need for additional public parking. In 2003, Durham County entered into a contract with Capitol Broadcasting Corporation and its subsidiary, American Campus LLC, to design and build a 1,129-space parking deck known as the South Deck on the American Tobacco Historic District Campus at a cost of \$14,435,514. Since its completion, the South Deck has provided public parking for American Tobacco, the Durham Bulls baseball games, and other events in the downtown area. The County of Durham further committed to build a 441-space public parking deck (known as the East Deck) on the DATA site conditioned upon Diamond View II office building being built by CBC. Of the 441 spaces, 336 would be for Diamond View II office building parking and 105 would be for Diamond View I replacement parking, as agreed in an Interlocal Agreement between the City and County. The deck also would serve as public

parking for the Performing Arts Center, Durham Bulls baseball games, and American Tobacco Campus. Development of the second phase of the American Tobacco Historic District on the downtown DATA site has required the close collaboration and coordination of four parties: the County, the City, Capitol Broadcasting Company, and Struever Bros. Inc. County staff has worked intensively over the past three years to complete the detailed plans and agreements between the parties. During that period of time, it has been necessary to review and evaluate the structure of the County's commitment. Given the complexity of the legal structure and the working agreements necessary to fulfill the current commitment, staff is recommending that the County consider allocating economic development incentive funds through an economic development reimbursement contract in the amount of \$6,129,610 to fulfill the original commitment. Completing the County's commitment through an economic development performance contract over the next ten years would save the County additional costs which would otherwise be incurred as owner of the deck, such as operating and maintenance expenditures, legal fees, and condominium association expenses. In addition, the County would gain property tax revenue from a privately owned deck. Funds provided through a contract would be used to reimburse CBC and its subsidiaries for expenses related to acquisition of real estate, remediation of soil, installation of utilities, site preparation, and other construction activities. The new investment for the Diamond View II office building and adjacent parking deck is approximately \$35 million. This public hearing was advertised on Friday, March 16, 2007, as required by Statute.

Chairman Reckhow stated that this agenda item is for the County to fulfill a prior commitment in a different way. The change was largely made due to the complexity of this project, given the number of parties involved. This is a better approach for the County.

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

Victoria Peterson, PO Box 101, Durham 27701

Mr. Bill Kalkhof, 115 Market Street, Durham, NC 27703, representing Downtown Durham, Inc.

Mr. Ted Conner, 300 West Main Street, Durham, NC 27701, representing the Durham Chamber of Commerce

Each person spoke in support of the performance contract and commended the County Commissioners and County staff for their work involving the American Tobacco Historic District.

As no one else requested to speak on the agenda item, Chairman Reckhow closed the public hearing and referred the matter back to the Board.

Commissioner Cheek thanked Ms. Peterson for her positive comments. This project shows what is good about public/private partnership. "It makes me very proud."

Chairman Reckhow commented that CBC efforts at American Tobacco have exceeded the County's expectations.



Vice-Chairman Heron remarked that County staff was very innovative in determining how to fund the project.

Commissioner Cheek moved, seconded by Commissioner Cousin, to approve allocating economic development investment funds and entering into a performance contract in the amount of \$6,129,610 between the County of Durham and Capitol Broadcasting Company Inc. and/or its subsidiaries to allow for the reimbursement of costs related to acquisition of real estate, remediation of soil, installation of utilities, site preparation, and other construction activities.

The motion carried unanimously.

**Site Plan and Preliminary Plat—Fayetteville Road Assemblage (D06-286)**

The Board was requested to approve a Site Plan and Preliminary Plat for “Fayetteville Road Assemblage” submitted by Haden Stanziale, P.A. on behalf of Toll Brothers Inc. for 276 single-family lots including a multi-purpose court and tot lot on a 142.23-acre site, with 2.64% fill proposed in the floodway fringe for a road crossing, zoned PDR 2.0 and F/J-B.

Frank M. Duke, AICP, City-County Planning Director, acknowledged that this site plan and preliminary plat has been a confusing and complicated issue. It is one of the last projects that has been reviewed under the provisions of the Zoning and Subdivision Ordinances pursuant to Section 1.10.4B of the Unified Development Ordinance (UDO). [The property is located on the east side of Fayetteville Road, north of Scott King Road and south of Chancellors Ridge Drive. PINs 0717-02-77-1635; 0717-02-67-8912, -7189; 0717-02-66-8774-6354; 0717-02-65-5887; 0717-02-75-4622, 07117-04-75-1245; 0717-02-55-7412] The Development Review Board recommended approval on January 26, 2007 by a vote of 8-0. The transition has not been easy and is particularly difficult when dealing with a site plan, largely because those transitional provisions require that the case be reviewed against the development regulations of the Zoning and Subdivision Ordinances as well as the environmental regulations of the UDO. Mr. Duke expressed that the Planning Department could have done a better job of pointing out where the issues differ. He stated if the case had been reviewed under the Zoning and Subdivision Ordinances, he would be recommending “straight” approval because there would be no discretionary actions by the Commissioners. Because the Zoning and Subdivision Ordinances provisions do not apply as related to the environmental features of the site pursuant to Section 1.10.4B of the Unified Development Ordinance, there is a discretionary action by the Board of Commissioners—the issue of fill in the floodway fringe. The applicant is proposing approximately over 2% fill in the floodway fringe. Pursuant to the UDO, the only entity that can approve fill within the floodway fringe is a governing body. In making that determination, the Board of Commissioners is required to make two findings: (1) that the proposed fill provides for a better balance between overall efficiency of the site design and improved conservation elsewhere on the site that would be possible without intrusion into that floodway fringe; and (2) that the proposed fill represents the minimal amount of impact to the floodway fringe that is required in order to achieve the

