

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

Monday, August 9, 2004

MINUTES

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

Present: Chairman Ellen W. Reckhow, Vice-Chairman Joe W. Bowser (arrived at 7:33 p.m.), and Commissioners Philip R. Cousin Jr., Becky M. Heron, and Mary D. Jacobs

Absent: None

Presider: Chairman Reckhow

Closed Session—Personnel Matters

4:00 – 6:30 P.M.

The Board of County Commissioners adjourned to Closed Session to evaluate the following employees pursuant to North Carolina General Statute 143-318.11(a)(6):

4:00 p.m. to 4:30 p.m.	Tax Administrator Kenneth Joyner
4:30 p.m. to 5:00 p.m.	Sheriff Worth Hill
5:00 p.m. to 5:30 p.m.	Register of Deeds Willie Covington
5:30 p.m. to 6:00 p.m.	County Attorney Chuck Kitchen
6:00 p.m. to 6:30 p.m.	Clerk Garry Umstead

7:00 P.M. Regular Session

Opening of Regular Session—Pledge of Allegiance

Action Resulting from the Closed Session—Personnel Matters

Commissioner Jacobs moved, seconded by Commissioner Cousin, to approve the annual salaries of the County officials as follows:

Tax Administrator Kenneth Joyner	\$ 87,500
Sheriff Worth Hill	\$ 97,000
Register of Deeds Willie Covington	\$ 90,000
County Attorney Chuck Kitchen	\$136,600

The motion carried with the following vote:

Ayes: Cousin, Heron, Jacobs, and Reckhow
Noes: None
Absent: Bowser (arrived late)

Chairman Reckhow announced that during the Closed Session, the Commissioners provided input to Clerk Garry Umstead. The County Manager was to perform Mr. Umstead's final evaluation.

County Attorney Chuck Kitchen stated, for the record, that the Board previously approved that the Register of Deeds' salary be reset to \$52,046 effective December 6, 2004, pending the election. However, the Board's action tonight repealed the previous setting; Mr. Covington's salary would not be reduced in December.

Chairman Reckhow publicized that the four County officials received positive evaluations and serve the County in an exemplary manner. The Board of Commissioners thanked them for their service to the community.

Agenda Adjustments

County Attorney Chuck Kitchen indicated an addition to the Closed Session at the end of the agenda regarding the discussion of matters relating to the location or expansion of industry.

Minutes

Commissioner Heron moved, seconded by Commissioner Jacobs, to approve as submitted the June 1, 2004 Budget Worksession and the July 26, 2004 Regular Session Minutes of the Board.

The motion carried with the following vote:

Ayes: Cousin, Heron, Jacobs, and Reckhow
Noes: None
Absent: Bowser (arrived late)

Chairman Reckhow directed County Manager Ruffin to follow up on a recommendation given at the June 1, 2004 Budget Worksession—"... convene a meeting with the key stakeholders such as the court officials, county attorney, Social Services representative, and two County Commissioners to talk about child support. Arnold Dennis was asked to set up the meeting."

Commissioner Heron suggested that County Manager Ruffin review the June 1, 2004 Budget Worksession Minutes for additional items that may require further action.

Resolution Honoring the Life of Dr. Charles DeWitt Watts

Dr. Charles DeWitt Watts, a pioneering African-American surgeon, former vice president and medical director of North Carolina Mutual Life Insurance Company, and founder of Lincoln Community Health Center, passed away on July 12, 2004. A resolution had been prepared honoring his life, accomplishments, and the extraordinary service he generously rendered to this community.

Chairman Reckhow postponed this item given that no family members were present to accept the resolution.

Consent Agenda

Commissioner Cousin moved, seconded by Commissioner Heron, to approve the following consent agenda items:

- *a. Budget Ordinance Amendment No. 05BCC000005—Criminal Justice Resource Center, Community Based Corrections—Reduction in Revenue and Personnel Cost Associated with Durham Drug Treatment Court Contract (reduce the agency’s budgeted revenue and corresponding personnel expense line by \$12,538);
- b. Approve EMS Laundry Service Contract with Angelica Textile Services (approve the \$44,928 contract award);
- c. Contract Approval for CJRC—“A New Day” Juvenile Day Reporting Center with Bethesda Family Services Foundation (approve the \$25,000 contract);
- *d. Set a Public Hearing to Close East and West Institute Drive (SC04-04) (adopt the resolution and set the public hearing for August 23, 2004);
- *e. Contract Award for Elevator Maintenance on County Buildings (authorize the Manager to enter into a contract with Southern Elevator Company for \$58,524, plus additional “On-Call” elevator services at the quoted hourly rate; extend the contract terms for additional one-year periods, not to exceed four consecutive years);
- *f. Memorandum of Agreement Between Durham Technical Community College and County of Durham (agree for use of the County’s Firing Range in the BLET curriculum);
- *g. Durham County ABC Board Service Agreement (agree to basic maintenance services for \$25,840.20, plus compensation for additional repair services as requested);

- h. Construction Contract for Renovation of Criminal Justice Resource Center (formerly Jail Annex, Johnson Motor Company Building) (authorize execution with D.W. Ward Construction Inc. for \$383,488 and execution of any change orders or related contracts);
- *i. Advancement of Revaluation Date (adopt the resolution from the Tax Administrator advancing the date to January 1, 2007);
- j. September 7 Worksession (approval for the September Worksession to convene at 1:30 p.m.);
- *k. Alston Village (Falls Pointe Apartments) Refunding (approve the two resolutions); and
- m. County Initiative for the \$100,000 HOME Investment Partnership Funds (approve the proposal submitted by The Durham Center).

