

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

Monday, March 23, 2009

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 Michael D. Page, Vice-Chairman Ellen W. Reckhow, and Commissioners Joe W. Bowser, Becky M. Heron, and Brenda A. Howerton

Absent: None

Presider: Chairman Page

Opening of Regular Session

Chairman Page called the meeting to order and welcomed everyone to the Monday, February 23, 2009 Regular Session of the Board of County Commissioners. He requested that persons rise for the Pledge of Allegiance to the Flag.

Agenda Adjustments

Commissioner Bowser requested to make a statement at the end of the agenda prior to the Closed Session.

Announcements

Chairman Page announced another "Conversations with Commissioners" to be held on Tuesday, March 24, from 7:00 to 9:00 p.m. in the Fellowship Hall at White Rock Missionary Baptist Church, 3400 Fayetteville Street.

Commissioner Heron commented that rural Durham County (southern, northern, Rougemont, Bahama, etc.) has not had an opportunity to comment on the upcoming budget. She suggested that community conversations be held at these locations.

Chairman Page stated that he and County Manager Mike Ruffin would confer about a couple of additional meetings.

Chairman Page announced that a public hearing would be held after the County Manager's recommended budget is presented.

Minutes

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to approve as submitted the February 16, 2009 CIP and the February 23, 2009 Regular Session Minutes of the Board.

The motion carried unanimously.

March Anchor Award Winner—Jane Korest

Chairman Page asked County Engineer Glen Whisler to come forward to present the March Anchor Award.

Mr. Whisler stated that “Jane Korest, Durham County Open Space and Real Estate Manager, began her employment with Durham County in the fall of 2003. Prior to that time, she was employed in the Durham City-County Planning Department for 18 years. She was instrumental in establishing the Open Space and Real Estate Division in the Engineering Department when she began her employment with Durham County. Under Jane’s leadership, the division has established a professional real estate office and reduced the County’s inventory of surplus properties. She has been involved in the acquisition of land for important capital projects such as the Human Services Complex and developed a program that makes appropriate surplus properties available for the development of low and moderate income housing.”

Mr. Whisler focused on Jane’s efforts related to open space and farmland preservation. “She has been energetic and creative in searching out opportunities to leverage Durham County funds available for open space and farmland preservation. The result has been that county residents benefit from the preservation of open space and farmland that is acquired at a very low cost. Over the past four years alone, she has worked on 11 different open space and farmland projects totaling \$11,962,000 in value. For these projects, she has helped successfully leverage over \$9,068,000 in outside funding. This has included writing, on behalf of Durham County, 11 grants that have been awarded \$7,018,796 in outside funding. In addition, she has worked to secure another \$2,049,797 in additional funding for projects through landowner donations and partnerships with the Triangle Land Conservancy, Eno River Association, City of Durham, and City of Raleigh. Several of these open space projects are still in progress, but when completed, Durham County will have protected another 2055 acres in open space, 341 acres in fee simple, and 1671 acres in conservation easements. This open space has been preserved at Durham County local cost averaging less than \$1500 per acre. Jane has played a key role in two notable projects. The first is the acquisition and development of the Little River Regional Park in a partnership with Orange County. The second is the acquisition and planning for the Hollow Rock property that involved Durham County, City of Durham, Orange County, Town of Chapel Hill, Triangle Land Conservancy, and the Erwin Area Neighborhood Association. Jane regularly works with a wide variety of citizen groups that care about open space issues in our community, including the Durham Open Space and Trails Commission, the Durham Farmland Protection

Board, the New Hope Creek Advisory Committee, the Hollow Rock Master Plan Committee, and most recently the Friends of Hill Forest. Because of Jane's efforts and leadership, Durham County is considered a leader in North Carolina in both open space and farmland preservation."

Mr. Whisler introduced Ms. Korest.

Ms. Korest expressed appreciation for the recognition and for recognizing the County's open space program. She stated that the success of the program can be attributed to the financial and project support provided by the Commissioners, which has allowed staff to work with land owners and others in the community to make Durham County open space a reality. Ms. Korest introduced and acknowledged the efforts of Wendy Seddon, Real Estate Coordinator, and Greg Schuster, Open Space Land Manager, stating that they have been involved in and have contributed to the success of the projects.

Chairman Page, Vice-Chairman Reckhow, Commissioner Heron, Commissioner Bowser, County Manager Ruffin, and Commissioner Howerton added their remarks of appreciation to Ms. Korest for her "remarkable" grant writing skills and for her "incredible" work ethic. In addition, they thanked the open space staff for their efforts.

Child Abuse Prevention Month Proclamation

Chairman Page introduced this item. He introduced Gail Angle, Child Protective Services Program Manager.

Ms. Angle spoke about April being Child Abuse Prevention month and the associated activities. She asked that if anyone suspects that a child is being abused, to file a report. She accepted the proclamation on behalf of all of Durham County's social workers.

Commissioner Bowser stated appreciation to the social workers and to the Department of Social Services (DSS) Board for their service to the community. He read the following proclamation into the record:

PROCLAMATION

WHEREAS, preventing child abuse and neglect is a community problem affecting both the current and future quality of life of a community, and finding solutions depends on involvement among people throughout the community; and

WHEREAS, child maltreatment occurs when parents find themselves in stressful situations without community resources and are unable to cope; and

WHEREAS, over 120,535 children were assessed for suspected abuse and neglect in North Carolina during FY 2008; and

WHEREAS, the Durham County Department of Social Services conducted safety and risk assessments for 2,560 Durham County youth in FY 2008, substantiating the abuse or neglect

of 528 youth, assuming legal custody of 101 youth, and implementing protection plans for all others; and

WHEREAS, the majority of child abuse and neglect cases stem from situations and conditions that are preventable with the help of an engaged and supportive community; and

WHEREAS, child abuse and neglect can be prevented by making sure each family has the support they need to raise their children in a healthy environment; and

WHEREAS, child maltreatment not only causes physical and emotional trauma to children but also increases the likelihood of criminal behavior, substance abuse, health problems such as heart disease and obesity, and risk behavior such as smoking; and

WHEREAS, all citizens should be involved in supporting families in raising their children in a safe, nurturing environment, giving them the opportunity to grow up to be caring, contributing members of the community; and

WHEREAS, effective child abuse prevention programs succeed because of partnerships created among social services agencies, schools, faith communities, civic organizations, law enforcement agencies, and the business community:

NOW, THEREFORE, BE IT RESOLVED that I, Michael D. Page, Chairman of the Durham County Board of Commissioners, do hereby proclaim April 2009 as

“Child Abuse Prevention Month”.

I commend this observance to our citizens and urge all citizens, community agencies, faith groups, medical facilities, and businesses to join with the Department of Social Services to increase their participation in our efforts to prevent child maltreatment and strengthen the communities in which we live.

This the 23rd day of March, 2009.

/s/ Michael D. Page, Chairman

Chairman Page called Ms. Angle forward to receive the proclamation. He thanked Ms. Angle, Social Services Director Sammy Haithcock, Assistant DSS Director Sharon Hirsch, and the entire DSS staff for their fine work.

County Manager Mike Ruffin spoke about the valuable work of the Social Services Department.

Commissioner Bowser invited his fellow Commissioners to the DSS breakfast on March 24 in honor of Durham County’s social workers.

Proclaim April 2009 as Earth Month

Chairman Page stated that Durham County is a leader in sustainability initiatives in North Carolina. He recognized Tobin L. Freid, Manager for the City-County Sustainability Office, and Keep Durham Beautiful member Dorothy Pearce.

Ms. Freid stated that Durham is a leader in environmental stewardship. Earth Day has been recognized for many years by holding an Earth Day Festival; that tradition will continue again this year. In addition, a calendar of over 30 events throughout the month of April has been assembled to celebrate Earth Month. There are events for all ages and all interests. Highlights include: stream clean ups, a Duke-Durham Local Climate Action Forum, eco-themed 3rd Friday and Art Walk events, story times at the County Libraries, and a tour of the Triangle Waste Water Treatment Plant. In addition, the Green Durham Photo competition will be held this year. Anyone can submit photos of Durham's natural or built environment in one of seven categories. The winning photos will be displayed at Blue Coffee Café (downtown) from April 22-May 6, including photos during the Earth Day Festival. Photos are due April 8. All information on the photo competition and a link to the Earth Month Events Calendar can be found at www.greendurham.net. She encouraged all citizens and anyone from neighboring municipalities to take advantage of the great events that will be happening throughout April to celebrate Earth Month in Durham.