balance. Mr. Duke apologized that he and his staff did not do a good job in pointing out these issues; he acknowledged that it was his responsibility. Mr. Duke then explained how he arrived at the conclusion. The fill proposed is required in order to provide for a stream crossing. Only one stream crossing is shown on this particular site plan and plat. It is the same stream crossing shown in the development plan approved by the Board for this site. If the Commissioners do not approve a stream crossing, there is no way to utilize both the east and west portions of this site which are crossed by the creek. Therefore, there would be no efficient utilization of the site. Further, if the Commissioners do not approve a stream crossing, there is no way to meet the minimum lot size requirements and the density requirements that are imposed as a result of the development plan. In essence, a stream crossing must be approved in order to fully utilize the development plan provisions. In order to build a road to county standards, the crown of the road must be elevated while doing the crossing of the stream. The applicant has proposed to do the crossing in a location where a crossing already exists. The existing crossing does not meet the standards of the county for a public road, so improvements must be made. That entails some fill; that is where the trade-off is so the determination can be made that this is the minimal amount of fill that is required. It is designed to provide for overall conservation throughout the site because this is the only place there is a stream crossing or the fill. Mr. Duke recommended that the Commissioners approve the fill based on the applicant having successfully met the required findings to provide for fill in the floodway fringe. Mr. Duke also recommended that the Commissioners approve the entire site plan and plat because they meet all ordinance requirements.

Vice-Chairman Heron expressed that the oral report presented by Mr. Duke should have been submitted with the written staff report.

Mr. Duke acknowledged his error in not providing this information sooner.

Chairman Reckhow requested that in the future, the Planning Department site the provisions and mention specific findings (if any) and justifications in the staff report.

Chairman Reckhow inquired about possible erosion into the creek.

Mr. Duke responded to Chairman Reckhow that this approval could not have been packaged with the development plan approval, because at the time of the development plan all of the details are not known with regard to the size of the road or to the extent of the impacts. The only way to do that is if all of the information is ready to move forward immediately with the site plan and the development plan. This case is somewhat unusual in that the applicant was able to say at the Planning Commission hearing that the only stream crossing would be at the location of the existing crossing because they were trying to process, to the extent that they could, the site plan and plat and the development plan.

Vice-Chairman Heron asked why the length of the bridge could not be extended instead of filling in the floodway fringe.

Mr. Duke replied that only 2% fill is proposed. Some fill would be necessary even with a bridge.

Chairman Reckhow recognized the signed speakers.

Ken Spaulding, 2530 Meridian Parkway, Durham, NC 27713, represented the applicant. He spoke to the issue of the stream crossing and requested approval of the site plan and preliminary plat.

George Stanziale, consultant, HadenStanziale, 27 Falling Water Drive, Durham 27713, decided not to speak.

Tom Eagen, 216 Monticello Avenue, Durham 27707, voiced his opinion about the complexity of the approval process. He asked that the Board approve the request.

Commissioner Cheek moved, seconded by Commissioner Page, to approve Site Plan and Preliminary Plat—Fayetteville Road Assemblage (D06-286).

Vice-Chairman Heron asked if the Planning Department could send information to the Development Review Board (DRB) in a timelier manner.

Mr. Duke explained why the agenda for the DRB is completed on Thursday before its Friday meeting; however, each member of the DRB is given information regarding a case at least six weeks in advance.

Vice-Chairman Heron asked questions of Mr. Duke regarding how the fill will affect the homes in the floodplains, the size of the fill, steps being taken to prevent erosion of the fill during storms, and the compliance of proffers made as committed elements.

Glen Whisler, County Engineer, replied to Vice-Chairman Heron's question concerning erosion control of the fill. The developer will be required to submit an erosion control plan and provide measures around the bridge crossing as well as all other areas of the site to minimize erosion and contain sediment on the site.

Mr. Duke stated that erosion control measures cannot be considered until the site plan and preliminary plat are approved.

Vice-Chairman Heron asked Mr. Spaulding if the developer would be willing to get some bonding or issue a letter of credit to say that this project will not cause more flooding downstream. If there is damage, would the developer provide compensation?

Mr. Spaulding stated that he did not believe the developer would do that. Based on the detention ponds and the ordinances, both City and County, a developer on any new project cannot allow any additional runoff than presently exists. Detention ponds can retain the extra amounts of water which can be released at specifically engineered rates. In addition, the developer has chosen a more expensive route than putting in culverts.

Chairman Reckhow questioned the discrepancy of the number of lots (286) on the cover sheet of the plan versus the number in the staff report (276).

Mr. Duke explained that the applicant can reduce the number of lots by up to 20%; the reduction is permitted by ordinance. He assured Chairman Reckhow that the overall minimum lot size and the second minimum lot size along the southern portion of the site have been complied with.

The motion carried unanimously.

Vice-Chairman Heron stated that she voted for approval "reluctantly".

### **Closed Session**

Commissioner Cheek moved, seconded by Commissioner Page, to adjourn to closed session to consult with an attorney regarding claims and to preserve the attorney client privilege and to prevent the disclosure of information that is confidential pursuant to N.C. Gen. Stat. § 143-318.10, and to instruct the public staff concerning the possible lease back to the County of the Oakleigh Building at Durham Regional Hospital pursuant to N.C. Gen. Stat. § 143-318.11(a)(1) & (3).

The motion carried unanimously.

### **Reconvene to Open Session**

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

### **Adjournment**

There being no further business, Chairman Reckhow adjourned the meeting at 9:58 p.m.

Respectfully Submitted,

Vonda C. Sessoms  
Clerk to the Board