Consent Agenda Item No. f. Commissioner Heron inquired about: (1) the cost for the Sheriff's Office to maintain the facility; and (2) whether Durham Technical Community College reimburses the County for use of the Firing Range.

Cecily P. Smith, Legal Advisor for the Sheriff, responded that she did not know the cost for maintaining the Firing Range. This agreement calls for no exchange of monies because the Sheriff's Office utilizes Durham Technical Community College classrooms for in-service training, free of charge.

Chairman Reckhow made an additional comment regarding consent agenda item No. j.—that the September 6 Worksession had been moved to September 7 due to the Labor Day Holiday.

The motion carried with the following vote:

Ayes: Cousin, Heron, Jacobs, and Reckhow
Noes: None
Absent: Bowser (arrived late)

*Documents related to these items follow:

Consent Agenda Item No. a. Budget Ordinance Amendment No. 05BCC000005—Criminal Justice Resource Center, Community Based Corrections—Reduction in Revenue and Personnel Cost Associated with Durham Drug Treatment Court Contract (reduce the agency's budgeted revenue and corresponding personnel expense line by \$12,538).

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2004-05 Budget Ordinance
Amendment No. 05BCC000005

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2004-05 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	\$256,188,013	(\$12,538)	\$256,175,475

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$ 38,372,548	(\$12,538)	\$ 38,360,010

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

This the 9th day of August, 2004.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Consent Agenda Item No. d. Set a Public Hearing to Close East and West Institute Drive (SC04-04) (adopt the resolution and set the hearing for August 23, 2004).

The resolution follows:

RESOLUTION DECLARING THE INTENT OF THE BOARD OF
COUNTY COMMISSIONERS OF DURHAM COUNTY TO
CONSIDER PERMANENTLY CLOSING
6,889.28 LINEAR FEET OF EAST AND WEST INSTITUTE DRIVE
AND CALLING A PUBLIC HEARING THEREON

WHEREAS, the Clerk to the Board of County Commissioners of the County of Durham has received a petition to close 6,889.28 linear feet of east and west Institute Drive:

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of the County of Durham that:

1. The Board of County Commissioners proposes to consider permanently closing 6,889.28 linear feet of east and west Institute Drive.
2. A public hearing is hereby called on the question of permanently closing the street named in Paragraph 1 above. Said public hearing shall be on the 23rd day of August,

2004 at 7:00 p.m. in the Board of County Commissioners' Chambers, 200 E. Main Street, Durham, North Carolina.

3. The City-County Planning Department shall notify all owners of property adjoining the street named in Paragraph 1 above as their interests may appear on the County Tax Records.
4. Notice of the closing and public hearing shall be prominently posted in at least two places along the street named in Paragraph 1 above.
5. Any person may be heard at the public hearing on the question of whether the proposed closing would be detrimental to the public interest or to the property rights of any individual.
6. If it appears to the satisfaction of the Board of County Commissioners after said public hearing that the closing of said street is not contrary to the public interest, and that no property owner would thereby be deprived of reasonable means of ingress and egress to his property, the Board of County Commissioners may adopt an Order permanently closing the street named in Paragraph 1 above.
7. BE IT FURTHER RESOLVED that notice of such hearing shall be published in the Durham Herald-Sun once a week for two successive weeks, the first publication to be not less than ten days or more than 25 days before the date fixed for the hearing.

This the 9th day of August, 2004.

Consent Agenda Item No. e. Contract Award for Elevator Maintenance on County Buildings (authorize the Manager to enter into a contract with Southern Elevator Company for \$58,524, plus additional "On-Call" elevator services at the quoted hourly rate; extend the contract terms for additional one-year periods, not to exceed four consecutive years).

The bid tabulation follows:

ELEVATOR MAINTENANCE

Company Name	Address	Proposed Cost
Southern Elevator Company	130 O'Connor St. Greensboro, NC 27406	58,524.00
Kone Elevator Company Inc.	One Kone Ct. Moline, Il 61265	55,080.00
Otis Elevator Company	P O Box 30726 Raleigh, NC 27622-0726	65,508.00
Dover Elevator Company	P O Box 37397 Raleigh, NC 27627	No Response
US Elevator Company	P O Box 841 Danville, Virginia 24543	No Response

Consent Agenda Item No. f. Memorandum of Agreement Between Durham Technical Community College and County of Durham (agree for use of the County's Firing Range in the BLET curriculum).

The memorandum of agreement follows:

MEMORANDUM OF AGREEMENT BETWEEN DURHAM TECHNICAL
COMMUNITY COLLEGE AND THE COUNTY OF DURHAM

This document is a Memorandum of Agreement between DURHAM TECHNICAL COMMUNITY COLLEGE located in Durham, NC, hereinafter referred to as "College", and the COUNTY OF DURHAM, hereafter referred to as the "County".

I. PURPOSE

The County owns a firing range and Police Officer's Physical Agility Test (POPAT) course located at Electra Road, Durham, North Carolina (hereinafter collectively referred to as "Facility"). The Facility has been established for, and is maintained and administered by, the Durham County Sheriff. The College desires to use the Facility for training purposes in its curriculum for the Basic Law Enforcement Training program. The Basic Law Enforcement Training (BLET) program prepares individuals to take the Basic Training Law Enforcement Officers Certification Examination (mandated by the North Carolina Criminal Justice Education and Training Standards Commission) and the Justice Officers Basic Training Certification Examination (mandated by the North Carolina Sheriff's Education and Training Standards Commission). The purpose of this Agreement is to set forth the obligations of the parties during the BLET program as it pertains to firearms and physical training at the Facility.