Ms. Pearce stated that Durham's Earth Day Festival is being sponsored by the City of Durham Parks and Recreation and Keep Durham Beautiful Inc. She provided additional information regarding the April 25 festival.

Vice-Chairman Reckhow read the following proclamation into the record:

PROCLAMATION

WHEREAS, the first Earth Day was celebrated on April 22, 1970, with the goal of inspiring environmental awareness and encouraging the conservation, protection, and appreciation of our nation's natural resources; and

WHEREAS, it is the duty and responsibility of all citizens to safeguard the environment, by recognizing that all life depends upon the Earth and upon the interactions of millions of different kinds of animals, plants, and microscopic organisms to provide food, oxygen, and medicine; and

WHEREAS, citizens in Durham are encouraged to make a personal and collective commitment to take steps to protect and preserve diversity in the natural environment through education, partnerships, and positive actions; and

WHEREAS, the citizens of Durham are encouraged to realize that global problems do have local solutions and to "think global and act local"; and

WHEREAS, Durham County citizens, staff, and elected officials are encouraged to work together to develop and implement regulations, ordinances, and programs specifically designed to preserve and improve Durham's fragile ecosystems and the quality of life therein; and

WHEREAS, Durham proudly recognizes all who work hard to protect the environment on Earth Day and every day, for their dedication to taking a proactive role in shaping the future of the environment and in protecting Durham's precious natural resource; and

WHEREAS, Durham also is proud to recognize organizations and groups who celebrate and educate the populace about Earth Day matters, not just on Earth Day but throughout the entire month of April:

NOW, THEREFORE, BE IT RESOLVED that I, Michael D. Page, Chairman of the Durham County Board of Commissioners, do hereby proclaim April 2009 as

EARTH MONTH

in Durham. I urge all citizens to take special note of this observance by participating in many activities and events in April that will add to their enjoyment and understanding of the importance of everyday being Earth Day.

This the 23rd day of March, 2009.

/s/ Michael D. Page, Chairman

Ms. Freid and Ms. Pearce accepted the proclamation.

Chairman Page thanked Ms. Freid and Ms. Pearce and requested that they continue their work for "green" initiatives.

Presentation of the Commissioners Community Circle Award

The Commissioners Community Circle Award, created by Michael D. Page, 2009 Chairman of the Durham Board of County Commissioners (BOCC), is designed as a way to recognize county departments, local non-profit organizations, and programs for the extraordinary services they provide to Durham's citizens.

The Commissioners Community Circle Award is based on three areas of selection criteria including productivity, creativity, and the commitment to Durham County's citizens.

The Nutrition Division of Durham County's Health Department received the very first Commissioners Community Circle Award due to their record of delivering nutrition services at the least expensive cost to the County; providing innovative nutritional services that

improve the overall goals of the Durham County Nutrition Services Division; and cultivating the development and improvement of citizen's nutritional competence and well-being.

Chairman Page stated that during the State of the County Address, he announced the Commissioners Community Circle Award. "The Commissioners Community Circle Award allows our board to give special recognition to County departments and community groups that have gone above and beyond to promote positive achievements in the Durham Community. It is my pleasure this evening to recognize the Nutrition Division of the Durham County Public Health Department as the first recipient of the Commissioners Community Circle Award. To receive this award, a County department or community organization must exhibit excellence in the areas of productivity, creativity, and commitment. In the area of productivity, the Nutrition Division has consistently provided services at the least expensive cost to the County. The Nutrition Division has continually sought funding to off-set costs of nutrition programs to the County. They bill Medicaid, Health Choice, and State grants for counseling services. Durham County Public Health is the only county public health facility that applies for and secures a reimbursable food stamp nutrition education program, drawing down federal funds to reach the population they have always served. In the area of creativity, the Nutrition Division has found resourceful approaches to delivering services that improve services to their clients. The division collaborates with other agencies such as Durham Public Schools, Interfaith Food Shuttle, Durham Food Bank, SEEDS, Durham's Partnership for Children, Duke Division of Community Health, Duke outpatient and community clinics, Children's Primary Care Clinic, and Lincoln Community Health Center to enrich and enhance services delivered to clients, providing a seamless services model that improves their reach into the community. The Nutrition Division has also developed innovative services that improve the overall goals of the organization. The Division's DINE for LIFE program teaches nutrition and physical activity education in schools and in the community that improves health-related activities of students, promotes prevention of pediatric obesity and promotes families to make healthy choices. Last, the Nutrition Division has exhibited a commitment to the community by providing health-related meetings in early mornings, late evenings, and on the weekends to increase the likelihood of reaching clients in their neighborhoods. Through their efforts, over 75% of clients counseled have made positive improvements in their health habits on return visits to nutritionists. Rebecca Freeman, Director of Nutrition Services, joins us tonight, along with Public Health Director Gayle Harris, to receive the Commissioners Community Circle Award. The Board and I share the desire to make our community a better place to live. We say thank you to you and the Nutrition Division for your efforts, and congratulations!"

Ms. Harris thanked the Commissioners for honoring the division of the Health Department. She asked that team members stand for recognition for all of the innovative ways in which they enhance the lives of Durham citizens.

Chairman Page requested applause for departmental staff efforts.

Ms. Freeman introduced staff and gave a brief explanation of their roles in the Nutrition Division. She thanked the Commissioners for honoring them with the very first Community Circles Award. Ms. Freeman acknowledged all partnerships in the community with whom the division works closely with on a daily basis.

Chairman Page presented the official award to the Durham County Health Department Nutrition Division.

Ms. Freeman ensured the Commissioners that they can rely upon the professionalism of the Nutrition staff because all of the nutritionist are credentialed by the National Credentialing Agency and licensed by the State of North Carolina.

Resolve to Support a Partnership between Durham County and the 2010 Census

Chairman Page stated that the “planning process to partner with the 2010 Census started in January 2009. Durham County Government has met with representatives from the 2010 Census to begin preliminary planning to ensure that each resident of Durham is counted. With Durham County Government’s census participation, residents are encouraged to participate in events and initiatives that will raise overall awareness of the 2010 Census and increase participation among all populations”.

Chairman Page introduced Laura Strickland McClettie, partnership specialist and team leader for North Carolina for the 2010 US Census Bureau.

Ms. McClettie stated that in 2000, Durham returned the census questionnaires at 68 percent; the average return for North Carolina was 64 percent. She noted the packet of information she had provided each Commissioner describing some of the products. She mentioned a brochure about the confidentiality of the information which is received. Ms. McClettie stated that the short form will be used for the census count. She informed the Commissioners that another seat in Washington was gained due to the 2000 count; they are hopeful that the 2010 census will result in another seat. Ms. McClettie thanked the Commissioners for the proclamation and asked that they advertise for the many new jobs associated with the census. She requested that a “Complete County Committee” be established similar to the one in 2010 to make sure that every individual is counted.

Per a question posed by Commissioner Heron, Ms. McClettie stated that homes would be visited if responses are not received after making two requests.

Ms. McClettie restated for Vice-Chairman Reckhow that only the short form will be used for the 2010 census; however, detailed information is gathered through the American Community Survey.

Commissioner Howerton asked for information about how one could apply for a job with the Bureau.

Ms. McClettie provided the information (1-866-861-2010). The hiring process has begun; a 28-question test must be passed, as well as a background check.

Commissioner Bowser expressed concerns about an undercount, which could cost the County valuable resources.

Ms. McClettie responded to Commissioner Bowser's concern by informing him that apartment residents will be counted as if they are permanent residences. She assured Commissioner Bowser that entire communities will be involved in the "Complete Count Committee", which will result in a more accurate count.

Ms. McClettie stated that she has provided her business card; she should be contacted by anyone interested in having a representative speak to a group about the census.

County Manager Mike Ruffin stated that the City-County Planning Department would be the point of contact.

Deputy County Manager Deborah Craig-Ray mentioned that the Public Information Specialist will work with Census officials and the Complete County Committee (appointed by the County Commissioners and the City-Council) in advance of the census day to publicize and speak to groups throughout the community.

Chairman Page read the resolution into the record:

RESOLUTION

WHEREAS, the U.S. Census Bureau is required by the Constitution of the United States of America to conduct a count of the population and provide a historic opportunity for Durham County Government to help shape the foundation of our society and play an active role in American democracy;

WHEREAS, Durham County Government is committed to ensuring every resident is counted;

WHEREAS, more than \$300 billion per year in federal and state funding is allocated to communities, and decisions are made on matters of national and local importance based on census data, including healthcare, community development, housing, education, transportation, social services, employment, and much more;

WHEREAS, census data determine how many seats each state will have in the U.S. House of Representatives as well as the redistricting of state legislatures, county and city councils, and voting districts;

WHEREAS, the 2010 Census creates hundreds of thousands of jobs across the nation;

WHEREAS, every Census Bureau worker takes a lifetime oath to protect confidentiality and ensure that data identifying respondents or their household not be released or shared for 72 years;

WHEREAS, a united voice from businesses, government, community-based and faith-based organizations, educators, media, and others will allow the 2010 Census message to reach a broader audience, providing trusted advocates who can spark positive conversations about the 2010 Census:

NOW, THEREFORE, BE IT RESOLVED that we, the members of the Durham County Board of Commissioners, support the goals and ideals for the 2010 Census and will disseminate 2010 Census information to encourage participation; ask its affiliates and membership to partner together to achieve an accurate and complete count; and encourage people in Durham County to participate in events and initiatives that will raise overall awareness of the 2010 Census and increase participation among all populations.

This the 23rd day of March, 2009.

/s/ All Five Commissioners

Commissioner Bowser moved, seconded by Commissioner Heron, to approve the resolution.

The motion carried unanimously.

Ms. McClettie accepted the resolution.

Chairman Page thanked Ms. McClettie for her comments.

County Manager Ruffin responded to a question posed by Chairman Page that federal, state, and local agencies receive funding as a result of the Census.

Consent Agenda

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

- *a. Property Tax Releases and Refunds for Fiscal Year 2008-2009 (accept the property tax release and refund report for February 2009 as presented and authorize the Tax Assessor to adjust the tax records as outlined by the report);
- b. Deferred until the April 13 Regular Session. ~~Budget Ordinance Amendment No. 09BCC000055 and Contract Amendment—Urban Ministries of Durham (approve in~~

- ~~the amount of \$25,000 and authorize the Manager to execute a contract amendment to reflect the additional \$25,000 to Urban Ministries of Durham);~~
- e. Appointment—Criminal Justice Partnership Act Advisory Board (approve the recommended appointment of B. J. Council [Police Chief or Designee]);
 - *f. Durham County and Town of Cary Interlocal Agreement for Wastewater Treatment and Amendment to Chapter 26 of the Durham Code of Ordinances—Utilities (approve the proposed interlocal agreement, the additional FTE, and the ordinance amending chapter 26 of the Durham Code of Ordinances); and
 - g. Drainage Easement Related to the Durham County South Regional Branch Library (authorize the purchase of a 443.41-square-foot permanent Drainage Easement from Charlotte Maynor and children located at the northeastern most corner of 4524 South Alston Avenue for the purchase price of \$5,000).

The motion carried unanimously.

*Documents related to these items follow:

Consent Agenda Item No. a. Property Tax Releases and Refunds for Fiscal Year 2008-2009 (accept the property tax release and refund report for February 2009 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 February 2009.

Releases & Refunds for 2008 Taxes:

Real Estate	\$ 75,638.25
Personal	\$ 53,447.90
Motor Vehicles	\$ 42,734.31
Vehicle Fees	\$ <u>1,190.00</u>
Total for 2008 Taxes and Fees	\$173,010.46

Prior years' (2005-2007) releases and refunds for February 2009 are in the amount of \$10,727.70. The total current year and prior years' releases and refunds amount to \$183,738.16.

(Recorded in Appendix A in the Permanent Supplement of the March 23, 2009 Regular Session Minutes of the Board.)

Consent Agenda Item No. f. Durham County and Town of Cary Interlocal Agreement for Wastewater Treatment and Amendment to Chapter 26 of the Durham Code of Ordinances—Utilities (approve the proposed interlocal agreement, the additional FTE, and the ordinance amending chapter 26 of the Durham Code of Ordinances).

ORDINANCE AMENDING CHAPTER 26
OF THE DURHAM COUNTY CODE OF ORDINANCES

WHEREAS, the North Carolina Legislature has, through N.C.G.S. § 153A-275, vested counties with the authority to establish public enterprise systems, including wastewater collection, treatment, and disposal systems and to adopt adequate and reasonable rules to protect and regulate those systems owned or operated by it; and

WHEREAS, this ordinance sets forth uniform requirements for direct and indirect contributors into the wastewater collection and treatment system for Durham County and enables the county to comply with all applicable state and federal laws, including the Clean Water Act and the General Pretreatment Regulations; and

WHEREAS, the North Carolina Legislature has, through N.C.G.S. §§ 153A-275, 153A-121, and 153A-123, vested the Board of County Commissioners with the authority to amend this Ordinance.

NOW, THEREFORE, THE BOARD OF COMMISSIONERS FOR THE COUNTY OF DURHAM DOTH ORDAIN:

1) That Chapter 26, Article IV, section 26-82 of the Durham County Code of Ordinances, definition of *Publicly owned treatment works (POTW)* or *county wastewater system* is hereby amended to read as follows:

Publicly owned treatment works (POTW) or county wastewater system. A treatment works as defined by Section 212 of the Act, (33 U.S.C. § 1292) which is owned in this instance by the county. This definition includes any devices or systems used in the collection, storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to the POTW treatment plant.

2) These amendments shall take effect upon enactment.

Approved by the Durham County Board of County Commissioners, this the 23rd day of March, 2009.

Consent Agenda Items Removed for Discussion

Consent Agenda Item No. c. Budget Ordinance Amendment No. 09BCC000056—Economic Development—Pass-Through of One NC Funds from State of North Carolina to Quintiles Transnational Corporation in the amount of \$500,000.

Chairman Page removed the item from the agenda in order to allow Dr. E. Lavonia Allison, representing Durham Citizens for the Affairs of Black People, 1315 McLaurin Avenue, Durham 27707, to speak.

Deputy County Manager Carolyn Titus responded to Dr. Allison by stating that the performance agreement and budget amendment are related to a grant between the State of North Carolina and Quintiles Transnational. The money is a pass-through to Durham County Government, which is a requirement of North Carolina State Statutes. Performance measures are required of Quintiles by the State and include investment in jobs. Separate from this budget amendment is the County's contract with Quintiles Transnational in which the performance agreement includes working with local residents. As of December 31, 2008, 115 Durham County residents were working at Quintiles. In addition, Quintiles has an agreement with Durham County to work with local educational institutions and other programs in which students are prepared for the biotech industry.

Dr. Allison requested that Ms. Titus provide disaggregated information in terms of the location of persons hired by Quintiles.

DURHAM COUNTY, NORTH CAROLINA
FY 2008-09 Budget Ordinance
Amendment No. 09BCC000056

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

Revenue:

<u>Category</u>	<u>Current Budget</u>	<u>Increase/Decrease</u>	<u>Revised Budget</u>
<u>GENERAL FUND</u>			
Intergovernmental	\$401,626,732	\$500,000	\$402,126,732

Expenditures:

<u>Function</u>			
<u>GENERAL FUND</u>			
Economic and Physical Development	\$ 6,988,251	\$500,000	\$ 7,488,251

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

This the 23rd day of March, 2009.

Consent Agenda Item No. d. Capital Project Amendment No. 09CPA000015—Durham Public Schools General Obligation Bond Project Budget Adjustments (Approval to move \$576,760 from three completed 2003 GO Bond funded DPS capital projects [New Elementary “D” (Pearson), Githens Middle School, and 2003 Bond Management] to four other 2003 GO Bond funded DPS capital projects [Lowes’ Grove Middle School, Durham School of the Arts, Northern High School, and Jordan High School]).

Chairman Page removed the item from the agenda in order to allow Dr. E. Lavonia Allison, representing Durham Citizens for the Affairs of Black People, 1315 McLaurin Avenue, Durham 27707, to speak.

Dr. Allison asked about the criteria for deciding priorities when there are left-over monies.

Chairman Page asked Hugh Osteen, Assistant Superintendent of Operational Services, Durham Public Schools, to provide that information for Dr. Allison.

DURHAM COUNTY, NORTH CAROLINA
FY 2008-09 Capital Projects Ordinance
Amendment No. 09CPA000015

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

Expenditures	Current Budget	Inc./Dec.	Revised Budget
New Elementary “D” (Pearson) (SH081)	\$13,354,700	(\$96,521)	\$13,258,179
Githens Middle School (SH071)	\$2,844,000	(\$195,261)	\$2,648,739
2003 Bond Management (SH093)	\$1,923,709	(\$214,978)	\$1,708,731
Lowe’s Grove Middle School (SH097)	\$9,602,400	\$280,000	\$9,882,400
Durham School of the Arts (SH086)	\$6,834,600	\$50,650	\$6,885,250
Northern High School (SH090)	\$664,200	\$70,000	\$734,200
Jordan High School (SH089)	\$902,400	\$176,110	\$1,078,510

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

This the 23rd day of March, 2009.