II. EFFECTIVE DATES/AMENDMENT/TERMINATION

This agreement shall be effective as of July 1, 2004 and shall remain effective until June 30, 2005. This Agreement may be renewed by mutual written consent of the parties. Any amendment or renewal of this Agreement must be approved by written agreement by both parties. This Agreement may be terminated, without cause, by either party upon thirty (30) days written notice to the other party. This termination notice period shall begin upon receipt of the notice of termination. This agreement may also be terminated by the County at any time in the event the County reasonably believes that the College is in violation of any term of this Agreement or any safety violation at the Facility. Such notice of termination shall be delivered in writing to the College at the address provided herein and shall be effective on the date set forth in the notice.

III. GENERAL AGREEMENT

During the term of this Agreement, both parties agree as follows:

A. Both parties hereby agree that, in its respective educational and/or employment practices, neither will discriminate against any person because of race, color, religion, sex, national origin, age, creed, or

disability. Further, the College represents that it is in compliance with all Federal, State, and local laws, regulations or orders, as amended or supplemented. The implementation of this contract will be carried out in strict compliance with all Federal, State, and local laws regarding discrimination in employment.

- B. Neither the County nor the Sheriff will be responsible for damages arising from personal injury to the students, employees, officials, or agents of the College, or for damage to their property, while they are present at the Facility unless such personal injury or property damage was caused by the negligence of the County, its employees, or agents. This Agreement shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Agreement shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.
- C. To the fullest extent permitted by the North Carolina Tort Claims Act, the College shall indemnify and hold harmless the County, the Sheriff, and each of their officials, agents, students, and employees, from and against all claims, damages, losses, and expenses direct, indirect, or consequential arising out of or resulting from the performance of this Agreement or the actions of the College, its officials, employees, students under this Agreement or under the contracts entered into by the College in connection with this Agreement. This indemnification shall survive the termination of this agreement.
- D. The College will be responsible for the negligence of its employees and agents to the extent permitted by the North Carolina Tort Claims Act.
- E. The College and the County will not exchange funds in connection with the BLET program, which is the subject of this Agreement.

IV. SPECIFIC RESPONSIBILITIES OF THE COLLEGE

The College acknowledges the following specific responsibilities in connection with this Agreement:

- A. To plan with the Durham County Sheriff's Office, sufficiently in advance, the scheduled dates of activities for the students at the Facility and the College faculty who will be involved.
- B. To ensure that its participating students, employees, officials, and agents, abide by all existing rules and regulations of the County and the Sheriff's Office in the performance of their activities at the Facility.
- C. To ensure that each instructor and student enrolled in the then current BLET certificate program has executed the required "Assumption of Risk/Waiver of Claims" form, a copy of which is attached hereto as Exhibit 1. The College shall deliver to the Sheriff the original forms executed by each student enrolled in the BLET program prior to his use of the Facility. The failure of the College to obtain and deliver a Release form from each student that will utilize the Facility shall be deemed a material breach of this Agreement and shall result in the immediate

termination of this Agreement and the College's privilege of using the Facility.

- D. To provide adequately trained and qualified personnel to supervise utilization of the firing range and POPAT course. These personnel will be responsible for observing and enforcing all safety protocols and for safeguarding the physical premises and equipment present at the Facility.
- E. The College shall take all due precautions to avoid any and all damage to the real property, buildings and structures, training aids, and personal property of the County and Sheriff present at the Facility. Should any damage or other loss result from the negligent or willful conduct of the College's students, employees, officials, or agents, it shall reimburse the County and/or Sheriff for said loss at the full replacement cost.
- F. The College shall be responsible for cleanup of the Facility following the utilization, including but not limited to retrieving and disposing of all brass, casings, cartridges, wadding, or other residue, as well as removal of targets and cardboard backings and personal refuse.
- G. The College shall carry, or cause its BLET program students to carry, adequate medical/accident insurance to cover any injuries or damage sustained or caused by its students, employees, or agents during the utilization of the Facility under this contract at the following limits:
 - \$1,000,000—Bodily Injury Liability; and
 - \$ 100,000—Property Damage Liability; or
 - \$1,000,000—Combined Single Limit Bodily Injury and Property Damage

The College agrees to furnish or have furnished to the County proof of compliance with the insurance coverage requirements of this Agreement upon request. The College, upon request by the County, shall furnish a certificate of insurance from an insurance company licensed to do business in the State of North Carolina verifying the existence of any insurance coverage required. The certificate will provide for sixty (60) days advance written notice in the event of termination or cancellation of coverage.

V. SPECIFIC RESPONSIBILITIES OF THE COUNTY

The County acknowledges the following specific responsibilities in connection with this agreement:

- A. The Facility shall be made available to the College for the limited purpose of the physical agility and firearms training portions of the BLET certificate program during the term of this Agreement.
- B. The County shall permit the students, duly enrolled in the BLET certificate program, to use the facility while participating in the BLET certificate program during the scheduled hours designated pursuant to Section IV, herein, while under the supervision of the College faculty teaching the BLET program.

IN WITNESS WHEREOF, the County and the College have executed this Agreement as of the date first written herein.

Consent Agenda Item No. g. Durham County ABC Board Service Agreement (approve for basic maintenance services for \$25,840.20, plus compensation for additional repair services as requested).

SCOPE OF WORK

Maintenance Services will be provided by employees of the General Services Department on the following ten (10) Durham County ABC Board properties:

1930 Holloway Street	905 Fayetteville Street
2801 Roxboro Road	107 Infinity Road
5004 Highway 55	3220 Guess Road
1620 Chapel Hill Blvd.	6118 Farrington Road
2806 Hillsborough Rd	Cooper Street Warehouse

Ground Maintenance Services:

1. Pick up trash every Monday and Thursday; also empty outside receptacles.
2. Mow and trim grass a minimum of every 2 weeks, more often if needed.
3. Remove leaves in the fall of each year as needed or on request.
4. The ABC Board will be invoiced a set amount for labor as described in compensation for services, plus parts, supplies, and materials as required.
5. Any other ground maintenance support services requested and agreed upon in advance (e.g., ice and snow removal, etc.)