Consent Agenda Item No. h. Approval of the FY 2010-2019 Capital Improvement Plan (CIP).

Chairman Page removed the item from the agenda in order to allow Dr. E. Lavonia Allison, representing Durham Citizens for the Affairs of Black People, 1315 McLaurin Avenue, Durham 27707, and Victoria Peterson, PO Box 101, Durham 27702, to speak.

Dr. Allison expressed concern about the revised Capital Improvement Plan in which the 2015 Bond Referendum was moved beyond FY 2019, lowering Durham Public Schools CIP amount by \$245 million over the next ten years. She asked how this will impact the racial disparities in graduation rates, suspension rates, etc.

Vice-Chairman Reckhow asked the County Manager if there was a follow-up on a request at the meeting two weeks ago in which the Schools were asked to provide data (regular reports, suspension data, etc.).

County Manager Ruffin stated that he followed up on the request. He replied to Dr. Allison that a referendum is planned for 2011 for about \$132 million for schools. Because the School System is updating its long-range facilities plan and the Commissioners will be revising its Capital Improvement Plan in two years, decisions about additional schools funding has been postponed until more accurate numbers are attained.

Ms. Peterson asked the County Commissioners to establish a task force to review the African-American participation in the construction of County buildings. She requested that the County increase its minority participation goal.

Chairman Page informed Ms. Peterson that her requests will be addressed in the future.

Vice-Chairman Reckhow moved, seconded by Commissioner Bowser, to approve consent agenda items c, d, and h.

The motion carried unanimously.

Public Hearing—Zoning Map Change—New Middle School—Treyburn (Z0800034)

Chairman Page opened the public hearing which had been continued from the March 12, 2009 Regular Session of the Board.

As no one requested to speak on the item, Chairman Page closed the public hearing and referred the item to Planning Director Steve Medlin.

Mr. Medlin stated that this item had been continued in order for the applicant and adjacent property owners to work through some issues. Progress has been made; however, much more work needs to be done to address all of the concerns. At the recommendation of the County Manager and Planning staff, both parties have decided that the most appropriate way to deal with the issues is to bring the transportation special use permit, site plan, and rezoning back to the Board at the July 27 Commissioner meeting.

After a brief discussion, the Board agreed to hear the item at the August 10 Regular Session to allow additional time for the concerns to be addressed.

Commissioner Heron moved, seconded by Vice-Chairman Reckhow, to approve the continuance of the public hearing until the August 10, 2009 Regular Session.

The motion carried unanimously.

Public Hearing—Unified Development Ordinance (UDO) Text Change—Hotel Location (TC07-15)

Planning Director Steve Medlin stated that this item arises from a request by Haden Stanziale in 2007 to remove the requirement that a hotel, motel, or extended stay residence have “direct” access from a major or minor thoroughfare. Staff agrees that the current requirement should be modified. It does not allow for appropriate hotel development or protect residential neighborhoods, and it creates numerous nonconformities. In October of 2007, the Joint City-County Planning Committee recommended that staff initiate this amendment. Staff carefully considered various options for improving the ordinance. Ultimately, staff determined that a special use permit requirement triggered by access through or adjacent to residential neighborhoods would best accomplish the desired result. This item had hearings before the Planning Commission. It was continued three times during those hearings to allow staff to address the concerns of neighborhoods adjacent to the Downtown Tier. The Planning Commission recommended approval in January 2009. The special use permit process, which was amended last year to increase protections for nearby properties and neighborhoods, is tailor-made to achieve the site-specific regulation the citizens seek while preventing unfair treatment and undesirable consequences for other neighborhoods. At this point, staff believes that this proposed amendment accomplishes its original purpose - to allow for safe, convenient access to overnight lodging while protecting surrounding residential areas.

Vice-Chairman Reckhow asked if the City Council adopted the amendment as written.

Mr. Medlin replied in the affirmative.

In response to a question by Chairman Page, Mr. Medlin stated that the ordinance speaks to the entire Durham City and County areas.

Per a question by Commissioner Heron, Mr. Medlin responded that in his opinion, the ordinance amendment provides sufficient protection for neighborhoods with the addition of requiring minor special use permits from the Board of Adjustment.

Chairman Page opened the public hearing that had been properly advertised.

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

Vice-Chairman Reckhow moved, seconded by Commissioner Bowser, to approve the Ordinance to Amend Provisions of the Unified Development Ordinance Regulating Hotels, Motels, and Extended Stay Residences (TC07-15).

The motion carried unanimously.

The ordinance amendment follows:

**AN ORDINANCE TO AMEND PROVISIONS OF THE
 UNIFIED DEVELOPMENT ORDINANCE REGULATING HOTELS, MOTELS,
 AND EXTENDED STAY RESIDENCES (TC07-15)**

WHEREAS, the Durham County Board of Commissioners wishes to amend certain provisions regarding the location of hotels, motels, and extended stay residences in the Unified Development Ordinance; and

WHEREAS, it is the objective of the Durham County Board of Commissioners to have the UDO promote the health, safety, and general welfare of the community.

NOW, THEREFORE, be it ordained that Article 5, Use Regulations, is amended to make the following changes:

SECTION 1

Modify Section 5.1, Use Table, paragraph 5.1.2, Use Table, Commercial Uses, Overnight Accommodations, Hotel, motel, and extended stay residences, as set forth below.

Sec. 5.1 Use Table

5.1.2 Use Table

		RESIDENTIAL					NONRESIDENTIAL					PLANNED			OVERLAY			
Use Category	Specific Use	R	R	R	R	R	C	O	C	C	C	P	U	C	I	M	D	Notes:
		R	S	-M	U	-M	N	I	G	D	B	D	R	C	P	U	O ¹	
COMMERCIAL USES																		
Overnight Accommodations	Hotel, motel, and extended stay residences							L	L	L			‡L	‡L	‡L	‡L	L	5.3.4M
	Bed and breakfast	L/m	L/m	L/m	L/m	L/m	L	L	L	L		‡L/m		‡L		‡L	L	5.3.4D
	Diet house						P	P	P	P				‡		‡	P	

SECTION 2

Modify Section 5.3.4, Commercial Use Standards, paragraph M, Hotels, Motels, and Extended Stay Residences, paragraphs 1, 2, and new paragraph 5, as set forth below.

Sec. 5.3 Limited Use Standards

5.3.4 Commercial Use Standards

M. Hotels, Motels, and Extended Stay Residences

Hotels, motels, and extended stay residences shall be permitted in accordance with the use table in Sec. 5.1, Use Table, subject to the following:

1. A minor special use permit shall be required if any access to a hotel, motel, or extended stay residence is through or adjacent to (including directly across a public right-of-way) a residential district or use, unless such access is consistent with an approved development plan that accurately specifies the type, size, and intensity of use.
2. All hotel, motel, and extended stay residence buildings and vehicular use areas shall be located at least 50 feet from any property line adjacent to a residential district or use.
3. Any accessory commercial activities such as restaurants shall not be located along the side of the property adjacent to a residential district or use.
4. Any outdoor recreation facilities, such as swimming pools, shall not be located along the side of the property adjacent to a residential district or use. If the outdoor recreation facility is a swimming pool, it shall meet the standards of Sec. 5.4.9, Swimming Pools, with regard to fencing.
5. A minor special use permit shall be required if the property line of a hotel, motel, or extended stay residence is 200 feet or less from a residential district or the property line of a single-family residential use, unless such location is consistent with an approved development plan that accurately specifies the type, size and intensity of use.

SECTION 3

That the Unified Development Ordinance shall be renumbered as necessary to accommodate these changes and clarifications.

SECTION 4

That this amendment of the Unified Development Ordinance shall become effective upon adoption.

Public Hearing—Unified Development Ordinance (UDO) Text Change—Development Plans (TC07-10)

Planning Director Steve Medlin stated that this item originated at the Joint City-County Planning Committee, which recommended in November 2007 that staff initiate the

amendment. It is designed to address concerns about the current development plan process that have been raised by elected officials, the Planning Commission, staff, and citizens. In essence, the amendment is designed to resolve the current problem that what you see on a development plan or in illustrative drawings used at hearings is not necessarily what you get when a project is constructed. It would also clarify the requirements overall. In addition, the amendment would create three options for development plans. They could be very simple as originally intended, of intermediate complexity to allow for addition of commitments deemed useful, or complex enough to function as a site plan in order to streamline the development process. The draft text was circulated for public comment in May 2008. In November 2008, the Planning Commission recommended approval with modifications. Commissioner Jacobs also recommended an additional modification. Those modifications are in the staff report, and staff recommends adopting them all. Staff also recommends deleting the last sentence in Sec. 3.5.12A.5, which should not have been retained and would likely prove confusing. Staff is recommending approval with the suggested modifications.

Vice-Chairman Reckhow noted an error (typo) on the ordinance amendment.

Per a question by Commissioner Howerton, Mr. Medlin and Vice-Chairman Reckhow spoke about the benefit of the “marked up copy” of an ordinance, which is included in the Commissioners’ agenda packages.

Mr. Medlin explained the phasing plan for Commissioner Heron. In addition, he informed Commissioner Heron that the ordinance amendment allows for less adjustment by the administration; however, there is some discretion within the ordinance to allow for some minor discretionary decisions of the Planning Director. This ordinance will give the Board certainty as to the outcome.

Chairman Page opened the public hearing that had been properly advertised.

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

Vice-Chairman Reckhow moved, seconded by Commissioner Heron, to approve An Ordinance to Amend the Unified Development Ordinance Concerning Development Plans (TC07-10), effective March 23, 2009.

The motion carried unanimously.

Vice-Chairman Reckhow commended the Planning staff for all their work on the ordinance amendment.

The ordinance amendment follows:

AN ORDINANCE TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE
CONCERNING DEVELOPMENT PLANS (TC07-10)

WHEREAS, the Durham County Board of Commissioners wishes to amend certain provisions regarding development plan requirements in the Unified Development Ordinance; and

WHEREAS, it is the objective of the Durham County Board of Commissioners to have the UDO promote the health, safety, and general welfare of the community.

NOW, THEREFORE, be it ordained that Article 1, General, Article 2, Review Authority, Article 3, Applications and Permits, Article 6, District Intensity Standards, Article 9, Landscaping and Buffering, and Article 16, Definitions, are amended to make the following changes:

SECTION 1

Modify Article 3, Applications and Permits, as follows: Section 3.5.1, Applicability, paragraphs A-E; Section 3.5.6, Development Plan, modifying paragraph A, Purpose, including deleting paragraphs 1, 3, 9, and 10 and modifying paragraphs 2 and 4-8, modifying paragraph B, Designation/Effect, adding new paragraph C, Authority of Planning Director, including paragraphs 1-6, modifying and renumbering as D paragraph C, Development Plan Requirements, including modifying paragraphs 1, 2, and 3, Existing Information, including modifying paragraphs a, b, c, e, f, and g and deleting paragraphs d, h-m, n with paragraphs 1-3, and o; deleting paragraph 4, Phasing Plans, including paragraph a with paragraphs 1-3 and paragraphs b and c, adding a new paragraph 4, Minimum Commitments, including paragraphs a-p, deleting paragraph 5, adding a new paragraph 5, Additional Commitments - Graphic, including paragraphs a-i, adding new paragraph 6, Additional Commitments - Text, new paragraph 7, SIA and TIA Commitments, new paragraph 8, Design Commitments, including paragraphs a and b, and new paragraph 9, Phasing Plans, including paragraph a with paragraphs 1 and 2 and paragraph b, adding a new paragraph E, Illustrative Graphic Depictions, adding a new paragraph F, Development Plan as Site Plan/Preliminary Plat, including paragraphs 1 and 2, and modifying paragraph D, Modifications Before Approval, renumbering as G and adding paragraphs 1-3; Section 3.5.9, Action by the Planning Commission, paragraph A, General Procedures, and paragraph B, Changed Application; Section 3.5.12, Significant Modifications to Approved Development Plans That Require a Zoning Map Change, including modifying paragraph A, modifying paragraphs 2, 3, 4, 5, 7, 8, and 9 and adding new paragraphs 10-14, modifying paragraph B, modifying paragraph C and renumbering as D, and modifying paragraph D and renumbering as C; Section 3.5.16, Period of Validity, including deleting paragraph A and modifying paragraph B; Section 3.7.2, Conformance to an Approved Development Plan, modifying paragraph A and deleting paragraph B; Section 3.14.3, Action by the Planning Director, paragraph A, paragraph 3; Section 3.21.1, Applicability, deleting paragraph D; and Section 3.21.2, Application Requirements, paragraph B, deleting paragraph 4 and paragraph 5 with paragraphs a-d, all as set forth in the strike-outs and underlining below.

3.5.1 Description

- A. Purpose. The purpose of a zoning map change is to amend the zoning district boundaries of the Official Zoning Map.
- B. Initiation. A zoning map change may be initiated by the governing body, the Planning Commission, the Board of Adjustment, the Planning Director or designee, a citizen or the property owner or their agent, except that a petition for a zoning map change with a development plan may only be initiated by the property owner or their agent.
- C. Development Plan. A development plan provides additional information with a zoning map change petition. The purposes of the development plan are set forth in Sec. 3.5.6, Development Plan. The development plan establishes the level of development that will be allowed on the property. Subsequent site plans or plats shall not deviate from the plan, unless otherwise allowed or required under this Ordinance. Deviation may require a zoning map change, as established in Sec. 3.5.12, Deviations from Approved Development Plans. Unless a development plan also functions as a site plan, it is not a site specific development plan. The right to develop pursuant to a development plan, whether approved under this Ordinance or any previous ordinance, accrues only for any portion of the plan for which a site plan or preliminary plat is approved, and then only for the period of validity specified in this Ordinance, or where a vested right is established pursuant to Sec. 3.21, Statutory Vested Rights Determination.
- D. Mandatory Development Plans. The development plan may be used by the petitioner in any zoning district; however, the development plan shall be required in the PDR, CC, MU, and IP districts and in the RS-M district if the applicant proposes to develop a building greater than 35 feet in height or proposes a density greater than eight units per acre. A development plan shall be required for additions to the UC District after the initial zoning map change establishing the District on each campus. Development plans may also be required as otherwise set forth in this Ordinance. The development plan shall become a part of the zoning map change petition and shall be reviewed concurrently with the zoning map change petition.
- E. Traffic Impact Analysis. A traffic impact analysis may be required if the proposed zoning map change meets the threshold requirements established in Sec. 3.3, Traffic Impact Analysis.

3.5.6 Development Plan

- A. Purpose. A development plan is intended to identify commitments that are equal to or greater than Ordinance requirements, including but not limited to:
 - 1. Intensity/density of the proposed development;

2. Sensitive areas and related protection;
 3. Any limitations on number, type, or range of uses;
 4. Dedications or reservations;
 5. Design elements if required or otherwise provided; and
 6. Development phasing if required or otherwise provided.
- B. Designation/Effect. When a proposed zoning map change includes a development plan, the letter “D” shall follow the proposed zoning district designation. If approved, the letter “D” shall remain as a part of the zoning designation of the property. The elements submitted as part of the development plan, called "commitments", are binding and establish the level of development permitted on the property absent further zoning action except as otherwise allowed or required under this Ordinance. "Commitments" may also be identified as "committed elements" throughout this Ordinance.
- C. Authority of Planning Director. The Planning Director is authorized to:
1. Delegate authority under this section to a designee;
 2. Determine whether modification of an unapproved development plan or deviation from an approved development plan is significant/substantial or minor, or more or less stringent, if not specified in this section;
 3. Interpret commitments;
 4. Determine whether a conflict exists between commitments. Any conflict between commitments, including design commitments, shall be resolved in favor of the most stringent;
 5. Determine whether an element is a commitment if it is not specified as such in this section; and
 6. Determine whether additional staff review time is necessary following addition of commitments at hearings through proffers or illustrative graphic depictions. Such determination may require consultation with other departments.
- D. Requirements. A development plan shall comply with all applicable laws and guidelines. Requirements under this section shall consist of the following, which may be supplemented by guidelines of the Planning Department.
1. A development plan shall be signed and sealed by a Professional Engineer, Registered Architect, or Registered Landscape Architect. All graphic depictions shall be accurately scaled, and separate or additional sheets may be required by the Planning Department.
 2. A development plan shall include a signed request from each property owner that the development plan be approved. A request from an owner's representative is unacceptable unless a document establishing legal authority to act as representative is included.