Building Maintenance Services:

1. Monthly treatment of pest control services at all locations.
2. General Services will invoice the ABC Board separately for all previously approved requests by Randy Mills, General Manager, Durham County ABC Board, or his designee.

Consent Agenda Item No. i. Advancement of Revaluation Date (adopt the resolution from the Tax Administrator advancing the date to January 1, 2007).

The resolution follows:

RESOLUTION REGARDING ADVANCING THE TIME FOR
GENERAL APPRAISAL OF REAL PROPERTY

WHEREAS, under the Octennial Plan, the County of Durham will be required to reappraise all real property as of January 1, 2009, in accordance with the provisions of North Carolina General Statutes 105-283 and 105-317; and

WHEREAS, pursuant to North Carolina General Statutes 105-286(a)(2), the County may advance the time for a general reappraisal of real property by the adoption of the Board of Commissioners of a resolution so providing; and

WHEREAS, the Tax Administrator has requested that the Board of Commissioners advance the time of the next general reappraisal of real property to January 1, 2007; and

WHEREAS, pursuant to North Carolina General Statutes 105-286(a)(2), the Board of Commissioners may advance the time for a general reappraisal of real property by the adoption of a resolution.

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

1. The next general reappraisal of real property within the County of Durham, North Carolina shall be advanced to January 1, 2007, under the provision of North Carolina General Statutes 105-286(a)(2).
2. The Tax Administrator shall promptly forward a copy of this Resolution to the North Carolina Department of Revenue.
3. The Tax Administrator shall promptly forward a copy of this Resolution to each of the taxing units located within the County.

ADOPTED this the 9th day of August, 2004.

Consent Agenda Item No. k. Alston Village (Falls Pointe Apartments) Refunding (approve the two resolutions).

The resolutions follow:

RESOLUTION APPROVING FINANCING TEAM AND MAKING
CERTAIN FINDINGS WITH RESPECT TO THE ISSUANCE OF
MULTIFAMILY HOUSING REVENUE REFUNDING BONDS
(FALLS POINTE APARTMENTS) SERIES 2004

WHEREAS, the Board of Commissioners (the "Board") of the County of Durham (the "County") met in the Commissioners' Meeting Room, Durham, North Carolina at 7:00 p.m. on the 9th day of August, 2004; and

WHEREAS, pursuant to N.C.G.S. § 153A-376, the Board has the power to exercise directly those powers granted by law to county housing authorities created under Chapter 157 of the North Carolina General Statutes (the "Act"); and

WHEREAS, pursuant to the Act, the County has the power to issue its bonds to finance, or refund, the cost of providing multifamily housing for low and moderate income persons; and

WHEREAS, NRP Alston Village, LLC, a North Carolina limited liability company, or an affiliated or related entity (the "Borrower"), has requested that the County assist in the refunding of County's Multifamily Housing Revenue Bonds (Alston Village Apartments) Series 2000 in the aggregate outstanding principal amount of \$21,820,000 (the "Prior Bonds") and the County has agreed to do so; and

WHEREAS, the proceeds of the Prior Bonds were loaned to the Borrower to finance the acquisition and construction of a multifamily rental housing development located in the County of Durham, North Carolina, to be known as Falls Pointe Apartments (the "Development"); and

WHEREAS, the County proposes to provide the financing for the refunding of the Prior Bonds by the issuance of its Multifamily Housing Revenue Refunding Bonds (Falls Pointe Apartments Project), Series 2004 in an amount now estimated not to exceed Twenty-Two Million Dollars (\$22,000,000) (the "Bonds"); and

WHEREAS, the North Carolina Local Government Commission has requested the County to make certain findings with respect to the Bonds consistent with Section 159-153 of the North Carolina General Statutes; and

WHEREAS, it is anticipated that the Bonds will be purchased by a single institutional investor, GMAC Commercial Holding Capital Corp., or an affiliated or related entity thereof ("GMAC"); and

WHEREAS, the Borrower has requested that the County approve its selection of the following financing team members for the issuance and sale of the Bonds, on the terms and at the fees set forth in the documents and financial information relating to the financing, providing for the issuance and sale by the County and the purchase by GMAC of the Bonds and in the financial information provided to the County with respect to the Bonds:

Bond Counsel:	Hunton & Williams LLP
Issuer's Counsel:	Durham County Attorney's Office
Trustee:	Wachovia Bank, National Association
Borrower's Counsel:	Broad and Cassell
Borrower's Local Counsel:	Womble, Carlyle, Sandridge & Rice, PLLC
Bond Purchaser :	GMAC Commercial Holding Capital Corp.
Bond Purchaser's Counsel:	KMZ Rosenman
Placement Agent:	Newman & Associates
Placement Agent's Counsel:	Eichner & Norris PLLC

WHEREAS, based upon information and evidence received by the County, it has determined to approve the Borrower's request;

NOW, THEREFORE, THE COUNTY OF DURHAM, NORTH CAROLINA DOES HEREBY RESOLVE, AS FOLLOWS:

1. The above financing team for the issuance of the Bonds by the County is hereby authorized and approved.
2. The County hereby finds that the financing is necessary and expedient to further the County's purpose of promoting low and moderate income housing in the County, and that the refunding of the Prior Bonds proposed by the Borrower is necessary and sufficient to accomplish the County's purposes with respect to the properties involved.
3. The County hereby finds that the Borrower has demonstrated that the amount of debt to be incurred in connection with the Development and the fees to be paid in connection therewith are sufficient but not excessive for the purpose of refinancing the Development.
4. The County hereby finds that the Borrower has demonstrated that (i) it is financially responsible and capable of fulfilling its obligations to make loan repayments and other payments under the Loan Agreement between the County and the Borrower (the "Loan Agreement"), which will provide the funds to pay principal and interest on the Bonds, and (ii) the Development will generate sufficient revenues to make loan repayments and other payments under the Loan Agreement, to operate, repair and maintain the Development at its own expense and to discharge such other responsibilities as may be imposed under the Loan Agreement. The County further finds that adequate provision has been made for the payment of the principal of, redemption premium, if any, and interest on the Bonds, and the operation, repair and maintenance of the Development at the expense of the Borrower.
5. The County hereby finds that the use of the proceeds of the Bonds for a loan to refinance the costs of the Development and for the other purposes stated above will accomplish the public purposes set forth in the Act and hereby approves such use of proceeds.
6. This Resolution shall take effect immediately upon its passage.

RESOLUTION AUTHORIZING ISSUANCE AND SALE OF
MULTIFAMILY HOUSING REVENUE REFUNDING BONDS
(FALLS POINTE APARTMENTS) SERIES 2004

WHEREAS, NRP Alston Village, LLC, a North Carolina limited liability company, or an affiliated or related entity (the "Borrower"), has requested that the County assist in the refunding of County's Multifamily Housing Revenue Bonds (Alston Village Apartments) Series 2000 in the aggregate outstanding principal amount of \$21,820,000 (the "Prior Bonds"), and the County has agreed to do so; and

WHEREAS, the County proposes to provide such financing by the issuance of its Multifamily Housing Revenue Refunding Bonds (Falls Pointe Apartments), Series 2004 in the principal amount not to exceed \$22,000,000 (the "Bonds"); and

WHEREAS, Newman and Associates, as Placement Agent (the "Placement Agent") will place the Bonds to GMAC Commercial Holding Capital Corp., or an affiliated or related entity (the "Bond Purchaser"); and

WHEREAS, the proceeds of the Bonds will be loaned to the Borrower pursuant to a loan agreement for the purpose of refunding the Prior Bonds, and paying certain issuance expenses in connection with the issuance of the Bonds; and

WHEREAS, the Borrower's obligations under the loan agreement will be secured by a deed of trust with respect to the Development, from the Borrower to a deed of trust trustee named therein for the benefit of the County (the "Deed of Trust"), and various other security documents, all of which will be assigned to the Trustee for the benefit of the Bond Purchaser; and

WHEREAS, there have been presented to this meeting draft forms of the following instruments which the County proposes to execute to carry out the transactions described above, copies of which instruments shall be filed with the records of the County:

- a) Trust Indenture dated as of September 1, 2004 (the "Indenture") between the County and Wachovia Bank, National Association, as trustee (the "Trustee"), authorizing the issuance of the Bonds and providing for the terms and details thereof and the security therefor;
- b) Loan Agreement dated as of September 1, 2004 (the "Loan Agreement") between the Borrower and the County, providing for the terms and conditions pursuant to which the loan of the proceeds of the Bonds will be made by the County to the Borrower, together with the promissory note (the "Note") in favor of the County and the Deed of Trust in favor of the County to be assigned to the Trustee;
- c) First Amendment to the Regulatory Agreement and Declaration of Restrictive Covenants dated as of June 1, 2004 pursuant to which the Borrower will be required to operate the Project in accordance with Section 142(d) of the Internal Revenue Code of 1986, as amended (the "Regulatory Agreement"); and
- d) Bond Placement Agreement dated the date thereof, among the County, the Borrower, the Placement Agent, and the Bond Purchaser (the "Bond Placement Agreement").

BE IT RESOLVED BY THE COUNTY OF DURHAM, NORTH CAROLINA:

1. The County hereby determines to provide financing to the Borrower for the refunding of the Prior Bonds through the issuance of the Bonds pursuant to the North Carolina Housing Authorities Law, Article 1 of Chapter 157 of the General Statutes of North Carolina, as amended, the advance of the proceeds thereof and the deposit of such proceeds with the Trustee in accordance with the Indenture and the Loan Agreement.
2. The County hereby authorizes the issuance and sale of the Bonds pursuant to the Indenture and in accordance with the terms set forth in the Indenture. The Bonds will bear interest at the rates and will mature and be redeemed in the years and amounts all as set forth in the Indenture; provided, however, that the aggregate principal amount of the Bonds shall not exceed \$22,000,000.
3. The Chairman or Vice Chairman of the County or his designee is hereby authorized and directed to execute and deliver the Indenture, the Loan Agreement,

- the Bond Placement Agreement, and the Regulatory Agreement to the other parties thereto. The Chairman and Vice Chairman of the County or his designee are each authorized and directed to execute and deliver such endorsements, assignments and other instruments as may be necessary to assign the promissory note, the Deed of Trust and other security documents to the Trustee.
4. The Chairman or Vice Chairman of the County is hereby authorized and directed to execute and deliver the Bonds in the manner and subject to the conditions provided in the Indenture to the Trustee for authentication and to cause the Bonds so executed and authenticated to be delivered to or for the account of the Bond Purchaser upon payment of the purchase price therefor.
 5. The Indenture, the Loan Agreement, the Regulatory Agreement, the Bond Placement Agreement, the Note (and assignment thereof), the Deed of Trust Assignment and the Bonds shall be in substantially the forms submitted to this meeting, which are hereby approved, with such completions, omissions, insertions and changes as may be necessary or convenient to reflect the final terms of the Bonds, and as otherwise approved by the officers of the County executing them after consultation with counsel to the County, their execution to constitute conclusive evidence of their approval of any such completions, omissions, insertions and changes.
 6. Any authorization made hereby to the officers of the County to execute a document shall include authorization to the Chairman or Vice Chairman of the County or his designee to execute the document, authorization to the Clerk or any Deputy Clerk to affix the seal of the County to such document and attest such seal and where appropriate, to deliver it to the other parties thereto, all in the manner provided in the Indenture.
 7. Such officers are hereby authorized and directed to execute and deliver any and all other documents, agreements, instruments, and certificates in the name and on behalf of the County as may be necessary or desirable to the issuance of the Bonds. All other acts of the officers of the County that are in conformity with the purposes and intent of this resolution and in furtherance of the undertaking of the refunding of the Prior Bonds and the issuance and sale of the Bonds are hereby ratified, confirmed, and approved.
 8. This resolution shall take effect immediately.