3. Existing Information. A development plan shall include an existing conditions survey that depicts conditions at time of plan submittal and is signed and sealed by a licensed Professional Land Surveyor. A separate existing conditions sheet may also be included. Such document(s) shall provide at least the following information:
 - a. All site location information, including vicinity map, property identification numbers, ownership, metes and bounds, and north arrow;
 - b. Acreage of the entire site, approximate acreage of the area within each zoning district or overlay on the site, and approximate acreage of area within floodway, floodway fringe, non-encroachment area, or non-encroachment area fringe on the site;
 - c. Existing zoning districts and overlays on the site and all adjoining properties, including properties separated by easements or rights of way;
 - d. The owners of all adjoining properties, including properties separated by easements or rights of way;
 - e. Existing manmade and natural conditions on the site and within 100 feet of the site on adjoining properties, including properties separated by easements or rights of way. Those existing conditions shall include but are not limited to: amount and location of impervious surface; topography including steep slopes; Special Flood Hazard Areas and Future Conditions Flood Hazard Areas; streams; wetlands; water bodies; forested areas; sites identified in the Durham County Inventory of Important Natural Areas, Plants and Wildlife (Inventory); historic sites or structures currently designated in, or eligible for, the National Register of Historic Places; sites identified in the Durham Architectural and Historic Inventory; sites identified in the Durham County Archaeological Inventory and other identified archaeological sites, including cemeteries and burial grounds; and other protected areas; and
 - f. Existing utility and access easements and rights of way on the site and within 100 feet of the site.
4. Minimum Commitments. A development plan shall depict the following proposed elements, as applicable, in graphic form without side notes. Labels and descriptive information shall be located within the graphic depiction. Such elements shall become commitments.
 - a. Zoning districts and overlays on the site;
 - b. Intensity/density for each zoning district or overlay (square feet if non-residential, units if residential);

- c. For non-residential or multi-family development, building and parking envelope;
- d. Project boundary buffers, including any located off-site, depicted by border lines and indicating minimum committed width. Illustrative representations of vegetation shall not be used. A buffer reduction may only be requested if the minimum committed width that reflects the possible reduction is depicted. Any such width shall be labeled "width if reduced";
- e. General location of each stream crossing;
- f. General location of access points and connections to existing roads;
- g. Dedications or reservations made for consistency with adopted plans, including transportation plans, or as otherwise required by this Ordinance or other law;
- h. Railroad corridors as required under Sec. 12.6, Railroad Corridors;
- i. Maximum impervious area for the site and for each separately zoned portion of the site, indicated numerically within the overall site depiction and each portion;
- j. Areas committed for preservation, including but not limited to steep slopes; stream buffers; wetland buffers; Inventory sites; historic sites or structures currently designated in, or eligible for, the National Register of Historic Places; sites identified in the Durham Architectural and Historic Inventory; and sites identified in the Durham County Archaeological Inventory and other identified archaeological sites, including cemeteries and burial grounds;
- k. Tree preservation areas, tree replacement areas, and a generalized or specimen tree survey as required under Sec. 8.3.3, Tree Survey;
- l. For a manufactured home park or subdivision in a Planned Development Residential (PDR) district, the information required under Sec. 5.3.2E, Manufactured Home Park or Subdivision, and Sec. 6.11.3, Planned Development Residential (PDR);
- m. For all development in a PDR district, the information required under Sec. 6.11.3, Planned Development Residential (PDR);
- n. For all development in a Commercial Center (CC) district, the information required under Sec. 6.11.5, Commercial Center (CC);
- o. For all development in an Industrial Park (IP) district, the information required under Sec. 6.11.6, Industrial Park (IP); and
- p. For all development in a Mixed Use (MU) district, the information required under Sec. 6.11.7, Mixed Use (MU).

5. Additional Commitments - Graphic. A development plan may depict additional proposed elements, including but not limited to the following, in graphic form without side notes. Labels and descriptive information shall be located within the graphic depiction. Such elements shall become commitments.
 - a. Limitations on number, type, or range of uses, if not required under Sec. 3.5.6D.4, Minimum Commitments;
 - b. General location of on- or off-site road improvements or pedestrian and bicycle systems;
 - c. General location and area of open space, recreation areas, trails and greenways, tree preservation areas, or buffers other than project boundary or stream buffers;
 - d. Buffer width or opacity that exceeds ordinance requirements;
 - e. Landscaping features such as berms or vegetation types;
 - f. Building specifications such as number, location, maximum floor area, or maximum height;
 - g. Location and types of stormwater facilities;
 - h. Areas where mass grading will not occur; and
 - i. Building or site design elements not subject to review by the Design District Review Team.
6. Additional Commitments - Text. A development plan may include additional proposed elements as text in side notes, provided they cannot legibly be included within, or do not reference, the graphic depiction. Such elements shall become commitments and shall be labeled "Text Commitments". Examples include description of off-site traffic improvements, technical specifications that exceed ordinance requirements, description of elements not identified graphically, and additional description of elements identified graphically. Such elements shall not repeat ordinance requirements or contradict or diminish graphic elements.
7. SIA and TIA Commitments. A development plan shall include a Stormwater Impact Analysis and a Traffic Impact Analysis, if required, with measures required to address any identified deficiencies. Such measures may be in graphic or text form as appropriate and shall become commitments.
8. Design Commitments. The development plan for a project containing nonresidential or multi-family structures not located in the UC District or Downtown Tier shall include design elements indicating how the project will relate to its environment (both built and natural). Such elements may

be in graphic or text form as appropriate and shall become commitments. They shall be labeled "Design Commitments" and shall include, at a minimum:

- a. A description of the general architectural styles proposed for use in the buildings. This description shall include information on rooflines, building materials, and any distinctive architectural features; and
- b. A description of how the proposed design will fit into the context area, including information about transitions and relationships to existing developments.

9. Phasing Plans.

- a. A phasing plan may be provided with any development plan, but shall be required in the following instances:
 - (1) Projects utilizing the Mixed Use District. The phasing plan shall ensure that residential and non-residential components are constructed to satisfy the intent and requirements of this district; and
 - (2) Development within the Suburban Transit Areas. The phasing plan shall ensure the existence of adequate available infrastructure for each phase and minimum required densities in a transit-supportive form at build-out.
- b. The phasing plan shall be in graphic or table form as appropriate and included in the development plan. It shall identify the sequence and timing of the development phases and include utility improvements, land use categories, and areas in square feet or acres. Phasing plan elements shall become commitments.

E. Illustrative Graphic Depictions. Graphic depictions other than those listed above shall not be shown at, submitted at, or otherwise used in connection with any public hearing on a zoning map change with development plan unless they depict only area within the scope of the development plan and are development plan commitments in their entirety. Such graphic depictions shall supersede existing commitments, if conflicts exist, to the extent they are more stringent.

F. Development Plan as Site Plan/Preliminary Plat.

1. At the request of the applicant, a development plan may also serve as a site plan or preliminary plat. Such plan shall comply with both development plan and site plan or preliminary plat requirements, as applicable, and shall undergo one review process. Such plan shall be deemed approved as both development plan and site plan or preliminary plat, as applicable, following

development plan approval by the governing body. Fees shall be adjusted by the Planning Department in such cases.

2. Where a development plan also serves as a site plan or preliminary plat, any associated special use permit requirement shall be waived if the development plan contains commitments as to all use categories; intensity of all uses; location of all uses; building heights and areas; and number and location of parking spaces.

G. Modifications Before Approval.

1. Modifications to a development plan that are proffered at a hearing before the Planning Commission or governing body shall become additional commitments and shall supersede existing commitments, if conflicts exist, to the extent they are more stringent. Proffers that prove to be illegal or less stringent than existing commitments shall be referred back to the Planning Commission or governing body for an additional hearing.
2. Minor modifications may be made to a development plan after the Planning Commission recommendation and before the governing body hearing. Such modifications become additional commitments and shall supersede existing commitments, if conflicts exist, to the extent they are more stringent.
3. Significant modifications that are made to a development plan after the Planning Commission recommendation and before the governing body hearing shall be referred back to the Planning Commission for an additional hearing as required under Sec. 3.5.9B, Changed Application.

3.5.9 Action by the Planning Commission

A. General Procedures

1. Before making any recommendation on a petition for zoning map change, the Planning Commission shall consider any recommendations from the Planning Director and shall conduct a public hearing where interested parties may be heard.
2. Notice and public hearing requirements shall be in accordance with Sec. 3.2.5, Notice and Public Hearings.
3. Except in the case of expedited hearings pursuant to Sec. 3.5.9C, Expedited Hearings, the Commission shall make its recommendation within three consecutive regular Commission cycles (approximately 90 days total) of its initial public hearing. The time period for a recommendation may be altered, as in the case of significant modifications, in which case three additional-consecutive regular cycles shall be granted before the case shall go to the governing body.

4. When a recommendation is not made within the time periods established in this section, the governing body may process the request without a Commission recommendation.
5. A zoning map change proposed as a County case shall not require rehearing by the Planning Commission if the property subject to the proposed change is annexed into the City before the Board of Commissioners has acted on the case and the annexation is within 12 months of the original Planning Commission recommendation on the zoning map change, unless the applicant has made a significant modification to the application.

B. Changed Application

If the applicant makes a significant modification to an application for a zoning map change after the Commission has made its recommendation, the Planning Director shall refer the modified request back to the Commission for an additional public hearing. In such case, the Commission shall make a recommendation to the governing body within 90 days of the public hearing on the modified application. If a recommendation is not made within this time frame, the governing body may hear the application without a recommendation from the Planning Commission.

[Paragraph C is omitted.]

3.5.12 Deviations from Approved Development Plans

- A. Significant Deviations. The deviations from an approved development plan listed below are deemed significant and shall require that the entire plan be resubmitted for a zoning map change in accordance with the application requirements of this section, except as specified in paragraphs B, C, and D below. Deviations not listed below do not require a zoning map change unless they are otherwise deemed significant or substantial.
 1. Increase by any amount in the number of residential units or approved density of residential projects in the overall project, except through use of the Affordable Housing Density Bonus pursuant to Sec. 6.6, Affordable Housing Density Bonus;
 2. Decrease by more than 20% in total density in residential projects, except in the Downtown Tier or Compact Neighborhood Tier, unless that decrease results from an inability to utilize the Affordable Housing Density Bonus pursuant to Sec. 6.6, Affordable Housing Density Bonus;
 3. Decrease by more than 5% in total density in residential projects located within the Downtown Tier or Compact Neighborhood Tier, unless that decrease results from an inability to utilize the Affordable Housing Density Bonus pursuant to Sec. 6.6, Affordable Housing Density Bonus, or from the application of UDO requirements relating to size or design;

4. In a nonresidential or mixed-use development, a cumulative expansion adjacent to a residential district or use that exceeds 5% of total building floor area or 4,000 square feet, whichever is greater, or a cumulative decrease that exceeds 20% of total building floor area if creating or maintaining intensity was important to the zoning map determination;
 5. With regard to development plans that were approved before commitments, or committed elements, were required to be identified on development plans, any change to a development plan depiction that exceeds current Ordinance requirements for setbacks, open space, buffer width or planting, recreation areas, tree protection areas, landscaped areas, or limitations on height, unless such depiction is clearly identified as "conceptual" or "illustrative".
 6. Elimination or reduction of a dedication of right-of-way, greenway, or other public component;
 7. A change in the proposed phasing of the project where phasing plans are required or are commitments;
 8. A change in use category (for example, residential to office, office to commercial, commercial to industrial, as described in Article 5, Use Regulations), if limitations on the number, range, or types of uses were proposed with the development plan and the governing body limited its consideration of uses to those uses;
 9. A significant change in the number, location, or configuration of access points to the development, or a significant change to previously shown public road improvements;
 10. A significant change in the location, square footage, or size of a building adjacent to a residential district or use
 11. A significant change in the architectural design;
 12. If a Traffic Impact Analysis was originally submitted, a change that would increase the total vehicle peak hour trips by 3% or greater. If a Traffic Impact Analysis was not originally submitted, a change that would require a Traffic Impact Analysis;
 13. An increase of more than 3% in impervious surface area; and
 14. Any change that is otherwise prohibited under this Ordinance.
- B. Changes to Portions of Development Plans. Where a deviation is proposed from a portion of a development plan, for example from one phase or zoning district, the Planning Director may consider cumulative deviations and the impact of such portion on the overall development in a significance assessment. If the deviation

is deemed significant, the Planning Director shall determine whether it requires a zoning map change to all or only a portion of the development plan.

- C. Changes Following Transfers to Residential Owners. Where a deviation is proposed from a development plan and a portion of the development has been transferred to a residential owner, the Planning Director may exclude such residential portion from a significance assessment if it meets all minimum ordinance requirements. If the deviation is deemed significant, the Planning Director shall determine whether it requires a zoning map change to all or part of the development plan.
- D. Changes Required by Ordinance or Other Law. Notwithstanding the other requirements of this section and except as stated below, a site plan or preliminary plat shall deviate from an approved development plan to conform to the requirements of a new ordinance or other law adopted after development plan approval, and a zoning map change shall not be required. Exceptions are: 1) where the development plan is vested by the appropriate governing body pursuant to the statutory vested rights procedure; and 2) as authorized under Sec. 1.10.3A, Approved Site Plans, Plats, and Permits and Completed Applications. Under such exceptions, the site plan or preliminary plat may conform to the approved development plan.

3.5.16 Development Agreements

Development agreements authorized under NCGS 160A-400.20 *et seq.* and NCGS 153A-379.1 *et seq.* are not authorized by this Ordinance.

3.7.2 Conformance to an Approved Development Plan

A site plan shall conform to an approved development plan except as required under Sec. 3.5.12D, Changes Required by Ordinance or Other Law, or as authorized under Sec. 3.5.12, Deviations from Approved Development Plans, and Sec. 3.5.6C, Authority of the Planning Director.

3.14.3 Action by the Planning Director

- A. The Planning Director shall have the authority to authorize the following administrative adjustments:
 - 1. A reduction of up to 10% of the required front, side or rear yard setback for any encroachments into required setback as of the effective date of these regulations.
 - 2. Minor adjustments to site plans consistent with the requirements of Sec. 3.7.14, Site Plan Amendments.

3. Minor deviations from development plans consistent with the requirements of Sec. 3.5.12, Deviations from Approved Development Plans, and Sec. 3.5.6C, Authority of Planning Director.

[Paragraph B is omitted.]

3.21.1 Applicability

[Paragraph D is deleted. Paragraphs A, B, and C are omitted.]

3.21.2 Application Requirements

- A. An application for vested rights determination shall be submitted in accordance with Sec. 3.2.4, Application Requirements.
- B. Applications shall include, at a minimum, the following information in addition to the standard information required pursuant to Sec. 3.2.4, Application Requirements:
 1. Information on the proposed uses of the property that the applicant wishes to vest;
 2. The length of time for which vesting is requested; and
 3. A list of those provisions of this Ordinance from which vesting is requested.

[Paragraph C is omitted.]

SECTION 2

Modify Article 1, General, Article 2, Review Authority, Article 6, District Intensity Standards, Article 9, Landscaping and Buffering, and Article 16, Definitions, as follows: Modify Section 1.10.3, Effect of this Ordinance on Approved Plans and on Completed Applications, paragraph A, Approved Site Plans, Plats, and Permits and Completed Applications, paragraphs 1, 2, and 3, and delete paragraph C, Effect upon Outstanding Building Permits; delete Section 1.10.4, Effect of this Ordinance on Incomplete Developments, including paragraph A, Property Zoned Without a Development Plan, paragraph B, Property Zoned With a Development Plan Approved Prior to the Effective Date of this Ordinance, with paragraphs 1-4, paragraph C, Modifications to Previously Approved Development Plans, with paragraph 1, Required Modifications, and paragraph 2, Permitted Modifications; modify Section 1.10.6, Zoning District Name Changes, paragraph C; modify Section 2.6.4, Powers and Duties, paragraph A, Authority, paragraph 1; delete Section 6.11.5, Commercial Center (CC), paragraph G, Design Guidelines; modify Section 9.6.4, Street Tree Installation, paragraph A; and modify Section 16.3, Defined Terms, modifying "Committed Elements", deleting "Conceptual Elements", modifying "Development Plan", and deleting "Elements, Committed" and "Elements, Conceptual", all as set forth in the strikeouts and underlining below:

1.10.3 Effect of this Ordinance on Approved Plans and on Completed Applications

A. Approved Site Plans, Plats, and Permits and Completed Applications

1. Completion of development under an approved site plan, preliminary plat, final plat, major or minor special use permit, or building permit (if none of the preceding approvals are required) shall be governed by the ordinance under which the approval was granted.
2. An application for a site plan, preliminary plat, final plat, major or minor special use permit, building permit (if none of the preceding approvals are required), or development plan associated with a zoning map change that was administratively determined to be substantially complete as of December 31, 2005, shall be governed by the ordinance in effect at the time of submission if it complied with such ordinance at that time. The expiration and continuing validity of any such site plan, plat, or permit shall be governed by the previous ordinance. The continuing validity of any such development plan shall be governed by Sec. 1.10.3A.3 below and Sec. 3.5.12, Deviations from Approved Development Plans.
3. For property with a development plan approved under an ordinance in effect prior to adoption of this Ordinance, an application for a site plan, preliminary plat, final plat, major or minor special use permit, or building permit (if none of the preceding approvals are required) that is substantially complete as of December 31, 2006 or within two years of the date of development plan approval, whichever is later, shall conform to the approved development plan except that it shall comply with the provisions of this Ordinance adopted for environmental purposes, including but not limited to Article 8, Environmental Protection, Sec. 3.8, Sedimentation and Erosion Control, and Sec. 12.10, Sedimentation and Erosion Control, and to all other applicable laws or ordinances adopted for environmental purposes.