Consent Agenda Item Removed for Discussion

Consent Agenda Item No. 1. Approval of Federal Grant Offer to the Raleigh-Durham International Airport (accept the grant offer).

Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702, Chairman of the Durham Committee on the Affairs of Black People, stated that the Federal grant offer is an excellent opportunity.

Dr. Allison asked whether the Raleigh-Durham Airport sales tax distribution matter had been addressed.

Chairman Reckhow informed Dr. Allison that the sales tax distribution issue is a work in progress. As a result of the July City-County Committee meeting, the leadership of Durham County, Durham City, Wake County, and the City of Raleigh plan to meet to discuss the distribution of sales tax revenue generated at the Airport. Attorney Jim Tatum, Counsel to the Airport, has prepared a report about other airport situations around the country. Chairman Reckhow asked County Attorney Kitchen if he had requested a copy of the report from Attorney Tatum.

County Attorney Kitchen replied that he contacted Attorney Tatum who agreed to send a paper copy of the report in the U.S. Mail. To date, Attorney Kitchen had not received the information.

Dr. Allison announced the 69th Founders' Anniversary to salute the officers and members of the Durham Committee on the Affairs of Black People. She requested that the Commissioners develop resolutions for the two honorees—Julius L. Chambers and Clarke Edgerton Jr.

Chairman Reckhow stated that the Board would follow up on Dr. Allison's request and contact her regarding its determination.

Commissioner Heron moved, seconded by Commissioner Jacobs, to accept the grant offered to the Raleigh-Durham International Airport for \$6,729,884 to expand the Terminal C Apron and relocate Taxiway D (Phase I).

The motion carried with the following vote:

Ayes: Cousin, Heron, Jacobs, and Reckhow
Noes: None
Absent: Bowser (arrived late)

Public Hearing and Budget Ordinance Amendment No. 05BCC000004—Office of the Sheriff—2004 Local Law Enforcement Block Grant Funds

Marcia Margotta, Sheriff's Comptroller, reported that the Office of the Sheriff submitted its on-line application for Durham County's share of the 2004 Local Law Enforcement Block Grant (LLEBG) and received subsequent approval of a \$67,335 block grant award from the U.S. Department of Justice—Bureau of Justice Assistance. The purpose of the LLEBG Program is to reduce crime and improve public safety. The award could only be used in accordance with the seven purpose areas described for this grant program.

These intergovernmental funds awarded to Durham County would be used for the purchase of equipment for the Sheriff's communications and general field deputies.

The Sheriff established an Advisory Board as specified by the grant, which met on July 15, 2004 to recommend the proposed use for these funds. The equipment to be

purchased as suggested by the Advisory Board is as follows: Network Security Software, HDU Training (bomb squad—Redstone, AL), Surveillance Equipment (SAC/NARC), Multi-Media Projectors (Gang Unit), Range Improvements, Bar Coding System (asset inventory & evidence collection/storage), Digital Movie Camera (Bull City Streets), Dialogue Projector/Teleprompter (Bull City Streets), POPAT Upgrades, and Crisis Negotiations Training. Such equipment and technology would enhance and improve the law enforcement abilities of the Sheriff's Office and the County of Durham.

One of the special conditions of this grant award program was to conduct a public hearing to receive public comment as to the use of these funds. This public hearing was advertised in the Durham Herald-Sun newspaper on August 1, 2004 and August 8, 2004 to give proper notification.

No additional County funding was required and no subsequent year budget impact was anticipated. The Office of the Sheriff would provide the required grantee local cash match of \$7,482.00 from its current budget. The total appropriation was \$74,817.00; the expenditures and revenue recognized was \$67,335.00 from the grant award.

Chairman Reckhow opened the public hearing. As no one requested to speak, Chairman Reckhow closed the hearing and referred the matter back to the Board.

Commissioner Jacobs moved, seconded by Commissioner Cousin, to approve the Advisory Board's recommendation for the proposed use of the 2004 LLEBG award funds and approve Budget Ordinance Amendment No. 05BCC000004 to accept grant funding and appropriate program spending.

The motion carried with the following vote:

Ayes: Cousin, Heron, Jacobs, and Reckhow
Noes: None
Absent: Bowser (arrived late)

The budget ordinance amendment follows:

DURHAM COUNTY, NORTH CAROLINA
FY 2004-05 Budget Ordinance
Amendment No. 05BCC000004

BE IT ORDAINED BY THE COMMISSIONERS OF DURHAM COUNTY that the FY 2004-05 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	\$256,120,678	\$67,335	\$256,188,013

Expenditures:

<u>Activity</u>			
<u>GENERAL FUND</u>			
Public Safety	\$ 38,305,213	\$67,335	\$ 38,372,548

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

This the 9th day of August, 2004.

(Budget Ordinance Amendment recorded in Ordinance Book _____, page _____.)

Public Hearing—Doc Nichols Road Tract (P04-09)

Frank Duke, Planning Director, gave an overview of the agenda item. R. L. Horvath Associates Inc. was requesting to rezone a 288.13-acre site located on the east side of Doc Nichols Road between Olive Branch Road and Leesville Road from RD to PDR 3.39. PIN 0769-01-19-6484; 0860-03-11-5310; and -32-3006. The proposal was in conformance with the small area plan.

The committed elements of the development plan follow:

1. Build a maximum of 976 dwelling units.
2. All single-family lots to be a minimum of 6,000 square feet.
3. No perimeter lots and no lots extended into stream buffers.
4. Site not to exceed 24% impervious surface.
5. A recreational swim club facility will be provided.
6. Construct left-turn lane at each site entrance on Doc Nichols Road.
7. Widen Doc Nichols Road to a 45 feet back-to-back curb and gutter section for the frontage of the site, including the frontage of the excluded Morton Property.
8. Dedicate 10 feet of additional right-of-way along the frontage of the site on Doc Nichols Road.
9. Construct northbound and eastbound left-turn lanes at the intersection of Olive Branch Road and Doc Nichols Road.
10. Construct westbound and southbound left-turn lanes at the intersection of Doc Nichols Road and Leesville Road.
11. Construct a westbound left-turn lane at the intersection of Olive Branch Road and NC 98.

Mr. Duke stated that staff recommends approval based on consistency with the adopted plan and conformity with technical requirements. The Zoning Committee of the Durham Planning Commission conducted a public hearing on June 8, 2004 and voted 7-0 to recommend denial, based primarily on the density requested.

Chairman Reckhow opened the public hearing that was properly advertised.

The following citizens spoke in opposition to the rezoning request:

Billy Sparks, 248 Bandoack Dr., Durham, NC 27703 (traffic concerns)

Bruce Harris, 245 Bandoack Dr., Durham, NC 27703 (environmental impact concerns, lack of diversity, and quality of life for the children)

Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702 (traffic, school impact, and environmental concerns)

William A. Drew Marsh III, Attorney for the applicant, 120 E. Parrish St., Durham, 27701, appealed to the Commissioners to approve the rezoning request.

Ronald Horvath, applicant, 16 Consultant Place, Durham, NC 27707, added to the argument given by Attorney Marsh in support of the rezoning.

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

Commissioner Jacobs inquired about bicycle and walking trails and traffic and school impact.

Chairman Reckhow voiced that the site plan is not appropriate for the environmentally sensitive site at the edge of the urban growth area. Her concerns were steep slopes, protection of water quality during construction, and mass grading. She recommended a larger buffer around the stream buffer and more protection for the environmental conditions. She suggested that the developer consider removing the 150 townhomes.

Commissioner Cousin asked Mr. Duke to (1) explain why Planning staff and the Planning Commission Zoning Committee have different opinions relating to approval and denial of rezoning requests; and (2) if the request is consistent with provisions of the new UDO.

Mr. Duke responded that (1) Planning staff is restricted in making recommendations by applying ordinances and policies approved by the Commissioners. The Zoning Committee has more discretion because it can consider factors beyond policy and ordinance requirements. (2) Mr. Duke named two areas in question with regard to the new UDO: density provisions and connectivity index requirements.

Commissioner Heron stated her concern that the density is inappropriate for the rural area. Additional concerns were parking, runoff from the steep slopes, utility infrastructure, and the lack of public transportation services in the area.

Commissioner Bowser inquired about the density as it relates to the new UDO. He asked about the density if the 150 townhomes were removed from the plan.

Mr. Horvath consented to complying with the number of units per the new UDO and reducing the townhomes until the units are less than 4 per acre.

The Commissioners discussed whether the changes offered by Mr. Horvath would require that the request be reconsidered by the Zoning Committee.

Commissioner Bowser aired concern about the amount of time involved in the approval process (4 to 5 months) if the plan is resubmitted to the Zoning Committee.

Mr. Horvath committed to reducing the townhomes to a maximum of 100 (a density of 3.2 units per acre) and enlarging the lots.

Commissioner Heron expressed additional traffic impact concerns. She suggested that an amended plan be resubmitted to the Zoning Committee.

Chairman Reckhow concurred with Commissioner Heron. She asked the developer if he would like the Board to defer action so he could make the suggested revisions to the site plan.

Mr. Marsh requested that the Board take action at this meeting because of the time element involved.

Commissioner Jacobs wished to know the reduction in trips per day by reducing the townhomes to 100.

Mr. Marsh replied that the reduction would be approximately 275 to 300.

Commissioner Heron made a motion to deny the rezoning request. Chairman Reckhow seconded the motion.

Commissioner Bowser moved to approve the request provided the townhomes are reduced from 150 to 100.

The motion failed for the lack of a second.

The Commissioners voted on the first motion, providing an ambiguous response.

County Attorney Chuck Kitchen spoke about the latitude of the Board in amending proposals without sending them back to the Planning Commission. The statute provides little guidance; however, the standard is a 10% variance.

Mr. Duke conveyed that the criterion applied by the City is an increase or decrease of more than 20%.

Chairman Reckhow advised that the developer work within the boundaries of 20% so that the request would not have to be resubmitted to the Zoning Committee.

Commissioner Heron contended that a 20% reduction is significant and should require that the plan be revisited by the Zoning Committee.

Commissioner Cousin requested a division to indicate how each member voted on the initial motion to deny.

The showing of hands determined that the motion to deny the request failed with the following vote:

Ayes: Heron and Reckhow

Noes: Bowser, Cousin, and Jacobs

Discussion ensued about the density issue and the reduction in townhouses.

Commissioner Jacobs moved, seconded by Chairman Reckhow, that the Board delay action on this request to give the Planning Director and the developer time to work out a reduction in the number of townhomes. Bring an amended plan back to the Commissioners at their September 13 Regular Session.