B. Timely Submission of Information

Applicants who have substantially completed applications as provided above shall comply with all requests for further information and submit all necessary revisions of submitted plans in a timely manner. A delay of more than 90 days in submission of information or revisions requested shall constitute effective withdrawal of the application, with loss of all fees paid. Any new application shall then conform to the provisions of this Ordinance.

1.10.6 Zoning District Name Changes

[Paragraphs A and B are omitted.]

- C. All parcels zoned with development plans, both developed and undeveloped, shall continue to carry the (D) designation. Deviations from such development plans shall be governed by the provisions of Sec. 3.5.12, Deviations from Approved Development Plans.

2.6.4 Powers and Duties

The Development Review Board shall have the following powers and duties.

A. Authority

1. The Development Review Board, through its chair, shall be responsible for reviewing and making recommendations regarding major site plans and development plans functioning as site plans or preliminary plats under Sec. 3.5.6D.10, Development Plan as Site Plan/Preliminary Plat.

6.11.5 Commercial Center (CC)

[Paragraph G is deleted. Paragraphs A-F and H-J are omitted. Paragraphs H-J would be renumbered as G-I.]

9.6.4 Street Tree Installation

- A. Required street trees shall be clearly noted on any site plan, preliminary plat, or final plat.

[Paragraphs B-G are omitted.]

16.3 Defined Terms

Committed Elements: See Commitments

Commitments: Elements submitted as part of a development plan associated with a zoning map change, which are binding and establish the level of development allowed absent further zoning action except as otherwise allowed or required under this Ordinance. Formerly known as "committed elements."

Development Plan: A type of plan that becomes part of the zoning of a property that establishes the level of development allowed absent further zoning action except as otherwise allowed or required under this Ordinance.

[Conceptual Elements; Elements, Committed; and Elements, Conceptual are deleted.]

SECTION 3

That the Unified Development Ordinance shall be renumbered as necessary to accommodate these changes and clarifications.

SECTION 4

That this amendment of the Unified Development Ordinance shall become effective upon adoption.

Public Hearing on Coordinated Transportation—2009-2010 Community Transportation Grant Application Request

Delphine Sellars, Cooperative Extension Service Director, stated that Cooperative Extension Service is requesting Board authorization to submit the FY 2009-2010 Community Transportation Program grant to the North Carolina Department of Transportation (NCDOT). Durham County's Community Transportation Program provides transportation services for elderly and disabled citizens and for transitional Work First and general public employment transportation needs for Durham County.

The revenue from this grant and expenditures required of the County will be budgeted in the FY2009-2010 budget for Coordinated Transportation. Cooperative Extension has applied for these grant funds annually through NCDOT since 1999 to purchase vehicles and to subsidize the administrative costs associated with the Community Transportation Program. A public hearing is required for this application.

The Community Transportation Program grant application requests \$210,951 from NCDOT. The Department of Transportation requires a local match of \$26,018 to be appropriated in FY 2009-2010 budget. This represents a \$480 decrease from fiscal year 2008-2009.

Requested Budget

• Administrative	\$98,451	(local match \$14,768)
Transportation Coordinator, Administrative Assistant and administrative supplies and support		
• Capital Expenditures	\$112,500	(local match \$11,250)
Vehicles		
Total	\$210,951	(local match \$26,018)

Per a question by Commissioner Heron, Ms. Sellars replied that three vans will be auctioned.

Chairman Page opened the public hearing that had been properly advertised.

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

Commissioner Heron moved, seconded by Commissioner Howerton, to approve the resolution authorizing Durham County Cooperative Extension to submit the FY2009-2010 Community Transportation Program Grant to the North Carolina Department of Transportation.

The resolution follows:

COMMUNITY TRANSPORTATION PROGRAM RESOLUTION
Section 5311
FY 2009 - FY 2010 RESOLUTION

Applicant Seeking Permission to Apply for Community Transportation Program Funding,
Enter Into Agreement with the North Carolina Department of Transportation
And to Provide the Necessary Assurances.

A motion was made by Commissioner Becky M. Heron and seconded by Commissioner Brenda A. Howerton for the adoption of the following resolution, and upon being put to a vote was duly adopted.

WHEREAS, Article 2B of Chapter 136 of the North Carolina General Statutes and the Governor of North Carolina have designated the North Carolina Department of Transportation (NCDOT) as the agency responsible for administering federal and state public transportation funds; and

WHEREAS, the North Carolina Department of Transportation will apply for a grant from the US Department of Transportation, Federal Transit Administration and receives funds from the North Carolina General Assembly to provide assistance for rural public transportation projects; and

WHEREAS, the purpose of these transportation funds is to provide grant monies to local agencies for the provision of rural public transportation services consistent with the policy requirements for planning, community and agency involvement, service design, service alternatives, training and conference participation, reporting and other requirements (drug and alcohol testing policy and program, disadvantaged business enterprise program, and fully allocated costs analysis);

WHEREAS, Durham County hereby assures and certifies that it will comply with the federal and state Statutes, regulations, executive orders, Section 5333 (b) Warranty, and all administrative requirements which relates to the applications made to and grants received from the Federal Transit Administration, as well as the provisions of Section 1001 of Title 18, U. S. C.

NOW, THEREFORE, be it resolved that the Chair of the Board of Commissioners is hereby authorized to submit a grant application for federal and state funding, make the necessary assurances and certifications, and be empowered to enter into an agreement with the NCDOT to provide rural public transportation services.

Board and Commission Appointments

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

At the request of Chairman Page, Commissioner Bowser offered to serve on the Community Child Protection Team/Child Fatality Prevention Team in lieu of Commissioner Howerton.

Commissioner Bowser mentioned that he had added an item to the February 23 Regular Session agenda regarding plea bargaining. As a result of the discussion, he attended a March 13 Crime Cabinet meeting co-chaired by Vice-Chairman Reckhow. The next day, an article was in The Herald-Sun, which stated that Commissioner Bowser's concerns were for the Black citizens of Durham County. Commissioner Bowser clarified that his concerns are for the protection of **all citizens of Durham County—Whites, Blacks, Latinos, and all citizens of Durham County.**

Vice-Chairman Reckhow stated that she recalled that Commissioner Bowser did not mention race at the Crime Cabinet meeting; a citizen who spoke after Commissioner Bowser mentioned race.

Vice-Chairman Reckhow asked County Manager Mike Ruffin if staff had followed up on the request at the Crime Cabinet meeting regarding research about the concerns involving plea bargains.

Commissioner Bowser mentioned that one issue to research is which attorneys are able to make the deals.

County Manager Ruffin replied that the directive has been initiated.

Attorney Chuck Kitchen announced the following appointments; incumbents are underlined:

Adult Care Home Community Advisory Committee:

Robert Hockman

Denice M. Johnson

Juvenile Crime Prevention Council:

Allison L. Wilson (Representing a Person Under 18)

Transportation Advisory Board:

Chandra Banner

Workforce Development Board:

Lisa Anne Pineiro (Private Sector; recommended by WDB)

Closed Session

Commissioner Heron moved, seconded by Commissioner Howerton, that the Board adjourn to closed session to discuss matters relating to the location or expansion of a business or industry pursuant to G. S. 143-318.11(a)(4).

The motion carried unanimously.

Reconvene to Open Session

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

Adjournment

There being no further business, Chairman Page adjourned the meeting at 9:13 p.m.

Respectfully submitted,

Vonda Sessoms, CMC
Clerk to the Board