Mr. Horvath confirmed for Mr. Duke that he proffered the following:

1. As a committed element, add a traffic signal at Olive Branch and Doc Nichols Roads subject to NCDOT approval.
2. To comply with the new UDO, install sidewalks on all cul-de-sacs greater than 400 feet in length.
3. Change the overall number of units in the project.

Chairman Reckhow petitioned Mr. Horvath to provide a plan for an environmentally-friendly project.

Commissioner Jacobs' motion carried with the following vote:

Ayes: Bowser, Cousin, Jacobs, and Reckhow

Noes: Heron

Commissioner Heron directed County Attorney Kitchen to obtain an unequivocal ruling as to whether the Board is violating policy by not requesting Zoning Committee approval on the revised plan.

Public Hearing—Plan Amendment A04-08—Junction Road Property

Planning Director Frank Duke stated that the property is comprised of 40.63 acres of a total of 75.88 acres on five parcels located on the east side of Junction Road, west of Woodland Park. The applicant is seeking medium-density residential and low-density residential designation to develop 249-single family units. The Northeast Durham Plan designates this site as an Employment Center, which allows high-density residential development but not medium- and low-density residential.

Staff has concluded that the applicant is correct that the proposed development would provide for a smooth transition from the low-density residential development from the south and east of the site to high-density residential. It is also true that more intense development would be difficult on the eastern portion of the site due to environmental constraints. Given these additional levels of detail, the change in designation is justified.

The proposal is consistent with the plans for the area and the Northeast Durham Plan.

The proposal for low-density residential and medium-density residential designations is compatible with the surrounding development of the area, providing a transition between the higher densities encouraged within the Employment Center and surrounding lower density development.

There are no significant environmental constraints on development of the site with the proposed designation.

The requested change was evaluated to suggest its potential impact on the road network and schools. In each case, the impact of the change is evaluated based upon a change from the most intense development using the existing land use designation and zoning within that designation to the use proposed with the corresponding zoning request.

The proposed designation represents a decrease in traffic based on the designation shown in the Plan.

The schools to be affected by this development are: Merrick-Moore Elementary School, Neal Middle School, and Southern High School. The proposed designation represents an increase of students over the existing designation. The school system has the capacity to accommodate the increase.

Planning staff recommended approval based on the proposed designation's consistency with the language of the Northeast Durham Plan.

The Planning Commission voted denial 6-5 at its meeting of April 28, 2004, the primary reason being that the Northeast Durham Plan is one of the last plans adopted. Mr. Duke acknowledged that the Planning Commission recommended approval of the corresponding rezoning subsequent to denial of the plan amendment.

Chairman Reckhow opened the public hearing that was properly advertised.

Patrick Byker, representing REA Associates, 2614 Stuart Drive, Durham, NC 27707, cited justifications for the Board to approve the plan amendment. Goals and objectives of the plan are to encourage affordable housing and new employment centers, reduce commuter travel times, promote infill development, and encourage cluster development near environmentally sensitive areas.

Liz Morey, Board Chairman for Healthy Start Academy (current owners of the referenced property), 6817 Huntingridge Road, Chapel Hill, NC 27517, supported the project.

Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702, voiced opposition to the plan amendment.

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

Commissioner Heron moved, seconded by Commissioner Cousin, to approve Plan Amendment A04-08—Junction Road Property.

The motion carried unanimously.

RESOLUTION AMENDING NORTHEAST DURHAM PLAN
CASE A04-08

WHEREAS, the Durham County Board of Commissioners has adopted long-range land use plans, including small area plans, to help guide the future development of land within the County's jurisdiction; and

WHEREAS, changed community conditions, the age of the adopted plan, development activity within the planning area, and other factors may warrant a change to an adopted plan; and

WHEREAS, the Durham County Board of Commissioners has adopted a resolution that requires that the Board consider changes to adopted land use plans when requested rezoning substantially conflicts with an adopted land use plan.

NOW THEREFORE BE IT RESOLVED BY THE DURHAM COUNTY BOARD OF COMMISSIONERS:

SECTION 1

That the Future Land Use map of the Northeast Durham Plan be amended as follows:

---to identify as Medium Density Residential and Low Density Residential the recommended future uses of parcels 0841-02-78-8940 (partial), 0841-07-59-7390 (partial) and 0841-07-69-6448 (partial) as shown on the attached map.

SECTION 2

This change shall become effective upon the adoption of this resolution.

Closed Session

Dr. E. Lavonia Allison, P.O. Box 428, Durham, NC 27702, requested elucidation regarding the process by which Closed Session minutes, principally involving personnel issues, are opened to the public.

Chairman Reckhow explained that the minutes are sealed and subsequently released for public review when the issue is no longer sensitive.

County Attorney Kitchen further expounded that the Board must adjourn to closed session to discuss personnel issues pursuant to Federal and State laws. The minutes remain closed until opening the minutes would no longer frustrate the purpose of the closed session.

Commissioner Jacobs moved, seconded by Commissioner Heron, that the Board adjourn to closed session to consider the competence, performance, or fitness of a public officer or employee and to discuss matters relating to the location or expansion of industry pursuant to G.S. § 143-318.11(a)(4) & (6).

The motion carried unanimously.

Chairman Reckhow announced that no action was taken in the Closed Session.

Commissioner Cousin moved, seconded by Commissioner Jacobs, to excuse Commissioner Bowser from the 4:00 to 6:30 p.m. Closed Session.

The motion carried unanimously.

Adjournment

There being no further business, Chairman Reckhow adjourned the meeting at 9:50 p.m.

Respectfully submitted,

Vonda C. Sessoms
Deputy Clerk to the Board